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Recommended Citation

Seita, Alex Y. (1997) "Globalization and the Convergence of Values," *Cornell International Law Journal*: Vol. 30: Iss. 2, Article 5.
Available at: <http://scholarship.law.cornell.edu/cilj/vol30/iss2/5>

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Globalization and the Convergence of Values

Alex Y. Seita*

As the twentieth century comes to a close, the circumstances of individual nations—their affairs, news, and problems—have tended increasingly to reach and captivate global audiences. A predominant reason has been the economic importance of foreign countries. Greater numbers of domestic businesses, employees, and consumers have looked to foreign markets, investors, and products for economic prosperity as well as economic competition. While driven primarily by economic factors, the process of globalization—in which international issues become as important as national, state, and local matters—has significant political and other noneconomic content. Democracy and human rights are, for example, as much a part of globalization as are free market principles. While globalization has detrimental effects, they can be minimized through the cooperative efforts of the United States and the other industrialized democracies which share basic economic and political values. America and its democratic allies should strongly promote and carefully manage globalization, for it has significant beneficial implications for humanity. Globalization is causing, and being reinforced by, a worldwide convergence of economic and political values that portend a possible, though distant, future world in which human beings will look upon themselves as part of a single humane civilization comprised of a single human race.

Introduction

Globalization is one of the great forces shaping the world today. It is a multifaceted concept encompassing a wide range of seemingly disparate processes, activities, and conditions—some nebulous, others concrete—that often reinforce as well as clash with each other. They are connected together by one common theme: what is geographically meaningful now transcends national boundaries and is expanding to cover the entire planet. Globalization has led to an awareness that international issues, not just domestic ones, matter.

Globalization means many things. It is foremost an economic process.¹ Economic globalization refers to the world-wide integration of mar-

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1. See *infra* notes 38-58 and accompanying text.
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kets.² In economic globalization, markets for goods, services, financial capital, and intellectual property take on transnational or global proportions. A paramount consequence of market integration has been increased economic interdependence among nations.

Globalization is also a political event, as evidenced by the spread of democracy and human rights among nations.³ Although it may be less extensive and have a less immediate impact than economic globalization, political globalization nevertheless has a significant international presence. There are now a greater number of democratically governed countries protective of fundamental human rights—rights that all human beings are entitled to, such as the rights to life and liberty, freedoms of expression and religion, freedom from torture or discrimination, and the right to a fair trial.⁴ A majority of the world's population may now live under democratically elected governments affording a measure of basic human rights.⁵

In addition to its all-important economic and political roles, globalization has numerous other dimensions. They reflect the wide range of human activity and thought, from the technological, cultural, legal, philosophical, and environmental, to the criminal and detrimental. The various aspects of globalization often interact with each other. For example, technology not only facilitates economic and political globalization, but together with economic globalization helps to introduce different cultures into local consciousnesses.⁶

Law has been important in managing economic globalization and may become as important with respect to political globalization.⁷ The ideology of globalization can be broadly divided into substantive and procedural components. The most important procedural element is the rule of law—the idea that disputes will be settled and agreements negotiated through the observance of established principles rather than the use of force or the intimidation of power.⁸ In turn, the substantive principles, what the rule of law seeks to enforce, are those that nations have selected to settle disputes and negotiate agreements. The rule of law can be a way of resolving conflicts effectively, peacefully, and cooperatively.

Furthermore, globalization enhances the perceived importance of distant international problems relative to local problems. Thus, protection of the environment beyond national borders has attracted strong international support, and the conflict between environment protection and economic development created the global issue of sustainable development.⁹

2. See, e.g., C. Fred Bergsten, *Globalizing Free Trade*, FOREIGN AFF., May-June 1996, at 105; Zia Qureshi, *Globalization: New Opportunities, Tough Challenges*, FIN. & DEV., Mar. 1996, at 30; MICHAEL E. PORTER, *THE COMPETITIVE ADVANTAGE OF NATIONS* 14-15 (1990).

3. See *infra* notes 59-82 and accompanying text.

4. Cf. *infra* notes 37 (listing human rights), 63 (defining democracy).

5. See *infra* note 67.

6. See *infra* notes 77-98 and accompanying text.

7. See *infra* notes 144-60 and accompanying text.

8. See *infra* note 147 and accompanying text.

9. Cf. *infra* note 186.

On the downside, technology together with economic and political globalization can facilitate the movement of criminal and terrorist activities across national boundaries and help criminals and terrorists to operate like efficient international businesses.¹⁰

Most significantly for this Article, however, globalization is an important source of common economic and political values for humanity. Globalization is simultaneously a cause and a consequence of the convergence of basic economic and political systems among nations. As the activities of globalization help to converge economic and political systems, their existence reciprocally facilitates the expansion of globalization. Momentously, the convergence of these systems is leading to the convergence of fundamental values—deeply held beliefs about what is right and wrong.¹¹

There is a widespread, though not universal, acceptance among nations of the basic values of liberal democracy: a market economy (or free markets), a democratic government, and the protection of human rights. Although particular details may differ from country to country, the general nature of these values is the same. The convergence of basic economic and political values among nations is a pivotal event because it is a necessary, though not sufficient, condition for the eventual emergence of a consensus among human beings that there is but one human race.¹²

This Article argues that the United States and the other industrialized democracies (e.g., the members of the European Union, Japan, and Canada), collectively referred to as the “West,”¹³ should vigorously support and substantially guide the process of globalization. As it is currently emerging, globalization fosters desirable common national values by advancing *general* forms of market economies, democracy, and human rights.¹⁴ It is precisely those general characteristics of liberal democracy that constitute the foundational pillars and shared values of the United States and the other industrialized democracies.¹⁵

Because the exact form of globalization is not a fixed certainty, the United States and the other industrialized democracies should aggressively configure globalization to be consistent with and to promote the values of

10. See *infra* notes 91, 132.

11. Value judgments (alternatively, beliefs, views, ideas, and opinions) about what is “good” or “bad” are never statements of *facts*. See 8 *ENCYCLOPEDIA OF PHILOSOPHY* 229-32 (1967). Other characterizations of “good” or “bad” might be “appropriate” or “inappropriate,” “correct” or “incorrect,” “necessary” or “unnecessary,” and “proper” or “improper.” The use of value judgments requires a person to base her decision on personal beliefs, whether or not these beliefs are her fundamental beliefs, beliefs widely shared and deeply felt by other members of society, or beliefs supported by objective evidence. See EZRA J. MISHAN, *INTRODUCTION TO NORMATIVE ECONOMICS* 24-26 (1981) (stating that value judgments are the product of, among other things, intellectual fashions, life experience, specific events, and interests). See also *THE MIT DICTIONARY OF MODERN ECONOMICS* 447-48 (David W. Pearce ed., 4th ed. 1992) [hereinafter *DICTIONARY OF MODERN ECONOMICS*].

12. See *infra* notes 104-17 and accompanying text.

13. See *infra* note 25.

14. See *infra* notes 118-28 and accompanying text.

15. See *infra* note 26.

liberal democracy. The industrialized democracies must also ensure that the path of globalization fairly balances the values of free market economics, democracy, and human rights, while accommodating such vital concerns as the protection of the environment, concerns that do not yet generate as strong a global consensus as the three convergent values.¹⁶

The mechanism for configuring globalization to conform to and to balance the values of liberal democracy consists of events and policies that, while difficult to achieve, are not unrealistic and have, to a degree, already been occurring.¹⁷ A particularly useful event might be a catharsis that would place the world into the next millennium without the baggage of the past. Perhaps by the year 2001, the representatives of oppressors, victims, victors, losers, and adversaries could assemble on a world stage in a therapeutic ceremony to put the past behind.¹⁸

Given their economic preeminence in the world, by acting in unison the industrialized democracies should be able to determine the specific content of globalization. Action from the industrialized democracies is needed because a humane globalization will increase human wealth and reduce human suffering.¹⁹ Morally, the promotion of liberal democratic values and the perspective of a single human race would serve to repay the historic debts that the industrialized countries have incurred over the past centuries.²⁰

At the same time, the industrialized democracies must be careful to use their influence responsibly and sensitively, for the wisest ideas pursued for the best motives may be rejected when unilaterally imposed upon the rest of the world. Perceived economic and political "imperialism," though much less malevolent than military imperialism, will not be warmly greeted. The primary vehicle for the industrialized democracies should be the "rule of law"—assuming that they have a substantial, if not commanding voice in determining its underlying principles.

An enlightened globalization will not lead to the establishment of a world government. It could, however, create a new attitude among human beings and serve the interests of the United States.²¹ More profoundly, advancing globalization will facilitate an event barely begun that holds the great potential of constructing, in the distant future, the perspective that the human race matters more than its component divisions along race, reli-

16. See *infra* notes 170-186 and accompanying text.

17. Some such possibilities are respect for the rule of law through support for multi-lateral dispute settlement, vigorous financial and political support for countries in transition to liberal democracy, greater regional economic and political integration, and structural changes in the United Nations. See generally Alex Y. Seita, *Putting the Past Behind and Humanizing Globalization* (May 1, 1997) (unpublished manuscript, on file with author).

18. Nations, for example, could apologize for their historical debts and for historical tragedies, and pledge reformed behavior in the twenty-first century. The ceremony would not be restricted to nations but could also include governments, organizations, and groups. See *id.*

19. See *id.*

20. See *id.*

21. See *id.*

gion, or ethnicity.²² The vision of a common humanity is reason enough to embrace globalization.

I. The Background of Globalization

Today, more than ever, the events of foreign lands have important economic and political consequences for local inhabitants. To be sure, foreign events have had significant ramifications in the past. Centuries ago, seminal inventions in China revolutionized the culture, science, and warfare of Europeans; the opening of American borders to European immigrants from the 19th through the mid-20th centuries gave millions a new home; and the conflicts in Europe during World War I eventually brought the United States onto the European battleground.²³

But these events were of *sporadic* importance. For example, after World War I ended, the United States isolated itself in a number of respects from international politics and trade; America declined membership in the League of Nations and enacted the Smoot-Hawley tariffs in 1931 which drastically reduced imports.²⁴ By contrast, transnational activities and affairs now have *continuous* importance, repeatedly affecting not just distant countries, but also the entire global community at times. The continuous importance of international events is a defining characteristic of globalization.

Another feature of globalization with potentially profound implications is the convergence of basic economic and political values among nations towards the liberal democratic values of the industrialized democracies, the "West."²⁵ For the West, the liberal, democratic values of market

22. See *infra* notes 104-17 and accompanying text.

23. See ROBERT TEMPLE, *THE GENIUS OF CHINA: 3,000 YEARS OF SCIENCE, DISCOVERY AND INVENTION* 7, 149-51, 81-84, 110-16, 224-29 (1986) (discussing the seminal inventions made by the Chinese, e.g., paper and printing, the magnetic compass, and gunpowder, and later utilized by Europeans); 1 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970*, at 105 (1975) (showing that the great majority of immigrants to the United States from 1820 to 1950 came from Europe) [hereinafter *HISTORICAL STATISTICS OF THE UNITED STATES*].

24. See UNITED NATIONS, *EVERYONE'S UNITED NATIONS: A HANDBOOK ON THE WORK OF THE UNITED NATIONS* 5 (10th ed. 1986) [hereinafter *UNITED NATIONS*]; JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* 9 (1969).

25. Identifying the most important industrialized democracies is easy, although compiling a list of all the industrialized democracies may not be. The most important industrialized democracies are members of the group of seven (G-7) nations: the United States, Japan, Germany, Great Britain, France, Italy, and Canada. See, e.g., INTERNATIONAL MONETARY FUND, *WORLD ECONOMIC OUTLOOK: OCTOBER 1996*, at 155-57 (1996) [hereinafter *WORLD ECONOMIC OUTLOOK*]. See generally C. FRED BERGSTEN & C. RANDALL HENNING, *GLOBAL ECONOMIC LEADERSHIP AND THE GROUP OF SEVEN* (1996).

A good proxy for the major industrialized democracies is the group of 23 nations that the International Monetary Fund (IMF) calls the "industrialized countries": the United States, Japan, Canada, Australia, Iceland, New Zealand, Norway, Switzerland, and all 15 countries of the European Union. See *WORLD ECONOMIC OUTLOOK, supra*, at 155-57. The fifteen nations of the European Union are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. See *What Is the Economic Union?* (visited Apr. 3, 1997) <<http://europa.eu.int/en/eu/states.htm>>. Although the European Union is not a

economies, democracy, and human rights are fundamental.²⁶ Given the arguably shallow roots of liberal democratic values in a number of countries and the absence of democracy and human rights in many others, this process may perhaps be too incomplete to be described as a convergence of

"country," it possesses international legal personality, speaks for all member nations in most external or international economic matters, and represents one step in a planned path to a future entity with some characteristics of a single country (e.g., common citizenship, a single monetary currency, a common defense policy). See generally Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11; Single European Act, Feb. 17-28, 1986, 25 I.L.M. 506; Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247, 253 (Maastricht Treaty); *Europa Homepage* (visited Dec. 8, 1996) <<http://europa.eu.int>> (website for the European Union). While all 23 industrialized countries are democracies that protect human rights, several of these have not been so throughout the entire post-World War II period (i.e., Greece, Portugal, and Spain had military dictatorships for decades).

Another possible proxy for the industrialized democracies is the Organisation for Economic Co-operation and Development (OECD). See generally *OECD Online* (visited Jan. 20, 1997) <<http://www.oecd.org>> (website for the Organisation for Economic Co-operation and Development). The 29 member nations of the OECD include the Czech Republic, Hungary, Mexico, Poland, South Korea, and Turkey, in addition to the IMF's 23 industrialized nations. See *About OECD: Member Countries* (visited Jan. 20, 1997) <<http://www.oecd.org/about/member-countries.html>> (from OECD website). The members of the OECD identify themselves as "governments of the industrialised democracies" that seek, among other things, "co-operation among nations essentially on domestic policies where these interact with those of other countries, in particular through trade and investment." See *About OECD: The OECD and its Origins* (visited Jan. 20, 1997) <<http://www.oecd.org/about/origins.htm>> (from OECD website). This description of "industrialized democracies" is reasonably accurate, although some OECD countries may lack (or for a long time did lack) some democratic features and human rights.

For convenience, this article describes the 23 IMF-designated industrialized nations collectively as the "West," although that term is arguably misleading. Some commentators would reserve the term "West" exclusively for U.S. allies of European heritage or for friendly but neutral European democracies with wealthy economies. They would instead characterize nations like Japan, South Korea, and Turkey as part of the "Free World." See Michael Lind, *Pax Atlantica: The Case for Euramerica*, WORLD POL'Y J., Spring 1996, at 1-2. Unlike the other 22 nations, Japan is not predominately a caucasian nation with European roots. It is also a country that has been frequently characterized, inaccurately, as being qualitatively different from the other 22 nations which are supposed to be identical to each other. See, e.g., *A Survey of Tomorrow's Japan*, ECONOMIST, July 13, 1996, at 5. For a discussion of Japan's role in international affairs as well as Japan's more important similarities with the other industrialized countries, see Alex Y. Seita, *Japan's Role in Globalization* (May 1, 1997) (unpublished manuscript, on file with author).

Placing Japan solely in the "Free World," however, seems odd as that phrase also describes an increasingly large number of countries whose economies are nowhere as prosperous as most of the IMF's 23 industrialized countries, let alone Japan's. On the other hand, Japan is an American ally, and the term "West" has often been used to describe the U.S.-led alliance of wealthy industrialized nations. Using the term "West" to describe the IMF's 23 industrialized nations avoids having to refer to "western and Japanese" governments, corporations, etc.

26. For example, the OECD (whose 29 members include all 23 nations of what this article refers to collectively as the "industrialized democracies") states that its "membership is not determined by wealth, but rather by what the Members have in common, which is their commitment to an open market economy, pluralistic democracy and respect for human rights." See *About OECD: Member Countries* (visited Jan. 20, 1997) <<http://www.oecd.org/about/member.htm>>.

fundamental values. Nevertheless, today there are greater similarities between the economic and political systems of nations than at any other time in the short history of globalization.²⁷ With careful and generous support from the West, this similarity of systems may evolve into a similarity of fundamental values.

A. Globalization's Beginning

Identifying the birth of globalization is an elusive task, but one possible date is the year 1945, when the United States led the Allied powers in creating the United Nations and its companion international organizations, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank).²⁸ Later in 1948, the United States and its democratic allies established the General Agreement on Tar-

27. The economic conflict between market and command economy paradigms has ended in the former's favor. The classes of imperial powers and colonies that existed at the end of World War II have vanished, and virtually all nations are now politically independent. See *infra* note 65. Democracy, not authoritarianism, is the prevailing form of government among nations. See *infra* note 59. With the end of the Cold War, the protection of human rights has not had to compete with national security concerns, and there has been at least pervasive formal recognition of the importance of human rights. Cf. *infra* note 60.

28. See UNITED NATIONS, *supra* note 24, at 3 (United Nations Charter signed on June 26, 1945, in San Francisco, and the United Nations officially came into existence on October 24, 1945); INTERNATIONAL MONETARY FUND, ARTICLES OF AGREEMENT (1968) (IMF Articles of Agreement adopted on July 22, 1944, and entered into force on December 27, 1945) [hereinafter IMF ARTICLES OF AGREEMENT]; SUSAN GEORGE & FABRIZIO SABELLI, FAITH AND CREDIT: THE WORLD BANK'S SECULAR EMPIRE 33-36 (1994) (the Articles of Agreement of the International Bank for Reconstruction and Development were adopted on July 22, 1944, and entered into force on Dec. 27, 1945). The International Bank for Reconstruction and Development (IBRD) and its affiliates—the International Finance Corporation (IFC, established in 1956), the International Development Association (IDA, established in 1960), the International Centre for Settlement of Investment Disputes (ICSID, established in 1966), and the Multilateral Investment Guarantee Agency (MIGA, established in 1988)—are collectively known as the World Bank Group, and the IBRD and the IDA together are collectively known as the World Bank. See WORLD BANK, ANNUAL REPORT 1996, at 6-7 [hereinafter WORLD BANK]; WORLD BANK GROUP, THE WORLD BANK GROUP: LEARNING FROM THE PAST, EMBRACING THE FUTURE 3 (1994).

Membership in the IBRD is restricted to members of the IMF. See WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT: ARTICLES OF AGREEMENT art. II, § 1 (1944) [hereinafter IBRD ARTICLES OF AGREEMENT]. In turn, membership in the IFC, IDA, and MIGA is restricted to members of the IBRD. See INTERNATIONAL FINANCE CORPORATION, ARTICLES OF AGREEMENT art. II, § 1 (1956); INTERNATIONAL DEVELOPMENT ASSOCIATION, ARTICLES OF AGREEMENT art. II, § 1 (1960); MULTILATERAL INVESTMENT GUARANTEE AGENCY, CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY art. 4 (1985). Contracting states that have signed ICSID need not be members of the IBRD. See INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, REPORT OF THE EXECUTIVE DIRECTORS ON THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES art. 67 (1965).

Both the IMF and the IBRD were products of the United Nations Monetary and Financial Conference held at Bretton Woods, New Hampshire, from July 1-22, 1944, under the leadership of the United States. See generally U.S. DEPARTMENT OF STATE, PUB. NO. 2866, PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE, BRETTON WOODS, NEW HAMPSHIRE, JULY 1-22, 1944 (1948). Though initially involved in the process of creating the IMF and the IBRD, the Soviet Union later declined to join either institution, choosing instead to exercise its political influence

iffs and Trade (GATT), another important economic institution for globalization along with the IMF and the World Bank.²⁹ The motivations for creating these international institutions were at once noble and selfish.

After the devastating experience of World War II, the victorious Allies were determined to prevent any reoccurrence of similar world wars. Their motivating hope was that a collegial body of nations would ensure the peaceful resolution of conflicts and provide a collective defense against wrongful aggression.³⁰ Thus, the United Nations was the focus of political attempts to prevent future acts of aggression. Further, unlike the League of Nations, the United Nations made the promotion of human rights one of its basic purposes.³¹ Toward that end, the United Nations created various human rights institutions and generated human rights conventions and

through its position as a permanent member of the U.N. Security Council. See HAROLD JAMES, *INTERNATIONAL COOPERATION SINCE BRETTON WOODS* 48-58 (1996).

29. Originally, the United States and its western allies had planned to establish the International Trade Organization (ITO), an international institution comparable in statute to the IMF and the IBRD, with the responsibility of promoting international trade. The ITO, however, was never established due to the refusal of the United States to approve it. Instead, the General Agreement on Tariffs and Trade (GATT)—the trade treaty that would have been administered by the ITO—became a de facto organization devoted to the expansion of world trade. See JACKSON, *supra* note 24, at 36-53. See generally *General Agreement on Tariffs and Trade*, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT]. The GATT was authenticated on October 30, 1947, and entered into force on January 1, 1948, with the United States as one of the original contracting parties (members). JACKSON, *supra* note 24, at 45, 899. As with the IMF and the IBRD, the Soviet Union declined to join the GATT. See *id.* at 898-901. Years later, the World Trade Organization (WTO), the modern-day equivalent of the ITO, emerged from the GATT Uruguay Round Agreements and was established on January 1, 1995. Cf. *Open for Business*, WTO Focus (World Trade Org.), Jan.-Feb. 1995, at 4. The agreement establishing the WTO includes a number of agreements that cover specific trade issues. See Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 33 I.L.M. 13, 15-16 (1994) [hereinafter WTO Agreement]. “Multilateral” agreements apply to all WTO members and “plurilateral” agreements apply only to members that have accepted them. See WTO Agreement, *supra*, art. II, paras. 2-3. All references to GATT in this article are to the original GATT treaty of 1947 (GATT 1947), and not to the legally distinct GATT 1994 agreement. The latter is part of the WTO Agreement and contains, among other things, all of the provisions of GATT 1947. Compare WTO Agreement, *supra*, art. II, para. 4, with General Agreement on Tariffs and Trade 1994, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, §1, 33 I.L.M. 29 (1994).

30. See, e.g., U.N. CHARTER *passim*; ROSEMARY RIGHTER, *UTOPIA LOST: THE UNITED NATIONS AND WORLD ORDER* 311-13 (1995). See generally U.N. CHARTER arts. 33-38 (Chapter VI: Pacific Settlement of Disputes), 39-51 (Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression). For a comprehensive treatment of the pervasive role the United States played in the establishment of the U.N. Charter, see RUTH B. RUSSELL & JEANNETTE E. MUTHER, *A HISTORY OF THE UNITED NATIONS CHARTER: THE ROLE OF THE UNITED STATES 1940-1945* (1958).

31. One of the purposes of the United Nations is “[t]o achieve international cooperation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” U.N. CHARTER art. 1, para. 3; see also *id.* arts. 13 para. 1b, 55 para. c, 55, 76 para. c. The covenant of the League of Nations had no comparable purpose or general provisions dealing with human rights. See RUTH B. HENIG, *LEAGUE OF NATIONS COVENANT* 179-89 (1973). There were, however, articles that touched on human rights concerns. See *id.* arts. 22 (colonies of defeated nations in World War I to be administered by the victors in a manner consis-

declarations.³²

At the same time, the Allies thought it critical to lay the foundations for the economic prosperity of the international community.³³ Prosperous countries, it was thought, would be less inclined to wage wars. Thus, the Allies promoted activities that would raise the standard of living among peaceful countries. For example, the Allies established international economic institutions which were in part created to promote international monetary cooperation (the IMF), to foster economic development in less developed countries (the World Bank), and to increase international trade (the GATT).³⁴

tent with the "well-being and development of [the native] peoples", 23 ("fair and humane conditions of labour for men, women, and children").

32. For example, the U.N. Commissions on Human Rights and on the Status of Women were established in 1946. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS* 5-8 (1990). Also, many human rights conventions and declarations have emerged from the United Nations. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 III(A), U.N. GAOR, 3d Sess., Supp. No. 127, at 71, U.N. Doc. A/810 (1948); Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 2670, U.N. GAOR, 3d Sess., pt. 1, at 174, 78 U.N.T.S. 277 (1948); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A(XXI), 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1966); International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1966); International Covenant on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 A(XX), 660 U.N.T.S. 195 (1965). The full texts of all of these conventions, as well as other human rights instruments, can be found at the United Nations human rights website. See *Welcome to the United Nations Human Rights Website* (visited Dec. 11, 1996) <<http://193.135.156.15/welcome.htm>> (U.N. website containing information relating to human rights, including "the full texts of over 90 international human rights treaties, declarations and principles, as well as their status of ratification").

33. See JAMES, *supra* note 28, at 27-57.

34. See IMF ARTICLES OF AGREEMENT, *supra* note 28, art. I (purpose of IMF); IBRD ARTICLES OF AGREEMENT, *supra* note 28, art. I (purpose of IBRD); GATT, *supra* note 24, pmbl. (purpose of GATT). Immediately after the end of World War II, the more pressing priority of these two institutions was to help rebuild countries ravaged by war. See, e.g., IBRD ARTICLES OF AGREEMENT, *supra* note 28, arts. I(i), (v). By initial design,

[T]he [IMF] is an *adjustment institution* whose short-term loans are directed to financing deficits that are either inherently temporary or intended to be temporary because of the adoption of adjustment policies, [while] the World Bank is a *development institution* whose long-term loans are directed to the promotion of development . . .

