

Maurer School of Law: Indiana University  
Digital Repository @ Maurer Law

Indiana Journal of Global Legal  
Studies

Volume 7 | Issue 2

Article 10

Spring 2000

# Global Village, Divided World: South-North Gap and Global Health Challenges at Century's Dawn

Obijiofor Aginam

*University of British Columbia*

Follow this and additional works at: <http://www.repository.law.indiana.edu/ijgls>

 Part of the [Health Law and Policy Commons](#), and the [International Law Commons](#)

## Recommended Citation

Aginam, Obijiofor (2000) "Global Village, Divided World: South-North Gap and Global Health Challenges at Century's Dawn," *Indiana Journal of Global Legal Studies*: Vol. 7: Iss. 2, Article 10.

Available at: <http://www.repository.law.indiana.edu/ijgls/vol7/iss2/10>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

# Global Village, Divided World: South-North Gap and Global Health Challenges at Century's Dawn

OBIJIOFOR AGINAM\*

## INTRODUCTION

In the Fall 1999 issue of this *Journal*, David Fidler published an article entitled *Neither Science Nor Shamans: Globalization of Markets and Health in the Developing World*.<sup>1</sup> The introduction of Fidler's article highlights the economic gap between developed and developing countries, as well as the huge disparities in the health conditions of populations in those countries, as articulated by the *World Health Report 1999* published by the World Health Organization (WHO).<sup>2</sup> In terms of global inequalities and imbalances between countries, neither Fidler's article nor WHO's *World Health Report 1999* says anything new. It is common knowledge that we have lived in a divided world marked by poverty and underdevelopment for decades. As it has often been observed, eighty percent of the world's population living in developing countries has access to less than twenty percent of the world's resources, while twenty percent of the world's population in the developed world has access to more than eighty percent of the world's resources.<sup>3</sup> What is new about Fidler's thesis is his prediction that globalization will adversely affect populations in the developing world by

---

\* Doctoral Candidate in Law & University Graduate Fellow, University of British Columbia, Vancouver, Canada; LL.M., Queen's University (1998); BL, Nigerian Law School (1993); LL.B., University of Nigeria (1992); presently Global Health Leadership Officer, World Health Organization, Geneva, Switzerland. Nothing in this Article should be taken as the official position of the World Health Organization. Rather, they are the personal views of the writer, the shortcomings of which the writer claims full responsibility. I thank Professors Ivan L. Head, Karin Mickelson, Stephan Salzberg, George Alexandrowicz, K. Venkatta Raman, Obiora Chinedu Okafor, and David Fidler for their intellectual support.

1. David P. Fidler, *Neither Science Nor Shamans: Globalization of Markets and Health in the Developing World*, 7 *IND. J. GLOBAL LEGAL STUD.* 191 (1999).

2. WORLD HEALTH ORGANIZATION, *THE WORLD HEALTH REPORT 1999: MAKING A DIFFERENCE 2* (1999).

3. UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT*, 29-30 (1998); Seymour J. Rubin, *Economic and Social Human Rights and the New International Economic Order*, 1 *AM. U. J. INT'L L. & POL'Y* 67, 75 (1986).

destroying indigenous or traditional medicine and simultaneously do little to place Western medicine in their reach. In the event of a failure to synthesize traditional medicine with Western medicine (which is unlikely to occur), poor people in the developing world will witness traditional medicine eroded by the impact of globalizing Western cultures. At the same time, it is unlikely that Western medicine will be readily available to these populations because it will be either too expensive or simply not available in sufficient quantity or quality.

This Article responds to Fidler's arguments, with which I substantially concur. As an African who is at the receiving end of the hard and uncomfortable punches of globalization, this Article is largely an addendum to Fidler's. To avoid unnecessary repetition, I will not focus on most of the issues that he discussed. My focus is on themes that emerge from *Neither Science Nor Shamans*, but that deserve further elucidation.

The beginning or end of every millennium provides an opportunity for stock-taking on multiple dimensions of global relations. Transiting from the dusk of the twentieth century to the dawn of the twenty-first century will enable humanity to reassess and rethink the complex socioeconomic issues facing populations in both the global South and the global North. In this twenty-first century global agenda, disparities in health conditions between populations in developing countries and those in the developed world deserve prominent attention from scholars, policymakers, and multilateral institutions. From the perspective of infectious diseases and global interdependence, history has recorded the decimation of populations by diseases—the Black Death in fourteenth-century Europe, small pox, measles, and influenza in the Americas in the sixteenth- and seventeenth-centuries (and again in 1918-19). In recent times, epidemics of ebola, lassa fever, hanta-virus, and outbreaks of cholera, plague, yellow fever, and meningitis in various parts of the world have ravaged populations. These outbreaks, in addition to the global burden of non-communicable diseases, serve as wake-up calls for countries to rise to the challenges posed by the globalization of public health. Whether these wake-up calls have been heeded uniformly by countries is a debatable issue that is beyond the scope of this Article. I am largely concerned with globalization of public health and its implications for global interdependence. At the risk of either oversimplification or over-inclusiveness, I refer to these implications as the “South-North public health gap.”

Part I of this Article revisits and rehearses the traditional and well-known concept of the “global village” metaphor and the place of health in that discourse. My interest does not terminate with a rehearsal of the basic

features of this discourse; rather, I argue that paradoxically we live simultaneously in a global village and a divided world. My argument is that our global village has been truncated and polarized by the underdevelopment and poverty afflicting more than eighty percent of the world's population in the global South—mainly in Africa, Asia, Latin America, and the Caribbean. Thus, global health policies must, by necessity, focus on health disparities between poor and rich countries.

In Part II, I argue that the international system globalizes poverty systematically as opposed to globalizing wealth. To elucidate this point, I conduct two levels of inquiry to assess the mechanisms used in the “transfer of wealth” or “transfer of resources” from the global North to the global South as a means of improving the health conditions of populations in the South. The first level of inquiry relates to the human right to health, while the second focuses on structural adjustment programs prescribed by international financial institutions. My argument is that globalization of wealth, via the right to health and development assistance from international financial institutions, must respond to the socioeconomic and political conditions of recipient States in the developing world.

Part III focuses on the present trend of horizontal prescriptions from multilateral institutions, such as the World Bank, International Monetary Fund (IMF), and World Trade Organization (WTO). I argue that this trend must be reversed and urgently replaced with economic reconstruction from the bottom-up based on “North-South entente.”<sup>4</sup> I revisit, although superficially, the contending schools of thought on adjustment policies prescribed by international financial institutions for the developing world. Focusing particularly on Africa, I highlight an emerging consensus on alternative approaches to economic development that seek to launch an “economic renaissance” in Africa.

