

Southern Regional Model United Nations XX
Enhancing Global Commitments to Human Rights and Equality
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Atlanta, GA
Email: oas@srmun.org



Honorable Delegates,

Welcome to the Southern Regional Model United Nations (SRMUN) XX, and the Organization of American States (OAS). It is my distinct honor to serve as your director for this conference. This will be my second year on staff at SRMUN, and will be Adrianna's first, and we are both very excited to be exploring these topics with you. For me the greatest joy in the model programs comes from engaging honestly and fully in these conversations. I expect us all to approach this as a learning experience, and please do not think that I mean that you will be the only ones doing the learning. One of the most exciting parts of SRMUN is that your research and experience will give you a unique understanding of the issues we will be discussing so you will be bringing fresh perspectives into the debate.

As one of the oldest regional intra-state organizations, the OAS is an important body, as much because of its mission to preserve peace as its commitment to democracy. But, those touchstones are greatly challenged by the very history of the great American nations. It is, during this conference, our task to try to live into the ideals of the organization as we address three important topics, each of which goes straight to the heart of the core values of the OAS:

- I. Assessing the status of the Free Trade Area of the Americas (FTAA) Agreement
- II. Human Trafficking in the Americas
- III. Accelerating the Completion of the American Declaration on the Rights of Indigenous Peoples

Preparations for conference should focus first on a thorough reading of the background information that Adrianna and I have put together for you, a full review of the work which the United Nations and the OAS have already undertaken to address these issues, followed by consideration of the concerns and actions specific to the Member State you are representing.

Delegates should submit one position paper that covers each of the three topics. This position paper should be no longer than two single-spaced pages, and should be present an argument meant to convince or persuade the committee to a course of action in keeping with the point of view of your respective Member State. Position papers should provide critical insight into the policy and position of each country and outline the steps that your delegation would take to address the issues at hand. A strong and well-developed position paper provides an excellent demonstration of conference preparation, and it is important that your position paper present a clear and concise statement that takes into consideration the multi-faceted nature of these issues. There is much more information on writing position papers can be found at the SRMUN website (www.srmun.org). **Position papers MUST be submitted by October 23, 11:59pm EST to the SRMUN website. Instructions for uploading your position paper can be found on the SRMUN website.**

I look forward to working with all of you at conference this year and wish you the best of luck in your preparations. Please feel free to contact myself, Adrianna, or Elizabeth if you have any questions.

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History of the Organization of American States

As the world's largest regional organization, the Organization of American States (OAS) is a democratic alliance of all 35 countries in the Americas. At its inception, the purpose of the OAS was and continues to be promoting peace and democracy.¹ As stated within the first article of their charter, their goal is "to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence."² The four official languages of the organization are English, Spanish, Portuguese and French.³ The OAS is also referred to as the Organización de los Estados Americanos (OEA) by most Spanish speaking nations.

In 1826, Simon Bolivar, the president of Gran Colombia in the 1820s and a leader in bringing South America to independence, began an initiative to create an organization of states in the western hemisphere.⁴ Though his original plan of a united continent faltered, it was not forgotten. Decades of perpetual attempts at creating a unified nation continued. In 1890, the First International Conference of American States became the foundation, and eventually the creation, of the International Union of American Republics which became the Pan American Union two decades later.

The turmoil and grave effects of two World Wars demonstrated the need to unite the neighboring nations. The member nations in the Pan American Union, recognizing the dangers of global conflicts, sought to establish resolutions ensuring human rights and security. In 1948, at the Ninth International Conference of American States in Bogota, Colombia, 21 countries joined together to form and sign the charter of what we now recognize as the Organization of American States.⁵

The OAS Charter, ratified in 1951 and most currently amended in the Protocol of Managua in 1993, states its eight specific goals within chapter two of its constitution.⁶ The overall purpose of the OAS is to strengthen security and democracy, seek solutions to political and economic issues, promote cooperative action and human rights, development cultural development, eradicate poverty, and encourage social development. The body also collectively tackles issues dealing with terrorism, drugs, trafficking, and corruption.⁷

In 1962, the nation of Cuba was suspended from its participation within the organization. At the Eighth Meeting of Consultation, the organization found that the government of Cuba does not match the goals and beliefs of the assembly as whole. During Cuba's indefinite suspension, they are also prohibited from attending meetings though they do hold observer status. Readmission of Cuba is often considered, but it is not likely to happen under their current national rule.⁸

There are also currently 61 permanent observer countries within the OAS, which includes the European Union. These observer states monitor, follow, and offer advice to the American state members that allow them to successfully promote cooperation not only in the western hemisphere, but worldwide. The list of observer nations

¹ "Background Notes: Organization of American States, March 1998," United States Department of State.
http://www.state.gov/www/background_notes/oas_0398_bgn.html

² *Charter of the Organization of American States*, The Organization of American States, February 27, 1967.
<http://www.oas.org/juridico/english/charter.html>

³ "Key OAS Issues: The OAS at a Glance," The Organization of American States.
http://www.oas.org/key_issues/eng/KeyIssue_Detail.asp?kis_sec=20

⁴ "Simón Bolívar," Encyclopædia Britannica, retrieved March 13, 2009.
<http://www.britannica.com/EBchecked/topic/72067/Simon-Bolivar>

⁵ "About the OAS: History," United States Permanent Mission to the Organization of American States.
<http://www.usoas.usmission.gov/history.html>

⁶ *Charter of the Organization of American States*

⁷ "Key OAS Issues: OAS History at a Glance"

⁸ "OAS Member States: Member States and Permanent Missions," Organization of American States.
<http://www.oas.org/documents/eng/memberstates.asp>

includes powerhouse countries such as China, France, Germany, Japan, the Russian Federation, and the United Kingdom.⁹

Since 2005, the OAS has been headed by Secretary-General Jose Miguel Insulza, former Vice President of the Republic of Chile. The framework of the OAS consists of four major divisions. The four secretariat positions are: the Secretariat for Political Affairs which works to strengthen governance; the Executive Secretariat for Integral Development which encourages social development; the Secretariat for Administration and Finance which handles budgetary affairs; and the Secretariat for Multidimensional Security to uphold public security.

The 35 Member States which include independent Caribbean nations and are as follows:

ANTIGUA AND BARBUDA, ARGENTINA, THE BAHAMAS, BARBADOS, BELIZE, BOLIVIA, BRAZIL, CANADA, CHILE, COLOMBIA, COSTA RICA, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GRENADA, GUATEMALA, GUYANA, HAITI, HONDURAS, JAMAICA, MEXICO, NICARAGUA, PANAMA, PARAGUAY, PERU, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SURINAME, TRINIDAD AND TOBAGO, U.S.A, URUGUAY, AND VENEZUELA.

⁹ "Permanent Missions Directory," Towson University, Department of Political Science.
<http://wwwnew.towson.edu/polsci/oas/Member2.htm#LIST%20OF%20PERMANENT%20OBSERVERS/>

Topic I: Assessing the status of the Free Trade Area of the Americas (FTAA) Agreement

Introduction

Free trade agreements (FTA) are not a new phenomenon. They have existed almost as long as the idea of trading and bartering. Launched almost immediately following the ratification of the North American Free Trade Area (NAFTA) by Canada; Mexico; and the United States, preliminary negotiations for the Free Trade Area of the Americas (FTAA) began not only with an apparent broad base of support, but because of the urgings of Latin American countries.¹⁰ The 34 democracies of the region quickly settled upon and signed both a comprehensive Statement of Principles and Plan of Action, and began several years of detailed preparation toward a substantive agreement.¹¹ But within three years of the start of formal negotiations on the substance of the agreement, the process began to slow dramatically.¹² Now, almost five years after the deadline for the completion of these negotiations, there still is no FTAA, nor is there a strong consensus on what should be done. Many countries in the region seek tighter economic and trade integration with the United States, several seek an alternative trade agreement integrating the economies of South America in contrast to the economic hegemony of the US, and some fear that the existing models of trade agreements destroy the social fabric while benefitting only multi-national corporations.¹³ In order to properly understand the status of the FTAA it is critical to understand the history of NAFTA. Not only is NAFTA considered to be the essential model from which the structure of the FTAA is derived,¹⁴ it was also the first major trade agreement to be reached between developed and developing economies, so it is seen as an important model for what can be expected from future trade agreements linking Latin American and Caribbean (LAC) countries with the US and Canada.¹⁵

The idea of a trade agreement spanning the North American continent was initially proposed by Ronald Reagan while running for the presidency of the United States in 1979.¹⁶ Reagan had inherited an eight-year period of “fast track” trade agreement negotiation powers giving him the ability to negotiate freely the terms of a trade agreement and allowing the Congress to only accept or reject it without any changes or amendments.¹⁷ With the appointment of Brian Mulroney to the Prime Minister’s post in Canada, the two North American nations were able to conclude talks and form the Canada-US Free Trade Agreement in 1988.¹⁸ Shortly afterwards Mexican president Carlos Salinas de Gortari approached the United States seeking a similar free trade accord,¹⁹ and within six months the Canadian government had requested that these talks become trilateral. An extension to the period of “fast track” status was granted to President George H. W. Bush, and the NAFTA draft agreement was officially signed by the three heads of state in December of 1992, but the battle for adoption of the agreement was not over. The prospect of such a broad trade agreement was not popular in either the United States or Canada.²⁰ Conservatives and “protectionists” feared that the agreement would undermine the developed nations’ industrial economy and weaken national sovereignty while liberals and environmentalists worried about job losses and the impact of polluting

¹⁰ “Free Trade Area of the Americas.” *The Princeton Encyclopedia of the World Economy*. Princeton: Princeton University Press. 2009. pp. 505-506

¹¹ “Antecedents of the FTAA Process.” Free Trade Area of The Americas. http://www.ftaa-alca.org/View_e.asp

¹² “RCMP used ‘excessive force’ at Quebec summit: report.” CBC News. 13 November, 2003.

http://www.cbc.ca/canada/story/2003/11/13/rcmp_summit031113.html

¹³ Raúl Zibechi. “Regional Integration After the Collapse of the FTAA.” The Americas Program of the International Relations Center. 21 November, 2005. <http://americas.irc-online.org/am/2937>

¹⁴ “FTAA: Frequently Asked Questions.” Global Exchange. 28 October, 2008.

<http://www.globalexchange.org/campaigns/ftaa/faq.html>

¹⁵ Daniel Lederman, et al. *Lessons from NAFTA for Latin American and the Caribbean Countries*. The World Bank. 2003.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACOFFICEOFCE/0,,contentMDK:20393778~pagePK:64168445~piPK:64168309~theSitePK:870893.00.html>

¹⁶ “Nafta Timeline.” NafiNA – North American Forum on Integration.

<http://www.fina-nafi.org/eng/integ/chronologie.asp?langue=eng&menu=integ>

¹⁷ Todd Tucker and Lori Wallach. “The Rise and Fall of Fast Track Trade Authority.” Public Citizen. 2008.

<http://www.citizen.org/documents/riseandfall.pdf>

¹⁸ “Nafta Timeline.” NafiNA – North American Forum on Integration.

<http://www.fina-nafi.org/eng/integ/chronologie.asp?langue=eng&menu=integ>

¹⁹ “Free Trade Area of the Americas.” *The Princeton Encyclopedia of the World Economy*. Princeton: Princeton University Press. 2009. pp. 505-506

²⁰ Frederick Mayer. *Interpreting NAFTA*. New York: Columbia University Press. 1998. p. 144

industries moving to Mexico where environmental regulation was either completely absent or notoriously lax.²¹ In Canada, the only interests who welcomed NAFTA were those tied to big business while unionists, nationalists, environmentalists in both Canada and the U.S. were heatedly opposed.²² In the United States this made it necessary for the incoming president, Bill Clinton, to secure side agreements promising that the states party would ensure the protection of both labor and the environment through the formation of two commissions, the Commission for Environmental Cooperation (CEC), and the Commission for Labor Cooperation (CLC).²³ Ironically, these side agreements caused as much division on the proposed trade agreement as they resolved. Environment and labor activists complained that the agreements were overly vague and provided no meaningful enforcement, while protectionists feared that such agreements would only bring further damage to national sovereignty.²⁴ These concerns aside, NAFTA was approved by the legislatures of the three states party, although narrowly in both the United States and Canada, and signed into law in 1994.

It is important to note that NAFTA, although named a “free-trade agreement,” really is not; rather, it is a preferential-trade agreement which seeks to increase trade by lowering trade barriers and increasing access to markets, as well as by making it easier to move investments between the three states party.²⁵ The main barriers to trade are import and export duties, or tariffs, which are often levied on products in order to provide protection for the domestic trades or industries dependent upon the sale of products that compete against such imports. While the intention of the agreement was to completely remove tariffs between the parties within 15 years²⁶, this goal has not been reached, and the agreement remains a framework surrounding preferential tariff rates on specific products; and while these duties ideally are to be harmonized, states party may still levy import duties at different rates for goods entering from different nations.²⁷ Further, the very contentious issues of agricultural subsidies and duties could not be resolved tri-laterally so a very important part of the NAFTA agreement consists of three separate bilateral trade agreements between the states party.²⁸

The History of the FTAA

Efforts to form the FTAA began at the Summit of the Americas in Miami, Florida in December of 1994, very shortly after the ratification of NAFTA.²⁹ At that time the 34 democracies in the region agreed in principle to develop a free trade area “in which barriers to trade and investment will be progressively eliminated,” and signed both a comprehensive Statement of Principles and a tightly integrated Plan of Action to move towards a substantive agreement.³⁰ The Statement of Principles espoused a hemispheric “partnership for development and prosperity,” that would “preserve and strengthen the community,” “eradicate poverty,” and “guarantee sustainable development,”³¹ and the Plan of Action provided a closely linked set of actions to achieve those principles.³² The target date for completion of the agreement was set for the year 2005 with the understanding that substantial progress towards formation of the FTAA should be completed by the year 2000.³³

²¹ “FTAA: Frequently Asked Questions.” Global Exchange. 28 October, 2008.

<http://www.globalexchange.org/campaigns/ftaa/faq.html>

²² Frederick Mayer. *Interpreting NAFTA*. New York: Columbia University Press. 1998. pp. 143-144

²³ Wesley R. Smith. “Assessing the NAFTA Side Agreements.” The Heritage Foundation. 30 September, 1993.
<http://www.heritage.org/research/tradeandeconomicfreedom/bg960.cfm>

²⁴ Ibid

²⁵ “NAFTA (North American Free Trade Agreement.” Pollution Issues.

<http://www.pollutionissues.com/Li-Na/NAFTA-North-American-Free-Trade-Agreement.html>

²⁶ Katherine Topulos. “NAFTA.” Duke Law Library. November 2008. <http://www.law.duke.edu/lib/researchguides/nafta.html>

²⁷ “Chapter 1 – Description of the NAFTA.” Department of Homeland Security, U.S. Customs and Border Protection.
http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/customs_procedures/description_nafta.xml

²⁸ “North American Free Trade Agreement (NAFTA).” United States Department of Agriculture. January, 2008.
www.fas.usda.gov/info/factsheets/NAFTA.asp

²⁹ “Antecedents of the FTAA Process.” Free Trade Area of The Americas. http://www.ftaa-alca.org/View_e.asp

³⁰ Ibid

³¹ “Declaration of Principles.” *First Summit of the Americas, Miami, Florida*. December, 1994.

<http://www.summit-americas.org/miamidec.htm>

³² “Summit of the Americas Plan of Action.” *First Summit of the Americas, Miami, Florida*. December, 1994.

