
**Altering World Order: The Alter-Globalization Movement
and the World Trade Organization**

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Abstract

This thesis analyses the relationship between the World Trade Organization (WTO) and the alter-globalization movement through the theoretical framework of Robert W. Cox. A Coxian perspective highlights that the WTO is a central international organization of the current *nebuleuse*, and one integral to enforcing, promoting and defending transnational corporate hegemony. The emergence of the protest movement inaccurately labelled the ‘anti-globalization movement’ can be described as a Coxian counter-hegemonic structure. From the plethora of protesters making up this ‘anti-globalization movement’ who dispute the legitimacy of the WTO, a distinct alter-globalization movement can be identified. It prescribes the alternative principles of public accountability, the rights of people and the protection of the environment as guides to reforming the WTO towards a Coxian ‘new multilateralism’. This thesis asks: to what extent has this alter-globalisation movement succeeded in altering the policies and processes of the WTO in accordance with these principles? In Coxian terms the questions of how far the campaign for ‘new multilateralism’ has successfully altered the hegemony of the current world order and avoided *trasformismo* are asserted.

After illustrating corporate structural power within the WTO’s policies and procedures, the alter-globalisation movement is defined as an entity of overlapping social movements and Non-Governmental Organizations (Alter-NGOs). The thesis identifies and evaluates three strategies employed by the alter-globalisation movement to place its values at the heart of the WTO: demonstrations on the street; assisting developing states during negotiations; and submitting *amicus* briefs to the WTO’s Dispute Settlement Body (DSB). The obstacles presented by the WTO’s policy of *trasformismo* are then detailed, namely: political elites coopting the alter-globalization movement’s principles into their own rhetoric; the cooption of NGOs by political elites from the developing world, and the cooption of NGOs and the fierce rejection of any NGO influence within the WTO. In its conclusions the thesis details the manner in which *trasformismo* is a significant tool in the armoury of corporate hegemony for resisting reform, and thereby informs existing literature on the problems faced by all social movements and NGOs engaging with reforming the world order.

Dedication

This thesis is dedicated to my wife Lesley and my son Calum.

Work like you don't need the money.
Love like you've never been hurt.
Dance like nobody's watching.
Sing like nobody's listening.
Live like it's Heaven on Earth.
Another world is possible.

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List of Abbreviations

AFL-CIO	American Federation of Labour-Congress of Industrial Organization
Alter-NGO	Alter-globalization Non-Governmental Organization
ART	Alliance for Responsible Trade
ATTAC	Association for the Taxation of Financial Transactions for the Aid of Citizens
BIAC	Business and Industry Advisory Committee
CAP	Common Agricultural Policy
CEO	Chief Executive Officer
CIEL	Centre for International Environmental Law
CONGOs	Coopted Non-Governmental Organizations
CMC	Centre for Marine Conservation
DG	Director-General
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Community
EU	European Union
FDI	Foreign Direct Investment
G7	Group of Seven
G8	Group of Eight
G20	Group of Twenty
G90	Group of Ninety
GATS	General Agreements on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
ICPS	International Centre for Policy Studies

ICFTU	International Conference of Free Trade Unions
ICTSD	International Centre for Trade and Sustainable Development
IGOs	Intergovernmental Organizations
ILO	International Labour Organisation
IMF	International Monetary Fund
IP	Intellectual Property
IPR	Intellectual Property Rights
IR	International Relations
ITO	International Trade Organization
INGO	International Non-Governmental Organisation
LDCs	Least Developed Countries
M&As	Mergers and Acquisitions
MAI	Multilateral Agreement on Investment
MFN	Most-Favoured-Nation
NAFTA	North American Free Trade Area
NGOs	Non-Governmental Organizations
OECD	Organization of Economic Cooperation and Development
PRSPs	Poverty Reduction Strategy Papers
Quad	Quadrilateral Group
R&D	Research and Development
RMALC	Mexican Action Network Confronting Free Trade
SACSNITI	South Asian Civil Society Network of International Trade Issues
SAPRIN	Structural Adjustment Participatory Review of International Network
TNCs	Transnational Corporations
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Property Rights
TSMOs	Transnational Social Movement Organisations

UN	United Nations
UNCTD	United Nations Conference on Trade and Development
UNECOSOC	United Nations Economic and Social Council
UNIECE	Union of Industrial and Employers Confederation of Europe
UK	United Kingdom
US	United States of America
USCID	US Council for International Business
USTR	United States Trade Representatives
WSF	World Social Forum
WTO	World Trade Organization
WUNC	Worthiness, Unity, Numbers and Commitment
WWF	World Wildlife Fund

Introduction

Neoliberal economic globalization ... is to bring about a situation in which private capital and 'the market' alone determine the restructuring of economic, political and cultural life, making alternative values or institutions subordinate.¹

One must beware of ignoring the principle of dialectics by over emphasising the power and coherence of a structure, even a very dominant one. Where a structure is hegemonic, critical theory leads one to look for a counter-structure, even a latent one, by seeking out its possible bases of support and elements of cohesion.²

1.1 The Subject and Nature of the Problem

In the past a three-day international trade summit would have passed without public knowledge and the conclusions of the negotiations would have only been allotted a small column in the financial sections of the broadsheets. All this changed when 50,000 people walked onto the streets of Seattle during the 30 November and the 3 December 1999. Non-violent mass protest marches were held; barricades to stop the delegates reaching the trade summit were built; the global brand names of Starbucks, MacDonalds, Nike and The Gap were attacked; to establish order – mirroring the *Star Wars* Storm Troopers – complete with tear gas, pepper spray, rubber bullets and truncheons - stood police in black armour, and the Mayor of Seattle declared Marshal

¹ Barry K. Gills. 'Introduction: Globalization and the Politics of Resistance', in Barry K. Gills (editor), *Globalization and the Politics of Resistance*, Basingstoke: Palgrave, 2000, p. 4.

² Robert W. Cox. 'Social Forces, States and World Orders: Beyond International Relations Theory', in *Millennium*: Vol. 10, No.2, 1981, p. 144.

Law. All these factors converged to ensure that the protests at the World Trade Organization's (WTO) 1999 Millennium Ministerial Conference in Seattle brought a wider public audience to think critically about the legitimacy of neoliberal economic globalization, and the emergence of a democratic deficit within international organizations.

In order to understand the significance of the events at Seattle they must be seen in the context of wider communication, economic, ideological, institutional, legal and political developments which have occurred in the latter half of the 20th century. Together these developments have been termed 'globalization'.³ What this concept is argued to draw attention to is that the world had become greatly integrated by the late 20th century in the economic, environmental, military, political and technological spheres. Unique to today's world is the utilisation of technological revolutions in data processing and communication, which overcome the borders of the state. This technology has brought about the compression of 'time and space', and allows 'real time' interaction amongst states, non-state actors and individuals, such that the world can be seen as a 'single social space'. A further consequence of the diffusion of technology is that a 'global consciousness' is argued to be emerging as more individuals acknowledge that events outside of their territory have a direct impact on the quality of their life and many cultures are exposed to new ideas and influences. Detailing the spheres, actors and factors of this integrated world order called globalization, however, does not get to the causes of why the world has become more

³ David Held *et al.* *Global Transformations: Politics, Economics and Culture*, London: Polity Press and Blackwell Publishers, 2000, David Held and Anthony McGrew. *Globalization/Anti-Globalization*, London: Polity Press and Blackwell Publishers, 2003, and David Held and Anthony McGrew. 'Introduction', in David Held and Anthony McGrew (editors), *Governing Globalization: Power, Authority and Global Governance*, London: Polity Press and Blackwell Publishers, 2003, Richard Higgot. 'Economics, Politics, and (International) Political Economy: The Need for a Balanced Diet in an Era of Globalization', in *New Political Economy*, Vol. 4, No. 1, 1999, p. 23-36, and Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000. Ankie Hoogvelt. *Globalization and the Postcolonial World: The New Political Economy of Development*, Hampshire: Palgrave, 2001. Grazia Ietto-Gillies. *Transnational Corporations: Fragmentation Amidst Integration*, London: Routledge, 2002, and Jan Aart Scholte. *Globalization: A Critical Introduction*, London: MacMillan Press Limited, 2005.

integrated. Indeed, it becomes an apolitical description of the current world order, which hides agency, intent and the pursuit of specific interests.

This integration has emerged because of cooperation and coercion amongst state and economic elites through centres of political authority outside of the state, which has been termed supraterritoriality.⁴ The General Agreement on Tariffs and Trade (GATT) (now the WTO), the International Monetary Fund (IMF) and the World Bank had all been created in the immediate post-World War Two era to manage Keynesian capitalism amongst member states. Structural Adjustment Programmes from the IMF and World Bank have been significant in coercing members to accept a new form of transnational capitalism.⁵ Similarly the construction of the WTO in 1995 has been a deliberate decision to change the context and institutional structure within which international trade is defined.⁶ The creation of the WTO, established the central international organisation for coordinating, codifying, enforcing and surveillance of international trade agreements. Like its sister organization it does so by protecting and enhancing the prevailing economic interests of the WTO's dominant actors – primarily the European Community⁷ (EC) and the United States of America (US) with the aid of the other members of the Quadrilateral Group (Canada and Japan).⁸

⁴ Jan Aart Scholte. *Globalization: A Critical Introduction*, London: MacMillan Press Limited, 2005.

⁵ Thomas J. Biersteker. 'The Triumph of NeoClassical Economics in the Developing World: Policy Convergence and Bases of Governance in the international Economic Order', in James N. Rosenau and Ernest-Otto Czempiel (editors), *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, p. 121, Walden Bello, with Shea Cunningham and Bill Rau. *Dark Victory: The United States, Structural Adjustment and Global Poverty*, Oakland, California: Institute for Food and Development Policy, 1994, p. 4-5, and Richard Snyder. *Politics After Neoliberalism: Reregulation in Mexico*, Cambridge: Cambridge University Press, 2001, p. 7. Ankie Hoogvelt. *Globalization and the Postcolonial World: The New Political Economy of Development*, Hampshire: Palgrave, 2001.

⁶ For example Richard Blackhurst. 'The Capacity of the WTO to Fulfil its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: The WTO and Beyond* (2nd Edition), Oxford: Oxford University Press, 2001, John H. Jackson. *Restructuring the GATT System*, (Royal Institute of International Affairs), London: Pinter Publishers Ltd., 1990.

⁷ The term EC is used to refer to the European Community, which represents all member states of the European Union at the World Trade Organization.

⁸ Richard Steinberg. 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', in *International Organizations*, Vol. 56, No. 2, 2002, p. 342, Theodore H Cohn. *Governing Global Trade: International Institutions in Conflict and Convergence*, Aldershot: Ashgate Publishing Limited, 2002. p. 123-160.

For example, although the WTO's Charter states that it provides a forum for the voluntary multilateral negotiations of trade liberalisation to bring about universal prosperity, only certain sectors of trade are subject to negotiation. Trade negotiations have focused on liberalising service markets and the high-tech industries throughout the world⁹, but not the highly subsidised markets for agriculture or textiles in the EU or US, which are subjected to strong domestic social forces. At the same time protection has been introduced to international trade through the WTO's agreement on Trade-Related Property Rights (TRIPS). The current world order, therefore, reflects a reorganisation of the policies of these institutions to promote and enforce a particular form of transnational capitalism. A neoliberal market ideology is also promoted by these institutions on a global scale to justify the establishment of this form of transnational capitalism within member states. Nearly all the states of the world are members of these international organisations, and so their policies to institute transnational capitalism are restructuring societies, life chances and quality of life of almost the entire world, as well as impacting on the health of the planet.

As the creation of economic policies and exercise of political power have shifted to these international organisations, in parallel the forces that contest and influence the exercise of political power have shifted their focus to them also. Seattle illustrated that the exercise of political power and the organisation of the *demos* to question this political power had fundamentally changed. The core claim made by the activists was that a small transnational political elite had been responsible for unleashing market forces on a global scale with the justification of a neoliberal ideology. The promotion of market economies by neoliberal globalization, the protesters argued, was not serving the people; the people were serving Transnational Corporations (TNCs), which in turn controlled governments. The activists also drew attention to: colossal global inequalities in health, opportunity and wealth; the undermining of the rights of

⁹ Linda Weiss. 'Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO', in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 723-749.

the individual; accelerated pollution and the exhausting of the earth's resources; and a decline in democratic participation nationally, and its non-existence internationally. Thus, in the final weeks of the 20th century, political elites were confronted, not only by protesters in Seattle, but by an increasing number of people throughout the world, asking the "cardinal question of political life concerning power and rule, namely: who rules, in whose interests, by what means and for what ends?"¹⁰ Suddenly it seemed the world was watching, and a new generation of protesters had provoked the public and the media to ask questions about the decisions that were being made by political elites within international organizations in the name of the *demos*.

Since Seattle, demonstrations by social movements have become a common feature of intergovernmental meetings, ranging from concerns over environmental degradation, the social justice of economic policies, women's, human and labour rights, and the use of military force.¹¹ Yet the protesters are described and labelled as a single anti-globalization movement. The language often used to describe the protesters inappropriately portrays them as a single movement, and one that is inherently anti-global governance, if not pro-anarchist. A more accurate description of the protesters, as seen at Seattle, acknowledges the many diverse social movements, civil society groups and NGOs that were present from all over the world. Within this plethora of groups a distinction can then be drawn between those that reject global institutions and policies, and those that assert a positive and constructive attitude to the integration of the world. The latter can be described as the 'alter-globalization movement' because it demands a reform of the global system so that the values of democracy, economic justice, environmental protection and human rights take precedence over dogmatic economic theory. The slogan of the alter-globalization

¹⁰ David Held and Anthony McGrew. *Globalization/Anti-Globalization*, London: Polity Press and Blackwell Publishers, 2003, p. 58.

¹¹ Mark Rupert. 'In the Belly of the Beast: Resisting Globalisation and War in a Neo-Imperial Moment', in Catherine Eschle and Bice Maiguashca (editors), *Critical Theories, International Relations and 'Anti-Globalisation Movement': The Politics of Resistance*, Abingdon: Routledge, 2005, p. 36-52.

movement is “another world is possible”. Reforming the existing institutions of global governance, such as the WTO, to embrace the values of this movement are activities directed towards the creation of this better world. Together these social movements and NGOs have engaged in campaigns to place pressure on governments to alter the agenda and principles of the current world order. This has included attempting to influence negotiations and the dispute settlement system within international trade governed by the WTO, so that they reflect the democratic, egalitarian, and environmental values this alter-globalization movement holds.

It is important to see this rise in the profile of social movements within the context of specific developments in the years prior to the 21st century.¹² Since the 1980s political parties and governments, especially within the Organization of Economic Cooperation and Development (OECD), have embraced the ideology of neoliberal globalization and developed close working relationships with corporations. As political parties have converged around the acceptance of neoliberalism there has been an absence of parties offering alternative policies. Market forces have therefore been brought into nearly every aspect of life. Coupled to this is the fact that more political decisions are taken outside the national setting and within regional and international organisations. These state-centric international organisations predominantly have very limited provision, often superficial, for the direct participation or representation of civil society groups. The key decision-making organs of these organisations are often concealed, as decisions and negotiations are made by elites, behind closed doors and free from public scrutiny.

¹² Mark Blyth and Richard S. Katz. ‘From Catch-all Politics to Cartelisation: The Political Economy of the Cartel Party’, in *Western European Politics*, Vol. 28, No. 1, 2005, Peter Mair and Ingrid Van Biezen. ‘Party Membership in Twenty European Democracies, 1980-2000’, in *Party Politics*, Vol. 7, No. 1, 2001, and Jeffery J. Ryan. *Painful Exit: Electoral Abstention and Neoliberal Reform in Latin America*, Manuscript for Latin American Studies Association, Washington, DC, September 6-8, 2001.

Not unrelated to these developments, in the new millennium, it has been suggested that party membership and voter turn-out at elections are declining in both the established and newly democratised states. Simultaneously however, there has been a significant increase in citizens participating in protests at the meetings of international economic organisations, and against the use of state violence in international disputes. “Not in My Name” was a key statement on placards used during the 2003 anti-Iraq war campaign, and the chant: “This is what democracy feels like” was frequently heard at demonstrations. Both of these statements illustrate the gulf many demonstrators felt between themselves and their political leaders. The membership of NGOs has also greatly increased.¹³ Using the tools of the technology revolution these social movements and NGOs are voicing their criticisms to a wider audience, attracting new members, and organising transnationally to lobby and protest. Consequently, social movements and NGOs are providing an alternative focal point for people to express dissent, unite and find solidarity outside of traditional party and electoral structures.

The legitimacy of the WTO is also called into question because citizens perceive that they have little control over it. Without transparency and public oversight there is no assurance that the WTO’s multilateralism is not used as an institution promoting TNC interests. To overcome this democratic deficit and crisis of legitimacy there have been calls from the alter-globalization movement for more formal and structured engagement of NGOs within the WTO.¹⁴ These NGOs are asserted to represent the interests of global civil society generally. The call for a democratising function for NGOs has not been met with universal agreement. It is denied that a democratic

¹³ Data from Mary Kaldor, Helmut Anheier and Marlies Glasius (editors), *Global Civil Society: 2003*, Oxford: Oxford University Press, 2003, p. 13.

¹⁴ Steve Charnovitz. ‘The Emergence of Democratic Participation in Global Governance (Paris, 1919)’, in *Indiana Journal of Global Legal Studies* Vol. 10, No. 45, 2003, Daniel C. Esty. ‘Environmental Governance at the WTO: Outreach to Civil Society’, in Gary P. Sampson and W. Bradlee Chambers (editors), *Trade, Environment, and the Millennium*, New York: United Nations University Press, 2002, p. 132, Daniel Esty. ‘Comment’, on Robert Keohane and Joseph Nye. ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’ in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 302.

deficit exists because the intergovernmental nature of the WTO determines that only governments are required to sit at the negotiating table. Doubts have also been raised over just who these NGOs represent and what legitimate right they have to observe or participate at the WTO.¹⁵ Fuelling this debate, many developing states have expressed suspicion at allowing NGOs access to the WTO on the grounds that it is inviting another force from the developed world to set the trading agenda. The elites of the WTO have consistently argued that negotiations between state elites are as democratic as the WTO can be.¹⁶ Debate on the participation of NGOs, the legitimacy of the WTO and the impact of its trade policies has continued to rage in both public and academic circles.

1.2 The Research Question

It is now eleven years since the WTO was created, and seven years since the debate over the WTO's legitimacy and accountability was first brought into the public domain by the events of Seattle. Having outlined the subject and nature of the problem, this thesis specifically addresses the question of to what extent the alter-globalization movement has successfully altered the policy and processes of the WTO towards the principles of social justice and public accountability between 1999 and 2005. In answering this question it will be possible to determine whether the alter-globalization movement has begun altering the principles and practices of the current world order.

¹⁵ Kent Jones. 'The WTO Core Agreements, Non-Trade Issues and Institutional Integrity', in *World Trade Review*, Vol. 1, No. 3, 2002, p. 265.

¹⁶ The World Trade Organization Consultative Report. *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*. January 2005.
http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm

1.3 Methodology

Traditional International Relations (IR) theories do not provide a very helpful framework to study the relationship between the alter-globalization movement and the WTO. The state-centric limitations of these theories can neither account for the influence of international organizations nor corporations, NGOs and social movements functioning within transnational networks. In contrast, this thesis asserts that the historical materialism of Robert W. Cox provides an insightful conceptual framework to understand the dynamic changes within the global political economy in which these inter-state and non-state actors are situated.¹⁷ Cox, drawing from Antonio Gramsci, applies the concepts of hegemony, counter-hegemony, organic intellectuals, and *trasformismo* to international organizations, but also developed his own concepts of *nebuleuse* and 'new multilateralism' to provide a unique analysis of the current world order. Coupled to this critical analysis is a plan of action to democratically transform international institutions and develop a 'new multilateralism' based on the interests of the less powerful civil society groups promoting "greater social equality, greater diffusion of power among countries and social groups, protection of the biosphere, moderation and non-violence in dealing with conflict, and mutual

¹⁷ Robert W. Cox. 'The Idea of International Labor Regulation' (1953), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. p. 41-48, Robert W. Cox (editor). *International Organizations: World Politics*, London: MacMillan and Co, 1969, Robert W. Cox with Harold K. Jackson (editors), *The Anatomy of Influence: Decision Making in International Organizations*, London: Yale, 1973, Robert W. Cox with Harold K. Jackson. 'Decision-making' (1977), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 349-375, Robert W. Cox. 'Social Forces, States and World Orders: Beyond International Relations Theory', *Millennium*: Vol. 10, No.2, 1981, p. 126-155, Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 124-143, Cox, R. W. 'Realism, Positivism and Historicism' (1987), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 49-59, Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, Robert W. Cox. 'Multilateralism and the World Order', in *Review of International Studies*, Vol. 18, 1992, p. 161-180, Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296-316, Robert W. Cox. 'Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of 'Ibn Khaldun'' (1992), in Robert W. Cox and Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 144-173, Robert W. Cox. *Multilateralism and the United Nations System: Final Report*, United Nations University Press, March, 1996, Robert W. Cox. (editor), *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, Robert W. Cox. with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, and Robert W. Cox. 'Beyond Empire and Terror: Critical Reflections on the Political Economy of World Order', in *New Political Economy*, Vol. 9, No. 3, September 2004, p.307-324.

recognition of civilizations”.¹⁸ This ‘new multilateralism’ is deemed to be inherently democratic from the ‘bottom-up’ because it overcomes state-centric multilateralism and is based upon the interests of civil society groups, which respect the diversity of cultural differences. Cox distances himself from deterministic Marxist doctrine by stating that although new social forces will emerge from a new mode of production to contest the hegemony and propose alternative principles for the organisation of society, they form part of a non-determined dialectical process. Consequently, he asserts that there is no historically determined teleological end, but he does make the normative claim that ‘new multilateralism’ ought to become a reality.

Finally, and central to this thesis, Cox stresses that when hegemony is constructed (the configuration of material capabilities, ideas and institutions by dominant social forces in production, the state and world order) it is resilient and can absorb demands for change through the process of ‘reform from above’ or *trasformismo*.¹⁹ Thereby agents that demand change, gain public support and undermine the legitimacy of an international organizations are invited to become accredited and engage with a forum of the institution in order to legitimise its policies and procedures to the public. At the heart of this concept of *trasformismo* is the assertion that such social reform is initiated by political elites for the sole purpose of forestalling popular political mobilization and thereby disabling the potential for democratic transformation. By controlling access to decision-making bodies political elites act as gatekeepers – determining who can participate, on what terms and by what means. In many ways *trasformismo* reflects the ‘structural power’ of corporate social forces within international organization because they are able to set the framework in which

¹⁸ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

¹⁹ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox and Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 130-131 and 139.

negotiations will take place and control policy outcomes.²⁰ It is for these reasons that the Coxian theoretical framework is applied in this thesis.

In chapter two it will be argued that through their control of the institutions of production within the prevailing states, a dominant transnational corporate class emerged within national and international organizations during the 1980s and built consensus on the policies for the coordination of the global economy (*nebuleuse*). Chapters three and four illustrate that the WTO performs the central functions of hegemony in the current *nebuleuse*, as it coordinates, legitimises, enforces and provides surveillance measures to ensure that national policies are consistent with the demands of a transnational model of production for this transnational elite. This analysis also identifies the structural power of corporate social forces to set the framework for policy outcomes through determining who can participate and on what terms. Attention will also be drawn to the manner in which the WTO promotes a specific ontology to build consent for transnational capitalism, such as the equality to be gained from regulating international trade through the WTO's Dispute Settlement Body (DSB). Through the examples of the Uruguay Round of negotiations (1986 – 1994) and the Cancun Ministerial Conference (2003), in chapter four, the contradictions of the WTO will be highlighted.

Chapter five constructs a four-stage continuum of the ideological positions within the counter-hegemonic forces to identify an alter-globalisation movement, which seeks to reform international organizations in a manner that is similar to the Coxian 'new multilateralism'. The thesis divides the alter-globalization movement into two constituent parts: social movements and NGOs. Those NGOs with an alter-globalization perspective are termed Alter-NGOs. The distinction is drawn because social movements are organised around informal and loose networks which employ

²⁰ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988.

unconventional methods of political participation, such as mass demonstrations, to shape public consciousness and place pressure on political elites²¹: whilst NGOs are formally organised and engage with political institutions through formal channels. Although there are official channels of access to the WTO, three unofficial strategies are identified to be employed by the alter-globalization movement to influence the policies and processes: demonstrations on the street, assisting developing states during negotiations, and submitting *amicus* briefs to the WTO's dispute settlement body.

In resisting the strategies of the alter-globalization movement chapters five and six draw attention to the policy of *trasformismo*, which has been pursued by the political elites of the *nebuleuse*. Through *trasformismo*, it is argued the alter-globalization movement has been coopted, distorted and prevented from changing the policy outcomes or structure of the WTO. Chapter five demonstrates that the language of the protesters has been coopted into elite rhetoric to justify the WTO and neoliberal globalization in general. Chapter six draws attention to the complexity of the NGO debate, not least through highlighting the argument that professional NGOs are causing a 'globalization from the middle-classes' and deradicalizing the demands of grassroots movements. The chapter also illustrates that the advocacy work of Alter-NGOs has involved providing assistance to developing states before and during negotiations by offering knowledge, expertise and resources; in addition Alter-NGOs have made attempts to utilise the legal provision of *Amicus curiae* at the WTO's DSB. In both of these cases cooptation is evident. The impact of the alter-globalization movement on the WTO will be assessed in the conclusion.

To understand the history, structure, decision-making process and ideology of the WTO, both primary and secondary sources are consulted, such as the WTO's

²¹ For an overview of social movement theory, see Donatella Della Porta and Mario Diani. *Social Movements: An Introduction*, Oxford: Blackwell Publishing, (1999) 2004.

charter,²² literature published by the WTO Secretariat²³, and the work of prominent international trade lawyers and economists published in international law journals.²⁴ The availability, through the Internet, of a large number of official WTO documents on dispute resolution and related General Council Minutes of Meetings, as well as public statements, have also been consulted. Since the dominant members within the WTO are the EC and US, public statements released by these two actors on relations with both the WTO and NGOs have been utilised. Similarly, documents and public statements of both activists and NGOs of the alter-globalization movement have been referred to throughout the thesis.

A limited number of meetings and interviews were also conducted with the actors involved in the research. Directly after the collapse of the WTO's Cancun Ministerial Conference, in October 2003, I visited the Department of Trade and Industry, London, to participate in a 'question and answer' session with the then EC Commissioner for Trade, Pascal Lamy, on why the negotiations failed. In November 2003, the then EC Deputy Commissioner for Trade, Mathew Baldwin, was interviewed at the European Union Commission, Brussels, on the causes of the Cancun breakdown. Five interviews also took place with officials from the WTO Secretariat in March 2004 at the WTO, Geneva.

Finally, ten interviews were conducted in Washington D.C. in May/June 2004. These interviews involved: Jim Rubin and William Clatanoff (present and former United States Trade Representative); Betsy White (US. Department of Labour); Steve

²² See the *Agreement Establishing the World Trade Organization*, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²³ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003.

²⁴ For example Richard Blackhurst. 'The Capacity of the WTO to Fulfil its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: The WTO and Beyond*, 2nd Edition, Oxford: Oxford University Press, 2001, John H. Jackson. *Restructuring the GATT System*, (Royal Institute of International Affairs), London: Pinter Publishers Ltd., 1990.

Wolfson (US Environmental Policy Advisor); David Donnes (US Department of Interior); John Cavanagh (Director of the NGO International Policy Studies); Thea Lea (Assistant Director of International Economics of the American Federation of Labour-Congress of Industrial Organization, (AFL-CIO)); Dan McGrew and David Hunter (President and former President of the advocacy NGO the Centre for International Environmental Law (CIEL)); and Carl Pier (the NGO Human Rights Watch). The interviews were designed to provide an impression and first-hand experience of the relationship between the WTO, its members and the alter-globalization movement. Since all the interviewees have had direct contact with the WTO and some aspect of the alter-globalization movement, parts of these interviews have been quoted as primary sources to support specific arguments.

1.4 Measuring the Success of the Alter-Globalization Movement

There are difficulties in measuring the degree to which the alter-globalization movement campaigns have altered or influenced the policy and process of the WTO. Social movement theorists have long recognised this difficulty in measuring the success of social movements within the borders of the state. Edwin Amenta and Neal Caren state that “conceptually speaking, scholars have to address the meaning of success or influence for challengers that make state related claims”.²⁵ William Gamson offers two categories of success when determining whether a social movement’s goals or claims have been realised and accepted. He argues that acceptance means that a social movement is recognised as being a legitimate representative of a constituency by the target of the collective action, and through this recognition the relationship between the challenging organisation and the groups it attempts to influence is altered.²⁶ Some basic acknowledgement that the challenger is

²⁵ Edwin Amenta and Neal Caren. ‘The Legislative, Organizational, and Beneficiary Consequences of State-Oriented Challengers’, in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 262.

²⁶ William Gamson. *The Strategy of Social Protest* (2nd Edition), Belmont, CA: Wadsworth, 1990.

a legitimate representative of a specific group is a starting point, but determining what is meant by the relationship being altered is somewhat vague. Amenta and Caren also draw attention to the problems with using recognition as a measurement of success. Firstly, they explain that it is possible for a social movement to be neither recognised nor have its stated programme realised, and for its constituents to still gain some benefits. More critically, they acknowledge that recognition may lead to just that, and no more than recognition.²⁷

In contrast Alison Van Rooy draws attention to the manner in which social movements and NGOs are able to establish incremental changes to political institutions through even limited access to institutions. The reason for these assertions is that even limited access can allow NGOs to promote their new ideas to a wider audience, and in doing so change

the ‘frames’ by which the public and decision-makers understand global issues. The realm of self-evident thought: it is the perimeter around our conscious thinking that we no longer questioning. Human rights have been framed in the 20th century as self-evident and universal ... the biggest advocacy battles are won when an idea becomes self-evident.²⁸

In addition she points out that through frame changing NGOs are now seen as legitimate participants in international institutions. Therefore it is important for social movements and NGOs to “take advantage of a partly opened door, seeking to open it further”.²⁹

²⁷ Edwin Amenta and Neal Caren. ‘The Legislative, Organizational, and Beneficiary Consequences of State-Orientated Challengers’, in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 262.

²⁸ Alison Van Rooy. *The Global Legitimacy Game: Civil Society, Globalization, and Protest*, Basingstoke: Palgrave/MacMillan, 2004, p. 22.

²⁹ Alison Van Rooy. *The Global Legitimacy Game: Civil Society, Globalization, and Protest*, Basingstoke: Palgrave/MacMillan, 2004, p. 29.

Jackie Smith, however, stresses that even though social movements and NGOs are recognised as legitimate representatives of groups and issues, on gaining access to international organisations, NGOs have become coopted by these institutions (CONGO's). In doing so the NGOs may have access to policy forums and discussions but are unable to actually influence the program on the political agenda. Indeed she points out:

many activists argue that the limited access provided to international arenas reflects an attempt by states to coopt movement organisations and to channel movement pressure in directions that limit its capacity for achieving fundamental social change. And the fact that states govern the rules of NGO access to international institutions means that the more radical critics are kept outside of this institutional arena.³⁰

Jonathon Fox and David Brown have also documented how this process of coopting has neutered the influence of NGOs accredited to the World Bank.³¹ In more recent years a wide number of NGOs have also complained of being excluded from the World Bank and that accreditation is merely part of a public relations exercise.³² Detailing the growth of NGOs becoming involved in government projects, Kendall W. Stiles explains how many NGOs are now in competition with one another to gain access to government funding, and how this competition has brought cooption and pressure to remove radical traits.³³ Recognition is therefore important, but it is not a reliable indication of actual influence or success. Indeed as Cox points out a policy of

³⁰ Jackie Smith. 'Transnational Processes and Movements', in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 316.

³¹ Jonathon Fox and David Brown (editors), *The Struggle For Accountability: The World Bank, NGOs, and Grassroots Movements*, London: The MIT Press, 1998.

³² Civil Society Members of the World Bank-Civil Society Joint Facilitation Committee. *A Call for Participatory Decision Making: Discussion Paper on World Bank-Civil Society Engagement*, Draft for Public Comment, 14 April 2005.

<http://www.globalpolicy.org/ngos/int/bwi/2005/0414wbengage.pdf>

³³ Kendall W. Stiles. 'Grassroots Empowerment: States, Non-States and Global Policy Formulation', in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 32-47.

trasformismo is designed to secure public legitimacy and to pacify political opponents by bringing them into political institutions, but preventing these opponents from actually changing policies.

Thankfully, Paul Burstein *et al* add more substance to the factors that enable some form of measurement of a social movement's success and influence. This can be determined by (1) the degree to which a social movement gets its programme on the political agenda, (2) the degree to which it influences the programme's passage into policy, or helps to ensure its enforcement, and (3) the degree to which the legislation has the intended effects.³⁴ Consequently, in order to measure the extent to which the alter-globalization movement has altered or influenced the policies and processes of the WTO, this thesis will use the four criteria of (1) recognition of the alter-globalization movement as the legitimate representative of a constituency, (2) the degree to which the alter-globalization movement has been able to place its programme for reform on the political agenda of the WTO, (3) the input that the Alter-NGOs of the alter-globalization movement have in the passage of these reforms into actual WTO policy, or in helping to ensure the enforcement of that policy, and (4) the degree to which the policies of the alter-globalization movement achieve the intended outcome for which they campaigned. Through applying this model to the relationship between the alter-globalization movement and the WTO it will be possible to discern whether 'new multilateralism' is becoming a reality within the WTO and to what extent the values and principle of the alter-globalization movement are influencing the WTO's policies and procedures.

³⁴ Paul Burstein *et al*. 'The Success of Political Movements: A Bargaining Perspective', in J. C Jenkins and B Klandermans (editors), *The Politics of Social Protest: A Comparative Perspective on States and Social Movements*, Minneapolis: University of Minnesota Press, 1995.

1.5 Contribution to Knowledge and Literature Review

In recent years a number of writers have claimed to different degrees that we must “recognise that ‘global social movements’ are now altering either agendas for social change or political engagement”.³⁵ This thesis aims to contribute to the existing literature on global governance, global social movements and the WTO by addressing the validity of this statement through a Coxian analysis of the WTO. Since the 1980s a Coxian approach to world order has been adopted by a number of authors under the label of a new neo-Gramscian School.³⁶ John A. Agnew and Stuart Corbridge³⁷, Enrico Augelli and Craig N. Murphy³⁸, Henk Overbeek³⁹, and Mark Rupert are among those attributed to this neo-Gramscian School.⁴⁰ Andreas Bieler and Adam David Morton are prominent amongst those advocating a Coxian approach because of their theoretical rigor and empirical work on neoliberal hegemony in European integration and Mexico, respectively.⁴¹ Frederick H. Gareau does apply the Coxian concept of hegemony when discussing the creation and structure of the WTO, but only in terms of US corporate hegemony and not transnational corporate hegemony

³⁵ Robin Cohen and Shirin M. Rai. ‘Global Social Movements: Towards a Cosmopolitan Politics’, in Robin Cohen and Shirin M. Rai (editors), *Global Social Movements*, London, The Athlone Press, 2000, p. 1. Also see Stephen Gill. ‘Towards a Postmodern Prince? The Battle in Seattle: A Moment in the New Politics of Globalization’, in *Millennium* Vol. 29, No 1, 2000, p. 131-140, Mary Kaldor. ‘Civilising’ Globalization? The Implications for the ‘Battle in Seattle’, in *Millennium* Vol. 29, No 1, 2000, 105-114, and Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000.

³⁶ See Peter Burnham. ‘Neo-Gramscian Hegemony and the International Order’, in *Capital and Class*, Vol. 41, 1991, p. 73-93; and Mark Rupert. *Producing Hegemony: The Politics of Mass Production and American Global Power*, Cambridge: Cambridge University Press, 1995.

³⁷ John A. Agnew and Stuart Corbridge. *Mastering Space: Hegemony, Territory and International Political Economy*, London: Routledge, 1995.

³⁸ Enrico Augelli and Craig N. Murphy. ‘Gramsci and International Relations: A General Perspective and Example of US Policy Towards the Third World’ in Stephen Gill (editor), *Gramsci, Historical Materialism and International Relations*, Cambridge: Cambridge University Press, 1993, p. 1227-147; and Craig N. Murphy. *International Organization and Industrial Change: Global Governance Since 1850*, Cambridge: Polity Press, 1994.

³⁹ Henk Overbeek (editor). *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neoliberalism in the 1980s*, London: Routledge, 1993.

⁴⁰ Mark Rupert. *Producing Hegemony: The Politics of Mass Production and American Global Power*, Cambridge: Cambridge University Press, 1995.

⁴¹ Andreas Bieler. *Globalization and Enlargement of the European Union: Austrian and Swedish Social Forces in the Struggle Over Membership*, London: Routledge, 2000; Andreas Bieler and Adam David Morton (editors), *Social Forces in the Making Of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, Basingstoke: Palgrave, 2001; Andreas Bieler and Adam David Morton. ‘The Gordian Knot of Agency-Structure in International Relations; A Neo-Gramscian Perspective’, in *European Journal of International Relations*, Vol. 7, No. 1, 2001, p. 5-35; Adam David Morton. ‘Structural Change and Neoliberalism in Mexico: ‘Passive Revolution’ in the Global Economy’, in Andreas Bieler *et al.* *Global Restructuring, State, Capital and Labour: Contesting Neo-Gramsci Perspectives*, Basingstoke: Palgrave MacMillan, 2006, p. 111-132.

within the *nebuleuse*.⁴² Although Robert O'Brien *et al* applied a Coxian theoretic framework to the WTO in 2000, it was heavily diluted with a level of liberal pluralism that weakened the very critical edge that is sought from a Coxian analysis. Focusing exclusively on NGOs, these writers sought to measure the influence of these non-state actors and used the term 'complex multilateralism' to illustrate their acknowledgement of the many non-state actors involved in influencing state-centric multilateralism.⁴³ A more critical Coxian analysis of the WTO is therefore warranted, not only because it is five years since O'Brien *et al*'s research was published, but also because O'Brien *et al*'s framework omitted the most important aspects of Cox's theoretical framework, such as the Coxian definition of hegemony, *nebuleuse*, structural power, and especially *trasformismo*.

Applying Coxian historical materialism to the relationship between the WTO and the alter-globalization movement establishes this thesis's original contribution to knowledge. To the best of my knowledge no other academic has detailed the WTO's creation, ideology, decision-making process, and engagement with social movements and NGOs through a consummate Coxian framework. In doing so the thesis informs existing literature engaged in debating and advocating global democracy.⁴⁴ It does so

⁴² Frederick H. Gareau. *The United Nations and Other International Institutions: A Critical Analysis*, Chicago: Burnham Inc., Publishers, 2002.

⁴³ Robert O'Brien *et al*. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000.

⁴⁴ David Held. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Cambridge University Press, 1995, Richard Falk. *One Humane Governance: Towards a New Global Politics*, Cambridge: Cambridge/Polity Press, 1995, Andrew Linklater. *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era*, Cambridge: Cambridge University Press, 1998, Anthony McGrew. 'Models of Transnational Democracy', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 250-513, David Held. 'Cosmopolitan Democracy', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 514-529, Robert A. Dahl. 'Can International Organizations be Democratic? A Skeptic's View', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 530-541, and David Held. *Global Covenant: The Social Democratic Alternative to the Washington Consensus*, Cambridge: Polity Press, 2004.

by detailing the reaction of the WTO members and the WTO Secretariat to the critical publicity received through mass public demonstrations by social movements outside its Ministerial Conferences, and its headquarters in Geneva. The thesis also details the response of the WTO members to the campaigns by advocacy Alter-NGOs through cooperation with the developing countries during negotiations, and the submission of *amicus* briefs to the dispute settlement body. In analysing these three different strategies, and the corresponding response of *trasformismo*, the thesis provides a valuable analysis on the obstacles faced by those seeking to create global democracy and a legitimate caution to all NGOs and social movements engaged in campaigns to reform the current world order.

In recent years the literature from a number of academic disciplines has emerged specifically addressing the creation of the WTO, and its relationship with the labour movement and NGOs. Rorden Wilkinson has provided valuable insights into the manner in which the WTO has avoided official engagement and status for organised labour and core labour standards.⁴⁵ In discussing the role of NGOs in the WTO, particularly notable is the work of international trade lawyers Daniel Esty⁴⁶ and Steve Chornovitz⁴⁷, who are both advocates of observer status for NGOs, but not participation. Prior to Seattle, Marc Williams detailed the manner in which the people most affected by the WTO's decisions were prevented from participating in the dispute settlement body.⁴⁸ Building on this, Jan Aart Scholte, Robert O'Brien and Marc Williams not only provide an invaluable overview of the pros and cons of NGO participation at the WTO, they also identify the manner in which business was

⁴⁵ Rorden Wilkinson. 'Peripheralizing Labour: the ILO, WTO, and the Completion of the Bretton Woods Project', in Jeffrey Harrod and Robert O'Brien (editors), *Global Unions: Theory and Strategies of Organised Labour in the Global Political Economy*, London: Routledge, 2002. Also see Steve Huges and Rorden Wilkinson. 'International Labour Standards and World Trade: No Role for the World Trade Organization?', in *New Political Economy*, Vol. 3, No. 3, 1998, p. 375–390.

⁴⁶ Daniel C. Esty. 'Environmental Governance at the WTO: Outreach to Civil Society', in Gary P. Sampson and W. Bradee Chambers (editors), *Trade, Environment, and the Millennium*, New York: United Nations University Press, 2002.

⁴⁷ Steve Chornovitz. 'WTO Cosmopolitics', in *International Law and Politics*, Vol. 34, 2002, p. 324.

⁴⁸ Marc Williams. 'The World Trade Organization, Social Movements and Democracy', in Annie Taylor and Caroline Thomas (editors), *Global Trade and Global Social Issues*, London: Routledge, 1999.

favoured over NGOs regarding access and lobbying at WTO negotiations.⁴⁹ To varying degrees, all of these writers present arguments for some reform of the WTO to allow NGOs to overcome the democratic deficit that has appeared at the WTO, and the absence of core labour rights or environmental safeguards. Each of these authors provides valuable research on the WTO's resistance to NGO participation, but none offers an account that explains WTO engagement in terms of *trasformismo*. In addition the many sections of the alter-globalization movement (especially the demonstrators on the street), and its engagement with the WTO are not engaged.

The defining of the alter-globalization movement is important for future research because it provides important distinctions between the many ideological positions and strategies held by the protesters. This thesis seeks to bring acknowledgement that the voices of the protesters on the street are as important as the work of advocacy NGOs working behind the scenes in bringing change to the WTO. Arguably, one of the first stages of bringing about peaceful revolutionary change is raising the consciousness of the *demos*. Mass public demonstrations and communication are two of the means in which to raise public awareness. Both academics and the media when describing the protesters have employed the idiom 'anti-globalization movement'. This catch-all 'anti' label, however, has become unhelpful for an analysis of global social movements as it allows the many different positions held by the activists to be perverted for specific political ends. For example, both Philippe Legrain's⁵⁰ and Michael Moore's⁵¹ misleading criticisms of protest under the label 'anti-globalization movement', focus on the violence and extreme politics of a small number to detract from any of the valid political issues that the protesters raise. Consequently, it is easy to dismiss all protesters as violent, ideological delinquents.

⁴⁹ Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998, also see Robert O'Brien. 'The Various Paths to Minimum Global Labour Standards', in Jeffrey Harrod and Robert O'Brien (editors), *Global Unions: Theory and Strategies of Organised Labour in the Global Political Economy*, London: Routledge, 2002.

⁵⁰ Philippe Legrain. *Open World: The Truth About Globalization*, London: Abacus, 2002.

⁵¹ Michael Moore. *A World Without Walls: Freedom, Development, Free Trade and Global Governance*, Cambridge: Cambridge University Press, 2003.

A small number of academics have sought to categorise and define the factors specific to this transnational protest. Barry K. Gills has contributed to the literature on global social movements by focusing on “globalized resistance” in response to global political power, whilst also examining prospects for the success of this resistance.⁵² Catherine Eschle reminds us that the very fact that academics have engaged in this form of study ensures that scholars are participating in the process of constructing⁵³ an entity called the ‘anti-globalization’ movement.⁵⁴ Eschle also points out that the term anti-globalization does not necessarily capture the many different goals and objectives of the protesters. Indeed it is clear that global neoliberal corporate hegemony is resisted, but other forms of global governance are deemed to be desirable. For example Michael Hardt and Antonio Negri define the popular movements resisting global corporate hegemony backed by military might - Empire – with their concept of “the multitude”. Essentially Hardt and Negri depict the emergence of “a new proletariat” attacking the centre of the Empire, seizing control “over linguistic sense and meaning and network of communications” and the means of production in their efforts to create a new global constitution reflecting “absolute democracy in action”.⁵⁵ Vicki Birchfield and Annette Freyberg-Inan use the term ‘anti-globalization’ movement to describe the protesters’ position against neoliberal globalization, but also argue that the protesters ought to be seen as a counter-hegemonic force armed with ‘organic intellectuals’.⁵⁶ The assertion that these protests

⁵² Barry K. Gills (editor). *Globalization and The Politics of Resistance*, Basingstoke: Palgrave, 2001, and Barry K. Gills and Christopher Chase-Dunn. ‘Waves of Globalization and Resistance in the Capitalist World-System: Social Movements and Critical Global Studies’, in Richard P Applebaum and William I Robinson (editors), *Critical Globalization Studies*. London: Routledge, 2005.

⁵³ Catherine Eschle. ‘Constructing the Anti-Globalisation Movement’, in Catherine Eschle and Bice Maiguashca (editors), *Critical Theories, International Relations and ‘Anti-Globalisation Movement’: The Politics of Resistance*, Abingdon: Routledge, 2005, p. 22.

⁵⁴ J. Mander and Goldsmith (editors). *The Case Against the Global Economy and the Turn to the Local*, San Francisco: Sierra Club Books, 1996, Kevin Hewison. *Localism in Thailand: A Study of Globalisation and Discontents*. Coventry: ESRC/University of Warwick Centre for the Study of Globalisation and Regionalisation, Working Paper No. 39/99, Colin Hinnes. *Localization: A Global Manifesto*. London: Earthscan, 2000, and Walter Bello. *Deglobalization: Ideas for a New World Economy*, London; Zed Books, 2nd Edition, 2004.

⁵⁵ Michael Hardt and Antonio Negri. *Empire*, USA: Harvard University Press, 2001, p. 402, 404 and 410.

⁵⁶ Vicki Birchfield and Annette Freyberg-Inan. ‘Organic Intellectuals and Counter-Hegemonic Politics in the Age of Globalisation: The Case of ATTAC’, in Catherine Eschle and Bice Maiguashca (editors), *Critical Theories, International Relations and ‘Anti-Globalisation Movement’: The Politics of Resistance*, Abingdon: Routledge, 2005, p. 154-173.

are motivated by anti-capitalist agendas has also been proposed by a number of other authors.⁵⁷ Mary Kaldor, Helmut Anheier and Marlies Glasius argued that these protests during “the 1990s were a period of consolidation of global civil society, a period in which a solid infrastructure was established, based on a broad shift in cultural and social values, especially in developed economies”.⁵⁸ Each of these authors draws attention to the civil society groups that are resisting corporate hegemony, but not the many different ideological positions that are held by counter-hegemonic forces.

Activists themselves, however, have explicitly distanced themselves from the term ‘anti-globalization movement’.⁵⁹ Again dropping the ‘anti-globalization’ label, social movement theorists have focused on transnational social movements, and have been instrumental in providing essential concepts for understanding the nature of social movements and their transnational development of campaigns and repertoires to contest global policies.⁶⁰ Consequently, this thesis rejects the analytical value of the term ‘anti-globalization movement’ because it is a political tool used by elites and the media to generate fear and mistrust of social movements. To bring clarity to the analysis of global social movements the thesis therefore provides a more

⁵⁷ See Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, John Clark. *Globalizing Civic Engagement: Civil Society and Transnational Action*, James and James Ltd, 2003, Leslie Sklair. *Globalization: Capitalism and its Alternatives* (3rd Edition), Oxford: Oxford University Press, 2002.

⁵⁸ Mary Kaldor, Helmut Anheier and Marlies Glasius ‘Global Civil Society in an Era of Regressive Globalisation’, in Mary Kaldor, Helmut Anheier and Marlies Glasius (editors), *Global Civil Society 2003*, Oxford: Oxford University Press, 2003, p. 3.

⁵⁹ Sam Ashman. ‘Resistance to Neoliberal Globalization: A Case of ‘Militant Particularism’, in *Politics*, Vol. 24, No. 2, 2004, Michael Lowy And Frei Betto. ‘Values in a New Civilization’, in William F. Fisher and Thomas Ponniah (editors), *Another World is Possible: Popular Alternatives to Globalization at the World Social Forum*, London: Zed Books Ltd, 2003, John Cavanagh *et al.* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc, 2002, Kate O’Neill. ‘Transnational Protest: States, Circuses, and Conflict at the Frontline of Global Politics’, in *International Studies Review* Vol. 6, 2004, p. 233-252, Naomi Klein. ‘Reclaiming the Commons’, in *New Left Review*, Series II, No 19, 2001, David Graeber. ‘For a New Anarchism’, in *New Left Review*, Series II, No 13, 2002, p. 62.

⁶⁰ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc., 2005, Donatella Della Porta and Sidney Tarrow (editors). *Transnational Protest and Global Activism: People, Passion and Power*, United States of America: Rowman and Littlefield Publishers, Inc., 2005, Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004, and John Clark. *Globalizing Civic Engagement: Civil Society and Transnational Action*, James and James Ltd, 2003.

comprehensive continuum of the many positions held by national and transnational social movements and NGOs, in order to draw a distinction between a reforming alter-globalization movement and those who wish to de-globalize and return to national or local communities. Jan Aart Scholte, Robert O'Brien and Marc Williams have argued that civil society groups can be split into three categories: conformers, reformers, and radicals.⁶¹ In more recent years, however, Scholte has employed a more illuminating categorisation, which gets to the heart of the conflicting goals - distinguishing between de-globalist and alter-globalist movements.⁶² In doing so he clearly draws attention to the conflicting objectives of either pulling down the institutions of global governance and advocating a return to local and national decision-making; or reforming/transforming existing global institutions so that they embrace new principles and ideals. What is clear from the alter-globalist agenda is that resistance to the current form of neoliberal globalization and corporate hegemony does not rule out that other forms of global governance that establish 'new multilateralism' are both desirable and possible.

The relationship between social movements and NGOs that have engaged with global governance in the past has been well documented in the literature discussing the influence of transnational civil society networks promoting human rights and environmental protection.⁶³ Mary Kaldor has been keen to see the events of Seattle as the 'coming out party' of global civil society⁶⁴, and has described NGOs as "tamed social movements... institutionalised and professional".⁶⁵ The ability of NGOs

⁶¹ Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998, p. 9.

⁶² Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd edition), Basingstoke: Palgrave MacMillan, 2005, p. 41-48.

⁶³ Abram Chayes and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*, London: Harvard University Press, 1995, Margaret E. Keck. and Kathryn Sikkink. *Activism Beyond Borders: Advocacy Networks in International Politics*, London: Cornwell University Press, 1998, John Bole and George M. Thomas. *Constructing World Culture: International Non-Governmental Organizations since 1875*, California: Stanford University Press, 1999, Robin Cohen and Shirin M. Rai (editors). *Global Social Movements*, London, The Athlone Press, 2000, Akira Iriye. *Global Community: The Role of NGOs in the Making of the Contemporary World*, California: California University Press, 2002.

⁶⁴ Mary Kaldor. 'Civilising' Globalization? The Implications for the 'Battle in Seattle' *Millennium* Vol. 29, No 1, 2000, p. 105-114.

⁶⁵ Mary Kaldor. 'The Idea of Global Civil Society', in *International Affairs*, Vol. 79, No. 3, 2003, p. 589.

working within the system to maintain a radical agenda for change similar to those on the street, however, is questioned. Writers such as Kendall W. Stiles⁶⁶ and Jackie Smith⁶⁷ have raised concerns over the danger of advocacy NGOs being coopted into the system they contest as they struggle to gain access to state finance. The emergence of 'cheque book activism' and professional activists raises further questions over the integrity and accountability of NGOs. Van Rooy also raises questions over the input that NGOs can have when they are high on rhetoric and low on detailed research.⁶⁸ The problems of social movements and NGOs working together to reform the WTO have also been well documented, especially regarding the old labour movement and the new alter-globalization movement.⁶⁹

Although there are difficulties in the cohesion of the alter-globalization movement, transnational advocacy networks still provide the framework around which demonstrators and advocacy NGOs engage with the WTO. A number of legal scholars have detailed the manner in which NGO advocacy networks have attempted to access the WTO DSB through the submission of *amicus* briefs.⁷⁰ These articles have illustrated the pros and cons of allowing NGO participation in the WTO's DSB. Most notably C. L. Lim has argued that the WTO is an intergovernmental organisation, and its members will prevent access to advocacy networks in order to

⁶⁶ Kendall W. Stiles. 'Grassroots Empowerment: States, Non-States and Global Policy Formulation', in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 32-47.

⁶⁷ Jackie Smith. 'Transnational Processes and Movements', in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 316.

⁶⁸ Alison Van Rooy. 'What Next? Civil Society's Prospects in World of Global Finance', in Jan Aart Scholte with Albrecht Schnabel (editors), *Civil Society and Global Finance*, London: Routledge, 2002.

⁶⁹ Peter Waterman. 'Talking across Difference in an Interconnected World of Labour', in Joe Bandy and Jackie Smith (editors), *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, p. 141-162.

⁷⁰ See Ernesto Hernandez-Lopez. 'Recent Trends and Perspectives for Non-State Actor Participation in World Trade Organization Disputes', in *Journal of World Trade*, Vol. 35, No. 3, 2001, Georg C. Umbrecht. 'An *Amicus Curiae* Brief' on *Amicus Curiae* Briefs at the WTO', in *Journal of International Economic Law*, Vol. 4, No. 4, 2001, Kent Jones, 'The WTO Core Agreements, Non-Trade Issues and Institutional Integrity', in *World Trade Review*, Vol. 1, No. 3, 2002, Petros C. Mavroidis. *Amicus Briefs Before the WTO: Much Ado About Nothing*, Jean Monnet Working Paper 2/10, 2002, Richard H. Steinberg. 'Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints', in *The American Journal of International Law*, Vol. 98, No. 2, 2004, and C. L. Lim. 'The *Amicus* Brief Issue at the WTO', in *Chinese Journal of International Law*, Vol. 4, No. 1, 2005.

maintain predictability in the rules of the WTO.⁷¹ Jonathan Graubart, however, has illustrated that activists and NGOs have made attempts at “‘legalising’ political mobilisation while also ‘politicising’ the transnational legal process to achieve their aims” within the North American Free Trade Area (NAFTA).⁷² This work on NAFTA offers an important insight into the manner in which social movements and NGOs can successfully cooperate to push international organisations to engage with public normative debates, which can force international legal systems into the uncomfortable position of publicly justifying why corporate interests dominate and why human/labour rights and environmental concerns should not figure in their deliberations. The WTO’s dispute settlement body might still hold open a way for the alter-globalization movement to access the decision-making of the WTO, if public demonstrations can be linked specifically with the campaigns of advocacy NGOs submitting *amicus* briefs to the WTO. More critically such developments may be no more than a policy of *trasformismo* to distort and coopt demands for just change.

Through applying a comprehensive Coxian analysis and demonstrating that the alter-globalization movement is a collection of social forces and NGOs pursuing ‘new multilateralism’, this thesis reinforces the need to conceptualise world politics in terms of global political economy.⁷³ The research will also yield valuable insight into the political opportunities which exist within the WTO’s structures, and how successfully these have been utilised by the alter-globalization movement. The thesis demonstrates that although mass public demonstrations can create critical public awareness of the policies and processes of international organisations, the more plentiful resources at the disposal of political elites and corporations can also manipulate public opinion (*trasformismo*).

⁷¹ C. L. Lim. ‘The *Amicus* Brief Issue at the WTO’, in *Chinese Journal of International Law*, Vol. 4, No. 1, 2005.

⁷² Jonathan Graubart. ‘‘Legalizing’ Politics, ‘Politicizing’ Law: Transnational Activism and International Law’, in *International Politics*, Vol. 24, 2004, p. 319-340.

⁷³ Robert O’Brien and Marc Williams. *Global Political Economy: Evolution and Dynamics*, Basingstoke: Palgrave MacMillan, 2004, p. 36-39.

A Coxian Perspective on Change and Continuity in Multilateralism

The “truth” of philosophy lies in its fit with the configuration of social forces that shape history – a shared mental framework, or intersubjectivity, constitutes the objectivity of an epoch. This must mean that “truth” changes with the movement of history.⁷⁴

2.1 Introduction: Aims and Objectives

The aim of this chapter is to establish a theoretical approach for understanding the multilateralism of the World Trade Organization (WTO). Integral to any theorising about the WTO is the identification of three important factors pertaining to this institution. First, through its constitution, literature and press releases, the WTO is responsible for propagating an ontology globally. This ontology legitimises the creation of national free market economies on the grounds that it is the only policy capable of achieving competition, efficiency, development, prosperity, peace and sustainable development. The construction of this ideational framework is responsible for legitimising particular power relations, which privilege the activities of corporations and set the limits to what is deemed possible for actors who attempt to engage with the WTO. Secondly, in doing so the WTO exhibits the characteristics of supraterritoriality because as an institution it has a degree of autonomy to exercise power above the state. Finally, a competent theory of the WTO would need to be able

⁷⁴ Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 30.

to account for the many actors that are engaged in activities - directly and indirectly - to influence the WTO's policies and processes. It is now widely accepted that throughout the 20th century corporations, social movements and Non-Governmental Organizations (NGOs) have built extensive transnational relations, and are competing to place their interests at the fore of member state and WTO policies. Therefore a coherent theoretical framework needs to provide a social theory of the global political economy to demonstrate how states generate specific trade policies, and how states and non-state actors influence, but are also influenced by the policies of the WTO.

In this chapter, it will be argued that the historical materialism offered by Robert W. Cox provides the concepts and analytical tools for an insightful understanding of the global political economy. Over more than fifty years of publishing a rich body of Coxian literature has been established, which has developed a distinct critical perspective on international organization, and the demand for 'new multilateralism'.⁷⁵ At its core Cox has identified the relationship between social forces, material capabilities, and ideologies, which are embedded in institutions, and illustrated the reciprocal relationships between social forces, forms of states and world orders. Cox's appliance of historical materialism to the international organizations of world order in general - and the United Nations (UN) specifically - provides a framework to understand the multilateralism of the WTO. The chapter will argue that the vast majority of theorising on multilateralism and international organizations has been state-centric and has not been able to capture all three of the factors of the WTO outlined above. Although the social constructivism of John G. Ruggie⁷⁶ and

⁷⁵ See Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, and Robert W. Cox. 'Beyond Empire and Terror: Critical Reflections on the Political Economy of World Order', in *New Political Economy*, Vol. 9, No. 3, September 2004, p.307 –324.

⁷⁶ See John. G. Ruggie. 'Multilateralism: The Anatomy of An Institution', in John. G. Ruggie (editor), *Multilateralism Matters: The Theory and Praxis of An International Form*, Oxford: Columbia University Press, 1993, John. G. Ruggie. *Constructing the World Polity: Essays on International Institutionalization*, London: Routledge, 1998.

Alexander Wendt⁷⁷ includes the ideational attributes of multilateralism, they both provide yet another state centric analysis of multilateralism. In contrast, Robert O'Brien *et al* use the term 'complex multilateralism' to illustrate their acknowledgement of the many non-state actors involved in influencing multilateralism.⁷⁸ Although O'Brien *et al* apply a diluted form of Coxian analysis to measure the influence of non-state actors at the International Monetary Fund (IMF), World Bank and WTO, it will be argued that this analysis, omits the most important aspects of Cox's theoretical framework, such as the Coxian definition of hegemony, *nebuleuse*, structural power, *trasformismo*, counter-hegemony and organic intellectuals. In doing so it will be argued that the theoretical account provided by O'Brien *et al* neglects the conceptual framework for understanding the resilience of hegemony to absorb, but not act on demands for just change, which are central in understanding change and continuity at the WTO. The chapter will begin with a critical analysis of Cox's theoretic framework, before engaging with other theoretic approaches.

2.2 Robert W. Cox – A Conceptual Framework

Throughout his work Cox has endeavoured to draw attention to the manner in which politics, economics and ideas are institutionalised at the local, national, international and transnational level. International institutions are of primary importance because they provide a 'governance without government', which establishes policies that shape both the forms of states and the social relations of much of the world. Ingrained in Cox's analysis is the view that multilateralism is a reflection of the dynamics of the capitalist world economy. Since all human societies produce material goods in order to survive, and the organization of production within a society is integral to defining the form of social relations, Cox asserts that "Production generates the capacity to

⁷⁷ Alexander Wendt. *Social Theory of International Relations*, Cambridge: Cambridge University Press, 1999.

⁷⁸ Robert O'Brien *et al*. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000.

exercise power, but power determines the manner in which production takes place”.⁷⁹ In his later work Cox expanded his study of production to include the “production of institutions, laws, morality and ideas”.⁸⁰ Thereby, Cox draws attention to the manner in which political and economic power are intertwined and the exercise of both are integral to the production of the institutions, ideas and laws, which govern social relations within any given society – be it local, national, regional or global. The artificial separation of politics from economics is only possible in the abstract world of academia and not in the “seamless web of the real social world”.⁸¹

Cox emphasises his historical scrutiny of the institutionalization of political, economic and intersubjective factors, by describing his approach as ‘historical materialist’. Cox distinguishes his own historical materialism from the mainstream ‘problem-solving’ theory of International Relations (IR) theory, by explaining that his approach is an example of critical theory.⁸² Accepting the prevailing system of world power relations and the institutions, concepts and ideas, which underpin our understanding of reality, are all features of problem-solving theories. The purpose of problem-solving theory is to identify and overcome any issues that threaten the stability of existing power relations. Since the structures of power of status quo are uncritically accepted, ‘problem-solving’ theories can be described as “ahistorical”, but more importantly as conservative ideologies. By drawing attention to the conservative nature of uncritical theories, Cox demonstrates that “Theory is always for someone and for some purpose”, and that the process of theorising is political in itself because it sets limits to what change is perceived to be possible.⁸³ Thereby when confronting a

⁷⁹ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 1.

⁸⁰ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 31.

⁸¹ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium: Vol. 10, No.2, 1981*, p 126.

⁸² Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium, Vol. 10, No.2, 1981*, p. 131.

⁸³ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium: Vol. 10, No.2, 1981*, p. 128.

‘problem-solving’ approach one is forced to ask, whose interests are being preserved by the dominance of this theory?

In contrast to ‘problem-solving’ theory, Cox describes his historical materialism as ‘critical theory’. This Coxian critical theory does not take social and political relations for granted but analyses their origin and how and whether they might be in the process of change.⁸⁴ Therefore, Coxian theory is historical in nature, and seeks to identify and explain the source, consolidation and erosion of different ‘structures’ of power, which shape human life throughout different periods of time. In doing so Cox explains his historical materialism analysis as the

ways in which international organization has contributed to particular structures of world order by reflecting and reinforcing dominant forms of state and pre-eminent social forces. Through this runs a practical interest in finding ways in which multilateralism may help construct alternative world orders more fully embodying normative commitments.⁸⁵

Clearly, a Coxian analysis of multilateralism identifies the social forces that both create and contest the oppressive power relations contained within the institutions of multilateralism. The challenging of the dominant ontologies and ideational frameworks perpetuated by international organizations are primary goals of social forces developing a project of emancipation. Before outlining Cox’s work on multilateralism at the UN, the basic tenets of his theory will be explained in this section.

⁸⁴ Robert W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium*: Vol. 10, No.2, 1981, p. 129.

⁸⁵ Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. xi.

A central theme of Cox's work is the creation and development of ontologies.⁸⁶ The reason for this is that ontologies are important for humanity because they encompass the intersubjective frameworks that prescribe purpose and meaning to the world. In terms of social relations, ontologies set mental parameters for the behaviour of actors by defining the rules for social interaction. This is achieved through advocating principles and norms concerning the proper political, economic, social, cultural, and environmental organization of society. Ontologies, therefore, justify the exercise of power to establish the organization and maintenance of a particular form of society on the grounds that it is acceptable and legitimate. Although different ontologies conflict on the nature of the 'real' world, an ontology becomes dominant and gains wider public acceptance when it is promoted through public institutions. By promoting the validity of an ontology these institutions also promote the reasons why a society should consent to specific power relations. Thereby, "What is subjective in understanding becomes objective through action" for individuals within society.⁸⁷ It is the investigation of the social forces behind both the creation and contesting of dominant institutions and ontologies in production, the state and international organization, which have provided Cox with a research agenda.

Cox's historical materialist credentials are highlighted here because he identifies distinct historical structures, such that dominant institutions and ontologies are limited to a particular time and space. Fernand Braudel, Antonio Gramsci, Karl Marx, Karl Polanyi, Giambattista Vico, Georges Sorel, and Max Weber are all cited as significant influences on this Coxian historical materialist framework.⁸⁸ Borrowing from

⁸⁶ For example see Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 78, Robert W. Cox. 'Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of 'Ibn Khaldun'', in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 145-146, Robert W. Cox. 'Realism, Positivism and Historicism', in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 53.

⁸⁷ Robert W. Cox. 'Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of 'Ibn Khaldun'', in *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 145-146.

⁸⁸ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 27-30.

Braudel, Cox identifies the interaction of material capabilities, ideas (intersubjective frameworks) and institutions within an ‘historical structure’. An historical structure is defined as the “material character to an institution or consecrated pattern of human relationships [such as] systems of language, of law, of religion, of morals, of economic organization, of family, of social life”.⁸⁹ For Cox historical structures are apparent at three levels - the organisation of production, forms of state and world orders each restraining and impacting on the other in a symbiotic relationship.⁹⁰ From Vico, Cox develops the idea that social practices have changed through class struggle, and that human nature is not fixed, but is shaped and reshaped due to changing social relations throughout the course of history. Therefore to understand why a particular historical structure has continuity or is in the process of changing it is necessary to understand the opposing social forces and their material capabilities, specific to that historical structure. As Andreas Bieler points out by focusing on social forces within production, Cox is ultimately advocating that “social forces, engendered by the production process, as the most important collective actors...the concept of class is crucial”.⁹¹

To explain class relations within a historical structure, Gramsci’s critical examination of the relationship between the state and civil society, and the concepts of hegemony, counter hegemony and the role of organic intellectuals are interwoven throughout Cox’s theorizing.⁹² Indeed Cox is often cited as an example of the Neo-Gramscian writers.⁹³ As Gramsci deliberated on the manner in which the modern state was able to manufacture civil society’s consent for oppressive power relations, so Cox

⁸⁹ Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 28.

⁹⁰ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium*: Vol. 10, No.2, 1981, p. 138.

⁹¹ Andreas Bieler. *Globalization and Enlargement of the European Union: Austrian and Swedish Social Forces in the Struggle Over Membership*, London: Routledge, 2000, p. 9.

⁹² Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 124.

⁹³ See Stephen Gill. *Gramsci, Historical Materialism and International Relations*, Cambridge: Cambridge University Press, 1993, p. 4; and Craig N. Murphy. ‘Forum: Understanding IR: Understanding Gramsci’, in *Review of International Studies*, Vol. 24, No. 3, 1998.

deliberates on the many civil societies that consent to the policies of international organizations. It is therefore necessary to present a quick sketch of Gramsci's main ideas, which influenced Cox.

Central is Gramsci's argument that one of the most important characteristics of the dominance of any group is the struggle to assimilate and conquer 'ideologically' the intellects and ideas of the previous political and economic order. To accomplish this, a dominant class must be able

to propagate itself throughout society ...bringing about not only a unison of economic and political aims, but also intellectual and moral unity, posing all the questions around which the struggle rages not on corporate interest but on a universal plane, and thus creating the hegemony of a fundamental social group over a series of subordinate groups.⁹⁴

Ultimately, Gramsci is drawing attention to the manner in which the employment of certain ideas is paramount in delivering consent from civil society. For example, consent was achieved by assimilating the dominant class's interest into the state and law, and justifying this through an ideology: such that society is compelled "to conform" and adopt the dominant class's ideas and practices. Collective intersubjective ideas are disseminated throughout society by the institutions of government, the church, the educational system, and the media to legitimise the rule of dominant social forces and bring compliance and consent from civil society. Gramsci used the term 'historic bloc' to describe a stable relationship between the institutionalised power of a class and the hegemony of its ideology.⁹⁵ In essence

⁹⁴ Antonio Gramsci. 'The Modern Prince', in Antonio Gramsci. *Selections from the Prison Notebook*, in Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 181.

⁹⁵ Antonio Gramsci. 'The Study of Philosophy', in Antonio Gramsci. *Selections from the Prison Notebook*, in Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 366.

hegemony ensures the dominant class is able to pursue its interests effectively by “ideologically eliminating the possibility of alternative” from the consciousness of civil society.

As Gramsci saw civil society as the terrain upon which power relations came to be established in capitalist societies, it was also within civil society that opposition (counter-hegemony) could be constructed. Counter-hegemonic forces call into question the material power and ontology of the dominant class.⁹⁶ Gramsci believed that leadership of this counter-hegemonic struggle would come from the proletariat, but also allowed for oppressed people outside of this class to become part of this movement. Different strategies of resistance to hegemony, defined by Gramsci as a ‘war of movements’ and a ‘war of position’, are deemed possible within different forms of states.⁹⁷ As Christine B. N Chin and James H. Hittelman point out the former is a “frontal assault on the state (labour strikes and even military action) whereas wars of position can be read as non-violent resistance, e.g. boycotts, that are designed to impede the everyday functions of the state. The objectives of both are to seize control of the state ... in violent and non-violent confrontation with the state”.⁹⁸

Gramsci, however, argues that a war of movements is only possible in those states where the hegemony of the ruling classes has not been consolidated within civil society. It is here that the central role of the ‘organic intellectual’ is asserted.⁹⁹ For example, Cox illuminates Gramsci’s argument by drawing attention to the established capitalist countries of Western Europe and the US where the ruling classes had established hegemony to such a degree that even the political parties of the workers

⁹⁶ Antonio Gramsci. ‘The State and Civil Society’, in Antonio Gramsci. *Selections from the Prison Notebook*, Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 229-239.

⁹⁷ Antonio Gramsci. ‘The State and Civil Society’, in Antonio Gramsci. *Selections from the Prison Notebook*, Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 231-232.

⁹⁸ Christine B. N Chin and James H. Hittelman. ‘Conceptualizing Resistance to Globalization’, in Barry K. Gills (editor). *Globalization and the Politics of Resistance*, Basingstoke: Palgrave, 2000, p. 32

⁹⁹ Antonio Gramsci. ‘Problems of Marxism’, in Antonio Gramsci. *Selections from the Prison Notebook*, Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 418.

could rule without disrupting the capitalist system. The reasons for this were that civil society had accepted the ruling class's ideology. Thereby the beliefs that capitalism was inevitable and alternative organizations of society were impossible were deeply ingrained within the consciousness of the population.¹⁰⁰ Gramsci asserts that under these hegemonic conditions, a 'war of movements' was doomed to failure because it would find little support within a civil society.

Instead, Gramsci argued that successful resistance within such an advanced capitalist state could only slowly emerge through 'organic intellectuals' challenging the dominance of the hegemonic intersubjectivity.¹⁰¹ Gramsci believes in a non-elitist form of intellectual. All individuals are intellectuals/philosophers because they attempt to make sense of the world in which they live. 'Traditional intellectuals' justify the existing system even by acting as 'neutral' voices of events. The 'organic intellectuals' are those that ask the critical questions of the existing structures of power, and desire to question and change the existing social system through challenging the hegemony. By pointing out to civil society the hypocrisy in the actions and ideology of the ruling classes, 'organic intellectuals' were deemed able to undermine the coherence of capitalist ideology in the consciousness of civil society. In doing so it would be possible to advocate the emancipation of society from oppression and exploitation through depicting an alternative organization of society. Thereby a counter-hegemonic force would have to win the argument within civil society first and create its own historic bloc, before attempting to challenge the hegemony of the state. Hegemonic elites, however, are able to pacify and divide counter-hegemonic movements through passive revolution or *trasformismo*. Reform from above is designed to absorb and coopt counter-hegemonic movements and ideas into the system of governance to illustrate their participation in governance structures

¹⁰⁰ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 124.

