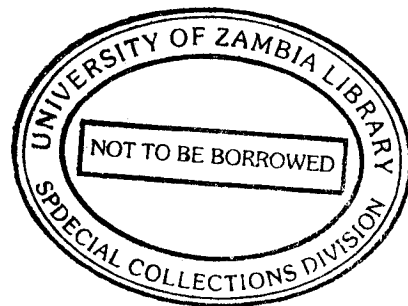


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



**THE RISE OF LEFT GOVERNMENTS IN SOUTH
AMERICA. AN ASSESSMENT OF ITS EFFECTS ON THE
INTERNATIONAL LAW ORDER**

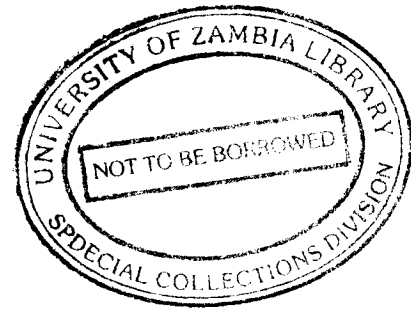
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BY

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OBLIGATORY ESSAY

ON

THE RISE OF LEFT GOVERNMENTS IN SOUTH AMERICA. AN ASSESSMENT OF ITS EFFECTS ON THE INTERNATIONAL LAW ORDER

BY

MWILA CHIBILITI M.D

Submitted to the University of Zambia Law Faculty in partial fulfilment of the requirements for the award of the Bachelor of Laws (LLB) degree programme.

School of Law
University of Zambia
Lusaka

December, 2006

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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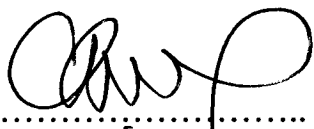
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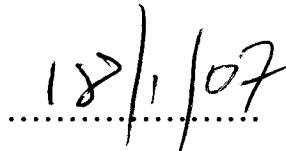
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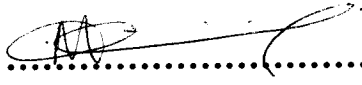


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Date

DECLARATION

I MWILA CHIBILITI M.D, do hereby declare that this dissertation is my authentic work, and that to the best of my knowledge , information and belief, no similar piece of work has previously been undertaken at the University of Zambia or any other institution for the award of Bachelor of Laws degree. All other works referred to in this dissertation have been duly acknowledged.

I bear absolute responsibility for any errors, defects or any omission therein.

Name MWILA...CHIBILITI...M.D
Signature 
Date 17/01/07

DEDICATION

This dissertation is dedicated to my late Mother, Martha Phiri whom despite not having lived to see me to this day, her love and blessings bestowed on me have been a driving force in ensuring that I achieve the many things she wished and prayed for me. I also dedicate it to my faithful brother Samson for all the confidence, help given to me when I needed it the most.

I thank God for an experience with you in life.

ACKNOWLEDGEMENTS

I would like to express my greatest thanks to the almighty God above for his continued wisdom in the many things I have done.

I wish to pay special tribute and appreciation to Professor Carlson Anyangwe. His guidance, patience, support, and wisdom throughout the period I spent on this work has been overwhelming and consistent.

I thank God for the support of my Bothers and Sisters; Evans, Alfred, Samson, Mulenga, Cecilia, Ngosa, Kabilo, Dorcus during my academic endeavours.

Am highly indebted to my faithful, dedicated and great friends in Claudia Chimfwembe, Chikwe Chiluba and Kabuyana Simasiku whose patience and support I am dearly thankful and shall always praise God for. The many years of uninterrupted friendship with you guys have been a blessing.

I also thank my classmates and good friends, Goodwell Mateyo, Kingston Musaila and Mulenga Chiteba.

ABBREVIATIONS

USSR	Union of Soviet Socialist Republics
CM	Communist Manifesto
FTAA)	Free Trade Area of the Americas
FTA	Free Trade Agreement
CAFTA	Central American Free Trade Agreement
WTO	World Trade Organization
GATT	Agreement on Tariffs and Trade
SADC	Southern African Development Community
EU	European Union
NAFTA	North American Free Trade Agreement
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
CMEA	Council for Mutual Economic Assistance Organisation of American States
OAS	Organisation of American States
UDHR	Universal Declaration of Human Rights

TABLE OF CONTENTS

TITLE	PAGE
Recommendation	i
Declaration	ii
Dedication	iii
Acknowledgement	iv
List of Abbreviations	v
Table of Contents	vi

CHAPTER ONE

1.0 Leftism and Communism- A Historical Analysis	1
1.1 Introduction	1
1.2 Leftism in Politics	1
1.3 History of the term “left” in politics	2
1.4 Nature of the leftist ideology	4
1.5 The positive side of the ‘left’	7
1.6 Communism and left-wing politics	8
1.7 Extent of communist influence	9
1.8 Conclusion	12

CHAPTER TWO

2.0 The Effects of Latin Americas Shift to the Left On the International Law Order	13
2.1 Introduction	13
2.2 Why shift to the left	13
2.3 International Legal Order	16
2.4 The Meaning of the “left” shift on International Law	21
2.5 International Human Rights Law	22
2.6 The South American Episode	27
2.7 International Trade Law	29
2.8 Conclusions	31

CHAPTER THREE

3.0 A Highlight of the Global Communist (leftist) Influence And the South American Democratic Status	33
3.1 Introduction	33
3.2 Socialism or Leftism - A Global Perspective	34
3.3 Socialist Leaning Countries	34