<http://www.summit-americas.org/miamiplan.htm>

³³ “Antecedents of the FTAA Process.” Free Trade Area of The Americas. http://www.ftaa-alca.org/View_e.asp

From its beginning, the FTAA was billed as an instrument promoting mutual prosperity through “open markets, hemispheric integration, and sustainable development,” while recognizing the “differing development challenges,” and “heterogeneity and diversity of . . . [the] resources and cultures” of the various states in the region.³⁴ Further, the founding document of the FTAA, the *First Summit of the Americas Declaration of Principles*, clearly states the organization’s commitment to the principles of non-intervention and self-determination for the Member States of the OAS, as well as the central importance of transparent and democratic systems of government for “stability, peace, and development in the region.”³⁵ The ministers and secretaries of trade of the respective Member States immediately set to work establishing working groups and examining the existing trade relations between their respective countries to identify ways in which further negotiations could be approached to continue removing barriers to trade and investment. These preparatory steps were taken over the course of several ministerial level meetings between 1994 and 1998.³⁶

Much of the impetus to form the FTAA originated from several Latin American countries. This has been attributed to the failure of import-substitution and debt-financing models of development, which had led to financial instability in the 1970s, and to the devastating “Lost Decade” following the Latin American debt crisis of the 1980s.³⁷ Further, the dramatic increase of foreign direct investment (FDI) into Mexico following the mere announcement of the intention to negotiate NAFTA seemed proof that free-trade agreements were effective tools of progress and development, and also presented a direct threat to the economies of other LAC countries whose trade with the United States might be diverted under the preferential terms of NAFTA.³⁸ Talks toward the development of the free trade area progressed well until the 2001 Third Summit of the Americas in Quebec when large protests outside the negotiations³⁹ mimicked the divisions beginning to arise among the negotiating parties.⁴⁰ The pressures put upon the developing world by technology, the changing economies of the last ten years, and the competition of new economic powers such as China⁴¹ caused negotiations on the FTAA to go flat, as did the influence of nationalist and anti-market ideologies in several influential Latin American states.⁴² The leaders of Venezuela and Bolivia expressed a deep concern that the economic integration promised by the FTAA represents “imperial domination of trade and investment in the Americas,”⁴³ while Brazil held the position is that the developing world should focus on implementing more equitable trade agreements internally before submitting to agreements with developed economies which place developing countries at a disadvantage.⁴⁴ In more developed countries, protestors against the FTAA pointed to concerns over environmental protection, increasing net poverty, job flight, and national sovereignty.⁴⁵ Even economists disagree over the value of conventional free trade agreements citing that a dramatic “asymmetry regards the relatively high mobility of capital in comparison with labor.”⁴⁶ But there are other factors involved in the LAC’s general movement away from the FTAA. One of these has to do with the essential purpose of the agreement. Unlike the European Union’s tighter political and economic integration

³⁴ “First Summit of the Americas: Declaration of Principles.” Free Trade Area of The Americas. December 1994. <http://www.summit-americas.org/miamidec.htm>

³⁵ “Antecedents of the FTAA Process.” Free Trade Area of The Americas. http://www.ftaa-alca.org/View_e.asp

³⁶ Ibid

³⁷ Jeffrey J. Schott. “Does the FTAA Have a Future?” Institute for International Economics. November, 2005 <http://www.iie.com/publications/papers/schott1105.pdf>

³⁸ Ibid

³⁹ “RCMP used ‘excessive force’ at Quebec summit: report.” CBC News. 13 November, 2003. http://www.cbc.ca/canada/story/2003/11/13/rcmp_summit031113.html

⁴⁰ “FTAA: Frequently Asked Questions.” Global Exchange. 28 October, 2008. <http://www.globalexchange.org/campaigns/ftaa/faq.html>

⁴¹ Jeffrey J. Schott. “Does the FTAA Have a Future?” Institute for International Economics. November, 2005 <http://www.iie.com/publications/papers/schott1105.pdf>

⁴² James M. Roberts. “Free Trade, Not Endless Summits.” Latin Business Chronicle. 11 August, 2008. <http://www.latinbusinesschronicle.com/app/article.aspx?id=2637>

⁴³ Tim Anderson. “Breaking Imperial Ties: Venezuela and ALBA.” Venezuelanalysis.com. 27 March, 2006. <http://www.venezuelanalysis.com/analysis/1675>

⁴⁴ Raúl Zibechi. “Regional Integration After the Collapse of the FTAA.” The Americas Program of the International Relations Center. 21 November, 2005. <http://americas.irc-online.org/am/2937>

⁴⁵ “FTAA: Frequently Asked Questions.” Global Exchange. 28 October, 2007. <http://www.globalexchange.org/campaigns/ftaa/faq.html>

⁴⁶ Kenneth C. Shadlen. “Latin American Trade and Development in the New International Economy.” *Latin American Research Review*. Vol. 41, Iss. 3. 2006. pp. 210-223

model, the FTAA was always intended to serve solely as a preferential trade agreement seeking to eliminate trade barriers.⁴⁷ This might seem an easier goal to pursue, but it misses the important fact that many of the countries in the region are in tight competition with each other to provide the same or similar products. It also overlooks the fact that, for instance, much of Mexico's success pre and post-NAFTA can be seen as a reflection of the political and economic reforms the country has taken over the last 20 years.⁴⁸ Without the promise of similar reforms developed nations are less inclined to make trade concessions so, despite the lack of obvious interference in national sovereignty, there is an implied level at which the FTAA places pressure on states party to conform to policies which they otherwise might reject.⁴⁹ It was this pressure that caused the Bush administration to back away from a uniform FTAA, and towards a structure which would allow "different levels of commitment among the members, or what was called 'FTAA Light.'"⁵⁰ The real result of this strategy was to create an atmosphere at the 2003 Ministerial meeting in Miami where some of the negotiating parties felt that they could take those issues which were most contentious to them off the table while others, like the United States, refused to make concessions on issues such as agricultural subsidies.⁵¹ The end result was not to free up negotiations but rather to hamstring them. But it is also possible that this particular aspect of the failure of the FTAA was inevitable.

One of the tenets of the FTAA was that it was to be "self-contained," meaning that the agreement would provide a comprehensive agreement covering all of the 34 states party to the negotiations, but this overlooks the fact that there already exist several bilateral and multilateral trade agreements and customs unions throughout the region reflecting the different paces that the American states are capable, or comfortable, moving at.⁵² Many of these agreements are "partial scope" trade accords that grant sector-specific benefits to bilateral trading partners."⁵³ Although these agreements reflect very small volumes of trade, they also underscore the difficulty of forming a single trade agreement which can effectively address the many and varied purposes for which these specific agreements were designed.

The issue of existing trade agreements also plays out in another large issue which led to the loss of momentum towards the FTAA. As stated previously, the United States has, during the course of negotiations, staunchly refused to make any concessions with regards to its practices on agriculture subsidies. This has been a particularly contentious issue for Brazil, one of South Africa's largest agricultural exporters. At the same time, Brazil has been reticent to make concessions with regards to external investment and intellectual property rights.⁵⁴ Given Brazil's dominant position in the Southern Common Market (MERCOSUR), and its booming export-oriented economy, it becomes understandable why the South American giant feels little pressure to negotiate the FTAA solely on the United States' terms.⁵⁵ The Miami Ministerial ended with a procedural compromise between the United States and Brazil which allowed the two sides to declare their intentions to continue negotiations, but, as suggested above, effectively crippled the agreement.⁵⁶

By 2004, the FTAA process was widely considered to be completely stalled if not already dead.⁵⁷ The United States, refusing to let go of the dream of a hemispheric free trade area, continued to pursue bilateral and other

⁴⁷ Jeffrey J. Schott. "Does the FTAA Have a Future?" Institute for International Economics. November, 2005
<http://www.iie.com/publications/papers/schott1105.pdf>

⁴⁸ Daniel Lederman, et al. *Lessons from NAFTA for Latin American and the Caribbean Countries*. The World Bank. 2003.
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACOFFICEOFCE/0,,contentMDK:20393778~pagePK:64168445~piPK:64168309~theSitePK:870893,00.html>

⁴⁹ Jeffrey J. Schott. "Does the FTAA Have a Future?" Institute for International Economics. November, 2005
<http://www.iie.com/publications/papers/schott1105.pdf>

⁵⁰ Raúl Zibechi. "Regional Integration After the Collapse of the FTAA." The Americas Program of the International Relations Center. 21 November, 2005. <http://americas.irc-online.org/am/2937>

⁵¹ Ibid

⁵² Jeffrey J. Schott. "Does the FTAA Have a Future?" Institute for International Economics. November, 2005
<http://www.iie.com/publications/papers/schott1105.pdf>

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Raúl Zibechi. "Regional Integration After the Collapse of the FTAA." The Americas Program of the International Relations Center. 21 November, 2005. <http://americas.irc-online.org/am/2937>

⁵⁶ Jeffrey J. Schott. "Does the FTAA Have a Future?" Institute for International Economics. November, 2005
<http://www.iie.com/publications/papers/schott1105.pdf>

⁵⁷ Ibid

regional free trade agreements in the hopes that such agreements could later be combined into a larger trading bloc, but these efforts were hampered by the lack of consistency and common vision between those various agreements.⁵⁸

The Economic Effects of NAFTA

It is important to look back at NAFTA because it serves not only as an important point in the history of the FTAA, but also because it may serve as a model for the impact that such a trade agreement might have on the states party to the agreement. As such, there is much at stake in interpreting just what that impact has been, not only on Mexico, but also on the United States and Canada. To some extent this interpretation is difficult because of the relatively short time since the adoption of NAFTA. It is also difficult because there is not a single impact of the agreement, but in fact there are many ways that NAFTA has impacted each of the three Member States. This difficulty is even greater because there are many ways to measure these impacts and as many ways to interpret those measurements. However, many of the arguments against the FTAA are based upon the negative economic and social changes the agreement will allegedly force upon the less-developed countries in the region, and for that purpose an examination of the economic and social impacts of NAFTA on Mexico are important. It is important to note, however, that analysis of these impacts upon Mexico are complicated by a variety of factors, not the least of which is the Tequila Crisis of 1994 when Mexico allowed a drastic devaluation of the peso causing a traumatic reduction in foreign investment and real income in the country.⁵⁹

Despite the difficulty of such analysis, the World Bank found that, as of 2003, Gross Domestic Product (GDP) had only increased 1.2% post NAFTA, and that the poverty rate had decreased slightly as well.⁶⁰ They found also that Foreign Direct Investment (FDI) in Mexico would be 40% lower without NAFTA than it is now and that Mexican global exports would have been 24% lower without the trade agreement.⁶¹ Another important finding is that, while Mexico has become a net exporter of electronics and technical equipment, the level of innovation in those areas is not on par with other developing countries suggesting that Mexico is simply relying upon low-cost labor for the assembly of technical goods for export rather than building a competency in the design and production of these goods.⁶²

While these indicators, though not profound, appear to point to overall growth, there are other ways to consider them. First, there is a strong critique of the use of GDP as a measure of productive growth. GDP is a measure of the total value of money spent on goods and services without any consideration of the nature of the need prompting the expenditure.⁶³ In other words, buying a new car because yours was stolen is as valuable to the GDP as buying a new car because you had saved up the money and were replacing your current car as scheduled. In fact, by this logic, natural disasters and crime sprees are very good for the economy. This suggests that simply evaluating the GDP of Mexico since the adoption of NAFTA does not tell us much about the nature of the impact of the agreement upon the lives of Mexicans. Critics also point to the measure of poverty and question what is really being measured.⁶⁴ If the measurement is simply evaluating income and consumption it could miss the point that a subsistence farmer living on his own land may live below the poverty line, but would seem to have a better life than a factory worker living in a crowded tenement. These concerns become even greater if the measurements are based simply upon aggregates and averages, because a large increase in the wages of a minority of the population can appear as a general rise in the income of all. But perhaps of greater concern are all of the persons who, because they have

⁵⁸ Thomas Andrew O'Keefe and Evan Scott Thomas. "Towards a Community of the Americas." *Latin Business Chronicle*. 15 September, 2008. <http://www.latinbusinesschronicle.com/app/article.aspx?id=2742>

⁵⁹ Maxwell Cameron. "Mexican Meltdown: States, Markets and Post-NAFTA Financial Turmoil." September, 1996. <http://basc.berkeley.edu/pdf/articles/Mexican%20Meltdown.pdf>

⁶⁰ Daniel Lederman, et al. *Lessons from NAFTA for Latin American and the Caribbean Countries*. The World Bank. 2003. <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACOFFICEOFCE/0,,contentMDK:20393778~pagePK:64168445~piPK:64168309~theSitePK:870893,00.html>

⁶¹ Ibid

⁶² Ibid

⁶³ Clifford Cobb, et al. "If the GDP is Up, Why is America Down?" *The Atlantic Online*. October 1995. <http://www.theatlantic.com/politics/ecbig/gdp.htm>

⁶⁴ Emmanuel Alvarado. "Mexico's Poor: Contextualizing Poverty and Inequality in the post-NAFTA years." May, 2007. http://www.nshp.org/docs/poverty_and_inequality_in_the_post_NAFTA_years.pdf

moved out of conventional employment, or emigrated out of the country, have completely disappeared from the system of measurement.⁶⁵

These concerns, taken along with the World Bank's findings on the lack of innovation within Mexico's high-tech assembly industry, collectively suggest that whatever benefit Mexico is receiving from NAFTA is confined to a very small segment of the country's broader economic activity, and may be confined to a similarly small portion of the population. If this is true, it calls into question the extent to which NAFTA is living up to its promise to "improve working conditions and living standards."⁶⁶

The Effects of NAFTA on Agriculture

As stated previously, the issue of agriculture in the context of the agreement was so difficult to overcome that it could not be harmonized to one text and required three separate bilateral agreements between the states party. However, the World Bank trumpets the success of the liberalization of agricultural trade between the United States and Mexico, pointing out that the opening of the Mexican corn market to cheaper US corn did not devastate Mexican agriculture, but led to increases in land productivity.⁶⁷ Along with a reduction in "arbitrary and discriminatory trade rules," this has, according to the U.S. Department of Agriculture, led to "lower prices and more choices,"⁶⁸ but the immediate effects did not seem as positive. The opening of the corn market in Mexico, along with the elimination of the market floor price for corn made it impossible for Mexican corn farmers to compete with their U.S. and Canadian counterparts who had access to industrial farming tools and methods. This forced many Mexican farmers not only out of their traditional work, but also off of their lands.⁶⁹ As a result millions of Mexicans moved to the cities (or across the border) in search of other work. In addition, price controls on tortillas were lifted.⁷⁰ Simple economics would suggest that tortilla prices, given the lower cost of corn, would fall, but that did not happen. Because of the large population shift from farms to cities, the consumer price index began to rise; so, while the corn that was being produced outside of the Mexican economy was cheap, the tortillas that were being produced inside the Mexican economy became more expensive with prices rising over 50% in the cities and even more in rural areas.⁷¹ But even this is not the end of the story. In 1996 the United States suffered a corn shortage which created a food crisis for Mexico during which an estimated 20% of Mexican children were malnourished.⁷² In short this would suggest that the elimination of subsidies and price controls has left Mexico unable to provide a reliable supply of corn to its population.

There are also concerns about the changes occurring within the agricultural sector of Mexico. The increases in land productivity can be attributed not only to an increase in the use of industrial tools and methods, but also to the widespread use of newer corn hybrids developed in other countries. Because these hybrids are more productive in combination with the use of chemical fertilizers and pesticides, they are displacing regional varieties of grain which have been developed over many centuries.⁷³ There are two primary concerns associated with this change. The first is that the need to rapidly increase land productivity has devastated small farmers in Mexico. In much of Mexico, those highly productive varieties of corn are only more productive with the addition of expensive inputs, and these varieties cannot be replanted from seed held back from the previous year's harvest. This means that small farmers, who have little or no access to credit, are required to make huge expenditures in order to maintain their farms. Because they cannot make these investments, and cannot make enough money raising crops using traditional

⁶⁵ David Bacon. "NAFTA's Legacy – Profits and Poverty." *Common Dreams.org*. 14 January, 2004. <http://www.commondreams.org/views04/0114-04.htm>

⁶⁶ "North American Free Trade Agreement." NAFTA Secretariat. 1 January, 1994. <http://www.nafta-sec-alena.org/en/view.aspx?x=343&mtpiID=120>

⁶⁷ Daniel Lederman, et al. *Lessons from NAFTA for Latin American and the Caribbean Countries*. The World Bank. 2003. <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACOFFICEOFCE/0,,contentMDK:20393778~pagePK:64168445~piPK:64168309~theSitePK:870893.00.html>

⁶⁸ "NAFTA Agricultural Trade an Unqualified Success." The Embassy of the United States of America, Ottawa, Ontario, Canada. 20 April, 2004. http://ottawa.usembassy.gov/content/can_usa/pdfs/nafta_terpstra_042004.pdf

⁶⁹ "Down on the Farm: NAFTA's Seven-Years War on Farmers and Ranchers in the U.S., Canada and Mexico." Public Citizen's Global Trade Watch. 26 June, 2001. <http://www.citizen.org/publications/release.cfm?ID=6788>

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Alejandro Nadal. "Corn and NAFTA: An Unhappy Alliance." *Seedling: The Quarterly Newsletter of Genetic Resources Action International*. June, 2000. <http://www.grain.org/seedling/?id=14>

methods, many farmers are forced to sell their land to larger farms.⁷⁴ The second concern is that this industrial aggregation of Mexican agriculture is further developing an agricultural monoculture which, by displacing local varieties, is causing the loss of an important source of genetic diversity. Those small local farmers, especially in areas where grain crops are most difficult to grow, have developed several varieties of corn which can withstand the many and varied problems the growers face. Examples are varieties which can withstand extreme temperatures, or which are immune to local fungi, or can survive periods of drought.⁷⁵ Because of their inability to survive an interruption in the harvest, these farmers have fostered most of the genetic variability in the germplasm of the world's corn by carefully selecting seed stock over hundreds of years. Larger producers, who can afford simply to spray large volumes of fertilizer and pesticide on their crops, have no interest in maintaining that genetic diversity.⁷⁶ Another concern surrounds the ways in which intellectual property laws have impacted agriculture. Large agribusinesses are able to seek out plant varieties that have been cultivated over hundreds of years, make minor genetic changes to the organism and, even when those changes make no meaningful difference to the plant, patent the organism and levy claims of patent infringement on the small farmers who continue to raise those crops.⁷⁷ In one case the Mexican state of Sinaloa was able to defend itself against the lawsuit brought against it for just such a claim of patent infringement, but these legal actions are highly expensive and often fought in venues far away from the peasant farmers they impact.⁷⁸ In such cases the advantage is clearly with the large companies who generally have large budgets and a legal staff in place.

