The Use of Trade Sanctions as an Enforcement Mechanism for Basic Human Rights: A Proposal for Addition to the World Trade Organization

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THE USE OF TRADE SANCTIONS AS AN ENFORCEMENT MECHANISM FOR BASIC HUMAN RIGHTS: A PROPOSAL FOR ADDITION TO THE WORLD TRADE ORGANIZATION

Patricia Stirling*

INTRODUCTION

In the spring of 1994, a debate raged in the United States concerning the trade status of China in relation to its policy on human rights.¹ On one side, economists contended that to deny China Most Favored Nation trading status would ultimately hurt the United States as much as China, and that the emphasis on human rights cost both countries economic opportunities.² On the opposite side of the debate, human rights activists and many politicians argued that to continue to permit China, a nation infamous for its violations of human rights, to retain Most Favored Nation trading status would be “a political, diplomatic and moral error of almost equal proportions.”³ The United States demanded that China improve its human rights policy in order to retain its trade status.⁴ China reacted with the assertion that the United States was interfering with

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¹ See Robert S. Greenburger, Cacophony of Voices Drowns Out Message From U.S. to China, WALL ST. J., Mar. 22, 1994, at A8 (chronicling the Clinton administration’s struggle in front of the media over the use of trade sanctions against China to encourage an improvement in China’s domestic human rights policy).

² Id.

³ See Alan Murray, Chinese-Trade Dilemma: New Thinking Needed, WALL ST. J., Mar. 14, 1994, at A1 (recognizing the integral role of human rights in the development of foreign policy and suggesting that one alternative for the United States is to use its influence with the World Bank to restrict China’s access to loans).

⁴ Greenburger, supra note 1, at A1.
Chinese domestic policies and inflicting a political ideology that had no place in China's agenda. Ultimately, the forces of trade and economics prevailed and the United States permitted China to retain its Most Favored Nation trading status. Human rights, the issue which sparked the initial furore, appears to have become an almost forgotten footnote.

The aforementioned situation between China and the United States is an illustration of the general ineffectiveness of the current use of trade by the United States as a mechanism for the enforcement of human rights, specifically for the encouragement of democracy. Increasingly, political ideology has become intimately tied to human rights. Haiti is an additional illustration of this situation, as was the former Soviet Union. One commentator has suggested that the United States use the same Helsinki Accords “basket” approach with China as it used with the former Soviet Union, i.e., linking all political and economic dealings with China to human rights. The resulting question becomes: is such an approach effective?

While China is an illustration of the ineffectiveness of this method, it is also an illustration of how trade is potentially the most effective mechanism for the enforcement of human rights. In an increasingly global economy, international trade is essential for the economic survival and development of nearly all countries, as illustrated by the virtual collapse of Iraq's economy due to internationally imposed trade and economic sanctions. Therefore, it can be convincingly argued that trade

5. See, e.g., Review and Outlook: Solving a Chinese Puzzle, WALL ST. J., May 11, 1994, at A14 (proposing alternatives to the linkage of trade with human rights for President Clinton to pursue that would not cause the Chinese leaders to feel that the United States is meddling in China's domestic affairs).


7. See Gerald Seib, Chinese Trade: A Useful Debate Becoming Sterile, WALL ST. J., Mar. 2, 1994, at A12 (explaining the approach of the former Reagan and Bush administrations with the former Soviet Union that forced then-President Gorbachev to discuss the issue of human rights at every meeting conducted between him and the President of the United States). The Helsinki Accords worked out three “baskets” of cooperation, referring to security in Europe (Basket I); economics, science, technology and the environment (Basket II); and humanitarian affairs (Basket III). Michael F. Miley, The CSCE Process and the Question of Sovereignty, 19 S.U. L. REV. 93, 96 (1992).

sanctions are the most effective mechanism for the international enforce-
ment of human rights.

Why then do countries not use trade sanctions, or if they use them, 
why do sanctions often fail? A number of reasons exist. First, the re-
gional human rights conventions currently in force, the United Nations’ 
favored method of human rights protection, do not provide for trade 
sanctions as an enforcement mechanism. 9 Second, the sanctioned-nations 
often react with refusals to comply with demands and with indignation 
at what they perceive to be unmerited intrusions into their domestic 
policies,10 a reaction that is entirely understandable in light of the polit-
cal underpinnings of the majority of sanctions. And third, the protected 
rights, rights which are primarily political in nature, very often have no 
place in the sanctioned country’s domestic policy.11

Therefore, for trade sanctions to be effective in the enforcement of 
human rights, it is necessary to distinguish between rights that are capa-
bile of international enforcement and those that are not. Universally held 
basic human rights must remain separate from political rights. Such 
basic human rights are those that are so universal that all societies, 
systems, nations and ideologies could, and do, espouse them. Converse-
ly, political rights are those that are dependent upon compatibility with 
the system of government in place and are therefore far less likely to 
garnner universal support. An effective multilateral enforcement mecha-
nism can only succeed if there is universal agreement and acceptance of 
the protected rights. Accordingly, at the outset of such a mechanism, 
only basic human rights may be enforced through trade sanctions. Once 
such a system is in place, more political rights may be included.

In Part I of this paper, I will briefly examine the history of the inter-
national enforcement of human rights. I will then describe human rights

9. See, e.g., European Social Charter, infra note 43, at 89 (guaranteeing fundament-
mental rights to all individuals for the benefit of society without providing economic 
sanction mechanisms to remedy violations).

10. See Andrew Wellington Cordier, South Africa: The Impact of Sanctions, 46 J. 
INT’L AFF. 193, 193 (1992) (asserting that individual nations impose trade sanctions 
that induce alterations in the sanctioned-nation’s domestic policies); Adi Ignatius, 
Many in China, Not Just Officialdom, Question the Effectiveness of Sanctions, WALL 
ST. J., Mar. 1, 1990, at A13 (chronicling the debate over extending sanctions against 
China and the response of the Chinese government that such sanctions interfere with 
Chinese affairs).

11. See infra notes 43-49 and accompanying text. (asserting that rights which are 
political in nature would include, among others, democracy and freedom of speech, 
and would thus not be compatible with all political systems).
which are universally espoused and thus capable of garnering international adherence. In this context, I will analyze the current methods for the protection of human rights, specifically international and regional conventions and unilateral sanctions, in terms of the reasons for their successes and failures.

From this analysis, in Part II, I will propose a framework for an apolitical, standardized system of trade sanctions for the enforcement of basic human rights. Specifically, I will consider why such a system is ideally compatible with the General Agreement on Tariffs and Trade (GATT), and therefore is within the provisions of the new World Trade Organization (WTO). In addition, I will propose the formation of an international human rights body within the WTO, charged with overseeing the administration of a system for multilateral enforcement of human rights through trade sanctions. Finally, I will set out in detail the procedural aspects of such a system in terms of investigative and appellate bodies as well as remedies for violations of human rights.

I. HUMAN RIGHTS PROTECTIONS TODAY

A. CAN HUMAN RIGHTS BE SUCCESSFULLY ENFORCED AT THE INTERNATIONAL LEVEL?

Regardless of the plethora of international treaties and agreements created to protect human rights, commentators continually question whether it is even possible to enforce effectively such rights on an international level. One commentator noted that while there are numerous United Nations’ votes, international instruments for protection, and state declarations, “for a large part of humanity, including a large part of what we generally call the ‘Western’ world, observance of human rights is presently a dream of things to come” as opposed to a reality. Infringements on a state’s sovereignty are one of the primary reasons for the apparent failure to establish an effective international

15. Id. at 71.
regime for the enforcement of human rights. Few states wish to become parties to treaties that interfere with their domestic policies, particularly those policies regarding domestic treatment of their citizens. Moreover, article 2(7) of the United Nations Charter prohibits the United Nations from intervening in matters that are "essentially within the domestic jurisdiction of any state." One may then question whether a state's treatment of its citizens is truly a matter for international law, and therefore not subject to international enforcement in the event that a state violates human rights. Yet, history shows that effective international enforcement can happen.

One of the first international attempts at the enforcement of a human right took place in the early nineteenth century with the international effort to abolish slavery. In 1814, the Treaty of Paris between France and Great Britain established cooperation between the two nations in order to suppress the traffic in slaves. Later, in the spring of 1890, the major European powers held an anti-slave trade conference in Brussels. The Belgian delegate later described the conference by stating that "[n]ever before had all the Great Powers come together so single-mindedly set on so generous, pure and disinterested a purpose to save the 'oppressed and decimated' races of Africa and end the monstrous trade in human flesh." At the end of the conference in July 1890, delegates created and later ratified an anti-slavery act, providing measures for the suppression of slavery both in Africa and on the high seas. In addition, the act contained one of the earliest examples of implementation in the guise of a special office attached to the Belgian Foreign Ministry created to oversee the enforcement of the act. Later, the twentieth century saw the right to be free from enforced servitude enshrined in many international human rights documents. Consequently,

18. Id.
19. Id.
21. Id. at 399.
22. ROBERTSON, supra note 17, at 15.
23. See, e.g., Universal Declaration of Human Rights, art. 4, G.A. Res. 217A(III), U.N. Doc. 810 (1948) (prohibiting nations from holding humans in slavery or servitude); see also International Covenant on Civil and Political Rights, art. 8(1), Dec. 19, 1966, 999 U.N.T.S. 171, reprinted in 6 I.L.M. 368, 371 (procluding the institution of slavery and compulsory labor to achieve the goal of promoting human rights and
ly, over a 150-year period, the prohibition against slavery became an established rule of customary international law that, while not always followed, nations universally accept as internationally enforceable.24

Despite this example, the question persists as to whether human rights can, and should, be enforced internationally, or whether they are truly a domestic concern of each state. In the late 1960s, one eminent commentator, H. Lauterpacht, argued that any matter is essentially within the domestic jurisdiction of a state only if international law does not regulate it or cannot regulate it.25 Lauterpacht contended that there are few such matters, if any, and that if there are international repercussions, international law governs.26 The profusion of international documents entered into force in the latter half of the twentieth century addressing the protection of human rights proved Lauterpacht correct by illustrating that nations no longer regard human rights as merely domestic matters.27 Indeed, Lauterpacht maintained that once international obligations govern an action, it no longer falls under domestic jurisdiction.28 For example, while a nation’s duty to protect its citizens from slavery was once a purely domestic matter,29 it is now a universally accepted duty governed by international obligations.30

The main reason for the international acceptance of the freedom from slavery as an internationally enforceable human right is the fact that it transcends politics and economics. The freedom from enforced servitude is a right that is basic to the citizens of any society, state or political system. As such, it is one that may be, and has been, agreed to and enforced on an international level under the auspices of the United Nations without any assertions by any members of interference in their domestic political systems.

