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Challenging the Global Structure Through Self-Determination: An African Perspective

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CHALLENGING THE GLOBAL STRUCTURE THROUGH SELF-DETERMINATION: AN AFRICAN PERSPECTIVE

DAVID KATONA^{*}

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INTRODUCTION

During past decades, anti-Marxist concerns stemming from the Cold War era shaped United States foreign policy towards sub-Saharan Africa.¹ The United States containment strategy constrained trade relations with the African region to particular strategic interests, which resulted in its economic marginalization in the wake of the Soviet Union's collapse.² In the current era, the prospect of a unified global economy drives the agendas of contemporary administrations, thereby re-characterizing the former adversarial nature of international relations.³ During the Clinton Administration in particular, the international community made great strides towards increased international trade, foreign investment, privatization, and global economic cooperation.⁴ Notwithstanding these advances, po-

1. See Jon H. Sylvester, *Sub-Saharan Africa: Economic Stagnation, Political Disintegration, and the Specter of Recolonization*, 27 LOY. L.A. L. REV. 1299, 1312 (1994) (noting that the United States competed with the Soviet Union to befriend various African States considered strategically important due to their abundance of natural resources and the availability of strategic locations for ports and air bases).

2. See A. Peter Mutharika, *The Role of International Law in the Twenty-First Century: An African Perspective*, 18 FORDHAM INT'L L.J. 1706, 1710 (1995) (noting the marginalization of Africa by the international community due in part to the loss of strategic importance and the lack of economic lure of the region in the post-Cold War era). In 1994, Africa represented only two percent of United States foreign trade. See Carol Thompson, *In Focus: Economic Policy Toward Africa*, 2 FOREIGN POL'Y IN FOCUS 23 (last modified Jan. 1997) <<http://www.foreignpolicy-infocus.org/briefs/vol2/v2n23eaf.html>> (attributing an increase in United States aid to Africa in 1985 to United States-Soviet tensions).

3. See, e.g., *Twenty-third Western Economic Summit*, BULLETIN EU (last modified July 8, 1997) <<http://www.europa.eu.int./search97cgi/s...te=EC-HTML>> (statement of the Group of Seven) (noting the significance of the commitment of the heads of state of the seven major industrial democracies—the Group of Seven Nations—to globalization as a means for world growth). The Group of Seven Nations consists of the United States, Japan, Germany, France, the United Kingdom, Italy, and Canada. See *id.* With the gradual increase of market-oriented economies, the International Monetary Fund ("IMF") envisions a uniform international economic order. See THE UNIQUE NATURE OF THE RESPONSIBILITIES OF THE IMF: THE CODE OF CONDUCT IN DIVERSE CIRCUMSTANCES, IMF PAMPHLET SERIES, No. 46 (1992), available in <<http://www.imf.org/external/pubs/ft/pam/pam46/pam4606.htm>> (discussing the institution's role in facilitating the transition to a universal economic regime).

4. See *All Free Traders Now?*, ECONOMIST, Dec. 7, 1996, at 21 (noting that during the 1990s international trade outpaced world output, and foreign direct in-

litical, social, and economic instability in most of the sub-Saharan African nations—including extreme poverty, corruption, civil violence, environmental pollution, underdevelopment, and despotism—precluded the region from participation in global integration initiatives.⁵

In 1999, a different reality exists in sub-Saharan Africa—the region is ripe for greater economic assimilation into the international community.⁶ During 1995 and 1996, thirty-five sub-Saharan African countries averaged growth rates of approximately five percent, more than doubling the growth rates of the previous decade.⁷ Indeed, today the region harbors nearly 700 million inhabitants and an immensely rich natural resource base.⁸ Due to its unique history of turmoil, however, sub-Saharan African economic development will require spe-

vestment increased by 40% in 1995).

5. See *expanding Trade with Sub-Saharan Africa: Hearings Before the Subcommittee on Trade of the House Ways and Means Committee*, 105th Cong. 2-3 (1997) (statement of H.E. Newai Gebre-Ab, Chief Economic Advisor to the Prime Minister of Ethiopia) (testifying about the international marginalization of Ethiopia and other sub-Saharan nations due to consistent internal strife). The European Economic Community, even after the colonial era, has historically given more attention to Africa than the United States. See generally European Union, *Europa, Development Policy* (visited Apr. 16, 1999) <http://europa.eu.int/pol/dev/info_en.htm> (emphasizing that the Lomé Convention, signed in 1975, is “far and away the most important regional agreement” for assisting most of the developed world, including the seventy African, Caribbean, and Pacific countries).

6. See WORLD BANK, 1997 ANNUAL REPORT 37 (1997) [hereinafter 1997 WORLD BANK REPORT] (stating that “sub-Saharan Africa’s economic recovery both accelerated and spread to more countries in 1996”). Specifically, gross domestic product (“GDP”) growth accelerated in twenty-three countries, seven countries reversed their GDP decline, and thirty-four countries recorded an improvement in per capita income. See *id.* Many African nations implemented economic policy reforms in an effort to open their economies to the global community. See Council on Foreign Relations, *Promoting U.S. Economic Relations With Africa*, AFRICA NEWS, May 1997 <<http://www.africanews.org/usaf/crftaskforce.html>> (statement of The Task Force) (discussing the “significant positive developments in Africa,” including a new leadership promoting a reform agenda). Indeed, The Task Force further recognized the “favorable economic and political trends in most African countries.” *Id.*

7. See 1997 WORLD BANK REPORT, *supra* note 6, at 37 (discussing aggregate growth rates for thirty-five African countries in 1995 and 1996).

8. See *id.* (discussing the demographics and topography of sub-Sahara Africa).

cial consideration to avoid further exploitation and bring the long-ignored region on par with the rest of the world.⁹

At the dawn of Africa's rising fortunes, the United States government is considering whether to adopt formally its first official trade policy towards the sub-Saharan region¹⁰ through the proposed African Growth and Opportunity Act ("African Growth Act").¹¹ This bill primarily seeks to implement a liberalized trade agenda, establishing the nations of sub-Saharan Africa as economic partners with the United States.¹² In its present form, however, the African Growth Act would increase the market-opening pressures of globalization¹³—forces that continue to generate a large global underclass.¹⁴ Thus, to

9. See Brian B.A. McAllister, *The United Nations Conference on Environment and Development: Opportunity to Forge a New Unity in the Work of the World Bank Among Human Rights, the Environment, and Sustainable Development*, 16 HASTINGS INT'L & COMP. L. REV. 689, 700-14 (1993) (listing several incidents where World Trade Organization ("WTO") and IMF structural adjustment initiatives had various adverse effects on human rights, the environment, and the political and social climate in sub-Saharan Africa); see also Council of Foreign Relations, *supra* note 6 (concluding that "African renewal . . . while largely self-generated, will nevertheless require significant international support and enhanced development consideration if it is to be sustained").

10. See *African Growth and Opportunity Act: Hearings Before the Senate Comm. on Finance*, 105th Cong. 2 (1998), available in 1998 WL 325460 [hereinafter June 17, 1998 Senate Finance Comm. Hearings] (statement of Madeleine K. Albright, Secretary of State) (announcing that "we [the United States] undertake the most fundamental change in our policy towards Africa since the independence movement blossomed on that continent four decades ago").

11. H.R. 1432, 105th Cong. (1998). The U.S. House of Representatives passed the Act on March 11, 1998, with bipartisan backing. See 144 CONG. REC. H1040-02, H1084 (daily ed. Mar. 11, 1998) (recorded votes) (tallying the final vote on the African Growth and Opportunity Act ("African Growth Act") at 233 to 186 with both Democrats and Republicans voting in favor).

12. See 142 CONG. REC. E1725-02 2 (daily ed. Sept. 26, 1996) (statement of Sen. Crane) (referring to sub-Saharan Africa's participation in the global marketplace as a step towards the nations in the region emerging as business partners rather than aid recipients).

13. See discussion *infra* Part III.A (analyzing how the African Growth Act forces IMF/WTO compliance).

14. See John T. Passé-Smith, *The Persistence of the Gap: Taking Stock of Economic Growth in the Post-World War II Era*, in DEVELOPMENT & UNDERDEVELOPMENT: THE POLITICAL ECONOMY OF INEQUALITY 15, 27-28 (Mitchell A. Seligson & John T. Passé-Smith eds., 1993) [hereinafter DEVELOPMENT & UNDERDEVELOPMENT] (concluding that the gap between sub-

many scholars the African Growth Act represents an unfettered opportunity for the United States' capitalist machine to further exploit Third World resources.¹⁵

Recent history suggests that economic dominance, not nuclear capability, is the coveted and feared weapon of the day.¹⁶ Recognizing the changing tide of international relations, the international community should empower developing nations to safeguard themselves against possible economic exploitation.¹⁷ Primarily, the poorest nations of this region need a shield to defend themselves against the neo-colonial weaponry of the modern world order. This Comment concludes that a modified version of "modern internal economic self-determination" is the only plausible form of protection that would allow sub-Saharan African countries to manage their own economic development.¹⁸

Part I of this Comment examines two primary provisions of the African Growth Act, while offering a developmental perspective on how to assess the policies contained therein. Part II discusses the miraculous growth experience of East Asia—the East Asian Paradigm—as a catalyst of the modern global trade paradigm that has evolved in the international arena. Part III demonstrates how the modern international system indirectly forces developing nations to accept and adopt the modern global trade paradigm—the so-called Neo-Classical Paradigm—that often proves disastrous for fledgling economies. Inherent weaknesses in the Neo-Classical framework have created a dramatic increase in the underclass of East Asian na-

Saharan Africa and rich countries, measured by per capita GDP, increased an average of \$232 every year since 1962 compared to an annual rise of \$142 in other poor countries).

15. See discussion *infra* Part III.B (discussing how the international system often proves harmful to developing nations).