The Environmental Effects of NAFTA

The question of what the effects of NAFTA would be on the environments of North America was a grave concern, and the agreement was only able to be ratified with the inclusion of a side agreement creating the North American Commission for Environmental Cooperation (CEC), which is mandated to provide information and analysis on the environment of the three states party, to promote sustainable development, to assist in trilateral collaborations to protect biodiversity, and to catalyze cooperation in order to resolve issues surrounding pollutants and health.⁷⁹ The Commission has been criticized because it lacks any means to enforce compliance to existing law, or to punish violators.⁸⁰ However, the organization does not accept this criticism. It has, instead, remained highly active, seeking public submissions of environmental concerns, actively seeking further information on the issues brought before it, investigating those claims which appear to have merit, and naming and shaming the violators through public forums such as its own website.⁸¹ Critics counter by pointing out that this process is long and cumbersome and that there are no guarantees that completing it will result in any actual change in the behavior of the violators.⁸² The 68 Citizen Submissions on Enforcement Matters submitted to the CEC since 1995, have involved 43 from Mexico.⁸³ This could be read one of two ways. The first is that two-thirds of the violations reported have occurred in Mexico, indicating a clear problem with the enforcement systems in Mexico. But the other is that the CEC system of submitting reports is at least functional enough that a significant number of violations are being reported and acted upon.

The initial concern for environmentalists was that polluting industries would be quick to move their activities to Mexico where environmental protection laws did not exist; were much more lax than those in the United States and

⁷⁴ "Down on the Farm: NAFTA's Seven-Years War on Farmers and Ranchers in the U.S., Canada and Mexico." Public Citizen's Global Trade Watch. 26 June, 2001. <http://www.citizen.org/publications/release.cfm?ID=6788>

⁷⁵ Alejandro Nadal. "Corn and NAFTA: An Unhappy Alliance." *Seedling: The Quarterly Newsletter of Genetic Resources Action International* June, 2000.. <http://www.grain.org/seedling/?id=14>

⁷⁶ Ibid

⁷⁷ "Down on the Farm: NAFTA's Seven-Years War on Farmers and Ranchers in the U.S., Canada and Mexico." Public Citizen's Global Trade Watch. 26 June, 2001. <http://www.citizen.org/publications/release.cfm?ID=6788>

⁷⁸ Ibid

⁷⁹ "Projects." Commission for Environmental Cooperation. http://www.cec.org/programs_projects/index.cfm?varlan=english

⁸⁰ "Down on the Farm: NAFTA's Seven-Years War on Farmers and Ranchers in the U.S., Canada and Mexico." Public Citizen's Global Trade Watch. 26 June, 2001. <http://www.citizen.org/publications/release.cfm?ID=6788>

⁸¹ Wesley R. Smith. "Assessing the NAFTA Side Agreements." The Heritage Foundation. 30 September, 1993. <http://www.heritage.org/research/tradeandeconomicfreedom/bg960.cfm>

⁸² Ibid

⁸³ "Citizen Submissions on Enforcement Matters." Commission for Environmental Cooperation. <http://www.cec.org/citizen/status/index.cfm?varlan=english>

Canada; or were not effectively enforced. But studies indicate this is not what happened.⁸⁴ At the same time, there is grave concern that the waste products of *maquiladora* facilities in Mexico is not properly accounted for or disposed of, and that the rate of birth defects and cases of hepatitis in some border areas are dramatically higher than they are elsewhere on the continent, indicating that at least some of the dire predictions of post-NAFTA environmental degradation may have been accurate.⁸⁵ If that is true, it may not be due to a legislative failure, but an economic one. Following the Tequila Crisis, the Mexican government was forced to slash spending on environmental protection by 45%, and even before that point Mexico's spending on the environment was only one-fifth that of its peers in the Organization for Economic Co-operation and Development (OECD).⁸⁶ This would appear to present a grave concern for any developing Member State weighing the benefits of a free trade agreement against its possible costs, especially since structural adjustment policies often require significant reductions in government spending.

NAFTA and National Sovereignty

Another concern raised by anti-NAFTA activists was that the agreement might allow one state party to force another to abandon or change either national or local law by claiming that such laws are, in effect, barriers to trade, and thereby striking directly at the heart of the notion of national sovereignty. The concerns appear to have some basis in truth, but at the same time the ramifications may not be quite as dire as they appear. There are several cases that are relevant to this issue, but we will focus on two: the case brought by the Ethyl Corporation against the government of Canada and the case brought by Methanex against the United States.

In early 1997, the Canadian Parliament banned the import and inter-provincial transport of methylcyclopentadienyl manganese tricarbonyl (MMT), a gasoline additive produced by Ethyl Corporation of Virginia.⁸⁷ The Canadian Parliament based its decision on the fact that MMT is manganese-based and the presumption that emissions of manganese would pose a significant danger to public health.⁸⁸ The United States had banned the use of MMT in formulated gasoline prior to Canada's federal law, and in 1997 Canada was the only country in which the additive was used.⁸⁹ It should also be noted that the Canadian ban on MMT could not be affected under the Canadian Environmental Protection Act provisions because the scientific evidence directly linking MMT to harmful manganese exposure was inconclusive at that time, so the Canadian government took this action instead.⁹⁰ Ethyl Corporation sued the government of Canada for damages of \$251 million under NAFTA's chapter 11 provisions, requiring that governments compensate investors for actions which effectively expropriate the investors' property.⁹¹ Ethyl claimed that the actions of the Canadian Government were illegal because they banned the import of MMT, but did not ban local production of the compound.⁹² Further, the Canadian law, by banning inter-provincial transport, would make it necessary for Ethyl to build production facilities in each of Canada's 11 provinces in order to continue its business.⁹³ Ethyl claimed that these actions effectively reduced the value of their manufacturing facility and harmed their sales.⁹⁴ About a year after passing the ban, the Canadian government settled with Ethyl, paying their legal fees, promising to rescind the legislation and publicly stating that the use of MMT presents no physical or environmental threat.⁹⁵

⁸⁴ Kevin P. Gallagher. "Free Trade and the Environment: Mexico, NAFTA, and Beyond." Americas Program. 17 September, 2004. <http://ase.tufts.edu/gdae/Pubs/rp/NAFTAEnviroKGAmerProgSep04.pdf>

⁸⁵ "FTAA: Frequently Asked Questions." Global Exchange. 28 October, 2007. <http://www.globalexchange.org/campaigns/ftaa/faq.html>

⁸⁶ Kevin P. Gallagher. "Free Trade and the Environment: Mexico, NAFTA, and Beyond." Americas Program. 17 September, 2004. <http://ase.tufts.edu/gdae/Pubs/rp/NAFTAEnviroKGAmerProgSep04.pdf>

⁸⁷ Michelle Sforza and Mark Vallianatos. "NAFTA & Environmental Laws: Ethyl Corp. v. Government of Canada." Global Policy Forum. April, 1997. <http://www.globalpolicy.org/component/content/article/212/45381.html>

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² Jason Kim, et al. "Ethyl Corporation vs. Canada." 13 October, 2005.

http://are.berkeley.edu/courses/EEP131/old_files/studentpresentations05/Ethyl%20v.%20Canada.pdf

⁹³ Michelle Sforza and Mark Vallianatos. "NAFTA & Environmental Laws: Ethyl Corp. v. Government of Canada." Global Policy Forum. April, 1997. <http://www.globalpolicy.org/component/content/article/212/45381.html>

⁹⁴ Ibid

⁹⁵ Jason Kim, et al. "Ethyl Corporation vs. Canada." 13 October, 2005.

http://are.berkeley.edu/courses/EEP131/old_files/studentpresentations05/Ethyl%20v.%20Canada.pdf

This case highlights some of the striking differences between NAFTA and other trade agreements. Historically, only other nations have been able to bring suits against a state party to such an agreement, and even then there was no provision for monetary compensation under such a suit.⁹⁶ NAFTA, however, allows corporations “private legal standing,” meaning that they can sue foreign governments directly and seek damages instead of just rectification.⁹⁷ This expansion of the rights of corporations within trade areas should raise questions about the extent to which nations can effectively legislate within the marketplace to begin with, but in this case it is particularly troubling to consider that sovereign government’s right to enact legislation for the health and well-being of its constituents could be seen as secondary to the rights of a corporation to engage in trade which might bring harm to that same constituency.⁹⁸ There are other frightening implications in this case, not the least of which is that NAFTA’s chapter 11 is, in part, designed to protect foreign investors from having their property seized arbitrarily by the government,⁹⁹ but this new interpretation on protecting a corporation’s market at the expense of its customers is quite troubling indeed. To be fair, it has been argued that it was Canada’s inability to provision the ban as an environmental protection measure, as well as its Agreement on Internal Trade, which makes the trade between Canadian provinces as protected as that between the United States and Mexico, might be more to blame for Canada’s reversal than NAFTA.¹⁰⁰ This view is reinforced by the example of the case of *Methanex v. the United States*, which also provides an important counter to the concerns that *Ethyl v. Canada* bring out.

Following the 1990 Clean Air Act in the United States, the year-round use of reformulated gasoline became required in the cities with the worst smog problems.¹⁰¹ One of the requirements of reformulated gasoline was the inclusion of oxygenates to increase octane ratings.¹⁰² In much of the midwest United States, ethanol is the oxygenate of choice, but in most other states methyl tertiary butyl ether (MTBE) was the additive used to meet this requirement.¹⁰³ But as traces of MTBE began to show up in drinking water supplies, concerns over the persistence of the chemical and its effects on humans were raised and several states passed legislation requiring that the use of MTBE be phased out.¹⁰⁴ California’s phased ban of the chemical was particularly important because the state was responsible for almost one-third of MTBE used in the country.¹⁰⁵ Within three months of the passage of California’s ban, Methanex, a Canada-based methanol supplier, filed a claim for \$970 million under NAFTA Chapter 11 alleging that the ban on MTBE was a protectionist measure to expropriate the company’s business toward domestic ethanol producers.¹⁰⁶ Methanex also points out that singling out MTBE fails to address the real problem, gasoline spillage into the environment.¹⁰⁷ Many environmental groups positioned this as a ploy to use NAFTA as a strong arm to force us “to pay polluters not to pollute,”¹⁰⁸ however this is not a fair assessment of the nature of the claim. MTBE is believed to have leaked into the water supply through many means such as leaking storage tanks and pipelines.¹⁰⁹ Neither of these sources is within the control of additive manufacturers, and Methanex argued that fixing the sources of environmental spillage would be a more effective means for addressing MTBE contamination.¹¹⁰ Ultimately, the claim was dismissed by

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ David Schneiderman. “MMT Promises: How the Ethyl Corporation Beat the Federal Ban.” *The Parkland Post*. Winter, 1999. <http://www.ualberta.ca/PARKLAND/post/Vol-III-No1/02schneiderman.html>

¹⁰¹ “Status and Impact of the MTBE Ban.” Energy Information Administration, United States Department of Energy. <http://www.eia.doe.gov/oiaf/servicerpt/mtbeban/>

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ “Methanex says California additive ban illegal under NAFTA Rules.” Global Exchange. June, 2004 <http://www.globalexchange.org/campaigns/ftaa/1997.html.pf>

¹⁰⁷ “Q&A Background on Methanex’s NAFTA Claim.” Methanex. October 20, 2008. <http://www.methanex.com/newsroom/mxnaftabackground.html>

¹⁰⁸ Cat Lazaroff. “USA: Billion Dollar NAFTA Challenge to California MTBE Ban.” CorpWatch. 11 September, 2000. <http://www.corpwatch.org/article.php?id=570>

¹⁰⁹ Status and Impact of the MTBE Ban.” Energy Information Administration, United States Department of Energy. <http://www.eia.doe.gov/oiaf/servicerpt/mtbeban/>

¹¹⁰ “Q&A Background on Methanex’s NAFTA Claim.” Methanex. October 20, 2008. <http://www.methanex.com/newsroom/mxnaftabackground.html>

the NAFTA tribunal on the grounds that the tribunal lacked jurisdiction in the issue because Methanex had failed to demonstrate that California undertook the MTBE ban specifically to damage methanol producers.¹¹¹

FTAA and the WTO Doha Round

Initiated in 2001, the Doha Development Round of negotiations of the World Trade Organization (WTO) was billed also as the Doha Development Agenda because of the stated aim of assisting the developing world in reaching parity with the developed world through freer trade.¹¹² Negotiations quickly stalled out primarily over two contentious issues: agricultural tariffs and subsidies.¹¹³ Developed nations object to the low threshold of the “special safeguard mechanism,” special purpose tariffs designed to protect local farmers from commodity price fluctuations due to seasonal surges in agricultural goods which large developing countries such as India, China, and Brazil demand.¹¹⁴ At the same time, Brazil has taken a leading role in demanding the reduction of agricultural subsidies by the northern agriculture exporting nations such as the Member States of the EU and the United States.¹¹⁵ The developing nations complain that such trade-distorting subsidies make it impossible for them to gain access to these very large markets.¹¹⁶ This essential concern echoes the sense in the developing world that the Doha Development Round was never really about development at all.¹¹⁷ From the outset, developing nations have insisted that the Doha round focus on resolving older WTO disputes and the challenges of fostering meaningful development while avoiding the initiation of negotiations on new trade liberalizations.¹¹⁸ Since this was not the way in which the Doha round was approached the leading developing nations noted with great cynicism the demands from the developed world that they fully open their markets while those same developed nations refused to provide the same kinds of market access.¹¹⁹ The apparent collapse of the Doha Round places a greater challenge before the resumption of FTAA negotiations because some OAS Member States had hoped to gain greater parity worldwide by having the issues of agricultural tariff harmonization and the reduction of agricultural subsidies addressed in a global context rather than a regional one; but barring such developments, they are already building their own multi-lateral trade agreements through regional agreements such as MERCOSUR.¹²⁰

An Alternative Vision – The Bolivarian Alternative for the Americas

As enthusiasm for the neo-liberal economic model has flagged in Latin America, several left-leaning governments have been elected and have begun to promulgate their own visions for what regional integration might look like.¹²¹ The most clearly stated and interesting of these is the Bolivarian Alternative for the Americas (ALBA) championed by Venezuela’s Hugo Chávez. It should first be stated that ALBA is not a structured trade agreement, nor is it a hierarchical organization intended to remove bureaucracy or foster economic integration.¹²² Rather, ALBA is a framework for regional cooperation.¹²³ The spirit of ALBA is expressed through such projects as Operation Miracle under which doctors from Cuba go to Venezuela and provide cataract surgery to anyone who needs it free of charge

¹¹¹ “Nafta Panel Fails to Rule on #1B Methanex MTBE Complaint.” *Automotive Digest*. August 7, 2002.

<http://www.automotivedigest.com/content/displayArticle.aspx?a=21825>

¹¹² “World trade talks end in collapse.” *BBC World News*. 29 July, 2008.

<http://news.bbc.co.uk/2/hi/business/7531099.stm>

¹¹³ *Ibid*

¹¹⁴ Daniella Markheim. “Web Memo: The Future of the WTO Doha Round.” *The Heritage Foundation*. December 22, 2008.

¹¹⁵ Raúl Zibechi. “Regional Integration After the Collapse of the FTAA.” *The Americas Program of the International Relations Center*. 21 November, 2005. <http://americas.irc-online.org/am/2937>

¹¹⁶ Doug Palmer and William Schomberg. “U.S. offers subsidy cut but is asked for more.” *EcoDiario*. 27 July, 2008.

<http://ecodiario.economista.es/noticias/noticias/668858/07/08/US-offers-farm-subsidy-cut-but-is-asked-for-more.html>

¹¹⁷ Walden Bello. “Why Today’s Collapse of the Doha Round Negotiations is the Best Outcome for Developing Countries.” *Focus On The Global South*. 25 July, 2006.

http://www.tni.org/detail_page.phtml?page=archives_bello_dohacollapse

¹¹⁸ *Ibid*

¹¹⁹ *Ibid*

¹²⁰ Fishlow, Albert. “Brazil: FTA or FTAA or WTO?” *Free Trade Agreements: US Strategies and Priorities*. Ed. Jeffrey J. Schott. Washington D.C.: Institute for International Economics. 2004. pp. 285-286

¹²¹ Raúl Zibechi. “Regional Integration After the Collapse of the FTAA.” *The Americas Program of the International Relations Center*. 21 November, 2005. <http://americas.irc-online.org/am/2937>

¹²² David Harris and Diego Azzi. “ALBA Venezuela’s answer to “free trade”: the Bolivarian alternative for the Americas.” *Focus on the Global South*. October, 2006. <http://www.focusweb.org/pdf/alba-book.pdf>

¹²³ *Ibid*

and with the Venezuelan government providing travel and lodging.¹²⁴ Another example of ALBA is the agreement between Venezuela and Bolivia to exchange Venezuelan oil for Bolivian soybeans at preferential rates.¹²⁵ But ALBA also has its own structural difficulties. First, it is challenged by the fact that it is championed by (and currently only formally accepted by) Chávez, former Cuban president Fidel Castro, Bolivian president Evo Morales and Nicaraguan president Daniel Ortega, all significantly left-leaning and antithetical to the neo-liberal Washington Consensus.¹²⁶ Secondly, its implementation has already challenged its core principles. The structure is supposed to be grass-roots and ultimately democratic, yet almost all actions taken under the arrangement have been accepted by the leaders of those countries with little or no popular input.¹²⁷ Despite these challenges it is very possible that Brazil and Argentina could be brought on board with this arrangement.¹²⁸

Conclusion

The FTAA faces significant challenges if it is to be revived. The neo-liberal economic model is no longer assumed to be the best model for development. Questions remain over just how equitably the benefits of free trade agreements are spread, and the specter of economic imperialism looms large over the negotiations. The evidence is not clear on whether entering a free trade agreement with the United States and Canada was good or bad for Mexico and the Mexican people. Questions also remain about whether or not economic liberalization is a threat to agriculture, the environment and national sovereignty. Even worse, the trade liberalization impetus seems to have lost steam not only in the Americas, but throughout the world as evidenced by the collapse of the Doha Round negotiations. Concurrent with these questions, new ideas have been put forward suggesting regional agreements designed around the principle of cooperative development that specifically preserves culture and promotes equity.