¹⁰¹ Antonio Gramsci. 'The Study of Philosophy', in Antonio Gramsci. *Selections from the Prison Notebook*, Quintin Hoar and Geoffrey N. Smith (editors), London: Lawrence and Wishart, 1998, p. 341.

to a wider public, but preventing any access to power. Therefore *trasformismo* is a policy to legitimise the hegemonic structures of power through cooptation of counter-hegemonic ideas into elite rhetoric so that they justify and do not challenge. Importantly, there is no pre-determined teleological end for this dialectic clash of hegemony and counter-hegemony. Gramsci asserted that this was why the clashing of hegemonic and counter-hegemonic forces in Italy, Germany and Russia resulted in Fascism and Stalinist authoritarianism during the 1930s and not socialism. Therefore through struggle a new undetermined ontology would emerge.

2.3 Coxian Hegemony and *Nebuleuse* in the Current World Order

Similar to Gramsci, Cox argues that in each ‘historical structure’ hegemony is possible within production and the state when there is a fit between material capabilities, ideas and institutions.¹⁰² Cox, however, then takes Gramsci’s ideas further and proposes that if the dominant class is able to dominate production and create hegemony within a particular state, it is also possible for this state to create international organizations to perform a similar function of hegemony amongst weaker states. A hegemonic state could also use both coercion and consent to ensure compliance from other states by “making concessions that will secure the weak acquiescence in their leadership and if they can express their leadership in terms of universal or general interests, rather than serving their own particular interests”.¹⁰³ “Among the features of international organization which express its hegemonic role are the following: (1) the institutions embody the rules which facilitate the expansion of hegemonic world orders; (2) they are themselves the product of the hegemonic world order; (3) they ideologically legitimate norms of the world order; (4) they co-opt the elites from peripheral countries; and (5) they absorb counter hegemonic

¹⁰² Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium*: Vol. 10, No.2, 1981, p. 138.

¹⁰³ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium*: Vol. 10, No.2, 1981, p. 137.

ideas”.¹⁰⁴ As material capabilities, ideology and institutions are brought together at the international level, the dominant class is able to pursue its own interests through expanding its chosen mode of production into more societies. International organizations are therefore responsible for propagating an ontology, which justifies the implementation of international economic policies to ensure the creation of specific forms of states. In doing so, social forces, forms of state and world orders are intimately interconnected in a symbiotic relationship to sustain a new model of production.

To demonstrate the existence of hegemony in world order, Cox identifies 1845-1875 as a period of British hegemony, 1875-1945 as one in which hegemony was destabilized, 1945-1965 as a period of US hegemony, 1965 to 1975 as a period when US hegemony declined and was continued through collaboration with the major western powers. During the 1980s the instability in the global economy saw the globalization or transnationalization of production and global finance, which challenged the previous concerns of political elites within Keynesian national economics. The emergence of transnational production was a consequence of the development of transnational social forces pursuing transnational interests.¹⁰⁵ Cox asserts that the hegemony that exists within the current world order is perpetuated and stabilized through international organizations, such as the Group of Seven (G7), the IMF, the UN, the World Bank and the WTO. Thereby international organizations perform a central role in the institutionalising of hegemony of transnational class. What this demonstrates is that

distinct historical phases, with their historically specific ontologies, are not sealed off from one another as mutually incomprehensible or

¹⁰⁴ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

¹⁰⁵ Robert W. Cox. 'Global Perestroika (1992)', in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 300.

mutually irrelevant constructs. Historical phases in our own current of civilization are produced, one following the other, in a process of contradiction. The contradictions and conflicts that arise within any established structure create the opportunity for its transformation to a new structure.¹⁰⁶

The contradiction between the development of material capabilities of social forces, and the dominant ontology projected by institutions in any era brings a clash of ontologies, which undermines the coherence of hegemon. Thereby a new historical structure begins to emerge reflecting the capabilities, ideas and institutions of new social forces.

The current historical structure then has to be seen in the context of changing social forces. Stephen Gills, the young disciple of Cox, explains “the origins and the contradictions of our time are largely to be found in the great transformation that emerged in Britain about 200 years ago with ‘the emergence of a new social ontology’”.¹⁰⁷ This ontology justified the coercion of society to impose relations of subordination and domination with the creation of liberal capitalist societies. As social forces have clashed throughout these two centuries, distinct historical structures have emerged and developed, such as the shift in historical structures advocating Fordism and Keynesianism in the post-World War II era, to transnational flexible production promoted in an era known as globalization or neoliberal economic globalization. As Grazia Ietto-Gillies points out: “No analysis of globalization can be complete without an understanding of the role played in it by transnational companies”.¹⁰⁸ Mica Panic

¹⁰⁶ Robert W. Cox. ‘Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of ‘Ibn Khaldun’’, in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 145-146.

¹⁰⁷ Stephen Gill. ‘Transformation and Innovation in International Studies’ in Stephen Gill and James H. Mittleman, (editors) *Innovation and Transformation in International Studies*, Cambridge: Cambridge University Press, 1997, p. 7.

¹⁰⁸ Grazia Ietto-Gillies. *Transnational Corporations: Fragmentation Amidst Integration*, London: Routledge, 2002, p. 4.

draws attention to the obvious, but important fact that “TNCs have no sovereign power”.¹⁰⁹ Consequently, a Coxian analysis of the current historical structure called ‘globalization’ acknowledges the rise of dominant social forces within transnational production, which have used their superior material capabilities to become institutionalised within states and have also institutionalised their transnational interests and ideology within international organisations. These three factors are responsible for establishing the dominance of intersubjective frameworks within international organizations, which naturalise corporate-state elite cooperation, transforming the forms of states, and acceptance of a new transnational mode of production.

Evidence of the institutionalization of corporate interests within the dominant states is plentiful. Donna Lee has demonstrated that the British Government of the late 1990s has been explicitly promoting corporate interests, such that “business interests have been formally integrated within the diplomatic system”.¹¹⁰ Lee highlights the degree to which government and corporate cooperation has developed stating that governments are “providing business with officially recognized influence in the planning, implementation, and evaluation of commercial diplomacy – public interest is increasingly conceptualised as a collective of private business interests”. Similarly, governments in Canada, Belgium and India have also mirrored this state promotion of corporate interests.¹¹¹ A literature has also emerged, which illustrates the global economic crises of 1970 and 1974 provided the ‘enabling environment’, which brought a criticism of Keynesianism, and opened the way for a new transnational capitalist class to use their superior material capabilities to place business interests at the centre of government policies, grow in influence within international

¹⁰⁹ Mica Panic. ‘Transnational Corporations and the Nation State’, in Richard Kozul-Wright and Robert Rowthorn (editors), *Transnational Corporations and the Global Economy*, Basingstoke, 1998, p. 244.

¹¹⁰ Donna Lee. ‘The Growing Influence of Business in UK Diplomacy’, in *International Studies Perspective*, Vol. 5, 2004, p. 50-54.

¹¹¹ See *International Studies Perspective*, Vol. 5, 2004.

organizations, which allowed corporations with transnational activities to enhance their interests globally.¹¹² Most famously, the former Senior Vice President of the World Bank, Joseph Stiglitz, acknowledged this argument. He stated that the World Bank and the IMF worked for the interests of specific social forces within the most powerful states: “The institutions are dominated not just by the wealthier industrial countries but by commercial and financial interests in those countries, and the policies of the institutions naturally reflect this”.¹¹³

The ideational framework, which has justified this reorganization of the world, has been term ‘neoliberal economic globalization’. The main historical thrust of neoliberal economic globalization, Barry K. Gill explains, is: “to bring about a situation in which private capital and ‘the market’ alone determine the restructuring of economic, political and cultural life, making alternative values or institutions subordinate”.¹¹⁴ Importantly, Gill points out that to prevent the success of alternative policies involves “the political exclusion of dissident social forces from the arena of state policy-making”. Neoliberalism has also been defined in terms of sets of policies, practices and ideas that seek to promote and extend corporate power and market discipline. This promotion and extension takes both a territorial (the opening of previously closed economies) and sectoral (the commercialisation of previously non-market activities) form.¹¹⁵ This definition overlaps with the term ‘globalization’ as it is often understood.¹¹⁶ Thus the term neoliberal globalization, which is the predominant role of financial capital, reflected in the drive to fully liberalise global

¹¹² See Thomas J. Biersteker. ‘The Triumph of NeoClassical Economics in the Developing World: Policy Convergence and Bases of Governance in the international Economic Order’, in James N. Rosenau and Ernest-Otto Czempiel (editors), *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, p. 121, and Richard Snyder. *Politics After Neoliberalism: Reregulation in Mexico*, Cambridge: Cambridge University Press, 2001, p. 7.

¹¹³ Joseph Stiglitz was a key policy economic advisor to the Clinton administration and then held the post of Senior Vice President of the World Bank (1997-2000). See Joseph Stiglitz. *Globalization and Its Discontents*, London: The Penguin Press 2002, p. 18.

¹¹⁴ Barry K. Gills. ‘Introduction: Globalization and the Politics of Resistance’, in Barry K. Gills (editor), *Globalization and the Politics of Resistance*, Basingstoke: Palgrave, 2000, p. 4.

¹¹⁵ David Harvey. *The New Imperialism*, Oxford: Oxford University Press, 2003.

¹¹⁶ Robert Kiely. *The Clash of Globalizations: Neoliberalism, the Third Way and Anti-Globalization*, Boston and Leiden: Brill, 2005.

capital markets.¹¹⁷ The second is the determination to lock neoliberal policies and practices into trade agreements, investment treaties and legal frameworks, including through the WTO. As the latter characteristic implies, states and inter-state organizations play vital roles in the advancement of the neoliberal project, in particular in the institutionalization of neoliberal policies and practices.¹¹⁸ This ideology justified the reorganisation of society throughout the 1980s and 1990s in the developed OECD countries, and nearly all the states of the world were brought to accept these practices through the policies of international organisations. For example the IMF and World Bank ‘Structural Adjustment Programmes’ were used to enforce policies for reducing government regulation on the movement of capital and goods.¹¹⁹ Consequently, the IMF, World Bank and WTO coerce and enforce the expansion of neoliberalism globally.

What is of the utmost importance to grasp, and must be emphasized here, is that world hegemony is possible to construct, not just amongst states, but also in terms of a global civil society. As Cox asserts

Hegemony at the international level is thus not merely an order among states. It is an order within a world economy with a dominant mode of production which penetrates into all countries and links into other subordinate modes of production. It is also a complex of international relationships which connect the social classes of the different countries.

World hegemony can be described as a social structure, an economic

¹¹⁷ Robert Hunter Wade. ‘What Strategies are Viable for Developing Countries Today? The World Trade Organization and the Shrinking of “Development Space”’, in *Review of International Political Economy*, Vo. 10, No. 4, 2003, p. 621-644.

¹¹⁸ Andy Storey. *The Struggle For Europe: Resistance to Neoliberalism*, International Political Economy Group Papers in Global Political Economy 2006.

¹¹⁹ See Thomas J. Biersteker. ‘The Triumph of NeoClassical Economics in the Developing World: Policy Convergence and Bases of Governance in the international Economic Order’, in James N. Rosenau and Ernest-Otto Czempel (editors). *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, p. 121, and Richard Snyder. *Politics After Neoliberalism: Reregulation in Mexico*, Cambridge: Cambridge University Press, 2001, p. 7.

structure; and a political structure...expressed in universal norms, institutions, and mechanisms which lay down general rules of behaviour for states and for those forces of civil society that act across national boundaries, rules which support the dominant mode of production.¹²⁰

Consequently, at the core of this world hegemony Cox identifies the *nebuleuse* or the transnational networks of state elites, corporate interests and finance, which build consensus on the policies of global international organizations - creating "governance without government".¹²¹ Leslie Sklair has charted the rise of this transnational capitalist class over the last 20 years.¹²²

This *nebuleuse* ensures that the interests of transnational social forces are secured and legitimised through a neoliberal ideology propagated by states and international organizations, which depict the 'true' organization of political, economic, social, and cultural life globally. The language of the policies and the negotiations within these international organizations are defined by the *nebuleuse* in terms of the neoliberal ontology - deregulation, downsizing, efficiency, flexibility, restructuring, outsourcing. Since alternative ideas about the organization are drowned out, a particular model or form of state is promoted as the norm. The international press and media and resolutions of the international organizations all contribute to the propagation of this ontology. As more elites come to accept this neoliberal ideology it "tightens the transnational network that link policy making from country to country".¹²³ In doing so this transnational class is able to determine the norms of behaviour and the actions possible through world hegemony. Cox famously explains this process in terms of the

¹²⁰ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

¹²¹ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296.

¹²² Leslie Sklair. *The Transnational Capitalist Class*, Oxford: Blackwell Publishing, 2001, and Leslie Sklair. *Globalization: Capitalism and Its Alternatives*, Oxford: Blackwell Publishing, 2002.

¹²³ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296.

internationalization of the state where “national policies and practices have been adjusted to the exigencies of the world economy of international production”.¹²⁴ International organizations develop officially endorsed policy guidelines and these are translated into policy guidelines at the national level. Andrew Baker established empirical research to justify the concept of *nebuleuse* depicted by Cox during his study of the United Kingdom’s HM Treasury and the Bank of England.¹²⁵ Although Baker takes issue with the idea that “state transformation begins with a process of international consensus formation, regarding the needs of the world economy”, he does nonetheless, accept that the UK is subject to the transnational social forces within the state (City) and the transnational social forces and ideas perpetuating the Washington Consensus or prevailing globalization discourses.

As the configuration of social forces within a state changes, however, resistance to the policies from international organizations is possible. After consulting the reports from eight international organizations, primarily the World Economic Forum and WTO reports, Murphy also argued in 1999 the “global balance of ideological and social power” was placing pressure for the continuation of neoliberalism.¹²⁶ However, Murphy also highlights that all of the reports draw attention to global inequalities and all advocate universal democratisation. In doing so, he asserts that the contradictions of neoliberalism in the form of the anti-democratic nature of governance and the growing gross inequalities will leave open the political space for alternative visions of world order. Thereby, due to the oppressive and exploitative nature of the policies of this world order and the contradictions generated by the hegemony of this transnational class, it creates the environment for its own counter-hegemonic forces. In a very similar way to Gramsci, Cox, is very clear on the possibilities of

¹²⁴ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

¹²⁵ Andrew Baker. ‘*Nebuleuse* and the ‘internationalization of the state’ in the UK? The Case of HM Treasury and the Bank of England’, in *Review of International Political Economy* Vol. 6, No. 1, 1999, p. 79-100.

¹²⁶ Craig N. Murphy. ‘Inequality, Turmoil and Democracy: Global Political-economic Visions at the End of the Century’, in *New Political Economy*, Vol. 4, No. 2, 1999, p. 289-303.

successfully challenging world hegemony. As officials from the exploited peripheral countries enter these international institutions with the goal of changing their policies from within, Cox points out that through *trasformismo* they are forced to work within the prevailing structures of the institutions. In working within these structures the individuals help to legitimise the hegemony, but are unable to bring about change, such that “Hegemony is like a pillow: it absorbs blows and sooner or later the would be assailant will find it comfortable to rest upon”.¹²⁷ This was clearly illustrated in the attempts to establish a New Economic Order during throughout the 1970s by the developing country elites. Many now have come to accept the principles of market economics.

Cox argues that the challenging of the hegemony of the *nebuleuse* will only be successful when a new historic bloc emerges from within national societies from the actions of ‘organic intellectuals’. From the many national historical blocs a counter-*nebuleuse* can emerge to challenge the hegemony within international organizations. Cox also warned that the *nebuleuse* would engage in *trasformismo* or passive revolution initiated by political elites. Incremental change from above is motivated by the desire to absorb “potentially counterhegemonic ideas and makes these ideas consistent with hegemonic doctrine.”¹²⁸ The current trend for the institutions of the *nebuleuse* to develop procedures for Non-Governmental Organization to be officially accredited and determined suitable for engagement in some form of participation in decision-making could be seen as examples of *trasformismo*. Consequently, Cox asserts that it is “Only where representation in international institutions is firmly based upon an articulate social and political challenge to hegemony – upon a nascent historical bloc and counter hegemony – could participation within international

¹²⁷ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

¹²⁸ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox and Timothy Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

organizations pose a real threat”.¹²⁹ Therefore the role of the ‘organic intellectual’ is still all important in challenging world hegemony because the argument from the counter-hegemonic force has to be won in a global civil society first before there are changes in the policies of states and the world order.

Evidence of the emergence of a counter-hegemonic force challenging or abstaining from the hegemony is rife in the current world order. In recent years it has been widely accepted that there has been an ideological shift by political elites towards neoliberalism and their embracing of business interests is argued to have had a significant impact on levels of traditional political participation in Western Europe, the US and Latin America.¹³⁰ As disengagement has taken place because of neoliberalism, new forms of political participation, protest and advocacy work have evolved. Boaventura de Sousa Santos defines the current form of counter-hegemonic globalization

as the vast set of networks, initiatives, organizations, and movements that fight against the economic, social and political outcomes of hegemonic globalization, challenging the conceptions of world development under the latter, and proposes alternative conceptions ... Counter-hegemonic globalization is focused on the struggle against social exclusion. Since social exclusion is always the product of unequal social relations, counter-hegemonic globalization is animated by a redistribute ethos in the broadest sense, involving the redistribution of material, social, political, cultural, and symbolic resources ... counter-hegemonic globalization unfolds as political and legal struggles guided

¹²⁹ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

¹³⁰ Mark Blyth and Richard S. Katz. ‘From Catch-all Politics to Cartelisation: The Political Economy of the Cartel Party’, in *Western European Politics*, Vol. 28, No. 1, 2005, Peter Mair and Ingrid Van Biezen. ‘Party Membership in Twenty European Democracies, 1980-2000’, in *Party Politics*, Vol. 7, No. 1, 2001,

by the idea that hegemonic legal and political structures and practices can be challenged by alternative principles of law and politics ... I distinguish two processes of counter-hegemonic globalization: global collective action through transnational networking of local/national/global linkages; and local or national struggles, whose success prompts reproduction in other locales or networking with parallel struggles elsewhere.¹³¹

The counter-hegemonic forces that de Sousa Santos identifies can be seen in the emergence of transnational social movement protest at the meetings of economic and environmental international organizations is now commonplace.

From the IMF riots of the 1970s and 1980s, the rebellion against the creation of North American Free Trade Agreement, the 'Battle in Seattle', Genoa and the meetings of the World Social Forums there is evidence that a real counter-hegemonic force has emerged. Joe Bandy and Jackie Smith illustrate that the number of Transnational Social Movement Organisations (TSMOs) have increased from 183 in 1973, to 959 in 2000.¹³² Although these TSMOs are primarily organised around the protection of human rights (26%), the environment (17%), peace (10%), women's rights (9%), and development (10%), there are a growing number of TSMOs that bring all of these issues together under the one umbrella, such as global justice/peace/environment (11%), and self-determination/ethnic unity (2%).¹³³ Literature from activists concurs with social movement theorists' analysis of the causes of transnational protest. Naomi

¹³¹ Boaventura de Sousa Santos. 'Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality', in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p.29.

¹³² Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, John Clark. *Globalizing Civic Engagement: Civil Society and Transnational Action*, James and James Ltd, 2003, p. 4.

¹³³ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, John Clark. *Globalizing Civic Engagement: Civil Society and Transnational Action*, James and James Ltd, 2003, p. 6.

Klein asserts that what unites these many national groups is the unleashing of TNCs on a global scale and the liberalisation trade policies by the IMF, World Bank and WTO.¹³⁴ The negative effects of these corporate transnational activities and mode of production, coupled with the developments in communication technology, have been the catalyst for bringing about the transnational cooperation and organisation of social movements. Although there is great diversity in the aims and objectives of these many transnational social movements, it is clear that what they have in common is that they contest the global power relations and the ontology that justifies these power relations in the current historical structure.

There has also been a shift in the growth in the number of INGOs in the 20th century. At the beginning of the 20th century there were just 176 INGOs, by 1996 there were 38,243 INGOs¹³⁵, and by 2001 there were to 48,000 INGOs worldwide.¹³⁶ Mary Kaldor *et al* illustrate that in the ten years between 1990 and 2000, the same period that there has been a significant drop in party memberships and electoral turnout in Western Europe and the Americas, the world has seen a near 70% increase in INGO memberships.¹³⁷ Almost a fifty per cent increase in the memberships of INGOs was evident throughout all regions of the world. The exceptions to this rise have been Central and Eastern Europe's 340% increase in INGO membership, which must be seen in the light of these regions experiencing the end of communism and the ability to begin to establish free association with non-governmental organisations, and the East Asia and Pacific region's 75% increase in INGO membership, which also recently experienced democratic reforms. Transnational mass membership of NGOs has emerged with Amnesty International having over 1 million members from over

¹³⁴ Naomi Klein. 'Reclaiming the Commons' in *New Left Review*, Series II, No 19, 2001, p. 84.

¹³⁵ David Held and Anthony McGrew. 'Introduction', in David Held and Anthony McGrew *Governing Globalization: Power, Authority and Global Governance*, London: Polity Press and Blackwell Publishers, 2003. Pg. 7.

¹³⁶ Mary Kaldor, Helmut Anheier and Marlies Glasius, (editors). *Global Civil Society2003*, Oxford: Oxford University Press, 2003, p. 10.

¹³⁷ All figures from Figure 1.2, in Mary Kaldor, Helmut Anheier and Marlies Glasius, (editors). *Global Civil Society2003*, Oxford: Oxford University Press, 2003, p. 13.

140 countries; Friends of the Earth federation, which combines 5,000 local groups with a total of over 1 million members.¹³⁸ One could argue that disaffection at one level of national political participation has encouraged new forms of political engagement at the global level.

Therefore Cox's historical materialism accounts for both the possibility of change and continuity in the multilateralism of the WTO because it focuses on the social forces that have emerged to create and challenge the current form of hegemony unique to this historical structure. Those transnational social forces with access to superior material capabilities in production have been able to gain access to the corridors of power within the dominant states, and also the policy process of international organizations. As Cox explains a *nebuleuse* has emerged within economic international organizations. Consequently, an ontology that justifies the reorganization of production, the forms of states, interstate and society-international organizations relations to allow transnational corporate interests to be pursued more efficiently has gained wider acceptance amongst political elites. This ontology depicts the institutionalisation of these transnational power relations as the only means to achieve collective prosperity, democracy, development, peace and sustainable development for the world. A counter-hegemonic force is also identified by Cox's historical materialism, which challenges the power relations and ontology of the hegemony. In doing so Cox provides a framework for understanding the rationale behind the many state and non-state actors interaction and engagement within the WTO's multilateralism. He also draws attention to the manner in which the WTO itself is built upon a specific ontology and power relations, which establish consent. Although a counter-hegemonic force has evolved more visibly in the last years of the 20th century, Cox demonstrates the difficulty in successfully challenging this ontology due to the inequality of material capabilities of these social forces. Transnational

¹³⁸ Mary Kaldor, Helmut Anheier and Marlies Glasius, (editors), *Global Civil Society 2003*, Oxford: Oxford University Press, 2003, p. 11.

social forces within the state have access to all the instruments of the state to propagate their own ontology, and ultimately have the final sanction of legitimately exercising violence in order to maintain their preferred political, economic, social, and cultural order – the iron fist of the military helps the invisible hand to prosper. Consent can also be manufactured through a policy of *trasformismo*, so that counter-hegemonic forces are brought inside political organizations in order to pacify popular attempts to challenge the hegemony. Therefore, although Cox might advocate the democratisation of global power relations, he accepts that this clash of thesis and anti-thesis will not have a predetermined conclusion. This is the essence of Cox's insightful theoretical framework on change and continuity – hegemony is resilient and able to absorb demands for just change from counter-hegemonic forces, but in doing so it will also be subject to new development and new social forces.

2.4 Criticisms of Cox

Cox's theory offers a political economy analysis of the state, international organizations and multilateralism. Announcing that you consider yourself to be a historical materialist also involves being categorised as a Marxist and on the periphery of mainstream IR theory. John Adam perhaps summed up the mainstream dismissive reaction towards Cox's analysis when he wrote, "Do we need another quasi-Marxist review of labor history? Classes? Surplus...Hegemony? Even with admixtures from Karl Polanyi, Antonio Gramsci, and others, Cox never breaks away from a watery Marxism – and we have all seen this before".¹³⁹ Similarly trivializing, Chris Brown argues, "Cox, certainly, is a fairly conventional Marxist and his historical materialism while explicitly based on the rejection of positivist accounts of Marxism seems much closer to these sources than he is, perhaps aware of."¹⁴⁰ Others have taken issue with Cox's focus on class relations, superstructure and false consciousness as being too

¹³⁹ John Adam. Review of 'Production Power and World Order', in the *Annals of the American Academy*, Vol. 501, 1989, p. 224

¹⁴⁰ Chris Brown. *International Relations Theory*, London: Harvester Wheatsheaf, 1992, p. 202.

reductionist.¹⁴¹ Analysis of world order that focuses on the historical development of political economy is then an easy target to dismiss by the mainstream on the grounds that it is Marxist, thereby guilty of reducing all events to single causes, reifies class, is deterministic and ultimately represents a failed ideology.

In his latest exposition of his theory, Cox explicitly rejects the Marxist label, if this label entails acceptance of economism or “vulgar Marxism, the economic determinism of ideas”.¹⁴² Cox’s theory does not insist that the process of history is guiding humanity to some pre-determined utopian world order. Cox may advocate emancipation from oppressive power relations and the co-existence of cultures in a pluralistic world, but he does not claim that this normative goal is inevitable. Rather Cox points out that “we are all Marxist now, given the demonstrated usefulness of many Marxists (or, perhaps better, Marxian) models for understanding social process”. In terms of reifying class, Cox illustrates that Marx defined class within a particular time and space, but the “essence of class is social domination and subordination. It can be expressed and experienced in the forms of gender, race, caste, status group and other identities, all of which converge into the relations of the production process...the question of class needs to be fundamentally rethought”.¹⁴³ Cox has developed his theory from a focus purely on class relations to expand his study of production to include the production of institutions, laws, morality and ideas. Indeed he points out that due to the current forces of hegemonic transnational capital and the increased heterogeneity experienced due to migration, the primacy of state orientated identities are challenged: “Where the sense of class remains strong today, it

¹⁴¹ See John M. Hobson. ‘For a “Second-Wave” Weberian Historical Sociology in International Relations: A Reply to Halperin and Shaw’, in *Review of International Studies*, Vol. 5, No. 2, 1998, and Johan M. Hobson. ‘The Historical Sociology of the State and the State of Historical Sociology in International Relations’, in *Review of International Political Economy*, Vol. 5, No. 2, 1998, and E. Fuat Keyman. *Globalization, State, Identity/Difference: Towards a Critical Social Theory of International Relations*, Atlantic Highlands: Humanities Press, 1997, p. 119.

¹⁴² Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 28.

¹⁴³ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 30-31.

may be more a cultural matter than something defined by property relations”. A new definition of class is deemed necessary to account for those forces that resist the current world order, but this would need to embrace the various identities of ethnicity, religion and gender to encompass these groups of resistance.¹⁴⁴ Therefore Cox is not guilty of advocating a 19th or 20th century definition of class, but rather illustrates how dominant economic relations are responsible for oppressing ethnicity, religion and gender in the lives of diverse people.

It is Cox’s application of social theory to the study of IR during the 1980s, which critical theorists celebrated because he challenged the dominant ontology and the status of accepted knowledge within the discipline of IR.¹⁴⁵ Cox’s now well worn quote that “Theory is always for someone and for some purpose”¹⁴⁶, and his distinction between ‘problems-solving’ and ‘critical theory’ are recognised for prising open the intellectual space that allowed the traditional IR epistemology and ontology monopolies (states, balance of power, national interest, security) to be interrogated.¹⁴⁷ IR theory had been guilty of pronouncing itself to be scientifically objective and independent of the other social sciences. John MacMillan and Andrew Linklater explain that Cox’s criticism introduced social theory to IR, and brought “a sophisticated challenge to the naïve empiricist view that a political neutral or innocent interpretation of external reality is possible”.¹⁴⁸ This “critical turn in International Relations” came to be known as the ‘third debate’¹⁴⁹ in IR theory and saw the Frankfurt School critical theory, social constructivists, post-structuralists and feminist

¹⁴⁴ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 85.

¹⁴⁵ John MacMillan and Andrew Linklater. ‘Introduction: Boundaries in Question’, in John MacMillan and Andrew Linklater (editors), *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, p. 8.

¹⁴⁶ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, in *Millennium*: Vol. 10, No.2, 1981, p. 128.

¹⁴⁷ Kimberly Hutchings. *International Political Theory: Rethinking Ethics in a Global Era*, London: SAGE Publications, 1999, p. 68.

¹⁴⁸ John MacMillan and Andrew Linklater. ‘Introduction: Boundaries in Question’, in John MacMillan and Andrew Linklater (editors), *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, p. 8.

¹⁴⁹ Yosef Lapid. ‘The Third Debate: On the Prospect of International Theory in a Post-Positive Era’, in *International Studies Quarterly* Vol. 33, No. 3, 1989, p. 235-254.

writers “highlight how images of ethnic identity, nation, national interests, community, state, international cooperation and global values help constitute power arrangements which favour some but disfavour others”.¹⁵⁰ Thereby Cox’s focus on social theory has been significant for providing the springboard for critical theorists to articulate criticism and develop projects of emancipation from the dominant structures of power and knowledge that are concealed within institutions. These Marxist tools are still relevant to today’s theorising because they account for the forces behind social relations from a local to global level, and provide a critical assessment of the process of theorising itself.

Cox’s is also criticised for misinterpreting Gramsci¹⁵¹ or as Catherine Eschle argues that Cox as a neoGramscian is guilty of tending towards a totalizing account of world social relations which circumscribes agency.¹⁵² The first criticism is perhaps a little pedantic, the latter misplaced. As Craig N. Murphy, points out it is not the interpretation of Gramsci that is important for international studies, it is the fact that many of the concepts and focus on historical analysis asserted by Gramsci “‘fit’ with some of the characteristics of the current age at a more ‘global’ level.”¹⁵³ Similarly, Richard Falk, congratulates Cox on his development of a theory that draws from Gramsci’s ideas and concepts to establish a theory that allows for agency within structures of power, and so goes beyond the static nature of world systems theory advocated by writers, such as Immanuel Wallerstein.¹⁵⁴ As Robert O’Brien and Marc Williams point out the historical materialism advocated by Cox allows for agency

¹⁵⁰ John MacMillan and Andrew Linklater. ‘Introduction: Boundaries in Question’, in John MacMillan and Andrew Linklater (Editors). *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, p. 8.

¹⁵¹ Randall D. Germain and Michael Kenny. ‘Engaging Gramsci: International Relations Theory and the New “Gramscians”,’ *Review of International Studies*, Vol. 24, No. 3, 1998.

¹⁵² Catherine Eschle. ‘Constructing the Anti-Globalisation Movement’, in Catherine Eschle and Bice Maiguashca (editors), *Critical Theories, International Relations and ‘Anti-Globalisation Movement’: The Politics of Resistance*, Abingdon: Routledge, 2005, p. 28.

¹⁵³ Craig N. Murphy. ‘Forum: Understanding IR: Understanding Gramsci’, in *Review of International Studies*, Vol. 24, No. 3, 1998.

¹⁵⁴ Richard Falk. ‘The Critical Realist Tradition and the Demystification of Interstate Power: E. H. Carr, Hedley Bull, and Robert W. Cox, in Gill S. and Mittelman J. H. (editors), *Innovation and Transformation in International Studies*, Cambridge: Cambridge University Press, 1997, p. 39-55.

within structures: “We view the relationship as dynamic and do not privilege either structure on unit level variables. There is a danger in reifying structures on one hand, and reducing complex events to individual action on the other. In rejecting structural determinism and methodological individualism we seek to understand the way in which structures constrain action, and agency impacts on structural constraints”.¹⁵⁵ As Cox points out

The problem facing anyone who seeks to define the ‘problematic’ of the contemporary world is to draw upon and in so far as possible integrate modes of understanding from different sources so as to yield a result that both explains adequately and orients action...It is more useful to leave intellectual identities aside and address the question of what are the important things to focus upon.¹⁵⁶

As pointed out above one of the important things to focus upon in a Coxian analysis is the process of dialectics that ensures that hegemony creates its own counter-hegemony and a non-deterministic change will result. Susan Strange once described Cox as “an eccentric in the best English sense of the word, a loner, a fugitive from intellectual camps of victory, both Marxist and liberal”.¹⁵⁷ This is perhaps Cox’s achievement; he is able to draw from such a wide number of theorists to produce a distinct critical theory of the politics of world order, which identifies agency within structures of power.

Susan Strange, however, also objected to Cox privileging power in production in accounting for changes in world order.¹⁵⁸ In contrast, she identifies four separate but

¹⁵⁵ Robert O’Brien and Marc Williams. *Global Political Economy: Evolution and Dynamics*, Basingstoke: Palgrave MacMillan, 2004, p. 36-39.

¹⁵⁶ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 29.

¹⁵⁷ Susan Strange. Review of ‘Production Power and World Order: Social Forces in the Making of History’, in *International Affairs*, Vol. 64, No. 2, 1988, p. 269.

¹⁵⁸ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 26.

inter-related structures that collectively bear down on international events, namely: “control over security, control over production, control over finance/credit, and control over knowledge”.¹⁵⁹ For Strange, the exercise of ‘structural power’ is the determining factor for producing transformation in international relations. In contrast to relational power, which can be defined as ‘A having the power to make B do something that it would not have otherwise have done’, ‘structural power’ differs. Strange describes ‘structural power’ as:

Conferring the power to decide how things shall be done, the power to shape the frameworks, with which each state relates to each other, relates to people, or relates to corporate enterprises. The relative power of each party in a relationship is more, or less, if one of the parties is also determining the surrounding structure of the relationship.¹⁶⁰

‘Structural power’ within production is important, but no more so than the other three structures in determining the changes that will occur in the international arena. This is an important insight because it draws attention to the way in which international institutions are not neutral forums for negotiation.

It is worth noting that after criticising Cox for privileging production, Strange then acknowledges the sway of power exercised by those who control the production structure, which in many ways echoes Cox. This can be seen as she writes that:

The class in a position to decide or to change the mode of production can use its ‘structural power’ over production to consolidate and defend its social and political power, establishing constitutions, setting up political institutions and laying down legal and administrative

¹⁵⁹ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 26.

¹⁶⁰ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, .P 25.

processes and precedents that make it hard for others to challenge or upset ...[S]tructural power over production geared to a world market becomes that of increasing cultural, linguistic and ideological influence.¹⁶¹

This is not to claim that the other three structures of power are of no importance. On the contrary, they are equally as important as production. As illustrated earlier, however, the current mode of transnational production has been a significant factor in generating transnational protest and the power relations in credit, security, and knowledge that are linked to transnational production. Interestingly, Strange fails to discuss the role of ideology in linking and legitimising all four of the structural forces that she defines. The West, especially the US, continues to dominate as the world's leading locus of military power. Similarly the West dominates control of finance, production and knowledge. As such all the structures of power are based upon a Western liberal ideology, which justifies Western practices and institutions. Therefore Strange and Cox have a great deal more in common, and the concept of structural power is essential in understanding the manner in which decision-making is designed to ensure specific outcomes.

Post-structuralism, however, directs a very different criticism at Cox, and one that often tests the limits of comprehending the English language. The essence of the post-structural criticisms runs as follows. On the one hand, Cox's assertion that "international political theory is not only about politics, it is political itself" is welcomed. On the other hand, his emancipation project is severely condemned. Implicit within Cox's belief that a 'counter-hegemonic structure' will evolve, is the premise that the dominant 'historical structure' is both exclusive and oppressive in nature. As such the 'counter-hegemonic structure' is generated by the oppressed, out

¹⁶¹ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 29-30.

of an attempt to break free and gain emancipation. Since this emancipation is on a world scale, Cox is asserting a universal morality. The problem is that if Cox is correct in his assertion that all international political theory is non-neutral, then his own critical theory must be a subjective theory by the same analysis.¹⁶² If this is so, on what grounds can Cox claim to offer a universal theory for the emancipation of humanity when his theory is subjective, and not objective?¹⁶³ For post-structuralists, Cox is merely privileging one perspective of Western modernity over all other moral views without justification. As such Cox is open to the same attack that he asserts a non-neutral theory of international politics, which attempts to change the world towards its own favoured political values.¹⁶⁴ J. George and David Campbell argue that what is required of a theorist is to: "cast off the legacy of uncritical judgements and 'isolated privileges' characteristic of western modern discourses and listen, seriously to marginalized voices, to different histories and cultural experiences".¹⁶⁵

This non-neutrality criticism that is pointed at Cox appears to have some weight. Cox deals with these criticisms himself and points out that the deconstruction of dominant ontologies should enhance not prevent our understanding of the present structures of power:

Now postmodernists ... [assert] every purported firm ground is to be doubted in the eyes of eternity. We are not however, working with the eyes of eternity but with a myopia particular to the late twentieth century...Our challenge is not to contribute to the construction of a universal and absolute knowledge, but to devise a fresh perspective

¹⁶² Robert Jackson and Georg Sorensen. *Introduction to International Relations*, Oxford: Oxford University Press, 2001, p. 234.

¹⁶³ Kimberly Hutchings. *International Political Theory: Rethinking Ethics in a Global Era*, London: SAGE Publications, 1999, p. 74.

¹⁶⁴ J. George and David Campbell. 'Patterns of Dissent and the Celebration of Difference; Critical Theory and International Relations' in *International Studies Quarterly* Vol. 34. No 3. September 1990, p. 281.

¹⁶⁵ J. George and David Campbell. 'Patterns of Dissent and the Celebration of Difference; Critical Theory and International Relations' in *International Studies Quarterly* Vol. 34. No 3. September 1990, p. 285.

useful for framing and working on the problems of the present...To deconstruct the ontological constructs of the passing present is a first step towards a more pertinent but still relative knowledge. The task of clearing the ground should not become an obstacle to constructing a new perspective that can be useful even though it in turn will ultimately be open to critical reevaluation¹⁶⁶

It is also necessary to reiterate that Cox is arguing that there is no teleological end point to the conflict between social forces. He may be in favour of the emancipation of dominated classes and people, but with his acknowledgement of non-deterministic dialectics their liberation is a forgone conclusion. It also has to be remembered that Cox's theory later acknowledged the emerging counter-hegemonic movement as culturally diverse in its composition and not the vehicle of a single class interest.¹⁶⁷ Therefore, the Coxian theoretical framework is not guilty of painting all the protesters with a single coherent declared interest and morality. In fact the very opposite is true - what these groups do have in common is that they believe that neoliberal globalization is responsible for their grievances.¹⁶⁸

2.5 Mainstream Multilateralism and the 'Dissident' Coxian New Multilateralism.

In establishing this Coxian theoretical perspective Cox acknowledges that he has set himself "Apart from the Mainstream" of international studies theorists.¹⁶⁹ Dominant amongst the mainstream theories that have attempted to understand the development of international institutions and multilateralism have been the neo-Realist and the

¹⁶⁶ Robert W. Cox. 'Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of 'Ibn Khaldun'', in *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 145-146.

¹⁶⁷ Robert W. Cox. 'Towards a Post-Hegemonic Conceptualisation of World Order: Reflections of the Relevance of Ibn Khaldun', in James N. Rosenau and Ernest-Otto Czempel (editors). *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, p. 144.

¹⁶⁸ Robert W. Cox. 'Introduction: The New Realism', in Robert W. Cox (editor), *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press Ltd, 1997.

¹⁶⁹ Robert W. Cox. 'Preface', in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996.

neoliberal Institutionalists. Both of these theories fall under the definition of a 'problem-solving' theory.¹⁷⁰ In contrast to 'problem-solving' theory, Cox applies his own 'critical theory', in the form of historical materialism to the study of international organizations and multilateralism. This section will illustrate the distinction between mainstream IR theorists and Cox on the subject of multilateralism. What is significant is the manner in which Cox's theorising has been ignored by the mainstream, regardless of his wealth of research and published contributions to the subject.

For example, it is clear that a central influence in guiding Cox's attention to his theoretic framework came from his time spent working and researching international organizations. For 25 years Cox worked uncomfortably at the International Labour Organization (ILO) because he came to realise that both the ILO and himself "had become an accessory to what I soon came to call 'hegemony' ...my work through the institute had implicitly promoted a perspective on labor and social policy that reflected the dominant social forces in the rich countries and in the world".¹⁷¹ As an academic, Cox's theorising of international organizations was further honed during two collaborative research projects. The first, during the 1960s, involved a comparative study of decision-making within eight international institutions. Working with Harold K. Jackson, Cox offered a critical analysis of decision-making in *The Anatomy of Influence: Decision Making in International Organizations*.¹⁷² The new Director General of the ILO would not allow this text to be published by an employee of the ILO, and so on 12 June 1972 Cox wrote his resignation letter. Turning to full time academic employment, Cox worked at Columbia University until 1976, and in 1977 returned to Canada and York University. Taking advantage of his new academic freedom, in 1977, Cox drew from his experience to articulate that power in

¹⁷⁰ Robert W. Cox. 'Social Forces, States and World Orders: Beyond International Relations Theory', *Millennium*, Vol. 10, No.2, 1981, p. 131.

¹⁷¹ Robert W. Cox . 'Influences and Commitments', in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 25.

¹⁷² The findings from this research were published in Robert W. Cox with Harold K. Jackson (Editors). *The Anatomy of Influence: Decision Making in International Organizations*, London: Yale, 1973. Also see Robert W. Cox (editor). *International Organizations: World Politics*, London: MacMillan and Co, 1969.

production, social forces, ideology, and hegemony were essential factors in shaping decision-making in international organizations.¹⁷³

In the 1990s, as the “intellectual leader”,¹⁷⁴ Cox was asked to contribute to a five-year research project for the United Nations University on the subject of ‘Multilateralism and the United Nations System’.¹⁷⁵ From 1994 to 1999, this UN research programme established a rich body of literature on UN multilateralism in seven collected volumes of essays.¹⁷⁶ Cox pointed out that to understand the problematic of UN multilateralism it was necessary to “link two dynamics: the dynamic of structural change in world order, and the dynamic of development of multilateral practices”.¹⁷⁷ Most notably amongst these were the decline of US hegemony, and the contesting of this hegemony by states and social movements.¹⁷⁸ The hierarchical state-centric multilateralism of the UN, however, did not reflect these structural changes. Cox therefore asserted that multilateralism “will become an arena of conflict between the endeavours to buttress the freedom of movement of powerful homogenizing economic forces, and efforts to build a new structure of regulation protecting diversity and the less powerful”.¹⁷⁹ Furthermore he asserted that the UN had the potential to transform and develop a 'new multilateralism' based on the interests of the less powerful civil

¹⁷³ See Robert W. Cox with Harold K. Jackson. ‘Decision-making’ (1977), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 351.

¹⁷⁴ Term used by Michael G. Schechter, see Michael G. Schechter. ‘Introduction’, in Michael G. Schechter (editor). *Innovations in Multilateralism*, Basingstoke: MacMillan Press Ltd, 1999, p. xix.

¹⁷⁵ Not only was Cox responsible for writing the final report, he also edited two of the collected volumes, and published a number of articles informed by the study See Robert W. Cox. ‘Multilateralism and the World Order’, in *Review of International Studies*, Vol. 18, 1992, p. 161-180, and Robert W. Cox. ‘Towards a Posthegemonic Conception of World Order: Reflections on the Relevancy of ‘Ibn Khaldun’’, in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996.

¹⁷⁶ Yoshikazu Sakamoto (editor). *Global Transformation: Challenges to the State System*, Tokyo: United Nations University Press, 1994; Robert W. Cox. *Multilateralism and the United Nations System: Final Report*, United Nations University Press, March, 1996; Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillan Press LTD, 1997; Stephen Gill (editor). *Globalization, Democratization, and Multilateralism*, London: MacMillan for the United University Press, 1997; Michael G. Schechter (editor). *Innovations in Multilateralism*, London: MacMillan for the United University Press, 1999; and Michael G. Schechter (editor). *Future Multilateralism: The Political and Social Framework*, London: MacMillan for the United University Press, 1999.

¹⁷⁷ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillan Press LTD, 1997, p. xvii.

¹⁷⁸ Robert W. Cox. ‘Multilateralism and the World Order’, in *Review of International Studies*, Vol. 18, 1992, p. 176.

¹⁷⁹ Robert W. Cox. ‘Multilateralism and the World Order’, in *Review of International Studies*, Vol. 18, 1992, p. 177.

society groups promoting “greater social equality, greater diffusion of power among countries and social groups, protection of the biosphere, moderation and non-violence in dealing with conflict, and mutual recognition of civilizations”.¹⁸⁰ This ‘new multilateralism’ was deemed to be inherently democratic from the ‘bottom-up’ because it was based upon the interests and culture of civil society groups, not just states.

Mainstream IR theories on multilateralism were inadequate for understanding or incorporating the structural changes identified by Cox. Indeed the study of multilateralism and international organizations had been neglected. The only academic definition of multilateralism that existed - “the practice of coordinating national policies in groups of three or more states” - had been supplied by the neoliberal Institutionalists Robert O. Keohane in 1988.¹⁸¹ Dominated by Neo-Realist and Neoliberal Institutionalists, mainstream IR theory had focused instead on the cooperation of states within international regimes. In 1982, Stephen Krasner had laid down the framework for mainstream theorising about international regimes by arguing that the dominant state creates international regimes, which establish “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue area”.¹⁸² Regimes and international institutions were deemed to be constructs of the most powerful hegemonic states.¹⁸³ Focusing purely on the material (mostly military) capabilities of

¹⁸⁰ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

¹⁸¹ Robert O. Keohane. ‘Multilateralism: An Agenda for Research’, in *International Journal*, Vol. 45, 1988, p. 731.

¹⁸² Stephen D. Krasner. ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’, in *International Organizations* Vol. 36, No. 2, 1982, p. 186. Keohane also emphasized the intergovernmental bargaining, arguing that regimes help states reach specific agreements by reducing transition costs, improving information, and raising the cost of violation. Regimes are also seen as embodying the norms and rules, which clarify the expectations of state behaviour. By providing the environment for these activities to take place and performing these functions, regimes were also deemed to ensure states could interact more efficiently. See Robert Keohane. *After Hegemony: Co-operation and Discord in the World Political Economy*, New Jersey: Princeton University Press, 1984, Geoffrey Garrett and Barry Weingast. ‘Ideas, Interests and Institutions: Constructing the European Unions Internal Market’, in Judith Goldstein and Robert O. Keohane, *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, Ithaca, Cornell University Press, 1993.

¹⁸³ See Kenneth Waltz. *A Theory of International Politics*, Massachusetts; Addison-Wesley Publishing Company, 1979, p. 72. Robert Gilpin. *War and Change in World order*. London; Cambridge University Press, 1981, p. 169.

states this state-centric hegemony overlooked the sophistication of Coxian hegemony. The social forces – national and transnational – responsible for shaping institutionalising ideas in a state’s foreign policy and in international organizations to pursue their mode of production were all absent from these analyses. Change and continuity in world politics was reduced to hegemonic wars.

By the early 1990s, the disagreement between Neo-Realist and Neo-liberalism (‘neo-neo’ debate) seemed to have all but disappeared because it has been reduced to whether states pursue relative gains (Neo-Realist) or absolute gains (Neo-liberal) from interaction within international regimes and organisations.¹⁸⁴ The existence of anarchy, the primacy of the state, sovereignty and national interest all seemed to be points of agreement not contention. On the one hand David Baldwin applauded this ‘neo-neo’ debate on the grounds that the theories “engaged one another’s arguments directly, and resulted in a more focused, and productive debate”.¹⁸⁵ On the other hand, the value of these theories was undermined because there was little actual disagreement between them. It appeared that mainstream IR theorising had reached its limits of understanding international regimes, whilst multilateralism and international organizations were ignored. As early as 1986, Martin J. Rouchester drew attention to the negative impact IR theorizing on regimes had for research on international organizations: “a steady disengagement of international scholars from the study of organizations, to the point that one must question whether such a field even exists any longer except in name”.¹⁸⁶

Acknowledging the lack of theorising on multilateralism John G. Ruggie addressed the subject, and asserted from the title of his 1993 edited volume that ‘Multilateralism

¹⁸⁴ Joseph M. Grieco. ‘Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism’, in *International Organization*, Vol. 42, 1988, p. 485 – 508.

¹⁸⁵ David Baldwin. *Neo-Realism and Neoliberalism: The Contemporary Debate*, New York: Columbia University Press, 1993, p. 3.

¹⁸⁶ Martin J. Rouchester. ‘The Rise and Fall of International Organizations as a Field of Study’, in *International Organization*, Vol. 40, No 1, 1986, p. 778.

Matters'.¹⁸⁷ Interestingly, although the title of Ruggie's own chapter *Multilateralism: The Anatomy of an Institution* resembles Cox's own 1972 title *The Anatomy of Influence: Decision Making in International Organizations*,¹⁸⁸ there is no reference or engagement with any of Cox's research. Rather Ruggie draws together both Keohane's interstate definition and argument that cooperation functions on the expectation of "diffuse reciprocity".¹⁸⁹ This leads him to claim that multilateralism has a unique neutral character because it shapes actors interests towards collective goods, which establishes norms of behaviour for participating states. Two examples are proposed to give weight to this argument. The first of these is the norm of the "most-favoured-nation" (MFN) as established in the international trade agreements and "corresponding rules about reciprocal tariff reductions and application of safeguards, and collectively sanctioned procedures for implementing the rules". Attention is drawn to the MFN principle in the Coden-Chevalier Treaty of 1860 and to the General Agreements on Tariffs and Trade (GATT) as examples of neutrality within institutionalised multilateralism. The second norm he cites is that of "collective security", which includes "the norms of a nonaggression, uniformed rules for the use of sanctions to deter or punish aggression, and collectively sanctioned procedures for implementing them".¹⁹⁰ The League of Nations and the United Nations, and specifically the US led coalition against the Iraq invasion of Kuwait in 1991, are held up as examples of collective security.

Incorporating the manner in which states, international organizations and neutral norms interact, Ruggie defines multilateralism as

¹⁸⁷ John. G. Ruggie (editor), *Multilateralism Matters: The Theory and Praxis of an International Form*, Oxford: Columbia University Press, 1993, p. 18.

¹⁸⁸ Robert W. Cox with Harold K. Jackson (editors). *The Anatomy of Influence: Decision Making in International Organizations*, London: Yale, 1973.

¹⁸⁹ Robert O. Keohane. 'Reciprocity in International Organizations', in *International Organizations*, Vol. 40, 1985.

¹⁹⁰ John. G. Ruggie. 'Multilateralism: The Anatomy of an Institution', in John. G. Ruggie (editor), *Multilateralism Matters: The Theory and Praxis of an International Form*, Oxford: Columbia University Press, 1993, p. 13.

the practice of co-ordinating national policies in groups of three or more states in accordance with certain principles of conduct; that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence.¹⁹¹

Interestingly, Ruggie further argues that the non-discriminatory nature of the multilateral institutions of today is a direct result of the non-discriminatory ideals that underpinned the US hegemony, which created these institutions in the post World War II era. Ultimately, multilateralism matters, argues Ruggie, because it develops intersubjective frameworks, which shape state perceptions towards the belief that acceptable state behaviour is linked to collective interests. In his later work Ruggie continues this discussion of states, international institutions and intersubjective frameworks within the context of an international society, and establishes his social constructivist credentials.¹⁹² Similarly, Alexander Wendt attempted to establish a social constructivist theory of interstate interaction by drawing attention to the norms and ideas created by states, which have the potential to guide state behaviour towards a number of possible normative frameworks.¹⁹³ Picking up on the themes of the state as a unitary actor, collective interests and the input of social constructivists, Kenneth W. Abbott and Duncan Snidal also offered a similar analysis of international organizations at the beginning of the 21st century, but stressed the relative power of the states as a major contributing factor.¹⁹⁴ All of these social constructivist theories are deficient because they begin with the state as the primary actor and then link norms to state behaviour without identifying the social forces that determine the

¹⁹¹ John. G. Ruggie. 'Multilateralism: The Anatomy of an Institution', in John. G. Ruggie (editor), *Multilateralism Matters: The Theory and Praxis of an International Form*, Oxford: Columbia University Press, 1993, p. 18.

¹⁹² John. G. Ruggie. *Constructing the World Polity: Essays on International Institutionalization*, London: Routledge, 1998, p. 12-13.

¹⁹³ Alexander Wendt. *Social Theory of International Relations*, Cambridge: Cambridge University Press, 1999.

¹⁹⁴ Kenneth W. Abbott and Duncan Snidal. 'Why States Act Through Formal International Organizations', in Paul F. Diehl (editor), *The Politics of Global Governance: International Organizations in an Interdependent World*, 2nd Edition, London: Lynne Rienner Publishers, 2001, p. 15.

policies and norms of states and international organizations. As Benno Teschke and Christian Heine point out the “the central constructivist problem is that cognitive shifts have no apparent external referent...explaining changes in international economic regimes without economics and changes in international political regimes without politics”.¹⁹⁵

In contrast, Cox highlights the absurdity of defining multilateralism at the UN in terms of neutral principles. The five members of the UN Security Council, each of which is able to exercise the veto should a UN decision clash with their own interests, dominate the decision-making of the UN. Furthermore, the Security Council reflects a configuration of power that existed at the end of the Second World War, not the early 1990s. He also points out that “The principle defect of the existing world order and the form of multilateralism associated with it is that is leading to ever-greater polarization of rich and poor, powerful and powerless, especially when one looks at global society”.¹⁹⁶ Yet, the state-centric manner in which multilateralism is defined prevents the powerless from representing their interests within the UN because it does not allow for non-state actors. Thereby mainstream theorising on multilateralism is guilty of advocating a ‘problem-solving’ approach to the study of international institutions, which maintains the status quo and prevents the UN from addressing oppressive power relations.

These sentiments are echoed throughout the edited volumes that emerged from the UN study on multilateralism. Michael G. Schechter, a key figure in the UN study reiterated Cox’s assertions, “the United Nations structure reflects, and perhaps magnifies, the power of the great powers of the Second World War. Thus those states

¹⁹⁵ Benno Teschke and Christian Heine. ‘The Dialectics of Globalisation’, in Mark Rupert and Hazel Smith (editors), *Historical Materialism and Globalization*, London: Routledge, 2002, p. 170.

¹⁹⁶ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillan Press LTD, 1997, p.247.

are privileged in the setting of the global agenda and in deciding which issues will be handled multilaterally and how”.¹⁹⁷ Marie-Claude Smouts argued since the interests of the powerful were institutionalised with the UN it could not be meaningfully reformed and so “the UN should not be looked on to resolve the key dilemmas confronting the globe’s population on the eve of the 21st century”.¹⁹⁸ Similarly, Abelardo Morales states that reform of the UN, the World Bank and IMF will never be radical because these bodies institutionalised the interests of a specific group who “are ill-suited to serve the interests of the South”.¹⁹⁹ Stephen Gill went further and identified, not the states, but the capitalist transnational social forces involved in the G-7 nexus, which direct the global economy.²⁰⁰ This is the crux of Cox’s analysis of multilateralism within international economic organizations: “There is a dominate transnational class at the summit of the global economy, together with subordinate social groups linked to it who also benefit from the dominant position of the world economy”.²⁰¹ Thereby a Coxian analysis of multilateralism within the economic international institutions argues that it has to be seen as part of the *nebuleuse* – a transnational network of corporate and financial social forces, which worked closely with the most powerful state elites, intellectuals and the media to pursue and legitimise their interests. Yet, Cox’s critical research has remained on the periphery of IR theory, and since mainstream state-centric IR theories ignore Cox it can be argued that they reinforce the legitimacy of the *nebuleuse*.

¹⁹⁷ Michael G. Schechter (editor). *Innovations in Multilateralism*, Basingstoke: MacMillan Press Ltd, 1999, p. xx.

¹⁹⁸ Marie-Claude Smouts. ‘United Nations Reform: A Strategy of Avoidance’ in Michael G. Schechter (editor), *Innovations in Multilateralism*, Basingstoke: MacMillan Press Ltd, 1999, p. 29-41.

¹⁹⁹ Abelardo Morales. ‘The United Nations and the Crossroads of Reform’, in Michael G. Schechter (editor), *Innovations in Multilateralism*, Basingstoke: MacMillan Press Ltd, 1999, p. 42-60.

²⁰⁰ Stephen Gill. ‘Structural Change in Multilateralism: The G-7 Nexus and the Global Crisis’, in Michael G. Schechter (editor), *Innovations in Multilateralism*, Basingstoke: MacMillan Press Ltd, 1999, p. 113-165.

²⁰¹ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillan Press LTD, 1997, p.254.

2.6 New Multilateralism and Complex Multilateralism within MEIs

This Coxian approach to world order has been depicted as initiating a new neo-Gramscian School, which ignited a study of hegemony.²⁰² Prominent amongst Cox's former students that have carried forward this Coxian framework, are Stephen Gill and Robert O'Brien.²⁰³ Gill has focused his attention on continuing to develop Coxian theory and language to describe the new ontologies of the world order, and new global social movements.²⁰⁴ In contrast O'Brien, has applied a form of Coxian analysis backed with empirical research drawn from his studies of multilateral economic institutions (MEIs), including the WTO.²⁰⁵ Since this chapter and thesis is dealing with the WTO, this section will therefore concentrate on the work of O'Brien and his analysis of the development of 'complex multilateralism' within the WTO.

Undoubtedly, O'Brien's work has been instrumental in understanding the ontologies, actors and institutions that have emerged within international trade. Interestingly, it is possible to discern a slow dilution of the application of a Coxian framework in his work from 1995, to the study of MEIs in 1997, and his subsequent research of the WTO in 1998 and 2000. The Coxian definitions of world hegemony in terms of *nebuleuse*, and the concept of counter-hegemony have all been significant in their absence from O'Brien's research. Cox is cited as "giving sound advice and support"

²⁰² See Peter Burnham. 'Neo-Gramscian Hegemony and the International Order', in *Capital and Class*, Vol. 41, 1991, p. 73-93; and Mark Rupert. *Producing Hegemony: The Politics of Mass Production and American Global Power*, Cambridge: Cambridge University Press, 1995.

²⁰³ Writers employing a Coxian perspective include Timothy J. Sinclair, Robert J. O'Brien, Randall Germain, Deborah Stienstra, Helene Pellerin, Stephen Gill, Jeffrey Harrod, Michael Schechter and Marc Williams.

²⁰⁴ Stephen Gill (editor). *Globalization, Democratization, and Multilateralism*, London: MacMillan for the United University Press, 1997; Stephen Gill and James H. Mittleman, (editors) *Innovation and Transformation in International Studies*, Cambridge: Cambridge University Press, 1997. Stephen Gill. 'Towards a Postmodern Prince? The Battle in Seattle: A Moment in the New Politics of Globalization', in *Millennium* Vol. 29, No 1, 2000, and Stephen Gill. *Power and Resistance in the New World Order*, Basingstoke: Palgrave MacMillian, 2003.

²⁰⁵ Robert O'Brien. 'International Political Economy and International Relations: Apprentice and Teacher?', in John MacMillan and Andrew Linklater (editors), *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, Robert O'Brien. *Subsidy Regulation and State Transformation in North America, the GATT and the EU*, Basingstoke: MacMillan Press, 1997, Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998; Robert O'Brien et al. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000; Jeffrey Harrod and Robert O'Brien (editors). *Global Unions? Theories of Organized Labour in the Global Political Economy*, London: Routledge, 2002; and Robert O'Brien and Marc Williams. *Global Political Economy: Evolution and Dynamics*, Basingstoke: Palgrave MacMillan, 2004.

to O'Brien's research projects on the WTO through out the years. Yet, in Cox's own work he has maintained that the concepts of *nebuleuse* (from 1992²⁰⁶ to 2002²⁰⁷) and counter-hegemony²⁰⁸ are central to understanding the current world order. Cooptation through *trasformismo* has been less evident in Cox's work since it first appeared in 1983, but is still evident in 2002 when he discusses 'passive revolution' and cautions of possible cooptation of social movements and NGOs by hegemony.²⁰⁹

Perhaps the reason why these concepts are omitted is that O'Brien's research on the WTO has involved collaborative effort with academics that do not share his Coxian perspectives.²¹⁰ Most notably amongst his research partners on MEIs is Jan Aart Scholte, a prolific writer on globalization, global governance and global social movements. For Scholte the current world order or globalization can be understood through theorising from a socio-historical perspective, drawing from Realism and Liberalism (states and governance structures), Marxism (importance of capitalism), Constructivism (identity patterns), Post-Structuralism (the power of knowledge), and Feminism (the importance of gender relations).²¹¹ In applying this framework he emphasises shifts in five macro social structures: geography, production, governance, identity, and knowledge. This perspective also advocates the emancipatory potential to create a secure, equitable and democratic world order.²¹² Using the term supraterritorial, Scholte claims social relations have escaped the structures of the

²⁰⁶ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox with Timothy Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 301.

²⁰⁷ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 33-34 specifically, but also see p. 16, 91, 39-40, 83, 179, 184.

²⁰⁸ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 104.

²⁰⁹ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 164 and 184.

²¹⁰ Although O'Brien acted as coordinator for the 2000 text he acknowledged in the preface that "...we faced scheduling difficulties and intellectual disagreements, but believe a coherent and persuasive study has emerged from our efforts" Robert O'Brien et al. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000. p. xi.

²¹¹ Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd edition), Basingstoke: Palgrave MacMillan, 2005, p. 136-154.

²¹² Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd edition), Basingstoke: Palgrave MacMillan, 2005, p. 136-154.

territorial state, but refuses to cite social forces as the primary cause of this development.

Consequently, Scholte argues that ‘neo-Gramscian’ writers using ‘historical materialism’ and ‘political economy’, such as Cox, are guilty of asserting that

ideational aspects of social relations are treated as outcomes of, with no autonomy from, the mode of production. Yet it over simplifies matters to suggest that culture and psychology are reducible to political economy, that structures of identity and knowledge are wholly reducible to political economy, and entirely subordinate to, those of production and governance.²¹³

Therefore Scholte is dismissive of Cox for offering a simplistic perspective on world order. Yet, standing back from what seems to be the complexity of Scholte’s theory, it is possible to discern striking similarities with Cox. Both stress the role of social forces in production, states, institutions, ideas and knowledge in shaping outlooks and identities. What distinguishes the two is that a Coxian framework asserts that one of the most important forms of institutional power in shaping identities and projecting specific gender relations is that of capitalism established by dominant social forces in the global economy. Perhaps capitalism may not be the only force, but is a central and powerful institutionalised power because of the material and ideological capabilities at its disposal. Scholte, however, is not convinced and he implicitly disputes the existence of *nebuleuse* on the grounds that supraterritorial capitalist class bonds exist in the form of ‘global elite circles’, but their influence is overplayed: “Global managers do not have a single and tightly coordinated strategy of planetary rule”.²¹⁴ It

²¹³ Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd Edition), Basingstoke: Palgrave MacMillan, 2005, p. 130.

²¹⁴ Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd Edition), Basingstoke: Palgrave MacMillan, 2005, p. 246.

is clear that there is much in common between a Coxian framework and Scholte, but the centrality of capitalist transnational social forces to generate policies within the state, and within international organizations is a point of conflict. Perhaps in response it could be argued that Scholte's critical introduction to globalization is less than critical because it fails to identify agency and intention, but rather states that globalization is a product of many forces without giving enough attention to social forces.²¹⁵

Arguably, this disagreement can be seen to influence O'Brien's research. For example in 1995, O'Brien argued, that the interaction of economic and political domains ought to be the central methodology in international relations, rather than being seen as a sub-discipline of IR.²¹⁶ In 1997, O'Brien clearly applied a Coxian political economy analysis to the study of international trade.²¹⁷ Indeed the opening chapter was divided into the headings of Globalization, Production, Finance, Social Forces, Ideas, Institutions, Resistance, and the State in order to establish a framework for understanding how subsidies had changed in the final decades of the 20th century. O'Brien's central argument drew attention to the level of autonomy and enforcement that MEIs had acquired to regulate subsidies in international trade resulting in a fundamental change in traditional understandings of the state. At the core of this process of regulations were regional and international organizations, the European Union (EU), North American Free Trade Agreement and the GATT (WTO). He further points out the main attributes of these institutions: (1) responsibility for defining and labelling a government's use of taxes to assist in the production of goods and services as subsidies; (2) defining of subsidies so broadly they included just about every function that government undertook from running a police force to providing

²¹⁵ See Justin Rosenberg. *The Empire of Civil Society: A Critique of the Realist Theory of International Relations*, London: Verso, 1994.

²¹⁶ Robert O'Brien. 'International Political Economy and International Relations: Apprentice and Teacher?', in John MacMillan and Andrew Linklater (editors), *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, p. 89 – 106.

²¹⁷ Robert O'Brien. *Subsidy Regulation and State Transformation in North America, the GATT and the EU*, Basingstoke: MacMillan Press, 1997.

tax breaks for corporations; (3) power to determine the legality of state subsidies, and apply sanctions to ensure compliance with subsidy reducing treaties; and (4) propagating the ideas that subsidies distorting trade and undermined economic growth.

Specifically, O'Brien states that these developments within international organizations are due to the emergence of transnational social forces within the global economy, and their demand for the regulation of state subsidies. Consequently, O'Brien argues that

US hegemony is gone, regimes live on²¹⁸...especially in the EU and WTO the trend has been for government leaders, backed by commercial interests, often representing a minority of the population, entering into international agreements to empower bureaucrats and lawyers to take decisions over the appropriateness of government expenditure. Once created, these agreements resemble constitutions in that they embody long term rules about the functioning of the society and the economy.²¹⁹

These developments were argued to have caused a significant change in the functions, and therefore our understanding, of state sovereignty. The reason for this was that as international organizations grew in power, and O'Brien directly quotes Cox, "national policies and practices have been adjusted to the exigencies of the world economy of international production".²²⁰ Therefore O'Brien explicitly acknowledges the way in which MEIs have developed an ontology, which justifies state elites redefining state interests towards the priorities articulated by capitalist transnational social forces

²¹⁸ Robert O'Brien. *Subsidy Regulation and State Transformation in North America, the GATT and the EU*, Basingstoke: MacMillan Press, 1997, p. 15.

²¹⁹ Robert O'Brien. *Subsidy Regulation and State Transformation in North America, the GATT and the EU*, Basingstoke: MacMillan Press, 1997, p. 181.

²²⁰ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

embodied within international institutions. In all but name, O'Brien is articulating the concept of *nebuleuse*. He also discusses resistance to these policies, but not in terms of counter-hegemony.

There is, however, no explicit or implicit reiteration of O'Brien's theoretical framework as he, Scholte and Marc Williams joined forces in 1998 to look at the impact of civil society groups, mainly NGOs, on the WTO in 1998.²²¹ In 2000, O'Brien, Scholte and Williams collaborated again, and added Anne Marie Goetz to their team to examine the extent to which social movements and NGOs had been brought into the policy and process of multilateralism at the end of the 20th century. These writers distinguish between Ruggie's state-centric 'traditional multilateralism' and Cox's normative description of democratised bottom-up 'new multilateralism'. Using 'new multilateralism' as an ideal type they set out a research agenda to evaluate the influence of non-state actors in the decision-making and creation of norms within the IMF, World Bank and WTO. It is their conclusion that there has been "a move away from a multilateralism based primarily on the activities of states. Other groups of actors, whether they be private firms or social movements have a significant role in multilateralism. However, states remain key actors and it is not yet established to what degree or in what way they will cede decision-making authority".²²² Therefore they use the term 'complex multilateralism' to describe the shift from traditional multilateralism, but not the realization of Cox's 'new multilateralism'.

Although these writers use Cox's description of new multilateralism as an ideal type they omit some of the most important aspects of Cox's theoretical framework in their analysis; namely the Coxian definition of hegemony in terms of *nebuleuse*, counter-hegemonic forces, organic intellectuals and *trasformismo*. A watered down definition

²²¹ Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998.

²²² Robert O'Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 207.

of hegemony is advocated that stresses the manner in which institutions perpetuate dominant ideas about the world, but it does not identify the social forces that created the institutions and propagates these dominant ideas to pursue their own interests.²²³ Transnational business is identified as the driving force behind globalization and its close relationship with political elites is acknowledged, but not that transnational social forces have been institutionalised in the form of *nebuleuse*.²²⁴ The structural power of these transnational social forces to set the agenda and policies for action, due to their influence in the framework of decision-making in MEIs – especially in the creation of the WTO policies and processes, is also absent. The ability of the hegemony to engage social movements and NGOs in a policy of cooptation through *transformismo* are also not included. Furthermore, although these writers recognize that there is an explicit division between those wishing to preserve the state-centric elite form of traditional multilateralism in MEIs, and the social movements and NGOs that wish to democratise the MEIs in the form of ‘new multilateralism’, they contend that these positions are not consciously acknowledged by the defenders and transformers of established multilateralism.²²⁵ Consequently, the insights that could be revealed from a Coxian analysis are lost.

For example, O’Brien *et al* conclude that although each MEI examined demonstrates different forms of engagement with global social movements and NGOs “this opening is often limited by a preference to maintain policy effectiveness and pre-empt a far-reaching restructuring of multilateralism or transformation of the principles underlying existing policies.”²²⁶ Of the three institutions it is argued the World Bank

²²³ Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 4.

²²⁴ Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 15.

²²⁵ Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 5.

²²⁶ Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 5.

had been the most engaging with non-state actors.²²⁷ Since the Coxian definition of hegemony, *nebuleuse* and *trasformismo* are negated, O'Brien *et al* become dangerously close to legitimising the World Bank's neoliberal programme because they assert it has made moves towards the ideals of social justice, sustainable development and gender equality embodied within global social movements. For example, using the concept of hegemony in his insightful analysis of the World Bank, Michael Goldman, is able to illustrate the manner in which statements concerning the engagement of MEIs and social movements can lead to the legitimisation of neoliberal policies:

the Bank's greatest accomplishment has been to make *its* worldview, *its* development framework, and *its* data sets the ones that people around the world chose above all others...now the world's largest environmental organizations are the chief sponsors of World Bank energy, land colonization, and forestry projects...under the label of green-neoliberalism...[T]he World Bank was pushed into its greening phase by a transnational social movement the demand that it 'reform or die'...the World Bank responded with fervour, ingenuity, and capital. Consequently, the Bank's form of environmental knowledge production has rapidly become hegemonic, disarming and absorbing many of its critics, expanding its terrain of influence, and effectively enlarging the scope and power of its neoliberal agenda.²²⁸

Since Goldman applies the concept of hegemony and implicitly recognises cooptation (*trasformismo*), he is able to explain how the World Bank can draw from the demands of the global green movement to weave their language through the rhetoric of World

²²⁷ Robert O'Brien *et al*. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 18.

²²⁸ Michael Goldman. *Imperial Nature: The World Bank and the Struggle for Social Justice in the Age of Globalization*, London: Yale University Press, 2005, p. 180.

Bank policies. In doing so, the World Bank deflects demands for just change and sustainable development by absorbing the demands into a newly modified ontology, which equates neoliberalism as the only path to sustainable development. Cox himself asserted that hegemony would “penetrate and coopt elements of popular movements. State subsidies to non-governmental organizations incline the latter’s objectives towards conformity with the established order and thus enhance the legitimacy of the prevailing order”.²²⁹ The neglect of the concepts of hegemony and *nebuleuse* therefore prevents an understanding of how MEIs can allow access and participation in decision-making to antagonistic groups without the institution having to change its policies.

It also has to be remembered that O’Brien *et al*’s research was conducted prior to the massive demonstrations at Seattle in December 1999. This event clearly defined the positions of those that were attempting to preserve the traditional multilateralism within the WTO, and those outside as a movement attempting to democratise or decommission the multilateralism of the WTO. Indeed, political elites within the WTO have again and again demanded the preservation of state-centric multilateralism after the acceptance of *amicus curiae* to the WTO dispute settlement body after 1997.²³⁰ Furthermore, political elites have articulated the term ‘anti-globalization’ movement and built an ideology around this term to discredit the challenge to the status quo by the protesters. At the same time NGOs have vigorously campaigned for the right to participate in decision-making and dispute settlement in a manner that reflected ‘new multilateralism’. Popular literature emerging for the World Social Forum also explicitly defined the movement against neoliberal globalization in terms of counter-hegemony.²³¹ These world and regional Social Forums also provide the

²²⁹ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 104.