3.4 Implications of Global Leftist Manifestations and Practice 36

3.5 A case Study of South America 38

3.6 Status of the South American Democracy 38

3.7 Strides Towards Human Rights and Democracy 40

3.8 Conclusion 45

CHAPTER FOUR

4.0 Conclusions and Recommendations 46

4.1 Recommendations 47

4.2 Conclusion 50

BIBLIOGRAPHY 51

PREFACE

This Dissertation is premised on the recent development witnessed particularly in Latin America where most States have been taken over by Left Governments. The background of this research was therefore prompted by that development. My main areas of introspection and research were why this sudden shift of economic policy by these countries from liberal ideals to socialist kind of policies. I was therefore interested in making a finding as to what this shift of ideology particularly in Latin, meant on the International Law Order. To do that the main objective of this research as stated has been centred on an analysis of the growing wave of leftist governments in South America and other parts of Europe, Africa and Asia. This is to ensure a broader understanding of the meaning of the shift of ideology especially on the International Law Order. A historical as well as current interpretation of leftism is undertaken.

Because of the technical nature of this research, the objectives are met by referring to a number of authorities on this matter. Information is drawn from authors who have exhaustively analysed the issue relating to left-wing politics and its inclination to communist and socialist ideologies. The research thus attends to the current emergence of left-wing governments and politics by taking special studies on exemplary countries. Consultations are made to prominent scholars and analysts on the subject within higher institutions of academics. It then assesses the impact of this growing influence of leftism on international law order by looking at the international trade and human rights instruments that form part of the cornerstone of modern international law. The human rights records of past socialist regimes are reviewed as well as the efforts of democratisation by Latin America.

In that regard, Chapter One of the research addresses the historical background of left-wing type of politics and shows the relationship of this type of ideology with those of communism and socialism. Chapter two outlines the international Law Order as well as the effects of Latin America's shift to the left on the International Law Order. Chapter three highlights the global leftist influence and the South American Democratic Status. The last Chapter draws recommendations and conclusions.

CHAPTER ONE

1.0 LEFTISM AND COMMUNISM- A HISTORICAL ANALYSIS

1.1 INTRODUCTION

The rise of left-wing governments in Latin America is an important event in International Relations as well as International Law that an analysis of the 'left' political Ideology is necessary. The left ideology in politics traces its origin way back from the Revolutionary periods particularly the French Revolution. The tendency of the left wingers has always been inclined to socialism. The principles under which leftists operate are for all intents and purposes socialist. Communism and Leftism in politics can be said to be 'two sides of the same coin'. The main difference is mainly be with regard the regions in which these names came from. While Leftism traces its origin from the Revolutionary period in France, Communism was born prior to the Russian Revolution. Otherwise, what separates the two is the nomenclature attached depending on where the socialist tendencies were understood and promulgated.

1.2 LEFTISM IN POLITICS

Prior to any discussion of the emergence of the leftist regimes in Latin America today, it is important to understand exactly what it means "to be left" from a historical, theoretical and practical perspective. The method for determining "What is left" is based on analyzing the substance and not the symbols or rhetoric of a regime or politician.¹ The

¹ James Petras "Centre-Left" Regimes in South America'. Portland. Frank Cass Publishers, p34. (2000)

practical measures open to scrutiny include political expediency, budgets, property, income, employment, labour, legislation, and priorities in expenditures and revenues.² Of particular importance is to focus on the present social referents, social configurations of power and alliances not the past given the changing dynamics of power and class politics. The third methodological issue is to differentiate between a political campaign to gain power and the policies of a political party once in power, as the gulf between them is both wide and well known.

The some activities of the leftist/ communists in politics are said to be responsible for some of the most atrocious human rights violations of the past century in their attempt to conserve the notion of “ordered liberty”.³ **Hunt**, shows that most leftist rulers in the past permitted virtually no freedom of debate or discussion. Opposition parties were outlawed. Police spies and informers were every where in trying to protect the stability of the State. Jails and prisons were full of political dissidents and political prisoners. Economic rights were swept away as private property ownership and investment was under constant control and intimidation from the State.⁴

1.3 HISTORY OF THE TERM “LEFT” IN POLITICS

In politics, left-wing, the political left or simply The Left are terms that refer to one who believes a significant, perhaps even radical, change in a new direction that will lead to a

² ibid

³ Roy A. Medvedev, *Let History Judge: The Origins and Consequences of Stalinism*. New York, Viking press. 1973 p.519

⁴ terrence Hunt “ Clinton, China Leader Spar Over human Rights,” the Arizona Republic(October 30, 19970: 1

great improvement in social and economic arrangements⁵. The term thus is in tandem with the segment of the political spectrum typically associated with any of several strains of Communism, Socialism, Social Democracy or Social Liberalism, and defined in contradistinction to its polar opposite, the right or those that oppose change and prefer an established social order with firmly rooted authority, for instance the Conservatives⁶.

The ideology traces its origins from the revolutions that swept Europe in the eighteenth century. The term “left” originates particularly from the French Revolution of the eighteenth century. This Revolution began with the intention, not of returning to the old ways, but of introducing a radically new social and political order. This revolution went further than the men who launched it intended and ended in a way that none of them wanted. But it did bring about sweeping changes in the social, economic and political life of France. Indeed the French revolution sent shock waves through all of Europe and much of the rest of the World, waves so strong that their effects are still felt today. One sign of this is the way political positions are now commonly described as Left, Right, or Centre⁷. These terms come from the sitting arrangement in the National Assembly of the revolutionary period. Moderates sat in the centre, those who favoured radical change congregated on the left side or “wing” of the chamber, and those who argued against change gathered on the right wing. That is why, today, there is reference to, for instance, ‘the right wing’.