Committee Directive

This topic is particularly challenging because it requires that delegates step away from the specifics of the FTAA itself to consider, instead, the challenges that FTAA negotiations face and ways that those challenges might be addressed. Delegates should not focus so much on their respective positions on specific points of the FTAA, but on the broader issues of, for instance, agricultural subsidies, market access, intellectual property, and the trade in services. These issues are all very important and significant hurdles that need to be addressed in order for FTAA negotiations to resume. It is also very possible that any trade agreement that could be reached simply cannot meet the FTAA's initial goal of being "self contained." If this is true, then this committee will need to consider carefully which portions of the agreement should be kept on the table and which should be removed. Finally, the committee should consider the suggestions set forth in the framework of ALBA. To what extent does it make sense to seek cooperative models for development that abandon the neo-liberal economic model, and can aspects of the two models be molded together to form a framework for development that will be more palatable for the parties involved?

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Ibid

Topic II: Human Trafficking in the Americas

“For those of us who are in position to do something to combat human slavery, however small our contribution, neutrality is a sin.”

-General Joseph E. Schmitz, U.S. Department of Defense¹²⁹

I. Introduction

Slavery is an act rarely seen in the life of everyday citizens, but rather viewed as an atrocity, written about only in history books. Every country in the world has deemed human slavery impermissible and has worked through their governments to legally prohibit the act. However, there have been over 27 million instances around the world of this modern day form of slavery, labeled human trafficking.¹³⁰

Human trafficking strips a person of their basic human rights. Universal and unalienable human rights are civil, political and social rights inherent to all human beings. In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR), which represented and consisted of the indivisible and collective civil liberties of all people regardless of nationality, sex, religion or color.¹³¹ After the atrocities of World War II, the international community came together to create and draft this affirmation of the most fundamental of all human entitlements. The United Nations General Assembly voted upon the UDHR under resolution A/RES/3/217A on 10 December 1948.¹³² The document was adopted by 48 votes and 8 abstentions, most of which came from the former Soviet bloc.¹³³ The Declaration consists of a thorough preamble, recognizing the essentials of the document, as well as the importance of the pledge, and contains 30 clearly stated human rights articles. The fourth of these articles states, “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”¹³⁴

According to the United States anti-human trafficking regime, the Trafficking Victims Protection Act (TVPA) established in 2000, trafficking is defined as either

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹³⁵

Trafficking forces people into sale as labor, for prostitution and even for the harvesting of human organs. The International Labor Organization (ILO) estimates that 12.3 million persons are trafficked annually, with 600,000 to 800,000 of those being traded across national borders.¹³⁶ Governments around the world are educating citizens on the reality of this crime, and together are creating new civil rights acts, conventions and campaigns to protect the victims of trafficking while punishing the perpetrators of the crime. One such ground-breaking convention, the

¹²⁹ “What is the Initiative Against Sexual Trafficking?” Initiative Against Sexual Trafficking.
<http://www.iast.net/index.htm>

¹³⁰ “Modern Slavery 101.” iAbolish American Anti-Slavery Group.
http://www.iabolish.org/slavery_today/primer/index.html

¹³¹ “What are Human Rights?” United Nations Office of the High Commissioner for Human Rights.
<http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

¹³² A/RES/3/217. International Bill of Human Rights. December 10, 1948.
<http://www.un-documents.net/a3r217.htm>

¹³³ *Universal Declaration of Human Rights*. United Nations General Assembly. December 10, 1948.
<http://www.udhr.org/history/yearbook.htm>

¹³⁴ *Universal Declaration of Human Rights*. United Nations General Assembly. December 10, 1948.
<http://www.un.org/en/documents/udhr/index.shtml>

¹³⁵ “Trafficking in Persons Report.” U.S. Department of State. June 4, 2008.
<http://www.state.gov/g/tip/rls/tiprpt/2008/105376.htm>

¹³⁶ Ibid.

Council of Europe Convention Against Trafficking of Human Beings, came into effect in 2008 and signaled a unified global response against the threat of this inhumane practice.¹³⁷

Throughout the world, various forms of slavery can be seen, of them the four most common types are: chattel slavery, debt bondage, forced labor, and sexual slavery.¹³⁸ Chattel Slavery was most notably seen in the early stages of the United States and is characterized as the owning of a person as one's property, traded in much the same way as modern day currency. The slaves are often forced to perform sexual acts at the demand of their masters. This form of slavery is often racially motivated.¹³⁹ The next form is Debt Bondage, which is most notable in poorer areas and throughout the developing world, where persons indebted will offer themselves and/or their children as collateral against an impending loan payment. Due to these characteristics, Debt Bondage is the most prevalent form of slavery in the modern world.¹⁴⁰ Thirdly there is Sex Slavery, which primarily affects women and children, who are usually carried across national boundaries under false pretenses, such as jobs or through the brutal act of kidnapping. This form of slavery affects approximately two million women and children each year.¹⁴¹ Lastly, Forced Labor, which occurs when an individual is pulled into a phony job and becomes the commodity of their so-called new employer. They are not paid for their work and often are the victim of crime and brutality. This form of slavery is wide-reaching and difficult to discover due to the large-scale of the organizations perpetrating these crimes and their rapid movement.¹⁴²

The United Nations is putting forth their maximum effort to abolish trafficking around the world. The UN Office of Drugs and Crime (UNODC), in partnership with the United Nations Interregional Crime and Justice Research Institute (UNICRI), has established a Global Initiative to Fight Human Trafficking (UN.GIFT).¹⁴³ This program provides support on an international level by encouraging governments to organize institutions geared at improving public awareness and advancing resources needed to help prevent this cross-cultural crime.¹⁴⁴ The cost of trafficking for Member States is also at an all-time high, with the UNODC estimating that \$7 billion a year has been expended on criminal proceedings.¹⁴⁵ The UN High Commissioner for Human Rights (UNHCR) and the Economic and Social Council (ECOSOC) have been working to develop an administrative and resource-based budget for the American states working towards the 2008-2009 Strategic Plan.¹⁴⁶ The United Nations Office for Drug Control and Crime Prevention (ODCCP), also battles this modern-day slavery by warning millions of potential victims about the dangers of trafficking through its Global TV Campaign on Human Trafficking.¹⁴⁷

The issue of human trafficking directly and severely affects American nations. Every year the number of victims continues to rise due to a lack of regional organization and varying levels of commitment to addressing the issue. The OAS has established the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which works in conjunction with the United Nations Convention against Transnational Crime in educating and protecting victims of trafficking.¹⁴⁸ It is estimated that 80% of exploited people are women and the

¹³⁷ "Council of Europe Convention Against Trafficking in Human Beings Will Enter into Force." Council of Europe. 25 October 2007.

[https://wcd.coe.int/ViewDoc.jsp?Ref=PR714\(2007\)&Language=lanEnglish&Ver=original&Site=DC&BackColorInter=net=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR714(2007)&Language=lanEnglish&Ver=original&Site=DC&BackColorInter=net=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE)

¹³⁸ "Modern Slavery 101." iAbolish American Anti-Slavery Group.

http://www.iabolish.org/slavery_today/primer/index.html

¹³⁹ "Types of Slavery." iAbolish American Anti-Slavery Group. http://www.iabolish.org/slavery_today/primer/types.html

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ "UNODC launches Global Initiative to Fight Human Trafficking." United Nations Office on Drugs and Crime.

<http://www.unodc.org/newsletter/en/perspectives/no03/page009.html>

¹⁴⁴ Ibid

¹⁴⁵ "Campaigning to combat human trafficking and slavery." Don't Trade Lives.

<http://www.donttradelives.com.au/dtl/Issues/default.aspx>

¹⁴⁶ "High Commissioners Strategic Management Plan." United Nations Office of the High Commissioner for Human Rights. 2008-2009. <http://www.ohchr.org/Documents/Press/SMP2008-2009.pdf>

¹⁴⁷ "Combating Trafficking: Prevention." HumanTrafficking.org.

http://www.humantrafficking.org/combat_trafficking/prevention

¹⁴⁸ "Anti-Trafficking in Persons Section." OAS.

http://www.oas.org/atip/atip_AbouUs.asp

UN Children's Fund (UNICEF) approximates that 50% of all human smuggling victims are children.¹⁴⁹ These victims are often transported outside their homeland and the crimes are scarcely reported, limiting the risks and making this a profitable global business for the offenders. The OAS is not the only regional organization working to combat the appalling crime of human trafficking. In 2000 the South Asian Association for Regional Cooperation (SAARC) drafted and established the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.¹⁵⁰

The Second Meeting of National Authorities on Trafficking in Persons

From 25 March to 27 March 2009, all 34 participating member nations of the OAS met in Buenos Aires, Argentina to create standards for the judiciary procedures used in prosecuting those perpetrating human trafficking.¹⁵¹ Due to the influx of trafficking cases in the Americas, a long standing commitment is being reinforced to fight those who profit by trafficking humans. The assembly also gathered to work together to prevent Trafficking in Persons (TIP) and to aid those who have been victimized by the act.¹⁵² While at the meeting, representatives reviewed their prior work on the matter, including the 2006, "Hemispheric Efforts to Combat Trafficking in Persons: Conclusions and Recommendations of the First Meeting of National Authorities on Trafficking in Persons" AG/RES. 2256.¹⁵³

The adopted agenda called for two technical working groups to be created. The first group served in administering justice, creating strategies for international cooperation and institutional strengthening. The second group focused on prevention and the importance of assisting victims such as women and children.¹⁵⁴

The motive for the seminar was to demand a comprehensive legal framework across American states and to harmonize judiciary procedures throughout the region. The introduction of the Meeting summarized the review of progress made thus far, including the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons which calls upon Member States to combat and prevent the trafficking of persons. The Protocol is one of two adopted under the auspices of the UN Office on Drugs and Crime and inherently a vital element in the OAS' role in combating trafficking in their nations.¹⁵⁵

The United States' Trafficking Victims Protection Reauthorization Act of 2005

In 2005, the United States created a trafficking act which reauthorized the combating of both international and domestic trafficking. With a staggering amount of cross-border exploitation, the United States was clear to note the growing number of commercial sex exploitations within their borders.¹⁵⁶ With this important new research and information, US President George W. Bush signed into law the authorization of the previous 2000 Trafficking Act. Countries wishing to act similarly must press through political red tape and be willing to make a cohesive change in the framework of their laws.¹⁵⁷

The Reauthorization Act focuses on three main points: combating international trafficking in persons, combating domestic trafficking in persons, and the authorization of appropriations.¹⁵⁸ Within this framework, the document

¹⁴⁹ "Child protection from violence, exploitation and abuse." UNICEF. March 12, 2007.
http://www.unicef.org/protection/index_exploitation.html

¹⁵⁰ "SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution." 5 January 2002.
http://www.humantrafficking.org/uploads/publications/SAARC_Convention_on_Trafficking_Prostitution.pdf

¹⁵¹ "Fighting Trafficking in Persons." OAS Committee on Hemispheric Security. 2009.
<http://www.oas.org/CSH/english/fightingtraffickinginpersons.asp>

¹⁵² "Ambassador Wayne Leads U.S. Delegation to the OAS' Second Meeting of National Authorities on Trafficking in Persons." Embassy of the United States. March 25-27, 2009.
http://argentina.usembassy.gov/oas2_event.html

¹⁵³ Permanent Council of the Organization of America States Committee on Hemispheric Security. 2009
<http://www.oas.org/CSH/english/fightingtraffickinginpersons.asp#II>

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ The United States Reauthorization Act. Public Law 109-164. January 6, 2006.
<http://www.coherentbabble.com/PublicLaws/HR972PL109-164.pdf>

¹⁵⁷ Ibid

¹⁵⁸ Ibid.

handles statistical reviews, prevention methods, fiscal demands, and enforcement efforts. The establishment of grant programs is important to ensure the success of projects such as those tackled within the Reauthorization Act.¹⁵⁹ In order to expand and enhance these ventures, the Secretary of Health and Human Services can designate the distribution of monies to partnerships with an expertise in trafficking.¹⁶⁰

Through the pressure generated by the reports published under the United States TVPA, other countries are developing statutes protecting the victims of trafficking. These laws tackle the issues directly pertaining to international human trafficking. For the American states, a common structure and universal directive is required in order to oppose the trade of human beings across one another's interstate or national borders.¹⁶¹ The TVPA specifically directs the United States Department of Labor, under section 105(b)(1), to monitor forced labor of trafficked persons in foreign countries.¹⁶² The goals of the TVPA include conducting studies in foreign countries, increased protections for foreign victims, and programming to work with other OAS Member States to provide common jurisdiction.¹⁶³

Within the US, a reported 300,000 children are victims of trafficking every year.¹⁶⁴ With such dramatic data, the United States Department of State directed an initiative to include and increase the amount of assistance and attention given to human trafficking within its borders. With cooperation for the Attorney General, the United States wishes to gain momentum on this issue through federal grant systems such as the concept of a Victim Grant Program that focuses on the protection of juveniles.¹⁶⁵

OAS Anti-Trafficking in Persons Section (TIP)

The goal of the OAS Anti-Trafficking in Persons (TIP) section is to raise awareness throughout the world, increase general knowledge about TIP to the general public, and to prevent future Trafficking in Persons. The OAS is trying to accomplish these goals by creating training programs with two separate groups. One group is working to create strategies that encourage cooperation throughout the entire world while the second group works to prevent future trafficking of women and children.

The OAS has developed a strategy to reduce the growing Trafficking problem throughout the World by creating measures involving many nations. The OAS Anti-Trafficking in Persons Section seeks to inform through training seminars, exchanging information with other nations, and providing technical assistance to these other nations. The TIP Section also provides information by analyzing the most modern literature on the subject of TIP, and by providing all new information that is found on the subject.

OAS TIP section also aims to create anti-trafficking measures. Many of the measures include sharing all of the information found on TIP, creating policies that will try to fight the problem of TIP, and by acquiring the financial necessities and national allies needed to support the strategy. To achieve their goals, the OAS has vowed to attack the TIP problem by focusing on prevention and training programs, and by constantly searching for new allies to help fight the problem.

One main goal of the OAS is to acquire financial partners to help reduce Human Trafficking. It is vital to have the financial partners to achieve these goals, and the OAS is reaching out to new partners by using the internet to distribute information in the form of pamphlets and multi-media webcasts. Another effort by the OAS invites many

¹⁵⁹ Ibid

¹⁶⁰ Ibid.

¹⁶¹ "Trafficking Victims Protections Reauthorization Act." United States Department of Labor.

<http://www.dol.gov/ilab/programs/ocft/tvpra.htm>

¹⁶² Ibid.

¹⁶³ "The Trafficking Victims Protections Act." January 4, 2005.

<http://www.state.gov/documents/organization/61214.pdf>

¹⁶⁴ Richard J. Estes and Neil Alan Weiner. "The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico." University of Pennsylvania. September 19, 2001.

http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf

¹⁶⁵ "The Trafficking Victims Protections Act." January 4, 2005.

<http://www.state.gov/documents/organization/61214.pdf>

countries to participate in important informational seminars. Many of the countries attend regularly, and often give important financial contributions.

Encouraging government participation is another goal held by the OAS to fight the problem of human trafficking. One way of encouraging government participation is by introducing criminal judiciary measures. An example of these judiciary measures can be found in the Inter-American Convention on Forced Disappearance of persons. In this convention the practice of disappearing persons is declared to be illegal and states are called upon to cooperate with the OAS to reduce human trafficking, and to punish those who engage in the forced disappearance of persons through regular prosecution procedures.

