

Disneyland, Doha and the WTO in Hong Kong: The Spectacle of Corporate Fear, Absurdity and the New Universalism

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It's fitting that the Sixth WTO Ministerial should arrive in Hong Kong only a couple of months after the opening of Disneyland. In both cases reality is abandoned at the door, while fiction and fantasy take over. The magical Doha 'Development' Round promises an end to global poverty and a new prosperity for all -- based on an agenda that boosts transnational corporate power and demolishes the remnants of political and social barriers to corporate profit. Like a rollercoaster ride through a fictional world, we set off to alleviate global poverty and arrive at greater impoverishment as the destination. There's a lot of smoke and mirrors and dazzling special effects, but we end up where we began. We end up with US\$545 billion in global agricultural exports co-existing with eight million people dying of hunger and hunger-related diseases every year, while tens of millions of small farmers and agricultural workers who produce the food that feeds the world are themselves living in hunger. In the fantasy world of the Doha Round 'market access' is the magical solution: small farmers and workers must compete harder, producing more for less, while pinning their hopes on access to overseas markets so they can sell more of the stuff that's impoverishing them. This will aggravate what a UN agency recently described as 'immiserizing trade' (trade that creates more misery), as agricultural commodity prices continue their free market freefall, driving down small farmers' incomes and workers' wages.[1] As the poverty gap widens, so too do the profit margins of the agri-food corporations and mega-supermarkets that control everything from the 'farm gate to the dinner plate.'[2]

Upon entering the fantasy world of the WTO and its magical Doha Round we're expected to embrace the irrational and absurd, accepting miraculous transformations that would otherwise violate our sense of what is real and rational. Access to water -- universally recognized as a human right yet denied to hundreds of millions of people throughout the world -- is transformed into a logical need to commercialize water

supplies and open up water markets.[3] Water markets? In the real world we'd wonder, 'What the hell is a water market?' But here in the world of the WTO we're assured that everything is or should be a market in which private corporations are free to invest, buy, sell, and profit. Anything preventing corporations from doing so is a barrier, an 'unfair trade practice.' So let's be fair to corporations, they tell us. This absurd logic is supposed to generate acceptance of the absurd, no questions asked. So when the transnational 'services' conglomerate, Suez, proudly declares its motif 'Delivering the Essentials of Life' (including access to water: human right turned profitable commodity) we're left to wonder how the company took control of the essentials of life in the first place....

Added to the absurdity of this spectacle is a sense of fear -- fear that the Doha Round will fail and the WTO talks will collapse, heralding the demise of multilateralism and the emergence of a global economy 'without rules.' Fear and absurdity -- two essential ingredients in the last quarter of a century of neo-liberalism -- play a crucial ideological role in justifying injustice and obscuring the harsh inequalities and social violence of global capitalism. So it's not surprising that the fear-absurdity matrix is deployed in the run-up to the WTO Ministerial in Hong Kong. Fear of failure in Hong Kong is used not only to secure concessions from developing country negotiators forced or enticed into bilateral trade-offs and backroom deals, but also those 'civil society' organizations who believe that a reformed WTO is essential to the future of multilateralism. To preserve this fiction of 'multilateralism at risk,' we're expected to ignore the fact that the WTO consolidated (and never challenged) the unilateral power of the US state; facilitated unilateral coercion in bilateral trade deals; justified the coercive power of unilateral trade sanctions; and further entrenched global inequality between and within nations. Also ignored is the conflict between the new rules imposed under the WTO regime and an array of international instruments on human rights, cultural, social and economic rights, the environment, and conventions on worker and trade union rights -- all of which form part of the abused and manipulated multilateralism of the UN system.