⁵ Ball & Deggar “ Political Ideologies”(1999) 3rd ed p 19. London, Longman

⁶ ibid

⁷ Ibid

Although it may seem counter to present-day usage, those originally on 'The Left' during the French Revolution were the largely bourgeois supporters of laissez-faire capitalism and free markets. As the electorate expanded beyond property-holders, these relatively wealthy elites found themselves clearly victorious over the old aristocracy and the remnants of feudalism, but newly opposed by the growing and increasingly organized and politicized workers and wage-earners. The "left" of 1789 would, in some ways be part of the present-day "right", liberal with regard to the rights of property and intellect, but not embracing notions of distributive justice, rights for organized labour, etc.⁸

As this original reference became obsolete, the meaning of the term has changed, and is now used to denote a broad variety of political philosophies and principles. In contemporary Western political discourse, the term is most often used to describe forms of Socialism, Social Democracy.⁹ In some countries, such as the Netherlands, "the left" had for a long time meant the non-religious side of politics¹⁰. This gradually changed into the more general European meaning of the word where the term has connotations associated with Bukharin and the democratization of all human activities. The left is often seen to include secularism (that is, separation between state and religion).¹¹

1.4 NATURE OF THE LEFTIST IDEOLOGY

The central proposal here may seem at first paradoxical but it is that attitude to the status quo that characterizes Leftists rather than Rightists. It is proposed that it is not Rightists

⁸ *ibid*

⁹ Tylor, Keith. *The Political Ideas of Utopian Socialists*, London: Cass, 1982, p76

¹⁰ Skinner, Quentin. 'The Foundations of Modern Political Thought', pg 123. Vol 2. Cambridge: Cambridge University Press, 1978

¹¹ *ibid*

who are in favour of the status quo. They are in fact indifferent to it and may equally favour it or oppose it according to circumstances. Like **Skinner** puts it:

Whatever else the Leftist may be, the bedrock of Leftism is a strong dislike or even a hatred of the way the world is. They have a strong desire or even a need for political change, often extreme change.¹²

This does not, of course, mean that Leftists will favour all sorts of change equally. What sort of change the Leftist favours will depend on what it is about the world that the Leftist dislikes. It will depend on the needs that drive his or her desire for change. And there are even times when those needs dictate a defence of the status quo. Leftists also tend to oppose religion and the churches and this in turn tends to mean that they may favour activities like abortion and oppose or obstruct religious schooling and religious observance in various ways.¹³

Also the insistence on the concentration of power in the State by has entailed the creation of a vicious, brutal instrument of oppression against those that do not succumb to its whims:

"Account must be taken of every single article, every pound of grain, because what socialism implies above all is keeping account of everything".¹⁴

Lenin's conception of the state was also purely oppressive as based on Karl Marx's Communist manifesto which stated:

¹² *ibid*

¹³ *ibid*

¹⁴ Lenin, VI "the state and revolution"

"Essentially the state is the power exercised over the masses by a group of armed men" The state is a special organization of force: it is an organization of violence for the suppression of some class"¹⁵

This makes the Leftist position very clear; The State exists to uplift its will even if it's at the expense of suppression of the people. So, power mad people such as Mussolini, Mao Zedong, Joseph Stalin, Fidel Castro, Hugo Chavez who have claimed or claim practice of communism or an associated ideology like big governments and do all they can to foster it.¹⁶

The Italia fascist leader Mussolini also believed in the power and authoritative nature of the State when he stated;

"Everything in the State, nothing outside the State, nothing against the State".¹⁷

Clearly, most of the leftist traits and practices are more inclined to the communist or Marxist philosophies as propounded by Karl Marx and other scholars like Friedrich Engels and many of their followers.

Introspection of the leftist thought evidences the fact that they emphatically toil the lines of totalitarian state machinery that seeks to control every aspect of life of its citizens. This in most cases leads to misery, brutality and despotism. Instead of freeing the people, those that drive the left path might fall into the communist trap of sacrificing the freedom of the individual to the oppression of communist planners as was the case in the Communist Soviet Union.

¹⁵ Communist Manifesto(1848)

¹⁶ John Ray.2006 "What are Leftists" www.politicalideologies.com

¹⁷ William s. Helparin, Mussolini and Italian Fascism. Princeton,NJ. Van Nistrond,1968 p47

1.5 THE POSITIVE SIDE OF THE 'LEFT'

Some scholars agree that the "left" has historically opposed the concentration of wealth and power, especially in an institutionalized form, in the hands of those who have traditionally controlled them. As such, the left often work to create or support equality in the state.

With the spread of the industrial revolution, left-wing politics became concerned with the conditions and rights of large numbers of workers in factories and of lower classes in general. Partial or full socialism, the welfare state, or trade unionism have been specific ways in which some leftists have tried to advance the interests of the poor. In modern times the left also criticized what it perceives as the exploitative nature of globalization through the rise of sweatshops and the race to the bottom, and has sought to promote fair trade.¹⁸

As civil and human rights gained more attention during the twentieth century, the left allied itself with advocates of racial and gender equality, and cultural tolerance. Although specific means of achieving these ends are not agreed upon by different left-wing groups, almost all those on the left agree that some form of government or social intervention in economics is necessary to advance the interests of the poor and middle class.