In Part IV, I return to the importance of public health in the global village through an approach predicated on the “mutual vulnerability” of populations in both the global North and South. In sum, the essence of “mutual vulnerability” lies squarely within the enlightened self-interest of countries, particularly in the developed world. If a certain disease emanates from the developing world and

---

4. Obiora Chinedu Okafor, *The Status and Effect of the Right to Development in Contemporary International Law: Towards a South-North “Entente,”* 7 Pt. 4 AFR. J. INT’L & COMP. L. 865 (1995). For a discussion of economic reconstruction from the bottom-up, see generally JEREMY BRECHER & TIM COSTELLO, *GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP* (1994).

poses a threat to populations in the developed world, enormous sacrifices must then be made by the developed world to confront mutual vulnerability.

I conclude by arguing that contemporary globalization marginalizes the developing world, either deliberately or accidentally, by creating or exacerbating difficult socioeconomic conditions that effectively imprison more than eighty percent of the world's population in a penitentiary of poverty. My conclusion stems from the incontrovertible fact that poverty remains a root cause of ill-health and the resurgence of diseases.<sup>5</sup> I explore these issues not from the perspective of economics, but from international law, global interdependence, and emerging trends in the globalization of public health.

### I. SOUTH-NORTH PUBLIC HEALTH GAP: THE PARADOX OF A GLOBAL VILLAGE IN A DIVIDED WORLD

We live in an interdependent world often described as the global village or "global neighborhood." Since the Peace of Westphalia in 1648, multilateralism has grappled with the multiple dimensions of the economic, health, social, and environmental aspects of global interdependence. A plethora of globalizing processes have emerged in the form of international airline networks, flows of foreign direct investment, eco-tourism, religious pilgrimages, international sports festivals, regionalism, and free-trade. The destabilizing effects of a globalizing world have become manifest through an upsurge in the number of refugees fleeing civil wars, regional conflicts, and environmental and natural disasters as well as the emergence, reemergence, and prevalence of infectious diseases. In the face of the problems created by a globalizing world, international cooperation to find solutions to global problems has intensified. In the terrain of public health, due to the menace of infectious diseases, the gospel has long been that "microbes carry no national passports" or that "diseases recognize no national boundaries." But, is this gospel heeded? Does the contemporary global development apartheid between rich and poor countries recognize the threats posed by infectious diseases for a globalizing world?

Whatever the answers to these questions, it is incontrovertible that the world is sharply divided into South and North by poverty and underdevelopment. More than eighty percent of the world's population live in

---

5. The Constitution of WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." WORLD HEALTH ORGANIZATION CONST. preamble (1946).

the developing world where, on a comparative basis, infant mortality, life expectancy at birth, maternal health, and child health lag dramatically behind the developed world. The wide disparities between the rich and poor countries—the global North and the global South—adversely affect the health conditions of the world's poorer populations. According to the United Nations Development Programme (UNDP), in 1960, the twenty percent of the world's people who lived in the richest countries had thirty times the income of the poorest twenty percent.<sup>6</sup> By 1995, the people in rich countries had eighty-two times as much income as people in poor countries.<sup>7</sup>

The World Bank has in turn classified countries into the following: (i) Low Income Economies (including the two most populous countries on earth—India and China, as well as most of Africa) with per capita gross national products (GNPs) of about \$350 in 1991; (ii) Lower Middle Income Economies with per capita GNPs up to \$2,500 in 1991; (iii) Upper Middle Income Economies with per capita GNPs up to \$3,500 in 1991; (iv) High Income Economies (mostly Organization for Economic Cooperation and Development (OECD) countries) with per capita GNPs on average of \$21,500 in 1991.<sup>8</sup>

It is projected that about 3.1 billion people, well over one-half the world's population, live in countries in the poorest group. Another 1.4 billion live in the lower-middle income nations, and 630 million in the upper-middle income nations. About 820 million live in the high-income nations, which are rich at least in part because of their ability to exploit the resources of poorer nations—resources that include oil, minerals, and food. Over eighty percent of the world's people live in nations that collectively have less than twenty percent of the world's wealth and productive capacity.<sup>9</sup>

There are many reasons why we ought to be concerned about the South-North gap and its implications for globalization of public health. The first is the impact of poverty on the health of populations. As WHO has persuasively argued,

[t]he world's most ruthless killer and the greatest cause of suffering on earth . . . stands for extreme poverty . . . Poverty is the main reason why babies are not vaccinated, clean

---

6. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1998 29-33 (1998).

7. *Id.*

8. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1993: INVESTING IN HEALTH x-xi (1993).

9. JOHN M. LAST, PUBLIC HEALTH & HUMAN ECOLOGY 338 (2d ed. 1998).

water and sanitation are not provided, and curative drugs and other treatments are unavailable and why mothers die in childbirth. Poverty is the main cause of reduced life expectancy, of handicap and disability, and of starvation. Poverty is a major contributor to mental illness, stress, suicide, family disintegration, and substance abuse.<sup>10</sup>

The other reason why the South-North gap is important is anchored on the mutuality of vulnerability, which I will discuss in detail below. In brief, mutual vulnerability recognizes that the presence of diseases anywhere in a globalizing world constitutes a serious threat to lives everywhere. Over and above the impact of poverty on the health of populations and mutuality of vulnerability, the South-North gap has equally raised a serious paradox for scholars and policymakers as we close the twentieth century. This is what I call the paradox of a global village in a divided world. Are we in a global neighborhood? If we are, it is a global neighborhood divided by disparities in wealth and health conditions of populations in the global South and global North. It is a global neighborhood with its inhabitants living close, but yet far and distant from one another. This paradox of a global village in a divided world has left the majority of the world's population poor, with adverse consequences for its health. It therefore compels a further analysis of the globalization of poverty.

## II. GLOBALIZATION OF POVERTY

### A. Overview

The decade of the 1970s is important in international economic relations and development. It marked an important turning point, or what economists refer to as the "inverted V" development process for Africa and most of the developing world.<sup>11</sup> From the perspective of international economic law, it

---

10. WORLD HEALTH ORGANIZATION, WORLD HEALTH REPORT 1995 BRIDGING THE GAPS 1 (1995).

11. *See generally* THANDIKA MKANDAWIRE & CHARLES C. SOLUDO, OUR CONTINENT, OUR FUTURE: AFRICAN PERSPECTIVES ON STRUCTURAL ADJUSTMENT (1999) (arguing that postcolonial African economic history is one of fairly respectable rates of growth for nearly a decade—including miracles in a number of countries—and then a decline after the oil crisis of the mid-1970s. Between 1965 and 1974, annual growth in gross domestic product per capita averaged 2.6%. From 1974 on,

marked the beginning of agitation for a New International Economic Order by the developing world through a plethora of conventions and soft-law mechanisms adopted by the United Nations (UN) General Assembly. After decolonization in the 1960s, modest improvements were noticed in most of the developing world until the oil crisis of the 1970s, which marked a sharp economic decline for most of the formerly colonized countries. Since then, many international agencies—UNDP, World Bank, IMF, and WHO—have consistently documented the widening development gap between countries as well as wealth disparities in the hemispheric North and South.

