

Civil Society, WTO and the Environment

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MASTER OF PHILOSOPHY

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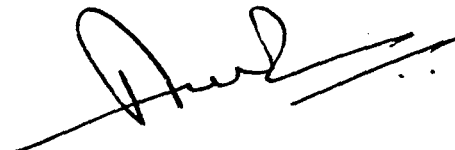
DECLARATION

I declare that the dissertation entitled *CIVIL SOCIETY, WTO AND THE ENVIRONMENT* has been submitted by me in partial fulfillment of the requirements for the award of the degree of *MASTER OF PHILOSOPHY* of this university is my original work. This dissertation has not been previously submitted for any other degree of this or other university.


SIREYA CHAKRABARTY

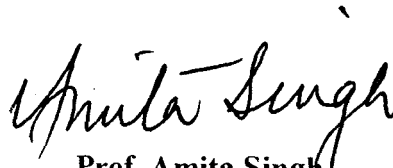
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ABBREVIATIONS

EU	European Union
FAO	Food and Agricultural Organisation
FOE	Friends of Earth
IMF	International Monetary Fund
IPPC	International Plant Protection Convention
ISO	International Standards Organisation
NGO	Non-governmental Organisations
NTB	Non-Tariff Barriers
OECD	Organisation for Economic Cooperation and Development
OIE	Office International des Epizootics (OIE)
SPS	Sanitary and Phyto-sanitary Measures/ Agreements
TBT	Technical Barriers to Trade
TNC	Transnational Corporations
TPRM	Trade Policy Review Mechanism
TRIMs	Trade Related Investment Measures
TRIPs	Trade Related Intellectual Property Rights
UN	United Nations
WB	World Bank
WHO	World Health Organisation
WTO	World Trade Organisation
WWF	World Wildlife Fund

Chapter 1

INTRODUCTION AND CONCEPTUAL FRAMEWORK

Introduction

With the creation of the contemporary liberal-democracy by the society along with the liberalisation followed by the globalisation process the society has been undergoing changes towards further fragmentation for the objective of achieving certain larger social and environmental problems which cannot be addressed on a unitary or unilateral basis. It would require greater co-ordination and co-operation between different actors or agents who are involved in the larger role of policy-making, up-gradation of markets and social productive as well as consuming forces. Since states have come out of their territorial boundaries to establish long-term economic, political relationships for mutual benefits and transparent development with lesser apprehensions, the respective societies have indirectly become a participant or a stakeholder in all these negotiations with the help of production processes, media and technology and greater transport facilities. Nevertheless, the state and state institutions at the external sphere deriving inspiration from the Athenian concept of “direct democracy”, are unable to provide active participation to these newly emerging groups and networks. Therefore, the hypothesis of my study revolves around the probable networking between glob-international civil society actors vis-à-vis the WTO on issues involving the Environment.

1.1 Globalisation

Globalisation has been defined as “*development*”¹ which began in the 19 and 20 Century² because it involves spread of “*knowledge*” and “*information*” with the help of “*technology and popular mobilization*”³. There are two strands of thinking which analyses this process by categorising different authors under: *a) liberalisation intensifiers; b) objective globalisers; and c) the adapters to globalisation*. The first school of thought are the “*sceptics*”⁴, the second being the “*globalists*”⁵ and lastly the

¹ Mary Kaldor. 2003. *Global Civil Society: An Answer to War*. Polity Press.

² David Held. et.al.2000. *The Great Globalisation Debate: An Introduction in The Global Transformation Reader: An Introduction to the Globalisation Debate*. ed. David Held and Anthony McGrew. pp.1-46. Polity Press.

³ Vincent Cable. 2002. *Globalisation and Global Governance*. Chatham Papers.

⁴ Ibid..2

⁵ Ibid..2,4

*“transformationalists”*⁶. Nevertheless, the element of change along with some status quo⁷ is present in all the three categories. According to Tarrow there is no concept such as “global” and every negotiation at the supraterritorial sphere is “international”.

Sceptics believe that globalization is a threat to already existing norms, values, prevailing practices and precedents. On the other hand, the globalists consider globalization as an extremely new concept beginning in the 1960s. Ironically, despite considering globalization as an old phenomenon popularly known as the liberalization of 19th and 20th Century, skeptics find an ideological difference between the two with the former based on liberalism whereas the latter based on “neo-liberalism” (Held et al, 2000:5).⁸ Sceptics’ view globalization keeps the local developments in mind such as the increasing dominance of markets whereas, the globalists view globalization with respect to the “structural changes” taking place both at the national level as well the supra-national level (Held et al, 2000: 6).

In addition to this, any incidence taking place in one part of the world has a “chain reaction” in terms of political, economic and social impact on other parts of the world in no time. The world can no more remain indifferent to the developments anywhere in the world. Globalisation has numerous angles and strands attached to it affecting as well as using factors such as trade or exchange of economic goods, technical know-how, knowledge and information, new political, administrative and management skills between states as well as societies. Apart from these factors there are various other issues that have gained importance in the globalized world. The major issue that has gained prominence and importance in the global world are environmental issues.

With the advent of neo-liberalism which forms the basis of globalisation has been assigning the state more of a regulatory role particularly in the economic sphere. Globalisation has led to diminishing capacities of the relatively autonomous welfare state due to rise of only a certain kinds of non-state actors such as the mercantilist bourgeoisie (during early liberalisation) and now the Trans-national/Multi-national

⁶ Ibid..2,4,5

⁷ Because state continues to remain an important factor either with less importance or more

⁸ The concepts of liberalism and neo-liberalism will be explained with respect to the role and scope of the nation state in the latter section of the conceptual framework.

Corporations (T/MNCs). There has been greater dependence on export-led growth and transfer of capital in the form of foreign direct Investments. This has been creating problems of privatisation of services such as health, insurance and so on due to which the distribution of services and resources is getting affected. This is because of the fact that liberalism, unlike realism, which forms the basis for liberalisation and globalization gives a lot (if not equal) of importance to non-state actors such as the society and markets which are less accountable to the masses as compared to the state. Unlike realism, liberalism asserts that states are not an end in themselves and the territorial state security cannot be the only reason for establishing international policy oriented relations.

All sectors in the economy of any state are extremely overlapping due to interdependence. Nevertheless, it is argued that deliberation by the international organizations especially in the economic sphere is focused on accumulation of wealth for larger societal benefits and development. However, they overlook the distributive functions of the state. Distributive functions are mainly carried out by the bureaucracy to whom the states⁹ delegate such work. Delegation according to Jeremy Bentham is assigning a particular job to an un-elected person or a group or any agency. Markets are one of the means of carrying out the task of distribution providing the consumers with a lot of choices.

It is based on the “principal agency theory” whereby the “principal” (in this case the states) delegate some job to the “agent” (in this case the bureaucracy). It is accompanied by “responsibility and accountability” for both the positive outcome and results or performance. Demand for reduction in the size of bureaucracy raises the question of as to how adequate means of distribution as well as burden sharing could be generated or located. Since markets breed “anarchy” in the form of competition, less state activity and inequality and due to absence of a world government and global justice system¹⁰ regulation of markets became a necessity for the states¹¹ his forces

⁹ This is however contextual and may vary from one state to another.

¹⁰ Amartya Sen . 2000. *Development as freedom*.OUP

¹¹ Charles Kegley Jr. and Euglene witkofp. *World Politics: Trend and Transformation*.St. Martin’s Press..p.27

states to function in a “relatively autonomous”¹² way and partially delegate their powers of policy deliberations to these agencies which will be explained later in this framework. Under relative autonomy states try to maintain a balance between the demands of the capitalists and those of the non-capitalists. Kuting¹³ considers the global agencies of economic governance such as the WTO as the primary “culprits” behind diminishing state powers to the powers of the markets. Sidney Tarrow argues that it is only in the economic sphere that the states have lost their powers. In case of traditional security the state continues to exercise control. According to Tarrow there is no concept such as ‘global’ and every negotiation at the supraterritorial sphere is ‘international’.¹⁴

However, the present scenario is a combination of “global” (in terms of scope or reach) as well as “trans-national” or “international” (in terms of activity) thereby creating a ‘Glob-international’¹⁵ like situation. The former has more a structural connotation whereas the latter is a functional concept where the actual activity takes place. This becomes the smallest unit of analysis while studying world relations-political, economic as well as social. A cumulative study of several such activities helps scholars to assess the intensity of the globalised structure or network. John Keane¹⁶ has argued that there is both a global as well as local impact of globalisation which makes it a deductive phenomenon. International Organisations play a very important role in regulating the “glob-international” relations with the UN, WTO, World Bank and IMF and numerous international regimes playing the role of global organisations or agencies regulating trans-regional relations whereas, regional

¹² Hamza Alavi’s, *The State in Post-colonial Societies: Pakistan and Bangladesh*” in. *Introduction to the Sociology of ‘Developing Societies’*. ed. Hamza Alavi and Teodor Shamin. Monthly Review Press 1982

¹³ Gabriela Kuting.2004. *Globalisation and the Environment: Greening of Global Political Economy*: State University of New York Press

¹⁴ Sidney Tarrow, ‘International Institutions and Contentious Politics: Does Internationalisa Make Agents Freerer or Weaker?’,

¹⁵ This term has been propounded by the researcher based on the inferences from various literatures on global governance.

¹⁶ John Keane *Global Civil Society?* Cambridge University Press.p.p.1-39.South Africa.Capetown.2003

organisations such as the EU, ASEAN and SAARC regulating trans-national or international relations.

Prevailing imbalances and inequalities in such trans-national or international leads to several local or contextual problems such as poverty, environmental hazards, violation of human rights in the form of child labour, gender discrimination and marginalization which in-turn create opportunities for the rise of different kinds of social organisations which we understand today as the civil society. Globalisation and the means facilitating such a process have helped some of these local organisations to establish themselves globally and function trans-nationally.

International organization and global governance

International arena has always been considered to be unstable due to absence of world government. Hobbesian according to both realist and liberal school of thought. Due to the absence of any world government at the supra-territorial sphere it was getting difficult for the states to manage their inter-national as well as domestic problems. Excessive competition during the period of colonialism and imperialism for territories led to the formation of military alliances between the states leading to the WWII. The states were affected in terms of capacity as they couldn't find unitary means to recuperate from the repercussions of the war. Thus, the first initiative towards an international organization was made in the form of the League of Nations.¹⁷ However, the League failed to establish itself as strong international organisation due to hegemony exercised by few victorious powers and the presence of colonialism..

The League was created with the objective to: promote co-operation among states; maintain international peace and security; avoid war; promote adherence to international law; to maintain justice and treaty obligations; dealt with economic policies; promoted scope for research to solve economic problems; giving out conditional loans for rehabilitation purposes; also incorporated social objectives of prohibiting trafficking of women and children; prohibit slavery and exploitation; and some scope for civil society involvement through an "International Committee for

¹⁷Akira Iriye, *Cultural Internationalism and World Order*, John Hopkins University, 1997, p. 57.

Intellectual Co-operation” with membership strength of 17 outstanding scholars of the world. International Organisations in the post-WWII era sought specialization. The League was revived into the United Nations Organisation to look into the problems of *security, maintain peace and spread democracy* through the General Assembly.

The UN, unlike the League encouraged sovereignty for states by supporting decolonisation. However, the restricted membership in the UN Security Council and the permanent veto powers enjoyed by the five erstwhile allied powers has led to lot of criticisms. Further bifurcation of the UN into different agencies has been carrying out different development projects to make liberalisation more humane. In addition to the UN, the states also established the Bretton Woods System for greater economic co-operation. Economic co-operation in the post-WWII era was seen as an alternative means of establishing peace and maintain security as it would make the international arena more interdependent. The Bretton Woods System included the International Monetary Fund (IMF); International Bank for Reconstruction and Development (now known as the World Bank); and the General Agreements on Tariffs and Trade (GATT).

The rise of international organisations finds its theoretical basis in Robert Keohane’s liberal institutionalist theory¹⁸ of international relations which considers institutions as the means of achieving transparency, co-operation and inter-dependence in an anarchical world. The idea is to regulate state behaviour according to certain universally applicable rules and norms which would dispel all kinds of apprehensions among states about each other which was very much prevalent under realism. However, such an arrangement in the economic sphere (the GATT) failed to act in a binding way due to the “embedded” nature of the world capitalist order under the influence of Keynesian economics.

According to Keynes the Bretton Woods System was to support free-market world economy.¹⁹ However, markets fail to address various societal problems such as unemployment. The afore-mentioned system underwent changes in the post-cold war

¹⁸ Tim Dunne. Liberalism.in.Globalisation of World Politics. John Baylis and Steve Smith.OUP.2008

¹⁹ Charles Kegley Jr. and Euglene R. Witfopf, *World Politics: Trend and Transformation*, St. Martin’s Press, 1997, p.27.

era. It was the rise of neo-liberalism which urged states to adopt several reforms in the domestic sphere. This was beginning of the strengthening of the concept called 'governance'.²⁰

Pierre, et al defines governance as a 20 Century initiative towards bridging the gap between state and society to enable both to adapt to varying international and domestic changes, through network governance. Such network governance would require a democratic setup, which can be facilitated by adopting cosmopolitan democracy.²¹ Such a setup would require involvement of various actors like- various advocacy networks, NGOs, Civil society groups etc. These actors play an important role in many aspects.

Civil Society is a necessity to ensure transparency in bureaucratic activities of the state to check corruption. They are also considered to be an outcome of the changing world order and the changing power relationships between states, societies and later international organisations.²²

As discussed earlier, the states practice partial delegation of some of their development policy deliberation powers to these agencies.²³ The delegation is partial (also called delegative democracy which will be discussed later in the framework) because the states although entrust these bodies with some pre-determined purpose they are unable to seek accountability and responsibility for any kind of problems faced. Ironically these agencies in such situations do not function as a "multilateral body" as such problems are dealt with either bilaterally or plurilaterally. Despite supra-territorial governance agencies role of government continues to remain significant as it is the states which actually decide the agendas and objectives for governance purposes.²⁴

²⁰ Jon Pierre and B. Guy Peters- "*Governance, Politics and the State*"; St. Martin's Press, New York 2000.).

²¹ David Held Models of Democracy Cambridge, 1999, p.p.383

²² Samuel Huntington has been cited by Akira Iriye to explain this causal factor for rise of different groups in the society in Cultural Internationalism and World Order.1997.p.p.57.John Hopkins University

²³ Ibid..7

²⁴ Jon Pierre and B. Guy Peters, *Governance, Politics and the State*, St. Martin's Press, New York; 2000).

However, Pierre and Guy Peters also argue that society also plays a very important role in helping state in governance purposes. They, do not discuss the role of society in global governance bodies. Kuting further adds that global governance has converted “states merely into a representative of economic actors and their interests and not of social interests which has led to marginalization of citizens”²⁵. Such marginalization has created a divide between “consumers” and “citizens” in the entire society. Global Governance has also been defined as “global policy making” process which has been criticized for not being adequately democratic in functioning.²⁶ They assert that global governance and global public policy making involve “public-private partnerships”. It is the government and the inter-governmental organisations which symbolize the “public” whereas, the civil society and the business groups which fall under the category of “private” actors. It is through this public-private partnership that the entire system of global governance seeks to do away with problems of “corruption, climate change, fighting diseases and environmental and *labour standards*”.

Goran Hyden writes that global governance agencies impose policies on states through enforced economic reforms and means to oversee or supervise such implementation periodically failing which they may be penalised through sanctions. Formation of international organisations and global governance agencies signify greater political and societal development as they help states and societies to come out of their realist apprehensions, fears and inherent insecurities to acknowledge the fact that no unitary entity can be completely self-sufficient. Since they are based on liberal institutionalism and local activities become part of analysis which brings the larger environment automatically into consideration. Due to intensified interconnectedness between different states and economies and societies solutions to such problems require trans-national transparency and consultations without which further development is impossible.

²⁵ Ibid..7

²⁶ Jan Aart Scholte. 1999. “Global Civil Society: Changing the World?”. CSGR Working Paper No.31/99 and Thornsten Benner, Wolfgang H. Reinicke and Jan Martin Witte- “Multi-sectoral networks in global governance: Towards a pluralistic system of accountability”

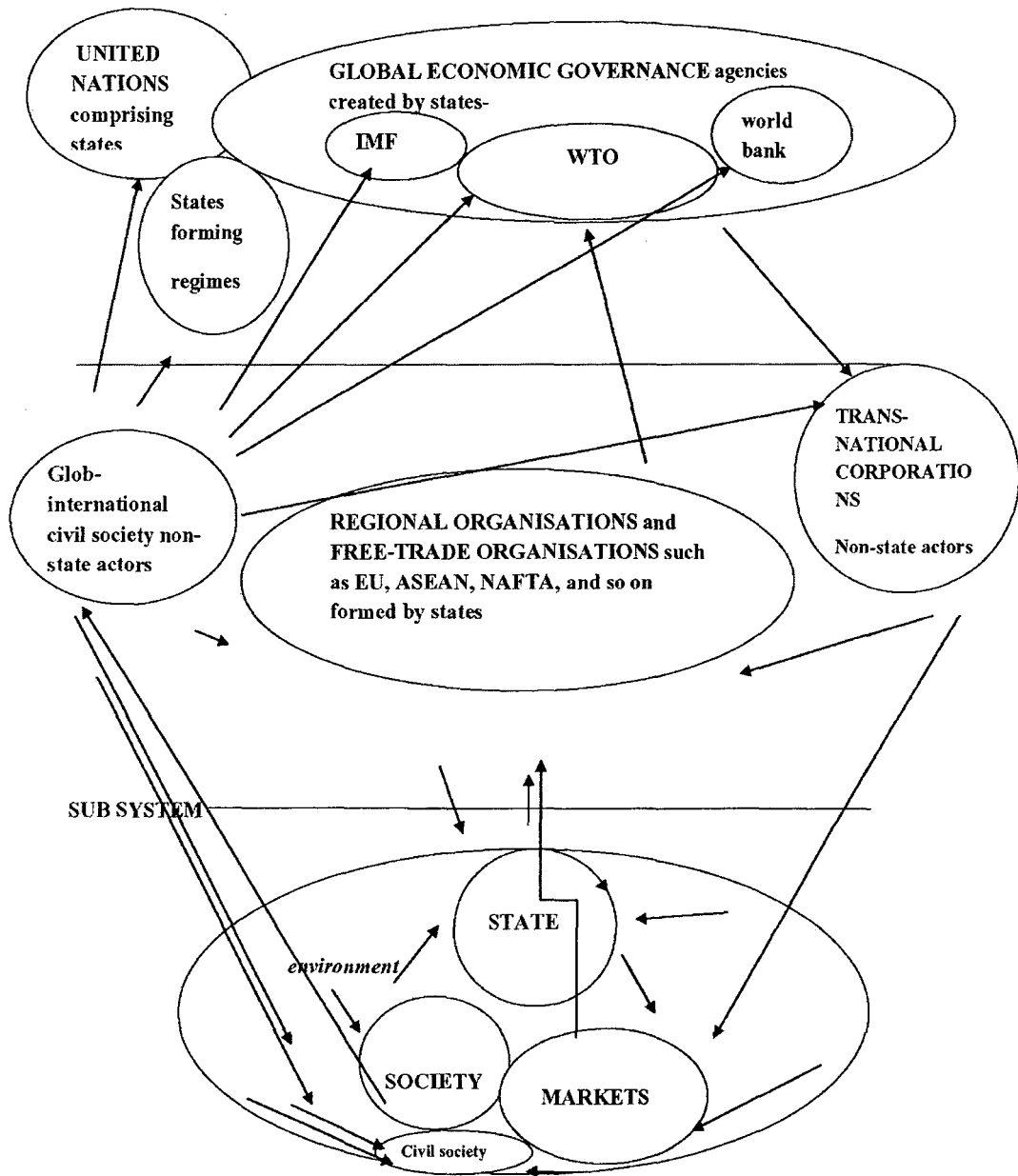
States, international organisations play a very important role in regulating global-international politics and relationships. These collectively have been defined as the “*world order*” which has been changing with the changing socio-economic factors. It is connected to the “*hegemonic stability theory*” put forth by Charles Kindleberger. Both World Order and hegemonic stability theories oppose the theory of anarchy and assert that in order to overcome the problems of stability, insecurity states require either a hegemon or a group of hegemons or international organisations to ensure “order” in true sense. During the realist phase the states ensured stability for themselves which changed signifying development. Structural realist phase of world order signified balance of power politics whereby states formed alliances, as suggested by Kautilya in his theory. This phase also saw the emergence of international organisation such as the League as components of the world order.

With greater trade and economic co-operation changes take place in a “cyclic”²⁷ pattern with smaller powers catching-up with major powers. It is an element of politico-economic development. The world order therefore, began with the dominance of Europe, followed by alliance building in Europe. With the end of WWII the world order changed into ideological bloc divisions such as the Soviet and USA along with the Bretton Woods System in early phase of the cold war. In the 1970s the rise of other structures such as NIEO led to emergence of the developing world in the world order. Rising economic problems and inability of politics to overcome them led to rise of civil society and new problems of society as a new force in the changing world order. End of cold war led to collapse of bloc politics but continued significance of global governance organisations, institutions or agencies along with states as well as civil societies. Rajni Kothari²⁸ opines that democracy and greater collective action from the developing world would be immense significance for ensuring democracy and adequate allocation of resources between states.

²⁷ Akira Iriya, 1997. “Cultural Internationalism and World Order”. p.p.2. John Hopkins University

²⁸ The World order models project. Rajni Kothari

GLOB-INTERNATIONAL SYSTEM²⁹



The above diagram explains that there are two systems functioning simultaneously in the global arena. The subsystem comprises of a larger local environment within which a society along with state, civil society and markets prevail and mutually interact within this environment. In addition to that states also cross this sub-system to establish numerous kinds of organisations regional and global. Civil society actors

²⁹ This diagram and the term are researcher's understanding of global governance interactions from different literature.

emerging from the society also cross this system to establish networks with other trans-national civil society actors. These groups are also joined by profit-making non-state actors such as the TNCs. These groups and organisations interact mutually and arrive at policies or arrive at policies. However, the policies discussed at the economic organisations indirectly promote greater growth for the TNCs and not the other kinds of “non-state actors” such as the civil society.

Development and Environment

...development is little more than the accumulation of capital and improvements in the efficiency with which resources are allocated—purely technical matters. This ideology misunderstands the nature of the transformation itself—a transformation of society, not just of the economy, and a transformation of the economy that is far more profound than their simple prescriptions would suggest.

Karl Polanyi (1957 *The Great Transformation*)

Development is a multi-faceted process which has been osmotic in nature with flow of wealth, technology, power, knowledge and resources from regions of higher concentration into regions of lower concentration of the same. Liberalisation and globalization consider trade as one of the most important components or factors for achieving global economic development. Based on Adam Smith’s free market principle and Ricardo’s principle of “comparative advantage” encouraged states to indulge in cross-border and cross-regional trading activities irrespective of their political strengths or weaknesses. It was during Ricardo that the markets became superior to states.³⁰ Ulaganathan Sankar argues that since liberalism and capitalist model of development emphasizes more on absolute gains whereas relative gains are overlooked. It is due to the imbalances in the relative gains of any states which create several societal and ecological problems such as marginalization in certain sections of the societies on this planet. Bio-environmentalists consider population growth and consequent poverty are some of the significant factors for environmental degradation.

³⁰ Ulaganathan Sankar in introduction to “Environmental Economics”. Oxford India Paperbacks”(2006).

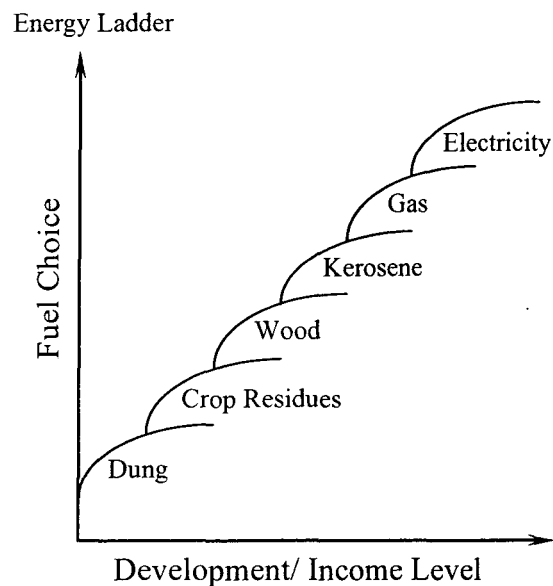
In addition to that benefits of economic growth are not adequately distributed amongst the people in all sections of the world.

Trade mainly fosters export-led growth and development which requires an industrialized production patterns and behaviour. Capitalism defines growth and development as a cumulative of different economic processes such as “production and trade of goods and services”.³¹ which has a universally applicable empirical name called the per capita income. Such a pattern of development is driven by the objective of “wealth maximization”. Development model based on “wealth maximization” objective was politically supported by rise of liberal democratic regimes which Amartya Sen defines as political development. Development also includes an institutional component in the form of well established institutions imparting justice. Sen further adds a capacity based development model which seeks to incorporate ecological dimension to the institutionalized justice system. The capacity based development model focuses on the behavioral changes taking place between individuals living in a society. This makes the social justice system more dynamic. However, capacity and institutional justice system have a greater local connotation than global which makes its inaccessibility an externality emanating from the entire capitalist development model. This kind of an empirical projection of development overlooks numerous externalities emanating during the entire economic process. “Externality” has been defined by as a “by product or effect or impact or outcome of any activity”. In economics its interpretation is given in terms of problems of “consumption or production decisions” which can be both “positive as well as negative”. These are necessarily are considered as negligible while calculating “transaction costs” emanating from administrative formalities or restrictions , production as well as transport costs”. Trade also includes greater flow of capital in the form of Foreign Direct Investments (FDIs) for promoting greater industrialized growth and development. It was at the Rio Summit 1992 when for the first time it was acknowledged that trade led development could be hazardous to the environment³².

³¹ Robert O'Brien and Marc Williams, *Global Political Economy: An Evolution and Dynamics*, Palgrave. 2004.

³² Robert O'Brien et.al.

Significant role was played by civil society actors in the “agenda-setting process and debates”³³



The graph above explains the changing requirements and consumption patterns of energy with the development of society.³⁴

The non-state activism for environmental conservation began in the 18th and 19th Century along with the industrial development³⁵. Activism during this period revolved mainly around forests as large patches of land masses were destroyed for either agricultural or other developmental purposes. Despite that due to excessive dominance of the state until the 1960s the ecological issues always took a backseat. The epistemic community played a very significant role in highlighting the human induced environmental hazards by means of industrial development.

Imperialism and colonialism also promoted the process of mining for setting up new heavy industries, railway networks within the colonies to carry goods, raw materials and people from one place to another. Imperialism and colonialism involved capturing of territories or “land-masses” (which is an important component of environment) rich in several kinds of resources. Territories (land) and population (human beings),

³³ Kuting, Gabriela.2004.Globalisation and the Environment: Greening Global Political Economy. State University of New York Press

³⁴ NCERT Textbook on Environment Studies Class VI.

³⁵ Ramchandra Guha.2000.Environmentalism. Longman

according to Kautilya, form the most important components for any kind of state apparatus. The trans-national power exercised by the colonial masters on the colonies to regulate their respective production processes and patterns in accordance with the demands of the former with insufficient distribution of surplus in the colonies laid the foundation for immense poverty in these colonies which are understood to be the developing and the less developed countries (LDCs) or the Third World or the Global South in contemporary world economy.

Such zero-sum policies were continued even in the Bretton Woods System which came to be known as “*Beggar-thy-neighbour policies*”. Due to the “zero-sum policies” which had been practiced by the colonial masters laid the foundation for the persistent “north-south debates” on the issues of environment³⁶. North-south divide the concept of “sustainable development” was institutionalised through the Brundtland Report. This report asserted that development is important and cannot be sacrificed. However, it is important to acknowledge the fact that development and environment cannot be treated in isolation for the new generations which are yet to come. Sustainable Development considers “participation” as an important component in the development model.

Development cannot be limited only to economic development through capitalist means. It needs to be more participatory. Participation here does not merely mean the right to vote in elections but greater co-ordination between states and society to build “capacity”. Capacity building has been defined in terms of social justice which cannot be achieved only through institutional means. Sen’s idea of participation and social justice seeks to create a duty bound responsible society to ensure that the state can carry out its functions of providing “public goods” to the society. In addition to institutions he argues for development of human capacities or resources with a dual phenomenon of exercising rights as well as duties.

³⁶ Ramchandra Guha Environmentalism. Longman. 2000

“Justice is conceived as social justice implying equal shares in social outcomes rather than equal standing in access to the games of life” Vincent Ostrom, p.p.403³⁷

Ostrom argues that there has been a problem of distribution of services and resources by the state which can only be emancipated through greater social justice as that would ensure actual democracy and adequate participation.

State cannot be done away with as it is a necessity to settle disputes and cover inequalities emanating from capitalist model of development. This enhances the scope for civil society to spread awareness and information for both state and society to understand and follow. They help in making the political system³⁸ more dynamic by channelizing popular demands and opinions from the society which includes the environment into political decision making.

Development and environment had been treated separately by the capitalists until 1960s. The entire development model institutionalised by the Bretton Woods System (in 1945) and later by the Washington Consensus considers economic development in isolation and also “commodification”³⁹ of the environment. Kuting argues that “global political economy based on capitalist development model” based on free markets and free trade which creates an ignorant approach towards some very important moral aspects such as labour standards or protection of the environment”. Kuting cites Daniel Drezner who has argued that such repercussions having moral implications are outside the jurisdiction of global economic agencies particularly the WTO. Environment can be defined as a small subset of nature which has been socially constructed by different actors in accordance with their changing needs and demands. However, environmental issues began getting incorporated in sphere of economic governance, specially the GATT/ WTO since “United Nations Conference on the Human Environment” was held at Stockholm, 1972. The Oxford Concise dictionary

³⁷ Vincent Ostrom.1999. *“Problems of Cognition as a challenge to policy analysts and democratic societies”* in Polycentric Governance and Development: Readings from the Workshop in Political Theory and Policy Analysis ed. Michael D. McGinnis. University of Michigan Press

³⁸ David Easton’s political systems approach

³⁹ Maude Barlow Tony Clarke.2002. *Blue Gold: The Battle Against Corporate Theft of the World’s Water*. Earthscan. UK

of Politics: Ian McLean OUP, 1996, defines “ecology” in terms of a German writer Haeckel. Haeckel had explained that

ecology is the science of relations between organisms and their environment... The concept of ecology has had three separate dimensions: a) ...the study of the system of interactions involving living things; b)...the reality of causal relationships between species; and c)...a substantive morality and a political programme inspired by the perception of the existence of an ecological system. The moral dimension of ecology blames human practices and activities for the damages caused to the “ecological systems and seeks to (re)create harmony between man and nature.

Thus, the Environment comprises of state, non-state (market and non-market) actors acting in tandem at the local sphere. Due to increased trans-nationalisation of interaction between these three entities and the supra-territorial regulations of such interactions have led to environmental externalities in various ways. However, it has been argued that global economic governance with the WTO in particular encourage growth of states as well as non-state market actors such as the TNCs suppressing the growth of non-state societal actors⁴⁰. Commitment to economic growth and development by means of free trade has helped the market-oriented profit-making non-state actors to flourish and emerge as a stronger force as compared to non-profit societal actors. Nevertheless, due to global reach of TNCs has helped local societies to participate in the world economy both through the production process (as the labour force and resources utilized is generally local) as well as through several organisations and unions seeking greater rights for local societies in order to make globalisation a moral and ethical and participatory phenomenon.

Development in economic terms is a multi-tiered process due to various kinds of production processes such as land use for agricultural purposes for raw materials and food production; and production of manufactured goods in any industry; followed by transportation of products to the domestic as well as international markets makes economic activities a chain process. Environment is an important stakeholder in the entire development model which has been “commodified” by the global institutions of economic governance. Stakeholder is someone who may expect something from a

⁴⁰ Sampson, Gary.2001.*The Role of the WTO in global governance. United Nations University Press. Blackwell*

particular kind of relationship and interaction. It is an interest based concept. Since development is an ecological outcome society also becomes an important stakeholder in the entire development process.

Globalisation has made environmental hazards such as climate change due to air pollution caused by the process of production, disposal of wastes in waters by the industries set up by different trans-national corporations and also due to exchange of goods by means of trade, consumption of resources – which includes process of mining, agricultural production, and so on, to sustain the export oriented development mechanism a global problem. Use of materials such as cement for setting up development projects has led to increase in trade of the same. Environmental hazards have been having immense impact on the health of people living in the society. Export-led growth has led to creation of several Export Processing Zones (EPZs) and Special Economic Zones (SEZs) in India and other places which have led to problems of enforced land acquisitions.

The society is forced to carry certain kind of production in various sectors to help states continue with the capitalist model of development. It was at a Conference at Founex prior to the Stockholm conference that the concept of sustainable development was actually discussed because the United Nations had incorporated development oriented goals for the states to follow. The basic north-south debate over environmental problems had been revolving on the issue of poverty prevailing in the developing countries and the need for immediate development to overcome such problems⁴¹. The developing countries were more inclined towards the problem of control over resources which involved Sunderlal Bahuguna's *Chipko Movement*.