24. ROBERTSON, supra note 17, at 10.
26. Id.
28. LAUTERPACHT, supra note 25, at 176.
29. See ROBERTSON, supra note 17, at 15 (discussing the 150-year transition on the issue of slavery from being purely domestic to being solely under the authority of international law).
30. Id. at 15.
While some commentators argue that the primary purpose of the United Nations is the enforcement of international peace and security, there are those who assert that the United Nations has a second and equally important purpose as evidenced in the Charter's preamble, namely the international protection of human rights.\textsuperscript{31} Beyond the preamble, other commentators point to Articles 13, 55, 68 and 76, which all address human rights in various forms, thus establishing the United Nations' competence and duty to protect human rights.\textsuperscript{32} In addition, most commentators now agree that article 2(7) allows the United Nations to act to protect human rights, particularly because egregious violations of human rights represent a threat to international peace.\textsuperscript{33}

However, while the United Nations may clearly recognize human rights, it does not effectively enforce them. This lack of effective enforcement is due in large part to the expansiveness of the United Nations' definition of what constitutes human rights. As the enforcement of the prohibition of slavery suggests, however, if the enforced human rights are truly universal in nature and apolitical, then effective international enforcement is possible.

\section*{B. DEFINING CORE HUMAN RIGHTS}

Definitions for human rights are numerous. Some say that human rights are safeguarded prerogatives present because a person is alive, and therefore any human being has rights by virtue of membership in the species.\textsuperscript{34} Human rights have also been defined as a "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family,"\textsuperscript{35} and that this recognition is "the foundation of freedom, justice and peace in the world."\textsuperscript{36} In essence, the concept of

\begin{itemize}
\item \textsuperscript{32} B.G. Ramcharan, \textit{The Concept and Present Status of the International Protection of Human Rights} 267 (1989).
\item \textsuperscript{35} Universal Declaration of Human Rights, pmbl. cl. 1, supra note 23.
\item \textsuperscript{36} Id.
\end{itemize}
human rights connotes the security of the individual or the group in the face of power, and the justice due to those people by virtue of their personhood.\textsuperscript{37}

International declarations and conventions currently in force provide lists of human rights, dividing them into civil and political rights, economic and social rights, and collective rights.\textsuperscript{38} Other conventions establish protections against violations of specific human rights such as racial discrimination,\textsuperscript{39} apartheid,\textsuperscript{40} discrimination against women,\textsuperscript{41} and genocide.\textsuperscript{42} The regional conventions and declarations address the protection of all these rights in varying forms and, to some extent, expand upon them.\textsuperscript{43}

Considering the various definitions of human rights as well as the myriad of rights contained in the conventions, it becomes clear that two types of rights are involved: the right to act in a particular manner and the right to be free from a particular action upon oneself. Political and

\begin{itemize}
\item \textsuperscript{37} Cohen, \textit{supra} note 34, at 11; see Reisman & McDougal, \textit{supra} note 31, at 172 (recognizing the significance of protecting individuals from state authority while promoting the development of nations).
\item \textsuperscript{38} See, e.g., International Covenant on Civil and Political Rights, \textit{supra} note 23 (recognizing the essential rights of life, liberty, and self-determination for all individuals); see also International Covenant on Economic, Social and Cultural Rights, \textit{supra} note 27 (guaranteeing all individuals the right to work and education in order to achieve goals of economic self-sufficiency).
\item \textsuperscript{41} Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, 19 I.L.M. 33 (1980) [hereinafter Discrimination Against Women Convention].
\end{itemize}
economic rights address the ability to assert one's political opinions and achieve wealth, and therefore act in a particular manner. The more basic and passive rights address the right to be free from being acted upon in some manner either because of some personal, immutable characteristic or simply by virtue of one's personhood.

Some examples of the right to act in a particular manner include freedom of speech, freedom of assembly, freedom of movement, the right to work, and the right to vote. All of these rights involve the ability to act affirmatively in a manner that one chooses without interference from, or denial by, the state. The existence of such rights for the citizens of a state presupposes the compatibility of such rights with the existing political system. Accordingly, such rights would not exist and would be unenforceable in a system of government that does not recognize political and economic rights such as the freedom of speech. In light of the numerous political and economic systems in the world that do not espouse all of these rights, there could be no universal adherence to an enforcement mechanism for them.

The more political of these rights, i.e., those having to do with government and governance, are intrinsically linked with the particular system of government existing in a particular state. As there is no universal agreement on a particular political system, there can be no universal agreement on whether such political rights may be recognized or even enforced. The same can be said for economic rights. As there is no universal agreement on which economic system is most desirable, there can be no universal agreement on which economic rights should be recognized and enforced. Further, one commentator has pointed out that economic rights are even more difficult to enforce than political or basic human rights as "it is easier to tell governments that they shall not..."
throw persons into jail without a fair trial than that they shall guarantee a minimum standard of living.50

Contrary to economic and political rights, the more basic, passive rights do not depend upon the system of government or the economics of a particular state. These rights fall into two categories: the right to be free from actions taken upon oneself because of an immutable characteristic such as race, gender or religion; and the right to be free from actions taken upon oneself simply by virtue of one's personhood. Examples of the former include the freedom from violent or discriminatory acts based upon one's gender, race or religion. Examples of the latter include freedom from acts such as torture and arbitrary detention not by virtue of one's immutable characteristics. As to the category of religion, it is arguable that religion is not an immutable characteristic in that it is possible to change one's religion, whereas the definition of an immutable characteristic is one that is unchangeable. However, for purposes of this paper, I will respect the belief that one's personal faith is immutable.

Important as the economic and political rights within the conventions are, the inescapable fact is that not all countries or societies hold these rights to be inalienable, compatible with their society, or even desirable. For example, the United States does not consider the prohibition against any dissemination of racially discriminatory language or information to outweigh the freedom of speech guaranteed by the United States Constitution, and has thus chosen to reserve that part of the convention addressing this prohibition.51 Alternatively, many countries do not espouse the idea of complete freedom of speech as enshrined in the United States Bill of Rights,52 choosing instead to opt for a greater security that results from the control of some types of speech, particularly the media.53 The consequence of such differing beliefs is either few

50. Rubin, supra note 14, at 82.
51. Racial Discrimination Convention, supra note 39, art. 4(a); S. EXEC. REP. No. 29, 103d Cong., 2d Sess. 7 (1994).
52. U.S. CONST. amend. I. ("Congress shall make no law... abridging the freedom of speech...").
ratifications of the conventions, or ratifications with reservations reflect-
ing differing beliefs.

Another example of the widely differing opinions regarding which
rights are essential human rights is democracy. This article defines de-
mocracy as government in which sovereign power rests in the hands of
the citizens by way of direct or indirect representation through the right
to vote.\(^\text{54}\) While this type of democracy may seem an inalienable hu-
man right to most industrialized nations, many developing countries have
for now chosen greater security through varying degrees of authoritarian-
ism.\(^\text{55}\) Very often, in some societies, sheer survival often takes prece-
dence over the attainment of democracy. On the other hand, one com-
mentator has questioned whether democracy is an entitlement in terms
of a human right to be protected by force.\(^\text{56}\) The action recently taken
in Haiti by the United States under the authority of the Security Council
appears to be one of the first instances of armed force used to enforce
the political right of democracy.\(^\text{57}\) No European ally of the United
States nor any major government of this hemisphere, however, chose to
join the United States at the outset of this action except four Caribbean
islands,\(^\text{58}\) thus raising the question whether democracy is a universally
held human right that nations are willing to protect, restore or establish
by force in other nations. Further, it is questionable whether the protec-
tion by force of other human rights would garner greater international
support. While the international movement to end apartheid in South
Africa gained nearly universal support,\(^\text{59}\) there was never any serious
contemplation that force from other nations would be utilized.\(^\text{60}\)

\(^{54}\) BLACK'S LAW DICTIONARY 432 (6th ed. 1990).

\(^{55}\) See Peter A. Samuelson, Pluralism Betrayed: The Battle Between Secularism
and Islam in Algeria's Quest for Democracy, 20 YALE J. INT'L L. 309 (1995) (dis-
cussing the conflict between the existing secular authoritarian state and the potential
authoritarian Islamic state).

\(^{56}\) Jean Kirkpatrick, Is Democracy an Entitlement?, WASH. POST, Sept. 12,
1994, at A23 (noting that “the idea of a 'Right of Democracy' that can be imposed
by force is a dramatic departure from previous theory and practice”).

\(^{57}\) Id.

\(^{58}\) Id.

\(^{59}\) See Louis K. Rothenberg, Sections 402 and 403 of the Comprehensive Anti-
apartheid with war crimes in universal condemnation).

\(^{60}\) Cf. Jost Delbruck, A Fresh Look at Humanitarian Intervention Under the Au-
thority of the United Nations, 67 IND. L.J. 887, 897 (stating, “[G]eneral international
law does not offer any legal basis for . . . military, enforcement mechanisms in cases
of grave violations of human rights”).
On the other hand, it has become widely accepted that real and sustained economic development is not possible without a respect for human rights. Yet it is unclear which human rights must gain support in order to facilitate sustained economic development. Moreover, is democracy one of those human rights that must be respected in order for economic development to take place? There can be no clear answer to this question, particularly in light of China, a clearly non-democratic nation with a booming economy but with an appalling record in the area of human rights.