To come to terms with the root causes of contemporary global inequalities, questions must be asked about how globalization—the disappearance or vulnerability of national boundaries—affects the process of development. Globalization is a complicated concept that has linkages with almost every aspect of the relations between countries and peoples. Scholarly opinions about its meaning and history are intensely divided. In a recent book, Ray Kiely wrote:

The 1990s have seen a boom in writing about globalisation. According to one sociologist, . . . it is the concept of the 1990s, a key idea by which we understand the transition of human society into the third millennium. . . . Much of the debate surrounding globalisation has been extremely abstract. There is often a lack of clarity in definitions of the term, its novelty and how it is experienced by people throughout the world.<sup>12</sup>

From its simpler meaning to its variegated theoretical and practical complexities in the 1990s, globalization seems to have arisen from the hegemonic<sup>13</sup> and colonial foundations of international law and international relations. It is not simply a concept of the 1990s, but part of an age-old, systematic institutionalization of global inequalities, which only came to climax in the decade of the 1990s through the so-called information superhighway and allied discoveries in communications and computer technology. The

---

it stagnated; by the end of the 1980s, many African countries had a lower GDP per capita than at independence).

12. Ray Kiely, *Globalisation, (post-) modernity and the Third World*, in *GLOBALISATION AND THE THIRD WORLD 2* (Ray Kiely & Phil Marfleet eds., 1998).

13. See *SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI* (Quintin Hoare & Geoffrey Nowell Smith eds., 1971).



emergence of free-trading blocks, the supersonic rise in the influence of transnational corporations, as well as the globalization of unfair trade, investment, and economic rules and regulations—by such global institutions as the World Bank, IMF, and WTO—all exacerbate global inequalities.

Globalization in the 1990s, more than ever before, has been premised on the fact that national boundaries are either disappearing or becoming increasingly vulnerable. One consequence of this is that investors, through their capital-exporting multinational corporations in computer, telecommunications, energy, natural resources, pharmaceutical, and food industries, confront only minimal or no barriers in their bid to penetrate juicy sectors of Third World economies. But why are national boundaries not disappearing uniformly across the world at the same time? Disappearance of boundaries has become a sword and shield argument—a sword used by foreign investors who are eager to exploit Third World resources, and a shield used by the global North via multilateral institutions against agitation for global economic equity. After centuries of monopoly of global capital and advanced technology by industrialized countries, the developing world of today has no option but to follow reluctantly the prescriptions given by the developed world, which controls international financial institutions and other multilateral agencies. Faulting the hegemonic nature of contemporary international economic relations, a leading international legal scholar has argued through his theses of “international order of poverty” and “poverty of the international order” that the contemporary international system has remained silent and non-responsive to the evils of underdevelopment that ravage three-quarters of the world’s population.<sup>14</sup> In 1979, Mohamed Bedjaoui identified the power of multinational corporations, structural inequality in the international monetary system, and the heavy indebtedness of undeveloped countries as some of the chronic issues facing the international system. These structural economic inequalities—which still confront the world today in many glaring ways—are maintained by hegemonic international law’s posture of complacency and indifference. According to Bedjaoui:

the laissez-faire and easy-going attitude which it thus sanctioned led in reality to legal non-intervention which favored the seizure of wealth and possessions of weaker peoples . . . To keep in line with the predatory economic

---

14. *See generally* MOHAMMED BEDJAOUI, TOWARD A NEW INTERNATIONAL ECONOMIC ORDER (1979).

order, this international law was thus obliged simultaneously to assume the guise of: (a) an oligarchic law governing the relations between civilized states, members of an exclusive club; (b) a plutocratic law allowing these states to exploit weaker peoples; (c) a non-interventionist law (to the greatest possible extent), carefully drafted to allow a wide margin of laissez-faire and indulgence to the leading states in the club, while at the same time making it possible to reconcile the total freedom allowed to each of them . . . This classic international law thus consisted of a set of rules with a geographical basis (it was a European law), a religious-ethical inspiration (it was a Christian law), an economic motivation (it was a mercantilist law) and political aims (it was an imperialist law).<sup>15</sup>

Bedjaoui's arguments underscore the historical antecedents prior to the "globalization" of the 1990s. As already noted, the phenomenon of globalization cannot be exhaustively discussed without these antecedents as well as its inexorable linkages with laws, cultures, politics, economies, and trade.

It is in the context of these linkages and their likely impact on the health of populations in developing countries that most of the arguments raised by Fidler stand to be vindicated. Focusing on globalization of international trade, Fidler sketches linkages between trade, markets, and culture. Rules of international trade law are now used by the developed world to export their "superior culture" to the developing world through the sale of tobacco and unhealthy food. Western tobacco companies can now effectively sell their tobacco products by packaging them as Western cultural products—so that buying Marlboro cigarettes is one way to sample Western lifestyle.<sup>16</sup> These companies "succeeded in riding the waves of international trade law, liberal triumphalism, and globalizing Western culture in penetrating the markets and lungs of millions of people in the developing world."<sup>17</sup> With respect to the export of processed food to the developing world, the dietary habits of

---

15. *Id.* at 49-50.

16. Fidler, *supra* note 1, at 201.

17. *Id.*

populations in the developing world are now being eroded. This situation has forced the WHO to warn against a possible global obesity pandemic.<sup>18</sup>

Fidler's indictment of liberal triumphalism and the globalization of Western culture via international trade and the search for markets remains a truism, which is now collaborated by a legion of commentators and scholars. Inspired by Bedjaoui and borrowing from Edward Said's *Orientalism*,<sup>19</sup> James Thuo Gathii argues that international law represents a "western style of dominating, restructuring and having authority" over non-Western communities.<sup>20</sup> It is this uneven landscape in the international system that has continued to globalize poverty. In the context of global public health, I now proceed to analyze two issues relevant to the globalization of poverty: right to health and structural adjustment programs.

### *B. Right to Health and Globalization of Poverty*

There are two reasons why the right to health deserves scholarly attention in connection with the globalization of public health. The first relates to the obligation undertaken by State Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) to "take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources" to realize ICESCR rights.<sup>21</sup> The second, which is related to the first, involves the express provisions in some international conventions on the right to health, which recognize the financial and economic needs of developing countries. A good example of the latter is Article 24 of the UN Convention on the Rights of the Child that provides for the health rights of children and States in Article 24(4) that "particular account shall be taken of the needs of developing countries."<sup>22</sup> The relevance of these approaches lies in the socially and economically holistic definition of health offered by the WHO—"a state of complete physical, mental

---

18. WORLD HEALTH ORGANIZATION, *Obesity Epidemic Puts Millions at Risk from Related Diseases*, Press Release, WHO/46 (June 12, 1997).