²³⁰ See World Trade Organisation. General Council, Minutes of Meeting, WT/GC/M/60, 22 November, Published 23 January 2001 and also chapter six of this thesis.

²³¹ See for example William F. Fisher and Thomas Ponniah (editors). *Another World is Possible: Popular Alternatives to Globalization at the World Social Forum*, London: Zed Books Ltd, 2003, p. 12-13, also see chapter five of this thesis.

platform for 'organic intellectuals' to meet and coordinate campaigns to bring the contradictions of world hegemony to their respective civil societies. The term alter-globalization movement has also grown in popularity with social movements and NGOs since Seattle, which reflects a position to reform hegemony. Therefore both defenders and transformers of the WTO's multilateralism are very conscious of the positions that they hold.

In terms of access to the WTO O'Brien *et al* concluded that the WTO was an institution in its infancy, but was showing signs of making adjustment to open up information and decision-making to NGOs and social movements. It was acknowledged that this access was very limited and to pacify critics claiming that the WTO was closed to public scrutiny. It was also argued that this should not detract from the point "Even lip service to sustainable development changes the orientation of an organization. Moreover, it presents NGOs with a yardstick by which to measure performance".²³² As Goldman illustrates through applying the concepts of hegemony and cooptation, however, it is clear that transnational elite networks are more than capable of changing their rhetoric and an institution's ontology to deflect demands for just change by just paying lip service, and convincing an uninformed public that demands for just change have been met.

Indeed, since Seattle a policy of *transformismo* has been evident as the language and demands of the protesters have been absorbed into the rhetoric of the "transnational networks of state elites, corporate interests and finance, which build consensus on the ideology and policies of global international organizations creating "governance without government" – the *nebuleuse*.²³³ This has clearly been the case at the WTO. After Seattle the WTO embarked on a public relations exercise to legitimise and

²³² Robert O'Brien *et al*. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 155.

²³³ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296.

justify the existence of the WTO through the creation of an on-line Website. This website sets out not just to give information, but to propagate an ontology that naturalises free trade, sanctifies comparative advantage, depicts itself as an institution embracing sustainable development, primarily promoting the interest of the poorest countries through the *Doha Development Round*, and engaging with NGOs. In doing so the public at large is provided with a picture of a WTO that addressed all the issues presented by global social movements. Yet, neither the policies of the WTO nor the *nebuleuse* have changed, only the rhetoric. The transnational *nebuleuse* has the superior material capabilities at its disposal to ensure that its neoliberal ontology dominates all others at the moment. The only way to reveal this process is to apply the Coxian framework, which applies the concepts of hegemony, *nebuleuse*, counter-hegemonic forces, organic intellectuals and *trasformismo*. In doing so, a more comprehensible understanding of the multilateralism of WTO can be established by applying a Coxian framework.

2.7 Conclusion

This chapter has argued that a Coxian perspective provides the essential analytical tools for understanding change and continuity at the WTO through the political economy of Cox. It has been demonstrated that the vast majority of IR theorising on multilateralism and international organizations has been state-centric, which has resulted in a very limited understanding of the dynamics of international organizations. Although Cox has built a respectable body of research relating to international organization over the last fifty years, his work has remained ignored and on the fringes of mainstream IR theorizing. Yet, since the WTO is responsible for generating policies to ensure governments establish foreign corporate competition for the supply of goods and services and justifies these policies through a neoliberal ideology, it would seem pertinent to begin analysis of the WTO with the social forces of production. By focusing on the conflict between social forces within production,

the state and world order, the Coxian historical materialism can account for why national and international organizations have become interlinked and propagate specific ontologies about the world in different epochs. The identification of hegemony within historical structures, which brings together social forces, material capabilities, ideas and institutions, is central to viewing the WTO as a construct of dominant transnational social forces and a central institution of the *nebuleuse*. This analysis also identifies the structural power of dominant social forces to set the framework for guaranteeing specific policies and the forms of actions possible. Employing the concept of dialectics illustrates the contradictions of each historical structure creating its own counter-hegemony forces, which challenge the dominant ideology and social forces within institutions. Hegemony, *nebuleuse*, counter-hegemonic forces, organic intellectuals and *trasformismo* enable this Coxian analysis to account for the competing ontologies, the functions of institutions, and the many actors involved within the power relations institutionalised within the WTO. In short Cox is able to account for both change and continuity in multilateralism at the WTO, and world order.

Currently, the contradictions of the current world order are evident in the undemocratic nature of governance of MEIs and the gross inequalities in power and wealth that neoliberalism justifies. O'Brien *et al* have applied a diluted form of Coxian theory to the study of MEIs in a bid to identify the forces contesting neoliberalism. Specifically, these writers have used Cox's 'new multilateralism' as an ideal type to define their own 'complex multilateralism'. In doing so O'Brien *et al* were able to account for the many different non-state actors that were attempting to influence the policies of the WTO at the end of the 20th century. This analysis, however, omitted the most important aspects of Cox's theoretical framework from their analysis, such as the Coxian definition of world hegemony, *nebuleuse*, structural power and counter-hegemony. It was argued that without the application of these concepts O'Brien *et al* were not able to account for the resilience of hegemony to

maintain its position through absorbing the demand for just change into the justification for the WTO's neoliberal policies. This was clearly demonstrated by Goldman's analysis of the World Bank and the environmental movement using the concept of hegemony. Consequently, this thesis will apply the concepts of hegemony, *nebuleuse*, counter-hegemony and *trasformismo* in order to evaluate the change and continuity the alter-globalization movement has caused at the WTO in the first five years of the 21st century.

The World Trade Organization in the Current *Nebuleuse*

The external objective is to increase or secure access to another market...the internal objective is to shift the domestic balance of power so that export oriented liberalization forces have the upper hand. This is accomplished by encasing liberalizing strategies in an international agreement which makes the cost of backsliding exceedingly high...[requiring] the construction of...supranational institutions to govern the increasingly integrated liberal market. ...legal and bureaucratic institutions are a useful mechanism for depoliticising disputes concerning the financial activities of states.²³⁴

3.1 Introduction and Aims

In Coxian terms the World Trade Organization (WTO) can be viewed as a hegemonic institution and part of the transnational and international networks of state and corporate representatives and intellectuals that have “worked towards the formation of a policy consensus for global capitalism” - the current *nebuleuse*.²³⁵ As Robert Cox points out “Among the features of international organization which express its hegemonic role are the following: (1) the institutions embody the rules which facilitate the expansion of hegemonic world orders; (2) they are themselves the product of the hegemonic world order; (3) they ideologically legitimate norms of the world order; (4) they co-opt the elites from peripheral countries; and (5) they absorb

²³⁴ Robert O'Brien. *Subsidy Regulation and State Transformation in North America, the GATT and the EU*, Basingstoke: MacMillan Press, 1997, p. 172.

²³⁵ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 33-34.

counter hegemonic ideas”.²³⁶ The purpose of this chapter is to argue that as a central hegemonic institution of the current *nebuleuse* the WTO embodies the rules and procedures that ensure the expansion of the current hegemonic world order, and these rules are a product of transnational corporate hegemony within the most powerful states (Chapter four will address points three, four and five). In doing so the WTO provides the enforcement and surveillance measures to protect and perpetuate a new model of production for transnational corporate social forces. Ultimately, what distinguishes the WTO from other international organisations of the current *nebuleuse* is that the dispute settlement system of the WTO has penalties to apply if members refuse to comply with WTO agreements. The binding nature of these international trade agreements and the WTO’s process of compulsory surveillance ensure that a particular form of state is constructed from membership of the WTO, which facilitates the interests of transnational corporations. As such, through the WTO, “national policies and practices have been adjusted to the exigencies of the world economy of international production”.²³⁷ Since corporate hegemony was paramount in the creation of the WTO, it will also be argued that the policies of the WTO are an example of corporate ‘structural power’, as identified by Susan Strange.²³⁸ Thereby policies reflecting transnational corporate interests are advantaged at the WTO because alternatives policies are not favoured within this WTO framework.

In order to develop this argument, the centrality of the WTO in the *nebuleuse* will be established by explaining the functions and policies of the WTO. Specific attention will be given to the WTO’s dispute settlement and policy review system to illustrate that the WTO represents the teeth of the current *nebuleuse*. The chapter will then illustrate the dominant story of why the WTO was created in 1995, which depicts the

²³⁶ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

²³⁷ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

²³⁸ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 26.

reasoning behind the creation of the WTO and the dispute settlement body in terms of the failures of the General Agreement on Trade and Tariffs (GATT). This literature does not explicitly acknowledge the influence of transnational social forces in the making and maintenance of the WTO. Consequently, the next section will illustrate that powerful transnational social forces have established hegemony within OECD countries. This corporate hegemony was active during the creation of the WTO to ensure that the WTO opened new markets in services, protected intellectual property rights, and that corporate foreign direct investment (FDI) was free from conditions imposed by host national governments. The WTO's dispute settlement system ensures that members of the WTO change domestic policies to reflect these policies. Each of these factors ensures that the WTO is in a strong position to develop specific society/state relations or 'forms of state' from its policies, which reflects the hegemony of transnational social forces. In the establishment of the WTO therefore, the hegemony of transnational corporate social forces are institutionalised. In demonstrating the process and policies of the WTO in this chapter it will then be possible to understand the criticisms of the WTO, and the manner in which the 'alter-globalization' movement has attempted to influence the WTO in subsequent chapters.

3.2 The WTO's centrality in the *Nebuleuse*

The centrality of the WTO in the trade and economic management of the current world order is well acknowledged. Indeed, the WTO's Charter states that the purpose of the WTO is to provide the main global forum for its members to negotiate "the substantial reduction of tariffs and other barriers to trade and...the elimination of discriminatory treatment in international trade relations".²³⁹ Theodore H Cohn draws attention to the fact that the global trading regime involves a mosaic of interrelated trade institutions, such as the Group of Eight (G8), the Quadrilateral Group (US, EU,

²³⁹ Preamble to the Agreement Establishing the World Trade Organization, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

Canada and Japan), the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTD). Yet he is clear that the WTO is “the key international organisation embedded in the global trade order”.²⁴⁰ Similarly, UN Professor of International Economic Governance Gary P. Sampson states that: “the WTO is undeniably a major player in the field of global governance, and its rules and processes will profoundly affect the future economic and political orientation of its members”.²⁴¹

The WTO may be the key global institution for governing international trade, but in order to ensure that there is one dominant form of international trade it cooperates closely with the IMF and World Bank. As Bernard M. Hoekman and Michel M. Kostecki argue the IMF, the World Bank and the WTO represent the three interdependent pillars of the international economic order.²⁴² Indeed the WTO Charter clearly establishes an aim of the WTO to be the promotion of cooperation between these three institutions.²⁴³ Both IMF and World Bank loans are normally conditioned on the debtor restructuring its national economy towards domestic and international market principles. The management of the liberalisation of government barriers to international trade is the goal of the WTO. The connection is also more direct – the accession of countries such as Mexico and Morocco to the WTO was supported with World Bank lending. Similarly, Anne O. Krueger and Sarath Rajapatirana illustrate the link between these three institutions in their overview of the World Bank’s ‘Structural Adjustment Loans’, ‘Trade Policy Adjustment Loans’ and ‘Sectoral Adjustment Loans’, which they conclude overlap and reinforce policies from the IMF

²⁴⁰ Theodore H Cohn. *Governing Global Trade: International Institutions in Conflict and Convergence*, Aldershot: Ashgate Publishing Limited, 2002, p. 2.

²⁴¹ See Gary P. Sampson ‘Overview,’ in Gary p. Sampson (editor), *The Role of the World Trade Organization in Global Governance*, New Delhi, Bookwell (United Nations University Press), 2002, p. 1.

²⁴² See Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 52.

²⁴³ The Agreement Establishing the World Trade Organization, 1994, Article III
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

and the WTO.²⁴⁴ Receipt of World Bank loans are conditioned on the recipient country establishing domestic policies that create a specific form of state. The official policies of the *nebulouse* then emerge from the ‘unholy trinity’ of the IMF, the World Bank and the WTO. Together these international organizations “impose a virtually synonymous set of neoliberal policies on countries the world over ... actively cooperat[ing] to create a coherent, unifying policy position, increasingly centred on what they take to be their most convincing theme – Free trade”.²⁴⁵ The three of these international organizations are therefore instrumental in attempting to forge one dominant form of international trade and one form of state in the world order.

Central as the WTO might be to the current form of ‘governance without government’, in comparison to its sister organizations it is an international organization in its infancy, and has fewer resources at its disposal. The WTO was brought to life in 1995, at the end of the General Agreement on Tariffs and Trade (GATT) Uruguay Round of negotiations, where statesmen from 124 countries and the European Community (EC) signed the *Final Agreement*.²⁴⁶ By 2006 the WTO’s membership had swollen to encompass 149 states.²⁴⁷ Yet, in 2004, a total number of 600 professional staff was employed by the WTO, whilst the IMF employed over 2,700²⁴⁸ and the World Bank over 9,300.²⁴⁹ The WTO’s budget for 2004 was \$135.71 million²⁵⁰, the IMF’s was \$785.5 million²⁵¹ and the World Bank’s \$940.4 million.²⁵²

²⁴⁴ See Anne O. Krueger and Sarath Rajapatirana’s ‘World Bank Policies Towards Trade’, in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 9-33, and Jose E. Alvarez ‘Symposium: The Boundaries of the WTO’, *The American Journal of International Law*, Vol. 96, No. 1. 2002, p. 149.

²⁴⁵ Richard Peet. *Unholy Trinity: The IMF, World Bank and WTO*, London: Zed Books, 2003, p. 200.

²⁴⁶ Final Act Embodying The Results Of The Uruguay Round Of Multilateral Trade Negotiations.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁴⁷ World Trade Organization. 2 September 2006.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

²⁴⁸ International Monetary Fund. ‘Factsheet’, 2 February 2005.

<http://www.imf.org/external/np/exr/facts/glance.htm>

²⁴⁹ World Bank Group. *About Us: Organization*, 2 February 2005.

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040580~menuPK:34588~pagePK:34542~piPK:36600~theSitePK:29708,00.html>

²⁵⁰ World Trade Organization. *WTO Secretariat Budget For 2004*, 14 December 2005.

http://www.wto.org/english/thewto_e/secre_e/budget04_e.htm

²⁵¹ International Monetary Fund. *The FY 2004 Budget and the Medium-Term Framework*, 14 December 2005.

<http://www.imf.org/external/np/obp/budget/033103.pdf>

Staff salaries and related overheads account for more than 70% of expenditure of the WTO's budget. The youth of this institution and absence of resources, however, are not an indication of a lack of purpose, coherence or authority. To the contrary the legal nature of the WTO, its purpose, functions and powers are explicitly detailed in its constitution or Charter. The 1994 *Agreement Establishing the World Trade Organization* or WTO Charter explicitly details the Articles and Annexes for the WTO.²⁵³ The "legal personality" of the WTO is asserted in Article VIII of the Charter.²⁵⁴

At the core of the Charter are sixteen Articles regulating the scope and functions of the WTO. Specifically, Article III of the Charter describes the WTO as having five functions: facilitating the implementation and operation of the Multilateral Trade Agreement; providing a forum for negotiations on already covered or new issues; administering the Dispute Settlement Understanding (DSU) and the Trade Policy Review Mechanism (TPRM); and finally, co-operating with the World Bank and the IMF to achieve "greater coherence on global economic policy-making".²⁵⁵ The securing of WTO membership for any state is conditional (with only very limited exceptions) on accepting the legal rules set out in the Charter in their entirety: "the so-called single undertaking".²⁵⁶ The granting of 'special and differential treatment' (SDT) is reserved for the 'least developed states', which allows an extended time scale for the implementation of the agreements.²⁵⁷ Exceptions aside, continued membership is based on accepting and implementing the agreements, as Article XXVI

²⁵² World Bank. *Budget for FY03 and FY04*, 2 February 2005.

<http://info.worldbank.org/etools/docs/library/81557/BudgetforFY03andFY04.pdf>

²⁵³ The Agreement Establishing the World Trade Organization 1994.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁵⁴ See Article III, 1. of the Agreement Establishing the World Trade Organization 1994.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁵⁵ The Agreement Establishing the World Trade Organization, 1994, Article III

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁵⁶ Richard Blackhurst. 'The Capacity of the WTO to Fulfill Its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 32-33.

²⁵⁷ Bernard M. Hoekman and Michel M. Kostecki explain that under Annex 3 those members that are defined as 'least developed countries' by the UN standard (having a GNP per capita of under \$1000) could apply subsidies programmes until 2002. See respectively Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: The WTO and Beyond* (2nd Edition), Oxford: Oxford University Press, 2001, p. 108.

of the WTO Charter clearly states that ‘no reservations may be made in respect of any provision of this Agreement’.²⁵⁸ By ensuring that all members unconditionally accept those agreements, the final rulings of the DSB and the review of their domestic legislation through the TPRM, the WTO has become one of the three central economic institutions of the current *nebuleuse*.

The policies that are enforced by the WTO are outlined in the four annexes of the Charter, which detail the substantive rights and obligations of the members.²⁵⁹ Each of these annexes is interlinked by both the ‘most-favoured-nation’ (MFN) principle, and the ‘National Treatment’ rule.²⁶⁰ The MFN principle has a long history in international trade and is described as the cornerstone of multilateral trade negotiations. It can be traced back to the landmark Cobden-Chevalier Treaty of 1860, which led to the reduction of tariffs throughout Europe in the 19th century.²⁶¹ It is claimed that the centrality of the MFN principle ensures that states do not discriminate between trading partners, by giving all trading partners status and concession as a most-favoured trading partner. This status is said to guarantee that when a member’s goods reach the border of another member’s territory they will be treated in the same way as every other member’s produce is. Non-discrimination is also pursued through the National Treatment rule, which requires that foreign goods that enter a market be subjected to the same tax and measures as domestic goods

The annexes that set out the basic principles for trade and directly govern the trade policies of the members are established in the three parts that make up Annex 1. Part one is the General Agreement on Tariffs and Trade (GATT 1994). This relates to the

²⁵⁸ The Agreement Establishing the World Trade Organization, 1994, Article XVI Paragraph 5.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁵⁹ Ernest-Ulrich. Petersmann. ‘International Trade Law and the GATT/WTO Dispute Settlement System 1948-1996: An Introduction, in Ernest-Ulrich. Petersmann (editor), *International Trade Law the GATT/WTO Dispute Settlement System*, London: Kluwer Law International Ltd, 1997, p. 11.

²⁶⁰ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003), p. 10.

²⁶¹ Gerard Curzon. *Multilateral Commercial Diplomacy: The General Agreement on Tariffs and Trade and its Impact on National Commercial Policies and Techniques*, London: Michael Joseph Limited, 1965, p. 15.

trading of goods, agriculture, textiles and clothing. It also outlines the level of tariff reductions that each state has agreed. Such concessions are then listed in schedules and bound, meaning that governments agree not to increase tariffs above the level at which they are bound.²⁶² The General Agreement on Trade in Services (GATS) makes up the second part of the first Annex. It governs the trading of services and access to service markets of members, such as construction, distribution, education, finance, transport, tourism and telecommunications. Finance and telecommunications have been the most liberalised of these service industries since the creation of the WTO.²⁶³ Trade Related Investment Measures (TRIMS) are policies used by governments with a view to forcing foreign investors to attain certain performance standards, such as conditions that the foreign investor must use local produce or labour. The WTO disciplines impose conditions on the use of TRIMS and are outlined in annex 1a.²⁶⁴

The final part of the first Annex is the Agreement on Trade-Related Intellectual Property Rights (TRIPS). It is unique in that it is the only WTO policy that is concerned with harmonising protection, rather than liberalisation, amongst members. Although multilateral negotiations on intellectual property (IP) can be traced back to the 19th century, their inclusion in the WTO's agreements marks the first attempt to enforce intellectual property rights (IPR) on a multilateral basis.²⁶⁵ Through TRIPS, IPRs have been defined in terms of ideas, inventions and creative expression on which there is a public willingness to bestow the status of property. This covers industrial property, copyrights and neighbouring rights in the form of patents, trademarks and knowledge goods. The TRIPS agreement provides intellectual property owners with a

²⁶² Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 24.

²⁶³ Rolf J. Langhammer and Matthias Lucke. 'WTO Access Issues', in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 9-33.

²⁶⁴ Agreement Establishing the World Trade Organization, Annex 1a, Multilateral Agreements on Trade in Goods, also see Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 120-122.

²⁶⁵ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 144.

twenty-year monopoly right, and it: “binds signatory states, requires them to pass implementing domestic legislation, adopt enforcement measures, and face the threat of trade sanctions if they fail to comply with the TRIPS provisions”.²⁶⁶ The MFN principle is the first Article of the GATT 1994, Article II of GATS and Article IV of TRIPS. The National Treatment rule is also stated in Article III of GATT, Article XVII of GATS and Article III of TRIPS.

3.3 The WTO’s DSB: The Teeth of the *Nebuleuse*

The centrepiece of the WTO, however, is the international acceptance of the rule of law as the basis for resolving international trade disputes. As such, the creation of the DSU is perhaps the most important function of the WTO within the current *Nebuleuse* because it ensures that all members adhere to the Charter and trade agreements outlined above. Disputes arising from any WTO agreement are dealt with by the Dispute Settlement Body (DSB), which has the authority to establish panels, adopt panel reports, scrutinise the implementation of recommendations, and authorise retaliatory measures if necessary.²⁶⁷ The dispute settlement procedures can be appealed to whenever a member believes that an action by another member has “nullified or impaired” a concession that was negotiated previously (i.e. tariff binding), or breaks a WTO rule and by doing so “impairs the attainment” of an objective of the GATT. No party can block the establishment of a Panel.²⁶⁸ The Panels are like tribunals, normally consisting of three to five experts from different member states who are chosen in consultation with the countries in the dispute. There are five stages to the resolution of disputes, and strict time scales are given to each stage of dispute settlement. In all it should take no more than one year, or 15 months

²⁶⁶ Susan K. Sell. ‘Private Corporation Power and the Globalisation of Intellectual Property Rights’, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 91.

²⁶⁷ See the Agreement Establishing the World Trade Organization 1994, Annex II, Article II, http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁶⁸ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 47.

if appealed, to deal with each dispute.²⁶⁹ The final stage of dispute settlement is based on members prompt compliance with the recommendations or rulings. If it is impracticable to comply immediately, the offending country is given a 'reasonable period of time' to do so. Failure to act within the set 'reasonable period of time' can result in the offending country entering into negotiations to determine a mutually acceptable compensation. If no satisfactory compensation is agreed upon, the complainant may request authorisation from the DSB to suspend concessions or obligations against the offending country (i.e. retaliation). This authorisation takes effect 30 days after the end of the 'reasonable period of time' has ended. It will usually be granted since under the WTO Charter a consensus of all members is required to refuse rulings of the DSB.²⁷⁰ Although the DSB has the authority to adjudicate during disputes, it should also be noted that Annex II of the DSU clearly states that: "recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements".²⁷¹

By 2006, the WTO dispute settlement system had received 349 complaints from members.²⁷² Of these complaints 27 TRIPS and 9 TRIMS disputes were brought before the DSB, the remaining 313 cases were for both GATT and GATS disputes.²⁷³ In dealing with these disputes the DSB has illustrated that domestic legislation is subject to the agreements of the WTO. Thereby the WTO is in a powerful position to mould a specific form of society/state relations because its agreements ensure that all member states follow national policies, which promote foreign trade in goods and services, protect intellectual property rights and defend FDI from government

²⁶⁹ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 56.

²⁷⁰ See Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 46-47.

²⁷¹ The Agreement Establishing the World Trade Organization 1994, Annex II, Article III, Paragraph 2. http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

²⁷² World Trade Organization. *Chronological List of Dispute Cases*, 23 September 2006. http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm

²⁷³ World Trade Organization. *Dispute Settlement: Index of Dispute Issues*, 23 September 2006, http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm

interference. Referral to the DSB, the rulings of the DSB or the threat of WTO sanctioned retaliatory measures from a member have all concurred to ensure that in most cases, but not all, the WTO is able to enforce GATT, GATS, TRIPS and TRIMS. The WTO is therefore able to ensure “national policies and practices have been adjusted to the exigencies of the world economy of international production”.²⁷⁴ For example, US domestic law detailing the type of petrol that can be exported to the US came under WTO scrutiny in January 1995, as Venezuela complained to the DSB that the United States was applying rules that discriminated against gasoline imports and breached the GATT.²⁷⁵ Just over one year later the dispute Panel completed its final report in favour of Venezuela, which the US appealed. An Appellate Body was established upholding the panels report, and the DSB adopted the report one year and four months later. It then took six and half months for the US and Venezuela to agree on what course of action the US ought to take to comply with the GATT agreement.²⁷⁶

A further example of the WTO being able to ensure domestic legislation complies with WTO agreements was seen during the dispute over US steel after tariffs were raised by nearly 30% in March 2002. Consequently, the EC, together with Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil asked the WTO to determine if these tariffs were legal under WTO GATT agreements. On 14 May 2002, the EU notified the WTO that it reserved its rights to re-balance the adverse effect of the US steel safeguards. The EU subsequently adopted a re-balancing Regulation on 13 June 2002, which listed \$2,242 million of retaliatory tariffs to be placed on US exports into the EU.²⁷⁷ The WTO’s DSB ruled that these US steel tariffs were indeed

²⁷⁴ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

²⁷⁵ World Trade Organization. Standards for Reformulated and Conventional Gasoline, WT/D321/1, 24 January 1995.

²⁷⁶ World Trade Organization. United States - Standards for Reformulated and Conventional Gasoline - Status Report by the United States - Addendum WT/DS2/AB/R, 20 May 1996.

²⁷⁷ Europa. *Trade Related Issues - US Steel Safeguard Measures: Questions and Answers Brussels*, 10 November 2003
http://ec.europa.eu/comm/trade/issues/sectoral/industry/steel/memo101103_en.htm

illegal.²⁷⁸ On the 4th December 2003 the US President was forced to withdraw the domestic laws created to impose tariffs on the import of foreign steel.²⁷⁹ Using these two examples of US domestic legislation being amended it is clear that even the most powerful states are subject to the DSB's rulings. As Richard Blackhurst succinctly states: "There lies – if all else fails – multilateral authorised trade sanctions".²⁸⁰

The obligations of the WTO's TRIPS agreements have also been enforced. Referral to the DSB and the threat of retaliation, through multilateral authorised trade sanctions, has been successful in compelling most member states to rewrite domestic laws or establish a legal framework for patent laws: especially in the patents of pharmaceuticals. For example, Pakistan was brought before the DSB in April 1996 because the United States claimed that Pakistan violated TRIPS on the grounds that it had neither provision for patent protection for pharmaceutical and agricultural chemical products nor a system to permit the filing of applications for patents on these products. The US also argued that Pakistan did not have a system to grant exclusive marketing rights to such products.²⁸¹ Ten months later both parties informed the DSB that they had reached a mutually agreed solution to the dispute and that the terms of the agreement were being finalized.²⁸² Similarly, the EC requested consultations with India alleging the absence of Indian patent protection for pharmaceutical and agricultural chemical products, and the absence of formal systems that permitted the filing of patent applications of and provided exclusive marketing rights for such products.²⁸³ After a DSB Panel report agreed with these allegations,²⁸⁴ India

²⁷⁸ World Trade Organization. United States - Countervailing Measures Concerning Certain Products From The European Communities, WT/DS212/AB/R, 9 December 2002, and World Trade Organization. United States - Definitive Safeguard Measures On Imports Of Certain Steel Products, WT/DS259/AB/R, 10 November 2003.

²⁷⁹ George W. Bush (US President). *President's Statement on Steel*, Press Release, 4 December 2003. <http://www.whitehouse.gov/news/releases/2003/12/20031204-5.html>

²⁸⁰ Richard Blackhurst. 'The Capacity of the WTO to Fulfil Its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 32.

²⁸¹ World Trade Organization. Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products, Request for Consultations by The United States, WT/DS36/1, 6 May 1996.

²⁸² World Trade Organization. Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products, Notification of a Mutually-Agreed Solution, WT/DS36/4, 7 March 1997.

²⁸³ World Trade Organization. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products: Request for Consultations by the European Communities, WT/DS79/1, 6 May 1997.

eventually reported that it had enacted the relevant legislation to meet the recommendations and rulings of the DSB on 16 April 1999.²⁸⁵ Canada was also subject to similar allegations from the EC at the DSB in December 1997. The EU pointed out that Canadian domestic law was not compatible with its obligations under the TRIPS Agreement because of the inadequate provisions for the protection for pharmaceutical patents.²⁸⁶ By August 2000 Canada had asserted that it would implement the DSB's recommendations and ensure domestic legislation complied with TRIPS.²⁸⁷

Not all attempts to enforce the protection of patents under TRIPS have been successful. The disputes over patents for AIDS treatments have been dropped by claimants due to the public relations disasters they created. Perhaps the most famous example of such disputes, but one that never went to the DSB, was that between the US and the South African Medical Law enacted in 1997. This law allowed for the use of generic drugs to be used and compulsory licensing in the South African government's fight against AIDS. Compulsory licensing enables a government to instruct a patent holder to license the right to use its patent to a company, government agency, or other party who could manufacture the drug for sale under a generic name and pay a royalty to the patent holder for each sale. The US government attempted to prevent this compulsory licensing and repeal the South African Medical Law from 1997 to 2000. Perhaps realising the scale of negative public perception created by this public health dispute, the Clinton administration withdrew from taking South Africa to the DSB over the alleged illegal compulsory licensing. Pharmaceutical companies, however, filed a private lawsuit against the South African Medical Law on the

²⁸⁴ World Trade Organization. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products Complaint by the European Communities and their member States, Report of the Panel, WT/DS79/R, 24 August 1998.

²⁸⁵ World Trade Organization. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, Status Report by India, WT/DS50/10/Add.4, 16 April 1999.

²⁸⁶ World Trade Organization. Canada - Patent Protection of Pharmaceutical Products, Request for Consultations by the European Communities, WT/DS114/1, 12 January 1998.

²⁸⁷ World Trade Organization. Canada - Patent Protection of Pharmaceutical Products, WT/DS114/13, 18 August 2000.

grounds that it violated the WTO's TRIPS.²⁸⁸ This private law suit, however, was also withdrawn in April 2001.

Brazil was also subject to a similar experience as it sought to provide affordable AIDS treatments for its people. It too found itself party to a TRIPS dispute at the WTO's DSB in 2000 when first the US²⁸⁹ and then the EC²⁹⁰ requested consultation. The Brazilian government found that its domestic law, which allowed that if a patented product was not being manufactured in Brazil within three years of the issuance of the patent, the government may compel the patent owner to license a competitor, was contested by the US and EC on the grounds that it was illegal under TRIPS. On 19 June 2001, the US informed the WTO that it had established a mutually satisfactory agreement with Brazil and was withdrawing its complaint.²⁹¹ This saw both parties agree to discuss TRIPS and AIDS pharmaceuticals patents in bilateral negotiations.²⁹² Again this withdrawal from the DSB was widely seen as the only exit from a growing public relations disaster for the US.

The WTO's DSB has been used to enforce patents and copyrights in the EC and US. Section 110(5) of the US Copyright Act was alleged to be illegal under TRIPS by the EC because it permitted, under certain circumstances, the playing of radio and television music in public places (such as bars, shops, restaurants etc.) without the payment of a royalty fee.²⁹³ On 9 November 2001, the arbitrator determined that the level of EC benefits, which were being nullified or impaired as a result of this US

²⁸⁸ Robert Block. 'Big Drugs Firms Defend Right to Patents on AIDS Drugs in South African Court', in *Wall Street Journal*, 6 March 2001.

²⁸⁹ World Trade Organization. Brazil - Measures Affecting Patent Protection: Request for Consultations by the United States, WT/DS199/1, 8 June 2000.

²⁹⁰ World Trade Organization. Brazil - Measures Affecting Patent Protection: Request for Consultations by the EC, WT/DS199/2, 20 June 2000.

²⁹¹ World Trade Organization. Brazil - Measures Affecting Patent Protection: Notification of Mutually Agreed Solution WT/DS199/4, 19 July 2001.

²⁹² United States International Information Programme. 'US and Brazil to Cooperate on HIV/AIDS and WTO Patents Dispute', 29 June 2001.

<http://usinfo.state.gov/ei/Archive/2003/Dec/31-569848.html>

²⁹³ World Trade Organization. United States - Section 110(5) of US Copyright Act, Request for Consultations by the European Communities, WT/DS160/1, 4 February 1999.

domestic law, amounted to Euro 1,219,900 per year.²⁹⁴ On the grounds that the US had failed to change domestic law to conform with TRIPS within the agreed reasonable period of time, the EC requested authorisation from the DSB to suspend trade concessions and apply retaliation measures in January 2002. This was to take the form of levying a special fee from US nationals at the EC border on copyright goods.²⁹⁵ The threat of this retaliation by the EC was significant enough to place pressure on the US to begin changing domestic laws and seek cooperation with the EC. Consequently, the US informed the DSB of a mutually satisfactory temporary arrangement between the US and the EC on 23 June 2003.²⁹⁶ The US has also ensured that states from the EC enforce patents. For example in 1996, the US brought Portugal before the DSB because it asserted that Portugal's Industrial Property Act was inconsistent with Portugal's obligations under the TRIPS Agreement.²⁹⁷ A mutual agreement was found between the parties.²⁹⁸ Greece also found itself before the DSB as the US argued that it regularly broadcast copyrighted motion pictures without enforcing intellectual property rights.²⁹⁹ On 20 March 2001, the parties to the dispute notified a mutually satisfactory solution on the matter to the DSB.³⁰⁰

The four TRIMS disputes brought before the DSB have all been successfully enforced by the WTO's TRIMS agreements, with one exception. From the October to November of 1996, the EC, Japan and US requested consultations with Indonesia concerning Indonesia's National Car Programme. All of these countries drew attention to the manner in which this National Car Programme was illegal under the

²⁹⁴ World Trade Organization. United States - Section 110(5) of the US Copyright Act Recourse to Arbitration Under Article 25 of the DSU Award of the Arbitrators, WT/DS160/ARB25/1, 9 November 2001.

²⁹⁵ World Trade Organization. United States - Section 110(5) of the US Copyright Act, WT/DS160/19, 11 January 2002.

²⁹⁶ World Trade Organization. United States - Section 110(5) of the US Copyright Act: Notification of a Mutually Satisfactory Temporary Arrangement, WT/DS160/23, 26 June 2003.

²⁹⁷ World Trade Organization. Portugal - Patent Protection Under the Industrial Property Act, Request for Consultations by the United States, WT/DS37/1, 6 May 1996.

²⁹⁸ World Trade Organization. Portugal - Patent Protection Under the Industrial Property Act, Notification of a Mutually-Agreed Solution, WT/DS37/2, 8 October 1996.

²⁹⁹ World Trade Organization. European Communities - Enforcement of Intellectual Property Rights for Motion Pictures and television Programs, Request for Consultations by the United States, WT/DS124/1, 7 May 1998.

³⁰⁰ World Trade Organization. European Communities - Enforcement of Intellectual Property Rights for Motion Pictures and Television Programs: Notification of Mutually Agreed Solution, WT/DS124/2, 26 March 2001.

TRIMS agreement, GATT and SCM. The DSB Panel found that Indonesia was in violation of Articles I and II: 2 of GATT 1994, Article 2 of the TRIMS Agreement, Article 5(c) of the SCM Agreement, but was not in violation of Article 28.2 of the SCM Agreement.³⁰¹ By a communication dated 15 July 1999, Indonesia informed the DSB that it had issued a new automotive policy on 24 June 1999 (the 1999 Automotive Policy), which effectively implemented the recommendations and rulings of the DSB in this matter.³⁰² India also found that it was requested to appear before the DSB in October 1998, as the EC requested consultations with India concerning certain measures affecting the Indian automotive sector, which conflicted with both GATT and TRIMS. The US also made a similar request in 1999.³⁰³ After a DSB Panel and then Appellate Body upheld, reinforced the Panel's finding for the EC and US allegations,³⁰⁴ India informed the DSB that it had fully complied with the recommendations of the DSB on 6 November 2002.³⁰⁵ Japan was also seen to request consultations with Canada in respect of measures being taken by Canada in the automotive industry in July 1998. After an Appellate Body found that Canada was in breach of its TRIMS agreements at the WTO,³⁰⁶ Canada stated that as of the 18 February 2001 its domestic law would be compatible with the DSB's recommendations. Finally, in May 2000, the US requested consultations with the Philippines in respect of certain measures in the Philippines' Motor Vehicle Development Program ("MVDP"), which was in breach of GATT and TRIMS. A panel is still to be created for this dispute.³⁰⁷

³⁰¹ World Trade Organization. Indonesia - Certain Measure Affecting the Automobile Industry, Report of the Panel, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, 2 July 1998.

³⁰² World Trade Organization Indonesia - Certain Measures Affecting the Automobile Industry, Status Report by Indonesia, WT/DS54/17/Add.1, WT/DS55/16/Add.1, WT/DS59/15/Add.1, WT/DS64/14/Add.1, 15 July 1999.

³⁰³ World Trade Organization. India - Measures Affecting Trade And Investment in the Motor Vehicle Sector, Request for Consultations by the United States, WT/DS175/1, 7 June 1999.

³⁰⁴ World Trade Organization. India - Measures Affecting the Automotive Sector, Report of the Appellate Body, WT/DS146/AB/R, WT/DS175/AB/R, 19 March 2002.

³⁰⁵ World Trade Organization. India - Measures Affecting The Automotive Sector, Communication from India, WT/DS146/14, WT/DS175/14, 13 November 2002.

³⁰⁶ World Trade Organization. Canada - Certain Measures Affecting the Automobile Industry, Report of the Appellate Body, WT/DS139/AB/R, WT/DS142/AB/R, 31 May 2000.

³⁰⁷ World Trade Organization. Philippines - Measures Affecting Trade and Investment in The Motor Vehicle Sector, Request for Consultations by the United States, WT/DS195/1, 31 May 2000.

The case of the US Foreign Sales Corporation Tax (FSC) brought before the WTO by the EC also illustrates that a member state's domestic tax system is subject to WTO agreements. In doing so the WTO is able to get at the heart of a government's domestic legislation and demand compliance with international policy-making. As Barbara Angus, of the US International Tax Council, points out: "Few things are as central to a country's sovereignty as the right to choose its own tax system".³⁰⁸ The FSC dispute also demonstrates the lengths that governments will go to maintain subsidies for corporations and avoid WTO agreements. Over the course of nine years the US has changed the name of this tax subsidy twice in order to protect state funding from exporting corporations. The dispute began in 1997 when the EC requested that the WTO establish a Panel to examine the legality of FSC under the WTO's Agreements.³⁰⁹ The Panel decision that emerged in 1999, argued the FSC was in fact a form of state subsidies and illegal under WTO agreements.³¹⁰ Although the US disputed this Panel decision, a subsequent Appellate Body report agreed with the Panel's decision and that the US must change its domestic law to conform to WTO agreements by the 1 November 2000.³¹¹

On 15 November 2000, the President of the United States signed into law the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (the "ETI Act"). The ETI Act, however, was very quickly attacked by the EC for continuing the subsidisation of exporting corporations. By 2002 a further Appellate Body had declared that the US had failed to fully withdraw its prohibited subsidy scheme and failed to implement DSB recommendations and rulings in this dispute.³¹² In 2004, the DSB ruled that the

³⁰⁸ Barbara Angus. *Testimony of Barbara Angus, International Tax Counsel, United States Department of the Treasury Before the House Committee on Ways and Means on the WTO Decision Regarding the Extraterritorial Income Exclusion Provisions*, Press Release, 27 February 2002.

³⁰⁹ World Trade Organization. Request for Consultations by the European Communities, WT/DS108/1, 28 November 1997.

³¹⁰ World Trade Organization. 'United States - Tax Treatment For "Foreign Sales Corporations' Report of the Panel, WT/DS108/R, 8 October 1999.

³¹¹ World Trade Organization. 'United States - Tax Treatment For "Foreign Sales Corporations' Report of the Appellate Body, WT/DS108/AB, 20 March 2000.

³¹² World Trade Organization. 'United States - Tax Treatment For "Foreign Sales Corporations' WT/DS108/RW, 2000 and WT/DS108/AB/RW, 2002.

EC could impose trade sanctions worth \$4 billion on US exports in retaliations for the US failure to comply with WTO rulings on FSC/ETI.³¹³ On 22 October 2004, the United States enacted the "the American JOBS Creation Act of 2004" (the "JOBS Act") and the repeal of the ETI Act. This too, however, was deemed as inconsistent with the same provisions of the WTO Agreement as its predecessor legislation and failing to properly implement DSB rulings. As of September 2006 this dispute was still to be resolved. Over the course of the nine years the US government have undoubtedly devoted significant state financial and legal resources to fight this case on behalf of corporations with export portfolios. The EC has also been able to refuse to comply with the DSB's ruling. Since 1997 the EC has refused to import GM crops and hormone enhanced beef from the US and Canada. It has preferred to suffer the trade sanctions authorised by the DSB from the US and Canada.³¹⁴

It also has to be acknowledged that the WTO not only provides a forum for members to bring disputes to be heard and enforced, it also demands that all members participate in reviews of their domestic laws by the WTO. The WTO's Trade Policy Review Mechanism (TPRM) ensures that reviews are undertaken. The TPRM is not an arm of the DSB, and it is argued that its purpose is not to determine the legal compatibility of any particular member's trade law or practices with the WTO disciplines. This is deemed to be for member states to discover and dispute at the DSB. Rather, as Sam Laird depicted, the TRPM is the "looking glass through which members examine each other's trade policies and practices".³¹⁵ The creation of TRPM was intended to enable examination of the impact of trade policies and practices of members on the trading system; and to contribute to improving adherence to WTO rules through greater transparency. The Trade Policy Review Body (TPRB) conducts

³¹³ International Herald and Tribune. *U.S. Braces For WTO Ruling Against Exporter Tax Breaks*, 18 March 2002. <http://www.iht.com/articles/44698.html>

³¹⁴ Richard H. Steinberg. 'Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints', in *The American Journal of International Law*, Vol. 98, No. 2, 2004, p. 264.

³¹⁵ Sam Laird. 'The WTO's Trade Policy Review Mechanism – From Through the Looking Glass', in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 33.

trade policy reviews, and each member is reviewed on a rotational basis. Each WTO Member is requested to submit periodic reports or 'policy statements' describing its trade policies. A member's share of world trade determines the frequency of review. The rationale behind this is that the largest players have the greatest impact on world trade. The four largest players – the EU, the US, Japan and Canada – are reviewed by the General Council every two years. The next sixteen largest traders are subjected to reviews every four years. A longer periodicity may be established for the least-developed countries.³¹⁶ During the mission to the capital of the member under review by the TPRB, the Secretariat team will consult with private enterprise (Chamber of Manufacturers, Commerce etc). Private sector meetings are used to identify constraints placed upon the operations of firms in international trade. By 1998 the TPRB had conducted 109 reviews and offered recommendations for further deregulation.³¹⁷ In addition to the TPRM, transparency is further promoted by the WTO, as it requires that all members publish all trade laws and regulations.³¹⁸ Thereby the membership of the WTO brings an obligation to ensure domestic legislation is compatible with WTO agreements, and the WTO has established a regime containing both surveillance and dispute settlement systems to identify and enforce non-compliance.

The examples above have depicted the binding nature of WTO agreements. Regardless of these two examples of refusal to accept WTO agreements, on the whole it can be asserted that the WTO is able to enforce its agreements on its members – even on the most powerful members. What is also striking is the number and diversity of states that have come to accept WTO agreements and processes as the norm. Indeed, central to the argument that the WTO is an essential institution of the current

³¹⁶ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 44.

³¹⁷ Sam Laird. 'The WTO's Trade Policy Review Mechanism – From Through the Looking Glass', in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 38.

³¹⁸ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 45.

nebuleuse is the binding nature of WTO agreements and the acceptance of surveillance measures to ensure compliance, so that “national policies and practices have been adjusted to the exigencies of the world economy of international production”.³¹⁹ Given these qualities it is clear why Hoekman and Kostecki declare that the WTO is an international organisation that “underscores the rule of law”.³²⁰ As a consequence of this focus on international law, Ernest-Ulrich Petersmann states: “the WTO agreements set out the basic rights and duties of its member countries and lay the legal foundation for a new international economic order for the twenty-first century”.³²¹ These developments also provoke J. H. H. Weiler to state that the WTO represents a “legal paradigm shift” as the rule of law overcomes diplomacy and power politics because even the most powerful states are subject to the DSB.³²² These statements need to be dwelled upon because they are central to the idea of the hegemony of the WTO, and the WTO as a central institution of the *nebuleuse*. If we consider that these WTO legal agreements enshrine the “rights and obligations” of member states, and that the WTO has the authority to enforce these rights and obligations, then it is clear that the WTO is vitally important in determining ‘domestic legislation that discriminated against foreign imports, such as taxes or subsidies for domestic producers (non-tariff protection measures)’. Membership of the WTO ensures that a specific form of state is encouraged to emerge from participation in the WTO’s brand of international trade. This form of state is constructed to accommodate the demands of corporate interests. It is for these reasons that the WTO must be considered to be one of the central pillars of the current *nebuleuse*.

³¹⁹ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

³²⁰ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 1.

³²¹ Ernest-Ulrich Petersmann. ‘International Trade Law and the GATT/WTO Dispute Settlement System 1948-1996: An Introduction’, in Ernest-Ulrich Petersmann (editor), *International Trade Law the GATT/WTO Dispute Settlement System*, London: Kluwer Law International Ltd, 1997, p. 11.

³²² J. H. H. Weiler. ‘The Rules of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement’, in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 335.

3.4 A Lack of Critical Analysis in the Creation of the WTO

Having established that the WTO has the authority to create binding trade agreements, it is pertinent to ask just whose interest such a powerful institution serves. Applying a Coxian historical materialist analysis to the WTO demands that attention be given to the dominant social forces that were at the fore of the dominant states during construction of this international institution. The application of such critical theory, however, has not dominated analysis of the WTO. In fact the literature that describes why the creation of the WTO was necessary predominantly focuses on the negotiations between states and the problems that were inherent to the WTO's predecessor - the General Agreements on Tariffs and Trade (GATT), which undermined the coherence of 'governance without government' in the post World War II era.³²³ The leading expert on international trade and architect of the WTO, John H. Jackson argues that, the GATT was doomed to failure because of 'birth defects' which caused it to be: "riddled with so many exceptions to its core principles that it was difficult at the time to be convinced of its potential effectiveness".³²⁴ Not least of these 'birth defects' was that the GATT was merely a trade agreement and therefore lacked the legal status which had been conferred on its sister economic international organisations the World Bank and the IMF.³²⁵ These failings were argued to be evident, regardless of the fact that the GATT was based upon the principles of "non-discrimination, reciprocity, market access and fair competition"

³²³ See Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis. *The World Trade Organization: Law, Practice and Policy*, Oxford: Oxford University Press, 2003, John H. Jackson. *Restructuring the GATT System*, (Royal Institute of International Affairs), London: Pinter Publishers Ltd., 1990.

³²⁴ John H. Jackson. Jackson's authority on the WTO is acknowledged by academics, WTO policy-makers and national negotiators; for example Jagdish Bhagwati asserts that he is "the great expert on GATT law". Benn Steil, Head of International Economic Programme, The Royal Institute of International Affairs, Warren Lavorel the former Deputy Director General of the WTO reveals that Jackson's opinions have been sought on a wide range of issues relating to the WTO, and Hugo Paemen, Ambassador for the European Union to the United States, and formally Chief Negotiator for the European Community in the Uruguay Round states that Jackson's writing on the WTO is the most authoritative to date. See John H. Jackson. *The World Trade Organization: Constitution and Jurisprudence*, (The Royal Institute of International Affairs) London: Pinter, 1998, p. XII and XIII.

³²⁵ Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis. *The World Trade Organization: Law, Practice and Policy*, Oxford: Oxford University Press, 2003, p. 3.

and advocated the policies of the ‘Most-Favoured-Nation’ (MFN), and ‘National Treatment’.³²⁶

For example, as early as 1958 the United Nations Haberler Report identified that although the GATT had reduced tariffs at the borders, the policies of Western industrial nations had nullified any benefits for the developing nations.³²⁷ Rather, the emergence of government non-tariff protection policies, quotas, subsidies, tax breaks and guaranteed loans were used to allow Western domestic producers to keep their prices artificially low in contrast to foreign exporters and producers. Similarly, Michael Beenstock argues that by the 1970s, the economic expansion in parts of the Third World caused alarm in developing states and they employed ‘new protectionism’ to deter imports. This took the form of non-tariff protectionism targeted at specific countries or groups of countries and at specific commodities or groups of commodities³²⁸ - all of which was illegal under the GATT.

By the 1980s the US had not only introduced non-tariff protection measures, it had coupled these with an ‘aggressive unilateralism’ to ensure access to foreign markets. Through the creation of Section 301 and Super 301 of the 1988 Omnibus Trade and Competitiveness Act, the US threatened to impose 100% tariffs on the goods of countries involved in unfair trade policies. Brazil, India, Japan, South Korea and Taiwan became the focus of claims because their domestic “anti-monopoly policies, retail distribution systems, infrastructure spending, savings rates [and] workers rights” were all causing ‘unfair trading’ relations with the US.³²⁹ At the same time, Clayton Yeutter points out that developing states became so frustrated with the existing multilateral rules on agriculture that they formed the Cairns Group to exert pressure

³²⁶ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 24.

³²⁷ Albert George Kenwood and Alan Leslie Loughheed. *The Growth of the International Economy 1820-1990* (3rd editions), London: Routledge, 1992, P 276.

³²⁸ Michael Beenstock. *The World Economy in Transition* (2nd edition), London: George Allen and Unwin, 1984, p. 219.

³²⁹ Jagdish Bhagwati. *The World Trading System at Risk*, Hertfordshire: Harvest Wheatsheaf, 1991, p. 22.

for the liberalisation of agricultural and eventually a new international trade organisation.³³⁰ Therefore although the GATT had reduced tariffs it had been unable to address non-tariff protection or ‘aggressive unilateralism’. As Albert George Kenwood and Alan Leslie Loughheed argue: “the major trading countries pursued increasingly protectionist policies with total disregard for the principles set out in GATT”.³³¹ The exercise of economic power was, then, an integral part of the dynamic of the multilateral trade regime which was illegal under the GATT agreements and principles, but the GATT was powerless to enforce its policies. Subsequently, the GATT could not effectively manage international trade because it was unable to enforce its agreements or bring satisfactory dispute settlement to its members.³³² Thus the GATT was deemed to represent the “Bretton Woods Gap”.³³³

Due to these ‘birth defects’, and the inability of the GATT to prevent transgression of its agreements it is argued that in September 1986 the ‘GATT system’ sponsored a ministerial meeting in Punta del Este in Uruguay which was designed to launch a new round of trade negotiations to address reform of the GATT. Four years after these negotiations got underway “Professor Jackson’s blueprint”,³³⁴ for reform of the GATT was printed in *Restructuring the GATT System*.³³⁵ Jackson points out that the GATT was experiencing a growing mandate as negotiators wanted to shift GATT members’ obligations and rights from the reduction of tariffs at the borders to addressing domestic legislation that discriminated against foreign imports, such as taxes or subsidies for domestic producers (non-tariff protection measures). In order to carry

³³⁰ Clayton Yeutter. ‘Critical Role of the Cairns Group in Liberalising Farm Trade’ in *Reasons Versus Emotions*, p. 10.

³³¹ Albert George Kenwood and Alan Leslie Loughheed. *The Growth of the International Economy 1820-1990* (3rd edition), London: Routledge, 1992, P 283.

³³² Albert George Kenwood and Alan Leslie Loughheed. *The Growth of the International Economy 1820-1990* (3rd edition), London: Routledge, 1992, p 284.

³³³ John H. Jackson. *The World Trade Organization: Constitution and Jurisprudence*, (The Royal Institute of International Affairs) London: Pinter, 1998, p. 1.

³³⁴ Jagdish Bhagwati. *The World Trading System at Risk*, Hertfordshire: Harvest Wheatsheaf, 1991, p.

³³⁵ John H. Jackson. *Restructuring the GATT System*, (Royal Institute of International Affairs), London: Pinter Publishers Ltd., 1990.

out these new functions Jackson argued that the GATT needed to be constitutionally reformed:

The WTO Charter would not only provide the institutional structure for GATT and many other Agreements, but would perform the role of an institutional agreement for service trade Agreements and service sector Agreements. Likewise it would define the relationship of an intellectual property 'code'.³³⁶

This literature then goes on to portray the Uruguay Round of GATT negotiation (1986–1994), which culminated in The Agreements Establishing the World Trade Organization, as resulting in a conscious collective decision to give more authority to the dispute settlement body of the multilateral trade system to enforce trade agreements. The negotiations are also portrayed as creating agreement amongst the members to broaden the WTO's role to include new trade issues of non-tariff protection, services and intellectual property rights. It is argued that these agreements met the interests of all the members. Developing countries' interests were served because they received assurances that developed countries, specifically the EC and US, would be subject to the new trade rules and the judgement of the dispute settlement system. Thus developing countries would be assured access to the rich markets of the developed world without experiencing non-tariff protection. In return developed states would be assured that they would be able to liberalise and regulate the emerging markets in the service industry, and protect intellectual property rights for their ideas and technology.

³³⁶ John H. Jackson. *Restructuring the GATT System*, (Royal Institute of International Affairs), London: Pinter Publishers Ltd., 1990, p. 93-95.

3.5 Transnational Social Forces and Forms of States

What is significant in its absence is that none of these leading trade lawyers account for the hegemony of transnational social forces in their depiction of the Uruguay negotiations that led up to the creation of the WTO and its above principles and policies.³³⁷ The creation of the WTO and its policies must be understood within the context of the rising hegemony of transnational social forces due to their superior material capabilities, and their ideas and interests becoming institutionalised within production, the dominant states and then international organizations. Specifically, the hegemony of transnational social forces has been effective in ensuring that a transnational model of production has been expanded and protected worldwide. In the following section it will be argued that transnational social forces emerged during the 1980s and influenced OECD governments to create an international organization to protect and enhance their exporting interests – the WTO. This national hegemony of transnational corporate elites was instrumental in the creation of hegemony at the WTO. Thereby transnational social forces have established ‘structural power’ within the WTO so that the policies and process of this institution are constructed in such a way as to reflect the agendas of these social forces. ‘Structural power’ ensures only specific policies can be concluded from discussion because alternatives are not allowed within the framework in which discussions take place.³³⁸

Although ‘transnational’ is defined as “any non-governmental actor from one country that has relations with any actor from another country or organisation”, a transnational corporation is “a company that has affiliates in a foreign country. The affiliation may be branches of the parent company, separate incorporated subsidiaries, or associates,

³³⁷ See Robert E. Hudec. *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System*, London: Butterworth Group of Companies, 1993 and Terence P. Stewart (editor). *The GATT Uruguay Round: A Negotiating History (1986-1994)*, London: Kluwer Law International, 1999. Some of this literature deals only with national corporate interests, but not transnational interests, see Daniel L. M. Kennedy and James D. Southwick (editors). *The Political Economy of International Trade Law: Essays in Honour of Robert E. Hudec*, Cambridge, Cambridge University Press, 2002, Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995.

³³⁸ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 26.

with large minority share holders”.³³⁹ Adding more detail to this definition Dunning states that TNCs are:

enterprises which own or control value-added activities in two or more countries. The usual mode of ownership and control is by foreign direct investment, but TNCs may also engage in foreign production by means of cooperative alliances with foreign firms ... TNCs operate two or more production units, and internalise the transactions between these units ... at least one of these production units is located in a foreign country and the markets internalised are transnational rather than domestic.³⁴⁰

Similarly, Hoogvelt uses the image of a TNC parent company coordinating a web of subsidiaries dispersed throughout the world, linked through the latest technology and employed on the basis of their economic competitiveness.³⁴¹ Leslie Sklair illustrates that TNCs are “globalizing corporations ... those consciously denationalising from their domestic origins in the course of developing genuinely global strategies of operation”.³⁴² Even though these TNCs are legally registered in a particular state, the global ambitions of the corporations are not a reflection of a particular national interest. Sklair illustrates that the TNCs and their executives do not see the world of business in terms of pursuing some national interest, but in the accessing of markets throughout the globe for profits for shareholders, not governmental economic interests. What is clear from these definitions is that economic activities are now

³³⁹ Peter Willets. ‘Transnational Actors and International Organizations’, in Steve Smith and John Baylis (editors). *The Globalization of World Politics* (3rd Edition), Oxford, Oxford University Press, 2005, p. 430. Also see Mira Wilkins. ‘Multinational Corporations: A Historical Account’, in Richard Kozul-Wright and Robert Rowthorn (editors), *Transnational Corporations and the Global Economy*, Basingstoke, 1998, p. 95 – 134.

³⁴⁰ John H. Dunning. ‘The Nature of Transnational Corporations and their Activities’, in United Nations Conference on Trade and Development Division on Transnational Corporations and Investment, *Transnational Corporations and World Development*, London: International Thomson Business Press, 1996, p. 27.

³⁴¹ Ankie Hoogvelt *Globalization and the Postcolonial World: The New Political Economy of Development*, Hampshire: Palgrave, 1997, p.127.

³⁴² Leslie Sklair. *The Transnational Capitalist Class*, Oxford: Blackwell Publishing, 2001, p. 48.

coordinated throughout many territories of the globe, and not limited within the borders of any particular state.

In the past a single ‘territorial based production’ was the norm (i.e. uninational). The location of the company, its assets, all stages of production and employment processes, were within the territory of one country, and protected and/or subsidised by the government of that territory.³⁴³ Given that advances in technology have accelerated the ability to communicate globally and instantaneously (telecommunications, satellite links and the World Wide Web), production of a particular good can also be global and transnational. Coupled to this is the decreasing cost of air transport, which allows corporations to produce different parts of a product in a number of territories throughout the world. By employing both these factors transnational production arises because the creation and selling of a good is dispersed throughout a number of countries, as well as: “procurement offices, materials processing installations, fabrication plants, finishing points, assembly lines, quality control operations, advertising and marketing bureaux, data processing offices, after-sales services”.³⁴⁴ All the activities of production can be outsourced competitively and financed through FDI, such that TNCs are involved in “flexible networks of capacities in which the core firm keeps the design, marketing, Research and Development and financial functions, while production and distribution ... are scattered over literally thousands of companies, both globally and domestically”.³⁴⁵ Through what is termed ‘global sourcing’, corporations can draw materials, components, machinery, finance and services from almost anywhere in the world. Consequently, a corporation owns a number of foreign subsidiaries to perform different aspects of the production of a

³⁴³ Grazia Ietto-Gillies. *Transnational Corporations: Fragmentation Amidst Integration*, London: Routledge, 2002, p. 179.

³⁴⁴ Jan Aart Scholte. ‘Global Trade and Finance’, in Steve Smith and John Baylis (editors). *The Globalization of World Politics* (3rd Edition), Oxford, Oxford University Press, 2005, p. 606.

³⁴⁵ Ankie Hoogvelt. *Globalization and the Postcolonial World: The New Political Economy of Development* (2nd edition), Basingstoke: Palgrave, 2001, p. 105.

good so that assets, ownership and control of production span many nation states.³⁴⁶ Transnational corporations therefore have developed a transnational mode of production.

The head of Levis Strauss explains the reality of transnational production as follows: “our company buys denim in North Carolina, ships it to France where it is sewn into jeans, launders the jeans in Belgium, and markets them in Germany using TV commercials developed in England”.³⁴⁷ These TNCs are also able to move aspects of production quickly to secure lower costs and maximising profits. For example TNCs such as Nike opened or closed fifty-five factories in North America and East Asia within a five-year period in response to changes in relative costs of production. Transnational production has developed in the manufacturing of “textiles, garments, motor vehicles, leather goods, sports articles, toys, optical products, consumer electronics, semiconductors, aeroplanes, and construction equipment”.³⁴⁸ These goods are then sold to a global market of consumers.

David Held *et al*, however, point out that restrictions on international trade have encouraged firms to locate and produce overseas, which involves intrafirm trade rather than trade between firms. Subsequently, the growth in transnational corporations and FDI has produced “the growing transnational organisation of production and distribution within and among firms instead of through markets”.³⁴⁹ As a consequence, the benefits of intrafirm trade are significant for TNCs. Not only does intrafirm trade lower costs because it overcomes payment of tariffs, it also prevents the diffusion of corporate technology to potential foreign competitors.

³⁴⁶ Grazia Ietto-Gillies. *Transnational Corporations: Fragmentation Amidst Integration*, London: Routledge, 2002, p. 179.

³⁴⁷ Cited in Jan Aart Scholte. ‘Global Trade and Finance’, in Steve Smith and John Baylis (editors), *The Globalization of World Politics* (3rd Edition), Oxford, Oxford University Press, 2005, p.606.

³⁴⁸ Jan Aart Scholte. ‘Global Trade and Finance’, in Steve Smith and John Baylis (editors), *The Globalization of World Politics* (3rd edition), Oxford, Oxford University Press, 2005, p. 606.

³⁴⁹ David Held *et al*. *Global Transformations: Politics, Economics and Culture*, London: Polity Press and Blackwell publishers, 2000, P 260.

Worldwide intrafirm trade in goods, services and technology accounts for approximately one-third of world trade.³⁵⁰ There has also been a steady increase in inter-firm agreements and partnerships relating to industries involved in the new core technologies, such as biotechnology, information technology and new materials. Ninety per cent of these inter-firm partnerships have been between the corporations of Europe, the US and Japan.³⁵¹

The parent companies of TNCs primarily emerge from Europe, the US and Japan. TNCs dominate the five major business sectors: consumer goods and services, financial services, heavy industry, infrastructure, and electronics.³⁵² The number of TNCs for the fourteen main developed countries in the years 1968 and 1969 was 7, 276.³⁵³ In terms of non-financial TNCs, in the “last years of the 20th century the total number of TNCs was 63,459 whilst the number of foreign affiliations located in another country is 689,520”.³⁵⁴ In 1998 some 93 of the top 100 TNCs had their headquarters in Japan, North America or the EU.³⁵⁵ These TNCs accounted for 25% of world production and 70% of world trade.³⁵⁶ By 2004, there were over 70,000 non-financial TNCs with some 690,000 foreign affiliations.³⁵⁷ The top 100 TNCs remained concentrated in the developed world: 25 from the US and 50 from the

³⁵⁰ United Nations Conference on Trade and Development. *World Investment Report 2000: Crossborder Mergers and Acquisitions and Development*, Geneva: United Nations, 2000, p. 115.

³⁵¹ Grazia Ietto-Gillies. *Transnational Corporations: Fragmentation Amidst Integration*, London: Routledge, 2002, p. 33.

³⁵² Leslie Sklair. *The Transnational Capitalist Class*, Oxford: Blackwell Publishing, 2001, p. 39.

³⁵³ United Nations Conference on Trade and Development - Division on Transnational Corporations and Investment. *World Investment Report 1994. Transnational Corporations, Employment and the Workplace*, New York: United Nations, 1994, p. 175.

³⁵⁴ United Nations Conference on Trade and Development. *World Investment Report 2000: Crossborder Mergers and Acquisitions and Development*, Geneva: United Nations, 2000, p. 76.

³⁵⁵ United Nations Conference on Trade and Development. *World Investment Report 2000: Crossborder Mergers and Acquisitions and Development*, Geneva: United Nations, 2000, p. 76.

³⁵⁶ All figures are from David Held and Anthony McGrew. ‘Introduction’, in David Held and Anthony McGrew (editors), *Governing Globalization: Power, Authority and Global Governance*, London: Polity Press and Blackwell Publishers, 2002, p. 2-3.

³⁵⁷ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 13.

EU.³⁵⁸ By 2003, the top 100 TNC employed over 7.2 million people in foreign countries.

Worldwide states have developed domestic policies to accommodate these TNCs. The expansion of transnational production and intrafirm trade has been facilitated by changes in the regulatory environment of virtually all countries. In the period 1991 to 1999, 94 per cent of 1,035 changes made to the laws governing FDI created a more favourable environment for FDI.³⁵⁹ Corporate cooperation with governments has allowed massive mergers and acquisitions (M&As) between corporations in different countries, which has created colossal transnational corporations such as: Daimler-Chrysler, Chase-J.P. Morgan, McKinsey-Envision, UBS-Paine Weber, Celltech-Medeva, SKB-Glaxo, AOL-Time Warner, Piftz-Warner Lambert, Nestle-Purina, Deutsche-Telekom-Voice Stream and GE-Honeywell. The value of completed cross-border M&As rose from less than \$100 billion in 1987 to \$720 billion in 1999. In 1999 there were 17,000 M&As between domestic firms.³⁶⁰ The reason for these mergers, as Randall Schuler and Susan Jackson explain, is that corporations believe: “companies today need to be fast growing, efficient, profitable, flexible, adaptable, future-ready, and have a dominant market position. Without these qualities, firms believe that it is virtually impossible to survive in today’s global market”.³⁶¹ A consequence of these mergers is that corporations now exist with access to colossal resources that dwarf many national states.

Many national policies have also changed in order to accommodate these TNCs. In 2004, both the number of national policy measures affecting FDI and TNCs that were

³⁵⁸ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 15-17.

³⁵⁹ United Nations Conference on Trade and Development. *World Investment Report 2000: Crossborder Mergers and Acquisitions and Development*, Geneva: United Nations, 2000, p. XV.

³⁶⁰ United Nations Conference on Trade and Development. *World Investment Report 2000: Crossborder Mergers and Acquisitions and Development*, Geneva: United Nations, 2000, p. 103.

³⁶¹ Randall Schuler and Susan Jackson. ‘HR Issues and Activities in Mergers and Acquisitions’, in *European Management Journal* Vol. 19, No 3, 2001, p. 239.

introduced and the number of economies involved in the process increased. A total of 271 new measures were adopted by 102 economies.

the vast majority (87%) of regulatory changes tended to make conditions favourable for foreign corporations to enter and operate. Most of these measures implied further liberalization of investment regimes; 95 involved new promotional efforts (including various types of incentives) and 37 greater investment protection. In terms of regional distribution, Asia and Oceania accounted for 30% of the new measures, followed by the transition economies (22%), Africa (21%), developed countries (14%) and Latin America and Caribbean (13%) ... significant reductions in corporate income taxes were noted in many countries.³⁶²

Thus corporations emanating from the EU, Japan and the US are responsible for much of the transnational investment and production throughout the world. As governments, throughout the world have accepted this shift towards a cooperative relationship with corporations foreign corporate affiliations have grown and states have sought to make themselves attractive to corporate interests.

These corporations therefore play a significant role in the economic development of the countries in which they have foreign affiliations. The UNCTD specifically advises developing economies towards “providing better services and gearing their assets to TNCs’ needs” to attract inward investment even though the “private interests of TNCs can diverge from the social interest of the host economy”.³⁶³ It is acknowledged that these TNCs have a major impact on not only the global economy, but also the policies

³⁶² United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 15-17.

³⁶³ United Nations Conference on Trade and Development. *The Competitive Challenge: Transnational Corporations and Industrial Restructuring in Developing Countries*, Geneva: United Nations, 2000, p. 214.

of states: “in today’s globalizing economy, TNCs are not only the main instruments by which national economies are economically interlinked, but their internal division of labour influences the manner in which particular countries participate in the international division of labour”.³⁶⁴ As Mica Panic points out the strategies of TNCs evolve around “two broad objectives: protection of the existing markets and entry into new markets with the aim of achieving as large a share there as possible”.³⁶⁵ Neither of these policies can be realised without the support of the major governments, and the institutionalisation of these interests within international organizations. Using the latest technology and the cooperation of dominant governments in the EC and US, these corporations have established hegemony and integrated nearly the whole world into a single global economy, which determines the division of labour between countries and ensures that development is dominated by the objectives of the global market.³⁶⁶ Consequently, a neoliberal ideology has been embraced globally by political elites, which has enhanced the transnational activities of TNCs by implementing a transnational mode of production. Together these two factors have integrated many parts of the world into a web of production and investment centred round the needs of transnational corporations. This has come to be known as neoliberal globalization, which is directed by the *nebuleuse*.

The stable ground for the foundations of this new transnational historic structure and *nebuleuse* was laid by the national hegemony of corporate social forces within the most powerful states during the 1980s. Henk Overbeek and Kees Van Der Pijl argue that the “transnational neoliberal revolution” that took place in the 1980s cannot be

³⁶⁴ John H. Dunning and Karl P. Sauvant. ‘Introduction: Transnational Corporations in the World Economy’ in *United Nations Conference on Trade and Development Division on Transnational Corporations and Investment: Transnational Corporations and World Development*, London: International Thomson Business Press, 1996, p. XV.

³⁶⁵ Mica Panic. ‘Transnational Corporations and the Nation State’, in Richard Kozul-Wright and Robert Rowthorn (editors), *Transnational Corporations and the Global Economy*, Basingstoke, 1998, p. 255.

³⁶⁶ John H. Dunning and Karl p. Sauvant. ‘Introduction: Transnational Corporations in the World Economy’ in *United Nations Conference on Trade and Development Division on Transnational Corporations and Investment: Transnational Corporations and World Development*, London: International Thomson Business Press, 1996, p. XV.

solely attributed to the economic crisis or dip in the normal business cycle of the 1970s.³⁶⁷ “Developments in social relations, the composition of the historical bloc, and its concept of control, the role of the state, and the international order” must all be considered.³⁶⁸ This economic crisis, however, did open the way for distrust in the Keynesian economic planning of governments. Intellectuals, including a number of Nobel Prize-Winners for Economics nurtured within the Chicago School, had vigorously condemned Keynesianism and campaigned for the freedom of corporate interests to flow with market demands. These included Fredrick Von Hayek³⁶⁹ and Milton Friedman³⁷⁰ who together helped to resuscitate and reformulate the ideas of Adam Smith (1776)³⁷¹, Richard Cobden (1836)³⁷² and David Ricardo (1817) under the banner of neoliberalism for the late 20th century.³⁷³ Individualism, freedom of choice, the market society, *laissez-faire*, and minimal government were all propagated. Thomas J Biersteker, however, points out that: “The mere presence of the ideas by themselves was not sufficient to bring about the dramatic policy change of the 1980s. The ideas needed an enabling environment (the major shock, the perceived failure of the past, domestic articulation, and international institutional backing) to have major effects”.³⁷⁴ The global recession that afflicted the economies of the advanced industrial world between 1970 and 1974 provided this ‘enabling environment’ and disillusion with Keynesian planning.

³⁶⁷ Henk Overbeek (editor). *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neoliberalism in the 1980s*, London: Routledge, 1993, p. 2.

³⁶⁸ Henk Overbeek (editor). *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neoliberalism in the 1980s*, London: Routledge, 1993, p. 14.

³⁶⁹ Fredrick. A Hayek. *The Road To Serfdom*, London: Routledge Classics, (1944) 2001.

³⁷⁰ Milton Friedman. *Capitalism and Freedom*, London, Chicago University Press, 1963.

³⁷¹ Adam Smith. *An Inquiry Into the Nature and Causes of the Wealth of Nations*, by K, Sutherland (editor), Oxford: Oxford University Press, 1992.

³⁷² Richard Cobden. *The Political and Economic Works of Richard Cobden*, London: Routledge/Thomas Press, 1995.

³⁷³ David Ricardo. *The Principles Of the Political Economy and Taxation*, London: The Quernsey Press Co Ltd, 1992.

³⁷⁴ Thomas J Biersteker. ‘The Triumph of NeoClassical Economics in the Developing World: Policy Convergence and Bases of Governance in the international Economic Order’, in James N. Rosenau and Ernest-Otto Czempiel (editors), *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, p. 125.