The Clinton administration, perhaps in response to the human rights situation in China, espouses the contrary belief that economic development fosters a respect for human rights. Specifically, the administration argues that a growing economy made possible by greater trade makes people more comfortable and therefore more likely to seek democracy. Thus, it becomes necessary to question how economic development can be measured in order to discern the level at which a respect for human rights is possible. In addition, the result of this policy appears to be that democracy is a human right that takes precedence over, or is rather a precursor to, other human rights. While democracy is just one of many human rights contained in the international conventions, it is the human right that appears to have garnered the greatest importance, attention and support. This result is due to the expansive-

61. ROBERTSON, supra note 17, at 13.
62. See China Keeps Favored Trade Status, Clinton Renews MFN, Blasts Asian Giants Human Rights Record, SAN DIEGO UNION-TRIB., June 3, 1995, at A17 (citing the numerous human rights violations that China commits, including the denial of freedom of speech and press, association, and religion).
64. Paul Blustein & Thomas W. Lippman, Clinton Says Trade Boosts Rights Issues, WASH. POST, Nov. 15, 1994, at A1 (quoting Clinton as saying, “Growth means people are better off, and that in turn means they begin independently seeking democratic rights”).
65. See, International Covenant on Civil and Political Rights, supra note 43, art. 25 (providing every citizen the right to vote and take part in the conduct of public affairs); see also American Human Rights Convention, supra note 43, art. 23 (declaring that all citizens have the right to vote); European Human Rights Convention, supra note 43, pmbl., Protocol No. 1 to the European Convention, art. 3, 213 U.N.T.S. 262 (agreeing to hold free elections at reasonable intervals with secret ballots); African Human Rights Convention, supra note 43, art. 13 (recognizing the right
ness of human rights to be protected by these conventions. The seemingly endless lists of rights, to which universal adherence is consequently virtually impossible, appear to have had the effect of establishing a hierarchy of rights with democracy apparently at the top with the more universal and basic rights deemed less pressing, despite the fact that democracy does not appear to be a universally held human right.66

There are some rights, other than democracy and other political and economic rights, that are more universally espoused.67 Indeed, there are rights which are so universal that all societies, systems, nations and ideologies would or do espouse them.68 These rights are the most basic of human rights, those rights which are not political or economic but rather are passive rights.69 For purposes of this paper, I will refer to these as core human rights.

There are two types of core human rights. The first type of core human rights are those rights derived from immutable characteristics possessed by all human beings. The second type of core human rights are those rights not derived from an immutable characteristic but are possessed by virtue of personhood. As previously stated, immutable characteristics include gender, religion, and race. A core human right

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66. Ebersole, supra note 65, at 249-50 (attributing the lack of international recognition of democracy as a universal human right to the fact that national elections are a recent phenomenon and to the fact that, until recently, international law did not concern itself with how states chose their governments).

67. See, e.g., Universal Declaration of Human Rights, supra note 23, art. 2 (prohibiting discrimination based on, inter alia, race, religion, or sex), art. 4 (prohibiting slavery), art. 5 (prohibiting torture), art. 9 (prohibiting arbitrary arrest).


69. Universal Declaration of Human Rights, supra note 23.
derived from an immutable characteristic is the right to be free from an act taken upon oneself as a result of that immutable characteristic. Accordingly, a core human right would be, for example, the right to be free from a non-political discriminatory act upon oneself based upon one's race, gender or religion.70

The second type of core human right encompasses the right to be free from actions that are injurious to the inherent dignity and security of the human being.71 For this reason, freedom from slavery, genocide, torture and arbitrary imprisonment, are core human rights. While arguably a government may legitimately deprive its citizens of political rights such as democracy, freedom of speech and the press, it may not legitimately deprive its citizens of the right to be free from slavery, genocide, torture and arbitrary imprisonment. Therefore, it appears that of the two forms of human rights, political/economic and core human rights, the latter are more likely to be compatible with any system of government.

While all the enumerated rights within existing conventions are important and arguably essential, not all of those rights are enforceable in every nation of the world. This being the case, it has never been possible to achieve truly universal enforcement of human rights by way of worldwide adherence to existing conventions. Because core human rights appear to be universally held by all nations regardless of political belief, however, they could be enforced on a worldwide basis, while the other, more political and economic human rights, could not.

Such a tailoring of protected human rights is not a new idea. The Restatement (Third) of Foreign Relations (1987) contains a relatively limited list of human rights to which customary international law applies.72 Specifically, Section 702 provides that it is a violation of customary international law if a state, as a matter of state policy, practices, encourages or condones genocide, slavery, murder or disappearance of persons, torture, prolonged arbitrary detention, racial discrimination or a consistent pattern of gross violations of internationally recognized human rights.73

Another document, the Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts74 (the Second Geneva Protocol), provides for certain

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70. A denial of the right to vote based upon one's gender, race or religion would not fall into this category as this would be the denial of a political right.
71. Cohen, supra note 34, at 10.
73. Id.
74. Protocol Additional to the Geneva Conventions of 12 August 1949, and Re-
minimum rights for all persons affected by such conflict. These mini-
mum rights include freedom from torture, collective punishments, taking
of hostages, acts of terrorism, outrages upon personal dignity such as
rape, slavery, pillage, or threats to commit any of these acts. These
rights apply regardless of race, color, sex, language, religion, political
opinion, national or social origin, wealth, birth or other status.

The very fact that the Second Geneva Protocol has gained wide ratifi-
cation illustrates that a more limited definition of human rights to be
enforced would be more apt to gain universal acceptance and respect.
By limiting the rights to be enforced to the core human rights accepted
by all, a truly effective enforcement mechanism could be achieved. Prior
to exploring the composition of such a mechanism, however, it is neces-
sary to examine the mechanisms now in place in terms of their provi-
sions as well as their successes and failures.

C. CURRENT PROTECTION MECHANISMS

Initially, it is necessary to note a matter of semantics. Current docu-
ments concerning human rights employ varying terms in the area of
human rights. Some documents refer to the "promotion" of human
rights, while others refer to the "protection" of human rights in con-
junction with their promotion. A majority of documents "recognize"
human rights. No document, however, specifically refers to the "en-
forcement" of human rights. When one considers the definitions of

lating to the Protection of Victims of Non-international Armed Conflicts (Protocol II),
adopted June 8, 1977, art. 4, 1125 U.N.T.S. 609.
75. Id. art. 4(2).
76. Id. art. 2(1).
77. See, The Universal Declaration of Human Rights, supra note 23 (declaring
that the document represents the commitment of all peoples and nations to promote
respect for rights and freedoms).
79. See, e.g., International Covenant on Civil and Political Rights, supra note 23,
pml. (citing the foundations of freedom, justice, and peace as the recognition of in-
herent dignity and inalienable rights of all individuals); see also American Human
Rights Convention, supra note 43, pmbl. (basing the essential rights of man in the
recognition that they are part of the human personality); European Human Rights
Convention, supra note 43, pmbl. (attempting to secure the effective and universal
(justifying the international and national protection of human rights on account of the
recognition of their essential attributes to human character).
80. See supra note 79 and accompanying text.
these terms, the significance of the use of one term or the other becomes apparent and relevant to this discussion.

By considering the standard dictionary definition of the terms, it can be said that "promotion" of human rights means the furtherance of the establishment or advancement of those rights.81 "Protect" refers to the guarding against the loss of those rights.82 "Enforcement," however, means to compel the observance of those rights.83 Clearly, a document containing the former terms carries far less force than one containing the latter, particularly when a document using the word "enforcement" contains effective mechanisms for achieving that end. None of the conventions or declarations currently in force, however, utilizes the word "enforcement," opting instead for either the term "protection" or the term "promotion."84

The seminal human rights document is the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948.85 In its preamble, the declaration reaffirms the fundamental human rights in the United Nations Charter.86 The declaration then proclaims that it is to be "a common standard of achievement for all peoples and all nations," and that "every organ of society" should "promote respect" for these rights, thus implying that these rights already exist.87 The rights contained within the document encompass political rights,88 economic rights89 and core human rights such as freedom from racial discrimination,90 arbitrary arrest,91 torture,92 and slavery.93 Being a declaration, the document has no enforcement mechanisms and places no

82. Id. at 1553.
83. Id. at 644.
84. See supra note 79 and accompanying text. But see European Human Rights Convention, supra note 43, pmbl. (stating that the European states would attempt "the collective enforcement of certain of the rights stated in the Universal Declaration").
85. Universal Declaration of Human Rights, supra note 23.
86. Id. pmbl.
87. Id.
88. Id. art. 21 ("Everyone has the right to take part in the government of his country, directly or through freely chosen representatives").
89. Id. arts. 17, 22-25 ("Everyone, as a member of society, has the right to social security . . . .").
90. Id. art. 2.
91. Id. art. 9.
92. Id. art. 5.
93. Id. art. 4.
obligations on parties.\textsuperscript{94} It is merely, as its preamble states, "a common standard of achievement."\textsuperscript{95} The Declaration has over time, however, acquired authority as customary international law in the preservation of human rights.\textsuperscript{96}

From the Universal Declaration of Human Rights came two covenants: The International Covenant on Economic, Social and Cultural Rights,\textsuperscript{97} and The International Covenant on Civil and Political Rights,\textsuperscript{98} both entered into force in 1976.\textsuperscript{99} Both covenants conform with, as well as expand upon, the Universal Declaration.\textsuperscript{100}

In the area of protection and promotion of human rights, the International Covenant on Economic, Social and Cultural Rights contains a provision whereby parties agree to submit reports to the Secretary General on the measures they have taken to achieve conformity with the rights contained within the covenant.\textsuperscript{101} The reports are then transmitted to the Economic and Social Council which in turn may transmit the reports to the Commission on Human Rights for study and recommendation.\textsuperscript{102} In addition, article 23 provides that "international action for the achievement of the rights recognized . . . includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings . . . ."\textsuperscript{103} Such methods, while possibly effective for promotion of human rights, cannot be seen as effective for enforcement.

\textsuperscript{94} THOMAS BUERGENTHAL \& HAROLD G. MAIER, PUBLIC INTERNATIONAL LAW IN A NUTSHELL 119 (1990) (noting that the U.N. General Assembly adopted the declaration in the form of a non-binding resolution); see Robertson, \textit{supra} note 17, at 26 ("[The Declaration] was not intended to impose legal obligations on states").

\textsuperscript{95} Universal Declaration of Human Rights, \textit{supra} note 23, pmbl.