19. EDWARD W. SAID, *ORIENTALISM* (1979).

20. See James Thuo Gathii, *The Limits of the New International Rule of Law on Good Governance*, in *LEGITIMATE GOVERNANCE IN AFRICA* 215-16 (E.K. Quashiga & O.C. Okafor eds., 1997) (citing A. Anghie, *Constructing the Nation State: Colonialism and the Making of International Law* (1994) (unpublished S.J.D. dissertation, Harvard University)).

21. *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, Art. 2(1), at 49, U.N. DOC. A/6316 (1967).

22. U.N. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, Supp. No. 49, at 167, U.N. Doc A/44/49 (1989).

and social well-being and not merely the absence of disease or infirmity.”<sup>23</sup> Taken together, these two factors point to the importance of economic development and financial resources in the realization of the right to health. Unfortunately, the right to health—and by extension, economic, social, and cultural rights—have been treated peripherally by scholars and policymakers.<sup>24</sup> To many, they do not exist. They are not rights but lofty wishes and desires. To others, they exist textually as “soft law” but are so encompassing and vague that their actual meaning and contents are difficult to determine.

Fidler seems to have aligned with the second school of thought when he wrote “the human right to health remains an amorphous concept. No one is really sure what it means.”<sup>25</sup> Faulting the definition of “health security” by the WHO’s Director-General in December, 1998, as “encompassing a right to health care, food, water, shelter, education and a safe environment,” Fidler submitted that this definition suggests that the right to health means a right to almost everything.<sup>26</sup> It is difficult not to recognize the imprecision that has characterized provisions on the right to health in international human rights treaties and conventions. Katarina Tomaseveski has argued that Article 12 of the ICESCR, which provides for right to health, is imprecise and vague.<sup>27</sup> Guaranteed access to health care services for all people remains an issue of disagreement. There is no agreement on the specific obligations of States in providing access to health care to all of its population, let alone whether it is obliged to undertake the provision of health care services at all.<sup>28</sup>

Notwithstanding this argument, the right to health—as Fidler seems to have suggested—does not mean everything and therefore nothing. A litany of reasons can be advanced to explain why the right to health (and all other

---

23. WORLD HEALTH ORGANIZATION CONST. preamble (1946).

24. See Brigit Toebes, *Towards an Improved Understanding of the International Human Right to Health*, 21 HUM. RTS. Q. 661 (arguing that although it is often asserted that all human rights are interdependent, interrelated, and of equal importance, in practice, Western states and NGOs have tended to treat economic, social, and cultural rights as if they were less important than civil and political rights).

25. Fidler’s reliance on Steven D. Jamar to support his assertion is not wholly unassailable because Jamar does not seem to reach the same conclusion as Fidler. Compare Fidler, *supra* note 1, at 214, with Steven D. Jamar, *The International Human Right to Health*, 22 S.U.L. REV. 53 (1994). As stated by Jamar, his article was an attempt to “define and add content to the human right to health so that a claim founded on that right has meaning . . . [and] to articulate what is meant by a right to health in a way that is useful, workable and effective, as well as theoretically and legally sound and justifiable.” See Jamar, *supra*, at 3.

26. See Fidler, *supra* note 1, at 214.

27. See Katarina Tomaseveski, *Health*, in 2 UNITED NATIONS LEGAL ORDER 859 (Oscar Schachter & Christopher Joyner eds., 1995).

28. *Id.*

economic, social, and cultural rights) has been relegated to irrelevance and impotency. The first is the subordination of economic, social, and cultural rights to civil and political rights. The implication of this is that civil and political rights are first generation human rights and therefore are superior to economic, social, and cultural rights—including the right to health.

The second reason relates to the way human rights have been construed in Western liberal democracies, which unduly emphasize justiciability predicated on an individual making a claim against the State, before a court or tribunal, for the violation of his or her rights. This narrow construction—based on the social contract philosophy of John Locke—raises the question whether a person can successfully prosecute a claim in a court or tribunal against a State based on the failure of the State to either guarantee or provide him or her with access to conditions necessary for health and health care resources. Put another way, the State is incapable of guaranteeing good health to all of its citizens. Thus, the litmus test for any claim to qualify as a human right is justiciability. A further reason relates to a glaring misunderstanding and confusion among scholars on the meaning of such concepts as health, health care, health services, and medical services.

In response to most of these contentions, a powerful league of scholars has generated vast literature to concretize the concept of right to health. Professors Virginia Leary, Larry Gostin, and the late Jonathan Mann have all worked to give the right to health concrete meaning.<sup>29</sup> A new way to think about human rights should deemphasize justiciability and stress human dignity and the interdependence of all human rights—civil, political, social, economic, cultural, and group rights. None is more important than or superior to the other. Of what relevance is voting in an election or enjoying freedom of expression (civil and political rights) to a woman in a rural village in Mozambique, Lesotho, Nigeria, or Burundi who is sick but cannot afford to buy aspirin? What is the substance of freedom of association to a man who, together with his family, is malnourished and cannot afford basic food and housing? Interdependence of rights and human dignity are the starting points in the evolution of alternative approaches to the right to health.

In this context, Leary has developed seven elements for a rights-based perspective on health. These include: (1) Conceptualizing something as a right emphasizes its exceptional importance as a social or public goal (rights as

---

29. See Leary *infra* note 31; see also Virginia A. Leary, *Justiciability and Beyond: Complaint Procedures and the Right to Health* REVIEW, Dec. 1995, at 105; Gostin & Mann, *infra* note 32.

“trumps”);<sup>30</sup> (2) rights concepts focus on the dignity of persons; (3) equality or non-discrimination is a fundamental principle of human rights; (4) participation of individuals and groups in issues affecting them is an essential aspect of human rights; (5) the concept of rights implies entitlement; (6) Rights are interdependent; (7) rights are almost never absolute and may be limited, but such limitations should be subject to strict scrutiny.<sup>31</sup>

In the same vein, Gostin and Mann proposed a human rights impact assessment for the formulation and evaluation of public health policies.<sup>32</sup> The proposal enables public health practitioners, human rights advocates, and community workers to explore the human rights dimensions of public health policies, practices, resource allocation decisions, and programs. This process includes a clarification of the public health purpose, an evaluation of the likelihood of the effectiveness of the policy, the target of the particular public health policy (including the risks of either over-inclusion or under-inclusion) and an examination of the proposed public health policy for possible human rights burdens. How then would human rights burdens of public health policies be measured? Gostin and Mann gave three important factors to be considered as the nature of human rights: the invasiveness of the intervention, the frequency and scope of the infringement, and the duration of the public health policy.<sup>33</sup>

These perspectives vindicate what cannot be denied—that efforts have been made to concretize the right to health. Any inquiry aimed at unmasking the reason why these perspectives are still largely peripheral and marginalized in both scholarship and international public policymaking would inevitably indict the current international system that has failed to empower the UN Committee on Economic, Social, and Cultural Rights to do its job effectively. Philip Alston,

---

30. See, e.g., RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977) (arguing that when something is categorized as a right, it trumps other claims or goods). Leary argues that the use of rights language in relation to health emphasizes the importance of health and health status. It does emphasize that the health issues are of special importance given the impact of health on the life and survival of individuals. Leary, *infra* note 31, at 36.