It's here that we arrive at a new level of fear and absurdity. On 25

October 2005, US-based corporations and business associations formed the American Business Coalition for Doha (ABCDoha) with the aim of saving the Doha Development Round from failure in Hong Kong. Its website "fact of the week" entitled The Promise of the Doha Round declares that the elimination of global trade barriers will "lift more than 300 million people out of poverty over 15 years" and "empower the world's poorest citizens." [4] Smoke and mirrors, special effects please. Stepping off that fantasy ride we can read more sober statements from ABCDoha's members which describe the benefits of a successful Doha Round to US-based corporations. No mention of poverty alleviation or the empowered poor.

The corporate co-chairs of ABCDoha include: Cargill (the agribusiness conglomerate that dominates the global trade in grains and agricultural commodities such as cocoa); Caterpillar; Eastman Kodak; Goldman & Sachs; Intel Corporation; the pharmaceutical giants Procter & Gamble, Johnson & Johnson and Pfizer; Time-Warner; and Wal-Mart. At the press conference launch of ABCDoha, the CEO of Cargill called for "tough decisions on market access," while the CEO of Wal-Mart reminded the US government that his corporation has a "vital interest in the expansion of the international flow of goods, agricultural products, retail services and financial capital." [5] And that's essentially the unilateral corporate agenda the US government is deputized to pursue.

Similar statements in defense of multilateralism and the need for a unilateral US corporate offensive were made by the member-organizations of ABCDoha's steering committee, which includes the National Foreign Trade Council, the US Chamber of Commerce, the US Council for International Business and the National Association of Manufacturers (NAM). Described by the President of NAM as "a powerful new force in support of a successful Doha Round for agricultural, manufacturing and services interests," [6] ABCDoha will apparently act as a powerful force in saving the global economy's fragile multilateralism, while channeling the benefits of expanded global trade to US business interests. That gives us a fairly good insight into the kind of multilateralism at stake in the Doha Round.

What is even more revealing about the Doha Round's multilateralism is

the outright opposition to any binding rules that might infringe on corporate rights -- including the right to violate international human rights. For decades US-based corporations, backed by the National Foreign Trade Council, the US Chamber of Commerce, the US Council for International Business and NAM, have consistently and aggressively opposed the application of any multilateral or national instruments that could hold them accountable for violations of international law, particularly with regard to human rights violations. So while the corporate interests driving ABCDoha actively promote new universal values and norms for a globalized economy, they vigorously oppose the universal application of long-standing international human rights conventions.

This is epitomized by the corporate offensive against the Alien Tort Claims Act (ATCA) or Alien Tort Statute (ATS), an obscure US law passed in 1789 that has recently been used by victims of international human rights abuses to sue US-based corporations in US courts. Farmers, workers, fisher-folk and local communities in more than a dozen countries have filed cases against corporations such as Texaco, Chevron, ExxonMobil, Gap Inc., Unocal, Royal Dutch/Shell, Rio Tinto, Coca-Cola, Del Monte, Union Carbide, and Freeport McMoran. The cases range from the Union Carbide tragedy in Bhopal, India, in 1984 in which 20,000 people died and 140,000 were injured, to the use of forced labour in Burma in the construction of an oil pipeline used by Unocal, and the torture and toxic pollution by Freeport mining company in Indonesia.[7]

Among these cases was a class action lawsuit filed by the Vietnam Association for Agent Orange Victims against a dozen US chemical manufacturers, including Dow Chemical and Monsanto, which was thrown out by a federal court in New York on 10 March 2005. Like many other cases filed under the ATS, involving atrocities against humanity, war crimes, torture, slavery and genocide, the Victims of Agent Orange sought -- more than anything -- to expose the truth about the involvement of these corporations in perpetrating these crimes.[8] Yet what is remarkable about the corporate response is the attempt to prevent these cases going to trial, challenging not the claims made by victims of these atrocities, but their right to use US courts to make their claims. There was rarely any attempt to deny that the atrocities occurred. Instead,

money, lawyers and lobbyists were mobilized to prevent these cases from going to trial. In other words, corporations were not able to claim that these things didn't happen or that they didn't profit from what happened. They simply declared that they shouldn't be held accountable and that any laws –international or national -- that may be used to enforce accountability for these crimes should be ignored, amended or revoked. It was for this reason that energy was concentrated in securing a Supreme Court ruling limiting the interpretation and use of the ATS, so that it could no longer be used to victimize US corporations. Indeed, 'support groups' were soon created to help corporate victims such as Unocal and Dow Chemical, apparently traumatized by the reminder of their crimes. Fear and absurdity returns with a vengeance....