\textsuperscript{96} ROBERTSON, \textit{supra} note 18, at 27 ("[M]any of (the Declaration's) principles can now be regarded as part of customary law").

\textsuperscript{97} International Covenant on Economic, Social and Cultural Rights, \textit{supra} note 27; see ROBERTSON, \textit{supra} note 17, at 27 (noting that U.N. G.A. Resolution 217(III), adopting the Universal Declaration of Rights, also called for work on the covenants to the Declaration).

\textsuperscript{98} International Covenant on Civil and Political Rights, \textit{supra} note 23.

\textsuperscript{99} Id. pmbl.; International Covenant on Economic, Social and Cultural Rights, \textit{supra} note 27, pmbl.

\textsuperscript{100} \textit{See supra} note 99.

\textsuperscript{101} International Covenant on Economic, Social and Cultural Rights, \textit{supra} note 27, art. 16(1).

\textsuperscript{102} Id. art. 16(2).

\textsuperscript{103} Id. art. 23.
The International Covenant on Civil and Political Rights provides for a Human Rights Committee to which states parties submit progress reports on measures they have taken to achieve the rights contained within the covenant. Unlike the International Covenant for Economic, Social and Cultural Rights, however, article 41 of this covenant provides for the submission of communications by one state party to the Committee concerning claims that another state party is not fulfilling its obligations under the covenant. Under article 41, the Committee may then bring the matter to the attention of the state party so accused. That state party must then communicate with the accusing state within three months as to domestic procedures and remedies taken. If there is no settlement, either may present the matter to the Committee which will then examine the situation and issue a report. Additionally, if the matter is not settled, article 42 provides that the Committee may appoint an ad hoc Conciliation Commission which may also examine the situation and issue a report. These provisions illustrate more extensive mechanisms for protection than those in the International Covenant for Economic, Social and Cultural Rights, yet none that could be characterized as effective enforcement. Further, while an optional protocol, entered into force in 1976, permits petitions from individuals and non-governmental organizations, few states have chosen to adopt it. Worse still, those states that have not adopted the protocol include those with the worst records on human rights.

In addition to the general lack of acceptance of the Optional Protocol, there have been questions as to the efficacy of the reporting requirements in these documents. As stated above, both covenants require states parties to submit reports to the Secretary General as to progress they have made in implementing the provisions of the covenants.

104. International Covenant on Civil and Political Rights, supra note 23, art. 40.
105. Id. art. 41(1).
106. Id. art. 41(1)(a).
107. Id. art. 41(1)(a).
108. Id. art. 41(1)(b)-(h).
109. Id. art. 42(1)(a).
111. See CARTER & TRIMBLE, supra note 68, at 373 (noting that only 48 countries are parties to the optional protocol).
112. ROBERTSON, supra note 17, at 65.
113. Id. at 41.
114. See supra notes 101, 104 and accompanying text (stating that under both the
These reports are compiled by national officials who are unlikely to call the attention of an international body to their failures in the area of human rights. Moreover, the reports cannot act as an enforcement mechanism unless independent persons, who are not governmental officials, follow-up with examination of the information, and unless an international body takes enforcement action. Yet, regardless of these shortcomings, it cannot be denied that the very existence of these covenants is an important step toward the international protection of human rights.

Beyond these covenants, there are a number of international documents addressing specific violations of human rights, all with varying provisions of enforcement. Some, such as the International Convention on the Elimination of all Forms of Racial Discrimination, contain the same type of enforcement mechanism as noted above, i.e., reports by states parties to a committee. Other documents contain more specific methods of enforcement that have a punitive tone. For example, the Convention for the Prevention and Punishment of the Crime of Genocide and the International Convention on the Suppression and Punishment of the Crime of "Apartheid" contain provisions requiring states parties to enact legislation to give effect to the conventions, as well as to try those charged with genocide and apartheid in competent tribunals in the state. Notably, these conventions declare genocide
and apartheid to be not simply violations of human rights, but also crimes against humanity and in violation of international law.\textsuperscript{124} Moreover, as violations are considered international crimes, they invoke individual punishment, a response that exists in no other document.

While genocide and apartheid are considered international crimes, two equally heinous acts, torture and slavery, are not considered crimes as such under international law, but rather acts violative of fundamental freedoms and human rights.\textsuperscript{125} Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provides that there can be no justification for torture under any circumstances.\textsuperscript{126} Further, under article 2, orders from superior officers or public authorities cannot be invoked as a justification for torture.\textsuperscript{127} Article 2 also provides that each state party must take effective measures to ensure that torture is an offense under its law and to prevent it, thus removing torture from the sphere of international crimes and adding it to the sphere of domestic crimes.\textsuperscript{128} Articles 17 and 19 of the Convention provide for a Committee against Torture to which states parties must submit reports on measures taken to give effect to the Convention.\textsuperscript{129} Under article 22, the Committee may also receive communications from states parties regarding violations of other states, and from individuals, provided that the individuals have exhausted all other remedies.\textsuperscript{130} Ultimately, however, prosecution in domestic tribunals is the only means of effective enforcement, and as such, enforcement is dependent upon the strength of those domestic tribunals.

In addition to these international documents based upon the United Nations Charter and Declaration of Human Rights, there are also regional conventions for the protection of human rights.\textsuperscript{131} Originally, the

\textsuperscript{124} Apartheid Convention, \textit{supra} note 40, at 1(1); Genocide Convention, \textit{supra} note 42, pmbl., art I.


\textsuperscript{126} Id. art. 2(2).

\textsuperscript{127} Id. art. 2(3).

\textsuperscript{128} Id. art. 2(1).

\textsuperscript{129} Id. art. 2(1).

\textsuperscript{130} Id. art. 22.

\textsuperscript{131} \textit{See supra} note 43 (explaining the establishment of a commission or court or both to protect human rights).
concept of regional enforcement was not favored by the United Nations due to the perception that “it might detract from the perceived universality of human rights.” As regional regimes developed, however, resistance by the United Nations decreased. Finally, in 1977, by way of Resolution 32/127, the General Assembly asked states not belonging to regional regimes to consider agreements to establish such a regime within their region. Commentators have noted several reasons for the acceptance and greater possible efficacy of regional regimes such as the general homogeneity of regions and a geographic proximity that leads to greater interdependence and cooperation. In addition, the regional, as opposed to universal, aspects of the regimes provide a greater chance for the investigation and remedying of violations. Currently, three regional regimes are in force: The European Convention for the Protection of Human Rights and Fundamental Freedoms, The American Convention on Human Rights, and African Charter on Human and Peoples’ Rights.

All three conventions address much the same political, civil and economic rights as the United Nations’ conventions. Both the European Convention and the American Convention provide for human rights commissions (the European Commission of Human Rights and the Inter-American Commission on Human Rights) and human rights courts (the European Court of Human Rights and the Inter-American Court of Human Rights). Both conventions provide standing for states, groups and individuals before either the commission or the court. The African

133. Id. at 591.
134. Id.
135. Id. at 589-90.
136. Id.
137. European Human Rights Convention, supra note 43.
139. African Human Rights Charter, supra note 43. While the European Convention is the oldest of the three, it was preceded by the American Declaration of the Rights and Duties of Man, a document somewhat similar to the Universal Declaration of Human Rights.
140. American Human Rights Convention, supra note 43, art. 33(a); European Human Rights Convention, supra note 43, art. 19(a).
141. American Human Rights Convention, supra note 43, art. 33(b); European Human Rights Convention, supra note 43, art. 19(b).
142. American Human Rights Convention, supra note 43, art. 44 (according to article 61, only state parties can bring a claim before the court); European Human
can Convention provides for a commission, but not a court.\textsuperscript{143} All three provide for submission of petitions to their commissions from those who feel their rights under the conventions have been violated.\textsuperscript{144}

Most commentators agree that the European convention has functioned well.\textsuperscript{145} Between 1953, its first year of legal effect, and 1990, 15,000 applications alleging violations were accepted for review by the commission.\textsuperscript{146} The majority of these applications came from individuals.\textsuperscript{147} These petitions led to 244 cases before the European Court of Human Rights with 129 judgments against states.\textsuperscript{148} All judgments in which the state lost were accepted by the member states, thus illustrating a willingness on the part of Western European states to accept judgment by an international court.\textsuperscript{149} One commentator has pointed out, however, that the membership obligations of this effective regime may prove too demanding for European states just emerging from communism.\textsuperscript{150}

The Inter-American Convention allows individuals or groups to petition the Inter-American Commission concerning violations of rights under the convention.\textsuperscript{151} The Commission then conducts investigations, including on-site investigations.\textsuperscript{152} However, while the Commission conducts more on-site investigations than any other similar body in the world, it is able to pursue only a small number of the petitions it receives.\textsuperscript{153} Following investigations, the Commission attempts to achieve a friendly settlement between parties, an example of which concerned the Argentinean government’s arbitrary detention of citizens in the 1980s

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\textsuperscript{143} African Human Rights Charter, \textit{supra} note 43, art. 30.
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\textsuperscript{144} American Human Rights Convention, \textit{supra} note 43, art. 44; European Human Rights Convention, \textit{supra} note 43, art. 25; African Human Rights Charter, \textit{supra} note 43, art. 47.
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\textsuperscript{145} See, e.g., DAVID P. FORSYTHE, HUMAN RIGHTS IN THE NEW EUROPE 182 (1994) (noting that the Council of Europe “produced the most authoritative and effective international systems for the promotion and protection of human rights . . . ”).
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\textsuperscript{146} Id.
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\textsuperscript{147} Id.
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\textsuperscript{148} Id.
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\textsuperscript{149} Id. at 182-83.
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\textsuperscript{150} FORSYTHE, \textit{supra} note 145, at 184.
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\textsuperscript{151} American Human Rights Convention, \textit{supra} note 43, art. 44.
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\textsuperscript{152} Id. art. 48.
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and the government’s subsequent enforcement of the Commission’s recommendations concerning compensation.\textsuperscript{154} The Commission also functions as a “gatekeeper” to the Inter-American Human Rights Court by selecting cases to be taken before the court.\textsuperscript{155} While private parties may not litigate cases before the court, their attorneys may act as legal advisors to the Commission.\textsuperscript{156} Some examples of this were cases concerning disappearances in Honduras in which attorneys for Americas Watch participated as legal advisors, as well as cases against Suriname, Peru and Colombia.\textsuperscript{157} One major difference between the Inter-American system and the European system is the fact that all member states of the Council of Europe have ratified the European Convention, while only two-thirds of the member states of the Organization of American States have ratified the Inter-American Convention.\textsuperscript{158}