The OAS and Japan – International Cooperation and Research

Because the very nature of the crime of trafficking is international, the OAS has recognized the importance of engaging the international community outside of the region in order to effectively address the issue.¹⁶⁶ This includes initiating dialogue with other nations, Non-Governmental Organizations (NGOs), and regional bodies to identify challenges, best practices, and develop strategies for identifying and prosecuting traffickers as well as protecting the victims of the crime.¹⁶⁷ As a direct result of this need, the OAS commissioned a study of Latin American and Caribbean (LAC) victims of trafficking in Japan. While the largest population of trafficking victims in Japan is from Asia, the population from the LAC region is a significant minority.¹⁶⁸ The report, using statistical data, provided the first scholarly estimation of the numbers of persons trafficked out of the LAC region into Japan.¹⁶⁹ The authors estimate that 1,700 men women and children are brought into Japan under false pretenses every year and then held through debt-bondage, threats, and intimidation.¹⁷⁰ Immigration into Japan is very strictly monitored, so demographic data on almost all immigrants is accessible.¹⁷¹ According to those records, most of the victims of trafficking are women, and most of those are underage teens.¹⁷²

The report goes on to discuss several important issues that lie just under the surface of the practice of trafficking in persons: the institutional nature of trafficking, the importance of laws that protect the victims, and some of the common methods used to compel victims to remain. Given how tightly the Japanese government controls and monitors immigration, it would seem unlikely that Japan would serve as a haven for human traffickers, but quite the opposite is true; Japan was, for some time, listed on the United States Trafficking Victims Protection Act¹⁷³ Tier 2 Watch List for its failure to adequately prevent trafficking, protect victims, and prosecute traffickers.¹⁷⁴ Tens of thousands of undocumented women are forced to work in the Japanese commercial sex industry which generates an income of US\$ 83 billion per year.¹⁷⁵

The industry is dominated by organized crime, particularly the Japanese *Yakuza* who rarely face prosecution and receive only light fines for violating immigration laws when they do.¹⁷⁶ The involvement of an extensive and coordinated criminal organization coupled with laissez-faire attitudes regarding the collation of immigration data make it very easy for traffickers to circumvent the immigration system.¹⁷⁷ Most LAC victims of trafficking enter

¹⁶⁶ Trafficking in Persons in the Southern Cone: Regional Cooperation, Challenges and Links with Other Regions.” Organization of American States Anti-Trafficking in Persons Section. December 5, 2007. http://www.oas.org/atip/atip_Detail.asp

¹⁶⁷ “The OAS organizes meeting on human trafficking with representatives of civil society.” South Florida Caribbean News. March 3, 2009. <http://www.sflcn.com/story.php?id=5793>

¹⁶⁸ Kaname Tsutsumi, et al. “OAS Rapid Assessment Report: Trafficking in Persons from the Latin American and Caribbean (LAC) Region to Japan.” 2005. [http://www.oas.org/atip/PDFs/Rapid%20Assessment%20\(English\).pdf](http://www.oas.org/atip/PDFs/Rapid%20Assessment%20(English).pdf)

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ “Trafficking Victims Protection Act of 2000 Fact Sheet.” United States Department of Health and Human Services - National Human Trafficking Resource Center. http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf

¹⁷⁴ Scott Hansen. “Japan’s Fight against Modern-Day Slavery (Part I).” United States Department of State - Embassy of the United States of America to Japan. Winter 2008. <http://tokyo.usembassy.gov/e/p/tp-20080123-03.html>

¹⁷⁵ Kaname Tsutsumi, et al. “OAS Rapid Assessment Report: Trafficking in Persons from the Latin American and Caribbean (LAC) Region to Japan.” 2005. [http://www.oas.org/atip/PDFs/Rapid%20Assessment%20\(English\).pdf](http://www.oas.org/atip/PDFs/Rapid%20Assessment%20(English).pdf)

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

Japan under one of three visa categories: temporary visitors, spouse or child of Japanese national, and entertainer.¹⁷⁸ In other words, almost all victims of trafficking brought into Japan were, to all appearances, entering the country legally. But this does not mean that there are no clear indications that something is amiss.

In February 2004 the Japanese government instituted a policy recommending visitors' visas for Colombian and Peruvian citizens who were travelling to the island.¹⁷⁹ In the four years prior, Japanese immigration had forbidden entry to almost 1,600 Colombians because of concerns over altered passports or falsified travel documents, indicating the strong possibility of trafficking.¹⁸⁰ As a result the Japanese government has placed visitors from those countries under greater scrutiny, which is deemed unnecessary if the traveler has gone through the process of applying for a temporary visa.¹⁸¹ Yet this same level of awareness has not been raised over the dramatic increase in entrants under family visas in the early 1990s, or the fact that the number of such entrants from Paraguay remains disproportionately large.¹⁸²

The report also provides insight into the need for victim protection laws. The practice in Japan when undocumented workers and prostitutes are arrested is to charge them, prosecute them, and deport them.¹⁸³ In most cases these victims are never recognized as victims of a crime themselves.¹⁸⁴ The report cites that the Colombian embassy, due to a particularly diligent staffer, regularly presents information regarding trafficked Colombian nationals to the Japanese police who then have no option under the law but to arrest the victims rather than help them.¹⁸⁵ These laws play into the hands of the traffickers by making it very difficult and dangerous, if not impossible, for the victims of trafficking to get any help from the police. This also points directly to one of the many ways that traffickers maintain control of their victims.

In Japan, most victims of trafficking are controlled through debt bondage. The victims are recruited in their home countries to travel to Japan for a lucrative job.¹⁸⁶ Upon arrival in Japan they are charged an exorbitant fee, perhaps millions of yen, for their travel, and are told that they will also have to pay extremely high rates for housing and food expenses, making it impossible for them to make enough money to pay off these "debts."¹⁸⁷ In addition it is common practice for traffickers to seize the victim's passport and travel documents rendering them unable to leave the country and at risk of arrest when they are on public property.¹⁸⁸ Other common practices include threatening violence against the victim's family members, restricting victim's movements, and sometimes the use of drugs.¹⁸⁹

Because of the level of international awareness raised by the United States and other Member States of the OAS over trafficking concerns in Japan, the Japanese Diet passed several laws in 2004 and 2005 strengthening the legal regime against the practice, and prosecutions followed in 2006.¹⁹⁰ Unfortunately, this trend has not continued.¹⁹¹ Not only have prosecutions decreased,¹⁹² crackdowns on prostitution have driven much of the practice underground or into newer forms that are more difficult to trace.¹⁹³ Perhaps as telling is the fact that Japan has yet to provide legal assistance to a single victim of trafficking and does not reliably seek out or identify trafficking victims.¹⁹⁴

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Scott Hansen. "Japan's Fight against Modern-Day Slavery (Part I)." United States Department of State - Embassy of the United States of America to Japan. Winter 2008. <http://tokyo.usembassy.gov/e/p/tp-20080123-03.html>

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ *Trafficking in Persons Report 2008*. United States Department of State. June 4, 2008. <http://www.state.gov/g/tip/rls/tiprpt/2008/index.htm>

¹⁹² Ibid.

¹⁹³ Scott Hansen. "Japan's Fight against Modern-Day Slavery (Part I)." United States Department of State - Embassy of the United States of America to Japan. Winter 2008. <http://tokyo.usembassy.gov/e/p/tp-20080123-03.html>

¹⁹⁴ *Trafficking in Persons Report 2008*. United States Department of State. June 4, 2008. <http://www.state.gov/g/tip/rls/tiprpt/2008/index.htm>

The Challenges of Organization and Education

But it isn't necessary to cross an ocean to see why functional international cooperation is so important in this fight. The tri-border region, where Argentina, Brazil, and Paraguay meet, provides a fine example of the challenges of addressing human trafficking in a global world.¹⁹⁵ The border area is porous and, even on established roads, borders are not particularly well patrolled.¹⁹⁶ And, the region is rife with human trafficking.¹⁹⁷ Many are trafficked into forced labor, many of those in Brazil or Argentina, but most of the victims are young women, and most of them are forced into the sex trade.¹⁹⁸ The region has been called "the Bangkok of Latin America" because of the thriving sex trade, fuelled by a large tourist population.¹⁹⁹ The young women drawn into the trade often come from the surrounding countryside, lured by promises of employment as domestic workers, in restaurants, or in retail shops.²⁰⁰ Many come from Paraguay and have families that are desperate for money. Subsistence farmers in the region live in extreme poverty, so the families are desperate for any income, so desperate that the girls often cooperate with the traffickers by accepting false documents and travel papers to cross the border.²⁰¹

Addressing trafficking is a challenge in this area not only because the borders are easy to pass through. There are other significant cultural barriers, such as language. In order to effectively work together, people must be able to communicate, and in the tri-border region Spanish and Portuguese speakers must also be able to communicate with those who speak Jopara, a crossover language made up of Spanish and Guarani, the language of the indigenous Paraguayans in the region.²⁰² But this is not the only complication. In each country there are also three levels of government and police involved: local, regional, and national.²⁰³ Add to this the fact that there may be several agencies involved. Argentina has at least five distinct security agencies tasked with patrolling the border.²⁰⁴ All of this makes coordinating law enforcement efforts difficult enough. It is made even worse by the fact that the three countries have very different legal structures and laws, not to mention the intricacies of local legislation.²⁰⁵ Further complicating efforts are the social mores in place. Victims, if they can afford to get help, live in fear of violent reprisals if they attempt to bring traffickers to justice.²⁰⁶ The culture of machismo is prevalent in the region.²⁰⁷ Many equate sex with underage girls as a sign of virility, and the perpetrators of sex crimes enjoy relative impunity.²⁰⁸ Against such values it is little surprise that the director of a children's charity in one Paraguayan border town lamented knowing of more than 700 cases of trafficking of which only 40 had been officially reported, of which only one had resulted in a guilty verdict.²⁰⁹ Those social mores may also perpetuate the problem. The Catholic proscription against birth control often leads to large families led by single mothers under 18.²¹⁰ Desperate for money, these children are in turn forced out into the streets to earn a living in any way they can, often ending up the victims of exploitation or trafficking themselves.²¹¹

¹⁹⁵ Andy Footner. "Paraguay's Traffic Hub Imperils Female Teens." Women's eNews. January 8, 2008. <http://www.womensenews.org/article.cfm?aid=3451>

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Oliver Balch. "Latin America's secret slave trade." The Guardian. December 20, 2006.

<http://www.guardian.co.uk/world/2006/dec/20/argentina.brazil>

¹⁹⁹ Ibid.

²⁰⁰ Andy Footner. "Paraguay's Traffic Hub Imperils Female Teens." Women's eNews. January 8, 2008.

<http://www.womensenews.org/article.cfm?aid=3451>

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Oliver Balch. "Latin America's secret slave trade." The Guardian. December 20, 2006.

<http://www.guardian.co.uk/world/2006/dec/20/argentina.brazil>

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Andy Footner. "Paraguay's Traffic Hub Imperils Female Teens." Women's eNews. January 8, 2008.

<http://www.womensenews.org/article.cfm?aid=3451>

²¹¹ Ibid.

NGO's and inter-governmental agencies are, however, working to bring about change.²¹² Governmental focus on the causes and nature of emigration is important, especially because there is no clear indication just how many people are trafficked and driven into forced labor.²¹³ There is also a clear directive to develop a better understanding of the larger picture of human trafficking.²¹⁴ In March of 2006, the OAS Meeting of National Authorities on Trafficking in Persons directed that Member States, and the OAS as a whole, should investigate

*the economic causes and consequences connected with the phenomenon of trafficking in persons, which would include the forces of demand, modus operandi of the criminal networks, the movement of earnings generated by trafficking in persons and how this is related to other illegal or illegal economic activities, the circuit of income and the social, psychological, physical, emotional and other negative impacts on the victims.*²¹⁵

Similarly, the OAS Rapid Assessment Report on trafficking of persons from the LAC region to Japan cited that “the recruitment and transportation of victims by the Japanese *Yakuza* and other traffickers working in Latin American and Caribbean countries is a criminal activity poorly understood by officials on both sides of the Pacific.”²¹⁶

This demonstrates one of the first ways in which education on the crime of human trafficking is vitally important. The OAS recognizes that learning more about the victims, perpetrators, causes and motives behind trafficking is key to developing effective strategies to combat this crime.²¹⁷ But that does not mean that efforts to halt trafficking should stop while this research is under way. There are other forms of education that can be pursued to immediately address the issue. The first of these is education of potential trafficking victims. In the area surrounding the tri-border region, a publicity campaign has been launched with radio advertisements, posters, and messages on bus tickets warning about the dangers of trafficking.²¹⁸ There is another kind of education that the OAS has been strong to encourage, the education of the larger society through bringing this crime to light.²¹⁹ The Director General of the OAS, Paul Spencer, recently told a seminar on anti-trafficking that “human trafficking has been swept under the carpet and it was time it was taken more seriously.”²²⁰ It would appear that OAS Member States are beginning to take this to heart. As an example, Argentina has, in the last year, passed legislation prohibiting human trafficking, specifying punishment for the crime, and providing for law enforcement efforts to prosecute traffickers and assist victims.²²¹ But these steps alone are not enough. Argentina remains on the TVPA Tier 2 Watch List for trafficking in persons.²²²

²¹² Ibid.

²¹³ “OAS Puts Human Trafficking On The Regional Agenda.” Focal Point. April 2009.

<http://www.focal.ca/publications/focalpoint/fp0409se/?lang=e&article=news>

²¹⁴ “Proposal for Conclusions and Recommendations of The Meeting of National Authorities on Trafficking in Persons.”

Organization of American States. 17 March, 2006. <http://www.venezuela-oas.org/Material%20Trata/1CONCLUSIONSandRECOMMENDATIONSTraffickinginPersons.pdf>

²¹⁵ Ibid.

²¹⁶ Kaname Tsutsumi, et al. “OAS Rapid Assessment Report: Trafficking in Persons from the Latin American and Caribbean (LAC) Region to Japan.” 2005. [http://www.oas.org/atip/PDFs/Rapid%20Assessment%20\(English\).pdf](http://www.oas.org/atip/PDFs/Rapid%20Assessment%20(English).pdf)

²¹⁷ “Proposal for Conclusions and Recommendations of The Meeting of National Authorities on Trafficking in Persons.”

Organization of American States. 17 March, 2006. <http://www.venezuela-oas.org/Material%20Trata/1CONCLUSIONSandRECOMMENDATIONSTraffickinginPersons.pdf>

²¹⁸ Andy Footner. “Paraguay’s Traffic Hub Imperils Female Teens.” Women’s eNews. January 8, 2008.

<http://www.womensenews.org/article.cfm?aid=3451>

²¹⁹ “Get tougher on human traffickers – OAS.” Radio Jamaica. 29 February, 2008.

http://www.radiojamaica.com/index.php?option=com_content&task=view&id=5987&Itemid=87

²²⁰ Ibid.

²²¹ “Trafficking in Persons Report 2009.” United States Department of State. June 16, 2009.

<http://www.state.gov/g/tip/rls/tiprpt/2009/123135.htm>

²²² Ibid.

Another extremely important area is that of the education of trafficking victims after they have been identified. Given that they often are single mothers with several children facing severe social pressures, there is tremendous danger faced by their children.²²³ This danger is heightened by the fact that many of these women are in denial about the dangers their children face, which can perpetuate the cycle.²²⁴ And, just as important, many of the women who are rescued from trafficking have few commercially viable skills, and given the choice between destitution and having some income, they may choose to continue to serve the traffickers.²²⁵ It is for this reason that small organizations like the Office of the Center for Awareness, Prevention and Companionship for Children and Adolescents in Situations of Commercial Sexual Exploitation in Ciudad del Este, Paraguay believe that teaching young girls commercial skills, such as the basics of working in a beauty salon, is critical.²²⁶ “Teaching skills to replace prostitution is an important part of the charity’s work.”²²⁷

Conclusion

The problem of human trafficking is growing throughout the world. The goal has been established to reduce human trafficking, and this goal has been adopted by the U.N., U.S. legislation, and the OAS. Specific goals of the United Nations and the OAS are to raise awareness and understanding about the nature of trafficking, not only to citizens but to government authorities as well. Another objective is to create country allies and financial partners to aid in the fight to reduce human trafficking. The goal is to increase the prosecution of traffickers and protection of trafficked individuals. Without a clear understanding of who the victims and perpetrators are, let alone the methods and motives involved, it will be particularly difficult to effectively address this crime. But just as certainly, the OAS is taking broad strides. The OAS Rapid Assessment Report, as one of the first scholarly investigations into the demographics of trafficking victims provides an important lesson in recognizing those who are most threatened by human trafficking. But it also serves an important object lesson. Merely tightening the screws on immigration policy will not eliminate human trafficking. In terms of the transport of trafficked persons, there is little difference between the tight immigration controls in Japan and the porous borders between Argentina, Brazil, and Paraguay. The importance of education on several levels must not be overlooked. Educating potential victims, educating societies and institutions, educating the victims of the crime as well as continued research into the specifics of the trafficking trade for effective investigation and enforcement are all vitally important.

Committee Directive

NGOs are a prime source of support in the fight against human trafficking. Examples of these NGO efforts include the SOLD project, a film project to document child prosecution, and the Alliance of Anti-Traffic (AAT) used to fight against the trafficking of women and children. Both of these NGO efforts are relatively fresh, but a continued promotion to fight human trafficking with the assistance of NGO’s could be vital to reducing this crime. With the assistance of established groups a broader number of citizens can be reached and a more extensive knowledge of the issue unearthed. Trafficking in human beings challenges the moral principles of basic human rights, but with the help of governments, advocates, and victims it is a crime that we can address. What needs to be done to ensure governments will participate in mandated programs? How can we make education and awareness available to citizens? In the example of the tri-borders region, is it too late to warn potential victims once they are already in the pipeline? Do these education programs need to reach out to poor subsistence farmers, and how can that be done effectively? How are the costs of legal procedures going to be recovered? It is also vitally important that the committee does not overlook the plight of forced laborers. Trafficking for sexual exploitation may represent the majority of trafficking violations, but there is a significant minority of men, women, and children who are forced into domestic, agricultural, and industrial labor by these same means.

²²³ Andy Footner. “Paraguay’s Traffic Hub Imperils Female Teens.” Women’s eNews. January 8, 2008.
<http://www.womensenews.org/article.cfm?aid=3451>

²²⁴ Oliver Balch. “Latin America’s secret slave trade.” The Guardian. December 20, 2006.
<http://www.guardian.co.uk/world/2006/dec/20/argentina.brazil>

²²⁵ Andy Footner. “Paraguay’s Traffic Hub Imperils Female Teens.” Women’s eNews. January 8, 2008.
<http://www.womensenews.org/article.cfm?aid=3451>

²²⁶ Ibid.

²²⁷ Ibid.