There are different approaches to the study of environmental hazards which highlight different human induced causes and probable solutions for the same. Clapp and Dauvergne⁴² discuss four schools of thought: a) "market-liberals"; b) "bio-environmentalists"; c) "social greens"; and d) institutionalists. The market-liberals or the liberal approach considers the markets and the market mechanisms as the only

⁴¹ Margeret E. Sikkink and Kathryn Sikkink "Chapter 4 Environmental Advocacy Networks" Activist Beyond Borders Cornell University Press 1998

⁴² Jennifer Clap and Peter Dauvergne; "Paths to a Green World: The Political Economy of the Green Environment" by Jennifer Clap and Peter Dauvergne;

solution to ensure sustainable development whereas, the bio-environmentalists blame the rising population and the consequent rise in the rate of consumption of resources as the root causes of the environmental degradation. The “*limits to growth*” argument raised by Ulrich Beck and Gareth Porter and Janet Welsh Brown⁴³ re-iterate the bio-environmentalists perspective. Beck had argued that the persistent rise in population would eventually surpass the quantity of production particularly in the food sector. The rising demand and the incapacity or inability of the states and markets would lead to inflation and food crisis thereby causing hindrances to growth mechanism.

In addition to these approaches the “institutionalist” or the “liberal institutionalist” or the “normative” approach towards these problems. According to this approach it is the lack of co-operation among states at the global sphere which has been increasing the intensity of the problem. This is a significant step towards global environmental governance by means of regimes such as the Montreal Protocol prohibiting states from trading in goods containing Chlorofluorocarbon (CFCs); CITES prohibiting trade in endangered species; BASEL convention. It was at the Rio Summit that the states first acknowledged the fact that trade has a relationship with environmental hazards.

The “social greens” oppose the distinction created between social and environmental policies and are against globalisation. Nevertheless, it has also been argued that it is very difficult to establish a direct relationship between trade and environmental degradation. Problems such as climate change is a global phenomenon but the divergent local impacts of this change makes it difficult for the states to arrive at any consensual agreement on the same other than the Kyoto Protocol.

Joseph Stiglitz considers American industrialization as the primary source of climate change problem and thus, proposes that states such as Europe and the third world needs to impose taxations against American goods responsible for higher GHG emissions.⁴⁴ This report also argues that international trade has led to greater integration of the world economy which has helped the developing countries catch-up

⁴³ “Global Environmental Politics”... Gareth Porter, Janet Welsh Brown and Pamela Chasek. Westview Press

⁴⁴ Introduction and overview-International trade and climate change: Economic, Legal and Institutional Perspectives; World Bank, 2007.

with the already developed countries of the North. Agriculture (which includes livestock, horticulture and fisheries) and forestry are considered to be two of the most vulnerable sectors of economy to changing environmental and climatic conditions. Since economies of developing countries are more dependent on these sectors for trade and economic development environmental degradation becomes an important problem for these countries. Carbon taxes are one of the means of checking problems of climate change in the long run. However, such politically determined and administratively levied mechanisms have affected free trade in several sectors. Emissions from the cement industries are one of the major sources of emissions of Suspended Particulate Matter (SPM) causing problems of climate change and certain health hazards particularly skin problems among the labourers who work in numerous development projects⁴⁵.

Global Economic Governance agencies have been accused of imposing the socially and environmentally hampering capitalist model of development on all the states. Gabriella Kuting like Caroline Thomas has argued that these agencies are regulating development globally.⁴⁶ However, the consequent inequalities and other outcomes are overlooked due to “asymmetry of information”⁴⁷ in these systems. Although, these non-state actors utilize societal resources and create as well as regulate new kinds of socio-environmental interactions and behaviours which force different actors in the society to organize into “collective action groups” to challenge the same. These groups are outcome of the influence of markets and the states and also, though indirectly by the global institutions of governance.

However, due to differences in opinions of the states with respect to prioritizing the issues of immediate concern justification for direct inclusion of these actors in the global economic governance structure becomes difficult. In case of the WTO these actors have succeeded in getting “sustainable development” incorporated in the

⁴⁵ Information regarding the SPM emissions derived from a journal article and class VI NCERT on “Environmental Education”. Information regarding skin problems in labourers derived from casual talks with some roadside labourers. Skin problems also seen in animals due to roadside dumping of cement.

⁴⁶ Ibid..13

⁴⁷ Susan Strange also talks about problems of information exchange in her book “The Retreat of the State: The diffusion of power in the world economy”. Cambridge University Press.1996

Preamble of this organization; have been the scope of participation in several symposia organized by the Secretariat of the organization⁴⁸. The most significant societal involvement in the WTO has been through its Dispute Settlement Body under the amicus curiae briefs. O'Brien et al. have defined this a "Complex multilateralism". In addition to that the societal actors played an important role in the creation of the "Committee for Trade and Environment (CTE)".

Although the United Nations prescribes measures for states to incorporate environmental accounting⁴⁹, Kuting argues that due to over-emphasis on "trade-liberalisation and erosion of non-tariff barriers" prevent states from including environmental standards because they lead to unfair trade restrictions. The entire ecological debate revolves around the overlap and conflict between state development (both economic and social) policies and different global governance institutions and regimes. It is the rise in "new social movements" which have helped the global political economy in understanding this overlap to a large extent⁵⁰. Social movements have been playing a very important role in environmental regime formation since the 1992 Rio Summit⁵¹.

However, these actors have not been able to acquire decision making powers and are merely consulted at the global fora⁵². Since post-modernists argue that cultural differences also influence the production and consumption patterns the role of social movements in bringing out these differences seem important. These factors do not become part of cost-benefit analysis of state policies. Nevertheless, these factors are overlooked by the states due to inherent incapacities and also to sustain an unbiased

⁴⁸ Robert O'Brien, Anne Marie Goetz, Jan Art Scholte and Marc Williams *Contesting Global Governance: Multilateral economic Institutions and Global Social Movements*. Cambridge University Press

⁴⁹ Amitav Kundu, 2008. "Environment and Development: Methodological Issues for National Resource Accounting" in. *Environmental Accounting: Explorations in Methodology*. eds. Amitav Kundu and Michael von Hauff. p.p.52. Manak Publications Private Ltd.

⁵⁰ Gabriela Kuting *Globalisation and the Environment: Greening of Global Political Economy: State University of New York*. 2004.16 and Gareth Porter, Janet Welsh Brown and Pamela Chasek *Global Environmental Politics*. Westview Press

⁵¹ It was at Rio Summit that trade and environment relationship was institutionalized for the first time. Robert O'Brien et al. *Contesting Global Governance*. Palgrave

⁵² *Ibid.*.13

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distribution system. States are committed to the utilitarian principles. However, since states have to play a relatively autonomous role at the domestic sphere it is forced to create homogenized policies for development for all citizens. This forces these states to establish global networks to reach out to the global governance institutions and seek expansion of participation in the same.

The concept of democracy needs to change from the “substantive” to actual democracy or participation. However, it is understood in relation to a well defined nation-state and a government legitimately elected by its citizens. Since there is no world government and only institutionalised state-centric global governance institutions, demand for greater democracy by the civil society actors in these institutions, particularly the institutions for economic governance becomes difficult to justify. Nevertheless, role of civil society cannot be discarded both at the local and global sphere and there significant contributions in the entire development mechanism makes them an important unit for the study as they have been playing a very important role in widening the definition of democracy and participation both at the local and the global levels. Participation is one of the components to ensure social justice and some of the important means to achieve that is to encourage greater social collective action in various forms⁵³.

Global Governance Institutions such as the UN, WTO, World Bank and the IMF may not provide the civil society actors with the decision-making powers like they provide to the states, they cannot remain indifferent either. It has been argued that states are undergoing “domestic policy reforms” (Sampson.2001.4) due to excessive powers entrusted in the WTO. In addition to this problems also arise due to creation of several kinds of international organisations and regimes for specific issues such as environment which may be of immense importance for only a fixed number of states and not for every country. This is due to the contextual characteristics of environmental degradation emanating from industrialized development model.

Global governance agents are run by representatives from democratically elected governments from the member states. Due to this reason these agents claim to

⁵³ Mier, Robert and Giloth, Robert P..2003.”Chapter9.Spatial Challenge and Social Justice”.in.Social Justice and Local Development Policy.Robert Mier.p.p.145.Sage Publications



function in a democratic as well as legitimate way as democracy is considered to be the only legitimate form of government. However, due to significant overlap between the local democratic systems with the global governance system such kind of elitist or representative democracy has been criticized by the several societies. Since the supra-territorial governance mechanism cannot assimilate diverse kinds of societal actors, democracy in global governance needs to be viewed in terms of social justice and the requisite institutional mechanism for the same. Also, at the global sphere it is difficult to have a fixed environment as several sub-systems are co-ordinating.

Global Civil Society

Sunil Khilnani like Mary Kaldor, writes that civil society is a late 20 Century concept. The era of radical civil society began in 1960s. Some scholars consider civil society as a “post-modern” outcome which is committed to achieve socialist democracy for the society. According to left liberals civil society is a tool to help liberalism adapt to changing conditions. Khilnani reiterates Lockean perspective on civil society on the ground that it is an outcome of society’s demand for right to property specially in the environmental sphere as it is very difficult to assign right to property over common environmental resources specially atmosphere. In order to check such environmental problems several governmental regimes have been created due to civil society initiatives.

Lisa Jordan and Peter Van Tuijl⁵⁴ differentiate between NGOs, Community-based Organisations (CBOs) and social movements: CBOs are small and locally based bodies which do not establish networks or alliances due to limited financial assistance; NGOs are more organized groups with properly defined legal bodies and organizational shape. Their organized status fetches them lot of financial assistance from several donors; social movements have a lot of capacity to reach out to a mass-based constituency of support and do not share the characteristics of an organization and get less financial assistance. Civil Society base their ideas or ideologies on certain collectively pre-determined interest.

⁵⁴ Lisa Jordan and Peter Van Tuijl⁵⁴ (2007) (NGO accountability Politics, Principles and Innovations. ed.- Earthscan UK)

Civil Society, unlike other non-state actors, are not driven by profit motive or government activity and include within its purview NGOs, CBOs, Social Movements, religious organisations and professional or academic associations. Since NGOs are the most organized form of all civil society actors, they are most important for society. They play service delivery, advocacy, agenda-setting (for decision-making regarding public policy) and democratizing roles in any society. “*Suitcase NGOs*” are those civil society actors which are represented by a single person who keeps travelling from one conference to the other. Responsibilities carried out by NGOs include organizational responsibility to ensure adequate transparency required in decision-making, accounting and efficiency of operations; fighting for the upliftment of the poor; and assigning responsibilities to the different stakeholders. Civil Society requires “universal freedom of association, assembly and expressions are essential rights for NGOs to provide public services

Thomas Princen et al⁵⁵ emphasise on change in lifestyle as a means to protect the environment. This makes scope for household and families to become part of the larger category of global civil society. Among the larger concept of global civil society their focus of study is Non-Governmental Organisations (NGOs). They consider *networks* as separate from NGOs. However, they do not specify the reason behind such a demarcation between the two. NGOs for them are not anti-government and are an outcome of rampant capitalist development. They along with Mary Kaldor and Jan Aart Scholte⁵⁶ consider 1980-1990s as the year when the global civil society began resurging. They provide different approaches to the study of NGOS and social movements: a) “*Top-down approach*” which focuses on “technology and capital” and require lot of financial expenses for stability and mainly focus on local issues. They play an advisory role. They have a “rational approach”⁵⁷ towards states and international organisations and regimes; b) *Bottom-up approach* comprise of the local

⁵⁵ Princen, Thomas and Matthias Finger.1994.”Environmental NGOs in world politics: Linking the local and the global”.p.p.1-2.Routledge

⁵⁶ Scholte, Jan Aart.1999.”Global Civil Society: Changing the World?”.CSGR Working Paper No.31/99(May 1999).

⁵⁷ Rational Approach is derived from rational choice theory which have an optimistic approach towards state and state institutions and believe that states will work for societal benefits on its own. State is sensible enough to decide rationally the priorities of the society.

social movements. It seeks greater decentralised structure and activity of the social movements.

The already divided world during the post-WWII era helped the dissatisfied societal groups to form slowly emerging third alliance of global civil society as we understand today. It is the alliance building patterns followed by the states from both the capitalist as well as the soviet bloc which taught societies the art of alliance building and networking trans-nationally in a much more concrete way. It is during this period when the urge and commitment to economic and societal development emerged.

Sidney Tarrow (1999) has argued that global civil society is a recent concept. It is an outcome of “internationalization” and not globalisation. Non-state actors have been significantly influencing state behaviour at the domestic sphere. It signifies emergence of world citizenship. Tarrow distinguishes between two kinds of non-state actors: the Trans-national Corporations (TNCs) and Non-governmental Organisations (NGOs) which are a part of civil society groups. Tarrow writes that TNCs are “professional and business networks” working for profit whereas, NGOs are “principled issue networks established by trans-national activists”. Tarrow’s approach towards trans-national civil society is a radical one.

There exists numerous sectoral divisions prevailing within these civil society groups dealing with issues of human rights and environment or other concerns of local people. Tarrow uses NGOs and social movements inter-changeably. Trans-national civil society, Tarrow writes, is driven by the goal of helping citizens overcome the hegemony of their respective state apparatus and the behavioural restrictions imposed by the same by means of institutions. Citizens are also under pressure from global governance institutions. This argument has also been reiterated by Keck and Sikkink. Global civil society networks have been defined as “*anti-globalisation, anti-neoliberalism*” which have been firmly opposing free market economy. Nevertheless, their primary targets are states, their institutions and policies. They also create identities which help them access various opportunities outside the territorially bound state. For Tarrow, social movements only challenge state as it fails to cater to societal requirements under the influence of globalisation. It provides greater scope for mutual inter-state and inter-society exchanges and co-operation. It has also widened the

meaning of participation from its traditional concept which is measured by means of votes.

Jan Aart Scholte defines global civil society groups as security generating and providing units as they fight for greater equity or social justice and democracy.⁵⁸ Scholte's concept of global civil society gets connected to security issues from a theory in international relations that democracies do not go to war with each other and also with the global objective of ensuring global democracy in the post-WW II era.

Scholte further adds that global civil society as a concept would include numerous kinds of "social movements" such as the NGOs, non-profit organisations, private voluntary organisations, independent advocacy groups, principled issue networks, segmented poly-centric ideologically integrated networks (SPINs).⁵⁹ Although Scholte, does not provide separate definitions for these respective categories, one can interpret them to be similar and fused or different names for NGOs itself because majority of the literature on global civil society consider NGOs or social movements as epitome of all these characteristics. These terminologies are merely characteristics features or probable indicators for assessing the role, impact and significance of these groups. Scholte further adds that social movements are not obsessed with state power and are infact in constant efforts to reduce the "democratic-deficit"⁶⁰ prevailing in the global order.

They try to highlight due to globalisation and global order and global governance societies are mere "passive participants"⁶¹ in the entire world politico-economic order. They want to target the decision-making structures within different institutions. The

⁵⁸ Jan Aart Scholte. 1999. "Global Civil Society: Changing the World?".in.CSGR Working Paper No.31/99(May 1999)

⁵⁹ Jan Aart Scholte. 1999. "Global Civil Society: Changing the World?".in. CSGR working Paper No.31/99(May 1999)

⁶⁰ Jan Aart Scholte. 1999. "Global Civil Society: Changing the World?".in. CSGR working Paper No.31/99(May 1999)

⁶¹ Jules Petty and David Smith. 2004. "Social Capital in Biodiversity Conservation and Management".in. Conservation biology, Vol. 18, No. 3 (June, 2004). p.p. 636. Blackwell or Society for Conservation Biology. Passive Participation has been defined as a situation when people have to merely follow the decisions that have already been taken.

definition of Scholte's "...voluntary..." means "self-mobilisation"⁶² as these movements emerge on their own after different societal experiences and observations. Civil Society also indulge in "interactive participation"⁶³ in the form of surveys, focused group discussions, campaigning and so on and become a very important means for carrying out "participatory research" as well as activism. Relationship between glob-international civil society is more a "functional participation"⁶⁴ similar thereby asserting the fact that the global governance institutions function as a system like the ones defined by David Easton and other functional theorists. Such functional participation requires a setup that is cosmopolitan in nature.

Cosmopolitalism has also widened the definition of traditional security threats which had revolved around military might until the cold war. It also tries to bridge class, cultural and religious barriers which has been considered as the "*new social movements*" (O'Brien et.al.). These categories of social movements have global impact according to David Korten⁶⁵. However, one cannot theoretically categorise such social movements according to their global or local applicability in terms of their impact as several locally based new social movements may also establish networks for activism. The non-traditional security threats include environmental degradation, violation of human rights, drug and narcotics trafficking, gender discrimination and so on. Tarrow's understanding of social movements is in consonance with the societal views that the state has failed to function as a relatively autonomous institution or agency).

The Social Movements categories of global civil society are organisations of people seeking "global justice"⁶⁶. There are three mechanisms of acquiring global justice: a) by resource mobilization; and b) by providing services; and c) seeking greater

⁶² Ibid..50

⁶³ Ibid..50,51

⁶⁴ Ibid..50,51,52

⁶⁵ As cited by Thomas Princen and Matthias Finger in *Environmental NGOs in World Politics: Linking the local and the Global*.1994..p.p.56.Routledge. Korten's approach has been called the "Third System Theory.

⁶⁶ Sidney Tarrow.2003. *Global Movements, Complex Internationalism, North South Inequality*. Cornell University Press and Russel Sage Foundation

participation. They may or may not use violence as a means for such mobilization and distributive system. The concept of resource mobilization is an American concept whereas service delivery is a European concept both based on the economic pattern of these states. Europe is more a service based economy with Britain in particular where the bureaucracy is fused within the executive due to lack of separation of powers which makes service oriented approach an inherent characteristic of any economy and society whereas, US is more about control over resources. This proves that there is a simultaneous influence or impact of the state as well as markets on the society due to which civil societies, both global and local emerge which eventually may either adopt reformist or radical means or objective. They use these patterns to generate popular trust towards alternative non-state-profit-making actors for services, resources and activism for demands.

Therefore, mobilization means and techniques and the objectives of these movements are determined by the interaction of the society with the economy and the state and are thus, divergent. However, on numerous occasions there has been greater overlap between resources and services. Water, petroleum, electricity emerge as resources but get distributed as services. Capital and finances are resources and they get fused into the service sector along with technology.

Tarrow creates three classifications of global social movements: a) "*Boomerang effect*" explained by Keck and Sikkink where the civil society actors in one state create international networks to influence other states and institutions which consequently influences their parent state as well as it can be analysed in the instance of Narmada Bachao Aandolan; b) domestic campaigns within nations against international actors or institutions; c) "*trans-national contention*" which include network activism against international actors or institutions such as the "Battle for Seattle" at the WTO. Tarrow's study focuses on the third category from the afore-stated. It has been termed as "complex internationalism" or "complex multilateralism" (O'Brien et.al.) which has created a "triangle" between states, non-state actors and other international institutions.

Separation of states from international institutions re-iterates the argument that there has been some amount of dissipation of state powers in the form of partial delegation

vis-à-vis international institutions. This kind of “*triangulation*” has helped in bridging the gap between local and the global which Tarrow terms as “*Glocalisation*”. Tarrow through secondary sources highlights that there is inherent inequality within global social movements as developing countries are not adequately represented. *Networks* of social movements require “organizational and interpersonal networks are crucial factors in movement mobilization”.

Sangeeta Kamat⁶⁷ views NGOs in isolation from civil society. The distinction is made on grounds of democracy. Civil Society is inherently undemocratic whereas, NGOs are democratic in structure. It is the NGOs which actually spread democracy and not the civil society. The theoretical basis of NGOs is the tussle between liberalism and socialism. According to Gabriela Kuting, civil society is an outcome of realism and is groups which challenge neo-liberalism. National and international NGOs are primary agents influencing change. Kamat discards specialization of experts under the capitalist influence. Only the NGOs have the capacity to implement “bottom-up approach” to development at the global sphere. “Bottom-up-approach” is the counter flow of pressure in the form of demands and new issues which tries to make the rigid hierarchical structure of any organisation or administrative structure more flexible and considerate towards “human-relations”⁶⁸

They have been working towards up-liftment of the poor and the marginalized sections of the society. Kamat highlights two different perspectives towards NGOs: a) “left-democrats” or radicals seeking to do away with state power; and b) “neo-liberals” believe that NGOs strengthen democracy. They have been re-framing public good and private interests. Civil society actors seek to change the international economic order and its neo-liberal notion of democracy. They face problems of north-south inequality as it is not properly developed in the Third World as the states continue to act as the primary service providers or distributors of “public goods”.

⁶⁷ Sangeeta Kamat The Privatisation of Public Interest: Theorising NGO Discourse in a Neo-Liberalism Era

⁶⁸ Human Relations theory of administration was put forth by Elton Mayo by means of his several Hawthorne Experiments in a factory whereby he proved that output of any organisation or administrative apparatus increases if better human relations are established between the superiors and the subordinates.

Civil Society actors according to the issues they address and also the kinds of means they adopt for activism. Kamat talks about NGOs carrying out the task of implementation in the development mechanism. She overlooks the fact that the job of implementation involves both responsibility and accountability which is lacking in case of civil society actors. Because they are not entities directly elected by the people or citizens. They are institutions which are “*for and of the people*” but not created directly “*by the people*”. Due to their autonomous status and method of working and functioning it is difficult to hold them accountable. Bureaucracy derives powers from the state as their appointments are made by the state and state laid procedures. Nevertheless, problems of corruption, red-tapism and nepotism bureaucracy is being considered as an evil which needs to be curtailed.

Kamat considers “*community based organisations (CBOs) or grassroots organisations (GROs) as main propellants of “bottom up approach”*”. “*Advocacy NGOs*” form the most recent concept famous in the third world. These groups “do not operate locally” and are issue based. They are involved in lobbying. They involve lot of expenditure in campaigning work. These kinds of NGOs have been playing an important role in the WTO Dispute Settlement Body (DSB) .

Helmut Anheier and Nuno Themudo consider global civil society as a larger whole which includes “associations, networks, movements and groups”. They form a space between “family, state and markets which operate within socio-political and economic system of any state”. They are “transnational volunteer-run networks” with no expenditures at all and are “non-profit” in their objectives. On the one hand they may either carry out campaigns while on the other hand they might function as voluntary organisations offering humanitarian assistance. Civil Society actors include “single-issue campaign groups such as activisms in schools; professional service providers; anti-globalisation groups; environmental movements; Christian revival groups; Trade Unions; philanthropic foundations; and so on. Civil Society Organisations vary in structure, governance, formality, scale and scope of their operations and revenue. According to Organisation theory civil society is formed according to society’s capacity to organize and manage itself.

The structure of civil society organisations include types of resources included, governance, accountability, organizational culture; informal structure and external relations. They consider “service providing and advocacy organisations” as a part of “non-profit organisations”. Civil Society are in a process of constant change as new forms are still in the emerging process. They have defined “networks” as the process when international NGOs establish decentralized structures by setting up their organisations in other countries and are working in a continuously co-ordinated way by regulating the activities of the decentralized office by a centrally located headquarter. These linkages of co-ordination are usually established laterally. “Libertarians”⁶⁹ consider society to be self-sufficient which is not true because the society poses lots of demands on the state due to which we witness the emergence of several kinds of civil society actors.

The liberal-democratic state follows the “utilitarian principle”⁷⁰ due to which certain “particular wills” of the societal actors may get overlooked⁷¹ because the “utilitarian principle” follows Rousseau’s principle of the larger “general will” of the people. It is the assimilation of these individual problems lead to formation of any group which may claim to be more close to the society which may be called civil society. Since individual problems may be diverse and may vary from one individual or state to another, a society may have numerous civil societies functioning separately for these different problems.

Thus, according to this particular definition of “*networks*” it only involves international NGOs with trans-national reach. Their method of decentralization is like that of TNCs. “*Networks*” do not involve any local indigenous NGO from the country where the international NGO (INGO) is trying to expand its reach. The INGOs⁷² may either set up decentralized offices with the actual name of the parent INGO like any TNC or may have some other name which will have an affiliation to the parent INGO. E.g. Oxfam involves “Save the children” (India).

⁶⁹ Ibid..8

⁷⁰ Sen, Amartya..

⁷¹ Ibid..8

⁷² O’Brien, Robert et.al..Contesting Global Governance. Palgrave

Anheier et al. add that global civil society actors need to have organized and structured action which take different forms such as “*networks, coalitions, partnerships and social movements in addition to more conventional forms such as NGOs and other non-profit organisations*”. Thus, they consider networks separate from NGOs. *Networks*, according to them, are structures and thus, become a unit of analyzing the activities of any INGO. In addition to that, the authors provide three important factors for measuring the activities of civil society organisations such as: a) the reasons behind the organisation’s success; b) difficulties faced; c) cost-benefit analysis done by these actors on a countrywise basis; and d) the extent of their growth. Citing from a secondary source the authors have also pointed out the problem of accountability faced by civil society actors which affects their ability to influence and make an impact. Their primary objectives include democratization or reducing North-South gap at the international forum.

NGOs with environmental goals have been undergoing immense changes in their activities and structures. The authors have also added that civil society actors particularly INGOs have been interacting with international or inter-governmental organisations since 1900s but their numbers began to increase since the 1970s and later also in the 1990s due to increase in growth rate. Global civil society organisations have to be studied in accordance with the process of globalisation. Scholars have also defined civil society actors as groups generating social capital. Social capital has been defined as “trust” (Putnam) and co-operation in the society which requires development of societal resources. Amartya Sen’s capacity building approach towards development strengthens the argument behind greater civil society role in mobilizing and organizing process. This is because capitalist development model cannot be reversed since it has globalised its reach. It can only be made more democratic and participatory by assigning a certain role for civil society actors both at the domestic as well as global sphere.

Anheier et al. cite Edwards and Hume along with Riddell and Salin who have argued that NGOs face problems due to involvement of beneficiaries and thus propose that they need to have a proper bureaucratic structure because “donors emphasise efficiency over innovation” (Anheier et. al.). J. Pretty (1995) elaborates seven

different levels of participation: a) *manipulative*; b) *passive*; c) *consultative*; d) *bought*; e) *functional*; f) *interactive*; and g) *self-mobilisation*⁷³.

Neera Chandhoke considers market as the sphere breeding competition. She differentiates between “*community and civil society*”. “*Community*” according to social anthropologists are based on “face-to-face interactions” whereas; civil society establishes relationships on a contractual basis. She cites Jean Cohen and Andrew Arato who consider “civil society...a normative moral order...opposed to both the state and the economy” give a radical definition of civil society according to Robert O’Brien et. al.. Lipschutz, according to Chandhoke, writes that global civil society includes “*social movements, interest groups, and global citizens*”. They are “*networks of knowledge and action*” and are dominated by NGOs. Democracy as a concept is undergoing change as the people are now demanding greater contribution towards policy formation.

Catherine Eschle and Neil Stammers write that civil society considers bureaucracy as a problem. Social movements adopt activist approach in order to bring about global change and to bridge the gap between social and political spheres. They do not talk about market factors in this entire system. According to realism or traditional school of thought only states are capable of effective agency in global politics and the domestic factors are overlooked. Pragmatist approach opines that governance has created platform for states to establish networks of co-operation with each other and with INGOs or Trans-national Social Movements Organisations (TSMO).

TSMOs and trans-national advocacy networks utilize the opportunities provided by globalisation, international organisations and regimes for establishing networks. Pragmatism tries to explore the role played by NGOs/TSMOs within international organisations and changing world order. It also seeks to assess the origins of any movement, its impact and effectiveness with the ultimate aim of generating knowledge. Focus on academia. These movements also have certain ‘normative objectives’ such as democratization of international organisations and improving global governance system with the intention of making their negotiations more

⁷³ Pretty, J. 1995b. “*Participatory learning for sustainable agriculture*”. in. World Development. 23(8), 1247-1263

inclusive and transparent. They also highlight the probability of fragmentations or co-optation within these movements.

“Radical transformations on a global scale are extremely limited”.⁷⁴ The “transformationalist” category of social movements include liberalism and neo-Gramscianism, anarchism, ecology, feminism, post-structuralism and social movement theory”. This category can also be categorized as critical theorists or reflexive as they believe in emancipation. Social movements can be both formal as well as non-formal. According to Commission of global governance establishment of a civil society forum is essential within the UN structure (Page 348). Democracy in international organisations and global governance merely practice procedural and not substantive form of democracy.

Networks involve reduction in hierarchy in order to ensure adequate flow of authority and legitimacy horizontally and interactively. John Boli criticize INGOs as hegemonic, overlook cultural aspects and focus mainly on economic and technological aspects. Social movements are or need to be three-tiered structure. The strategy adopted by movements may either be materialists or institutionalists. The latter strategy is towards creating new “cultural norms, values and lifestyles”.

Iris Marion Young considers civil society activism as “*assimilationist model of citizenship*” at the global sphere which has been defined as “*cosmopolitanism*” or “*cosmopolitan citizenship*”. Such kind of group formation is beyond cultural, racial and class divisions and has also been defined as “*new social movements*” by Robert O’Brien et.al.. Edelman’s Barometer (2005) of Trust ranked NGOs as one of the most trusted forms of organization, ranking above corporations, but also above governments, churches, media and other authorities. Thomas W. Pogge⁷⁵ discusses three important components of cosmopolitanism: legal which is exercised by means of a global order with all persons enjoying equivalent legal rights and duties; moral which is considered to be weaker than the legal component and is based on mutual respect between individuals and states acting as positive restraints on our conduct and

⁷⁴ Catherine Eschle and Neil Stammers (“Taking Part: Social Movements, INGOs, and Global Change; Journal Alternatives Vol. 29, 2004

⁷⁵ Pogge, Thomas W.”*Cosmopolitanism and sovereignty*” in “The Global Environment and World Politics: International Relations for 21st Century” by Elizabeth R. Desombre

efforts; and the interactional cosmopolitanism which is based on liberal institutionalism as they ask for better institutional schemes in the form of regimes in order to have a shared justice system.

Global governance is a combination of all three components of cosmopolitanism and all three of these components have a behavioral impact on societal behavior as they play a very important role in determining patterns of state policies. Glob-international civil society enhance cosmopolitanism also because they are not fragmented on the basis of religion, caste and class dimensions which is different from other radical as well as transformationist groups that had emerged since the pre-Westphalian state era.

Some of the factors responsible for the rise of civil society include *state-centricism*, *inadequate distribution of wealth and technology* among different communities of a society and also *families* and due to *shrinking state capacity to deliver "public goods"* to the citizens and dependence on market *mechanisms for the delivery of such services*. "Public Goods" have been defined as goods which the state is supposed to provide in the form of services to its citizens without practicing any kind of discrimination towards the citizens. State is responsible to ensure liberty and equality of opportunity (according to Rawls) to the citizens vis-à-vis such goods. However, since civil society actors both local and global are fragmented on the basis of objectives, the kinds of problems they address may differ which would consequently determine the kinds of public goods they choose to channelize to the people. Civil Society which have trans-national or global existence try to create such opportunities for people of the world at large and not confined to any particular state with the objective of creating a complete borderless society.

From *T.H. Marshall's* theory of citizenship we can deduce some differences between "citizens" and "consumers". The former concept has substantive and legal elements of equality. A citizen is entitled to enjoy all the fundamental rights one's state enlists for him/her. All citizens enjoy equal political rights and ample choice during elections in a liberal democratic state. Although all citizens may enjoy "liberty and equality of opportunity"⁷⁶ in every sphere including *employment*, inequalities persist due to

⁷⁶ John Rawls Theory of Justice

differences in their income, accessibility to various important services such as “education, health, participation and food” which has been defined as social justice⁷⁷.

Consumers and citizens thus differ in terms of their relative “*capacities*” vis-à-vis the afore-stated services or “*public goods*” which the state is supposed to provide to all its citizens. The term “Consumers” denotes man’s relationship with the markets as well as state whereas, citizens are more related to the state. Although welfare-state created a concept of state as a provider of some very important services such as health, food, shelter, education and so on for the citizens in order to give them a dignified life, the neo-liberal state depends on markets a lot for such services. States are accountable to the citizens and not to the consumers in true sense as citizens as consumers are considered to be free to choose goods and services according to their needs. It is the markets or the free economy which needs to be accountable to the consumers. However, seeking accountability from any “non-state actor” is a difficult task which will require better institutions for justice according to John Rawls. Amartya Sen adds the capability aspect to justice which seeks greater participation from society in various spheres.

Aristotle and Amartya Sen consider family as the smallest unit in a society members of which indulge in the entire production and consumption mechanism which is being practiced even today by the contemporary consumer society. Disparities in income of individual families also lead to some social problems such as farmer suicides, child labour, domestic violence and also some severe kinds of societal upsurges such as Naxal Movements in India, students’ movements in Poland during Cold War, and so on. Collection of small families living in urban areas establish their respective Residence Welfare Associations (RWA) to combat problems of environmental degradation in areas within their reach. Their interests in most occasions are confined to their own residential areas and generally do not expand their sphere of activity.

Families can be source for “suitcase NGOs”. “Suitcase NGOs” have been defined as individuals who travel attending conferences on their own. They can play a significant role in encouraging people to transform their lifestyles for societal development and ecological conservation. However, households in rural areas require other kinds of

⁷⁷ Sen, Amartya.2000.Development as Freedom. Oxford University Press (OUP)

civil society actors such as NGOs or New Social Movements to fight for social justice.