The African Charter for Human and Peoples’ Rights encompasses many of the same rights as the two other regional conventions, but with some important differences.\textsuperscript{159} As one commentator has pointed out, the Universal Declaration of Human Rights and the other regional charters embody a more Western tradition of the rights of the autonomous individual.\textsuperscript{160} The aim of the African Charter is to eliminate apartheid, discrimination, and the remnants of colonialism.\textsuperscript{161} The rights contained in the charter are the rights of “peoples” and based upon the group norm rather than the rights of the individual, thus reflecting the communitarian aspects of African society.\textsuperscript{162} Another difference between the African Charter and the other regional conventions is the lack of a human rights court.\textsuperscript{163} As the authors of the charter explained, disputes are settled in a more traditional manner of friendly arbitration rather than in the adversarial manner of the West.\textsuperscript{164}

\textsuperscript{154} Id. at 107.
\textsuperscript{155} Id. at 108.
\textsuperscript{156} Id.
\textsuperscript{157} Id. at 108-09.
\textsuperscript{158} Id. at 109-10.
\textsuperscript{159} See Thomas M. Franck, \textit{The Emerging Right to Democratic Governance}, 86 \textit{Am. J. Int’l L.} 46, 86-87 (1992) (stating that the African Charter shares in a “textual convergence regarding freedom of expression” with several other regional charters).
\textsuperscript{161} Id. at 309.
\textsuperscript{162} Id.
\textsuperscript{163} Id.
\textsuperscript{164} Id. at 330.
While the Arab states and Asia have not created regional human rights regimes, they have taken some steps toward the protection of human rights. In 1968, the Council of the Arab League adopted a resolution relating to the creation of a Permanent Arab Commission on Human Rights. Subsequently, the Council of the Arab League drafted a declaration for an Arab Charter of Human Rights containing all the rights and freedoms proclaimed by the Universal Declaration of Human Rights. The draft contained what one commentator referred to as a three-fold objective: "[A] concern for continuity with the past, a desire to achieve Arab unity, . . . [and] a call for justice in respect of the Arab populations living in the occupied territories." To date, the draft has not been ratified.

As for Asia, there have been some non-governmental movements such as the Permanent Standing Committee on Human Rights created in 1979 by Lawasia, a professional association of Asian and Western Pacific lawyers. However, the vast differences in culture, political ideology and economic development among Asian nations, coupled with a lack of a regional organization, have made a cohesive policy on human rights impossible.

As can be seen, many, if not most, nations participate to varying degrees in multilateral attempts at the protection of human rights through international or regional conventions. Some nations, howev-

165. See ROBERTSON, supra note 17, at 196-200 (discussing the creation of the Permanent Arab Commission on Human Rights on September 3, 1968, which was announced at the Arab Regional Conference on Human Rights in Beirut in December 1968).

166. Id.


168. Id.


170. Id. at 651.

er, such as the United States, have also chosen to act unilaterally by way of sanctions when they feel another country is violating human rights. More often than not, the right being violated has been democracy. The United States uses unilateral action as the predominant method by which it involves itself in the international human rights sphere, particularly in its encouragement of democracy.

D. INTERNATIONAL ENFORCEMENT OF HUMAN RIGHTS BY THE UNITED STATES

Ironically, the United States, which has always considered itself an international symbol of the protection of human rights, has not been a consistent participant in the international enforcement of human rights through the operation of conventions and treaties. Rather, the United States often acts unilaterally in response to what it considers to be violations of human rights. Its actions take the form of both sanctions and, most recently in the case of Haiti, armed force. Other nations


174. See supra note 173 and accompanying text (indicating the unilateral action of the United States against China for human rights violations and the unilateral lifting of the arms embargo by the United States in the Balkans would harm United States interests).

175. See David L. Marcus, The Cold War Ended and the Players Moved On, DALLAS MORNING NEWS, Aug. 7, 1994, at 1R (discussing the United States use of armed force against Haiti); Bruce Fein, No Queensbury Rules for Castro, WASH. TIMES, May 22, 1995, at A20 (claiming that the United States is often viewed as an “invincible weapon against repressive governments abroad”).
have also used sanctions as an enforcement mechanism for human rights, but the United States by far is the most active in this area.\textsuperscript{176} By way of illustration, between 1973 and 1983, the United States instituted sanctions against thirteen countries it deemed to be violating human rights.\textsuperscript{177}

Historically, while often inclined to employ unilateral actions when it feels another nation is violating human rights, the United States has been reluctant to become a party to international conventions for the protection of human rights.\textsuperscript{178} In the mid-1950s, Senator John Bricker of Ohio introduced an amendment to the United States Constitution that required implementing legislation rather than just the advice and consent of the Senate for treaties to have a binding effect in this country.\textsuperscript{179} The targets for this amendment were the international human rights treaties and conventions then being debated.\textsuperscript{180} The American Bar Association agreed with Bricker, predicting serious consequences in the guise of encroachment on the sovereignty of the United States, the loss of states' rights, and greater Soviet influence in the event the Senate ratified the treaties without implementing legislation.\textsuperscript{181} While Senator Bricker's amendment ultimately failed, "Brickerism" has lived on, resulting in a continuing hesitation on the part of the United States to ratify international human rights conventions.\textsuperscript{182} The interpretation persists that human rights treaties are non-self-executing, thereby making ratification without time-consuming implementing legislation difficult.\textsuperscript{183} Further, without United States ratification, United States courts never inter-

\textsuperscript{176} See, e.g., \textbf{1 GARY C. HUFBAUER ET AL., ECONOMIC SANCTIONS RECONSIDERED 336} (1990) (listing 13 individual incidences of the use of sanctions by the United States).

\textsuperscript{177} See \textit{id.} (stating that the countries against whom the United States instituted sanctions include South Korea (1973), Chile (1973), Uruguay (1976), Ethiopia (1976), Paraguay (1977), Guatemala (1977), Argentina (1977), El Salvador (1977), Brazil (1977), U.S.S.R. (1978) (regarding dissident trials), Bolivia (1979), Suriname (1982) (with the Netherlands), and Grenada (1983) (with the OECS)).


\textsuperscript{179} \textit{id.} at 807.

\textsuperscript{180} \textit{id.}

\textsuperscript{181} \textit{id.} at 807-08.

\textsuperscript{182} \textit{id.} at 807.

\textsuperscript{183} \textit{id.} at 808.
interpret these treaties, thereby depriving other tribunals of United States case law on the meaning of these treaties. 184

The litany of treaties and conventions to which the United States has yet to become a party includes the American Convention on Human Rights, 185 the International Covenant on Economic, Social and Cultural Rights, 186 the Convention on the Elimination of all Forms of Discrimination against Women, 187 and, at the time of this writing, the International Convention on the Elimination of all Forms of Racial Discrimination. 188 The United States ratified the Convention on the Prevention and Punishment of the Crime of Genocide, but not until twenty-eight years after the initial transmission to the Senate. 189 In 1988, the United States ratified the Convention Against Torture, but only after adding numerous reservations regarding, among others things, the death penalty and the definition of torture. 190 The reservations include almost all possible defenses to a torture prosecution. 191 In addition, the United States recently ratified the International Covenant on Civil and Political Rights, albeit with five reservations, five understandings and four declarations. 192 The United States chose not to adopt the optional protocol allowing individual petitions. 193 In short, these ratifications can be inter-

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184. Id. at 808.
185. American Human Rights Convention, supra note 43. While President Carter did sign the American Convention on Human Rights in 1977, he included numerous reservations and did not accept the jurisdiction of the Inter-American Court of Human Rights. Id. The Senate has yet to ratify this convention. Id.
187. Discrimination Against Women Convention, supra note 41.
190. Smith, supra note 178, at 829-30. No implementing legislation for this convention has been passed at the time of this writing, nor have instruments of ratification been deposited. Id.
191. Id.
192. David P. Stewart, Text of U.S. Reservations, Understandings and Declarations, reprinted in U.S. Ratification of the Covenant on Civil and Political Rights: The Significance of the Reservations, Understandings and Declarations, 14 HUM. RTS. L.J. 77, 123 (1993). In ratifying this convention, the United States included an understanding that the Covenant would be implemented by the federal government “to the extent that it exercises legislative and judicial jurisdiction over the matter covered and otherwise by the state and local governments.” Id.
193. Id.
interpreted as a willingness on the part of the United States to appear to be a party, but not allow itself to assume all obligations contained in the treaties. The apparent reluctance of the United States to assume international obligations is a major stumbling block to a concerted international effort at enforcing human rights: the largest and most powerful democracy in the world is largely absent from the multilateral protection of human rights.

Rather than becoming an international participant in the multilateral enforcement of human rights through ratification of the conventions, the United States has, in recent years, preferred the use of unilateral actions such as sanctions. These actions have often linked human rights to trade as in the recent China dispute and in numerous other instances. The United States, however, also linked military assistance to human rights, as country-specific riders attached to military aid bills denning or reducing aid to certain countries in the 1970s and 1980s. In addition, in 1976, Congress authorized and directed executive directors of the Inter-American Development Bank and the African Development Fund to vote against loans to countries violating human rights.

Another example of actions taken by the United States unilaterally to address perceived violations of human rights was the enactment of section 502B of the Foreign Assistance Act of 1974. Section 502B begins by stating that the principle goal of the foreign policy of the United States, “in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions,” is to “promote and encourage increased respect for human rights.” Accordingly, “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human

194. See supra note 173 and accompanying text (claiming that United States unilateral sanctions against China due to its human rights violations have only antagonized China).


196. 1 HUFBAUER, supra note 176, at 336. Those countries included South Korea, Chile, Uruguay, the Philippines, Brazil, El Salvador, Guatemala, Nicaragua, Paraguay, Ethiopia, Argentina and Zaire. Id.