By the early 1980s state leaders, initially in Chile, New Zealand, United Kingdom (UK) and the US, were advocating market supremacy in the national economy and international trade. The UK's Prime Minister of this era, Margaret Thatcher, was one of the pioneering political elite who vigorously advocated free market capitalism and international free trade as outlined by Hayek and Friedman's neoliberalism. Indeed, Thatcher and her Senior Civil Servant Sir Keith Joseph are credited with influencing "the agenda for a good part of the rest of the world".³⁷⁵ One of the major policies of this ideological shift towards the superiority of the market was the privatisation of state assets. For example coal, steel, gas, telecommunications, electricity, water, railways, airlines, nuclear power and shipbuilding were auctioned off to private companies at below market prices in the UK.³⁷⁶ The role of the state was reduced in regulating capital flows and it became the norm for states to promote "increased export dependence and flows of foreign direct investment (FDI) relative to domestic investment".³⁷⁷ The election of Ronald Reagan as US president during the 1980s also ushered in a concerted and highly successful effort to radically reorganise American society towards the needs of business and "to create a global economy that was more responsive to US corporate interests."³⁷⁸ Importantly, these economic reforms explicitly promoted and justified a governmental shift from "confrontation to cooperation" with corporate social forces.³⁷⁹ Taking together the political and economic developments in both the UK and US illustrates the manner in which a neoliberal ideology emerged, which revolved around a hegemonic relationship between corporations and governments to enhance and protect the needs of corporations. Kees Van Der Pijl states "an unreconstructed liberal faction in the

³⁷⁵ Daniel Yergin and Joseph Stanislan. *The Commanding Heights. The Battle between Government and the Market Place that is Re-making the Modern World*, New York: Simon and Schuster, 1998, p. 93.

³⁷⁶ Harry Shutt. *The Trouble with Capitalism: An Enquiry into the Causes of Global Economic Failure*, London: Zed Books, 1998.

³⁷⁷ Will Hutton. *The State We're In*, London: Jonathan Cape, 1995, p. 56.

³⁷⁸ David C. Korten. *When Corporations Rule the World*, London: Earthscan Publications, Ltd, 1995, p. 63.

³⁷⁹ John H. Dunning. *The Globalization of Business: The Challenge of the 1990s*, London: Routledge, 1993, p. 320.

capitalist class was able to restore full sovereignty to private capital”.³⁸⁰ This new corporate hegemony that emerged in the 1970s brought together and institutionalised transnational elites, political elites and intellectuals, at the state level and within international organizations, to generate consensus on global economic policies– the *nebuleuse*.

3.6 The Transnational Historical Structure in the Creation of WTO Policies

The emergence of this transnational corporate historical structure has ensured that international trade policies provide a favourable national and global environment for a transnational model of production and investment. This corporate hegemony within the dominant states was responsible for bringing new trade issues into the political arena, such as access to foreign services markets and the protection of foreign investment and intellectual property rights. In this section it will be argued that TNCs hegemony played a significant role in the creation of WTO agreements to expand and protect their interests globally. Corporations created pressure for a new international trade organisation and TNCs coordinated transnationally working with the most powerful governments to negotiate international agreements. Thereby the structural power of TNCs is interwoven within the agreements of the WTO.

Corporate hegemony within the EC and US has been critical in the creation of international agreements for foreign investment, and intellectual property rights within the WTO. The agreement finalising the establishment of the WTO emerged from the GATT Uruguay Round of Trade Negotiations 1986-94. The USCID, working in conjunction with other business umbrella organisations such as the US Business Roundtable (BR), played a significant part in lobbying the GATT Uruguay

³⁸⁰ Kees Van Der Pijl. ‘The Sovereignty of Capital Impaired: Social forces and Codes of Conduct for Multinational Corporations’, in Henk Overbeek (editor), *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neoliberalism in the 1980s*, London: Routledge, 1993, p. 29.

Round for favourable investment laws.³⁸¹ Although FDI was not part of the explicit negotiations in the Uruguay Round, a number of agreements covered by the Final Act are directly relevant to FDI and TNCs, namely the General Agreement on Trade and Services (GATS), the General Agreement on Trade-Related Investment Measures (TRIMS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Paz Estrella Tolentino explains, “these Agreements have the objective of binding the GATT members to facilitate growth in trade and FDI (the latter confined to services) by specifying the responsibilities of countries to foreign investors”.³⁸² As illustrated above these agreements are at the very core of the WTO policies and illustrate the success of transnational corporate hegemony to gain dominance not only within the dominant states, but also over global economic policy through dominance of the international organizations.

For example the WTO agreements on GATS and TRIMS clearly enhance and protect the transnational model of production favoured by TNCs involved in trade in services and investment, which predominantly emanate from the EC, US and Japan. As stated above, the GATS is the second part of the first Annex. It governs the trading of services and access to service markets of members, such as construction, distribution, education, finance, transport, tourism and telecommunications. Finance and telecommunication have been the most liberalised of these service industries since the creation of the WTO.³⁸³ Since TNCs predominantly emanate from the EC, Japan and US and dominate the world’s share of service providers, the protection of FDI in services was important for OECD corporations. For example, by 2001 trade in services made up 60% of OECD GNP, and trade in services grew faster than trade in

³⁸¹ Andrew Walter. *Globalization and Policy Convergence: The Case of Direct Investment Rules*, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p.57.

³⁸² Paz Estrella Tolentino. ‘Transnational Rules and TNCs’, in Jonathan Michie and John Grieve Smith (editors), *Global Instability: The Political Economy of World Economic Governance*, London: Routledge, 1999, p. 186.

³⁸³ Rolf J. Langhammer and Matthias Lucke. ‘WTO Access Issues’, in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 9-33.

merchandise throughout the end of the 20th century.³⁸⁴ By 2003-2004 this trend continued with corporations from the developed world accounting for nearly 80% of all the world's FDI in services.³⁸⁵ The GATS agreement therefore is important for TNCs involved in services. Similarly, The WTO's TRIMS agreements challenge government policies that impose conditions on private foreign investment, such as the requirement of foreign investors to use local materials and suppliers when doing business. Thereby a transnational model of production is protected as TNCs can globally source for the cheapest resources and labour without government interference. The current WTO Agreements can still be seen to be instrumental in liberalising national controls for the freedom of TNC activity. As demonstrated above, the WTO's DSB has consistently enforced GATS and TRIMS on WTO members.

The creation of TRIPS, however, is perhaps one of the best examples of TNCs hegemony emerging from the dominant states and being institutionalised at the global level. TNCs collaborated with one another transnationally and through hegemony and the EC, Japanese and US governments have delivered international agreement that protects their intellectual property rights from competition emerging from the developing world. TRIPS specifically ensures that TNCs are able to patent and protect intellectual property rights, and governments which are members of the WTO have a responsibility to uphold these intellectual property rights. As illustrated above the WTO's DSB has ensured that member states, such as Canada, India, Pakistan, the EC and US, have established the domestic legal framework to protect corporate intellectual property rights and patents – especially for pharmaceuticals patents.

³⁸⁴ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 127.

³⁸⁵ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 8 and p. 260.

Although, not using the term corporate hegemony, Susan K. Sell has been instrumental in illustrating that TRIPS “is a case of particular MNCs wanting, and getting, their kind of international regulation of intellectual property rights.”³⁸⁶ Sell explains the corporate influence throughout the creation of TRIPS in great detail. In 1984, the United States Trade Representatives (USTR) requested private sector input on including Intellectual Property (IP) in the upcoming GATT Round. John Opel the Chief Executive Officer (CEO) of IBM commissioned economist Jacque Gorlin to draft a paper for the USTR outlining a trade based approach for IP. This became the multilateral strategy that all corporations pursued in IP. Edmund Pratt, CEO of Pfizer Pharmaceutical was the Business Roundtable’s leader in 1988 when trade and intellectual property dominated the US agenda. He was selected to be advisor to the US Official Delegation at the Uruguay Round in his capacity as Chairman of ACTN, and yet the GATT had no official standing for the private sector.³⁸⁷ According to Sell, this US sponsored proposal:

closely mirrors the expressed wishes of the twelve CEOs who spearheaded this effort ... these CEOs formed the ad hoc Intellectual Property Committee (IPC) in March 1986, just prior to the Punta del Este meeting that launched the Uruguay Round. In 1986 the members of the IPC were: Bristol-Myer, CBS, Du Pont; General Electric; General Motors; Hewlett-Packard; IBM; Johnson & Johnson; Merck; Monsanto; and Pfizer. These companies represent a broad spectrum of US intellectual property interests, including chemical, computer, entertainment, pharmaceutical and software.³⁸⁸

³⁸⁶ Susan K. Sell. ‘Private Corporation Power and the Globalization of Intellectual Property Rights’, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 91.

³⁸⁷ Susan K. Sell. ‘Private Corporation Power and the Globalization of Intellectual Property Rights’, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 99.

³⁸⁸ Susan K. Sell. ‘Private Corporation Power and the Globalization of Intellectual Property Rights’, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 112.

The International Trade Commission played a significant part in providing the US government with information about the failure of foreign countries to apply IP, and the subsequent losses incurred by the corporations. This was used in trade negotiations to illustrate how much US corporations were losing. The government had to rely on the expertise of IP lawyers, typically corporate counsel to translate the complexities into political discourse and make clear the connection between IP and international trade.

The important aspect of the creation of this agreement is that it demonstrates TNC hegemony was able to generate the substantive norms for international property protection for all governments and have these agreements enforced by the WTO. In 1986 the IPC met with the Confederation of British Industries, the IBI in Germany, the French Patronat, and through them with the Union of Industrial and Employers' Confederation of Europe (UNICE). UNICE is the official representative of European business and industry in European institutions and is composed of thirty-three member federations from twenty-two countries. In July 1986 the IPC went to Japan and met with the Japanese Federation of Economic Organizations. "The IPC convinced the European and Japanese counterparts of the merits of a trade based approach by emphasising their shared experience and common plight ... who agreed to work on it and pledged to present these views to their respective governments in time for the launch of Uruguay Round".³⁸⁹ Lobbying government is not hegemony, and perhaps Sell is understating the level of influence of corporations institutionalised within these dominant states. For example, expressing satisfaction with the final 1994 TRIPS agreement Gorlin, advisor to the IPC, said that IPC got 95% of what it wanted.

³⁸⁹ Susan K. Sell. 'Private Corporation Power and the Globalization of Intellectual Property Rights', in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 101.

Pfizer Chairman, Emeritus Edmund J. Pratt was also jubilant about the creation of TRIPS and during a speech to the US Council for International Business states,

The IPC helped to convince US officials that we should take a tough stance on intellectual property issues, and that led to trade-related intellectual property rights being included on the GATT agenda when negotiations began in Punta del Este, Uruguay, in 1986 ... The current GATT victory, which established provisions for intellectual property protection, resulting in part from the hard-fought efforts of the US government and US business, including Pfizer, over the past three decades. We've been in from the beginning, taking a leadership role.³⁹⁰

This leadership role of corporations is more than just a policy of lobbying governments and that these governments are neutral between competing conceptions of foreign policy. Rather this leadership of the dominant governments is significant in terms of corporate hegemony. It is perhaps more insightful to view chemical, computer, entertainment, software, but specifically pharmaceutical corporations as being able to use TNCs hegemony in order to create the TRIPS agreement during the creation of the WTO. As illustrated above the WTO DSB has been employed to ensure the pharmaceutical patents are enforced amongst the members of the WTO. Corporate hegemony and structural power is therefore evident within the WTO.

Andrew Walter contests corporate hegemony on the grounds that corporations were unsuccessful in acquiring the Multilateral Agreement on Investment (MAI). The MAI was an international economic agreement designed to limit the power of governments

³⁹⁰ Emeritus Edmund J. Pratt (Pfizer Chairman). *Intellectual Property, Speech to US Council of International Business*, Washington D.C., March 1995.
www.pfizer.com/are/about_public/mn_intellectualpropfrm.html

to restrict and regulate FDI within the OECD, which would have later been extended to countries outside the OECD.³⁹¹ By signing up to the MAI, governments would have: agreed to open up virtually all sectors of their economies to FDI; allowed corporations to sue governments if they impose regulations and performance criteria on FDI; and therefore allowed foreign capital significant leverage over national policies.³⁹² Walter does state, however, “US international business organisations have formulated clear preferences relating to international investment rules, in part because they have been in a position to influence government policy and negotiation strategies in the US and elsewhere in the OECD”.³⁹³ For example, in an effort to persuade foreign government to support policies for transnational corporate investment interests, an Investment Committee from the US Council for International Business (USCID) led a delegation to Japan to lobby for support of the MAI. Similarly Elizabeth Smythe argues that multinational capital was significant in initiating the MAI negotiations, and the Business and Industry Advisory Committee (BIAC) to the OECD made great efforts to advise the OECD to accept MAI. Executives of some of the largest multinational corporations based in the member states of the OECD occupied the chair and policy committees of BIAC.³⁹⁴ The MAI was never signed at the 1995 negotiations, which Walters argues undermines the existence of corporate hegemony. Failure with the MAI, however, also has to be seen in the context of achieving corporate structural power within the WTO during the same period – the most powerful economic international organization within the current *nebuleuse*. MAI is perhaps of less importance because within the OECD it required a gradual

³⁹¹ Elissa Braunstein and Gerald Esptein. ‘International Credit Rules and Investment’, in Jonathan Michie and John Grieve Smith (editors), *Global Instability: The Political Economy of World Economic Governance*, London: Routledge, 1999, p. 117.

³⁹² Elissa Braunstein and Gerald Esptein. ‘International Credit Rules and Investment’, in Jonathan Michie and John Grieve Smith (editors), *Global Instability: The Political Economy of World Economic Governance*, London: Routledge, 1999, p. 117-121.

³⁹³ Andrew Walter. *Globalization and Policy Convergence: The Case of Direct Investment Rules*, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p.57.

³⁹⁴ Elizabeth Smythe. ‘State Authority and Investment Security: Non-State Actors and the Negotiations of the Multilateral Agreement on Investment at the OECD’, in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 81-82.

acceptance and the signatures of the developing world over a longer period of time. In contrast the WTO's 'single undertaking' clause ensured that all members accepted TRIPS as a condition for being a member of the WTO, and the WTO has the authority to apply surveillance and enforcement measures on FDI. In doing so, corporate hegemony went global in one afternoon of signatures at the WTO in 1994. Paul Hirst and Graham Thompson foresee that the WTO will attempt to use the development of TRIMS to place MAI back on the international political agenda.³⁹⁵

Corporate structural power is clearly evident within the WTO. In doing so TNCs have been able manipulate the WTO to gain the rules that they favour to pursue their interests. It was highlighted above that TNCs originate from the Europe and the US, and these corporations dominate the five major business sectors: consumer goods and services, financial services, heavy industry, infrastructure, and electronics.³⁹⁶ Sell has also demonstrated that companies representing chemical, computer, entertainment, pharmaceutical and software were at the core of the WTO negotiations that created the WTO agreements, specifically TRIMS and TRIPS.³⁹⁷ With the creation of the WTO, Linda Weiss has also illustrated that the WTO's policies may claim to prevent subsidies from national governments by making them illegal under WTO agreements, but in actual fact there are provisions to actually encourage subsidies to the high tech and knowledge based corporations.³⁹⁸ Weiss specifically focuses her attention on the manner in which WTO's TRIMS and Subsidies and Countervailing Measures (SCMs) have been designed to ensure that subsidies from the core states to corporations are still legitimate under the WTO. On the one hand, TRIMS impinges on government policy autonomy by prohibiting host governments from imposing any obligations on

³⁹⁵ Paul Hirst and Graham Thompson. *Globalisation in Question: The International Economy and The Possibilities of Governance* (2nd Edition), London: Polity Press, 1999, pg. 214.

³⁹⁶ Leslie Sklair. *The Transnational Capitalist Class*, Oxford: Blackwell Publishing, 2001, p. 39.

³⁹⁷ Susan K. Sell. 'Private Corporation Power and the Globalization of Intellectual Property Rights', in Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler (editors), *Non-State Actors and Authority in the Global System*, London: Routledge, 2000, p. 112.

³⁹⁸ Linda Weiss. 'Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO', in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 723-749.

foreign investment companies. Similarly, SCMs declare that WTO members renounce import controls and measures favouring domestic producers – especially subsidies.³⁹⁹ On the other hand, however, since 2000 a number of subsidies have been determined to be permissible.

Importantly these legal subsidies are aimed specifically at high tech and knowledge based corporations, which have transnational operations. The SCM rules allow governments to continue to offer substantial support subsidies for techno-industrial innovation and upgrading, which

also include the financing of venture capital funds, the provision of state-developed technologies and innovations spun off to the private sector from government research labs (e.g. the US National Institute of Health which spins off key intellectual property to US pharmaceutical companies), public procurement of private goods and services, and standard setting and subsidization of end-users demand for particular technologies aimed at market expansion at home and abroad.⁴⁰⁰

Given the manner in which these WTO policies allow states to maintain large subsidies in the high tech and knowledge based industry, the argument concerning corporate structural power within the WTO cannot be dismissed as conspiratorial. Corporate hegemony has been evident in the creation of the WTO, and world corporate hegemony appears to be evident through the policies of the WTO.

³⁹⁹ Linda Weiss. 'Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO', in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 727.

⁴⁰⁰ Linda Weiss. 'Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO', in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 728.

Although Weiss acknowledges that corporations are being subsidised her analysis is too state-centric and avoids explaining these developments through the concept of hegemony. For example, Weiss argues that with the creation of the WTO

the rich nations as a group ... have carved out a multilateral order which best suits their current developmental trajectory, one that, on the one hand, diminishes space for promoting the more labour – and capital-intensive industries critical to their climb up the development ladder and, on the other hand, increased the space for sponsoring the technology – or knowledge-intensive industries that are now deemed critical to securing national prosperity.⁴⁰¹

Interestingly, Weiss asserts that these policies at the WTO were unintentional and that they illustrate that states are not constrained by the rules of the WTO. She also acknowledges the provisions under the WTO to allow subsidies for high tech and ‘knowledge based industries’ fits with the current form of development endorsed by the developed states of the OECD. She also notes that this development model promoted by the WTO actually impinges on the progress of developing states because they are involved in production.⁴⁰²

Weiss, however, is overlooking the transnational and international networks of state and corporate representatives and intellectuals that have “worked towards the formation of a policy consensus for global capitalism” at the WTO. Perhaps what needs to be stressed is the link between the dominant corporate social forces within these OECD countries and the subsidies “exempted from the WTO’s ‘prohibited’ list” are by design and not unintentional as Weiss assumes. The corporations from the triad

⁴⁰¹ Linda Weiss. ‘Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO’, in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 728.

⁴⁰² Linda Weiss. ‘Global Governance, National Strategies: How Industrialized States Make Room to Move Under the WTO’, in *Review of International Political Economy*, Vol. 12, No. 5, 2005, p. 731.

of the EC, US and Japan have consistently dominated the world's high tech and knowledge based industries, and are institutionalised within the dominant states and the WTO. The subsidies that are deemed to be permissible at the WTO reflect corporate hegemony. For example, in 2002 global R&D expenditure reached \$6.77 billion. It was highly concentrated, as 91% of this expenditure is in the developed countries of the world.⁴⁰³ This is also the location of the top 100 TNCs in the world. Between 1996 and 2002, the growth in R&D expenditure in the US was twice as high as the world average. Britain and the Canada also demonstrated high levels of investment in this period. Similarly China was seen to increase spending in FDI in R&D by 20% in this period. *The World Development Report* points out TNCs continue to be key players in R&D because they account for half of global R&D expenditures, and at least two-thirds of business R&D expenditures (estimated at \$450 billion). Over 80% of the 700 largest R&D spending firms come from only five countries: the United States, Japan, Germany, the United Kingdom and France. In 2003, over half of the spending from these firms was concentrated in the sectors of IT hardware, automotive and pharmaceuticals/biotechnologies.⁴⁰⁴ In 2002 Pfizer spent \$6,504 million on R&D. There is obviously a strong link between the transnational corporate social forces and government spending on R&D and the policies of the WTO. This is because of the hegemony of corporate social forces within the dominant governments, and the WTO. As illustrated above the WTO is central to ensuring its members' national policies reflect the form of state that is necessary to enhance corporate interests.

⁴⁰³ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 105.

⁴⁰⁴ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 119.

3.7 Conclusion

This chapter has argued that the WTO is a central hegemonic institution of the current *nebuleuse*, which enforces the rules and procedures that ensure the expansion for transnational corporate hegemony throughout the world. It has also illustrated that the rules and procedures of the WTO are a product of the transnational social forces emerging from the most powerful states and developing transnational and international networks of state and corporate representatives and intellectuals have, “worked towards the formation of a policy consensus for global capitalism”.⁴⁰⁵ The corporate hegemony protects and promotes a transnational model of production and the interests of transnational social forces. This analysis, however, is absent from the dominant stories of why the WTO was created. To establish this argument attention was drawn to the manner in which the WTO has constructed both enforcement and surveillance regimes to ensure that its policies are carried out. Through detailing the core agreements of the WTO’s charter it was established that the policies promoted the deregulation of national borders to promote entry of goods and services from foreign corporations, but also the protection of corporate investment and intellectual property rights of these corporations in foreign countries. Through examples of GATTs, GATS, TRIMS and TRIPS enforcement it was clear that on the whole, but not in every case, “national policies and practices have been adjusted to the exigencies of the world economy of international production”.⁴⁰⁶ Undoubtedly, these policies reflect the interests of transnational corporations and the transnational model of production they employ to prosper. Indeed, it was argued that the rise of transnational corporate social forces after the economic crisis of the 1970s and their consolidation during the late 1980s in the UK and US, were responsible for establishing hegemony at the national level within a number of countries. In the creation of the WTO itself corporate hegemony was present and active to ensure that the WTO reflected its

⁴⁰⁵ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 33-34.

⁴⁰⁶ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

interests globally. Thereby, the nature of the WTO's agreements, the dispute settlement and the surveillance regime of the WTO combine to ensure that a specific form of state emerges in the current world order, which is not hostile to corporate interests.

The Contradiction of the World Trade Organization

States willy-nilly became more effectively accountable to a *nebuleuse* personified as the global economy; and they were constrained to mystify this external accountability in the eyes and ears of their own publics through the new vocabulary of globalization, interdependence, and competitiveness.⁴⁰⁷

4.1 Introduction and Aims

It is clear that through its constitution, literature and press releases, the WTO propagates the superiority of neoliberal economic policies throughout the world. The construction of this ideational framework serves to legitimise the WTO's legal framework for international trade and the establishment of enforcement and surveillance mechanisms to ensure compliance with WTO agreements. In doing so this ideology justifies the WTO's ability to forge a form of state, which favours particular state/society power relations on the grounds that it is the only means of achieving competition, efficiency, development, prosperity, peace and sustainable development. Through performing this function the WTO ensures that the form of state that emerges from WTO membership is compatible with a transnational model of production and the protection of transnational corporate interests through the allure of attaining collective goods. The principle of non-discrimination is also used to justify participation in the decision-making and dispute settlement of the WTO on the grounds that all members are treated as equals.

⁴⁰⁷ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox and Timothy J. Sinclair *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 301.

The purpose of this chapter is to apply a Coxian analysis to the World Trade Organization (WTO) in order to identify the contradictions in the ideology that legitimise the policies and procedures of this central hegemonic institution of the current *nebuleuse*.⁴⁰⁸ In addition it will be argued that the WTO has experienced strong resistance to the cooption of elites from the developing world through transnational corporate interests making concessions that “secure the weak acquiescence in their leadership” and by expressing their “leadership in terms of universal or general interests, rather than serving their own particular interests”.⁴⁰⁹ Since corporate hegemony was paramount in the creation of the WTO, however, corporate ‘structural power’,⁴¹⁰ is embedded within the procedures of the WTO ensuring transnational corporate interests are advantaged because alternatives policies are not favoured within this WTO framework. There lies the contradiction engrained with the WTO - the realisation of collective goods from WTO’s membership will always be subject to the demands of corporate hegemony.

To develop this argument, the chapter will first illustrate the manner in which both a neoliberal ideology and the legalisation of global trade have together been employed by legal scholars, the WTO’s Charter,⁴¹¹ and the WTO’s Secretariat to legitimise the policies and process of the WTO. Thereby, the *nebuleuse*, transnational and international networks of state and corporate representatives and intellectuals, have worked towards the formation of an ideology, which justifies the WTO’s policy and processes.⁴¹² This neoliberal ideology specifically legitimises the WTO’s ability to exercise power and enforce certain, but not all, deregulation policies on the grounds that it enhances the mutual benefits of employment, stability, peace, predictability,

⁴⁰⁸ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

⁴⁰⁹ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, in *Millennium*: Vol. 10, No.2, 1981, p. 137.

⁴¹⁰ Susan Strange. *States and Markets: Power in the World Economy*, London: Pinter Publisher, 1988, p. 26.

⁴¹¹ The Agreement Establishing the World Trade Organization 1994

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴¹² Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 33-34.

prosperity and sustainable development. The chapter will then describe how the legalisation of the WTO's international trading system is argued to ensure the 'rights and obligations' of each member, so that all members are 'equal before the law'. These provisions are proposed as safeguards preventing the strong states from dominating the weak. The Charter specifically affirms that the process, policies and agreements of the WTO are designed to promote non-discrimination, especially in decision-making and the dispute settlement process. Finally, through the examples of the Uruguay Round of negotiations (1986 –1994) and the Cancun Ministerial Conference (2003), the chapter will demonstrate that corporate hegemony has been promoted through the WTO at the expense of the interests of any other group. It will also illustrate that the creation of the *Doha Development Agenda* was an attempt to acquire the agreement of the developing world to accept the leadership of the hegemonic states, but these have yet to be realised. Thereby this chapter will highlight the contradictions that undermine the WTO's ideology.

4.2 WTO Ideology – The Rule of Law and 19th Century Liberalism

As Robert W. Cox asserts, central to the creation of state and world order hegemony is the institutionalisation of an ideology, which justifies the application of a model of production for the interests of dominant social forces. This ideology propagates the claim that the policies of an institution represent the collective interest of all members.⁴¹³ Since the 1980s, transnational social forces have emerged to create hegemony within the EC and US, and used a neoliberal ideology to justify the reorganization of society for corporate interests. Indeed, such is the success of hegemony in these states that the language of neoliberalism - privatisation, liberalization, deregulation, and downsizing - has not been limited to elite rhetoric: it has become the discourse used for describing and understanding the world for the

⁴¹³ Robert, W. Cox. 'Social Forces, States and World Orders: Beyond International Relations Theory', in *Millennium*: Vol. 10, No.2, 1981, p. 137.

masses. Throughout the final decades of the 20th century corporate hegemony within the EC and US has been responsible for institutionalising corporate hegemony at the global level. Transnational social forces played a dominant role in the creation of the WTO in an attempt to ensure the application of a transnational model of production, and the protection of transnational investment and intellectual property rights throughout the world.⁴¹⁴ This has been supported by an associated rhetoric of globalization [the market is more reliable than governments and growth comes from business not government intervention]. Neoliberalism has become the accepted policy guide, which limits government 'management' of the economy to allow the market to function freely. Consequently, governments or the ruling party are able to claim that it is not their policies which have caused economic hardship, but the problems of 'market adjustment'.⁴¹⁵ In this section it will be illustrated how this transnational model of production is justified by the Secretariat of the WTO through the language of market adjustment, deregulation, downsizing, efficiency, flexibility and restructuring. In doing so it will be argued the Secretariat is not a neutral agency promoting the collective good of all members, but rather it is responsible for naturalizing the interests of corporate hegemony throughout the world.

The WTO's Secretariat and Charter argue that the Secretariat functions on the principle of non-discrimination and neutrality between assertions of national interests. This is argued because the Secretariat is composed of constantly changing civil servants and is employed to carry out the administration of the WTO. Article VI of the Charter makes provision for the WTO to create a Secretariat, headed by a Director General (DG). The Secretariat, and members' relations with the Secretariat, are explicitly directed to maintain a neutral character in paragraph 4 of Article VI:

⁴¹⁴ See chapter three of this thesis.

⁴¹⁵ See Mark Blyth and Richard S. Katz. 'From Catch-all Politics to Cartelisation: The Political Economy of the Cartel Party', in *Western European Politics*, Vol. 28, No. 1, 2005, p. 54.

The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.⁴¹⁶

The neutral character of the Secretariat is argued to be maintained because the staff are not appointed by governments but are hired as international civil servants to work for the WTO Secretariat. The duties of the Secretariat include providing technical and logistical support, such as organising meetings of governing bodies and preparing background documentation requested by delegations. The Secretariat also assists the dispute-settlement process, provides legal services when requested to do so, and publishes studies and trade policy reports. It has also been responsible for setting up the WTO website, distributing news of current events at the WTO, and publishing literature explaining and defending the WTO. The Secretariat is also very keen to give interviews to the media and academia to promote the WTO in a positive light.⁴¹⁷

Through consensus, the WTO's General Council has the task of selecting the DG from a list of candidates. Hoekman and Kostecki describe the DG as “the guardian of the collective interest of the member States ‘acting as’ a broker – not a decision-

⁴¹⁶ See The Agreement Establishing the World Trade Organization 1994, Article VI Note 4 http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴¹⁷ This was very clear from my contact with the WTO, Geneva, Switzerland in March 2004.

maker – in many situations, which reinforce[s] this assertion of non-discrimination.⁴¹⁸ Since the creation of the WTO in 1995 there have been four DGs, Renato Reggiero (1995-99), Michael Moore (1999-2002), Dr. Supachai Panichpakdi (2002-2005) and Pascal Lamy (2005-2009). The normal term for a DG is four years, but the General Council was split during “the rancorous 1999 leadership contest”.⁴¹⁹ The debate over selection revolved around the appointment of yet another Western candidate, rather than a nominee from the developing world. In the end, it was agreed that Moore and Panichpakdi should hold a three-year term each.⁴²⁰ It could be claimed that this illustrates that the WTO is applying the principle of non-discrimination and ensuring neutrality.

The neutrality of the Secretariat, however, is limited to the promotion of a neoliberal ideology, which justifies the creation of a transnational model of production, and the protection of transnational investment and intellectual property rights under the banner of free trade. The collective benefits to be reaped from both the deregulation of national barriers to trade and their legal enforcement are clearly stated in the WTO’s Secretariat’s press releases, speeches and publications. For example, on the eve of the creation of the WTO, Andras Szepesi outlined the possibility of equity amongst the contracting parties from the deregulation of national economies:

as we enter the WTO phase ... increasing market access opportunities and efficient rules for undistorted competition go hand in hand. It is only predictability and stability in trade and economic relations that

⁴¹⁸ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 39.

⁴¹⁹ Bridges. *Pascal Lamy Set to Become Next WTO Director-General*, Bridges Weekly Trade News Digest, Vol. 9, Number 17, 18 May 2005.

<http://www.ictsd.org/weekly/05-05-18/story1.htm>

⁴²⁰ World Trade Organization. *WTO Member Governments Agree On Director-General Succession*, 22 July 1999. http://www.wto.org/english/news_e/pres99_e/pr131_e.htm

can provide everyone with a meaningful share of the world trade cake.⁴²¹

Six years later at the 50th Anniversary of Multilateral Trading the then Director General of the WTO Renato Ruggiero and Secretariat Alexander Swobada again reiterated these sentiments. In his opening speech Swobada insisted that “Trade, and trade liberalisation, are of mutual benefit to all trading partners”.⁴²² Ruggiero, the Director General explicitly outlined these mutual benefits by declaring:

The multilateral trading system of today will be more important than ever to ... build a much more equitable world ... to take advantage of the equaliser potential of the new borderless technologies to permit the least developed countries to accelerate dramatically their human and economic development ...

Trade Agreements are after all not an end in themselves – they are a valuable means to important ends such as alleviating poverty and malnutrition, widening the circles of development, sharing technological process, sustaining the health of our planet, and advancing the cause of peace.⁴²³

Again on the 20 April 2005, the WTO’s Director-General Supachai Panitchpakdi emphasised the WTO’s contribution to world peace and development. In his introductory remarks to the WTO Public Symposium, he said that:

⁴²¹ Andras Szepesi ‘Chairman Of The Contracting Parties Pays Tribute To GATT on the Eve of the WTO’, GATT Press Release, Gatt/1659, 8 December 1994, p. 4.

⁴²² Opening remarks at the 50th Anniversary Symposium. The WTO Secretariat ‘From GATT to the WTO: The Multilateral Trading System in the New Millennium’, The Netherlands: Kluwer Law International, 2000, p. 3

⁴²³ Renato Ruggiero. Opening Remarks At The 50th Anniversary Symposium In The WTO Secretariat ‘From GATT to the WTO: The Multilateral Trading System In The New Millennium’. The Netherlands: Kluwer Law International, 2000, p. 3.

the WTO has extended the rule of law into the international trade realm and has contributed significantly to keeping peaceful and stable trading relations between WTO members ... [T]rade is not the answer to all the world's problems, but it can make a powerful contribution to international efforts for development.⁴²⁴

These speeches by the WTO's elites illustrate that the justification for liberalisation is that it provides a panacea for many of the world's ills. These WTO elites claim that membership and application of WTO policies will cause member states to experience a cure for economic stagnation, under-development, poverty and war. Hoekman and Kostecki argue that such speeches are responsible for creating a mandate for the WTO which it can only "fail to live up to".⁴²⁵

If Hoekman and Kostecki are correct and these claims are mere hyperbole from an excited and optimistic Secretariat, it would seem that a more accurate picture of the real aims and objectives of the WTO should be evident in the WTO's legal Charter. The preamble to this agreement states that, by signing up to the Charter, signatories are:

Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of

⁴²⁴ Director-General Supachai Panitchpakdi. "WTO After Ten Years: Global Problems and Multilateral Solutions", Geneva, 20 April 2005.

http://www.wto.org/english/news_e/spsp_e/spsp38_e.htm

⁴²⁵ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: The WTO and Beyond*, 2nd Edition, Oxford: Oxford University Press, 2001, p. VII.

sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development ... [and]

Recognising further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.⁴²⁶

It is only the absence of the specific goal of peace that distinguishes the objectives of the WTO Charter from those expressed by the Secretariat. On all other counts the WTO's Charter justifies the use of multilateral trade rules to reduce government barriers to trade for the realisation of development, employment, equity, prosperity, peace and sustainable development.

It is also important to recognise that the Secretariat is propagating the realisation of universal goals from WTO agreements, with the exception of sustainable development, which has been the standard cry of all free traders since the 17th century. This is apparent in the work of Adam Smith⁴²⁷ and Richard Cobden⁴²⁸, and in David Ricardo's theory of comparative advantage⁴²⁹; the freeing of trade from government intervention is portrayed as a panacea for the world's ills. In the late 19th century Ricardo stated:

⁴²⁶ Agreement Establishing the World Trade Organization, Preamble, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴²⁷ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, K. Sutherland (editor), Oxford: Oxford University Press, 1992, p 293.

⁴²⁸ Richard Cobden. *The Political and Economic Works of Richard Cobden*, London: Routledge/Thomas Press, 1995, P 100.

⁴²⁹ David Ricardo. *The Principles Of the Political Economy and Taxation*, London: The Quernsey Press Co Ltd, 1992.

Under a system of perfectly free commerce, each country naturally devotes its capital and labour to such employments as are most beneficial to each. This pursuit of individual advantage is admirably connected with the universal good of the whole ... it distributes labour most effectively and most economically: while increasing the general mass of production, it diffuses general benefits, and binds together, by one common interest and discourse, the universal society of nations throughout the civilised world.⁴³⁰

We can see parallels between Ricardo's position and today's justification for deregulation of government control of trade in terms of the attainment of a universal prosperity and peace advocated by the WTO's Secretariat. Indeed, during my own visit to the Secretariat I was advised to take home and study *In Defence of Global Capitalism*⁴³¹ as a well thumbed edition was waved in front of me.⁴³²

In fact the WTO's publication *Understanding the WTO* continues to use Ricardo's theory of comparative advantage to defend the deregulation of national controls for international trade.⁴³³ It states that this theory is "the single most powerful insight into economics" and rests on "commercial common sense". This is because:

'comparative advantage' states that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other

⁴³⁰ David Ricardo. *The Principles Of the Political Economy and Taxation*, London: The Quernsey Press Co Ltd, 1992, P 81.

⁴³¹ Johan Norberg. *In Defence of Global Capitalism*, Washington D.C., CATO Institute, 2003.

⁴³² Interviews conducted at the World Trade Organization, Geneva March 2004.

⁴³³ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 13.

countries produce best ... [serving to] sharpen competition, motivate innovation and breed success.⁴³⁴

The publication further depicts a bleak picture for those states that do not embrace liberal trading policies: “Protectionism ultimately leads to bloated, inefficient producers supplying consumers with outdated, unattractive products. In the end factories close and jobs are lost despite the protection and the subsidies”.⁴³⁵ Consequently, the liberal ideology of the 19th century is still being used to justify the opening of markets to foreign competition in the 21st century. Taken together the multilateral nature of negotiations for trade agreements that deregulate national barriers to trade are argued to promote employment, peace, predictability, prosperity, stability and sustainable development. Indeed these arguments provide the ideological backbone for that justification of the implementation of WTO trade agreements and the continued existence of the WTO. To repeat, this neoliberal ideology has been dominant within the states of the EC and the US since the 1980s and has been used to justify the emergence of corporate hegemony. Thereby the corporate hegemony within these states has now established its ideology and policies within the WTO.

4.3 Sovereign Equality at the WTO

This section will seek to illustrate that the WTO’s Charter specifically states that the principles of non-discrimination and equity amongst members informs the whole structure and process of negotiations at the WTO. Non-discrimination amongst members begins with accession to the WTO. For example, it is stated that the rules governing the organisation of the WTO were not arbitrarily created, but were the product of multilateral negotiations, which established a legal document to which all

⁴³⁴ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003), p. 10-14.

⁴³⁵ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003), p. 10-14.

members are accountable. As Article XXVI of the WTO Charter clearly states ‘no reservations may be made in respect of any provision of this Agreement’.⁴³⁶ Thereby the securing of WTO membership for any state is conditional (with only very limited exceptions) on accepting the legal rules set out in the Charter in their entirety: “the so-called single undertaking”.⁴³⁷

Non-discrimination amongst members in the form of sovereign equality is stressed within WTO decision-making. Sovereign equality is required for all WTO members to participate fully in decision-making. This concept purports to “formally negate status, offer equal representation and voting powers in international organisations, and to take decisions by consensus or unanimity of the members”.⁴³⁸ It also necessitates that “in all plenary meetings ... diplomats fully respect the right of any member state to: attend; intervene; make motions; take initiatives (raise an issue); introduce, withdraw, or reintroduce a proposal (a legal text for decisions) or amendment; and block the consensus or unanimous support required for action”.⁴³⁹ It is important to acknowledge in any discussion of WTO decision-making that Article III of the Charter specifically stipulates that it is only the governments of member states that can propose, negotiate and sign the WTO agreements.⁴⁴⁰ Thereby the WTO Charter emphasises the intergovernmental nature of the WTO, and that corporations or Non-Governmental Organizations (NGOs) are not officially able to sit at the negotiation table. The structure of the WTO is clearly set out in Article IV and states that representatives of all the member governments will have the opportunity to be

⁴³⁶ See The Agreement Establishing the World Trade Organization, Article XVI Paragraph 5, 1994.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴³⁷ Richard Blackhurst. ‘The Capacity of the WTO to Fulfill Its Mandate,’ in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 32-33.

⁴³⁸ Richard H. Steinberg. ‘In the Shadow of Law or Power? Consensus-Based Bargaining and the Outcomes of the GATT/WTO’, in *International Organizations*, Vol. 56, No. 2, 2002, p. 339.

⁴³⁹ Henry G. Schermers and Niels M. Blokker. *International Institutional Law: Unity Within Diversity*, The Hague: Martinus Nijhoff, 1995, p. 475 – 506.

⁴⁴⁰ The Agreement Establishing the World Trade Organization 1994, Article 3, Paragraph 2 describes that the functions of the WTO are to provide a negotiating forum for its Member states multilateral trade relations as stipulated in the Agreements and Annexes. Further negotiation and Agreements are to take place at the Ministerial Conference. As stated in Article 10, the authority to initiate proposals or amend Agreement lies explicitly with the members. See the Agreement Establishing the World Trade Organization, 1994.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

involved in the many different councils and committees that make up the WTO. It is therefore argued that: “the WTO is run by its member governments. All major decisions are made by the membership as a whole ... [it is] a member driven, consensus-based organisation”.⁴⁴¹ The emphasis on consensus decision-making amongst governments is intended to ensure sovereign equality in decision-making.

At the pinnacle of the structure are Ministerial Conferences, which comprise the ministerial representatives of all the members. Article IV states that Ministerial Conferences will meet at least once every two years. To date there have been six Ministerial Conferences: Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001), Cancun (2003) and Hong Kong (2005). At these Ministerial Conferences core changes to the WTO structure and policies are presented for negotiation. At Singapore it was decided that the trade agreements of the WTO should be increased to cover the issues of investment, competition, transparency in government procurement and trade facilitation. These have come to be known as the ‘Singapore Issues’ and represent the core interest of corporate hegemony.⁴⁴² In contrast at the fourth Ministerial Conference at Doha it was declared that the interests of the developing world were at the core of the all WTO negotiations:

The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, enhanced market access,

⁴⁴¹ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 101.

⁴⁴² See chapter three of this thesis.

balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play.⁴⁴³

The entire package of negotiations has officially been called the '*Doha Development Agenda*'. There are 21 subjects for negotiation that emerged from the '*Doha Development Agenda*', and all are still under negotiation after failing to be agreed by the members by their July 2005 deadline. The WTO's Ministerial Conferences are therefore the central decision-making arenas for determining the essential issues to be promoted by the WTO agreements. With the establishment of the '*Doha Development Agenda*' the Ministerial Conference appears to have legitimised itself on the grounds that it seeks to promote the interests of the poorest states.

Since all members are represented at these Ministerial Conferences, they alone are deemed to have the authority to take decisions on all matters relating to the WTO Charter (this will be described below). Outside of the meetings of the Ministerial Conference the General Council is responsible for carrying out the functions of the WTO. It is for this reason that Richard Blackhurst asserts that "between meetings of the Ministerial Conference ... the main governing body is the General Council".⁴⁴⁴ The General Council comprises representatives of all the members. From these representatives the General Council constructs bodies to carry out the provisions stated in each of the Annexes: the Dispute Settlement Body and the Trade Policy Review Body. Three further subsidiary councils operate under the WTO's General Council: the Council for Trade in Goods; the Council for Trade in Services; and the Council for Trade Related Aspects of Intellectual Property Rights. From each of these councils emanate a number of working groups. Separate committees also exist to deal primarily with the interests of the least developed states, such as the Committee on

⁴⁴³ World Trade Organization. *Ministerial Declaration' Doha WTO Ministerial 2003*, 20 November 2001. http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

⁴⁴⁴ Richard Blackhurst. 'The Capacity of the WTO to Fulfill Its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 33.

Trade and Development. Committees also exist on Trade and Environment, Budget, Finance and Administration, and Balance of Payment restrictions. All of these committees report to the WTO's Ministerial Conferences.

It is the procedures of decision-making, however, that are at the heart of the argument that the WTO promotes non-discrimination and inclusion. Article IX of the WTO's Charter states that the decisions made at the Ministerial Conference or General Council must be agreed through consensus. In the footnote provided to Article IX consensus is defined as follows: "The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no member present at the meeting when the decision is taken, formally objects to the proposed decision".⁴⁴⁵ The pros and cons of WTO consensus decision-making have been asserted. On the one hand, Hoekman and Kostecki state that consensus decision-making processes are a useful device to ensure that small states have "greater negotiating leverage – especially if they are able to form coalitions – in the informal consultations and bargaining that precede decision-making. In creating a coalition states are able to create a strong bargaining position."⁴⁴⁶ On the other hand, Jeffrey J Schott argues that a consensus system of decision-making can reinforce conservative tendencies in the system because a proposal for change can be adopted only if unopposed by a blocking majority.⁴⁴⁷ To operate efficiently in the future, he argues, the WTO will need to develop an 'executive board' similar to those of the IMF and World Bank. Representatives of corporate hegemony in the EC and US have also made this type of criticism of consensus decision-making at the WTO. For example after the collapse of the Cancun Ministerial Conference in 2003, the trade representatives of both the EC, Pascal Lamy, and US, Robert Zolleck, condemned the

⁴⁴⁵ The Agreement Establishing the World Trade Organization, Article IX, 1994.

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁴⁶ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System :From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 41.

⁴⁴⁷ Jeffrey J Schott, Institute for International Economics, Washington, cited in World Trade Organization.

'Understanding the WTO: The Organization, Whose WTO is it Anyway?' 25 May 2000.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

system of decision-making at the WTO for resembling a “medieval organisation”,⁴⁴⁸ which had become a “forum for the politics of protest”⁴⁴⁹, not cooperation. Consequently, consensus decision-making is then condemned by the representatives of corporate hegemony for slowing down the process of implementing policies for the efficiency of transnational production and corporate interests globally through the WTO.

Although provision has also been made for when a consensus decision cannot be reached on the basis of one-member-one vote⁴⁵⁰, this has not been used to ensure that transnational interests are forced upon the membership. The reason for this is that the legitimacy of the WTO’s decision-making process rests on the principle of voluntary consensus and the all members are formally able to participate in all levels of WTO decision-making. As Blackhurst points out that there is nothing in the WTO’s decision-making that corresponds to the executives of the IMF or World Bank.⁴⁵¹ The IMF and World Bank have weighted voting (relative to each country’s contribution to the two organisations’ capital funds), whilst WTO members base their most important decisions on the principle of consensus. The WTO is also different from the United Nations’ main decision-making body, the Security Council, because at the WTO no country has an official veto power. Therefore, the WTO is argued to be distinguishable from the other international organisations within the current world order on the grounds that all members have the opportunity to be represented throughout the many councils and committees. Sampson states that it is the focus on

⁴⁴⁸ Pascal Lamy (European Union Trade Commissioner). *Press Conference Closing the WTO 5th Ministerial Conference*, Cancun, Mexico, 14 September 2003.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁴⁴⁹ Robert Zoellick (US Trade Representative). *America Will Not Wait For The Won’t Do Countries*, 22 September 2003

<http://www.ustr.gov/speech-test/zoellick/2003-09-22-ft.htm>

⁴⁵⁰ The Agreement Establishing the World Trade Organization, Article IX, Section I, Paragraph 1, 1994

http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁵¹ Richard Blackhurst. ‘The Capacity of the WTO to Fulfill Its Mandate,’ in Anne. O. Krueger (editor) *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 33.

these non-discriminatory multilateral rules which provides the real attraction for both large and small governments to join the WTO. He argues that all governments see:

adherence to multilateral rules – rather than political or commercial power – to be in their national interests. Rules bring predictability and stability to the world trading system and, although rule-based governed trade may not guarantee peace, it does remove a potent source of conflict.⁴⁵²

As such, it is argued that the collective negotiation of trade rules by all members, based on consensus, enables all states to pursue their national interests. As stated above the WTO's Secretariat argues that the decisions that emerge from these negotiations ensure the neutrality of the rules that govern international trade thereby bringing stability and predictability, and providing a cornerstone for establishing peace amongst nations. There are many ways to skin a chicken, and ensuring the application of transnational interests in WTO decision-making has been pursued through channels that undermine this consensus decision-making. This will be illustrated in below.

4.4 Non-Discrimination in the WTO Charter

This section will seek to illustrate that the WTO's Charter specifically states that non-discrimination and equity are the principles that guide the agreements made at the WTO. The legal complexities of the WTO are found in the 29 agreements and understandings listed in the four Annexes of the Charter.⁴⁵³ These Annexes detail the substantive rights and obligations of the members. The annexes that set out the basic

⁴⁵² Gary P. Sampson. 'Overview', in Gary P. Sampson (editor). *The Role of the World Trade Organization in Global Governance*, United Nations University, 2001, p. 1.

⁴⁵³ Ernest-Ulrich. Petersmann. 'International Trade Law and the GATT/WTO Dispute Settlement System 1948-1996: An Introduction, in Ernest-Ulrich. Petersmann (editor), *International Trade Law the GATT/WTO Dispute Settlement System*, London: Kluwer Law International Ltd, 1997, p. 11.

principles for trade and directly govern the trade policies of the members are established in the three parts that make up Annex 1, which includes the General Agreement on Tariffs and Trade (GATT 1994), The General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Intellectual Property Rights (TRIPS).⁴⁵⁴ Taken together, these first three parts of Annex I are described as the ‘Multilateral Trade Agreements’.⁴⁵⁵

Hoekman and Kostecki argue that these Multilateral Trade Agreements are based on the principles of “non-discrimination, reciprocity, market access and fair competition”.⁴⁵⁶ Governments negotiate under these principles when removing trade barriers, such as tariffs and subsidies for domestic producers or exporters. Primarily the tools that are used to promote non-discrimination are the ‘most-favoured-nation’ (MFN) principle, and the ‘National Treatment’ rule.⁴⁵⁷ The MFN principle has a long history in international trade and is described as the cornerstone of multilateral trade negotiations. It can be traced back to the landmark Cobden-Chevalier Treaty of 1860, which led to the reduction of tariffs throughout Europe in the 19th century.⁴⁵⁸ It is claimed that the centrality of the MFN principle ensures that states do not discriminate between trading partners, by giving all trading partners status and concession as a most-favoured trading partner. This status is said to guarantee that when a member’s goods reach the border of another member’s territory they will be treated in the same way as every other member’s produce is. The MFN principle is the first Article of the GATT 1994, Article II of GATS and Article IV of TRIPS. Non-discrimination is also pursued through the National Treatment rule, which requires that foreign goods that enter a market be subjected to the same tax and measures as

⁴⁵⁴ For details of each of these agreements see chapter three of this thesis.

⁴⁵⁵ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: The WTO and Beyond*, 2nd Edition, Oxford: Oxford University Press, 2001, p. 38.

⁴⁵⁶ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 24.

⁴⁵⁷ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 10.

⁴⁵⁸ Gerard Curzon. *Multilateral Commercial Diplomacy: The General Agreement on Tariffs and Trade and its Impact on National Commercial Policies and Techniques*, London: Michael Joseph Limited, 1965, p. 15.

domestic goods. The National Treatment rule can be found in Article III of GATT, Article XVII of GATS and Article III of TRIPS.

It is argued that reciprocity ensures “trade liberalisation occurs on a *quid pro quo* basis” and an exchange of market access between members. For example, a reciprocal trade negotiation between government A and government B would require that a commitment to market access or the reduction of tariffs on a product by government A is conditional on the measured exchange of similar access and tariff reductions by government B. Through this it is argued that the “convergence in the levels of protection is gradual”.⁴⁵⁹ Such concessions are then listed in schedules and bound. This means that a country agreeing to a concession cannot raise tariffs above the agreed levels without negotiating compensation for the affected parties. Reciprocity is claimed to create ‘fair competition’ in international trade because it ensures it occurs on a *quid pro quo* basis. The MFN principle then ensures that all members are also afforded the same reduction in protection on the given product or service. Together these principles are argued to promote market access because they require the negotiation of the mutual reduction of trade barriers to national markets.

The following two Annexes move on from a focus on the details of the principles and schedules of international trade agreements, to cover the enforcement of the agreements by the WTO. Annex II (Understanding on Rules and Procedures Governing Dispute Settlement) provides the procedures for the WTO to resolve trade disputes amongst its members, while Annex III (Trade Policy Review Mechanism) obligates each member to be transparent in trade policy.⁴⁶⁰ Finally, Annex IV (Plurilateral Trade Agreement) contains codes from the previous trade negotiations at the GATT Tokyo Round on civil aircraft and government procurement, which were

⁴⁵⁹ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 24.

⁴⁶⁰ Sam Laird. ‘The WTO’s Trade Policy Review Mechanism – From the Looking Glass’, in Peter Lloyd and Chris Milner (editors), *The World Economy: Global Trade Policy 1999*, Oxford: Blackwell Publishers, 1999, p. 33.

not negotiated to encompass all members of the WTO. Since the Plurilateral Trade Agreement does not have a multilateral dimension it is not important to this discussion. In contrast, both Annexes II and III continue to appear to apply the principle of non-discrimination.

4.5 Enforcement – Equality Before the Law

The most important function of the WTO has been the creation of the Dispute Settlement Understanding (DSU) to ensure that all members adhere to the Charter and trade agreements. As the WTO Secretariat acknowledges; “Dispute settlement is the central pillar of the multilateral trading system, and the WTO’s unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced”.⁴⁶¹ John H. Jackson, leading international expert on international trade institutions⁴⁶², explains just how important the DSU is for international trade:

It is also clear that the strength of the WTO dispute settlement system depends on a world perception that it is fair and even handed. And that perception, in turn, depends on the ability of all members of the WTO to have essential access to the dispute settlement process, even if they lack the resources to do so on their own basis.⁴⁶³

⁴⁶¹ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 55.

⁴⁶² John H. Jackson’s authority on the WTO is acknowledged by academics, WTO policy-makers and national negotiators; for example Jagdish Bhagwati asserts that he is “the great expert on GATT law”. Benn Steil, Head of International Economic Programme, The Royal Institute of International Affairs, Warren Lavorel the former Deputy Director General of the WTO reveal that Jackson’s opinions have been sought on a wide range of issues relating to the WTO, and Hugo Paemen, Ambassador for the European Union to the United States, and formally Chief Negotiator for the European Community in the Uruguay Round states that Jackson’s writing on the WTO is the most authoritative to date. See John H. Jackson. *The World Trade Organization: Constitution and Jurisprudence*, (The Royal Institute of International Affairs) London: Pinter, 1998, p. XII and XIII, Jagdish Bhagwati. *The World Trading System at Risk*, Hertfordshire: Harvest Wheatsheaf, 1991.

⁴⁶³ John H. Jackson. ‘Perceptions about the WTO Trade Institution’, in *World Trade Review*, Vol. 1, No. 1, 2002, p. 113.

The effective resolution of trade disputes is not only imperative for the smooth functioning of the trading system, it also needs to be seen to treat all members equally and not be arbitrarily discriminatory to have any legitimacy amongst its members. The WTO has established a unified dispute-settlement mechanism, and the same procedures are used for settling disputes across all issues of trade in goods, trade in services and intellectual property.⁴⁶⁴ The WTO Secretariat usually suggests the names of three potential panellists to the parties in the dispute. Panellists are expected to serve in their individual capacities, and not subject to any government's instruction. In 2002, WTO members created the Advisory Centre for WTO Law, which has a small legal staff to assist developing countries. In a system similar to that used for domestic Legal Aid, the cost of using the Centre's legal staff is calculated in relation to the wealth of the country seeking aid.⁴⁶⁵ Arguably, this development represents a step towards preventing discrimination in the use of the DSB because it ensures that all members have access to the necessary resources to file for a panel.

What is clear is that all members are argued to be treated and judged equally before the panels and Appellate Bodies in respect of the WTO agreements that they have signed. J. H. H. Weiler articulates why this is particularly significant for international trade, and international relations as a discipline itself, by stating that:

the new DSU makes legal resolution more attractive to members because it can, for example, equalise egregious disparities of power that exist at the negotiating table. At the negotiating table, Venezuela is Venezuela and the United States is the United States. The name of the game is power. At the Bar of Law it is an altogether different

⁴⁶⁴ The Agreement Establishing the World Trade Organization, Annex II, Article II, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁶⁵ John H. Jackson. 'Perceptions about the WTO Trade Institution', in *World Trade Review*, Vol. 1, No. 1, 2002, p. 112-113.

paradigm, or at least it is meant to be so. All are equal before the law.⁴⁶⁶

Consequently, he argues, the legalisation of international trade has repercussions for the traditional dynamics of diplomacy through power politics because “politicians, even of powerful states, are forced to ask their lawyers “is it legal?” before embarking on a course of action”.⁴⁶⁷ Therefore the DSU is argued to have established non-discrimination within the WTO because it is based upon the principle that all members are ‘equal before the law’. More importantly, the WTO Charter gives the Appellate Panels of the DSU the power to sanction the withdrawal of trading privileges as set in the WTO agreements for those members who refuse to adhere to Panels’ final reports and decisions. As Richard Blackhurst succinctly states: “There lies – if all else fails – multilateral authorised trade sanctions”.⁴⁶⁸ The Trade Policy Review Mechanism (TPRM) ensures that all members are adhering to WTO agreements.⁴⁶⁹ Together these mechanisms ensure that once agreements are negotiated under the principles of non-discrimination they are also applied and enforced in a non-discriminatory manner. It would appear that all members are equal before the DSB, and all are reviewed equally under the TPRM.

⁴⁶⁶ J. H. H. Weiler. ‘The Rules of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement’, in Rodger B. Porter *et al* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 339.

⁴⁶⁷ J. H. H. Weiler. ‘The Rules of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement’, in Rodger B. Porter *et al* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 340.

⁴⁶⁸ Richard Blackhurst. ‘The Capacity of the WTO to Fulfil Its Mandate,’ in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 32.

⁴⁶⁹ Roderick Abbott. ‘GATT and the Trade Policy Review Mechanism: Further Reflections on Earlier Reflections’, in *Journal of World Trade*, Vol. 27, No. 3, p. 117-119.

4.6 Uruguay Negotiations: The Undermining of Sovereign Equality and Non-Discrimination

There is clear evidence, however, that sovereign equality, non-discrimination and equality before the law are more vocally advocated by the Secretariat than they are applied to the WTO's policies and procedures. For example, it is argued that the WTO did not emerge from the Uruguay Round of trade negotiations as a result of inter-state negotiations based upon the principles of sovereign equality and non-discrimination, but was subject to the coercion of corporate hegemony of the EC and US. Richard H. Steinberg points out that the relative size of each state's market allows states with the largest markets to wield the strongest bargaining power, the reason for this being that:

Larger national economies have better internal trade possibilities than smaller national economies. A given volume of trade liberalisation offers proportionately more welfare and net employment gains to smaller countries than to larger ones. The political implication is that a given volume of liberalisation offers proportionally less domestic benefits to the government delivering it in the larger countries.⁴⁷⁰

Due to this, smaller states are able to offer less in trade negotiations, and the threat of trade closure is more damaging to a smaller economy than to a larger one. As such using market size as a measure of a state's trade bargaining power, this illustrates how the corporate hegemony within the EU and US has had a greater influence on trade negotiations within the WTO. Even China and India with their vast domestic markets rely upon access to the wealthy consumer market of the EC and US to sell consumer goods for the corporations that they represent.

⁴⁷⁰ Richard H. Steinberg. 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', in *International Organizations*, Vol. 56, No. 2, 2002, p. 347.

Corporate hegemony within the EC and US has been able to manipulate the building of world hegemony through promising access to wealthy domestic markets for foreign corporations. Although the EU and US account for only 11.76% of the world's population, their current combined GDP comprises nearly half the world's GDP.⁴⁷¹ Business and corporations emanating from the EC⁴⁷² and US⁴⁷³ are responsible for nearly 40% of all retained merchandise imports throughout the globe. These factors confer an immense level of trade bargaining power to these actors, especially when they cooperate to influence multilateral trade negotiations. The inequalities are stark when it is considered that membership of the WTO has swollen to 148 states, and two-thirds are developing countries.⁴⁷⁴ Thirty-two are recognised as 'least developed countries' (LDCs).⁴⁷⁵ Research conducted in 2000 on the world's 73 poorest countries shows that 49 of these states were members of the WTO, and a further 11 were awaiting membership.⁴⁷⁶ Each of these states is responsible for less than 0.05% of the world's imports of goods and services,⁴⁷⁷ and has a GDP that is a fraction of those of the EC and US.⁴⁷⁸ Many of these countries also have considerable loans owed to the World Bank.⁴⁷⁹ These substantial inequalities have a significant impact on the procedures of the WTO and the principle of non-discrimination. Consequently, the WTO might be a key global institution, but it is the corporate hegemony represented

⁴⁷¹ World GDP in 2004 was \$ 55, 500 trillion, the US had the highest share of GDP at \$ 11, 750 trillion and EU \$ 11, 650 trillion. See CIA Fact Book.

<http://www.cia.gov/cia/publications/factbook/rankorder/2001rank.html>

⁴⁷² The European Union is the world's largest trader of goods, accounting for 19.1% of global merchandise exports and imports. The European Union is also the world's largest trader of commercial services, with 24.3% of world trade in services. See

http://europa.eu.int/comm/trade/gentools/faqs_en.htm#wto

⁴⁷³ US share of world merchandise imports was 18.5 per cent in 2000

http://www.un.int/unitar/trade_campus/statistics_2000.htm

⁴⁷⁴ World Trade Organization. *Understanding the WTO* (3rd Edition), Geneva: World Trade Organization Information and Media Division, 2003, p. 93.

⁴⁷⁵ United Nations definition. *Understanding the WTO. 'Least Developed Countries'*,

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm

⁴⁷⁶ Aaditya Mattoo and Arvind Subramanian. 'The WTO and the Poorest Countries: The Stark Reality', in *World Trade Review* Vol. 3, No. 3, 2004, p. 386.

⁴⁷⁷ Aaditya Mattoo and Arvind Subramanian. 'The WTO and the Poorest Countries: The Stark Reality', in *World Trade Review* Vol. 3, No. 3, 2004, p. 386.

⁴⁷⁸ In 2004 countries such as Senegal and Mozambique have GDP's between \$ 18,360 and \$ 23,380 trillion, whilst the GDP of Guinea-Bissau is \$ 1,008 million. See CIA Fact Book.

<http://www.cia.gov/cia/publications/factbook/rankorder/2001rank.html>

⁴⁷⁹ Senegal owed the World Bank \$ 2.6 Billion, Mozambique \$ 2.94 billion, and Guinea-Bissau \$ 309. 8 million. See World Bank. Countries and Regions.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/0..pagePK:180619~theSitePK:136917.00.html>

by the EC and the United States (aided by the other members of the Quadrilateral Group or Quad - Canada and Japan⁴⁸⁰) that has institutionalised corporate interests and a transnational model of production within the WTO. Thereby this corporate hegemony within the most powerful states has been able to use its superior wealth and knowledge as a means to push weaker states into agreements from whose negotiations they were absent, or that they don't understand (see below). As a consequence more states of the world are being drawn into accepting a neoliberal ideology, and agreements that project and protect the interests of transnational corporations. It ought to be noted that the UN *World Investment Report* now has a section on the top 50 TNCs operating out of the developing world,⁴⁸¹ thereby illustrating the extent to which corporate hegemony is expanding throughout the globe due to WTO policies.

Steinberg for example illustrates that although the EC and US bitterly disagreed on access to agricultural markets (oil seed markets) in 1992-93, they cooperated to use both the strategies of exit and the obligation of the 'single undertaking' to ensure that they gained the WTO that they wanted from the Uruguay Round. Initially at the negotiations Argentina, Brazil, Egypt, India and Yugoslavia had blocked consensus on the agenda for WTO negotiation because it introduced new trading issues of intellectual property rights, investment measures, and services (GATS, TRIPS, and TRIMS),⁴⁸² but did not include the issues of agricultural and textile access that they wanted. As Cohen points out the developing states were "excluded from the inner circle of discussions, prenegotiations and negotiations".⁴⁸³ Foreign direct investment (FDI), growth in the service industry and intellectual property rights were key issues

⁴⁸⁰ The 'Quad' was created in 1982 because it was felt that the G7's mandate for global economic governance was too wide to focus specifically on international trade. In contrast the 'Quad's' purpose is to set the agenda for international trade negotiations. See Theodore H Cohn. *Governing Global Trade: International Institutions in Conflict and Convergence*, Aldershot: Ashgate Publishing Limited, 2002. p. 123-160.

⁴⁸¹ United Nations Conference on Trade and Development. *World Investment Report 2005: Transnational Corporations and the Internationalization of Research and Development*, Geneva: United Nations, 2005, p. 15-17.

⁴⁸² Richard H. Steinberg. 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', in *International Organizations*, Vol. 56, No. 2, 2002, p. 359.

⁴⁸³ Theodore H Cohn. *Governing Global Trade: International Institutions in Conflict and Convergence*, Aldershot: Ashgate Publishing Limited, 2002. p. 123-160.

for the corporate hegemony prevalent in the EC and US. Developed OECD countries dominated the world's share of service providers and required continual and further guaranteed access to foreign markets to continue to grow. For example at the beginning of the 1990s 50% of the world's total FDI was in the service industry.⁴⁸⁴ By 2001 trade in services made up 60% of OECD GNP, and trade in services grew faster than trade in merchandise throughout the end of the 20th century.⁴⁸⁵ Corporate hegemony was also evident within the developed industrialised economies that exported high technology goods and services who expressed concern that their comparative advantage had been eroded through counterfeiting and illegal reproduction of technology. Therefore TRIPS was also important for the creation of world corporate hegemony but not the interests of the corporations from the developing states. The threat from developing states to subvert or gain exemption from these GATS, TRIPS and TRIMS at the Uruguay Round of Talks was detrimental to the creation of corporate world hegemony at the WTO.

The corporate hegemony of the EC and US avoided the initial impasse through the Punta del Este declaration of 1986, which established a consensus on the negotiating agenda because it incorporated agricultural issues from the developing world. By 1993, however, when the market access package was presented for agreement it was met with hostility and protest because it only reflected the input of the Quad and G7, without any input from the rest of the GATT members. In 1993 Peter Sutherland took over as the new outspoken and proactive Director General of the GATT. On the day he took office, Sutherland accused the developing world of slowing up the Uruguay Round, and demanded that they step up to the needs of the multilateral trade organization. Steinberg's core argument here is that the EC and US negotiators ensured that the Uruguay Round was closed with the signing of the *Agreement*

⁴⁸⁴ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 128.

⁴⁸⁵ Bernard M. Hoekman and Michel M. Kostecki. *The Political Economy of the World Trading System: From GATT to WTO*, Oxford: Oxford University Press, 1995, p. 127.

Establishing the WTO. This agreement contained the compulsory, so-called, ‘single undertaking’ clause and made acceptance of GATS, TRIPS and TRIMS obligatory and binding on all who signed.⁴⁸⁶ This document also ended the GATT 1947 by establishing the new, legally distinct GATT 1994 within the WTO.⁴⁸⁷ This allowed the EC and US to withdraw from the GATT 1947, and relinquish all trading agreements and obligations under this treaty with the developing states. This was a monumental action because it ensured that continued multilateral access to EU and US markets for foreign corporations was conditional on joining the WTO. In doing so the corporate hegemony of the EC and US were able to create the WTO containing their preferred and enforceable agreements. The developing world could either accept GATS, TRIPS and TRIMS within the terms of the ‘single undertaking’, or negotiate access to EC and US markets bilaterally.

Sylvia Ostry argues that Uruguay represented a ‘Grand Bargain’, which turned out to be a “Bum Deal” for everyone but the Quad.⁴⁸⁸ She argues that the developing states accepted the ‘Grand Bargain’ without a real comprehension of the implications it would have. The very sectors of agriculture and textiles that the developing world wanted to access were sidelined in the final agreement. Agriculture was still substantially restricted because of the Peace Clause, which ensured that agriculture was left out of WTO negotiations and dispute settlement until the end of 2004. As Ostry points out, the new issues of GATS, TRIPS and TRIMS were not concerned with border controls but the reorganisation of domestic laws on trade, health, safety, and the restructuring of domestic institutions. Therefore: “The trading system was transformed from the negative regulation of the GATT – what governments must not

⁴⁸⁶ The Agreement Establishing the World Trade Organization, Article II, Section II, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁸⁷ The Agreement Establishing the World Trade Organization, Article II, Section IV, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁸⁸ Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 1.

do to positive regulation – what governments must do”.⁴⁸⁹ All of this is costly to implement, but expertise can be bought from developed states to help oversee implementation. Many of the African member states did not participate in the Uruguay negotiations because of lack of representation and expertise in these very technical agreements.⁴⁹⁰ This is not a slight on the countries of the developing world. The architect of the WTO, John H. Jackson, confessed in 1998 that: “the WTO Agreement, including its elaborate Annexes, is probably fully understood by no nation that has accepted it, including some of the richest and most powerful trading nations that are members”.⁴⁹¹

Ostry further argues that by the time of the 1999 WTO Seattle Ministerial Meeting the reality of the ‘Grand Bargain’ of the Uruguay Round was becoming clear: “They got less access than they had wanted, and the burden of the new agenda was far heavier they had understood”.⁴⁹² Joseph Stiglitz employs the word ‘hypocrisy’ to describe the Western countries because they pushed the poorest countries to accept the elimination of barrier controls to goods and services from the developed world, whilst preventing developing countries from exporting agricultural produce. “The result was that some of the poorest countries in the world were actually made worse off.”⁴⁹³ Stiglitz also points out that the acceptance of TRIPS was to have an impact on the ability of the developing countries’ corporations to develop drugs to address the pandemic of AIDS because developing countries cannot afford to pay for the high prices demanded for patents and the drugs. Perhaps what ought to be stressed is that the Uruguay Round ensured that corporate hegemony was now installed within the WTO. In doing so it

⁴⁸⁹ Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 5. (Unpublished).

⁴⁹⁰ Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 9. (Unpublished).

⁴⁹¹ John H. Jackson. *The World Trade Organization: Constitution and Jurisprudence*, (The Royal Institute of International Affairs) London: Pinter, 1998, p. 1.

⁴⁹² Sylvia Ostry. ‘Institutional Design for Better Governance’, in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 364.

⁴⁹³ Joseph Stiglitz. *Globalization and Its Discontents*, London: The Penguin Press 2002, p. 9

was able to propagate the collective benefits to be gained from WTO membership and the acceptance of the reorganization of domestic society for a market economy sympathetic to transnational interests. As corporate interests were institutionalised within the WTO it soon became apparent the principles of non-discrimination and sovereignty were a fallacy. The biggest complaint from the developing countries concerning the WTO on the lead up to the Seattle Ministerial Meeting in 1999 was the undemocratic nature of the decision-making process. Consequently the Dominican Republic's trade ambassador remarked after Seattle, "...there is no trust between the developed and developing world".⁴⁹⁴

4.7 Undermining Decision-Making at the WTO

Given the inequalities of power and wealth and the manipulation that occurred during the Uruguay Round, it is possible to critically re-examine the manner that the WTO's negotiations and dispute settlement processes function, allowing as they do the corporate hegemony of the EC and US to continue to dominate the multilateral trading system. The Cancun Ministerial Conference will be used as an example of how inequalities of wealth and knowledge are used as a means to perpetuate the corporate interests of the EC and US. The section also illustrates how hegemonic powers use both coercion and consent to ensure compliance from other states by "making concessions that will secure the weak acquiescence in their leadership and if they can express their leadership in terms of universal or general interests, rather than serving their own particular interests".⁴⁹⁵ Thereby through the EC and US, corporations have maintained their 'structural power' within the WTO. It is argued that these were the major factors why the Seattle and Cancun Ministerial negotiations broke down. It became clear that the only markets that were to be opened were for the

⁴⁹⁴ Justin Forsyth. *The Southern Chorus at the WTO Sounds Like Seattle Again*, 2000, p. 2.

<http://www.globalpolicy.org/socecon/bwi-wto/wto/2000/1130jf.htm>

⁴⁹⁵ Robert, W. Cox. 'Social Forces, States and World Orders: Beyond International Relations Theory', in *Millennium*: Vol. 10, No.2, 1981, p. 137.

TNCs operating out of the EC and US where corporate hegemony had been constructed.

As stated above, in theory sovereign equality is required for all WTO members to participate fully in decision-making. Inequalities between countries, however, have impacted on equity in decision-making and ensured the protection and expansion of corporate interests. For example sovereign equality may be enshrined in the WTO Charter because it specifies the practice of consensus, but it also stipulates that: “The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration if no member, present at the meeting when the decision is taken, formally objects to the proposed decision”.⁴⁹⁶ The point is that a member has to be present to participate in a consensus. It has been estimated that there are 2,800 WTO meetings per year in Geneva (WTO councils, committees and working parties). A number of permanent representatives in Geneva are therefore required in order for a WTO member to fully participate.⁴⁹⁷ In May 2005, research showed that from a list of 38 African members, South Africa and Tanzania were unique with nine permanent Geneva representatives. The Central African Republic, Gambia, Guinea-Bissau, Malawi, Niger, Sierra Leone, Swaziland and Togo had none; Djibouti and Namibia had one, Burundi, Mozambique and Rwanda had two.⁴⁹⁸ It also has to be remembered that these permanent representatives also have to attend UN meetings on behalf of their country. In contrast, the EC maintains a 15 strong team of delegates in Geneva, which works solely on WTO policies⁴⁹⁹, whilst the US has 27 permanent representatives in Geneva to deal with the WTO and the UN.⁵⁰⁰ These numbers ensure

⁴⁹⁶ The Agreement Establishing the World Trade Organization, Article IX, 1994
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴⁹⁷ All Figures quoted from WTO Directory, May 2005, cited in Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 9. (Unpublished).

