



*Attorneys at Law*

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## CONSIDER THIS

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### **#42 Sovereignty, World Trade and Human Rights**

In 1948, the newly formed United Nations announced a great event with appropriate fanfare: the unveiling of the [Universal Declaration of Human Rights](#). The dream was that through this and other international efforts, many of the horrors of the first half of the 20<sup>th</sup> Century could be left behind by a world that had much that it wished to forget.

With time, 141 nations signed and duly ratified the Declaration. But sad to say, despite the fact that the Declaration is now acknowledged to be the global consensus agreement defining human rights, its provisions have been violated on a daily basis in many parts of the world from then until today. Over time, the offenses visited by corrupt regimes, violent dictators, and ethnic majorities seem to be becoming more, rather than less violent and horrific. Today, each disaster that goes unpunished is speedily followed by the next. To recite but a few: Rwanda, Congo, Darfur, Kosovo, Liberia...the litany of horrors seems endless.

In part, this is due to the degree of difficulty involved in agreeing upon and engaging in collective action through the United Nations. Only rarely does the international community achieve the degree of consensus required to successfully navigate the bureaucracy, veto rights and process necessary to achieve such a result. Even the new International Criminal Court, established as a standing tribunal in 2002, is only designed to address abuses after the fact. Even then, it only possesses the authority to act with respect to crimes involving the nationals of signatory nations and such other countries as might consent to its jurisdiction.

In consequence, while the actions being taken today on many fronts to secure human rights are many and honorable, from pressure applied by individual or allied nations against abusive regimes to the significant activities and initiatives of a myriad of non-governmental organizations (NGOs), the ability of a government to abuse its citizens remains today largely unchecked.

At the heart of the matter lies the conundrum that has handicapped most post-war efforts to make the world a better place through collective action: the reticence of many nations to allow any external force to place any limits on what it can do, either externally, or (more emotionally) internally. After 71 years of only partial progress in the face of ongoing and terrible abuses, the cause of human rights can seem hopeless.

Must this be so? Perhaps not, if one considers this:

On January 1, 1995, the World Trade Organization (WTO) replaced the General Treaty on Tariffs and Trade (GATT). GATT was another international post-war initiative launched in an attempt to build a more peaceful and rational world. Today the WTO is not only strong and successful, but nations (such as China) willingly undergo long, strenuous and difficult transformations of their entire economies to accede to WTO membership.

One example of efforts undertaken under the auspices of the WTO that is familiar to readers of this journal is the [Act on Technical Barriers to Trade](#) (ATBT), which (among other goals) seeks to prevent the use of standards and conformance testing to unfairly benefit domestic commerce at the expense of international trade. As with many other restrictions imposed under the WTO, member states give up

numerous rights at home in order to enjoy a more level playing field for their own goods and services in the marketplaces of the world.

The WTO/ATBT system, while hardly perfect, does provide a set of rules within which the standards created through the voluntary consensus process may be given greater force through quasi-governmental authority. In practice, the WTO operates as a forum within which the rules of international trade are set, but not one that has the authority to bring actions to enforce those rules. Instead, it provides a venue (the Dispute Settlement Body) within which individual members may bring charges against other members, and resolve their disputes with the threat of WTO-approved sanctions to back up the rulings of WTO arbiters.

Under the due process provisions of the WTO/ATBT, complaints can be brought confidentially, permitting investigation prior to publicity, and decisions can be appealed. If the dispute resolution process fails to resolve issues, the WTO can impose meaningful sanctions against the guilty party, and in favor of the country or countries that brought the original complaint to the attention of the WTO.

While this process has its clear weaknesses (for example, a sanction that favors a large importer/exporter hits the guilty party far harder than one that benefits a small country, meaning that sanctions that favor a small country can easily be ignored by a large one), it nonetheless represents a remarkable achievement of international resolve and cooperation. In the less than eleven years of the WTO's existence, about [300 disputes](#) have been brought to its Dispute Settlement Body. Most of these disputes have been resolved, resulting in a more orderly and fully functional international marketplace.

Why is it that the nations of the world assembled in congress can reach agreement on the rules of international trade and go to great lengths to subject themselves to the WTO's authority, but have not set themselves the goal of providing an equally effective means of protecting elementary human rights?

The answers are not immediately obvious. After all, the rules endorsed by the WTO are humanistic as well as commercial, including (for example) the principle of providing greater flexibility to evolving economies than developed ones. Similarly, allowing an international body to control domestic trade in important respects is arguably as great, or greater, a concession to national sovereignty than agreeing to basic principles of human dignity.

Similarly, the United Nations does succeed on occasion in achieving consensus around the condemnation of human rights violations, and even on intervention by UN-authorized peacekeeping forces, despite the hurdles that stand in the way of such a result. What is needed is a standing commission with respected, neutral arbiters with the power to act, rather than a difficult and time-consuming ad hoc process.

Why then does the WTO have powers that the United Nations does not? It seems both tragic and comic that a system exists that can provide meaningful sanctions for trade abuses involving music in bars, pet food and solid urea, while the United Nations can only dither while children starve in Darfur.

The reasons, sadly, are several. Among them are that commercial forces have traditionally been more politically influential than humanitarian ones, and that repressive regimes traditionally have more to fear from their poor than from their commercial upper classes.

Still, the WTO experience demonstrates that the goal of achieving consensus around enforceable constraints, and even socially informed rules, can be achieved. It's long overdue for the same dedication that has been directed at achieving fair trade to be focused on protecting human dignity as well.

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