197. Id. at 337.


199. Id.
In compliance with this statute, the State Department compiled human rights reports, not all of which met with a greater willingness on the part of the listed countries to increase their respect for human rights. In 1977, in response to the State Department's list which included eighty-two countries, five Latin American countries (El Salvador, Argentina, Brazil, Guatemala and Uruguay) renounced United States military aid in protest. In the ensuing years, Section 502B appears to have receded in importance with the increasing reluctance to tie human rights to aid.

Another way in which the United States enforces international human rights is through the Alien Tort Statute, which provides that district courts have original jurisdiction over civil actions by aliens for a tort committed in violation of the law of nations or a treaty of the United States. This statute was enacted as part of the Judiciary Act of 1789. The most famous use of this statute was the case of Filartiga v. Pena-Irala in which the Second Circuit held that a citizen of Paraguay could sue another citizen of Paraguay in the United States for wrongful death by official torture. The court held that because official torture was a crime prohibited by the law of nations, such an action was tenable under the Alien Tort Statute. Under the statute, the United States provides victims of human rights abuses falling under the

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201. See supra note 200.

202. 1 HUFBAUER note 176, at 336.

203. Id. at 339. In November 1983, President Reagan specifically vetoed legislation tying a continuation of aid to progress on human rights. Id.

204. 28 U.S.C. § 1350 (1988). In 1992, this statute was amended to include provisions regarding liability and the definitions of extrajudicial killing and torture. Id. In addition, the statute now requires exhaustion of remedies in the home country and provides a statute of limitations of 10 years. Id. §§ 2-3 (1993).

205. Id.


207. 630 F.2d 876 (2d Cir. 1980).

208. Id.

209. Id. at 884-87.
law of nations with a forum for redress. For the most part, however, the
United States acts in a more concerted manner using sanctions and di-
plomacy.

In recent years, the United States has used trade and economic sanc-
tions, or the threat of such sanctions, in its efforts to promote human
rights.  Two examples of this are Burma and China. Yet, while
arguably effective to a certain extent, the unilateral use of economic
might by the United States has not contributed to an internationally co-
hesive effort at the enforcement of human rights.

Further, the actions of the United States appear to have engendered a
great wariness towards the United States on the part of smaller nations,
particularly those of South and Central America. Rather than joining
its neighbors in the collective enforcement of human rights by way of
conventions and the like, the United States appears instead to its neigh-
bors to be inflicting its beliefs upon them. One commentator has said
that the United States actions have resulted in dominant exertions of
power rather than examples of leadership and have crippled the effec-
tiveness of the American Convention. Consequently, its South Amer-
ican neighbors appear to look upon the United States as an "imperialistic
democracy." In addition to a wariness, there is resentment on the
part of those neighbors as a result of the refusal of the United States to
join in the regional regimes to protect human rights. This resentment
is perhaps due to the manner in which the United States appears to be
quick to judge what it deems to be its neighbors' violations of human
rights, while seemingly not allowing any judgment of its own possible
violations.

210. See supra note 173 and accompanying text (describing the United States uni-
lateral use of trade and economic sanctions in the past).
211. See Globalization of Rights Stressed for Asia, DAILY YOMIURI, July 26, 1995,
at 8 (reporting that Burma recently released opposition leader Aung San suu Kyi after
six years of house arrest, due in part, to the United States use of economic sanc-
tions); A Look Around the World, CHI. SUN-TIMES, Jan. 1, 1995, at 28 (discussing
the United States threat to impose heavy trade sanctions on China unless it agreed to
put a stop to its unauthorized copying of American computer software, movies, books,
and music).
212. See Smith, supra note 178, at 812-13 (describing the angry and defensive
reaction of Mexican officials when the Clinton Administration proposed sending a
group of international observers to monitor Mexico's elections in 1994).
213. Id. at 816.
214. Id. at 816.
215. See id. at 812 (citing the resistance by the United States to the O.A.S. hu-
man rights regime).
216. See id. at 812 (comparing and contrasting the fact that the United States
Unilateral actions by the United States also have another adverse effect: that of garnering support not for the United States, but rather for the object of those actions, as was recently seen in the case of Burma.\textsuperscript{217} The United States policy towards Burma’s brutal regime\textsuperscript{218} was to isolate the country by cutting off all trade. No Asian nation would cooperate with the United States, however, forcing it to reopen talks with Burma’s leaders.\textsuperscript{219} During trade talks in Indonesia in November 1994, Chinese President Jiang Zemin stated that many Asian nations, including China, reject the United States view that individual liberty and political freedom are fundamental human rights that take precedence over an entire nation’s stability and the communal rights of its citizens.\textsuperscript{220} Burma, in comparison to the United States, is an illustration of the widely divergent views of what constitutes essential human rights. Burma is also an example of the less than successful attempts of the United States to act independently as the world’s arbiter of human rights.

The participation of the United States, arguably the most powerful and influential country in the world, would greatly add to the strength of the international and regional human rights conventions. As a result, an enormous gulf is left by its failure to participate. The reason for the United States failure to join can be explained even more simply than asserting that it is the result of continuing Brickerism. As stated above, the very expansiveness of the human rights to be protected in the international documents makes them unenforceable even by those countries

\textsuperscript{217} Ross Howard, \textit{Canada Puts Trade Before Rights}, \textit{TORONTO GLOBE & MAIL}, May 12, 1995, at A1. Canada’s government, in agreement with ASEAN, announced its intent to sever the link between human rights and trade, particularly in regard to Burma and China. \textit{Id.} Canada’s Foreign Relations Minister, Andre Ouellet, stated that the best way to promote democratic development is through developing trade, regardless of whether other governments are in agreement with Canada’s beliefs about human rights. \textit{Id.}

\textsuperscript{218} See \textit{id.} (referring to the right to act affirmatively in a non-political manner, such as freedom of speech and other social and economic freedoms).
considered most protective of human rights, including the United States. Conversely, the occasional success of the United States unilateral actions of trade and economic sanctions shows that trade can be an effective enforcement mechanism above and beyond the mechanisms contained in the international and regional conventions.221

One example of the efficacy of United States policy is sanctions against Argentina, in the form of aid reduction in 1977 to protest human rights violations by the military-controlled government.222 The United States sanctions may have influenced the eventual democratic election of Raul Alfonsin in 1983, who became the head of the first civilian government in Argentina in a decade.223 One commentator also wrote that United States economic sanctions helped to topple Haiti's Jean-Claude Duvalier in 1986, Uganda's Idi Amin in 1979, Chile's Salvador Allende in 1973, and the Dominican Republic's Anastasio Trujillo in 1961.224 Another example is the overthrow of President Anastasio Somoza of Nicaragua, in part due to the denial of military aid by the United States in 1977-79.225 However, the case of Nicaragua is also an example of the weakness of unilateral action. In 1979, the IMF approved of loans to the Somoza government despite the United States position regarding the denial of military aid to Nicaragua due to human rights violations.226

Clearly, sanctions are only effective if all alternative sources and markets are cut off from the target of those sanctions, as illustrated by the current situation in Iraq.227 Cutting off virtually all of Iraq's markets through international cooperation has brought that country's economy to its knees,228 thus proving that the true strength of sanctions is not their unilateral use, as in the case of the United States, but in their multilateral use.

221. Id.
222. Id.
223. Id.
225. 2 HUFBAUER, supra note 176, at 452-53.
226. Id.
228. Id. United Nations reports concluded that Iraq is on the brink of a famine. The reports compare the people of Iraq to "the populations in disaster-stricken African countries." *Id.* The multilateral ban on Iraqi oil exports has rendered Iraq without the resources it needs to import food and medicine. *Id.*
E. SUMMARY

The two major forms of human rights enforcement, multilateral regimes and unilateral actions, have had both successes and failures.\textsuperscript{229} Ironically, however, the causes for the failure of one system appear to be the very reason for the success of the other. Specifically, multilateral regimes often fail due to the lack of a forceful and effective enforcement mechanism. Unilateral actions, such as sanctions, often fail due to the lack of multilateral support for what often is an effective enforcement mechanism. When both of these causes are considered, it becomes clear that a logical remedy would be to combine the strengths of the two systems while eliminating their weaknesses. Such a combination would be comprised of a multilateral regime using sanctions to enforce core human rights and remedy violations of those rights. Thus, the might of unilateral actions, in the form of trade sanctions by a powerful nation, can be made even mightier by the multilateral support of other less powerful nations.

II. AN ALTERNATE REGIME

A. INTRODUCTION

The most logical place for a regime using trade sanctions for the enforcement of human rights is within the provisions of the World Trade Organization (WTO),\textsuperscript{230} the largest organization for the regulation of international trade. The new WTO, established in January 1995, is the most sweeping and ambitious attempt ever undertaken to regulate international trade activity. The provisions of the WTO, as created by the Uruguay Round\textsuperscript{231} of the General Agreement on Tariffs and Trade

\textsuperscript{229} See supra notes 225-26 and accompanying text (discussing the United States denial of military aid to Nicaragua in 1977-79 as an example of unilateral action that was ultimately successful in that it contributed to the eventual overthrow of the Somoza regime, yet was not entirely successful in that the IMF approved loans to the Somoza government, thereby thwarting the effect of the United States unilateral sanctions against Nicaragua).

\textsuperscript{230} Agreement Establishing the Multilateral Trade Organization, opened for signature Dec. 15, 1993, 33 I.L.M. 13 [hereinafter WTO]. "Multilateral Trade Organization" (MTO) was changed to "World Trade Organization" (WTO) in all Uruguay Round documents. Id.

\textsuperscript{231} Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, opened for signature Dec. 15, 1993, 33 I.L.M. 9 [hereinafter Uruguay Round].
(GATT), will serve to regulate trade and settle disputes on an almost world-wide scale. The adoption of the WTO by such a large number of states illustrates that the majority of nations in the world are willing to allow an international body to liberate, as well as regulate, one of their major activities, namely trade, in the international sphere.