16. See Steven Arnold, *From the Cold War to Cold Hearts? International Development in Search of its Future*, in IDEAS AND INFO ABOUT DEVELOPING EDUCATION 3, 4 (1996) (stating that multinational corporations are increasingly assuming the power of determining resource allocation).

17. See FANTU CHERU, *THE SILENT REVOLUTION IN AFRICA* 2-6 (1993) (discussing the extreme poverty, lack of economic development, and overall disappointing progress of Africa from the 1960s through the late 1980s).

18. See discussion *infra* Part V (advocating "self-determination" as Africa's shield against globalization).

tions and other nations around the world. Accordingly, this section illustrates the underclass phenomenon in order to understand the rise of anti-globalization movements that exist today. Part IV analyzes the current legal state of self-determination, a modern right that some scholars believe should be expanded beyond the colonial context. Finally, Part V of this Comment provides to the international community recommendations on interpreting the modern right of self-determination so as to bridge the current legal gap that prevents sub-Saharan African nations from using this principle as a means of protection from destructive global market pressures.

I. THE AFRICAN GROWTH AND OPPORTUNITY ACT

A. PROVISIONS

The African Growth Act arrived on the floor of the United States House of Representatives with strong support from all parts of the political spectrum, including President Clinton.¹⁹ Yet, the bill created an immediate undercurrent of intense criticism, emanating predominantly from African lobbying organizations and environmental and human rights groups.²⁰ Nevertheless, the House of Representatives

19. See Guy Gugliotta, *Africa Trade Bill Passes House; Legislation to Liberalize Policy Overcomes Strong Opposition*, WASH. POST, Mar. 12, 1998, at A4 (stating that 92 Democrats and 141 Republicans voted in favor of the African Growth Act, which was embraced by the Clinton Administration). President Clinton's administration, in fact, established a new economic approach to African development for the upcoming period. See *U.S. African Trade: Before the Subcomms. of Africa and Int'l Econ. Policy & Trade of the House Comm. on Int'l Relations*, 105th Cong. 2 (1997), available in 1997 WL 277066 [hereinafter *Deputy U.S. Trade Rep. Remarks*] (statement of Jeffrey Lang, Deputy United States Trade Representative) (announcing the administration's "Partnership for Promoting Economic Growth and Opportunities in Africa" Program as the executive approach for implementing trade relations with sub-Saharan Africa). The Deputy United States Trade Representative further explained that the "partnership begins with the simple but powerful idea that American firms are best served if they view African countries as partners in trade and investment." *Id.*

20. See generally TransAfrica, 28 *Prominent African Americans Urge Senate To Modify The African Growth and Opportunity Act* (visited Apr. 16, 1999) <<http://www.citizen.org/pctrade/Africa/transafr.htm>> (expressing several reservations about the current provisions of the bill); see also Letter from the Honorable Jesse Jackson, Jr., Congressman, to the Honorable Philip Crane, Congressman (last

passed the legislation since it cedes to the President the power to address the problems that the bill's opponents predict will arise after the Act's implementation.²¹ The Senate subsequently failed to vote on the bill. According to Congressman McDermott, one of the bill's co-sponsors, however, Congress will certainly reintroduce similar legislation next term, which would allow a Senate vote on the companion bill.²²

In its proposed form, the African Growth Act seeks to establish several key initiatives.²³ For the purposes of this Comment, only two

modified Mar. 10, 1998) <<http://www.citizen.org/pctrade/Africa/jessejr.htm>> (expressing Representative Jackson's concerns about H.R. 1432).

21. See 144 CONG. REC. H1040-02, H1066 (daily ed. Mar. 11, 1998) [hereinafter Rep. Royce Remarks] (statement of Rep. Royce) (claiming that the twelve eligibility guidelines of the bill are merely general and that each need not be satisfied in order for a country to qualify for consideration under the United States program). "The criteria call for countries to make as we say, and let me quote, 'continual progress toward establishing a market-based economy' relative to the 12 items listed in the bill." *Id.* The general consensus among House legislators was that, although the bill was "not perfect," any flaws in the African Growth Act were not serious enough to outweigh its benefits. See 144 CONG. REC. H1040-02, H1068 (daily ed. Mar. 11, 1998) (statement of Rep. Owens). Indeed, opening trade relations with such a large, virtually untapped market is in the best economic interest of the United States. See Deputy U.S. Trade Rep. Remarks, *supra* note 19 (stating that the United States cannot afford to ignore such a huge potential market in Africa in the face of growing global economic competition). In fact, the Preamble to the African Growth Act expressly includes the "mutual economic interest of the United States and sub-Saharan Africa." H.R. 1432, 105th Cong. sec. 2 (1998).

22. See Telephone Interview with Jennifer Crider, Public Relations Coordinator for Congressman McDermott (Nov. 15, 1998) (stating that although the current version of the African Growth Act did not reach a vote in the Senate, a similar bill will certainly be introduced in the next session).

23. See H.R. 1432, 105th Cong. sec. 6 (1998) (requiring the President to establish a United States/Sub-Saharan Africa Trade and Economic Forum, an initiative to foster close economic ties between the governments and private sectors of the two regions). Traditionally, aid has been the predominant characteristic of the relationship between the United States and Africa. See *Obstacles to U.S.-African Trade and Investment: Hearing Before the Subcomm. on Africa and on Int'l Econ. Policy and Trade of the House Comm. on Int'l Relations*, 105th Cong. 3-4 (1997) (statement of David F. Gordon, Overseas Development Council) (commenting on the two pillars that characterize the United States-African past policy: humanitarian concerns and sustainable development through foreign assistance programs). Due to rather mixed results and a decline in political support for aid programs, the United States increasingly cut its budget in this area; much of the aid supplied today is tied to strict enforcement requirements, which constrict the aid's overall effectiveness. See ANNE O. KRUEGER, ECONOMIC POLICIES AT CROSS-PURPOSES 36

provisions of the Act will be examined. The first provision seeks the negotiation of a United States/Sub-Saharan Africa Free Trade Area with country eligibility based on a list of criteria and the full discretion of the President.²⁴ The second provision strives to bring all eligible beneficiaries in compliance with World Trade Organization ("WTO") standards²⁵ and to encourage exports by reauthorizing the Generalized System of Preferences ("GSP") program²⁶ for an enhanced list of products,²⁷ most notably textile goods.²⁸ These two

(The Brookings Inst. ed., 1993). In fact, the United States completely denied aid appropriations to the African Development Bank in 1997. *See* CONGRESSIONAL BUDGET OFFICE, A C.B.O. STUDY: THE ROLE OF FOREIGN AID IN DEVELOPMENT 66 (1997). The African Growth Act, however, does include some minimal assistance measures. *See* H.R. 1432, 105th Cong. secs. 5, 10-12 (1998) (encouraging various intergovernmental organizations—the United States Agency for International Development, the Overseas Private Investment Corporation, the Development Fund for Africa, and the Export-Import Bank—to create assistance packages for the implementation phase of the African Growth Act); *see also id.* sec. 13 (creating a new office for an Assistant Trade Representative to the sub-Saharan region).

24. *See* H.R. 1432, 105th Cong. sec. 7 (1998) (declaring and describing the U.S.-Sub-Saharan Africa Free Trade Area); *id.* sec. 4 (offering twelve criteria that the President would use in determining the eligibility of countries as trading partners). Whether a country must satisfy all of the eligibility requirements of the Act, or whether the list is merely suggestive and flexible has created great controversy. *Compare* TransAfrica, *supra* note 20, at 2 (complaining that Section 4 would require annual certification via the list of new requirements), *with* Rep. Royce Remarks, *supra* note 21 (urging that the African Growth Act merely offers general guidelines and each criterion need not be satisfied).

25. *See* H.R. 1432, 105th Cong. sec. 4(b)(2)(B) (1998) (stating that a nation's eligibility will be partly based upon its pursuit of WTO membership).

26. *See* Trade Act of 1974 sub. ch. V, 19 U.S.C. sec. 2461 (1994 & Supp.) (amended 1976, 1979, and 1985) (establishing the Generalized System of Preferences ("GSP") program, which gives duty free treatment to a list of specified goods for a specific period of time). Section 2463(a) lists articles to be considered for designation. *See id.* sec. 2463(a). The Africa Growth Act amends Section 503(a)(1) of the Trade Act of 1974. *See* H.R. 1432, 105th Cong. sec. 9 (stating "[s]ection 503(a)(1) of the Trade Act of 1974 [19 U.S.C. sec. 2463(a)(1)] is amended").

27. *See* H.R. 1432, 105th Cong. secs. 8-9 (1998) (amending and extending the GSP program to include non-import-sensitive goods).

28. *See id.* sec. 8(b)(2) (revealing the African Growth Act's heavy emphasis upon expansion of the textile industry as a way of fortifying and diversifying African industry). United States textile unions and workers represent a large part of the domestic resistance to the passage of this bill due to their fears that their jobs will either be exported overseas or lost to the cheaper goods of foreign competitors. *See*

provisions certify the United States' adoption of a trade liberalization strategy towards sub-Saharan Africa—a paradigm very similar to those employed with little success in the past by the International Monetary Fund (“IMF”)²⁹ and in the North American Free Trade Agreement (“NAFTA”).³⁰

B. A DEVELOPMENT PERSPECTIVE ON THE AFRICAN GROWTH ACT

Since trade liberalization is the goal, it is not surprising that the United States corporate sector is one of the African Growth Act's largest proponents.³¹ Multinational corporations stand to acquire many new resources and much new business via expanded market access if Congress ratifies a similar bill.³² With increased global trading in recent years, transnational corporations have assumed a supreme position in the world hierarchy, seizing many of the roles

June 17, 1998 Senate Finance Comm. Hearings, supra note 10, at 5 (statement of Mark Levinson, Chief Economist, Union of Needletrades, Industrial, and Textile Employees) (remarking that the United States textile labor force dropped by 14% in four years due to the GSP program under the NAFTA). Textile lobbies also portend a transshipment problem due to the African Growth Act's low point-of-origin standards. *See* 144 CONG. REC. H1040-02, H1044 (daily ed. Mar. 11, 1998) (statement of Rep. Burton) (expressing fear that the 35% value-added standard will be exploited by Chinese textile manufacturers trying to take advantage of the duty free treatment of African goods).