Topic II: Accelerating the Completion of the American Declaration on the Rights of Indigenous Peoples

Introduction

Since the formation of the United Nations, there has been no shortage of ambitious declarations, which were composed not because they represented existing international law, but in the hope that they might influence the laws of Member States and thereby become recognized international practice. One of the first and most important of these was the Universal Declaration of Human Rights (UDHR) which was passed by the General Assembly without dissent in December of 1948, barely three years after the formation of the United Nations.²²⁸ Declarations do not have the force of law that a treaty or convention has and are aspirational in the sense that they are meant to illustrate the minimal standards that Member States should use in formulating their laws. But, that should not be taken to mean that these documents represent an impossible dream. Quite the contrary, such a document should “describe current State practice or actions that States feel obliged to take as a matter of legal obligation.”²²⁹ In the case of the UDHR, it stands as the core of what became the International Bill of Human Rights (IBHR), which became binding international law in 1976, three months after it had been ratified by the required 35 Member States.²³⁰ In under 30 years, just such an aspirational declaration, and one that has been called “the single most important document in the twentieth century,”²³¹ was drafted, adopted by the nations of the world, and became international law.

In contrast, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) had a much tougher road to ratification. A statement of indigenous rights was first actively pursued by the formation of the Working Group on Indigenous Populations under the Economic and Social Council in 1982.²³² The Working Group was directly mandated “to give attention to the evolution of international standards concerning indigenous rights.”²³³ It would be another 25 years before that standard was finally completed, and even at that point it met stiff criticism, particularly from the three developed countries with large indigenous populations; two of those (the United States and Canada) being chief members of the OAS.²³⁴ The US and Canada shared a few key concerns with the UNDRIP: the declaration was too vague and liable to contradictory interpretation, especially with regards to the right of self-determination and the issue of collective rights versus individual rights; that it could be seen to challenge existing treaties and land settlements that predate the declaration; and that it would give native populations an implied power of veto over all legislative acts and thereby completely abrogate the democratic process in those countries.²³⁵

Although both Member States promised to continue their work to further the cause of indigenous peoples and were closely involved in drafting earlier versions of the document as well as the formation of the United Nations Permanent Forum on Indigenous Issues (UNPFII),²³⁶ their failure to support the declaration caused indigenous rights

²²⁸ “Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights.” Office of the High Commissioner for Human Rights. June 1996. <http://www.unhchr.ch/html/menu6/2/fs2.htm>

²²⁹ “Observations of the United States With Respect to the Declaration On The Rights Of Indigenous Peoples.” United States Mission to the United Nations. September 13, 2007. <http://www.shunpiking.com/ol0406/0406-IP-positionofUS.htm>

²³⁰ “Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights.” Office of the High Commissioner for Human Rights. June 1996. <http://www.unhchr.ch/html/menu6/2/fs2.htm>

²³¹ Peter Bailey. “The Creation of the Universal Declaration of Human Rights.” UDHR History of Human Rights. <http://www.universalrights.net/main/creation.htm>

²³² “Working Group on Indigenous Populations – Mandate.” Working Group on Indigenous Populations. Site archive 2005.

<http://web.archive.org/web/20060211221540/www.ohchr.org/english/issues/indigenous/groups/wgip.htm#mandate>

²³³ Ibid.

²³⁴ “United Nations adopts Declaration on Rights of Indigenous Peoples.” UN News Centre. September 13, 2007. <http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1=>

²³⁵ “Observations of the United States With Respect to the Declaration On The Rights Of Indigenous Peoples.” United States Mission to the United Nations. September 13, 2007. <http://www.shunpiking.com/ol0406/0406-IP-positionofUS.htm>; John McNee. “Statement by Ambassador McNee to the General Assembly on the Declaration on the Rights of Indigenous Peoples.” 13 September, 2007. http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/general_assembly-assemblee-generale/10373.aspx?lang=eng

²³⁶ Haider Rizvi. “Indigenous Groups Slam Canada at UN.” OneWorld.net. May 2, 2008. <http://us.oneworld.net/places/canada/-/article/indigenous-groups-slam-canada-un>

campaigners to question the depth of their commitment. Concerns over the intent of the UNDRIP itself were raised when, short months after passage of the declaration, a delegation of indigenous peoples were forcibly excluded from the December 2007 meeting of the United Nations Framework Convention on Climate Change in Bali.²³⁷

In many ways, these issues and challenges are seen again in the struggle to develop and adopt the American Declaration on the Rights of Indigenous Peoples (ADRIP). The process, which began in 1989, was initially meant to demonstrate the region's willingness to begin working earnestly toward recognizing the rights of indigenous peoples by 1992; which was the 500th anniversary of the beginning of the conquest of the American continents.²³⁸ However, the process almost immediately came under fire. Despite the intent to speak directly to the rights and interests of indigenous peoples, Member States of the OAS ignored repeated requests for regional consultations with indigenous peoples and chose instead to rely on the testimony and opinions of "anthropologists and 'other experts.'"²³⁹ Because of such exclusionary tactics, the first draft of the declaration was composed without any input from civil society and was completed in closed-door sessions.²⁴⁰ This first round of negotiations was not completed until 1999, some seven years after the target for completion of the document.²⁴¹ It was only during the second round of negotiations that some OAS Member States (notably the United States, Canada, Antigua and Barbados) began to allow representatives of indigenous peoples to occupy some of their delegation's seats and voice their opinions, and the practice of excluding civil participation in the discussion began to erode.²⁴² By 2003 the deliberations of the OAS Working Group became completely open to indigenous peoples as well as non-governmental organizations (NGOs).²⁴³ However, the goodwill represented by the inclusion of indigenous representatives does not appear to have had much longevity for some Member States. The United States has since distanced itself from the process, filing several documents outlining reservations over issues very similar to those it has voiced over the UNDRIP.²⁴⁴ Delegations from the US are perceived as having been little more than observers in the process, and it is further perceived that Canada and Colombia are "falling in line" with the position of the US.²⁴⁵

Concerns with the American Declaration

Since the adoption of the UNDRIP, much of the progress seen from the Working Group has been focused on harmonizing the existing consensus language of the American Declaration, with that of the UN Declaration.²⁴⁶ There has been other work towards reaching consensus on new language, but the Working Group recognizes the UNDRIP as the "baseline for negotiations," and feels that its job is to "develop the general concepts contained in the UN Declaration," while at the same time maintaining a level of coherency with the UNDRIP.²⁴⁷ This raises immediate concerns for those Member States who were not able to support the UNDRIP (including Colombia who abstained from the UN vote).²⁴⁸

There are several issues that the US and Canada have with the content of the UNDRIP, including Article 19; Article 26; and the perceived lack of consistency with regards to the issues of self determination, and individual versus

²³⁷ "UN's Empty Declaration of Indigenous Rights." Project Censored.

<http://www.projectcensored.org/top-stories/articles/17-uns-empty-declaration-of-indigenous-rights/>

²³⁸ "Draft American Declaration on the Rights of Indigenous Peoples." Indian Law Resource Center.

<http://www.indianlaw.org/en/projects/ihr/oas/draft>

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Office of the National Chief, Assembly of First Nations. "Concerns of the National Chief of the Assembly of First Nations of Canada on Recently Published Documents of the Working Group." Permanent Council of the Organization of American States. 27 June 2007. http://scm.oas.org/doc_public/SPANISH/HIST_07/DADIN00169S04.doc

²⁴⁵ Gale Courey Toensing. "Draft American Declaration on the Rights of Indigenous Peoples moves Forward." Indian Country Today. 9 January, 2009. <http://www.indiancountrytoday.com/global/undeclaration/37351714.html>

²⁴⁶ "Meeting For Reflection Outcomes and Recommendations Presented to the Permanent Council on November 28, 2007." Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. November 28, 2007. http://scm.oas.org/doc_public/ENGLISH/HIST_08/CP19616E07.doc

²⁴⁷ Ibid.

²⁴⁸ "United Nations Declaration on the Rights of Indigenous Peoples." United Nations Permanent Forum on Indigenous Issues. <http://www.un.org/esa/socdev/unpfi/en/declaration.html>

collective rights.²⁴⁹ But there is also a larger issue with the very nature of the Declaration and what both Member States have described as, the failure of the document to achieve the aspirational status that it promised.²⁵⁰ For critics, Article 19 is problematic because it seems to challenge the sovereignty of Member States and to cripple the democratic process. The article reads:

*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*²⁵¹

This is echoed in the ADRIP, Article XXII section 3, which provisionally reads, “states shall obtain free, prior and informed consent of the indigenous peoples concerned before adopting and implementing such policies and measures,” as may directly affect their rights.²⁵² The complaint with these respective articles is that they place an undue burden on the governments of States to ensure free and prior consent on all legislation that might have any impact on indigenous peoples. This could be read as giving indigenous peoples veto power over almost any proposed legislation, and to be completely short-circuiting the democratic process by which a majority of the population may be enacting legislation that is in the best interest of the nation. Dissenting States point out that this democratic anomaly makes the implementation of these Declarations impossible.

The Challenge of Land Rights

A similar challenge is found in UNDRIP Article 26, which discusses land rights and, in three sections, states that indigenous peoples have rights over lands they “have traditionally owned, occupied or otherwise used or acquired,” “have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired,” and that States “shall give legal recognition and protection to these lands, territories and resources.”²⁵³ This is strengthened in ADRIP Article XXIV which, over eight provisional sections, states that indigenous peoples (1) “have the right to the recognition of their property rights and ownership rights, with respect to the lands and territories that they historically occupy, as well as the use of the lands to which they have traditionally had access for carrying out their traditional activities,” including “the waters, coastal seas, flora, fauna, and all other resources of that habitat, as well as their environment;” (2) that “the rights of the indigenous peoples to their lands and territories they occupy or use historically are permanent, exclusive, inalienable, imprescriptible, and indefeasible;” (3) that these rights “may only be modified by mutual agreement between the State and the respective indigenous peoples, with full knowledge and understanding by their members;” (3) that in cases where the State claims mineral (or other resource) rights over those lands, prospecting, planning, or extraction of those resources cannot be undertaken without first establishing or maintaining “procedures for the participation of the peoples concerned;” and (4) allowing that they may “participate in the benefits of such activities, and receive fair compensation for any harm they might suffer as a result of such activities.”²⁵⁴

²⁴⁹ “Observations of the United States With Respect to the Declaration On The Rights Of Indigenous Peoples.” United States Mission to the United Nations. September 13, 2007. <http://www.shunpiking.com/ol0406/0406-IP-positionofUS.htm>;

John McNee. “Statement by Ambassador McNee to the General Assembly on the Declaration on the Rights of Indigenous Peoples.” September 13, 2007. http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/general_assembly-assemblee-generale/10373.aspx?lang=eng

²⁵⁰ Ibid.

²⁵¹ *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations General Assembly. September 13, 2007.

²⁵² “Table Comparing the Draft American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples.” Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. March 14, 2008.

<http://scm.oas.org/IDMS/Redirectpage.aspx?class=XVI%20GT/DADIN/DOC&classNum=317&lang=e>

²⁵³ *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations General Assembly. September 13, 2007.

²⁵⁴ “Table Comparing the Draft American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples.” Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. March 14, 2008.

<http://scm.oas.org/IDMS/Redirectpage.aspx?class=XVI%20GT/DADIN/DOC&classNum=317&lang=e>

Canada's ambassador to the UN, John McNee pointed out that Article 26 of the UNDRIP is particularly unworkable for the government of Canada, specifically because, "Aboriginal and treaty rights are given strong recognition and protection in its [Canada's] Constitution."²⁵⁵ He argues that Article 26 is "overly broad, unclear, and capable of a wide variety of interpretations," that it fails to recognize that there is a broad variety of rights that may be held to any particular piece of land or territory, and that ultimately such provisions might end up "putting into question matters that have been settled by treaty."²⁵⁶ The United States echoes these concerns, but also points out that the original intent of the drafters of the Declaration was to protect indigenous land rights by developing transparent mechanisms and processes for adjudication of land disputes and providing redress for violations of existing land rights.²⁵⁷ Instead these declarations now, in "overly broad and inconsistent language," appear to "require recognition of indigenous rights to lands without regard to other legal rights existing in land, either indigenous or non-indigenous," in essence ignoring "contemporary realities in most countries by announcing a standard of achievement that would be impossible to implement."²⁵⁸ While the ADRIP addresses, on some level, the issue of the broad spectrum of property rights over land or territory, it still does not appear to effectively address the question of historical land and property usage treaties and agreements.

The way these declarations address the concept of self determination is also very important and very challenging. According to the US, the UNDRIP Working Group was mandated "to articulate a new concept, i.e., self-government within the nation-state," which they failed to do. Instead, they simply repeated Article 1 of the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights.²⁵⁹ Based on that understanding, this approach is considered incorrect.²⁶⁰ Self-determination is "understood by some to include the right to full independence under certain circumstances," while, in the context of existing nation states, "indigenous peoples generally are not entitled to independence nor any right of self-government within the nation-state."²⁶¹ In the opinion of the US, "it was not the mandate of the Working Group (nor was it within its power) to qualify, limit, or expand the scope of the existing legal obligations set forth in common Article 1."²⁶² This concern is seen in the ADRIP language as well through the suggestion, by the United States, that Article III of the declaration be amended to specify that the right of indigenous peoples to self-determination should be restricted as appropriate "within the nations in which they reside."²⁶³ This raises the particularly difficult question of, just how much self-determination an individual or group can have within an otherwise "free" society. This question is particularly challenging within the context of indigenous groups who are widely understood to be "nations" and who maintain "government to government" relationships with the nation states in which they reside.²⁶⁴

There is another profound divide over the interpretation and extension of human rights. The United States has put forth its belief that "human rights are universal and apply in equal measure to all individuals."²⁶⁵ Because they apply to all individuals, collective rights cannot be elevated to the status of human rights, or else certain groups would be able to hold rights that some individuals did not hold, thereby making those rights non-universal.²⁶⁶ Furthermore, if collective rights could be considered human rights, there is a great danger that individuals within the collective "would be extremely vulnerable to potential violations of their human rights by the collective."²⁶⁷ By this

²⁵⁵ John McNee. "Statement by Ambassador McNee to the General Assembly on the Declaration on the Rights of Indigenous Peoples." 13 September, 2007. http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/general_assembly-assemblee-generale/10373.aspx?lang=eng

²⁵⁶ Ibid.

²⁵⁷ "Observations of the United States With Respect to the Declaration On The Rights Of Indigenous Peoples." United States Mission to the United Nations. September 13, 2007. <http://www.shunpiking.com/ol0406/0406-IP-positionofUS.htm>

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Office of the National Chief, Assembly of First Nations. "Concerns of the National Chief of the Assembly of First Nations of Canada on Recently Published Documents of the Working Group." Permanent Council of the Organization of American States. 27 June 2007. http://scm.oas.org/doc_public/SPANISH/HIST_07/DADIN00169S04.doc

²⁶⁴ "Observations of the United States With Respect to the Declaration On The Rights Of Indigenous Peoples." United States Mission to the United Nations. September 13, 2007. <http://www.shunpiking.com/ol0406/0406-IP-positionofUS.htm>

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

logic, human rights and collective rights must be distinct and separate things. Indigenous leaders have countered that “this approach is inconsistent with the Inter-American Democratic Charter, which stresses that ‘promotion and protection of *human rights of indigenous* peoples ... contribute to strengthening democracy’ (Article 9).” [emphasis in the original]²⁶⁸ The Inter-American Democratic Charter, passed by the OAS in September of 2001, provides a functional definition of what makes up a democratic state and how it functions.²⁶⁹

All of the differences aside, there are few who question the need for an effective declaration of indigenous rights addressing the specific needs of indigenous peoples in the Americas. Throughout the region, indigenous populations face many threats and challenges. Many of these are closely connected to land, whether through land rights, the environmental impact of industrial activities, or forced displacement.²⁷⁰

Indigenous Displacement in Colombia

A dramatic example of displacement is occurring now in Colombia, where the Embera, one of the indigenous groups who populate the Chocó rainforest in the north-west of the country,²⁷¹ are being forced to flee their homes and villages due to the violence between illegal paramilitaries.²⁷² The dense Chocó extends across the border into Panama and has several waterways feeding into the Pacific Ocean, making it strategically important to the illegal paramilitaries and guerrillas, as a smuggling route for moving illicit goods, such as drugs and arms into and out of the country.²⁷³ These armed combatants often perpetrate violence against the native population, kidnapping children to act as guides and beating the men for their alleged collaboration with rival factions.²⁷⁴ The humanitarian response from Colombian authorities, as well as international organizations has been quick in this particular case, but there are still profound issues at play.²⁷⁵

The United Nations High Commissioner for Refugees (UNHCR) has voiced concern not only about the protections provided to those displaced, but also over reports of human rights abuses in the region, including murder and rape.²⁷⁶ Tragically, this is not an isolated event. Violence of this kind has been prevalent in rural Colombia for over 40 years²⁷⁷, and there are an estimated four million persons displaced, an exodus that has been described as a “humanitarian and human rights crisis.”²⁷⁸ The UNHCR has stated that 27 indigenous groups in the nation are threatened with extinction due to the violence and displacements; and that they, along with many others, cannot hunt or fish in much of their traditional homelands due to restrictions placed upon them by the paramilitaries.