With such an overwhelming acceptance of an international body for trade regulation, the possibility arises of expanding that acceptance to include the enforcement of human rights in conjunction with trade. A human rights arm of the WTO could be created to make recommendations for the enforcement of human rights through trade sanctions similar to existing sanctions for other purposes.

In order to make use of the WTO structure in this way, procedures established for the multilateral enforcement of human rights through trade sanctions need to be compatible with investigative and dispute settlement mechanisms already in place within the WTO. The dispute settlement procedures within particular agreements instituted by the Uruguay Round of the GATT could be used as the model, thereby making use of previously negotiated procedures. For purposes of this paper, I will make use of the remedies provisions in Article 4 of the Agreement on Subsidies and Countervailing Measures as a theoretical model. Article 4 contains a comprehensive regime for the settlement of disputes regarding prohibited subsidies, as well as for the institution of panels for investigating and recommending countervailing measures. As explained below, a modified form of this regime could be established for the enforcement of human rights.


233. Bhushan Bahree, Italy's Ruggiero is Appointed to Head WTO, WALL ST. J., Mar. 24, 1995, at A11. As of January 1, 1955, more than 80 of the GATT's 128 members have joined in the WTO. More are expected to follow. Id.


236. ASCM, supra note 234, art. 4.

237. Id.
B. COMPATIBILITY WITH THE GATT

Prior to setting out the precise structure of such a system, it is necessary to consider whether a system for the enforcement of human rights is even compatible with the GATT, and whether it would fit within the WTO. At first glance, human rights do not appear to have a place within this trade regime. Upon closer examination, however, human rights appear to have been a consideration since the very inception of the concept of an international trade regime.238

In 1944, the Bretton Woods Conference established the charters of the International Monetary Fund and the International Bank for Reconstruction and Development (the World Bank).239 While the conference did not specifically address the area of trade, it contemplated the necessity of an International Trading Organization (ITO).240 The ITO called for attention to human rights by the inclusion of a provision allowing for the exclusion of goods made by prison labor.241 The Havana Conference of 1948 produced a completed draft ITO charter.242 However, the ITO never came into being, primarily due to the United States Congress' failure to approve it.243

While the ITO never came into being,244 the GATT subsequently did.245 It was completed at the Geneva Conference in 1947.246 While initially to be subordinated to the ITO, the GATT was brought into force, and remains in force today, by way of the Protocol of Provisional Application in 1948.247 The Protocol retains the original ITO proposals

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238. See infra notes 239-267 and accompanying text (supporting the existence of a link between international trade and human rights).
243. JACKSON, supra note 240 at 34.
244. ld.
245. GATT, supra note 232, art. XX(e).
247. JACKSON, supra note 240, at 34-35.
regarding prison labor. Thus, within the original GATT, and all successive versions, Article XX (e) provides the following:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

... (e) relating to products of prison labor.

(Emphasis added.)

The inclusion of this article has apparently never created dissention, as illustrated by the fact that no member has ever disputed its use. Moreover, there now appears to be a significant movement toward increasing the GATT's coverage of worldwide labor standards.

During the Uruguay Round, the United States proposed a formal link between trade and labor standards in the framework of the WTO. While it ultimately backed away from this issue, the United States made it clear that it will continue to pursue such a link, later asserting that trade sanctions should be available as a last resort if member nations violated agreed upon standards regarding child and slave labor.

At the Quadrilateral Meeting following the completion of the Uruguay Round, representatives of the United States, Europe, Japan and Canada discussed the subject of a "social clause" in the future rounds. The social clause would specify labor standards as a precondition for market access. The European Parliament supports such a social clause.

248. Id.
249. GATT, supra note 232, art. XX(e).
250. JACKSON, supra note 240, at 34.
251. Id.
252. Uruguay Round, supra note 231.
255. Quadrilateral Meeting Will Allow EU, USA, Japan and Canada to Discuss Follow-up to Uruguay Round, Agence Europe, Sept. 9, 1994.
At the time of this writing, the International Labor Organization (ILO) has not yet decided whether to support the inclusion of a social clause. The ILO has stated, however, that social considerations should be applied to the liberalization of trade only if three principles are followed: first, the framework for such an action must be multilateral; second, any direct link must be restricted to recognition of a limited group of basic standards concerning workers' rights which consist of generally accepted human rights; and third, action should be taken to promote parallelism between social progress and the economic development that becomes possible as a result of trade liberalization. The ILO emphasizes that consensus among members of the WTO can only be achieved if solutions involve less radical change and are compatible with existing procedures. The ILO also stated that a possible location for a link between trade and workers' rights could be in Article XX.

As the suggestion of a social clause indicates, a formal link between trade and human rights is an acceptable idea among industrialized members of the WTO. The basis of Article XX(e), as well as increased regulation of labor standards, is the ability of a member of the WTO to address the actions of another member's treatment of its citizens or residents without running afoul of Most Favored Nation obligations. For example, Article XX(e) allows member A to bar the goods of member B.

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258. BNA Int'l Bus. & Fin. Daily, Apr. 12, 1995. After a meeting of the Governing Body in Geneva in April 1995, the ILO announced that it had not yet reached a decision regarding the social clause, but that a working party would be kept in session throughout the remainder of 1995. Id. The meeting did produce a consensus that the gulf between developed and developing countries regarding a link between international trade and social standards through a sanctions-based social clause mechanism was so wide that the issue should be temporarily shelved. Id.

259. Background Statement, International Labour Office, Nov. 1994. In the opinion of ILO Director General Michel Hanseene, the following ILO standards could be included in a multilateral social clause: freedom of association, the right to organize and bargain collectively, minimum age for the employment of children and the progressive abolition of child labor, freedom from discrimination in employment on the grounds of race, sex, religion or political opinion, and freedom from forced labor. Id.


261. Id. ¶ 33.

262. U.S. to Press for Trade-Labor Link at WTO, supra note 253. There is significant resistance to the idea among developing countries which see such a clause as a form of “back-door protectionism” threatening their comparative advantages on costs. Id.

263. GATT, supra note 232, art. XX(e).
B by virtue of member B's use of prison labor to produce those goods to be exported. Accordingly, Article XX(e) allows member A to take action to protect the human rights of member B's citizens and residents and thus, legally interfere in member B's domestic policy toward its citizens, without fear of accusations of a denial of the GATT's Most Favored Nation treatment.

While some might suggest that this provision is intended merely to address the unfair competitive advantage a nation making use of prison labor may have in terms of cost of production, this is not necessarily the case. The provision is contained within the article addressing environmental and public policy concerns, not within any article addressing unfair competition. Such a placement can be interpreted as showing that human rights were a driving force in its inclusion. In addition, as stated above, no member has ever challenged this provision.

Clearly, Article XX(e) appears to permit one member to use trade sanctions to protect the human rights of citizens of another member. Thus, the link between trade and human rights already exists within the GATT. Therefore, the inclusion of a human rights body within the WTO to oversee the enforcement of core human rights would be a logical and permissible extension of Article XX(e). While Article XX is a shield for members to avoid violations of Most Favored Nation obligations, it is also a sword for members to use to address human rights abuses in the form of prison labor. A human rights body would simply be a multilateral use of the existing shield/sword.

Further, such a system could possibly encounter less resistance than a social clause addressing labor standards. As stated above, labor rights are more political in nature, as they involve the right to act affirmatively in a certain manner. Being political or collective, labor rights are less likely to gain universal adherence than the more passive and internationally espoused core human rights. In addition, the institution of a social clause addressing labor standards could possibly create more questions than answers. For example, do the clause's labor standards apply only to those industries producing products for export, or do they apply to all laborers within a particular country?

Contrary to the social clause, the application of a human rights system for the enforcement of core human rights within the WTO would be straightforward, as it would apply to all citizens and residents of

264. Id.
265. Id.
266. Id.
each member state regardless of their employment status. Further, the system would not be a prerequisite to international trade, but rather a remedy in the event of violations. As a logical extension of Article XX(e) in terms of Article XX(e)'s human rights considerations, a system for the enforcement of core human rights through trade sanctions could be universally acceptable, provided the rights to be enforced are those which are espoused by all members.\(^{267}\)

**C. THE RIGHTS TO BE ENFORCED**

As stated in Part I, in order to gain universal agreement and compliance with such as system, the rights enforced must be those which are universally espoused.\(^{268}\) Political and economic rights could not be included initially, as such inclusion would negate the possibility of universal adherence and would also raise the distinct possibility of numerous reservations to the agreement.

The rights enforced should encompass core human rights, essentially those rights contained within the Second Geneva Protocol and Section 702 of the Restatement (Third) of Foreign Relations.\(^{269}\) These rights would include freedom from torture, collective punishments, prolonged arbitrary detention, genocide, slavery, or threats to commit any of these acts.\(^{270}\) These rights would apply regardless of race, gender or religion.\(^{271}\) While the death penalty is considered a form of torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,\(^{272}\) freedom from the death penalty could not be included as a core human right. Due to the widespread approval of capital punishment, inclusion of the right to be free from the death penalty would hinder universal acceptance of the agreement.

While this list of rights appears short, it is merely a starting point at which there could be the greatest chance of acceptance. Such an approach is consistent with the ILO's expressed desire to limit the labor standards to be applied in order to gain greater consensus.\(^{273}\) Once

\(^{267}\) See supra notes 54-77 and accompanying text (discussing the fundamental human rights generally accepted by all members of the United Nations).

\(^{268}\) See supra notes 54-77 and accompanying text.

\(^{269}\) See supra notes 71-75 and accompanying text (enumerating basic human rights).

\(^{270}\) See supra notes 71-78 and accompanying text.

\(^{271}\) See supra notes 71-78 and accompanying text.

\(^{272}\) Torture Convention, supra note 125.

\(^{273}\) See supra notes 257-60 and accompanying text (emphasizing the need to lim-
these core human rights are adopted by the WTO as rights to be universally enforced, it may then be possible to expand the list to include such rights as freedom from the death penalty and the more political rights. A provision such as a two-thirds vote of all members in favor of inclusion of additional human rights would allow for such an expansion. Initially, however, it would be wisest to begin with a list of only those core human rights apt to gain immediate acceptance, specifically those rights already espoused by all member nations.