⁴⁹⁸ All Figures quoted from WTO Directory, May 2005, cited in Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 9. (Unpublished).

⁴⁹⁹ Information provided by DG Trade Information and Communication at the European Commission, 07 October 2005,

TRADE-INFORMATION@cec.eu.int

⁵⁰⁰ United States Trade Representative's Office.

<http://www.genevabriefingbook.com/chapters/ustr.pdf>

that the EC and US corporate representatives can participate in all the councils, committees and workshops of the WTO, whereas the majority of the membership does not have the financial resources to attend meetings and have their views expressed. As a consequence it is difficult to challenge corporate hegemony at the WTO.

Procedural justice is also prevented through other forms of exclusion from both decision-making and agenda setting. The agenda for a WTO's Ministerial meeting will begin formulation in either Brussels or Washington before being discussed within the G7. It will then be presented to the WTO membership as a whole for the submission of other issues. However, as Steinberg points out, initiatives by the weaker countries have a habit of dying. Powerful countries are able to block them by linking outside issues to trade preferences (loans, aid or bilateral trade agreements), or through the use of smaller caucuses such as the now infamous 'green rooms'.⁵⁰¹ 'Green room' meetings are unofficial, informal, off-the-record meetings of a select group of members (between 20 and 30 countries) who have an interest in a particular area of the negotiations. The EC and US normally initiate these with the support of the WTO Secretariat. The drafts that emerge from these 'green rooms' are presented to the formal plenary meetings of WTO members and accepted by consensus with little or no amendments.⁵⁰² As Kenyan WTO negotiator, Nelson Ndirangu, revealed after Cancun "when you are dealt with singly, the pressure is too much". Therefore the influence that can be applied in 'green rooms' can remove certain issues from the agenda and negotiation proceedings, which do not reflect corporate hegemony.

This was clearly the case in the months leading up to Cancun, and at the conference itself. Prior to Cancun the draft declaration on the agenda that emerged from Geneva

⁵⁰¹ Richard H. Steinberg. 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', in *International Organizations*, Vol. 56, No. 2, 2002, p. 355.

⁵⁰² Richard Blackhurst. 'The Capacity of the WTO to Fulfil its Mandate,' in Anne. O. Krueger (editor), *The WTO as an International Organization*, London: The University of Chicago Press, Ltd., 1998, p. 31-58.

was disputed by 40 states⁵⁰³ because it only reflected the corporate hegemony of the EC and US positions contained in the Singapore Issues and TRIPS. Yet, at the 2001 Doha Ministerial Conference, the developing world had received assurances that the negotiations on these Singapore Issues (competition, trade facilitation, transparency in government procurement, and investment) would not begin without 'explicit consensus' at Cancun. At Cancun the vast majority of the developing states wanted to see evidence from research being conducted on each of these Singapore Issues before negotiations began.

Consequently, as the conference drew closer two coalitions emerged, the G20⁵⁰⁴ and the G90,⁵⁰⁵ to contest the trading agenda proposed by the EC and US and place agriculture and cotton at the heart of the negotiations. These countries pointed out that the EC and US farm subsidies and tariffs undermined the economic growth of the developing world. Agriculture, textiles and clothing remain the key sectors of export trade for many developing states, especially when it is considered that the G20 accounts for 65% of the world's population, 72% of its farmers and 22% of world agricultural output.⁵⁰⁶ The Tanzanian Minister for Trade and Industry, Iddi Simba, pointed out just how important the maintenance of thriving domestic agricultural markets is for smaller developing states when agriculture employs 80% of the population: "We [the Least Developed Countries] need the WTO far more than the US or the EU. We will do everything we can to make sure the Doha Ministerial succeeds. We understand that some governments may lose elections over agriculture reforms. But they need to understand that if agriculture continues to be mishandled,

⁵⁰³ See World Trade Organization. Draft Cancun Ministerial Text. WT/MIN(03)/W/4, 4 September 2003, paragraphs 13, 14, 15, and 16, dealing with the Singapore Issues.

⁵⁰⁴ This group emerged at Cancun (Argentina, Bolivia, Brazil, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand and Venezuela).

⁵⁰⁵ This group comprised of the least developed countries, such as the African, Caribbean and Pacific (AFC) and African Union (AU).

⁵⁰⁶ Alan Wheatley. *End Farm Export Subsidies in 5 years, G-20 Says*, Global Policy Forum, March 19, 2005. <http://www.globalpolicy.org/socecon/trade/subsidies/2005/0319g20.htm>

we lose lives".⁵⁰⁷ Agricultural markets are then, not only central for economic growth for many of the developing world, they are essential for the survival of many of the world's people.

Although propagating the superiority of deregulation and market forces, a recent Congressional Budget Office report established that the EU, US and Japan were the top three global spenders on farm subsidies respectively. The EU and US accounted for over one-third of the world's total farm subsidies, and Japan 15%.⁵⁰⁸ The EU's Common Agricultural Policy (CAP), even after the reforms of June 2003, cost £43bn in 2005 - or 44% of the EU's annual budget. To put these subsidies into perspective, the annual income of an EU dairy cow exceeds the annual income of half the world's human population.⁵⁰⁹ In the US, \$16.4 billion was spent on subsidies to US farmers in 2003, a 27% increase since 2002.⁵¹⁰ Import tariffs as well as subsidies ensure that world agricultural prices are fixed at a level with which developing farmers cannot compete because they do not receive such massive subsidies. Turning to agricultural import tariffs, the highest and most prevalent are in East Asian countries (Korea, Taiwan, India, China, Vietnam and Japan top the global list).⁵¹¹ It could be argued that these countries need tariffs to protect their agricultural produce from such highly

⁵⁰⁷ Quoted from Barry Coates. Doha: *It's Déjà Vu All Over Again, Comments from Director Of The World Development Movement on the WTO Ministerial Meeting In Progress In Doha*. 12 November 2001.

<http://www.wdm.org.uk/presrel/current/dejavue.htm>

⁵⁰⁸ Congressional Budget Office Report (Congress of the United States). *Policies that Distort World Agricultural Trade: Prevalence and Magnitude*, August 2005.

<http://www.cbo.gov/ftpdocs/66xx/doc6614/08-22-Doha.pdf>

⁵⁰⁹ Simon Jeffery. *The EU Common Agriculture Policy*, Guardian Unlimited, Thursday, 26 June 2003.

<http://www.guardian.co.uk/theissues/article/0,6512,975350,00.html>

⁵¹⁰ In the longer time scale the figures are astonishing: from 1995 to 2002 the United States spent \$131,313,000,000 on agricultural subsidies. See Environmental Working Group. *Farm Subsidy Database*, 2005, p. XI

<http://www.ewg.org/farm/regionsummary.php?fips=00000>

⁵¹¹ Congressional Budget Office Report (Congress of the United States). *Policies that Distort World Agricultural Trade: Prevalence and Magnitude*, 13 August 2005.

<http://www.cbo.gov/ftpdocs/66xx/doc6614/08-22-Doha.pdf>

subsidised EU and US agricultural trade, which ensures an artificially low price for agriculture on world markets for dominant corporate agricultural social forces.⁵¹²

At the WTO Ministerial Conference at Cancun the corporate hegemony in the EC and US attempted to seek the acquiescence of the developing world first through coercion, and then through consent by discussing agricultural subsidies, but with little intention to reduce subsidies. In the preparations for the Cancun negotiations, developing countries were advised by the EC and US that membership of the G20 and a strong stance on agriculture would not be in their interests. Kenya's application for a new IMF loan was implicitly threatened. Egypt, El Salvador, Guatemala, Costa Rica and Thailand's bilateral free trade agreements with the US were jeopardised. Brazil, India and South Africa received telephone calls from Washington urging them not to take a strong stance on agriculture or cotton at Cancun. The EC also sought to discourage the African, Caribbean and Pacific countries from a strong stance through highlighting the fragility of their bilateral free trade agreements with them.⁵¹³ At the Cancun negotiations the EC and US negotiators demanded a reduction in agricultural import tariffs from the rest of the membership. In reciprocation they only offered to agree procedures and general formulae for future reductions of their own farm subsidies, but left these unchanged. The specific figures and the framework detailing the phasing out of farm subsidies were missing.⁵¹⁴

When the G20 announced they could not be party to such an agreement, they were publicly condemned for not practising reciprocity.⁵¹⁵ Given that the EC and US

⁵¹² Even a recent World Bank Report concluded "a subsidies cut by the US by 28%, the EU by 18%, Norway by 16% and Australia by 28% would make a significant difference". Kym Anderson and Will Martin. *Agricultural Trade Reform and Doha Development Agenda*, World Bank, World Bank Policy Research Working Paper 3607, May 2005, p. 8.
http://wdsbeta.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/05/12/000011823_20050512121406/Rendered/PDF/wps3607.pdf

⁵¹³ See Fatoumata Jawara and Aileen Kwa. *Behind the Scenes at the WTO: The Real World of International Trade Negotiations/Lessons From Cancun – Updated Edition*, London: Zed Books, 2004, p. xxxviii – xli.

⁵¹⁴ Fatoumata Jawara and Aileen Kwa. *Behind the Scenes at the WTO: The Real World of International Trade Negotiations/Lessons From Cancun – Updated Edition*, London: Zed Books, 2004, p. xxvi.

⁵¹⁵ Franz Fischler. *State of Play of Agriculture Negotiations*, Press Release, Cancun, Mexico, 14 September, 2003.

demand such reciprocity and National Treatment in trade agreements, the developing states have argued that these principles do not create a 'level playing field' for international trade. Rather they argue that these two principles are biased in favour of the rich countries because they sustain a position of 'equal treatment of unequals'. Due to the above inequalities, reciprocity and national treatment do not establish non-discrimination: they perpetuate discrimination. It is also clear that agriculture was placed on the WTO's agenda for discussion to ensure the participation of the developing world in the negotiation and in participating the developing world legitimised the negotiation process of the WTO. Yet, at the same time the demands made by the EC and US ensured that terms of the negotiations were unacceptable and could not change the *status quo* of agricultural subsidies in Europe and the US. By bringing the developing world to the negotiating table to discuss agriculture, however, corporate elites were able use the Cancun Ministerial as a means to coerce these states to accept the Singapore Issues that expanded transnational corporate interests.

A further core contradiction of the WTO is highlighted by the '*Doha Development Agenda*', which promised to place the interests of the poorest states at the heart of negotiations. In reality, however, the *Doha Development Agenda* has been used as a 'stick and carrot' to pursue the favoured the Singapore Issues of corporate hegemony. This was clearly the case at Cancun. At the Conference itself, the final Ministerial Declaration that emerged did not reflect the views of the entire WTO membership as expressed throughout the conference (Derbez text).⁵¹⁶ The 'Derbez text' omitted the developing world's position on agriculture subsidies and tariffs, especially cotton, and the Special and Differential Treatment of the least developed countries. The text was condemned for being a reproduction of the EC and US agenda on the Singapore Issues, and delegation after delegation voiced their anger at having their views ignored. As these speeches ended 'green room' negotiations began again, but without

⁵¹⁶ Presented by conference chairman, the Mexican Foreign Minister Luis Ernesto Derbez.

yielding results. As no consensus could be made, the Conference collapsed. The Tanzanian President later stated that: “The only positive thing for the poor to have come out of the talks was the unprecedented show of unity among developing countries. I hope that this unity is sustainable, and I urge rich and powerful countries to try to direct it toward constructive outcomes rather than undermining it”.⁵¹⁷ The corporate hegemony of the EC and US were unable to force an agreement from the developing states because of the creation of strong coalitions, but it was able to argue that the developing world was unwilling to negotiate on a *quid pro quo* basis. This was clearly argued by Pascal Lamy on a number of occasions.⁵¹⁸

Again this illustrates that the WTO does not promote free trade; rather it is used to pursue the opening of specific economic sectors that are advantageous to a transnational model of production, whilst also protecting the interests of transnational investment and intellectual property rights. For example, agricultural markets in the developed world remain heavily subsidised and protected, which maintains an artificially low price for these goods on the world market. As a result, the ability of the developing producers to sell their products at home or abroad is limited because they cannot compete with this artificially low price. The reduction of agricultural subsidies remains a bargaining tool for the developed world, to exchange for access to the service and high tech markets of the developing world. In addition the agricultural subsidies are a means of bringing political elites into the WTO arena to participate in the WTO process. By doing so the WTO attempts to establish agreement from the developing states to accept the leadership of corporate hegemony on the grounds that all members can benefit from negotiations. The structural power of corporations, however, ensures that the transnational corporate interests trump all other issues at the WTO.

⁵¹⁷ Benjamin William Mkapa. ‘Cancun’s False Promise’, in *Foreign Affairs*, Vol. 83, No. 3, 2004, p. 133.

⁵¹⁸ The then EC Commissioner for Trade Pascal Lamy argued this in his overview of the collapse of the Cancun Ministerial Conference when I attended his visit to the Department of Trade and Industry, London, October 2003.

4.8 Undermining Dispute Settlement at the WTO

Finally, these disparities in wealth and knowledge are also causing the procedures of the DSU to be undermined. As already stated the dispute settlement process has become legalised within the WTO. Due to this there has been a “juridification of the process, including not only the rule of law but the rule of lawyers”.⁵¹⁹ Ostry, a former Canadian Deputy Minister of International Trade, Ambassador for Multilateral Trade Negotiations and the Prime Minister's Personal Representative for the Economic Summit, argues there is a significant “knowledge gap” because rich countries are well equipped with legal talent and a worldwide network of personnel to provide data, whereas developing states are not.⁵²⁰ Current research illustrates that of the 340 complaints brought before the dispute settlement system the EC accounted for 19% of these and the US 23%. The other two members of the Quad accounted for significantly less - Japan 3% and Canada 8% - but this still means that the Quad were responsible for bringing over 50% of all legal cases to the DSB.⁵²¹ In contrast there is an absence of any African country using the DSB. Corporate hegemony has ensured that the rule of law is confined to those that can afford to employ the best legal teams. A lack of national legal expertise is not easily overcome by employing private lawyers. “A conservative estimate of attorney fees in trade litigation begins at \$90,000 to \$250,000 depending on the complexity of the case plus another \$100,000 to \$200,000 for data collection and economic analysis”.⁵²² These costs spiral when a dispute requires the creation of an Appellate Body because litigation can take up to

⁵¹⁹ J. H. H. Weiler. ‘The Rules of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement’, in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 335.

⁵²⁰ Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 9. (Unpublished).

⁵²¹ All figures for Alasdair R. Young. *Government Preferences and the Prosecution of Trade Disputes: The European Unions Use of the World Trade Organisations Dispute Resolution*, 2005, p. 24 (Unpublished).

⁵²² Sylvia Ostry. *The Post Doha Trading System*, Paper for Pre-G8 Academic Conference, Glasgow University, June 29-30, 2005. p. 10. (Unpublished).

two and a half years.⁵²³ When interviewed, a senior official from Antigua revealed that his country could not afford to maintain legal action against the US over its protectionist gambling laws. This was because of costs incurred by the length of time it took to find the ‘mutually agreed compensation’ that the DSU demands.

The impartiality of the Appellate Bodies is also questioned because of the ‘knowledge gap’. A lack of national legal experts means that the developing world finds it difficult to supply panellists for DSB or the Appellate Bodies.⁵²⁴ The corporate hegemony in the EC and US enjoy special privileges for selecting Appellate Body members. Candidates are often interviewed in Washington or Geneva prior to their endorsement.⁵²⁵ In an attempt to address these disparities in knowledge, in 2002 the WTO members (excluding the US) created the Advisory Centre for WTO Law, which has a small legal staff to assist developing countries. The cost of using the Centre’s legal staff is calculated in relation to the wealth of the country seeking aid.⁵²⁶ However, Ostry argues that it still lacks adequate funding and coordination to effectively close the ‘knowledge gap’. As officials from the exploited peripheral countries enter the WTO with the goal of changing their policies from within, Cox points out that they are forced to work within the prevailing structures of the institutions. In working within these structures the individuals help to legitimise the hegemony. “Hegemony is like a pillow: it absorbs blows and sooner or later the would-be assailant will find it comfortable to rest upon”.⁵²⁷ One could therefore argue that by accepting the dictates of this legal process the developing states are accepting and legitimising the agreements and processes of the WTO.

⁵²³ Bernard M. Hoekman and Pertos C. Mavrodís. ‘The WTO Dispute Settlement, Transparency and Surveillance’, in *The World Economy*, Vol. 23, No. 4, 2000, p. 531.

⁵²⁴ Bernard M. Hoekman and Pertos C. Mavrodís. ‘The WTO Dispute Settlement, Transparency and Surveillance’, in *The World Economy*, Vol. 23, No. 4, 2000, p. 532.

⁵²⁵ Richard H. Steinberg. ‘Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints’, in *The American Journal of International Law*, Vol. 98, No. 2, 2004, p. 264.

⁵²⁶ John H. Jackson. ‘Perceptions about the WTO Trade Institution’, in *World Trade Review*, Vol. 1, No. 1, 2002, p. 112-113.

⁵²⁷ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

A further point of contention is that the Appellate Body does not have the power to impose economic compensation, only to suspend concession and legally sanction retaliations. It has long been accepted that smaller countries cannot credibly threaten the suspension of concessions to provoke compliance. Raising import barriers will have little impact on an offending state that has a large domestic market and can simply choose alternative trading partners to overcome its losses. Indeed it is the welfare of the smaller state that will be damaged most by the raising of tariffs and loss of the larger trading party.⁵²⁸ Wealth also allows the luxury of refusing to comply. The EC has chosen not to comply with authorised sanctions from the US and Canada for its refusal to accept GM crops and hormone enhanced beef. It has preferred to suffer the sanctions.⁵²⁹ Attempts to apply a system of financial compensation, or develop a system where punishment for non-compliance is based on the withdrawal of market access commitments to all WTO members, has been resisted. Therefore smaller economies are at a disadvantage. Not only because of the cost of litigation, but also because even if they win they will be unable to gain an equitable conclusion. This would suggest that corporate hegemony of the EC and US has been able to construct an institution, and determine the framework within which agendas are created and negotiations conducted in such a way as to ensure specific ends, but employ an ideology to legitimise the institution and the manner in which it functions.

4.9 Conclusion

This chapter has argued that there are significant contradictions between the WTO's ideology and the practices of this institution. In addition it was suggested that the WTO has limited success in coopting elites from the developing world through

⁵²⁸ Bernard M. Hoekman and Pertos C. Mavrodís. 'The WTO Dispute Settlement, Transparency and Surveillance', in *The World Economy*, Vol. 23, No. 4, 2000, p. 531.

⁵²⁹ Richard H. Steinberg. 'Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints', in *The American Journal of International Law*, Vol. 98, No. 2, 2004, p. 264.

transnational corporate interests making concessions to the political elites in the developing world by expressing their “leadership in terms of universal or general interests, rather than serving their own particular interests”.⁵³⁰ It was illustrated that a neoliberal ideology emanating from the WTO’s Secretariat justifies the WTO agreements, whilst the principles of MFN, the principles of ‘equality before the law’, non-discrimination and sovereign equality have legitimised both the decision-making and dispute settlement at the WTO. These principles have been used to promote membership of the WTO. However, it has been argued that this ideology merely provides a veneer of legitimacy for the corporate hegemony within the EC and US to institutionalise their interests within the WTO. In doing so the ‘structural power’ of corporate hegemony has been institutionalised within the WTO and ensures that corporate interests are favoured in the WTO. This was seen in the tactic of placing agriculture on the agenda of the WTO’s negotiations, ensuring that the developing states participate in negotiations and are confronted with further acceptance of GATS, TRIMS and TRIPS policies. The promotion of developing states participating in legal schooling for dispute settlement can also be seen as the means of ensuring that acceptance of the policies of corporate hegemony are furthered throughout the world, and draw more political elites into the *nebuleuse*.

By illustrating these points the chapter drew attention to the contradictions in the Charter because the attainment of development, equity, prosperity, peace and sustainable development – is subject to the interests of transnational corporate interests. The themes of non-discrimination and collective benefit through the MFN principle, ‘National Treatment’, reciprocity, equality in decision-making and equality before the law were all seen to be distorted by the wealth and knowledge afforded to the corporate hegemony of the EC and US. The Uruguay Round of trade negotiations was brought to a close through the obligation of the ‘single undertaking’. This

⁵³⁰ Robert, W. Cox. ‘Social Forces, States and World Orders: Beyond International Relations Theory’, in *Millennium*: Vol. 10, No.2, 1981, p. 137.

mandatory agreement for membership of the WTO ensured that continued access to the wealthy markets of the EC and US was conditional on acceptance of GATS, TRIMS, and TRIPS – these agreements enhance and protect corporate hegemony by ensuring a dominance of a transnational model of production. The *Doha Development Agenda* and the Cancun Ministerial demonstrated these contradictions. The agricultural products of the developed world remain highly subsidised, while these developing states' have opened their markets to the corporate interests embedded in the WTO. The WTO is therefore not about promoting free trade, but the enhancement of a transnational model of production and the protection of corporate investment and intellectual property rights throughout the world. This was clearly seen with the pressure to accept the Singapore Issues at Cancun, and the impasse over agriculture.

The WTO DSB also requires access to legal expertise and sufficient wealth to employ a legal team to pursue a dispute, and ensure the status of corporate hegemony. The inequalities in wealth and knowledge between members prevent all states from participating equally in dispute settlement. The dispute settlement system of the WTO rests on the ultimate penalty of withdrawing trading privileges from transgressors. The smaller states require continued access to the EC and US for economic growth. The absence of economic sanctions for the transgressions by the wealthy states ensures that the smaller states suffer because the withdrawal of market access does not penalise the most-powerful states and deter illegal action. Therefore on these grounds the chapter argues that the WTO allows for the distortion of consensus decision-making and equality before the law in dispute settlement by the representatives of corporate hegemony in the EC and US because it was designed for the purpose of protecting their corporate interests they represent. Concessions have been made in order to gain wider acceptance by political elites from the developing world, but this has been met with resistance from strong coalitions.

Alter-Globalization Movement: Hegemonic Distortion and Cooption

What we write here should lay to rest the claim by corporate globalists that the goal of those of us who resist is the elimination of all institutions of global governance. This has always been a serious misrepresentation. The goal of civil society is to replace the autocratic institutions of corporate rule with democratic institutions, as earlier generations replaced the institutions of monarchy with those of political democracy.⁵³¹

Among the features of international organizations which express its hegemonic role are ... they absorb counter hegemonic ideas⁵³² ... penetrate and coopt elements of popular movements ... and thus enhance the legitimacy of the prevailing order.⁵³³

5.1 Introduction and Aims

The purpose of this chapter is to begin to develop an analysis of the relationship between the World Trade Organization (WTO) and the alter-globalization movement. As pointed out in the introduction to this thesis, three strategies employed by the alter-globalization movement to place its values at the heart of the WTO have been identified: demonstrations on the street; assisting developing states during negotiations; and submitting *amicus* briefs to the WTO's dispute settlement body. Of

⁵³¹ John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc., 2002, p. 241.

⁵³² Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

⁵³³ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 104.

the three strategies, this chapter deals with the most symbolic and public of these strategies - mass demonstrations on the street by social movements to alter public consciousness. It thereby makes an important distinction between social movements and Non-Governmental Organizations (NGOs), but acknowledges that NGOs participate in these transnational demonstrations.⁵³⁴ It will be argued that transnational counter-hegemonic forces bearing 'organic intellectuals' have emerged to propagate the contradictions of the *nebuleuse* in a 'war of positions' and to develop a global consciousness that rejects the legitimacy of world corporate hegemony. Although social movement theorists bring analytical clarity to the features of counter-hegemony, it lacks acknowledgement of the magnitude and diversity of change demanded by counter-hegemonic forces. Diversity is a key feature of these counter-hegemonic movements, and so a variety of 'organic intellectuals' advocate competing, alternative visions to corporate hegemony. A four part continuum will be constructed, ranging from 'de-globalists' to 'alter-globalists', to illustrate the many different ideological perspectives that are reflected in the current transnational counter-hegemonic forces. It will be argued that elements of the alter-globalization movement propose that alternative principles and policies can be realised through the application of radical democratic principles or a 'bottom up', 'new multilateralism' as defined by Robert W. Cox.⁵³⁵

Since the Seattle Ministerial Conference of 1999 the WTO has become a target of criticisms from protesters, and it will be argued that a policy of cooption and distortion has been pursued by this central institution of the *nebuleuse*. As Cox points out a principal function of an international organization expressing hegemony is to "absorb counter hegemonic ideas"⁵³⁶ through 'passive revolution' or *trasformismo*.⁵³⁷

⁵³⁴ Chapter six of the thesis will analyse the engagement of the WTO with NGOs with an alter-globalization perspective.

⁵³⁵ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

⁵³⁶ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

At the heart of this concept of *trasformismo* is the assertion that social reform initiated from above is for the sole purpose of forestalling popular political mobilization and thereby disabling the potential for democratic transformation. By controlling access to decision-making bodies political elites act as gatekeepers – determining who can participate, on what terms and by what means. On the one hand, demands of the protesters have been distorted by the prevailing images of violent extremist youths. On the other hand, since Seattle it is also possible to note a significant change in the language of hegemonic political elites in relation to trade and the WTO. This is clearly the case with the new buzzwords of ‘free and fair’ trade and the creation of the *Doha Development Round*, which embraces the language of the protesters to deflect criticism from the *nebulouse*. The example of the United Kingdom’s *Make Poverty History* campaign in 2005 will reinforce this argument and illustrate how political elites have been able to depict themselves as the real champions of global justice. Thereby the primary argument of this chapter is that hegemonic political elites have engaged in *trasformismo* - both distorted and coopted the language of the alter-globalization movement in order to legitimise the policies and procedures of the WTO.

5.2 Transnational Protest and the Counter-Hegemonic Forces

If 11th September 2001 brought ‘terrorism’ into the global public consciousness, the protests on the streets of Seattle during the World Trade Organization’s 1999 Millennium Ministerial Conference were responsible for bringing neoliberal globalization into the global public consciousness. The WTO had been created in 1995 ‘without much fanfare’, but the Seattle demonstration four years later pulled it out of obscurity. Due to the revolution in information technology, transnational protesters were able to coordinate and contest the global governance that facilitates a

⁵³⁷ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox and Timothy Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 130-131 and 139.

neoliberal ideology. This same technology also enabled a global media to beam these criticisms into private homes around the globe. Questions were asked over the WTO's legitimacy to exercise political power over elected governments, why policies were devoid of public scrutiny, and who was benefiting from these policies. The power and influence of transnational corporations (TNC) in determining national labour and environmental policies through the WTO also faced public attention. Discussion also turned to why the developing countries were claiming that the WTO was institutionalising the dominant economic interests of the developed countries. As with all social movements, these protesters attempted to use the media as a means of propagating their arguments to a wider general public. In attracting the attention of the media, however, the protesters were collectively labelled the anti-globalization movement. Consequently, Seattle brought neoliberal globalization and anti-globalization into the public consciousness. This section seeks to illustrate the significance of the protest at Seattle within the context of the wider campaigns against transnational corporate hegemony.

The Seattle demonstrations illustrated the direct targeting and contesting of the WTO, and the *nebulouse*, which have enforced the implementation of neoliberal globalization and a transnational mode of production. The estimated 50,000 people on the streets of Seattle included 20,000 members of the American Labour Federation-Congress of Industrial Organization (ALF-CIO), whose organised workers received relatively little press coverage. In contrast protest by NGOs, such as Greenpeace (protesting against the proliferation of genetically modified organisms in food and agriculture), Ralph Nader's Public Citizen (against multinational corporations), the Sierra Club (against rainforest logging), Confederation Paysanne (against hormone-fed beef), N30 (against global capitalism) and Sea Turtle Restoration Group (against turtle-killing shrimp nets) were all visible and caught some of the media attention. The *Los Angeles Times* headline: "Who on earth were they and what were they so mad about?" reflected the many pedestrians ignorant of their acceptance and consent

to corporate hegemony, but stunned by the size and the assertiveness of the protest.⁵³⁸ Although it was heavily denied that these demonstrations had any bearing on the trade negotiations, Seattle was also the first WTO Ministerial Conference to collapse because no agreement could be reached amongst the members. Seattle proved to be the catalyst for the developing world to publicly criticise the developed states for hypocrisy and bullying within the WTO that generated unfair trade rules. Consequently the Dominican Republic's trade ambassador remarked after Seattle, "...there is no trust between the developed and developing world"⁵³⁹. The collapse of the WTO's negotiations at Seattle signalled for many of the protesters a victory for the developing world, global justice and the rejection of neoliberal globalization. The main story the media focused on, however, was the isolated cases of violence, the Seattle Mayor declaring Marshal Law and the apparent naive attitude of the protesters to globalization.⁵⁴⁰

It is important, however, not to see the protests in Seattle as an isolated event. Rather Seattle has to be seen in the context of wider resistance to corporate hegemony. Previously, national demonstrations had been seen against the policies of austerity and structural adjustment that became conditional for loans from the International Monetary Fund (IMF) and World Bank. For example, John Watson and David Seddon draw attention to the "IMF Riots", which took place in many of the countries where people were adversely affected by food shortages created by these IMF policies during the 1970s and 1980s.⁵⁴¹ John Cavanagh *et al* argue that the campaign that

⁵³⁸ Quoted in William S. Solomon. 'More Form than Substance: Press Coverage of the WTO Protests in Seattle', in *Monthly Review*, Vol. 52, No.1, 2000.
<http://www.monthlyreview.org/500solo.htm>

⁵³⁹ Justin Forsyth. *The Southern Chorus at the WTO Sounds Like Seattle Again*, 2000, p. 2.
<http://www.globalpolicy.org/socecon/bwi-wto/wto/2000/1130jf.htm>

⁵⁴⁰ See overview of the media reports on Seattle in William S. Solomon. 'More Form than Substance: Press Coverage of the WTO Protests in Seattle', in *Monthly Review*, Vol. 52, No.1, 2000.
<http://www.monthlyreview.org/500solo.htm>

Steven Pearlstein. 'Protest's Architect 'Gratified'; D.C.-Based Activist Brought Diverse Groups Together', in *The Washington Post*, Thursday December 2, 1999.

⁵⁴¹ John Watson and David Seddon. *Free Markets and Food Riots: The Politics of Global Adjustments*, Oxford: Blackwell Publishers, 1994, p. 39.

emerged to resist and offer alternatives to the North American Free Trade Area (NAFTA) from 1991 to 1995 was also instrumental in educating Americans about the social and environmental costs of trade and investment liberalisation. The resistance to NAFTA brought together a transnational coalition of social movements and NGOs, such as the US based Alliance for Responsible Trade (ART), the Mexican Action Network on Free Trade (RMALC), and the Canadian Common Frontiers. By the time of Seattle “there existed a solid base of activists...who were eager to use the summit as an opportunity to voice their criticism of the WTO and free trade in general”.⁵⁴² It is also worth noting that in 1998 activists had mobilised transnationally and claimed a victory in preventing the signing of the Organisation for Economic Cooperation and Development (OECD) - sponsored Multilateral Agreement on Investments (MAI). Social movements were also on the streets of London during 1999 making their voices heard against the Group of Eight (G8).

The December 2001 Seattle protests were quickly followed by protest marches against the IMF and World Bank in Washington D.C.; against the Asian Development Bank in Chiang Mai, Thailand; and the World Economic Forum in Melbourne, Australia in 2000. Later in the same year Europe again saw demonstrators in Prague for the United Nations (UN) Framework Convention on Climate Change. In 2001, Davos, Switzerland witnessed demonstrations as it hosted the World Economic Forum, followed by Quebec because of the meeting of the Free Trade Association of the Americas, and Gothenburg, when the European Union (EU) heads of state gathered there for negotiations. This mobilisation of social movements in 2001 culminated in the most violent of demonstrations seen to date during the G8 Summit in Genoa. In 2002, Johannesburg, Sydney, New York City, Florence, and Washington D.C. were also sites of protest. Cancun, Mexico, also became the focus of

⁵⁴² John Cavanagh, Sarah Anderson, and Karen Hansen-Kuhn. ‘Crossborder Organizing Around Alternatives to Free Trade: Lessons from the NAFTA/FTAA Experience’, in Michael Edwards and John Gaventa (editors), *Global Citizen Action*, London: Earthscan Publication Ltd, 2001, p. 149.

transnational protest as the WTO chose it as the venue for its Ministerial Conference in 2003.⁵⁴³ We should not forget that transnational networks amongst activists created during this period of protest provided the contacts and infrastructure to mobilise an anti-war movement against the war in Iraq in late 2002 and early 2003.⁵⁴⁴ The global reach of this infrastructure was clearly demonstrated on 15 February 2003, when 11 million people in 800 cities all over the world confirmed their refusal to accept the legitimacy of the US government led attack on Iraq. The coordinated mobilization of social forces from around the globe represented the largest one-day protest in world history. Consequently, the end of the twentieth century and the beginning of the 21st century have witnessed an increased number of transnational social movement demonstrations not only nationally, but also at the official international organisations of the *nebulouse* responsible for coordinating policy consensus for neoliberal globalization.

5.3 Social Movement Theory: Why Transnational Protest?

As mass demonstrations on the streets were beamed into the homes of people throughout the world by the media, street protests became a powerful symbol of social movement resistance to neoliberal globalization. It would be easy to assume that there is something ‘new’ and ‘unusual’ about the mobilisation of large numbers of the public to protest at a political system. It is important to acknowledge this could not be further from the truth. Social movements have been a constant feature of political life and accounted for in Western Europe since the 18th century and in the US since the 19th century. A rich body of social movement theory has emerged within the discipline of sociology, which has developed its own conceptual language and

⁵⁴³ Data from Mark I. Lichbach and Paul Almeida. *Global Order and Local Resistance: The Neoliberal Institutional Trilemma and the Battle of Seattle*, 2005.
<http://www.bsos.umd.edu/gvpt/lichbach/Page2a.htm>

⁵⁴⁴ See Mark Rupert. ‘The Global Justice Movement and War’, in Catherine Eschle and Bice Maiguashca (editors), *Critical Theories, International Relations and ‘Anti-Globalization Movement’: The Politics of Resistance*, Abingdon: Routledge, 2005, p. 22.

literature.⁵⁴⁵ Traditionally social movement analysis has been restricted to within the border of the state and favoured a comparative analysis. With the development of transnational social movement protests, however, a few social movement theorists have recently begun to consider the transnational dimension.⁵⁴⁶ For these writers there is a necessity of distinctions. Although social movements, NGOs, pressure groups, trade unions all emerge from civil society and participate in transnational protests, social movements are determined to be a separate category because they exist outside of organised and institutionalised politics.⁵⁴⁷ To hold them all together as a single entity is, in the words of social movement literature, a “source of analytical confusion”.⁵⁴⁸ This distinction is important because NGOs are organised in a way that social movements are not, and social movements use unconventional methods of political action to influence the political process.⁵⁴⁹ As Charles Tilly points out “No one owns the term” social movement, but using the term as a catchall phrase “badly handicaps any effort to describe and explain how social movements actually work”.⁵⁵⁰ Therefore, this section will draw from social movement theory to understand the activities and reasoning behind the emergence of transnational social movements from this discipline. The assertions of social movement theorists will be qualified by adopting a Coxian perspective.

Social movements have a long history of political influence. David A. Snow, Sarah A. Soule and Hanspeter Kriesi draw attention to this fact by pointing out

⁵⁴⁵ For an overview of social movement theory, see Donatella Della Porta and Mario Diani. *Social Movements: An Introduction*, Oxford: Blackwell Publishing, (1999) 2004.

⁵⁴⁶ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc., 2005, Donatella Della Porta and Sidney Tarrow (editors). *Transnational Protest and Global Activism: People, Passion and Power*, United States of America: Rowman and Littlefield Publishers, Inc., 2005, Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004.

⁵⁴⁷ Timothy Doyle And Doug McEacher. *Environment and Politics*, London: Routledge, 1998, p. 55.

⁵⁴⁸ Donatella Della Porta and Mario Diani. *Social Movements: An Introduction*, Oxford: Blackwell Publishing, (1999) 2004, p. 16.

⁵⁴⁹ NGOs and their activities will be discussed in chapter six of the thesis.

⁵⁵⁰ Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004, P. 7.

an understanding of many of the most significant developments and changes throughout human history – such as the ascendance of Christianity, the Reformation, and the French, American and Russian revolutions – are partly contingent on an understanding of the workings and influence of social movements, and this is especially so during the past several centuries.⁵⁵¹

It is worth remembering that some of the major events of the 20th century have been initiated by social movement protests with iconic leaders: Ghandi's non-violent social movement's protest in the fight for India's independence; Martin Luther King's peaceful protest for African American civil rights in the US and Nelson Mandela's armed struggle against apartheid. Lest we forget the student protests throughout Europe in 1968; the demonstrations against the Vietnam war on both sides of the Atlantic; the campaigns against the deployment of nuclear missiles and nuclear testing in Western Europe; or the Velvet Revolutions of Eastern Europe during the fall of communism in the 1989; the student pro-democracy demonstrations of Tianamen Square and the 2005 Orange Revolution of the Ukraine. Just as these social movements have been responsible for bringing about some form of economic, environmental, political and social change, Tim Jordan reminds us that today's transnational social movements are also important: "it is within some of these movements that beliefs are being invented that may shape our future. From activism may come new definitions of the good life and society."⁵⁵² Indeed the main aim of social movements throughout history has been to forge a new common understanding of alternatives to the status quo.

⁵⁵¹ David A. Snow, Sarah A. Soule and Hanspeter Kriesi. 'Mapping the Terrain', in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 3.

⁵⁵² Tim Jordan. *Activism! Direct Action, Hacktivism and the Future of Society*, London : Reaktion Books, 2002, p. 6.

Social movement theorists are very specific about the presence of certain qualities in the definition of social movements. Social movements “are largely non-institutional, and they occupy a political terrain that is often quite separate from more established institutionalised political forms such as pressure groups, parties and the administrative and parliamentary systems of the state...Rarely is this dimension governed by formal laws and statutes of association”.⁵⁵³ Donatella Della Porta and Mario Diani argue that in social movement theory, scholars from varying theoretical and territorial backgrounds share concern for at least four characteristics of social movements. These are: “(1) informal networks, based on (2) shared beliefs and solidarity, which (3) mobilise about conflictual issues, through (4) the frequent use of various forms of protest”.⁵⁵⁴ Political parties, NGOs and trade unionists may join a social movement, but it is the focus on informal networks and use of non-traditional forms of political participation that makes social movements distinct from other actors. Charles Tilly draws attention to three elements social movements combine: “1) campaigns of collective claims on target authorities; 2) an array of claim making performances including special-purpose associations, public meetings, media statements, and demonstrations; 3) public representations of the cause’s worthiness, unity, numbers, and commitment” (WUNC).⁵⁵⁵ It is the act of “protest – or the collective use of unconventional methods of political participation to try to persuade or coerce authorities to support a challenging group’s aims – is perhaps the fundamental feature that distinguishes social movements from routine political actors”.⁵⁵⁶ Russell Dalton identifies a continuum to illustrate four different levels that protest can take from the non-violent and legal, such as the signing of petitions, boycotts, marches and strikes, to the illegal occupation of buildings and, at the most extreme, acts of violence.⁵⁵⁷

⁵⁵³ Timothy Doyle And Doug McEacher. *Environment and Politics*, London: Routledge, 1998, p. 55.

⁵⁵⁴ For an overview of social movement theory, see Donatella Della Porta and Mario Diani. *Social Movements: An Introduction*, Oxford: Blackwell Publishing, (1999) 2004, p. 16.

⁵⁵⁵ Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004, P. 7.

⁵⁵⁶ Verta Taylor and Nella Van Dyke. “Get up, Stand up”: Tactical Repertoires of Social Movements’, in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 263.

⁵⁵⁷ Russell Dalton. *Citizen Politics in Western Democracy*, Chatham: Chatham House, 1988, p. 65.

Consequently, social movements' protests can be either positive, creating sympathy with the cause, or negative, threatening to create disorder. Together these definitions illustrate that what is distinct about social movements is that they form informal networks of activists within civil society and are able to build collective identities because of collaborative participation in protest. The issue around which the protest is mobilised is then 'dramatised' to bring it into the consciousness of the wider public and to convince civil society to join the protest. The reason for this is that changes in individual consciousness are paramount in the transformation of political structures.

In Della Porta and Tarrow's opinion the mobilisation of transnational collective actions has emerged around two 'master frames': 'global social justice' and opposition to 'neoliberal globalization'. These frames have brought about the transnational diffusion of beliefs, ideas, identities and repertoires, and the rise of domestic protests for foreign causes and attempts to use international organisations to change domestic governmental policies.⁵⁵⁸ In contrast Joe Bandy and Jackie Smith argue that transnational protest is emerging out of "resistance to economic globalization".⁵⁵⁹ The injustice and inequalities that are inherent in capitalism and neoliberal globalization, however, are also what unite the two 'master frames' of 'global social justice' and opposition to 'neoliberal globalization'. Indeed, social movement theorists assert that transnational protest emerges because of the shifting of sites of political power coupled with developments in communications – two central features of neoliberal corporate hegemony. For example, Tilly identifies changing political contexts and developments in communication as the two factors that have been responsible for the developments and changes in social movements throughout history.⁵⁶⁰ From the 17th century, social movement campaigns have shifted from the

⁵⁵⁸ Donatella Della Porta and Sidney Tarrow (editors). *Transnational Protest and Global Activism: People, Passion and Power*, United States of America: Rowman and Littlefield Publishers, Inc., 2005, p. 7.

⁵⁵⁹ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc., 2005, p. 2.

⁵⁶⁰ Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004, p 3.

local to the national and to the transnational because of these two factors. Tilly explains that prior to the 19th century the exercise of political power and communication systems were local. In contrast as the “19th century brought the centralisation of the state, the development of national and international capitalism and the emergence of new forms of technology, which expanded the scope of communication”, it also caused social movements to adopt new forms of action.⁵⁶¹ Similarly, the 20th century has witnessed the exercise of political power outside of the state in the form of international organizations, the imposing of a transnational mode of production and all facilitated by a transnational communication system. Therefore these developments have combined to forge transnational social movements.

Although these theorists do help to develop greater understanding of factors specific to social movements, the significance of hegemony for civil society is neglected in their analysis. Indeed without acknowledging hegemony, these theorists reinforce the naturalization of “the ‘top down’ process in which the dominant economic forces of capitalism form an intellectual and cultural hegemony which secures the acquiescence in the capitalist order among the bulk of the population”.⁵⁶² Social movements are depicted as merely protesting and campaigning for small alterations to the existing system. They are not explained in “terms of ‘bottom up’ process led by the strata of the population which are disadvantaged and deprived under the capitalist order, who build a counter-hegemony that aspires to acquire sufficient acceptance amongst the population so as to displace the erstwhile hegemonic order”.⁵⁶³ As Cox points out civil society has the potential to transform the existing order, not just reform it to make it more palatable for the human conscience: “civil society is the realm in which existing social order is grounded; and it can also be the realm in which new social

⁵⁶¹ Charles Tilly. ‘Social Movements and National Politics’, in C Bright and S Harding (editors), *State-Making and Social Movements: Essay in History and Theory*, University of Michigan Press, 1984, p. 309.

⁵⁶² Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 100.

⁵⁶³ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 100.

orders can be founded”.⁵⁶⁴ Through a Coxian analysis of transnational social movements it is clear that in the current era of a transnational model of production “any locally based social forces will have to build transnational arrangements for mutual support. The alternative to capitalist globalization will need to build upon productive forces created by capitalism by converting them to the service of society. The counterforce to capitalist globalization will also be global, but it cannot be global all at once”.⁵⁶⁵ Therefore a Coxian analysis draws attention to the building of counter-hegemony that aims to transform the existing *nebuleuse*, but begins within national societies before the creation of a more transnational linked and globally formed counter-hegemonic force.

5.4 Counter-hegemony and the WTO

Literature from activists concurs with Cox’s depiction of the source of the counter-hegemonic force. Naomi Klein asserts that what unites these many national groups is the unleashing of TNCs on a global scale and the liberalisation trade policies by the IMF, World Bank and WTO.⁵⁶⁶ The negative effects of these corporate transnational activities and mode of production, coupled with the developments in communication technology, have been the catalyst for bringing about the transnational cooperation and organisation of social movements. As Klein explains “thanks to Shell Oil and Chevron, human rights activists in Nigeria, democrats in Europe, environmentalists in North America have united in a fight against the unsustainability of the oil industry”.⁵⁶⁷ Indeed it is clear that national social movements and NGOs on different sides of the planet have found that they are experiencing conflicts with the same corporation. Thus transnational linkages have emerged as allies and coalition partners

⁵⁶⁴ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002. p. 97.

⁵⁶⁵ Robert W. Cox. ‘*Global Perestroika* (1992), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 308.

⁵⁶⁶ Naomi Klein. ‘Reclaiming the Commons’ in *New Left Review*, Series II, No 19, 2001, p. 84.

⁵⁶⁷ Naomi Klein. ‘Reclaiming the Commons’ in *New Left Review*, Series II, No 19, 2001, p. 84.

have been found outside of national borders to confront corporate hegemony. Klein captures the nature of transnational linkage between local protesters by describing transnational counter-hegemonic forces as the ‘movement of movements’ or ‘coalition of coalitions’. Activist Kevin Danaher and Jason Mark point out that the 2003 anti-war protests represented the

globalization of conscience, not a globalization of commerce ... trade unions have formed relationships among workers in different countries. Environmentalists have encouraged consumers to use their power to stop rainforest destruction. Human rights groups have brought attention to the plight of indigenous groups threatened by ill-conceived “development” projects. Fair trade organizations have created links between producers in the world’s poor countries and consumers in the wealthier nations. And activists from all these movements have united across continents to challenge the power of institutions such as World Trade Organization, and the International Monetary Fund. The idea is that the community can act as an antidote to commodification.⁵⁶⁸

Neoliberal globalization has then brought a common cause against the influence of corporate interests in governments, and has united the many diverse social movements and NGOs campaigning for environmental protection, human rights, indigenous peoples’ land rights, national and international organised labour, national land reform, social justice and women’s empowerment around the world.⁵⁶⁹

⁵⁶⁸ Kevin Danaher and Jason Mark. *Grassroots Globalization Gets Real*, AlterNet, March 6, 2003.

<http://www.alternet.org/story/15327/>

⁵⁶⁹ John Cavanagh *et al Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc, 2002, p. 11 - 12.

It is also clear from the activists that there is a campaign to significantly alter or transform the current system of world corporate hegemony. David Graeber, a self-proclaimed “active participant” in the protests, writes that the movement has never been comfortable with the term anti-globalization because it is the label given to it by the US media. Rather he asserts that the protesters are a movement against “neoliberalism”, “market fundamentalism” or “corporate globalization”, which claims that there is no alternative to the application of market principles to all aspects of life on earth.⁵⁷⁰ He also dismisses the violence associated with the movement on the grounds that these are isolated flash points instigated by a minority, and not indicative of the movement as a whole. Similarly, Klein asserts that the label ‘anti-globalization movement’ is not useful because very few people understand what globalization means and therefore do not understand the arguments that transnational protest is making. She points out that the ‘movement’ has been given many names, such as “anti-corporate, anti-capitalism, anti-free trade, anti-imperialism”, but none of these precisely captures what is currently developing and emerging.⁵⁷¹

These sentiments are also strongly stated by David Hunter, the former president of the NGO Centre for International Environmental Law (CIEL). He argues, “The label anti-globalization is not even accurate. We don’t call ourselves the anti-globalization movement; we call ourselves the Economic Justice Movement. There is a Global Economic Justice Network and there is also the International Forum on Globalization; it’s not the International Forum Against Globalization”.⁵⁷² Cavanagh *et al* drop the term anti-globalization movement altogether and use the terms “citizen movements”, “alliance of civil society movements” and “global civil society” when referring to the transnational social movement. These writers argue that the demonstrations that have taken place in countries all over the world are “against the institutions and policies of

⁵⁷⁰ David Graeber. ‘For a New Anarchism’, in *New Left Review*, Series II, No 13, 2002, p. 62.

⁵⁷¹ Naomi Klein. ‘Reclaiming the Commons’ in *New Left Review*, Series II, No 19, 2001, p. 81.

⁵⁷² Interview with David Hunter [Former President of the Centre for International Environmental Law] Wednesday 2 June 2004.

corporate globalization”. And what is often neglected is that many demonstrators are in favour of “economic justice for all, international cooperation, vibrant cultural diversity, and healthy sustainable societies that value life more than money”.⁵⁷³ These statements are important because they are drawing attention to the rejection of the ‘anti’ global label, and the assertion of the positive elements of the movement in demanding global justice, cooperation, solidarity and sustainable development. William F. Fisher and Thomas Ponniah, however, advocate understanding the ‘movement of movements’ in terms of identifying a common adversary, but also engaging in “a counter-hegemonic discourse”, which illustrates that the means to solving the challenges that all of the movements face is through the application of radical democracy to overcome hierarchical relation of oppression from the local to the global.⁵⁷⁴ The transnational structures of neoliberal globalization are then responsible for drawing together diverse national social movements and forging transnational counter-hegemonic forces engaged in overthrowing corporate hegemony.

Given that this counter-hegemonic movement rejects neoliberal globalization, it is clear why the activists have targeted the WTO as one of the central institutions of the current world hegemony. For example although the WTO’s Charter justifies the use of multilateral trade rules to reduce government barriers to trade for the realisation of development, employment, equity, prosperity, peace and sustainable development⁵⁷⁵; the Indian activist, Vandana Shiva, stated at Seattle:

The rules set by the secretive WTO violate principles of human rights and ecological survival. They violate rules of justice and sustainability.

⁵⁷³John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc., 2002, p. 2 and 6

⁵⁷⁴William F. Fisher and Thomas Ponniah (editors), *Another World is Possible: Popular Alternatives to Globalization at the World Social Forum*, London: Zed Books Ltd, 2003, p. 12-14.

⁵⁷⁵See Agreement Establishing the World Trade Organization, Preamble, 1994.
http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

They are rules of warfare against the people and the planet. Changing these rules is the most important democratic human rights struggle of our time. It is a matter of survival.⁵⁷⁶

Similar criticisms were crystallised by a 'coalition of coalitions' and presented to the WTO prior to the 1999 Seattle Ministerial Conference. Over 1,000 organisations from 87 countries, which included environmentalists groups, human rights groups and labour organisations, signed a statement opposing the Millennium Round and any further liberalisation policies proposed by the WTO. The statement read "in the past five years, the WTO has contributed to the concentration of wealth in the hands of the rich few; increasing poverty for the majority of the world's population; and unsustainable patterns of production and consumption".⁵⁷⁷ This 'coalition of coalitions' has been responsible for propagating the contradictions of the WTO's hegemony to a wider public. Thereby it has attempted to establish the collective consciousness necessary to mobilise civil society against corporate hegemony.

The reason that trade is linked to the environment is that trade deregulation is argued to place downward pressure on environmental laws as corporations are moving to countries where environmental legislation is weakest –“the race to the bottom”. On the one hand, advocates of trade liberalisation argue that liberalisation will actually cause an increase in environmental legislation because it promotes the economic growth necessary to facilitate the demand for environmental protection. In addition economic growth will allow the transfer of new technology that is more efficient and environmentally friendly.⁵⁷⁸ On the other hand, Eric Neumayer demonstrates that trade liberalisation can have a negative impact on the environment for a number of

⁵⁷⁶ Vandana Shiva, quoted in David Cromwell. *Private Planet: Corporate Plunder and the Fight Back*, Charlbury: Jon Carpenter Publishing, 2001, p. 1.

⁵⁷⁷ A Rowell. 'Faceless in Seattle' in *Guardian*, 2002
<http://www.guardian.co.uk/Archive/Article/0,4273,3909384,00.html>

⁵⁷⁸ See Frits Schlingemann. 'Trade Versus Environment; The Evidence', in Duncan Black (editor), *Trade and Environment: Conflict or Compatibility? Proceedings of the Royal Institute of International Affairs Conference Chatham House*, London, April 1997, London: Royal Institute of International Affairs, 1998, p. 26-27.

reasons.⁵⁷⁹ He illustrates that most developing countries fall short of the economic growth needed to reach the turning point levels required for increased environmental protection. Secondly he states “trade liberalisation that shifts the production of pollution intensive goods towards the low-income, high polluting South increases global pollution as the decrease in the Northern emissions is insufficient at the margins to compensate for the increase in Southern emissions”.⁵⁸⁰ Research conducted by the OECD after the creation of the WTO predicted that international transport would increase by 4-5 per cent because of the increase of trade.⁵⁸¹ Increases in transportation are directly related to noise and environmental degradation. Therefore, neoliberal globalization and corporate hegemony are argued to be responsible for environmental squalor.

The WTO’s dispute settlement process is also criticised for placing trade liberalisation before environmental protection.⁵⁸² Critics argue that the WTO’s judicial system has ruled to allow lower environmental standards to be given status over the more stringent national environmental legislation in trade disputes. This was seen in the disputes over the quality of harmful traded gasoline⁵⁸³ and the trading of shrimp caught in nets that kill endangered sea turtles.⁵⁸⁴ Health has also become a concern due to the WTO’s position on promoting genetically modified foodstuffs before scientific evidence proves that it is safe for human consumption.⁵⁸⁵ This was argued to

⁵⁷⁹ Eric Neumayer. *Greening Trade and Investment: Environmental Protection Without Protectionism*, London: Earthscan Publications, 2001, p. 107.

⁵⁸⁰ Eric Neumayer. *Greening Trade and Investment: Environmental Protection Without Protectionism*, London: Earthscan Publications, 2001, p. 107.

⁵⁸¹ Organization for Economic Cooperation and Development. *Freight and the Environment: Effects of Trade Liberalisation and Transport Sector Reform*, OECD/GD(97)213, Paris, 1997.

⁵⁸² Daniel C. Esty. ‘Comment’, on Robert Keohane and Joseph Nye. ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’ in Rodger B. Porter *et al* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 302, also see Eric Neumayer. *Greening Trade and Investment: Environmental Protection Without Protectionism*, London: Earthscan Publications, 2001, p. 118.

⁵⁸³ World Trade Organization. United States – Standards for Formulated and Conventional Gasoline, Report by Appellate Body, WT/DS2/AB/R, 20 May 1996.

⁵⁸⁴ World Trade Organization. United States – Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Appellate Body, WT/DS58/R, 12 March 2001.

⁵⁸⁵ See Lori Wallace and Patrick Woodall. *Public Citizen. Whose Trade Organization? A Comprehensive Guide to the WTO*, London: New Press, 2004, p. 76-80.

be the case when the WTO's dispute settlement process penalised Europe for its refusal to import US hormone-enhanced beef.⁵⁸⁶ The WTO's agreement on Intellectual Property Rights (TRIPS) has also led to the claim that this agreement was written by and for multinational pharmaceutical organisations, to provide them with twenty-year patents/monopolies for medicine, causing medicine to become too costly to deal with pandemics such as AIDS.⁵⁸⁷ Again it is possible to see the manner in which these counter-hegemonic forces are highlighting the contradictions of corporate hegemony and the policies of the WTO.

Labour movements have also been drawn together due to the development of a flexible transnational production and the pressure that it places on labour rights throughout the world. Transnational production has seen TNC production locate where it receives its highest return, because there are no labour rights and minimal wages, creating sweatshop industries in cities such as Jakarta.⁵⁸⁸ Bill Jordan (the former General Secretary, International Confederation of Free Trade Unions) has argued that deregulation "has put downward pressure on fundamental workers rights...as governments actually reduce workers rights in order to minimise labour costs".⁵⁸⁹ He also points out that the freedom to create trade unions has been denied in Malaysia and Mexico, the ability to strike outlawed in Turkey, and that child labour is still allowed in countries such as Egypt.⁵⁹⁰ In addition, in order to appear competitive and to dam this flow of jobs, developed states have allowed the implementation of short-term contracts and minimal wages and conditions for the majority of the flexible

⁵⁸⁶ World Trade Organization. European Communities – Measures Affecting Meat and Meat Products (Hormones), Report by the Appellate Body, WT/DS26/AB, 16 April 1998.

⁵⁸⁷ Lori Wallace and Patrick Woodall, Public Citizen. *Whose Trade Organization? A Comprehensive Guide to the WTO*, London: New Press, 2004, p. 94.

⁵⁸⁸ Nioma Klein. *No Logo*, London: Flamingo, 2000, p. xiv.

⁵⁸⁹ Bill Jordan. 'Building a WTO that can Contribute Effectively to Economic and Social Development Worldwide', in Gary P. Sampson (editor), *The Role of the World Trade Organization in Global Governance*, New York: United Nations University Press, 2001, p.247.

⁵⁹⁰ Bill Jordan. 'Building a WTO that can Contribute Effectively to Economic and Social Development Worldwide', in Gary P. Sampson (editor), *The Role of the World Trade Organization in Global Governance*, New York: United Nations University Press, 2001, p.247.

workforce.⁵⁹¹ The argument from unions is that trade liberalisation has allowed corporations to move production to parts of the globe where there are little or no labour rights because it is more cost effective. This has the affect of putting pressure on workers in the developed world to accept a reduction in existing labour standards to remain competitive in a global labour market.

The International Labour Organisation (ILO), which represents workers from all over the world, released a press statement before the 1999 Seattle Talks to outline workers' concerns. The Director General, Juan Somavia, stated that the ILO presence at the talks was intended: "to address the social dimension of globalization. We must understand the benefits are not reaching enough people. The backlash is brewing...we believe new directions are necessary to make markets work for everybody...developing countries and working families".⁵⁹² Thea Lea (Assistant Director of International Economics for the American Federation of Labour-Congress of Industrial Organisation (AFL-CIO)), argues that workers, communities and poor people in the North and South are being shut out of the decision-making process at the national and global level. To protect workers rights the AFL-CIO has actively engaged with individuals, unions and governments from all over the world to forge a common position to place pressure for labour rights to be part of the WTO agenda.⁵⁹³ Yet, whilst liberalisation is promoted, members of the WTO have met the discussion of labour rights being integrated into the WTO's agreements with hostility.

Trade agreements then spill over into the environment, health and labour spheres of public life, but these decisions are not open to public scrutiny or participation. Even

⁵⁹¹ Elissa Braunstein and Gerald Epstein. 'Creating International Credit Rules', in Jonathan Michie and John Grieve Smith (editors), *Global Instability: The Political Economy of World Economic Governance*, London: Routledge, 1999, p. 123.

⁵⁹² International Labour Organization, Press Release. *ILO Direct-General to Attend WTO Conference in Seattle*, 18 November 1999.

<http://www.ilo.org/public/english/bureau/inf/pr/1999/39.htm>

⁵⁹³ Interview conducted with Thea Lea [Assistant Director of International Economics] American Federation of Labour-Congress of Industrial Organisation (AFL-CIO), Tuesday June 1 2004.

when specific groups of citizens are directly affected by a dispute in which they are not allowed to participate. Using the example of the Windward Island banana growers, who were prevented from having preferential access to EU markets because of a case of unfair trade brought before the WTO by the US, Tony McGrew explains that these banana growers' livelihood and future was decided without them being able to present their own case to the WTO. Consequently, "those with the most to lose in a dispute had no formal means to contest the process".⁵⁹⁴ Due to such decisions it has been argued that the WTO fails to be accountable to the people that it governs. Jordan states that "until people's social, developmental, and environmental concerns are properly addressed within the WTO system, its lack of credibility can only grow".⁵⁹⁵ Therefore, the legitimacy of the WTO is dependent on shifting away from the secrecy of the organisation, and allowing access to a wider public through transparency and democratic participation in decision-making.

Drawing these criticisms together it is clear that counter-hegemonic forces are confronting the *nebulouse* and the WTO. The WTO's trade liberalisation rules are argued to be increasing inequality within and between states, undermining sustainable development through the damping down of environmental protection, causing a decline in labour standards and putting trade liberalisation and profit before health. Not only this, but the WTO is argued to be secretive and undemocratic. These diverse issues are all related to the current system of neoliberal corporate hegemony and have brought local and national social movements together within counter-hegemonic forces. The reason for this is that diverse groups have found a common cause in resisting and countering hegemony "that transcends nationality and state borders ... [as] organisers around the world are beginning to see their local and national struggle

⁵⁹⁴ Tony McGrew. 'The World Trade Organisation: Technocracy or Banana Republic?', in Annie Taylor and Caroline Thomas (editors), *Global Trade and Global Social Issues*, London: Routledge, 1999, p. 199.

⁵⁹⁵ Bill Jordan. 'Building a WTO that can Contribute Effectively to Economic and Social Development Worldwide', in Gary Sampson (editor), *The Role of the World Trade Organization in Global Governance*, New York: United Nations University Press, 2001, p.247.

– for better funding of public schools, against union busting and casualisation, for family farms, and against the widening gap between rich and poor – through a global lens”.⁵⁹⁶ As Cox points out civil societies are becoming aware that “national policies and practices have been adjusted to the exigencies of the world economy of international production”⁵⁹⁷, and a product of a “globalization from above”.⁵⁹⁸ The ‘pyramid model’ of leaders at the top with the followers at the bottom is argued to have created a ‘democracy deficit’ that is unresponsive to the issues and concerns of the people. Thereby radical democracy or a Coxian form of ‘new multilateralism’ is advocated by some sections of the counter-hegemonic forces to ensure global governance is a reflection of civil society.

5.5 Counter-hegemony: Typology and Continuum

The counter-hegemonic movement, however, is decentralised and non-hierarchical due to the fact that it has “no governing body, official ideology or a charismatic leader with a mandate to speak for the whole”.⁵⁹⁹ Without a centralised structure, Klein acknowledges, there is often “...a cacophony of disjointed slogans, a jumbled laundry list of disparate grievances without clear goals...slogans everywhere, to the point of absurdity”.⁶⁰⁰ As social movement theory argues, the collective nature of protest is essential for building a “common understanding of problems and their causes and shared sets of objectives and commitments to address them”.⁶⁰¹ The parallel summits that have been organised in response to intergovernmental institution meetings of the *nebuleuse* have contributed greatly to the process of building such common perspectives. In 2001, 2002 and 2003, the *World Social Forum* (WSF) in Porto

⁵⁹⁶ Naomi Klein. ‘Reclaiming the Commons’ in *New Left Review*, Series II, No 19, 2001, p. 83.

⁵⁹⁷ Robert W. Cox. *Production, Power, and World Order: Social Forces in the Making of History*, Chichester: Columbia University Press, 1987, p. 253.

⁵⁹⁸ Fred R. Dallmayr. ‘Globalization from Below’ in *International Politics*, Vol. 36, No. 3, 1999, p. 329.

⁵⁹⁹ John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc., 2002, p. 1.

⁶⁰⁰ Naomi Klein. ‘Reclaiming The Commons’ in *New Left Review*, Series II, No 19, 2001, p. 86.

⁶⁰¹ Jackie Smith. ‘Transnational Processes and Movements’, in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 322.

Alegre, Brazil became established as an arena for participation and discussion to build common objectives and commitments to resist neoliberal hegemony and constructive alternative world orders: “Peoples’ movements around the world are working to demonstrate that the path to sustainable development, social and economic justice lies in alternative models for people-centred and self-reliant progress, rather than in neoliberal globalization.⁶⁰² In 2003, 100,000 participants from 156 countries met for workshops, panels and plenary sessions on their personal experiences and different objectives in contesting the injustice of the current *nebuleuse*. In 2004, the WSF met in Mumbai, India. These meetings have also been complimented by a large number of regional social forums. It is here that transnational networks of activists are built, which share information and work on common goals together to challenge the *nebuleuse* – including the WTO.⁶⁰³ Therefore there have been attempts to construct a shared identity, goals and worldview within the counter-hegemonic movement.

Fisher and Ponniah, however, outline the core issues of debate within the movement that emerged from the 2002 World Social Forum.⁶⁰⁴ Primarily there is the classic dilemma of ‘revolution versus reform’ - between the desire of some civil society groups to be a part of the global governance process and the determination of many other groups to protest and resist. Secondly, there is debate between the environmental movement and the unions over the priority of the environment and economic growth. Thirdly, workers in the developing world see the promotion of environmental, labour and human rights by their western counterparts as a form of protectionism, which would deter employers from setting up in the developing world. Fourthly, linked to the promotion of human rights is the claim that western values are universal. Rather than simply reject the idea of universalism and promote cultural

⁶⁰² *World Social Forum*, 20 October 2006.

<http://www.wsfindia.org/?q=node/2>

⁶⁰³ Interview with John Cavanagh [Director of International Policy Studies], Washington D.C. Friday 5th June 2004.

⁶⁰⁴ William F. Fisher and Thomas Ponniah (editors), *Another World is Possible: Popular Alternatives to Globalization at the World Social Forum*, London: Zed Books Ltd, 2003, p. 2.

relativism, writers have proposed that it could be possible to champion global values that promote diversity and also address those groups that are marginalized by the process. Finally the question of how the different issues at the local, the national and the global levels should be addressed brings dispute within the movement. There are three positions here; those that promote the primacy of the local community and the merits of direct democracy; those that want to radically alter the state, which embraces participatory democracy and regulation by civil society; and then there are those that assert that global issues require global solutions and institutions, which are subject to overview by a world parliament and civil society. These writers point out that these disagreements are the “fault lines in the movement for global justice and solidarity”. Somewhat optimistically Cavanagh *et al* argue that at the moment it is sufficient to frame the issues and present the fact that another world is possible, one that is not based on neoliberal corporate hegemony.⁶⁰⁵ The purpose of this section is to develop a four stage continuum that depicts the many different ideological positions within the counter-hegemonic movement, but specifically identifies an alter-globalization movement engaged in creating a Coxian ‘new multilateralism’.

In an attempt to understand the wide number of ideological positions from ‘revolution to reform’ a small number of authors have offered their own typology. David Held and Anthony McGrew offer a continuum that spans three anti-globalization categories: global transformers, state/protectionists and radicals, and allows for a great deal of overlapping of these categories.⁶⁰⁶ Acknowledging Held and McGrew, Yahia Said and Meghnad Desai narrow their field of analysis and refer specifically to the “civil society response to global capitalism” and identify the three ‘anti’ positions of

⁶⁰⁵ John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc., 2002, p. 1.

⁶⁰⁶ David Held and Anthony McGrew. *Globalization/Anti-Globalization*, London: Polity Press and Blackwell publishers, 2003, Chapter 8 (98-115), also see table 8.1 Modes of Global Politics a summery and comparison’, p. 116-117.

“reformers, isolationists and alternatives”.⁶⁰⁷ Duncan Green and Matthew Griffith use the terms statist, alternatives and reformers to distinguish between the groups.⁶⁰⁸ In contrast Kate O’Neill offers a distinction that is based on the activity that each constituency uses to promote its cause. She thereby identifies three strands within the transnational social movement: the peaceful majority (travelling circus), the radical violent wings (the dark side), and the professional NGOs.⁶⁰⁹ Jan Aart Scholte, Robert O’Brien and Marc Williams have argued that civil society groups can be split into three categories: conformers, reformers, and radicals.⁶¹⁰ In more recent years, however, Scholte has employed a more illuminating categorisation, which gets to the heart of the conflicting goals - distinguish between de-globalist and alter-globalist movements.⁶¹¹ In doing so he clearly draws attention to the conflicting objectives of either pulling down the institutions of global governance and advocating a return to local and national decision-making, or reforming/transforming existing global institutions so that they embrace new principles and ideals. What is clear from the alter-globalist agenda is that resistance to the current form of neoliberal globalization and corporate hegemony does not rule out that other forms of global governance are desirable and possible.

By looking at transnational protest in terms of de-globalization and alter-globalization and employing some of the categories of Held and McGrew it allows for the construction of a four stage continuum beginning with the de-globalist, statist/protectionist, reformist and global transformationists at the end. Thereby the alter-globalist positions draws together the reformist and global transformationists

⁶⁰⁷ Yahia Said and Meghnad Desai. ‘Trade and Global Civil Society: The Anti-Capitalist Movement Revisited’, in Mary Kaldor, Helmut Anheier and Marlies Glasius, (editors), *Global Civil Society 2003*, Oxford: Oxford University Press, 2003, p. 66.

⁶⁰⁸ Duncan Green and Matthew Griffith. ‘Globalization and its Discontents’, in *International Affairs*, Vol. 78, No. 1, 2002, p. 55.

⁶⁰⁹ Kate O’Neill. ‘Transnational Protest: States, Circuses, and Conflict at the Frontline of Global Politics’, in *International Studies Review* Vol. 6, 2004, p. 234.

⁶¹⁰ Jan Aart Scholte, Robert O’Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998, p. 9.

⁶¹¹ Jan Aart Scholte. *Globalization: A Critical Introduction* (2nd edition), Basingstoke: Palgrave MacMillan, 2005, p. 41-48.

who advocate a Coxian 'bottom up' new multilateralism. The continuum begins with the 'de-globalists', who reject the state, global governance, global economic and global environmental policies in their entirety. At the other end are the alter-globalists, who want to reform global governance so that it is democratic, transparent, working for all of humanity, and for the health of the planet. The more intense elements of the alter-globalization movement wish to transform the existing global system through socialist or anarchist principle and so move beyond legislation and institutions that ensure that capitalism and existing social structures work more efficiently. This continuum clearly illustrates the many ideological positions in a coherent manner.

Beginning with the de-globalists, it is possible to locate those groups that reject global institutions and global policies and assert the primacy of small, local communities over all other political and economic communities. The position rejects the authority of global governance and of the state. Perhaps the best known advocates of this position are Black Bloc⁶¹², Co-Motion Action⁶¹³, Continental Direct Action Network (CDAN)⁶¹⁴, Protest Net⁶¹⁵, Reclaim the Streets⁶¹⁶, Ruckus Society⁶¹⁷, Ya Basta⁶¹⁸ and Zapatistas of Chiapas State. As the Irish Black Bloc anarchist, John Blair argues, the removal of all hierarchical structures of power is the objective, not the democratisation of global governance and the state.⁶¹⁹ Ward Churchill also asserts the

⁶¹² Black Bloc, 18 October 2006.

<http://www.infoshop.org/blackbloc.html>

⁶¹³ Co-Motion Action, 18 October 2006.

http://www.afj.org/student/student_resources/execsummary.pdf

⁶¹⁴ Continental Direct Action Network (CDAN), 18 October 2006.

<http://www.bapd.org/gcocrk-1.html>

⁶¹⁵ Protest Net, 18 October 2006.

<http://protest.net/links.html>

⁶¹⁶ Reclaim the Streets, 18 October 2006.

<http://rts.gn.apc.org/ideas.htm>

⁶¹⁷ Ruckus Society, 18 October 2006.

<http://www.ruckus.org/article.php?id=49>

⁶¹⁸ Ya Basta, 18 October 2006.

<http://www.ezln.org/>

⁶¹⁹ John Blair. 'Solidarity Bulletin interview with John Blair', in *Syndicalist Solidarity Network*, Wednesday 8 April 2002.

http://flag.blackened.net/revolt/ssn/belbull/genoa_interview.html

necessity of direct action and the futility of peaceful protest because it has brought demonstrations so near to “the realm of symbolic/ritual protest as to render themselves self-nullifying”. Commenting on Seattle, Churchill argues the protesters were coopted by the authorities: “notwithstanding much vociferous rhetoric denouncing the spiralling human and environmental costs attending the American-led drive to economic globalization, droves of “responsible” protesters served literally as surrogates for the police, forming themselves into cordons to protect major corporate facilities”.⁶²⁰ For some commentators, such as Graeber it is only because of the violence that the media was compelled to report on the protests at Seattle.⁶²¹ Therefore, for many of these de-globalists, it is only through rejection of corporations, global governance and the state that another world is possible. Although the end of the current form of global governance is distinctive about these groups, it should be noted that even *Black Bloc* envisages that a global society based on anarchist principles is possible and desirable.⁶²²

Moving along the continuum from these de-globalists are the statist groups. Here we see the demands for the strengthening of the nation-state to empower it to protect the identity, religion or ideology of the national populations from global forces. Their political argument rests on the primacy of nation states in all international linkages. The advocates of protectionism want to preserve and even enhance the capacity of the nation state to govern. Such a position breeds hostility or rejection to global linkages and international organisations and foreign commercial interests. In its most forceful form we encounter nationalist characters, such as Patrick Buchanan, Pim Fortuyn, Pauline Hanson, Vladimir Zhirinovskiy, and Jean-Marie Le Pen. Terrorists groups could also be added, who use “inequalities of power, bullying and fanatical violent

⁶²⁰ Ward Churchill. *On the Justice of Roosting Chickens: Reflections on the Consequence of U.S. Imperial Arrogance and Criminality*, Edinburgh: AK Press, 2003, p. 15.