Although scholars consider the rise of global civil society as a 20th Century phenomenon, the elements of cross border inter-societal transactions could be traced back to the era of 4th Century B.C. Several expeditions carried out by emperors such as Alexander brought with them some “travelers”⁷⁸ (John Keane) such as Megasthenese who explored the newly conquered territories and wrote books and manuscripts for the future generation to acquire knowledge about these places and continue with these exchanges which helped in societal development.

Tarrow’s interpretation of global civil society carries lot of normative elements which could be traced back to the ancient period of world history when different religious leaders such as Buddha and Mahavira of the “Bhakti Movement” went places outside their territories to spread moral virtues such as adherence to “dhamma” and love and respect for the environment.

The objectives of these sects was similar to the contemporary civil society actors as they challenged the prevailing state apparatus hegemonised by the dominant upper caste of the Hindu religious order. However, the changing definition of the state and also due to religious limitations and lack of infrastructural development prevented these non-state actors to become a global force. In addition to that, the present Buddhist leader Dalai Lama’s negotiations with several world leaders from the political sphere further establishes the dominance of states in the world order. However, due to regional limitations of these sects and also due to inherent differences between the state structure and apparatus prevailing during early Buddhism and during modern era, they have remained as a trans-national or trans-regional force and have failed to emerge as global social force in true sense in terms of their domain of actions with a few exceptions.

Keane also talks about various recreational troupes such as sports groups and artistes also a part of civil society actors. These actors play a very important role in assimilating different societies from the world to come together and exchange ideas,

⁷⁸ John Kean Global Civil Society? Cambridge University Press Cambridge University Press 2003 p.p. 34-35

culture and new means of gathering. The cricket tournaments such as the DLF IPL and soccer events organized by FIFA which has although led to the global commodification of human beings have been used by the UNEP to promote environmental awareness among the people at large. The present German soccer team symbolises greater societal and cultural unification of the earlier ideologically divided East and West Germany.

Although, Turkey may not be a part of the political economic organisation called the EU it still enjoys participation in the UEFA CUP football tournament thereby proving that sports promotes greater cosmopolitanism in terms of recreation and can therefore be considered as civil society initiative. South African government which encouraged cricketers during the 2003 ICC Cricket World Cup to plant trees. Music artistes and bands such as Michael Jackson, Pakistani bands such as Junoon and many others have been spreading awareness about several social problems such as human rights, racism and environmental issues through their music. However, such kind of activism helps them acquire lot of popularity worldwide as social activists which helps them earn lot of profit as well.

Nevertheless, the other civil society actors use these artistes to spread their principled values the world over. However, since all other civil society actors such as NGOs, *social movements* require adequate budgeting as one of the primary means to ensure sustainability in their activities, the profits earned by these artistes are a necessity. It is the margin of profit which raises questions on the role of these actors as social activists. The organizers of DLF IPL have played a very significant role by paying the required taxes to the government as replenishment. However, their contribution to UNEP has not been made public as yet. Awareness regarding social issues are also spread by means of advertisements and movies some of which are also exempted from taxes by the government for the people to watch at a much reasonable prices. Audubon Society in the USA comprises of a group of sportsmen for the protection of wild birds and their eggs with a membership strength of 16000⁷⁹.

⁷⁹ D.T. Kuzmaik The American Environmental Movement in The Geographical Journal, Vol. 157, No. 3 (Nov. 1991), p.p.265-278

Inter-societal transactions through mercantile trade since 16th Century⁸⁰, led to the establishment of markets and also exchange of Western scientific thought and technology such as weapons. Imperialism and colonialism led to several societal upsurges such as the national movements in the colonies in Asia and Africa with the objective of bringing down the exploitative state structure. Rise of some “*suitcase NGOs*” could be traced from this period in the form of Raja Ram Mohan Roy, Vivekananda, Rabindranath Tagore, M.K. Gandhi, Erin Brockovich⁸¹ (faught along with a law firm in USA against water pollution due to Chromium which led to health hazards such as cancer because chromium is a carcinogen-she collected data through interviews, collected specimen of polluted water for testing and proving causality of such health hazards) and so on who travelled several places and attended numerous conferences from where they brought new ideas and thoughts which they spread in the societies by means of school education system for both boys and girls, newspapers, poetries and novels written in both vernacular as well as various foreign languages for the people to learn and imbibe.

Role of Christian Missionaries⁸² was also significant as they helped the society to become aware of social justice, rights and dignity. Schools set up by Christian Missionaries continue to impart moral values and education to all sections of the society irrespective of several divisions in the society based on religion and financial disparities. Education is an important means of developing human resources in any society and is also an important component for sustainable development. Scholars such as Michel Foucault criticize schools for being excessively regimented and hegemonic, however, the rising and changing role of education system as civil society actors cannot be overlooked. Education system also includes institutions for higher learning such as universities, colleges along with students’ and teachers’ unions and research institutions such as the University of Delhi and Jawaharlal Nehru University have been actively involved societal development and up-gradation. Ralph L.Beals

⁸⁰ Karl Polanyi The Great Transformation, 1957.

⁸¹ Cited from the movie-documentary Erin Brockovich

⁸² Edward Said calls it Orientalism

(1969)⁸³ writes that civil society organisations also carry out research on a contractual basis given to them by their respective states for policy purposes as state capacities may fail to bear such kind of extra work which generate opportunities for employment for students.

Civil society are an outcome of interaction between family, state and markets which claims to eradicate corruption from state and market activities in order to ensure better and transparent distribution process adopted by states as well as markets. They have been trying to incorporate accountability in the market sphere as well by means of *corporate social responsibility (CSR)*. Families are becoming part of the larger network of global civil society in a hidden way with the help of “*media*”⁸⁴ which helps them and other civil society actors acquire information and awareness. Global Civil Society actors such as the *WWF*, *Greenpeace*, and so use *media networks* such as different news channels,

However, due to problems of co-optation and problems of accountability the argument demanding greater participation for these actors becomes difficult. They have expanded the Lockean understanding of natural rights by bringing new issues of immediate concerns such as the environment, human rights and others. Lockean understanding of civil society was territorially bound and led to the creation of states. The citizens delegated their right to govern to the state apparatus. The state was thus, entrusted with the functions of providing universal interpretation of citizens’ natural rights, provide security from both domestic and external forces.

Mary Kaldor⁸⁵ puts forth the afore-mentioned argument which considers the 20th Century concept of Civil Society as the resurgent version of Lockean interpretation of territorially bound Civil Society. In addition to this Kaldor, inter alia provides three major categories of global civil society. This categorization has been done on the basis of the objectives and methods adopted by them for mobilization. The “*Activists*” according to Kaldor, do not challenge the prevailing order in the true sense. Rather,

⁸³ Ralph L. Beals 1969. *Politics of Social Research: An Inquiry into the ethics and responsibilities of social scientists*. Aldine Publishing Company

⁸⁴ Robert O’Brien et.al.2000. *Contesting Global Governance*. Palgrave

⁸⁵ Mary Kaldor.2003. *Global Civil Society: An Answer to War*. Polity Press

they *seek greater participation, democracy and autonomy*. They want the state-centricity to be curtailed. The “*Post-modernists*” as mentioned earlier in this chapter, criticizes the concept of “global” in civil society as they believe that there is considerable amount of “north-south” gap persistent overlooking of “context” and “cultural differences”. The “*neo-liberal*” category form the “*positivists*” who *although do not challenge the global order try to make globalisation more beneficial for the grassroots* and the society through policy analysis. They want to transform the rules and norms put forth by the global order from outside through adequate cost-benefit analysis which is an important component of governance.

The contemporary civil society seeks the expansion of interpretations such natural rights and security from the traditional form to non-traditional concept. Traditional concept of security is defined in terms of territorial or armed or security against state-led aggression whereas, non-traditional security includes security of human rights against exploitation, child labour, environmental hazards, drug and narcotics abuse, human trafficking and so on carried out by mainly non-state actors along with some states. Drugs and narcotics are also derived from plants such as opium, cannabis, marijuana and so on. Ulrich Beck explains that it is with the help of some pre-determined knowledge about other individuals that we become comfortable in interacting with others.

L. David Brown⁸⁶ defines NGOs as mobilizing, service and information providing agents which are involved in activities such as “*analysis, agenda setting, pressurizing and lobbying*”. They form “*advocacy coalitions*” and “*networks*” (Nye and Donahue). Mark H. Moore et.al., view civil society, NGOs and networks as three separate entities. “*Networks*” according to them are primarily associated with global civil society and are established over certain specific issue or programme which are generally “*horizontal*”. However, they may also form vertical networks which connect them to local actions as well. “*Networks*” have also been defined as “*knowledge and practice*” which requires sustainability.

Sustainability is an important factor for ensuring and measuring governance which requires adequate budgeting, accessibility to technological and communication

⁸⁶ Cited in “Governance in a Globalising World” ed. Joseph S. Nye Jr. and John D. Donahue.p.p.1-44

infrastructure networks acting as tools or means for mobilization. Anheier and Thermudo⁸⁷ define networks as “...increasing co-operation and co-ordination in the activities of national affiliates of international NGOs outside their conventional headquarters-subunit structure, and develop lateral relations both locally and internationally”. Global Civil Society networks try to bring out the “multi-level” impact of globalisation and global governance. Some scholars also consider the significant role of civil society actors particularly the NGOs in the development processes in the developing countries particularly during economic crises and the consequent failure of the market mechanisms to provide the primary services such as health and medicinal aid, shelter, food,

Knowledge and information remove all scopes of apprehensions and fear as they ensure transparency and encourage co-operation which helps in generating “social capital”. This provides a lot of scope for civil society actors to flourish. However, according to Foucault power plays a very important role in knowledge generation as well as acquisition. Pre-conceived values and norms play a significant role in creating a particular kind of knowledge which the post-modernists like Rosemary Coombe seek to explore. The global capitalist order has the capacity to generate new kinds of demands as well as knowledge by means of newly discovered technology and so on. Knowledge and information require a medium to propagate amongst people and also for understanding. Social Sciences consider “language” as one of the primary means to spread knowledge and awareness. Societal reformists such as Raja Rammohan Roy, Rabindranath Tagore, Vivekananda, M.K. Gandhi used English as well as numerous vernacular as well as other trans-national (Raja Rammohan Roy used Persian) languages to spread *modern scientific knowledge and information* to transform the Indian society for the better.

“Language” is also viewed as any common ideology or objective common to any particular group or organization determined by the values responsible for their formation. Agencies of global economic governance and the TNCs use language laden with “neo-liberal” values, goals and objectives which is projected by means of

⁸⁷ Anheier, Helmut et.al. “Organisational Forms of Global Civil Society: Implications of going Global”

market economy. Since Civil Society actors claim to be “*principled issue networks*”⁸⁸ which follow the language of reforming the neo-liberal development model either being an active participant of the system or by adopting a “positivist” methodology of transforming the system from outside. Principle here means a subjective understanding of values which leads to moral actions or motives (Tarrow and Joseph S. Nye).

Critical Theorists according to Richard Devetak may interpret “language” as “discourse or deliberations” which is one of the key features of civil society actors as they are expected to use peaceful and democratic means of negotiations such as Gandhi and so on. Critical Theorists also categorise civil society groups and actors as “problem solving” entities who acknowledge the problems emanating from policies and try to emancipate the societies from such problems (Devetak, Richard and Benner et.al.). Critical theorists form the Frankfurt School of thought which emphasise on discourse and deliberations as the medium of negotiating with the state as well as state created institutions.

Some scholars such as Lipschutz consider social movements, interest groups and global citizens as part of the larger whole of civil society which function as “*networks of knowledge and action*”. Global Civil Society has also been interpreted as a part of an “international private sphere” (Benner et.al.) along with other non-state actors such as the corporate world including the TNCs. “*Networking*”, according to Pushpa Sundar are established through periodic meetings, conferences and funds provided to co-ordinating offices (Sundar.2010.120).

Most of the literature discussed above fails to provide information regarding the kind of support civil society actors derive and the means they access to channelize such support since they are not elected bodies. Pushpa Sundar⁸⁹ writes that NGOs which render services or carry out research are immensely dependent on financial as well as other forms of aid and help coming from trans-national sources. Such kind of

⁸⁸ Sidney Tarrow.2003. *Global social movements, Complex Internationalism and North south Inequality*. Cornell University and Russel Sage Foundation and

⁸⁹ Sundar, Pushpa.2010.”Of Resources and Sources” and “The Foreign Donors” in “Foreign Aid for Indian NGOs: problem or solution?”Routledge.p.p.80,81,83,84

dependence of local NGOs on trans-national funding sources is to a large extent inevitable.

Groups and organisations of trans-national origin which have been providing assistance to the developing countries have been playing a very constructive role in establishing NGOs like “Partners in Change, Society for Promotion of Wasteland Development, Agha Khan Rural Support Programme, Development Alternatives, MYRADA and others”(Page 81). The donor organisations acquire funds from either public or governments or both with the objective of achieving certain objectives or outcomes. There is a difference in perception towards these aid programmes. The Northern countries which provide such aid claim to be doing it out of responsibility towards developing the developed and developing south. However, the southern or the Third World Countries consider such programmes as their rights to “*entitlement and compensation*” for enforced plundering of wealth and consequently inflicted societal inequalities by the Northern countries for the past few centuries. Sundar adds that resurgence of civil society began after 1990s due to increasing reliance on “market-led development”; greater emphasis on the process of democratization; and “to enhance impact” (Sundar.2010.120). Sundar considers “*journalists, lawyers, trade unions or research centres*” as some of the key elements of civil society.

The concept of “*co-operatives*” which is very much popular in India is also a “*not-for-profit*” organization of different workers who come together along with their respective “resources” for a better livelihood for themselves. Their basis can be defined in accordance with Mancur Olson’s theory of groups according to which they emerge to fulfill some of their pre-determined common goals. Consequently these groups which are generally found in the rural areas of India such as Gujarat and other regions become service providing bodies to the persistently growing consumer population in the country.

“Co-operatives”⁹⁰ like Amul have playing a significant role in making the “*white revolution*” successful which has helped in increasing the productivity of dairy

⁹⁰ Rodern Wilkinson, The WTO: Crisis and the Governance of Global Trade, Routledge, 2006. And Kleber B. Ghimire, The Contemporary Global Social Movements: Emergent Proposals, Connectivity and Development Implications, UNRISD, 2005.

products in the country. In addition to this co-operative banking has also helped in making the agricultural reforms under “green revolution” successful by providing loans to poor farmers for purchasing new and efficient irrigation and harvesting technology and better qualities of seeds, pesticides, fertilizers and so on. The conventional civil society actors such as the NGOs and some social movements also acquire funds by selling several kinds of accessories, products made by labourers (both men and women) which provides employment to people. *These products may include handicrafts such as potteries, garments, greeting cards, soft toys and so on.* Potteries require clay, while garments require fibre derived from plants and silkworms, greeting cards require paper (however, civil society actors promote use of recycled paper and also encourage international groups such as Archies, Hallmark to do the same). Schools such as Fr. Agnel in New Delhi have been using recycled paper for several art and craft related work for greater social awareness.

Civil Society cannot function without sufficient aid provided to them by several donor agencies. These donor agencies, as cited by Pushpa Sundar, civil society are an important element for market economy. Markets according to Sundar puts too much emphasis on “efficiency” which overlooks the humanitarian elements of the society involved in the development model. Most civil society groups or organizations acquire aid from mainly two of the most important “bilateral donors” such as the EU and the USA. Donor agencies are to a large extent bound by government influence in three ways: the extent of “freedom” the government provides for the NGOs to emerge and function (*Article 19 from the Indian Fundamental Rights provides Indian citizens the freedom of association without arms*); by means of resources which the government provides to the civil society; and institutional regulations imposed on NBOs. This makes civil society institutionally dependent on the state apparatus. However, none of the literature covered so far have discussed the procedure the Global civil society actors need to follow to establish their offices or networks in any country.

Global Civil societies also hire students and other professionals as interns as well as permanent workers which helps them groom and also gain experiences of some grassroot realities. They use media (both print and electronic), internet, better transport networks such as airways, roadways, social networking sites such as

Facebook, Twitter, cellphone networks such as IDEA, AIRCEL and others to reach out to the people on important environmental issues as well. The “*Red ribbon express*” is a famous civil society campaign which is joined by even state actors for making people aware about the problem of HIV/AIDS. Networks, thus, become both a structure as well as a tool for all actors to communicate with the people. Global Civil Society such as the WWF trying to incorporate Corporate Social Responsibility (CSR) within the cellphone networking business by encouraging them and people to work for conservation of Tigers in India.

Sundar highlights the changing objectives of civil society actors from “rural development” in the pre-1990 era to problems related to “girl child”, health-primarily *HIV/AIDS*, environmental degradation such as “climate change, energy security, food security”, issues related to “*intellectual property rights (IPRs)*”, disaster management, and so on. She writes that NGOs acquire three types of grants from the donor agencies: *a) individual grant* which is for an individual or “suitcase NGOs” as discussed above so that one can travel, study and carry out research; *b) project grant* could also be seen as a “contract research” which is provided to a large organization for a pre-defined objective to be achieved by means of a project ; *and c) core-support grant* also called “*institutional grant*” to incur expenses on working personnel (their salaries) and others required for maintaining an office.

In addition to these activities, civil society actors establish networks with different universities and provide published academic works from several researchers (who form an important category of civil society actors) either free of cost or at subsidized rates to the emerging scholars and researchers for further study. Jstor is one such online as well as conventional journal site which is a “*non-profit organization*” connecting researchers from universities such as University of Delhi, Jawaharlal Nehru University with other foreign universities. Civil society actors also write books, they fight cases, indulge in street-plays, puppet shows to spread awareness (*Salaam Balak Trust*), *street processions on several social problems, carry out signature campaigns through e-mails*. Global Civil Society used similar means of activism even during the Seattle Ministerial Conference of the WTO.

International NGOs also include certain networks or organisations which may focus on the activities confined to any specific region such as the “*Third World Network*”⁹¹ and the *Centre for Trade and Development* (which restricts its activities to trade and development issues in the South Asian region).

However, problems of co-optation and lack of accountability on part of civil society actors have raised lot of criticism against these non-state actors (Sundar.2010.). Since donor agencies regulate civil society activities by chalking out siphoning of funds to appropriate sectors and projects as determined by the donor agencies which mainly belong to either EU, USA, Japan and some other developed countries. This creates a north-south gap in the functioning of civil society actors with respect to choosing the issues of priority for the society at large. Also networks between some global civil society actors with local civil society actors have not been dealt with in most of the literature or have been projected as alliances between civil society actors. Such alliances provide a decentralized structure to global civil society actors which in turn helps them bridge the global and the local. Civil Society actors also emerged from the sphere of literature playwrights and dramatists such as William Shakespeare, Charles Dickens (dealt with coal mine workers). Several painting and musical movements also part of civil society activism.

*Power comes from the people
But where does it go?
And how does it happen
That it goes to such a place?*

Vladimir Vysotsky (the late Soviet Popular Singer)

The quotation above signifies the dissatisfaction with decision-making patterns and the policies of the states with respect to the people who actually elect their representatives in a democratic country. The hegemony exercised by the Soviet Union on the people led to the rise of several kinds of protests including in the world of music.

From the above discussed literature we can understand the diversities prevailing within the larger whole of *global civil society*. However, the contemporary neo-liberal

⁹¹ Clapp, Jennifer and Peter Dauvergne.2005.”*The Globalisation of Environmentalism*” in Paths to a Green World.p.p.73.Boston.M.A.

glob-international system only accepts the reformist category of new social movements or NGOs as they are not against the state or state created institutions. The Radicals on the other hand lose out because they expect a utopian political scenario where there will be no state or state created institutions or international organisations which may not be possible and is yet a dream which even Karl Marx could not achieve. State is a legitimate entity which is for every individual and the civil society activists need state apparatus to get themselves heard. Glob-international civil society also derives institutional recognition from the United Nations as social groups which do not aim profit or individual gains but demand larger absolute social up-gradation and development. Absolute social up-gradation is an outcome of accumulation of marginalized units seeking greater resource as well as service mobilization within the society. The UN further adds that civil society needs to refrain from using violent means for such mobilization as it is the state which controls the legitimate control over the army to ensure both internal security from both domestic as well as external violence derived from the social contract theory and the theory of liberalism. Unlike the civil society, the state is an elected body due to which its legitimacy is stronger and more assertive.

CONCLUSION

One of the biggest difference between the civil society during 16th Century and the 1980s is in relationship with the state. The former wanted the creation of state whereas, some of the contemporary social movements want that the states should perish along with all other state led institutions. This category is not supported because they are anti-state in their approach. State here acts on the basis of rational choice as it cannot part with the general demands of the people for a particular faction. Environmental Social movements began rising during the 1960s and the 1970s in USA as well as the other developed countries. Environmental social movements have been specifically considered to be non-partisan in nature and affiliation⁹². Despite this the state and political will also plays a very significant role in the development of environment as an issue or a programme. Glob-international civil society enhances the significance of local knowledge with respect to the process

⁹² D.T. Kuzmaik The American Environmental Movement in *The Geographical Journal*, Vol.157, no.3 (Nov. 1991) p.p. 265-278

of globalisation as they help the market actors to flourish better through some market research they carry out for their benefits. International Organisations such as the WTO use scientific knowledge to establish the “validity of local knowledge”⁹³. The Environmental Movements have been challenging the policies of the state and state created organisations.

Environmental social movements began going trans-national since the UN Conference on Human and Environment at Stockholm in 1972⁹⁴. The North-South gap between the developing and the developed countries on the problem of environment and development became significant. It was at a *Conference at Founex* prior to the *Stockholm conference* that the concept of sustainable development was actually discussed because the United Nations had incorporated development oriented goals for the states to follow. The basic north-south debate over environmental problems had been revolving on the issue of poverty prevailing in the developing countries and the need for immediate development to overcome such problems. Since the WTO is one of the organisations for global economic development the environmental social movements with glo-binternational reach are criticizing the WTO on grounds of legitimacy due to its rigidity towards limited participation for these non-state actors. In addition to that certain policies implemented by the states due to their commitments to global development governance organisations such as the IMF, G-8, World Bank and the WTO such as the problem of debts and conditionalities on loans, Tobin Taxes⁹⁵ and corruption problems.

⁹³ Jude L. Fernando NGOs and Production of Indigenous Knowledge under the Condition of Post-modernity in *Annals of the American Academy of Political and Social Sciences* Vol. 590 *Rethinking Sustainable Development* Sage

⁹⁴ Margaret E. Keck and Kathryn S. Sikkink *Activist Beyond Borders* Cornell University Press 1998.p.p.123

⁹⁵ Tobin Taxes are defined as the extra cost which is levied by the states on currency exchanges which is later used for future development purposes in the pattern of Kuznet's Curve. Klobber B. Ghimire *The Contemporary Social Movements Emergent Proposals, Connectivity and Development Implications*. UNRISD Civil Society and Social Movement Programme Paper No 19, august 2005 Paper no. 19. [http://www.unrisd.org/8025683C0058CCF9\(httpAuxPages\)/FOF8C2DF84C2FB2DC1257088002BFB D9/\\$file/ghimire.pdf](http://www.unrisd.org/8025683C0058CCF9(httpAuxPages)/FOF8C2DF84C2FB2DC1257088002BFB D9/$file/ghimire.pdf)

Chapter2

THE WORLD TRADE ORGANISATION (WTO)

The primary basis of the international and now global trading regime or agency is the International Trade Organisation (ITO) Charter laid down by the ECOSOC under UN supervision¹. Different kinds of negotiations finally led to the formation of the most important basis for the newly emerging “*Liberal International Order*”² or the *Brettonwoods Institutions*. However, unlike the ITO which also included clauses to counter unemployment³ the GATT overlooked such concerns emanating from market fluctuations. The GATT was mainly focused on liberalizing trade. The initial idea behind the creation of a separate organisation for trade purposes was inherently an overlapping concept because of its links with the UN led ECOSOC. Overlap also existed within the League of Nations which dealt with international trade issues as well. Also the League had provisions for bilateral treaties such as the Treaty of Versailles something which is not permitted under the WTO. The problem of unemployment is of immense importance from a developing country perspective as increase in the number of unemployed due to increase in population would lead to increase in the number of dependent population and eventually poverty which the bio-environmentalists consider as one of the important factors for environmental degradation. However, state practices such as “*currency devaluation, tariffs, quotas, export subsidies*”⁴ and other unitary protectionist measures to prevent such problems leading to excessively harsh impacts on the other trading partners economy.

Therefore, GATT could never culminate into an organization due several kinds of trade restricting policies adopted by the states categorized under “*Beggar-thy-*

¹Charles W.Kegley Jr. and Euglene R. Witkopf.1997.World Politics: Trend and Transformation. Wardsworth Publications.

² Ibid..1

³ Manmohan Aggarwal.2006. “*WTO as a regime in international relations*”. In India, the European Union and the WTO.ed. Rajendra K. Jain and Hartmut Elsenhans. Radiant Publishers.p.p.1-25

⁴ Charles W.Kegley Jr. and Euglene R. Witkopf.1997.World Politics: Trend and Transformation.Wardsworth Publications and Robert O’Brien and Marc Williams Global Political Economy: Evolution and Dynamics

neighbour policies”⁵. Such policies led to extreme kinds of competitions making it extremely difficult for the developing countries specially to access the benefits of international trade relationships. Although, it failed to discuss in detail about the decision-making procedures of this arrangement, *Article XXV* made provision for a democratic set-up based on “*one nation one vote*”. The final decision was arrived at by a majority decision or by a majority of votes cast. . Witkofp writes that any nation’s vote is caste by its executive wing which has no co-ordination with the legislature during such voting thereby raising questions on the democratic basis of this organization. *Article XXV* dealt with powers of individual contracting parties to interpret the GATT Agreement. GATT never had any Secretariat.

In addition to this, Articles XV and XVI of GATT 1947, the exchange rates of all “Contracting Parties”⁶ were to be determined by the International Monetary Fund (IMF) thereby creating *greater overlap amongst different international organisations*. Exchange rates play a very significant role in determining the “balance of payment”⁷ and the trade deficit conditions of any “contracting party” or the “member states” (under the WTO) which consequently affect “market accessibility” as more protectionist policies may be incorporated violating the free trade norm. Such crises may lead to problems of inflation, unemployment, environmental degradation. Such deficits affect interest rates (as they go up) reducing social security cover which may include housing, employment, health, hygienic environment and other public goods. From the time of the creation of a *world trading agency there have been efforts within these agencies to reduce such kind of overlap and ensure better specialization in the development mechanisms*. However, due to prevailing ideological and structural differences in the cold war era the ITO Charter failed to get enforced making the initial effort towards formation of a strong world trade body futile. GATT discussed

⁵ Ibid..1,2

⁶ The states (which included both free as well as those which were still colonies) were referred to as Contracting Parties because these states were joining the GATT which was an Agreement or a contract.

⁷ Ibid..1, Balance of Payment can be understood as the total sum of balance of trade, the current account (it includes trade in goods and services , investment income and payments such as money from MNCs) and capital account (which measures foreign nationals’ investment of resources abroad and in the home country.) in case of greater amount of money flowing in it is called balance of payment surplus whereas, when greater amount of money flows out it is called balance of payment deficit.

only problems related to “tariffs”⁸ in its first few rounds and adopted the issue of agriculture during the Tokyo round of talks in the 1960s. The GATT norms failed to adapt to the changing requirements of the world economy. It was in the Uruguay round of talks that the GATT began to shift towards non-quantitative restrictions on trade and discussions on the problem of subsidies due to U.S. pressure.

WTO is committed to promoting development by means of free trade and by in-turn bringing about prosperity and peace by means of rules, agreements for better settlement of disputes which ensures unbiased decision-making process. Since it is an international organisation it can exercise “power-to” generate “co-operation and co-ordination”⁹ amongst nations. Free trade helps to reduce “cost of living” because protectionist policies make goods such as food and clothing expensive. Free trade claims to reduce “costs of production, prices of finished goods and services” which helps reduce the expenses of a decent living as income level of the people in different states and societies increases due to enhanced employment opportunities which is essential for a dignified life. Free trade means free and better market accessibility which is driven by competition providing the consumers with ample choices to choose from¹⁰. The WTO norms superseded all previous clauses under the GATT and therefore emerged as an all powerful agency for global economic governance.

The WTO functioning can be studied under the “principal-agent” theory¹¹. The GATT has been defined as “a collective of bilateral relationships whereby inter se arrangements between subsets of members are only proscribed for liberalizing activities”¹² which has been replaced by multilateralism within the WTO.

⁸ Charles Kegley Jr and Euglene R. Witkofp World Politics: Trend and Transformation. St. Martin’s Press.p.p. 27-30

⁹ Robert Dahl. Concept of Power. in.Behavioral Science. Vol.2, no. 3 1957.p.p.201

¹⁰ Richard Peet. “The World Trade Organisation”.in. Angus Cameron, Anastasia Nestvetailova and Ronan Palan, eds., *International Political Economy*, Vol III, Sage Publications.2003.p.p.13-48

¹¹ Manfred Elsig. “Principal-Agent theory and the WTO: Complex agency and ‘missing delegation’”- *European Journal of International Relations* XX(X) 1-23).

¹² Thomas Cottier and Marina Foltea.Ch.3. “Constitutional Functions of the WTO and Regional Trade Agreements (RtA)” in.Regional Trade Agreements and the WTO legal System: International Economic Law.ed.Lorand Bartels and Federico Ortino.OUP.p.p.43-76.

The World Trade Organisation (WTO) came into existence as a “*glob-international*” body on January 1, 1995 through the Marrakesh Agreement. The theoretical basis of the WTO is neo-liberalism. The transition from the GATT to the WTO has been defined by scholars such as Kofi Oteng Kufour¹³ as “*constitutionalisation of international trade rules, institutions and decision-making*”. It is considered to be one of the most important organisational component of the “*global governance system*”¹⁴ entrusted with a lot of power¹⁵. This is because of the fact that GATT 1947 lacked continued and only had partial applicability¹⁶. According to GATT 1947, GATT began with four countries or Contracting Parties from Europe: Belgium, France, Netherlands and UK. Kufour adds that WTO carries out multiple functions of a “*legislative, deliberative and adjudicating body*” which has a lot of impact on domestic policies of the member states.

WTO, unlike the ITO overlooks local problems such as that of unemployment¹⁷ which show a shift from the restrictions that were based on Keynesian economics and welfare-state during the ITO. The legally binding norms and “*code of conduct*” of the WTO, force states to adopt those measures after permitting certain fixed time limit for state legislatures to deliberate upon them which tends to get prolonged¹⁸ thereby increasing the transaction costs. Bernard Hoekman¹⁹ considers WTO as body encouraging “*international cooperation on trade-related policies*”. Hoekman has discussed five important principles to understand both GATT and the WTO: “*non-discrimination; reciprocity; enforceable commitments; transparency; and safety*”

¹³ Kofi Oteng Kufour.2004. in “Introduction”in. World Trade Governance and Developing Countries: The GATT/WTO Code Committee System. Blackwell Publishing

¹⁴ Gary Sampson “The Role of the WTO in Global Governance” in United Nations University Press, Blackwell.2000.p.p.1-18

¹⁵ Ibid..11

¹⁶ Article XXVI:5(c) of GATT 1947

¹⁷ Eric Neumayer “WTO Rules and Multi-lateral Environmental Agreements” .in. Greening Trade and Investment: Environmental Protection Without Protectionism.p.p.161. Earthscan Publications

¹⁸ Ibid..12

¹⁹Bernard Hoekman.”The WTO: Functions and basic principles” in Development, Trade and the WTO: a Handbook.eds. Bernard M. Hoekman, Aaditya Mattoo, Philip English.p.p.41.2002

valves". Karl Polanyi²⁰ writes that the post-feudal economic order is based on two key concepts: "*reciprocity and redistribution*". "*Reciprocity*" helps in reducing transaction costs by avoiding the need and expenditure on unnecessary administrative procedures. Reciprocity is ensured by means of institutions, agreements, rules and so on.

The norm of "*non-discrimination*" is exercised by the WTO by its "*most-favoured nation (MFN; GATT Article I)*" and "*national treatment principles (GATT Article III)*"²¹ clauses. The MFN clause makes it mandatory for states to implement measures which treat goods coming from other countries at par with the goods produced by the states produced at the domestic sphere. This clause is further supported by the "*national treatment principles*" which force states to levy similar taxations and tariffs on both imported as well as domestic goods. The primary objective is to reduce state intervention, transaction costs as these clauses create universalized taxations and tariffs for all trading partners and consequently prevent any scope of biased trade policies acting as protectionist measures obstructing free-trade. Unlike the WTO, the GATT was based on the "*Protocol of Provisional Application (PPA)*". Kegley Jr. define the intention behind the formation of the GATT to assert the fact that GATT was only an Agreement whereas the WTO is an organisation.

WTO also lays down a "*list/schedule*" of permitted concessions and tariffs which prevents states from raising tariffs beyond a certain level without any prior negotiation with the required trading partner or the "*principal supplier of the product*" (Hoekman..43). These clauses try to ensure "*transparency*"²² in the functioning of the WTO. "*Transparency*" forms one of the most important objectives of the WTO which is made a legal obligation by Article X of GATT and Article III of the General Agreement for Trade in Services (GATS)²³. Member States are expected to get their trade regulations published for further negotiations and trade regulations. This creates separate institutions to review their "*administrative decisions*" which regulate trade.