....
This division of labor became blurred after 1974.

John Williamson, *The Lending Policies of the International Monetary Fund*, in IMF CONDITIONALITY 605, 617 (John Williamson ed., 1983) (emphasis in original). Over the years, there has been considerable convergence in the activities of the IMF and the World Bank as it has become clear that macroeconomic adjustment and balance of payments problems (IMF areas of expertise) are linked to economic development and microeconomic policies concerning investment in such areas as infrastructure, training, and education (World Bank areas of expertise). Also, the constituencies of the two institutions have converged. Originally concerned with the problems of all countries, the IMF now only provides funds to developing or poor countries (including former communist countries). Thus, its constituencies are the same as those of the World Bank. See JAMES, *supra* note 28, at 143-44, 325-27, 527-29. See generally INTERNATIONAL MONETARY FUND, ANNUAL REPORT 1996, at 3 (1996) [hereinafter IMF] (the International Monetary Fund provides funds to low-income and heavily indebted poor countries, including

The creation of the United Nations, the IMF, the World Bank, and the GATT were key moments in globalization. These institutions signaled the start of an era of cooperative behavior, however imperfect, among nations. While the number of nations involved was limited, their cooperation required the development and formal recognition of common interests. The GATT and the United Nations, in particular, were critical components in the genesis of globalization.³⁵ In seeking to reduce barriers to trade of goods, the GATT contained free market principles that favored lower tariffs, banned quotas, and prohibited discrimination against foreign goods.³⁶ The United Nations, at least on paper, championed the principles of human rights and democratic forms of government.³⁷ As these principles

countries in transition from command to market economies, to help them cope with balance of payments problems); WORLD BANK, *supra* note 28, at 6 (the central purpose of the World Bank Group is to promote economic and social progress in developing countries by offering them loans, grants, co-investment financing, and investment insurance).

35. Of course, the GATT was not the only factor in economic globalization. The European Community Treaties were instrumental to integrating the markets of western Europe, and the United States opened its huge domestic market to imports from allied and neutral countries. See, e.g., STEPHEN D. COHEN ET AL., FUNDAMENTALS OF U.S. FOREIGN TRADE POLICY: ECONOMICS, POLITICS, LAWS, AND ISSUES 34-38 (1996); Gary Clyde Hufbauer, *An Overview*, in EUROPE 1992: AN AMERICAN PERSPECTIVE 1-3 (Gary Clyde Hufbauer ed., 1990). Also, the Marshall Plan and similar aid programs from the United States, along with some support from the World Bank and IMF, helped to rebuild war-shattered economies, whose recovery led to greater international trade. See, e.g., JAMES, *supra* note 28, at 72-84; Alex Y. Seitza, *Discussing Japan Rationally*, 25 L. & POL'Y INT'L Bus. 193, 211 n.84 (1993).

36. See, e.g., GATT, *supra* note 24, arts. I, II, III, XI. Articles I and III banned discrimination based on foreign origin and nationality, respectively. Under the most-favored-nation rule of article I, a contracting party to GATT was obligated to treat the imports from or exports to all other contracting parties no less favorably than it treated the imports or exports of any trading partner (whether a GATT contracting party or not). The national treatment rule of article III required a contracting party to treat imported goods, once through customs, no less favorably than domestic goods (subject to a government procurement exception). Under article II, tariffs could be no higher than the maximum tariffs listed by a contracting party in its tariff schedules. A contracting party determined its tariff schedules after negotiating with other contracting parties, and through reciprocity, lowered its maximum tariffs if other contracting parties did likewise. See JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 117-26 (1989). See generally WILLIAM R. CLINE ET AL., TRADE NEGOTIATIONS IN THE TOKYO ROUND: A QUANTITATIVE ASSESSMENT (1978). Article XI generally forbade quantitative restrictions (quotas). There were, of course, important exceptions to GATT's general efforts to reduce barriers, and GATT did not cover trade in services and did not adequately handle the issue of liberalizing trade in agriculture, or textiles and apparel. See generally WORLD AGRICULTURE TRADE: BUILDING A CONSENSUS (William M. Miner & Dale E. Hathaway eds., 1988); DALE E. HATHAWAY, AGRICULTURE AND THE GATT: REWRITING THE RULES (1987); WILLIAM R. CLINE, THE FUTURE OF WORLD TRADE IN TEXTILES AND APPAREL (1987).

37. See, e.g., Universal Declaration of Human Rights, *supra* note 32, arts. 2 (no discrimination on the basis of race, sex, religion, etc.), 3 (right to life, liberty, and personal safety), 4 (freedom from slavery), 5 (freedom from torture), 7 (equal protection under the law), 10 (right to fair and public criminal proceeding), 18 (freedom of religion), 19 (freedom of expression), 20 (freedom of assembly and association), 21 (right to a democratic government), 23 (right to work, to have just conditions of work, and to form unions), 25 (right to a standard of living adequate for the health and well-being, including food and medical care), 26 (right to education). The boundaries of human rights are

gained international acceptance, economic and political norms developed. That is, common values emerged.

B. Economic Globalization

In current usage, the term globalization refers primarily to economic globalization. As barriers to trade, investment, financial flows, and technology transfers have fallen, there has been an expansion of markets for goods, services, financial capital, and intellectual property to transnational, regional, and even global dimensions.³⁸ There are several hallmarks of economic globalization. First, it increases opportunities for sellers as well as buyers. Second, economic globalization simultaneously creates new competition. Third, it develops interdependency among nations. Finally, economic globalization spreads the ideology of the free market economy model because the industrialized nations, the major promoters of globalization, advocate free market policies.

The enlargement of markets beyond national boundaries means that both sellers and buyers have greater choices. More firms issue equity

the matter of some debate. See, e.g., *infra* note 184 and sources cited (whether protection of the environment is a "human right"); Burns H. Weston, *Human Rights*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION* 14, 17-18 (Richard P. Claude & Burns H. Weston eds., 2d ed. 1992). No single human right is absolute, since rights must eventually conflict and one right would otherwise dominate all other rights. Human rights can be divided into three broad categories: personal security rights (e.g., freedom from torture, slavery, arbitrary arrest), civil and political liberties (e.g., freedom of expression, religion, participation in government), and depending on the affluence of the country, economic or welfare rights (e.g., right to food, shelter, health care, education). See, e.g., Universal Declaration of Human Right, *supra* note 32; *HUMAN RIGHTS AND U.S. FOREIGN POLICY: PRINCIPLES AND APPLICATIONS* xviii-xxi (Peter G. Brown & Douglas MacLean eds., 1979). Core human rights—those generally recognized as human rights—are sometimes characterized as first and second-generation rights, while emerging or potential human rights are called third-generation rights. Cf. Weston, *supra*, at 18-20; *supra* note 184.

38. With the establishment of the World Trade Organization and the North American Free Trade Agreement, the continuing integration of the European Union, and regional declarations of free trade (e.g., the Asia-Pacific Economic Cooperation forum, APEC), the long-term trend clearly points to the globalization of markets, the geographical expansion of markets to include more competitors and consumers. See Canada-United States Free Trade Agreement, Dec. 22, 1987-Jan. 2, 1988, U.S.-Can., KAV 270(s), 27 I.L.M. 281 (treaty integrating Canadian and American markets); North American Free Trade Agreement, Dec. 8-Dec. 17, 1992, U.S.-Can.-Mex., KAV 3417(s), 32 I.L.M. 289 (treaty integrating American, Canadian, and Mexican markets); *supra* note 25 (treaties integrating the markets of the various European Union countries); WTO Agreement, *supra* note 29. See generally YOICHI FUNABASHI, *ASIA PACIFIC FUSION: JAPAN'S ROLE IN APEC* (1995); JOHN S. WILSON, *STANDARDS AND APEC: AN ACTION AGENDA* (1995). More markets will cover a greater number of countries because barriers to those market commodities will continue to fall, whether or not these are tariffs, legal barriers, or cultural barriers. The reduction of market barriers will widen the geographic areas for markets, in some cases, to world-wide dimensions. Markets will become freer for both sellers and buyers. Companies will be able to sell products to customers in more countries. Businesses and individuals will also be able to buy commodities and services from a greater number of countries. More products will have global markets—not just commodities like automobiles, airplanes, computers, and securities.

securities in, or obtain financing from, international markets.³⁹ They also find it profitable to sell their goods and services in, or buy their raw materials or components from, international markets. Worldwide trade now amounts to an astonishingly large figure, six trillion dollars in 1995, more than 80% the size of the gross domestic product of the United States, the world's largest economy.⁴⁰

The existence of greater choice also extends to investment opportunities. Companies are investing in foreign countries, buying assets such as securities, businesses, facilities, and land, and have shifted production to

39. This is an example of international financial integration. See, e.g., HAL S. SCOTT & PHILIP A. WELLONS, INTERNATIONAL FINANCE: TRANSACTIONS, POLICY, AND REGULATIONS (3rd ed. 1996); RICHARD J. HERRING & ROBERT E. LITAN, FINANCIAL REGULATION IN THE GLOBAL ECONOMY 13-48 (1995).

40. The gross domestic product of the United States was \$7,245.8 billion in 1995. See *National Income and Product Accounts*, SURVEY OF CURRENT BUSINESS, July 1996, at 5 tbl. 1.1 (Bur. Econ. Anal., U.S. Dep't Com.) [hereinafter SURVEY OF CURRENT BUSINESS, July 1996]. The United States has the world's largest economy, accounting for, by one measure, 21.3% of world gross domestic product in 1995. See, e.g., WORLD ECONOMIC OUTLOOK, *supra* note 25, at 156.

From 1992 to 1995, total world exports of merchandise and commercial services amounted to the following (in billions of dollars):

	1992	1993	1994	1995
Merchandise	3,655	3,630	4,090	4,875
Commercial Services	1,017	1,000	1,080	1,230

See *Overview of World Trade in 1995 and Outlook for 1996*, WTO Focus, May 1996, at 2 tbl. 1 (World Trade Org.) (data for 1993-95) [hereinafter WTO Focus, May 1996]; *Overview of World Trade in 1994 and Outlook for 1995*, WTO Focus, Mar.-Apr. 1995, at 5 tbl. 1 (World Trade Org.) (data for 1992) [hereinafter WTO Focus, Mar.-Apr. 1995]. Theoretically, total world exports should equal total world imports. In practice, however, total world exports differ from total world imports because of differences in evaluation, definition, and data collection. See WTO Focus, May 1996, *supra*, at 4 tbl. 3 (giving total world imports of merchandise at \$5,015 billion for 1995).

Merchandise trade consists of goods—manufactured goods and primary commodities such as minerals or agricultural, fishery, and forestry products. Commercial services fall into broad categories of transportation, travel (tourism), and other private services (insurance, banking, telecommunications, etc.) and income. Cf. *id.* at 3-4; WTO Focus, Mar.-Apr. 1995, *supra* at 5. In 1994, the six leading exporters and importers of commercial services, in billions of dollars (value) and as percentages of total world trade in commercial services (share), were as follows:

	1994 EXPORTS		1994 IMPORTS		EXPORTS & IMPORTS
	VALUE	SHARE	VALUE	SHARE	COMBINED VALUE
United States	178.2	16.5	125.0	12.0	303.2
Japan	57.2	5.3	109.2	10.5	166.4
France	89.1	8.3	69.9	6.7	159.0
Germany	53.1	4.9	98.8	9.5	151.9
Italy	59.1	5.5	58.0	5.6	117.1
United Kingdom	58.6	5.4	50.8	4.9	109.4

See WTO Focus, May 1996, *supra*, at 8 tbl. 7.

In 1995, exports and imports of merchandise trade were as follows for the European Union and the following countries:

foreign factories.⁴¹ Concurrently, sellers of such domestic assets now have

	1995 EXPORTS OF MERCHANDISE TRADE (IN BILLIONS OF DOLLARS)	1995 IMPORTS OF MERCHANDISE TRADE (IN BILLIONS OF DOLLARS)
European Union	750.8	736.1
United States	583.9	770.8
Japan	443.0	335.9
China	148.8	132.0
Russia Federation	80.2	55.7

See *id.* at 6 tbl. 5 (export and import data for Russian Federation; figure includes trade with former republics of the USSR), 7 tbl. 6 (export and import data for all but Russia; European Union figures exclude intra-European Union trade).

41. For example, consider the total foreign direct investment (FDI) positions of the United States and Japan in 1995:

	FDI IN COUNTRY	FDI ABROAD
United States	\$560.1 billion	\$711.6 billion
Japan	\$ 34.1 billion	\$463.6 billion

See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 47 tbl. 3, 50 tbl. 4 (giving total foreign direct investment in the United States and total American foreign direct investment abroad by historical cost at year-end 1995); Jon Choy, *Foreign Direct Investment in Japan Rebounds*, JAPAN ECON. INST., July 21, 1995, No. 27B, at 8, 9 (giving foreign direct investment in Japan as of March 31, 1995, based on notifications, not actual transactions, and excluding disinvestments); *Japan's FY 1994 Foreign Direct Investment*, JAPAN ECON. INST., July 7, 1995, No. 25B, at 6, 7 (giving Japanese foreign direct investment abroad as of March 31, 1995, based on notifications, not actual transactions, and excluding disinvestments). Foreign direct investment is foreign investment in domestic real estate, businesses, and factories (as contrasted with "portfolio investment," foreign investment in domestic financial assets such as stocks and bonds). A more technical definition is that a foreign resident has ownership or control, directly or indirectly, of 10% or more of the voting securities of a domestic corporation or the equivalent interest in an unincorporated domestic business. See Raymond J. Mataloni, Jr., *A Guide to BEA Statistics on U.S. Multinational Companies*, SURVEY OF CURRENT BUSINESS, Mar. 1995, at 38 (Bur. Econ. Anal., U.S. Dep't Com.).

As a percentage of all direct investment, the figure for foreign direct investment in Japan is among the lowest for the industrialized countries. In most industrialized countries, foreign direct investment has had a long and substantial presence. Since the 1980s, the United States has experienced a substantial increase in foreign direct investment. See EDWARD M. GRAHAM & PAUL R. KRUGMAN, *FOREIGN DIRECT INVESTMENT IN THE UNITED STATES* 31-33 (3d ed. 1995). The shares of foreign-owned firms for manufacturing sales, value added, and employment in France, the United Kingdom, and the United States were as follows for 1985 and 1990 (in percentages):

	VALUE					
	SALES		ADDED		EMPLOYMENT	
	1985	1990	1985	1990	1985	1990
France	26.7	28.4	25.3	27.1	21.1	23.7
United Kingdom	20.3	24.1	18.7	21.1	14.0	14.9
United States	8.0	16.4	8.3	13.4	8.0	10.8

See *id.* at 33 tbl. 1.9.

The manufacturing companies of most developed countries produce a substantial percentage of their output in foreign countries. See Douglas Ostrom, *MITI Looks to United States, Europe for Lessons on Restructuring*, JAPAN ECON. INST., June 21, 1996, No. 23B, at 3 (reporting that in 1994 manufacturing companies of Japan, Germany, and the United States produced 7.9%, 17.5%, and 20.1%, respectively, of their output outside of their home country). Even Japanese companies, which have been latecomers in shifting manufacturing production overseas, now produce more in foreign factories than the total

more buyers to choose from. The liberalization of investment opportunities—the removal of barriers—contributes to the liberalization of trade, and vice versa.⁴²

Expanding markets simultaneously generates more competition along with more opportunities;⁴³ domestic firms must compete not only with domestic but also foreign rivals. While benefiting domestic consumers, foreign competition may threaten domestic businesses and employees.⁴⁴ Whether the foreign competition comes from imports or the local subsidiaries of foreign corporations, employees of domestic firms may lose their jobs as these firms lay off surplus employees in order to become more competitive.⁴⁵ Where local subsidiaries of foreign corporations provide competition, however, these subsidiaries will create new jobs that replace, in

amount of Japanese exports. For example, Japanese manufacturing companies produced ¥41.2 trillion worth of goods in overseas plants in fiscal year 1995 (ending in March 1996), a figure greater than the total amount of exports from Japan, ¥39.6 trillion (\$41.2 billion and \$39.6 billion, respectively, using a \$1 = ¥100 exchange rate, cf. *Currency Markets*, N.Y. TIMES, Apr. 2, 1997, at D17 (as of April 1, one dollar was worth about ¥120)). See Sumie Kawakami, *Exporting a Surplus [Focus Japan]*, FAR EAST. ECON. REV., July 4, 1996, at 44.

42. See *Globalisation: Creating a Borderless World?*, OECD LETTER, Aug.-Sept. 1996, at 4 (Org. Econ. Co-Op. & Dev.).

43. See PORTER, *supra* note 2, at 7-9.

44. Even buyers can face increased competition, in that they may incur higher costs from increased competition. For example, oil from Russia need no longer be sold at subsidized prices to former Soviet allies. See Beth Knobel, *Unpaid Energy Bills Split Russia, Neighbors*, L.A. TIMES, Apr. 14, 1994, at D5.

45. Compare, for example, employment and revenues at several of America's largest corporations in 1978 with 1995.

	NO. OF EMPLOYEES		REVENUES (\$ MILLIONS)	
	1978	1995	1978	1995
General Motors	839,000	709,000	63,221.1	168,828.6
Ford Motors	506,531	346,990	42,784.1	137,131.0
International Business Machines	325,170	252,215	21,076.1	71,940.0
General Electric	401,000	222,000	19,653.8	70,028.0
Chrysler	157,958	126,000	16,340.7	53,195.0

See *Fortune's Global 500: The World's Largest Corporations*, FORTUNE, Aug. 5, 1996, at 102, F-1, F-11 (data for 1995 fiscal year ending on or before March 31, 1996) [hereinafter *Global 500*]; Peter Dworkin, *The Fortune Directory of the 500 Largest U.S. Industrial Corporations*, FORTUNE, May 7, 1979, at 268, available in LEXIS, News Library, Fortun File (data for 1978). Employment went down as sales (adjusted for inflation) went up. From March 1979 (end of fiscal year 1978) to March 1996 (end of fiscal year 1995), the consumer price index changed from 69.8 to 155.7, an increase of about 123%. See *Bureau of Labor Statistics Data* (visited Oct. 15, 1996) <<http://stats.bls.gov:80/cgi-bin/surveymost>> (website for Bureau of Labor Statistics, providing consumer price index for all urban consumers). The five companies listed above increased their sales by considerably more than 123%, and four out of five increased sales by over 200%.

Downsizing, of course, is not restricted to the United States. For many employees, not just in America but also in Japan and Europe, globalization has been a bane, exposing them to foreign competition and throwing them out of work. See, e.g., Teresa Watanabe & David Holley, *Japanese Jolted by Demands of Future: As Nation Recovers from Brutal Recession, Traditional Business Practices Mean Little, Older Men Lose Guarantees on Pay, Jobs, Respect*, L.A. TIMES, July 14, 1996, at A1; Joan Warner et al., *Clinging to the Safety Net*, BUS. WK., Mar. 11, 1996, at 62 (regarding European workers).

part, jobs lost at domestic firms.⁴⁶ One of the major consequences of increased foreign competition and the domestic drive for efficiency is that countries have become more willing to privatize and deregulate.⁴⁷

By making foreign countries important sources of consumers, investors, and suppliers, globalization creates interdependence. When domestic businesses buy from and sell to foreign markets, their financial welfare becomes linked to those markets. More domestic companies have evolved into multinational corporations, firms that have economic interests in several countries. Businesses set up partnerships with foreign firms, to share technology and risk, in order to create new products.⁴⁸ Because customers as well as suppliers are foreign, firms in one country become economically dependent upon firms in other countries. When foreign firms likewise become dependent upon domestic markets, interdependence is established as the economic prosperity of one nation becomes connected to that of other countries. For virtually all countries, transnational trade is important, if not vital, to their economic prosperity.⁴⁹

As economic globalization integrates various national markets into regional or world-wide markets, it also promotes general free market prin-

46. In 1994, nonbank U.S. affiliates of foreign companies employed 4,867,000 American workers, or 5.0% of the total nonbank employment in the United States. See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 102, 113 tbl. 13. In many cases, foreign subsidiaries will pay higher wages than local firms. See Ned G. Howenstine & Dale P. Shannon, *Differences in Foreign-Owned U.S. Manufacturing Establishments by Country of Owner*, SURVEY OF CURRENT BUSINESS, Mar. 1996, at 43 (Bur. Econ. Anal., U.S. Dep't Com.) (reporting that the "U.S. manufacturing establishments of each of the major investing countries [Canada, France, Germany, Japan, the Netherlands, and the United Kingdom] tend to be much larger, pay higher wages, and be more productive than the U.S.-owned establishments").

47. See *infra* note 52.

48. See, e.g., Brian Bremner et al., *Keiretsu Connections: The Bonds Between the U.S. and Japan's Industry Groups*, Bus. Wk., July 22, 1996, at 52 (numerous tie-ups between U.S. and Japanese multinational companies); Darryl Gibson, *A Profitable Window [Focus Japan]*, FAR EAST. ECON. REV., July 4, 1996, at 48 (joint ventures involving U.S. and Japanese firms, Chinese and Japanese firms, and U.S., German, and Japanese firms); NTT, *IBM Japan Tie up in Small Information Device Field*, JAPAN ECON. NEWSWIRE, June 26, 1996, available in LEXIS, News Library, Curnws File (Nippon Telegraph and Telephone Corp. of Japan and IBM Japan Ltd. will jointly develop and sell advanced portable information equipment called personal digital assistants, PDAs, which can be linked with mobile phones and computers); *US, Japanese, Korean Chipmakers Join to Create Faster Memory Chips*, COMPUTERGRAM INTERNATIONAL, June 25, 1996, at No. 2941, available in LEXIS, News Library, Curnws File (an international consortium of U.S., Japanese and South Korean companies will develop a memory chip with two to five times faster access times and transfer rates by the year 2000—the participants are Texas Instruments, Micron Technology, and Apple Computer of the United States; Fujitsu and Mitsubishi Electric of Japan; and Hyundai Electronics Industry and Samsung Electronics of South Korea); Evelyn Iritani & Karen Kaplan, *NEC to Merge its PC Unit with Packard Bell Computers: The Move by the Big Japanese Firm Is a Financial Boost for the Struggling Sacramento Company*, L.A. TIMES, June 5, 1996, at D1 (NEC of Japan will merge its personal computer division with Packard Bell of the United States to create an \$8 billion-a-year company, Packard Bell NEC). Of course, there are numerous purely domestic alliances as well.

49. For example, the United States had the following total exports and imports of merchandise and services, and GDP for 1992-95:

ciples, such as the quintessential concept of the market mechanism to allocate resources,⁵⁰ reduce protectionism in international trade,⁵¹ and

Exports and Imports (Billions of Dollars) for Years 1992-95		1992	1993	1994	1995
Merchandise	Exports	440.4	456.8	502.5	575.9
	Imports	536.5	589.4	668.6	749.4
Services	Exports	177.3	186.1	195.8	210.6
	Imports	119.5	125.5	134.1	142.2
TOTAL TRADE: Exports & Imports of Merchandise and Services		1273.7	1357.8	1501	1678.1
GDP		6244.4	6550.2	6931.4	7245.8
TOTAL TRADE as % of GDP		20.5%	20.8%	21.8%	23.2%

See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 5 tbl. 1.1, 68 tbl. 1 (GDP data for 1994-95, and trade data for 1992-95); *National Income and Product Accounts*, SURVEY OF CURRENT BUSINESS, Jan.-Feb. 1996, at 36 tbl. 1.1 (Bur. Econ. Anal., U.S. Dep't Com.) (GDP data for 1992-93). The definition of services differs from that of the World Trade Organization for commercial services, e.g., by including certain military goods. See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 68 tbl. 1, 87 n.3. The figure for 1995 merchandise trade also differs by 1%-3% from that of the WTO, primarily due to different methods of calculation. See generally *supra* note 40 (WTO trade figures). Figures from different organizations often differ because of varying definitions and methods of calculations.

50. The industrialized democracies are more accurately described as having mixed economies which utilize markets as well as government bureaucrats to allocate economic resources (and perhaps, a bit of custom as well). These countries are, however, characterized as market economies (or having free markets), to distinguish them from the command (or planned) economies which utilized bureaucrats much more heavily. See PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 25, 38-48 (13th ed. 1989); THE NEW PALGRAVE: PROBLEMS OF THE PLANNED ECONOMY at xi-xiii (John Eatwell et al. eds., 1990). An ideal type of market is the microeconomic concept of a perfectly competitive market, that is,

a market in which perfect competition exists. The traditional conditions for perfect competition are rather stringent: all items sold must be exactly alike in order to avoid product differentiation; there must be numerous buyers and sellers to prevent any one buyer or seller from influencing the market price; entry or exit barriers to the market must be absent to allow resources like labor or raw materials to enter or leave the market quickly; and market participants must have accurate and instantaneous knowledge of important information, such as the market-determined price of the commodity. The virtue of perfect competition is that it efficiently allocates resources and that it maximizes the welfare of society with respect to the particular market commodity being sold.