29. *See infra* Part III.B (discussing the IMF's formula of indiscriminate capital account liberalization and Thailand's experience in the early 1990s).

30. *See generally* Public Citizen, *The Failed Experiment: NAFTA at Three Years* (visited Apr. 18, 1999) <<http://www.citizen.org/pctrade/nafta/reports/epi-joint.htm>> (analyzing in its Executive Summary the policies and rather devastating results of the free trade agreement).

31. *See* Public Citizen, *Meet the Multinational Corporations Behind the Lugar-Crane Africa Bill* (visited Apr. 16, 1999) <<http://www.citizen.org/pctrade/trade-home/factsheet.html>> (listing Amoco, Caterpillar, Chevron, Enron, General Electric, K-Mart, Mobil, Occidental Petroleum, and Texaco as some of the major corporate proponents).

32. *See* Abid Aslam, *US Discovers an African Trade Bonanza* (visited Apr. 16, 1999) <<http://www.mg.co.za/mg/news/97apr2/24apr-trade.html>> (noting that the return on United States corporate investments in Africa consists of three times the worldwide rate in recent years); *see also* Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF., Jan.-Feb. 1997, at 50, 57 (noting that private capital flows have grown twice as fast as trade, shifting more power to corporations and leaving governments less free choice in setting economic rules).

previously performed by States.³³ Foreign direct investment, the fastest growing, most abundant form of financing in today's market, bolsters the power of these corporations and makes their influence in politics all the more prevalent.³⁴ The corporations' profit-maximizing motives, however, may prove quite destructive to a developing nation's weak domestic industries.³⁵

Corporate interests aside, the benefits realized from incremental degrees of trade liberalization are undeniable. Global trading networks have absorbed increased exports from all sectors, which has allowed the further expansion of certain industries and increased the flow of foreign capital, essential for development efforts.³⁶ The world, however, also has witnessed the devastation of economies governed purely by market forces.³⁷ Many scholars therefore reject

33. See Arnold, *supra* note 16, at 4 (arguing that multinational corporations are becoming increasingly powerful and replacing democracy with a sort of global corporate dictatorship).

34. See generally OVERSEAS DEVELOPMENT INSTITUTE, FOREIGN DIRECT INVESTMENT FLOWS TO LOW-INCOME COUNTRIES: A REVIEW OF THE EVIDENCE (Briefing Paper No. 3, Sept. 1997) (stating that of all forms of financing, foreign direct investment is preferable and grown to 35% of all official flows of capital in 1996).

35. See Mathews, *supra* note 32, at 63-65 (describing the weakening of government power in the area of economics in the face of growing markets and increased corporate competition, a fact that may lead to increased conflicts).

36. See Albert Fishlow & Catherine Gwin, *Lessons from the East Asian Experience*, in MIRACLE OR DESIGN? LESSONS FROM THE EAST ASIAN EXPERIENCE 1, 9 (Overseas Dev. Council Policy Essay No. 11, 1994) [hereinafter MIRACLE OR DESIGN?] (certifying that the world economy could handle a massive expansion of exports from all the developing countries, even if the countries grow at a rate equal to that of the East Asian markets). A World Bank study predicts that if all the developing countries expand at rates similar to those of the Newly Industrialized Countries ("NICs"), their imports to markets in the United States, the European Community, and Japan would amount only to 3.7% of the total of these three markets. See THE WORLD BANK, THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY 361 (1993) (discussing the World Bank's study); CONGRESSIONAL BUDGET OFFICE, *supra* note 23, at 17-18 (stating that the countries that have recently attracted the greatest amount of private capital experienced vigorous growth rates between 1990 and 1994). Sub-Saharan African nations received only three billion United States dollars in private capital in 1994. See *id.*

37. See discussion *infra* notes 98-102 and accompanying text (reviewing the collapse of the Thai economy when its capital sector was virtually fully liberalized).

cookie-cutter models for economic development.³⁸ Accordingly, it is necessary to examine the Neo-Classical Trade Paradigm,³⁹ which underlies the modern international economic system and the African Growth Act, to adequately assess the policies contained in the Act.⁴⁰ Prior to this examination, it is necessary to discuss the past growth experience of East Asia as a prelude to the modern economic order.

II. THE EAST ASIAN PARADIGM

A. PRELUDE TO THE MODERN ECONOMIC ORDER

Over the span of approximately three decades, the nations of East Asia have ascended from the ranks of economic underdevelopment to a status rivaling most highly developed nations.⁴¹ This extraordinary experience has left development theorists and economists alike wondering how to duplicate such fast-paced growth in other developing countries.⁴² In spite of the mixed speculation and failed para-

38. See JAMES H. MITTELMAN & MUSTAPHA KAMAL PASHA, *OUT FROM UNDERDEVELOPMENT REVISITED* 242 (Timothy M. Shaw ed., 1997) (noting that countries vary greatly according to their historical structures, resources, and cultural norms, which makes a prescriptive approach to development unworkable); Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L. L. 339, 341 (1995) (asserting that the Western notion of liberalism cannot adequately respond to the historical, political, and social conditions of Africa). Mutua states that the "individualist, narrow formation of human rights is not sufficient to pull the African continent back from the abyss." *Id.* at 340. Currently, Africa's Charter on Human and People's Rights—the Banjul Charter—departs from the "narrow formalities of other regional and international human rights instruments." *Id.* at 339.

39. See MITTELMAN & PASHA, *supra* note 38, at 133 (explaining that neo-classical theorists see outward economic orientation, implying trade liberalization, as the key to development); see also *infra* Part III (discussing the Neo-Classical Paradigm).

40. See MITTELMAN & PASHA, *supra* note 38, at 130 (stating that the new orthodoxy in international development showcases the NICs' experience).

41. See *id.* at 131 (illustrating the dramatically improved conditions of this region, including sustained average GDP growth rates between eight and ten percent for nearly two decades).

42. See *id.* at 133 (arguing that the NICs' experience has proliferated neo-classical ideals, such as free-market access and fast-paced global integration, as the prescription for economic success in the global South). Prior to the growth period of the NICs, the prominent development orthodoxy, called "modernization theory," represented a simplified model of the various stages a traditional society passes

digms of the 1970s and 1980s, the liberalized market economy has emerged as the dominant structure promoted by most economic scholars.⁴³ Accordingly, market liberalization has become the hallmark of the new global capitalist movement and is couched within the African Growth Act.⁴⁴ Recently, however, scholarly research suggests that there are significant contradictions between this modern liberalization market theory and the methods employed by East Asian nations to develop their economies.

B. LESSONS FROM THE EAST ASIAN NEWLY INDUSTRIALIZED COUNTRIES ECONOMIC DEVELOPMENT EXPERIENCE AND THEIR IMPLICATIONS FOR SUB-SAHARAN AFRICA

The World Bank recently conducted a comprehensive study—the first of its kind on the East Asian region by a multinational institution—about the remarkable growth experience of the economies of

through on its path to industrialization. *See id.* at 37-38. Thus, subsequent experience taught scholars that there is more to the development formula than the mere imposition of a rigid framework upon all societies, each exhibiting varying socio-political cultures. *See id.* at 242.

43. *See* INTERNATIONAL MONETARY FUND, 1998 ANNUAL REPORT 51-52 [hereinafter 1998 IMF ANNUAL REPORT] (discussing a renewed call for trade liberalization efforts by the IMF in member and non-member countries). In 1997, the directors of the IMF called for more cooperative efforts between the IMF, the World Bank, and the WTO to advance and quicken the pace of trade liberalization in developing countries. *See id.* (stating that “trade reform was important in promoting transparency and good governance—reducing the scope for administrative discretion, incentives for lobbying for protection, and opportunities for rent seeking”). *See generally* WORLD TRADE ORGANIZATION, REPORT OF WTO DIRECTOR GENERAL TO WTO MINISTERIAL CONFERENCE (May 1998) (visited Nov. 15, 1998) <<http://www.lcds.org/wtoreport.htm>> (discussing the launch of a trade liberalization program for least developed countries (“LDCs”) involving the WTO, IMF, International Trade Commission, UNCTAD, UNDP, and World Bank).

44. *See generally* James H. Mittelman, *The Dynamics of Globalization*, in GLOBALIZATION I, 1-9 (James H. Mittelman ed., 1996) (outlining the changing social, political, and economic dimensions—from a global division of labor to increased democratization—felt around the world as a result of market liberalization and integration efforts). The Group of 77, comprised of developing nations, recently held a workshop on globalization in order to prepare a unified response to advocates of this model. *See* Ambassador Oscar de Rojas, *Intervention at the SID/G77 Workshop on Globalization*, Address at the SID/G77 Workshop on Globalization (last modified May 6, 1998) <<http://www.globalpolicy.org/soccon/global/rojas.htm>> (stating that in his view “globalization is and purports to be nothing less than the triumphant, unabashed apotheosis of capitalism”).