31. See Virginia A. Leary, *The Right to Health in International Human Rights Law*, 1 *HEALTH & HUM. RTS.* 36 (1994). The work of the Physicians for Human Rights has underscored the interdependence of rights. For instance, detention under inhuman conditions or torture inevitably affects the health of the person either detained or tortured. For documentation of these linkages by Physicians for Human Rights, see *The Taliban's War on Women: Health and Human Rights Crisis in Afghanistan* (1998); and see *HEALTH AND HUMAN RIGHTS: THE LEGACY OF APARTHEID* (1998) (discussing deaths in detention, racial discrimination in the health sector, and segregation in medical education under the Apartheid South Africa).

32. See Lawrence Gostin & Jonathan Mann, *Towards the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies*, 1 *HEALTH AND HUM. RTS.* 59 (1994).

33. *Id.*

who until recently chaired the Committee, has summarized his frustration in a detailed commentary:

The UN Commission on Human Rights devotes about five percent of its time to economic and social rights issues; other human rights bodies usually ignore them. The only body mandated to do work in this area, the UN Committee on Economic, Social, and Cultural Rights, was established in 1987 on the implicit condition that it be ineffectual and inactive. . . . As the Committee's Special Rapporteur, I am keenly aware of its problems. . . . We receive little institutional support from anyone. The UN secretariat provides only rudimentary clerical help; I myself typed about half of our report for lack of a secretary with word processing experience. The International Labor Organization and the World Health Organization observe Committee sessions from time to time, but neither group has made a single serious contribution to its work. The Committee lacks expertise. The membership consists of attorneys general and ministers of justice, former diplomats who are nominated and elected and arrive at their positions through the spoils system—the prestige of a seat on the Committee, six weeks a year in Geneva (expenses paid). Of the eighteen elected members, only some are capable of a real contribution. Ninety-five percent of the written product is churned out by myself and by a German international lawyer during our part-time work on the Committee. . . .<sup>34</sup>

If the right to health remains unrealized, it is not because it means nothing. It is because States in the contemporary international system have stultified its progressive development by creating a committee that lacks the capacity to articulate emerging perspectives on ways to realize the human right to health.<sup>35</sup>

---

34. See Economic and Social Rights and the Right to Health 36 (Sept. 1993) (interdisciplinary discussion held at Harvard Law School).

35. See Makau wa Mutua, *Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement*, 4 BUFF. L. REV. 211 (1998) (arguing that many official international human rights bodies such as the Human Rights Committee are weak, timid, and ineffectual).

Another dimension of the right to health, which is more relevant to the central theme of this Article—the globalization of public health and the South-North gap—relates to financial, technical, and economic assistance to developing countries to help them realize the right to health. The question of whether an industrialized State in the global North has an obligation under international human rights law to commit financial and economic resources toward the eradication of a disease or promotion of a right to health in a developing country in the global South has elicited contrasting answers from scholars. Put another way, does Article 2 of the ICESCR contemplate that States have obligations to aliens abroad?<sup>36</sup> International lawyers who are still stuck within the “decaying pillars”<sup>37</sup> of the Westphalian international system founded strongly on relations between nation-States argue that such an obligation offends State sovereignty. Louis Henkin has articulated the canons of this school of thought as follows:

The failure of the international human rights movement to address the responsibility of a state for human rights of persons in other states may reflect only the realities of the state system. States are not ordinarily in a position either to violate or to support the rights of persons in other states. States are reluctant to submit their human rights behavior to scrutiny by other states; states are reluctant to scrutinize the behavior of other states in respect of their own inhabitants; surely, states are reluctant to incur heavy costs for the sake of rights of persons in other countries. . . . Therefore, human rights in another state are not the explicit concern of international human rights law.<sup>38</sup>

Although this view represents the “realities of the state system,” Henkin himself, as well as other scholars, admits that the State system can be

---

36. This question has recently been analyzed in Amir Attaran, *Human Rights and Biomedical Research Funding for the Developing World: Discovering State Obligations Under the Right to Health*, 4 HEALTH AND HUM. RTS. 26.

37. For an articulation of emerging global issues which threaten to dislocate a rigid state-model international system, see Mark W. Zacher, *The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance*, in GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS 58 (James N. Rosenau & Ernst-Otto Czempiel eds., 1992).

38. LOUIS HENKIN, *THE AGE OF RIGHTS* 44 (1990).



circumvented in some ways.<sup>39</sup> In a recent scholarly treatment of this problem—focusing on biomedical research for the developing world—Amir Attaran wrote:

to summarise, in the contentious question of whether the ICESCR obliges states to progressively realise covenant rights for aliens outside the state's jurisdiction, the answer is clearly "yes," provided that state sovereignty is respected. This is certainly the case where the resources and management employed to meet the international obligation are wholly domestic and located in the donor state. A state's control over its own domestic scientific research program is an example of such a case.<sup>40</sup>

A logical extension of this proposition is that an industrialized State is obligated to devote a certain percentage of its resources to, for instance, commission research to target health problems of inhabitants of another country that may be poor. This is not to say that all is well with the language of Article 2(1) of the ICESCR. The undertaking by a State Party to "take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant" is vague and confusing. According to Robertson: "It is a difficult phrase—two warring adjectives describing an undefined noun. 'Maximum' stands for idealism; 'available' stands for reality. 'Maximum' is the sword of human rights rhetoric; 'available' is the wiggle room for the state."<sup>41</sup> The vagueness of this provision has offered an escape route to State Parties to the ICESCR, thus leading to the conclusion that the human right to health is an illusion. Leary remains one of the scholars who has been consistent in arguing

---

39. Henkin wrote "another state can help to give effect to some economic-social rights—the right to food, education, health-care and an adequate standard of living—without forcible intervention, merely by financial aid to the local government . . . and, as the Third World has insisted in its campaign for a New International Economic Order . . . wealthy states are therefore morally obligates and should be legally obligates to help the poorer states." See also MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* (1995). See also Allyn Lise Taylor, *Making the World Health Organization Work: A legal Framework for Universal Access to the Conditions of Health*, 18 AM. J. L. & MED. 301 (1992).