Two other important conditions are also implicit in the concept of perfect competition. First, market prices must account for all costs and benefits associated with the sale of the market commodity. Second, market commodities must not be "public goods" which are freely available to all. If these two conditions are not met, an efficient allocation of resources does not occur.

Although these conditions indicate that perfect competition exists nowhere in our world, the ideal of a perfectly competitive market yields useful and accurate predictions when applied to markets that closely resemble it. The stock and foreign exchange markets are often cited by economists as examples which approach perfect competition.

privatize and deregulate.⁵² Well before the collapse of the Soviet Union or even the end of the Cold War, the market economy (free market) paradigm of the West emerged as the decisive winner in the economic contest with the command (or planned) economy paradigm of the Soviet bloc.⁵³ Since globalization is being led by the corporations and governments in the capitalist economies of the industrialized democracies, it naturally advocates the ideology of the winners rather than the losers. Thus, the rules underlying globalization seek to expand markets among market economy rather than command economy principles.⁵⁴

For example, the WTO espouses the implementation of free-market ground rules to cover international trade and trade-related aspects of

Alex Y. Seita, *Common Myths in the Economic Analysis of Law*, 1989 B.Y.U. L. Rev. 993, 1041-43 (footnotes omitted).

51. Free trade among nations, unimpeded by protectionism, follows the theory of comparative advantage, an important economic principle originating from David Ricardo nearly 180 years ago. See, e.g., PAUL R. KRUGMAN & MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* 13-35 (1988); RUSSELL D. ROBERTS, *THE CHOICE: A FABLE OF FREE TRADE AND PROTECTIONISM* (1994) (an entertaining discussion of free trade and protectionism). Free trade is consistent with the concept that a market mechanism should make resource allocation decisions, e.g., that a market of buyer and sellers should determine what commodities should be sold and at what prices. When a government erects trade barriers—whether tariffs, nontariff barriers such as quotas, discriminatory standards or regulations, or local content requirements—the government, not the market, is adding an effective price increase to imported goods. See KRUGMAN & OBSTFELD, *supra*, at 184-98.

52. Decreasing government ownership (privatization) and control (deregulation) of industries is also consistent with the idea that the market should make production and purchasing decisions. Privatization places state-owned or controlled companies, factories, and facilities in the hands of private ownership. See *DICTIONARY OF MODERN ECONOMICS*, *supra* note 11, at 345. It follows the free market paradigm because the means of production are supposed to be in the hands of private entrepreneurs in a market economy. On a worldwide basis, privatization has accelerated recently, especially in countries where government ownership of productive facilities was formerly pervasive. See, e.g., COSMO GRAHAM & TONY PROSSER, *PRIVATIZING PUBLIC ENTERPRISES: CONSTITUTIONS, THE STATE, AND REGULATION IN COMPARATIVE PERSPECTIVE* 1 (1991); Ernst & Young, *The Global Sweep of Privatization*, *EUROMONEY*, July 1990, *supp.* 1. Government control of an industry, such as by limiting the number of competitors (including foreign competitors) or the areas of competition, creates entry barriers to industry—a clear departure not just from the perfect market paradigm but also from the general notion that in a market economy the number of sellers should not be limited. Deregulation removes such governmentally imposed barriers to entry. See *DICTIONARY OF MODERN ECONOMICS*, *supra* note 11, at 104. To a lesser extent, there has also been increased deregulation. See, e.g., RICHARD H. K. VIETOR, *CONTRIVED COMPETITION: REGULATION AND DEREGULATION IN AMERICA* (1994); KENNETH BUTTON, *AIRLINE DEREGULATION: THE INTERNATIONAL EXPERIENCE* (1991).

53. See generally Gregory Grossman, *Command Economy*, in *THE NEW PALGRAVE: PROBLEMS OF THE PLANNED ECONOMY* at 58 (John Eatwell et al. eds., 1990).

54. If the command market model had proven superior to free market model in economic performance, globalization today would have a dramatically different appearance. There would be a global system that fosters greater trade and economic cooperation among command economies, and its rules would have underlying Marxist, not capitalist, premises. After all, the Soviet-led Council for Mutual Economic Cooperation tried to promote greater trade among nations with command economies. See, e.g., JOANNE GOWA, *ALLIES, ADVERSARIES, AND INTERNATIONAL TRADE* 3, 116, 120 (1994).

investment and intellectual property.⁵⁵ Its rules go further than those of the GATT, its predecessor in carrying out the free market principle of comparative advantage by stamping out protectionism among nations.⁵⁶ When tools of protectionism—such as tariffs, quotas, or domestic subsidies—are reduced, foreign imports can better enter a domestic market, creating more competition for local firms. The presence of increased competition contributes to the development of more efficient local firms as only the fittest firms will survive in a competitive marketplace. The use of a market and consumer choice, rather than a bureaucracy, to determine the survival of firms and products is the essence of a free market.⁵⁷ Not surprisingly, the various WTO agreements are expected to substantially

55. The IMF and the World Bank, too, have promoted market economy principles. See, e.g., JAMES *supra* note 28, at 323 (IMF conditionality, the terms on which it will lend, has often required budgetary and domestic credit restraints, as well as trade liberalization); WORLD BANK, *THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY* 10 (1993) [hereinafter *EAST ASIAN MIRACLE*] (advocating a “market friendly” strategy in which “the appropriate role of government is to ensure adequate investments in people, provide a competitive climate for private enterprise, keep the economy open to international trade, and maintain a stable macroeconomy”); BAREND A. DE VRIES, *REMAKING THE WORLD BANK* 6, 56-58 (1987) (describing how the World Bank has encouraged decentralized planning rather than command-type central planning, and has made substantial loans to help borrowing nations increase their economies’ efficiency and competitiveness, such as by liberalizing trade); cf. John Williamson, *Introduction*, in *IMF CONDITIONALITY*, *supra* note 34, at xiii (stating that one complaint of borrowing countries is that the IMF is “ideologically biased in favor of free markets and against socialism”). At this time, however, the WTO is the most important of the international economic institutions in carrying out the implementation of free market principles, primarily the idea of opening markets (liberalizing trade) among countries. The WTO agreements have gone beyond the GATT in covering trade in services as well as trade-related aspects of intellectual property and trade-related investment measures. See General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 44 (1994); Agreement on The Trade-Related Aspects of Intellectual Property, Including Trade in Counterfeit Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 81 (1994); Agreement on Trade-Related Investment Measures, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29, 1997). Further, the WTO agreements address more meaningfully the subjects of agriculture, textiles, and apparel. See Agreement on Agriculture, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29, 1997); Agreement on Textiles and Clothing, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29, 1997).

56. For instance, the WTO makes a member’s subsidy to its domestic industry actionable by another member if its effect “is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member.” Agreement on Subsidies and Countervailing Measures, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 6.3(a), available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29, 1997).

57. See *supra* note 50.

increase global income.⁵⁸

C. Political Globalization

As economic globalization expands, it has been accompanied by a somewhat lesser degree of political globalization in that there are now substantial numbers of elected governments.⁵⁹ Also, the rhetoric of human rights has gained universal acceptance, and more nations than ever before have pledged to protect human rights.⁶⁰ With political globalization, there is

58. See *WTO to Boost Global Income by \$500 Billion*, Focus (GATT Newsletter), Oct. 1994, at 1.

59. See, e.g., Judith Matloff, *Democracy, of a Sort, Sweeps Africa*, CHRIST. SCI. MONITOR, Aug. 7, 1996, at 10. The 1995-96 Freedom House survey observes that

The rise in the number of formal democracies continued in 1995. This year's survey shows that there are now 117 democracies . . . This represents just over 61 percent of the world's 191 countries. From the perspective of a decade ago the gain is all the more impressive. Ten years ago, less than 42 percent of the world's countries were formal democracies.

Today, 3.1 billion persons out of a world population of 5.7 billion live under democratically elected governments. While not yet a universal standard, democracy has deepening and widening roots in all parts of the world . . .

That 61 percent of all countries and nearly 55 percent of the world's population live under governments and legislatures elected in generally free and fair political processes represents a landmark shift. Today it is the expectation of the clear majority of citizens that their governments be accountable to them through regular elections. Such a broadening global consciousness does not guarantee full freedom, but it does create the basis for more free societies and for greater engagement by citizens in public affairs. Widening public democratic consciousness throughout the world, as well as growing expectations by the Western advanced industrial democracies that countries which receive significant aid should respect fundamental human rights and democratic procedures reinforces this trend.

Adrian Karatnycky, *The Comparative Survey of Freedom 1995-1996: Democracy and Despotism: Bipolarism Renewed?*, in *FREEDOM IN THE WORLD: THE ANNUAL SURVEY OF POLITICAL RIGHTS & CIVIL LIBERTIES 1995-1996*, at 3, 4-5 (Roger Kaplan ed., 1996) [hereinafter *FREEDOM IN THE WORLD 1995-96*] (annual Freedom House survey).

60. At the second World Conference on Human Rights, all 171 participating states adopted the Vienna Declaration and Programme of Action, which declared

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.

United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action art. 5, U.N. Doc. A/CONF.157/24, pt. 1 (1993), 32 I.L.M. 1661, 1665 (1993). See generally *HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY* (Louis Henkin & John L. Hargrove eds., 1994) [hereinafter *HUMAN RIGHTS*].

More countries have formally pledged to protect human rights. For example, there have been numerous state parties to the following human rights instruments: Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 32 (122 parties); International Covenant on Economic, Social and Cultural Rights, *supra* note 32 (135 parties); International Covenant on Civil and Political Rights, *supra* note 32 (135 parties); and International Covenant on the Elimination of All Forms of Racial Discrimination, *supra* note 32 (148 parties). See *Texts of the International Human Rights Instruments* (visited Dec. 11, 1996) <<http://193.135.156.15/html/intlinst.htm>> (U.N. human

more than just the *existence* of elected governments and the *recognition* of human rights by governments. Political globalization has also tended to cause a convergence in political values, with the *genuine acceptance* of democracy and human rights in a greater number of countries.

Compared to the convergence in economic values, the convergence of political values has had a more difficult path. The growth of economic globalization was championed by countries that realized they would gain economically by increased foreign trade. Even the command-economy communist nations sought trade with the capitalist economies of the West.⁶¹ Well before the end of the Cold War, some communist nations even embraced capitalism to an extent. As events in China have clearly shown, dictatorship and a dismal human rights record have not been incompatible with free market policies.⁶²

Unlike economic globalization, the support for political globalization historically has been weak, perhaps because its benefits were not as obvious or immediate. Despite their long history predating free market principles, the political values of democracy and human rights have been more dishonored by breach than honored by observance.⁶³ Most countries did

rights webpage containing links to the status of ratification of over 90 human rights instruments) [hereinafter *Human Rights Instruments*]. "Parties" to a treaty (whether by ratification, accession, etc.) are states that have "consented to be bound by the treaty and for which the treaty is in force." Vienna Convention on the Law of Treaties art. 2, para. (1)(g), U.N. Doc. A/CONF.39/27 at 289, 1155 U.N.T.S. 331 (1969). However, since some of the parties are countries that lack democratic governments and have a poor human rights record, it is clear that for these countries, the human rights instruments have no real meaning. See, e.g., *Human Rights Instruments, supra* (Cambodia and Rwanda are parties to the Convention on the Prevention and Punishment of the Crime of Genocide; Iraq, to the International Covenant on Civil and Political Rights).

61. For example, from 1986 to 1988, the 12-nation European Community (now the 15-nation European Union, with Austria, Finland, and Sweden as new members) imported 74.245 billion ECU (\$85.4 billion) of goods from the 8-nation Soviet Bloc (the USSR, East Germany, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, and Albania), and exported 60.212 billion ECU (\$69.2 billion). See OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, *THE EUROPEAN COMMUNITY AND ITS EASTERN NEIGHBOURS* 11-13 (1990); EUROPEAN INVESTMENT BANK, *ANNUAL REPORT 1990*, at 51 (1991) (extrapolating from graph an exchange rate of ECU 1.15 = \$1). In 1995, Chinese imports of goods to the United States totaled \$45.542 billion, and U.S. exports to China totaled \$11.750 billion. See *SURVEY OF CURRENT BUSINESS*, July 1996, *supra* note 40, at 76 tbl. 2, 78 tbl. 2. Obviously, since it takes two to trade, the desire of the communist nations to trade had to be matched by a corresponding desire on the part of the West.

62. See, e.g., *Survey of China: A Vacancy Awaits*, *ECONOMIST*, Mar. 18, 1995, at survey 3-4; ORVILLE SCHELL, *MANDATE OF HEAVEN: A NEW GENERATION OF ENTREPRENEURS, DISSIDENTS, BOHEMIANS, AND TECHNOCRATS LAYS CLAIM TO CHINA'S FUTURE* 331-406 (1994); NICHOLAS D. KRISTOF & SHERYL WU-DUNN, *CHINA WAKES: THE STRUGGLE FOR THE SOUL OF A RISING POWER* 308-69 (1994). See generally SUSUMU YABUKI, *CHINA'S NEW POLITICAL ECONOMY: THE GIANT AWAKES* (Stephen M. Harner trans., 1995).

63. International commerce and trade have been in existence for millennia. But the intellectual foundations of capitalism are more recent. See, e.g., ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (Edwin Cannan ed., 1937); SAMUELSON & NORDHAUS, *supra* note 50, at 4. By contrast, the ideas of democracy and notions analogous to some human rights were discussed long before. See, e.g., ARISTOTLE, *THE POLITICS* 145-55, 159-64, 240-44 (trans. T. A. Sinclair, 1962) (defining and

not espouse them, and those that did applied these concepts selectively.⁶⁴

For decades after the end of World War II, the spread of humanitarian political values had to contend with severe obstacles.⁶⁵ For much of the

classifying democracy); Weston, *supra* note 37, at 14-17 (tracing the origin of human rights, known in earlier forms as "natural rights" or "the rights of Man," to ancient Greece and Rome). This article uses the term "democracy" to mean a society that is ruled indirectly by its citizens through their elected representatives. Such a democracy does not always protect "human rights" because a tyranny of the majority may deny human rights to a disfavored minority.

64. As many are undoubtedly aware, the United States, the world's leading symbol for democracy and human rights, denied democratic representation and basic human rights to African-Americans for at least a century before and a century after the United States was born. Native Americans also suffered greatly.

65. Among them were anti-minority attitudes among majorities in democratic countries, entrenched authoritarian traditions in nondemocratic countries, the attempt of colonial powers to retain their colonies, the indifference of the industrialized countries to conditions in developing countries, internecine internal wars in nondemocratic countries, the subordination of political to economic values, and the Cold War. The complications of the Cold War and rampant colonialism almost immediately made the United Nations—the institution designed to keep the peace and promote democracy and human rights—ineffective in doing any of the three.

Since most of the founding members of the United Nations were participants in the Allied cause which had fought against the Axis Powers, some common agreement on U.N. purpose and action could have been expected. But soon after World War II ended, the Cold War began, crippling the ability of the United Nations to act as an arbitrator or enforcer of peace. See, e.g., RIGHTER, *supra* note 30, at 315. Perhaps even without the Cold War, the United Nations would have been ineffective. It was incapable of handling the new type of warfare that became dominant after World War II: "wars of liberation, civil wars, transfrontier guerrilla operations, and even *jihad* ." Id. Further, throughout the Cold War, the promotion of democracy and human rights by the United States was secondary in priority to American national security concerns. To contain communism, the United States allied itself with dictatorships or nondemocracies in Argentina, Brazil, Chile, El Salvador, Greece, Guatemala, Indonesia, Portugal, South Africa, South Korea, South Vietnam, Spain, Taiwan, and numerous other countries. See, e.g. Tom J. Farer, *On a Collision Course: The American Campaign for Human Rights and the Antiradical Bias in the Third World*, in HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 263 (Donald P. Kommers and Gilbert D. Loescher eds., 1979).

In the following decades, the United Nations proved itself incapable either in preventing or in resolving, by diplomacy or military force, wars and internal conflicts—a number involving wars of independence. Several conflicts grew out of wars of independence in which colonized peoples sought to liberate themselves from European powers. Anti-colonial revolts, some quite bloody, broke out all over the world, eventually leading to independence for European colonies. See, e.g., RAYMOND K. KENT, FROM MADAGASCAR TO THE MALAGASY REPUBLIC (1962) (French Madagascar); DONALD LANCASTER, THE EMANCIPATION OF FRENCH INDOCHINA (1961) (French Indochina); MAHFOUD BENNOUNE, THE MAKING OF CONTEMPORARY ALGERIA: 1830-1987 (1988) (French Algeria). For other new nations, independence from colonial rule was considerably less violent. See, e.g., BRIAN LAPPING, END OF EMPIRE (1985) (nations emerging from the dismantling of the British Empire after World War II); FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, PHILIPPINES: A COUNTRY STUDY 38-39, 41-43 (Ronald E. Dolan ed., 4th ed. 1993) (independence of the Philippines from America). When the United Nations was born in 1945, about 750 million people, nearly a third of the world's population, lived in dependent territories; today, about 1.5 million do. See *Decolonization*, U.N. CHRON., Sept. 1995, at 10.

While no single war of the magnitude of the World Wars occurred, numerous other conflicts emerged, with lethal results. The list of wars, hostilities, conflicts, and suppressions running from the late 1940s through the 1990s is long and depressing: e.g., the

existence of the United Nations, the most important international organization devoted to the promotion of democracy and human rights, many of its leading members either did not observe democratic values or human rights domestically, or subordinated these values to other priorities in foreign affairs.⁶⁶ Despite initial obstacles, however, these political values slowly developed roots in non-western countries.

Even before the end of the Cold War, the past two decades saw the emergence of a greater number of countries with democratic governments and protective of human rights.⁶⁷ These countries offer political rights and

Communist-Nationalist battle for China; the French Suppression in Madagascar; the French Vietnam War; the Chinese Suppression in Tibet; the Soviet Suppression in Hungary; the Korean War; the French Algerian War; the U.S. Vietnam War; the Soviet Suppression in Czechoslovakia; the three Arab-Israeli Wars; the Cambodian Massacres; the Soviet Afghanistan War; the Argentine-British Falklands War; the Iraq-Iran War; the Gulf War; the Bosnian War; and the Rwandan Massacres. During its first four decades, "the U.N. proved manifestly incapable of preventing close to 150 conflicts, including more than 125 in the Third World, which cost some 22 million lives." RIGHTER, *supra* note 30, at 311.

The absence of major wars on the scale of World War II or World War I is attributable not so much to U.N. influence, but to nuclear deterrence—the horrible prospect that another such war would involve the massive use of nuclear weapons and cause the probable destruction of human civilization. One relatively successful U.N. action to punish aggression was the Persian Gulf War of 1991, in which U.N. forces, comprised primarily of United States military personnel, defeated the Iraqi invaders who had conquered Kuwait. See ANTHONY C. AREND & ROBERT J. BECK, *INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM* 53-55 (1993). In that conflict, American leadership together with military assistance from U.S. European allies and political acquiescence from China and Russia allowed the United Nations to take decisive action against a belligerent nation. Even in that "success" story, the root cause of Iraqi aggression—Iraqi dictator Saddam Hussein—was not removed; he continues to rule Iraq. The U.N.-sanctioned invasion of Haiti by American troops might be considered another successful action. See, e.g., *UN Efforts Give "Exemplary Illustration of Diplomacy of Democratization," Says Secretary-General*, U.N. CHRON., Spring 1996, at 4; Richard D. Lyons, *U.N. Authorizes Invasion of Haiti to Be Led by U.S.*, N.Y. TIMES, Aug. 1, 1994, at A1.

Even with colonialism long disappeared and the end of the Cold War, the United Nations has difficulty dealing with conflicts involving civil wars, guerilla operations of minority or occupied populations, and persecution of particular groups by government authorities. See, e.g., RIGHTER, *supra* note 30, at 315. Many hostilities or acts of violence were purely internal to a country, and thus, more difficult for the U.N. to intervene. See, e.g., Michael R. Gordon, *Chechnya Toll Is Far Higher, 80,000 Dead, Lebed Asserts*, N.Y. TIMES, Sept. 4, 1996, at A3 (Russian presidential security adviser Lebed estimating that, to date, 80,000 people have been killed and 240,000 wounded in the fighting between Chechen separatists and Russia troops in the Russian republic of Chechnya); Clestine Bohlen, *War on Rebel Kurds Puts Turkey's Ideals to Test*, N.Y. TIMES, July 16, 1995, § 1, at 3 (Turkish government war against minority Kurds displacing over 300,000 villagers from their homes and resulting in a death toll approaching 18,000).

66. For example, after World War II ended, France fought to keep her colonies from becoming independent, and neither Communist China nor the Soviet Union placed much value on human life. See, e.g., *supra* note 65 (postwar French colonialism); KRISTOF & WUDUNN, *supra* note 62, at 65 (Chinese communist elimination of potential counter revolutionaries); ROBERT CONQUEST, *THE GREAT TERROR: A REASSESSMENT* 477-78, 484-86 (1990) (citing millions imprisoned at Soviet labor camps in the 1950s).

67. See FREEDOM IN THE WORLD 1995-96, *supra* note 59, at 1. Given the disparity of political freedoms and civil liberties between countries, only a rough assessment of the number of countries with democratic governments and human rights is possible. According to one estimate, at the beginning of 1996, 19.55% of the people in the world

civil liberties that make them different in kind from past authoritarian regimes. With the end of the Cold War, many of the former Soviet-allied countries established popularly elected governments. Earlier, elected governments emerged from dictatorships in Latin America, Asia, and Africa.⁶⁸ As the transformation of South Africa—the former bastion of apartheid—into a democratic country shows, the unbelievable can happen.

The outlook today is promising for the values of democracy and, to a lesser extent, human rights. First, with the triumph of liberal democracy over communism in the Cold War,⁶⁹ the United States and its allies can now more vigorously pursue humanitarian rather than security objectives. Second, the commonality of democracy and human rights in nations has provided more reason for these nations to cooperate among themselves in trade, humanitarian, and security matters, as well as in trying to nurture the qualities of democracy and human rights in authoritarian countries. The remaining authoritarian strongholds face pressures to democratize, and to recognize some level of human rights.⁷⁰

Democracy has been easier to achieve than the protection of human rights, perhaps because the implementation of democracy is technically more easily accomplished (e.g., a popularly elected government), while there may be disagreement over which rights are basic human rights and how these basic rights are to be protected.⁷¹ Furthermore, elected governments need not necessarily protect human rights, especially in nascent

lived in free countries (i.e., with a “broad range of political rights and civil liberties”), 41.49% in partly free countries (where some basic rights are denied), and 38.96% in countries that were not free (basic rights are denied). See Karatnycky, *supra* note 59, at 4 (1995-96 Freedom House survey). The number of countries in each category in various years were as follows:

YEAR	FREE COUNTRIES	PARTLY FREE COUNTRIES	NOT FREE COUNTRIES
1986	56	56	55
1993	75	73	38
1994	72	63	55
1995	76	61	54
1996	76	62	53

Id. at 8. Other sources also rate the political rights and civil liberties of individual countries. See, e.g. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1996 (1995); COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, REPORT SUBMITTED TO THE COMMITTEE ON FOREIGN RELATIONS U.S. SENATE AND THE COMMITTEE ON INTERNATIONAL RELATIONS U.S. HOUSE OF REPRESENTATIVES BY THE DEPARTMENT OF STATE, 104th Cong. (1995) [hereinafter HUMAN RIGHTS PRACTICES 1994]. See generally Marcus W. Brauchli, *More Nations Embrace Democracy—and Find It Often Can Be Messy*, WALL ST. J., June 25, 1996, at A1.

68. See Tina Rosenberg, *Overcoming the Legacies of Dictatorship*, FOREIGN AFF., May-June 1995, at 134, 135.

69. This victory is attributable not just to the United States and its allies, but also to the courage and vision of former communist leaders like Mikhail Gorbachev. See, e.g., *infra* note 134.