²⁰ Karl Polanyi.1957."The Great Transformation". Rinehart and Company.p.p.51

²¹ Ibid..17

²² Ibid..17

²³ Ibid..17,20

This makes it easy for the states to get access to information about policy changes adopted by the members. WTO ensures transparency through its Trade Policy Review Mechanism (TPRM) given in Annex 3 which acts as an “*external surveillance*” (Hoeckman.44) body making it a global “panoptic” (Foucault). Commitment to transparency through TPRM helps the WTO to ensure legitimacy for itself. TPRM does not ensure legitimacy but supremacy of the WTO norms because the conventional concept of legitimacy is understood in relation to any state. Under such a concept any state or the sovereign is viewed as the savior or provider of all the services such as “*physical security, justice (delivery), ensuring economic growth and development and providers and distributors of public goods*” (Smith, David A.). State is considered as the primary and unbiased provider of services thereby upholding the relatively autonomous nature of the state. However, free-trade norms laid down by the supra-territorial agencies have created alternative service providers which act through the medium of a competitive market although providing choices and inherent inequality.

Hoeckman proposes TPRM as an important means for the civil society to assess the “implications” and repercussions of the trade policies implemented by the respective member states. TPRM came into existence since 1998²⁴. Transparency reduces transaction costs by bringing down apprehensions and ensuring commitments which is nothing but keeping the trading partners periodically informed about the changes in domestic economic policies vis-à-vis international demands.

TPRM of the WTO was established during the Uruguay Round. Through this body the member states try to carry out periodic and “*systematic review of developments*” taking place in the “*trading system*”²⁵. The economic might and capacity of the states and their consequent contributions to the world trading system plays a very significant role in determining the periodic intervals between such review exercises. Member states such as the EU, USA, Japan and Canada form the largest contributors to the world trading system and are thus, subjected to such reviews more frequently (twice per year) compared to the “*next sixteen largest traders*” which face review once in

²⁴ Ibid..11

²⁵ Ibid..11,13

every four years, whereas the remaining member states undergo such a review in every six years time. Under the “*special and differential treatment (SDT)*” norm the interval for this kind of review may get extended for the “*least developed countries*”²⁶. TPRM does not ensure legitimacy but supremacy of the WTO norms.

The WTO is the reformed form of the first international trade body called the General Agreement for Tariffs and Trade (GATT). The WTO has been committed to the objective of growth and development by means of free trade. Nevertheless, the WTO has emerged as a much stronger supra-territorial organization compared to the former. The institutional basis of the GATT was to be the International Trade Organization (ITO) charter which failed to get ratified thereby preventing the GATT from becoming a stringently binding organization. The GATT was a more flexible arrangement like the League of Nations which permitted states or the “*Contracting Parties*” (in case of GATT) to withdraw or “*opt-out*”²⁷ from certain *agreements or policies*. The GATT failed to implement fixed time intervals between the ministerial conferences or meetings²⁸.

The objective behind the creation of GATT was to create an arrangement for the war affected states (the Axis, Allied as well as the newly emerging states) to overcome economic crises and strengthen their base. Due to “*stagflation*” in the international economy the GATT model failed to sustain itself. The means of exchange were dominated by the USA such as the US dollar which was the only stable currency then. Due to Non-Aligned Movement and the rise of EU as separate forces helped USA to slowly dominate the world economy and the trade regime which later got institutionalized by the Washington Consensus.

However, the WTO has greater binding implications on its “*member states*” (the contracting parties of the GATT become permanent members of the WTO and all its agreements). The phrase “*member states*” signifies the stringency in terms of applicability of WTO norms for all members and the abandonment of the “*opt-out*”

²⁶ Ibid..17

²⁷ Ibid..11,13,14

²⁸ Ibid..17

clause” which was prevalent during the GATT. In addition to this the WTO also has a strong “*dispute settlement body*”²⁹ which helps it to act as a separate “*world court*” dealing with trade related disputes. This provides both “legal and institutional foundation” to the WTO and the international trading system³⁰. Unlike the GATT which promoted only “*negative integration*” of states based on “tariff concessions” the WTO claims to be promoting “*positive integration*” among states. The WTO through its several committees and the dispute settlement body (DSB) tries to ensure *greater specialization* and “*division of labour*” in the sphere of global economic governance.

The WTO functioning, according to O’Brien et.al., depends on certain important variables such as: the fluctuations in the global political economy; variations taking place in the trade order; and reforms in the WTO as an international organization. These variables also influence WTO’s perspective towards both state as well as non-state actors³¹. The provides the platform for states to carry out their respective policy discussions. According to Witkofp both GATT and the WTO permit free-riding. However, the difference lies in the stringent conditionalities imposed on the member states (which were earlier the contracting parties to the GATT) under the WTO to abide by all its agreements and “market access commitments” which was not the case under the GATT.

The GATT permitted free-riding to the smaller states which were exempted from any kind of contributions to the “GATT system”. WTO establishes a system at the supra-territorial level where member states bring policy inputs from their respective environments and sub-environment which we understand as the society. Unlike the WTO, the GATT never clearly emphasized on a decision-making process based on “*consensus*”. It remained a vulnerable pattern of decision-making. However, in case of WTO a clear definition of consensus was provided according to which a decision is believed to have been passed consensually when “no member present and voting”

²⁹ Ibid..17

³⁰ Robert O’Brien, Anne Marie Goetz, Jan Aart Scholte and Marc Williams *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*. Cambridge University Press.2000

³¹ Ibid..28

refuses to support the decision collectively made by others (Witkofp). Although the WTO is considered to be “*most democratic*”³² of all global governance organisations the developing countries do not get adequately represented.

The WTO Charter comprises of four Annexes.

ANNEX 1:

- a) contains Multilateral Trade Agreements comprising of the outcome of the Uruguay Round;
- b) WTO obligations binding on the members “single package” which was very different from the Tokyo Round of talks under the GATT;

STRUCTURE AND FUNCTIONS

The WTO is headed by the “*Ministerial Conference*” of all members which is held once in a span of every two years³³ (Hoeckman.46; O’Brien et.al.137; and Peet,Richard.2003.15). During the interval between the Ministerial Conferences the functioning of the WTO is managed by *the General Council*. The General Council is an assimilation of “*diplomats*” representing each member state. It meets *twelve times* in a year. It also acts as the Dispute Settlement Body as well as the Trade Policy Review Body (TPRB) (Hoeckman..47). The *General Council* plays the role of the supervisor (Witkofp). TPRB carries out periodic reviews of concerned “governmental agencies, chambers of commerce, research institutes and other elite organisations” of every member country.

The General Council has under its purview several subsidiary councils on goods, services and intellectual property rights. It also sets up several committees to deal with “interests of developing countries such as the Committee on Trade and Development; WTO finances and administration and so on (Hoeckman..47). In addition to these bodies the WTO also has a Secretariat comprising of “official

³² “Making Global Trade Work for People”.Heinrich Boll Foundation.(UNDP).2003

³³Bernard Hoeckman.46; Robert O’Brien et.al.137; and Richard Peet .2003.15

representatives of members based in Geneva, civil servants based in the capitals and national business and non-governmental groups” who try to push their respective governments to put-forth their demands at the multi-lateral forum. Both the Ministerial Conference and the General Council enjoy exclusive rights to incorporate interpretations of the entire WTO Charter and the Annex 1 Multilateral Trade Agreements.

Annex 1 Multilateral Trade Agreements can be enlisted under **Annex 1A** and **Annex 1B**. **Annex 1A** comprises of GATT (now called the GATT 1994) along with lists of schedules as well as tariffs of some key trading countries such as EU, Japan and the US (Witkoff). It, inter alia includes: Article I of GATT ensured commitment to transparency ; Article X:1 of GATT 1994 forces members to publish their “measures” and international agreements to others also to ensure transparency; Article X:2,3 makes it committed to “Rule of Law”; Agreement on Agriculture; Agreement on Technical Barriers to Trade; Agreement on Trade Related Investment Measures (TRIMs); Article IV- Agreement on Anti-Dumping; Agreement on Customs Valuation (Article VII); Agreement on Import licensing; Agreement on Subsidies and Countervailing Measures; and Agreement on Safeguards. Annex 1B includes General Agreement on Trade in Services. Annex 1C TRIPs measures. Annex 2 Dispute Settlement Understanding. Annex 3 Trade Policy Review Mechanism (TPRM), Article V of GATT permits unrestricted or “free transit of goods through the territory of any WTO member”. Article VII:1 regulates exchange of labour. Article VII deals with the budgeting system of the WTO. The Director General of the WTO presents the budget to the “Committee on Budget, Finance and Administration” which the General Council has to approve with the ratification of a two-thirds majority.

The Director General is appointed and empowered as well as entrusted with duties by the Ministerial Conference as the head of the WTO Secretariat. The Director General then carries forward the job of appointing and entrusting his staff members with their respective duties for the Secretariat. The Director General is all-powerful bureaucrat compared to any member government.

Both GATT and the WTO have had a decision-making pattern based on “*consultations and consensus*” (Hoekman..48). Hoekman considers as an advantage

and opportunity for smaller countries with better opportunities of participation in negotiations. Weaker and smaller states, according to Hoekman, get adequate platform for carrying out bargaining and informal consultations. Voting is considered as the *last resort* in the decision-making process in case the WTO fails to arrive at a consensus. The distribution of votes amongst the member states is based on the principle of “*one member one vote*” (Hoekman..48). Amendments are also made possible particularly to the Most Favoured Nation (MFN) or the “national treatment clause” by means of “*unanimity*” (Hoekman..48). WTO norms, agreements, clauses and “*decisions on waivers of a member’s obligations*” are subject to interpretation which can be done only by a *three-fourths majority* (Hoekman..48).

Hoekman adds that due to large scale membership within the WTO (153 countries) the problem of arriving at a consensus on any issue have been increasing in the decision-making process leading to deadlocks and prolonged deliberations. There have been suggestions towards reducing the number of “*active participants*” in the WTO deliberations by permitting states or members to “opt” and attend deliberations on the issues of their respective concerns³⁴. The WTO also has a “*Quad group*” comprising of Canada, EU, Japan and the USA which indulge in discussions related to all topics. Spokespersons from Egypt, India and Yugoslavia also participate in almost all major meetings. In addition to these the WTO proceedings also involve the “*Green-room*” involving major countries along with a set of developing countries (in all twenty delegations) who actually try to chalk out an outline of “acceptable proposals” or “negotiating agendas” raising lot of criticisms on grounds of being secretive and undemocratic and lacking transparency without much success to abolish the same.

The primary characteristic of both the GATT and the WTO has been the clause on “reciprocity”³⁵. Reciprocity norm involves ‘credit’ found in reciprocal negotiations for unilateral liberalisation carried out by developing countries; and WTO’s regulatory control over “border trade restrictions” levied in the form of quotas, tariffs

³⁴ Ibid..11

³⁵ Bernard Hoekman.2002.”*The WTO: Functions and Basic Principles*” and Finger et.al.”*Reciprocity in the WTO*” in. Development, Trade and the WTO: a Handbook.eds. Bernard M. Hoekman, Aaditya Mattoo and Philip English

and also over the regulatory structure within the borders of the member-states dealing with the issues of “*standards and intellectual property*”³⁶. The authors in this case try to project the local or domestic influence and control of the supra-territorial agency for global economic governance such as the WTO and also add that the clause on reciprocity becomes the benchmark to compare and assess the performance of the trading partners as well as the entire world trading system at large.

WTO has been criticized for its broadened sphere of influence and “*permanence*” of rule-making authority and its consequent belittling influence on states³⁷. WTO has been defined as both a “*rule-making and rule-supervisory*” body. As a “*rule-making*” body it acts as an initiative towards a “*global policy making*” mechanism whereas, as a “*rule-supervisory*” body it ensures compliance and adherence of the state norms to the norms laid down by the WTO³⁸. Since the major decisions in the WTO are taken by state representatives (in the Ministerial Conference) the WTO gets ample scope to shirk accountability and responsibility. These issues are considered to be local problems which the states have to take care of.

WTO Secretariat in Geneva comprises of 550 staff members, mainly lawyers. It is headed by a Director-General (presently Pascal Lamy from EU)³⁹. Two-thirds of WTO members belong to the developing or the third world.

The WTO has been viewed as an intercept as well as an “*intersection*” between different regions of trade such as the “*US, Europe, Russia, Asia and Africa*”⁴⁰. In order to achieve this objective the WTO DSB refers to some important regional conventions such as the Lome Convention signed between EU and some African countries while adjudicating on disputes regarding goods or products such as

³⁶ Michael T.Finger and L. Alan Winters.2002. “*Reciprocity in the WTO*” in. *Development, Trade and the WTO: A Handbook*.eds. Bernard M. Hoekman, Aaditys Mattoo and Philip English

³⁷ Ibid..28

³⁸ Ibid..28

³⁹ Ibid..8

⁴⁰Thomas Cottier and Marina Foltea.2006. “Ch.3.Constitutional Functions of the WTO and Regional Trade Agreements (RTA)” .in.*Regional Trade Agreements and the WTO Legal System: International Economic Law*.ed.Lorand Gartels and Federico Ortino.OUP.

“bananas” traded between these countries. Such referring process is not carried out when the same product may be traded to any country which is not a signatory to such a convention. Vienna Convention is also sometimes referred during interpretation of any treaty.

WTO and the DISPUTE SETTLEMENT BODY

Unlike the dispute settlement mechanism under the GATT which was weak as it sought the consensus of the losing party as well, the WTO dispute settlement body (DSB) is more stringent and binding on the member states which deprived the states the power to provide their consensus on whether to accept the decision or not. DSB is based on the norm of “*rule of law*”⁴¹ WTO DSB enjoys appellate jurisdiction along with ordinary jurisdiction and also enjoys powers of Judicial Review⁴² and Judicial Activism as the policy decisions taken by the DSB becoming binding on the states. However, it is yet to introduce a concept of Public Interest Litigation (PIL) in order to make this judicial body more democratic and accessible to the people and ensure greater interaction between the global and the local.

(Article 2)⁴³ of the Dispute Settlement System of the WTO is applicable to all its members. Under Article 4 of the DSB, the member states at conflict are supposed to settle their disputes bilaterally. The DSB thus becomes the last resort like the *International Court of Justice (ICJ)* under the *United Nations*. This clause respects the sovereign rights and powers of the member states like the United Nations. DSB, thus, is also a mediating body for trade conflicts. Disputes come to the DSB at the behest of either of the complaining parties. The WTO DSB exercises a “*negative consensus*

⁴¹Kofi Oteng Kufour.2004.in. “Introduction”.in. World Trade Governance and Developing Countries: The GATT/WTO Code Committee System.Blackwell Publishing

⁴² Judicial Review was incorporated in the Uruguay Round of talks. Thomas Cottier and Marina Foltea,,2006. “Constitutional Functions of the WTO and Regional Trade Agreements (RTA)-Chapter 3” in. Regional Trade Agreements and the WTO Legal system, International Economic Law.ed. Lorand Bartels and Federico Ortino. Oxford University Press.p.p.59

⁴³Valentina Delich..”*Developing Countries and the WTO: Dispute Settlement System*”.p.p.71.in.Development Trade and the WTO: a Handbook.eds. Bernard M. Hoekman, Aaditya Mattoo and Philip English

mechanism” (Article 6 of the DSB) when it comes to formation of the Panel; no consensus is required for the formation of a panel but if there is a consensus against the formation of the Panel then the process gets stalled⁴⁴.

The DSB comprises of three panelists which is committed to unbiased judicial proceedings. This is ensured by choosing panelists from member states which are not involved in the feud which is to be heard at the DSB⁴⁵. The DSB is *criticized for being secretive as the proceedings of the panel which includes “deliberations and opinions”*, are kept a “confidential” or secret and “anonymous” (Article 6, 14 of the DSB). Panelists are “usually selected from an ‘*indicative list*’ maintained by WTO Secretariat” (Peet.2003.34). The Panel is permitted a time span of six months to carry out all the examinations following which a report is prepared by the Panel which is circulated to the member states. After sixty days from the date of this circulation the DSB is under compulsion to adopt the measures of the report. However, a “*negative consensus*” at this stage could stop the adoption process of the report. Adoption of the report is also stalled in case of an appeal made by either of the conflicting parties against any decision taken by the Panel (Article 16. DSB)⁴⁶. Here the role of the Appellate Body comes into picture.

Appellate Body was created during the Uruguay Round to consider various kinds of appeals. It comprises of seven members out of which only three “*serve on any given case*”. These seven members are appointed for a period of four years. These members may not be affiliated to any government and are generally “*semi-permanent members*”⁴⁷ each enjoying a tenure of four years and eligibility for “one_re-appointment”. This way the body restricts the membership to mainly *Geneva-based officials*. The appeals which are related to the report provided by the Panel and the

⁴⁴ Valentina Delich 2002 Developing Country and the WTO: Dispute Settlement System”.in. Development, Trade and the WTO: A Handbook.eds Bernard M. Hoekman, Aaditya Mattoo, Philip English p.p.71

⁴⁵ Ibid..24

⁴⁶ Ibid..24

⁴⁷ Richard Peet “The World Trade Organisation”.in. International Political Economy. Vol III.ed. Angus Cameron, Anastasia Nesvetailova and ronan Palan.13-48. Sage Library of International relations. Sage Publications.p.p.34

interpretations accompanied with the same are heard by the Appellate Body. This body carries out its proceedings within sixty days from the date of circulation of the report to the members. The Appellate Body is also confidential in its proceedings (Article 17 of the DSB). Under Article 19 the DSB has the authority to ask a member (whose measures may not be conducive to the WTO norms or the agreements under the WTO) to make the necessary changes or adopt certain policy reforms to bring such measures in consonance with the WTO rules laid down by means of several agreements. Peet adds that the DSB breeds considerable amount of “*democratic-deficit*” (Peet.2003.34). The inability of the local citizens to actually participate in the supra-territorial decision-making and deliberations and the consequent marginalization of certain societies have led to such criticisms against the WTO. It is the “*elites*”⁴⁸ which actually take decisions

With the help of Article 22 any complaining party may seek “*suspension of concessions or other obligations*” with respect to the sector where violation has taken place which is determined by the report prepared by the Appellate Body (AB). However, if such sanctions prove to be ineffective then complaining party can ask for similar sanctions in “*other sectors*” as well (under the same agreement)⁴⁹. The DSB has the powers to impose “*retaliatory actions*” in case of failure on part of any member to comply with the DSB norms. However, such actions are considered to be the last resort. Such actions required “*multilateral authorization*”. Under GATT the defendant could veto such actions⁵⁰. Such retaliatory actions were used only twice under GATT, both against the USA which were vetoed. Article 22.6 permitted thirty day time span for the retaliatory action to get authorized by the member states. However, such actions are considered to be insufficient for carrying out a proper review of compliance under Article 21.5.

The DSB has several provisions for the developing countries such as Article 4.10 which sought special attention from the members towards certain important

⁴⁸ Robert O'Brien et.al.

⁴⁹ Ibid..24,25

⁵⁰Robert Hudec. “The Adequacy of the WTO Dispute Settlement Remedies: A Developing Country Perspective”. <http://www.ppl.nl/bibliographies/wto/files/289.pdf>

“problems and interests” of developing countries during the course of consultations and negotiations. Article 12.10 provides an extended consultation period in cases regarding “measures taken by developing countries if the parties agree”⁵¹. Under Article 8.19 a developing country which is a party to any dispute may ask for a representative from any developing country (which is not at dispute) on the Panel. Article 21.8 empowers the DSB to scrutinize the impact of any trade measure violating the WTO norms (which becomes an issue of dispute) adopted by any developing country. Article 27.2 helps developing countries to get access to neutral legal advice and technical assistance from the WTO Secretariat. Article 24.1 keeps a check on imposition of retaliatory sanctions against Least-Developed Countries (LDC).

Hudec adds that the WTO DSB accepts the member governments as rational actors which act in accordance with their respective self-interests. Such an interpretation is a northern perspective as the Washington Consensus considers state (especially developing or southern states) to be corrupt entities. Hudec writes that states’ decisions to comply with the legal rulings depends on three factors: a) people involved in the decision-making process of defendant governments support such compliance as this helps them retain their power to influence national decision-making process; b) within every government decision-making process there are present certain “*officials*” and also “*private interest groups*” who promote compliance with the legal system on the ground that it will fetch them and their country both, long term gains; and c) governments also may have to comply under the influence of international pressures. Matthias Oesch⁵² writes that it is the duty of the Panel to ensure “balance of power”.

His interpretation may to some extent suit the GATT arrangement due to the dominance of cold war during its inception. However, such interpretation may not hold true for the WTO because being a multi-lateral body alliance formation (which is a significant component of balance of power theory) cannot be a correct approach

⁵¹ Ibid..24

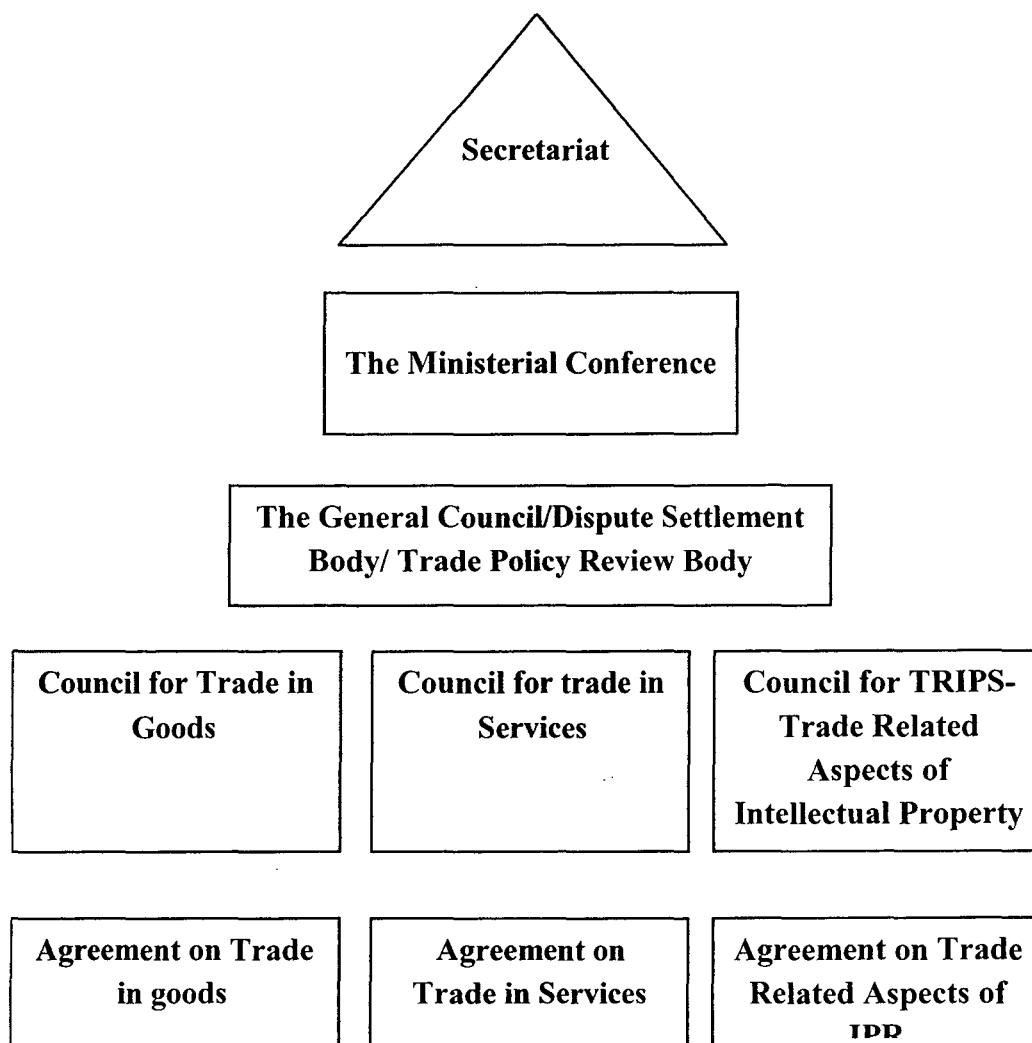
⁵²Matthias Oesch.2003.International Economic Law: Standards of Review in WTO Dispute Resolution. Oxford University Press.p.p.24

towards understanding the neo-liberal trade body. Balance of Power was also another causal factor for protectionism which led to the collapse of the Brettonwoods Institutions particularly the GATT. Several policies initiated during that period with the objective of building alliances such as the Marshall Plan by the USA and the “Cominform” by the USSR led to several economic crises leading to instability in the international trade arrangement.

The basic structure of the WTO includes the Most-Favoured Nation norm; national-treatment policy; non-discrimination policy; *tarrification*. The WTO Dispute Settlement Body makes it an extremely powerful body at the supra-territorial sphere. WTO DSB reiterates the primary objective of the organisation is to ensure adequate market conditions which would help individuals to improve their respective living conditions. Trade helps generate economic welfare and is one of the primary means of promoting human rights and freedom from insecurities, “want and poverty”. WTO is also committed to “*sustainable development*”⁵³ which further makes development as an indispensable objective which needs reforms. However, it is subject to interpretation. Some articles of the WTO deal with adequate use of resources (Article XX). Reforms are usually political decisions which are linked with the economic as well as social factors. Therefore, it becomes difficult for the WTO to incorporate such measures which maybe beyond the scope of the WTO jurisdiction. This makes participation issue an important factor for providing an alternative means for making market mechanisms more beneficial for the society which the reformist civil society organisations seek to put forth vis-à-vis the WTO.

⁵³ O’Brien, Robert, Goetz, Anne Marie, Scholte Jan Aart and Williams, Marc.2000. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*. Cambridge University Press

The WTO structure can thus be explained as under:



WTO: A Collection of different Agreements

The WTO when created adopted all the agreements and articles of the GATT 1994

Article VI of GATT 1994⁵⁴ deals with “*dumping*” and “*subsidies*” committed to “*free-trade*” Uruguay Round. This measure was used and incorporated for the first time by US and Canada. Anti-dumping measures incorporated in the national laws of different member states only after 1980. Earlier such measures were practiced only in EU, US, Australia, Canada, New Zealand and South Africa. However, anti-dumping

⁵⁴Kofi Oteng Kufour.2004.”Developing countries in the GATT Committee System prior to the established of the WTO”.in. World Trade and governance and developing countries: The GATT/WTO Code Committee System.p.p. Blackwell Publishing

measures adopted by member-states are considered to be protectionist in nature as well as in impact. Third- World countries like Mexico, Brazil, Argentina, Korea and India are the member-states to have adopted this measure. “Dumping” has been defined as an act not carried out by governments but by corporate houses. Article VI GATT 1994 although curbed protectionist influence over free-trade, it never opposed “anti-dumping duty”. Anti-dumping duties have been having immense hazardous impact on developing countries.

Dumping may increase transaction costs as separate legislations may be required. Dumping may lead to problems of unemployment, poverty, loss of market-accessibility, consumption of domestic resources without returns. This could initiate a vicious circle of environmental degradation in the third-world where poverty is a major concern. The Anti-dumping Agreement has provision for the Committee on Anti-Dumping practices under Council for Trade in Goods comprising of representatives from each Member state. This Committee supervises the Anti-dumping Measures adopted by different members with the objective of uniformly disciplining behavior of members and also create new uniformly applicable rules.

Dumping has been paraphrased and classified⁵⁵ as under:

- a) **Persistent Dumping-** It is a kind of monopolization. It is a condition when a single producer tries to sell his goods at a very high price within the domestic market. These producers could overcome transportation costs and unnecessary trade barriers. It seems very similar to black-marketing.
- b) **Predatory Dumping-** It is not permanent but a strategy by which a producer may try to sell his goods in other countries at a cheaper price with a malafide intention of ruining the importing country’s market accessibility within its own country. Once such a goal is achieved the prices no more remain low and a new kind of monopoly is created. Therefore, dumping has been eliminated from the WTO norms completely.

⁵⁵Charles Kegley and Witkofp, Euglene R.1997. World Politics: Trend and Transformation.p.p.27.St.Martin’s Press

c) **Sporadic Dumping-** when any good is occasionally sold at a cheaper price in other countries but not in domestic sphere with the intention of extracting the surplus from the commodity by not affecting the prices. Seasonal sale of commodities such as garments, shoes, jewellery, and so on, not necessarily in other countries but at domestic level itself continue to take place even today. These do not affect market prices as such but are considered to be clearance sale to do away with the pending stock and avoid infestation and wastage. These discount packages also called “*schemes which lack transparency*”⁵⁶ are provided specially by private producers such as TNCs like Adidas, Reebok, Nike and so on. Could exchange offers on electronic gadgets such as refrigerators, television sets and so on also be considered as a kind of dumping? Removal of old technology reduces overconsumption of resources particularly energy. Also exchange of old furnitures for new on several occasions helps in reusing such goods made of wood which prevents felling of trees. What about sale of customs confiscated goods at cheaper price in selected shops? It is very difficult to prove the causality of societal and environmental issues emanating due to dumping.

States which seek to fight dumping were forced to increase their production to overcome such market pressures which affect the environment. Increase in production would lead to overconsumption of resources, greater means of transport to carry out exchange of goods. dumping also affects market-accessibility which leads to accumulation of finished goods or products (situation similar to colonialism and imperialism) which lead to “bail-outs” and unemployment.

Agreement on Subsidies and Countervailing Measures (Article 24.1) includes “Industrial Subsidies” provided by different member states particularly the “*manufacturing sector, railway lines, agriculture and coal* (by EU between 1997-1999)”. However, in case of India subsidies in “*agriculture, coal and railways*” are generally for the poor. This agreement tends to overlook agricultural subsidies as they are dealt with by the “Agreement on agriculture”. Subsidies are also prevalent in

⁵⁶ Report (2009) of the Committee on Trade and Environment. October.30.10.2009

plurilateral “Agreement on Trade in Civil Aircraft” and OECD Ship-building Agreements. **Article 24.2** provides setting up of a Subsidiary Body “**Permanent Group of Experts (PGE)**” comprising of five independent and highly qualified persons which “provide advisory assistance/opinions to members on existence and nature of subsidies” but not asked by Panel to assist in decision-making process. Subsidies can be both import, production as well as export. Subsidies help reducing costs for the consumers. However, the producers lose a substantial amount of share due to this⁵⁷.

General Agreement on Trade in Services (GATS)⁵⁸ was incorporated in the WTO system during the Uruguay Round of talks. Important service sectors such as telecommunications, energy provisions and transport are beyond the scope of the WTO jurisdiction. This Agreement has a much more stringent hierarchical structure compared to the GATT and its supplementary Agreements. This Agreement covers twelve sectors: *a) business services; b) commercial services; c) construction and related engineering services; d) financial services; e) health-related and social services; f) tourism and travel-related services; g) recreational cultural and sporting services; and h) transport services.*

By means of a provision of GATS on trade in recreational cultural and sporting services the WTO makes space for civil society to flourish as the Chapter 1 of my dissertation considers sporting and cultural groups as one of the categories within the larger whole of civil society.

The Council for Trade in Services is the central organ of GATS. GATS Council doesn't encourage “cooperation” with other international institutions but General Council does. However, health and air traffic services do not come under the general rule of GATS. Article XII GATS deals with “international transfer and payment of capital” (not mentioned if such a clause considers environmental issues as well). Article III:4 of GATS makes a provision for the setting up of “*national inquiry*

⁵⁷ Joseph Stiglitz and Charlton, Andrew.2005. Fair Trade for all: How Trade can promote development.

⁵⁸ Kofi Oteng Kufuor .2004. “Developing country in the GATT Committee System prior to the establishment of the WTO” in. World Trade Governance and Developing Countries: The GATT/WTO Code Committee System

points” required for providing “information” trying to bridge the gap between global and the local and also ensuring transparency. Article VII of the GATS Agreement comprises of a set of rules by means of which guidelines for “employment qualifications, requirements and certifications” (credentials) to work in other countries. It *further lays down guidelines* for “authorization, licensing or certification of a service provider” (Article VII: 1). Article VII: 2 and 3 of GATS institutionalizes the “non-discrimination” clause by setting harmonized standards required for issuing of licenses or certificates to the service providers.

Since the WTO is unable to regulate non-state actors directly it equips states to carry out such regulatory measures which in itself contradictory to WTO’s primary goal of trade liberalisation. However, Article VII:5 of GATS urges members to create “*public-private partnerships*” along with Civil Society (NGOs) and other international governmental organisations for ensuring harmonized and unbiased set of standards. Article IV adds flexibility for the developing countries by incorporating certain conditions to enable these members to expand their domestic services, their effectiveness and competitiveness. Article V of GATS is committed to greater economic integration with respect to customs union and Free Trade Agreements (FTA).