East Asia, collectively known as the newly industrialized countries ("NICs").⁴⁵ The World Bank's Report concluded that four main factors contributed to the success of the economies in the region: macroeconomic stability, extensive investment in social infrastructure, efficient export-push efforts, and selective government intervention.⁴⁶ Many scholars view the conclusion regarding State intervention as the most telling aspect of this Report.⁴⁷ In fact, they believe that such government control during East Asia's early development was a significant factor in the final equation,⁴⁸ contrary to the World Bank's conclusions.⁴⁹

45. See generally THE WORLD BANK, *supra* note 36 (analyzing the major aspects of the East Asian experience, which the World Bank claims was the result of its institutional policies). Certain mathematical analyses reveal that external factors had little or nothing to do with the NIC phenomenon; rather, it was the internal structure, social and political, that proved statistically significant in regression calculations. See *infra* notes 48-57 and accompanying text (discussing the role played by external and internal factors in the NICs growth and criticizing the World Bank Report's conclusions).

46. See Fishlow & Gwin, *supra* note 36, at 4-5 (listing the four growth factors but de-emphasizing the role that State intervention played in initiating development and its inclusion as an element in future models).

47. See, e.g., Stephan Haggard, *Politics and Institutions in the World Bank's East Asia*, in MIRACLE OR DESIGN?, *supra* note 36, at 81, 87-90 (using Indonesia, Korea, Taiwan, and Thailand to argue that strong State governments were the reason for the macroeconomic stability that led these countries to economic success).

48. See *id.* One scholar notes that there is a profound difference in the way that the World Bank and East Asians view the role of government with respect to economics. See Robert Wade, *Selective Industrial Policies in East Asia: Is The East Asian Miracle Right?*, in MIRACLE OR DESIGN?, *supra* note 36, at 55, 69-74 (contrasting the East Asian "ingredients" approach with the World Bank's "framework" approach). The East Asian "ingredients" approach conceives the economy as a whole—the structure of which is made up of multiple industries—the future paths of which can be conducted through various stages of industrialization by manipulating industrial policies. See *id.* The World Bank's "framework" approach, however, takes a more microcosmic view—entailing correcting price distortions within industries to accommodate individual interests. See *id.*

49. See generally Wade, *supra* note 48, at 56-65 (asserting that the World Bank report on the NICs was flawed for concluding that State policies were not effective). Wade discusses the reasons why the report was flawed, which are as follows: first, the report utilized the "industrial structure test," which uses cross-country figures to compare the NICs economies against average industrial structures, incorrectly assuming that free market forces alone would have propelled the East Asian economies to meet the averages; second, the "total factors productivity test," which the World Bank Report applied, as well, comparing growth in productivity be-

These scholars assert that the State-directed policies helped mobilize and effectively allocate resources in the calculated direction of domestic industry, while extracting high performance through incentive schemes.⁵⁰ Their evidence indicates the various preferences, including favorable credit options, trade terms, and price concessions,⁵¹ that East Asian governments provided to their domestic businesses, which consists largely of State-Owned Enterprises (“SOEs”) and Chaebols—local cartels.⁵² Often, these preferences came in the form of incentive-based contests run by the governments to bolster domestic performance and meet export goals—a result that the World Bank incorrectly assumed resulted solely from the export orientation of the economy.⁵³ Moreover, the centralized governments in East

tween promoted and non-promoted industries, is irrelevant. *See id.*; *see also* Dani Rodrik, *King Kong Meets Godzilla: The World Bank and the East Asian Miracle*, in *MIRACLE OR DESIGN?*, *supra* note 36, at 13, 31-33 (discussing the inconsistencies of using the “total factors productivity test”). Scholars opine that the World Bank’s fear of underlying its credibility as an intellectual leader drove it to deemphasize the State intervention factor. *See, e.g.*, Wade, *supra* note 48, at 56 (proposing this theory).

50. *See* Gary Gereffi, *The Elusive Last Lap in the Quest for Developed-Country Status*, in *GLOBALIZATION*, *supra* note 44, at 53, 79 (discussing how East Asian governments extracted local capital for domestic industry and helped establish vertical linkages between exporters and suppliers).

51. *See* Haggard, *supra* note 47, at 94-95 (explaining that access to cheap inputs and domestic industry’s protected status, through generous financing and subsidies, were crucial components to the region’s export growth); *see also* MITTELMAN & PASHA, *supra* note 38, at 141-42 (referring to practices of providing low interest rate loans to key industries as well as giving selective favorable treatment to certain targeted industries).

52. *See* MITTELMAN & PASHA, *supra* note 38, at 142-45 (revealing a highly domestic and government favored economy). 133 SOEs accounted for 10% of Korea’s GNP, while 30 Chaebols accounted for 28% and 45% of Korea’s total manufacturing capacity and total domestic capital, respectively. *See id.* 450 SOEs in Singapore represented 21.4% of sales in the manufacturing sector in 1983. *See id.*

53. *See* Haggard, *supra* note 47, at 96 (asserting that contests were run on the basis of a set of clear criteria with a strong enforcement mechanism). Scholars criticize the World Bank Report for its failure to establish causal statistical links between the export strategy, the fundamental stressed as most successful by the World Bank, and the resulting domestic growth. *See, e.g.*, Rodrik, *supra* note 49, at 33-34, 42 (criticizing the World Bank Report). Instead, the World Bank relied on vague assumptions. *See id.* Furthermore, East Asian countries accomplished technological spillover—a much-hailed benefit of this export-oriented strategy—at least in part through clever governmental schemes and pirating efforts. *See id.* at

Asia utilized fiscal repression measures to protect domestic industries from excessive foreign competition.⁵⁴

Meanwhile, on the side of social justice, East Asian government policies assured that the fruits of the resulting growth were shared quite equitably among the population, a factor strongly stressed by both scholars and the World Bank as a key to the NICs' successes.⁵⁵ Those people to whom the dividends did not fall as freely were systematically and structurally silenced by governments that transferred their policy implementation powers to technocratic elite groups. These groups were able to distribute rewards more efficiently than the governments since they functioned free from the pressures of politics.⁵⁶ Accordingly, despite some flaws, development theorists laud the World Bank Report for its candor on these issues.⁵⁷

34-35 (citing studies on the spillover phenomenon, which demonstrate little evidence and great ambiguity in the World Bank's theoretical argument); *see also* Wade, *supra* note 48, at 75-76 (providing an example that occurred in Taiwan, where the government utilized delay tactics for approving a foreign business' import shipments to extract technological information for a domestic chemical producer).

54. *See* MITTELMAN & PASHA, *supra* note 38, at 141-42, 145 (evidencing Korea's use of emergency tariffs and investment regulations and Singapore's use of restrictive licensing practices to control foreign competition).

55. *See* Haggard, *supra* note 47, at 91-93 (discussing executive acts of good will, including land reform and redistribution, the provision of low-income housing, and the favoring of certain disadvantaged, domestic ethnic groups).

56. *See* Rodrik, *supra* note 49, at 43 (highlighting the existence of technocratic structures in East Asia, which made it easier to implement policies and distribute rewards); *see also* Haggard, *supra* note 47, at 90 (stating that technocratic structures are a very important lesson in the NIC story and an important component of a democratic society, as well). Strong governments in East Asia, also allowed most of the NICs to splinter the power of unions, alleviating the upward pressure on wages. *See id.* at 99-100. The fact that this elite group was able to collaborate with the upper echelon of the business society in the form of deliberation councils was also a key factor in the NICs miraculous growth, as it prevented indifference by the technocrats in the outcome of such policies. *See* Rodrik, *supra* note 49, at 43. Although, the southeast Asian NICs used less government-directed tactics than their northern regional partners, one scholar explains that growth in the southern region was probably the result of the so-called "neighborhood effect," a spillover from northern Asian growth and policies. *See* Wade, *supra* note 48, at 65-69 (discussing the regional arrangement where southeast Asian nations assumed an outward orientation and began exporting goods manufactured largely with northeast Asian inputs); *cf.* Walden Bello & Stephanie Rosenfeld, *The Rise and Crisis of the Dragon Economies*, in *DEVELOPMENT & UNDERDEVELOPMENT*, *supra* note 14, at 421, 425 (stating that Korea, Singapore, and Taiwan all became dependent on Japan and

Indeed, the Report's discussion of State-intervention is extremely important in the context of the African Growth Act, particularly with respect to the Act's reluctance to recognize strong governments.⁵⁸ Only nations that are willing to abide by the WTO and IMF market-oriented rules attain trading status under the Act.⁵⁹ Thus, the Act's eligibility requirements are contrary to the NICs' policies and therefore may prevent preferential treatment of domestic investors, price controls, subsidies, and other financial measures that ensure protection for domestic industries.⁶⁰ Although proponents of the bill argue that its provisions are flexible and non-binding,⁶¹ the United States, the WTO, and the IMF have a history of prying markets open while repressing government intervention therein.⁶² Further, despite experiences of successful growth with less government intervention than that employed by the NICs,⁶³ development experts assert that a State's role is still important in the development process. Although the State's role may have changed over the past few years in light of modern circumstances, its importance to the development process

thus ran a huge trade deficit with Japan).

57. See Rodrik, *supra* note 49, at 33 (asserting that due to the World Bank's acknowledgment it will no longer be plausible to argue that East Asian prosperity was due to minimal government intervention).

58. See H.R. 1432, 105th Cong. sec. 4(8),(10),(11) (1998) (calling for "minimizing government intervention," increased "private ownership," and removing restrictions on investment, respectively).

59. See *id.* secs. 4(b)(2)(B), 4(b)(3), 4(b)(4), 8(b)(1), 8(b)(2), 10(a), 10(c)(5)(B) (mandating some level of compliance with either WTO or IMF policies).

60. See *id.* sec. 4(a)(6), (a)(8), (a)(11), (b)(2) (establishing anti-market-intervention criteria, which the President will consider in determining a nation's eligibility under this Act).

61. See Rep. Royce Remarks, *supra* note 21 (stating that the eligibility requirements of the Africa Growth Act are merely suggestive—not binding).