70. See STEPHAN HAGGARD & ROBERT R. KAUFMAN, THE POLITICAL ECONOMY OF DEMOCRATIC TRANSITIONS 4 (1995).

71. For example, some Asian countries disagree with the West on the need for extensive human rights protection. See, e.g., Charles Graybow, *South and East Asia: A Raw Deal for the Masses*, in FREEDOM IN THE WORLD 1995-96, *supra* note 59, at 68, 69-70.

democracies which may have problems of illiteracy, corruption, authoritarian traditions, ethnic or religious conflicts, and a winner-takes-all political system.⁷²

The value of democratic governments is that their actions reflect the desires of a majority of the people rather than the wishes of a tyrant or a select few. Democracy is arguably the most basic human right because it recognizes the sovereignty of the people in that a government pursues policies which the majority of the people support through their freely elected representatives. The preferences of at least a majority of its population, rather than the desires of a select few, influence democratic governments. Democratic governments are much more likely to respect human rights, at least those of the majority, than authoritarian regimes which are unaccountable to an electorate. Of course, democracy is not itself a sufficient condition for a humane society, since a majority may persecute or subjugate a minority in a democratic society.⁷³ A practical benefit of *mature* democracies, those having democratic governments for a long period of time, is that they substantially protect a wide variety of human rights and are much less likely to use military force to resolve conflicts.⁷⁴

72. See, e.g., Matloff, *supra* note 59 (reporting on the fragility of African democracies); Howard W. French, *Can African Democracy Survive Ethnic Voting?*, N.Y. TIMES, Mar. 17, 1996, § 4 at 4 (stating that voter allegiance to tribe, language, and region is stronger than to policy throughout Africa because countries were artificially created by European powers; democratic elections give winners everything and losers nothing). In its 1994-95 survey, Freedom House reported:

Many of these democracies, however, remain fragile and often are incapable of providing for the basic rights of their citizens

Many of these fragile democracies are at risk because of internal division, rampant corruption, overarching influence by militaries and oligarchies, and destabilization from abroad. As a result 37 democracies are only Partly Free.

Inter-ethnic and inter-sectarian strife is a major contributing factor in the erosion of political rights and civil liberties in many formal democracies.

Adrian Karatnycky, *The Comparative Survey of Freedom 1994-1995: Democracies on the Rise, Democracies at Risk*, in FREEDOM IN THE WORLD: THE ANNUAL SURVEY OF POLITICAL RIGHTS & CIVIL LIBERTIES 1994-1995, at 3, 4 (James Finn ed., 1995). As examples of democracies at risk, Freedom House listed countries with inter-ethnic or inter-sectarian conflict (e.g., Bosnia, India, Turkey, Mali, Niger); countries in transition from communist rule (e.g., Albania, Romania, Russia); countries recovering from extended periods of guerrilla insurgencies, terrorism, and civil war (e.g., El Salvador, Nicaragua, Mozambique); and countries where the political process and judicial system are tainted by corruption, such as the influence of drug cartels (e.g., Brazil, Colombia, the Dominican Republic, Guatemala, Honduras, Paraguay, Venezuela). See *id.* at 4-5.

73. To take a historical example, the Confederate States of America was formed on February 8, 1861, by seven states that seceded from the United States of America, and eventually grew to consist of eleven seceding states. See SAMUEL E. MORISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE* 607-12, 625 (1965) (the eleven confederate states were Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia). The confederacy was a democracy, except that the human rights of a large minority were disregarded. In 1860, on the eve of the Civil War, blacks—the great majority of whom were slaves—comprised 42% of the population in the states that later became the Confederate States of America. Cf. HISTORICAL STATISTICS OF THE UNITED STATES, *supra* note 23, at 24 tbl. ser. A 195-209 (figure of 42% derived from statistical data).

74. While mature and stable democracies are less likely to go to war, newly democratized countries in transition from authoritarian to democratic governments seem more

Despite disagreement over the extent to which human rights should be protected, some level of human rights protection exists for a substantial percentage, if not the majority, of the world's population.⁷⁵ For an increasing number of countries, there seems to be a real, as opposed to a rhetorical, acceptance of some form of human rights. While inadequate and imperfect, this is an enormous improvement over the past. While outrageous examples of inhumanity still occur, such as in Rwanda, they are universally condemned.⁷⁶

In an indirect way, the cultural impact of economic globalization stimulates political globalization. Economic globalization has long introduced aspects of foreign cultures—especially American culture—either directly by the sale of merchandise such as movies and musical recordings, or indirectly through exposure to foreigners.⁷⁷ More than in the past, the opening of new markets through economic globalization has brought a flood of people and companies into foreign lands.

Personal contact, always so important in understanding other human beings, has made foreigners less inscrutable. More business personnel are assigned to overseas offices, more consumers travel abroad as tourists, and more students study in foreign countries.⁷⁸ Local residents are more likely than ever before to work for, do business with, or personally know foreigners. In some cases, this transnational encounter may lead to a personal

likely to fight wars than mature democracies or even autocracies. These newly democratizing countries will fight wars even with democratic states. See Edward D. Mansfield & Jack Snyder, *Democratization and War*, 74 *FOREIGN AFF.*, May-June 1995, at 79. For example, a combination of nationalism and incipient democratization led to the start of disastrous wars in late 18th-century France, pre-World War I Germany, and Japan in the 1920s. *Id.* at 85-86.

75. There is not a "complete agreement about the nature of [human] rights or their substantive scope—which is to say, their definition." Weston, *supra* note 37, at 17. Still, it is clear that the protection of human rights is widespread. See *supra* note 67.

76. Unfortunately, this universal condemnation has not been matched by immediate universal action to prevent the inhumanity. Because of this inaction, some have suggested the creation of a standing emergency force under the United Nations which would intervene to prevent lethal conflicts. See *infra* note 156.

77. See, e.g., John Yemma, *The Americanization of the World*, *BOSTON GLOBE*, July 28, 1996, at F1.

78. For example, international tourism receipts, excluding air travel, are estimated to have been \$372 billion in 1995 spent by 567 million tourists. See Ron Scherer, *Tourism Booms as World's Middle Class Goes Trekking*, *CHRIST. SCI. MONITOR*, June 12, 1996, at 1 (citing figures from the World Tourism Organization). Eight of the top twenty destinations for tourism in 1995 were countries that were part of the European Union, and twelve were European countries:

affinity with or an in-depth understanding of foreign cultures.⁷⁹

<i>TOP TWENTY COUNTRIES IN 1995</i>	<i>TOURIST ARRIVALS (MILLIONS)</i>
1. France	60.6
2. Spain	45.1
3. United States	44.7
4. Italy	29.2
5. China	23.4
6. Britain	22.7
7. Hungary	22.1
8. Mexico	19.9
9. Poland	19.2
10. Austria	17.8
11. Canada	16.9
12. Czech Rep.	16.6
13. Germany	14.5
14. Switzerland	11.8
15. Greece	11.1
16. Hong Kong	9.6
17. Portugal	9.5
18. Malaysia	7.9
19. Singapore	6.6
20. Thailand	6.5

Id. Many tourists are likely to come from neighboring countries. For example, in 1994, out of 46.4 million Americans traveling to foreign countries, 28.3 million went to Canada or Mexico, while of 45.5 million foreigners traveling to the United States, 26.3 million came from Canada or Mexico. See BUREAU OF THE CENSUS, DEP'T OF COM., STATISTICAL ABSTRACT OF THE UNITED STATES 1995, at 266-67 tbls. 430-31 (115th ed., Sept. 1995)) (estimate) [hereinafter 1995 STATISTICAL ABSTRACT]. As for business-related travelers and students, in 1993 there were approximately 3.5 million nonimmigrants admitted to the United States in connection with a business purpose: 2,962,000 business travelers; 145,000 treaty traders and investors; 224,000 temporary workers and trainees; 21,000 representatives of foreign information media; and 132,000 intracompany transferees. See *id.* at 11 tbl. 7. In fall 1993, there were 449,000 foreign students enrolled in U.S. colleges and universities. *Id.* at 188 tbl. 295.

⁷⁹ Exposure to foreign businesses, tourists, and products is no guarantee that local residents will achieve an in-depth understanding of a foreign culture. A particular foreign culture may be more difficult to understand if it is little studied by local residents and has different historical roots from the local culture. For example, there are significant Japanese investments, large numbers of Japanese tourists and students, and a widespread presence of Japanese consumer products in the United States. See, e.g., Alex Y. Seita, *The Intractable State of United States-Japan Relations*, 32 COLUM. J. TRANSNAT'L L. 467, 469 & n.2, 479 & n.31 (1995); 1995 STATISTICAL ABSTRACT, *supra* note 78, at 188 tbl. 295 (in 1994, Japanese students comprised the single largest group of foreign students in the United States, with 44,000 out of a total of 449,000), 267 tbl. 432 (in 1993, Japanese travelers constituted the single largest group of foreign visitors for pleasure admitted to the United States, nearly 3.2 million out of a total of 16.9 million). Despite that, most Americans are still not very familiar with Japanese culture. Japan is still viewed by most Americans in stereotypical terms that may contain some truth but which lack in-depth analysis based on objective data. See, e.g., Robert D. Deutsch & Arthur J. Alexander, *Americans' Images of Japan*, JAPAN ECON. INST., May 17, 1996, No. 19A, at 1, 16. Nevertheless, American perceptions of Japan, as well as Japanese perceptions of America, are undoubtedly more accurate and positive today than during World War II and before. See, e.g., JOHN W. DOWER, *WAR WITHOUT MERCY: RACE AND POWER IN THE PACIFIC WAR 15-32* (1986); SHEILA K. JOHNSON, *THE JAPANESE THROUGH AMERICAN EYES 1-17, 163-71* (1988).

Further, economic globalization has generated an interest in learning foreign languages, primarily English. Perhaps irreversibly, English has become the international language of business and science, with a broader usage than any other language.⁸⁰ At the same time, the ability to speak a foreign language other than English gives one a competitive advantage in doing business in non-English-speaking countries.⁸¹

Doing business with foreigners, in their country or in one's own, requires that one communicate with them, cooperate with them, and be exposed to their political and business values.⁸² The political values of democracy and human rights, as well as aspects of foreign cultures, are often inseparable (though secondary) components of economic globalization. Thus, countries that seek to benefit from economic globalization must frequently tolerate political globalization and exposure to foreign cultures. As people know more about foreign cultures, some familiarity with foreign political values is bound to arise.

II. Technology's Vital Role in Converging Values

The advanced communication technology that links much of the world together continues to be crucial to the convergence of economic and political values. This technology is utilized primarily by business entities to facilitate economic globalization.⁸³ Modern technology has also tended to promote democracy and human rights by making it easier and cheaper for

80. Even though only 377 million people speak English as a first language, probably 1.8 billion people, one-third of the world's population, are regularly exposed to English in their daily lives. By one estimate, a billion people will be speaking or learning English by the year 2000. English is not only the language of business, but that of science as well, with two-thirds of the world's scientists reading scientific information in English and with four-fifths of all stored electronic information in English. See, e.g., William McGurn, *English in Asia: Money Talks*, FAR EAST. ECON. REV., Mar. 21, 1996, at 40; Alexander MacLeod, *Once-Fussy BBC Begins to Speak with Scottish, Irish, Even American Accents*, CHRIST. SCI. MONITOR, Sept. 4, 1996, at 11; Kim Campbell, *The World Rushes to Speak and Write "American" English*, CHRIST. SCI. MONITOR, Sept. 4, 1996, at 10.

81. Being able to speak the language of the country that you wish to do business in is an obvious advantage. See, e.g., Bernard Wysocki Jr., *Utah's Economy Goes Global, Thanks in Part to Role of Missionaries: Mormons' Overseas Stints Yield Linguistic Skills and Network of Contacts*, WALL ST. J., Mar. 28, 1996, at A1. Understanding a country's language means that one can read its newspapers, watch its television programs, and talk to its ordinary citizens. It is an important way in which one understands and appreciates another country's culture.

82. This might mean, for example, that a foreign-owned subsidiary in the United States must adhere to American laws prohibiting sexual harassment. See, e.g., Leon Jaroff, *Assembly-Line Sexism?: Charges of Abusing Women—and Angry Denials—Rock a Midwestern Mitsubishi Auto Plant*, TIME, Jan. 7, 1992, at 1 (Equal Employment Opportunity Commission files the biggest federal sexual-harassment lawsuit in history against a factory operated by the American subsidiary of a Japanese company); Mark Maremont, *Abuse of Power: The Astonishing Tale of Sexual Harassment at Astra USA*, BUS. WK., May 13, 1996, at 86 (allegations of widespread sexual harassment at the American subsidiary of a Swedish company). On the other hand, foreigners may apply their home country's ethical code of conduct while doing business in another country. See *infra* note 168 (discussing foreign corrupt practices).

83. Technology is only a tool, deftly applied by the skilled and wasted by the incompetent. Since technology can provide tremendous advantages for conducting business,

people to communicate without censorship across national boundaries. Communication technology not only exposes a national population to foreign ideas, but also concurrently exposes domestic conditions to a global audience.

This has occurred because economic globalization involves communication technologies with multiple uses. The same technology that transmits a business proposal may also communicate politically embarrassing or other non-business information. These multiple uses of advanced technology cannot easily be separated from each other, making it difficult to restrict the technology to purely business purposes. A country that wishes to participate in international business cannot isolate itself from all uses of communication technologies unrelated to business dealings.⁸⁴

The internet⁸⁵ is a recent communication medium with tremendous potential for linking people across national boundaries, furthering mutual interests of the international community, and a myriad of other uses.⁸⁶ The internet will become, or may already be, an important or even critical technological medium for business, as well as for scientific research and consumer enjoyment.⁸⁷ The internet is the essential part of the "informa-

flexible and cost-efficient private firms—the basic actors in the free market—utilize technology as they do any other productive input.

84. For example, faxes expedite international business transactions by connecting different countries through telephone lines. Exact copies of business documents that would otherwise require delivery by overnight courier service can be faxed in a few minutes. Business people can also transmit computer files by connecting a modem to a telephone line. Within minutes, a subsidiary can dispatch data across the world to a parent company which may need the information to make a quick financial decision. Political dissidents can use the same fax machines or computer modems to send pictures, reports, and other information to supporters in foreign countries. See, e.g., Joyce Barnathan et al., *China: Is Prosperity Creating a Freer Society?*, *Bus. Wk.*, June 6, 1994, at 94.

85. See generally ED KROL, *THE WHOLE INTERNET: USER'S GUIDE & CATALOG* (Bruce C. Klopfenstein adapt., 1996); *It's Only Growing Pains: The Second Annual Roundtable on the State of the Internet*, *IEEE SPECTRUM*, Sept. 1996, at 46.

86. Children can come into contact with their peers from other countries. See, e.g., *China, Japan Kids Link Via Net*, *JAPAN TIMES*, June 10-16, 1996, at 15 (weekly edition) (Chinese and Japanese elementary students communicating through the internet). Like-minded political groups can exchange information and publicize news events. For example, the internet has numerous human rights resources. See, e.g., *Welcome to the United Nations Human Rights Website* (visited Dec. 11, 1996) <<http://193.135.156.15/welcome.htm>> (U.N. website containing information relating to human rights); *AAAS Directory of Human Rights Site on the Internet* (visited Oct. 15, 1996) <<http://www.aaas.org/spp/dspp/shr/dhr.htm#general>> (from website of the American Association for the Advancement of Science, publisher of the journal *Science*, listing human rights resources on the internet).

87. See, e.g., *Annual Report on Information Technology: The Information Appliance*, *Bus. Wk.*, June 24, 1996, at 71 (articles discussing devices that will utilize the internet); John W. Verity, *Invoice? What's an Invoice?: Electronic Commerce Will Soon Radically Alter the Way Business Buys and Sells*, *Bus. Wk.*, June 10, 1996, at 110 (predicting that once necessary software and security measures are in place, the internet's world wide web will become the global infrastructure for electronic commerce); Joan O'C. Hamilton & Heidi Dawley, *Welcome to the World Wide Lab: By Providing Instant Access to Data, the Web Is Changing How Research Is Done and Shared*, *Bus. Wk.*, Oct. 30, 1995, at 66. There are many publications that explain the functions, benefits, and methods of access to the

tion superhighway," a source of information that promises to change fundamentally human lives.⁸⁸

E-mail and computer file transmission on the internet can potentially provide a more powerful (e.g., faster, cheaper, more convenient) business tool than such conventional devices as the postal service, telephones, and faxes. Internet users can transmit and download data, articles, images, movies, speeches, sound recordings, and other information.⁸⁹ By providing a forum for the transfer of such information, the internet will help protect the freedoms of expression and choice for followers of any ideological persuasion.⁹⁰ Unfortunately, however, it may shield criminal, obscene,

internet, including its most powerful and commercially attractive feature—the world wide web. See, e.g., KROL, *supra* note 85; PC MAG., Oct. 10, 1995 (issue focusing on the world wide web).

88. See, e.g., GENERAL ACCOUNTING OFFICE, INFORMATION SUPERHIGHWAY: AN OVERVIEW OF TECHNOLOGY CHALLENGES (GAO/AIMD-95-23, Jan. 1995); GENERAL ACCOUNTING OFFICE, INFORMATION SUPERHIGHWAY: ISSUES AFFECTING DEVELOPMENT (GAO/RCED-94-285, Sept. 1994). The United States government

envisions the superhighway as a seamless web of communications networks, computers, databases, and consumer electronics—built, owned, and operated principally by the private section—that will put vast amounts of information at users' fingertips. It believes that the superhighway, if freed from the constraints imposed by rigid regulatory regimes, can fundamentally change the way we work, learn, get health care and public services, shop, communicate, and entertain ourselves.

GENERAL ACCOUNTING OFFICE, INFORMATION SUPERHIGHWAY: AN OVERVIEW OF TECHNOLOGY CHALLENGES, *supra*, at 2.

89. Today, the internet is generally not able to transmit data-intensive information (e.g., movies) in real time (i.e., sending a two-hour movie on the internet will take much longer than two hours). In the future, the internet will be able to transmit real-time, full-motion video images along with audio signals that will allow, for instance, the kind of teleconferencing that now occurs through satellite transmission. See, e.g., Laurent Belsie, *Promise from Cable Guys: Internet 300 Times Faster*, CHRIST. SCI. MONITOR, June 28, 1996, at 8 (stating that future home modems will transmit at speeds of 7 to 10 megabits per second, much faster than the 28.8 kilobit modems commonly used by consumers today). See generally Jan Ozer, *Sound Blasts the Web*, PC MAG., Mar. 26, 1996, at 103 (discussing the transmission of sound, whether speech or music, as an example of multimedia on the internet's world wide web); Jan Ozer, *Web TV Tunes in*, PC MAG., Mar. 26, 1996, at 129 (discussing the transmission of video, or moving images, as an example of multimedia on the internet's world wide web).

90. The ideology need not be political. Websites, the most popular and most powerful method of transmitting data on the internet, span the gamut of human interests and cater to a myriad of tastes. See, e.g., *Star Trek* (visited Dec. 8, 1996) <<http://star-trek.msn.com>> (website for news about various Star Trek productions); *Welcome to the White House* (visited Dec. 8, 1996) <<http://www.whitehouse.gov/WH/Welcome.html>> (website to the White House); *NCR Homepage* (visited Dec. 8, 1996) <<http://www.nas.edu>> (website for the National Research Council, which is administered by the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine); *Institute for Christian Leadership* (visited Dec. 8, 1996) <<http://www.iclnet.org>> (a religious website); *Sydney 2000* (visited Dec. 8, 1996) <<http://www.sydney.olympic.org/>> (website for the 2000 summer Olympic games in Sydney, Australia); *Albany Law School of Union University Homepage* (visited Dec. 8, 1996) <<http://www.als.edu>> (website for Albany Law School). Thus, huge amounts of information are available to those who wish to receive or transmit information of any kind.

racist, and terrorist activities as well.⁹¹

A government might attempt to control the content of information transfers. It could screen large numbers of telephone calls, faxes, or computer data; it could restrict access to or intercept messages on the internet. Total censorship, however, would bring a halt to international business.⁹² Firms might object if government surveillance is too pervasive. For example, companies might not want government officials to be privy to proprietary information.⁹³ A certain amount of freedom of communication is therefore assured if a country wishes to be part of a global economy: international firms will leave a nation if censorship prohibitively increases the cost of doing business. This will remain true even if governments attempt to censor communications using the most advanced and cost-effective surveillance technology available.⁹⁴

91. See, e.g., *World Wide Sex Links* (visited Dec. 8, 1996) <<http://web.demon.co.uk/photouk/www/links.html>> (website providing links, or connections, to sex-oriented websites); *Club Red Light District* (visited Dec. 8, 1996) <<http://fun2.fun.nl>> (a sex-oriented website); *Anarchy N Explosives* (visited Aug. 8, 1996) <<http://www.netcore.ca/-locutus/ane/ane.htm>> (website giving recipes for making explosives); *The World Wide Anarchy Page* (visited Aug. 8, 1996) <<http://www.break.com.au/-dah/anarmain.html>> (same); *Explosive Solutions* (visited Feb. 22, 1997) <<http://www.dra.nl/-funny/terrorin.html>> (same). These websites are easily located through world wide web search engines which can be used without charge and which search for any type of website. See, e.g., *All-in-One Search Page* (visited Dec. 8, 1996) <<http://www.albany.net/allinone>> (website listing numerous search engines); *AltaVista: Main Page* (visited Dec. 8, 1996) <<http://www.altavista.digital.com>> (search engine provided by the Digital Equipment Corporation).

92. Perhaps, for example, international phone calls might be routed through a switchboard where an operator would inquire about the purpose of the call and retain a record of the parties to the telephone conversation. Copies of faxes might have to be transmitted to the government. A government could restrict internet access to registered users who claim to have only business objectives in utilizing the internet. At some point, however, surveillance would become very cumbersome. Imagine, for instance, screening millions of international calls a day.

93. Proprietary information, such as trade secrets, can be immensely valuable to a company. For example, when the Indian government required the Coca Cola Company to disclose the ingredients for its cola soft drink in order to establish a production subsidiary in India, the Coca Cola Company chose not to invest in India. See Michael A. Epstein, *If It's the Real Thing, Guard It Carefully: How Companies Can Protect Trade Secrets*, N.Y.L.J., Nov. 22, 1993, at S1 (special section on intellectual property).

94. The Chinese government, for example, is attempting to control the political content of information on the internet in China. All 50,000 domestic internet users in China are required to register with the police and are prohibited from hindering public order. See Sheila Tefft, *China Attempts to Have Its Net and Censor It Too*, CHRIST. SCI. MONITOR, Aug. 5, 1996, at 1. Complete censorship, however, would seem to be impossible, especially if the number of users grow to the extent present in the West. Even the most advanced western technology seems incapable of censoring the internet. See, e.g. John Markoff, *Japanese Chips May Scramble U.S. Export Ban*, N.Y. TIMES, June 4, 1996, at D1 (reporting that Nippon Telegraph and Telephone, one of Japan's largest corporations, has been selling data scrambling chips that make it difficult, if not currently impossible, for American intelligence and law enforcement agencies to conduct electronic surveillance on telephone lines and the internet). See generally Bruce Schneier, *Applied Cryptography: Protocols, Algorithms, and Source Code in C* (2d ed. 1996) (discussing how encryption maintains the secrecy of electronic messages; a sample source code for encryption is included); PHILIP R. ZIMMERMANN, THE OFFICIAL PGP USER'S GUIDE (1995) (discussing "Pretty Good Privacy," a widely used encryption for e-mail).

Communication technologies not essential to international business transactions also serve to bolster humanitarian political values. International news reporting utilizes communication technologies to broadcast major domestic events of all types on a worldwide screen. There are numerous journalists, broadcasters, and commentators whose professional livelihood depends upon bringing newsworthy stories to a foreign, if not international, audience. While most publicized stories may not involve political events, many do. The competitive members of the news media are unlikely to let stories of outrageous acts completely escape the attention of the international public. Furthermore, these news articles may be read by anyone in the world who has access to the internet.⁹⁵

At the same time, news stories alone would not generate international repercussions against repressive governments if purely theoretical political values were involved. There must be influential constituencies that place high priority on the existence of democracy and human rights, that seek to spread those values, and that are galvanized into action upon news of deplorable political conditions. Neither value would flourish unless there were constituencies, either domestic or abroad, that strongly supported it.

The presence of democratic governments and strong protections for human rights in the industrialized countries means that these values are expressed to some degree in their business transactions with other countries.⁹⁶ Sizable populations in the industrialized countries also attempt to support democracy and human rights abroad through private means.⁹⁷ Moreover, as the living standards of developing countries improve, the citizenry of these countries seem to expect more democratization (first) and

95. For example, each day's edition of the *New York Times* can be read at the *New York Times* website—currently, without charge. See *The New York Times on the Web* (visited Dec. 8, 1996) <<http://www.nytimes.com>>. Scientific and medical information is also available on the web, sometimes free of charge and in full text (picture, charts, tables, and other graphics are usually not available). See, e.g., *Scientific America* (visited Dec. 8, 1996) <<http://www.sciam.com>> (free access to the current issue of *Scientific American*); cf. *Science On-Line* (visited Dec. 8, 1996) <<http://science-mag.aaas.org/science>> (free access to abstracts of current and some past issues of *Science*, published by the American Association for the Advancement of Science); *AMA Home Page* (visited Dec. 8, 1996) <<http://www.ama-assn.org>> (free access to abstracts of current and some past issues of journals published by the American Medical Association); *New England Journal of Medicine On-Line—Home Page* (visited Dec. 8, 1996) <<http://www.nejm.org>> (free access to abstracts of current and some past issues of the *New England Journal of Medicine*). While this primarily facilitates scientific and medical research, it can also publicize embarrassing information about the state of science and level of health in a country. See, e.g., *infra* note 167.