Despite the response of Colombian authorities, the Embera feel neglected and say that government officials rarely visit their camps.²⁷⁹ There is also concern that, even if the government were to take decisive action, these crimes

²⁶⁸ Office of the National Chief, Assembly of First Nations. “Concerns of the National Chief of the Assembly of First Nations of Canada on Recently Published Documents of the Working Group.” Permanent Council of the Organization of American States. 27 June 2007. http://scm.oas.org/doc_public/SPANISH/HIST_07/DADIN00169S04.doc

²⁶⁹ *Inter-American Democratic Charter*. Organization of American States. September 11, 2001. http://www.oas.org/charter/docs/resolution1_en_p4.htm

²⁷⁰ Gale Courey Toensing. “Draft American Declaration on the Rights of Indigenous Peoples moves Forward.” *Indian Country Today*. 9 January, 2009. <http://www.indiancountrytoday.com/global/undeclaration/37351714.html>

²⁷¹ “Hundreds of Indigenous Embera people flee from armed group in Colombia.” United Nations High Commissioner for Human Rights. April 10, 2009. <http://www.unhcr.org/49de0de12.html>

²⁷² Valdivieso, Gustavo. “Some 2000 indigenous people flee threats and violence in Colombia.” United Nations High Commissioner for Refugees. 17 March, 2009. <http://www.unhcr.org/49bfd6732.html>

²⁷³ Anastasia Moloney. “Caught in Colombia’s drug war.” *Reuters*. May 8, 2009. <http://www.alertnet.org/db/blogs/46655/2009/04/8-173159-1.htm>

²⁷⁴ “Hundreds of Indigenous Embera people flee from armed group in Colombia.” United Nations High Commissioner for Human Rights. April 10, 2009. <http://www.unhcr.org/49de0de12.html>

²⁷⁵ Valdivieso, Gustavo. “Some 2000 indigenous people flee threats and violence in Colombia.” United Nations High Commissioner for Refugees. 17 March, 2009. <http://www.unhcr.org/49bfd6732.html>

²⁷⁶ *Ibid.*

²⁷⁷ Simon Romero. “Colombia’s Indians Displaced.” *The New York Times*. April 21, 2009. <http://www.nytimes.com/interactive/2009/04/21/world/americas/20090422-colombia-indians/index.html>

²⁷⁸ Adriaan Alsema. “Number of displaced in Colombia grows dramatically.” *Colombia Reports*. 30 September, 2008. <http://colombiareports.com/colombia-news/news/1492-number-of-displaced-in-colombia-grows-dramatically.html>

²⁷⁹ Simon Romero. “Colombia’s Indians Displaced.” *The New York Times*. April 21, 2009. <http://www.nytimes.com/interactive/2009/04/21/world/americas/20090422-colombia-indians/index.html>

may not be properly adjudicated. In 2001, Human Rights Watch (HRW) published a report claiming that there are deep institutional ties between the paramilitaries and the Colombian military and police.²⁸⁰ HRW went on to accuse the Colombian military of continuing “to promote, work with, support, profit from, and tolerate paramilitary groups.”²⁸¹ HRW claims that the militias are so tightly connected to the military that officers of the five-division army refer to the paramilitaries as the ‘Sixth Division.’²⁸² Given the possibility of such connections, it is even more troubling that indigenous leaders in Colombia are likely targets for assassination when they stand up to paramilitary and other illegal organizations.²⁸³ Robert DeJesus Gaucheta, the Vice Governor of the Nasa Reservation of Honduras (in the western part of Cauca Department, Colombia), was beaten to death on 18 May, 2009.²⁸⁴ He had asked for protection following repeated death threats from ex-paramilitaries tied to the drug trade, and his requests had been echoed by the Inter-American Commission on Human Rights.²⁸⁵ Although Colombian law has been tightened, ostensibly to provide a specific framework for prosecuting paramilitary leaders for their crimes, these laws are still problematic, and there seems little assurance that such prosecutions will be satisfactory to the indigenous peoples whose lives, territories, and communities have been shattered by the violence.²⁸⁶

Land Use Rights in Peru

On 5 June 2009 the Peruvian province of Bagua exploded in violence, when clashes erupted between police and indigenous protestors blocking a remote stretch of highway.²⁸⁷ Reports vary, but it is estimated that 40 protestors and 23 police were killed in at least two separate altercations.²⁸⁸ It is also unclear who started the shooting.²⁸⁹ The otherwise peaceful protests in Bagua had been ongoing for almost two months,²⁹⁰ while indigenous and non-indigenous subsistence farmers sought to force the government to repeal several laws, enacted by the President, which encouraged foreign mining and energy-extraction investments in the Amazon.²⁹¹ Those laws, passed in 2007 and 2008, were criticized by indigenous groups and international human rights organizations because they were written without any consultation of the peoples who populate the land.²⁹² Although indigenous peoples have lived in the region for centuries, they have no formal title ownership.²⁹³ The Peruvian president, Alan Garcia, has said that the natural resources found in those lands cannot belong solely to “the people who had the fortune to be born there,” because, by that logic, most of the nation’s territory would belong to a very small minority of the population.²⁹⁴ Passed as part of a package of legislation to facilitate a free trade agreement with the United States, the new Peruvian laws take the extraordinary steps of allowing for indigenous lands to be seized by corporations, criminalizing protest, and providing immunity to members of the military if they kill protestors.²⁹⁵ In a series of

²⁸⁰ Human Rights Watch. “Colombia: Paramilitary Groups Closely Tied to Army, Police.” October 3, 2001. <http://www.hrw.org/en/news/2001/10/03/colombia-paramilitary-groups-closely-tied-army-police>

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Rick Kearns. “Indigenous governor assassinated in Colombia.” Indian Country Today. June 22, 2009. <http://www.indiancountrytoday.com/global/48607197.html>

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Human Rights Watch. *Breaking the Grip: Obstacles to Justice for Paramilitary Mafias in Colombia*. November 17, 2008. <http://www.hrw.org/en/reports/2008/11/17/breaking-grip-0>

²⁸⁷ Romero, Simon. “Fatal Clashes Erupt in Peru at Roadblock.” New York Times. June 5, 2009. http://www.nytimes.com/2009/06/06/world/americas/06peru.html?_r=1&emc=eta1

²⁸⁸ Marco Aquino. “Peruvian troops patrol Amazon towns after 60 die.” Reuters. June 8, 2009. <http://uk.reuters.com/article/idUKN07282324>

²⁸⁹ Romero, Simon. “Fatal Clashes Erupt in Peru at Roadblock.” New York Times. June 5, 2009. http://www.nytimes.com/2009/06/06/world/americas/06peru.html?_r=1&emc=eta1

²⁹⁰ “Crisis in Peru.” Indian Law Resource Center. <http://www.indianlaw.org/en/node/422>

²⁹¹ Marco Aquino. “Peruvian troops patrol Amazon towns after 60 die.” Reuters. June 8, 2009. <http://uk.reuters.com/article/idUKN07282324>

²⁹² “Several dead in Peru land clashes.” Al Jazeera. June 6, 2009.

<http://english.aljazeera.net/news/americas/2009/06/20096516561168631.html>

²⁹³ Renzo Pipoli. “Garcia denies massacre and keeps laws; forces Native chief out.” Indian Law Resource Center. June 12, 2009.

<http://www.indianlaw.org/en/node/429>

²⁹⁴ Romero, Simon. “Fatal Clashes Erupt in Peru at Roadblock.” New York Times. June 5, 2009. http://www.nytimes.com/2009/06/06/world/americas/06peru.html?_r=1&emc=eta1

²⁹⁵ Rick Kearns. “International solidarity protests against Peruvian forest laws.” Indian Country Today. June 8, 2009.

well-organized moves, protestors have managed to halt commercial traffic on important roads and waterways, disrupt oil production, and even temporarily occupied valve stations of a natural gas pipeline.²⁹⁶ President Garcia, responded to the latest protests by declaring a 60-day state of emergency and suspending constitutional guarantees in hopes that the demonstrators would disperse.²⁹⁷ He went on to compare the protestors to the infamous insurrectionist Shining Path Maoists and denounced the demonstrators for their efforts to halt Peruvian progress and development.²⁹⁸ In the wake of the protests, the Peruvian congress repealed the two laws which indigenous people felt were the greatest threat to their territories and ways of life, leading to a cessation of indigenous protests.²⁹⁹ But, the UNPFII has already urged an independent investigation into the allegations of rights abuses during the confrontation, and the disappearance of several individuals.³⁰⁰

Alleged Treaty Violations in the United States

In contrast to these acute problems endangering indigenous peoples throughout the Americas, there are also long-standing disputes that not only demonstrate the point of friction between indigenous self-determination and the sovereignty of Member States, but also suggest an intentional and insidious erosion of the rights of indigenous peoples. In 1863, the United States and the Western Bands of the Shoshone signed the Treaty of Peace and Friendship at Ruby Valley in the Nevada Territory.³⁰¹ The treaty is concise, and clearly gives the United States rights of passage through the lands claimed by the Western Shoshone, as well as the right to exploit natural resources including timber and minerals.³⁰² The treaty does not make any indication that the Western Shoshone ceded the territory in question to the United States,³⁰³ but rather establishes that the land shall be used peacefully by both parties.³⁰⁴ This issue gets cloudy because, although the Western Shoshone land includes a large part of the modern state of Nevada,³⁰⁵ there is no mention of the Western Shoshone or their territory in the Constitution of the State of Nevada, which was ratified over a year after the Treaty of Ruby Valley was signed.³⁰⁶ This also immediately calls into question the intent of the United States. A treaty is understood to be “a formal agreement between two or more nations in reference to peace, alliance, commerce, etc,”³⁰⁷ and further, Article VI of the United States Constitution holds that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby.”³⁰⁸

In 1934, the United States passed the Indian Reorganization Act (IRA) which allowed those natives living on reservations to establish local tribal governance models based upon a federal model of government,³⁰⁹ to exercise jurisdiction over reserved land and subject to the approval of the Secretary of the Interior.³¹⁰ In the case of the Western Shoshone, this created problems not only because there is little evidence of broad cohesive governance in

<http://www.indiancountrytoday.com/global/47043272.html>

²⁹⁶ Romero, Simon. “Fatal Clashes Erupt in Peru at Roadblock.” *New York Times*. June 5, 2009.

http://www.nytimes.com/2009/06/06/world/americas/06peru.html?_r=1&emc=eta1

²⁹⁷ “Several dead in Peru land clashes.” *Al Jazeera*. June 6, 2009.

<http://english.aljazeera.net/news/americas/2009/06/20096516561168631.html>

²⁹⁸ Ben Powless. “Peru: Battle lines drawn over the Amazon.” *Rabble.ca*. June 8, 2009.

<http://rabble.ca/blogs/bloggers/ben-powless/2009/06/peru-battle-lines-drawn-over-amazon>

²⁹⁹ “Peru Indians hail ‘historic’ day.” *BBC*. June 19, 2009. <http://news.bbc.co.uk/2/hi/americas/8109021.stm>

³⁰⁰ “UN calls for Peru clashes probe.” *BBC*. June 20, 2009. <http://news.bbc.co.uk/2/hi/americas/8110561.stm>

³⁰¹ Zia Akhtar. “Human Rights and American Indian Land Claims.” *The International Journal of Human Rights*. December, 2007. pp. 529-534

³⁰² “United States Treaty With the Western Shoshoni, 1863.” *Nativeweb.org*.

http://www.nativeweb.org/pages/legal/shoshone/ruby_valley.html

³⁰³ *Ibid.*

³⁰⁴ Zia Akhtar. “Human Rights and American Indian Land Claims.” *The International Journal of Human Rights*. December, 2007. pp. 529-534

³⁰⁵ “Map of Western Shoshone Lands.” *Western Shoshone Defense Project*.

<http://www.wsdp.org/images/newemap.gif>

³⁰⁶ “The Constitution of the State of Nevada.” *The Nevada Legislature*. <http://leg.state.nv.us/Const/NvConst.html>

³⁰⁷ *Random House College Dictionary*. New York: Random House. 1980

³⁰⁸ *The Constitution of the United States*. 1788.

³⁰⁹ Zia Akhtar. “Human Rights and American Indian Land Claims.” *The International Journal of Human Rights*. December, 2007. pp. 529-534

³¹⁰ “Newe Segobia History and Culture.” *Western Shoshone National Council*. August, 2006.

<http://www.newesogobia.com/history/index.html>

the history of the indigenous peoples in the region,³¹¹ but also because not all of the bands were affected by this law.³¹² The Te-Moak Tribe of Western Shoshone was formed under the auspices of the IRA in 1938 and was formally recognized by the United States as the governing body of the Western Shoshone.³¹³ In opposition, several bands formed the Western Shoshone National Council (WSNC) as a traditional governing voice for many of the bands, especially those who did not live on reservations, but this body was never recognized by the government of the US.³¹⁴

In 1946, the United States formed the Indian Claims Commission (ICC) to hear and adjudicate claims by indigenous persons or groups against the United States government.³¹⁵ The ICC notified the Te-Moak Council (TMC) that there may be grounds for filing a claim; however the TMC chose not to file at that time.³¹⁶ In 1951, the TMC, encouraged by a law firm contracted by the Bureau of Indian Affairs,³¹⁷ a government agency, did file a claim with the ICC.³¹⁸ The WSNC objected to this filing on the grounds that it was unnecessary.³¹⁹ They believed that Western Shoshone title to the land had not been extinguished, and the claim for monetary damages did not represent the desire of the Western Shoshone to see a return of land that had been taken in contravention of the Treaty of Ruby Valley.³²⁰ The ICC completed its decision 11 years later, finding that all Western Shoshone land had been lost through a process of “gradual encroachment by whites, settlers and others, and the acquisition, disposition, or taking of their lands by the United States for its own use and benefit,” however, the ICC failed to provide any historical evidence or specific details of the dates and places of such encroachment or the taking of Western Shoshone land.³²¹ The ICC, unable to find a specific event to set a date that title had been extinguished, decided in 1966 to arbitrarily set that date as 1 July 1872.³²² While there is no indication of why this date was selected,³²³ 1872 stands as an important year in which the General Mining Act was passed providing for private extraction of valuable minerals on Federal land.³²⁴ It is troubling that, using that date, the ICC would eventually set a price of 15 cents per acre for the initial claim³²⁵ while the mining act provides sale of public land for 15 to 33 times that value.³²⁶ It is also troubling that, despite the claim that Western Shoshone land has been encroached upon, in fact between 80% and 90% of the land claim is now held as Federal public land and is not being used at all.³²⁷

In 1976, the TMC, which had just become aligned with the WSNC following new elections, attempted to suspend the still-incomplete ICC proceedings on the basis that title to Western Shoshone land was still intact and because the TMC sought to negotiate directly with the United States government, but the ICC refused the request.³²⁸ The ICC

³¹¹ Elmer Rusco. “Formation of the Pyramid Lake Paiute Tribal Council, 1934-1936.” *Journal of California and Great Basin Anthropology*. 1988. pp 187-208.

³¹² Ibid.

³¹³ “Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.” May 3, 1938.

<http://www.temoaktribe.com/constitution.shtml>

³¹⁴ Ibid.

³¹⁵ “Records of the Indian Claims Commission.” The National Archives.

<http://www.archives.gov/research/guide-fed-records/groups/279.html>

³¹⁶ Steven Newcomb. “Failure of the United States Indian Claims Commission to File a Report with Congress in the Western Shoshone Case (Docket 326K), Pursuant to Sections 21 and 22(a) of the Indian Claims Commission Act.” January, 2003. <http://www.nativeweb.org/pages/legal/shoshone/ili-report.html>

³¹⁷ “Letter to the Secretary of the Interior of the United States.” European Parliament. February 24, 1998.

<http://nativeweb.org/pages/legal/shoshone/ep-letter.html>

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid.

³²³ Ibid.

³²⁴ Robert McClure and Andrew Schneider. “The General Mining Act of 1872 has left a legacy of riches and ruin.” Seattle Post Intelligencer. June 11, 001. http://www.seattlepi.com/specials/mining/26875_mine11.shtml

³²⁵ “Western Shoshone Nation, USA.” Earthworks. <http://www.earthworksaction.org/westernshoshonenation.cfm>

³²⁶ Robert McClure and Andrew Schneider. “The General Mining Act of 1872 has left a legacy of riches and ruin.” Seattle Post Intelligencer. June 11, 001. http://www.seattlepi.com/specials/mining/26875_mine11.shtml

³²⁷ “Letter to the Secretary of the Interior of the United States.” European Parliament. February 24, 1998.

<http://nativeweb.org/pages/legal/shoshone/ep-letter.html>

³²⁸ Steven Newcomb. “Failure of the United States Indian Claims Commission to File a Report with Congress in the Western Shoshone Case (Docket 326K), Pursuant to Sections 21 and 22(a) of the Indian Claims Commission Act.” January, 2003. <http://www.nativeweb.org/pages/legal/shoshone/ili-report.html>

case was completed in 1979 when \$26 million was awarded to the TMC as restitution for the taking of Western Shoshone land.³²⁹ The Bureau of Indian Affairs was charged with distribution of the award but in meetings over 80% of the Shoshones who testified refused to accept the monetary reward.³³⁰ With a legal requirement that the award distribution be accomplished within six months, and facing steep opposition to accepting the reward, the Bureau of Indian Affairs requested an extension but it was not granted.³³¹ To resolve this issue the Interior Department accepted the award on behalf of the Western Shoshone.³³² That money would sit unclaimed in a trustee account for 25 years³³³.