GATS specifies four modes of by which services may be acquired or bought: MODE I includes the purchase of software or insurance services from supplier situated abroad (time-space distancing and compression) e.g. tele-marketing (international numbers for these purposes are free and not regulated which increases market accessibility and upholds the clauses of non-discrimination), online marketing, supplier situated abroad may also get into joint-ventures with some private suppliers in other countries. MODE II deals with acquisition of services when an individual voluntarily goes to a different country where the service is being provided (educational, tourism and health services). MODE III deals with FDIs; and MODE IV when individual service providers move to other countries. Joint-ventures may either be between one local and one international service provider or both international service provider or supplier)

Trade in services, technology and investments overlap. A service provider may be solely a private profit-making actor or may only function through transfer of capital from outside on a project- by- project basis-DND FLYWAY. India being a mixed-economy has private actors providing transport services (Blue-Line Buses) along **with state plied** buses, drinking water (not as a service as it is not as a supply by private actors,) and water purification technology/services (overlapping with trade in technology). Also SEZs owned by private actors may involve capital from international sources as in case of SEZ owned by Mukesh Ambani in Kolkata along with investments from the Arab World. A service becomes a service when it has a back-up support in terms of periodic up-gradation and maintenance facilities. A service is about sustainability, therefore knowledge and information along with manpower and transportation play a very significant role in this sector. Any technology transferred and bought gets transformed into a service by means of numerous maintenance and customer care services accompanying the same. Trade in services augment scope for trade in *welfare goods*⁵⁹ as several public goods get commodified. However, such maintenance services may not be equipped to deal with externalities emanating from such *techno-services* sectors. E.g., radioactive emissions from medical technologies. Adequate risk-assessment and management required which becomes the responsibility of the states. Risk-assessment may lead to increase in transaction costs.

Services cover a massive share of the GDP in both developed (60% of GDP) and developing countries (50% of GDP)⁶⁰. However, due to diminishing state capacities, trade in services (health, insurance) have been surpassing trade in both agricultural and manufactured goods. This further widens the scope of the service sector-e.g. transfer of technology such as Clean Fuel like CNG, metro, artificial technology, Automated Teller Machines (ATMs), medical technology such as ventilators (life support system), MRI technology, CT Scan are slowly getting fused into the service sector. CNG has got fused into transportation services for providing better health and environment for citizens.

⁵⁹ Ibid..52

⁶⁰ Ibid..38

States, particularly from the developing world are dependent on international private actors for technology to boost their service sectors. Service sector provides scope for higher wages than in manufacturing sector. Service sector requires lot of transportation services as well thereby creating an *inter-service sector network*. The concept of state as a service provider began from the time of Locke when the society created the state to render some important services of providing security from both external as well as internal aggression and also upholding the social contract. Currently security services are being provided by the state police force as well as the defence forces. Economic nationalistic policies continue to dominate. However, private security services which hire contractual labourers for providing security for personal as well as commercial purposes. Government organisations and institutions such as nationalized banks, centralized universities have been lending out contracts to privately provided security services for a regular supply of security guards. Nevertheless, trans-national exchange of services has been very prevalent in spheres of health, transportation, and so on.

TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPs)

This is regarding control over “*information*”⁶¹. Intellectual Property Rights include several categories which include: *a) copyright (Article 9); b) trademarks (Article 15); c) industrial designs (Article 25); d) patents (Article 27); e) protection of undisclosed information (Article 39)*. Article 7 promotes technological innovation, transfer and dissemination of technology, mutual advantages of producers and users of technological knowledge, social and economic welfare. Only economic aspects of intellectual property rights get regulated by TRIPs. Article 2.1 of TRIPs was derived from 1967 Paris Convention. Article 9.1 of TRIPs has been derived from Berne Convention 1971. *Article 3 and 4 TRIPs* talks about “*National Treatment and MFN*” clause. Article 6 of TRIPs says that exchange of Intellectual Property leads to loss of owners’ rights with respect to any specific product or service because of transfer of property. This has been termed as “*exhaustion of IPRs*”.

⁶¹Robert Dahl. “Concept of Power”.in.Behavioral Science.Vol.2.p.p.201-215. American Political Review 1957

Article 8 looks into public interest in health and nutrition. Article 10.1 TRIPs regulates “*computer programs and literary works*”. Article 10.2 provides copyright protection to “data banks”. However, it fails to provide for contents on the INTERNET and in the multimedia sector. TRIPs has also become an important component of the rapidly growing service sector as the new forms of technology are being created such as new soft-wares for computers, phones and health related issues (including medicines) also new techniques of diagnosis and so on. However, TRIPs does not provide us the information regarding the team of people (labourers) who are actually involved in the making of any of these products and are sold under a particular brand name. According to Elton Mayo’s Hawthorne Experiments on Human Relations, encouragement by means of acknowledgement of their products along with the brand name (not merely in terms of incentives) could motivate these workers to enhance their productivity both quantitatively as well as qualitatively.

Agreement on Sanitary and Phytosanitary Measures (SPS) and the Technical Barriers to Trade (TBTs)

Standards are considered to be important for ensuring “quality”⁶² for the food and other consumer products for the people. There are three different approaches to the study of standards and quality (quality is considered to be status symbol for consumers) put forth by Anna Coote. The WTO adopts the “*Scientific Approach*”⁶³ to quality by referring to other international organisations and epistemic communities (discussed in the next chapter) for setting globally applicable standards to ensure good food, health and environment. In order to achieve such standards for domestic purposes the member states as well as the private profit-making business actors adopt these standards for gaining market accessibility (has been discussed in a case in the next chapter where the Panel gives an estimate that profits for firms adopting such measures may rise) and therefore adopt the “*Managerial or Excellence Approach*”⁶⁴.

⁶² Anna Coote. 1998. “Chapter 13: Understanding Quality”. in. *Social Policy and Social Justice* ed. Jane Franklin. Polity Press

⁶³ Ibid..22

⁶⁴ Ibid..22,23

This approach further incorporates the concept of *Corporate social Responsibility (CSR)*. Indian government has set up the BIS to help her achieve glob-internationally applicable standards laid down by the WTO along with other regional standards such as the EU and so on.

The SPS as well as the TBTs were initially fused under a single agreement under the GATT until the Uruguay round of talks after which a thin line of demarcation was drawn to conceptually separate the two clauses for better understanding amongst the member states and avoid any kind of dispute. TBTs are basically a set of instructions or caution pasted on any product which may either guide the consumer (or user of the product) with the appropriate steps or/and also precautions that may be required to operate any technical gadget or object. Whereas, SPS are the internationally determined and globally accepted sets of standards that are levied on certain foodstuffs that are obtained from plants and animals. This kind of provisions or set of standards are considered to be essential by the member states for the protection of health of their consumers and citizens.

The GATT and now the WTO both, through these provisions seek to ensure a liason between the global and the local and also by upholding the sovereign rights of states to impose restrictions on trade policies keeping human-consumer along with plant and animal health concerns as an alibi. Here health and also environmental degradation are viewed to be a non-traditional component of security. These standards also provide consumers with the information regarding nutritional contents of any food-product in case of packaged food and beverages which help consumers to use such information and carry out self-regulatory measures in terms of health and nutrition. Packaged food and manufactured goods covered under these standards and regulations also contain internationally applicable telephone network to for consumers to contact the concerned consumer or customer care service officials along with “*geographical indicators*⁶⁵” which help them know where the product is being manufactured. Geographical Indicators are a vague concept still as they are governed

⁶⁵ Geographical Indicators in the WTO are generally applicable only for alcoholic beverages such as wines and spirits. Chaturvedi, Sachin.2002.”Chapter 13: India, the European Union and Geographical Indications”.in. India, the European Union and the WTO”.eds.R.K. Jain and Hartmut Elsenhans.p.p.293.Radriant Publishers.

by the TRIPs Agreement and have been generally used for certain popular brands of products derived from the environment such as olive oil in Italy⁶⁶

However, the WTO makes it difficult for the member states to adopt such restrictions by making periodic scientific evidence to justify their case for imposing such measures as a mandatory requirement. The WTO further adds that the member states need to be cautious while implementing such standards such that the basic structure of the World Trade Constitution does not get violated. The basic structure of the World Trade Constitution includes clauses on “non-discrimination, transparency”

These standards exempt both products based on their characteristics (“Product Standard” Harmonisation) as well as the process or method adopted for making these products (“Process Standards” Harmonisation)⁶⁷. However, these globally applicable standards are adopted and periodically updated by the WTO by means of consultations carried out by the WTO with the “Codex Alimentarius Commission (Codex)” set up in 1963 (for food standards). It is “run jointly by the UN Food and Agricultural Organisation (FAO) and World Health Organisation (WHO); “International Office of Epizootics (OIE)” which is an “inter-governmental organization that informs government about animal diseases and harmonious regulations for trade in animals and animal products; and the Secretariat of the International Plant Protection Convention (IPPC)” under the FAO which tries to prevent the spread of plant diseases. Standards of any kind are the most stringently applicable in the European Union and their free trade agreement. These standards within the EU are much higher as compared to those set by the Codex. DDT residues are permitted by Codex and which is “50% times greater than” the amount permitted by the US Laws (Peet.2003.). SPS Agreement is also criticised for incorporating standards prescribed by organisations which are not adequately democratic as all countries may not be able to participate.

⁶⁶ The detailed analysis of this study is beyond the scope of this dissertation. Such kinds of patenting leads to larger local control over local resource or products which may also be traded locally as well as globally. It also increases market accessibility.

⁶⁷ Ibid..46

SPS and TBTs along with subsidies and “customs valuations” have been categorized as the “*Non-Tariff Barriers (NTBs)*”⁶⁸ as they are not levied in the form of tariffs but in the form of benchmarks for assessment in order to make products conducive to health requirements of the consumers. However, these measures have been criticized for being protectionist as the compulsion to meet the demands of such standards at the international particularly at the regional level puts immense unilateral pressure on any member state specially for the developing countries as they require new improved technology and investments (Kulkarni.2005.) for the same. Swapan K. Bhattacharya⁶⁹ has defined NTBs as the state levied regulations or measures on different goods and services which may lead to discriminatory treatment for the producers in the markets. The producers are dependent on the choices made by the consumers according to their purchasing capacity, rationality and sometimes due to brand tradition as well value out of “*good faith*”.

Standards today are no more restricted to finished goods and the processes creating those goods. Their scope has been widened to cover services as well such as educational (includes schools and universities), banking (restaurants, and so on. The products and processes under SPS and TBTs are to be implemented by the states whereas, the standards adopted by the service sectors are based on norms laid down by the *International Standard setting Organisation (ISO)*⁷⁰ which primarily govern the corporate bodies through Corporate Social Responsibility. However, nationalized banks of India also adopting ISO certification for delivering services. Standards seek to eliminate any scope of adulteration and corruption. Since the SPS Agreement deals with plant, animal and human health, it partially engulfs the CITES and the Convention on Biological Diversity.

Kulkarni writes that all states specially from the developing world are not periodically involved in improving such standards with changing needs of the society. India facing

⁶⁸ Parashar Kulkarni.2005.”*Non-Tariff Barriers and NAMA Negotiations: Developing India’s Negotiation Position*” for CENTAD-Centre for Trade and Development

⁶⁹ Swapan K Bhattacharya.2006.”Chapter 12. Non-Tariff Barriers, Indo-EU Trade and the World Trade Organisation”.in.India, the European Union and the WTO”.ed.Rajendra K. Jain and Hartmut Elsenhans.p.p.265.Radiant Publishers

⁷⁰ Ibid..64

problems related to NTBs in three major sectors such as “*textiles, leather and marine products*”⁷¹ which is hindering her growth in these areas of trade. United States until November, 18, 2004 also practiced NTBs in these sectors⁷² (Kulkarni.2005). Several developing countries a Kulkarni writes that WTO cannot regulate ISOs as they are adopted by non-state actors however, the issue of ISO regulations being incorporated by nationalized service sectors has been overlooked by him. Standards try to bring certain important non-trade but social issues within the neo-liberal goals of free trade.

European Union	23.3
The United States	44.0
Japan	45.9

Source: CENTAD (2005)

SPS Agreement also includes a clause on “Regionalisation”. Regionalisation is different from regional organisations such as EU, ASEAN, SAARC and so on. Regionalisation is a process of choosing and demarcating a portion of any state or demarcated portions of other states taken together for a sustained prevention of diseases in animals and plants as well as their products so that free and unrestricted trade in such products could be carried out despite a country being affected due to some severe disease and pests which may affect trade even in regions (either within a state or portions of different states taken collectively). States such as Brazil, Mexico and Chile have been practicing this pattern of ensuring good health as well as free trade in horticulture sector (mangoes) and poultry (against swine flu). The core idea behind such a phenomenon is to declare the regions within as well as regions of similar importance or significance prevailing within other states (which may or may not have been affected by disease or pests) as disease-free. Regionalisation does not

⁷¹ Ibid..64

⁷² Ibid..64

require the separate implementation of standards which reduces transaction costs. India is planning to incorporate this phenomenon after a proper policy research for upgrading her mango as well as poultry sectors.

The afore-cited CENTAD paper by Kulkarni provides a list of sectors which are subject to NTBs along with countries from both developed as well as developing world. WTO also has provisions for plurilateral agreements which do not involve all the members of the organization. There are four “optional” or “plurilateral” agreements enlisted under Annex 4.

The WTO also has an agreement on Investments called the Trade Related Investment Measures (TRIMs) which covers the issues related to Foreign Direct Investments (FDIs) which became an important agenda issue for the Doha-Development Round⁷³. FDIs are extremely important as they act as market-based means of enhancing state capacities to carry out economic and social recovery⁷⁴ as well as development. They played a major role in the advent of the globalisation process and the beginning of the era of global economic governance inflicting local reforms under the Structural Adjustment Programmes such as *privatization of services* or *intensification of mixed economy as in case of India*.

FDIs involve trade in capital and finances as an actor who is investing in any sector in any economy in some other country may not always acquire ownership as in cases of mergers like *Arcelor-Mittal Deal*, the historic one in the steel sector, *Fortis-Escorts health services*. Increased entry of such investments may lead to problems of loss of market accessibility, unemployment, increased marginalisation due to poverty or larger dependent population which is one of the major causal factors for environmental degradation according to *environmentalists*⁷⁵. FDIs mainly cover

⁷³ Brian McDonald.2002.”The European Union, India and the Doha Round”.in.India, the European Union and the WTO.eds.Rajendra K.Jain and Hartmut Elsenhans.p.p.101-104.Radiant Publishers

⁷⁴ Recovery due to role played by FDIs during the debt crisis of 1980s in the developing world. Robert O’Brien et.al.Global Political Economy..Palgrave

⁷⁵ Jennifer Clapp and Peter Dauvergne. Paths to a Green World: The Political Economy of the Global Environment. Academic Foundation.2008 .

investments which promote greater industrialized growth, transfer of technology, expertise and managerial skills thereby leading to larger societal development⁷⁶.

The TRIMs agreement has been criticised due to the vagueness and ambiguity regarding its definition.

“FDI refers to the investment made outside the home country of the investing company in which control over the resources transferred remains with the investor”.

*Robert O’Brien and Marc Williams*⁷⁷

The *Lead-Bismuth case on countervailing duties (May 10, 2010)* dealt with the issue of portfolio investment as there was transfer of property from owner of the company to the new owner. Robert O’Brien et.al. argue that FDIs also have negative impact on the society in terms of adequate allocation of resources and capabilities. However, they also lead to problems of division of labour and are mainly propelled by Transnational Companies (TNCs). Investments⁷⁸ are also important for the implementation of internationally applicable standards as laid down by the SPS Agreement as new technology, surveillance team, vaccination and other medicinal services may be required in abundance for sustaining such an arrangement. From the common North-South debate over environmental problems the developing countries require lot of financial investments and technology for adopting different environmental services and goods and for eco-labelling practices.

Patterns of Membership

Scholars discard the organizational status of the GATT and prefer to either call it a *de facto* organization or just an *Agreement*. The GATT original began with only 23 signatories to this Agreement or the Contract⁷⁹ and were therefore, called the

⁷⁶ Ibid..32

⁷⁷ Ibid..32

⁷⁸ Bakshi, Kajli..<http://www.idfresearch.org/pdf/SPS-Agreement.pdf>.p.p.3

⁷⁹ The Oxford Concise Dictionary defines Agreement as Contract.

Contracting Parties. There were two methods by which GATT could incorporate more signatories which can be understood as under:

- a) **NORMAL METHOD**- Article XXXIII of the GATT prescribes that via a two-thirds majority of the prevailing signatories a new nation could be accepted as a new signatory to this supra-territorial Agreement. However, any new nation aspiring to be a signatory to this Agreement had to first declare its commitment to the norms of “reciprocity” and procedures for discussing on the issue of “tariff” reductions. Similarly, the WTO also adopts these conditionalities through Article XII according to which a nation’s (now being referred as Member states ensuring permanency as well as the organisational status of the WTO) commitment towards all the Multi-lateral Agreements.
- b) **“SECOND PATH”**- According to this method, Article XXVI:5 (c) of the GATT that any state which had remained a colony of a nation which had been a signatory to the GATT could automatically be accepted as a new signatory after the concerned nation ceases to remain a colony. However, “sponsorship” from its erstwhile colonial master which had also been the “original” signatory to this Agreement was a pre-requisite. The erstwhile colony which was to be accepted as a new signatory was also called the “*dependent customs territory*”. This reduced the transaction costs of “negotiations” for the newly emerged independent nations (50 in number) to become a signatory to the agreement.
- c) **SIMULTANEOUS OPT-OUT CLAUSE** – This provision was as prescribed under Articles XXXV (GATT) and XIII permits contracting parties and the members respectively to impose on other states forcing their eviction or to impose such withdrawal on themselves even at a stage when some new member has been supported by the signatory which seeks an “opt-out” from the Agreement. The WTO may permit an opt-out but that would be applicable for all Agreements the WTO has provision for because all states will have accept all the Agreements under the WTO as a whole.

CRITIQUE OF THE WTO

WTO criticized for being undemocratic, excessively “market-centric”⁸⁰ on numerous occasions specially in its functions carried out in “Green Room” and the “Quad group”⁸¹. Markets strengths of member states play a very crucial role in determining their strengths and status for bargaining during the course of negotiations⁸² which leads to different kinds of impacts on different member states. Markets also play a very significant role in determining the powers of the civil society organisations as well as the issues which get the priority at the global sphere. WTO criticized for lacking transparency. Implementation or adherence to WTO norms requires both legal and administrative reforms and capacity building required⁸³. Transportation costs are extremely expensive and the WTO has, thus been criticized for being quiet on this issue which creates problems in transportation of goods and people⁸⁴. Heinrich Boll Foundation is of the opinion that academicians, policy makers also believe that the WTO faces problems of diminished accountability and transparency. However, no specific reason is provided in the text. The agenda setting process of the WTO is not appropriate⁸⁵

WTO only lays down guidelines on what has to be done but not says nothing on how such decisions have to be implemented or carried out. This creates problems for the state apparatus. The standard setting bodies which the WTO consults for the purpose of SPS related issues have been criticized for being largely influenced by large “food industries and corporations”(Peet.2003.31). These corporations either try to lobby the Commission itself or channel their interests through “government delegation”. Such government delegations may also comprise of representatives from food industry

⁸⁰ Gary Sampson. *The Role of the WTO in Global Governance*. United Nations University Press. Blackwell. 2001

⁸¹ Clare Short.2001.”*Making the Development round a reality*”in. *The Role of the WTO in Global Governance* eds. Gary P. Sampson. United Nations University Press, Blackwell.p.p.67

⁸² Ibid..74

⁸³ Ibid..74

⁸⁴ Ibid..74

⁸⁵ “*Making Global Trade Work for People*”.2003.Heinrich Boll Foundation.(UNDP)

which are in turn sent to the official meetings of the Codex (Peet.2003.31). Standards which have been finalized by the Codex are stringently binding on all states with prior and proper scientific evidence. The WTO does not permit the states to adopt any kind of “precautionary principle and regulating trade” (Peet.2003.31).

Scholars such as B.S. Chimni criticise the WTO for exercising American hegemony by forcing states particularly those from the developing world to liberalise and accept universally applicable free trade norms. It was only from the year 2000 that the developing countries were given importance. The WTO being an organization as well as an agency for “*global tradonomic (trade and economic) governance*” it requires a separate budgeting system for itself. Budgeting is an important component of governance as well as according to Gullick and Urwick’s POSDCORB⁸⁶ model.

The contributing capacity of every member state varies. However, such contributions collectively form a pool of resources for the WTO to utilize the same as its budget which was around 19000 Swiss Francs in 2000. Although it has been argued that this figure covers a substantial share of developing country contributions to world trade, the insufficient economic capacity of several such member states have led to enforced cornering as well as belittling of their status to “*inactive*” economic power for a span of three years. The total number of developing countries which were reduced to the status of “*inactive*” was 15 (their numbers were 23 in the year 1997). Such reductionist measures deprived these member states of any kind of “technical assistance” which the WTO Secretariat has always been committed to provide. These states were also not permitted to access several other privileges that the WTO offered them. 7 developing countries could not hold posts in the WTO bodies due to their two year pending arrears.

Technical assistance and investments are generally expected during economic crises. Ironically, the denial of such assistance by the WTO led to greater demands for social justice and participation and democracy by these countries. 22 developing countries which was equivalent to 1/5 of the total membership could not hold the post of Chairperson at the WTO. 16 out of the afore-stated 22 countries belonged to the

⁸⁶ POSDCORB stands for Planning, Organising, Staffing, Directing, Co-ordinating, Reporting and Budgeting. in. Rumki Basu’s book on Public Administration

category of Least Developed Countries whose membership with the WTO was nearly negligible. Several such countries were dependent on various European states such as Brussels, Bonn, London and Paris. This also increases pressure on these European Countries to sustain such representation for these countries.

However, the WTO has been to a large extent compensating for such imbalances by providing special and differential treatment for the purpose of implementation of different agreements in their domestic sphere which also puts a lot of burden on the developed countries of the North. WTO also faces criticism for emphasizing too much on the economic aspect of global trade and consequently overlooking the societal and environmental impact of such exchanges at different international. Societal impact may include issues of labour which to a large extent gets covered by the ILO norms.

Environmental impacts may include climate change issues due to increasing industrial as well as transport (also very extensively used in various service sectors and also consumption of non-renewable resources such as petrol, diesel, animal driven carts creating problems of animal cruelty) which lead to problems of rising sea level, increase in soil salinity which along with changing patterns of monsoon have been affecting agricultural growth which is of immense importance for economic growth and development even for industries. It has been argued since the state centric structure of this organization has declared the WTO as a trade body the WTO has not been too receptive towards the changing demands of different societies which although may not be of direct economic importance to the trade body.

The WTO has been criticised to be all powerful as it supersedes international and customary laws along with the regional trade agreements. Also unlike the European Court of Human Rights, the WTO does not consider societal and humanitarian issues within its purview⁸⁷. Oesch adds that the WTO DSB faces problems of legitimacy as the states have delegated significant portion of their powers to the “WTO and its organs...”. However, he does not explain how and neither does he explain the concept of legitimacy. Nevertheless, his argument regarding delegation of powers affirms WTO’s role of that of an agency or inter-national organisation for global trade governance. It is the decision-making process which is generally criticised by the

⁸⁷ Matthias Oesch.2003.International Economic Law: Standards of Review in the WTO.OUP

society. The WTO supersedes international law which helps it exercise tremendous amount of power⁸⁸.

The TRIPs Agreement has been criticised by civil society for acting as a hindrance in the free exchange of ideas, knowledge and information. Academic materials required for research and knowledge purposes may not be accessible by developing countries due to the implementation of IPRs. In addition to that in a country like that of India where there is lot of diversity in terms of languages academic materials available only in English make it difficult for students to acquire higher education which is a right for every individual for a good life. This affects level of participation of society in terms of research and academic work.

The TPRM focuses only on the adequate implementation of WTO norms and overlooks the externalities emanating due to such policies. Since the Agreements are subject to interpretation differences in language such as French, Spanish and English which may create problems in settling disputes between states. Cultural issues become an issue of trouble in the organisation specially with respect to the anti-dumping measure Article XXIV:8. The WTO DSB does not permit actors or agents other than the disputing parties and the third parties to join the proceedings as observers.

The WTO interprets democracy with respect to free markets as they give consumers a greater brands of goods to choose from because it is based one of the principles of the Washington Consensus and Strcutural Adjustment Programmes called trade liberalisation.

The problem of unemployment is of immense importance which the WTO overlooks because it is considered to be a local problem which the states are supposed to take care of according to John Keynes⁸⁹ from a developing country perspective as increase in the number of unemployed due to increase in population would lead to increase in the number of dependent population and eventually poverty which the bio-

⁸⁸ Thomas Cottier and Marina Foltea.2006. "Chapter 3: Constitutional Functions of the WTO and Regional Trade Agreements (RTA)".in.Regional Trade Agreements and the WTO Legal System: International Economic Law.ed.Lorand Bartels and Federico Ortino.OUP.

⁸⁹ Ibid..50

environmentalists consider as one of the important factors for environmental degradation.

MEMBERS	2001 CONTRIBUTIONS	
	%	CHF
Albania	0.015	19,935
Angola	0.061	81,069
Antigua and Barbuda	0.015	19,935
Argentina	0.534	709,686
Australia	1.292	1,717,068
Austria	1.522	2,022,738
Bahrain	0.075	99,675
Bangladesh	0.103	136,887
Barbados	0.02	26,580
Belgium	2.774	3,686,646
Belize	0.015	19,935
Benin	0.015	19,935
Bolivia	0.027	35,883
Botswana	0.039	51,831
Brazil	1.047	1,391,463
Brunei Darussalam	0.046	61,134
Bulgaria	0.099	131,571
Burkina Faso	0.015	19,935
Burundi	0.015	19,935
Cameroon	0.029	38,541
Canada	3.892	5,172,468
Central African Republic	0.015	19,935
Chad	0.015	19,935
Chile	0.335	445,215
Colombia	0.254	337,566
Congo	0.026	34,554
Costa Rica	0.095	126,255

Côte d'Ivoire	0.074	98,346
Croatia	0.155	205,995
Cuba	0.054	71,766
Cyprus	0.069	91,701
Czech Republic	0.532	707,028
Democratic Republic of the Congo	0.025	33,225
Denmark	1.001	1,330,329
Djibouti	0.015	19,935
Dominica	0.015	19,935
Dominican Republic	0.12	159,480
Ecuador	0.092	122,268
Egypt	0.271	360,159
El Salvador	0.052	69,108
Estonia	0.062	82,398
European Communities	0	0
Fiji	0.018	23,922
Finland	0.711	944,919
France	5.766	7,663,014
Gabon	0.036	47,844
Gambia	0.015	19,935
Georgia	0.016	21,264
Germany	9.716	12,912,564
Ghana	0.035	46,515
Greece	0.329	437,241
Grenada	0.015	19,935
Guatemala	0.06	79,740
Guinea	0.015	19,935
Guinea-Bissau	0.015	19,935
Guyana	0.015	19,935
Haiti	0.015	19,935
Honduras	0.038	50,502
Hong Kong, China	3.605	4,791,045

Hungary	0.396	526,284
Iceland	0.045	59,805
India	0.828	1,100,412
Indonesia	0.929	1,234,641
Ireland	0.952	1,265,208
Israel	0.554	736,266
Italy	4.699	6,244,971
Jamaica	0.06	79,740
Japan	7.163	9,519,627
Jordan	0.071	94,359
Kenya	0.052	69,108
Korea, Republic of	2.549	3,387,621
Kuwait	0.216	287,064
Kyrgyz Republic	0.015	19,935
Latvia	0.051	67,779
Lesotho	0.015	19,935
Liechtenstein	0.028	37,212
Luxembourg	0.297	394,713
Macau, China	0.064	85,056
Madagascar	0.015	19,935
Malawi	0.015	19,935
Malaysia	1.465	1,946,985
Maldives	0.015	19,935
Mali	0.015	19,935
Malta	0.05	66,450
Mauritania	0.015	19,935
Mauritius	0.044	58,476
Mexico	1.962	2,607,498
Mongolia	0.015	19,935
Morocco	0.163	216,627
Mozambique	0.015	19,935
Myanmar, Union of	0.033	43,857

Namibia	0.031	41,199
Netherlands, Kingdom of the	3.44	4,571,760
New Zealand	0.29	385,410
Nicaragua	0.018	23,922
Niger	0.015	19,935
Nigeria	0.222	295,038
Norway	0.927	1,231,983
Oman	0.105	139,545
Pakistan	0.196	260,484
Panama	0.132	175,428
Papua New Guinea	0.039	51,831
Paraguay	0.075	99,675
Peru	0.148	196,692
Philippines	0.663	881,127
Poland	0.711	944,919
Portugal	0.622	826,638
Qatar	0.063	83,727
Romania	0.182	241,878
Rwanda	0.015	19,935
Saint Lucia	0.015	19,935
Senegal	0.024	31,896
Sierra Leone	0.015	19,935
Singapore	2.302	3,059,358
Slovak Republic	0.213	283,077
Slovenia	0.177	235,233
Solomon Islands	0.015	19,935
South Africa	0.564	749,556
Spain	2.477	3,291,933
Sri Lanka	0.096	127,584
St. Kitts and Nevis	0.015	19,935
St. Vincent and the Grenadines	0.015	19,935
Suriname	0.015	19,935

Swaziland	0.018	23,922
Sweden	1.542	2,049,318
Switzerland	1.621	2,154,309
Tanzania	0.027	35,883
Thailand	1.131	1,503,099
Togo	0.015	19,935
Trinidad and Tobago	0.047	62,463
Tunisia	0.138	183,402
Turkey	0.838	1,113,702
Uganda	0.019	25,251
United Arab Emirates	0.533	708,357
United Kingdom of Great Britain and Northern Ireland	5.991	7,962,039
United States	15.631	20,773,599
Uruguay	0.068	90,372
Venezuela	0.335	445,215
Zambia	0.022	29,238
Zimbabwe	0.034	45,186
TOTAL	100	132,900,000

Source: World Trade Organization, rue de Lausanne 154, CH-1211 Geneva 21, Switzerland, www.wto.org.

Chapter 3

“GREEN CRITIQUE” OF THE WTO

The entire critique about the WTO revolves around debates about how trade affects society and environment and the theoretical categorizations of these arguments. Environment as an issue began dominating international politics since the 1960s. Environmental issues received impetus from the process of globalisation when they became acceptable by several states as one of the most important non-traditional threat to security of any state. This is because of earlier liberalization processes that have been taking place with a global structure in the making and the further intensification of which having led to the contemporary neo-liberal era.

Under neo-liberalism it is argued that the state has been losing its capacity to handle such situations without any global as well as local societal co-operation. The entire environmental degradation which the states and their societies have been complaining about revolves around the pattern of development or the development model that the states have been practicing¹. Trade being the primary medium as well as means of achieving the much needed neo-liberal pattern of development has also been criticised for being ignorant towards environment. Development needs to be more engulfing so that marginalisation and environmental degradation can be overlooked. *Environmental degradation has included problems of ozone depletion, climate change, and so on.* Role of civil society both global and local have been considered very constructive in making the world aware about these problems and the need for creating scope of global collective action both state as well as non-state for such issues.

According to “Environmental Economists”² the domestic trade policies or trade protectionism practiced by the Southern or developing countries for all environmental hazards. However, “*Ecological Economists*” argue that the global trade body supports

¹ Chapter 1 already discusses this concept.

² Muradian et al. 2001. “Trade and the Environment: From a Social Perspective”. in. *Environmental Economics*. p.p.281-297

free trade as the only solution to environmental problems as it follows an “*Environmental Kuznet’s Curve*” model. Environmental Kuznet’s Curve (EKC) explains a phenomenon by which with rising economic growth and development environmental degradation will increase. However, it is the former which will in the long run help bring the problems due to environmental issues. It is similar to the idea of first securing the economy and then utilising the economy for further environmental development. However, a third category of environmentalists which could be categorized as the “*social greens*” who provide a subjective view as they consider greed and corruption on part of states to overlook environmental issues and the consequent hindrance in siphoning of portion of the revenue earned by states for such societal and environmental purposes. WTO being an “*inter-governmental body*” would therefore, remain ignorant towards such problems. From the afore-stated theoretical debates it can be perceived that these schools of thought consider the GATT to be completely against *environmental problems*. *GATT was created during a situation when all states needed rapid recuperation mechanism and not development*³. *GATT was basically a British or European model and its restrictionist policies such as Quantitative restrictions in the form of quotas (both import and export) were reverse-environmentalism* as they prohibited states from over-consuming natural resources and also lesser use of transport facilities.

Trade and environmental issues have also emerged into North-South conflict. Scholars have argued that most of the southern countries along with southern NGOs oppose environmental measures as they fear that such measures would help the developed countries of the North to exploit the former even more as they South wants greater financial and technological support⁴.

Shaffer adds that both U.S. and EU want environmental issues to get incorporated within trade policies. The North, dominated by EU and USA, believe that it is due to *lack of democracy* in decision-making process that the states fail to implement

³ Already discussed in Chapter 2

⁴ Daniel Esty.2001.”Bridging the trade-environment debate”.in. *Journal of Economic Perspectives*. Vol.15, No.3.Summer. and. Shaffer, Gregory..The Under Examined Trade-Environment Linkage: Domestic Politics and the WTO Disputes

important environmental policies at the national level⁵ However, Shaffer goes on to argue against the allegations of the “Northern Commentators”⁶. According to Shaffer the debate is more between the domestic state policy and the globally applicable WTO norms. Shaffer adds that the Northern demand vis-à-vis WTO is the permission for states to unilaterally implement environmental policies which may even lead to trade restrictions without any “*financial assistance*” or compensation. Southern states face criticism from their local NGOs which however, gets culminated into a set of criticism against the Northern countries at the international sphere. Such a contradiction in their approach prevents the southern NGOs hold firm ground along with the dominant Northern NGOs. Southern NGOs lack a coherent set of criticisms. Only if they can criticise their own states at the international sphere can these groups acquire greater recognition and impose a greater impact on the world system.