⁶²¹ David Graeber. ‘Anarchy in the USA’, in *In These Times*, January 10, 2000.

<http://www.inthesetimes.com/issue/24/03/graeber2403.html>

⁶²² Black Bloc, 18 October 2006.

<http://www.infoshop.org/blackbloc.html>

attempts to de-globalise” for nationalist ends”.⁶²³ Alternatively, the Tiger Economies of East Asia, which promote government inspired policies are a good example of states still engaged with the global institutions, but not so that they restrict their national policy autonomy. This is a position that many unions take, such as American Federation of Labour-Congress of Industrial Organisation (AFL-CIO) and the International Conference of Free Trade Unions. Via Campesina (Canadian, Honduran, Brazilian, Spanish, Polish and Filipino activists) could also be included here too. This is a coalition of activists campaigning for the primacy of food as the sovereignty of every country. Therefore, within the statist/protectionist’s position there is a shift from disengagement and the primacy of the state to different degrees of engagement with global institutions along this continuum. Undoubtedly, this position does not transform the existing structures of hierarchical power to generate a new multilateralism, but maintains the old multilateralism.

Working from this statist/protectionist position, which still engages in limited interaction with global institutions, it is possible to develop a reformist position that advocates different degrees of engagement and promotion of global governance along the continuum. At the end of the continuum are those that advocate a complete and radical reform of existing global institutions, which verge on sponsoring changes of revolutionary proportions. The global transformer’s position of Held and McGrew ultimately must fall into this category. The global transformer’s position begins with a “cosmopolitan political project”, which requires democratic arrangements or basic democratic law to link cities and subnational regions to nation-states, supranational regions and wider global networks.⁶²⁴ Through such democratic arrangements global governance and global policies can be better regulated and shaped to create a more desirable redistribution of wealth, rights and duties than currently exists. In many

⁶²³ John Keane. *Global Civil Society*, Cambridge: Cambridge University Press, 2003, p. 145.

⁶²⁴ David Held and Anthony McGrew. *Globalization/Anti-Globalization*, London: Polity Press and Blackwell publishers, 2003, p. 108.

ways this perspective is much closer to the radical changes required for the realisation of the 'new multilateralism' that is proposed by Cox because it advocates that the institutions of global governance open themselves up to participation by civil society groups.

In practical terms, Held and McGrew assert that the global transformer's position advocates the reforming of existing international institutions. A reformed United Nations (UN) is the preferred centrepiece of global governance. This reforming of the UN would involve the elimination of the veto system and the creation of a second chamber so that global civil society could be represented. Reform of both the IMF and WTO is also called for so that they are subordinate to the new UN role as the primary institution for addressing global poverty, welfare and related issues. The creation of public assemblies is also advocated at the global, regional and local level. Transparency and freedom of information would also be brought to bear on intergovernmental organisations, opening them to public scrutiny. Another goal would be an independent transnational military, financed by a global tax system, to ensure peace. Together it is argued that these reforms would foster democracy and social justice across borders.

The *International Forum on Globalization* argues for a similar approach to reform of the current *nebuleuse*. Cavanagh *et al* in fact outline a project that mirrors many of the reforms advocated by Held and McGrew with the exception of placing more emphasis on national autonomy than the cosmopolitan position.⁶²⁵ However, in doing so Cavanagh *et al* take great care to emphasise that many parts of the transnational movement do not wish to pull down all the institutions of global governance, but that the primary goal is the democratisation of these global institutions so that they are

⁶²⁵ John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc, 2002, p. 228-242.

accountable to civil societies around the world.⁶²⁶ Both the reformist position of Cavanagh *et al* and Held and McGrew's global transformation are useful because they illustrate the area of a distinct alter-globalization movement and agenda. For example both reject neoliberal corporate hegemony, but between Cavanagh *et al* (more national autonomy within global governance) and Held and McGrew (cosmopolitan global democratic governance) there are a variety of positions asserting different degrees of reform of the institutions and policies of global governance, which reflect a Coxian 'new multilateralism'. These reforms emphasise the primacy of democratisation, justice, equality, gender, peace and the inclusion of civil society in the institutions of global decision-making. Academics, activists, social movements and NGOs that advocate such reforms, therefore, do not fall under the heading of 'anti-globalization', but 'alter-globalization' because it encompasses all those that believe in reforming the institutions of the *nebuleuse* to make them more democratic so that the policies of global governance work for humanity and the health of the planet.

The principles embodied within the term 'alter-globalization' movement outlined above do appear to reflect the objectives of a wide range, but certainly not all, of movements within the counter-hegemonic forces. Bandy and Smith illustrate that it has proven impossible to collate data on all transnational linkages amongst social forces.⁶²⁷ In an attempt to establish greater knowledge of this transnational social movement, these authors have employed the term Transnational Social Movement Organisations (TSMOs) to denote those transnational social movements that are more formally organised and appear in the *Yearbook of International Associations*. In doing so current research conducted by Bandy and Smith illustrates that the number of TSMOs have increased from 183 in 1973, to 959 in 2000. Although these TSMOs are

⁶²⁶ John Cavanagh *et al* *Alternatives to Economic Globalization: A Better World is Possible. A Report from the International Forum on Globalization*, San Francisco: Berrett-Koehler Publishers, Inc, 2002, p. 241.

⁶²⁷ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, p. 6.

primarily organised around the protection of human rights (26%), the environment (17%), peace (10%), women's rights (9%), and development (10%), there are a growing number of TSMOs that bring all of these issues together under the one umbrella, such as global justice/peace/environment (11%), and self-determination/ethnic unity (2%).⁶²⁸ From this research it is clear that there is a demand for an alternative form of global governance, which respects marginalized groups, the environment and peace.

Alter-globalization principles are also evident in NGOs and social movements - not all demand the radical transformation of the current world order, but they do demand the inclusion of civil society groups in the decision-making of international institutions. This is clear from the World Development Movement's Trade Justice Movement, which campaigns for "fundamental changes to the unjust rules and institutions governing international trade, so that trade is made to work for all".⁶²⁹ The Global Justice Movement "seeks to present well thought out alternatives to traditional globalization efforts."⁶³⁰ ATTAC (International Movement for Democratic Control of Financial Markets and their Institutions) advocates reforming international financial institutions so that a Tobin Tax is applied to economic transactions to pay for the social costs of neoliberal globalization.⁶³¹ The US coalition, International Centre for Policy Studies (ICPS) also calls for the reform of the UN before it takes a central role in global economic and social affairs. One World Trust is engaged in promoting "education and research into the changes required within global organisations in order

⁶²⁸ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, p. 6, also see John Clark. *Globalizing Civic Engagement: Civil Society and Transnational Action*, James and James Ltd, 2003, p. 6.

⁶²⁹ Trade Justice Movement, 18 October 2006.

<http://www.tjm.org.uk/about.shtml>

⁶³⁰ The Global Justice Movement, 18 October 2006.

http://www.globaljusticemovement.org/about_us.htm

⁶³¹ ATTAC (International Movement for Democratic Control of Financial Markets and their Institutions), 18 October, 2006.

<http://www.attac.org/indexen/>

to achieve the eradication of poverty, injustice and war.”⁶³² International Centre for Trade and Sustainable Development (ICTSD) has sought to provide information for the purpose of “empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research, and capacity building, to influence the international trade system such that it advances the goal of sustainable development”.⁶³³ World Campaign for in-depth Reform of the System of International Institutions has been engaged in coordinating support for “democratic governance of globalization to contribute to resolving the grave problems and challenges that face our world”.⁶³⁴ One could also include Corporate Europe Observatory (CEO),⁶³⁵ CorpWatch,⁶³⁶ Global Exchange,⁶³⁷ The Institute for Agriculture and Trade Policy,⁶³⁸ and Our World is not for Sale (OWINFS).⁶³⁹ From the developing world alter-globalization movements include Focus on the Global South,⁶⁴⁰ South Asian Civil Society Network on International Trade Issues (SACSNITI),⁶⁴¹ The Development

⁶³² One World Trust, 18 October 2006.

<http://www.oneworldtrust.org/?display=about>

⁶³³ International Centre for Trade and Sustainable Development (ICTSD), 18 October 2006.

<http://www.ictsd.org/about/index.htm>

⁶³⁴ World Campaign for in-depth Reform of the System of International Institutions, 18 October 2006.

<http://www.reformcampaign.net/index.php?lg=eng>

⁶³⁵ Corporate Europe Observatory. States that it is “research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups”.

<http://www.corporateeurope.org/index.html>

⁶³⁶ Corpwatch. States that it “investigates and exposes corporate violations of human rights, environmental crimes, fraud and corruption around the world. We work to foster global justice, independent media activism and democratic control over corporations”.

<http://www.corpwatch.org/article.php?id=11314>

⁶³⁷ Global Exchange States that it is. “a membership-based international human rights organization dedicated to promoting social, economic and environmental justice around the world.”

<http://www.globalexchange.org/>

⁶³⁸ The Institute for Agriculture and Trade Policy “works to democratize the multilateral system of policy-making.”

<http://www.iatp.org/iatp/about.cfm>

⁶³⁹ Our World is not for Sale. States that it “is a loose grouping of organizations, activists and social movements worldwide fighting the current model of corporate globalization embodied in global trading system. OWINFS is committed to a sustainable, socially just, democratic and accountable multilateral trading system”.

<http://www.ourworldisnotforsale.org/index.asp>

⁶⁴⁰ Focus on the Global South. 18 October 2006.

<http://www.focusweb.org/who-we-are.html>

⁶⁴¹ South Asian Civil Society Network on International Trade Issues. “Created in 1983, it has five programme centres and advocacy centre in India, Africa, and the UK”.

<http://www.cuts-international.org/sacsniti.htm>

GAP (The Development Group for Alternative Policies),⁶⁴² and Third World Network (TWN).⁶⁴³

This is not in any way intended to be an exhaustive list of all the social movements advocating an alter-globalization agenda as radical as Cox would demand; rather it is an attempt to illustrate that social movements pursuing an alter-globalist agenda work together in rejecting corporate hegemony and advocating reform of corporate hegemony. All of these groups take issue with the creation of the WTO, and campaigns have emerged to prevent the application and further negotiations of the General Agreement on Trade in Services (GATS).⁶⁴⁴ The alter-globalization movement is also well equipped with its own ‘organic intellectuals’. For example the Transnational Institute, a worldwide fellowship of committed scholar-activists provides “intellectual support to those movements concerned to steer the world in a democratic, equitable and environmentally sustainable direction”⁶⁴⁵ These ‘organic intellectuals’ include Walden Bello, Susan George, John Cavanagh, Mariano Aguirre, Marcos Arruda, Phyllis Bennis, Praful Bidwai, Kees Biekart, Brid Brennan, Daniel Chavez, Jochen Hippler, Martin Jelsma, Boris Kagarlitsky, Dot Keet, Kamil Mahdi, Joel Rocamora, David Sogge, Myriam Vander Stichele, Achin Vanaik, Howard Wachtel, and Hilary Wainwright.⁶⁴⁶ OpenDemocracy has also been responsible for providing ‘organic intellectuals’ with an alter-globalization perspective with a global

⁶⁴²The Development GAP (The Development Group for Alternative Policies), 18 October 2006.

http://www.developmentgap.org/mission%26principles/mission_principles.html

⁶⁴³ Third World Network (TWN). Mission statement: “Research and Advocacy on issues of social and economic policy that advances the needs and interests of peoples of African and other third world countries (especially marginalized social groups), a fair distribution of world’s resources, and forms of development which are sustainable and fulfil human needs”.

<http://twnafrica.org/twnmission.asp>

⁶⁴⁴ See “GATS Free Zones” campaign (The rejection of General Agreement on Trade in Services)

<http://www.gats.nl/petitie.shtml>

GATSwatch. States that GATS negotiations “radically restructure the role of government regarding public access to essential social services world wide to the detriment of the public interest and democracy itself.”

<http://www.gatswatch.org/campaign.html>

Polaris Institute "Stop the GATS Attack" Number of Organizations = 598 Number of Countries = 64

http://www.polarisinstitute.org/polaris_project/public_service/gats/english_sign_on.htm

⁶⁴⁵ Transnational Institute. 20 October 2006.

<http://www.tni.org/index.htm>

⁶⁴⁶ Transnational Institute. TNI Fellows

<http://www.tni.org/index.htm>

on-line forum to propagate criticism of the existing system and possible alternatives to the current world order.⁶⁴⁷ Many of these ‘organic intellectuals’ have spoken at the WSF and at the Regional Social Forums to advocate resistance to corporate hegemony and alternative world orders.

Undoubtedly, this continuum of ideological positions outlined here illustrates that a key feature of the counter-hegemonic forces is diversity. Such diversity, however, is argued not to be confused with incoherence and contradiction; rather it is claimed by a number of activists that such diversity demonstrates the reality of real democracy. Hardt and Negri celebrate this “proliferation of differences” and point out that the acceptance of difference and diversity of identity is the cornerstone of a rejection of the forced homogenisation of humanity through neoliberalism economics.⁶⁴⁸ Together these issues have brought diverse social movements together at the global level, but based on principles of decentralisation and non-hierarchical consensus democracy. Graebar further argues that the reason for this is that “this is a movement about reinventing democracy ... It is about creating and enacting horizontal networks instead of top-down structures like states”.⁶⁴⁹ Boaventura de Sousa Santos articulates what is entailed in this radical democracy. He asserts that the diversity found at the WSF is a result of the many movements being “embedded in diverse cultures and knowledges”. He therefore calls for an engagement in “the exercise of translation” through mutual recognition, dialogue, and debate “to identify and reinforce what is common in the diversity of counter-hegemonic forces”.⁶⁵⁰ This process of translation amongst the different knowledges of groups and cultures starts from acceptance that all are

⁶⁴⁷ OpenDemocracy. States that it is “committed to human rights and democracy. We aim to ensure that marginalized views and voices are heard. We believe facilitating argument and understanding across geographical boundaries is vital to preventing injustice”.

<http://www.opendemocracy.net/about/index.jsp>

⁶⁴⁸ Michael Hardt And Antonio Negri. ‘Forward’, in William F. Fisher and Thomas Ponniah (editors), *Another World is Possible: Popular Alternatives to Globalization at the World Social Forum*, London: Zed Books Ltd, 2003, p. XVII

⁶⁴⁹ David Graebar. ‘For a New Anarchism’, in *New Left Review*, Series II, No 13, 2002, p. 70.

⁶⁵⁰ Boaventura de Sousa Santos. ‘The Future of the World Social Forum’, in *Development*, Vol. 48, No. 2, 2005, p. 15-22.

incomplete and, therefore, can “be enriched by dialogue and confrontation with other cultures”.⁶⁵¹ Thereby for many groups advocating an alter-globalization agenda common principles and policies can be agreed and then realised through radical democratic principles or a ‘bottom up’, ‘new multilateralism’ as defined by Cox.⁶⁵²

5.6 The Reaction of Corporate Hegemony: Distortion

At the core of world hegemony are the transnational networks of state elites, corporate interests and finance, which build consensus on the policies of global capitalism within international organizations and are supported by the international media - the *nebuleuse*.⁶⁵³ Since the WTO is a central institution of the current *nebuleuse*, which advances and legitimises corporate hegemony, it should be possible to detect the cooption of counter-hegemonic ideas and concepts by this institution. The purpose of the cooption of the language is to enhance the legitimacy of the WTO and neoliberalism without making significant change. In this section it will be argued that there is evidence of the distortion of the alter-globalization movement’s objectives by the media and political elites. In doing so political elites have been able to deflect criticisms and gloss over the contradiction of corporate hegemony to maintain the support and consent of civil society. Thereby ‘organic intellectuals’ from the alter-globalization movement have found it difficult to undermine the coherence of corporate hegemony in the consciousness of civil society because their arguments and policies are distorted.

The organisation of mass demonstrations on the street has been the most visible of all the strategies employed by the alter-globalization movement to gain media attention

⁶⁵¹ Boaventura de Sousa Santos. ‘The Future of the World Social Forum’, in *Development*, Vol. 48, No. 2, 2005, p. 15-22.

⁶⁵² Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

⁶⁵³ Robert W. Cox. ‘Global Perestroika’ (1992), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296.

and influence public opinion, thereby placing pressure on state elites to respond to public opinion and reform the WTO. The raising of public consciousness reflects Tilly's assessment of the purpose of social movements in publicising the cause in terms of worthiness, unity, numbers, and commitment" (WUNC).⁶⁵⁴ The existence of the WTO, the closed nature of its negotiations, and the impact of trade policies in the developing world have been brought to the public's attention through street protests. Gaining access to a wider public, however, relies upon access to the media, but this has its difficulties when the media is a powerful tool of hegemony. This was clearly illustrated at Seattle when the violence and not the politics of the demonstrators became the story. The exercise of violence is 'newsworthy' and, as Graeber points out, violence did catch the media's attention:

It's hard to deny that the Black Bloc in Seattle got a point across. All along, they were arguing that organisations like the WTO are yet another addition to a growing apparatus of global rule, in which the powers of the state hardly even pretend to respond to the needs of local communities, and are simply put at the service of multinational corporations. How could mere words bring this home as vividly as the spectacle of the mayor of Seattle declaring martial law in order to protect Starbucks?⁶⁵⁵

This simple and powerful insight is, however, lost when the media portrays the violence as the main point of protest, and political elites merely engage in condemning the violence and are able to avoid answering the political questions raised by the protesters.

⁶⁵⁴ Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004, P .7.

⁶⁵⁵ David Graeber. 'Anarchy in the USA', in *In These Times*, January 10, 2000.

<http://www.inthesetimes.com/issue/24/03/graeber2403.html>

This is not to claim that Seattle was ineffective in raising public consciousness, but only that political messages have been distorted by the media, corporations and especially by political elites. Since Seattle books, such as *Fast Food Nation: The Dark Side of the All-American Meal*, *Don't Eat This Book: Fast Food and the Supersizing of America*, *No Logo*, *Stupid White Men*, *Weapons of Mass Deception* and films, such as *Bowling for Columbine*, *Fahrenheit 9-11*, *Enron: The Smartest Guys in the Room*, *Wal*Mart - The High Cost Of Low Prices*, *The Corporation*, *Outfoxed* - have all become part of popular culture. Each of these has illustrated the manner in which transnational production and corporate hegemony functions through an ideology perpetuated by the media to justify the current world order and undermines the quality of life of people throughout the world. Multinational coffee shops⁶⁵⁶ and corporations⁶⁵⁷ have begun advertising their 'fair trade' credentials to what they perceive to be a critical public and consumer.⁶⁵⁸ These developments, however, are not transforming corporate hegemony. Although the contradictions of neoliberalism are more widely propagated there is great difficulty in identifying what the alternatives could be. This is especially so when political elites continue to assert that 'There Is No Alternative' to neoliberal globalization (see below). It has to be acknowledged that the resources available to the alter-globalization movement to illustrate the contradictions of corporate hegemony and the *nebuleuse* are limited. Indeed they are dwarfed by the material resources at the disposal of corporate hegemony to project their perspective of the world to civil societies throughout the world by means of the media and press releases from the *nebuleuse*.

⁶⁵⁶ For example see Starbucks. Good Coffee – Good Doing, September 2005.

<http://www.starbucks.com/aboutus/origins.asp>

Costa Coffee. Costa Coffee Launches its Own Blend of Fairly Traded Coffee, September 2005.

<http://www.costa.co.uk/coffee/fairtrade.aspx>

⁶⁵⁷ For example see NIKE. Corporate Social Responsibility Report, September 2005.

<http://www.nike.com/nikebiz/nikebiz.jhtml?page=29&iditem=fy04>

GAP Inc. Social Responsibility, September 2005.

<http://www.gapinc.com/public/SocialResponsibility/socialres.shtml>

⁶⁵⁸ In early 2003, Oxfam International launched a "Fair trade Coffee" campaign against Kraft Foods and Procter and Gamble, which was able to mobilise public opinion against the low prices they pay to coffee growers in Africa, Latin America and Asia, 3 May 2003.

<http://www.oxfam.org.uk/press/releases/progreso130504.htm>

For example with a few exceptions, from Seattle to Cancun the reaction of the media to the emergence of counter-hegemonic protest has been to focus on the outbreaks of violence, the destruction of private property, revolting adolescence and ill-informed arguments. After the protests in Prague against the IMF and World Bank, The UK's *The Daily Telegraph* casts the activists as "highly educated, bourgeois offspring rejecting the ways and wealth of their parents' generation".⁶⁵⁹ Diane Coyle writing for the *Observer* stated that the protesters' arguments against neoliberal globalization did not bode well with the facts and "Despite being so heavily criticised by the anti-globalization protestors, with a one-member, one-vote rule, the WTO is the most democratic of the international institutions".⁶⁶⁰ On the run-up to the Quebec protests Thomas Freedman wrote in the *New York Times* that the "anti-globalization movement is largely the well intentioned but ill informed being led around by the ill intentioned and well informed (protectionist unions and anarchists), who do not serve Africa's interests".⁶⁶¹

There have been exceptions to this negative publicity. For example a significant number of the press have made a distinction between the peaceful and violent protesters making sure that they depict that the violence is a result of a small minority of people. For example Paul Reynolds of the *BBC* states

But among the crowd, with its varied and colourful banners, were some black figures in anoraks and face masks ... So the masked figures roamed the downtown area, blocking traffic, shouting their slogans, spraying walls and

⁶⁵⁹ Quoted in Katharine Viner. 'Instead of Vilifying the Prague Protesters, We Could Learn From Them', *Guardian Newspaper*, Friday, 29 September 2000.
<http://www.guardian.co.uk/comment/story/0,,374906,00.html>

⁶⁶⁰ Diane Coyle. 'What the Protestors Get Wrong', *Observer Newspaper*, Sunday, 21 July 2002.
<http://www.guardian.co.uk/globalization/story/0,,759344,00.html>

⁶⁶¹ Thomas Freedman. 'Foreign Affairs, Protesting for Whom?' *New York Times Newspaper*, 24 April 2001.
<http://www.nytimes.com/2001/04/24/opinion/24FRIE.html?ex=1160625600&end=400a96eb00d56af8&dei=5070>

windows with their graffiti and trying - and in some cases succeeding - in smashing windows of the elegant shops which are in the heart of Seattle.⁶⁶²

James Harding of the *Financial Times* acknowledged the significance of neoliberal globalization in motivating transnational protest after spending time interviewing the activists. This caused him to write that the movement is not “strictly speaking ‘anti-globalization’”. The vast majority of activists are pro-globalization ... Instead this is counter-capitalism. The new wave of political activism has coalesced around the simple idea that capitalism has gone too far”.⁶⁶³ The *BBC* also drew attention to the fact that after the violence and shooting at Genoa “All of the 93 people they arrested have been released without charge, and instead magistrates have now placed several of the officers under investigation for acts of brutality ... Of the 93 arrested, 62 needed hospital treatment.”⁶⁶⁴ Thereby the media has debated the coherence of the different arguments coming from the protesters, especially the rejection of neoliberal globalization, but it has also focused on the outbreaks of violence. Consequently, violence, uninformed or extremist ideological politics have become synonymous with transnational protests and the political arguments can seem to be lost.

It is important to acknowledge that the *nebuleuse* have not just ignored the protesters, they have condemned them, coopted the language and blurred the distinction between who is responsible for and who is campaigning against neoliberal globalization and transnational production. With the exception of the campaign against the invasion of Iraq, the term ‘anti-globalization’ has been used by corporate hegemony to describe the protesters. It cannot be denied that the term ‘anti-globalization’ is riddled with negative connotations. Indeed the hyphenated joining of these two words establishes

⁶⁶² Paul Reynolds. ‘Eyewitness: The Battle of Seattle’, in *BBC News*, Thursday, 2 December 1999. <http://news.bbc.co.uk/1/hi/world/americas/547581.stm>

⁶⁶³ James Harding. ‘The Anti-Globalization Movement’, in *Financial Times*, 15 October 2001. <http://www.globalpolicy.org/globaliz/define/2910.htm>

⁶⁶⁴ Bill Hayton. ‘Genoa one year on’, in *BBC News*, Monday, 22 July 2002. <http://news.bbc.co.uk/2/hi/europe/2144804.stm>

the assumption that there is unity within the movement against anything that is global. This label has played well in the hands of the political elites in their bid to discredit and distort the political message from the ‘organic intellectuals’ of the alter-globalization movement. For example, after the Prague demonstrations UK Government Minister Clare Short stated that the protesters were "today's Luddites ... their call to halt historical change and tear down our international institutions offers no solution".⁶⁶⁵ Philippe Legrain (Former Assistant to the WTO's Secretary General) attempts to convince those not involved in demonstrating (the “millions of people who make up the silent majority”) that the people at the protests are “globaphobes” motivated by the extreme ideas of either communists or the far right of Le Penn.⁶⁶⁶ This depiction of extremist politics is then married to the violent images in which “tens of thousands of demonstrators fight running battles...[which cause] the police to respond with water cannon, tear gas and clubs”.⁶⁶⁷ Michael Moore (former Secretary General of the WTO) also uses this imagery, but to claim that the protesters threaten civilised values of freedom, democracy and justice: “we were corralled behind wire barricades, I found myself wondering how such fine, noble, principled expression of universal values and rights as internationalism and solidarity became so denigrated”.⁶⁶⁸ John Macklethwait and Adrian Wooldridge go further and place the anti-globalization movement in the same category as terrorist organisations and leaders, such as Osama bin Laden.⁶⁶⁹

British Prime Minister Tony Blair has also distorted the political motives and arguments of the demonstrators. After the Gothenburg demonstrations he stated:

⁶⁶⁵ Quoted in Katharine Viner. ‘Instead of Vilifying the Prague Protesters, We Could Learn From Them’, in *Guardian Newspaper*, Friday, 29 September 2000.

<http://www.guardian.co.uk/comment/story/0,,374906,00.html>

⁶⁶⁶ Philippe Legrain. *Open World: The Truth About Globalization*, London: Abacus, 2002, p. 17-18.

⁶⁶⁷ Philippe Legrain. *Open World: The Truth About Globalization*, London: Abacus, 2002, p. 16.

⁶⁶⁸ Michael Moore. *A World Without Walls: Freedom, Development, Free Trade and Global Governance*, Cambridge: Cambridge University Press, 2003, p. 8.

⁶⁶⁹ John Macklethwait and Adrian Wooldridge. *A Future Perfect: The Challenge and Hidden Promise of Globalization*, London; William Heinemann, 2000, p. 277.

these protests began at Seattle...this is simply a form of anarchism directed at institutions of a collective nature...and we shouldn't dignify it in any shape or form by saying that this is some reasoned political argument... Insofar as they have an argument, it is an argument that is completely and totally wrong and misguided and we should challenge it at every level.⁶⁷⁰

Given this strong condemnation it is little wonder that the term 'anti-globalization' has been responsible for causing a rejection of the alter-globalization movement or the counter-hegemonic movement as a whole in some quarters of civil society. Political elites have been successful in making protest synonymous with a movement that is violent, anti-global, and guided by extreme left and right politics. The alternatives that the protesters propose are deemed to be irrational, incoherent, contradictory and a threat to freedom, democracy and justice. Depicting the protesters in this way, Blair, Legrain, and Moore are attempting to convince the 'silent majority' or the mass of civil society consenting to hegemony to dismiss the protesters before they are aware of the issues that they raise. At the same time each of these political elites defends and reinforces the ideology of neoliberal globalization on the grounds that "There Is No Alternative" - the TINA effect. Therefore 'organic intellectuals', such as those from the Transnational Institute have had difficulty in raising their voices above these political elites to not only bring the contradictions of neoliberalism in the consciousness of civil society, but also to believe "Another World is Possible".

5.7 Hegemonic Cooption

The persistence of counter-hegemonic forces to demonstrate the contradiction of corporate hegemony has also caused a policy of *transformismo* to be employed as the

⁶⁷⁰Tony Blair (Prime Minister). *Edited Transcript of a Press Conference by the Prime Minister, Gothenburg, Sweden*, Foreign and Commonwealth News Website, Saturday, 16 June 2001.
<http://www.fco.gov.uk/news/newstext.asp?5064#Top>

rhetoric of the *nebuleuse* has been significantly transformed. Corporate hegemonic elites have attempted to present themselves as the real champions of global justice and even supporters of the alter-globalization movement's demands. In addition many of the policy demands used by the protesters during the street protests ('fair trade', global justice, labour and human rights, enhanced transparency and democracy within international organization, and sustainable development) have now become the buzzwords embedded in press releases and the political rhetoric of the *nebuleuse*. This strategy has been employed by the US administration. For example the US has been one of the key architects and enforcers of neoliberal globalization and the current *nebuleuse* – including the WTO. Yet, at Seattle, the US President Bill Clinton distanced himself from this fact by claiming that he sympathised and shared the views of the peaceful protesters on the streets. Clinton even used the language and arguments of the protesters declaring that the WTO had to embrace environmental concerns, public inclusiveness and transparency in order to remain legitimate.⁶⁷¹ Similarly UK PM Blair has blurred the distinction between himself and the corporate hegemony that he has enhanced. For example Blair has stated his commitment to the fair trade demands of the alter-globalization movement and even declaring in a press release to the *Trade Justice Movement* "I urge you to keep up pressure on governments, and can assure you that we're building alliances across the world on this issue".⁶⁷² The UK's opposition party was also seen to uphold the ideology of the hegemony as the Conservative Party's Shadow International Development Secretary Caroline Spelman told MPs in 2002: "Trade could be the greatest force for poverty reduction in history."⁶⁷³ By embracing the language and demands of the protesters it is difficult for civil society to identify who is responsible for the current world order.

⁶⁷¹ Statement of the President of the United States, High Level Symposium on Trade and Environment, Geneva, 15 March 1999.

⁶⁷² BBC News. *Trade Lobby Gets Fair Hearing*, Wednesday, 19 June 2002.

http://news.bbc.co.uk/1/hi/uk_politics/2053120.stm

⁶⁷³ BBC News. *Trade lobby gets fair hearing*, Wednesday, 19 June 2002.

http://news.bbc.co.uk/1/hi/uk_politics/2053120.stm

Perhaps one of the most notable examples of the *trasformismo* after Seattle has been the shift in the vocabulary of political elites from a demand for “free trade”, to a call for “free and fair trade” as they coopt the language of the protesters. In 2001, the UK’s Trade and Development Minister, Patricia Hewitt, argued that the WTO only promoted ‘free and fair trade’ in order to elevate poverty, promote peace and prosperity, raise environment, health and labour standards, and worked for and with the poorest nations of the world.⁶⁷⁴ Further evidence of the shift in vocabulary is evident in the contrast between the speeches of US President G. W. Bush as he came to power in 2001 and reinforced the ideology of hegemony with the benefits from ‘open trade’: “Along with economic progress, open trade also helps build democracies and spreads freedom as it reinforces the spirit of liberty by spurring economic and legal reforms. When we promote open trade, we promote both economic and political freedom. Societies that open to commerce will one day open to liberty”.⁶⁷⁵ By 2003, US President Bush was also seen to be advancing the merits of ‘free and fair trade’ for domestic workers: “You hear a lot of talk about trade," he said. "You're living in the trade world, and if we do a good job by making sure trade is free and fair, people are going to find work in America”.⁶⁷⁶ In 2004 Bush expressed the universal benefits to be attained from ‘free and fair trade’ to an Australian audience: “One of the great economic achievements since the end of the Cold War has been the success of free and fair trade in raising up the world's poor, bringing hope to the world's hopeless, promoting freedom among the world's oppressed, and creating jobs at home and abroad.”⁶⁷⁷ This argument for ‘free and fair’ trade was restated in 2005 as Bush told the US public “Free and fair trade creates jobs, raises living standards, and lowers

⁶⁷⁴ Patricia Hewitt (Rt. Hon). *Free and Fair Trade for Peace and Prosperity*, *Speech to the Foreign Press Association*, 6 November 2001.

<http://www.dti.gov.uk/ministers/archived/hewitt071101.html>

⁶⁷⁵ George. W. Bush (US President). *A Proclamation By the President of the United States of America*, The White House President George W. Bush, May 18, 2001.

<http://www.whitehouse.gov/news/releases/2001/05/20010518-9.html>

⁶⁷⁶ CNN News. *Bush Touts Economy, 'Free and Fair' Trade*, 10 November 2003.

<http://www.cnn.com/2003/ALLPOLITICS/11/10/elec04.prez.bush.campaign/>

⁶⁷⁷ See George. W. Bush (US President). *President Bush Signs U.S.-Australia Free Trade Agreement*, Whitehouse Press Release, August 3, 2004

<http://www.whitehouse.gov/news/releases/2004/08/20040803-1.html>

prices for families throughout America. It also strengthens our relationships with other countries, helping us to forge new partnerships based on a commitment to generate new prosperity and a better way of life for people in America and throughout the world”⁶⁷⁸. Thereby since the protests in Seattle the rhetoric of political elites has evolved to embrace the demands of the alter-globalization movement.

It is not only the language of political elites that has coopted the language of the protesters after Seattle, so too has the WTO engaged in *trasformismo*. As the protesters had drawn attention to the inequalities between the developed and developing countries and the role of the WTO in perpetuating these inequalities, the next round of the WTO trade negotiation was declared to be solely concerned with the needs of the developing world. Indeed in the lead up to the Doha Ministerial Conference the Director General of the WTO in 2001, Michael Moore, re-emphasized that the WTO negotiations were geared towards promoting the interests of the developing countries: “A strong, vibrant, predictable and rules-based multilateral trading system is in the interest of all countries, particularly developing countries. They should seize this opportunity to fashion the system in such a way that it would be responsive to their development needs”⁶⁷⁹. It would appear from this statement that the equalities experienced in the developing world are caused by an inability of their political elites to assert their interests at the negotiation of the WTO. The subsequent *Doha Development Agenda* that emerged from the Ministerial Conference asserted that

we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them,

⁶⁷⁸George. W. Bush (US President). *A Proclamation By the President of the United States of America*, The White House President George W. Bush, 12 May 2005.

<http://www.whitehouse.gov/news/releases/2005/05/20050512-8.html>

⁶⁷⁹ Michael Moore (WTO Director-General 2001). *Introductory statement by the Director-General*, World Trade Organization, Monday 10 September 2001.

http://www.wto.org/English/news_e/spmm_e/spmm69_e.htm

secure a share in the growth of world trade commensurate with the needs of their economic development.⁶⁸⁰

Together these statements illustrate that the WTO's Secretariat used the Doha Ministerial Declaration to weave the demands of the protesters concerning the interests of the developing world through press releases and policy statements to deflect criticisms. Thereby it appears – unlike the arguments of the protesters – that the WTO is not the cause of global inequalities, rather it is the solution because it advances the interests of the developing world within its negotiations. Indeed the answer to anyone asking at the WTO about the benefits of trade liberalization for the developing countries will find the *Doha Development Agenda* is pulled out of the proverbial hat as indisputable evidence of the central place of the needs of the developing countries in WTO negotiations.⁶⁸¹

Similarly, the corporate hegemony in both the EC and the US has publicly supported the WTO's *Doha Development Agenda* on the grounds that it will not only advance the interests of the developing states, but the world as a whole. The United States Trade Representative asserted that “The United States will continue to push for substantial improvements in market access in agriculture, manufacturing and services because this will generate the most benefits for development, including poverty reduction”.⁶⁸² The European Commission can also be seen to draw from the language of the protesters in defending the *Doha Development Agenda*: “Not only will the WTO continue to improve conditions for worldwide trade; it will also, through enhanced and better rules, be able to play a much fuller role in the pursuit of

⁶⁸⁰ World Trade Organization. *Ministerial Declaration' Doha WTO Ministerial 2001*, 20 November 2001. http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

⁶⁸¹ Interviews conducted at the World Trade Organization, Geneva March 2004.

⁶⁸² Rob Portman (United States Trade Representative). *USTR Portman Applauds G-7 Commitment to Ambitious Doha Round Lauds \$4 billion in "Aid for Trade" to Developing Countries*, 3 December 2005.

[http://www.ustr.gov/Document_Library/Press_Releases/2005/December/USTR_Portman_Applauds_G-7_Commitment_to_Ambitious_Doha_Round_Lauds_\\$4_billion_in_Aid_for_Trade_to_Developing_Countries.htm](http://www.ustr.gov/Document_Library/Press_Releases/2005/December/USTR_Portman_Applauds_G-7_Commitment_to_Ambitious_Doha_Round_Lauds_$4_billion_in_Aid_for_Trade_to_Developing_Countries.htm)

economic growth, employment and poverty reduction. Better international governance and the promotion of sustainable development is the ambitious backdrop to the agenda. The EU firmly stands to push this agenda to a successful conclusion”⁶⁸³ The EU Trade Minister of 2003, Pascal Lamy, also employed the language of the protesters when he acknowledged that the WTO “cannot simply focus on trade opening while ignoring the inter-linkage between trade and the environment, social development, health, corruption, corporate governance”.⁶⁸⁴ In his capacity as the Director General of the WTO, Lamy has also been able to weave the language of the protesters throughout WTO public statement to justify the WTO

We must also remember that we live in a world where millions continue to live on less than \$1 a day. This has direct implications for sustainable development. As the Brundtland Report had put it, what many countries face is the “pollution of poverty.” Poverty forces people to overexploit their natural environment, and such overexploitation, in turn, hurts their chances of development. For, as we all know, a healthy natural resource base is itself a vital ingredient for economic growth. Trade, and the WTO, can help by bringing that growth about.⁶⁸⁵

Clearly, the elites of the *nebuleuse* have engaged in *trasformismo* as they have used the *Doha Development Agenda* and public statements to coopt the language of the protesters in order to deflect criticisms and attempt to legitimise the WTO.

⁶⁸³ European Commission. *The Doha Development Agenda*, 22 July 2006.
http://ec.europa.eu/trade/issues/newround/doha_da/index_en.htm

⁶⁸⁴ Pascal Lamy (European Union Trade Commissioner). *The Future of the WTO for European Parliament Kangaroo Group*, 27 January 2004.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁶⁸⁵ Pascal Lamy (Director General of the World Trade Organization). *Trade Can be a Friend, and Not a Foe, of Conservation*, Geneva, 10-11 October 2005.
http://www.wto.org/English/news_e/sppl_e/sppl07_e.htm

As part of the *nebuleuse* the World Bank and IMF have supported and defended the WTO against the criticisms voiced by the protesters. The World Bank has defended the *Doha Development Agenda*, and thereby the necessity of the trade policies of the WTO: “Trade is not only in my view a mainspring of development, but ultimately of international peace and solidarity as well. Trade creates wealth. It generates new and better jobs, transfers knowledge and technology and fosters shared responsibility to go with interdependence. Together there is much we can do to make increased trade serve the interests of the poor. More trade will help to build a more inclusive world”.⁶⁸⁶ On the eve of the Cancun Ministerial Conference the World Bank stated “A trade deal that addresses the concerns of developing nations could spur global growth and reduce poverty by as much as 144 million people by 2015, according to a new World Bank report issued today. The report is being launched on the eve of a meeting of the world's trade ministers in Cancun next week that will review progress on WTO negotiations on the *Doha Development Agenda*”.⁶⁸⁷ The IMF also attempted to undermine the arguments of the protesters. “We must seek to persuade the skeptics of the benefits of free trade. We must persuade all governments to narrow the gap between rhetoric and practice. A successful Doha round outcome would, in my view, be the best possible means of achieving these objectives”.⁶⁸⁸ On the eve of Cancun the IMF restated the arguments for free trade and the work of the WTO “The Doha Declaration is a powerful signal of the international community's determination to tackle poverty decisively, and to ensure that the benefits of globalization are more

⁶⁸⁶ James D. Wolfensohn (World Bank President). *World Bank Statement at WTO Talks in Doha: Strengthening the International Trade Architecture for Development*, 10 November 2001.
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0..contentMDK:20044022~menuPK:34464~pagePK:34370~piPK:34424~theSitePK:4607.00.html>

⁶⁸⁷ The World Bank. *World Bank Report Highlights Need for Success at Cancun Trade Talks: WTO Breakthrough Would Spur Confidence, Boost Incomes, Reduce Poverty*, 3 September 2003.
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0..contentMDK:20126037~menuPK:34464~pagePK:34370~piPK:34424~theSitePK:4607.00.html>

⁶⁸⁸ Anne O. Krueger (Acting Managing Director International Monetary Fund). *Willful Ignorance: The Struggle to Convince the Free Trade Skeptics*, 18 May 2004.
<http://www.imf.org/external/np/speeches/2004/051804a.htm>

widely spread. The importance of trade for poverty reduction has been repeatedly emphasized”.⁶⁸⁹

In 2003, the World Bank President James Wolfensohn was also seen to coopt the language of the protesters. In a public statement he went further and claimed that the institutions of the *nebuleuse* and the World Social Forum were working towards the same goals.

Our collective demand is for a global system based on equity, human rights and social justice. Our collective quest for a more equal world is also the quest for long-term peace and security. This growing consensus is playing out in the emergence of a global partnership for poverty reduction. At the recent United Nations conferences in Monterrey and Johannesburg, and at the launch of the Doha round of World Trade Organization (WTO) negotiations, developed countries pledged to help developing countries by strengthening capacity, increasing overseas development assistance, opening markets to trade and reducing agricultural subsidies ... Rich and poor countries alike have reaffirmed their commitments to achieving the Millennium Development Goals. At the World Bank, we have now reoriented our strategy to help developing countries meet the Goals - including halving poverty, ensuring basic education and health for all, promoting gender equality and protecting the environment - and pressing the richest countries to meet their obligations under the Goals to help the poor.⁶⁹⁰

⁶⁸⁹ Horst Köhler (Managing Director International Monetary Fund). *Cooperation in Trade and International Financial Integration, International Monetary Fund*, 13 May 2003.

<http://www.imf.org/external/np/speeches/2003/051303.htm>

⁶⁹⁰ James Wolfensohn (World Bank President). *Choosing a Better World*, 22 January 2003.

<http://www.globalpolicy.org/socecon/bwi-wto/wbank/2003/0122betterworld.htm>

Through these public statements, and declarations by the *nebuleuse* it can be argued that the demands of alter-globalization have been interwoven and coopted by political elites. In doing so the *nebuleuse* is able to deflect attention from who is responsible for the global inequalities generated by corporate hegemony. In some cases the developing countries are argued to have been responsible for undermining attempts to advance their own interests. For example after the collapse of the Cancun Ministerial Conference in 2003, the trade representatives of both the EC, Pascal Lamy⁶⁹¹, and US, Robert Zoellick, condemned the developing states during negotiations for turning the WTO into a “forum for the politics of protest”⁶⁹², not cooperation. Such ‘official’ declarations are important because they establish a perspective in the mind of civil society, which paints the alter-globalization movement as being misinformed and engaging in misguided campaigns and arguments – a fringe social movement that criticises the world of politics which it knows nothing about.

These claims about the ability of the WTO to address global inequalities, however, have been criticised. In 1997 the United Nations argued that the poverty and inequalities had become worse as any benefits of neoliberal economic globalization were spread unevenly across the globe and countries.⁶⁹³ Writing in 2001, Robert Hunter Wade reinforced this point by showing that world income inequalities had increased over the last 20 years, regardless of the claims of the WTO to universally distribute wealth through its free trade policies. The richest 20% of the world are the recipients of 82.7% of the world’s income. The consequence of such disparities, he argues, is that the world is divided into one of peace and prosperity and another of

⁶⁹¹ Pascal Lamy (European Union Trade Commissioner). *Press Conference Closing the WTO 5th Ministerial Conference*, Cancun, Mexico, 14 September 2003.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁶⁹² Robert Zoellick (US Trade Representative). *America Will Not Wait For The Won't Do Countries*, 22 September 2003.

<http://www.ustr.gov/speech-test/zoellick/2003-09-22-ft.htm>

⁶⁹³ United Nation Development Programme. *Human Development Report 1997*, New York: Oxford University Press, 1997.

poverty, war and turmoil.⁶⁹⁴ On the one hand perhaps, it is too early to judge the *Doha Development Agenda* as merely rhetoric. On the other hand, Joseph Stiglitz has argued: “today's Development Round does not deserve its name. Many of the issues that it has addressed should never have been on the agenda of a genuine development round, and many issues that should have been on the agenda have not”.⁶⁹⁵ Four years after the *Doha Development Agenda* was celebrated there is still no decrease in the subsidies of the EC and US on agriculture and textiles. The so-called ‘peace clause’⁶⁹⁶ that allowed WTO members to maintain agricultural subsidies without being challenged has authorised the continued agricultural and textile subsidies of the EC and US, which are detrimental to the economies of the developing world. In January 2005 the ‘peace clause’ expired and the EC and US have attempted to convince members of the WTO to renew its terms.⁶⁹⁷ In fact the US almost doubled its subsidies on cotton in 2004. In the WTO publication *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*, which has come to be known as the ‘Sutherland Report,’ it was clearly stated that only governments could be thought of as participating within the decision-making process of the WTO.⁶⁹⁸ This would suggest that the language of the alter-globalization movement has been hijacked to legitimise the policies and process of the WTO, but with little substantive reforms of the WTO in terms of civil society engagement and ‘new multilateralism’ (see chapter six).

⁶⁹⁴ Robert Hunter Wade. ‘Inequalities Of World Incomes: What Should Be Done’, in *Open Democracy*, 2001. http://www.opendemocracy.net/forum/document_details.asp?docid=832andcatid=99

⁶⁹⁵ Joseph E. Stiglitz. *The Development Round that Wasn't*, Webdiary, 14 May 2005 <http://webdiary.com.au/cms/?q=node/1058>

⁶⁹⁶ Uruguay Round Agreement. Agreement on Agriculture, Part VII, Article 13. ‘Due Restraint’. http://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXIII

⁶⁹⁷ Oxfam America. *Immunity from Challenge at WTO Would Undermine Development Round*, 13 December 2005.

http://www.oxfamamerica.org/newsandpublications/press_releases/press_release.2005-12-13.7485082947

⁶⁹⁸ Peter Sutherland et al. *The Future of the WTO: Addressing Institutional Challenges in the New Millennium, Report by the Consultative Board to the Director-General Supachai Pantichapakdi*. Geneva: The World Trade Organization, 13 March 2004.

http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf

Consequently, it is difficult for the alter-globalization movement to present a clear distinction to civil society between themselves and the official spokespersons of corporate hegemony. The obscuring of this distinction has been a deliberate ploy to ensure that civil society is unclear about who is responsible for the inequalities and suffering perpetuated by the current corporate world hegemony. In doing so it appears that political elites are motivated and capable of generating the reforms of international institutions to bring about the realisation of global justice. Perhaps more importantly this blurring of who is responsible ensures that civil society is unaware of the structural power of corporate hegemony within international organizations. Due to this the reforms offered by political elites will only ever be cosmetic and so maintain the existence of corporate structural power and world hegemony. At the same time discussion of reform by political elites is enough to weaken the mobilization of civil society behind the issues raised by the alter-globalization movement. Thereby the political elites of the *nebuleuse* are able to neuter support for counter-hegemonic forces, and avoid the radical change or transformation in world politics required to emancipate the world from corporate hegemony through 'new multilateralism'.

The problems of *trasformismo* were also evident during the global *Action Against Poverty* campaign in 2005. Again political elites did not ignore the protesters, but promoted themselves to the public as the champions of global social justice, whilst at the same time waging war in Iraq and maintaining the debt and global trading system. In the lead up to the July 2005 G8 meeting at Gleneagles, Scotland, a UK coalition of 500 British NGOs and campaign groups came together to form *Make Poverty History*.⁶⁹⁹ This coalition began to campaign for the G8 to address the African debt relief, aid and trade rules, which perpetuated the poverty within the continent. This campaign received a phenomenal degree of public support, in schools, churches and universities. Their emblem was a white wristband with the word's *Make Poverty*

⁶⁹⁹ Make Poverty History. 16 October 2006.
<http://www.makepovertyhistory.org/>

History emblazed upon it. On the 3rd July 2003, 250,000 people marched through the city of Edinburgh in white shirts making a single white band around the city as a symbol of the poverty trap for many developing countries due to international debt and unfair trade rules by the WTO. Bob Geldof, the man who brought the famine and starvation in Africa to the world's attention through *Live Aid* in the 1980s, organised Live8 concerts to draw attention to the G8 Summit. The UK Prime Minister Tony Blair, and Finance Minister Gordon Brown met with Bob Geldof, Bono and Richard Curtis, the organisers and performers of the UK Live8. Many of the *Make Poverty History* organisers were uncomfortable with the close relationship these pop stars maintained with the UK political elites because both Blair and Brown argued that they believed in, and indeed would march in, the *Make Poverty History* demonstration.

The significance of this close relationship between the UK political elites and the pop stars that gained media attention and sought to speak for the campaign was that *Make Poverty History* was hijacked. John Hilary of *War on Want* drew attention to this hijacking and the fact that the UK is a member of the G8 and a leading advocate of neoliberal globalization, but that in contradiction to this they were advocating a campaign for the G8 to change its policies.⁷⁰⁰ Such a close relationship between the self-appointed spokespersons for the campaign and the political elites blurred the message of who was responsible for global inequalities, war and debt. Similarly in a squabble between the pop stars an important point was raised on the issues of cooption. On the one hand Bob Geldof declared that the conclusion of the G8 talks was a success for the people in Africa, whilst Bono declared that George W. Bush “deserved a place in history for turning the fate of the continent around”.⁷⁰¹ Yet, the reality of the G8 proposals to address the plight of the World's poorest is

⁷⁰⁰ John Hilary quoted from Tom Burgis, ‘Insiders-Outsiders: The NGO Fracture Zone’, in *Open Democracy*, 4 July 2005.

⁷⁰¹ Bono quoted from Bianca Jagger, ‘Why I Don’t Trust Them, or Sleeping with the Enemy’, *Open Democracy*, 15 July 2005.

disappointing when analysed properly.⁷⁰² On the other hand Bianca Jagger argued Blair and Brown “neutralised and coopted the efforts of hundreds of NGOs, grassroots organisations and people throughout the world united in their desire to see poverty eradicated. They achieved their aims with the help of Geldof and Bono”.⁷⁰³ Jagger does raise an important point about cooption of the *Make Poverty History* campaign.

The leaders of the G8 also made statements that they would address the trading relations of the least developed states at the WTO’s Hong Kong Ministerial Conference in December 2005. Throughout this 2005 campaign *Make Poverty History* collected the e-mail addresses of thousands of UK citizens, who agreed with the sentiments of this alter-globalization movement. These e-mail addresses have been used to regularly update these people on recent events and upcoming campaigns in order to encourage them to get involved in protest activism again. Using the latest technology *Make Poverty History* has made simple procedures in order to electronically e-mail politicians as they engage in decision-making in the institutions of the *nebuleuse*, such as the WTO. For example on 10 December 2005, the *Make Poverty History* coalition delivered a total of 750,000 votes from campaigners all over Britain calling on the UK Government to deliver trade justice at the Hong Kong WTO.⁷⁰⁴ Unfortunately, Hong Kong achieved nothing in terms of the trading reforms that *Make Poverty History* had campaigned for to alleviate poverty in Africa.

In many ways these demonstrations that began in Seattle and the arguments that these protesters took to the door of the WTO Ministerial Conference have been brought into the consciousness of a much wider public. As the *Make Poverty History* campaign

⁷⁰² Ben Young. *NGO Assessment of the G8 Proposals for Debt Cancellation*, Jubilee Scotland, 2005, (Unpublished Manuscript).

⁷⁰³ Bianca Jagger, ‘Why I Don’t Trust Them, or Sleeping with the Enemy’, in *Open Democracy*, 15 July 2005, p. 2.

⁷⁰⁴ Make Poverty History. *Santa Delivers*, *Make Poverty History*, 12 December 2005
<http://www.makepovertyhistory.org/yearsofar/santa.shtml>

demonstrates, the alter-globalization movement has refined its repertoires. It is now clear that there are counter-hegemonic movements striving to alter the institutions of global governance and neoliberal globalization so that they address the global ills of poverty, alienation and war they perpetuate. The alter-globalization movement is also reaffirming the concept of the public accountability of political elites. This was demonstrated in the latest *Make Poverty History* campaigns, such as ‘The World is Watching’ and specifically the ‘Lend Us Your Eyes’ campaigns, which asked for individuals to e-mail pictures of their eyes so that these pictures could be sent as a giant collage to world leaders.⁷⁰⁵ Such campaigns draw attention to the altering of public consciousness to make political elites aware that a more informed and critically aware public is watching their actions and decision-making. At the same time political elites have begun employing a strategy of distortion and coopting the language and issues of the alter-globalization movement into their rhetoric. Therefore, the message from the demonstrators and political elites has begun to sound the same even though they are very different.

5.8 Conclusion

The chapter has attempted to illustrate that hegemonic political elites have engaged in a policy of *trasformismo* - both distorted and coopted the language of the alter-globalization movement into their own rhetoric in order to justify the policies and procedures of the WTO – thus enhancing the legitimacy of the prevailing hegemonic order. In the first instance, the chapter illustrated that the events at Seattle were part of a wider campaign to resist and propagate the imposing of corporate hegemony to the world. Through consulting social movement theory it was argued that although these theorists provided insight into some of the core factors attributed to social movements (informal networks, forms of protest and the reasons for shifts in campaigns:

⁷⁰⁵ Make Poverty History. *Lend US Your Eyes*, 12 December 2005.
<http://www.actionaidspace.org/campaigns/EYESITE.htm>

communication networks and shifts in centres of power) it negated the core concept of hegemony. Social movement theory was then argued to naturalise the 'top down' nature of hegemony because it did not identify the manner in which social movements from civil society attempted to transform the existing system of hegemony. In contrast it was asserted that transnational counter-hegemonic forces have emerged because of the creation of corporate world hegemony. With the coordination of neoliberal globalization by the *nebulouse* and the unleashing of TNCs throughout the world, national social movements have found allies outside of national borders in a common cause of resistance to the institutions of corporate hegemony. From literature written by activists it was clear that this was why the WTO was targeted and that the term counter-hegemonic forces captures the common denominator of this transnational protest, rather than the term 'anti-globalization' movement.

The chapter has also attempted to establish a continuum between 'de-globalist' and 'alter-globalist' perspectives to illustrate the many different aims and objectives of the counter-hegemonic forces. In doing so it was argued that it was possible to identify a distinct 'alter-globalization' movement, which demands reform or transformation of the institutions of global governance. Those social movements and NGOs that fall within this alter-globalization movement definition do so because they promote reforming global governance towards the principles that address aid, debt, poverty, environmental protection, human rights, indigenous peoples' land rights, national and international organised labour, national land reform, social justice, and women's empowerment. More specifically a significant number advocated the participation of civil society groups in international decision-making in a similar manner to radical democracy of Coxian 'new multilateralism'.

Finally, the chapter has sought to argue that the protests on the street by the alter-globalization movement have not been able to change the policies and processes of the WTO through mobilising civil society. The reason for this is that the political

elites of corporate hegemony have been able to successfully distort and coopt the arguments and language of the alter-globalization movement. It was pointed out that the media and political elites have used the term 'anti-globalization' movement to draw the public's attention to the use of violence at each site of protest and not the political arguments of 'organic intellectuals'. Since Seattle US and European hegemonic political elites have begun to speak of the need for global justice, fair trade and peace as they coopt the language of the alter-globalization movement. The 'so-called' *Doha Development Agenda* also appears to have hijacked the language of the protesters and is used as a source of evidence that the interests of the people in the developing world are at the core of all WTO decisions. The UK's *Make Poverty History* campaign in 2005 reinforced this argument. It was argued that UK's Prime Minister had been able to hijack the campaign to promote global reform of international aid, debt and trade and the momentum of the protest was neutralised. Such cooption has been used to legitimise the policies and process of the WTO to a wider civil society.

It could be argued from these examples that the reforms offered by political elites are only cosmetic and so maintain the existence of corporate structural power and world hegemony. At the same time discussion of reform by political elites is enough to weaken the mobilization of civil society behind the issues raised by the alter-globalization movement. Thereby the political elites of the *nebuleuse* are able to neuter support for counter-hegemonic forces, and avoid the radical change or transformation in world politics required to emancipate the world from corporate hegemony through 'new multilateralism'. There is nothing new in these tactics, as Tom Burgis explains, "the history of power, is the history of assimilating dissidence"⁷⁰⁶ – or as Cox has pointed out cooption of the demands of counter-hegemonic forces is a core function of any institution of world hegemony.

⁷⁰⁶ Tom Burgis, 'Insiders-Outsiders: The NGO Fracture Zone', in *Open Democracy*, 4 July 2005.

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In fifty years’ time we might look back and say that NGOs were an essential impulse to democratic change in areas like international trade, even if they themselves were not always the answer.⁷⁰⁷

Any effort to explore counter-hegemonic efforts to curb corporate global rule should address corporate counter efforts to silence, evade, oppose, and coopt such unwarranted political pressures.⁷⁰⁸

Trasformismo also absorbs potentially counter-hegemonic ideas and makes these ideas consistent with hegemonic doctrine.⁷⁰⁹

6.1 Introduction and Aims

The purpose of this chapter is to evaluate the impact of the strategies of Non-Governmental Organizations (NGOs) with an alter-globalization agenda on the policy and process of the World Trade Organizations (WTO). Alter-globalization NGOs (Alter-NGOs) reflect the principles of a Coxian ‘new multilateralism’, and emphasise the primacy of a ‘bottom up’ democratisation of the decision-making of the *nebuleuse* through the active participation of civil society.⁷¹⁰ In a previous study, Robert O’Brien

⁷⁰⁷ Interview with Matthew Baldwin (Former EU Deputy Commissioner for Trade). Brussels, 11 November 2003.

⁷⁰⁸ Ronen Shamir. ‘Corporate Responsibility: A Case of Hegemony and Counter-Hegemony’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p. 93.

⁷⁰⁹ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox and Timothy Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

⁷¹⁰ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

et al acknowledged that NGOs had very limited access to the International Monetary Fund, World Bank and WTO (institutions of the *nebuleuse*) and the access granted was largely to pacify public critics. These writers also claimed that the limited participation offered by the WTO still presented NGOs with a “yardstick by which to measure performance”.⁷¹¹ Indeed participation of NGOs at the WTO was seen as evidence of a process of ‘complex-multilateralism’, which signalled the beginning of a Coxian ‘new multilateralism’. Similarly, Alison Van Rooy argues that “Incremental change ought not to be discounted: it signals nascent frame-changing through alterations in staffing (NGO liaison units have been set up at the World Bank and IMF, for instance), procedural policies (such as the WTO’s formal guidelines for its relationship with NGOs, or the banks’ guidelines on participation), and change in language (to include terms such as ‘civil society’ and ‘partnership’).⁷¹² Warning against such incremental changes, Mark Rupert points out, that “(r)evolutionary change needs to be distinguished from reform which may result in significant redistribution of resources, but which has the political effect of demobilizing grassroots movements, pre-emptive transformative process of struggle and collective self-empowerment, and contracting the horizons of self-empowerment, and contracting the horizons of the political possibility”.⁷¹³ This chapter will argue that accreditation and participation of Alter-NGOs at the WTO should be viewed with caution and even suspicion, rather than being celebrated.

There is a cause for concern over the political elites of the *nebuleuse* granting official access to Alter-NGOs at the WTO because of the danger of cooptation. Robert W. Cox, following Antonio Gramsci, has drawn attention to this type of ‘reform from

⁷¹¹ Robert O’Brien et al. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 155.

⁷¹² Alison Van Rooy. *The Global Legitimacy Game: Civil Society, Globalization, and Protest*, Basingstoke: Palgrave/MacMillan, 2004, p. 18-25.

⁷¹³ Mark Rupert. *Ideologies of Globalization: Contending Visions of a New World Order*, London: Routledge, 2000, p. 153.

above' as it represents 'passive revolution' or *trasformismo*.⁷¹⁴ At the heart of this concept of *trasformismo* is the assertion that social reform initiated from above is for the sole purpose of forestalling popular political mobilization and thereby disabling the potential for democratic transformation. By controlling access to decision-making bodies political elites act as gatekeepers – determining who can participate, on what terms and by what means. In performing this function structural power is used to ensure that Alter-NGOs are seen to be participating to a wider public, but in reality they are not meaningfully part of the decision-making process and their presence is no more than a public relations exercise. Thereby *trasformismo* satisfies the demand for public oversight and participation at the WTO, whilst weakening the argument that a democratic deficit exists and ultimately building legitimacy for the WTO. There is therefore a danger that Alter-NGOs are being coopted by the WTO in order to pacify demands for just change, whilst also legitimising both the existing structure and neoliberal ideology to a wider civil society.

In order to build this argument the chapter will first establish why the WTO has a democratic deficit and why NGOs are deemed to be able to address this problem. In the next section the nature of NGOs and the problems of cooptation within the United Nations (UN), IMF and World Bank will be examined. It will also be pointed out that there has been condemnation of the emergence of highly professional transnational private aid agencies because they push out the local social movements and depoliticise decision-making. Having established some of the problems with NGO participation in the institutions of the *nebuleuse*, the chapter will then illustrate the favouring of business NGOs and the cooptation of NGOs through the WTO opening some official channels to NGOs - accreditation, symposia and access to more official documentation. Terms such as 'civil society' and 'partnership' may be part of the

⁷¹⁴ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox and Timothy Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 130-131 and 139.

WTO's official language now, but the reality is still that official access to the WTO decision-making bodies has been fiercely resisted. Subsequently, the chapter will evaluate two strategies employed through unofficial channels by Alter-NGOs to place their interests at the heart of the WTO: offering their expertise to the developing countries during trade negotiations to build counter-coalitions; and secondly, Alter-NGOs submitting their demands through *amicus* briefs to the WTO's Dispute Settlement Body (DSB) and relying on the judicial activism of Appellate Bodies for their acceptance. Both of these strategies have been fiercely condemned by hegemonic elites. Through the example of the 2003 Cancun Ministerial Conference the role of Alter-NGOs will be examined. It will be suggested that the collapse of Cancun has perhaps helped to legitimise the WTO system and its neoliberal ideology. The denial of Alter-NGOs' access to the DSB and the promise of reform by the WTO's elites will be used as an example of further *trasformismo*. At the moment it appears that the Alter-NGOs have little leverage within the WTO and are pawns in the elite process of passive revolution and cooption.

6.2 Democratic Deficit: To NGO or not to NGO, that is the Question.

Since the creation of the WTO in 1995 it has been criticised for suffering from a lack of public transparency and sustaining a democratic deficit. After the protests at Seattle in 1999 these arguments were brought to a wider public. It has to be remembered that it is not only critical writers, such as Robert W. Cox that have identified a democratic deficit, so too have mainstream political scientists and legal theorists. For example Steve Charnovitz outlines three reasons why a democratic deficit may be found within a multilateral international organisation like the WTO: (1) international organisations are not run in a democratic manner vis-à-vis participating states; (2) multilateral organisations do not make it mandatory for all members to have democratic governments in order to participate and ensure that the will of their people is represented through their national governments; (3) international organisations are not

run in a democratic manner vis-à-vis the public.⁷¹⁵ This section will demonstrate that as an institution of the *nebuleuse* the WTO clearly suffers a democratic deficit in each of the categories outlined above because it is engaged in top down hegemonic elite rule.

Firstly, a democratic deficit exists because not all members of the WTO are able to participate equally in the negotiations and because of the inequalities of power and knowledge that exist within dispute settlement.⁷¹⁶ Hegemonic states have been able to use their superior capabilities to provide leverage in negotiations. Green Room discussions have allowed for this leverage to be used in a way that transgresses the rules of consensus decision-making at the WTO. The legal and complex language used in the agreements necessitates the employment of specialised legal teams to engage in negotiations and disputes. The ability to buy such legal expertise varies significantly across the members. Together these factors allow the corporate hegemony emanating primarily from the EC and US to dominate the decision-making and dispute settlement process of the WTO. David Held *et al* clearly acknowledge this when they state:

In a world where powerful states make decisions not just for their own people but for others as well, and where transnational actors and forces cut across the boundaries of national communities in diverse ways, the questions of who should be accountable to whom, and on what basis, do not easily resolve themselves.⁷¹⁷

⁷¹⁵ Steve Charnovitz. 'The Emergence of Democratic Participation in Global Governance (Paris, 1919)', in *Indiana Journal of Global Legal Studies*, Vol. 10, No. 45, 2003, p. 49-50.

⁷¹⁶ See Chapter four of this thesis.

⁷¹⁷ David Held *et al* *Global Transformations, Politics, Economics, and Culture*, Cambridge: Polity Press and Blackwell Publishers, Reprint 2000, p. 81.

Susan Marks voices similar unease at the loss of the democratic will of the people: “since decisions are taken for collective life outside of the national settings, then democracy remains compromised ... the nation state can no longer be considered the container of democracy”.⁷¹⁸ Thereby within the WTO the democratic principles of consensus decision-making are ignored and the resources to participate in negotiations are such that a democratic deficit exists.

Secondly, because the WTO includes non-democratic states the *demos* of all members of the WTO are not represented and a democratic deficit exists. Amongst the democratically elected governments, however, it has been suggested that Latin America, the US and Western Europe have experienced a decline in electoral participation.⁷¹⁹ In addition Christophe Bellmann and Richard Gerster have argued that with the exception of the US, national parliaments play little or no role in international trade negotiations or the ratification of agreements: “the people’s representative simply approve what trade diplomats and governments have negotiated in a complex give-and-take process leading to the acceptance of multilateral packages”.⁷²⁰ This point was highlighted during the US Congress’s vote to agree to the Uruguay Round of negotiation that brought life to the WTO. No US Senators would agree to the challenge set by Ralph Nader to sign an affidavit declaring that he or she had read the Uruguay Round text and publicly answer ten simple questions about its content.⁷²¹ Nader’s point, of course, is that none of the representatives of the US people could declare that they were acting on behalf of their constituents because

⁷¹⁸ Susan Marks. *The Riddle of all Constitutions*, Oxford, Oxford University Press. 2000, p. 77 and 100.

⁷¹⁹ See Peter Mair and Ingrid Van Biezen. ‘Party Membership in Twenty European Democracies, 1980-2000’, in *Party Politics*, Vol. 7, No. 1, 2001, Jeffery J. Ryan. *Painful Exit: Electoral Abstention and Neoliberal Reform in Latin America*, Manuscript for Latin American Studies Association, Washington, DC, September 6-8, 2001, Pippa Norris. *Democratic Phoenix: Agencies, Repertoires, and Targets of Political Activism*, Paper for presentation at the annual meeting of the American Political Science Association, 29th August 2002, Mark Blyth and Richard S. Katz. ‘From Catch-all Politics to Cartelisation: The Political Economy of the Cartel Party’, in *Western European Politics*, Vol. 28, No. 1, 2005,

⁷²⁰ Christophe Bellmann and Richard Gerster. ‘Accountability in the World Trade Organization’, in *Journal of World Trade*, Vol. 30, No. 6, 1996, p. 31.

⁷²¹ See Lorri Wallach and Patrick Woodall. *Whose Trade Organization? A Comprehensive Guide to the WTO*, Washington: Public Citizen, 2004, p. 282.

they did not understand what they were agreeing to by signing the US membership of the WTO. Thereby the interests and oversight of the *demos* of all members appears unrepresented through the state membership at the WTO because of a lack of democratic engagement and oversight from the national representatives within democratic and non-democratic countries.

Finally, as Tony McGrew has illustrated, the WTO makes binding decisions within negotiations and dispute settlement, which impact directly on the public, but the public does not have a right to observe or participate in this decision-making.⁷²² The international trade lawyer and academic Robert Howse articulates this problem well:

Governments will still depend largely on the insider network to develop the agenda and the negotiating proposals while the “external” constituencies look in from the outside. This, in fact, is the real democratic deficit, the management of the process by agents who have a distinctive interest of their own, which tends to exclude or marginalise those that are important to democratic principles.⁷²³

Attention is drawn here to the fact that the national *demos* are not directly represented or able to oversee the ‘distinctive interests’ that are being negotiated in their name by national trade representatives. Taken together it is clear that a number of academics are asking questions regarding the democratic nature of trade negotiations because of the lack of input and oversight directly from the national *demos*, or even through national assemblies, into the WTO agreements. The exclusive nature of negotiations and dispute settlement also illustrates that an absence of transparency and the existence of a ‘democratic deficit’ are very real. As Cox points out this is because

⁷²² Tony McGrew. ‘The World Trade Organization: Technocracy or Banana Republic?’, in Annie Taylor and Caroline Thomas (editors), *Global Trade and Global Social Issues*, London: Routledge, 1999, p. 199.

⁷²³ Robert Howse. ‘From Politics to Technocracy – and Back Again: The Fate of the Multilateral Trading Regime’, in *The American Journal of International Law*, Vol. 96, No. 1, 2002, p. 116.

national trade representatives are part of the *nebuleuse* or the transnational networks of state elites, corporate interests and finance, which build consensus on the policies of global international organizations.⁷²⁴ The absence of public oversight is deliberate in order to allow the pursuit of transnational interests without the impediment of the *demos*.

It is not only the WTO that is determined to exhibit such democratic deficits, so too are the IMF and World Bank.⁷²⁵ To overcome these democratic deficits there have been calls for greater civil society participation in global governance. For example drawing attention to the essential role of civil society in generating transparency from participation Patrizia Nanz and Jens Steffek argue:

The democratisation of international governance will ultimately depend upon the creation of an appropriate transnational public sphere ... [and] organised civil society groups have the potential to act as 'transmission belts' [...] giving voices to citizens concerns and channel them into the deliberative process of international organisations. Second, they can make the internal decision-making process of international organisations more transparent to the wider public and formulate technical issues in accessible terms.⁷²⁶

There are also two interesting points which Nanz and Steffek are drawing attention to here. Firstly, they are asserting that interstate relations are not a sufficient means of ensuring a democratic and transparent process within international organisations. In order to ensure the plurality of diverse interests is brought into the negotiation process

⁷²⁴ Robert W. Cox. 'Global Perestroika' (1992), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 296.

⁷²⁵ Richard Peet. *Unholy Trinity: The IMF, World Bank and WTO*, London: Zed Books, 2003, p. 200.

⁷²⁶ Patrizia Nanz and Jens Steffek. 'Global Governance, Participation and the Public Sphere', in *Governance and Opposition*, Vol. 39. No. 2, April 2004, p. 333 and 323.

and exclusion is prevented, direct participation by civil society groups must be allowed. Direct access to the decision-making process is also argued to facilitate greater public understanding of what is being negotiated and how this impacts on the lives of citizens. In many ways these demands reflect the ‘globalization from below’ as articulated by Coxian ‘new-multilateralism’.

What is interesting is that this demand for greater civil society participation in global governance is very often translated into a demand for greater NGO participation. Indeed to overcome the WTO’s democratic deficits there have been calls for a more formal and structured engagement with NGOs from academics⁷²⁷, statesmen⁷²⁸ and NGOs⁷²⁹. These NGOs are deemed to be able to represent the interests of civil society generally, and more specifically environmental protection and human and labour rights, within the negotiating and dispute settlement process of the WTO.⁷³⁰ Daniel Esty, an international lawyer and a supporter of the WTO’s policies of deregulation tied to environmental protection, has long argued the necessity of the WTO to allow NGO observation and participation in the form of information gathering and

⁷²⁷ G. Richard Shell. ‘Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization’, in *Duke Law Journal* Vol. 44, 1995, p. 829-927, Daniel C. Esty. ‘The World Trade Organization’s Legitimacy Crisis’, in *World Trade Review*, Vol. 1, No. 1, 2002, p. 1-33, David Held *et al.* *Global Transformations, Politics, Economics, and Culture*, Cambridge: Polity Press and Blackwell Publishers, Reprint 2000, p. 81, Robert Howse and Kalypso Nicolaidis. ‘Legitimacy and Global Governance: Why Constitutionalizing the WTO is a Step too Far’, in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 233, Robert Keohane and Joseph Nye. ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’ in Rodger B. Porter *et al.* (editors). *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 290, Susan Marks. *The Riddle of all Constitutions*, Oxford, Oxford University Press. 2000, p. 77-100, Andy Strauss. ‘Citizens in the International Realm; The new Participatory Demands’, *American Society of International Law Proceedings Vol. 162, 2001*.