62. See *infra* Part III.B (discussing the effects of IMF policies on Thailand); *infra* note 92 (suggesting that external forces dominate the agendas of African nations); see also 1998 IMF ANNUAL REPORT, *supra* note 43, at 51 (renewing the IMF's aim to liberalize trade in the modern era).

63. See Michael T. Rock, "Twenty-five Years of Economic Development" Revisited, in WORLD DEVELOPMENT 1787, 1789 (1993) (concluding that growth episodes occurred in as many cases where inequality initially existed as where equality was a precondition). However, when initial conditions are more equitable growth will reduce poverty to a greater extent than when initial conditions are of a more unequal nature. See *id.* at 1796.

has not diminished.⁶⁴ The African Growth Act would,⁶⁵ and IMF structural adjustment programs do, place great pressure on sub-Saharan nations to minimize overall government intervention.⁶⁶

Regardless, virtually all development scholars agree that equitable social conditions preceding periods of growth will lead to higher quality growth.⁶⁷ For example, during the 1960s primary and secondary schooling in the NICs was more prominent than in any other developing society.⁶⁸ At least one scholar asserts that this widespread educational push accounted for ninety percent of the resultant growth in certain parts of the region.⁶⁹ Additionally, income and land distributions within these East Asian countries were comparatively highly equal.⁷⁰ It is quite clear that political history and culture—namely, the

64. See generally Leo Panitch, *Rethinking the Role of the State*, 1997 INT'L POL. ECON. Y.B. 83, 108-13 (1997) (reflecting on the changed role of the State). Today, the international community requires States not to attempt control over the means of production and capital flows but to restructure themselves in the form of a more democratic, ideologically different set of institutions. See *id.* Many scholars believe this lack of State power led to the sub-Saharan region's developmental deficit. See, e.g., Rock, *supra* note 63, at 1792 (adopting this view).

65. See *supra* note 59 (citing the relevant provisions and language of the Act that would minimize government intervention).

66. See discussion *infra* Part III.A (explaining why developing nations have little discretion in setting market standards).

67. See Haggard, *supra* note 47, at 87 (stating that if there is a lesson to be learned it is that wealth inequalities must be attacked as early as possible); Rock, *supra* note 63, at 1797 (concluding that initial conditions substantially affect the outcome of a development project).

68. See Rodrik, *supra* note 49, at 16 (using cross-country averages to show nearly universal primary and high secondary schooling for the East Asian countries).

69. See *id.* at 22 (alleging that 90% of the growth in Korea, Malaysia, Taiwan, and Thailand, and 75% of the growth in Japan were the result of a highly educated population).

70. See *id.*, at 19-26 (using statistical calculations to show that the initial equality in the region explained a significant part of the growth in East Asia); Jeffrey Sachs, *Growth in Africa: It Can Be Done?*, ECONOMIST, June 29, 1996, at 20 (citing studies that show cross-country growth is related to income conditions); ECONOMIC COMMISSION FOR AFRICA, UNITED NATIONS, AFRICAN ALTERNATIVE FRAMEWORK TO STRUCTURAL ADJUSTMENT PROGRAMS FOR SOCIO-ECONOMIC RECOVERY AND TRANSFORMATION: A POPULAR VERSION 1-2 (Environmentally Sustainable Dev. Proceedings Series No. 12, Ismail Serageldin & Richard Barrett eds., 1995) [hereinafter AFRICAN ALTERNATIVE FRAMEWORK] (asserting African

Confucian ethic—played the dominant role in creating the favorable circumstances in this region.⁷¹

Thus, upon consideration of the value of initial equitable social conditions prior to periods of significant growth, sub-Saharan Africa is at a clear disadvantage.⁷² Further, its societies lack the historical unity, structure, and power necessary to effectuate change through such East Asian methods.⁷³ Nonetheless, one lesson from the NICs experience is that such growth-antecedent equitable conditions are prerequisites for successful long-term growth. Delineating the economic growth scenario helps to illustrate why this is the case. When an economy is injected with large amounts of new capital, societal distribution occurs along existing channels.⁷⁴ If such channels do not effect fair apportionment, the resulting social unrest creates an unattractive investment environment.⁷⁵ In contrast, the African Growth Act pushes market forces in advance of social equality, the underly-

nations must improve patterns of income distribution in order to develop successfully); Rock, *supra* note 63, at 1789 (citing various studies revealing that initial wealth distributions influence subsequent trends of inequality).

71. See MITTELMAN & PASHA, *supra* note 38, at 136-40 (stating that Hong Kong, Japan, Korea, Singapore, and Taiwan all prompted land reform measures before the industrialization era). Some scholars contend that Confucian values, focusing on education, achievement, and family and communal sharing and solidarity, assisted in economic growth. See generally Herman Kahn, *The Confucian Ethic and Economic Growth*, in DEVELOPMENT & UNDERDEVELOPMENT, *supra* note 14, at 169, 170-71 (providing an overview of the Confucian ethic and its effect on economic growth).

72. See AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 70, at 298-300 (identifying the precarious state of education and high unemployment levels, among other conditions, as symptoms of a social crisis in Africa that is one of the major contributors to the socio-economic crisis currently plaguing the continent).

73. See MITTELMAN & PASHA, *supra* note 38, at 152-53 (summarizing the unique structures of NIC governments and contending that increased democratization in today's world will not permit Third World States to achieve the desired changes through duplication of NIC methods). In short, the NICs methods, which often relied on authoritarian governmental practices for their success, will not be ripe for duplication. See *id.*

74. See Rodrik, *supra* note 49, at 23 (citing a study by Kevin Murphy, Andrei Shleifer, and Robert Vishny, which implies that as long as existing channels appease the middle class—the natural source of demand for home-based manufacturers—industrialization will occur with less potential strain).

75. See *id.* (citing a study of Japan, Taiwan, and Thailand, which indexes social and political instability in the face of inequality).

ing theory being that the products of economic growth will provide the resources necessary to achieve such social equality.⁷⁶ As with any wager, developing nations should have a choice as to whether or not to accept the risk of failure inherent in such a tactic, which the Act fails to provide.

Overall, the section above serves less as an argument for a specific development model⁷⁷ and more as a basis for undercutting certain mainstream views advocated by the IMF, the World Bank, and the United States.⁷⁸ The world can no longer claim that the NICs' experience was the result of purely liberalized market forces.⁷⁹ East Asian tactics, however, are less workable in today's global environment where market-opening pressures subject government policies to a more stringent level of international scrutiny.⁸⁰ In addition, the structure of the world economy and developing governments' eagerness to join the globalization movement are making rapid liberalization an almost mandatory prerequisite for participation in the inter-

76. See 143 CONG. REC. E751-01, E751 (daily ed. Apr. 24, 1997) (statement of Rep. Philip Crane) (declaring that private sector investment "must serve as the catalyst for sub-Saharan African countries to compete in the global marketplace, to become self-reliant, and to raise the standard of living for their people").

77. But see AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 70, at 19-32 (proposing a long-term-focused development model for African nations that takes into account the peculiarities and realities of each nation while ensuring the active participation of all members of society).

78. Compare Theotonio Dos Santos, *The Structure of Dependence*, in DEVELOPMENT & UNDERDEVELOPMENT, *supra* note 14, at 193, 200-02 (arguing that transnational corporations dominate world economic relations, leading to developing economies that respond to foreign interests rather than domestic interests, are exploited for cheap labor and profits are repatriated, forming a dependence towards developed nations that dominate the world economy), with Immanuel Wallerstein, *The Present State of the Debate on World Inequality*, in DEVELOPMENT & UNDERDEVELOPMENT, *supra* note 14, at 217, 226-30 (describing a model in which the global economy is one capitalistic entity where nations make up the subparts of the economy and where economic fluctuations are natural).

79. See *supra* notes 46-56 and accompanying text (discussing the multiple tactics East Asian governments utilized to control their respective economies and development).

80. See Haggard, *supra* note 47, at 106-08 (arguing that both the developed nations and multinational corporations are exerting stronger market-opening force in the present era, making it harder for other developing countries to utilize NIC tactics without answering to worldwide pressure).

national market.⁸¹ Accordingly, the next section examines how the IMF and the WTO have increased control over developing nations and institutionalized the trade liberalization approach in world politics.

III. THE NEO-CLASSICAL PARADIGM

A. MULTINATIONAL INSTITUTIONS' INCREASING POWER OVER THE LEAST DEVELOPED COUNTRIES LEADS TO LIMITED DEVELOPMENTAL OPTIONS FOR THE COUNTRIES

Due in large part to the debt crisis of the 1980s, the IMF's power⁸² over recipient countries—often the least developed countries ("LDCs")—increased significantly.⁸³ With an inflated budget and the desperation of developing economies to achieve stability after the crisis, the IMF's role as a provider increased in importance. Thus, the IMF amended its Articles to include the power of surveillance over economic policy.⁸⁴ In fact, the IMF asserts that it adopted the policy

81. See discussion *infra* Part III.A (exposing the coercive force of the international global market towards a free market paradigm).

82. Compare NASSAU A. ADAMS, *WORLDS APART: THE NORTH-SOUTH DIVIDE AND THE INTERNATIONAL SYSTEM* 29 (1993) (stating that the IMF was originally established to stabilize countries' exchange rates in the short term), with International Monetary Fund, *The IMF At A Glance* (last modified Aug. 1998) <<http://www.imf.org/external/np/exr/facts/glance.htm>> (listing the IMF's duties today as surveillance, financial assistance in the medium term, and technical assistance). The World Bank, as well, now offers development financing, rather than reconstruction financing as originally envisioned, and its role now overlaps to a certain extent with the IMF). Cf. ADAMS, *supra*, at 31-33 (stating that many development scholars view the modern roles of these institutions as a mediator of North-South relations).