96. See, e.g., *infra* note 168 and accompanying text (discussing reform of foreign corrupt business practices).

97. For example, non-governmental organizations such as Human Rights Watch, Amnesty International, and international labor unions are supported by private contributions. See, e.g., *Human Rights Watch* (visited Oct. 15, 1996) <<http://www.hrw.org>> (Human Rights Watch accepts contributions from private individuals and foundations worldwide, and not from any government, directly or indirectly); cf. *Introduction to GreenPeace* (visited Oct. 15, 1996) <<http://www.greenpeace.org:80/gpi.html>> (GreenPeace, an environmental protection organization, is supported “by small contributions from 5 million supporters in 158 countries and by sales of merchandise.”).

human rights (later).⁹⁸

III. The Importance of Globalization

Because globalization promotes common values across nations and can make foreign problems, conditions, issues, and debates as vivid and captivating as national, state, and local ones, it contributes to a sense of world community.⁹⁹ It develops a feeling of empathy for the conditions of people abroad, enlarging the group of human beings that an individual will identify with. Globalization thus helps to bring alive persons in foreign lands, making them fellow human beings who simply live in different parts of the world rather than abstract statistics of deaths, poverty, and suffering.

The convergence of basic political and economic values is thus fundamentally important because it helps to establish a common bond among people in different countries, facilitating understanding and encouraging cooperation. All other things being equal, the commonality among countries—whether in the form of basic values, culture, or language—enhances their attractiveness to each other.¹⁰⁰ In addition, convergence increases

98. The high living standards of the industrialized West as well as the improving standards of many developing countries have tended to reinforce the viability of democracy and human rights. For both industrialized countries and newly industrializing countries, this may be a reflection of the belief that altruistic desires can be pursued only after the satisfaction of basic needs. See generally ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* (2d ed. 1970).

99. Recall, for example, CNN's broadcast of the single man who stood in the path of a line of tanks and stopped their movement in Tiananmen Square. See Thomas Collins, *Footage Worthy of a Time Capsule*, *NEWSDAY*, June 7, 1989, at 71, available in LEXIS, News Library, Arcnws File.

100. For example, Americans have found investment in Western Europe more attractive than in other regions of the world, and in the United Kingdom more than in other European countries. By historical cost, the U.S. direct investment position abroad in 1995 was \$711.621 billion, with the investment distributed as follows (in millions of dollars):

<i>REGION</i>	<i>INVESTMENT</i>
Europe	363,527
Asia and Pacific	125,968
Latin America and other and Other Western Hemisphere	122,765
Canada	81,387
Middle East	7,982
Africa	6,516
International	3,476
 <i>20 HIGHEST COUNTRIES</i>	 <i>INVESTMENT</i>
United Kingdom	119,938
Canada	81,387
Germany	43,001
Japan	39,198
Netherlands	37,421
Switzerland	36,342
France	32,645
Bermuda	27,807
Australia	24,713

the possibility that a transformation of attitude will take place for those who participate in transnational activities.

People will begin to regard foreigners in distant lands with the same concern that they have for their fellow citizens.¹⁰¹ They will endeavor to help these foreigners obtain basic political rights even though the status of political rights in other countries will have no tangible beneficial impact at home.¹⁰² Convergence does not mean that there is a single model of a market economy, a single type of democracy, or a single platform of human rights. They exist in different forms, and nations may have different combinations of these forms.¹⁰³

Brazil	23,590
Belgium	17,785
Italy	16,718
Panama	15,908
Mexico	14,037
Hong Kong	13,780
Singapore	12,570
Sweden	12,226
Ireland	10,970
Spain	9,689
Argentina	7,962

See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 47 tbl. 3. More than half of all U.S. investment is in countries with a European culture (Hong Kong and Bermuda are British colonies). Of the twenty countries in which U.S. direct investment is the highest, fourteen have a European culture. Further, six (including Ireland) have a British cultural heritage and are largely English-speaking. The United Kingdom and Canada are by far the largest recipients of U.S. direct investment. To some extent, the attractiveness of Europe, the United Kingdom, and Canada lies in the common heritage that they have with America. The proximity of Canada and the relatively high standard of living in all three are other factors.

101. It is evident for many that the lives of foreigners lack the same importance as that of one's countrymen. See, e.g., *Bush and Schwartzkopf Oppose Haiti Invasion*, CHI. TRIB., Sept. 16, 1994, at C1 (retired General Norman Schwartzkopf saying that "I don't know of one thing in Haiti that's worth the life of a single American service man or woman").

102. There is little need to promote basic economic rights (in the sense of free market rights) in other countries; even Cuba has instituted market reforms. See FREEDOM IN THE WORLD 1995-96, *supra* note 59, at 199, 292.

103. Cf. HAGGARD & KAUFMAN, *supra* note 70, at 377-79 (but also noting that a multiplicity of factors could prevent the transition to democracy). There are some commentators who think that democracy exists only in one very specific form and that it protects only particular human rights; any country that deviates from such standards is therefore undemocratic and lacks human rights. See, e.g., PETER J. HERZOG, JAPAN'S PSEUDO-DEMOCRACY (1993) (arguing that Japan is not a true democracy and does not adequately protect human rights); ROBERT HARVEY, THE UNDEFEATED: THE RISE, FALL AND RISE OF GREATER JAPAN 208-26 (1994) (same). This view is much too narrow. In different countries with different cultures and traditions, some variation should be expected in the operation of democracy and the protection of human rights. See, e.g., JOSHUA MURAVCHIK, EXPORTING DEMOCRACY: FULFILLING AMERICA'S DESTINY 91-108 (1991) (stating that Japan must be considered democratic by any realistic standard). In the case of Japan, for example, "[d]emocracy in Japan is no less genuine for having acquired a peculiarly Japanese character than for having been initiated by Americans." *Id.* at 107. Some say that because of its hierarchies and other idiosyncrasies, Japan's system is not a democracy at all. The effective answer was reached some forty years ago:

A. The Perspective of One Human Race

The convergence of fundamental values through globalization has profound consequences because it increases the chance that a new perspective will develop, one which views membership in the *human race* as the most significant societal relationship, except for nationality.¹⁰⁴ A person owes his or her strongest collective loyalties to the various societies with which he or she most intensely identifies. Today, this societal identification can be based on numerous factors, including nationality, race, religion, and ethnic group.¹⁰⁵ While it is unlikely that nationality will be surpassed as the most significant societal relationship, globalization and the convergence of values may eventually convince people in different countries that the second most important social group is the human race, and not a person's racial, religious, or ethnic group.¹⁰⁶

One of the first steps in the formation of a society is the recognition by prospective members that they have common interests and bonds. An essential commonality is that they share some *fundamental values*. A second is that they *identify* themselves as members belonging to the same community on the basis of a number of common ties, including shared fundamental values. A third commonality is the *universality of rights*—the active application of the “golden rule”—by which members expect that all must be entitled to the same rights as well as charged with the same responsibilities to ensure that these rights are protected.

Globalization promotes these three types of commonalities. Globalization establishes common ground by facilitating the almost universal acceptance of market economies, the widespread emergence of democratic governments, and the extensive approval of human rights. The most visible example is economic. With the end of the Cold War, the free market economy has clearly triumphed over the command economy in the battle of the

The sovereignty of the people, the supremacy of law, the absolute guarantee of basic rights and liberties, the independence of the courts, the recognition of the individual—these must of necessity be the fundamental requirements. Through what machinery they are provided, how they are to be obtained and assured, presents a problem the solution of which may differ widely among men.

Id. (quoting General MacArthur, *from* SUPREME COMMANDER FOR THE ALLIED POWERS, POLITICAL REORIENTATION OF JAPAN, p. 92).

104. On an individual level, family, personal, and work ties will ordinarily dominate a person's life.

105. Ordinarily, the identification would occur on the basis of factors such as geography, history, ethnicity, race, religion, and culture. Other possibilities might be political creed, gender, or sexual orientation. These factors could be reduced to a yet more local level—for example, a particular region, tribe, or sect. Individuals could simultaneously view themselves as belonging to more than one society, identifying more strongly with some than others.

106. In some cases, nationality may be subsumed by a regional identification. Perhaps the identify of being a “European” will replace that of the individual nationalities of the European Union. Whether a nationality or regional identification is involved, its paramount importance will not change. Americans are, for instance, still likely to see themselves first as Americans. A closer identification with the human race, however, may mean that Americans will more quickly and vigorously respond to solve international problems that involve human beings who are not Americans.

economic paradigms. Because some variant of a market economy has taken root in virtually all countries, there has been a convergence of sorts in economic systems.¹⁰⁷

Further, because it often requires exposure to and pervasive interaction with foreigners—many of whom share the same fundamental values—globalization can enlarge the group that one normally identifies with. Globalization makes many of its participants empathize with the conditions and problems of people who in earlier years would have been ignored as unknown residents of remote locations. This empathy often leads to sympathy and support when these people suffer unfairly.

Finally, the combination of shared values and identification produce the third commonality, universality of rights.¹⁰⁸ Citizens of one country will often expect, and work actively to achieve, the same basic values in other countries. They will treat nationals of other nations as they would wish to be treated. The effects of shared values, identification, and universality of rights in globalization could have a pivotal long-term effect—the possibility that a majority of human beings will begin to believe that they are truly part of a single global society—the human race.

This is not to say that people disbelieve the idea that the human race encompasses all human beings. Of course, they realize that there is only one human species. Rather, the human race does not usually rank high on the hierarchy of societies for most people. Smaller societies, especially those based on nationality, race, religion, or ethnicity, command more loyalty.¹⁰⁹ The idea of the human race, the broadest and all-inclusive category of the human species, is abstract and has little, if any, impact on the lives of human beings. To believe in the singular importance of the human race requires an attitudinal shift in which a person views the human race seriously.

107. Given the free market outlook of the major economic powers and international economic organizations, a reversal in the ascendant position of the *general* free market model is unlikely to occur in the near future. What will now occur is the fine tuning of the free market model primarily through the World Trade Organization, bilateral agreements, and increased regional integration. Policies of the International Monetary Fund, World Bank, Organisation for Economic Co-operation and Development, and other international institutions will also be influential. There is already a vigorous debate over the benefits of industrial policy in market economies. See, e.g., Seita, *supra* note 35, at 223-28 & nn.149-69 and sources cited therein (discussing Japan's industrial policy). See generally EAST ASIAN MIRACLE, *supra* note 55 (discussing factors, including government policies, that have contributed to the high economic growth rates of East Asian market economies).

108. This is necessary because common values and identification alone are insufficient in themselves to create the attitude that membership in the human race is a profound social relationship. Just sharing fundamental values with the people of other countries and empathizing with them may only mean that one will feel regret but do nothing when these people are deprived of the rights that flow from those values. If a society is of essential importance to its members, they will work to protect it and their fellow members.

109. Sometimes these societies almost totally overlap. See Seita, *supra* note 79, at 492 n.72 (listing countries, such as South Korea and Japan, where there is a nearly complete overlap of nationality and ethnicity).

This may occur because the convergence of values does not only mean that the people of different countries will share the same basic values. It may also lead to the greater promotion of these values for the people of *other* countries. Historically and certainly today, America and the other industrial democracies have attempted to foster democracy and human rights in other countries.¹¹⁰ While some part of this effort has been attributable to "self interest," it has also been due to the empathy that the industrialized democracies have had for other countries.¹¹¹ The magnitude of these efforts in the future, as in the past, will depend not solely upon the available financial and human resources of the industrialized democracies. It will also depend upon their national will—a factor undoubtedly influenced by the intensity with which the people of the industrialized democracies identify with people in foreign lands.

The perspective that the human race matters more than its component divisions would accelerate cooperative efforts among nations to attack global problems that adversely affect human rights and the quality of human life.¹¹² Obviously, there is no shortage of such problems. Great suffering still occurs in so many parts of the world, not just from internal armed conflicts,¹¹³ but also from conditions of poverty.¹¹⁴ There are severe health problems in much of the world which can be mitigated with relatively little cost.¹¹⁵ There are the lives lost to the AIDS epidemic, and

110. See Karatnycky, *supra* note 59, at 6 (industrialized democracies increasingly insist that foreign aid recipients respect democracy and human rights); *JPN ODA Program* (visited Oct. 15, 1996) <<http://infomofa.ntls.co.jp/infomofa/refer/jpnoda.html>> (from website of the Japanese Ministry of Foreign Affairs) (One of the four principles Japan follows in providing foreign aid—official development assistance—is that "Full attention should be paid to efforts for promoting democratization and introduction of a market-oriented economy, and the situation regarding the securing of basic human rights and freedoms in the recipient country.").

111. See MURAVCHIK, *supra* note 103, at 8-9.

112. See generally *supra* note 37 (giving examples of human rights).

113. See, e.g., Bill Berkeley, *The Longest War in the World*, N.Y. TIMES, Mar. 3, 1996, § 6 (magazine) at 59 (reporting on the civil war in Sudan that has occupied 30 of the last 40 years and 13 of the past 17 decades, and that has probably killed 1.5 million people since 1983).

114. There is a problem of growing economic disparity among nations. The world is being divided into rich and poor nations, with the gap between the two groups widening. See, e.g., ZAVEN N. DAVIDIAN, *ECONOMIC DISPARITIES AMONG NATIONS: A THREAT TO SURVIVAL IN A GLOBALIZED WORLD* (1994). Further, among developing countries, while many of the nations of East Asia have enjoyed high rates of economic growth, other countries, especially in Africa, have generally had much lower growth rates. See *WORLD ECONOMIC OUTLOOK*, *supra* note 25, at 173-76; *EAST ASIAN MIRACLE*, *supra* note 55, at 1-3.

115: See, e.g., Warren E. Leary, *Billions Suffering Needlessly, Study Says*, N.Y. TIMES, May 2, 1995, at C5 (citing the first annual survey of global health conducted by the World Health Organization); Patrick E. Tyler, *China Confronts Retardation of Millions Deficient in Iodine*, N.Y. TIMES, June 4, 1996, at A1 (reporting that the Chinese Public Health Ministry estimates that iodine deficiency during brain development has resulted in over ten million cases of mental retardation in China). Poverty, and its companion, malnutrition, take an especially heavy toll among children. See, e.g., J. Larry Brown & Ernesto Pollitt, *Malnutrition, Poverty and Intellectual Development*, *SCI. AM.*, Feb. 1996, at 38.

the deaths and disabilities caused by land mines.¹¹⁶ Russia, a nuclear superpower that could end life on this planet, has severe social, economic, and political problems.¹¹⁷ Making the human race important would not just promote liberal democratic values but would also reduce human suffering and perhaps eliminate completely the risk of nuclear war.

B. General Convergence of Values

Assuming that the formation of a single human society is a possible outcome, two broad questions should be answered: what kind of human society is being created, and is this society desirable. The answer to the latter question will depend on an evaluator's subjective judgment of the society that is being formed. Undoubtedly, the great majority of human beings would abhor a world society that was being created by the conquests of a totalitarian government. Presumably, most Americans (and many citizens of other countries) would reject even a benevolent, democratic global society in which a world government dominated by other countries dictated laws that governed the lives of all human beings. If either outcome were present, many would call for a halt to globalization. Thus the direction that globalization follows is critical for assessing its appeal.

What globalization has brought is a *general* convergence of fundamental economic and political systems among many nations. These systems are not identical. There are still innumerable differences among countries with market economies, democratic governments, and respectful of human rights.¹¹⁸ The practices of one country may be intolerable to another coun-

116. See John C. Caldwell & Pat Caldwell, *The African AIDS Epidemic*, *SCI. AM.*, Mar. 1996, at 62 (discussing the cause of the epidemic in sub-Saharan Africa); Gordon Fairclough, *A Gathering Storm*, *FAR EAST. ECON. REV.*, Sept. 21, 1995, at 26 (reporting on AIDS in Thailand and other Asian countries); Gino Strada, *The Horror of Land Mines*, *SCI. AM.*, May 1996, at 40 (reporting that for the past two decades, antipersonnel land mines have killed or maimed about 15,000 people a year worldwide, primarily civilians and many of them children; that there are an estimated 100 million land mines planted in 64 countries; and that many of these mines have lifespans of hundreds of years); Kevin Fedarko, *Land Mines: Cheap, Deadly and Cruel*, *TIME*, May 13, 1996, at 54.

117. The Russian life expectancy for men has declined dramatically and the incidence of alcoholism among Russians has soared. See Michael Ryan, *Alcoholism and Rising Mortality in the Russian Federation*, *BRIT. MED. J.*, Mar. 11, 1995, at 646 (reporting a Russian male life expectancy of 59 years in 1993 compared with 64.9 in 1987). In some ways, the state of medical services in Russia resembles that of developing nations which cannot afford to treat preventable afflictions. For example, the lack of sophisticated medical technology has given Russia a high rate of deafness among its population. See Genine Babakian, *The Silent Minority*, *MOSCOW TIMES*, Feb. 24, 1996, available in LEXIS, News Library, Curnws File (official statistics listing 12 million deaf people out of a population of 150 million, with deafness caused in many by the administration of excessive amounts of ototoxic antibiotics).

118. Corruption, for example, is much more common in certain new democracies than others. See Matt Moffett & Jonathan Friedland, *A New Latin America Faces a Devil of Old: Rampant Corruption*, *WALL ST. J.*, July 1, 1996, at A1 (concluding that the appearance of free markets and democracy in a number of Latin American countries has not removed the prevalence of corruption and has merely changed the corrupt players from bureaucrats and military dictators to entrepreneurs and politicians).

try.¹¹⁹ Furthermore, it is unlikely and probably undesirable that economic and political systems will ever exactly converge. Nor is it foreseeable that the nations of the world will coalesce into one.

Even among the industrialized democracies, there are enough dissimilarities in market economies, democratic governments, and attitudes towards human rights that make some believe that the differences between these nations outweigh the similarities. For example, Japan is frequently characterized as having a producer-oriented market economy, as compared with the consumer-oriented market economy of the United States.¹²⁰ In general, the members of the European Union more extensively regulate their economies than the United States, engaging at times in social engineering that seems contrary to market principles as interpreted by Americans.¹²¹ In the area of criminal justice, the United States is virtually alone in permitting the death penalty and imprisons a much higher percentage

119. For example, while Singapore has a free market economy and is a parliamentary republic, certain drug offenses receive a mandatory death penalty, criminals can be beaten with canes, and political censorship is practiced by the government. See FREEDOM IN THE WORLD 1995-96, *supra* note 59, at 416-18; HUMAN RIGHTS PRACTICES 1994, *supra* note 67, at 679-86; see also Henry Kamm, *In Prosperous Singapore, Even the Elite Are Nervous About Speaking Out*, N.Y. TIMES, Aug. 13, 1995, at 10. An environment like Singapore's would probably be unacceptable to most Americans.

120. See, e.g., Seita, *supra* note 107, at 198-99 & nn.21-25 and sources cited therein. Japan is not the only industrialized country to differ significantly from the United States in economic practices. For example, according to a U.S. government report, "[t]he fundamental way in which business operates differs in the United States, Japan, and Germany." UNITED STATES GENERAL ACCOUNTING OFFICE, COMPETITIVENESS ISSUES: THE BUSINESS ENVIRONMENT IN THE UNITED STATES, JAPAN, AND GERMANY 6 (GAO/GGD-93-124, Aug. 1993).

121. For example, the European Union follows the legal rule of comparable worth, that persons performing work of equal value should be paid the same, which is contrary to the American rule of equal pay for equal work. Works of equal value are job performances that are deemed to be the same in "value" even though the jobs might be different (e.g., the job of a secretary might be deemed to be the same in value as the job of a truck driver). See Case 61/81, *Commission v. U.K.*, 1982 E.C.R. 2601 (the European Court of Justice holding that Great Britain had failed to implement Directive 75/117 which provided for equal pay for work of equal value); EVELYN ELLIS, EUROPEAN COMMUNITY SEX EQUALITY LAW 95-116 (1991) (discussing the Equal Pay Directive which implements the doctrine of comparable worth in the European Union); ELAINE SORENSEN, COMPARABLE WORTH: IS IT A WORTHY POLICY? 3-19 (1994) (discussing the relative weakness of the doctrine in the United States). Health insurance is more universal in EU countries (and other industrialized democracies like Japan) than in the United States. See LAURENE A. GRAIG, HEALTH OF NATIONS: AN INTERNATIONAL PERSPECTIVE ON U.S. HEALTH CARE REFORM (1991) (comparing universal health care in Canada, Germany, Japan, the Netherlands, and Great Britain with the lack of universal health care in the United States); see also Craig R. Whitney, *Rising Health Costs Threaten Generous Benefits in Europe*, N.Y. TIMES, Aug. 6, 1996, at A1. In many EU countries, the social safety net gives significantly greater benefits than in the United States. See, e.g., Rebecca Blank, *Does a Larger Social Safety Net Mean Less Economic Flexibility?*, in WORKING UNDER DIFFERENT RULES 157 (Richard B. Freeman ed., 1994); cf. Nicholas D. Kristof, *Welfare as Japan Knows It: A Family Affair*, N.Y. TIMES, Aug. 10, 1996, at A1 (the qualifications for and attitudes about welfare in Japan have historically been significantly different from those in the United States; very few people qualify for welfare in Japan).

of its population than other industrialized democracies.¹²²

Nonetheless, the basic economic and political systems of different countries clearly share more similarities than ever before. When asked to characterize their existing economic and political systems, more people in more countries than ever before will respond that they have a "market" economy, that their government is "democratic," and that they protect "human rights." Importantly, the convergence of *values* seems to be accompanying the convergence of *systems*. Certainly, most people in the industrialized democracies would view their existing economic and political systems as expressing the foundational values of their societies—the values that define their society.¹²³ The convergence of values along liberal demo-

122. Except for Japan (which executes a few criminals annually), no other industrialized democracy inflicts the death penalty. See Teruaki Ueno, *Japan Hangs Three Death-Row Convicts*, REUTERS, July 12, 1996, available in LEXIS, News Library, Curnws File; *Belgium Abolishes Capital Punishment*, AGENCE FRANCE PRESSE, June 13, 1996, available in LEXIS, News Library, Curnws File. The number of executions in the United States, all performed by state authorities, numbered 23 in 1990, 14 in 1991, 31 in 1992, and 38 in 1993, with a backlog of 2,716 prisoners under a sentence of death at yearend 1993. See BUREAU OF JUST. STAT., DEP'T OF JUST., SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1994, at 591 tbl. 6.76, 597 tbl. 6.81 (Kathleen Maguire & Ann L. Pastore eds., 1995). In developing countries, the death penalty is far more common. See, e.g., Bruce Gilley, *Rough Justice: Executions Surge in Tough Anti-Crime Drive*, FAR EAST. ECON. REV., July 4, 1996, at 22 (stating that there were 2,500 publicly revealed executions in China in 1995, with the actual number of executed persons possibly twice as high).

The total number of inmates (including unconvicted persons) at local, state, and federal institutions in America was approximately 1.37 million in 1993. See BUREAU OF JUST. STAT., *supra*, at 534 tbl. 6.13, 548 tbl. 6.26. By contrast, the average daily population of penal institutions in Japan (including unconvicted persons) was 45,057 in 1993 and 45,573 in 1994. See GOVERNMENT OF JAPAN, SUMMARY OF THE WHITE PAPER ON CRIME 1995, at 68 tbl. III-1. Although the population of the United States is twice that of Japan's, America incarcerates 30 times as many people. See WORLD BANK ATLAS 1996, at 8-9 (1995) (giving 1994 population figures of 260,529,000 for the United States and 124,782,000 for Japan) [hereinafter WORLD BANK ATLAS]. The United States today has the world's highest reported imprisonment rate and has been at the top for some time. See Jon Jefferson, *Doing Soft Time*, ABA J., Apr. 1994, at 62. Between 1990 and 1991, incarceration rates per 100,000 population were:

COUNTRY	RATE
United States	455
South Africa	311
Venezuela	177
Hungary	117
Canada	111
China	111
Australia	79
Portugal	77
Czechoslovakia	72
Denmark	71
Albania	55
Netherlands	46
Ireland	44
Sweden	44
Japan	42
India	34

Id. at 63 (excluding nations from the former Soviet Union).

123. *Cf. supra* note 26 (listing the ties that bind OECD members).

cratic lines means that nations are better situated to negotiate wealth-maximizing trade agreements and to resolve political disputes peacefully.