⁷²⁸ For example the former US President Bill Clinton believed that the WTO promoted active engagement with civil society, calling for a “forum where business, labour, environment and consumer groups can speak out and help guide the future evolution of the WTO”, President Bill J. Clinton. WTO Ministerial Meeting, Geneva, 18th May 1998. The former WTO Secretary General Michael Moore discusses in his recent book the need for a ‘democratic caucus’ (a second chamber containing parliamentarians from around the world) to bring legitimacy and accountability to the WTO. Michael Moore. *A World Without Walls: Freedom, Development, Free Trade And Global Governance*, Cambridge: Cambridge University Press, 2003.

⁷²⁹ See ‘Civil Society Statement on Openness, Transparency and Access to Documents in the WTO’, 3 October 1998.

<http://www.ictsd.org/ministerial/geneva/statement.PDF>

See ‘Open Letter on Institutional Reform in the WTO’ (Action Aid, CIEL, Friends of the Earth International, Oxfam, and World Wildlife Fund),

http://www.oxfam.org.uk/what_we_do/issues/trade/downloads/wto_instit_reform.pdf

⁷³⁰ Daniel Esty. ‘Non-Governmental Organisations at the World Trade Organization’, in *Journal of International Economic Law*, Vol. 1, 1998, p 887-990, Steve Charnovitz. ‘WTO Cosmopolitics’, in *International Law and Politics*, Vol. 34, 2000, p. 299-354.

argumentation, but not voting.⁷³¹ The reasoning behind his argument for NGO participation is based on his belief that because the vast majority of the public lacks an understanding of how the WTO functions, the closed nature of its procedures encourages much of the public to see the WTO as a ‘black box’ and suspect that multinational corporations and other insiders are taking advantage of their access to the levers of power within the system.⁷³² Since it has become almost universally accepted that any judicial process that is deemed to be fair ensures ‘justice is seen to be done’ in an open court allowing public scrutiny, “The existence of ‘secret tribunals’ links the WTO in the minds of many to dictatorships and other undemocratic governance systems”.⁷³³ It is also argued that NGOs should play an important role in representing interests beyond those just relating to trade because:

the WTO cannot help but make decisions that affect a great many other policy realms. In doing so, the WTO must show sensitivity to the concerns and values that are reflected by those other domains ... Broadening the base of its connections to the citizens of the world through NGOs represents an important step forward for the organisation⁷³⁴ ... the dialogue will help to solidify the WTO’s legitimacy, deepen its debates and therefore improve the organisation’s authoritativeness, and demonstrate its capacity for fairness and its ability to balance trade liberalisation goals with other important values such as environmental protection.⁷³⁵

⁷³¹ Daniel C. Esty. ‘Environmental Governance at the WTO: Outreach to Civil Society’, in Gary P. Sampson and W. Bradee Chambers (editors), *Trade, Environment, and the Millennium*, New York: United Nations University Press, 2002, p. 132.

⁷³² Daniel Esty. ‘Comment’, on Robert Keohane and Joseph Nye. ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’ in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 302.

⁷³³ Daniel C. Esty. ‘Environment and the Trading System: Picking up the Post-Seattle Pieces’, in Jeff Scott (editor), *The WTO After Seattle*, Washington: Institute for International Economics, 2000, p. 1506.

⁷³⁴ Daniel C. Esty. ‘Environmental Governance at the WTO: Outreach to Civil Society’, in Gary P. Sampson and W. Bradee Chambers (editors), *Trade, Environment, and the Millennium*, New York: United Nations University Press, 2002, p. 137.

⁷³⁵ Daniel C. Esty. ‘Environmental Governance at the WTO: Outreach to Civil Society’, in Gary P. Sampson and W. Bradee Chambers (editors), *Trade, Environment, and the Millennium*, New York: United Nations University Press, 2002, p. 140.

Thereby NGOs can bring information, expertise and alternative proposals to the WTO. In doing so this can enhance political support for the WTO by ensuring, through public oversight, that citizens have their interests represented and that fair procedures are being followed within the WTO.

The NGOs themselves clearly believe that they can represent the public interest in a manner that can overcome the democratic deficit and enhance the WTO's legitimacy. In 2001 an open letter from forty-six NGOs proposed that the WTO bring transparency into all areas of decision-making:

Non-profit public interest nongovernmental organisations (NGOs) groups have a major role to play in rebalancing trade policy, to ensure that it serves the poor and the environment. WTO members should continue to harness the creativity and support of civil society. Failure to engage with NGOs has already proved problematic for the WTO. Increasing protests against powerful economic institutions demonstrates public suspicion and mistrust of these institutions. This mistrust must be addressed through open discussion, information sharing and subjecting decisions to public scrutiny at both the multilateral and national levels.⁷³⁶

What has to be remembered is that the participation of NGOs in international organisations is not some new and radical leap into the unknown. NGOs are recognised as legitimate political actors, and have been used to provide technical and specialist knowledge to advise political elites since the League of Nations.⁷³⁷ At the end of WWII, 1200 NGOs came to San Francisco to participate in the proceedings on

⁷³⁶ See 'Civil Society Statement on Openness, Transparency and Access to Documents in the WTO' <http://www.icts.org/ministerial/geneva/statement.PDF>

⁷³⁷ Steve Charnovitz. 'The Emergence of Democratic Participation in Global Governance (Paris, 1919)', in *Indiana Journal of Global Legal Studies* Vol. 10, No. 45, 2003, p. 45-77.

the adoption of the United Nations Charter. Their main objective was to ensure that the UN Charter would not be confined to international security matters but would include provisions dealing with economic, social and cultural matters. These NGOs are credited by some with securing the inclusion of human rights provisions in the UN Charter.⁷³⁸

This democratising function of NGOs has by no means found universal agreement, and a number of writers have cast doubt on just who these NGOs represent and what legitimate right they have to observe or participate at the WTO.⁷³⁹ At the core of this argument is the view that government-to-government negotiations are as democratic as trade negotiations can be. As the three former Secretary Generals of the WTO jointly stated in 2001, the WTO is an intergovernmental organisation within which only its members can participate, and questions of democracy ought to remain at the national level.⁷⁴⁰ The WTO's negotiations are deemed to be of a specifically sensitive nature due to the binding nature of its rights and obligations, which endows it with a "special character".⁷⁴¹ Another way of articulating this is that domestic interests are compromised in horse-trading over access to markets. As such there is no place for NGOs to be involved in these discussions because they could make public just whose interests were being compromised. As a former Argentinian trade official queried "can anyone really imagine a trade negotiator agreeing to reasonable trade and environmental disciplines while the representatives of the business sector and the local branch of Greenpeace or the World Wildlife Fund are seated next to each other and him or her at the WTO".⁷⁴² Therefore, it is argued that the intergovernmental

⁷³⁸ Abram Chayes and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*, London: Harvard University Press, 1995, p. 250.

⁷³⁹ See David Roberston. 'Civil Society and the WTO', *The World Economy*, Vol. 23, No. 9, 2000, p. 454, Philippe Legrain. *Open World: The Truth About Globalization*, London: Abacus, 2002, p. 17-18, and Sungjoon Cho. 'A Quest for WTO's Legitimacy', in *World Trade Review* Vol. 4, No. 3, 2005, p. 78-90.

⁷⁴⁰ Arthur Dunkel, Peter Sutherland, and Renato Ruggiero. *Joint Statement on the Multilateral Trading System*, 1 February 2001, http://www.wto.org/english/news_e/news01_e/jointstatdavos_jan01_e.htm

⁷⁴¹ World Trade Organization. *Guidelines for Arrangements on Relations with Non-governmental Organisations*, WT/L/162, 23 July 1996.

⁷⁴² Jorge B. Riaboi. 'Trade Liberalization and Dangerous Political Games', in *Fordham International Legal Journal*, Vol. 24, 2000, p. 573 – 593.

nature of the WTO determines that only governments are required to sit at the negotiating tables. These sentiments were restated again in 2005 when the former Secretary General Peter Sutherland brought together seven trade specialists in the publication of *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*, which has come to be known as the ‘Sutherland Report’.⁷⁴³ Fuelling this debate, many of the developing states have expressed suspicion at allowing NGOs access to the WTO on the grounds that it is inviting another force from the developed world to set the trading agenda.⁷⁴⁴ Therefore there has been a mixed reaction to the role that NGOs can play in enhancing the legitimacy of the WTO and whether in fact a democratic deficit does exist. The WTO, however, has allowed limited access for NGOs to enhance its legitimacy to a wider a public (see below).

6.3 Alter-NGOs: Advocacy, Cooption or Depoliticising

This apparent acceptance that NGOs represent civil society, however, needs to be qualified. It is necessary to further analyse NGOs to illustrate some important distinction, which relates to just who is being represented by an NGO. This section will define the concept of NGOs and the many ideological positions these NGOs support. In doing so it will be illustrated that Alter-NGOs have raised concerns about cooptation at the UN, IMF and World Bank. It will also be demonstrated that there are fears we are witnessing a ‘globalization from the middle’ as well-funded Alter-NGOs with middle-class personnel are pushing out the smaller grassroots social movements and causing a depoliticisation of counter-movement within the *nebuleuse*.

⁷⁴³ Peter Sutherland *et al.* *The Future of the WTO: Addressing Institutional Challenges in the New Millennium, Report by the Consultative Board to the Director-General Supachai Pantichapakdi*. Geneva: The World Trade Organization, 13 March 2004.

http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf

⁷⁴⁴ Michael Mason. ‘Representing Transnational Environmental Interests: New Opportunities for Non-Governmental Organisations to Access within the World Trade Organization’, in *Environmental Politics*, Vol. 13, No. 3, 2004, p. 568.

There are a number of definitions for non-governmental organisations. For example Peter Willets advocates a definition, which encompasses: “any group of people relating to each other regularly in some formal manner and engaging in collective action, provided that the activities are non-commercial and non-violent, and are not on behalf of a government”.⁷⁴⁵ This definition is very loose and allows Willets to incorporate social movements. The problem with doing so is that Willets blurs the important distinction between social movements and NGOs. Social movement theorists demand a distinction in order to differentiate the different methods of organisation and engagement that is unique to each entity when engaging with a political system. Social movements are organised around informal and loose networks, which employ unconventional forms of protest through unofficial modes of political participation.⁷⁴⁶ In contrast, Timothy Doyle and Doug Mceacher draw a distinction between social movements and NGOs on the grounds that NGOs are formally organised and engage with political institutions through formal channels.⁷⁴⁷ They point out that “NGOs have legitimised themselves through the adoption of constitutions, setting rules of conduct and defining organisational goals...Such NGOs are as formal as non-institutional politics gets”.⁷⁴⁸ Most NGOs also seek formal recognition from political institutions. There is great diversity amongst the size, activity, philosophy and degree of institutionalisation amongst NGOs. As Lorraine Elliott points out NGOs are created for one or all the following: conducting research, lobbying and pressure group activities and grassroots activism.⁷⁴⁹

A further distinction to be drawn is between NGOs that operate within one national territory, and those that engage in transnational activities and come under the term

⁷⁴⁵ Peter Willets. ‘Transnational Actors And International Organisations,’ in Steve Smith and John Baylis (editors). *The Globalisation of World Politics* (3rd Edition), Oxford, Oxford University Press, 2005, p. 434.

⁷⁴⁶ See Donatella Della Porta and Mario Diani. *Social Movements: An Introduction*, Oxford: Blackwell Publishing, (1999) 2004, and Charles Tilly. *Social Movements, 1768 – 2004*, London: Paradigm Publishers, 2004.

⁷⁴⁷ Timothy Doyle And Doug Mceacher. *Environment And Politics*, London: Routledge, 1998, p. 55.

⁷⁴⁸ Timothy Doyle And Doug Mceacher. *Environment And Politics*, London: Routledge, 1998, p. 56.

⁷⁴⁹ Lorraine Elliott. *The Global Politics of the Environment*, London: MacMillan Press, 1998, p. 135.

International Non-Governmental Organisation (INGO).⁷⁵⁰ Due to technological advances in the realms of communications and transport transnational networks of NGOs have been made easier in recent years. The formal organisation and the use of formal political channels of NGOs are highlighted by the six specific principles laid down for NGOs seeking accredited status to the United Nations Economic and Social Council (UNECOSOC). These principles state that the NGO should be; representative and democratic, non-profit, non-violent, not a political party, not an organisation created by an intergovernmental treaty and that they support the aims of the UN.⁷⁵¹ Due to this distinction between formal and informal structures, Doyle and McEacher argue that NGOs ought to be considered as contingent parts of social movements and not an entirely separate phenomenon. This is an important point because NGOs coordinate with social movements, engage in protests and use non-official channels of political participation too. Therefore, on the one hand it is the manner in which NGOs are formally organised through a constitution that really distinguishes NGOs from social movements. On the other hand it is only NGOs that can be accredited to international organizations – social movements currently cannot. A further important distinction is that NGOs are distinct from corporations because the former does not pursue profits.

Since the 1970s, social movements and NGOs have been actively forming ‘transnational advocacy networks’, which have campaigned for recognition of mainly environmental legislation and human rights. Abram Chayes and Antonia Handler Chayes⁷⁵², Margaret E. Keck and Kathryn Sikkink⁷⁵³ and Jonathan Graubart⁷⁵⁴ have all demonstrated that NGOs have been instrumental in campaigning for states to

⁷⁵⁰ Peter Willets. ‘Transnational Actors And International Organisations’ in Steve Smith and John Baylis (editors), *The Globalisation of World Politic*, (2nd Edition), Oxford, Oxford University Press, 2001, p. 370.

⁷⁵¹ Peter Willets. ‘Transnational Actors And International Organisations,’ in Steve Smith and John Baylis (editors). *The Globalisation of World Politics* (3rd Edition), Oxford, Oxford University Press, 2005, p. 434.

⁷⁵² Abram Chayes and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*, London: Harvard University Press, 1995.

⁷⁵³ Margaret E. Keck and Kathryn Sikkink. *Activism Beyond Borders*, New York: Cornell University Press, 1998.

⁷⁵⁴ Jonathan Graubart. ‘Legalizing’ Politics, ‘Politicizing’ Law: Transnational Activism and International Law’, in *International Politics*, Vol. 24, 2004, p. 321.

uphold human rights and environmental protection norms within existing international treaties. Keck and Sikkink describe transnational advocacy networks, which link domestic social movements and NGOs in campaigns through a 'boomerang effect'. This boomerang occurs "when channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside".⁷⁵⁵ Thereby social movements have actively sought help from advocacy INGOs in the form of lobbying both governments and international organizations to condemn the offending state. These transnational advocacy networks were successful in bringing international pressure on Argentina, Chile and South Africa for human rights violations. Keck and Sikkink argue that the international condemnation seen after the 1989 Tiananmen Square massacre in China was a result of the 1970s campaigns by transnational advocacy network on human rights, which shaped public and state perceptions of what is acceptable conduct for states.

The growth in the number of INGOs has been significant. At the beginning of the 20th century there were just 176 INGOs, by 1996 there were 38,243 INGOs⁷⁵⁶, and by 2001 there were to 48,000 INGOs worldwide.⁷⁵⁷ Van Rooy asserts that the diversity of these INGOs can be identified in terms of Supporters, Rejectionists, Reformers, and Alternatives.⁷⁵⁸ It was established in the previous chapter that social movements and NGOs could be situated on a four stage continuum depending on their ideological position - beginning with the de-globalist, statist/protectionist, reformist and global transformationists. The alter-globalization NGOs were identified as those that fall

⁷⁵⁵ Margaret E. Keck and Kathryn Sikkink. *Activism Beyond Borders*, New York: Cornell University Press, 1998, p. 13.

⁷⁵⁶ David Held and Anthony McGrew. 'Introduction', in David Held and Anthony McGrew (editors), *Governing Globalization: Power, Authority and Global Governance*, London: Polity Press and Blackwell Publishers, 2003. p. 7.

⁷⁵⁷ Mary Kaldor, Helmut Anheier and Marlies Glasius, (editors). *Global Civil Society 2003*, Oxford: Oxford University Press, 2003, p. 10.

⁷⁵⁸ Alison Van Rooy. *The Global Legitimacy Game: Civil Society, Globalization, and Protest*, Basingstoke: Palgrave/MacMillan, 2004, p. 29.

between the reformist and global transformation positions. Such Alter-NGOs are engaged in transnational advocacy networks to represent the disposed and abused people by attempting to bring their plight to the attention of the world. Thereby the principles of ecology, equality, gender, justice, and peace as articulated by these different civil societies, through Alter-NGOs, such as ActionAid, Amnesty International, Centre for International Environmental Law, Focus on the Global South, International Policy Studies, Greenpeace, Red Cross, Save the Children, Third World Network, and the World Development Movement. In doing so these Alter-NGOs reflect the principles of a Coxian 'new multilateralism', and emphasise the primacy of a 'bottom up' democratisation of the decision-making of the *nebuleuse* through the active participation of the ignored and dispossessed civil society groups.⁷⁵⁹ Drawing from Van Rooy's category of supporters, however, it is important to recognise the NGOs responsible for advocating more neoliberal policies to support corporate hegemony. It is also important to illustrate the dangers of cooption that Alter-NGOs face.

Although a corporation cannot be defined as an NGO, corporations have cooperated to create their own NGOs to lobby on their behalf. With names such as the Global Reporting Initiative (Deutsche Bank, Ford, General Motors, Nike and Royal Dutch Shell)⁷⁶⁰, Social Accountability International (Open Society of George Soros, and the McArthur, Ford and Rockefeller Foundation)⁷⁶¹, and the Triple Bottom Line Initiative (IBM, Shell, Heineken, BASF, Philips and Canon)⁷⁶² their corporate supporting identities are not obvious. Ronen Shamir defines such 'supportive' NGOs as Market

⁷⁵⁹ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

⁷⁶⁰ Global Reporting Initiative. Funding, October 2006.

<http://www.globalreporting.org/AboutGRI/Funding/>

⁷⁶¹ Social Accountability International. *About US*, 16 October 2006.

<http://www.sa-intl.org/>

⁷⁶² Triple Bottom Line Initiative, Who are we? 16 October 2006.

<http://www.tbli.org/index.html>

Orientated – NGOs (Ma-NGOs) to explicitly establish their position.⁷⁶³ Through Shamir’s analysis of Corporate Social Responsibility (CSR) he demonstrates that corporate hegemony has been able to take control of the demand for civil society participation in order to justify the institutions, policies and process of the *nebuleuse*. Firstly he points out that corporate hegemony has determined that it is only NGOs that can represent civil society within the *nebuleuse*. The demands from protesters for transparency and democratisation of the *nebuleuse* through civil society representation have been converted to NGOs as the agents responsible for representing civil society. The legitimacy of an institution and its policies then rests upon NGOs’ involvement in the decision-making process. Shamir argues that corporations are aware of this legitimising function that NGOs perform and have created their own non-profit Ma-NGOs in order to campaign and participate in governing arrangements to establish legitimacy. In creating Ma-NGOs corporations have been able to claim that civil society oversight and participation is taking place under the label of NGOs, and therefore claim civil society has approved of the institution and its policies.

Shamir points out that corporations have assertively embarked upon strategies to address the public demand for greater control of corporations through constructing the frameworks for CSR themselves. Part of this strategy has been to weave the language of ‘accountability’, ‘transparency’ and ‘participation’ throughout CSR, with a focus on NGO involvement to ensure its legitimacy. Crucially, however, this framework ensures that the very notion of CSR is amenable to corporate concerns. Consequently, “the common denominator of all corporate-orientated and corporate-inspired notions of “social responsibility” is the voluntary, non-enforceable, and self-regulating

⁷⁶³ Ronen Shamir. ‘Corporate Responsibility: A Case of Hegemony and Counter-Hegemony’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p. 109.

meaning of the term”.⁷⁶⁴ Successful lobbying has resulted in a corporate-inspired ‘Global Compact’ at the UN to oversee CSR, and similar bodies have been created with the International Labour Organization (ILO) and the Organization for Economic Cooperation and Development (OECD). Each of these bodies promotes voluntary, non-enforceable, and self-regulating CSR, and advocates voluntary cooperation between corporations and NGOs through “constructive dialogue”. Those NGOs participating and legitimising the process are the Ma-NGOs, such as Global Reporting Initiative, Social Accountability International, and the Triple Bottom Line Initiative.

In contrast Alter-NGOs, such as Corporate Watch, Human Rights Watch, and Amnesty International have voiced fierce reservation and suspicion of the NGO and corporate ‘partnership model’. For example these Alter-NGOs have cooperated to create ‘Alliance for a Corporate-Free UN’, and have asserted in an open letter to the UN

The Global Compact allows the name and reputation of the UN to be abused by corporations whose practices are in contradiction with the values of the UN. Partnerships with these corporations damage the integrity and mission of your agency and of the United Nations ... We also describe the use of the Global Compact by participating lobby groups as a rhetorical weapon in the effort to prevent progress on the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. ... Therefore, again, we call on you to end your agency's participation in the Global Compact, in favor of initiatives that emphasize cooperation with groups that share the aims of the United Nations, and in favor of measures to

⁷⁶⁴ Ronen Shamir. ‘Corporate Responsibility: A Case of Hegemony and Counter-Hegemony’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p. 100-101.

hold powerful corporations accountable in an international legal framework.⁷⁶⁵

Indeed these Alter-NGOs have warned against such corporate ‘partnership models’ because it draws Alter-NGOs into relationships with corporations, which affords them little input into decision-making, but portrays NGOs as advocating these policies. Thereby such arrangements of NGO inclusion perform a legitimising function for corporate governing bodies because Alter-NGOs are seen to be participating, but the reality of their limited involvement in decision-making ensures that the policies from governing bodies do not reflect the interests of the Alter-NGOs. Shamir therefore draws attention to the corporate blue wash, and the corporatization of the UN and other bodies of the *nebuleuse*, which advocate corporate and NGO partnership because it is not an equal relationship.⁷⁶⁶

Claims that Alter-NGOs are suffering from cooptation at the IMF and World Bank have also gained voice in recent years. Far from the claim made by O’Brien *et al* that these institutions were beginning to open up their procedures through accreditation for NGOs resulting in policies modification⁷⁶⁷ – a very different story of cooptation is emerging. As Van Rooy argues, in theory accreditation is responsible for “legitimising an active role for civil society in economic decision-making”.⁷⁶⁸ The reason for such hesitation, however, is that the consequence of NGO engagement has

⁷⁶⁵ EarthRights International. U.N. Alliance for a Corporate-Free U.N., January 16th, 2004. Signatures included Kenny Bruno, EarthRights International, Alison Linnecar, International Baby Food Action Network, Chee Yoke Ling, Third World Network, John Cavanagh, Institute for Policy Studies, Miloon Kothari, Habitat International Coalition, Pratap Chatterjee, CorpWatch, Anuradha Mittal, Food First, Fiona Dove, Transnational Institute, Susan George, ATTAC, Tom Goldtooth, Indigenous Environment Network, June Zeitline, Women's Environment and Development Organization, Rob Weissman, Essential Action, Bobby Peek, groundwork, Victor Menotti, International Forum on Globalization.

<http://www.corpwatch.org/article.php?id=9708>

⁷⁶⁶ Ronen Shamir. ‘Corporate Responsibility: A Case of Hegemony and Counter-Hegemony’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p. 102-110.

⁷⁶⁷ Robert O’Brien et al. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 206.

⁷⁶⁸ Alison Van Rooy. ‘What Next? Civil Society’s Prospects in World of Global Finance’, in Jan Aart Scholte with Albrecht Schnabel (editors). *Civil Society and Global Finance*, London: Routledge, 2002, p. 251.

not evolved in a way that NGOs would have wanted. As Jackie Smith stresses many NGOs that have gained access to the World Bank have become coopted by the institution creating Coopted NGOs (CONGOS). Smith sums up these concerns succinctly when she states that

many activists argue that the limited access provided to international arenas reflects an attempt by states to co-opt movement organisations and to channel movement pressure in directions that limits its capacity for achieving fundamental social change. And the fact that states govern the rules of NGO access to international institutions means that the more radical critics are kept outside of this institutional arena.⁷⁶⁹

Similarly David Craig and Doug Porter draw attention to the manner in which the language of apparently apolitical catchwords like participation, partnership, and community have been used to legitimise the policy process at the global level. Partnership and participation here have powerful legitimating roles, as NGOs and civil society groups are routinely involved as proxy representatives for the marginal. But these approaches are nonetheless prone to accusations of being mere ‘spin and deceit’.⁷⁷⁰

During the late 1990s Jonathon Fox documented the realisation of such fears as he saw NGOs cooption at the World Bank.⁷⁷¹ Similarly Goldman has illustrated how the World Bank has drawn from the demands of the global green movement to weave their language through the rhetoric of World Bank policies without providing real

⁷⁶⁹ Jackie Smith. ‘Transnational Processes and Movements’, in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 316.

⁷⁷⁰ David Craig and Doug Porter. ‘Poverty Reduction Strategy Papers: A New Convergence’, in *World Development*, Vol. 30, No. 12, 2002, p. 16.

⁷⁷¹ See Jonathon Fox and David Brown (editors). *The Struggle For Accountability: The World Bank, NGOs, and Grassroots Movements*, London: The MIT Press, 1998.

input into decision-making.⁷⁷² Similarly in 2004 ActionAid pointed out that since 1999 NGOs had been encouraged to contribute to the creation of Poverty Reduction Strategy Papers (PRSPs) as a means of bringing public influence into the conditions set by the IMF and World Bank loans.⁷⁷³ ActionAid, however, asserted that NGOs representing civil society groups were prevented from advocating alternatives to the policies proposed by the IMF and World Bank. In 2005, the Civil Society Members of the World Bank-Civil Society Joint Facilitation Committee, including a number of Alter-NGOs accredited to the World Bank declared that the World Bank was ignoring them.⁷⁷⁴ Accredited NGOs also expressed anger after meetings with the World Bank were postponed. Allegations were made that the meetings were merely a “public relations exercise” and that the World Bank was not serious about giving a greater voice to indigenous and local people affected by the finance projects of this institution.⁷⁷⁵ The Alter-NGO, Global Policy Forum, has also argued that the wide discussion of the merits of PRSPs shows the unease of many NGOs and academics with the narrow interpretation given to the concept of ‘participation’ by the IMF and World Bank. This in turn has led to assertions that the demand for participation from protesters has been hijacked by the *nebuleuse*. Participation has come to mean that NGOs are consulted and in doing so provide legitimacy to the policies and process of the *nebuleuse*. What the contrived definition of participation by the IMF and World Bank, however, entails is that NGOs are not actually being able to influence the decision-making process. Therefore ‘participation’ is argued to have become the “new tyranny”.⁷⁷⁶

⁷⁷² Michael Goldman. *Imperial Nature: The World Bank and the Struggle for Social Justice in the Age of Globalization*, London: Yale University Press, 2005, p. 180.

⁷⁷³ ActionAid. *Rethinking Participation: Questions for Civil Society About the Limits of Participation in -Poverty Reduction Strategy Paper (PRSPs)*, Discussion Paper, Washington D.C., 14 April 2004.

⁷⁷⁴ Civil Society Members of the World Bank-Civil Society Joint Facilitation Committee. *A Call for Participatory Decision Making: Discussion Paper on World Bank-Civil Society Engagement*, Draft for Public Comment, 14 April 2005.

<http://www.globalpolicy.org/ngos/int/bwi/2005/0414wbengage.pdf>

⁷⁷⁵ Emad Mekay. *World Bank Delays NGO Consultations*, 5 November 2004.

<http://www.globalpolicy.org/ngos/int/bwi/2004/1105consultations.htm>

⁷⁷⁶ Bretton Woods Project. *PRSPs: Political Space? At Whose Expense?*, 12 September 2003.

<http://www.globalpolicy.org/ngos/int/bwi/2004/0404think.pdf>

As neoliberal hegemony has privileged civil society consultation in terms of NGOs as a source of policy legitimacy, criticisms have also been directed at the emergence of professional transnational advocacy networks. Shamir illustrates that this NGO paradigm, which establishes the “right way of doing things” “is heavily biased towards the corporate hegemonic model of organization and implementation ... perceived grievances of oppressed, marginalized and exploited populations are transformed into a meaningful political and legal voice by relatively affluent and secure career-situated experts who often speak the language of and deploy the instruments of hegemonic rational organization and managerial systems characteristic of contemporary capitalism”.⁷⁷⁷ Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito illustrate the point that “Missing from this top-down picture are the myriad local, non-English-speaking actors – from grassroots organizations to community leaders – who, albeit are often working in alliance with transnational NGOs and progressive elites, mobilize popular resistance to neoliberal legality while remaining as local as ever”.⁷⁷⁸ Yet, because it is only NGOs that can be represented within the institutions of global governance many non-western civil society groups are overlooked or crowded out. By defining who is eligible to participate and under what conditions, there is a fear that professional western NGOs have become complicit in diluting the demands of grassroots civil society groups in order to maintain their position in negotiations. Therefore Shamir raises concerns over the ‘deradicalization’ of participation within the institutions of corporate hegemony.

Jeremy Gould and Julia Ojanen’s analysis of domestic Tanzanian civil society engagement in the development of PRSPs also raises similar concerns over the NGO

⁷⁷⁷ Ronen Shamir. ‘Corporate Responsibility: A Case of Hegemony and Counter-Hegemony’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p. 113.

⁷⁷⁸ Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito. ‘Law, Politics, and the Subaltern in Counter-hegemonic Globalization’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p.11.

paradigm.⁷⁷⁹ The expertise required for effective participation within PRSPs, and global governance in general, privileges the organizational form of transnational private aid agency NGOs. These writers point out that the voluntary and ad hoc nature of grassroots domestic organization undermines their ability to participate effectively in the decision-making process of PRSPs. They illustrate that Tanzanian civil society groups were overwhelmed by the nature of the “intellectual challenges of formulating alternatives to the hegemonic neoliberal policy regime ... Leading advocates are ignored when their arguments are too critical, or coopted into the mainstream by the Government and its partners”.⁷⁸⁰ Voicing similar concerns to Shimar, Gould and Ojanen highlight that reliance on professional NGOs is causing a depoliticisation of the PRSPs’ negotiating process because more radical demands are removed. Such unease is based on the observation that “the new corps of policy advocates are not necessarily ‘movement veterans’ – grassroots activists with deep ties to a social cause – but development professionals whose vocational skills have been moulded first and foremost by the bureaucratic demands of the development industry”.⁷⁸¹

Gould and Ojanen argue that an ‘iron triangle’ of transnational middle-class professionals from state actors, donor agencies and NGOs has emerged to dominate negotiations of PRSPs. This leads Sen to argue that far from representing ‘globalization from below’, the growing reliance on professional advocacy NGOs to represent grassroots civil society groups within international debates and institutions has resulted in a debate amongst a transnationally homogenous middle-class – a ‘globalization from the middle’. Genuine grassroots ‘processes, identities and cultures’ are subordinated to an exclusive dialogue among those with a common

⁷⁷⁹ Jeremy Gould and Julia Ojanen. *‘Merging in the Circle’: The Politics of Tanzania’s Poverty Reduction Strategy*, Institute of Development Studies, University of Helsinki Policy Papers 2/2003, p. 7.
<http://www.globalpolicy.org/socecon/bwi-wto/wbank/2003/07prsptanzania.pdf>

⁷⁸⁰ Jeremy Gould and Julia Ojanen. *Merging in the Circle’: The Politics of Tanzania’s Poverty Reduction Strategy*, Institute of Development Studies, University of Helsinki Policy Papers 2/2003, p. 7.
<http://www.globalpolicy.org/socecon/bwi-wto/wbank/2003/07prsptanzania.pdf>

⁷⁸¹ Jeremy Gould and Julia Ojanen. *Merging in the Circle’: The Politics of Tanzania’s Poverty Reduction Strategy*, Institute of Development Studies, University of Helsinki Policy Papers 2/2003, p. 73.
<http://www.globalpolicy.org/socecon/bwi-wto/wbank/2003/07prsptanzania.pdf>

“class, lifestyle and language”.⁷⁸² It is argued that since these transnational middle-class professionals have all been similarly schooled in the problem-solving approach to development a process of ‘deradicalisation’ and ‘depoliticisation’ has emerged from this ‘iron triangle’, which does advocate counter-hegemony. Similarly, Craig Murphy argues that regardless of the inclusion of NGOs in global governance they are no match for the prominence of business interests, which ensures the plight of the world’s politically, economically and socially excluded will not change unless it is in the interests of the market and supported by the dominant states.⁷⁸³ Therefore there is a fear that the dominance of professional transnational advocacy networks may perform a key role in passive revolution.

Acknowledging the possibility of cooptation and the ‘deradicalisation’ of political debate through NGO participation in the international organizations of the *nebuleuse* is not intended to dismiss Alter-NGOs. Undoubtedly, Cox was weary of looking to NGOs as the source of counter-hegemony and that incremental change from above is motivated by the desire to absorb and manipulate demands for an alternative order so that their arguments and movements come to conform to the hegemonic doctrine.⁷⁸⁴ It would appear that this warning has validity given to the criticisms voiced by the Alter-NGOs that the political elites of the *nebuleuse* have engaged in *trasformismo* though defining that only NGOs can represent civil society groups and limiting NGO engagement in decision-making to the minimal level of a definition of participation. The fear that a reliance on advocacy NGOs will ‘deradicalise’ the demands of grassroots social movements as transnational middle-class values and norms dominate debate, is also the reason that Cox asserted, “only where representation in

⁷⁸² See Sen, Jai. *Civilising Globalisation? Globalising Civilisation? Some Reflections Towards Civil Governance and a Conscious, Critical Globalisation*, Paper presented to the Helsinki Conference 2002 on Searching for Global Partnerships, 2002, p. 13-15.

<http://www.helsinkiconference.fi/netcomm/news>

⁷⁸³ Craig Murphy. ‘Global Governance: Poorly Done and Poorly Understood’, in *International Affairs* Vol. 76, No 4, 2000, p. 802.

⁷⁸⁴ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox and Timothy Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

international institutions is firmly based upon an articulate social and political challenge to hegemony – upon a nascent historical bloc and counter hegemony – could participation within international organizations pose a real threat”.⁷⁸⁵ Important and insightful as these arguments are, de Sousa Santos and Rodriguez-Garavito point out “If hegemonic structures and discourses are so pervasive as to absorb and dilute counter-hegemonic strategies (which renders the latter undistinguishable from what they oppose), we are left with a deterministic image of globalization in which there is virtually no space for resistance or change”.⁷⁸⁶ It is therefore essential to acknowledge that Alter-NGOs may not be perfect, but they do provide a means of bringing the principles of ecology, equality, gender, justice, and peace as articulated by different civil society members into the institutions of the *nebuleuse*. The point being made is that Alter-NGOs have to be cautious of being invited into the institutions of the *nebuleuse*, and finding that their political demands are being ignored or diluted, whilst their participation is used to legitimise the corporate world order.

6.4 After Seattle: The Limits of Official NGO Engagement at the WTO

It could be strongly argued that *transformismo* has been the WTO’s response to the protests in Seattle in 1999. What has to be remembered is that since its creation the WTO’s Charter has established provision for consultation and cooperation with NGOs through the WTO Committee on Trade and Environment (CTE).⁷⁸⁷ In 1996, this Committee made it clear that it thought NGOs really ought to be directing their energies at the national level and not at the WTO.⁷⁸⁸ Since the WTO’s Singapore Ministerial Conference in 1996, NGOs have been able to attend Ministerial

⁷⁸⁵ Robert W. Cox. ‘Gramsci, Hegemony, and International Relations: An Essay on Method’ (1983), in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

⁷⁸⁶ Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito. ‘Law, Politics, and the Subaltern in Counter-hegemonic Globalization’, in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (editors), *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge: Cambridge University Press, 2005, p.12.

⁷⁸⁷ See the Agreement Establishing The World Trade Organization Article V, Paragraph 2, 1994 http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf

⁷⁸⁸ World Trade Organization. *Report of the Committee on Trade and Environment*, WT/CTE/W/40, 12 November 1996.

Conferences after they had first undergone a process of registration and accreditation. Jan Aart Scholte, Robert O'Brien and Marc Williams concluded from their analysis of this conference that the WTO had done very little to institutionalise relationships with civil society, but had preferred to focus engagement with the supportive groups of business, whilst providing a merely cosmetic level of engagement with the rest of civil society.⁷⁸⁹ Access to WTO Ministerial Conferences had revolved primarily around business groups that were in favour of greater access to foreign markets. For example, over 65% of those NGOs accredited to attend the Singapore Ministerial Conference represented business interests. Inequality of access to the WTO also exists between NGOs from the North and South. The NGOs based in the North "urban based, university educated, computer-literate, relatively high earning, English speakers" were asserted to have had greater access to the WTO than those civil society groups that have emerged from the South. Those representatives have also been gender biased towards men.⁷⁹⁰ The WTO, they therefore argued, was guilty of "unequal access, shallowness, and limited reciprocity".

At the Seattle Ministerial Conference, 686 NGO organizations were accredited and present, and an official WTO parallel NGO Symposium was held during the Ministerial Conference. The symposium took place outside the formal structure of the WTO and physically outside the building holding the Ministerial Conference itself. The purpose of the symposium, asserted the WTO Secretariat, was to encourage an informal dialogue between WTO members and representatives of non-government organizations on issues likely to affect the international trading system of the WTO in the next century in order to (1) enhance awareness of the issues involved (2) provide a forum for exchange of ideas and (3) increase the understanding of the WTO's

⁷⁸⁹ Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998, p. 15.

⁷⁹⁰ Jan Aart Scholte, Robert O'Brien and Marc Williams. *The WTO and Civil Society*, CSGR Working Paper No. 14/98, 1998, p. 15.

contribution in these areas.⁷⁹¹ Michael Chossudivsky undermines the credibility of this symposium by drawing attention to the blatant corporate interests that were present and involved in its organization.⁷⁹² Firstly formal accreditation was conducted by the Seattle Host Committee, which was chaired by Microsoft's Bill Gates and Philip Condit of The Boeing Company. He further argues that the symposium was organized in 1998 to ensure that radical or potential conflictual NGOs were absent, and only 'partner NGOs' vetted to ensure their sympathy to the WTO's free trade were able to attend. He argues that these 'partner NGOs' "serve to deflect the articulation of 'real' social movements against the New World Order". Similar to the self-regulation of CSR, Chossudivsky draws attention to a 'moratorium' demanded by civil society groups on the run up to Seattle, which became an official audit on the effectiveness of the WTO - conducted by the WTO and Western Governments.⁷⁹³ NGOs that were providing the background reports for this audit were performing a legitimising function for the WTO, he claimed.⁷⁹⁴ Therefore prior to the Seattle protests a policy of *trasformismo* appeared to be employed by the WTO to regulate the participation of NGOs to ensure business interests were allowed access, whilst also ensuring that it could claim legitimacy for the institution because public access was granted through engagement with Ma-NGOs.

Immediately after the protests at Seattle the WTO engaged in a public relations exercise, which included statements about establishing forums for NGOs to engage with the WTO. A major part of the strategy to address the claims of non-transparency and the democratic deficit in decision-making was to promote the WTO's own website. Documents from WTO meetings that had previously been restricted were

⁷⁹¹ World Trade Organization. Seattle Symposium on International Trade Issues in the First Decades of the Next Century, December 1999.

http://www.wto.org/English/thewto_e/minist_e/min99_e/english/ngo_e/ngo_e.htm

⁷⁹² Michael Chossudivsky. *Disarming the New World Order: Seattle and Beyond*, 25 November 1999.

<http://www.thirdway.org/files/world/nwosumfix.html>

⁷⁹³ European Commission. *Commission and NGOs hold Dialogue on the Millennium Round*, Brussels, 17 November, 1998.

⁷⁹⁴ Michael Chossudivsky. *Disarming the New World Order: Seattle and Beyond*, 25 November 1999.

<http://www.thirdway.org/files/world/nwosumfix.html>

now available to the public and NGOs via the WTO's official website. On 1 February 2001 a new electronic document database was created. In addition, the WTO declassified documentation on the outcomes of trade negotiations, the creation of Panels, and the rulings of dispute settlements from the Appellate Body. These are also available to the public through the WTO's own official website.⁷⁹⁵ Through this 'on-line out-reach' the Sutherland Report declared that the WTO has made significant efforts to become more transparent and involve civil society groups.⁷⁹⁶

The second part of the public relations exercise was to assert that relations were being built with NGOs and therefore public involvement was taking place at the WTO. The WTO began to engage in a number of 'dialogues and briefings' whereby NGOs were now able to engage in informal discussions and formal symposia with the WTO secretariat; attend technical seminars on particular issues of the WTO remit; and a specific out-reach section on the WTO's website to receive NGO position papers. Research papers from NGOs were also accepted by the WTO at the annual NGO Symposium. These annual symposia have allowed NGOs to voice their opinions on; 'Issues Confronting The World Trading System' (6 and 7 July 2001)⁷⁹⁷, 'The *Doha Development Agenda* and Beyond' (29 April to 1 May 2002)⁷⁹⁸, 'Challenges Ahead on the Road to Cancún' (16 to 18 June 2003)⁷⁹⁹ 'Multilateralism at a crossroads' (25 to 27 May 2004)⁸⁰⁰ and "WTO After 10 Years: Global Problems and Multilateral

⁷⁹⁵ World Trade Organization. *Welcome*, 13 May 2005.

<http://www.wto.org/index.htm>

⁷⁹⁶ Peter Sutherland *et al.* *The Future of the WTO: Addressing Institutional Challenges in the New Millennium, Report by the Consultative Board to the Director-General Supachai Pantichapakdi*. Geneva: The World Trade Organization, 2004.

http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf

⁷⁹⁷ World Trade Organization. *Symposium on issues confronting the world trading system*, June 2001.

http://www.wto.org/english/forums_e/ngo_e/ngo_symp_2001_e.htm

⁷⁹⁸ World Trade Organization. *The Doha Development Agenda and Beyond*, April 2002.

http://www.wto.org/english/thewto_e/minist_e/min05_e/ngo_info_e.htm

⁷⁹⁹ World Trade Organization. WTO hosts public symposium: 'Challenges Ahead on the Road to Cancún', May 2003.

http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_03_e.htm

⁸⁰⁰ World Trade Organization. *WTO hosts its annual public symposium: 'Multilateralism at a crossroads'*, March 2004.

http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_04_e.htm

Solutions” (20 to 22 April 2005).⁸⁰¹ But as Ernest-Ulrich Petersmann explains, “[The symposia] are no substitute for internationalising civil society representatives as an advisory body with access to WTO documents and the right to submit recommendations to all WTO bodies subject to procedures”.⁸⁰²

Nevertheless, O’Brien *et al* celebrated the participation of NGOs within the Committee on Trade and Environment (CTE) as the beginning of a process of more engagement with the civil society groups.⁸⁰³ Yet in 2005 the WTO’s own website continued to state that observer status is as far as NGO participation can go:

It would be inappropriate to allow NGOs to participate directly as observers in the proceedings of the CTE. The main consideration for many delegations was that primary responsibility for informing the public and establishing relations with NGOs lies at the national level. Another concern related to the special character of the WTO, which is both a legally binding instrument, involving rights and obligations for its Members, and a forum for negotiations.⁸⁰⁴

Moreover observer status for NGOs has been prevented within "special sessions" held by the CTE, which reserves access solely for member state representatives.⁸⁰⁵ As Ngaire Woods and Amrita Narlikar state, transparency is not enough. Real

⁸⁰¹ World Trade Organization. *WTO hosts its 2005 annual Public Symposium — “WTO After 10 Years: Global Problems and Multilateral Solutions”*, March 2005.

http://www.wto.org/english/news_e/events_e/symp05_e/symposium_2005_e.htm

⁸⁰² Ernest-Ulrich Petersmann. ‘Human Rights and International Economic Law in the 21st Century: The Need to Clarify Their Relationship’, in *Journal of International Economic Law*, Vol. 3, No. 37, 2001, p. 4.

⁸⁰³ Robert O’Brien et al. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, p. 155.

⁸⁰⁴ World Trade Organization. Relationship with NGOs and Public Access to WTO Documentation, May 2005.

http://www.wto.org/english/tratop_e/envir_e/envir_backgrnd_e/c6s2_e.htm

⁸⁰⁵ See International Centre for Trade and Sustainable Development (ICTSD). WTO Environment Committee Zeroes in on Scope of Negotiations, *Bridges*, Vol. 6, No. 22, 12 June 2002.

<http://www.ictsd.org/weekly/02-06-12/story3.htm>

International Centre for Trade and Sustainable Development (ICTSD). Trade, Environment Officials Progress On MEA-WTO Links, *Bridges*, Vol. 2, No. 18, 21 November 2002.

<http://www.ictsd.org/biores/02-11-21/story2.htm>

accountability requires active participation.⁸⁰⁶ Consequently, rather than NGOs finding that they have begun to prised open the door of the WTO to establish greater access, as O'Brien *et al* assert, the intergovernmental nature of the WTO takes precedence over transparency and actual participation. Observation status satisfies the requirement that NGOs are engaged in WTO agreement, but also ensures that NGOs are unable to bring their issues to the negotiating table and influence decision-making with one exception (see below).

The number of NGOs actually accredited to the WTO for Ministerial Conferences also rose after Seattle. At Seattle, 776 were deemed eligible for accreditation and 686 were present. Following Seattle, at the Doha Ministerial Conference in 2001 the WTO claimed that of the 651 NGOs with accreditation, only 370 were represented because of the “lack of accommodation available”. At the Cancun Ministerial Conference, 785 NGOs and almost 1,600 of their representatives attended.⁸⁰⁷ Regardless of these high numbers of NGOs present at Ministerial Conferences and the WTO reforms since Seattle, Rorden Wilkinson, points out WTO negotiations still take place behind closed doors and officially NGOs are still not permitted entrance.⁸⁰⁸ Wilkinson asserts that since Singapore a strict vetting procedure emerged, so that in order to receive accreditation NGOs have been “requested to provide general information on the institutional structure of their organization, including details of national, regional and international representation, the number of staff, size of membership, and financial statements, as well as a statement of whether they have previously attended WTO Ministerial Meetings”.⁸⁰⁹ Consequently, NGOs are chosen by the WTO from those deemed to have a legitimate interest in trade issues so that “the WTO’s emerging regime for dealing with NGOs is likely to continue to favour those well organized,

⁸⁰⁶ Ngaire Woods and Amrita Narlikar. ‘Governance and Limits of Accountability: The WTO, the IMF and the World Bank’, in *International Social Science Journal*, Vol. 53, No. 170, 2001, p. 579.

⁸⁰⁷ World Trade Organization. NGO Participation in Ministerial Conference was Largest Ever, 6 October 2003. http://www.wto.org/English/news_e/news03_e/ngo_minconf_6oct03_e.htm

⁸⁰⁸ Rorden Wilkinson. ‘The World Trade Organization’, in *New Political Economy*, Vol. 7, No. 1, 2002, p. 132.

⁸⁰⁹ Rorden Wilkinson. ‘The World Trade Organization’, in *New Political Economy*, Vol. 7, No. 1, 2002, p. 134.

Northern-based NGOs that can demonstrate a legitimate interest in WTO affairs and which pursue a largely unthreatening agenda – precisely those NGOs that already have access to the WTO”.⁸¹⁰ Finally, Wilkinson points out that these provisions were unlikely to expand meaningful access to the WTO for many NGOs because the vast majority of the forums take place in Geneva, which is costly to travel to and stay for most non-western NGOs.

Consequently, it appears that the WTO’s selection process ensures that the WTO establishes relations with NGOs based upon what NGOs can do in terms of nurturing free trade capacity in developing countries, rather than as scrutineers of decision-making. Alter-NGO access to the WTO has been limited to participation in symposia far from the decision-making bodies of the WTO. Indeed in 2005 the Secretariat’s External Relations spokesman made it very clear to NGOs that they were wasting resources by engaging with the WTO, and would be better placed campaigning at the door of national governments.⁸¹¹ He has also consistently publicly argued that NGOs are undemocratic and unaccountable agents in the global economy that needed to be accredited to have their status verified, and listed on the WTO’s website.⁸¹² Yet once an NGO has accredited status at the WTO it also ensures that this NGO is seen as a willing participant, if not complicit, in the WTO system. It could be argued that this list of accredited NGOs performs a legitimising function for the WTO because it allows the WTO to hold up this list as evidence that public participation is taking place and therefore the demands of the protesters are being met. Indeed the list appears on the WTO website – transparency has its benefits. Therefore it could be argued the WTO has engaged in a top-down *transformismo* to present a picture of the WTO as an institution engaging with civil society on conditions of its own making that ensure non-participation in decision-making, but enough engagement to claim

⁸¹⁰ Rorden Wilkinson. ‘The World Trade Organization’, in *New Political Economy*, Vol. 7, No. 1, 2002, p. 134.

⁸¹¹ Speech given by Bernard Kuiten at the University of Birmingham during the conference ‘Endgame at the WTO? Reflections on the *Doha Development Agenda*’, 11-12 November 2005.

⁸¹² Interviews conducted at the World Trade Organization, Geneva March 2004.

legitimacy. Although this limited access could be used as a “yardstick by which to measure performance” of WTO engagement with NGOs it also provides enough access to divert criticism of the WTO.

6.5 Unofficial Channels: Transnational Advocacy Networks

Since the official channels of access to the WTO remain closed to participation by Alter-NGOs other unofficial channels have been sought. Two strategies employed through unofficial channels by Alter-NGOs are through offering their expertise to the developing countries during trade negotiations to build counter-coalitions; and secondly, Alter-NGOs have submitted their demands through *amicus* briefs to the WTO’s DSB and relied on the judicial activism of Appellate Bodies for their acceptance. This section will evaluate the strategy of Alter-NGO collaboration with the developing states at the Cancun Ministerial Conference as they have attempted to place their interests at the heart of the WTO. It will be suggested that this strategy may have only brought about the cooption of Alter-NGOs by the developing states, and further helped to legitimise the ideology of corporate hegemony. The following section will address the strategy of *amicus* briefs.

Transnational advocacy networks of Alter-NGOs have cooperated with the developing countries within the WTO to redress the inequalities in negotiations and dispute settlement. At Seattle, although Alter-NGOs had limited influence in building alliances and coalitions with the developing countries, many still felt that the demonstrations outside “empowered the South to walk away from the negotiating table.”⁸¹³ In contrast at Cancun Alter-NGOs provided their legal and informational expertise to the developing states, and helped to build common policy positions amongst the developed countries. Prior to Cancun in May 2003, an international Civil

⁸¹³ Interview with David Hunter [Former President of the Centre for International Environmental Law]. Washington, Wednesday 2 June 2004.

Society Forum for *Advancing LDC Interests in the Fifth WTO Ministerial* met in Dhaka to review the official work plan for Cancun and to use their expertise to express possible policy positions for the Least Developed Countries (LDC). Participants also included government trade representatives from Malawi, Togo, and Zimbabwe. The day after this civil society conference ended, trade Ministers from thirty-eight LDC countries gathered in Dhaka for an official meeting on the Cancun Ministerial Conference. As these trade officials met they were presented with a declaration from the civil society groups on possible policy positions to be taken at Cancun. The official Dhaka Ministerial Declaration reflects many of the positions stated in the civil society declarations on agriculture, cotton and the Singapore Issues.⁸¹⁴ The South Asian Civil Society Network of International Trade (SACSNT) met in Kathmandu, Nepal during July 2003 to discuss the south Asian agenda for the Cancun Ministerial Conference, which was intended to provide a common position for South Asian countries.⁸¹⁵

The specialised knowledge and expertise of certain Alter-NGOs was also actively sought by developing countries in preparation for the Cancun negotiations. The CIEL claimed that it could not keep up with the demand for legal advice and consultation. Fourteen papers were written by the CIEL on Trade Related-Aspects of Intellectual Property Rights (TRIPS) for states such as Brazil, China, India and Pakistan. The CIEL had been requested to perform an analysis of the TRIPS agenda proposed by the EC and US for Cancun, and to outline possible policy responses to these proposals. The CIEL also provided papers, evaluating the investment negotiations as part of the Singapore Issues, to the developing world in the run up to Cancun.⁸¹⁶ Third World Network was directly involved in advising the governments of the developing

⁸¹⁴ Second LCD Trade Ministers Meeting. *Dhaka Declaration*, Part I, Dhaka, Bangladesh, 31 May – 2 June 2003. http://www.sdnbd.org/sdi/issues/economy/ldc_dhaka/documents/ldc_final_declaration.pdf

⁸¹⁵ Saman Kelegama and Indra Nath Mukherji. *WTO and South Asia From Doha to Cancun*, 2003. <http://www.epw.org.in/showArticles.php?root=2003andleaf=09andfilename=6254andfiletype=html>

⁸¹⁶ Interview with Dan McGrew [President of the Centre for International Environmental Law]. Washington, Wednesday 2 June 2004.

countries to keep the four Singapore Issues from being more widely accepted at Cancun.⁸¹⁷ Oxfam International claimed that “At Cancun, negotiators from the developing countries used Oxfam’s research and policy analysis to influence the policy debate...Oxfam’s lobbying gave the new power blocs added strength to come together and stay together”.⁸¹⁸

At the conference itself, this preparation and cooperation amongst the developing states and the Alter-NGOs was clearly evident. Matthew Baldwin (the EC Deputy Commissioner for Trade at Cancun) explained at Cancun:

there was an amazing sea change and the NGOs completely rethought their game. The environmental and labour unions disappeared from the scene, they were effectively not players in Cancun and the development NGOs stepped into the scene and united with the South. Indeed I would say encouraged the South to take a stance [...] NGOs actively sponsored, championed advocated and wrote the position of the developing countries in Cancun.⁸¹⁹

Sylvia Ostry’s experience of NGOs at Cancun caused her to describe similar cooperative action

African NGOs were included in many official delegations and they provided ongoing information as well as research and policy analysis. African NGOs, in turn, had regular briefing sessions from officials and

⁸¹⁷ Interview with John Cavanagh [Director of International Policy Studies]. Washington, Friday 5 June 2004.

⁸¹⁸ Oxfam International. *Oxfam International Annual Report 2003*. December 2003.

http://www.oxfam.org/en/files/annual_report_2003.pdf

⁸¹⁹ Interview with Matthew Baldwin (Former EU Deputy Commissioner for Trade). Brussels, 11 November 2003.

Ministers. They were not demonstrating outside the tent but consulting inside many tents.⁸²⁰

Examples of Alter-NGO cooperation were seen in both Uganda and Kenya as representatives from ActionAid formed part of their national delegation at Seattle, Doha and Cancun.⁸²¹

The impact of Alter-NGOs cooperating with the developing countries in Cancun once again brought the inequalities in international negotiations out into the public domain.

As a senior EC commissioner observed:

The message from NGOs was loud and clear at Cancun. For example in practical terms in Cancun the European Commission represented between 15 and 25 member governments and had a team of five people of whom three were actively speaking to the media. Oxfam had 12, whose message came over more clearly and we could not compete with that volume.⁸²²

Christian Aid, Third World Network, Oxfam International and the World Development Movement all provided daily reports on their websites on the tactics and impact of the policies used by the corporate hegemony represented by the EC and US.

As the Cancun conference collapsed without an agreement, NGOs were blamed for the role that they had played. The United States Deputy Trade Representative (USTR), Josette Sheeran Shiner, was openly critical of Oxfam International for

⁸²⁰ Sylvia Ostry. *Canada in a Changing Trade Environment*, Statistics Canada Economic Conference 2004, June, 2004.

⁸²¹ Davis Ddamilura and Halima Noor Abdi (CAFOD). *Civil Society and the WTO: Participation in National Trade Policy in Uganda and Kenya*, August 2003.

<http://www.cafod.org.uk/archive/policy/Civilsocietyrpt03.pdf>

⁸²² Interview with Matthew Baldwin (Former EU Deputy Commissioner for Trade). Brussels, 11 November 2003.

assisting four African countries in their bid to win concessions on cotton, and stated that NGOs like Oxfam were not helping negotiations by constantly criticising the WTO system.⁸²³ Franz Fischler the EU's agricultural minister condemned NGOs for the failure of Cancun; "One of the biggest problems was that too many people were not interested in the success of the round and the second problem was that there was a misperception of what negotiations mean [...] This was led partly by NGOs, they conveyed the message to developing countries that no deal was better than a bad deal."⁸²⁴ The impasse at Cancun caused the EC and US to claim that the WTO negotiations were becoming unworkable because it was an institution resembling a "medieval organisation"⁸²⁵ that had become a "forum for the politics of protest"⁸²⁶ not for cooperation. Yet, in the immediate post-Cancun fever of May 2004 the then EC Trade Commissioner Pascal Lamy and Agriculture Commissioner Franz Fischler circulated a letter to their trading partners, offering to end all export subsidies and proposed more lenient treatment of the weakest and most vulnerable developing countries in the current round of talks.⁸²⁷

For many activists the collapse of Cancun was a victory for global justice and evidence that the hegemony could be countered. Mark Ritchie and Kristin Dawkins argued:

The most remarkable success in Cancun was the WTO meeting itself.

What happened was simply that most of the countries refused to go

⁸²³ Josette Sheeran Shiner (Deputy USTR). *The Bretton Woods Committee Delves into Doha and Why Global Trade Talks Stalled*, 2003

<http://www.brettonwoods.org/agtrade0903.html>

⁸²⁴ Jeremy Smith. *WTO Mood at Cancun Worsened by NGOs-EU's Fischler*, 19 September 2003

<http://www.globalpolicy.org/ngos/int/wto/2003/0919cancun.htm>

⁸²⁵ Pascal Lamy (European Union Trade Commissioner). *Press Conference Closing the WTO 5th Ministerial Conference, Cancun, Mexico*, 14 September 2003.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁸²⁶ Robert Zoellick (US Trade Representative). *America Will Not Wait for the Won't Do Countries*, 22 September 2003.

<http://www.ustr.gov/speech-test/zoellick/2003-09-22-ft.htm>

⁸²⁷ See Bridges Weekly News Digest, Vol. 8, Number 17, 13 May 2004.

<http://www.ictsd.org/weekly/index.htm>

along with the demands made by the cabal that has been running things up until now. It was the first time that the World Trade Organization began to feel like a truly global organisation--not just an extension of the U.S. government's foreign and domestic economic policy. In previous ministerial meetings, there have been small hints of shifting power relations at the WTO, but Cancun was a breakthrough: a giant shift in the balance of forces in global politics.⁸²⁸

Delighted with the collapse of Cancun, John Cavanagh (Director of International Policy Studies) argued that countries like Brazil and Argentina had acted as the new 'counter veiling power' to halt corporate hegemony.⁸²⁹ Indeed the emergence of coalitions, such as the G21 and G90 were celebrated as being instrumental because they prevented corporate hegemony represented by the EC and US from dominating the trade agenda of the WTO. Strangely, interviews conducted with a number of the WTO Secretariat immediately after Cancun revealed that there was broad agreement that the collapse of Cancun was a positive development because it illustrated that "voices other than the EU and US were being heard, which is what multilateralism is about".⁸³⁰

The 'voices being heard' from the G21 and G90 emerged confident from Cancun and began negotiating and forcing compromises from the dominant trading actors through the DSB. A spokesman for the G21 stated that they represent 51 per cent of the world's population and, with the "world's opinion" on its side, further negotiations at the WTO would be conditioned on "improving and elevating the standard of living"

⁸²⁸ Mark Ritchie and Kristin Dawkins. *A New Beginning for WTO After Cancun*, Foreign Policy In Focus (Heinrich Boll Foundation: The Green Political Foundation), April, 2004.

<http://c1.cancun.boell-net.de/en/web/410.html>

⁸²⁹ Interview with John Cavanagh [Director of International Policy Studies], Washington, 5 June 2004.

⁸³⁰ Interviews conducted at the World Trade Organization, Geneva March 2004.

for the world's poorest.⁸³¹ In April 2004, Brazil won the first Panel of its case against US cotton subsidies paid from 1999-2000 at the WTO's DSB. Brazil argued that the US was responsible for driving down world cotton prices, and harming Brazilian farmers while increasing the US share of the global cotton market. Clodoaldo Hugueneu, Brazil's leading trade negotiator stated, "this Panel is going to show how important it is that you really change this policy of developed nations".⁸³² The subsequent Appellate Body's final report found that the US was guilty of transgression of WTO rules by following this policy. The WTO also received a request from Mexico to begin dispute settlement procedures with the US for allegedly dumping stainless steel.⁸³³

It would appear that both Mexico and Brazil are now in a position to challenge the corporate hegemony represented by the EC and US through the WTO's laws created at Uruguay. A more critical analysis might exercise reservation over celebrating these events as illustrating the emergence of counter-hegemony. A point of interest is whether the G20 do represent the interests of half the world's poor or the corporate interests emanating from the developing world. Argentinian, Brazilian, Indian, and Mexican political elites are demanding market access to the heavily protected agricultural and textile markets of the EC and US, but as the above examples illustrate they are also demanding access for the goods and services of their own corporate interests. In many ways this does not challenge corporate hegemony; it reinforces and expands its sphere of interests. More importantly the G20 are also legitimising and naturalising the free trade ideology upon which corporate hegemony rests. The argument that is being presented by the G21 in challenging the EC and US is that more free trade is necessary in order to make the whole world healthy, peaceful and

⁸³¹ Quote from the statement of the G21 at their post-Cancun meeting in Buenos Aires, Argentina, 10 October 2003. See BRIDGES Weekly Trade News Digest Vol. 7, No. 34, 15 October 2003, Pg. 1.

<http://www.ictsd.org/weekly/03-10-15/index.htm>

⁸³² See Bridges Weekly News Digest, Vol. 8, No. 15, 28 April 2004.

<http://www.ictsd.org/weekly/02-10-02/story1.htm>

⁸³³ World Trade Organization. United States - Anti-Dumping Determinations regarding Stainless Steel (WT/DS325/1, G/L/727, G/ADP/D60/1) entitled from Mexico, 10 January 2005.

prosperous, not that free trade and corporate hegemony ought to be challenged. Indeed this claim about free trade is the very ideology that justifies the WTO. Secondly, in using the WTO's DSB to gain access to these EC and US markets the WTO's existing structure and power are legitimised in the eyes of wider public.

Advocacy work by Alter-NGOs therefore did play a significant role in the collapse of the Cancun negotiations by working with the developing countries. The events at Cancun raised public awareness of the manipulation and bullying that the EC and US are willing to engage in to force other states into accepting a specific transnational corporate trading agenda. This cooperation between Alter-NGOs and the developing world, however, did not change the WTO's agreements and procedures. In fact it could be suggested that the collapse of Cancun has helped to legitimise the WTO system and its neoliberal ideology. On a more positive assessment of Cancun, Thea Lea believes that the Cancun collapse brought the WTO to a new era in its history:

at the moment we are at a place where the WTO's forward momentum is clearly broken and it is an organisation that is now unable to move forward smoothly and implement its agenda, which I think is a good thing. I think that before you can turn around a train you have to stop it. That is where we are now; we have kind of slowed down the juggernaut and now the burden is on us to build a positive forward looking agenda for some kind of multi-lateral rule setting that is more progressive more inclusive more open more accountable than the WTO has been.⁸³⁴

Lea rightly draws to our attention the claim that the WTO will have to rethink its attitude to the demands from Alter-NGOs after the collapse of Cancun. But it has to be accepted that neither the trade negotiations at Cancun nor the collaboration with

⁸³⁴ Interview conducted with Thea Lea [Assistant Director of International Economics] American Federation of Labour-Congress of Industrial Organisation (AFL-CIO), Tuesday June 1 2004.

the developing nations allowed the Alter-NGOs to place environmental issues, gender, human and labour rights at the heart of the WTO. The procedures of the WTO also remain intact preventing Alter-NGOs from gaining rights to participate in the decision-making of Ministerial Conference or the DSB. Cancun may have stopped the WTO from generating further trading agreement for corporate interests, but the DSB is busy opening markets around the world for corporations from the developed and developing world. Hegemony is therefore expanding and not contracting. The Alter-NGOs won a battle at Cancun, but not the war to counter-hegemony and altering the WTO so that a 'bottom up' new multilateralism can emerge based upon alternative values to corporate hegemony.

6.6 Influencing Dispute Settlement: NGOs and *Amicus curiae* briefs

The issues of transparency and who ought to be able to participate in the WTO's dispute settlement process have been debated since the negotiations that led to the WTO's creation.⁸³⁵ CIEL, in conjunction with the World Justice Movement, has been instrumental in spearheading the campaign for Alter-NGO participation within the DSB. CIEL argues that it is absurd that trade dispute settlement is conducted solely amongst trade experts. Trade policy impacts directly on public policy and therefore requires that environmental, health, labour and rights experts ought to be able to supply the trade experts with information on the social and environmental impact of their decisions.⁸³⁶ Although there is no provision in the Charter for non-members to participate in the DSB Panel or Appellate Body proceedings, Alter-NGOs and the business community have attempted to find ways to ensure that their interests are represented at the DSB. In all there are four ways that these NGOs have attempted to

⁸³⁵ See Terence P. Stewart (editor). *The GATT Uruguay Round: A Negotiating History (1986-1992), Volume II: Commentary*, The Hague; London: Kluwer Law International, 1993, p. 2750-1, and also GATT Document, No. MTN.TNC/W/35, and Draft Agreement Establishing the Multilateral Trade Organization, Informal Note by the Secretariat, 25 March 1992.

⁸³⁶ Interview with Dan McGrew [President of the Centre for International Environmental Law]. Washington, 2 June 2004.

influence and participate in the dispute settlement system: (1) NGOs have assisted in the litigation preparations of WTO members behind closed doors.⁸³⁷ (2) *Amicus curiae* briefs⁸³⁸ (friends of the court) written by NGOs have been submitted and appended to a WTO Member's litigation submission during involvement in DSB.⁸³⁹ (3) Independently of any WTO Member, *amicus* briefs from NGOs have been submitted to WTO Panels.⁸⁴⁰ (4) Finally, and again independent of any WTO Member's input, *amicus* briefs compiled by NGOs have been presented to the Appellate Body.⁸⁴¹

In this section it will be illustrated that the submission of *amicus* briefs to the dispute settlement process by these non-members has caused vehement debate both inside, and outside the WTO. A quarrel within the WTO has been sparked off because the acceptance of *amicus* briefs has only been possible because of the manner in which

⁸³⁷ World Trade Organization. Report from the Panel, Japan-Measures Affecting Consumer Photographic Film, WT/DS44/R, 31 March 1998. In the Kodak-Fuji dispute the two governments written submissions and oral arguments were written by Kodak and Fuji lawyers, acting jointly with US and Japanese government officials respectively.

⁸³⁸ The term *amicus* briefs will be used hitherto.

⁸³⁹ See World Trade Organization. Report of the Panel, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R, 15 May 1998. “3.129. The Panel received two *amicus* briefs submitted by non-governmental organizations (NGOs). The first one was submitted on 28 July 1997 jointly by the Centre for Marine Conservation (CMC) and the Centre for International Environmental Law (CIEL) ... The United States had decided to attach the "factual portions" of the *amicus* brief to its oral statement only at the end of the second substantive meeting of the Panel with the parties, after the formal rebuttal statements had been made and the question-and-answer session completed.” Also see the World Trade Organization. Report of the Panel, European Communities – Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/9, 8th November 2000 is most notable because it invited *amicus* briefs from interested parties.

⁸⁴⁰ World Trade Organization. Report of Appellate Body, United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, WT/DS138/AB/R, 10 May 2000, “On 7 February 2000, "*amicus curiae* briefs", from the American Iron and Steel Institute and the Specialty Steel Industry of North America. WTO. European Communities – Measures Affecting Asbestos and Asbestos-Containing products, WT/DS135/R, September 18, 2000, World Trade Organization. Report of the Panel, Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 by Canada, WT/DS18/RW, 18th February 2000. *Amicus* briefs received from concerned fisherman in South Australia.

⁸⁴¹ World Trade Organization. Report of Appellate Body, United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, WT/DS138/AB/R, 10 May 2000, “On 7 February 2000, "*amicus curiae* briefs", from the American Iron and Steel Institute and the Specialty Steel Industry of North America, World Trade Organization. Report of the Appellate Body, Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland, WT/DS122/AB/R, 12 March 2001. 62. On 1 December 2000, the Appellate Body received a written brief from the Consuming Industries Trade Action Coalition ("CITAC"), a coalition of United States companies and trade associations. World Trade Organization. Report of the Appellate Body, European Communities - Trade Description of Sardines, WT/DS231/AB/R, 26 September 2002. World Trade Organization. Report of the Appellate Body, United States – Definitive Safeguard Measures in Imports of Certain Steel Products, WT/DS248, 249, 251, 252, 253, 254, 259, /AB/R, 10 November 2003. World Trade Organization. Report of the Appellate Body, United States – Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R, 19 January 2004.

successive Appellate Bodies have acted independently in their interpretation of the Articles of the DSB. Prior to this judicial activism, which began in 1997, neither Panels nor Appellate Bodies accepted *amicus* briefs. Consequently, a majority of the members, mainly the developing states, have condemned the judicial wing of the WTO for acting outside its authority as laid down in the WTO Charter. On the other hand, the EC and US have been supportive of the acceptance of *amicus* briefs to bring expertise and knowledge to disputes. There has therefore been tension between the majority of the membership and the Appellate Body because they feel that the intergovernmental nature of the WTO is being threatened. The strategy of Alter-NGOs submitting their demands through *amicus* briefs, however, has been resisted. It will be suggested that demands for access to DSB by Alter-NGOs have caused the WTO to begin another process of *trasformismo* as certain NGOs have been given observer status to pacify public demands for transparency.

Petros C. Mavroidis explains that an *amicus* brief is sent to the WTO for two reasons; “to provide some information (an opinion how to interpret facts established by others) on the one hand, and to sensitise a court about the interest that a particular case might have for the wider public on the other. This second ground is in fact the bridge between court and the society”.⁸⁴² Dinah Shelton points out there is nothing new about the submission of *amicus* briefs to judicial systems. The history of *amicus curiae* can be traced back to ancient Roman times.⁸⁴³ The US legal system has allowed the submission of evidence from third parties on the basis that it will “prevent a collusive suit to protect unrepresented persons or the public interest, or to point out error to the court”.⁸⁴⁴ Georg C. Umbricht illustrates the significant development of these submissions from the ideal to the pragmatic:

⁸⁴² Petros C. Mavroidis. *Amicus Briefs Before the WTO: Much Ado About Nothing*, Jean Monnet Working Paper 2/10, 2002, p. 11.

⁸⁴³ See Dinah Shelton. ‘Participation of Nongovernmental Organizations in International Judicial Proceedings’, in *The American Journal of International Law*, Vol. 88, No. 4, 1994, p. 612.

⁸⁴⁴ See Dinah Shelton. ‘Participation of Nongovernmental Organizations in International Judicial Proceedings’, in *The American Journal of International Law*, Vol. 88, No. 4, 1994, p. 612.

The concept of *amicus curiae* briefs, as it is understood today, is that a private person or entity who has no direct legal interest at stake in the dispute at hand may submit an unsolicited report to the court in which such person or entity may articulate its own view on legal questions and inform the court about factual circumstances in order to facilitate the courts ability to decide the case...Today, most *amici* are guided by their own interests and try to influence the judges into taking a position that is the most favourable to their interests, either by pointing out new factual aspects or by trying to fortify a specific line of argumentation that seems to be most beneficial to their position. What was once an idealistic service to the court has now become an instrument to influence judicial decision-making.⁸⁴⁵

Therefore it is argued that due to the fact that *amicus* briefs are not neutral, but are advocating a particular interest on one (or either) side of a dispute, their inclusion in the WTO dispute settlement system has been problematic. What should also be stressed is that very few international organisations, however, actually accept *amicus* briefs.

Ultimately, the acceptance of *amicus* briefs has only been possible because of judicial activism on the part of the Appellate Body. The Appellate and Panel reports were adopted in 1998. Concerns had been raised in the past by advocacy NGOs through *amicus* briefs over the quality of harmful traded gasoline⁸⁴⁶, hormone-enhanced beef, genetically modified foodstuffs⁸⁴⁷, the trading of asbestos products⁸⁴⁸, and more

⁸⁴⁵ Georg C. Umbricht. 'An 'Amicus Curiae Brief' on Amicus Curiae Briefs at the WTO', in *Journal of International Economic Law*, Vol. 4, No. 4, 2001, p. 778.

⁸⁴⁶ World Trade Organization. Report by the Appellate Body, United States – Standards for Formulated and Conventional Gasoline, WT/DS2/AB/R, May 20, 1996.