83. See generally ADAMS, *supra* note 82, at 150-53 (discussing the IMF's increased power via measures taken against non-OECD countries). Adams, specifically outlines how non-OECD countries quickly built up large debt positions after the oil shock of the 1970s. See *id.* The IMF imposed various austerity measures to ensure repayment of outstanding debts, and thus, earned substantial profits, subsequently increasing power as a result. See *id.* at 154-55 (noting, however, that recipient economies collapsed in recession and suffered rather severely). Because the United States has been and remains quite influential in the IMF decision-making process, the United States' power over developing countries has increased as well. See *id.*

84. See International Monetary Fund, *The Role of the IMF: Financing and its Interactions with Adjustment and Surveillance-Introduction* (visited Apr. 16, 1999)

of increased surveillance over economic policy in developing countries to bolster "transparency."⁸⁵ This surveillance power led to the further practice of offering technical policy advice to recipients as well as non-recipients of IMF loans.⁸⁶ Rigid implementation conditions that attach to IMF loans, however, in effect make such advice mandatory.⁸⁷ Moreover, for the world's poorest nations, most of which are African,⁸⁸ the IMF created additional conditions imposed through a recent program called the Enhanced Structural Adjustment Facility ("ESAF").⁸⁹

To some extent, the IMF's tightening of control can be justified due to the recent increased assistance it has provided to developing countries. High expectations and reliance on IMF programs in the past, however, led to the overburdening of government agendas.⁹⁰ Consequently, sub-Saharan governments find themselves more accountable to international creditors than to their own citizens.⁹¹ As

<<http://www.imf.org/external/pubs/ft/pam/pam50/pam50int.htm>> (explaining the amendment which will allow the IMF to carry out its "responsibilities to seek to avoid and help to correct maladjustments in countries' balance of payments").

85. 1998 IMF ANNUAL REPORT, *supra* note 43, at 49.

86. See International Monetary Fund, *supra* note 84 (listing the IMF's various roles, including surveillance and providing financial as well as technical advice to countries).

87. See 1998 IMF ANNUAL REPORT, *supra* note 43, at 50 ("In April 1998, the Interim committee endorsed the central of the IMF, in particular its role in supporting the necessary reforms through conditionality.").

88. See Rock, *supra* note 63, at 1789 (noting that 22 of the 36 poorest countries in the world are sub-Saharan African nations).

89. See 1998 IMF ANNUAL REPORT, *supra* note 43, at 53 (describing the Enhanced Structural Adjustment Facility Agreement as "provid[ing] support in the form of highly concessional loans to low-income member countries facing protracted balance of payments problems"). See generally Diana E. Moller, *Intervention, Coercion, or Justifiable Need? A Legal Analysis of Structural Adjustment Lending in Costa Rica*, 2 SW. J.L. & TRADE AM. 483 (1995) (offering an in-depth analysis of the intrusive nature of conditionality loans by the IMF and concluding that the IMF approach is not successful).

90. See Vicki Waye, *The Constituent Objectives of Development-Zimbabwe Case Study*, 28 INT'L LAW. 385, 396-99 (1994) (tracing the decline in Zimbabwe's social order after the implementation of a World Bank Structural Adjustment Program—creating a strong opposition to the ESAF's ineffectual policies).

91. See Fantu Cheru, *New Social Movements: Democratic Struggles and Human Rights in Africa*, in GLOBALIZATION, *supra* note 44, at 145, 150 (arguing that African governments effectively have lost their capacity to manage their domestic

such, sub-Saharan governments often tend to neglect the pressing domestic social needs of their countries.⁹²

In addition to the IMF's heightened control, the World Trade Organization holds the keys to the global trading channels, the only means for sub-Saharan countries to break out of their third world status and escape IMF dependence.⁹³ Yet, the WTO's powerful market-liberalizing agenda is obvious.⁹⁴ Thus, many scholars' powerful arguments for slower growth in Africa⁹⁵ may never advance to fruition given the WTO's philosophy of emphasizing reciprocal trade concessions rather than trade preferences. Additionally, in its May 1998 Ministerial Conference, the WTO adopted an integrated framework for developing countries, which aggressively urges them to seek membership.⁹⁶ As a result, many African countries are joining the regime, further increasing pressure on non-members to conform in order to avoid falling behind.⁹⁷

B. FAILURE OF THE MODERN PARADIGM IN EAST ASIA AND OTHER REGIONS AND COUNTRIES THROUGHOUT THE WORLD

In the 1990s, the IMF promotes a formula of indiscriminate capital account liberalization as one prescription for successful economic

affairs).

92. See Waye, *supra* note 90, at 399 (asserting that the trade liberalization and deregulation model imposed by the World Bank did not address the nation's structural inequalities because the Bank did not implement the basic needs approach as it declared it would).

93. See *All Free Traders Now?*, *supra* note 4, at 21 (stating that membership in the WTO has increased dramatically over the last several years as developing countries seek to reap the benefits of freer trade).

94. See *id.* (discussing the WTO's "free trading commitment" and challenge "to continue liberalising [sic] trade in goods and services"); *cf.* 1998 IMF ANNUAL REPORT, *supra* note 43, at 51-52 (calling for a cooperative effort between the WTO, the IMF, and the World Bank to quicken the pace of liberalization in the future).

95. See, e.g., AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 70 (advocating for a gradual approach that links sectors and results in more equitable growth).

96. See generally WORLD TRADE ORGANIZATION, *supra* note 43 (discussing the trade liberalization program the WTO established where LDC's participate more fully in the implementation of the WTO framework).

97. See *id.* at 1 (declaring that thirty-four LDC's decided to join the program and more are expressing interest).

development, adopted most notably by the East Asian nations.⁹⁸ After a massive deregulation effort spawned by IMF pressure, Thailand, after 1993, became the model of this approach.⁹⁹ Within the next three years, approximately fifty billion American dollars flooded the very liquid Thai economy.¹⁰⁰ Recent unstable market conditions, however, spurred the exodus of foreign private investors from the Thai market.¹⁰¹ As a result of these conditions, havoc reigned over the Thai economy as well as other East Asian nations, and the GDP growth in Thailand fell to negative 3.5% as of February 1998.¹⁰² This occurrence, however, is not unique to Thailand or the East Asian region.¹⁰³ IMF-related freefalls occurred in countries such as in Mozambique, Costa Rica, the Philippines, and Indonesia.

For example, in Mozambique the IMF stabilization strategy failed, thereby worsening the condition of the country and causing many IMF allies to criticize the organization's strategy.¹⁰⁴ In Costa Rica,

98. See *International Monetary Fund: Hearings Before the Subcomm. on General Oversight and Investigations of the House Comm. on Banking and Financial Services*, 105th Cong. 1 (1998) (statement of Walden Bello, National Chairman, Akbayan Party) [hereinafter *IMF Hearings*] (discussing the capital account liberalization strategy, which allowed a massive influx of foreign capital to enter the East Asian markets).

99. See *id.* at 2 (highlighting the rapid transition of the Thai economy from a highly regulated market to a completely liberalized economy with few government controls).

100. See *id.* at 3 (noting some twenty-four billion American dollars in highly liquid capital flooding an economy that had very little experience in dealing with such large amounts of money).

101. See *id.* (explaining how leveraging an economy through foreign capital can prove disastrous if the market becomes panicky). Between 1988 and 1996, Thailand's debt bloated from \$21 billion to \$89 billion without eliciting even a warning from IMF officials. See *id.* at 191.

102. See *IMF Hearings*, *supra* note 98, at 4-5 (tracing the negative progression of the Thai economy after the fallout). Thailand's government estimates that the crisis translates into a negative 6.5% annual drop in GDP in the second quarter of 1998. See *id.*

103. See generally WORLD BANK, *ADJUSTMENT IN AFRICA: REFORM, RESULTS AND THE ROAD AHEAD* (1994) (discussing the slower growth in agricultural production of African countries after instituting IMF structural adjustment policies).

104. See generally Joseph Hanlon, *Strangling Mozambique: International Monetary Fund "Stabilization" in the World's Poorest Country*, MULTINATIONAL MONITOR, July/Aug. 1996, at 17 (stating how IMF allies are calling the IMF's policies senseless and excessive).

IMF conditionalities caused domestic levels of production, employment, and wages to severely decline.¹⁰⁵ Similarly, the Philippines realized the highest poverty rates among non-communist Asian nations after implementing IMF policies.¹⁰⁶ Finally, in Indonesia, 118.5 million people, 60.6% of the population, currently live under the poverty line after the imposition of an IMF reform program.¹⁰⁷

Despite external attempts to explain the downturns experienced in Thailand and other countries, certain IMF officials pinned responsibility upon their own ineffective policies.¹⁰⁸ Moreover, the East Asian crisis generally demonstrates that an underlying trend of irresponsible financial management practices seems to precipitate when private creditors and borrowers are given unregulated access to markets free of responsibility of the consequences of a possible recession, due to the IMF's acquired bailout role.¹⁰⁹ In other words, relinquishing nearly all governmental control over capital flows and market forces tends to produce economic backlashes.¹¹⁰

105. See generally Moller, *supra* note 89, at 501-14 (discussing the harsh reality and prescription type format of IMF conditionalities upon Costa Rica, which ended up worse off in the long run).

106. See *IMF Hearings*, *supra* note 98, at 8 (examining the IMF's effects on the Philippines).

107. See *id.* at 8 (examining the Indonesian freefall).

108. See *id.* at 5 (stating that Hubert Neiss, the IMF's Asia-Pacific Director, admitted that the IMF's policies played a role in the Thai economy's collapse). The IMF also revealed in an internal memo that the Indonesian banking crisis resulted from its own directive. See *id.* Davison Budhoo, a former senior manager at the World Bank, once stated that "everything we did from 1983 onward was based upon our new sense of mission to have the south privatized or die; towards this end we ignominiously created economic bedlam in Latin America and Africa." Brendan Martin, *Gains Without Frontiers: Global Privatization*, in 7 *NEW STATESMAN & SOCIETY* 22, 23 (Statesman and Nation Publishing Co., 1994).