The fear-absurdity matrix then produced a new claim: by holding US-based corporations accountable for violations of international laws, rights and principles that the US government hasn't consented to, the use of the ATS constitutes nothing less than "judicial imperialism." [9] Desperate to save the corporate victims of judicial imperialism, the Bush regime challenged the interpretation of the ATS in the Supreme Court and sought its repeal or reinterpretation. The case of the corporate victims was also made directly to the Supreme Court in a brief submitted by the National Foreign Trade Council, the US Chamber of Commerce, the International Chamber of Commerce, the US Council for International Business, the Organization for International Investment, the American Petroleum Institute, and the US-ASEAN Business Council on January 23, 2004. The text of the brief includes a remarkable sub-heading that perfectly illustrates their key argument: "ATS Lawsuits Harm The Economy By Putting Companies With A US Presence At A Unique And Unfair Competitive Disadvantage." This is explained as follows:

"This means that US companies (or companies with a US presence) are at a significant competitive disadvantage against their foreign competitors -- facing unique risks and uncertainty in the planning, financing, and insuring of activities abroad. They either have to absorb these added costs, or cede profitable ventures to other nations' companies." [10]

So here we see members of ABCDoha, defenders of the WTO's multilateralism and a rules-based global economy, essentially arguing

that legal liability for violations of international human rights is a competitive disadvantage in the global economy.

But the fear of judicial imperialism doesn't stop there. In a separate brief submitted to the Supreme Court by NAM (another member of the newly-founded ABCDoha), the problem lies in the threat posed by the very notion of universalism. NAM argues that a norm cannot be universal "unless the United States has assented to it," and therefore any international treaty, law or convention not ratified by the US government simply can't be considered universal. In a footnote to the brief a specific danger in this creeping universalism is recognized -- the dangerous application of universally recognized worker and trade union rights:

"The dangers that lurk if courts do not focus on assent by the United States are especially dramatic in the area of labor standards, where the International Labour Organization has adopted 185 conventions over the years, many of which could be invoked by plaintiffs as norms of customary international law against corporate defendants. Yet the United States has ratified only 14 of those conventions." [11]

This fear of internationally recognized worker and trade union rights being applied to the US, after decades of effectively resisting ratification of ILO conventions, gives us a glimpse of the promising world of the Doha Development Round. While the ABCDoha website assures us that the poor of the world will be empowered, the very same corporate interests are doing everything in their power to deny workers their collective rights. Added to that is the precondition that all universal values be based on US government consent, which in turn casts doubt on the very meaning of universalism in a globalized world.

Finally, corporate fears of victimization reach even greater heights in the "nightmare scenario" depicted in *Awakening Monster*, a policy paper on the Alien Tort Statute published by the Institute for International Economics. In this rollercoaster ride through the house of horrors we see 100,000 class action lawsuits filed by plaintiffs in China against major US-based corporations for "abetting China's denial of political rights, for observing China's restrictions on trade unions, and for

impairing the Chinese environment." There's no question about the complicity of these corporations in committing such violations, or how much they profited from it. That's not the point. The point is that if these cases were to succeed, they could amount to damage claims of up to US\$20 billion. Added to this horrific corporate nightmare is the risk that the Alien Tort Statue could fall into the hands of "antiglobalization forces," which would ultimately be "more destructive to the liberalization agenda than protests mounted in Seattle, Prague or Washington, D.C." [12] And Hong Kong?