But in countries in transition from authoritarian to liberal democracy, many people may not yet fully accept their newly established economic and political systems as reflecting fundamental values of what is correct, proper, or right. Whether these transitional countries continue to establish or possess liberal democracies will depend upon how well the systems of liberal democracy work, an outcome that the industrialized democracies should strive vigorously to achieve. Workable systems can evolve into entrenched values.

Obviously, the implantation of the values of liberal democracy in Russia is of paramount concern.¹²⁴ Nurturing a democratic Russia is in the vital national interest of the United States (and the rest of the world) for very practical reasons—only Russia and the United States possess sufficient nuclear weapons to end human civilization.¹²⁵ Whether by unilateral or multilateral extensions of financial assistance or political inclusion, the industrialized democracies should do their utmost to make Russia a strong liberal democracy. Economic aid should be generous, and Russia should be incorporated into the activities of the industrialized democracies as much as possible.¹²⁶

Not all basic values are converging and nor, perhaps, should they. Religious values are not converging in the sense that the same general religion, such as Christianity, is taking root in a preponderance of countries.¹²⁷ Nevertheless, the convergence of economic and political values means that there is a greater basis for cooperation. For that reason, the

124. As former Secretary of State Kissinger has stated,

Integrating Russia into the international system is a key task of the emerging international order. It has two components which must be kept in balance: influencing Russian attitudes and affecting Russian calculations. Generous economic assistance and technical advice is necessary to ease the pains of transition, and Russia should be made welcome in institutions which foster economic, cultural, and political cooperation—such as the European Security Conference.

HENRY KISSINGER, *DIPLOMACY* 818 (1994).

125. See, e.g., Sam Nunn, *U.S. Investment in a Peaceful Russia*, *ISSUES IN SCIENCE AND TECHNOLOGY*, Summer 1995, at 27 (Senator Sam Nunn stating that American aid to Russia to transport, store, and destroy excess nuclear (and other) weapons is in America's national security interests, and that "[i]t is in our interest that Russia establish a durable democratic political system and a durable market-based economic system," *id.* at 30).

126. See, e.g., John M. Logsdon & Ray A. Williamson, *U.S.-Russian Cooperation in Space: A Good Bet*, *ISSUES IN SCIENCE AND TECHNOLOGY*, Summer 1995, at 39 (pointing to the important scientific, economic, and political value of U.S.-Russian cooperation in space exploration, especially in the U.S.-led partnership to build the international space station with Canada, Japan, and Europe).

127. While many of the underlying tenets of different religions may be the same (e.g., forbidding killing), people will identify themselves as members of a particular religion rather than followers of particular tenets. Thus, for example, one may say that she is a Christian, Muslim, Buddhist, Jew, or some other religious adherent, but not that she is a follower of the Golden Rule. Of course, it may be the case that the preeminent belief of one religion is not shared by others (e.g., the Christian belief that Jesus was the son of God, died to save humanity, and was resurrected).

“West”¹²⁸—that is, the United States and the other industrialized democracies—should support the process of value convergence.

Sharing the same values creates similar expectations and a common ground for understanding. The more prevalent reliance upon market forces to direct production and consumption means that nations are more likely to trade with and invest in each other. The relative sameness of political values, for example, the prevalent use of negotiation rather than military force in settling disputes, means that nations can have greater trust in and less to fear from each other. The similarity of basic values also means that the different peoples of humanity are one step closer to viewing themselves primarily as part of one human society—the human race—though represented by different governments.

IV. Shaping the Content of Globalization

Despite its ubiquity, globalization is not a given, the inevitable consequence of the confluence of current human events. It is a highly probable long-term outcome, that should be supported in the face of opposing forces, in order to ensure its survival.¹²⁹ Although there is no inevitability that the process of globalization will continue, it seems very likely for economic and technological reasons. Autarky and isolationism are disfavored national policies. Absent major international calamities, globalization will grow as market integration, economic interdependence, and technological advances continue.

Nor is the precise shape of globalization a settled outcome. There is not just one distinct type of globalization. The activities, the principles, and the value-converging features of globalization are variables influenced by the leadership of nations such as the United States and international organizations such as the United Nations and the World Trade Organization. How globalization proceeds, especially in its preeminent economic form, is crucial because globalization can be a double-edged sword. It can create international problems as well as elevate human beings into a better

128. As previously discussed, the use of the term “West” is convenient to describe the industrialized democracies but misleading in that Japan, the industrialized democracy with the second largest economy, is an Asian country with cultural roots in China rather than Europe and with a non-Christian, non-white population. See *supra* note 25.

129. Opposition to economic globalization, and the integration of markets, is a strong, though not dominant, movement in the United States as well as in other industrialized countries. Politicians often blame the global integration of markets for declining wages and increasing unemployment or underemployment. Cf. David E. Sanger, *A Flare-Up of Passions on Trade and Jobs*, N.Y. TIMES, Feb. 20, 1996, at A1 (Pat Buchanan, candidate for the Republican presidential nomination, denouncing the World Trade Organization and the North American Free Trade Agreement, and pledging to pull the United States out of both organizations); David LaGesse, *Silence on NAFTA Could Prove Fleeting: Candidates May Have to Face Issue if Perot Runs, Mexico Finances Sink*, DALLAS MORN. NEWS, Apr. 6, 1996, at 1A, available in LEXIS, News Library, Curnws File (documenting 1992 presidential candidate Ross Perot’s opposition to U.S. participation in the World Trade Organization and the North American Free Trade Agreement).

world.¹³⁰

For example, the basic values that globalization spreads can sometimes be at odds with each other and with other important values. Free market practices can weaken democracy through a race to the bottom in permitting unethical business practices, and democracy can suppress human rights through a tyranny of the majority. All three convergent values can conflict with the desire to protect the environment, a desire that is predominantly a concern of industrialized countries.¹³¹ Also, economic and technological interdependency can facilitate the activities of rogue nations and terrorist groups, and make members of the global community vulnerable to transnational crime.¹³² Finally, how globalization copes with the paradoxical trend of diversification (e.g., ethnic, political, or religious differentiation) is important.¹³³

130. It is well recognized that the effects of globalization are not always economic or beneficial. See, e.g., *It's the Global Economy, Stupid: The Corporatization of the World*, THE NATION, July 15-22, 1996 (series of articles on the harmful consequences of the global economy); DAVID C. KORTEN, *WHEN CORPORATIONS RULE THE WORLD* (1995); RICHARD J. BARNET & JOHN CAVANAGH, *GLOBAL DREAMS: IMPERIAL CORPORATIONS AND THE NEW WORLD ORDER* (1994); cf. sources cited *infra* note 186 (describing the clash between economic development and protection of the environment); JEREMY RIFKIN, *THE END OF WORK: THE DECLINE OF THE GLOBAL LABOR FORCE AND THE DAWN OF THE POST-MARKET ERA* (1995) (criticizing automation and, to that end, globalization).

131. For a discussion of environmental concerns, see *infra* notes 179-186 and accompanying text.

132. At one time the Bank for Credit and Commerce International (BCCI) was the seventh-largest private bank in the world, with assets of over \$20 billion. BCCI's involvement with widespread international banking fraud eventually led to its collapse in 1991. See, e.g., RAJ K. BHALA, *FOREIGN BANK REGULATION AFTER BCCI* 3-13 (1994); JOHN KERRY & HANK BROWN, 102D CONG., *THE BCCI AFFAIR: A REPORT TO THE COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE* (Comm. Print 102-140 1992). According to the report produced by Senators Kerry and Brown, BCCI was involved in more than just bank fraud. It was also engaged in laundering drug money, supporting terrorism and arms trafficking, training drug cartel death squads, and supplying prostitutes. See *id.* at 61-72. "BCCI cannot be taken as an isolated example of a rogue bank, but a case study of the vulnerability of the world to international crime on a global scale that is beyond the current ability of governments to control." *Id.* at 17. International crime, of course, involves more than just bank fraud. From bases in one country and supported financially by another country, terrorists can launch attacks into a third country. See, e.g., *WESTERN RESPONSES TO TERRORISM* (Alex P. Schmid & Ronald D. Crelinsten eds., 1993). Illegal drugs, especially those consumed in the United States, often have transnational origins. See, e.g., OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, *THE NATIONAL DRUG CONTROL STRATEGY, 1996: PROGRAM, RESOURCES, AND EVALUATION* 17-20. Finally, from anywhere in the world, one can access pornography or recipes for homemade bombs through the internet. See, e.g., *supra* note 91.

133. See Takeyuki Kumamura, *New World Emerges, Demands Fresh Set of Strategies: Globalization, Diversification Both Occurring*, NIKKEI WKLY., July 22, 1996, at 7; J. P. Kavanagh, *A Time of Crisis, Challenge for U.N.*, JAPAN TIMES, Apr. 8-14, 1996, at 9 (weekly edition); cf. KISSINGER, *supra* note 124, at 806-08. The Soviet Union has splintered into fifteen separate nations, and ethnic groups within nations (e.g., Kurdish rebels in Turkey and Iraq, Chechen rebels in Russia, and Tamil rebels in Sri Lanka) have called for national independence. Strong group identification—whether ethnic, political, or religious—has led to fanaticism, hatred, and killings in Rwanda, Burundi, Cambodia, and Bosnia.

Managing globalization will require policies and programs that carefully nurture, accommodate tensions among, and emphasize the universality of convergent values. These values need to be supported because the presence of free markets, democracy, and human rights in some countries may represent currently ascendant economic and political systems—existing superficial conditions—rather than fundamental values. Citizens of more countries may now describe their economic system as “market” based, their structure of government as “democratic,” and their panoply of civil liberties as the protection of “human rights.” Yet, for newly formed capitalist democracies, their citizens may not completely *accept* these conditions as fundamental values—deeply felt beliefs of what is right.¹³⁴

Balancing these values, when they conflict with each other or with the protection of the environment, is necessary to avoid, primarily, a race to the bottom in economic practices and the unreasonable dominance of economic activities over political and environmental concerns.¹³⁵ The universality of convergent values essentially means that human beings will work to ensure that the same general rights—including the satisfaction of basic needs—are available in all countries.¹³⁶ The idea that particular rights should be universally present, without geographic limitation, is important not just to the convergence of fundamental values but also to the belief that all human beings belong to the same society and are entitled to the same rights.

A. Fulfilling Western Responsibilities

The industrialized democracies have an essential, indispensable role in determining the policies and programs for globalization that will promote common values, balance competing values, solidify respect for the rule of law, and increase empathy among nations. This role is given not by the grace of God but by a simple fact of economics and by the deep roots of liberal democratic values in the industrialized democracies. They have the lion's share of world wealth, and by it, the ability to finance and influence heavily the course of globalization. In addition, free markets, democracy, and the protection of human rights are fundamental values, permanent and enduring, in the industrialized democracies.

134. The belief of many people in these nations in the values of liberal democracy may be quite fragile. Further, the shift in economic or political systems for nations previously under command economies or authoritarian political regimes has created substantial numbers of losers as well as winners. It would be in the self-interest of the industrialized democracies to support those countries in transition from command and authoritarian systems to market and democratic systems. Russia, in particular, should receive generous financial and political help. Without the bold actions of the former Soviet leadership, the end of the Cold War—and the subsequently reduced threat of nuclear war, freedom for the east European countries from Soviet domination, and reunification of Germany—would not have occurred. See PHILIP ZELKOW & CONDOLEZZA RICE, *GERMANY UNIFIED AND EUROPE TRANSFORMED: A STUDY IN STATECRAFT* 4-19, 369-70 (1995).

135. See *infra* notes 170-186 and accompanying text.

136. Cf. *supra* note 108 and accompanying text.

It is undeniable that the industrialized nations dominate the world economically. These nations are bound together by the common values of liberal democracy, and are either allied or on friendly terms with the United States. Table 1, below, provides figures for the population, economy, contributions to the United Nations, foreign aid (official development assistance, or ODA), and numbers of the world's largest corporations from the twenty-three industrialized nations collectively referred to as the "West": the United States, Japan, the fifteen-nation European Union, and six other rich industrialized nations.¹³⁷

TABLE 1

	Population in Thousands (1994)	G.N.P. in Billions of Dollars (1994)	Regular U.N. Budget Assessment Rate (%) (1996)	Foreign Aid (ODA) in Billions of Dollars (1995)	No. of World's 500 Largest Companies (1995)
U.S.A.	260,529	6,737,367	25.0000	7.303	153
Japan	124,782	4,321,136	15.4350	14.484	141
European Union	370,221	7,577,378	35.2825	31.513	154

137. The data in Table 1 is derived from several sources. See WORLD BANK ATLAS, *supra* note 122, at 8-9 (population figures), 18-19 (GNP figures), 20 (world population; world GNP calculated by multiplying world population by world per capita GNP); UNITED NATIONS SECRETARIAT, STATUS OF CONTRIBUTIONS AS AT 29 FEBRUARY 1996, Annex II, at 5-9 (ST/ADM/SER.B/487, Mar. 14, 1996) (regular U.N. budget assessment rate); *Financial Flows to Developing Countries in 1995: Sharp Decline in Official Aid; Private Flows Rise*, OECD PRESS RELEASE, June 11, 1996 (Org. Econ. Co-op. & Dev.) (giving preliminary figures for OECD member foreign aid in 1995; differences for "West" total are rounded off) [hereinafter OECD PRESS RELEASE]; *Global 500*, *supra* note 45, at 102, F-30 to F-40 (ranking corporations by revenues).

The "other [rich nations]" mentioned in Table 1 are Australia, Canada, Iceland, New Zealand, Norway, and Switzerland. They, together with the United States, Japan, and the nations of the EU, are classified by the International Monetary Fund as the twenty-three industrialized nations, and are what this Article refers to as the "West." Cf. WORLD ECONOMIC OUTLOOK, *supra* note 25, at 155-57. All of the 23 nations except for Greece and Iceland provide foreign aid to developing countries. See OECD PRESS RELEASE, *supra*, at 9. Countries that provide foreign aid but that are not among the 23 industrialized nations are not included in the ODA figure. Such non-ODA foreign aid, however, is small by comparison with ODA foreign aid. See, e.g., *OECF to Close Seoul Office as S. Korea Aid Role Grows*, DAILY YOMIURI, Aug. 17, 1996, at 12, available in LEXIS, News Library, Curnws File (reporting that in 1994 South Korea provided \$150 million in foreign economic assistance).

The figures for world population and GNP, which were taken from the World Bank, apparently omit data from the Republic of China (i.e., Taiwan), a relatively rich and populous nation. See WORLD BANK ATLAS, *supra* note 122, at 8-9, 18-20. In 1995, Taiwan's population of 21.3 million was larger than Australia's, and its GNP, by exchange rate conversion, was \$253.82 billion, ranking 18th in the world. See Sofia Wu, *ROC Ranks 18th in Terms of GNP*, CENTRAL NEWS AGENCY, May 30, 1996, available in LEXIS, News Library, Curnws File; cf. WORLD BANK ATLAS, *supra* note 122, at 8 (giving a 1994 population figure of 17.8 million for Australia).

As Table 1 shows, the West, with less than 15% of the world's population, generates over 75% of the world's GNP, and has the financial resources to pay most of the U.N.'s regular budget, provide substantial amounts of foreign aid, and produce nearly all of the world's largest corporations. Just America and Japan together account for over 40% of world GNP.¹³⁸

The hand of the West is also dominant in the major international economic institutions which provide substantial flows of financial capital to developing countries and to countries in economic transition from socialism to capitalism.¹³⁹ Table 2, below, shows that the big five and the

138. Recent data give first quarter 1996 Gross Domestic Product (GDP) figures of \$7,417.8 billion for the United States and \$5,028.7 billion for Japan. See SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 5 tbl. 1.1 (giving U.S. GDP for first quarter of 1996); *Economic Indicators*, NIKKEI WKLY., July 22, 1996, at 13 (giving a nominal, seasonally adjusted, annual GDP of ¥502,873.6 billion for January-March 1996, applying an exchange rate of ¥100 = \$1, cf. *Currency Markets*, *supra* note 41, at D17). U.S. GDP and GNP are virtually equivalent. See, e.g., SURVEY OF CURRENT BUSINESS, July 1996, *supra* note 40, at 7 tbl. 1.9 (giving first quarter 1996 GNP of \$7,423.1 billion for the United States). GNP equals the GDP of a country plus its net overseas property income. See *infra* note 141 (defining gross domestic product).

139. As of June 30, 1996, the International Bank for Reconstruction and Development (IBRD) had approved loans totaling \$164,766,000,000, of which \$110,246,000,000 was outstanding. See WORLD BANK, *supra* note 28, at 173. Also providing substantial funding to developing countries are the IBRD's two affiliates, the International Development Association (IDA), which provides low-interest rate credits (loans) to the poorer developing countries, and the International Finance Corporation (IFC), which finances private sector ventures and projects primarily in less developed countries. As of June 30, 1996, the IDA approved \$97,450,000,000 in development credits, of which \$72,821,000,000 was outstanding. See *id.* at 203. As of June 30, 1996, the IFC provided cumulative gross commitments of \$30,380,906,000 for 1707 enterprises. See INTERNATIONAL FINANCE CORPORATION, ANNUAL REPORT 1996, at 143 (1996) [hereinafter IFC]. As of April 30, 1996, the IMF had total loans outstanding of SDR 42,040,000,000 (approximately \$60.961 billion). See IMF, *supra* note 34, at ii, 178 (using an exchange rate of one SDR = \$1.45006; technically, member countries of the IMF purchase currencies rather than borrow from the IMF). The SDR (special drawing right) is an international reserve asset whose value is a function of other currency values. Effective January 1, 1996, it includes:

CURRENCY	AMOUNT OF UNITS IN SDR
U.S. dollars	0.582
Deutsche marks	0.446
Japanese yen	27.2
French francs	0.813
Pounds sterling	0.105

See *id.* at 143.

Other important multilateral economic institutions include regional development banks such as the Asian Development Bank (ADB) and the European Bank for Reconstruction and Development (EBRD), which provide funding and technical assistance for development in their respective regions. As of December 31, 1995, the ADB had approved loans totaling \$31,426,926,000, of which \$17,530,101,000 were outstanding, to member countries in the Asian and Pacific region. See ASIAN DEVELOPMENT BANK, ANNUAL REPORT 1995, at 154 (1995) [hereinafter ADB]. As of December 31, 1995, the European Bank for Reconstruction and Development provided ECU 7,853,000,000 (approximately \$10.072 billion) in financing through loans, equity participation, and guarantees to countries and projects in central and eastern Europe. See EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, ANNUAL REPORT 1995, at 15-17, 53 n.2 (1995)

other industrialized democracies of the West together have a commanding share of the voting power in such major international economic institutions as the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and International Development Association (IDA) of the World Bank Group, the International Monetary Fund (IMF), the Asian Development Bank (ADB), and the European Bank for Reconstruction and Development (EBRD).¹⁴⁰

(using ECU 1.2826 = \$1 exchange rate) [hereinafter EBRD]. The ECU, or European currency unit, is a composite currency and a unit of account used by the European Union. Similar to the SDR, its value is determined through a basket of EU member country currencies, which is composed of the individual currencies of the twelve member nations of the EU prior to the addition of Austria, Finland, and Sweden in 1995. The currency composition of the ECU will be frozen until the Euro, the single European currency, is introduced. See EUROPE IN FIGURES 342-43 (4th ed. 1995). The ECU will be replaced by the Euro on January 1, 1999. See *The Road to Economic and Monetary Union* (visited Oct. 15, 1996) <<http://europa.eu.int/en/agenda/emu/enscsc.html>> (from website of the European Union).

140. See WORLD BANK, *supra* note 28, at 178 (voting power in IBRD as of June 30, 1996); IFC, *supra* note 139, at 123-24 (as of June 30, 1996); WORLD BANK, *supra* note 28, at 205 (voting power in IDA as of June 30, 1996); IMF, *supra* note 34, at 209 (as of April 30, 1996); ADB, *supra* note 139, at 158 (as of December 31, 1995); EBRD, *supra* note 139, at 60 & n.* (voting rights in EBRD as of December 31, 1995, calculated from data; the voting rights of the United States are restricted because of non-payment of some capital subscriptions, and are reduced from 10.12%). In the Asian Development Bank, the nations with the largest voting power in addition to Japan and the United States are Pacific Rim countries: China (6.65%), India (6.54%), Australia (6.01%), Canada (5.47%), and South Korea (5.28%). See ADB, *supra* note 139, at 158-59. The countries of the "West" are listed in *supra* note 25.

Another important international financial institution is the Bank for International Settlements (BIS), whose objectives are "to promote the cooperation of central banks, to provide additional facilities for international financial operations and to act as trustee or agent for international financial settlements." BANK FOR INTERNATIONAL SETTLEMENTS, 66TH ANNUAL REPORT, Apr. 1, 1995-Mar. 31, 1996, at 186. The members of the BIS are central banks, and its seventeen-member board of directors consists of the governors of the central banks of Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States, and appointed directors from Belgium, France, Germany, Italy, the United Kingdom, and the United States. See *id.* at 186, 194. Until recently, there were 32 member central banks; in September 1996, nine central banks were admitted as new members (Brazil, China, Hong Kong, India, Mexico, Russia, Saudi Arabia, Singapore, and South Korea). See *The BIS: Join the Club*, ECONOMIST, Sept. 14, 1996, at 78.

TABLE 2

	Population in Thousands (1994)	G.N.P. in Billions of Dollars (1994)	Regular U.N. Budget Assessment Rate (%) (1996)	Foreign Aid (ODA) in Billions of Dollars (1995)	No. of World's 500 Largest Companies (1995)
Other [Rich Nations]	62,204	1,323,079	5.4125	5.700	28
West: US, EU, Japan & Other	817,736	19,958,960	81.1300	59.002	476
West's Share of World Total	14.59%	77.44%	81.13%	100%	95.20%
World Total	5,603,000	25,773,800	100.0100	59.002	500

While there are different ways of calculating the collective economic power of the West, there is no question of the West's economic importance to the world.¹⁴¹ As much as possible, the West—principally the economic

141. For example, on the basis of purchasing power parities, the International Monetary Fund calculates that the group of 23 industrial countries account for 53.9% of world gross domestic product (GDP), with developing countries accounting for 41.2%, and countries in transition (e.g., Russia, Hungary, and Poland), 4.9%. See *WORLD ECONOMIC OUTLOOK*, *supra* note 25, at 156. There are two common ways to calculate a nation's economy or productive output: gross national product (GNP) or gross domestic product (GDP). The quantitative difference between the two is not significant for the great majority of countries. Table 1, above, uses GNP figures provided by the World Bank. The GDP, however, is the most commonly used measure of national output by both domestic and international authorities. See, e.g., *SURVEY OF CURRENT BUSINESS*, July 1996, *supra* note 40, at 1-8; *WORLD ECONOMIC OUTLOOK*, *supra* note 25, at 167-79. The GDP measures the net value of the goods and services produced in a country from economic activity. See *DICTIONARY OF MODERN ECONOMICS*, *supra* note 11, at 297-298. The GDP of a country is related to its GNP in that GDP plus net property income from abroad equals GNP. See *id.* Net property income from abroad equals the difference between what domestic residents receive in profits, dividends, and interest on foreign assets, and what foreign residents receive in profits, dividends, and interest on domestic assets. See *id.* at 304.

Also, either GNP or GDP can be calculated by the use of foreign exchange rate conversions or by purchasing power parities (PPP). Exchange rate conversion emphasizes the international purchasing power of a currency (e.g., dollar or yen), whereas PPP emphasizes the domestic purchasing power of a currency (e.g., how much of that currency is needed to buy a basket of goods and services in domestic markets). In comparing national economies, whether in terms of GDP or GNP, Table 1 uses data based on foreign exchange rate conversions. In the foreign exchange rate method, actual market rates are used to compare national economies. The foreign exchange rate is what one currency is worth in terms of another. For instance, a visitor to Japan will need yen to buy goods and services, and would receive ¥1,000,000 if she went to a bank to exchange \$10,000 for yen (at a foreign exchange rate of \$1 = ¥100). The foreign exchange rate method makes possible the comparison of the U.S. economy (which is expressed in dollars) with the Japanese economy (which is expressed in yen). See *WORLD BANK ATLAS*, *supra* note 122, at 33. Thus, for example, the GDP of Japan in yen terms is converted into dollars by using market foreign exchange rates, and the Japanese GDP can be compared with that of the United States.

giants of the United States, Japan, and the European Union—should act collectively to create a humane globalization. These three entities should undertake to cooperate even more extensively than they already do. This will require American acceptance of a greater role for the European Union and Japan in western decision-making, a process that historically has been carried out mostly by American leadership. It will also require a more vigorous and creative Japanese presence in international affairs.