D. STRUCTURE AND PROCEDURE

As stated above, a human rights arm of the WTO could be created and called the Human Rights Body (HRB). The HRB would be similar to the Dispute Settlement Body (DSB)\textsuperscript{274} now in place. Like the DSB, membership in the HRB would be automatic for all current members of the WTO. This body would include a standing committee, called the Human Rights Committee, of approximately twelve individuals who would be representatives of members of the WTO. Each representative would serve a two-year tenure, with membership revolving among all WTO members. If possible, various areas of the world would be consistently represented on the committee, i.e., three from Europe, three from Asia, three from the Americas, three from Africa. There would be no permanent members as there are in the Security Council of the United Nations, thereby negating the possibility of any one WTO member appearing more influential than any other.

The Human Rights Committee (HRC) would be responsible for receiving reports of denial or abuse of any of the core human rights by any member of the WTO. Such reports may be received from other WTO members, individuals or non-governmental organizations. The HRC would then investigate the matter. If it determines that there is insufficient evidence of abuse or denial, the HRC may then either dismiss the action or request further information from the individual, member or organization submitting the report. In doing so, the HRC must determine the validity of the reports.

Should the HRC find that there is sufficient evidence to warrant further investigation, it may then order the establishment of an inves-

\textsuperscript{274} See Dispute Settlement Procedures, supra note 235 (providing method of dispute settlement).
tigative panel. No member of this panel may be the same nationality as that of the member accused or the reporting individual, member or organization. Membership on the panel should be equally comprised of trade experts as well as human rights experts. This panel system would be similar to that contained in Article 4.4 of the Agreement on Subsidies and Countervailing Measures. As in Article 4, the panel would review all evidence, as well as permit the accused member the opportunity to demonstrate that it has not committed any violation. This last provision, however, should not be interpreted as placing the burden of proof of innocence on the accused member. Rather, it would provide the right to due process, i.e., notification and the right to be heard.

Once the panel had fully investigated the report, it must then submit its conclusions to the HRC. The panel must include its determination as to the existence of abuse and its recommendation as to action to be taken by the HRB. Such recommendations may be either (1) dismissal, due to lack of evidence of a violation, or (2) the institution of sanctions, based on a violation. As stated above, the inclusion of both human rights experts as well as trade experts on the panel is essential as such a decision would entail considerations of both human rights and trade issues.

As in Article 4, the HRC would adopt the panel report within thirty days unless any party involved wishes to appeal. Appeal would be available to either the accused member in the event of a recommendation for sanctions, or to the reporting individuals, member or organization in the event of a dismissal.

To facilitate appeal, a separate appellate body would be created in much the same way as in Article 4. This appellate body would be comprised of twelve representatives of all WTO members with a revolving membership as with the HRC. The members of the appellate body, however, may not be the same nationality as those of the panel members nor the accused member, reporting individual, member or organization, thus, providing greater neutrality. As in Article 4, the appellate body must issue its decision within thirty days of the request for appeal. The HRC must immediately adopt the appellate body’s report. Only with a unanimous vote may the HRC block the appellate body’s findings.

275. ASCM, supra note 234, art. 4.4.
276. Id. art. 4.
277. Id.
278. Id.
279. Id.
In the event that a report is adopted containing a recommendation for sanctions, the HRC would then be responsible for notifying all members of the WTO. Such notification would include a complete report of the panel’s findings, as well as a schedule for the immediate multilateral institution of sanctions against the member in violation. As human rights violations and the safety of those whose rights are being violated are involved, time is of the essence. Ideally, the entire procedure from receipt of reports to institution of sanctions should take no more than twelve weeks even with the inclusion of an appeal.

E. TRADE SANCTIONS

In order for such a system to be successful, all members must initially agree upon the trade sanctions to be used. Further, it is essential that the sanctions are multilaterally applied in order to achieve the greatest effectiveness.

There are three main types of international sanctions in use today: those restricting exports to a sanctioned country; those restricting imports from a sanctioned country; and those that impede finance such as the reduction of aid, the freezing of assets, and the denial of loans. Generally, a combination of trade and financial sanctions has been used most often. For simplicity’s sake, however, only one type of sanction should be adopted for the multilateral enforcement of core human rights. For a number of reasons, the type of sanction that appears most likely to be effective and acceptable to all members would be a restriction on imports from the country found to be violating core human rights.

The reasons why import restrictions would be the most effective type of sanction become clear when one considers the most common reasons for the failure of sanctions. Several commentators have written that trade sanctions often fail due to a lack of cooperation from other countries. In addition, sanctions often prompt allies of the sanctioned country to increase their support and thus offset any effects of the sanctions. This was clearly the case most recently in Burma. Finally, sanctions may alienate allies that do not share the sanctioning country’s

280. 1 HUFBAUER, supra note 176, at 36.
281.  Id. at 12.
282.  Id. at 12.
283. See supra notes 217-219 and accompanying text (describing the United States aborted attempt to impose trade sanctions against the Burmese government due to the refusal of other Asian nations to cooperate).
goals, thereby eliminating any possibility of multilateral support. All of these reasons for failure could be eliminated if the purpose of the sanctions is one that is supported by all members. Democracy and the other political rights, as well as Western labor standards, are not accepted by all members of the WTO. Therefore, all members would most likely not support sanctions for the enforcement of these rights. Sanctions for the enforcement of such rights could more than likely gain unanimous support among members.

Such universal support would help to ensure the success of sanctions in the form of restrictions on imports. Import sanctions most often fail due to the sanctioned country's ability to find alternate markets. If all WTO members instituted sanctions restricting imports from the sanctioned member, the only alternate markets remaining to that sanctioned member would be non-member markets. In light of the number of current members, in addition to the number of countries expressing interest in joining the WTO, those alternate markets should decrease in the future. In addition, restrictions on imports would, for the most part, have less of a negative effect on the member countries than on the sanctioned country. The members would be able to obtain goods from other sources while the sanctioned member would have few other markets on which to fall back. Further, a restriction on imports from, rather than exports to, the sanctioned member would eliminate the need to delineate between humanitarian and non-humanitarian goods entering the sanctioned member state.

The next question is whether the sanctions would apply to all of the sanctioned country's exports or only to specific goods. It would, of course, be impossible to restrict the export of only one kind of goods from all members. Accordingly, two possibilities arise. One possibility would be a complete restriction on all imports of any kind from the member in violation; in essence, a complete blockade against any export activity by that member. The severity of such a sanction, as well as the staggering logistics of enforcement, make this type of sanction impractical. The second alternative would be to restrict the import of the main product of that country. For example, member A's main product for export is textiles. Therefore, if member A were found to be violating core human rights, then all members would institute sanctions restricting the import of any textiles from member A.

284. 1 HUFBAUER, supra note 176, at 12-13.
285. Id. at 36.
As was pointed out earlier, the strength of such a system would come in the form of deterrence. The very existence of a transparent regime of trade sanctions may effectively deter violations. Further, unlike the social clause, a system for the enforcement of core human rights would not be a prerequisite for market access. Rather, it would be a remedy for the violation of rights espoused by all members. As with sanctions provided in the GATT for other violations, such as prohibited subsidies, the sanctions would be instituted only in the event of a violation. With regard to the other GATT sanctions, the transparency of the consequences of a failure to enforce core human rights could serve as an effective deterrent to any violations.

In addition, the multilateral and pre-set nature of the sanctions could help to ensure their success. As one commentator pointed out, the United States was particularly successful in making use of sanctions from the end of World War II through the early 1970s because of its economic leverage. As the economic strength of the United States waned, sanctioned countries had other choices and used them. The institution of multilateral sanctions under the direction of the United Nations against Iraq following the invasion of Kuwait, illustrates that sanctions, specifically multilateral sanctions, can be very effective when actively enforced and backed by economic leverage. Other commentators have pointed out that experience has shown that a "hard and fast" application of sanctions maximizes the impact as it gives the sanctioned country less time to prepare and thus, divert the sanctions' effects. Finally, sanctions are most successful when the sanctioning country avoids high costs to itself. Pre-set multilateral sanctions within the WTO could attain the same sort of success as those employed against Iraq, as they too would be applied quickly and effectively giving the sanctioned member little time to seek immediate alternate markets. While there would be no way to eliminate completely the cost of such sanctions to the sanctioning countries, mechanisms for alternate supplies of the sanctioned member's products could be created.

287. Id.
288. Id.
As to the duration of the sanctions once instituted, the HRC would be charged with oversight of compliance. The sanctioned member would be responsible for providing clear proof of cessation of its violations as well as steps taken to prevent further violations. Only after the HRC is satisfied that the sanctioned member has made sufficient progress would the sanctions be lifted.

CONCLUSION

In the past ten years, human rights tragedies have abounded. To comprehend the seriousness of the situation and the urgent need for some type of effective enforcement of core human rights, one need only consider such tragedies as the tribal slaughters in Rwanda, the atrocities in the former Yugoslavia and the thousands of demonstrators gunned down by government forces in Burma. The alarming frequency of horrific violations of fundamental human rights illustrates the overall ineffectiveness of current methods of protection. An effective alternative is obviously needed, one that is capable of garnering universal support and which has quick and effective mechanisms for enforcement. Limiting the rights to be protected to those which are apolitical, and therefore compatible with all ideologies, could ensure universal support of such a system. Basing the sanctions for violations on international trade, an economic activity practiced by virtually all nations, will allow swift, effective enforcement within an already existing trade regime, the WTO.

The result of ever-increasing international trade is that nations are no longer independent of each other economically. Therefore, the denial of a nation's ability to trade internationally can have a devastating effect on its economy. However, sanctions against a nation whose trade practices injure the economy of another nation appear to have greater support than do sanctions for other misdeeds such as violations of human rights.

In light of the overwhelming support of sanctions to remedy violations of internationally accepted trade practices, it is logical to make use of an existing trade regime such as the WTO to enforce another equally pressing problem, violations of basic human rights by member states. When a member state faces the possibility of loss of access to interna-

291. See supra notes 227-228 and accompanying text (describing the situation in Iraq after the 1990 U.N.-imposed multilateral economic sanctions).
292. See supra notes 227-28 and accompanying text.
tional markets if it violates the human rights of its residents and citizens, it may think twice about committing such violations.