109. See *IMF Hearings*, *supra* note 98, at 4 (statement of Ian Vasquez, Project Director, Cato Institute) (testifying that both private lenders and government regulatory bodies wittingly miscalculated the risk of their portfolios knowing that the IMF would bail them out in case of trouble). This "Moral Hazard" dissuades beneficiary governments from altering their macroeconomic policies to alleviate resultant problems. See *id.* at 3.

110. See Rodrik, *supra* note 49, at 42-43 (demonstrating that government-set policies played a large role in managing successful development of the East Asian region); see also Moller, *supra* note 89, at 505 (concluding that an open market regime only works properly in a perfect or near perfect capital market, which eludes most LDCs).

The above analysis proves important when considering the African Growth Act's eligibility requirements mandating compliance with IMF policies and sub-Saharan government's removal of "restrictions on investment."¹¹¹ Thus, the African Growth Act essentially would force qualifying sub-Saharan African nations to adopt this potentially destructive Neo-Classical framework. Unfortunately, many African governments will likely submit under international pressures to these mainstream ideals, despite the silent pleas of those who are being disadvantaged by globalization.¹¹² Historical crises induced by the Neo-Classical model highlight a trend towards the exploitation of indigent classes all over the world. Therefore, the harsh realities of today's world economic paradigm as well as the relative success of other development models—namely, the NICs model—justify the fear of a wholesale acceptance of the modern framework. Accordingly, it is reasonable to demand some form of legal protection be made available to nations who decide to protect their domestic constituencies by adopting appropriate internal measures.¹¹³

111. H.R. 1432, 105th Cong. sec. 4(a)(11) (1998). Some opponents of the Act fear that this broad language seeks to remove all restrictions on investment, resulting in a regime where foreign investors receive equal treatment—a provision contained within the OECD's Multilateral Agreement on Investment. See *TransAfrica*, *supra* note 20 (criticizing the Act "requiring African governments to cede their ability to shape foreign investment to best suit their broad public interests); see also H.R. 1432, 105th Cong. sec. 4(a)(6) (1998) (including "national treatment for foreign investors" as an eligibility factor). Even viewing this issue in the light most favorable to proponents, the fact that the Act mandates compliance with the IMF's policies—which push investment liberalization—supports the hypothesis that sub-Saharan Africa will have to comply. See discussion *supra* Part III.A (demonstrating the increased stronghold that the IMF has gained over developing nations). Furthermore, minimizing a sub-Saharan government's ability to tax excess profits of foreign corporations would hurt the country's ability to "fund essential public services." *TransAfrica*, *supra* note 20.

112. See Martin Khor, *WTO Party Marred By Anti-Globalization Protests* (visited Apr. 16, 1999) <<http://www.twinside.org.sg/souths/twn/title/1753-cn.htm>> (describing a recent protest by more than 10,000 people from all over the world at a WTO Ministerial Conference who were rallying against the social dislocation caused by free trade). A recent study demonstrates that over a long period of time trade liberalization and corporate influence have negative effects upon development. See Volker Bornschier & Christopher Chase-Dunn, *Transnational Penetration and Economic Growth*, in *DEVELOPMENT & UNDERDEVELOPMENT*, *supra* note 14, at 239, 242-60 (demonstrating that transnational penetration over the long run slows investment, which results in the decline of developing economies).

113. See discussion *infra* Part V (outlining the legal protection that should exist

IV. MODERN SELF-DETERMINATION

Over the past several years, scholars, governments, and inter-governmental organizations alike have heavily scrutinized the right to self-determination.¹¹⁴ Although the colonial conception of self-determination has arguably attained the level of *jus cogens*,¹¹⁵ it is the scope of the right's modern meaning in the face of changed circumstances in the international community that has left analysts undecided on the implications of this right.¹¹⁶

Due to colonial imperialism, self-determination initially represented a form of protection from external discrimination against a particular homogeneous group.¹¹⁷ Legitimately exercising self-determination in this context usually resulted either in secession to form a new independent entity or in unification with an existing entity.¹¹⁸ In the post-colonial era, however, because of the potentially

for disadvantage nations).

114. See Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1, 6-15 (1993) (providing and developing the multitude of positions that States and scholars have expressed over the years regarding the modern meaning of self-determination).

115. See *id.* at 2 (stating that no norm of international law has been so widely accepted as that of self-determination); see also Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1287, 1288 (1991) (discussing the international law community's wide acceptance of the concept of self-determination).

116. See Eric Kolodner, *The Future of the Right to Self-Determination*, 10 CONN. J. INT'L L. 153, 157 (1994) (contending that the legal status of the right is rather unclear, and that although the international community highly respects the general right, there is confusion about which aspect of the right should qualify as a customary norm).

117. See Hannum, *supra* note 114, at 2-3 (revealing the history of self-determination, which grew out of the ethnic and linguistic political demands in earlier centuries). Self-determination became the means by which these earlier ethnic groups organized politically. See *id.*

118. See *id.* at 39-57 (providing a comprehensive analysis of the debate over whether self-determination should include the right to secession). Issues of the debate include, whether a qualifying group can unilaterally declare secession to attain independence, and whether remedies other than secession are viable in light of the disruptiveness of secession in such an interconnected world. See *id.* Some scholars believe that broadening the definition of self-determination may result in an incessant cycle of demands for secession. See, e.g., Kolodner, *supra* note 116, at 159-60 (advocating this theory).

extreme international consequences of exercising such forms of self-determination in an increasingly interconnected world,¹¹⁹ serious debates concerning the definition of "self,"¹²⁰ the implications of employing the right, and other possible remedies besides secession erupted in an effort to clarify the concept.¹²¹ Some scholars even advocate the complete disposition of this right outside of the decolonization context.¹²² Currently, there is no consensus on the issue in the international community.¹²³

The enactment of two widely-accepted international instruments, the International Covenant on Economic, Social, and Cultural Rights ("ICESCR")¹²⁴ and the International Covenant on Civil and Political Rights ("ICCPR"),¹²⁵ sheds some light on this controversy for many scholars. The first Articles of both instruments read: "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their eco-

119. See Hannum, *supra* note 114, at 30-31 (stating that nearly all African governments adopted a very narrow definition of self-determination due to the extreme heterogeneous nature of their societies).

120. See *id.* at 37-39 (discussing a European Community debate on the definition of self, which utilized a territorial approach). This approach utilized the group by territorial boundaries to arrive at a definition of self in the Yugoslavian context. See *id.* However, this approach neglected many ethnic groups within territorial borders that would have been included had an ethnicity approach been used. See *id.*

121. See *id.* at 1 (stating that the modern conception of self-determination is still quite vague).

122. See Kolodner, *supra* note 116, at 157 (opining that some international scholars feel that international law should no longer recognize this right as it was a creature of the colonial era).

123. See *id.* (discussing the unclear status of self-determination in today's legal environment).

124. G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6136 (1966) [hereinafter ICESCR]. See generally J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT'L L.J. 1, 25-26 (1995) (advocating heightened recognition of the ICESCR, which has been given less attention than the International Covenant on Civil and Political Rights, because structural adjustment programs have deteriorated the economic and social rights of Africans).

125. G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6136 (1966) [hereinafter ICCPR].

nomic, social and cultural development.”¹²⁶ This declaration has at least two important implications. First, it implies the continued recognition of self-determination beyond the de-colonization context.¹²⁷ Second, it links self-determination with the human rights corpus of international law by transferring the right to individuals, as opposed to groups.¹²⁸

Some scholars opine that the transfer of the right to individuals implies the bifurcation of self-determination into two separate parts: external self-determination and internal self-determination.¹²⁹ The external component effectively encompasses the traditional understanding of self-determination, which includes the issue of secession.¹³⁰ On the other hand, the internal element enshrines a more humanistic quality by endowing all peoples with certain fundamental democratic rights.¹³¹ The scope and meaning of the exercise of internal self-determination remains uncertain.¹³² This ambiguity and flexibility, however, may prove advantageous to certain groups within the

126. *Id.* at 52, ICESCR, *supra* note 124, at 49.

127. *See* Oloka-Onyango, *supra* note 124, at 11 (supporting the continuation of self-determination by requiring States to report the activities they undertake to further the rights contained in the instrument).

128. *See* Hannum, *supra* note 114, at 57-59 (noting that the ICESCR and the ICCPR, in effect, link self-determination with the corpus of human rights).

129. *See, e.g., id.* at 66 (inferring the existence of an internal element of self-determination because of the notion that secession is not necessary—a State may take certain internal steps to prevent an outcry for secession); *see also* Kolodner, *supra* note 116, at 159-66 (explaining the characteristics of both internal and external components of self-determination).

130. *See* Kolodner, *supra* note 116, at 159 (relating the issue of secession to the external component of self-determination). Internal self-determination is a more peaceful, and thus preferable, alternative to succession. *See id.* at 162.

131. *See* Hannum, *supra* note 114, at 57-59 (stating that certain traditional human rights have, as a result of the two covenants, been combined with self-determination to form an instrument that encompasses certain democratic ideals, as well as normal human rights issues).