Advocacy of government or social intervention in the market puts those on the left at odds with advocates of the free market as well as corporations (who oppose democratic control of the markets but not necessarily all control) if they see their interests threatened.

¹⁸ op cit, James Petras at p.43

Left-wing positions on social issues, such as opposition to social hierarchy and authority over moral behaviour, strict adherence to tradition, and monoculturalism, may make them allies with right wing advocates of "individual freedom", though their solutions are very different.

1.6 COMMUNISM AND LEFT-WING POLITICS

Communism, as well as the Marxist philosophy that many base it on, and most currents of traditional anarchism are often considered to be radical forms of left-wing politics.¹⁹ The path of communism can easily be traced in many parts of the world that at present times purport to be leftist. Many countries in central Europe, Southern America that are currently experiencing a surge in what is referred to as leftistism, bears the traits of Communism. This can greatly be attributed to the marxist theories of Karl Marx.

Despite minor insignificant differences from other left-wing ideologies, the Communism of the former **USSR** (and its **satellites**) and of the **People's Republic of China** during and shortly after the time of Mao Zedong is widely considered to be a part of "the left. Furthermore, the totalitarian practices of **Nazism** and **Fascism** are arguably also widely considered to be left-wing.²⁰

Communism, just like Leftism is a term denoting either a society where all property is held in common or a political movement whose final aim is the establishment of such a society. In its modern form the term communism became associated with the theories of **Karl Marx** and **Friedrich Engels**. They jointly drafted the Manifest der

¹⁹ Bogdan Szajkowski. 'Marxist Governments- a world survey'. V 3. London. Macmillan Press.1981

²⁰ Ibid

kommunistischen Partei (1848, **Communist Manifesto**). Later this became one of the most popular texts in the rapidly developing socialist movement. Until the Russian Revolution (1917), no major working-class party or organization called itself communist. Nevertheless all socialist and social democratic parties envisaged that the society which would come into existence once capitalism had run its full course would be characterized by the abolition of private ownership of the main means of production, distribution, and exchange, in other words, a communist society.

Marx never offered a blueprint of how this would come about or how it would be organized. He and Engels were contemptuous of such endeavour: they saw their “scientific socialism” as superior to “utopian socialism”. The chief purpose of Marx's theoretical works was to unveil “the laws of motion of capitalist society”. However, it is possible to capture in his works an occasional glimpse of what communism would entail. In the first place a communist society would be one of extreme abundance of material goods. There would be no division of labour: “Society regulates the general production and thus makes it possible for one to do one thing today and another tomorrow. Where these conditions prevail, there are no social classes.

1.7 EXTENT OF COMMUNIST INFLUENCE

By 1930 Communism had come to denote an international movement whose fundamental aim was to defend and protect the USSR and whose immediate objective was to replicate, with some inevitable modification due to national differences, the Bolshevik revolution and the subsequent construction of socialism in the USSR. In the inter-war years the

basic assumption of Communists was that political power could only be achieved through an insurrection, and not by electoral and parliamentary means. The circumstances which made such revolution possible could not be determined by the Communists themselves but depended on what Lenin had called the **general law of revolution**: this would occur only when the ruling class was no longer able to rule and when the oppressed classes were no longer willing to go on in the old ways. The task of the Communist vanguard was to prepare for such eventuality. Only then would the Communists swiftly occupy the centre of power, abolish the bourgeois organs of representative democracy (parliament, etc.) where they existed, and establish a network of assemblies or Soviets somehow co-ordinated by the Communist party itself, that is, the dictatorship of the proletariat.

In practice this meant that the Communist party would rule the country using the central administration of the state, including the police and the secret services, in order to destroy opposition and prevent the formation of other independent parties or groups. By the end of the 1930s the Soviet Union had become a fully-fledged model for all Communists. Lenin's successor, Joseph Stalin, had become not only its unchallenged leader but also the ultimate repository of orthodox Communist thought. The drive to collectivization and industrialization in the 1930s, conducted with astonishing brutality, was accompanied by massive political repression (the Great Purges) to eliminate all forms of dissent.²¹

Communists were expected not only to defend all aspects of economic and political developments in the Soviet Union but to struggle for the adoption of similar policies in their own countries. Thus Communists supported the seizure of power by violent means,

²¹ B. Ireland & s Latarski. "The Communist Takeover in Poland". New haven: Yale University Press, 1975.

the nationalization of the principal means of production, distribution, and exchange, a centrally directed planned economy, and the collectivization of agriculture.

Until about 1920 the socialist movement had been confined only to Europe, Australia, and New Zealand (in the United States it was not significant). The victory of the Communists in Russia, however, gave a considerable boost to the expansion of socialist ideology outside the developed world. Anticolonial activists saw the USSR as a champion of anticolonialism and as a model for overcoming backwardness without recourse to capitalism. As early as 1920 Lenin had realized the potential appeal of Communist Russia to what we now call the Third World communist parties were created all over the world, including Poland, North Korea, South Africa, Turkey, Persia, India, Cuba, Spain, China and in many other countries

In the 1920s, however, the only Asian Communist party which had an important working class following was that of China. This Communist influence has extended to many parts of the world disguised as Leftism. Communist ideologies have found a haven in states that are being termed as leftist. The surge in "leftists" governments in South America is a reincarnation of Communist ideologies to stand parallel to the Capitalist ideas of the west. There is no wonder as to why the bilateral relations of the emerging leftists regimes in South America and Communist States are being strengthened.