Shaffer considers the environmental protests against the WTO as an outcome of unreasonable trade measures imposed by the US against certain goods which became crucial for the developing countries. US and EU became more keen towards incorporation of environmental issues within the after the controversial *Tuna-Dolphin Case* (1991). The Marrakesh Agreement which led to the establishment of the WTO also led to the formation of the “*Committee on trade and environment (CTE)*”. Despite such measures trade and environment debates revolve around some important issues: Multilateral Environmental Agreements (MEAs); Production and Process Methods; Eco-labels; and⁷ Subsidies The conflict is mainly that of supra-territorial impositions as well as restrictions and regulations over states’ sovereign right and duty to create local policies for the control, production and distribution of some important “*public goods*”. The rights of citizens have been extremely contextualized in the era of globalisation due to which role for civil society intervention has

⁵ Ibid..4

⁶ Gregory Shaffer... The Under Examined Trade-Environment Linkage: Domestic Politics and the WTO Disputes.p.p.1-13

⁷ Gregory Shaffer.The Under Examined Trade- Environment Linkage: Domestic Policies and WTO Disputes.2005.1-13., , Gareth Porter, Janet Welsh Brown and Pamela Chasek.2003. Global Environmental Politics. Westview Press and Manoharan, T.R.2005. “Sustainable Development Trade and Environment Standards”. In. Sustainable Development: An Inter-disciplinary Perspective.ed. Guljit K. Arora and Arunabh Talwar.61-74. R&P House.102-113

increased. There is considerable gap between environmental NGOs over the issue of subsidies. Northern NGOs are opposed to the granting of subsidies by the states in the fuel and agricultural sectors due to unreasonable environmental implications such as the overproduction causing land infertility

Problem arises in a country like India where officially natural rights are not part of the Indian Constitution but have found a place in our society due to repeated re-interpretations of the Constitutional clauses. Article 22 of the Indian Constitution indirectly incorporates Right to life which has been further expanded to right to a dignified life which can only be fulfilled by adequate distribution of public goods. Public Goods in India have been fragmented into various lists due to a federal polity in practice. Public goods like education (part of services in the WTO and concurrent list in India), health and agriculture (part of State List in India) are separately handled and since it is the Central Government representatives participating at the WTO decision-making process a universalised policy for trade and development prove to be insufficient and also lead to a clash between efforts of the UN towards such problems and global trade measures. Also numerous public goods in India come under directive principles which are non-justiciable such as right to compulsory education, better working conditions for all, and so on. Health services provided by the state at the rural as well as district level face problems of *infrastructural insufficiency*.

WTO is about re-negotiation that is why it is an organisation or an agency for global governance. The Kyoto Protocol also makes provision for Carbon-intensive goods and services⁸. However, the literature covered above does not specify if the Carbon-intensive goods can be included within the category of environmental goods and services and whether the GATS refers to the MEA to deal with the problems related to such goods and services. Also the kinds of standards they are to be assigned. These kinds of environmental and health restrictions have been defined as *Non-Tariff Barriers (NTBs)*⁹ by the World Bank as they affect transaction costs by increasing the

⁸ Eric Neumayer.2001. "WTO Rules and Multilateral Environmental Agreements" in. Greening Trade and Investment: Environmental Protection Without Protectionism.p.p.161.Earthscan Publications

⁹ Swapan K. Bhattacharya.2006. "Non-Technical Barriers, Indo-EU Trade and the World Trade Organisation" in.India. the European Union and the WTO.eds.Rajendra K.Jain and Hartmut Elsenhans.p.p266-267.Radiant Publishers

“*cost of production*”¹⁰. Some scholars such as Ingo Walter and Peter Lloyd consider NTBs as extremely trade restrictive in their impact. They are called NTBs because they are not taxes or tariffs in true sense but are protective measures for ensuring good health of citizens.

3.1.MULTI-LATERAL ENVIRONMENTAL AGREEMENTS

Multilateral Agreements are inter-governmental agreements which may or may not involve all states as participants. They have also been defined as international regimes as they set norms, rules and institutions

CITES- Convention on Trade in Endangered Species (CITES) which prohibits states from imposing trade measures on states which may or may not be signatories to this agreement in order to conserve or protect animal species which are on the verge of extinction due to human recreational habits of poaching and deforestation (as it also includes plant species). The book does not specify if CITES includes species prone to extinction due to changing climatic conditions such as lizards (TOI). It also fails to provide us with the knowledge regarding civil society role in getting this agreement enforced. It is basically trying to conserve the “*sinks*”. CITES, project tiger in India and civil society.

The agreement enlists endangered species of animals under two different Appendices: Under Appendix I there are “600 animals and 300 plant species”. These species are on the verge of extinction and therefore cannot be traded for commercial purposes; Appendix II comprises of 4000 animals and 25000 plant species which may also reach a stage of extinction unless their trade is checked. A prior “*export permit*” is required to carry out with such trade. *Article IV* of this agreement inter alia prohibits cruel treatment against animals. CITES has not been adequately influential in conservation of species such as tigers, rhino. They have been most successful with crocodiles and elephants. It however, does not provide any clause regarding offering monetary and financial assistance to the developing countries for conservation purposes and complying with the Convention. Involvement of civil society in getting

¹⁰ Ibid..4

this MEA accepted at the WTO- several networks under the WWF such as TRAFFIC. Literature does not mention the procedure, parameters and transaction costs any state has to incur to acquire endangered species status for any wildlife species it owns.

MONTREAL PROTOCOL AGAINST CFC RICH SUBSTANCES- Prohibits states from trading in substances affecting ozone layer. Products comprising of Chlorofluoro Carbons (CFCs) such as air conditioners, deodorants, perfumes, mosquito repellent sprays and coils. Although these products come with certification that they no more contain CFCs they cause other health related problems such as respiratory problems and even food poisoning. Do these substances lead to air pollution? Since the sprays and coils are heavier than normal air there is a probability of such gases remaining suspended in the air. Mostly developing countries which were rich in trade in substances containing CFCs. This agreement has a provision for lending financial help to developing countries to adhere to the Convention.

BASEL CONVENTION- This MEA banned the exchange of hazardous waste between OECD and non-OECD countries (Porter et.al..184) India permitting imports of metal scraps-Zn, and so on from US which had exploded in several areas in Delhi. These scraps are used in melted form by India which is cheaper for India to use). These agreements have been ratified by the European Union but not by the USA. Vogel further talks about the Montreal Protocol on Biodiversity which the EU supported as it was in consonance with EU's domestic restrictions on the planting, sale and labeling of genetically modified foods and seeds. However, the US, which is a "major exporter of such crops" sought to challenge the restriction on grounds of trade protectionism. Daniel C. Esty gives preference to MEAs over trade rules.

3.2.Eco- Labelling and Process and Production Methods (PPMs)

According to T.Manoharan the WTO clearly demarcates between products and PPMs. Eco-labelling helps in promoting sale of eco-friendly products in the markets. It's is

based on the concept of “*life cycle*” approach by means of which all stages of production or life of a product get certified¹¹. Manoharan adds that the WTO gives more importance to product standards as compared to the PPMs. However, Vogel argues that the Northern countries such as EU and the US acknowledge the legal status of the environmental labels for both product as well as the methods adopted for the production of the same. Despite this Vogel asserts that the EU is more open to eco-labelling and PPM as compared to US. Porter et.al consider eco-labelling and PPMs as one of the most important mechanisms for ensuring better environment. Nevertheless, problems of secrecy and lack of transparency revolving around such labeling the basic norms of the WTO such as the “*Technical Barriers to Trade and the Most Favoured Nation*” clauses get violated. These clauses prohibit states from arbitrarily imposing restrictions on trade due to regulations on “*standards and regulations*”. The *Committee on Trade and Environment (CTE)* acknowledges the need for more transparency on these issues. Daniel C. Esty adds that imposing standards on products (which is generally acceptable) while overlooking “*production process or methods*” make no sense in an “*ecologically interdependent world*”. He explains with the help of an example of production process used in making semi-conductors with the help of CFCs which could destroy the Ozone layer. Vogel writes that EU is assertive about having WTO norms which can be more inclusive of “*Non-Product Related Process*”.

The process of production of certain very important development goods give out lot of harmful emissions which lead to the problem of global warming and climate change. Climate Change is an outcome of Green house effect or a phenomenon called the global warming the causes of which have already been discussed in earlier chapters. Salination of soil occurring as a result of rise in sea-level due to global warming could kill the earthworms present in agricultural soil. This would lead to loss of “*humus*” or fertility of the soil for agricultural purposes. Earthworms are called the “*friends of farmers*” as they make the agricultural soil porous and fertile. Loss of fertility of soil and also changing weather conditions as a result of climatic changes

¹¹T.R. Manoharan .2005. “Sustainable Development: Trade and Environment Standards” in.Sustainable Development: An Interdisciplinary Perspective ed. Guljit K. Arora and Arunabh Talwar.61-74. R&P House

could affect agricultural output thereby creating problems of inflation and food insecurity and also trade. Trade in fertilizers and chemicals will increase which will aggravate problems of water pollution which will affect marine life which is very important for trade purposes. These chemicals contain hydrocarbons which create lot of waste and environmental degradation. (No civil society supporting vermicompost for helping earthworms to breed-Fr. Agnel School did it on a small scale basis). Production of steel, cement which are some of the key ingredients for all development projects such as the Commonwealth Games, housing facilities and others lead to air pollution, health hazards such as asthma, skin problems in humans and animals.

3.3.Environmental Goods and Services

These goods and services are regulated under the General Agreement on Trade in Services (GATS) of the WTO and have been defined in *three ways*: a) cost borne by industries for environmental control-higher the cost, dirtier will be the industry; b) impact on environment when wastes are given out during production of certain products. Generally it is the importing country which levies such standards to ensure that environmentally conducive products and goods are permitted within their territories¹². However, Chaturvedi does not specify how the standards for such goods and services would be assigned. Also there are chances of such services and goods to be brought under health standards which would widen the scope of NTBs such as SPS and TBTs which would consequently increase trade protectionism as well.

Sandeep Singh¹³ discusses the probable list of different kinds of environmental goods and services which the WTO acknowledges. This list includes sanitation services; services to check noise pollution; sewage services; waste management services; and others such as preservation of nature and landscape and services to clean the polluted air which is emitted-includes dische or chimney, exhaust fans, air conditioner ducts used for household as well as official purposes. However, these goods do not carry

¹²Sachin Chaturvedi2005."WTO Negotiations and Environmental Goods and Standards: Some Challenges" in. Sustainable Development: An interdisciplinary perspective ed. Guljit K. Arora and Arunabh Talwar.p.p.61-74. R&P House

¹³Sandeep Singh.2003..Economic and Political Weekly.Aug.2.p.p.3241

any kind of labels or certifications for the consumers to know about their environmental significance. They are sold as normal electrical appliances with consumer services provided for periodic up-gradation and maintenance.

These services have been bifurcated into two: a) core-which can be easily amended and the list is therefore flexible; and b) related which have been incorporated by European Commission and Switzerland and include-professional services; research and development; consultancy¹⁴, sub-contracting and engineering; and construction related environment. According to the *WTO Services Database* so far eighteen developing countries have assured commitment to these services. Some of these countries include Ecuador, Morocco, Qatar and UAE and Thailand. India's solid waste management services have been developing well. Local civil society actors such as Devotion have been training women to carry out such services. EC also wants to incorporate "water" services into this list. However, water services will also be regulated by the SPS Agreements due to its health implications and varied purification methods which can also be considered as the processing of packaged water. Packaged water has been considered as an important mechanism for enhancing adaptability of any state to the changing climatic conditions in the era of global warming¹⁵. Presently there has been a monopoly of private profit making actors of this resource which is being provided in the form of a service.

3.4.DISPUTE SETTLEMENT IN THE WTO AND THE ENVIRONMENT

The structure of the Dispute Settlement Body has been explained in my previous chapter along with the other structural aspects of the WTO. The Dispute Settlement Body (DSB) is one of the most institutionalized means of incorporating environmental issues and the goal of sustainable development within the WTO. The DSB has to carry out its role of a judicial body by assessing certain given facts which

¹⁴ Discussed in Chapter 2 as well.

¹⁵ WTO-UNEP Report on Trade and Climate Change.2009.www.wto.org.The report further adds that all member states need to promote supply of clean drinking water in the form of packaged water to their respective rural population. There have also been reports in the TOI about poor women in Indian desert of Rajasthan walking extra miles to fetch pitchers full of water for their families.

may either be directly provided to the Panel by the “*national administrative authority*” of the party at conflict, or the Panel on some occasions may even discard the ready-made facts provided by the national administrative authority and may carry out a separate “fact-finding” activity before assessing and adjudicating on any given case.

The former is called the “*deference*” whereas the latter is called the “*de novo review*”¹⁶. Under the former provision the sovereignty of states does not get curtailed whereas, in case of the latter the national control over facts and further proceedings at the *World Trade Court* gets ensured. The Appellate Body according to *Article 17.6* of the Dispute Settlement Understanding, cannot carry out the task of fact-finding. These kinds of fact-finding mechanisms were undergoing reform during the Uruguay round of talks when a *civil society activism* carried out by some *lawyers* prohibited the engulfment of Intellectual Property Rights within the “*deferential*” pattern of review. The objective was to uphold the significance of context and scope for greater protection of local knowledge.

The DSB Panel is of immense impact as it can force states who are parties to a particular dispute to bring certain legislative changes. There is a probability of having two kinds of domestic legislations on the norm under question vis-à-vis GATT: a) *Mandatory Legislation* which clearly violates the GATT norms and the Panel is empowered sufficiently to ask the Contracting party (now Members) to change the same; and b) *Discretionary Legislation* which can have a subjective interpretation as a lot of political intention of the executive that determines the extent to which the legislation can be made flexible either in favour or against the accepted GATT norms. In this case the Panel cannot ask Contracting Parties to change such a legislation to make it more conducive to GATT¹⁷. Cases and decisions (both which may or may not have been implemented or adopted) under GATT are being used by the WTO as archives and precedents to help the reformed DSB to take appropriate decisions. There have been persistent efforts by states to have uniform approach to these

¹⁶Matthias Oesch.2003.International Economic Law: Standards of Review in WTO Dispute Resolution. Oxford

¹⁷ Oeche, Matthias.2003.International Economic Law: The Standards of Review in WTO Dispute Resolution.OUP.p.p.68

subjects¹⁸. United States played a very significant and considered to be a hegemonic role¹⁹ in empowering the Panel in two ways with the help of Article 11.1 which it had put forth in October and November 1993. The clauses of this Article can be paraphrased as under:

- a) Panel to have power to assess the weightage and relevance of the evaluated facts presented (which had been “adopted” or evaluated) by any member. Such an “evaluation” had to be reasonable.
- b) The Panel also was entrusted with the power to foresee that the afore-stated evaluated fact when incorporated as a “measure” does not violate or is not an antigen corrupting the “*basic structure*” of the clauses of different WTO Agreements.

The scope and role of the WTO (earlier GATT) DSP has been a subject for lot of debates and arguments. However, there have been two schools of thought which have dominated such discussions on the: a) the scope and powers of the DSP should remain confined to that of assistance to states in different negotiations and to sort out disputes in a peaceful and deliberative way; and b) the panel needs to have proper “*juridical*” status and power in order to ensure impartiality in its procedures. The DSB adopts a “rule-oriented approach in its procedures which helps it to accommodate both, adherence to rule, impartiality as well as flexibility towards societal considerations. There is demand for greater creditability, legitimacy and efficiency. The DSB follows “*due process of law*” like the US judicial system since there is no world government at the supra-territorial level to lay down procedures for the DSB court to follow. The dispute settlement also follows the concept of “*judicial economy*”²⁰.

¹⁸ Ibid..18

¹⁹ Many states had opposed these clauses on the grounds of being protectionist as states were free to present interpretations according to their own cost-benefit analysis.

²⁰ It was adopted by the DSB in the *Shirts and Blouse* case and has been defined as the objective of the DSB. Under this principle the DSB is committed to adequately sorting out disputes between states keeping proper cost-benefit analysis in mind.

GATT DSP AND ITS EVOLUTION

ITO Charter which sought to create a proper trade organisation also had provision for a dispute settlement mechanism. However, the GATT failed to deal with such a mechanism in an elaborate way. Article XXII and XXIII of the GATT talked about the GATT dispute settlement body. Art.XXII permitted the Contracting Parties to consult each other on problems and issues related to GATT with the objective of creating greater scope for a transparent, peaceful and interdependent relationship and consequently reduce apprehensions, penchant for acquiring traditional power and transaction costs. The objective was to restore trust and understand mutual comparative advantage (strengths and weaknesses) and promote trade accordingly. Article XXIII was extremely important as mutual consultation between states was important before invoking multilateral GATT process. This article has been criticised by scholars for using ambiguous terms for providing the contracting parties with means to impose sanctions and withdraw concessions. These terms include “*retorsion, retaliation or the re-balancing of benefits*”. Such measures can only be adopted by the contracting parties through a majority vote.

Under GATT, violation of clauses led to stripping of benefits; the contracting parties given power to carry out investigations and suggest course of actions and also to give judgment on any matter; and the contracting parties could also authorise contracting parties to impose sanctions against other contracting parties in case of violations. During the initial period of the functioning of the GATT disputes were sorted in the semi-annual meetings of the Contracting Parties; “*inter-sessional committees*” of the Contracting Parties; and “*working party*” took up the job of examining the disputes. It was in 1955 that the GATT decided to entrust the “*panel of experts*” in lieu of the “*working party*” with the institutional power to adjudicate on the disputes thereby making the DSB a proper judicial organ of the GATT. Article XXV sought adequate interpretation of the GATT. The problem of the GATT Dispute Settlement was that the decisions of the Panel were not binding and could be discarded if the consensus of the losing party was not sought. Efforts were being made since the 1982 Ministerial Meeting to reform this arrangement based on consensus from the losing party however, nothing materialized until the Marrakesh Agreement of 1994 which led to the establishment of the WTO and the contemporary DSB with binding and non-

consensual status from January 1, 1995. The WTO now no more follows the consensus pattern of adopting any decision. The decision taken by the Panel is binding after which the dissatisfied party may or may not appeal to the appellate body. The first ever dispute to be brought for the appellate body intervention was the case against United States on the *gasoline* regulations.

All disputes (falling under any particular agreement) would have to follow the basic DSB terms, conditions and “procedures” (*Article 1*). It further adds that any complaining party will have the right to ask for the creation of a Panel to hear any dispute.

WTO also refers to certain international customary laws particularly the Lome Convention²¹, Paris Convention²². The DSB has been a platform for several developing-developed country feud over different kinds of trade issues. In August 2000, out of a total of 43 filed by the developing countries with the WTO, twenty two were against the developed countries. Sixty seven complaints were filed by the latter against the former. These statistics depict imbalances in the usage of this facility between the developed and developing countries. Nineteen developing countries were target of complaints by both developed countries and the developing countries. Some of the important developing countries targeted include Argentina, Brazil, Chile, India, Indonesia, Korea, Mexico and Thailand.

Article 17.9 of the Dispute Settlement Understanding gives to the WTO the power to adopt measures by consulting the chairman of the DSB and the Director-General of the WTO members for suggestions and information which was later circulated amongst the WTO members. However, the WTO is secretive about the method which it adopts to choose three appellate body members from the total of seven. In order to ensure impartiality not a single panelist is chosen from the member countries which are fighting the case against each other at the DSB. However, under the special and differential provision given to the developing countries one panelist could be chosen from some other developing country which is not a party to the concerned dispute.

²¹ Lome Convention is a Trade and aid Agreement which was signed between the EU and certain African countries. Disputes between these countries were sorted by referring to this agreement as well.

²² Paris Convention is on Intellectual Property rights under WIPO supervision.

Although, scholars view the DSB as a “two-tiered”²³ structure, it is a three-tiered process as the process of fact-finding has to be, which includes both the background of the case which is being filed as well as the legal interpretations justifying the stand. In case of former it may require data collection at the sub-national level, anthropological studies to enquire about societal and environmental impacts of the trade measure which is at dispute.

For legal interpretations also disputing parties will require lawyers from sub-national levels along with assessment of local policies. This is because hindrance to free trade may emerge not merely due to faulty trade measure but also due to some other policy which had been created with a different objective in mind. Marshall plan promoted trade in capital and finances from US to Japan and European Countries which led to problems of dumping and economic crisis due to imbalances in opportunity costs. Also, the issue of multi-lateral environmental agreements could be adopted which may or may not have trade implications. *Article 8* of the DSB provides for the composition of the Panel. The Panel is supposed to comprise of three to five lawyers of international lawyers specialized in trade related issues or trade policies or officials working on trade policies. These panelists are selected by the WTO Secretariat after the conflicting parties agree to give their consent to the same²⁴.

The Appellate Body comprises of three members per case. The selection is done at random from the total of seven members who are “*permanent*”. The Appellate Body is not empowered to accept new facts or carry out an independent review of the already given facts. *Article 17* restricts its powers only to the interpretation of the facts. WTO follows the system of *anti-adoption consensus* according to which the decision of the panel can only be discarded if all members refuse to give consent to the same which was not applicable under the GATT. The time-span permitted for every dispute is one year which could get an extension of three months provided the parties have appealed to the Appellate Body. The DSB faces criticism for carrying out

²³Eric Neumayer.2001. “Greening Trade and Investment: Environmental Protection without Protectionism” Earthscan Publication.p.p.119

²⁴ Ibid..24

*non-panoptic*²⁵ proceedings. Article 21 adds a compulsion on the disputing parties to implement the decision taken by the panel within a span of fifteen months. Article 13²⁶ of the WTO DSB permits the appellate Body to accept inputs and suggestions from private actors (as interpreted by the Appellate Body). The “submission”²⁷ for the amicus curiae may be provided by any WTO member who may or may not be a direct party to the dispute. It is for the discretion of the Appellate body to decide the final acceptance of such submission for any particular case. It continues to remain a “corroborative evidence” for the DSB court.

Neumayer adds that, the losing party is asked to compensate the winning party for the losses failing which the latter could seek withdrawal of all the privileges it was offering to the former through the WTO along with imposition of “*retaliatory trade measures*”(Page 120). He does not explain the situation when a defending party wins the dispute and whether in such a situation the compensation holds good or not. Such compensations increase the transaction costs. India participates in the global trading system through several environmentally sensitive goods. Trade cannot flourish without taking the environment into consideration. India leads in the sectors of jewellery such as pearl, stones along with mangoes. Her share in fisheries exports is much lesser compared to the afore-mentioned goods and products.

CASES INVOLVING ENVIRONMENTAL ISSUES AND CIVIL SOCIETY INVOLVEMENT

Some of the significant disputes revolving around environmental issues within the WTO involve fisheries.

²⁵ Panoptic has been derived from Benthamite and Foucauldian concepts of “Panopticism” which means public glare. It has been considered both a hallmark as well as a critique of capitalist society for its capacity to ensure both transparency as well as regulated human behaviour emanating due to fear and mild apprehension of being watched and punished if caught doing some non-conventional act.- *Discipline and Punish*

²⁶ www.wto.org

²⁷ www.wto.org

TUNA and TUNA PRODUCTS (1982-1983)

COMPLAINANT- Canada

DEFENDANT- USA

PROBLEM- This case was the first to be brought to the GATT for environmental considerations vis-à-vis a domestic trade norm creating restrictions in glob-international trade relations. The case involved the issue of right over the “commons” (water as well as the dolphin and tuna) exercised by Canada. These three interpreted as extremely significant resource for Canada. The concept of resource is relative as they are also “sinks” which require periodic comparison on the basis of which the opportunity cost²⁸ and comparative advantage can be determined before trading. Canada’s claims forced the US to shut down markets for Canadian tuna and tuna products. This was a “retaliatory measure” which the US adopted by referring to her own domestic legislation called the *US Fishery Conservation and Management Act of 1976*. This legislation empowered the US to curtail trade relationships with any state exercising rights over the common pool of tuna upto a distance of “200 miles” and confiscated US fishing vessels on the same grounds. Issue is also about confiscating the “means of production” (fishing vessel without which you cannot fish on a large scale for trading purposes for sustaining fishing industry) owned by US (capitalist society). Neumayer adds that the US had apparently imposed such restrictions to generate international co-operation towards environmental conservation particularly tuna as it is an important resource. GATT Article XX(g) which deals with conservation of resources was used to justify the stand taken by the US. The Panel took into consideration the transparency US showed by being open about the declaration and also assessed the extent of non-discrimination practiced by US while using the domestic act to restrict trade.

²⁸ Opportunity Cost is compensation earned by any trading partner from a non-conventional sector for the sector which was in focus in normal circumstances. The trading partner has to forego a portion of its earnings from the latter sector to benefit from the former.

However, the Panel found that the US had violated the “*national treatment*” norm as no such restriction was imposed on local producers and consumers. This proved that US import restriction on Canadian tuna and tuna products was out of revenge. The US wanted to apply a dormant “me too policy” where it wanted only a share of Canada’s resources. The domestic norm used by the US was considered to be justified for conservation of resources. Similarly the Canadian measure was for the protection of their resources. Article XX also has clause related to protection of health of plants, animals and humans. However, US trade measure did not fulfill the remaining clauses either. Moreover, this article could be applicable to goods or products (being imported) having inappropriate health standards for the country²⁹ purchasing those imports. US never presented any evidence in support of such a clause against the Canadian imports of both raw as well as packaged goods.

Fishermen (were they local or hired by TNC dealing with fish trade, not clear from this literature). If the fishermen were local then their arrest was justified as they could get access to the available technology or means of production in this case. Hired fishermen usually using the means of production provided by the TNC they were working for. The cost should have been borne by either the TNC or the state. US was more concerned about the “*means of production*” being confiscated by Canada. Citizens were overlooked. Would labour standards also have been levied for the costs (assessed on basis of plight and capacity of the fishermen) which were to be paid at the end of the case.

TUNA I (1991)

Complainant- **MEXICO**

DEFENDANT- **UNITED STATES**

The above described Tuna case was the first concrete measure taken by the erstwhile GATT on environmental conservation in the form of tuna fish stocks. The issue was

²⁹ Ibid..26

of resources. The process of fishing is carried out with the help of fishing vessels of different sizes and are generally 8 to 40 metres long.³⁰

The tuna case of 1991 the United States imposed restrictions against Mexico for using faulty fishing method and technology in the form of “*purse-seine nets*”. The environmental externality observed due to such measures was the consequent killing of dolphins in the “Eastern Tropical Pacific Ocean” (Neumayer.2001.134). The United States had levied such measure on the basis of certain domestic regulations such as the *US Marine Mammal Protection Act (MMPA)*. Getting affected by these trade restrictive measures, Mexico filed a complaint with the GATT dispute settlement system. Fishermen from Mexico were prohibited from selling tuna to US consumers. This case categorises goods into two: non-product; and product³¹. Tuna is exported and imported or bought by consumers in raw form (they are fished and exported in the same form generally) and is therefore, categorized as a non-product. However, the definition of a product and a non-product is relative in nature. A non-product could be interpreted as a product in a different context when being compared to some other good for example shrimp and tuna.

The packaged or canned form of Tuna could be considered as a product of the same non-product. It had been argued in the case that Article XX(b) of the erstwhile GATT helped states to adopt trade restrictive measures on grounds of health as well as environmental protection. Definition of any product or a non-product plays a very important role in determining the kind of standards which can be levied upon them on grounds of Article XX(b). This article create two kinds of situations in this multi-lateral trading system: on the one hand it grants unilateral sovereignty to member states to incorporate measures against non-traditional security threats emanating from environmental and sometimes consequent health hazards, and on the other hand it inflicts changes in trade measures of other countries on a multi-lateral level.

Despite being security issue members are bound by globally applicable norms and commitment to transparency and reciprocity.

³⁰ The World Book Encyclopedia.

³¹ Eric Neumayer.2001.”Greening Trade and Investment: Environmental Protection Without Protectionism”.Earthscan publications.p.p.134-135

These measures are categorized as: *product-based measures* which are based only on their characteristics or ingredients used; and *process-based measures* which are not directly related to the characteristics of product but based on the method of making those products. However, these two types of standards or measures are for goods which come under the category of products. Non-product goods are protected through PPMs. This particular case focuses on the impact of “*non-product*” measure on the environment as they were beyond the scope of the GATT Article XX jurisdiction due to which the Panel had decided against the US measure. Despite taking a stand against the US measure the Panel permitted the concept of labelling on tuna and tuna products to ensure that *process of producing* tuna (here the method of fishing) is not affecting the dolphins in any way. The *means of production* such as the local as well as international boats used for fishing purposes were also to be labeled.

The panel, according to Neumayer, also perceived the generation of surplus in favour of such labeled products vis-à-vis non-labeled products and therefore countered the same by preferring to rely on free market means and the consequent free choice and will of the consumers contributing to such gains. The Panel considered free market superior to actual environmental protection measures expecting the *consumers and local households* (or the *common American population or larger societal responsibility*) to exercise their rationality and responsibility to choose an environment friendly product. The GATT here tried to distinctly separate the public and the private sphere despite acknowledging the existence of a consumer society. The concept of *eco-labelling* was initiated by this case.

Nevertheless, this decision did not satisfy the “*environmentalists*” such as *Non-governmental organisations (NGOs)* such as *Earth Island Institute*, a local US based civil society organisation. They opposed the Panel decision and enforced removal of restrictions by US. The dispute was then brought down to the local courts in the US. In addition to this they also urged US and Mexico to sign an *Agreement on the International Dolphin Conservation Programme (IDCP)* in August 2000.

Brian G. Wright³² writes that the objective of the NGO was to protect dolphins and marine environment. The different methods used by the NGOs: a) *direct methods*

³² Environmental NGOs and Dolphin-Tuna Case

which include lobbying governments for direct contacts with decision makers; b) *access-creating tactics* which include social contacts and financial support; c) *information* providing activities giving expert testimony and policy advice; and d) participating on international bodies. They also used indirect methods such as grass-root movements or campaigns to mould public opinion activating general membership to lobby and also used media campaigns³³. There were also several kinds of coalitions against Latin American governments. *Greenpeace (both USA and Mexico) along with WWF, Centre for Marine Conservation, Environmental Defense Fund and National Wildlife Federation*. There was *intra-NGO network* like the one between Greenpeace USA and Mexico. *Coalition* is also a means for civil society activism. This also a technique which the civil society has learnt from political parties belonging to the developing countries such as India. In case of a coalition, networks become a tool or a technique. Coalitions are excessively issue specific and may segregate after the goal has been achieved. However, if the issue is too big a problem for the future generations which we understand as sustainable development then these NGOs may create their own specific programmes for those issues and establish permanent practicing networks for such purposes.

Apart from these civil society groups there was an environmental NGO which protested against *American Tuna Boat Association (ATA)* tried to transform the *Marine Protection Act*. This agreement forced US to bring changes to the methods of labelling to the extent of allowing fishermen to use "*purse-seine nets*" (without killing any dolphin) which became the issue of dispute in the case against Mexico. The local court upheld the decision given by the Panel however, in a modified way.

However, the Panel does not consider any situation if the tuna has been extracted from a reservoir where there are no dolphins. The US is perceived to be out-sourcing the job of extracting tuna from its own pool of resources and importing them to sell their technology and cut down on labour charges and in turn forcing other states to participate in its local environmental conservation programme. Baylis et.al. consider this as a social construction of environmental issue in order to draw global co-operation. The case tries to encourage states towards greater global environmental co-

³³ Brian G. Wright. Environmental NGOs and Dolphin-Tuna Case

operation. The decision taken by the Panel was correct. In 1994 the European Economic Community (EEC) and the Netherlands also challenged US measures on the same problem with an “*embargo*” (Neumayer.2001.136). The literature also fails to provide any information regarding the kind of networks and means of mobilisation the civil society adopted apart from playing the advocacy role at the local court in the United states. The decision was taken with the help of “*deference standard of review*”.

CANADA-Measures affecting exports of unprocessed herring and salmon

COMPLAINANT- United States

DEFENDANT- Canada

PROBLEM- The case deals with the health related and depletion (the problem or the tragedy of the commons) of fish stocks problems emanating from trade of certain products of salmon and herring. Usually territorial demarcation of any state would also include the demarcation along the sea or ocean-bed as well. However, fish and sea animals cannot be bound by such man-made territorial demarcations and are therefore, considered to be “commons”. However, the definition of “common” may change in global governance with the geographical location of the resource. If the resource is outside the land territory of any state then claim for resource is difficult to justify as compared to any in-land water body such as a river or a reservoir or a pond.

Article XX(g) of GATT was applied Canada with the objective of conserving its natural stocks of fish. This measure was challenged by the United States on grounds of being a trade protectionist measure and a violation of national treatment clause as it was observed that the domestic producers were not stopped from exporting such fish products. An environment and health related trade measure is acceptable only if it does not violate the clause of discrimination and MFN (Most favoured nation clause)

and is not “*arbitrary*”. These along with commitment to “rule of law”³⁴ form the basic structure of the WTO which have to be adhered to as a complete “package”. The problem of market accessibility was also created as any kind of trade restriction would affect any state’s or private actor’s reach to the markets which was not mentioned by the complainant party. The United States appealed to the Appellate Body against the Panel decision which was in favour of Canada as the Panel was convinced with the intention of the defendant that the measure was adopted to conserve the natural fish stocks (Neumayer.2001.122-123). The decision in this case was taken on the basis of “*deference standard of review*” as Neumayer writes that only factual evidence was acknowledged by the Panel.