40. ECONOMIC AND SOCIAL RIGHTS, *supra* note 34, at 35.

41. Robert E. Robertson, *Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social, and Cultural Rights*, 16 HUM. RTS. Q. 693-94 (1994).

that Article 2(1) of the ICESCR has meaning. This is without prejudice to the fact that it could be drafted in better and more practical language. All countries, she argues,

have at least some 'available resources'—even if severely limited in comparison with other countries. Hence, under the Covenant, all ratifying States are obligated to respect the right to health, regardless of their level of economic development. The same paragraph of the Covenant also refers to the possibility of States calling upon international assistance to achieve the respect for the right to health.<sup>42</sup>

Robertson makes a valid point by arguing that the noun "resources" is undefined, but the pertinent question remains whether the perceived vagueness surrounding the right to health provisions under the ICESCR can be surmounted if we shift the focus from ICESCR to other international normative or even soft-law paradigms. This question stems from the perceived failure, in most of the developing world, of the 1978 WHO-UNICEF Alma-Ata Declaration on Primary Health Care and Health for All by 2000 (Alma-Ata Declaration).<sup>43</sup> In other words, since the provisions of the Declaration are clearly worded, why did it fail to improve the health of populations in developing countries? The answer is complex; but what is definite is that the developed world failed to transfer sufficient resources to poor countries to meet Alma-Ata's lofty goals. This failure frustrated the Alma-Ata Declaration, which to date remains one of the most pragmatic articulations of global health challenges. As argued by the Pan American Health Organization, "the goal of Health for All by the Year 2000 is, in fact, the most concrete and useful definition of the programmatic social right to health protection, and may more succinctly express the common view of the responsibility of the state for the health of its people."<sup>44</sup> The wealth disparities between countries has stymied efforts to tackle global health challenges. The Alma-Ata Declaration captured these disparities in the following terms: "The existing gross inequality in the health status of the people particularly between

---

42. Leary, *supra* note 31, at 46.

43. See WORLD HEALTH ORGANIZATION, DECLARATION OF ALMA-ALTA, Sept. 12, 1978 [hereinafter DECLARATION OF ALMA-ALTA].

44. See PAN AMERICAN HEALTH ORGANIZATION, THE RIGHT TO HEALTH IN THE AMERICAS 603 (Herman Fuenzalida-Puelma & Susan S. Connor eds., 1989).

developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.”<sup>45</sup> The implication of the unwillingness—by the international system and the developed world—to narrow the development gap between the South and the North has frustrated the ideals not only of the Alma-Ata Declaration, but also of pragmatic efforts to articulate a viable human right to health. This is one way through which the international system has continued to globalize poverty in the developing world.

### *C. Structural Adjustment Programs and the Globalization of Poverty*

As noted by Fidler, structural adjustment programs (SAPs) prescribed by international financial institutions (IFIs), such as the World Bank and the IMF, for the developing world have become controversial in the 1990s.<sup>46</sup> Based on liberalism or neo-liberalism, SAPs involve an economic liberalization scheme founded more on market forces and strong private sector participation and less on government intervention in the provision of social services. In particular, SAPs involve the removal of barriers to exports and imports as well as increased foreign investment in the economies of the developing world.<sup>47</sup> As pointed out by Cleary, SAPs are closely identified with the ideological belief in the superiority of the market over economic planning.<sup>48</sup> SAPs are rooted in an almost mystical faith in the private sector, which, operating under freer domestic and external market conditions, will provide the motive and power for a resumption of growth and development.<sup>49</sup> The ideology of SAPs is, therefore, a revival of economic liberalism with market-oriented strategies, free-trade, and minimal State intervention as its key elements.<sup>50</sup> The controversy surrounding SAPs, particularly their linkage with poverty and public health in the developing world, has polarized scholars who have analyzed SAPs from diverse perspectives—political science, economics, and public health. A recent study has argued that there is no conclusive evidence that

---

45. See DECLARATION OF ALMA-ATA, *supra* note 43.

46. See Fidler, *supra* note 1, at 204.

47. *Id.*

48. S. CLEARY, STRUCTURAL ADJUSTMENT IN AFRICA 41 (1989), *quoted in* STRUCTURAL ADJUSTED AFRICA: POVERTY, DEBT, AND BASIC NEEDS, *infra* note 51, at 3.

49. See STRUCTURAL ADJUSTMENT IN AFRICA 41 (Bonnie K. Campbell & John Loxley eds., 1989).

50. See STRUCTURAL ADJUSTED AFRICA: POVERTY, DEBT, AND BASIC NEEDS 3 (David Simon et al. eds., 1995).

SAPs cause poverty.<sup>51</sup> Lending support to this view, Kwafi Akoor, the Finance Minister of Ghana, asserted “there is one thing worse than structural adjustment, and that is not adjusting.”<sup>52</sup>

That scholarly opinions are divided on the impact of SAPs must not obscure the fact that SAPs do in many ways adversely affect poor populations in the developing world. Advocates of SAPs have long maintained that there is no alternative to SAPs and that adjustments have resulted in the stabilization of most economies so much that these countries can now repay their debt to IFIs. But at what cost does this marginal stabilization come? It is through the exploration of this question that the hollowness of SAPs emerges. What are the implications of marginal stabilization that is achieved through cuts in social programs—health, housing, education, and jobs? A developing country that adopts SAPs and is capable of paying back fifteen to twenty percent of its debt to IFIs, but is incapable of providing housing, food, clothing, jobs, and education to eighty percent of its citizens, is only comparable to the proverbial saying of “robbing Peter to pay Paul.” Michel Chossudovsky calls this “economic genocide,” by which he means “a conscious and deliberate manipulation of market forces by global institutions”—World Bank, IMF, and WTO.<sup>53</sup>

SAPs directly affect the lives of more than 4 billion people. Chossudovsky argues that: “This new form of economic domination—a form of ‘market colonialism’—subordinates people and governments through the seemingly ‘neutral’ interplay of market forces.”<sup>54</sup> The end result of all of this in the developing world has been the collapse of internal purchasing power, disintegration of families, closure of schools and health clinics, and the denial of the right to primary education to millions of children. In many regions of the developing world, IMF and World Bank reforms have precipitated the resurgence of infectious diseases including tuberculosis, malaria, and cholera.

---

51. See DAVID E. SAHN, STRUCTURAL ADJUSTMENT RECONSIDERED: ECONOMIC POLICY AND POVERTY IN AFRICA 254 (David E. Sahn et al. eds., 1997). For other perspectives on SAPs and poverty, see generally MICHEL CHOSSUDOVSKY, THE GLOBALIZATION OF POVERTY: IMPACTS OF IMF AND WORLD BANK REFORMS 33 (1997); GLOBALISATION AND THE THIRD WORLD 32 (Ray Kiely et al. eds., 1998); AFRICA'S RECOVERY IN THE 1990'S: FROM STAGNATION AND ADJUSTMENT TO HUMAN DEVELOPMENT 99 (Giovanni A. Cornia et al. eds., 1992); UNITED NATIONS DEVELOPMENT PROGRAMME, NEGOTIATING STRUCTURAL ADJUSTMENT IN AFRICA 1 (William van der Geest ed., 1994); ROBERT LENSINK, STRUCTURAL ADJUSTMENT IN SUB-SAHARAN AFRICA 11 (1996).