Established communist and socialist ideology political havens like China, South Korea, Cuba, Iran, Russia are basic models of the leftist political surge in South America. The influence and drive of the political systems in these South American countries is

simple- Communism. This communist trait has now manifested in the name of leftism in countries like Bolivia, Venezuela, Chile, Brazil, Nepal, Germany, Spain and France, to take for instance.

This Communist-Leftist influence has also mutated in a concept called **New Left**²² which refers to radical left-wing movements from the 1960s onwards. Where earlier left-wing movements were generally rooted in labour activism, the New Left generally adopted a broader definition of political activism, commonly called **social activism**.

Many Greens Parties deny that green politics is "on the left"; nonetheless, their economic policies can generally be considered left-wing, and when they have formed political coalitions (most notably in Germany, but also in local governments elsewhere), it has almost always been with groups that would generally be classified as being on the left.

1.8 CONCLUSION

The leftist ideology has always been based on socialist principles just like the Communist ideology. It is no wonder that an analysis of leftism reveals that there is no difference between the two as they both operate under the same ideas. It is also important to note that as the communist influence is spreading to other parts of the world having emanated from the Communist Soviet Union, some countries are adopting this ideology in the form of leftism.

CHAPTER TWO

2.0 THE EFFECTS OF LATIN AMERICAS SHIFT TO THE LEFT ON THE INTERNATIONAL LAW ORDER.

2.1 INTRODUCTION

The recent shift to the left or to socialist leaning ideologies by a number of countries in the third world poses challenges of reconfiguring power equations on the international law scene. Of particular interest is the development in South America where most countries have leftist leaning governments. This development is likely to have a significant impact on international law particularly in the areas of international trade law and the international human rights law. It is critical that an analysis of the cause of this shift and the impact of this development on international human rights law and international trade law be analysed both in the historic and present perspective to conclusively determine its impact on the international legal order.

2.2 WHY SHIFT TO THE LEFT

LATIN AMERICA

It is probably true that left-wing parties and governments are currently stronger in Latin America than anywhere else in the world. Left-wing parties in Latin America have tended to do well by offering something different from the dominant free market policies which

previous governments followed²³; promising more to the poor, playing the anti-Bush card - the war in Iraq is deeply unpopular in the region and speaking of Latin American integration.

In the 1980s Latin America led the world in following the so-called Washington consensus, by which governments were encouraged to liberalise and privatise their economies. Many governments went much further down that path than in other parts of world, but the results have been disappointing. Out of a population of around 550 million, 220 million are still poor and 100 million are extremely so, living on less than \$1 a day²⁴. The 2005 UN development report showed that Latin America was the worst in the world for inequality, along with sub-Saharan Africa.²⁵

The U.S. administration failure to forecast these occurrences and its lateness to implement policies to prevent the trends suggests the end of American economic and political dominance of South America. Regional trade treaties like the **Mercosur**²⁶ will hinder U.S. exports to South America, radical governments will increase their demands on investors, national cooperation will counter U.S. influence and local considerations will combat globalism²⁷. Therefore, the United States can either continue on a path

²³ Gott, Richard. *"Hugo Chávez and the Bolivarian Revolution"*. London and New York: Verso. 2005

²⁴ Naomi Chomsky- *"US intervention in Venezuela and Latin America"*. www.ZNET.za.co. 2006

²⁵ James Petras *"The New Revolutionary Peasantry"*; ZMAGAZINE, 2006

²⁶ *infra*, page 17

4. Petras, James, and Henry Veltmeyer, *"Whither Lula's Brazil? Neo-Liberalism and 'Third Way' Ideology,"* The Journal of Peasant Studies, Vol. 31, No. 1. 2003

towards isolation that will lead to economic decline, or start a new era of genuine cooperation that will raise Latin America's living standards and enable America to maintain its own quality of life.

Because of some of the reasons mentioned above, Latin American Countries had reservations and thereby reluctant to back the initial Draft of the **Free Trade Area of the Americas (FTAA) and the Free Trade Agreement (FTA)** with the United States. This is because most scholars perceive this as not a legal agreement designed to integrate the economies of the hemisphere. Rather it is a plan for the annexation of the weak Latin American economies by the very powerful American economy. Moreover, there is growing displeasure amongst the South American people for some of the States commitment to the **Central American Free Trade Agreement (CAFTA)** because it's perceived to be sponsored by the west.

However, many African and Asian countries have also opted to adopt socialist leaning political systems²⁸ as the liberal policies of the West have failed to provide solutions to their Economic difficulties.

This political shift to the left has an important bearing on the international law order. The political tide entails a possible reconfiguration of legal norms in relation to international human rights and international trade law.²⁹

²⁸ Löwy, Michel, *"Marxism in Latin America from 1909 to the Present"*. Humanities Press, 1992

6. Hardt, Michael, and Antonio Negri, 2005, *Multitude: "War and Democracy in the Age of Empire"*. London: Hamish Hamilton

Another cause for this shift to the left has been the continued USA interference in the internal matters of Latin American States. America has caused so much destabilization on the political front in Cuba, Mexico, Columbia and Chile for so many years.³⁰

However, Chile provides an exemplary situation of the US's maneuvers in Latin America. It has been over three decades since Latin America's first brief shift to the left was swiftly crushed by U.S. backed military dictatorships. Augusto Pinochet's bloody coup against Chile's democratically elected socialist President, Salvador Allende. Allende was elected on a platform to create a more equitable and fair Chile no longer subservient to the interests and whims of U.S. corporations. President Richard Nixon responded by ordering the CIA to destabilize Allende's government through industrial sabotage, bribery and terrorism. When these measures failed, the CIA fomented a military coup that took control of the country by force on September 11, 1973. Pinochet declared martial law and Allende's supporters were either rounded up in the National Stadium or simply shot.