⁸⁴⁷ World Trade Organization. Report by the Appellate Body, European Communities – Measures Affecting Meat and Meat Products (Hormones), WT/DS26/AB, April 16, 1998.

recently the rights of indigenous people.⁸⁴⁹ These, however, have been rejected or dismissed on grounds that Article 13 of the DSU, specifically states, “Each Panel shall have the right to seek information and technical advice from any individual or body it deems appropriate”. Since *amicus* briefs had been submitted without the Panel formally seeking information and technical advice they were considered to be unsolicited.⁸⁵⁰ As Mavroidis points out, however, “through artistic legal expression”⁸⁵¹ the Appellate Body decided that the Panel’s interpretation of Article 23 was “unnecessarily formal and technical in nature”.⁸⁵² Consequently, the Appellate Body concluded that it could decide to accept information and technical assistance in the form of *amicus* briefs, not just actively seek it as stated in Article 13.

This unique interpretation of the word “seek” emerged from a dispute in 1996. India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the US on the importation of certain shrimp and shrimp products.⁸⁵³ The US protection of sea turtles was at the heart of the ban. The US Endangered Species Act of 1973 listed as endangered or threatened the five species of sea turtles found in US waters, and prohibited fishing without nets specifically designed to prevent the catching of protected turtles. As the Appellate Panel decided to accept *amicus* briefs under its new interpretation of ‘seek’, two were submitted by environmental Alter-NGOs to support a US ban on the import of foreign shrimp and shrimp products, which had been caught by methods that could kill endangered sea turtles. The first was a joint *amicus* brief from the Centre for Marine Conservation (CMC) and the

⁸⁴⁸ World Trade Organization. Report of the Panel, European Communities – Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/9, 8th November 2000.

⁸⁴⁹ See World Trade Organization. United States: Preliminary Determinations with Respect to Certain Softwood Lumber From Canada, WT/DS236/R, 27 September 2002, also see the International Centre for Trade and Sustainable Development (ICTSD), ‘WTO members Comment On Indigenous *Amicus* Brief In Lumber Dispute’ <http://www.ictsd.org/biores/02-05-16/story2.htm>

⁸⁵⁰ See World Trade Organization. United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R, 15 May 1998.

⁸⁵¹ Petros C. Mavroidis. *Amicus Briefs Before the WTO: Much Ado About Nothing*, Jean Monnet Working Paper 2/10, 2002, p. 2.

⁸⁵² World Trade Organization. United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 12 October 1998, p. 107.

⁸⁵³ World Trade Organization. United States - Import Prohibition of Certain Shrimp and Shrimp Products, Request for Consultations by India, Malaysia, Pakistan And Thailand, WT/DS58/1, 14 October 1996.

CIEL.⁸⁵⁴ The World Wide Fund for Nature (WWF) submitted the second. The Appellate Body decided that the US was in breach of WTO agreements, not because it sought to protect the environment but because it discriminated between WTO members. The US had provided countries in the western hemisphere (mainly in the Caribbean) with technical and financial assistance and longer transition periods for their fishermen to start using turtle friendly nets. It did not, however, give the same advantages to the four Asian countries that filed the complaint with the WTO.⁸⁵⁵ The opposing parties to the Shrimp/Turtle dispute also very quickly condemned this interpretation of Article 13 of the DSU.⁸⁵⁶ The Malaysian delegation asserted that a “procedural flaw concerned the Appellate Body's treatment of *amicus curiae* briefs submitted by non-governmental organisations (NGOs). His delegation believed that members, not the Appellate Body, should decide the extent to which NGOs might be involved in a dispute settlement process”.⁸⁵⁷ It would not be difficult to argue that the US government was merely coopting the influence of high profile Alter-NGOs in order to get public opinion behind the demand for protectionist policies from US corporate fishing interests, rather than the interests of endangered turtles.

In 2000, an Appellate Body went one step further and asserted that although Appellate Bodies did not have a legal duty to accept or consider *amicus* briefs from those parties outside of the “WTO members which are parties or third parties in a particular dispute”, it did have “the legal authority under the DSU to accept and consider *amicus curiae* in an appeal in which we find it pertinent and useful to do so”.⁸⁵⁸ The Appellate Body made it clear that it was under no legal obligation to respond to the

⁸⁵⁴ The Centre for Marine Conservation, Red Nacional de Accion Ecologica (RENACE) of Chile, the Environmental Foundation Ltd of Sri Lanka, and the Philippine Ecological Network.

⁸⁵⁵ World Trade Organization. United States - Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 12 October 1998, see Sections 185 and 186.

⁸⁵⁶ World Trade Organization. United States - Import Prohibition of Certain Shrimp and Shrimp Products 1, Minutes of Meeting, 6 November 1998, WT/DSB/50, Published, 14 December 1998.

⁸⁵⁷ World Trade Organization. United States - Import Prohibition of Certain Shrimp and Shrimp Products 1, Minutes of Meeting, 6 November 1998, WT/DSB/50, Published, 14 December 1998.

⁸⁵⁸ World Trade Organization. United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, WT/DS138/AB/R, 10 May 2000, p. 41 and 42.

sender or reflect on the content of the brief received. The final step, and one that provoked a backlash from a number of member states, came in November 2000 when an Appellate Body decided to publicly invite *amicus* briefs from all interested parties during a dispute over the trade of asbestos.⁸⁵⁹ This document stated “in the interest of fairness and orderly procedure in the conduct of this appeal” it was willing to accept *amicus* briefs on the grounds of Article 16, section 1 of its Working Procedures.⁸⁶⁰ It then stated seven preconditions for submission, which included that the submissions must be limited to legal argument.

This initial opening up of the WTO Appellate Body to NGO participation through submission of *amicus* briefs was very quickly reined in, but not stopped. A number of the WTO members, initiated by Egypt, requested a special meeting of the WTO’s General Council to address this issue.⁸⁶¹ The overwhelming tone of this meeting, with only a few exceptions, was one of accusation and outrage. The Appellate Body’s interpretation of the DSU, it was argued again and again, had caused it to be engaged in judicial activism in an area outside of its authority, and which undermined the special intergovernmental character of the WTO.⁸⁶² It is worth dwelling on the arguments of the delegations to get a sense of how seriously the members guard the intergovernmental nature of the dispute settlement process, and the WTO in general.

The Uruguay delegation pointed out that the Appellate Body did not have the authority to interpret the agreements, especially on an issue that “affected the rights and obligation of the WTO members”.⁸⁶³ Egypt stated that the decision “went far

⁸⁵⁹ World Trade Organization. European Communities – Measures Affecting Asbestos and Products Containing Asbestos, see WT/DS135/R/Add.1, September 18, 2000, WT/DS135/9, 8th November 2000.

⁸⁶⁰ Agreement Establishing the World Trade Organization, Annex 2, http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf

⁸⁶¹ See World Trade Organization. General Council, Minutes of Meeting, WT/GC/M/60, 22 November, Published 23 January 2001.

⁸⁶² See World Trade Organization. General Council, Minutes of Meeting, WT/GC/M/60, 22 November, Published 23 January 2001. Chairman’s comment, Point 114.

⁸⁶³ Uruguay, Minutes of Meeting, WT/GC/M/60, Point 4.

beyond the Appellate Body's mandate and power",⁸⁶⁴ and this was also stated by Mexico, Singapore, Columbia, Costa Rica, Argentina, Australia, Tanzania, Pakistan, and Japan. Uruguay argued that the Appellate Body was guilty of granting "individuals and institutions outside of the WTO a right that members themselves did not possess. This procedure allows individuals or institutions to present their points of view, and possibly influence a purely legal and interpretive decision on the rules of a specific case, while the right was solely reserved to the parties and third parties to a dispute, and was even refused to other WTO members".⁸⁶⁵ Argentina asked if WTO members that were not party or third parties to a dispute, could present themselves as NGOs in order to submit *amicus* briefs? And if this were the case, would the dispute settlement system be "flooded by an unmanageable amount of briefs?"⁸⁶⁶

Argentina and Brazil asserted the acceptance of *amicus* briefs had political implications. Argentina stated "the DSB would be excessively influenced by NGOs or by large corporations who would offer legal services".⁸⁶⁷ Brazil pointed out that the neutrality of the dispute settlement system was under threat when the Appellate Body could determine who had the right to submit *amicus* briefs, such that "the dispute settlement mechanism could soon be contaminated by political issues that did not belong to the WTO, much less to its dispute settlement mechanism".⁸⁶⁸ Argentina, Pakistan, and Tanzania cited objections on the grounds that the submission of *amicus* briefs gave undue advantage to NGOs in the West, because NGOs from the developing countries and least developed countries did not have access to the Internet and available information to participate.⁸⁶⁹ The real question that needs to be asked is: what do the states have to hide from the rest of the world? Perhaps what is being hidden is the manner in which the structural power of corporate hegemony is able to

⁸⁶⁴ Egypt, Minutes of Meeting, WT/GC/M/60, Point 12.

⁸⁶⁵ Uruguay, Minutes of Meeting, WT/GC/M/60, Point 7.

⁸⁶⁶ Argentina, Minutes of Meeting, WT/GC/M/60, Point 93.

⁸⁶⁷ Argentina, Minutes of Meeting, WT/GC/M/60, Point 93.

⁸⁶⁸ Brazil, Minutes of Meeting, WT/GC/M/60, Point 51.

⁸⁶⁹ Argentina, Minutes of Meeting, Point 93; Pakistan, Minutes of Meeting, Point 66; and Tanzania, Minutes of Meeting, Point 107. WT/GC/M/60.

manipulate negotiations and decisions to expand and reinforce its interests throughout the world. Without transparency speculation will continue, and the public will not know what is being negotiated in their name.

In contrast, the US, EC, Canada and Australia were less scathing in their contribution to the discussion. The US was the only Member to argue that the Appellate Body acted appropriately, and within its authority to interpret agreements.⁸⁷⁰ The EC pointed out that it had always been in favour of greater transparency of the DSB, and recognised that “obviously civil society had a clear interest in some of the issues related to the work of the WTO, and particularly the DSB”. The EC therefore asserted the need for further discussion and debate was required on the role of non-members. Siding with the Appellate Body, the EC asserted “if the legislative arms fell short of legislation, the judicial arm had the tendency to fill in the gaps”.⁸⁷¹ Canada agreed that it was in favour of greater transparency, but that *amicus* briefs were not about transparency, they were about participation by non-members, and as such would require further debate by the members over the acceptance of this development.⁸⁷² Australia was in favour of continued negotiations, but within the parameters of respecting and preserving the rights of members, of respecting the WTO as an intergovernmental body, and of the need to respond to public interest in the WTO’s work.⁸⁷³

In the Chairman’s summary of the meeting, he drew attention to the majority of members asserting the intergovernmental nature of the WTO, and that they did not want unsolicited *amicus* briefs to be accepted by Appellate Bodies in the future.⁸⁷⁴ India, Pakistan, Egypt and Malaysia asked that the *amicus* brief procedures be

⁸⁷⁰ US, Minutes of Meeting, WT/GC/M/60, Point 74.

⁸⁷¹ EC, Minutes of Meeting, WT/GC/M/60, Point 96.

⁸⁷² Canada, Minutes of Meeting, WT/GC/M/60, Point 71.

⁸⁷³ Australia, Minutes of Meeting, WT/GC/M/60, Point 105.

⁸⁷⁴ Chairman, Minutes of Meeting, WT/GC/M/60, Point 114.

withdrawn on the grounds that the WTO agreements clearly state that the organisation is member state driven, and only member states can participate in the dispute settlement. Members told the Appellate Body dealing with the asbestos dispute that it must proceed with "extreme caution" in future dealings with NGO participation in the dispute settlement process.⁸⁷⁵ Consequently, all of the 17 requests to submit *amicus* briefs from Alter-NGOs were refused by the Appellate Body.

It is clear from the above discussion that the majority of members, especially the developing countries, are against the acceptance of *amicus* briefs and the judicial activism that caused them to be submitted. It is also clear that the majority of developing countries do not want NGO and social and environmental issues to gain access to Appellate Bodies. If *amicus* briefs must be submitted they must be limited to legal issues. To ensure the artificial distinction between trade and its social and environmental consequences, members have pointed to Article 3.2 of the DSU, which specifically states: "Recommendations and rulings of the DSB cannot add or diminish the rights and obligations provided in the covered agreements".⁸⁷⁶ In addition, members have emphasised the *Agreement Establishing the WTO*, Article 5.2, which makes it clear that only the General Council has the authority to determine the appropriate arrangements for consultation and cooperation with NGOs, since it is the highest authority when the Ministerial Conference is not in session. Although the EC and US have been in favour of greater NGO engagement it would be in the realms of fantasy to declare them as champions of Alter-NGO involvement at the DSB. It is possible to advocate greater NGO participation to gain wider public exposure as a state committed to transparency and democratisation, whilst also knowing that this position would never become a reality as it would be vetoed by the rest of the

⁸⁷⁵ The International Centre for Trade and Sustainable Development (ICTSD), WTO General Council Slaps Appellate Body on *Amicus* Briefs, Vol. 4, No. 45, 20 November 2000.
<http://www.icts.org/html/weekly/story1.28-11-00.htm>

⁸⁷⁶ Agreement Establishing the World Trade Organization. Annex 2, 'Understanding on Rules and Procedures Governing the Settlement of Disputes', Article 3, Section 2.

membership. In addition opening the WTO to NGO participation would also allow Ma-NGOs to use their greater resources and marketing power to flood the DSB with demands for more free trade and deregulation.

Academics have debated the pros and cons of the submission and acceptance of *amicus* briefs. Outlining the advantages, Umbricht argues that all available information is an asset to determining the settlement of a dispute, and the fair representation by governments of every minority forming part of their constituency is a fiction.⁸⁷⁷ On the arguments against, he notes there is a fear that by allowing NGOs to participate it will entail a shifting of more power to the industrialised countries from which most NGOs emanate. The submission of *amicus* briefs is seen as a slippery slope towards full participation and recognition of non-members in what is deemed to be an exclusively intergovernmental institution.⁸⁷⁸ It is feared that the dispute settlement system will become politicised by *amicus* briefs submitted by NGOs, rather than purely deliberating and concluding disputes on points of law as laid down in the WTO agreements by the members. There is alarm about the prospect of an independent and active Appellate Body causing unpredictability and uncertainty in the dispute settlement process, by choosing to bring social, economic, and environmental issues into the trade disputes.⁸⁷⁹ Kent Jones argues that the WTO dispute settlement system is not the place to address non-trade issues e.g. environment, labour standards, and human rights. That is not what the WTO is designed for, he claims, and their inclusion and enforcement would only increase protectionism and distort trade by using trade sanctions to ensure the application of non-trade issues.⁸⁸⁰

⁸⁷⁷ Georg C. Umbricht. 'An 'Amicus Curiae Brief' on Amicus Curiae Briefs at the WTO', in *Journal of International Economic Law*, Vol. 4, No. 4, 2001, p. 778.

⁸⁷⁸ Georg C. Umbricht. 'An 'Amicus Curiae Brief' on Amicus Curiae Briefs at the WTO', in *Journal of International Economic Law*, Vol. 4, No. 4, 2001, p. 783-786.

⁸⁷⁹ C. L. Lim. 'The Amicus Brief Issue at the WTO', in *Chinese Journal of International Law*, Vol. 4, No. 1, 2005, p. 88.

⁸⁸⁰ Kent Jones. 'The WTO Core Agreements, Non-Trade Issues and Institutional Integrity', in *World Trade Review*, Vol. 1, No. 3, 2002, p. 265.

C. L. Lim asserts that the Member states need to address the issue of the submission of *amicus* briefs during the reform of the DSU, to lay down detailed terms of action to prevent judicial activism on the part of the Appellate Body, and thereby preserve the stability and predictability of the intergovernmental nature of the DSU.⁸⁸¹ In contrast, Ernesto Hernandaez-Lopez argues that *amicus* briefs ought to be accepted to “stress the global nature of the WTO” because of the economic social, political and environmental effects of trade dispute settlement.⁸⁸² To ensure that *amicus* briefs do not overwhelm the Appellate Body, Umbricht argues, *amicus* briefs ought only to be accepted at the Panel level. In doing so no new evidence is submitted for the final review by the Appellate Body.⁸⁸³ Mavroidis, however, argues that there is a disproportionate importance placed on the submission of *amicus* briefs and the judicial activism by the Appellate Body because ultimately it is the members that have the authority to correct the Appellate Body and its rulings.⁸⁸⁴ More critically, Steinberg claims that ‘judicial activism’ to incorporate environmental issues, labour standards, and human rights by the Appellate Body will not be tolerated by the most powerful states. This is especially true if they damage the “powerful political interests in both the European Community and the United States”. He concludes that judicial activism will be prevented by the EC and US by rewriting DSU rules, de-legitimising the Appellate Bodies through diplomatic statements and defying the rulings, and ultimately threatening to exit the WTO altogether.⁸⁸⁵

⁸⁸¹ C. L. Lim. ‘The *Amicus* Brief Issue at the WTO’, in *Chinese Journal of International Law*, Vol. 4, No. 1, 2005, p. 116.

⁸⁸² Ernesto Hernandaez-Lopez. ‘Recent Trends and Perspectives for Non-State Actor Participation in World Trade Organization Disputes’, in *Journal of World Trade*, Vol. 35, No. 3, 2001, p. 469-498.

⁸⁸³ Georg C. Umbricht. ‘An ‘*Amicus Curiae* Brief’ on *Amicus Curiae* Briefs at the WTO’, in *Journal of International Economic Law*, Vol. 4, No. 4, 2001, p. 783-786.

⁸⁸⁴ Petros C. Mavroidis. *Amicus Briefs Before the WTO: Much Ado About Nothing*, Jean Monnet Working Paper 2/10, 2002, p. 11.

⁸⁸⁵ Richard H. Steinberg. ‘Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints’, in *The American Journal of International Law*, Vol. 98, No. 2, 2004, p. 268.

Perhaps what Steinberg is overlooking is that a policy of *trasformismo* ensures that the corporate interests represented by the EC and US are protected behind 'reform from above'. The majority of the WTO members, mainly the developing states, have been the most vocal critics against the acceptance of *amicus* briefs in either the Panel or Appellate Body. Primarily, it has only been the EC and US that have supported the acceptance of *amicus* briefs. As pointed out above, the official objections have been primarily on the grounds that the WTO is an intergovernmental organisation, and as such the development of its agreements, rules and procedures are exclusively determined by the WTO's member states. Yet the decision to accept *amicus* briefs, even in the face of continued reprimands by many of the members, was not initiated by the members, but through judicial activism on the part of the Appellate Body.⁸⁸⁶ The majority of the members may not be happy about the acceptance of *amicus* briefs and consistently voice their disapproval, but the membership as a whole has been unable to find a consensus on an agreement that rejects or accepts *amicus* briefs. The WTO membership has consistently postponed reforming the DSU from 1999 to 2004.⁸⁸⁷ Consequently, so long as this remains the case and the Appellate Body is willing to continue to accept *amicus* briefs from NGOs the social, economic and environmental impact of trade agreements will be submitted to the dispute settlement system. To date, however, the *amicus* briefs promoting the values of the alter-globalization movement have yet to have a substantive impact on the policies and process of the WTO. Indeed gaining access to DSB through *amicus* briefs Alter-NGOs may actually result in establishing greater legitimacy to the WTO without

⁸⁸⁶ "Judicial activism" is to 'clarify ambiguity in the agreements, and in many ways filling in the gaps of the vague agreements that states found difficult to negotiate the finer details'. Richard H. Steinberg. 'Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints', in *The American Journal of International Law*, Vol. 98, No. 2, 2004, p. 268.

⁸⁸⁷ A 1994 Ministerial Decision said that the dispute settlement rules should be reviewed by 1 January 1999. The review started in the Dispute Settlement Body in 1997. The deadline was extended to 31 July 1999, but there was no agreement. In November 2001, at the Doha Ministerial Conference, Member governments agreed to negotiate to improve and clarify the Dispute Settlement Understanding. Ministers said that the new negotiations should be concluded not later than May 2003. These negotiations take place in special sessions of the Dispute Settlement Body (DSB). On 24 July 2003, acknowledging the fact that the DSB special session needed more time to conclude its work, the General Council agreed to extend the special session's timeframe by one year, to May 2004. See World Trade Organization website. http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#news

really being able to change the deregulations policies. Through a process of *trasformismo* it is clearly possible to envisage having a token clause on trade agreement that asserts the voluntary, unenforceable/open to interpretation statement to uphold environmental standards or human rights as was seen with the UN and CSR.

Indeed due to the criticisms received on the issues of transparency, accountability, social justice, environmental sustainability and lack of NGO access, there have been major changes in rhetoric within the institution. For example, the former WTO Director-General Michael Moore discusses in his recent book the need for a 'democratic caucus' (a second chamber containing parliamentarians from around the world) to bring legitimacy and accountability to the WTO. In the post-Cancun world, the EC Trade Commissioner, Pascal Lamy acknowledged that the WTO "cannot simply focus on trade opening while ignoring the inter-linkage between trade and the environment, social development, health, corruption, corporate governance"⁸⁸⁸. He has spoken about the need for a more structured relationship between the WTO, civil society (NGOs) and parliamentarians to give the WTO legitimacy.⁸⁸⁹ In many ways this builds on Lamy's earlier argument that the EU experience of regional economic integration, which necessitated political institution building for transparency and accountability coupled with social and environmental chapters, provides a model for global governance.⁸⁹⁰

Pascal Lamy is now the Director-General of the WTO and in September 2005 NGOs were allowed for the first time to observe the operations of one specific dispute

⁸⁸⁸ Pascal Lamy (European Union Trade Commissioner). *The Future of the WTO for European Parliament Kangaroo Group*, 27 January 2004.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁸⁸⁹ Pascal Lamy (European Union Trade Commissioner). *The Future of the WTO for European Parliament Kangaroo Group*, 27 January 2004.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

⁸⁹⁰ See Pascal Lamy (European Union Trade Commissioner). *The Multilateral Trading System and Global Governance after Doha*, Berlin, 27 November 2001.

http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla86_en.htm

settlement Panel.⁸⁹¹ The EU and US voluntarily agreed to allow the opening of this Appellate Body's proceedings for observation, but not for representation and participation by NGOs.⁸⁹² At the request of the parties to the disputes, the Panels agreed to open their proceedings with the parties and scientific experts on 27-28 September and with the parties on 2-3 October 2006 for observation by WTO Members and the general public via closed-circuit broadcast to a separate viewing room at WTO Headquarters in Geneva.⁸⁹³ The WTO's website advertises this opening up of the dispute settlement process as evidence of public oversight and transparency at the WTO with great enthusiasm. In November 2005, the WTO was again criticised by 68 union and civil society groups in an open letter to Director-General Pascal Lamy, for failing to ensure that agenda for the negotiations of GATS at the Hong Kong Ministerial Talks were set through consensus decision-making.⁸⁹⁴ Lamy replied to these groups on the very same day through the WTO website, claiming that the concerned groups were misinformed about the manner of decision-making. Importantly he claimed that his reply was "in the interest of transparency".⁸⁹⁵ One could argue that this was Lamy demonstrating that NGOs are recognised as legitimate actors at the WTO with a recognised constituency. Given these developments, there could be reason to be somewhat optimistic for future transparent and accountable reforms of the WTO. The optimism has to be measured because rhetoric is cheap and substantive change has yet to be seen. The experience of Alter-NGO cooption within the World Bank raises fears that this participation may be so limited that Alter-NGOs

⁸⁹¹ World Trade Organization. United States — Continued Suspension of Obligations in the EC — Hormones Dispute, WT/DS320, and Canada - Continued Suspension of Obligations in The EC - Hormones Dispute, WT/DS321, 12-15 September 2005.

⁸⁹² World Trade Organization. *WTO Opens Panel Proceeding to Public for the First Time*, 12 September 2005. http://www.wto.org/english/news_e/news05_e/openPanel_12sep_e.htm

⁸⁹³ World Trade Organization. *Registration Begins for Public Hearings of "US/Canada — Continued Suspension of Obligations in the EC—Hormones Dispute" (Complainant EC) Panels on 27-28 September and 2-3 October 2006 in Geneva*, September 2005.

http://www.wto.org/english/tratop_e/dispu_e/public_hearing_sep06_e.htm

⁸⁹⁴ Open Letter to WTO Director General – Pascal Lamy (From Sixty Eight Union and Civil Society Groups). 'Redefining What 'Consensus' Means in the WTO', Geneva 27 October 2005.

http://www.ciel.org/Publications/Lamy_1Nov05_English.pdf

⁸⁹⁵ World Trade Organization. Lamy to NGOs: *Your Criticism is Based on a Misunderstanding of Services Talks*, 18 November 2005.

http://www.wto.org/english/news_e/news05_e/dg_letter_nov05_e.htm

have little real influence, and merely legitimise the WTO procedures. Indeed it would seem to suggest that this may be another example of a policy of *trasformismo* at the WTO.

6.7 Conclusions

This chapter has argued that the sustained attempts by Alter-NGOs to change the principles and processes of the WTO have had limited success. This was argued to have been due to the manner in which *trasformismo* has ensured limited access of Alter-NGOs to the WTO and the cooption of those Alter-NGOs that gain access. This clearly seemed to be the case with the IMF, UN and World Bank as Alter-NGOs were expressing frustration at being part of a ‘public relations’ exercise, which afforded them little influence. The language of participation and transparency has been redefined by these institutions to ensure legitimacy, but prevent actual access to policy decision-making. Attention was also drawn to professional and well funded advocacy NGOs that were criticised for pushing out smaller social movements, and deradicalising the political process as a new transnational middle class came together to problem-solve issues of development without challenging corporate hegemony. Therefore it was claimed that advocacy NGOs were responsible for removing the radical nature of counter-hegemonic social movements. Accepting these arguments it was argued that Alter-NGOs still played a role in raising issues, but needed to be careful of cooptation through *trasformismo* by *nebuleuse* political elites.

In the first instance it was suggested that in the official channels of access to the WTO a policy of *trasformismo* had been pursued to ensure that NGOs were closely vetted and prevented from gaining access to the decision-making bodies of the WTO. Although Alter-NGOs have employed two strategies to gain access to the WTO, the chapter argued that these have had limited success. At Cancun Alter-NGOs wrote the policy positions and joined national delegations of developing countries. Thereby

Alter-NGOs were able to unofficially gain access to the WTO negotiating process. The creation of common policy positions by Alter-NGOs also played some role in helping to establish common ground for the state coalitions that emerged between the G21 and G90 at Cancun. The collapse of the talks, however, did not fundamentally alter the content of the agreements or the process of the WTO towards the principle of the alter-globalization movement. Indeed it could be argued that the failure of the Conference has helped to reinforce the need for more open markets and that neoliberalism is the only way to address world poverty and war. The subsequent use of the DSB by the members of the G20 further legitimises the WTO's procedures and focus on corporate hegemony. Finally, the submission of *amicus* briefs has also been a strategy with no real evidence of success. The WTO's judicial system has been severely reprimanded by the members from the developing world for engaging in judicial activism, which allowed *amicus* briefs to be submitted. To date no *amicus* brief submitted by NGOs has played a substantive role in influencing the DSB to warrant any claim of success. Rather it was suggested that further discussion by political elites about the opening of the DSB to NGO participation is an example of further *trasformismo* to ensure that NGOs are only able to observe and legitimise the WTO and not place their interests and values at the heart of the WTO.

Conclusion

A pessimist sees the constraints that define the limits of the possible, the strong bonds that hold the existing structure together, and the influences that orient its direction of development. The pessimist as critic also looks for the contradictions in the status quo that might become triggers of change and focus on how desirable change might be pursued realistically.⁸⁹⁶

7.1. A Brief Summary

At the World Trade Organization's (WTO) 1999 Millennium Ministerial Conference in Seattle, transnationally coordinated social movements and Non-Governmental Organizations (NGOs) attacked the integrity of the WTO. Public attention was drawn to questions regarding the WTO's legitimacy to exercise political power over elected governments and why negotiations and decisions appeared to be devoid of public scrutiny. The collective prosperity, peace and sustainability development promised from the neoliberal ideology propagated by the WTO was criticised for providing a smoke screen for who was really benefiting from these policies. The real beneficiaries it was alleged were the powerful transnational corporations (TNCs) who were determining national labour and environmental policies through the WTO. Discussion also turned to why the developing countries were claiming that the WTO was institutionalising the dominant corporate economic interests of the developed

⁸⁹⁶ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 37.

countries, whilst ignoring all other interests. The emergence of these transnational protesters in 1999 further fuelled academic interests on the degree to which such global social movements were “altering either agendas for social change or political engagement”.⁸⁹⁷

This thesis has argued that the historical materialism of Robert W. Cox’s provides an insightful conceptual framework to understand the dynamics of the global political economy in which these actors are situated. It was seen that Cox, drawing from Antonio Gramsci, not only applied the concepts of hegemony, counter-hegemony, organic intellectuals, and *trasformismo*, to international organizations, he also developed his own concepts of *nebuleuse* and ‘new multilateralism’ to provide a unique analysis of the current world order. Cox’s analysis is also equipped with a programme of action to transform and develop a ‘new multilateralism’ within international institutions that shifts decision-making way from the monopoly held by government and economic elites. The less powerful civil society groups promoting “greater social equality, greater diffusion of power among countries and social groups, protection of the biosphere, moderation and non-violence in dealing with conflict, and mutual recognition of civilizations” are to be given priority in setting the agenda of international organizations.⁸⁹⁸ This ‘new multilateralism’ was deemed to be inherently democratic from the ‘bottom-up’ because it was based upon the interests of civil society groups, which sought the acceptance and celebration of cultural identities.

⁸⁹⁷ Robin Cohen and Shirin M. Rai. ‘Global Social Movements: Towards a Cosmopolitan Politics,’ in Robin Cohen and Shirin M. Rai (editors), *Global Social Movements*, London, The Athlone Press, 2000, Stephen Gill. ‘Towards a Postmodern Prince? The Battle in Seattle: A Moment in the New Politics of Globalization’, in *Millennium* Vol. 29, No 1, 2000. Mary Kaldor. ‘Civilising’ Globalization? The Implications for the ‘Battle in Seattle’, in *Millennium* Vol. 29, No 1, 2000, Barry K Gills (editor). *Globalization and the Politics of Resistance*, Basingstoke: Palgrave, 2000. and Robert O’Brien *et al.* *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000, Iain Watson. *Rethinking the Politics of Globalization: Theory, Concepts and Strategy*, Aldershot: Ashgate Publishing Limited, 2002.

⁸⁹⁸ Robert W. Cox (editor). *The New Realism: Perspectives on Multilateralism and World Order*, Basingstoke: MacMillian Press LTD, 1997, p. xvii.

Although Robert O'Brien *et al* had applied a Coxian theoretic framework to the WTO in 2000; it was heavily diluted with a level of liberal pluralism that weakened the very critical edge that is sought from a Coxian analysis. Focusing exclusively on NGOs these writers sought to measure the influence of these non-state actors and used the term 'complex multilateralism' to illustrate their acknowledgement of the many non-state actors becoming involved in state-centric multilateralism.⁸⁹⁹ A more critical Coxian analysis of the WTO is therefore warranted, not only because it is five years since the O'Brien *et al* research was published, but also because the O'Brien *et al* framework omitted the most important aspects of Cox's theoretical framework, such as hegemony, *nebuleuse*, structural power, and especially *trasformismo*. Indeed the concept of *trasformismo* is important for further research on the influence of any social movement or NGO engaged with political institutions – sub-national, national, regional or global.

From this Coxian framework the concept of counter-hegemony was employed to categorise the protesters that rejected corporate hegemony. The thesis identified an alter-globalization movement (see below) from the wide number of protesters engaged in counter-hegemony. Rather than tearing down the existing international institutions this alter-globalization movement is distinctive because it is campaigning for the alternative principles of democratic accountability, environmental protection, social justice in economic policies, women's, human and labour rights, transparency and the end of military force as a tool of diplomacy to guide the multilateralism of international organizations. Similar to Coxian 'new multilateralism', this alter-globalization movement asserts that civil society groups ought to be actively part of the decision-making of international organizations. To understand and evaluate the strategies of the alter-globalization movement, the thesis intentionally divided the alter-globalization movement into two constituent parts: social movements and

⁸⁹⁹ Robert O'Brien *et al*. *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*, Cambridge: Cambridge University Press, 2000.

NGOs. The distinction was drawn because social movements are organised around informal and loose networks which employ unconventional methods of political participation, such as mass demonstrations, to shape public consciousness and place pressure on political elites, whilst NGOs are formally organised and engage with political institutions through formal channels. Although there are official channels of access to the WTO, three unofficial strategies were identified to be employed by the alter-globalization movement to influence the WTO's policies and processes: demonstrations on the street, assisting developing states during negotiations, and submitting *amicus* briefs to the WTO's Dispute Settlement Body (DSB).

The thesis set out to investigate whether the alter-globalization movement had been successful in influencing the policies and procedures of the WTO from 1999 to November 2005 through these strategies. Following Cox, it was suggested that in order to develop an understanding of the possibilities of influencing an international organization, such as the WTO, it was necessary to begin by identifying the social forces with superior material and ideational capabilities that were responsible for its creation. To this end it was argued that through their control of the institutions of production within the prevailing states, a dominant transnational corporate class emerged within national and international organizations in the 1980s and built consensus on the policies for the coordination of the global economy (*nebuleuse*). Chapters three and four illustrated that the WTO performed the central functions of hegemony in the current *nebuleuse*, as it coordinated, legitimised, enforced and provided surveillance measures to ensure that national policies were consistent with the demands of a transnational model of production for this transnational elite (hegemony). In doing so the WTO was seen to promote a specific ontology for the purpose of building consent for international trade to be negotiated, codified and regulated through the WTO. Through the examples of the Uruguay Round of negotiations (1986–1994) and the Cancun Ministerial Conference (2003), in chapter four, it was demonstrated that some states were more equal than others in both

consensus decision-making and before the law of the WTO, and that corporate hegemony took precedence over all other interests brought to the WTO. This analysis also identifies the 'structural power' of corporate social forces to set the framework for policies outcomes through determining who can participate and on what terms.

Through a process of dialectics, the contradictions of the WTO created its own counter-hegemony forces, which challenging the legitimacy of the WTO's decision-making structures. Chapter five illustrated that 'organic intellectuals' in a 'war of positions' propagated to a wider public the contradictions inherent in the policies of the *nebuleuse*, and the WTO. This was to develop a global consciousness that rejected the legitimacy of world corporate hegemony. The activities of transnational corporations, developments in communication and the changing political context were seen to be the factors that had caused social movement and NGOs to cooperate transnationally outside of the national setting and form a counter-hegemonic bloc. After constructing a four-stage continuum of the many ideological positions held by varying groups of the counter-hegemonic forces, it was argued that it was possible to identify a specific alter-globalisation movement, which sought to reform international organizations in a manner that reflected a Coxian 'new multilateralism'. In chapters five and six attention was drawn to the policy of *trasformismo*, which had been pursued by the political elites of the *nebuleuse*. Through *trasformismo*, counter-hegemonic forces were coopted, distorted and prevented from changing the policy outcomes or the structure of the WTO. Indeed the purpose of *trasformismo* is to ensure that institutions can absorb the ideas and forces demanding just change to ensure that they contribute to the legitimacy of the existing hegemonic system, rather than sustain a challenge and gain wider public support.

7.2 Answering the Research Question

The research question posed in this thesis asked: “to what extent the alter-globalisation movement has successfully altered the policy and processes of the WTO towards the principles of social justice and public accountability”. From the research conducted, this thesis concludes that there is very little evidence to suggest that the alter-globalization movement has had anything other than very limited success in altering the policies and process of the WTO. Although it is possible to identify three strategies outside of the official WTO channels for non-state actor participation, such as demonstrations on the street, assisting developing states during negotiations, and submitting *amicus* briefs to the WTO’s dispute settlement body, each strategy has encountered substantial obstacles due to a policy of *trasformismo* by political elites and the WTO. Thereby there is no reason to believe that the alter-globalization movement has been able to alter the current world order.

It was established in the introduction that in order to measure the extent to which the alter-globalisation movement has altered or influenced the policies and processes of the WTO, the thesis would use the four factors of: (1) recognition of the alter-globalisation movement as the legitimate representative of a constituency, (2) the degree to which the alter-globalisation movement has been able to place its program for reform on the political agenda of the WTO, (3) the input that the alter-globalisation NGOs (Alter-NGOs) of the movement have in the passage of these reforms into actual WTO policy, or in helping to ensure the enforcement of that policy, and (4) the degree to which the policies of the alter-globalisation movement obtained the outcome for which they campaigned. The limited success that the alter-globalization movement has had in altering the policies and process of the WTO will be demonstrated through examining each of these in turn:

- (1) The recognition of the alter-globalisation movement as the legitimate representative of a constituency

As pointed out above, the thesis intentionally divided the alter-globalization movement into two constituent parts: social movements and NGOs. There has been some recognition of the legitimacy of the alter-globalization movement's mass protests as being representative of a constituency. Initially the protests on the streets by social movements were mostly demonised by political elites as an 'anti-globalization' movement, which should be feared because it was violent, incoherent and contained extreme politics that threaten the values of liberty, democracy and justice. Through this policy of distortion the 'anti-globalisation' movement was depicted as a radical minority that was not representative of the wider, silent, content majority of the public. Although this distortion of mass protests is still practiced, an additional policy of *trasformismo* has been employed, which is evident in the conversion of the rhetoric of the *nebuleuse*. Many of the demands voiced by the protesters during the street protests ('fair trade', global justice, labour and human rights, enhanced transparency and democracy within international organization, and sustainable development) have now become the buzzwords embedded in press releases and the language of the *nebuleuse*. Corporate hegemonic elites have attempted to present themselves as the real champions of global justice and even supporters of the alter-globalization movement's demands. Both US President Bill Clinton and UK Prime Minister Tony Blair have acknowledged the protesters and even asserted personal support for their demands - so long as they were consistent with a policy of liberalising trade barriers. This represents a dramatic change in attitude from Blair towards the protesters after his comments at Genoa, when he described the protesters as a minority of anarchists, who were wrong and should not be tolerated.⁹⁰⁰ Similarly in 2003, the World Bank President James Wolfensohn,

⁹⁰⁰ Tony Blair (Prime Minister). *Edited Transcript of a Press Conference by The Prime Minister*, Gothenburg, Sweden, 16 June 2001.

claimed the protesters and the World Bank were pursuing the same goals.⁹⁰¹ Such a significant turnaround in attitude would suggest that political elites have come to recognise the alter-globalization movement as a legitimate representative of a constituency of people demanding global social justice and transparency. The cooptation of the language of the protesters also demonstrates that political elites recognise that the alter-globalization movement threatens the legitimacy of corporate hegemony.

In a similar manner to the protesters on the street being demonised, Alter-NGOs have been criticised by political elites for being un-elected, unaccountable and unrepresentative. Yet, a number of these Alter-NGOs were heavily involved in offering their expertise to analyse and write both national and common policy positions for developing countries at the Cancun Ministerial Conference. It could be claimed that this working relationship with the developing countries is a sign of these Alter-NGOs being recognised as legitimate representatives of a constituency that demands global social justice in the form of promoting equitable participation in trade negotiations. As David Hunter explained, at Cancun: “Civil societies had changed to adopt a lot more of the Southern [countries’] concerns in a hope that they would recognise our agenda for foreign investment and trade and try to regulate it in a more even handed, equitable and sustainable way”.⁹⁰² Perhaps more accurately it can be argued that the developing countries at Cancun viewed these Alter-NGOs as merely a free consultancy service, which enabled them to pursue their own national corporate interests more effectively. The question of just who or what these Alter-NGOs legitimately represented were unimportant. This argument can be supported by the fact that the developing countries have fiercely rejected all other aspects of the Alter-

<http://www.fco.gov.uk/news/newstext.asp?5064#Top>

⁹⁰¹ James Wolfensohn. *Choosing a Better World*, in *Inter Press Service*, 22 January 2003.

<http://www.globalpolicy.org/soecon/bwi-wto/wbank/2003/0122betterworld.htm>

⁹⁰² Interview with David Hunter [Former President of the Centre for International Environmental Law]. Washington, Wednesday 2 June 2004.

NGO agenda, such as NGO access to the WTO's DSB, a primary goal of these Alter-NGOs. This would suggest that Alter-NGOs provided a valuable service at Cancun to the developing countries, but also that the expertise of Alter-NGOs in deciphering WTO trade agreements is more important than the principles or constituency these Alter-NGOs represent.

Pressure from Alter-NGOs to bring transparency and public accountability to the WTO through access to negotiations and DSB, however, has seen the first movements towards the opening of Panel proceedings to public scrutiny.⁹⁰³ In addition, the WTO's Director-General, Pascal Lamy, publicly engaged in dialogue with NGOs over the equity of decision-making for the agenda for the Hong Kong Ministerial Conference in 2005. Other political elites have concurred with Lamy's statements that the WTO needs to include the participation of NGO in some part of the negotiating process to address its democratic deficits.⁹⁰⁴ This would suggest that there is some recognition of the Alter-NGOs as legitimate representatives of a constituency that wish to see great public accountability within the WTO. More critically, and due to the continued closed nature of the WTO decision-making, this is perhaps nothing more than a further policy of *transformismo* to ensure that the public see NGO participation, but do not realise that they have no impact on the policies of the WTO. Thereby these discussions and public statements by political elites and the WTO appear to recognise the alter-globalization movement as a legitimate representative of a constituency, but only in order to build legitimacy for the WTO without having to change policy or procedures.

⁹⁰³ World Trade Organization. *WTO Opens Panel Proceeding to Public for the First Time*, 12 September 2005. http://www.wto.org/english/news_e/news05_e/openpanel_12sep_e.htm

⁹⁰⁴ Americo Beviglia Zampetti (Former Director General For International Trade, European Commission). 'Challenges to the Multilateral Trading System', in Rodger B. Porter *et al.* (editors), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium*, Washington, D. C.: Brooking Institution Press, 2001, p. 45, Michael Moore. *A World Without Walls: Freedom, Development, Free Trade And Global Governance*, Cambridge: Cambridge University Press, 2003, p. 216. See Pascal Lamy (European Union Trade Commissioner). *The Future of the WTO for European Parliament Kangaroo Group*, 27 January 2004. http://europa.eu.int/comm/commissioners/lamy/speeches_articles/spla190_en.htm

- (2) The degree to which the alter-globalisation movement has been able to place its programme for reform on the political agenda of the WTO

It was pointed out in the introduction to the thesis that the recognition of an actor as a legitimate representative of a constituency is not an indicator of that actor's influence in a political process.⁹⁰⁵ Indeed a policy of *trasformismo* is designed to coopt those actors that have public support and appear as a threat to the stability of the current hegemony. The programme of reform that the alter-globalization movement has campaigned for revolves around the principles of global social justice and public accountability in the WTO's policies and procedures. In relation to the realisation of the goal of global social justice both the protests on the street and the involvement of Alter-NGOs at Cancun, have aimed at reforming the WTO agreements and procedures, to ensure that the interests of the people of the developing countries take precedence in WTO negotiations. One could argue that the WTO has placed this demand for reform onto the political agenda with the establishment of the *Doha Development Agenda* in 2001. In addition, and as pointed out above, there are a number of political elites that have discussed and proposed the reform of the WTO to allow accredited Alter-NGOs to participate in some form within negotiations and the DSB. These reforms, however, have not been placed on to the WTO's agenda. Indeed, discussions on the reform of the DSB as a whole have not been successfully negotiated to a conclusion since the WTO was created in 1995.⁹⁰⁶ Therefore it would appear that the alter-globalization movement has only been successful in revealing

⁹⁰⁵ Edwin Amenta and Neal Caren. 'The Legislative, Organizational and Beneficiary Consequences of State-Orientated Challengers', in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (editors), *The Blackwell Companion to Social Movements*, Oxford: Blackwell Publishing, 2004, p. 262.

⁹⁰⁶ A 1994 Ministerial Decision said that the dispute settlement rules should be reviewed by 1 January 1999. The review started in the Dispute Settlement Body in 1997. The deadline was extended to 31 July 1999, but there was no agreement. In November 2001, at the Doha Ministerial Conference, Member governments agreed to negotiate to improve and clarify the Dispute Settlement Understanding. Ministers said that the new negotiations should be concluded not later than May 2003. These negotiations take place in special sessions of the Dispute Settlement Body (DSB). On 24 July 2003, acknowledging the fact that the DSB special session needed more time to conclude its work, the General Council agreed to extend the special session's timeframe by one year, to May 2004. http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#news

itself as a threat to the legitimacy of the WTO and that a policy of *trasformismo* has been required to disarm the campaign for reform.

- (3) The input that the Alter-NGOs have in the passage of these reforms into actual WTO policy, or in helping to ensure the enforcement of that policy

There is no evidence to suggest that the alter-globalization movement has had any input into the passage of reforms into actual WTO policy or in helping to enforce that policy. Alter-NGOs have been refused admission to WTO negotiations and the DSB with the one exception. The case of the shrimp/turtle dispute did allow Alter-NGOs an avenue to place environmental concerns within the WTO.⁹⁰⁷ It can be argued that this was an attempt by the US government to coopt the support of high profile NGOs to gain public sympathy with their cause. On all other accounts attempts by Alter-NGOs to place their principles into the DSB through submission of *amicus* briefs have been rejected and met with hostility by the majority of developing member states.

- (4) The degree to which the policies of the alter-globalisation movement have the intended outcome for which they campaigned

There is very little evidence to suggest that the policies that the alter-globalization movement have campaigned for have had the outcome that they would have wanted. Although the *Doha Development Agenda* asserts that the WTO ought to put the needs of the least developed states to the fore of WTO negotiations this has still to be realised. Critically, Joseph Stiglitz has argued: “today's Development Round does not deserve its name. Many of the issues that it has addressed should never have been on the agenda of a genuine development round, and many issues that should have been

⁹⁰⁷ World Trade Organization. United States - Import Prohibition of Certain Shrimp and Shrimp Products, Request for Consultations by India, Malaysia, Pakistan And Thailand, WT/DS58/1, 14 October 1996.

on the agenda have not”.⁹⁰⁸ Four years after the *Doha Development Agenda* was celebrated there is still no decrease in the subsidies of the EC and US on agriculture and textiles. The so-called ‘peace clause’⁹⁰⁹ that allowed WTO members to maintain agricultural subsidies without being challenged has authorised the continued agricultural and textile subsidies of the EC and US, which are detrimental to the welfare of the people of the developing world. In January 2005 the ‘peace clause’ expired and the EC and US have attempted to convince members of the WTO to renew its terms.⁹¹⁰ In fact the US almost doubled its subsidies on cotton in 2004. In contrast, as was seen at the Cancun negotiations, the developing countries were asked to reduce their tariffs to agriculture and to accept the Singapore Issues (investment, transparency in government procurement, market access and trade facilitation), which are for the corporate interests represented by the EC and US.

Consequently, it can be argued that the emergence of the *Doha Development Agenda* suggests that a policy of *transformismo* has been employed by the WTO. Once again it appears that the language and demands of the alter-globalization movement have been coopted by political elites to quell the demand for change. Yes, the rhetoric of the WTO states that the needs of the people of the developing world are at the fore of negotiations, but the reality is that the position of subservience and exploitation are maintained. Similarly, the opening of the first DSB Panel proceeding to public observation and the discussions for further reform of the WTO towards transparency and accountability through NGO access could be seen as no more than *transformismo*. This ‘reform from above’ ensures public acknowledgement of the inclusion of Alter-NGOs into the WTO’s institutional framework, and thus manufactures greater

⁹⁰⁸ Joseph E. Stiglitz. *The Development Round that Wasn't*, Webdiary, 17 November 2005.
<http://webdiary.com.au/cms/?q=node/1058>

⁹⁰⁹ Uruguay Round Agreement. Agreement on Agriculture, Part VII, Article 13. ‘Due Restraint’, 15 November 2005.
http://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXIII

⁹¹⁰ Oxfam America. *Immunity from Challenge at WTO Would Undermine Development Round*, 13 December 2005.
http://www.oxfamamerica.org/newsandpublications/press_releases/press_release.2005-12-13.7485082947

legitimacy - but this inclusion is deliberately tailored to ensure that Alter-NGOs are prevented from gaining access to decision-making and influencing policy outcomes. Therefore there is no evidence that the actual policy reforms of the WTO reflect the reforms that the alter-globalization movement intended.

In the final analysis, and by using the above model to measure success, the thesis comes to the conclusion that the alter-globalization movement has had very little impact in altering the policies and process of the WTO. At present it appears that the WTO's and the *nebuleuse* are paying lip service to reforming the WTO towards policies of global social justice and public accountability or 'new multilateralism' as promoted by the alter-globalization movement. The WTO remains closed to public scrutiny and public accountability, and appears to perform all of the functions of a hegemonic institution as defined by Cox: (1) embodies the rules which facilitate the expansion of hegemonic world orders; (2) is a product of the hegemonic world order; (3) ideologically legitimises the norms of the world order; (4) co-opts the elites from peripheral countries; and (5) absorbs counter-hegemonic ideas.⁹¹¹ Procedures at the WTO to preserve sovereign equality are ignored and access to a just dispute settlement is inaccessible for many states because of resource inequalities and the widening 'knowledge gap'. The corporate hegemony represented by the EC and US are thus able to reap profits at the expense of the weakest people on the planet under the legitimising ideology of the WTO's non-discrimination principles and the promises of collective prosperity, peace and sustainable development. Guarding the access points for any challenge by the Alter-NGOs stand the lawyers of corporate hegemony. Indeed the 'structural power' of corporate hegemony is able to ensure that any participation in the WTO is limited by the rules of this elite. The WTO continues to be successful in coopting reformers and expanding the sphere of corporate hegemony through the acceptance of trade liberalization as the only means to peace,

⁹¹¹ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 138.

prosperity and sustainable development. This was suggested to be evident as Argentina, Brazil, India and Pakistan used the WTO's DSB to demand that the markets of the EC and US be opened for agriculture and goods from these countries, rather than challenge the legitimacy of the existing structure of power.

At present there is no reason to believe that this challenge to the corporate hegemony represented by the EC and US from these states will bring any of the values and principles promoted by the alter-globalization movement to be realised in terms of labour rights, environmental protection or 'new multilateralism'. Rather it is perhaps more evidence of the expansion of the *nebuleuse* as more political elites enter the process of building consensus for transnational capitalism to prosper. As Thea Lee explained the states from the developing world that have asserted themselves to contest the EC and US trading agenda, have also been the most verbal objectors at the hint of the word labour:

all we were asking for is to have a conversation about workers rights and we have been thoroughly rebuffed. That [labour rights] was the horrible proposal in Seattle that was so objectionable to so many countries and again in Doha where countries like India and Pakistan threatened to walk away from the entire talks if the word 'labour' showed up anywhere in the Doha declaration.⁹¹²

It would therefore appear that corporate hegemony is being incorporated by political elites across the globe and the demands of the protesters further rejected.

Dwelling on this point, the thesis has demonstrated that political opportunities presented to the alter-globalization movement are minimal. Social movements and

⁹¹² Interview with Thea Lea [Assistant Director of International Economics] American Federation of Labour-Congress of Industrial Organisation (AFL-CIO), Tuesday June 1 2004.

Alter-NGOs have had very limited access to the WTO. Therefore in conjunction with demands for 'new multilateralism' there must be similar participation by civil society at the local, national and regional level. As Cox points out

The only effective way to confront the salient issues of the late twentieth century ... is to reconstitute public authority at local, national and global levels that are firmly based on public support. Only strong public authorities are capable of dealing with these problems. Such a movement would have to come from the bottom, from a reconstitution of civil society as a support for political authorities attentive to peoples needs (where as much of the movement in civil society recently has been towards a withdrawal from alienating government and corporate power).⁹¹³

Thereby changes to the policies and processes of the WTO will require changing the policies of states because it is only states that have the authority to sit at the negotiating table and negotiate on behalf of a recognised constituency, and only states have the authority to change this norm towards 'new multilateralism'.

The realisation of 'new multilateralism' in the current world order then rests on the alter-globalization movement's ability to mobilise wider public and to place pressure on states' elites and transform the policies they make in the name of the *demos*. Indeed it is the public opinion/consciousness of the citizens of the most powerful states that the alter-globalization movements will have to change if 'new multilateralism' is to be realised at the WTO, and in become a norm of the current world order. Joe Brandy and Jackie Smith accept this point:

⁹¹³ Robert W. Cox with Michael G. Schechter. *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilization*, London: Routledge, 2002, p. 94.

States, corporations, and multinational agencies tend to heed change more readily when mass support is available than when it is not. Despite the expansion of social movement opposition to economic globalization in recent years and the Herculean effort of activists and scholars to promote dialogue about the costs of globalization, there has been relatively little mass support for reform [...] [T]he participants in global justice movements, although growing in number, are still a very small minority of the worlds citizenry.⁹¹⁴

In addition the street demonstrations by the alter-globalization movement are aimed at changing public consciousness to reject corporate hegemony and the state political elites from which it draws support, but state leaders have absorbed the rhetoric of these campaigns and used the language of the protesters without changing policies. Illustrating this to a wider public through the breaking down of complex legal trading arguments or international investment clauses to make the public aware of what is being negotiated in their name is never going to be easy. Illustrating the contradiction of hegemony and gaining wider public support has its difficulties when the hegemony is so powerful. As David Cromwell points out: “it is difficult to bring the publics attention to the argument [...] the vast majority of people are just not interested in being ‘radical’ [...] [are] struggling to make a living or are content – or resigned”.⁹¹⁵ Leslie Sklair points to the mainstream media in the West as being part of the problem as it produces swathes of mindless ‘entertainment’ which detracts from meaningful debate on the issues of the global economy: “as long as the media are directly, or indirectly through commercial leverage, under the control of the transnational capitalist class, it is difficult to see how the socialist project can get a fair and

⁹¹⁴ Joe Bandy and Jackie Smith (editors). *Coalitions Across Borders: Transnational Protest and Neoliberal Order*, Oxford: Rowan and Littlefield Publishers, Inc, 2005, p. 236.

⁹¹⁵ David Cromwell. *Private Planet: Corporate Plunder and the Fight Back*, Charlbury: John Carpenter Publishing, 2001, p. 218.

balanced hearing in the newspapers, on television and radio or anywhere else”.⁹¹⁶ Indeed the message that ‘There Is No Alternative’ to corporate hegemony still appears to be dominant. Ultimately, this is the crux of the problem for bringing about the realisation of the principle of the alter-globalization movement and altering the current world order, “another world is possible” if enough people are interested and believe it is possible.

John Keane, however, warns against such fatalism and cynicism: “Fatalism feeds wistfulness. It turns its back on the job of naming and mapping these governing institutions, in order that they may better be judged, defended, reformed or fundamentally transformed”.⁹¹⁷ The “cardinal question of political life concerning power and rule, namely: who rules, in whose interests, by what means and for what ends?” is still important, so that political elites know they are answerable to the *demos*.⁹¹⁸ Therefore, demonstrating the injustice of the global political economy of international trade is not an end in itself, these arguments are essential for mobilising people to take issue with any perceived abuse of political and economic power. The difficulty, however, for the alter-globalization movement will be to convince more of the *demos* that its principles of global social justice, transparency and ‘new multilateralism’ are causes worth pursuing and that alternative world orders are possible in practice and not just alive in rhetoric. The achievement of this goal will always be difficult, as this thesis has demonstrated, because *trasformismo* is a powerful weapon for suffocating public support for alternatives.

⁹¹⁶ Leslie Sklair. *The Transnational Capitalist Class*, Oxford: Blackwell Publishing, 2001, p. 325.

⁹¹⁷ John Keane. *Global Civil Society*, Cambridge: Cambridge University Press, 2003, P128.

⁹¹⁸ David Held and Anthony McGrew, *Globalization/Anti-Globalization*, London: Polity Press and Blackwell Publishers, 2003, p. 58.

7.3 The Original Contribution of the Thesis

Applying Coxian historical materialism to the relationship between the WTO and the alter-globalization movement establishes this thesis's original contribution to knowledge. As pointed out in this thesis, mainstream theorists of the discipline of International Relations (IR) have ignored the critical theoretical framework of Cox during their analysis of international organizations. Cox is labelled a dissident and at the periphery of the IR discipline on the grounds that he is too Marxist or too reductionist because he wants to discuss social relations, ideas, the exercise of power within the many inter-related institutions of the global political economy. Yet, by drawing our attention to the fact that social forces, ideologies and institutions are all interlinked within the current 'historical structure', Cox brings a more insightful understanding of the 'seamless web' of social relations that are the real world. In doing so Cox rightly raises the question of why the state-centric analysis of IR has been allowed to dominate, and just whose interests are protected by the perpetuation of this mode of thinking. Similarly, Cox points out that it is not enough to list factors that have changed in social life under a heading of 'globalization' because it conceals the agents responsible for exercising power and bringing about new oppressive power relations.

Consequently, this thesis highlights why the Coxian concepts of *nebuleuse*, 'new multilateralism' and *trasformismo* are essential for developing existing knowledge and understanding of the relationship between the WTO and the alter-globalization movement. Firstly, this is because the concept of *nebuleuse* is able to grasp the manner in which international organizations reflect a transnational corporate elite who are able to coordinate and legitimise economic policies, which touches almost every corner of the world, through the construction of hegemony. In addition the concepts of 'new multilateralism' captures the manner in which social forces are rejecting corporate hegemony, whilst also identifying the democratising strategies employed by some factions of counter-hegemony to bring public accountability and social justice to the institutions of hegemony. Ultimately, the obstacles created through a policy of

trasformismo at the WTO establish a framework for understanding the suppression of demands for democratisation at the WTO. The application of these Coxian concepts therefore establishes an original contribution to knowledge.

7.4 The Implications of the Thesis for Wider Knowledge

The thesis's application of a Coxian theoretic framework to the WTO and the alter-globalization movement has repercussion for the study of international organizations, NGOs, and the process of reforming and democratisation international organizations, but also the study of discipline of IR. In recent years a volume of literature has emerged debating the pros and cons of the democratisation of the institutions of global governance.⁹¹⁹ Pippa Norris, using the results of the World Values Survey (1995-97), points out that humanity is still a long way from establishing identities consistent with being members of a global community, which are required for this form of global democracy. On the one hand, she asserts that regardless of global flows of capital, trade, communication and the existence of institutions of global governance individual identities remain largely national and not cosmopolitan. On the other, she illustrates that there is evidence that the post-war generation, which has experienced greater urbanization, education and less nationalist wars, shows signs of a more cosmopolitan outlook. This growth in cosmopolitan attitudes, she asserts, will cause a new generation to be more concerned with the democratic credentials of global governance.⁹²⁰ It is essential for any theoretical model of global democracy to take

⁹¹⁹ David Held. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Cambridge University Press, 1995, Richard Falk. *One Humane Governance: Towards a New Global Politics*, Cambridge: Cambridge/Polity Press, 1995, Andrew Linklater. *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era*, Cambridge: Cambridge University Press, 1998, Anthony McGrew. 'Models of Transnational Democracy', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 250-513, David Held. 'Cosmopolitan Democracy', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 514-529, Robert A. Dahl. 'Can International Organizations be Democratic? A Skeptic's View', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 530-541, and David Held. *Global Covenant: The Social Democratic Alternative to the Washington Consensus*, Cambridge: Polity Press, 2004.

⁹²⁰ Pippa Norris. 'Global Governance and Cosmopolitan Citizens', in David Held and Anthony McGrew (editors), *The Global Transformation Reader: An Introduction to the Globalization Debate* (2nd Edition), Cambridge: Polity Press/Blackwell Publishers, 2002, p. 287-297.

note of the many different obstacles that can be placed in the way of meaningful participation and democratisation of the international organizations of global governance. This thesis identifies three factors that should be taken into consideration by future research in global governance, namely: structural power, cooptation and *trasformismo*.

For example through identifying the ‘structural power’ of dominant classes within international organizations the thesis has sought to illustrate the manner in which institutional arrangements and procedures are constructed in such a way as to ensure specific outcomes. Transnational corporate elites played a significant role in creating and writing of Trade Related Intellectual Property Rights (TRIPS) of the WTO, and influencing governments participating in WTO negotiations. Therefore the thesis illustrated the role corporate elites had in maintaining and expanding their dominance through the manner in which they had structured the mechanisms for decision-making and dispute settlement. Each of these decision-making bodies was crafted to ensure that the superior material capabilities of corporate hegemony could overcome the principles of consensus decision-making and equality before the law stated in the WTO’s Charter. This was clearly demonstrated at the Cancun Ministerial Conference as the ‘green-room’ decision-making and the external issues of debt and bilateral trade agreements were mobilised to bring pressure on member states to agree to specific trade policies. Although Cancun illustrated that this structural power was being contested, it also demonstrated that corporate hegemony was being reinforced as those contesting EC and US demanded greater trade liberalization. Active and equal participation within each of these decision-making bodies was also restricted by the highly complex nature of trade agreements and its legal vocabulary. A ‘knowledge gap’ was therefore seen to exist, which resulted in decision-making and dispute settlement being exclusive. However, the engagement of the developing world with the WTO’s legal system after Cancun also helped to legitimise the WTO’s DSB, and the neoliberal ideology that legitimises corporate hegemony.

The analysis of NGOs undertaken by the thesis also illustrated the need to be critical about the participation and representational functions that NGOs perform in the decision-making process of international organizations. The distinction between Alter-NGOs and Market Orientated-NGOs (Ma-NGOs) reinforces the necessity for critical awareness of just whom NGOs represent and whether they are actually advocating or challenging corporate hegemony. It was suggested that corporate hegemony addressed the demands for public participation and democratisation of international organizations and treaties through defining public participation solely in terms of NGOs and then provided Ma-NGOs to perform the legitimising function. Similarly it was argued that Alter-NGOs had become coopted by corporate hegemony so that the legitimacy of the institutions were enhanced rather than criticised. In doing so the allegation of the exclusion of public oversight and the existence of a democratic deficit could be deemed to have been addressed, but without having to change any of the policy outcomes of hegemonic institutions. Finally, further critical analysis of the manner in which powerful transnational aid and advocacy NGOs were brought into the negotiation processes also illustrated some important consequences. This analysis drew attention to the problems of smaller, less professional, and less organized indigenous social movements being pushed out of participating in decisions that directly affected them. As this occurred, it was illustrated that concerns had been raised over the deradicalization of campaigns as these professional, resources and knowledge intensive NGOs brought further western middle class values and 'problem-solving' solutions to the decision-making table that were compatible with corporate hegemony. Consequently, this 'globalization from the middle' was taking primacy over 'globalization from below' so that these large NGOs were becoming partners in legitimising corporate hegemony and not resistance.

Through identifying 'structural power', Ma-NGOs, and NGO cooptation and deradicalisation this thesis demonstrates the manner in which hegemonic organizations are able to avoid demands for reform or democratisation. In illustrating the 'structural power' within the WTO, this thesis provides a framework for analysing

the biases institutionalised within the decision-making process of other organizations – including NGOs. Similarly the role NGOs can play in enhancing or undermining reform and democratisation of organizations is informative for NGO and institutional analysis. The concept of *trasformismo* is important for any research on social movement or NGO engaged in attempts to reform political institutions – sub-national, national, regional or global. Finally, this research reinforces the argument that the dominant paradigm of state-centric analysis is redundant because it cannot account for the concepts of *nebuleuse*, ‘new multilateralism’ and *trasformismo*, which are essential for understanding the social forces and strategies involved in the process of reform and democratisation of international organizations. In place of the state-centric paradigm this thesis strengthens the argument that the interaction of economic and political domains ought to be the central methodology in international relations, rather than being seen as a sub-discipline of IR.⁹²¹

7.5 A Critical Reflection on the Limitations of the Thesis

Through embarking on this research project a number of lessons have been learned. As Donna Lee eloquently draws attention

Theorising about international relations without proper data can be an all too abstract and barren enterprise. At the same time, grubbing in archival data without theoretical guidelines risk the proverbial ‘missing the forest for the trees’. The archival records of international relations are not the exclusive province of diplomatic historians; they are the proper data of international relations theory.⁹²²

⁹²¹ Robert O’Brien. ‘International Political Economy and International Relations: Apprentice and Teacher?’, in John MacMillan and Andrew Linklater (editors), *Boundaries in Question: New Directions in International Relations*, London: Pinter Publishers, 1995, p. 89 – 106.

⁹²² Donna Lee. *Middle Powers and Commercial Diplomacy: British Influence at the Kennedy Trade Round*, Basingstoke : Macmillan, 1999, p. vii.

In many respects Lee highlights the main problems encountered in this research. The necessity of establishing a coherent understanding of the theoretical framework that is being applied to evaluate primary materials is paramount to successful research. Perhaps this was more important because initially the methodological approach for this project was based upon interviews with the many different actors involved in the global political economy of the WTO. Many of the interviews for this thesis took place via face-to-face meetings in Brussels, Geneva and Washington D.C. Therefore there was only one opportunity to conduct the interview. Without a sound understanding of the theoretical framework being applied the interviewer is in danger of not only asking the incorrect questions, even worse the wrong people are being asked. A Coxian framework was favoured from the start of this research because it focused on the social forces, material capabilities, and ideologies embedded in institutions, and illustrated the relationships between social forces, forms of states and world orders. Having grasped the main thrust of the Coxian approach the subtleties of the role of the *nebuleuse* and *trasformismo* were unfortunately overlooked. Consequently, the visits to Brussels, Geneva and Washington could have been more fruitful had I ventured outside the *nebuleuse* and NGO community.

Interviewing elites is exciting and a researcher is made to feel that they are gaining access to information that is not available on the websites of these institutions – in this case the WTO, the EC and the US government. In actual fact the researcher is experiencing the process of *trasformismo* first hand. As this thesis has pointed out above, the institution of the *nebuleuse* is now expertly versed and impressive at marketing its institutions and policies. A human being can convey so much more sympathy and convincingly distort the legitimacy of an institution or policy than any website or written argument. After approaching the WTO, it was clear that the Secretariat were eager to engage with the academic world and receive good publicity. This was reinforced by the warm welcome that the Secretariat extended. The interviews themselves, however, brought little information that was not available on

the WTO website. Therefore perhaps the most insightful aspect of the visit to the WTO was a chance meeting with a member of an Eastern European delegation who was part of her country's agricultural negotiating team at the WTO. She explained that she was exhausted from spending the whole day in a warm room with nothing to negotiate because her country was too small to impact on the negotiations. She also alluded to the 'knowledge gap' in the WTO negotiations as she complained about the difficulty in keeping up with the technical terminologies of agriculture and international trade law. Similarly, it is only on reflection of the interview in an ostentatious office with the WTO's giant Deputy Director-General, whose height was matched by his booming Texan voice, that the intimidating nature of the WTO is remembered. Indeed it has to be admitted that on returning from four days of interviewing at the WTO the argument that the WTO was misunderstood seemed valid. Therefore on one hand the interviewing experience did a great deal to cloud the fact that the job of the Secretariat since 1999 has been to appear transparent and cooperative in order to tell the public about the brutal way that their work is distorted by the protesters. On the other hand, the personal experience of *trasformismo* at the WTO reinforced the need to focus on this concept throughout the thesis.

In hindsight the research trip to the WTO in Geneva should have been replaced with interviews with more of the Alter-NGOs in Geneva, such as International Centre for Trade and Sustainable Development. This may have brought more evidence on the official and unofficial channels of access open to NGOs at the WTO for chapter six. Similarly the research trip to Washington D.C. was focused too heavily on the government elites and more time should have spent time with grassroots activists. Interviews that were conducted with the Centre for International Law (CIEL) provided invaluable debate and discussion, which went well beyond the textbook accounts of a question and answer interview. Dan McGrew gave an insightful account of the advocacy role the CIEL had played for the developing states during preparation for the Cancun Ministerial Conference. David Hunter of the CIEL engaged in an

interesting discussion on the need to reject the label of ‘anti-globalization’ movement on the grounds that global social justice and global sustainable development were not anti-global, rather they were arguments for an alternative globalization rejecting corporate hegemony. Interviews with John Cavanagh (Director of the advocacy NGO International Policy Studies); Thea Lea (Assistant Director of International Economics of the American Federation of Labour-Congress of Industrial Organization, (AFL-CIO)) and Carl Pier (the NGO Human Rights Watch) all provided valuable insights on the form of movement against corporate hegemony and the need for the term alter-globalization movement and Alter-NGOs. It was only as these interviews were finished in my last week in Washington D. C. that it became clear that these types of social movements and Alter-NGOs ought to have been targeted for the thesis.

7.6 Questions and Directions for Future Research

Alternatively to Geneva and Washington, engagement with the grassroots social movements at the World Social Forum (WSF) would have been more beneficial for the thesis. These interviews would have enhanced the continuum constructed to understand the many different ideological positions of the counter-hegemonic movement and perhaps brought my attention to other strategies used by social movement and NGOs to influence the WTO. Indeed the questions and the direction of future research on the relationship between the alter-globalization movement and the WTO would revolve around conducting interviews at the WSF. It was Cavanagh that stressed that

What you need to remember is that the previous demonstrations brought together people from around the world who were against corporate globalization. From there transnational networks of activists were built, which shared information and worked on common goals together. Similar

with the WSF, it is not the speeches out front that are the most important, it is the face to face meetings of people from all over the world who have built and are building the necessary networks to challenge these global institutions. People have now made contacts and the networks now exist, these are the important things to make a better world possible.⁹²³

Conducting research at the WSF therefore seems to provide the direction for future research. Indeed discussion with Boaventura de Sousa Santos⁹²⁴ and Susan George⁹²⁵ have led me to believe that establishing a greater knowledge of the alter-globalization movement and their strategies to influence the WTO would provide the material to re-evaluate the WTO in three to five years from now.

Therefore future research on the WTO and the alter-globalization movement would involve an attempt to illustrate the extent to which the WTO's *trasformismo* policies have prevented the development of a Coxian 'new multilateralism' within this time scale. It is possible to speculate that the alter-globalization movement may find itself in a similar position to the Green Movement in the 1990s, which saw government create Ministers and departments of government charged with advocating and campaigning for the 'greening' of public policies to the extent that the radical edge of the green movement was diluted and pushed to the periphery.⁹²⁶ Perhaps in the near future corporate hegemony will ensure that all governments and institutions of the *nebulouse* have a department or representative campaigning for transparency and global social justice in the global political economy. Thereby, *trasformismo* will have ensured that the principles of the alter-globalization movement appear to be satisfied

⁹²³ Interview with John Cavanagh [Director of International Policy Studies], Washington D.C. Friday 5 June 2004.

⁹²⁴ Discussion with Boaventura de Sousa Santos at Law, Politics and Power in the Global Age: The Legal and Social Theory of Boaventura de Sousa Santos, University of Glasgow, 3 November 2006.

⁹²⁵ Interview with Susan George [Director of Transnational Institute], St Johns Church, Edinburgh, 28 June 2006.

⁹²⁶ John C. Stauber and Sheldon Rampton. 'Democracy' for Hire: Public Relations and Environmental Movements, in *The Ecologist*, Vol. 25, No.5, 1995, Andy Rowell. Green Backlash: Global Subversion of the Environmental Movement, London: Routledge, 1996, Brian Tokar. *Earth for Sale: Reclaiming Ecology in the Age of Corporate Greenwash*, Boston: South End Press, 1997, Jim Green. Green Business, Greenwash, *Green Left Weekly*, No. 364, 9 June, 1999.

to the general public, whilst also ensuring that this campaign only involves hegemonic political elites and coopted NGOs. Constantly being frustrated by the *trasformismo* can weaken the demand for radical change, as Cox's points out, "Hegemony is like a pillow: it absorbs blows and sooner or later the would be assailant will find it comfortable to rest upon".⁹²⁷ On a more optimistic note, perhaps the seeds of participation now planted at the WTO will have flourished and 'new multilateralism' will be further woven within WTO structure or policies. Thereby the claims that 'another world is possible' will be on their way to being realised. Only future research will bring evidence for these claims, but at the moment *trasformismo* has ensured the alter-globalization movement have had very little impact on the policies and process of the WTO.

⁹²⁷ Robert W. Cox. 'Gramsci, Hegemony, and International Relations: An Essay on Method' (1983), in Robert W. Cox with Timothy J. Sinclair. *Approaches to World Order*, Cambridge: Cambridge University Press, 1996, p. 139.

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