Australia-Regulations on imported salmon (1998)

COMPLAINANT- CANADA

DEFENDANT- AUSTRALIA

PROBLEM- Australia prohibited the import of “*frozen, fresh, chilled or salmon*” in 1975. The issue was being brought to the DSB in October 1998. Canada opposed such a trade measure. Australia explained the intention behind such a measure to be the prevention of a “*non-identified diseases*” which had never shown its effects amongst Australian salmon stocks. The literature and the reports do not discuss the place of origin of the new disease and the reasons behind the emergence of such a disease. Fish are more prone to bacterial damage due to *protein content*³⁵.

Nevertheless, the Panel decision had enforced changes in states’ trade policies by suggesting them to switch over from raw fish with cooked ones (heat treated). The decision was based on the comparative advantage and opportunity cost norm. Australia had failed to provide proper report on “*risk assessment*”. The Panel decision

³⁴ The concept of Rule of Law was put forth by Dicey according to which states cannot adopt unreasonable and biased measures which are not universally applicable for the entire society.

³⁵ The World Book Encyclopedia.1994

was overruled this decision as the change of product would completely change the product which may hamper the earlier comparative advantage. Diseases which are to be covered under the SPS Agreement, are to be enlisted by WHO, IPPC and OIE and FAO. Appellate Body upheld Panel's decision that Australia took a biased step as herring is a more vulnerable compared to salmon category and is not brought under such a measure. The Panel found Australia guilty of violating Article 5.1, 5.5 and 5.6 and Articles 2.2 and 2.3 of the agreement on the *Application of Sanitary and Phyto-sanitary Measures* (SPS agreement).

Sanitary and Phyto-sanitary Measures³⁶ seek to ensure that a country's consumers are supplied with food that is safe to eat—"safe" according to a state's individual standards however, without being protectionist towards trade policies. The agreement has been criticised for being inherently contradictory towards its commitment to sovereign status of the members as it asks for scientific justifications and evidence and data to substantiate a member's measures taken in accordance with environmental and health requirements. The agreement tries to follow Lockean theory of harmonisation by making globally applicable standards as the benchmark for the members to follow thereby creating supra-territorial co-operation over certain recognised non-traditional external³⁷ security threats in the form of pests, diseases, disease carrying or causing organisms (*Annex A of the SPS Agreement*). In addition to this the members are permitted to adopt more stringent measures as compared to the prescribed international standards in case of a new disease that has emerged. The agreement upholds one of the three major functions of the negative liberal state: of providing security to its citizens from external aggression or threat.

There are different forms of SPS measures: permitting entry of animals and animal products from disease free areas which can also be implemented through Regionalisation (*Article 6 of the SPS Agreement*); inspection of products for micro-biological contaminants; making certain kind of fumigation treatment compulsory for the treatment of any product which can be acquired through technical assistance; and

³⁶ www.wto.org

³⁷ External threat because consumers may purchase goods from a state which may have been affected by some of the non-traditional threats mentioned above.

setting maximum allowable levels of pesticide residues in food by means of prescribed international standards. Any kind of additive, contaminants, toxins or disease-causing organisms (in their food, beverages, foodstuffs); plant or animal carried diseases (zoonoses) affecting humans; pests, diseases, or disease-causing organisms. Health and environmental regulations in the trade body can be covered by both the SPS Agreement as well as TBT (technical barriers to trade).

However, TBTs cover a wider spectrum of products other than food products (as covered under the SPS). TBTs are also applicable on electrical appliances and vehicles, textiles and garments, regulations of means of production such as ships and ship equipments (as in case of Tuna I case involving US), use of holograms to avoid piracy or duplication of products. TBTs may not be dependent on scientific justifications like the SPS Agreements and could be one of the relevant factors to “assess risk” or a warning for consumers to be cautious while using such goods. TBTs could also form set of instructions as to how any product may be operated or used by consumers. On most occasions they are used for standardizing products, ensure quality or to prevent consumers from being deceived. Unlike the SPS measures, TBTs cannot be tested in a dispute.

Article 4 deals with “*equivalence*” according to which members can adopt different measures to achieve same health standards. The agreement provides lot of flexibility for states to choose the implementation mechanism according to adequate cost-benefit analysis. This however, leads to segregation of products on country-wise basis as different countries may ask for different purification or measures. This article gives greater importance to “ends” (achieving a certain pre-determined SPS standard) than to the “means” measures for achieving such an end) which merely expects the producer-seller to provide empirical facts to prove that the measures adopted by it achieves the required level of standards as desired by the importing party. However, difference in such measures may restrict or delay trade relationships. In order to evaluate equivalence a member has to be transparent by allowing accessibility to the other trading parties for periodic “inspections, testing and other relevant procedures” and are generally bilateral in nature which has been criticised by a civil society called the *CENTAD (Centre for Trade and Development)*. CENTAD also wants plurilateral and sectoral co-operation for the same.

Article 5.7 of this agreement permits members to adopt provisional measures in case of “*insufficient scientific evidence to permit a final decision on the safety of a product or process*”. In such cases, measures can be adopted on the basis of the available information about the health risks of a product or process. However, members must seek “*additional information*” required for a more objective assessment of the risk. Members also need to review it within a reasonable period of time. Provisional measures could be adopted in case of “sudden outbreak of (as an emergency response) an animal disease suspected of being linked to imports”. Periodic review of the SPS measures very important.

In the concerned Salmon case Australia imposed a precautionary measure on ocean-caught Pacific salmonid from the Pacific Rim³⁸. The Panel found Australia guilty of violating Article 5.1, 5.5 and 5.6 and Article 2.2 and 2.3 of the agreement on the application of Sanitary and Phyto-sanitary Measure (SPS Measure). Panel further added that Australia guilty of not providing adequate “risk assessment” before imposing such a measure. The measure was applied to adult, wild, ocean-caught Pacific salmon and other categories of Salmon products in disputes. Article 3.8 of the DSU based on objective truth or fact that if there is any violation of the WTO clauses then such measure has to be discarded or nullified. Australian measures had also affected Canada economically. The parties first present written submissions followed by oral proceedings.

Australia challenged Panel’s decision on the following grounds: a) panel considered certain general quarantine measures also which Australia did not like and thus, different method of quarantine required for salmon and for chilled or frozen salmon; and b) although Panel did not consider heat treated Salmon as part of the dispute (Article 5.1 of the SPS Agreement was considered). Quarantine is interpreted as a Sanitary requirement which became a part of the trade measure for fresh, chilled or frozen salmon. The report does not specify if the quarantine services which may include veterinary and vaccination services were provided by private or state actors. Panel in this case carried out the *de novo standard of review* which was opposed by Australia as it wanted the Panel to adopt the *method of deference*. The Panel has a

³⁸ Report on Salmon Case...

transparent approach towards choosing the experts they wish to consult for an independent review.

The states or parties to the dispute are expected to put forth their suggestions and comments regarding the credentials and qualifications of the experts shortlisted by the Panel. Under this the, Panel establishes an independent *network* with certain epistemic community organisations such as the. The Panel was advised by the experts that the chilled or frozen salmon is not the same product as heat-treated or smoked salmon-they are different tariff classifications. Experts may be questioned directly by the parties. The experts can also directly answer the question. Oral statement by parties also considered. The Panel derives this right from the *Article 13* and *Article 11* of the *SPS Agreement*. The Parties to the dispute agreed to bring experts advice for independent review. The *Experts* present their views in three ways: a) data derived from the OIE annual returns; b) scientific reports; and c) published scientific literature.

The issue of burden of proof was also raised by the Panel as Canada failed to provide prima facie (as it appears objectively or at first sight) evidence against Australia as having violated Articles 5.1,5.5 and 5.6 of the Agreement along with the latter's failure to present convincing "risk assessment". Melvin Spreij writes that evidence for "risk assessment" is sought only when there has been formal complaint is filed against any party with the WTO DSB. Australia argued that the Panel did not require scientific data to support Canada's stand. Australia was against the Panel carrying out a de novo review and preferred the deference standard of review based on objective assessment of facts. Australia argued that "risk assessment" can be carried out only for products and not on processes. "Risk assessment" of process could prove to be helpful for calculation of industrial emissions leading to climate change and other kinds of externalities such as water pollution (due to use of pesticides) which has been having immense impact on fisheries and trade related to them. Process of production in case of fishing would also include the means of production such as the kind of technology they use.

The Appellate Body also carried out comparative study of risks related to different kinds of diseases with similar biological, environmental and economic repercussions.

Australia however, preferred a comparative study between various causal factors which make a product vulnerable to diseases. The causal factors may include geographical locations, climatic conditions and presence of various microbes such as bacteria, fungi, virus (which can get affected due to industrial emissions) and so on. Health requirements and standards also determined market accessibility such as coastal regions may not require too much of iodine rich food products which may include sea food as may be required by the land-locked regions of the world. Such *kind of assessments and the required consultations make dispute settlement an inter-disciplinary process* requiring adequate and periodic veterinary and medicinal services. Australia also had to reveal its government practices and processes as evidence to the DSB.

The Panel examined different kinds of salmon products such as fresh, chilled or frozen Salmon as well as heat-treated salmon and their respective *market-accessibility* was assessed. Australia was found to be ignoring heat-treated salmon from Canada despite Australia being open to the entry of heat-treated salmon. The former category of salmon was prohibited from entering into Australia because it was not *heat-treated in accordance with the prescribed temperature and heat duration periods* thereby regulating energy consumption of any member state which is a party to such transactions. Canada opposed due process adopted by the DSB as that makes the supra-territorial body extremely powerful having regulatory impact over states and it also keeps scope open for incorporation of *de novo standard of review*³⁹.

Canada cited certain studies against the heat-treatment used for particular disease agents. *These studies also become part of the civil society contribution to the evidence provided by the state.* Canada had also accused Australia for having violated the norm of transparency as it had not informed the Appellate Body about these studies which Canada had already cited in the report of 1996. Canada's perspective towards Panel's views on "*risk assessment*" and scientific proof provided by Australia. Panel had

³⁹ Derived from *Marbury v/s Madison* case in which the US Supreme Court could issue *writ of mandamus* by interpreting Articles 3 and 6 dealing with powers of the Judiciary. The Articles did not actually provide this power to the judiciary but the judiciary derived it on its own with the help of due process of law. Although Article 11 of the DSB prefers objective factual considerations the acknowledgement of the fact that mere objective assessment may not be sufficient leaves scope for interpretation and incorporation of *de novo review*.

discarded the scientific evidence provided by Australia and had preferred to seek independent advice from “a network of experts and their laboratories chosen periodically”. *Advisory Role played by the Experts and a direct epistemic community (a type of civil society) in the Panel.* Canada also questioned the different levels of protective measures adopted by the Panel which was considered as arbitrary and unjustifiable. This is contradictory to the acknowledgment of sovereign right of states to adopt measures for their own protection and security. The focus of analysis was widened by the two disputing parties and the Panel for a comparative study. Dead fish was considered to be less harmful than live fish and the food provided to them which is called the bait.

Experts thus laid down different categories of fish products and assessment:

- a) Fresh, chilled or frozen salmon;
- b) Heat-treated or smoked salmon;
- c) Ocean caught Pacific Salmon;
- d) Ornamental fish and bait fish; and
- e) Dead and disemboweled fish which bring less diseases

Under Article 5.6 of the SPS Agreement, Canada argued that despite heat-treatment being the prescribed and permitted “heat treatment” it did not fulfill Australia’s required levels of protection and prohibited entry of fresh, chilled or frozen salmon. Prohibition of heat-treated salmon provided better protection instead. However, Article 6 argues that no trade measure can be appropriate option for such protection. This clause permits changes in “transaction costs” but no changes in trade measures and in turn reiterates Ricardo’s principle of “comparative advantage” and also WTO’s commitment to free market means to handle such issues.

The Panel has been criticised for taking into consideration only selected claims made by the parties to the dispute while certain claims may get overlooked. If a Member is not satisfied with exclusion of certain claims then it has to file a separate case for that. Canada also provided evidence accusing Australia of having violated the Article 2.3, the norm for non-discrimination and national treatment as Australia continued to trade

in salmon within its own territory. In addition to that Australia also applied different measures on domestic salmonid product and imported salmon.

European Communities (EC), India and the United States formed the third parties to the dispute. EC accused Panel and its network for not having sufficient evidence to do the findings for all categories of salmon. It reiterated Canada's stand that similar restrictions on the internal movement of Salmon were levied by Australia. European Communities want to combine trade measure with sanitary measure and therefore want regulations in market forces to ensure good health and environment for its citizens. EC was against *de novo review* and reiterated violation of article 5.1 or 5.5/5.6. EC tried to emphasise on differences in levels of protection as indirect evidence of the third element. EC tried to interpret subjective motive of Australia which was perceived to be nothing but imagination. EC sought greater plurilateral or multi-lateral approach towards environmental and health governance.

From an Indian perspective the burden of proof should have been on Australia. However, India was in favour of international standards (*harmonisation*) over individual or unilateral measures for protection. US quoted that "*heat treatment*" changed the texture of product. It destroys the product and is therefore, not applicable to fresh, chilled or frozen salmon. The experts and the Panel suggest different methods of preservation to the parties which consequently changes the product being exchanged leading to changes in the trade policies of the members.

However, the Panel had failed to widen its analysis to all fresh, chilled or frozen salmon which was the actual focus of dispute. US accused Australia of having imposed such a ban on the basis of an apprehension. The Panel also provided alternative processing methods such as "*flash baking, par-boiling, gamma radiation and so on*". In this case reference was cited from the *EC- Hormone Case* that *Article 2.2 and 5.1* had to be read together. *Articles 2.2 and 5.1* have to be read together as both these articles seek scientific measures, evidence and principles for implementation of scientific measures and "*risk assessment*". The Panel discarded a local report which was of immense importance in Australia. The *EC Hormones case* also helped the panel to sort out problems of the "*burden of proof*" seeking objective proof and facts for violating the given norms of the SPS Agreement on part of the

defending party. The Report also deals with impact of change in climatic conditions on fisheries at large.

Canada also argued that in case there are no prescribed standards for any disease with the OIE or IPPC then a member may adopt measures which may be of higher standards as compared to the standards set by these international standard setting bodies. However, in this case Australia had not imposed higher standards than those laid down by these bodies. SPS Agreement does not provide any methodology for *carrying out risk assessment. Such trade and SPS Measure led to cultural and behavioral changes in the form of dietary changes as the product was changed.*

The Report also defined "Risk Assessment" as a way of analyzing the risk presented to the Panel. It can be both qualitative and quantitative. It can be defined as the probability of occurrence of any disease along with its societal impact which could be either high, low or negligible but cannot be zero. Risk Management has been defined as a method of deciding if a particular risk estimate under given circumstances was acceptable- based on interplay of different factors including results of risk assessment. Management is about organizing and handling then implementation issues cannot be overlooked. Risk Communication involves transparency factor according to which information regarding communication of risk assessment through information, opinions and feedback from all interested parties on any relevant factor including scientific data and method and acceptable risk levels. The independent group of Experts emphasised that risk assessment reports should be clear. They also acknowledge the role of climate change as one of the key causal factors of diseases.

EUROPEAN COMMUNITIES (EC)-ASBESTOS CASE

COMPLAINANT- CANADA

DEFENDANT- FRANCE/EC

ISSUE- Ban on asbestos and products containing asbestos

France had stopped production, distribution and exchange (mainly imports) of asbestos within its territory citing health reasons. Canada being one of the largest

producers of “*chrysotile asbestos*”⁴⁰, suffered economic losses which could be considered under *Article 2 of the TBT Agreement*. The process of curtailing production and consumption of chrysotile asbestos began in 1997 and had to be completed by January, 2005. The justification behind such a measure was the non-availability of empirical figures regarding the minimum level of required “*exposure*” (Neumayer.2001.132) to chrysotile asbestos that could be cancerous. Nevertheless, it is still the only permissible category of asbestos within the EU. *Epistemic community* in EU called the *Scientific Committee on Toxicity, Ecotoxicity and the Environment* helped EU with the periodic studies to help them equip with evidence required for justifying such a measure under *GATT Article XX(b)*.

The Panel released its report in September 2000 in which both *asbestos* as well as *non-asbestos products* are considered as “*like products*” (Neumayer.2001.132). Neumayer contradicts his point when he says that the September 2000 Panel Report on the one hand upheld French ban on asbestos imports, on the other hand it considers the ban as a violation of Article III of GATT by France. The Panel, according to Neumayer, asserted that the health impacts of the asbestos and non-asbestos products should not be the criteria for deciding the likeness of two products. The decision of the Panel on the “*like products*” was criticised by the *Environmental NGOs*. It was later, upheld by the Appellate Body. However, Neumayer does not talk about the NGOs which were involved in this kind of activism and the means they used for such networking and advocacy work.

The Panel Report on the other hand projects this case as a labour issue concerning their health. However, the labour here have been interpreted as a sample study for the entire population by Neumayer and also in the latter part of the report as a larger health issue. Labour and Consumers form a part of the larger environment. The Panel sought country-wise perspective on different chrysotile-asbestos products. Canada provided a list of such products and two basic categories of asbestos: *amphibole asbestos*; and *chrysotile asbestos*⁴¹. These come under the category of “*non-friable*

⁴⁰ Eric Neumayer.2001.”*Greening Trade and Investment: Environmental Protection without Protectionism*”.p.p.132

⁴¹ Annex I. Decree No.96-1133 of 24 December, 1996. “Concerning the Ban on asbestos, implemented pursuant to the Labour code and the Consumer Code”.in. *Official Journal of December 26, 1996*

products". "Non-friable products" also include different kinds of fibres made of chemicals and are found in *cement, asphalt road surfacing, resins, plastics*, etc. The *ILO Convention 162* lays down certain contemporary processing methods for asbestos.

The causal factors which lead to discharge of asbestos particles in the atmosphere is during constructions and demolitions of buildings particularly in the form of "*asbestos-cement material*" which may stick to the water vapours in the atmosphere and add to the problems of *climate change* and problems of acid rain. It also leads to accumulation of solid waste which can flow into the environment as pollutants. However, chrysotile asbestos is not soluble in water and is less hazardous. Risk emanates from fibres due to their lengths, quantity to which one is exposed and time period according to which it remains suspended in the air. Problems of respiration come up amongst labourers and miners. It does not include workers who collect waste after the debris flows into the environment. This case incorporates *Corporate Social Responsibility (CSR)* in order to ensure better working conditions. Canada used data provided by a research organisation called *International Agency for Research on Cancer*. A comparative analysis and study of different kinds of asbestos was carried out to prevent trade protectionism as states could choose the most appropriate and harmless category of asbestos and not ban the product completely like France. French ban on asbestos was on the basis of a provisional clause for "*technical regulation*" in a French Agreement or Decree.

The problem of "*like products*" is very important in standard setting as it reduces *transaction costs*. The concept of like products is still vague and ambiguous. The comparative chemical composition of different products is the first step towards deciding if the two products are like products or not. EC provided historic facts about the quantity of asbestos consumption by France which helped it to oppose France's stand. EC interpreted France's *technical regulation* as a documentary proof to ensure transparency with respect to characteristics as well as method of production of any product. EC therefore, emphasises on method of production. EC also emphasised on the supremacy of TBTs over GATT Annex 1A. EC and Canada both asserted the importance of international.

Consultation with different epistemic communities (*COC Study*) helped Canada and France propose alternatives (*opportunity cost*) to compensate for the category of asbestos which had to be prevented from international trading. Epistemic communities helped members to know about new kinds of diseases which the international standard setting bodies had not included in their list of diseases.

Quebec has an *Association of Asbestos Mines of Quebec* which has been considered by most of the producer countries as the source of various classifications required for asbestos. The problem of emission of *gamma radiations* from asbestos products and also certain technologies such as X-Rays leading to “*Mesothelioma*” (which is mainly caused due to inhalation of asbestos).

However, since the subject of dispute is asbestos and due to lack of evidence supporting the claim about X-Rays being hazardous to health. The rate of exposure to such radiations also had to be considered. The apparatus required for construction work require an *ISO 7337 certification*. This case also laid the “*burden of proof*” on the complainant. *The Third World perspective* on this case was to bring household use of asbestos into the international surveillance measures. The EC was not in favour of controlled or restricted use of such asbestos.

US ANTI-DUMPING ACT (also called the REVENUE ACT) of 1916

COMPLAINANT- EC and JAPAN

DEFENDANT- US

The WTO DSB in this case has been entrusted with the responsibility of hearing both a civil as well as criminal proceedings. The complainants questioned the validity of the 1916 Act on following grounds:

- a) Both EC and Japan considered it to be a violation of Articles VI:1 and VI:2 of the GATT 1994:
- b) EC and Japan considered it a violation of Articles 1, 4 (4.1 by Japan) and 5.5 (5.1,5.2,5.4,18.1 and 18.4 by Japan) of the anti-dumping agreement;

- c) EC and Japan considered it a violation of Article XVI:4: and
- d) Benefits earned by EC and Japan were nullified or impaired

Anti-dumping includes three types of measures and the Members have to question at least one of these measures to prove the charges of dumping. According to *Article 17* of the *Anti-dumping Agreement* it is important for the complaining party to challenge one of the three types of measures given in *Article 17.4* of that Agreement such as an *anti-dumping duty*, which is a provisional measure or a price undertaking. EC and Japan had to challenge the *1916 Act* in consonance with *Article 17.4* which gave US the opportunity to argue against the stand taken by EC and Japan. The Panel had used the clause of “*discretionary and mandatory legislation*” to ask US to interpret the 1916 Act. However, US had argued against the Panel saying that it would levy the burden of proof on the defendant and that EC and Japan had failed to meet the burden of proof.

Article VI of the *Anti-dumping Agreement*, US argued, considers tariff oriented restrictions post-Uruguay Round⁴². These duties are levied as border regulations so that the market prices do not get affected. US *added that any other measure imposed to prevent dumping need to be considered beyond the scope of Article VI of this agreement. The DSB permits participation of third parties in the case the criteria for which the criteria was derived from the EC-Hormones case which can be enlisted in the following way. The case was fought even at the local court in the US the interpretations of which have were upheld by the Panel. US had interpreted “anti-dumping measures” to be comprising of “duties, price undertakings and provisional measures” and therefore, do not come within Article VI of Anti-dumping Measure.*

However, provisional measure could be anything and not be interpreted only as tariffs. The provisional measure in this case was the arrests of certain private traders for practicing dumping. This gave an opportunity to the WTO DSB to adjudicate over both civil as well as criminal issues widening the domain of the WTO. Subsidies can also lead to dumping as market-accessibility may get affected in weaker countries

⁴² Uruguay round had done away with non-tariff restrictions and made tariffs as the only form of permissible restriction.

such as in case of sugar industry in Africa. The problem of market accessibility has never been raised as an issue by any disputing party. In this case markets are considered to be superior to state.

EUROPEAN COMMUNITIES-GROWTH HORMONES IN MEAT PRODUCTS

COMPLAINANT- USA and CANADA

DEFENDANT- EC

The problem was regarding health hormone induced meat being exported to EC. EC had imposed a ban on imports of such meat on health grounds under *Article 5 of the SPS Agreement*. USA and Canada had opposed such a ban. The Panel found the measures adopted by the EC to be lacking adequate “*risk assessment*” as required by Article 5.1 and 5.2 of SPS Agreement and is, therefore, inconsistent with the requirements of Article 5.1. The Panel had conferred the burden of proof on the defending party which the Appellate Body had changed and had conferred on the complaining party. The appellate body further added that only quantitative assessment of risk is not sufficient. This has widened the scope of risk assessment to include societal and demographic factors. Risk assessment has also been interpreted by the appellate body to also include risks due to “*administration of controlled substances and from controlled problems*” which may be interpreted as corruption and rent seeking costs. The SPS Agreement also includes a “*precautionary principle*” which is not considered as a part of the Agreement or “*inter-nationally accepted customary international law*”⁴³. The Precautionary Principle is being projected as a short-term or stop-gap arrangement. Such a principle can be applicable if there is some disease in some part of the world and the diseases are communicable then a member could be adopting precautionary principle as a security measure.

USA imposed a trade sanction of US\$191.4 million against the ban imposed by EU. The reason for such a sanction is not given other than the fact that the ban had been

⁴³: Neumayer, Eric.2001.Greening Trade and Investment Environmental Protection without Protectionism”.p.p.129

affecting the relative gains and market accessibility of the US. The WTO has a provision for states to impose sanctions in case of trade restrictive measures adopted by any other member state.

US-IMPORT PROHIBITION OF CERTAIN SHRIMP AND SHRIMP PRODUCTS

COMPLAINANT- MALAYSIA

DEFENDANT- USA

THIRD PARTY PARTICIPANT- EC, HONG KONG, CHINA, INDIA, JAPAN and MEXICO

The problem was related to the method of production or “*fish harvesting technique*” adopted by the above mentioned countries which were creating “*negative externalities*” in the form of death of some particular kinds of species of turtles which were enlisted under *CITES (Convention on International Trade in Endangered Species)*⁴⁴. The WTO Report on this case, however, does not include the problem of this *Multilateral Environmental Agreement (MEA)* with the WTO norms. There was a local as well as supra-territorial determination of means of production for states to adopt and follow. It also led to transfer of means of production in the form of trade in technology called the *Turtle Excluding Devices*. The unilateral power of the US to adopt environmental measures was questioned during the dispute on grounds of product and non-product related issue. Shrimp, according to Neumayer, is a *non-product*⁴⁵.

The Appellate Body opposed the stand taken by the US due to non-applicability of PPM on a non-product. Therefore, the appellate body does not consider fishing as a process of production. Neumayer does not discuss the binding nature of the *Inter-American Convention* that was signed for environmental conservation purposes.

⁴⁴ Neumayer, Eric.2001.Greening Trade and Investment: environmental Protection without protection without protectionism.p.p.136

⁴⁵ The discussion on product and non-product already mentioned in the tuna-dolphin case above.

Malaysia had accused US of implementing a new measure by violating the retrospective jurisdiction⁴⁶ norm. However; the Panel upheld such a step taken by the US proving lack of will amongst the developing country to co-operate in environmental governance due to impact on their *relative gains*⁴⁷. Their domestic industries get affected and lose market-accessibility. This further proves that law on several occasions has been against the society and the environment. *The ban by USA was implemented under Article XX of the GATT with the help of data provided to the United States by a locally based civil society called the American Humane Society, which fused the concept of resources with endangered species making environmental resource for any country. The Panel in this case did not adopt a de novo standard of review which forced the Panel to accept the factual and legal interpretations of every single piece of evidence including the report of the American Humane Society. This is called the deference standard of review under Article 11.*

The issue regarding acceptance of claims made by parties therefore depends on the type of standard of review the Panel may want to accept or follow. In case of *de novo review* the Panel chooses on its own the claims which it considers feasible for dispute resolution whereas, in case of deference the state exercises its discretion and power to force panels to accept the objective factual and legal interpretations provided by the state. In this case the Panel had questioned USA about the partial interpretation of the report provided by the *American Humane Society*. However, USA exercised its powers to declare it as an “*independent stand or opinion*” of the civil society and that under deference the Panel did not have to carry out an independent review of the same. Since USA violated the retrospective jurisdiction norm it was easy to justify the measure as an act of “*good faith*”. *Article 21.5 of the Dispute Settlement Understanding* dealt with the problem of implementation. It is not specified whether it is part of *Trade Policy Review Mechanism*.

⁴⁶ The concept of retrospective jurisdiction can be found even in the Indian constitution. According to this norm: a) a law-violator cannot be tried for the same violation twice (double-jeopardy); and b) the law which is applicable during the date and time of its violation can be used during the trial of the violator. The violator cannot be tried by a new law.

⁴⁷ Relative Gains are the gains of states taken separately.

CONCLUSION

From the above description of cases it can be inferred that in cases where the USA has been a direct party to the dispute the Panel could not use the *de novo standard of review* which enhances the scope for greater and more *direct civil society networking* in the form of some *epistemic communities*. However, *USA's emphasis over deference as given in Article 11 of the DSB prevents the use of networking facility within the Panel. The participation of civil society gets restricted to local NGOs along with states for providing evidence to the DSB.* Although the *de novo standard of review* was more easily used under the *GATT the Panel's acceptance that only objective assessment of facts may not be sufficient for settlement of disputes does not completely deprive the Panel of such networking opportunities.* The positive repercussion of such NGO involvement becomes the societal and environmental impacts which can be put forth in a better way. Societal impact of science and scientific data have on several occasions raise debates over the issue of claims as already discussed earlier.

Unlike the GATT, which had scope for the Panel to establish independent networks with epistemic communities and their laboratories through the *de novo review*, the WTO apart from subtle *de novo*, also has other means of bringing *civil society participation* particularly in the *Ministerial Conferences*. *Article v:2⁴⁸* was included during the Marrakesh Agreement. Through this Article NGOs are the only category of civil society which can get the objectively institutionalised opportunity of involving in the actual WTO *modus operandi*. The *General Council* played a very significant role in determining and specifying the task which they need to perform in the larger global economic system. NGOs have been entrusted with the job of "*spreading awareness among people with respect to the WTO*"⁴⁹. The WTO has been organising symposia for NGOs since 1996⁵⁰. It was in the year 1996 when provisions were made to permit NGOs to become part of the bi-annually held Ministerial Conferences. The *WTO Secretariat* maintains a daily *network* with the NGOs.

⁴⁸ www.wto.org

⁴⁹ *Ibid.*:37

⁵⁰ www.wto.org; and O'Brien, Robert et.al.2001. *Contesting Global Governance*. Palgrave

Singapore Ministerial Conference⁵¹ was the first Ministerial Conference in which civil society participation was entertained. These NGOs got registered for this Conference through *Article v:2* and the subsequent approval of the Secretariat. However, prior to the approval of their registration, the *NGOs were asked to prove that their "sphere of influence" was in consonance with WTO long term Agenda*. For the Geneva Ministerial Conference a total of 152 NGOs registered. However, only 128 could actually participate. The meeting was committed to transparency.

The panel decisions under GATT did not have a binding impact on the states as it did not have a proper dispute settlement body. The adjudicating pattern was based on consensus due to which the decision never got implemented. Structural changes brought about within the Dispute Settlement body during the Uruguay Round made the DSB a more stringent body in terms of implementation. Therefore, it proved the institutionalists⁵² argument that environmental policies with respect to market and economic reforms cannot be brought about without adequate rules, laws, institutions and norms. This makes the environmental NGOs more dependent on the state apparatus and their rules and laws made by them. Due to influence of the global governance institutions the civil societies feel that the states are unable to adapt to the dual responsibilities performed by them at the local as well as global sphere.

⁵¹ www.wto.org

⁵² Jennifer Clapp and Peter Dauvergne *Paths to a Green World: The Political Economy of the Developing World: The political Economy of the Global Environment*. Academic Foundation 2008

Chapter 4:

GOVERNANCE ISSUES

Governance has been defined by scholars as measurement of performance by any institution, group or individual. Performances of different states are measured by both local as well as global sphere in terms of GDP, trade deficits, environmental accountings, balance of payment problems, and so on. However, performances of global governance agencies such as the UN, WTO, World Bank and the IMF cannot be carried out by states unilaterally. It is the local societies which determine the societal acceptability of the working and functioning of these supra-territorial bodies. Implications of such their activities have societal and environmental effects both in the form of growth as well as externalities because they may reduce state capacities on several occasions.

Loans granted by the World Bank and IMF are accompanied by several kinds of conditionalities such as the *Structural Adjustment Programmes* seeking reduced bureaucratic role, control on corruption, emphasis on greater *local democratization* in the form of increased civil society activity. Conditions are imposed mainly for developing countries so that the internationally contributed money which is being granted as loans require accountability and responsibility from the borrowing countries. Since it is a common pool of “resources”¹ coming from different countries individual contributors are right in asking for greater transparency in term of adequate *distribution and participation* system through a single authority such as the IMF and the World Bank. Corruption as discussed in Chapter 3 can also interpreted as a risk assessment tool even by the WTO. Being inter-governmental bodies these organisations can only be scrutinized by the member states.

Civil society actors face problems of legitimacy, lack of accountability and a concretised force due to which they may not be entertained by supra-territorial bodies. However, their role has been acknowledged to be of immense significance even by

¹ Selee, Andrew D. and Philip Oxform..”*Decentralisation and Democratisation*”.in.*Decentralisation, Democratic Governance and Civil Society in Comparative Perspective: Africa, Asia and Latin America*. Woodrow Wilson Centre Press (Washington, DC).John Hopkins University Press

these supra-territorial bodies in terms of *different kinds of academic works published, data gathered through research, street activism and mobilization, providing evidence, spreading awareness and seeking social justice as in case of the Narmada Bachao Andolan, setting up of the Global Environmental Facility (GEF)² with the World Bank to provide financial assistance to the developing countries to sustain environment oriented projects.*

From the *chapter 1* I could deduce certain indicators which could be used as tools or mechanisms for assessing the role of civil society actors (both global and local) in larger world order:

Decentralisation, Democracy and Scope of Participation: The roots of decentralisation can be found in certain policies created by the colonial powers for their respective colonies specially in India. It is a tool for ensuring greater participation and democracy and also enhancing capacities of self-governance amongst the people. It is a means adopted by states with larger population and a kind of federal structure in practice. Powers of the central government are to some extent distributed to a different stratum of the state apparatus. Civil Societies adopt these means to organise their activities vis-à-vis society. They create a parallel social apparatus to interact with the society. Unlike the bureaucracy which prefers to maintain status quo, the civil society actors both global and local try to transform or reform the society and the state activities.