Against this backdrop, in 1974, the United States brought trespassing charges against Mary and Carrie Dann, members of the Dann Band of Western Shoshone, for grazing their livestock on public land without a permit.³³⁴ The Danns claim that the land is still the property of the Western Shoshone, but the Supreme Court found against the Danns, claiming that all rights to tribal lands throughout Nevada had been extinguished with the ICC's ruling.³³⁵ The Danns responded seeking assistance from the OAS Inter-American Court of Human Rights (IACHR), based upon the claim that the United States' actions represented violations of the American Declaration on the Rights and Duties of Man³³⁶, specifically:

*Article II, right to equality before the law; Article III, right to religious freedom and worship; Article IV, right to a family and to protection thereof; Article XIV, right to work and to fair remuneration; Article XVIII, right to a fair trial; and Article XXII, right to property.*³³⁷

The IACHR found against the United States, deciding that the ICC had failed to "operate in compliance with the norms and principles of international law,"³³⁸ and that the seizure of Western Shoshone lands was in violation of the Fifth Amendment of the United States Constitution, because there was no proper justification for the taking of the entirety of the vast lands claimed by the Western Shoshone.³³⁹ The United States dismissed this ruling citing that the formation of the ICC in 1946 predated the US's ratification of the OAS charter in 1951.³⁴⁰ The US also held that the Dann sisters were incorrect in seeking relief outside of the United States, while they still had appropriate venues to press their claims within the nation's legal system.³⁴¹ For its part, the IAHCR has responded by pointing out that the ICC decision on the Western Shoshone territory was delivered in 1962, well after the United States ratified the OAS Charter.³⁴²

Despite the legal sparring, the Bureau of Land Management (BLM), the US Agency in charge of managing federal land, has insisted that the fines levied against the Danns and other members of the WSNC for illegal grazing and trespassing must be paid.³⁴³ Fines in excess of \$500,000 were levied against the Western Shoshone in 1998 for

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid.

³³² Jerry Reynolds. "Bush signs Western Shoshone legislation." Indian Country Today. July 9, 2004.

http://www.wsdp.org/distribution_bill.htm#070904-signs

³³³ Ibid.

³³⁴ Zia Akhtar. "Human Rights and American Indian Land Claims." *The International Journal of Human Rights*. December, 2007. pp. 529-534

³³⁵ Ibid.

³³⁶ "The Case of Mary and Carrie Dann v. The United States: Summary of the conclusions and recommendations of the Inter-American Commission on Human Rights." Indian Law Resource Center. July 30, 2002.

http://www.dlncoalition.org/related_issues/dannvsus.htm

³³⁷ Zia Akhtar. "Human Rights and American Indian Land Claims." *The International Journal of Human Rights*. December, 2007. pp. 529-534

³³⁸ "The Case of Mary and Carrie Dann v. The United States: Summary of the conclusions and recommendations of the Inter-American Commission on Human Rights." Indian Law Resource Center. July 30, 2002.

³³⁹ Zia Akhtar. "Human Rights and American Indian Land Claims." *The International Journal of Human Rights*. December, 2007. pp. 529-534

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid.

³⁴³ Pat Calliotte. "BLM fines Western Shoshone \$564,000 Despite OAS Request." News From Indian Country. May, 1998.

grazing on protected public lands that are threatened with environmental damage due to over-grazing.³⁴⁴ However, the government's claim that it is protecting the environmental integrity of the land is challenged by the fact that these grazing lands are adjacent to some of the richest gold fields in the United States.³⁴⁵ It was reported that mining firms are rarely fined for environmental damage, and, when fines are levied against mine operators, they are often waived in exchange for small inexpensive public-works projects.³⁴⁶

Unfortunately, the battle for these lands is far from over. In order to settle the argument regarding the Western Shoshone's refusal to accept the ICC's monetary award, the Bush administration signed the Western Shoshone Distribution Bill on July 7, 2004, forcibly distributing the now \$145 million settlement with the intention of finally subsuming all Western Shoshone claims to the land in question.³⁴⁷

Conclusion

There are many issues at hand here. Questions and concerns have been raised about the intent and structure of the ADRIP, and these are valid concerns. The indigenous peoples of the Americas need a strong statement, not only of their rights, but of the obligations that OAS Member States have towards the peoples themselves, and to the protection of their societies; ways of life; and lands. But this statement will not be an easy one to make. It is encouraging that the voice of this statement, which at first included only the voices of the dominant and predominantly European populations of the region, eventually came to represent more fully the voice of the indigenous peoples it is meant to celebrate. But, that does not change the fact that there are great challenges to be met in making this statement. Foremost among these, is the dramatic friction to be found within the issues of national sovereignty and indigenous self-determination. The United States, especially in its dealings with the Western Shoshone, is caught squarely in the space between its insistence that it maintains "government to government" relations with the Shoshone people while, at the same time, insisting that they have sovereignty only to the extent that it has been granted them subject to the sovereignty of the United States. It is from within this conflict that these difficult issues, such as the need to respect the desires of indigenous populations with regards to national policies or legislation which might affect them, arise.

On some level these are very similar concerns to those that arise out of the discussion over indigenous peoples and land rights. Some of that conflict is over the question of the propriety of the land rights that Europeans gained over and above the land rights of the indigenous peoples that inhabited the American continents. This land was not an uninhabited wilderness when Europeans arrived, but neither was there a clear distinction between the lands of, for instance, the Shoshones and the Arapaho, and their own disagreements over land rights caused skirmishes between the bands over territory.³⁴⁸ Some of the conflict also arises over the very different ideas of land right and land ownership. None of these conflicts are easy to address, but at the same time there is a difference between the position that what has been done is over and there is no way to address it, and the belief that there is room for discussing some of the injustices of the past and at least being honest about them.

It is also true that many of the conflicts between the dominant society and indigenous peoples seem to be tied in some way to the issue of land. It shows up in the issues of sovereignty, self-determination, subsistence and even religious practice. It is also well represented in the dichotomy between individual rights and collective rights. Within most indigenous cultures land, to the extent that it could be "owned" was held collectively,³⁴⁹ whereas in post-colonial experience the paradigm has shifted to individual ownership, directly threatening the social constructs that nurture indigenous society.³⁵⁰ However, not only do these issues present serious challenges to Member States

<http://www.projectcensored.org/top-stories/articles/23-bureau-of-land-management-charged-with-human-rights-violations-against-t/>

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Thomas Buecker. *Fort Robinson and the American West, 1874-1899*. Norman, Oklahoma: University of Oklahoma Press. 1999. pp. 100-101

³⁴⁹ Carmen Diana Deere and Magdalena León de Leal. *Empowering Women*. Pittsburgh: University of Pittsburgh Press. 2001. p. 137

³⁵⁰ "Indigenous Peoples and Land Rights." International Work Group for Indigenous Affairs. <http://www.iwgia.org/sw231.asp>

and the indigenous peoples who live within them, they also present serious juridical challenges, and are not likely to be seen as having been adjudicated fairly within any context where the legal system of a nation state is both judge and defendant or plaintiff. Herein is one of the reasons why the ADRIP is vitally important beyond the UNDRIP. Within the OAS there is an international court with jurisdiction over matters of human rights and OAS treaty.

Committee Directive

It is first important to note that the topic is “Accelerating the completion of” the ADRIP. It is not the goal of this committee session to write, edit, or pass the American Declaration. Nor is it our goal to try to directly address the case studies provided in this discussion. As important as the situations in Colombia and Peru are, we have been given the task of looking over the status of negotiations on the ADRIP and determining what can be done to speed up the process of drafting the Declaration so that it can be accepted. While this can be done without the United States, Canada, and Colombia, to do so would certainly be an empty victory. It is the goal of this committee and conference to first consider ways of engaging these important partners in the development of the ADRIP. That may mean giving careful consideration to some of the concerns voiced by those three countries, but it might also mean engaging in serious conversation about the conflicts between, for instance, self-determination and national sovereignty. A meaningful discussion, met with a definitive statement about the boundaries of these two seemingly conflicting ideals, may go a long way towards addressing the deep reservations that have been expressed over the ADRIP. It is also possible that the fruit of such a discussion could transform the Declaration from being merely a regionalized interpretation of the UNDRIP to becoming the aspirational document so many have sought.

Topic I: Assessing the status of the Free Trade Area of the Americas (FTAA) Agreement

Conforti, Piero & Velazquez, Beatriz. "The Effects of Alternative Proposals for Agricultural Export Subsidies in the Current WTO Round." <http://ageconsearch.umn.edu/bitstream/23848/1/05010011.pdf>

Although this article does not focus specifically on OAS states, it does provide a nice overview of agricultural export subsidies and the difficult issues they present in the context of the WTO Doha Round negotiations.

Congressional Research Service. <http://opencrs.com/>

A gateway to research reports funded by the government of the United States, the Congressional Research Service hosts a multitude of US-centric reports, but of special interest in this regard are their reports on the World Trade Organization Doha Round in particular and the issues of free trade and agriculture in general. Try searching on "WTO," "Doha Round," and "agricultural subsidies."

Duke University Law School. <http://www.law.duke.edu/lib/researchguides/nafta.html>

Duke University provides not only links to the full text of the NAFTA agreement, but also a very tidy bibliography of important sources, including some internet resources, on the background of the agreement, on the standing dispute resolution process, the legislative history of the agreement, and others.

Heboyan, Vahe, et al. "U.S. – Mexico Sugar Dispute: Impact of NAFTA on the Sugar Market." <http://econpapers.repec.org/paper/agsa01/20730.htm>

Although it is almost a decade old, this report provides an interesting case study of the impact of NAFTA on the sugar market. It also does a good job examining the disputes that have arisen between the United States and Mexico over allegations of protectionism and dumping.

Office of the United States Trade Representative. <http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>

Providing a very pro-NAFTA viewpoint, the United States Trade Representative does provide interesting statistical and historical data, and also links to similar information with regards to the other Free Trade Agreements that the United States is party to, including those with Chile, Colombia, Panama, and Peru.

Redefining Progress. <http://www.rprogress.org/index.htm>

Founded by Ted Halstead in 1994, Redefining Progress is a progressive think-tank dedicated to developing and promoting sustainable development and economic models. Halstead is responsible for much of the debate surrounding the value of Gross Domestic Product as a measure of economic health. The Redefining Progress website contains a wealth of material discussing their suggested alternative, the Genuine Progress Indicator, as well as educational resources on topics such as environmental sustainability, economic localization, and ecological impact.

Schott, Jeffrey J. "US-Brazil Trade Relations in a New Era." <http://www.iie.com/publications/papers/schott1103-2.pdf>

Schott not only provides an extensive review of the issues that divide the United States and Brazil in both the WTO Doha Round and FTAA negotiations, but also takes a broader view and presents compelling arguments for why both trade giants should move beyond these issues. He goes on to provide recommendations for substantive actions both countries could take to move negotiations forward.

United Kingdom Department for International Development (DID). "Poverty measurement, mapping, and analysis." http://www.research4development.info/pdf/ThematicSummaries/Brief8_Poverty_measurement_mapping_and_analysis.pdf

The DID has provided a brief, but very informative look at some of the questions and concerns that need to be considered when investigating poverty, particularly with regards to statistical measurements.

World Trade Organization. <http://www.wto.org>

The definitive source for World Trade Organization (WTO) documents, the WTO also provides extensive commentary on the organization's many projects and processes. There is a wealth of material regarding the Doha Round of negotiations. It should be apparent that all of that commentary and discussion is pro free trade. Begin with a search on "Doha Round."

Topic II: Human Trafficking in the Americas

Global Rights – Partners for Justice Online. Resource Library: Human Trafficking.
http://www.globalrights.org/site/PageServer?pagename=ResourceLibrary_Trafficking

Global Rights and their partners work to create just societies founded on the principles of human rights. They work with organizations and governments to develop and ensure strategies of change. This includes founding and coordinating [Freedom Network \(USA\)](#), which is helping to build regional networks of activists and lawyers based in Central America, the Caribbean and Mexico, and West Africa.

Carroll, Susan. "More men victims of human trafficking". Chron Online. July 6, 2009.
<http://www.chron.com/dispatch/story.mpl/front/6514945.html>

This article brings to light the increase in males being trafficked across borders and opens up questions on the importance and significance of such occurrences.

Amnesty International. <http://archives.cnn.com/2000/WORLD/europe/08/31/slavery.world.reut/>

An international organization consisting of over 150 countries campaigning around the globe to stop the abuse of human rights. The group appeals for respect, truth, and justice when dealing human rights issues that include the trafficking of human beings. A plethora of information can be found on this site in regards to human rights. It includes options for detailed searches by country, issue, relevance, and date.

"World faces deluge of human trafficking". CNN. August 31, 2000.
<http://archives.cnn.com/2000/WORLD/europe/08/31/slavery.world.reut/>

CNN reports on the ever increasing rise of human trafficking around the world, including those of the American States.

Anti-Slavery.org – Today's Fight for Tomorrow's Freedom. www.antislavery.org

Anti-Slavery International works at local, national, and international levels to eliminate all forms of slavery around the world through advocacy programmes, public outreach, community events, international partnerships and education.

Human Trafficking Search. <http://www.humantraffickingsearch.net>

This website is run by the National Multicultural Institute, a private, non-profit organization that offers workshops, conferences, and education to strengthen society through diversity. The site offers an intricate search engine which allows you to find the latest news, statistics, and information by country map. It also separates the issues of human trafficking by child labor, forced labor and sex slavery.

Forced Migration Online – A World of Information on Human Displacement.
<http://www.forcedmigration.org/browse/thematic/trafficking.htm>

FMO was designed for use by practitioners, policy makers, researchers, and students to provides a variety of online resources dealing with forced migration. Human trafficking is a large source of forced migration worldwide. This site provides trafficking-related articles that teach and introduce the concept of international trafficking instant access to a wide variety of online resources dealing with the situation of forced migrants worldwide.

ISRIA. "UN – A Women's Discrimination Committee Begins Review of Country Reports." July 23, 2009.
http://www.isria.com/pages/23_July_2009_17.php

An article published by ISRIA, an information publishing service specializing in global and geopolitical new and information that is relevant to current international affairs issues. The article is a comprehensive detail of the Committee on the Elimination of Discrimination against Women and issues concerning anti-trafficking programs worldwide.

Klarevas, Louis. Buckley, Christine. "Human Trafficking and the Child Protection Compact Act of 2009".
http://writ.news.findlaw.com/commentary/20090715_klarevas_buckley.html

A well researched and well thought out article by NYU professor Louis Klarevas and human rights advocate Christine Buckley which describe different types of trafficking and thoroughly evaluate the Trafficking Victims Protection Act, as well as the Child Protection Compact Act.

Topic III: Accelerating the Completion of the American Declaration on the Rights of Indigenous Peoples

Abya Yala Net. <http://abyayala.nativeweb.org/>

The Abya Yala site provides an extensive set of links to information about the history, issues, and important treaties and documents for the indigenous peoples of the Americas by region.

Fulmer, Amanda M., Godoy, Angelina Snodgrass. & Neff, Philip. "Indigenous Rights, Resistance and the Law: Lessons from a Guatemalan Mine. *Latin American Politics and Society*, vol 50, Winter 2008, pp 91-121.
This article provides an excellent case study of the complicated dynamics among national law, international law, multi-national corporations, and international financial institutions.

Hall, Gillette & Patrinos, Harry Anthony. "Latin America's Indigenous Peoples."
<http://www.imf.org/external/pubs/ft/fandd/2005/12/hall.htm>

Hall and Patrinos present an interesting discussion on the economic and developmental lag of indigenous peoples and suggesting ways that this gap might be addressed. Commissioned by the World Bank, the authors provide a market-centric set of solutions.

Indigenous Peoples' Literature. <http://www.indigenouspeople.net>

This site is challenging to navigate, but also has extensive background information and links to information on many of the tribes and bands of indigenous peoples in the Americas, as well as an extensive collection of indigenous literature.

International Labor Organization. <http://www.ilo.org>

The International Labor Organization (ILO) passed its Convention 107 on indigenous populations in 1957, and its Convention 169 on the rights of indigenous peoples in 1989, making these conventions very important precursors to the UNDRIP and the ADRIP. In fact, many rights violations, particularly those surrounding informed consent with regards to land use, are prosecuted under ILO Convention 169 because it is legally binding upon all ILO Members.

Latin American Network Information Center (LANIC). <http://lanic.utexas.edu/la/region/indigenous/>

The LANIC provides another excellent source of links to information about indigenous peoples by region, country, and ethnic group. Most of these resources are in Spanish, and some in Portuguese and other languages.

Mittelstadt, Matt. "Colombia's Displaced." <http://www.zmag.org/znet/viewArticle/4195>

A moving and insightful article discussing the violence perpetrated against Colombian civilians, the reasons so many are displaced, and the challenges they face. This article does not specifically address indigenous peoples, but the problems he discusses are pertinent.

Skidmore College. <http://www.skidmore.edu/library/courses/Indigenous/>

A project out of the Lucy Scribner library at Skidmore, this site provides an extensive bibliography of resources, including internet indexes and databases pertaining to indigenous peoples in Latin America.

United Nations Permanent Forum on Indigenous Issues. <http://www.un.org/esa/socdev/unpfii/index.html>

The UNPFII site not only has links to the most important UN resolutions and statements with regards to indigenous peoples, it also has a wealth of other reports and resources to raise and discuss the barriers to economic and social development in the indigenous world.

Unrepresented Nations and Peoples Organization (UNPO). "Self-Determination in Relation to Individual Human Rights, Democracy and the Protection of the Environment." <http://www.unpo.org/downloads/Self-determination%20conference%201993.pdf>

This document, a conference report of the 1993 UNPO meeting at The Hague, provides an excellent countervailing view to the ways in which the conflict between sovereignty and self-determination might be resolved.