52. Quoted in KEVIN WATKINS, THE OXFAM REPORT 71 (1995).

53. CHOSSUDOVSKY, *supra* note 52, at 37.

54. *Id.*

Furthermore, IFIs are now confronted with a strange paradox—the World Bank’s mandate of “combating poverty and protecting the environment” and its support for large-scale hydroelectric and agro-industrial projects. These projects speed up the process of deforestation and the destruction of the natural environment, leading to the forced displacement and eviction of several million people in the developing world.<sup>55</sup> A leading advocate of a humane world order has severely critiqued a market-driven global civilization, which is subject to the logic of global capital and indifferent to the plight of the poor and the jobless; insensitive in the face of oppression and exploitation; irresponsible with respect to the environment; and complacent about the crisis of sustainability that will be bequeathed to future generations born in the twenty-first century.<sup>56</sup> Thus,

the current ideological climate, with its neo-liberal dogma of minimizing intrusions on the market and ‘downsizing’ the role of government in relation to the provision of public goods that compose the social agenda, suggest that the sort of global civilization that is taking shape will be widely perceived, not as a fulfillment of a vision of unity and harmony, but as a dysutopian result of globalism-from-above that is mainly constituted by economic ideas and pressures.<sup>57</sup>

The indictment of SAPs as hurting the poor and as “globalism-from-above” opens the road for alternative approaches. Notwithstanding the vehement insistence by IFIs that “adjustment has no alternative” or that “SAPs are the only way out,” attempts have been made by scholars to chart a new

---

55. *Id.*

56. RICHARD A. FALK, ON HUMANE GOVERNANCE: TOWARD A NEW GLOBAL POLITICS: THE WORLD ORDER PROJECT REPORT ON THE GLOBAL CIVILIZATION INITIATIVE, IN LEGAL VISIONS OF THE 21<sup>ST</sup> CENTURY: ESSAYS IN HONOUR OF JUDGE CHRISTOPHER WEERAMANTRY 15 (Antony Anghie & Garry Sturgess eds., 1998).

57. *Id.* For a similar critique of the so-called international rule of law on good governance, which are often prescribed together with neo-liberal SAPs, see Gathii, *supra* note 20 (arguing that neo-liberal economic reform founded on SAPs undermines the promotion of democracy through its stringent requirement on governments to cut back on social expenditure in the areas of health, education, worker benefits, and rights). See also Vito Tanzi, *The Consistency between Long-term Development Objectives and Short-term Policy Instruments*, in FROM ADJUSTMENT TO DEVELOPMENT IN AFRICA: CONFLICT, CONTROVERSY, CONVERGENCE, CONSENSUS? 81 (Giovanni A. Cornia & Gerald K. Helleiner eds., 1994). For an account of the implications of cuts in social programs, see generally STRUCTURAL ADJUSTMENT AND THE WORKING POOR IN ZIMBABWE (Peter Gibbon ed., 1995); WATKINS, *supra* note 53, at 71 (focusing on social costs of adjustment on health care in Zimbabwe, Peru, Zambia, and Pakistan); CHOSSUDOVSKY, *supra* note 52.

course. As most of the discourse about Third World development has been characterized as unnecessarily “reactive” and “deconstructive,”<sup>58</sup> these alternative approaches synthesize deconstruction with reconstruction. The next part of this Article briefly explores these alternative reconstructive approaches.

### III. SOUTH-NORTH PUBLIC HEALTH GAP: DEVELOPMENT FROM BOTTOM-UP

One of the major criticisms of SAPs is that they are hostile to their host environments. They are prescriptions from a hierarchical paradigm and therefore alien to the social, economic, and cultural context of the recipient countries. This raises many questions, which various disciplines—law, political science, anthropology, and economics—are bound to answer in different ways. Because the South-North public health gap is inexorably linked with development, one of these many questions could cut across many or all of these disciplines. How do we study different societies to ensure that development processes (including SAPs) are not hostile to the health of the poor? Put another way, how can development be humane within the context of diversities in cultures and social context? If market-driven global civilization, as Richard Falk has argued, is “a dystopian result of globalism-from-above,”<sup>59</sup> then as a panacea, we must explore ways to adopt a bottom-up approach. Among other things, this would involve an effective integration of indigenous practices in the development process.

Although lawyers have studied these issues peripherally, seminal works in comparative law, law and development, and law and anthropology provide some useful insights. As Laura Nader put it:

while I do not believe that we can adopt a wholesale Western jurisprudential categories of law for use in non-Western cultures, it is possible that we could explicitly state that we are using an outline of Anglo-American common law, for example, against which or from which we view exotic legal

---

58. See Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353 (1998) (asserting *inter-alia* that to the extent that a broader Third World approach to international law is recognized at all, it is ordinarily characterized as essentially reactive in nature); see also RICHARD FALK, *Foreward* to B.S. CHIMNI, *INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES* 9 (1993).

59. FALK, *supra* note 58.

systems. At least we would be clear about what our biases were.<sup>60</sup>

Law and development theorists tell us that theories of modernization and dependency appear to reflect the ideological hegemony of Western capitalism and the dominant forces of contemporary imperialism. These theories assume that the developing world must necessarily follow a path roughly similar to that of the developed capitalist countries.<sup>61</sup> Recognizing the existence of viable alternative approaches to development, David Trubek wrote in 1972 that the so-called “core conception of modern law” has misdirected the study of law and development by asserting that only one type of law—that found in the West—is essential for economic, social, and political development in the Third World.<sup>62</sup>

From the perspective of economics, the bottom-up approach to development has received more in-depth scholarly analysis. With respect to SAPs, economists have moved from deconstruction to an elaborate articulation of “African perspectives on adjustment.”<sup>63</sup> In sum, the canons of this school of thought underscore the following critically important factors:

- (1) that a certain perspective is emerging among African scholars about SAPs and about the imperatives of a sound policy framework to address the fundamental crisis of poverty and underdevelopment in Africa;
- (2) there is a need to make policy design sensitive to each individual country’s historical and initial conditions;
- (3) there is a need for a broader policy agenda for African countries and for a much more active role for the State within a largely market economy;

---

60. Laura Nader, *The Anthropological Study of Law*, AM.ANTHROPOLOGIST, Vol. 67, at 3, 25. For a further exploration of this theme from law and anthropology school of thought, see Clifford Geertz, *Local Knowledge: Fact and Law in Comparative Perspective*, in FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY (1989).