Anti-globalization activists may be tempted to make this corporate nightmare a reality. But the point of course is not to defend the Alien Tort Statute as a means to hold US-based corporations accountable. It's to realize that victims of corporate crimes are compelled to use this ineffective, biased US law because nothing else exists. With all the talk of multilateralism at risk and fears of a global economy without rules, the fact is no such rules exist. In the real world farmers, workers, fisher-folk and local communities have no internationally binding legal instruments to hold transnational corporations accountable for rights violations, atrocities, complicity in torture and war crimes, or genocide.

There are, of course, International Criminal Courts and guidelines on transnational corporations like the OECD Guidelines on Multinational Enterprises. But none of these have the enforceability -- based on a genuinely democratic mode of social and political power -- needed to effectively regulate transnational capital. This kind of social regulation would run counter the very logic of the WTO regime. That's precisely why it's absurd to attempt to add social clauses to WTO rules, attaching international human rights as a footnote to the corporate agenda. Proposals like the social clause are premised on the assumption that rights have been inadvertently neglected, somehow left off the agenda. Yet in the real world we see an orchestrated effort by transnational corporations to prevent the imposition of any kind of mandatory, enforceable, and effective multilateral instrument on human rights. That's one reason why voluntary instruments like the UN Global Compact are welcomed by business interests: they allow corporations to receive public approval for voluntarily acknowledging human rights

already enshrined in UN conventions and treaties. Gone is the obligation to recognize human rights as fundamental and universal. Instead it's voluntary and selective (corporations are free to choose which rights to recognize) and is used benevolently to declare: "We've decided recognize human rights." This is tantamount to recognizing people as human.

So where does that leave us? Twenty years after the nightmare of the Bhopal tragedy and 40 years after the tragedy of Agent Orange in Vietnam, we're witnessing new tragedies in the making, each and every day. Meanwhile, farmers, workers, fisher-folk and their communities are compelled to live under the shadow of fear and absurdity, constantly promised that they'll be lifted out of poverty through more global trade, while systematically denied the rights -- individual and collective -- that we've struggled together for generations to establish as fundamental and universal human rights. Yet in the fantasy world of the WTO and the magical Doha Round all of that is swept away. At least in Disneyland the fiction and fantasy ends when you leave.

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NOTES

1. On 'immiserizing trade' see, United Nations Conference on Trade and Development (UNCTAD), The Least Developed Countries Report 2004: Linking International Trade with Poverty Reduction, New York and Geneva, United Nations, 2004, p.152.
2. See Gerard Greenfield, "Free Market Freefall: Declining Agricultural Commodity Prices and the 'Market Access' Myth," Focus on Trade, No 100, June 2004, pp.20-28.
3. In legal-institutional terms, the UN Committee on Economic, Cultural and Social Rights recognized in November 2002 that Articles 11 and 12 of the Covenant on Economic, Social and Cultural Rights include the right to water.
4. See the ABCDoha website.

5. ADCDoha Press Release, 25 October 2005.
6. "NAM helps form ABCDoha Coalition," NAM Press Release, 25 October 2005.
7. See a list of recent ATS cases against US corporations.
8. The lawsuit is online. Also see the online petition, Justice for Victims of Agent Orange.
9. Robert H. Bork, "Judicial Imperialism," Wall Street Journal, 17 June 2003; Daphne Eviatar, "Judgment day: Will an obscure law bring down the global economy?" The Boston Globe, 28 December 2003.
10. Brief for the National Foreign Trade Council, et al. as Amici Curiae in Support of Petitioner, 23 January 2004, p.12.
11. Brief for National Association of Manufacturers as Amicus Curiae in Support of Reversal, 23 January 2004, p.8, footnote 11.
12. Gary Clyde Hufbauer and Nicholas K. Mitrokostas, Awakening Monster: The Alien Tort Statute of 1789 (Policy Analyses in International Economics 70), Institute for International Economics (IIE), July 2003, p.1-2.

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