2.3 INTERNATIONAL LEGAL ORDER

A. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Since World War II and the era of totalitarian regimes, the international community has become increasingly concerned with the protection of human rights. The global world today is regulated by various international human rights instruments that form the basis

7. Hardt, Michael, and Antonio Negri, 2000, *Empire*, Cambridge, MA: Harvard University Press.

for international human rights law. Currently a number of international human rights instruments have been formulated and signed and domesticated by a number of countries thus creating an international human rights legal framework.

Although concern for human rights is expressed in the UN Charter, the development of specific norms related to human rights began in 1948 with the passage of two nonbinding declarations: the American Declaration of the Rights and Duties of Man, approved by the Organization of American States, and the Universal Declaration of Human Rights, approved by the UN. The Universal Declaration of Human Rights described a variety of rights, including the rights to life, liberty, and security of person; to freedom from slavery; to freedom of conscience, religion, opinion, expression, association, and assembly; to freedom from arbitrary arrest; to a fair and impartial trial; to privacy; and to education. This document remains the cornerstone of international human rights law and has been the basis of bills of rights in nearly 100 countries.

This human rights law is constituted by the International Bill of human rights. The documents that make up the International Bill of Human Rights are: pertinent provisions in the Charter of the UN; the Universal Declaration of Human Rights³¹; International Covenant on Civil and Political Rights together with the two Optional Protocols thereto; the International Covenant on Economic, Social and Cultural Rights.

In addition to the International Bill of Rights and the core human rights treaties, there are many other universal instruments relating to human rights. The legal status of these instruments varies: declarations, principles, guidelines, standard rules and

³¹. (1948)

recommendations. Most of these instruments have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct; covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them.

Other important international treaties related to human rights include the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the Convention on the Rights of the Child (1989). These treaties have been widely ratified; the Convention on the Rights of the Child, for example, has been accepted by every country in the world except the United States and Somalia.

These treaties have been supplemented by three regional human rights agreements: the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights. The regional agreements and many of the UN treaties allow individuals to bring petitions to regional or global human rights organizations for protection against acts by their governments that violate their rights.³²

Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by

³² Microsoft Encarta Encyclopedia. Standard 2005 1993-2004 Microsoft Corporation.

optional protocols dealing with specific concerns. The treaties lay down the very principles initially espoused in the Universal Declaration of Human Rights.

B. INTERNATIONAL TRADE LAW

Besides the human rights law that constitute this legal order, there is also the International Trade Law that regulates the international trade amongst states. International Trade, the exchange of goods and services between nations. International trade commerce enables a nation to specialize in those goods it can produce most cheaply and efficiently, and sell those that are surplus to its requirements

There are a number of legal instruments that regulate global trade. Amongst these legal instruments is the World Trade Organization, an international body established to promote and enforce global free trade. The World Trade Organization (WTO) was founded in 1993 by the Final Act that concluded the Uruguay Round (1986-1994) of multilateral negotiations under the **General Agreement on Tariffs and Trade (GATT) of 1947**, which it supersedes, and exists to administer and police the 28 free-trade agreements in the Final Act, oversee world trade practices, and adjudicate trade disputes referred to it by member states.

Following from that, certain regions of the world have trade groupings amongst themselves that could be jeopardised by a difference in political ideology.³³ This normally results in what are called **Regional Trading Communities**.

³³ Naomi Chomsky "*US intervention in Venezuela and Latin America*", 2006, ZNET.com

Several trading communities have been established to promote trade among countries that have common economic and political interests or are located in a particular region. Within these trade groups, preferential tariffs are administered that favour member countries over non-members.

For instance in 1957 six European countries established the European Economic Community, or EEC (now the **European Union**), aimed at reducing trade barriers among member countries. The EEC was expanded after its creation, with other nations joining the original members. In Southern Africa, there is the **Southern African Development Community (SADC)**.

Many economists foresee the development of three major trading blocs in the developed world—the EU, the members of the **North American Free Trade Agreement (NAFTA)**, and a Pacific-Asian bloc. Trade within each bloc will be encouraged by the removal of trade restrictions, but difficult negotiations may be required to reduce trade barriers between the trading blocs. There has been much debate on whether the new regional trading communities, such as the **Asia-Pacific Economic Cooperation grouping** or the **Mercosur group of Latin American countries**, promote or restrict international trade overall.

Many scholars have held the view that such regional groupings like the Mercosur are a reactionary economic group from the exploitative west policy on South America.³⁴

11. Gilly, Adolfo, 2005 "*Bolivia: a 21st Century Revolution*", *Socialism and Democracy*, vol.19, no.3, pp 41-45. November 2005

Mercosur, an organization formed in March 1991, initially to establish a common market in South America by 1995. The group has its roots in a bilateral trade treaty signed by Argentina and Brazil in 1986, which was expanded in 1990 to form a free-trade zone. In January 1995 a customs union was inaugurated, and tariffs between member countries were abolished on 80 per cent of products traded. A free trade agreement with Chile was signed in 1996 and with Bolivia in 1997.