The United States, Japan, and the European Union are singled out, not because their citizenry are inherently wiser and more capable than those of other nations, but because their economic power tempered by the humanitarian constraints of their political systems make them best suited

The foreign exchange rate conversion method disregards the domestic purchasing power of dollars and yen—the concept of purchasing power parity. See Seita, *supra* note 79, at 483 n.44; see also *McCurrencies: Where's the Beef?*, *ECONOMIST*, Apr. 27, 1996, at 82 (providing a brief summary description of PPP). A given amount of yen may actually buy much less in Japan than what the market foreign exchange rate for dollars and yen would suggest. For instance, if the same basket of goods and services would cost \$100 in America and ¥15,000 yen in Japan, the PPP method would yield a PPP exchange rate of \$1 = ¥150. Thus, if the U.S. economy was \$6 trillion and the Japanese economy, ¥450 trillion, a PPP exchange rate of \$1 = ¥150 would make the U.S. economy twice that of Japan's (\$6 trillion to \$3 trillion), while a market foreign exchange rate of \$1 = ¥100 would make the U.S. economy only one-third larger than Japan's (\$6 trillion to \$4.5 trillion). There is often a difference between market foreign exchange rates and the exchange rates implied by PPP. Both methods are used in international measurements. See *WORLD BANK ATLAS*, *supra* note 122, at 18-19, 33 (giving GNP by market foreign exchange rates and giving per capita GNP in PPP terms).

Nevertheless, this Article uses data based on foreign exchange rates because this method better measures the international importance of a nation's economy than the PPP method. The international purchasing power of a currency—what it will buy in other countries—is determined by foreign exchange markets, not by PPP. For example, whatever a yen might buy at home, what it can buy overseas determines the international importance of the yen. See Seita, *supra* note 79, at 482-84 & nn.43-45.

Also, there is some latitude in determining the financial strength of a nation's corporations. Table 1 uses a ranking based on corporate revenues. Other rankings are possible, such as that based on apparent market value. See *The Business Week Global 1000*, *Bus. Wk.*, July 8, 1996, at 46, 49 (ranking the world's 1000 most valuable corporations by their market value on May 31, 1996, using May month-end exchange rates for foreign corporations). Under a market value ranking, the 1000 most valuable corporations would be distributed as follows:

<i>No. of 1000 MOST VALUABLE CORPORATIONS (1996)</i>	
United States	422
Japan	227
European Union	263
Other	62
	974

See *id.* at 49-80. Under this method, the United States has by far the single largest number of companies. It is a method, however, that probably has more variability than a ranking based on revenues. For example, while Japanese companies accounted for 48% of the \$5.7 trillion market value of the global 1000 in 1988, they had dropped to just 23% of \$11.2 trillion in 1996; U.S. companies went from 30% in 1988 to 46% in 1996. See William C. Symonds et al., *The Globetrotters Take Over: Worldwide Champions Outpace Domestic Competitors*, *Bus. Wk.*, July 8, 1996, at 46. Regardless of the method, however, the dominance of the West is clear.

to shape a better world if they so choose. There is also the reality that although it is the world's richest country and only superpower, the United States cannot manage or finance globalization on its own. Because the three are so important economically, it would be a mistake, as some have gratuitously suggested, for the United States and the European Union to unite to isolate Japan politically and economically.¹⁴²

When necessary, the West should also use its economic power to flesh out the details of market economies, democratic governments, and human rights in the globalization context. While the devil may lie in details, some

142. For examples of the literature favoring the isolation of Japan, see Charles A. Kupchan, *Reviving the West*, 75 FOREIGN AFF., May-June 1996, at 92 (urging the creation of an Atlantic Union, an economic alliance between Western Europe and North America); Lind, *supra* note 25 (urging creation of a Euramerican bloc, consisting of the United States, Canada, and the European Union, that would "present a united front toward Japan in trade matters and toward China with respect to security matters," *id.* at 5).

A policy of isolating Japan and treating it as a potential enemy would cause problems dwarfing current difficulties and lower Japan's incentive to make international contributions. See generally Seita, *supra* note 79 (discussing the frictions between the United States and Japan); Seita, *supra* note 25 (discussing the benefits of fully utilizing Japan's economic and human resources). It creates conflict where none presently exists and would be reminiscent of past colonial days when white, Christian nations dominated or subjugated most of the non-Christian world. Alternatively, it has been argued that a "mixed-race or nonwhite majority in the United States . . . will emerge a few generations hence . . . [and] ensure that a Euramerican bloc, far from being a 'white' alliance, would be the most racially diverse bloc on the planet." Lind, *supra*, at 5.

And yet, today, the Euramerica bloc is predominately white, and political power in the United States is exercised overwhelmingly by its white majority. Currently, there is one senator of Black heritage, two of Asian or Pacific Islander heritage, and none of Hispanic heritage. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1996, at 279 tbl. 442 (116th ed.) (as of January 3, 1995); Elizabeth A. Palmer, *Women, Blacks Hold Steady*, DAYTON DAILY NEWS, Nov. 8, 1996, at 15A, available in LEXIS, News Library, Curnws File (reporting that the November 1996 elections produced no change in the number of minorities in the Senate). The two senators of Asian or Pacific Islander heritage are both from Hawaii. See Ed Henry, *Seldom-Heard Akaka Takes the Floor to Assail the Treatment of Asians*, ROLL CALL, Mar. 24, 1997, available in LEXIS, News Library, Curnws File (Senator Daniel Akaka and Senator Daniel Inouye). In addition, Senator Ben Campbell of Colorado states that he is partially of Northern Cheyenne Native American descent. See Steve Jackson, *Athlete, Artist, Indian Chief: From Dark Horse to Nighthorse, It's Been One Hell of a Ride for Ben Campbell*, DENVER WESTWORD, Sept. 12, 1996 (Features Section), available in LEXIS, News Library, Curnws File. Today, there are Asian-American governors in the states of Washington and Hawaii, but there are no Black governors. See *Turnout Tuesday Hit a Record Low of 49 Percent of Eligible Voters*, AGENCE FRANCE PRESSE, Nov. 6, 1996, available in LEXIS, News Library, Curnws File (Washington state elected the first Asian-American governor outside of Hawaii); *Whitman Stands Out Among Her Peers: The Only Woman at Governors Meeting*, BERGEN RECORD, Aug. 1, 1995, at A9, available in LEXIS, News Library, Curnws File (Asian-American governor in Hawaii but no Black governor in any state); Louis Sahagun, *American Album: Hawaii Governor Fights an Economic Undertow*, L.A. TIMES, Dec. 21, 1995, at A5 (Governor Ben Cayetano of Hawaii, a Filipino American, eying a re-election bid in 1998). There is also only one nonwhite justice out of nine on the United States Supreme Court. Hawaii is a state where the nonwhite majority has arrived, a factor which no doubt has contributed towards its selection of nonwhites as well as whites to Hawaii's highest political and judicial offices. See Nancy Yoshihara, *Benjamin Cayetano: On the Success of Asian American Politicians—or Lack Thereof*, L.A. TIMES, Sept. 17, 1995, at M3.

refinement of principles may be required to create a "level playing field" for business competition and to balance competing values. That may open up the charge that the views of the West are being imposed upon, and not necessarily to the benefit of, the rest of the world.

While such an allegation would have substantial historical validity, it could be deflected by the promulgation of rules based on those internal practices of the industrialized democracies. These rules would be a modification of the "Golden Rule." Nations should do unto others what the nations of the West do unto themselves. That undeniably involves the value judgment that the industrialized democracies are better models for economic and political development. It is a value judgement, however, that seems to be shared by most human beings: the flow of immigration between the West and the rest of the world is decidedly one-sided in the former's favor.¹⁴³

143. For a discussion of migration periods and patterns, see BARNET & CAVANAGH, *supra* note 130, at 296-309. Immigration to the major industrialized nations from each other is relatively low. For example, in 1993, the number of immigrants to the United States from the other G-7 (the largest industrialized) nations was dwarfed by the number from developing nations and former communist nations:

Number of Immigrants to United States in 1993		
G-7 COUNTRIES		
	Canada	17,200
	France	2,900
	Germany	7,300
	Italy	2,500
	Japan	6,900
	United Kingdom	18,800
SELECTED COUNTRIES		
	China	65,600
	Dominican Republic	45,400
	El Salvador	26,800
	India	40,100
	Jamaica	17,200
	Korea	18,000
	Mexico	126,600
	Poland	27,800
	Former Soviet Union	58,600
	Vietnam	59,600

See 1995 STATISTICAL ABSTRACT, *supra* note 78, at 11 tbl. 8. While immigration occurs primarily for economic reasons, this data suggests that democracy and human rights also positively influence immigration.

B. Adhering to the Rule of Law

The process of converging values through the activities of globalization is facilitated by procedural mechanisms and substantive principles. Without them, globalization might eventually consist solely of the intermingling of peoples and the economic interdependence of countries without the sharing of values. Convergence is reinforced by procedural mechanisms that implement substantive principles which are derived from and flesh out the meaning of convergent values. One mechanism might consist of unilateral action in which one nation, particularly the United States, imposes its views of appropriate economic behavior on another country.¹⁴⁴ While an economically dominant nation may get its way, the subordinate country may not accept the substantive principle used to justify the unilateral action. The latter country may simply see the "principle" of "might makes right."

Another mechanism exists in multilateral agreements in which nations collectively determine the international legal rights of individual nations.¹⁴⁵ Multilateral agreements often contain dispute settlement procedures that attempt, in theory, to administer impartially the rule of law in judging national, firm, or individual conduct.¹⁴⁶ The "law" would be made up of substantive principles that reflect or accommodate clashes among convergent values. The use of the rule of law is today one of the most effective means to reinforce common values, especially in the areas connected with international trade. The rule of law also avoids the antagonism generated when one nation imposes its views on other nations.

In a broad sense, the rule of law requires respect for substantive principle, not merely power or chance, to settle disputes.¹⁴⁷ Implicit, too, in the rule of law is that disputes are peacefully settled whenever possible,

144. Unilateral attempts at fostering common values have been successful in the aftermath of war when a victorious nation occupied a vanquished one. For example, according to one commentator, the American-catalyzed creation of a permanent and peaceful democracy in Japan "is one of history's greatest and most constructive feats of social engineering." MURAVCHIK, *supra* note 103, at 107. For less dramatic and effective unilateral actions by the United States, see *infra* note 149.

145. See *supra* notes 25 (European Union), 38 (Canada-United States Free Trade Agreement, North American Free Trade Agreement).

146. The dispute settlement procedure of the World Trade Organization applies to the agreement establishing the WTO as well as the numerous WTO agreements. See *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 33 I.L.M. 112 (1994) [hereinafter *Dispute Settlement Understanding*]. Many bilateral agreements do not have dispute resolution procedures. See, e.g., Seita, *supra* note 79, at 513-15 & nn.140-44 (listing 21 bilateral treaties between Japan and the United States and the scarcity of dispute resolution procedures in the treaties).

147. Cf. GRANT GILMORE, *THE AGES OF AMERICAN LAW* 105 (1977) (the rule of law "emphasizes principally the importance of procedural due process, the nice observance of established rules, the right of the accused to confront his accuser in open court before he is sent to jail"). For purposes of this Article, the rule of law is briefly discussed only to show its role in facilitating the convergence of values. What is law, what is international law, and what is the rule of law are questions that compel complicated and lengthy answers. See generally H.L.A. HART, *THE CONCEPT OF LAW* (1961); LON L. FULLER, *ANATOMY OF THE LAW* (1968); HANS KELSEN, *THE PURE THEORY OF LAW* (Max Knight

and that negotiations and economic sanctions are utilized before military operations are commenced. In the globalization context, acceptance of the rule of law means that most nations will not only acknowledge the applicability of substantive principles to a transnational problem but also accept a solution recommended by an impartial international body.¹⁴⁸ The absence of either condition precludes the existence of a rule of law, and also militates against the development of convergent values.

First, without the recognition that there are substantive principles which are relevant to analyzing a conflict, there is no rule of law because there are no laws to apply. Without substantive principles, convergent values are less likely to emerge. Second, a nation should respect the decisions of a mediating or adjudicatory international organization. If a nation chooses to settle a dispute unilaterally, there is no rule of law since any principle, even if meritorious, would be enforced unequally. The unilateral actor would be a law enforcer against other nations only, and presumably never the object of enforcement.¹⁴⁹ Such discriminatory enforcement diminishes the validity of substantive principles because they do not apply to all nations, and impedes the acceptance of their values as convergent values.

At the same time, the international tribunal or body that implements the rule of law must be impartial and competent, for nations are more likely to abide by the rule of law when they believe that it can be administered fairly and wisely.¹⁵⁰ Further, before abiding by the rule of law in a

trans., 1967); INTERNATIONAL LAW ANTHOLOGY (Anthony D'Amato ed., 1994); HENRY J. STEINER ET AL., TRANSNATIONAL LEGAL PROBLEMS: MATERIALS AND TEXT (4th ed. 1994).

148. One possible embodiment of the rule of law would be the WTO dispute settlement procedures. See, e.g., Dispute Settlement Understanding art. 22, *supra* note 146; *The WTO Dispute Settlement Mechanism*, GENERAL AGREEMENT ON TARIFFS AND TRADE, GATT FOCUS, May 1994, at 12-14.

149. Unilateral measures by one country, even if ostensibly taken to protect desirable principles, may engender ill will among other countries affected by those measures. These countries may react by questioning the justifications of the unilateral actor. Eventually, the validity of the principles may come into question if they are applied only to protect one country's interests. For example, the United States frequently takes a unilateral approach to solving economic problems with its trading partners. See, e.g., Trade Act of 1974, Pub. L. No. 93-618, § 301, 88 Stat. 1978 (1974) (codified as amended at 19 U.S.C. § 2411 (1988)) (authorizing the United States to take unilateral action against unfair, even though not internationally unlawful, economic practices of foreign countries). This has not generated feelings of goodwill among U.S. allies. See, e.g., EUROPEAN COMMISSION, REPORT ON UNITED STATES BARRIERS TO TRADE AND INVESTMENT 1996, at 9-10 (criticizing section 301); Hiroshi Nakamae, *U.S. Worst Violator of Trade Rules*, MITI Says, NIKKEI WKLY., June 6, 1994, at 2 (in its 1994 Report on Unfair Trade Policies by Major Trading Partners, the Japanese Ministry of International Trade and Industry accuses the United States of pursuing unfair trade practices such as section 301).

150. A nation may reject the jurisdiction of an international tribunal to adjudicate a dispute it has with another country. The rejection may be motivated by a perception that the tribunal is biased, or that the tribunal may judge fairly but contrary to the interests of the rejecting nation. It may be difficult to determine the motivation for such a rejection. For example, in 1986 the International Court of Justice held that the United States violated international law (customary international law as well as treaty obligations) by mining Nicaraguan ports, and stated that the United States and Nicaragua should hold settlement talks to determine the amount of appropriate reparations. See

particular area, nations usually must conclude that the substantive principles of law are generally acceptable to them. Of course, some principles may be imprecise in order to accommodate different national views about how detailed these principles should be. Because nations may have varying opinions on the desired details of substantive principles and may make political compromises to arrive at their language, these principles may be vague or incomplete.¹⁵¹ The tribunal or other body that interprets these principles may have considerable leeway to refine, embellish, or expand the meaning of the substantive law.

While an immediate benefit of the rule of law is that current disputes are resolved, a long-term benefit is that the utilization of reason and rules are substituted for power or force. If powerful and weak nations alike will follow the rule of law, then the law, not military or economic power, will determine rights and resolve conflicts. Recognition of the rule of law also means that the substantive principles used to resolve disputes are automatically enhanced since their selection legitimizes them (they are the "law") and reinforces the values that they represent. While these principles are likely to be popular and respected in order to have been chosen as the substantive bases for conflict resolution, their selection is likely to strengthen and broaden their appeal, enhancing the durability of their val-

Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 4 (June 27). The United States, however, did not comply with the court's opinion, even though the United Nations Charter compels U.N. members to comply with decisions of the International Court of Justice in cases in which the member is a party. See U.N. CHARTER art. 94, para. 1. Prior to the date of the decision, the United States notified the United Nations that it would end its thirty-eight year acceptance of the "compulsory jurisdiction" of the International Court of Justice. Compare United States Department of State Letter and Statement Concerning Termination of Acceptance of I.C.J. Compulsory Jurisdiction (Oct. 7, 1985), 24 I.L.M. 1742, with United States Declaration of Aug. 14, 1946, 61 Stat. 1218, T.I.A.S. No.1598, 1 U.N.T.S. 9 (compulsory jurisdiction effective six months after deposit of the declaration with the United Nations). Under the Statute of the International Court of Justice, a state could recognize the compulsory jurisdiction of the court over cases involving that state, thereby avoiding the need for a special agreement to permit the court to hear each individual case. See STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, para. 2, June 26, 1945, 59 Stat. 1055, 1060 (1945). The United States withdrew its acceptance of compulsory jurisdiction in order to avoid having the court decide Nicaragua's case against the United States. The court, however, held that the attempt to withdraw jurisdiction was ineffective. See 1986 I.C.J. at 7. See generally THE UNITED STATES AND THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE (Anthony C. Arend ed. 1986).

151. For example, the term "subsidy" was never defined under GATT, although subsidies were a long recognized problem in international trade. See JACKSON, *supra* note 24, at 382-83; JACKSON, *supra* note 36, at 255; GATT, *supra* note 29, arts. VI, XVI. Further, the United States had grandfather rights permitting it to levy countervailing duties upon subsidized goods without finding material injury to domestic industry, otherwise a requirement under GATT art. VI, para. 6(a). See JACKSON, *supra* note 24, at 258. In another example, the United Nations defined the international crime of genocide to exclude acts against economic or political classes. Genocide covers acts only against a "national, ethnical, racial or religious group." Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 32, art. 2. The Convention has never been applied. See James Podgers, *The World Cries Out for Justice*, A.B.A. J., Apr. 1996, at 52, 54 (discussing the international criminal tribunals for Rwanda and the former Yugoslavia).

ues. Thus, the choice of interpreters and the selection of substantive principles are important decisions.

At times, the viability of the rule of law may require enforcement to ensure adherence to the rule of law. In economic disputes, there could be collectively authorized sanctions.¹⁵² When there are acts of aggression over territorial disputes and economic sanctions have failed to prevent a breach of the peace, the use of military force could be authorized. For example, in 1990, Iraq invaded Kuwait over alleged disputed property rights and territory; in response, the United Nations authorized the use of force by the United States and its allies against the Iraq in the 1991 Gulf War.¹⁵³

For countries like North Korea and Iraq that are not democracies and do not protect human rights, the industrialized democracies should present a unified front in encouraging change and discouraging political oppression and the use of force. While the ad hoc international criminal tribunals for Bosnia and Rwanda are important, the establishment of a permanent international criminal court will better solidify the idea that war crimes must be condemned and adjudicated by the international community.¹⁵⁴ Although it is late, there ought to be a tribunal for Cambodia. There is still no justice for the atrocities against the Cambodian people that occurred in the mid to late 1970s, in what many have called as the equivalent of genocide.¹⁵⁵ The establishment of a standing emergency peacekeeping force might prevent the future reoccurrence of atrocities that

152. See, e.g., Dispute Settlement Understanding, *supra* note 146, art. 22.

153. The United Nations has rarely sanctioned the collective use of force under Chapter VII of the U.N. Charter. The defense of South Korea in 1950 against an invasion by North Korea, the humanitarian relief operations in Somalia in 1992, and the invasion of Haiti in 1994 are the only other examples. See AREND & BECK, *supra* note 65, at 51-56; *Multinational Force Dispatched to Pave Way for Aristide's Return*, U.N. CHRON., Dec. 1994, at 20.

154. Established by the United Nations, these ad hoc tribunals may presage the establishment of a permanent international criminal court. See Podgers, *supra* note 151, at 52. See generally LAWYERS COMMITTEE FOR HUMAN RIGHTS, IN THE NATIONAL INTEREST: 1996 QUADRENNIAL REPORT ON HUMAN RIGHTS AND U.S. FOREIGN POLICY 1-10 (1996); Paul D. Marquardt, *Law Without Borders: The Constitutionality of an International Criminal Court*, 33 COLUM. J. TRANSNAT'L L. 73, 96-101, 136-47 (1995); Leila S. Wexler, *The Proposed Permanent International Criminal Court: An Appraisal*, 29 CORNELL INT'L L.J. 665 (1996).

155. See, e.g., Payam Akhavan, *Enforcement of the Genocide Convention: A Challenge to Civilization*, 8 HARV. HUM. RTS. J. 229, 230 n.5 (1995); Barbara Crossette, *Waiting for Justice in Cambodia*, N.Y. TIMES, Feb. 25, 1996, § 4 at 5. In the late 1970s, Pol Pot's Khmer Rouge was responsible for massive numbers of killings and deaths among the Cambodian people. See, e.g., CAMBODIA 1975-1978: RENDEZVOUS WITH DEATH (Karl D. Jackson ed., 1989) (essays discussing the Khmer Rouge's regime in Cambodia). But see DAVID P. CHANDLER, *THE TRAGEDY OF CAMBODIAN HISTORY: POLITICS, WAR, AND REVOLUTION SINCE 1945*, at 236-72 (1991). The number of people who died under the Khmer Rouge government was enormous:

More than one million people are dead to begin with. Included are not only the victims of Pol Pot's killing fields, where members of the former ruling elite were cut down, but also, hundreds of thousands of men, women, and children who died from disease and starvation directly resulting from the regime's misguided and draconian policies.

took place in Cambodia, Rwanda, Burundi, Bosnia, and elsewhere.¹⁵⁶

Also, although there has been a general convergence of economic and political values, the application of these values to specific situations is, in most cases, yet to be determined.¹⁵⁷ When it becomes important to specify how these values will apply to particular cases, the use of a multilateral forum will help to win international acceptance of the principles selected to

Out of 7.3 million Cambodians said to be alive on April 17, 1975, less than 6 million remained to greet the Vietnamese occupiers in the waning days of 1978. Although precise figures may never be known, present calculations suggest that in the Cambodian revolution a greater proportion of the population perished than in any other revolution during the twentieth century.

Karl D. Jackson, *Introduction: The Khmer Rouge in Context*, in *CAMBODIA 1975-1978: RENDEZVOUS WITH DEATH*, *supra*, at 3 (footnote omitted); CHANDLER *supra*, at 1.

156. The United Nations might establish a standing emergency force to prevent armed conflicts (in addition to rescuing victims of natural disasters). See generally *Permanent Peacekeeping: The Theoretical & Practical Feasibility of a United Nations Force*, 28 CORNELL INT'L L.J. 619, 645 (1995) (symposium on *Peacekeeping, Peacemaking, & Peacebuilding: The Role of the United Nations in Global Conflict*). While the U.N. emergency force would not be able to intervene in matters involving major power interests, it might be able to move quickly to prevent reoccurrences of tragedies such as those in Cambodia, Rwanda, Burundi, and Bosnia, where the international community failed to prevent massive numbers of deaths. At some point, internal conflicts become so horrendous that outside nations ought to intervene:

[A]cts of genocide cannot be tolerated by the community of nations. When people are being exterminated because of their ethnicity, race, or social class, outside powers have not only the right but the compulsion to intervene. Ideally they should do this in concert, whether through the United Nations or simply by joint agreement. It was shameful that the United States did not intervene in Rwanda in 1994 to stop the slaughter of half a million Tutsi by the rival Hutu tribe. France alone, to its credit, sent its troops to end the bloodshed. It was no less shameful that in the 1970s not a single Western nation moved against the Khmer Rouge that killed an estimated two million of their own people in their drive to "purify" Cambodia for communism. Finally, it was neighboring Vietnam that entered the killing fields to stop the genocide.

RONALD STEEL, *TEMPTATIONS OF A SUPERPOWER* 130 (1995); see also *NEW REPUBLIC*, Aug. 7, 1995, at 7, 10-21 (various articles on *Accomplices to Genocide: The Consequences of Appeasement in Bosnia*). America is often blamed for a burden that it never accepted—the job of policing the world. It might be better to have the United Nations policing the world in conflicts outside of major-power interests. The Security Council of the United Nations has the right to intervene, even in purely national conflicts, to prevent breaches of the peace or acts of aggression that involve massive human rights abuses (e.g., genocide). See U.N. CHARTER arts. 39-51. See generally Fernando R. Tesón, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323, 336-42, 369-71 (1996) (discussing Security Council authorized U.N. military intervention in countries to prevent massive human rights abuses). There are still conflicts—particularly in Africa—that can potentially kill, or have killed, tens of thousands, if not hundreds of thousands of human beings. See, e.g., Andrew Purvis, *A Contagion of Genocide: The Civil Wars of Rwanda and Burundi Spread to Eastern Zaïre, in a Bloody Conflict the World Ignores*, *TIME*, July 8, 1996, at 38.