However, we cannot overlook the fact that different civil society actors are much more issue-specific unlike the bureaucracy and the state. This makes the state apparatus overburdened with responsibility. Decentralisation is even more important for *glo-binational civil society actors* such as the *NGOs or social movements to convert the “glo-binational” into an actually global both in terms of structure as well as practice. “Representativeness and distinctive values (formal-procedural) and effectiveness and empowerment”³* . Since these actors desire greater development in

² Ashwani Sharma's unpublished manuscript on GEF-Global Environmental Facility with the World Bank

³ Attack, Iain. 1999. "Four Criteria of Development NGO Legitimacy" in *World Development*. Vol. 27, No. 5, p. 855-864. Elsevier Science Ltd.

the form of democracy and participation in numerous state as well as in activities of state-led international organisations and institutions, they require a democratic structure for themselves as well something which has been argued by scholars for different political parties. This indicator is most appropriate for global social movements or NGOs because they are generally based in the Northern countries and have a structure like that of the Trans-national Corporations. Civil Society do not involve in active decision-making⁴ and do not make decisions even in their own activities. They merely create programmes as well as mechanisms to achieve a particular goal or merely carry out activism to convey some messages to the state, state institutions and society. It is the extent of decentralisation which can determine the sustainability of glob-international or local civil society networks. They also use market means such as advertisements, banners, pamphlets and so on. Based on the afore-mentioned parameters of measuring any glob-international social movement some NGOs and movements have also been listed along with a description on their areas or domains of functioning and activity. These groups have been some of the regular participants at the WTO conferences.

- a) **Funding:** Financial aid and support a very important role in sustaining the activities of social movements, NGOs and also academicians and researchers and suitcase NGOs. However, the sources of such aid may create problems of co-optation. Glob-international civil societies derive funds from different sponsors or donor agencies and even states. Sometimes some civil society “foundations” may give grants to some other civil society groups such as research groups and academic institutions to help them provide adequate infrastructure. Ford Foundation has been playing a very significant role in upgrading infrastructure for research groups such as the Centre for Law and Governance (JNU), UGC Fellowship to research scholars in India, *World Wildlife Fund*, *Bill Gates Foundation*. In addition to these indicators leadership issues also become very significant in civil society mobilization. WWF had reached around US\$350 million which had exceeded the financial capacity of UNEP’s (2001) which

⁴ Decision-making here is defined in terms of policy making or legislations carried out by the state.

was US\$120 million⁵. The sources of funding for “*Suitcase NGOs*” have not been provided by any literature. They would require affiliation to some well established NGOs or social movements or may require sponsorship from some donor agencies. However, the question of “trust” between the glob-international civil societies such as the WWF, FOE, Greenpeace, any academician or an individual easily accessible through e-mails to new information seekers.

- b) **Infrastructure:** infrastructure may include accessibility to internationally accepted academic literature, libraries such as the *delnet*, data and statistics, computer and internet facilities, laboratories, transport facilities, adequate manpower to work as staves. Infrastructure plays a very significant role in determining the extent of decentralisation of any civil society network or group specially in case of social movements. These also form the means and methods of mobilization. They use multimedia facilities to draw popular interests and attention by circulating videos of campaigns, environment features on their respective websites.
- c) **Issues and problems covered:** This is an important aspect of civil society role as it determines the glob- international nature of any civil society actor. Their areas of study and activity may vary from environmental issues (which is the primary focus of my study), human rights, gender issues, labour rights.
- d) **Time Period of existence:** helps any institution or group or movement to get organised, acquire resources, and make an impact on the society, markets, states as well as state created organisations. New groups may require more time to establish contacts and networks with these groups in the society.

⁵ Clapp, Jennifer and Peter Dauvergne. 2005. *The Globalisation of Environmentalism*. in. “Paths to a Green World”. p.p. 78. Boston, MA.

e) **Consistency in participation in the international organisations:**

This helps them become aware of the proceedings of the institutions as well as the society. However, the continuity in their networking within the organisation would also help the organisation acquire periodic reviews from the society. Nevertheless, such a systemic mechanism can be made possible only by proper decentralization system.

Friends of Earth (FOE) are a federation of sixty one groups. It has an international secretariat, an international executive committee which meets *thrice a year*, a general assembly meeting twice a year, five thousand local groups and one million members. It has an adequately decentralised and autonomous structure and functioning. Most of the member organisations represent themselves as “*Friends of Earth*” however, there are others who prefer to use local names and languages. This helps them get closer to people as on several occasions particularly in the third world local population may not follow trans-national languages and may feel alienated. Membership into this federation is very difficult as their administrative body screens application forms before admitting any new member. It claims to have no religious or political inclinations or biases. The literature does not provide the criteria or parameters which they follow or assess before granting membership to any new group. In Canada FOE members are not allowed to cast their votes.

Heinrich Boll Foundation is a non-profit organisation which is committed to the norms of “democracy, civil society, human resources and healthy environment”⁶. It has affiliations with the “*German Green Party*” (Berlin). Structurally it is not adequately 25 offices worldwide. It was created in 1998. Today it works in partnership with 200 organisations in over 60 countries. It is considered to be one of the major “*think-tanks*” in the world which organizers study tours and exchange programmes. It conducted two-day conference on “*Anti-nuclear programme*” at the “*India International Centre*” in New Delhi, India in August 2008 where academics and scholars from different countries including India were invited as “*suitcase NGOs*” to present papers on social, economical and environmental effects of nuclear power

⁶ www.boell.org/web/137.html

and technology with the objective of making people aware about such hazardous impact.

It promoted exchange of ideas between scholars such as *Jean Dreze, Achin Vanaik*, and so on. It has been *working on further reforming the WTO through a project called www.brettonwoodsproject.org in UK*. It also had been pushing India to sign the *Comprehensive Test Ban Treaty (CTBT)* to check arms trade. This has been viewed as a way of exercising northern hegemony particularly the US as it wanted India to sign it. The *Heinrich Boll Foundation* considers agriculture as most significant sector for the impoverished people of the world as it generates employment for 70% of the population. It opposes subsidies and dumping in the agricultural sector. The role of TRIPs is very important for conserving “*traditional knowledge, health, agriculture and biological resources*”. It supports the unitary right of all states to imbibe adequate environmental measures. It also acknowledges the fact that global trade governance leads to marginalisation. Since it also focuses on gender issues there is no clear demarcation between its area of study and activity. Agriculture is a problematic area for both developing as well as developed countries. However, approaches towards subsidies varies between the two. Greater accountability and transparency required in the activities of the WTO. Since the Foundation considers environmental problems a state responsibility mainly and it abstains from blaming the WTO participation has been more consistent for it compared to others.

The WTO accepts participation of “suitcase NGOs” such as academicians and the papers and other scholarly materials published by them such as *Ashwani K. Sharma* (Reader, Satyawati College, University of Delhi, New Delhi, India). It is easier for suitcase NGOs to travel anywhere which in itself is decentralisation. However, they are bound by financial constraints. However, global problems require glob-international mobilization and activism which makes glob-international social movements or NGOs as the most important category of civil society organisations.

Problems arise due to non-global concerns with respect to any kind of issue which is being targeted or looked at. From the southern perspective environmental problems are more related to agricultural land, water pollution, poverty whereas, for the north problem of climate change, ozone depletion had been of primary concern. According

to the “*social constructivist*” argument the Northern countries deliberately create global environmental problems which may not be global in nature. However, it is their impacts which actually make them a global problem. The problem of climate change will have impact on agriculture in the developing world such as on coffee trade in Southern America.

Glob-international nature of civil society groups along with the states have been able to incorporate *special and differential treatment through the Doha Development Round*. Patents on food products such as Turmeric, bittergourd and brinjal due to local knowledge problems make them expensive for consumers and also harmful for health purposes due to use of biotechnology.

The *World Trade Organisation (WTO)* and the establishment of all kinds of international organisations or global governance agencies have both positive as well as connotation: the positive impact is the increasing scope of inter-state cooperation in an anarchical world; and the negative impact is the reduction in states’ domestic capacities to provide adequate services and resources and looking for new areas of concern. Supra-territorial institutions cannot adequately perceive from a distance far-off what repercussions and impact and demands of societies prevailing within individual state could be.

Unfortunately, states which negotiate at these bodies are much more focused on economic analysis of policies. The societal implications may not get adequately heard at these places. This makes civil society an important emergence in recent international political economy. *Glob-international Civil Society* groups have been most successful with respect to activities of the United Nations by participating in several multi-lateral agreements, treaties related to Human Rights, Environment, Gender Issues, Child Labour and trafficking and so on. The UN has its own separate definition of permissible civil society.

The WTO was created with the objective of facilitating free trade so that a market led economic growth and development could be achieved. Since governance involves issue-specific organising and functioning, the WTO, some scholars argue that needs to remain a trade body only as the objective of contemporary global governance is to enhance specialisation in the working of these organisations. However, since

development is considered to be for everybody, its marginalizing impact requires some consideration. Neo-liberal development model has been having severe impact on the society and the environment at large in the form of disbalanced distribution of services and resources and also divergent capacities of individuals to access such resources. Such kind of imbalances creates demands for greater participation and social justice as the marginalized people feel left out of the benefits provided by the same model to others.

The common people are unable to understand whether to seek justice from the own state apparatus or from an outside body which they can neither see or even feel during their day-to-day activities. Such demands may be picked by either local or any global-international civil society actor mainly NGOs which either act as social movements themselves or may have a separate arm to carry out such a mobilization. The weak are made aware of their rights and are also organised by such realizations either by themselves or any civil society group. Globalisation has helped such groups to emerge as a network both with the state as well as amongst themselves.

Civil society groups have been partially successful in getting societal issues such as labour, health, development as well as environmental problems within the WTO through its ministerial conferences, the dispute settlement system and the general discussion arena called the WTO Public Forum. The role played by these actors within the WTO DSB has been defined as the *amicus curiae briefs*⁷ (“*Friends of the Court*”). The scope for civil society within the WTO also varies from one country to another.

The European Communities are considered to be more open to different kinds of Civil Society participation including as observers whereas, the United States have been emphasizing more on their role in the DSB. However, after some analysis it could be deduced that within the DSB there is scope for epistemic community to establish links with the Panel directly (at the Panel’s discretion) which may not be out of EC’s choice but out of the self acquired powers to carry out judicial review by the Panel. It has been observed that this power of the Panel gets curtailed each time United States becomes one of the major disputing parties at the court. Therefore, such kind of

⁷ www.wto.org

probability may not be always out of choice the disputing parties but out of interpretations. States cannot themselves carry out such scientific tests and assessments due to limited state capacity. States cannot even reach out to every single corner of the society to look for impacts and problems. They can only be informed either by the bureaucracy and the civil society groups.

The WTO and other Global Governance agencies take a market-liberal perspective towards such issues which the social civil society groups want to oppose. The WTO in an objective analysis is committed to the principles of *Rawls Theory of Justice* which gives lot of emphasis on liberty and equality of opportunity. Prior to the conferences the member states are not aware of their relative gains that may emerge out of such discussions which Rawls had defined as the “*veil of ignorance*”⁸. Since the WTO is not a world government so partial-anarchy or global state of nature continues to exist which makes it difficult for the organisation to accommodate social justice demands to the fullest through its conventional state based structure. In addition to that, the WTO and other international organisations which have been created by the states themselves, practice Rational Choice Theory as states are considered to be most rational and responsible actors to enforce and sustain the development patterns laid down by these organisations.

The civil society, on the other hand, seek “*need based social justice*”⁹ which on several occasions prove to be excessively contextual which creates problems in negotiations. These groups are seeking cooperation from the markets for better social and environmental conditions. They want to make macro-economic policies more contextual. However, due to reduced capacities of states and state institutions to deliver fair justice it becomes difficult to some particular demands to come out in the global sphere either through state-civil society networks or through inter-civil society networks. They can either change their *societies or change the entire development*

⁸ Kymlicka, Will. *Rawls Theory of Justice*.

⁹ Miller, David. 1999. *Principles of Social Justice*. p.p.250. Harvard University Press

*model created by the states as well as state-led agencies for global economic governance*¹⁰. Within the DSB the role for NGOs has been mainly local.

From the list of different Environmental NGOs participating in the WTO activities and negotiations over the years it can be observed that very few international environmental NGOs have been able to maintain a particular level of consistency of participation. Most of these NGOs belong to the Global North or the developed countries particularly from Europe and the United States of America. Although, many of these glob-international NGOs have had offices in some southern countries particularly in India such as the WWF, Greenpeace and the Friends of Earth which never get the opportunity to participate in these negotiations. Their offices in other Northern countries are better represented as compared to their southern decentralised offices. They may be structurally decentralised or global their activities continue to be predominantly restricted to a particular region of the world. They had also been involved in making the anti-fur campaign a success.

Heinrich Boll Foundation provides a generalized perspective of the larger category of “civil society organisations” comprising of both northern as well as southern groups that the present trading system needs to promote greater human development in the form of democracy, “education, employment, public health, movement of capital and labour”. It therefore, promotes market means to ensure societal development. It considers “academicians, policy experts” as smaller unitary units within larger category of civil society organisations. It further adds that the WTO is not open to gender issues. Women play a very constructive role in ensuring food security. They fetch water, collect food, fodder and fuel from distant places.

India has been facing several problems due to *genetically modified organisms (GMOs)* used in agricultural production processes such as problems emanating from *Bt Cotton and brinjal* and the subsequent peasants’ movements at the local level. However, Greenpeace has been active only at the local sphere for India but has never represented her demands at the WTO as *Greenpeace* India could never participate at the supra-territorial level. They have been establishing networks with common people

¹⁰ Giddens, Anthony.1989.Chapter.20.”Social Change: Past, Present and Future”.in.Sociology.Blackwell

through e-mails, newsletters, websites and pamphlets. However, even the export-led growth ideology globalised by the agencies of global economic governance or international economic organisations executed by states in the form of SEZs or EPZs are not permitted to establish civil society groups such as trade unions for their rights. It has been observed that the maximum number of civil society groups from India have been some of the labour organisations mainly at the *Cancun Summit of the WTO*.

Greenpeace International is an independent global campaigning organisation which covers areas such as “*conservation of whales, climate change, forests, oceans, sustainable agriculture, toxic chemicals, conservation of endangered species such as marine life, bluefin tuna, turtles*”¹¹. It has offices in 40 countries. They also encourage waste management practices to remove toxic e-waste emanating from laptops, computers, encourage use and development of solar energy. They had *been playing* an important role in *Bhopal Gas Tragedy in India*. Greenpeace had pressurized Bayer to withdraw research base from India as their genetically engineered crops were discarded by farmers and consumers due hazardous impact on health and environment. They also participated in the activism against dumping of toxic warship *Clemenceau* because workers have to dismantle them by hand. They prefer that farmers use scraps of ships at Alang , Gujarat. They had warned against Genetically Engineered rice. They have offices in many countries such as Amsterdam in Netherlands, Bangalore in India and Research Laboratories in the United Kingdom. The company which produced the Bt Brinjal called the Monsanto continues to carry out bio-technology research in India. Bt crops have been having health impact on “*farm and factory workers*”¹².

World Wildlife Fund (WWF) has been providing suggestions to *US, EU and Canada* for new kinds of issues which could be incorporated in trade negotiations¹³ to make trade policy decisions more environment friendly. They want greater popular participation in the decision-making. They oppose the biasness in the decision-making

¹¹ www.greenpeace.org/international

¹² The Times of India, October 15, 2009, New Delhi

¹³ Neumayer, Eric.2001.”Chapter 7.Trade Liberalisation and the Environment”.in.Greening Trade and Investment: Environmental Protection Without Protectionism.Earthscan Publications.

process. The environmental NGOs try to help states link up environmental problems with trade policies being discussed at the WTO. However, representation from their representatives from the developing country not adequate. Developing countries have long list of endangered species which may require public-private partnerships and greater participation for conservation.

Through a recent newsletter they conveyed their expansion of sphere towards role of gender in wildlife conservation through their role in Zeng Cotton Textiles. These women have been hired by this industry to create hand-woven tigers as mementoes *3200 tigers for WWF*. They have offices in 48 countries. *WWF-IGNOU* initiative offering PG Diploma. It also considers *families* as part of the larger civil society network when they observed earth hour March 19. It had 400 wildlife species with larger flocks of migratory birds and endangered sea-turtles and whales. 2010 has been observed as the “Year of the Tiger” and have also been conserving atlantic Bluefin at serious risk of extinction. It has also been regularly participating in the CITES Conference of Parties.

It has different networks working within it: Forest and Trade Networks in China, India and Vietnam. It also has *Regional Trade Networks* and Information working for animal habitat. *TRAFFIC* is a network which has a goal to ensure wild plants and animals not threatened conservation of nature. *TRAFFIC* International is based in Cambridge and UK and now has offices in 5 continents, 7 regional programmes in 25 countries and territories and has the largest trade monitoring programme. It has a federal working pattern with both state and national government. It has been campaigning against trade and use of toxic chemicals to fight against climate change. They played a very significant role in making some taxpayers environmental and consumer coalition to get *\$200billion* subsidies removed. There is a network of grassroot groups in 77 countries. They also hire advocates for advocacy purposes.

Oxfam which is considered to be a development NGO working on problems of poverty has not represented India in any of the WTO Summits. They publish papers which get published in journals accessed by researchers and academicians. Within the DSB NGOs are not the only *civil society groups* which get the opportunity to present the evidence or suggestions, epistemic or scientific groups are also part of the same as

they contribute by providing adequate quantitative as well as qualitative data regarding risk assessments required to judge if any kind of trade restriction has been imposed by any member state. Areas of attention include “*education, agriculture, gender, HIV/AIDS and aid*”¹⁴.

Their means of influencing institutions include “*lobbying, research and advocacy*”. Within the WTO they focus on issues such as “*subsidies and anti-dumping*” specially for the developing countries by 2013. It is a confederation of 14 organisations with similar pattern of thinking. It was against arms treaty like Heinrich Boll Foundation. Also working for people in Afghanistan. They work in co-ordination with other international organisations such as *UNHCR, OCHA, ICRC, UNCTAD, WHO, ILO*. They also answer questions and influence decision-making of the Panel. Therefore, this kind of participation has been defined as “*consultative participation*”¹⁵.

Nevertheless, such kind of consultative role is not easy to access as it is no more objectively prescribed in the WTO norms and is therefore, not a compulsion and is subject to the powers and interpretive abilities of the Panelists. Here the epistemic community plays a *constructive role and is not against the society as many environmentalists argue against them. However, due to trade restrictive impact of such consultations and recommendations some developing countries oppose such a role for these communities within the DSB Panel.*

Friends of Earth (FOE) focusing on environmental disasters due to Oil Disaster in Gulf of Mexico. Eleven oystermen died to catch birds. Oil spill was due to importation of oil. They have been campaigning to draw volunteers for cleaning up of oil spill. 100,000 citizens becoming part of the larger network of activists, who also played the part of holding vigils for securing climate justice. They seek clean energy, solutions to global warming and protect people from toxic and new potentially harmful technology, low pollution transportation facilities which even *Centre for Science and Environment* did for Delhi, India.

¹⁴ www.oxfam.org

¹⁵ Pretty, Jules and David Smith.2004.”Social Capital in Biodiversity Conservation Management”.in.Conservation Biology, Vol.18,No.3(June 2004),p.p.631-638.Blackwell or Society for Conservation Biology

It opposed subsidies given to some corporate producers. They have been lobbying the World Bank for environmental and human rights purposes. They also banned international whaling for conservation purposes. Conservation may be defined as the process of preventing further deterioration in the prevailing situation of any environmental resource, whereas Preservation may be a process of preventing rotting or staleness of *any food or animal product or part such as jams, pickles, smoked salmon and so on.*

Centre for Science and Environment (CSE) was established by *Anil Aggarwal and Sunita Narain* with the objective of promoting research and promote advocacy for public interest¹⁶. Since they emphasise so much on advocacy and research they belong to the category of reformists and not radicals. They accept the already existing and functioning state-market institutional structures. They are positivists who gather factual evidence against state and market products and outputs and want to help states overcome them. Despite having found the presence of pesticides (DDT) in soft-drinks it failed to drive them out of the markets due to the failure of states to ratify the Multilateral Agreement on Persistent Organic Pollutant. They could not even get eco-labelling imposed on them at the local sphere.

However, they have been working on the ground-water pollution problem for the peasants. It can also be categorized under the *epistemic community*. At the local sphere in Delhi it has succeeded in getting the world's largest network of *CNG PUBLIC TRANSPORT SERVICES and NETWORK* as a replacement for polluting diesel buses. They had also been one of the activist group (dormant one) involved in getting Sustainable Development incorporated within the WTO Preamble¹⁷. CSE is also trying to campaign against hazardous "e-waste".

CARE International is a non-governmental organisation with professional staff capacity of over ten thousand of which about nine thousand belong to the countries in which this NGO establishes a tran-national structure. The US affiliate of this NGO has an income of US\$40 million. It has been providing education to 150,000 farmers

¹⁶ www.cse.org

¹⁷ www.wto.org

through 6000 schools in Bangladesh which has helped increase the productivity of fish for trade purposes¹⁸. Glob-international Civil Society have been active in creating new issues and meanings¹⁹ as well as identities in various societies. There is a greater sense of belongingness among the members of these groups along with their membership in the state apparatus to a more social and philanthropic associations. Signature on e-mails and newsletters by any individual belonging to any organisation asserts that belongingness.

CONCLUSION

From the entire historical and descriptive research on the topic I could deduce that due to hyper-liberalisation in the twentieth century which we understand as Globalisation which is being increasingly institutionalized by different global governance agencies or organisations such as the United Nations, the WTO, World Bank and the IMF along with the different kinds of environmental and other kinds of regimes created for ensuring global co-operation as well as co-ordination for a specific objective that has been having global implications in divergent forms. These organisations and regimes which have been primarily state initiatives signify the diminishing state capacities and abilities and also *glob-international collective acknowledgement* on part of the states on such a loss that they have been undergoing. State participation in these engagements and organisations and the varying bargaining powers of the have been helping rise of different kinds of “*non-state actors*” to emerge as glob-international force.

The emergence, growth and spread of *economoprofit-making actors* such as the Trans-national Corporations have been an outcome of a type of chain reaction of an institutionalized and well *structured economic globalisation* which has to a large extent have cut across the traditional public-private divide thereby creating a

¹⁸ Pretty, Jules and David Smith.2004.”Social Capital in Biodiversity Conservation Management”.in.Conservation Biology, Vol.18, No.3 (June, 2004).p.p.634

¹⁹ Mueller, Carol..”Chapter 10: Conflict Networks and the Organisations of women’s liberation”.in.New Social Movements: From Ideology to identity ed. Enrique Larana, Hank Johnston and Joseph R. Gusfield.
<http://books.google.co.in/books?id=YeGINvARb4cC&pg=PPI&XTtloPYOW&dq=new+social+mov>.

“consumer society”. The fact that the states now views citizens as consumers it seeks greater co-operation from them as citizens to regulate their behaviours vis-à-vis state and markets to share the burden along with the states as their duties. The states now want to decentralise further but beyond the conventional form of such devolution that is being practiced as an outcome of the advent of globalisation during the early 1990s. The states also require partnerships such as the *Bhagidari programme* and the creation of the “Knowledge Commission” between states and society.

Economic globalisation aims at a generalized development and welfare generation. The basic understanding of development is freedom from all kinds of insecurities which includes depravity, poverty, unhygienic environment, lack of education, health facilities and infrastructure for the common citizens who require such services in the form of public goods which are supposed to be provided by the state. The states already has two kinds of service providers and resource mobilisers: the bureaucracy and the markets. The former is challenged due to allegations of corruption, excessively driven by state politics and dependent on political instructions and status quo.

The latter on the other hand, boasts of being transparent and democratic for the citizens. However, in practice it is biased in favour of the consumers and not the citizens. Economic integration has also led to framing and creation of wants, needs and desires. However, such a privilege is enjoyed by a selected section of the society. Our society, from a developing country perspective, continues to have a population which works as contractual labourers, begging children and people on the street, poor farmers committing suicides due to dependence on groundwater and monsoons for agricultural cultivation purposes despite the practice of Green Revolution and transfer of capital through banks for the development of these sectors. Free trade is important for states to practice however, the job of distribution lies solely with the states.

The withdrawal of United states from the health, sanitation²⁰ and insurance services, the withdrawal of aid by England to India signify the growing incapacity of different

²⁰ The Times of India on March 17, 2010 cited WHO-UNICEF report 17% of the World Population still lack toilet facilities. The Indian government state and municipality both have been providing such services along with an NGO called Sulabh but the cleanliness level are poor in the state provided toilets. 638million people in India have not been provided the facility of toilets which leads to health

states in the distribution sector. Since the concept of contemporary glob-international civil society from the developed world was the first to highlight such incapacities of the states and had been challenging them for greater participation devoid of biases based on race, gender and also regional affiliations such as Eastern Europe. East European Societies were not allowed to have a share of the benefits which their Western European counterparts gained from the US, similarly the developing countries which were closer to the Eastern bloc began activism in the form of NAM and NIEO. However, due to debt crisis these societies failed to capitalize on such kind of state-led activism and require new agents or actors to help them fulfill the duties of a “welfare or relatively autonomous state”.

Activism is no more confined to street mobilization but have taken the form of research and academic work, online campaigning and other kinds of peaceful mechanism. Glob-international civil society use “social power”²¹ derived from the society and different types of social relationships to sustain their job of mobilization. This is because power is required to make any kind of impact both on the society and the state. However, it is the rational use of such power which differentiates between power exercised by the social civil society groups and the non-state actors which use violence. Some scholars perceive the presence and significance of power even within networks.

The WTO is considered to be an extremely powerful organisation for greater economic co-operation and for ensuring trade-led growth and development. The decision-making system and the dispute settlement system sometimes prove to be detrimental to the societal and environmental needs and requirements of the system. If the system is too need-based it will bring more scope of protectionism as the popular will and desires will become excessively state driven. Therefore, the state has no choice but to open their markets for all kinds of goods and products to ensure democracy for the citizens. The WTO for having faced criticism for carrying out stealthy decision-making process, has been allowing limited participation to the civil

problems in the society due to, mixing of human waste with the environment. Sanitation services form a part of the environmental goods and services. Reports from other organisations may help in facilitating trade in various other sectors as well.

²¹ Social Power was put forth by Barry Barnes.

society actors in both institutionalized as well as interpretive way. The several kinds of cost-benefit analysis which states carry out are partially outcome of socio-economic demands.

The institutionalized way has been the Article v:2 which has been responsible in setting agendas for the WTO ministerial conferences only. In addition to this the WTO Public Forum has been inviting *academicians, researcher, business group representatives* and so on for free and open interactions and deliberations. NGOs also enjoy observer status in the WTO similar to the United Nations. However, the *denovo standard of review* is the most significant aspect of the WTO DSB as it is an interpretive mechanism exercised by the Panel according to the needs and requirements of the Panel and the disputing parties. This Article however, is being re-interpreted by the General Council to bring in NGO contribution even within the DSB. One has to be careful about the fact that *Article v:2* is different from *amicus curiae briefs* which are exclusively for the DSB. However, any civil society contribution in the DSB is brought under this category. Also the Panel networks with the epistemic or scientific groups are also under the category of *amicus curiae* according to the WTO website. The Reports on some occasions do not refer them as *amicus curiae*.

From my study I propose that the *de novo* is largely in control of the United States as they prefer deference standard of review. From the cases that could be covered it can be observed that the *de novo* can be used by states only in cases that are related health and environment particularly the SPS Agreement. Nevertheless, in the Gasoline case between the US and Venezuela the *de novo* could not be used due to US being one of the *disputing party*. *The conflict here is not between North and South but more between US and the rest. However, it is difficult to interpret it as US hegemony as the interpretation of factual and legal evidence lies with the Panel. Apart from this civil societies have also been used by states on a local basis only to provide the states with the evidence that could be presented to the Panel during the hearing.*

Participation in the WTO Ministerial Conferences have been biased in favour of North based offices of the glob-international NGOs. Although the WTO has the Committee on trade and environment it is mainly run by the state officials and has no

participation from the environmentalists²². The Trade Policy Review Mechanism (TPRM) could be developed into another mechanism for greater state-global-international civil society-WTO co-ordination and interaction so that the organisation becomes aware of the externalities and the problems states and societies face in the implementation process. The Panel establishes networks with epistemic communities through the de novo for adequate risk assessment and management programme which the states may find it difficult to achieve. Global Trade Point Network (GTP Net) provided by the WTO which helps medium sized enterprises (SME) to acquire information and telecommunication technology and services thereby increasing market accessibility for them as more customers get information about these enterprises.

The scope for de novo is limited also because it is not a compulsion. The civil society actors also use transport networks such as air, train (local) for establishing interaction and co-ordination with other civil society actors as well as the WTO. The WTO also has an online comments forum on its website where even common people can post their views and comments on the organisation and its functioning. Most of the director generals of the WYO have belonged to either EU or New Zealand where administrative reforms have been of the similar pattern based on public-private partnerships due to which over the years the civil society involvement has also increased.

Jubilee 2000 (in 1996)²³ is a partnership of different NGOs dealing with development issues in the United Kingdom which later emerged into a large international social movement. The literature however, does not specify the reason behind the rise of such a movement. It has a history of mobilising fifty thousand people in Birmingham against the G-7 meeting and later about twenty four million people in other countries. However, they have not been able to establish networks to interact with global institutions of governance. It also faces the problem of north-south gap. However, the

²² Robert O'Brien et.al. *Contesting Global Governance*

²³ Anheir, Helmut and Themudo, Nuno. "Organisational forms of Global Civil Society: Implications of going global"

Southern strands of this movement are still active mainly against problems of trade in finances and their impact on the society.

Amnesty International (1961) is a “*transnational group*” started by a group of British Lawyers as volunteers and now has several student groups, specialists, networks and coordinators. Its membership strength is more than one million. Due to its massive expansion to hundred countries within a span of forty years it underwent frequent reorganisation process. It has a complex governance structure.

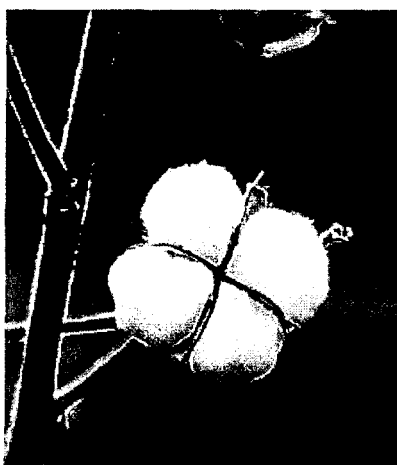
Since state capacity has not been defined by any scholar in appropriate terms it is subject to interpretation. State may define capacity in terms of the entire state as an apparatus or an organisation based on institutions²⁴ with sufficient amount of co-operation and co-ordination among these organs. Budgeting forms a part of such organisation process which the state may increase by means of revenues and taxes. In addition it has to depend on market mechanisms to enhance such capacity. Markets define capacity in terms of finances or FDIs, trade liberalisation, GDP and GNP. It is the co-ordination and interaction of these capacities that determine the needs of the states and consequently the individuals. Since markets get impetus from the global institutions of economic governance the societies try to develop their own capacities both through their labour and intellect to put forth their demands to the states and state institutions. This is how these actors make local knowledge and information significant for state, society and the activities of international organisations. Movements such as Jubilee 2000 which began in Britain continues to function in the South against the problems of conditionalities imposed by international organisations and the societal implications of these conditions. Oxfam Britain 2002, third World Network also carries forward the campaigns against reach to the markets. Gender movements are also part of such activism.

Environmental Justice Foundation

On Wednesday 25th and Thursday 26th April, EJF hosted a roundtable for sustainable and ethical cotton in London.

²⁴ Amartya Sen Development as Freedom OUP 2000

The meeting was a rare opportunity to bring together a mixture of organisations including major retailers, NGOs, campaigning groups, and consultants to discuss important topics, such as how to eradicate child labour in the cotton industry, the environmental and human health impacts of cotton, together with an overview of industry initiatives and their supply chains.



Organisations and speakers included:

Mali Association for Participatory Development (AMADIP), AOFG India, Better Cotton Initiative, Ethical Trading Initiative, Fair Planet, Fairtrade Foundation, Greenfibres, H&M Hennes & Mauritz AB, Helvetas, Historic Futures, Hivos, Human Rights Watch, IIED, India Committee of the Netherlands, International Fair Trade Association, International Labour Rights Fund, International Research on Working Children, IUF, Labour Behind the Label, Legambiente, MADE-BY Foundation, Marks and Spencer, Monsoon Accessorize, MV Foundation, Next Plc, OBEPAB, Oikos Norway, Open Society Institute, Organics for Kids, Oxfam GB, Patagonia, Pentland Group, PAN Germany, PAN UK, Quantum Group, Sainsbury's, Soil Association, Solidaridad, Swedish Society for Nature Conservation, Tesco, Topshop, Twin and Twin Trading, Youth and Society, Tajikistan.

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