2.4 THE MEANING OF THE “LEFT” SHIFT ON INTERNATIONAL LAW

The central issue for analysis therefore is the violations of these instruments by totalitarian regimes like the communists and the leftists. It is significant that these types of regimes be put to the test both at the human rights level and the economic front. It is of clear importance that human rights issues have taken centre stage in the modern world. Additionally, nations have come together and entered into treaties that will regulate a number of aspects between them like trade, human rights, commerce, diplomatic relations, peace and so on. However, it is undoubtedly true that human rights and peace issues have received great attention in recent times as more nations seek to ensure a peaceful global environment that seeks to protect and advance the will of mankind or humanity. A global village managed by a legitimate legal system that is effectively recognised and enforceable is what the world is fighting for.

Of great concern however, is the continued breach of international law in as far as human rights are concerned by a number of countries whose political ideologies have to some extent a role to play in this. For instance, after the Second World War, the world has sought to discourage the emergence of totalitarian regimes or any political ideology that champions or can be a haven for totalitarianism like Communism, Fascism, leftism, Nazism, socialism and so on. Even in international trade agreements like the GATT 1994 the world community seeks to act carefully so as not to endanger international peace. In Article XXIV, paragraph 3 says that:

“The provisions of this agreement shall not be construed to prevent...(b) advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.”

2.5 (1). INTERNATIONAL HUMAN RIGHTS LAW

PAST AND PRESENT EXPERIENCES

To be able to explicitly understand the impact of leftist regimes on human rights, it is cardinal to highlight important historical events that have culminated in serious human rights violations. According to the Human Rights Watch Report of 1999³⁵, it points out that a lot of countries under varying political ideologies have been guilty of human rights violations that have led to the death of millions of people. The Report highlights human

³⁵ Human Rights Watch Report. “*Human Rights and Democracy in Latin America and the Caribbean*”. 1999

rights abuses in Asia and Middle East, Africa, Latin America, United States of America and Europe.

Under the capitalist or liberal ideologies of the West that proclaim to protect and advance the wills of democracy, the United States for instance, has long regarded itself as a beacon of human rights. This is evidenced by an enlightened constitution, judicial independence, and a civil society grounded in strong traditions of free speech and press freedom. But the reality is more complex; for decades, civil rights and civil liberties groups³⁶ have exposed constitutional violations and challenged abusive policies and practices particularly at international level.

The United States' disregard for international human rights standards has not been limited to domestic matters. During the year, it has opposed human rights initiatives on issues of broad international interest, including landmines, child soldiers, and the creation of the **International Criminal Court (ICC)**³⁷. In the case of landmines, the United States refused to join the 133 nations, including nearly every major U.S ally that had already signed the treaty by October 1998. It blocked international efforts to end the use of child soldiers, arguing against a proposed optional protocol to the Convention on the Rights of the Child that would raise the minimum age for military recruitment and participation in armed conflict to eighteen. And the United States was one of only seven states voting against the statute creating the ICC at the Rome Diplomatic Conference in July; 120 states voted for the treaty. Furthermore, the U.S is behind the rest of the developed world in failing to ratify the key international instrument on women's rights

³⁶ National Commission on Disappeared People (Americas), *Nunca Mas: The Report*, London and Boston, MA: Faber and Faber

³⁷ 2003

and virtually alone in the world in failing to ratify the international children's rights convention.

Additionally, the USA has continued to detain over six hundred terror suspects at Guantanamo Bay in Cuba³⁸ under conditions contrary to the **1949 Geneva Convention III** which in **article 13** stipulates that any prisoner of war be treated humanely. The said article prohibits causing death or seriously endangering the health of a prisoner of war by unlawful means. There is also a reliably attested history of the US's human rights violations against the red Indians, segregative laws and so on.³⁹

In Europe, the world has not forgotten the evils of the totalitarian regimes like the Italian fascists, the Nazis in Germany who provides history with the most notorious example of the century with its systematic effort carried on by Nazi Germany during the 1930s to destroy the Jewish population of Europe. By the end of World War II in 1945, about six million Jews had been murdered by the Nazis.

There are also the killings of the Franco regime in Spain whom were responsible for the execution, deportation and displacement of millions of people. Mass killings were the order of the day and so many acts of genocide were perpetrated by these regimes which the world is still unable to fully account for.

³⁸ "*Detention in Guantanamo; Hell- hole or Paradise?*" The Economist. p. 52. March 20th, 2004

³⁹ *ibid*, Petras at page 42

The Council of the European Parliamentary Assembly (PACE) ⁴⁰ in its resolution condemns totalitarian regimes. The following is an excerpt on the speech by Mrs Mikhailova, a parliamentarian representing Bulgaria:

“There is need for international condemnation of crimes of totalitarian communist regimes...

This debate reminds me how evil communist regimes can be and how the absence of international condemnation of the massive human rights violations and deaths of many millions of individuals regrettably gave a chance to many dictators in the 21st century to feel untouchable by the law. It is difficult to discuss communism without emotion. It is a question not only of politics, but of humanity.”

Another event of great horror which the historic pages of human rights violations can not forget is the dreadful act of genocide that took place in Kosovo. The almost ten years of repression, systematic discrimination, and widespread police brutality against ethnic Albanians finally erupted into armed conflict in Kosovo in 1998. Less than three years after the **Dayton Peace Agreement** ended the war against civilians in Bosnia and Herzegovina, the Yugoslav Army and special police units carried out a military offensive in Kosovo in which civilians were the primary victims. Yugoslav government troops committed extrajudicial executions,⁴¹ systematically destroyed civilian property, and forced thousands of people to flee their homes. This was all done Despite **Resolution 260**

⁴⁰ 25th January, 2006.