61. See Francis G. Snyder, *Law and Development in the Light of Dependency Theory*, 14 L. & SOC’Y REV. 723 (1980).

62. David M. Trubek, *Towards a Social Theory of Law: An Essay on the Study of Law and Development*, 82 YALE L.J. 1 (1972). Trubek’s view radically departs from the century-held theory of Max Weber whose concern was to explain the influence and the role of western legal system in the triumph of capitalism in Europe. See MAX WEBER, *ECONOMY AND SOCIETY* (Guenther Roth & Claus Wittich eds., 1978). For a recent critique of the Weberian conception of legitimacy of law and legal system, see Obiora Chinedu Okafor, *The Concept of Legitimate Governance in the Contemporary International Legal System*, 44 NETHERLANDS INT’L L. REV. 33 (1997).

63. See, e.g., MKANDAWIRE & SOLUDO, *supra* note 11.

- (4) as post-colonial African economies are vulnerable to neo-colonial and external influences, it is the primary responsibility of Africans to devise policies to reduce the vulnerability of their economies to exogenous factors; and
- (5) Africa must, and can, compete in a globalized world. To be able to compete, however, the State cannot be reduced to a passive entity as the World Bank insists. Decisions, consultations, and debate are needed to identify sectors that could yield long-term comparative advantages for African countries.<sup>64</sup>

Even the World Bank has indicted itself on SAPs' insensitivity to the historical conditions of individual countries. In one of its numerous reports, the Bank ferociously defended SAPs by asserting that future strategies should include "continuous pursuit of adjustment programs, which should evolve to take fuller account of the social impact of the reforms, of investment needs to accelerate growth, and of measures to ensure sustainability."<sup>65</sup> The same report states that "[d]evelopment practitioners from the North have often prepared programs for the South without the participation of local officials . . . These programs often inspire little commitment from the countries involved and as a result have often been ineffective."<sup>66</sup>

Taken as a whole, development from bottom-up, whether from the perspective of law or economics, underscores the need to design policies that would be sensitive to local conditions. Applying all of these to Fidler's article, the possible or probable erosion of traditional medicine by globalization of Western cultures stands conspicuously. It is arguable that SAPs have no clear link with the possible or probable erosion of traditional medicine in Africa. Nonetheless, as I have suggested, SAPs are part of the development process prescribed by IFIs for adjusting countries, and development and globalization are inexorably linked. This complex and complicated process, taken holistically, makes Fidler's predictions about the future of traditional medicine in the developing world likely to come true.

---

64. *Id.*

65. WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO GROWTH (1989).

66. *Id.* at 62.



#### IV. MAPPING THE ROAD AHEAD: FROM MUTUAL VULNERABILITY TO COMMUNITARIAN GLOBALISM

As stated in Part II, the mutuality of vulnerability is a phenomenon that has emerged with the globalization of public health. The emergence of a disease anywhere in a globalizing world is a threat to populations everywhere.<sup>67</sup> As argued by Fidler,

the powerful impetus of globalization undermines state sovereignty as power flows out of the formal apparatus and legitimacy of the state . . . Due to the pervasive impact of globalization . . . the distinction between national and international health is no longer relevant because globalization has enabled pathogenic microbes to spread diseases globally, with unprecedented speed.<sup>68</sup>

John Last, one of the world's leading epidemiologists, has identified "self-interest" as a catalyst for concern about global health disparities.<sup>69</sup> In a world constantly threatened by diseases, where populations in all parts of the globe are mutually vulnerable, there is an urgent need to narrow the South-North public health gap by moving from Falk's "globalism-from-above"<sup>70</sup> to what I call "communitarian globalism." This would represent a pool of efforts and resources by countries and multilateral agencies to prevent diseases and protect the health of populations. Why communitarian? It is "communitarian" because it recognizes the inherent risk of mutual vulnerability of populations if States—large or small, wealthy or poor—fail to cooperate. Simultaneously, communitarian globalism recognizes the benefits that would flow to all populations from an effective global cooperative paradigm based on ideals of fairness, justice, and equitable distribution of scarce but moderate global

---

67. For a discussion of mutuality of vulnerability from a broad international perspective, see IVAN L. HEAD, *ON A HINGE OF HISTORY: THE MUTUAL VULNERABILITY OF SOUTH AND NORTH* (1991).

68. David P. Fidler, *The Globalization of Public Health: Emerging Infectious Diseases and International Relations*, 5 *IND. J. GLOBAL LEGAL STUD.* 1, 12 (1997); see also David P. Fidler, *Trade and Health: The Global Spread of Diseases and International Trade*, 40 *GERMAN Y.B. INT'L L.* 300 (1997); DAVID P. FIDLER, *INTERNATIONAL LAW AND INFECTIOUS DISEASES* (1999); PAUL F. BASCH, *TEXTBOOK OF INTERNATIONAL HEALTH* (1999).

69. LAST, *supra* note 9, at 337.

70. *Id.* at 338.

resources.<sup>71</sup> Why is it global? Its globalism stems from the complex nature of contemporary international health where the phenomenon of globalization has destroyed the erstwhile traditional distinction between “national” and “international” public health.

#### CONCLUSION

Poverty remains a root cause of disease. In today’s unfair world, sharply divided into South and North, poverty continues to nurture diseases in a way that shares the “global burden of disease” unfairly and unequally between countries and populations in the global South and global North. Multilateral institutions have articulated this unequal global disease distribution in many reports and studies. As public health is tied to development, the phenomenon of globalization has conspired with poverty to wreak havoc on the health of populations in the developing world. The world is witnessing the “globalization of poverty” through the powerful conspiracy of certain important international institutions and the globalizing private sector. The World Bank tells us that the State, especially for African countries implementing SAPs, must get out of the way for market forces to take over. The consequences of this approach are enormous. Both in terms of the burden of communicable diseases and non-communicable diseases, the developing world stands doomed. Above all, there is a big question mark on the future of traditional medicine because of the power and influence of globalizing forces. The doom does not end here—Western medicine will also not be affordable because it will be too expensive for populations in the developing world.

Nobody believes that the world will not globalize or that globalization is merely a temporary phase. Scholars who are skeptical about globalization, such as Falk, are only asking that globalization be humane. As the Carnegie Corporation stated, “globalization offers great opportunities—but only if it is managed more carefully with more concern for global equity.”<sup>72</sup> “Enlightened self-interest” on the part of the developed world, which recognizes the concept of the mutuality of vulnerability, is the only panacea to the present global health imbalances and calamities. I am inspired by Nobel Laureate Joshua

---

71. Professor Thomas Franck has discussed similar issues under the rubric of legitimacy in international law. For his exploration of procedural fairness and distributive justice in the law of nations, see THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1995).

72. CARNEGIE COMMISSION ON PREVENTING DEADLY CONFLICT, *REPORT: PREVENTING DEADLY CONFLICT* 86 (1997).

Lederberg's assertion that "the world is just one village. Our tolerance of disease in any place in the world is at our peril."<sup>73</sup> The world must indeed heed this powerful message at the dawn of the twenty-first century.

---

73. *Quoted in* LAURIE GARRET, *THE COMING PLAGUE: NEWLY EMERGING DISEASES IN A WORLD OUT OF BALANCE* 619.