132. *See* Kolodner *supra* note 116 (recognizing the lack of clarity with regard to the status of self-determination). Kolodner and other scholars believe that self-determination should be fused with human rights norms to prevent State abuses. *See, e.g., id.*, at 67-69.

international community since the right's meaning can be adapted to the altering conditions of the world order.¹³³

Presently, however, the notion of self-determination bears several limitations preventing its potential benevolent use. First, the definition of "self" appears to only include a homogeneous group defined by a common territory, a distinct heritage, ethnicity, language, or religion.¹³⁴ Second, beyond secession/unification or the grant of power to a qualifying group, the sole existing enforcement mechanism for internal self-determination is the practice of reporting, a procedure by which States are required to submit annual reports regarding measures taken to ensure the panoply of rights guaranteed by the international instruments.¹³⁵ The primary purpose behind State reporting is to keep the international community informed so that it may advise an offending State on how to resolve any dispute before a dissident group demands independence.¹³⁶ Such peaceful resolutions are sympathetic to the highly interconnected world that exists today and more reflective of a human rights approach.¹³⁷ Reporting, however, is generally ineffective because many participating sub-Saharan nations fail to carry out their reporting duties, and no enforcement mechanism dissuades such conduct.¹³⁸

133. See Hannum, *supra* note 114, at 58 (arguing that "the right to participate effectively in the political and economic life of one's country...[is] likely to become an increasingly important focus of human rights activists and theorists in the future").

134. See *id.* at 35-39 (analyzing the multitude of definitions that various States and instruments have used to determine what groups the "self" element covers). Although the inclusion of indigent groups in this definition is a novel proposition, the spirit of self-determination arguably would support this addition. See *id.* at 61 (stating that "it is when a group's very identity is threatened—by denial of the group's existence, seizure of its lands, or denigration of its culture—that salvation is sought through political and economic self-determination").

135. See Oloka-Onyango, *supra* note 124, at 11 (revealing that reporting is the only implementation mechanism for the ICESCR). This enforcement mechanism, however, has not proven to be very useful in the past as many nations simply neglect the practice. See *id.* at 15.

136. See Kolodner, *supra* note 116, at 162 (noting that there seems to be a preference in the international community for exercising internal measures before resorting to a claim for independence through external self-determination).

137. See *id.* (arguing that secession is less preferable in today's highly integrated world).

138. See Oloka-Onyango, *supra* note 124, at 15 (stating that over half of the

Despite this ineffective reporting mechanism, many scholars applaud the new internally focused interpretation of self-determination contained within the ICESCR and ICCPR.¹³⁹ This Comment, however, argues that the modern construction of internal self-determination is not adequate to deal with the harsh realities of today's international climate. Whereas in the earlier part of this century political oppression plagued the world order, economic domination presently lies at the heart of the global dilemma.¹⁴⁰ Today, oppression of the lower classes takes the place of ethnic persecutions of the past.¹⁴¹ That is not to say that ethnic discrimination has altogether ceased, but that, as a result of a change in the world order from a bipolar/adversarial system to a cooperative system, the victims of global subjugation have changed. International law must also change to reflect such modern transformations.¹⁴² The next section recommends the legal modifications necessary for successful economic development in sub-Saharan Africa.

V. RECOMMENDATIONS

As discussed above, the right of self-determination evolved out of the necessity to protect victims of the colonial world order.¹⁴³ Today, there are new victims in the modern world order. For example, in the present era, there is a growing trend of economic stratification between the world's wealthy and Africa's impoverished peoples.¹⁴⁴

countries that have acceded to the ICESCR have overdue reports).

139. See, e.g., Kolodner, *supra* note 116 (supporting an internally focused interpretation); Hannum, *supra* note 114 (recognizing internal self-determination).

140. See *supra* notes 14-17 and accompanying text (discussing the increasing exploitation of Africa's lower classes).

141. See *supra* note 14 and accompanying text (examining the increasing gap between African citizens' income and rich nations income).

142. See generally Kolodner, *supra* note 116 (arguing for a new modern conception of self-determination); Hannum, *supra* note 114 (arguing for a more human-rights based approach to self-determination).

143. See generally Hannum, *supra* note 114, at 11-17 (tracing the origin of external self-determination). Hannum asserts that twentieth century decolonization caused the vague "principle" of self-determination to evolve into a "right." *Id.* at 12.

144. See *supra* notes 15-18 and accompanying text (revealing the increasing disparity of wealth).

Global resources are becoming more concentrated in the hands of an elite group.¹⁴⁵ Despite what some theories and scholars might suggest about future conditions resulting from modern economic policies, the reality is that Africa's lower classes are growing and suffering.

Self-determination is the only answer. The common index of human rights will not suffice,¹⁴⁶ and international law need only take a few steps to bridge the gap between modern internal self-determination and a conception that would lead to the protection of the poor in developing countries. Because sub-Saharan Africa's conditions are uniquely depressed with respect to the rest of the globe, any new protective instruments should begin with this region.

The first step would be to draft an international instrument expanding the scope of the definition of "self" to include indigent peoples.¹⁴⁷ These groups share a common characteristic of poverty and often represent distinct sectors of given societies—as nations begin to liberalize their economies, certain sectors will suffer at the expense of others.¹⁴⁸ In this light, such disadvantaged sectors should qualify under the purview of the definition of "self." Moreover, the ICESCR and ICCPR both recognize *all* peoples as beneficiaries of this right.¹⁴⁹ Although this may seem somewhat over-inclusive, implicating millions of people around the world, a modification in the "determination" element of self-determination—the second step—would soften the blow.

145. See WORLD BANK, *supra* note 103, at 7 (stating that many of the richest countries in the world are transnational corporations).

146. See Hannum, *supra* note 114, at 61 (stating that, common humanitarian norms may address minority complaints of discrimination, physical violence, and land seizures, but they do not adequately respond to economic demands).

147. See *supra* note 134 (revealing that it would not stretch the purpose of self-determination beyond its intended scope by including indigent groups in the definition of "self").

148. See, e.g., Office of Statistics, U. S. Census Bureau, *U.S. Trade With Kenya in 1998* (visited Feb. 21, 1999) <<http://www.census.gov/foreign-trade/sitcl/1998/c7790.html>> (revealing that out of ten export categories to the United States, only three have sustained any increase over the year, suggesting that some markets remain untapped and marginalized).

149. See *supra* text accompanying note 126 (providing the text of the identical first Articles of the ICESCR and the ICCPR, which expressly include "all peoples").

This proposed vision of self-determination would allow an African State, based upon a multilateral assessment by a non-partisan organization, to employ mild protective measures. These measures could include increased tariffs on foreign exports or enhanced tax rates for high-grossing foreign businesses—in violation of the African Growth Act's free-trade policies—to correct any social imbalance caused by market-opening forces.¹⁵⁰ This would reinforce the international preference for peaceful dispute resolution over violent revolts. Further, this concept of self-determination would provide special force to the people-focused commitment currently undertaken by African nations in the Banjul Charter.¹⁵¹

Although the modern notion of self-determination envisions individuals as the right-holders, the State becomes accountable for the actualization of such rights. Article two, paragraph one of the ICESCR states that, "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant. . . ."¹⁵² Therefore, the ICESCR makes the State responsible for ensuring the participation of its peoples in the economic development of the nation.¹⁵³ Thus, although the individuals are the rights holders, the State becomes the enforcer of these rights. Under this proposed scheme, Article One of the ICESCR, which states the right of economic participation, takes life. Under the traditional State reporting mechanism, governments are only required to implement Articles Six through Fifteen of the ICESCR—Articles One through Five are merely ceremonial.¹⁵⁴ Further, although the proposed con-

150. See AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 70, at 24 (suggesting a similar proposition, which proposes a multi-tiered exchange rate system to encourage certain sectors of the economy).

151. See Mutua, *supra* note 38, at 370 (1995) (discussing Africa's Banjul Charter, which contains language that calls for national unity, solidarity, and security as a shield against foreign occupation).

152. ICESCR, *supra* note 124, art. 2, para. 1.

153. Cf. *supra* note 135 (discussing the State reporting mechanism under the ICESCR).

154. See Oloka-Onyango, *supra* note 124, at 12 (noting the implementation sequence for Article Six and the remaining Articles of the ICESCR).

ception would violate the one-time-application rule inherent in external self-determination, it would make internal self-determination comparable to other humanitarian rights, which may be exercised repeatedly with every violation.¹⁵⁵

Since this broadened proposed definition of self-determination holds the potential for increased abuse, the minimum hurdle for legitimately exercising this right should be set rather high.¹⁵⁶ The designated overseeing body should assess this floor based upon a cost-benefit analysis, which would weigh the costs imposed upon the complainant African nation against the benefits accrued by foreign presence in that nation.¹⁵⁷ If foreigners benefit excessively while poverty is rampant throughout the nation, equitable development—a supposed aim of the African Growth Act¹⁵⁸—will not occur. Thus, corporations must understand the need to contribute to the communities in which they are situated.

CONCLUSION

Sub-Saharan Africa's poor need a weapon to protect themselves from the crushing force of globalization. The governments of these nations are more likely to join the globalization movement due to factors discussed throughout this Comment, including but not limited to the increased dominance of the IMF and the WTO, the creation of unilateral treaties like the African Growth Act, and the international political pressure to seek integration. All of these factors combine to leave sub-Saharan governments with little choice over developmental options for their countries' economies. Accordingly, international

155. See generally Hannum, *supra* note 114, at 41-55 (stating that external self-determination is a right that can only be exercised once because of its effect of creating a new entity).

156. See Kolodner, *supra* note 116, at 163 (urging that a high level of deprivation exist before allowing internal self-determination, due to the potential abuse of creating such a right).

157. See AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 70, at 7 (highlighting the central principles of the Lagos Plan of Action for the Economic Development of Africa for 1980-2000). African leaders created this plan as a means of ensuring the well-being of its people and creating self-reliance among fellow nations. See *id.*

158. See H.R. 1432, 105th Cong. secs. 2, 3 (1998) (stating that the purpose behind the African Growth Act is to promote economic self-reliance as well as economic and social development).

law should provide some form of defense for these governments against forced development. This Comment concludes that the ICESCR and ICCPR are the weapons of choice. These instruments currently provide the infrastructure for such protection.