157. For instance, should market economies be allowed to countenance groups of companies that tend to do business more among themselves than with outsiders? See Seita, *supra* note 107, at 217-23 & nn.116-48 (discussing Japanese *keiretsu*). Should democratic governments forbid their citizens to exacerbate health and social problems in other countries? See, e.g., *infra* notes 167 (exports of tobacco), 174 (child prostitution). Does the promotion of human rights require the industrialized democracies to accelerate and widen their efforts to relieve hunger, disease, and suffering abroad? See, e.g., *supra* notes 113-117 and accompanying text.

implement these values. The process of filling out the details of these values, that is, determining their principles, is facilitated because there is agreement over basic values. Once a broad framework has been agreed upon, nations can resolve particular difficulties as necessary.¹⁵⁸

The most fruitful area of further refinement of values is in the economic realm. There is already a process of greater harmonization of rules and practices that affect trade, investment, and intellectual property.¹⁵⁹ Establishing ground rules for international competition will eliminate the perceived unfair advantages of some nations. At the same time, there should be agreement on the proper conduct of governments, businesses, and individuals in transnational activities. Determining proper behavior will create a level playing field for international competition and will avoid actual or perceived disadvantages for some nations.¹⁶⁰

C. Setting Global Standards and Balancing Values

A major issue raised by globalization is the harmonization of business practices and the accommodation of competing values. Without common rules to govern business behavior, companies from one country might compete at a disadvantage against those of another because each country could have dissimilar rules for acceptable corporate behavior in international business. Setting up the "rules of the game" in international business is important not just to promote economic competition under fair conditions but also to determine the proper balancing of competing values.

158. For example, one value of democracy may be "one person, one vote," giving equal voting weight to each citizen. This principle is not always recognized by democracies. Some variation from the exact equating of voting weight might be expected because it may be difficult in practice to make the number of voters eligible to elect a representative precisely the same. In some cases, federalism concerns might lead to large differences in voting weight. For example, two senators are elected from each state in America. See U.S. CONST. art. I, § 3, cl. 1, *amended by* U.S. CONST. amend. XVII, § 1. Thus the senators from California, the largest state by population, represent over 60 times the number of people as the senators from Wyoming, the least populated state. See 1995 STATISTICAL ABSTRACT, *supra* note 78, at 28-29 tbls. 27-28 (in 1990, at the time of the most recent census, California and Wyoming had populations of 29.8 million and 454,000, respectively).

159. The European Union is the outstanding example at an international regional level. See generally KLAUS-DIETER BORCHARDT, EUROPEAN INTEGRATION: THE ORIGINS AND GROWTH OF THE EUROPEAN UNION 31-58 (1995). On a global scale, the WTO is potentially of enormous importance in establishing and refining global trade rules. See generally TRANSMISSION OF LEGISLATION AND RELATED DOCUMENTS TO IMPLEMENT AGREEMENTS RESULTING FROM GATT-URUGUAY ROUND—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, H.R. Doc. No. 103-316 (1994).

160. See *infra* notes 161-86 and accompanying text. Some of the details of convergent values can be determined by dispute settlement bodies that try to flesh out the substantive principles governing disputes. Other details can be written into the substantive principles themselves. Through either process, the substantive principles become more defined, and refine the content of convergent values if accepted by the international community. As much as possible, the industrialized democracies should ensure that either process successfully works. The dispute settlement body should be fair, competent, and respected. If written in detailed fashion, the substantive principles should represent rules of behavior followed internally within the industrialized democracies, modified to accommodate international conditions.

As with other policies, the single-minded pursuit of free markets, democracy, or human rights can be destructive when carried to an extreme. Any single principle, right, or value has its limits and becomes constrained before taken too far because it will invariably clash with other principles, rights, or values.¹⁶¹ Like the conflict between liberty and order, or freedom of the press and a defendant's right to a fair trial, there can be conflicts among the activities of the free market, a democratic government, and protection of human rights. While frictions may always be present, they need to be managed by a balancing of values, to determine how far a particular value should be pursued, to prevent one value from unduly dominating the others.

In particular, the dynamism of economic globalization has produced a number of serious, and often novel problems that involve the clashing of economic objectives with democratic values, human rights, and environmental goals.¹⁶² To be solved effectively, these problems require internationally agreed upon rules of behavior which accommodate competing values. For example, an unfettered capitalism can produce a "race to the bottom" in economic behavior, producing deplorable political and environmental effects. Also, nations might engage in economic activities that have harmful transnational environmental effects—"externalities" or "spillover effects."¹⁶³

The industrialized democracies should therefore have two main, interconnected, priorities. First, they should "harmonize" their economic practices that have a significant international effect. Second, they must harmonize practices in a way that optimally accommodates other competing values when conflicts arise. Some judgment about the desirable balance of competing values is unavoidable. Presumably, it would be undesirable to have a harmonized rule that all western corporations may engage in bribery when doing business overseas because that rule would weaken the integrity of political institutions in foreign, primarily developing nations.

161. Cf. *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 355 (1908) (Holmes, J.) ("All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which becomes strong enough to hold their own when a certain point is reached.")

162. Economic globalization has been blamed for "generating new and fundamental inequities as regions and nations compete for corporate investment, [and for] lowering wage, environmental and human rights standards." *Incorporating the World*, THE NATION, July 15-22, 1996, at 3.

163. "Externalities" or "spillover effects" are the costs and benefits of market commodities not borne by the parties producing or consuming those commodities. Externalities preclude a competitive market because such a market is supposed to take all relevant costs and benefits into account. When some such costs and benefits are excluded from the calculation of market prices, too much or too little of the market commodity may be produced and sold. See Seita, *supra* note 50, at 1042 & sources cited n.175. By analogy, "externalities" in the environmental context are the costs or benefits of domestic activities that are not suffered or enjoyed by domestic residents.

Harmonization has already occurred to a degree. Some important examples of ground rules are found in various GATT and WTO agreements, such as those which prohibit dumped and subsidized goods in international trade.¹⁶⁴ Another is the agreement reached by the industrialized democracies on capital adequacy requirements for international banks.¹⁶⁵ There could be global standards on industrial espionage, a problem that directly afflicts western countries rather than developing countries,¹⁶⁶ and the wisdom of harmful exports such as tobacco products.¹⁶⁷

The area of foreign corrupt practices is another that could be harmonized. There is now no rule that prevents western multinational corporations from committing corrupt practices overseas. Companies from an industrialized country with lax laws on foreign corrupt practices can steal business away from companies headquartered in a country with stringent laws by offering bribes or engaging in other corrupt practices. Without an agreement, western firms from different countries would not compete on equal terms for business contracts in the developing world.

The industrialized democracies are now in the process of reaching an agreement to prohibit bribes and other corrupt business practices in doing business abroad. All the industrialized countries currently make it illegal for companies to engage in corrupt practices at home.¹⁶⁸ The proposed

164. See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29 1997); Agreement on Subsidies and Countervailing Measures, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade_law/documents/freetrade> (visited Mar. 29 1997).

165. See HERRING & LITAN, *supra* note 39, at 107-113. Known as the Basle (or Basel) Accord, this was an agreement that the U.S. government especially sought because it believed that American banks were at a competitive disadvantage compared with the banks of other countries, particularly those of Japan, which had low bank capital requirements. See generally SCOTT & WELLONS, *supra* note 39, at 232-92.

166. See, e.g., Paul Blustein, *France, Israel Alleged to Spy on U.S. Firms*, WASH. POST, Aug. 16, 1996, at A28 (The U.S. Central Intelligence Agency identified France, Israel, China, Russia, Iran, and Cuba as the countries that extensively engaged in "economic espionage" against the United States; the CIA also stated that, contrary to popular belief, Japan's efforts to collect economic data "are mostly legal and involve seeking openly available material or hiring well-placed consultants.").

167. Tobacco exports, cigarette industry advertising, and cigarette industry funding of academic research are economically significant in a number of countries. See, e.g., 1995 STATISTICAL ABSTRACT, *supra* note 78, at 823 tbl. 1342 (describing how the United States exported \$4.965 billion of cigarettes and \$1.303 billion of unmanufactured tobacco in 1994); Kenneth E. Warner et al., *Cigarette Advertising and Magazine Coverage of the Hazards of Smoking—a Statistical Analysis*, NEW ENG. J. MED., Jan. 30, 1992, at 305 (finding correlation between cigarette advertising in magazines and reduced magazine coverage of the hazards of smoking); Jon Cohen, *Institutes Find It Hard to Kick the Tobacco Funding Habit*, SCI., Apr. 26, 1996, at 490. Whether the source of tobacco is imported or domestic, tobacco consumption is a worldwide problem. See, e.g., Carl E. Bartecchi et al., *The Global Tobacco Epidemic*, SCI. AM., May 1995, at 44; Richard Peto et al., *Tobacco—the Growing Epidemic in China*, J. AM. MED. ASS'N, June 5, 1996, at 1683.

168. While all member nations of the OECD have criminalized the bribery of, and the acceptance of bribes by, public officials, few members have laws that make the bribing

agreement will simply extend that prohibition to activities abroad, and possibly lead to higher ethical standards in developing countries where corruption is endemic. This agreement would be enforceable against the companies most likely to violate the agreement because the great majority of banks and corporations engaged in international business transactions come from the industrialized democracies.¹⁶⁹

Setting up the "rules of the game" is important not just to promote competition under fair conditions. Common ground rules also balance competing values. In particular, they avoid an injurious race to the bottom in business practices that elevate economic objectives over all others. There are business activities that need global standards because the practices or the secondary effects of economic globalization can directly conflict with the protection of human rights.¹⁷⁰ For example, there could be restrictions on investments in countries that violate human rights,¹⁷¹ standards on employment conditions by foreign investors in developing nations, and curbs on the involvement of western tourists in the sex industries of developing nations. Global standards can balance economic globalization with the protection of human rights.

Only an international agreement can effectively address the issue of fair labor conditions in facilities operated or utilized by western corporations in developing countries. Otherwise, there might be a race to obtain the lowest possible costs by western corporations, and developing nations might, for economic gain, condone exploitative activities by foreigners. These companies could profit from cheap labor in developing countries, contributing to or preventing improvement in deplorable labor practices, such as thirteen and fourteen-year-old children working fifteen to twenty-

of foreign officials a criminal offense. See *Bribes to Foreign Officials: Tax Deductibility to End*, OECD LETTER, June 1996, at 3 (Org. Econ. Co-op. & Dev.). Some progress, however, is being made. For example, the United States has tried to prohibit the use of bribes by U.S. and other western multinational corporations in less developed nations. See, e.g., Foreign Corrupt Practices Act, Pub. L. No. 95-213, 91 Stat. 1494 (1977) (amended 1988); Marlise Simons, *U.S. Enlists Rich Nations in Move to End Business Bribes*, N.Y. TIMES, Apr. 12, 1996, at A10. Also, the members of the OECD have agreed that it is their intention to disallow the tax deductibility of bribes paid to foreign officials. See *id.* See generally Gregory L. Miles, *Crime, Corruption and Multinational Business*, INT'L BUS., JULY 1995, at 34 (discussing the cost of crime and corruption to U.S. multinational corporations, and estimating minimum annual losses of \$260 billion in U.S. markets and \$105 to \$135 billion in foreign markets due to bribery and corruption, business property theft by non-employees, employee theft of property, and intellectual property theft).

169. If not from the 23 industrialized democracies, such companies are probably from the other member nations of the OECD (e.g., South Korea, which has large multinational companies doing business around the world). See generally *supra* notes 25-26 (discussing the industrialized democracies and member nations of the OECD).

170. See, e.g., KORTEN, *supra* note 130, at 229-37 (citing problems such as the "hiring of child labor, cheating workers on overtime pay, imposing merciless quotas, and operating unsafe facilities," *id.* at 229).

171. Unilateral attempts at stopping foreign investment in countries like Myanmar and Cuba might fail. See, e.g., Adam Zagorin, *Punishing Cuba's Partners*, TIME, June 24, 1996, at 54 (American allies strongly critical of a U.S. law punishing foreign firms that use confiscated American assets in Cuba).

hour workdays under armed guard.¹⁷²

Obviously, however, foreign investment can provide sorely needed jobs, for children as well as adults, in developing nations.¹⁷³ The condition of child labor is a complex problem involving the shortages of alternatives for children in developing countries. These nations may lack the educational infrastructure to keep all young teenagers in primary or middle schools, and national governments may not fully realize that educating children, rather than making them work, makes more sense for economic growth in the long run.

There is also the growing problem of child prostitution, mostly in economically poorer countries but also in industrialized countries, with increasing transnational traffic.¹⁷⁴ Teenage children have become trapped in prostitution, exploited by pimps who extract most of the children's

172. See, e.g., Eyal Press, *Kathie Lee's Slip*, NATION, June 17, 1996, at 6 (asserting example of children working 15-hour shifts under armed guard); Stephanie Strom, *A Sweetheart Becomes Suspect: Looking Behind Those Kathie Lee Labels*, N.Y. TIMES, June 27, 1996, at D1 (asserting that these same children work 20 hours each day, with no mention of armed guards).

173. At the same time, the desperation of developing countries and their workers should not allow western companies to use their superior bargaining position to extract unconscionable concessions. A basic human right should be the right to work for an "appropriate" wage under "decent" work conditions. Without global standards, there might be a race to the bottom in providing the lowest wages and the worst working conditions. See David Holmstrom, *One Man's Fight Against Sweatshops*, CHRIST. SCI. MONITOR, July 3, 1996, at 12. Western investors might give their domestic employees barely minimal advantages over prevailing miserable foreign wages and employment conditions. The problem of child labor in developing countries, however, is not purely one of western creation. The use of child labor is rampant throughout the developing world. See, e.g., Timothy P. McElduff, Jr. & Jon Veiga, *The Child Labor Deterrence Act of 1995: A Choice Between Hegemony and Hypocrisy*, 11 ST. JOHN'S J. LEGAL COMMENT., 581, 584-88 (1996); Timothy A. Glut, *Changing the Approach to Ending Child Labor: An International Solution to an International Problem*, 28 VAND. J. TRANSNAT'L L. 1203, 1205-10 (1995). See generally PRESS RELEASES INDEX (visited Apr. 24, 1997) <<http://www.ilo.org/public/english/235press/pr/index.htm>> (containing press releases on the problem of child labor, from the website of the International Labor Organization, a specialized agency of the United Nations). If the industrialized nations used their economic power to force developing nations to prohibit the use of child labor, tens of millions of poor children would be out of work and possibly forced into even more dangerous occupations. See Gordon Fairclough, *Child Labour: It Isn't Black and White*, FAR EAST. ECON. REV., Mar. 7, 1996, at 54. Also, western corporations may show more social responsibility than they are commonly given credit for. Some, perhaps most, western multinationals apparently carry out policies in developing countries that would meet with approval in the industrialized countries. See, e.g., Matt Moffett, *A Racial "Democracy" Begins Painful Debate on Affirmative Action: Blacks Make up 45% of Brazil But Stay Marginalized*, WALL ST. J., Aug. 6, 1996, at A1 (quoting a Brazilian Justice Ministry official as saying that "The companies that discriminate the most in Brazil [against blacks] are Brazilian companies. The best are multinationals, and when multinationals do discriminate it's usually because the directors are Brazilian.").

174. See, e.g., *The Child Sex Trade: Battling a Scourge (Nine-Part Series)*, CHRIST. SCI. MONITOR, Aug. 22-Sept. 16, 1996, at 1; Nicholas D. Kristof, *Asian Childhoods Sacrificed to Prosperity's Lust*, N.Y. TIMES, Apr. 14, 1996, § 1 at 1 (reporting on tens of thousands of children who are working as enslaved prostitutes in Cambodia, India, China, Thailand, the Philippines, Taiwan, and other countries); Margaret A. Healy, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT'L L.J. 1852 (1995).

"earnings" and use the children as virtual slaves. While the growth of child prostitution in developing countries has been fueled to a certain extent by sex tourists from the industrialized world, most exploiters of children are domestic ones.¹⁷⁵ "Employment" for children and local community standards of morality should never justify the use of child prostitutes to satisfy local and western lust. The trade in child sex is just part of the general problem of prostitution present in every country but especially widespread in the developing world.

The sex "market" in the poorer countries attracts male "buyers" from the industrialized countries—Europeans, Americans, Japanese, Australians, Canadians, New Zealanders, and others—who are able to pay higher prices than local customers and thereby increase the supply of prostitutes.¹⁷⁶ Yet, like child prostitution, adult prostitution in developing nations is not a problem caused by the industrialized countries; domestic patrons outnumber foreign ones.¹⁷⁷ Poverty, the lack of economic and educational opportunities for children and women, cultures that tolerate prostitution, and affluent western sex tourists combine to create thriving sex industries in many developing countries.¹⁷⁸

Another important conflict is with the principle of environmental protection, a value that is generally more strongly held among the industrialized than the developing countries.¹⁷⁹ There is often a clash between the policies of protecting the environment and encouraging economic development. Domestic activities would not be an international problem if their effects were substantially confined within national boundaries. But local activities can have detrimental spillover effects—harmful externalities that have transnational or global effects: radioactive fallout (from nuclear power plant accidents), acid rain, ozone depletion, global warming, and depletion of tropical rain forests.¹⁸⁰ Other local economic activities, while not directly affecting the welfare of foreigners, can cause environmental concern: the decimation of wild fish stocks in the world's oceans by modern industrial fishing,¹⁸¹ the destruction of coastal areas by economic activities,¹⁸² and the trade in endangered species.¹⁸³

175. See, e.g., sources cited *supra* note 174.

176. See, e.g., *id.*; CLEO ODZER, PATPONG SISTERS: AN AMERICAN WOMAN'S VIEW OF THE BANGKOK SEX WORLD v, 1-22 (1994).

177. See, e.g., ODZER, *supra* note 176 (describing the Thai sex industry).

178. See, e.g., sources cited *supra* note 174.

179. See, e.g., DANIEL C. ESTY, GREENING THE GATT: TRADE, ENVIRONMENT, AND THE FUTURE 24-27, 181-203, 238-39 (1994).

180. See RICHARD N. COOPER, ENVIRONMENTAL AND RESOURCE POLICIES FOR THE WORLD ECONOMY xx-xxi, 37-68 (1994).

181. See Carl Safina, *The World's Imperiled Fish*, SCI. AM., Nov. 1995, at 46. Countries may simply ignore conservation agreements that they sign, or they may even disregard the United Nations. See *id.* at 50-52. "In 1990 high-seas drift nets tangled 42 million animals that were not targeted, including diving seabirds and marine mammals. Such massive losses prompted the U.N. to enact a global ban on large-scale drift nets (those longer than 2.5 kilometers)—although countries like Italy, France and Ireland, continue to deploy them." *Id.* at 51.

182. See Don Hinrichsen, *Coasts in Crisis*, ISS. SCI. & TECH., Summer 1996, at 39.

Thus, there should be a balance between the right of nations to utilize their resources and engage in economic activity, and the right of other nations to be free from harmful externalities. Whether this conflict is characterized as one between protection of the environment and free market principles (or democracy or human rights), there is a clash between the value of protecting the environment and a convergent value.¹⁸⁴ Views regarding environmental protection may eventually converge if global standards are agreed upon.¹⁸⁵ Major steps towards possible future convergence have emerged from the Rio Conference, with its aspirational but nonbinding *Agenda 21* and *Rio Declaration on Environment and Development*, which address, among other issues, the problem of "sustainable development."¹⁸⁶ In time, the protection of the environment may become

183. See, e.g., Donald G. McNeil Jr., *Madagascar Reptile Theft Hits Rarest of Tortoises: Stolen Animals Are Thought to Have Been Taken for the World's Illicit Pet Trade*, N.Y. TIMES, July 2, 1996, at C1.

184. While some commentators have argued that protection of the environment is part of a new generation of human rights, that view has not yet gained widespread acceptance. See INTERNATIONAL ENVIRONMENTAL LAW ANTHOLOGY 34-37, 61-69 (Anthony D'Amato & Kirsten Engel eds., 1996); VED P. NANDA, INTERNATIONAL ENVIRONMENTAL LAW & POLICY 61-72 (1995). Since any important right could conceivably be viewed as a "human" right, this Article takes the common position that human rights are distinct from environmental protection. The basic international human rights treaties contain provisions that recognize the "inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources" and the right of "[a]ll peoples . . . for their own ends, [to] freely dispose of their natural wealth and resources." International Covenant on Economic, Social and Cultural Rights, *supra* note 32, arts. 1 para. 2, 25; International Covenant on Civil and Political Rights, *supra* note 32, arts. 1 para. 2, 47.

185. See John H. Cushman Jr., *In Shift, U.S. Will Seek Binding World Pact to Combat Global Warming*, N.Y. TIMES, July 17, 1996, at A6 (reporting that "[f]or the first time, the United States will seek a binding international agreement to reduce the kinds of air pollution, chiefly from burning fossil fuels, that threaten to warm the global climate").

186. The United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro, Brazil, from June 3-14 of 1992. Popularly referred to as the Rio Conference or the Earth Summit, the UNCED was the most widely attended environmental conference in history, with over a hundred heads of state and representatives from over 170 nations. See NANDA, *supra* note 184, at 103. At the Rio Conference, all nations in attendance (including the United States) unanimously adopted three non-binding instruments. See *Report of the United Nations Conference on Environment and Development*, 47th Sess., U.N. Doc. A/CONF.151/26 (1992); *AGENDA 21: THE EARTH SUMMIT STRATEGY TO SAVE OUR PLANET 1*, 24-26 (Daniel Sitarz ed., 1994). See generally *THE ENVIRONMENT AFTER RIO* (Luigi Campiglio et al. eds., 1994).

The first instrument, the *Rio Declaration on the Environment and Development*, deals with the issues of sustainable economic development and achieving an equitable balance between the sometimes conflicting developmental and environmental needs of current and future generations and of different nations. See *Rio Declaration on the Environment and Development*, U.N. Conference on Environment and Development, 47th Sess., Annex 1, U.N. Doc. A/CONF.151/26, vol. 1, at 8 (1992), available in 31 I.L.M. 874. The massive text of *Agenda 21*, the second instrument, is contained in three U.N. volumes. See *Agenda 21*, U.N. Conference on Environment and Development, 47th Sess., Annex 2, U.N. Doc. A/CONF.151/26, vol. 1, at 14 *et seq.* [hereinafter *Agenda 21*]. *Agenda 21* addresses numerous environmental issues, with the following major themes: the quality of life on earth, the efficient use of the earth's natural resources, the protection of the earth's global commons (the atmosphere and oceans), the management of human settlements, chemicals and waste, and sustainable economic growth. See *AGENDA 21: THE EARTH SUMMIT STRATEGY TO SAVE OUR PLANET*, *supra*, at 8-19. See generally

another converging value.

Conclusion

Globalization has been primarily an economic process that has expanded markets for international trade and opportunities for international investment. Simultaneously, it has increased economic interdependency among nations and made nations economically vital to each other. But globalization is more than just doing business with foreigners and traveling to foreign lands. Through sophisticated technology and international news reporting, globalization connects persons throughout the world and brings into local homes vast amounts of information about transnational issues. It has placed a human face on people in distant lands, and cultivated a global perspective and a sensitivity to different foreign traditions. More people learn about foreign cultures, become interested in foreign affairs, and speak foreign languages. Travelers or alien residents in foreign lands often expect to receive the same basic rights as they do at home.

Profoundly, globalization has contributed to the convergence of basic values among nations towards the liberal democratic values of market economies, democratic governments, and human rights. The clear triumph of market economies over command economies as well as the liberalization of international trade and investment has converted numerous nations over to general free market principles. For people in different countries, globalization has contributed to an expanding consciousness that prefers democratic governments and human rights over authoritarian regimes that repress freedoms.

As values converge, nationals of one country often care enough to work for the enjoyment of similar political rights in other countries. Ultimately, globalization is important and desirable because it encourages a belief in the primacy of the human race. A world in which liberal democratic values abound and people emphasize their status as human beings will be more humane than the world of the past. We should dream of a common humanity for "[w]e are such stuff [a]s dreams are made on."¹⁸⁷

Agenda 21, supra; AGENDA 21 & THE UNCED PROCEEDINGS, vols. 1-6 (Nicholas A. Robinson ed., 1992 & 1993). The third instrument covers the treatment of forests. See *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, U.N. Conference on Environment and Development, 47th Sess., Annex 3, U.N. Doc. A/CONF.151/26, vol. 3 at 111 (1992), available in 31 I.L.M. 881.

The issue of sustainable development is one that has captured the attention of many commentators. See, e.g., *SUSTAINABLE DEVELOPMENT AND INTERNATIONAL LAW* (Winfried Land ed., 1995); *A SURVEY OF ECOLOGICAL ECONOMICS* (Rajaram Krishnan et al. eds., 1995); *GREENING INTERNATIONAL LAW* (Philippe Sands ed., 1994); *INVESTING IN NATURAL CAPITAL: THE ECOLOGICAL ECONOMICS APPROACH TO SUSTAINABILITY* (AnnMari Jansson et al. eds., 1994); *TOWARD SUSTAINABLE DEVELOPMENT: CONCEPTS, METHODS, AND POLICY* (Jeroen C. van den Bergh & Jan van der Straaten eds., 1994).

187. WILLIAM SHAKESPEARE, *THE TEMPEST* act IV, sc. 1, l. 156.