⁴¹ Roy A. Medvedev, *Let History Judge: The Origins and Consequences of Stalism*. New York, Viking press, 1973 p. 519

of the UN General Assembly⁴² prohibiting all acts of genocide. In adopting the Convention on the Prevention and Punishment of the Crimes of Genocide, the Resolution stated:

“Recognising that at all periods of history, genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required”

As the world negotiated a treaty for an International Criminal Court during the year, the promise of and the obstacles to an effective system of international criminal justice were nowhere more evident than in the Former Yugoslavia. Although significant progress was made during 1998 in transferring indicted persons—whether by arrest or by surrender—to the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Hague, the highest ranking persons indicted for atrocities in the region were not arrested and others believed responsible for war crimes remained unindicted. Other examples where claims of genocide have been made include the Nigerian-Biafran conflict in 1969,⁴³ Uganda during the 1970s, the treatment of the Kurds by Iraq (1986-2003), and, in the 1990s, and the atrocities committed by the Hutus against the Tutsis in the civil war in Rwanda.

Further human rights crimes have taken place in the Latin American Countries of Chile, Cuba, Colombia, and Nicaragua.⁴⁴ For instance in the case of the totalitarian regime of

⁴² 9 December, 1948

⁴³ Microsoft Encarta Encyclopaedia Standard 2004

⁴⁴ Kamala Sarup “Democracy v Communism- Lessons from History”. 2006 www.NewsBlaze.com

Augusto Pinochet Ugarte, murders of dozens of Spanish and Chilean citizens were carried out during the seventeen years in which Pinochet and the military governed Chile. The Human Rights Watch reports that it was a time of widespread and egregious violations of the right to life, liberty, and physical integrity, including some 3,000 assassinations or "disappearances."⁴⁵

In March 1999 a House of Lords appellate panel ruled that Pinochet could be extradited for torture committed after December 8, 1988, the date that **the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** entered force in the three countries concerned. This Convention requires member countries to outlaw torture in their national legislation and in practice. It explicitly provides that no exceptional circumstance whatsoever and no order from a superior may be invoked as a justification for torture.

2.6 THE SOUTH AMERICAN EPISODE

The emergence of leftist regimes in Latin America is a significant development in the direction of the international law. The shift to the left is probably a timely economic move by the Latin American States to liberate its peoples from the perceived enslaving western capitalist policies. However, there is great need to analyse the nature of leftist politicians vis a vis Human rights. There is no doubt that the mass support most of the leaders have received to ascend to power in the Americas is overwhelming. The question that remains to be understood is whether the left leaning leaders who certainly have

⁴⁵ Human Rights Watch Report, 1999. www.humanrights.org

adopted socialist or communist practical ideas can ensure peace, unity and more importantly a democratic dispensation that has respect for human rights.

Some of the historical events suggest that leftist or rather communist leaning regimes, though having made strides to reinvigorate the economies of there countries, have failed to honor the demands of the international community in as far as human rights are concerned.⁴⁶ This was at the expense of the existence of the underlying human rights law-
Universal Declaration of Human Rights (1948).

The objective of the 30-article declaration is to promote and encourage respect for human rights and fundamental freedoms. The declaration proclaims the personal, civil, political, economic, social, and cultural rights of humans, which are limited only by recognition for the rights and freedoms of others and the requirements of morality, public order, and general welfare. Among the rights cited by the declaration are the rights to life, liberty, and security of person; to freedom from arbitrary arrest; to a fair trial; to be presumed innocent until proved guilty; to freedom from interference with the privacy of one's home and correspondence

Other freedoms enshrined include the freedom of movement and residence; to asylum, nationality, and ownership of property; to freedom of thought, conscience, religion, opinion, and expression; to association, peaceful assembly, and participation in government; to social security, work, rest, and a standard of living adequate for health and well-being; to education; and to participation in the social life of one's community.

⁴⁶Roy A. Medvedev, *Let History Judge: The Origins and Consequences of Stalism*. New York, Viking press, 1973 p. 519

This document has been practically “supplanted” by the two key human rights conventions of 1966, that is, **International Covenant on Civil and Political Rights** together with the two Optional Protocols thereto; the **International Covenant on Economic, Social and Cultural Rights**.

The experiences of Communist Russia, China, Vietnam, North Korea, Cuba, have all shown that leftist like capitalists usually come to power riding on promises to ensure equitable distribution of wealth, but they normally become a stodgy, rigid, bureaucratic institution, more interested in maintaining the power and privileges of its leaders than in bringing an end to exploitation and alienation. An exemplary event is the mass murder in China which Ball⁴⁷ highlights thus:

“There, in the country Mao Zedong once called a “people’s democratic dictatorship,” student protestors who occupied Tiananmen Square in the spring of 1989 called upon Communist Party leaders to relinquish some of their power so that China could become a democracy. The Party responded by sending troops to massacre the demonstrators. Hundreds, perhaps thousands, died in a single night. Other demonstrators were arrested, imprisoned, and some even executed.”

A lot of crimes were therefore committed in these socialist leaning countries contrary to the international human rights law.

2.7 (2). INTERNATIONAL TRADE LAW –LATIN AMERICAN PERSPECTIVE

⁴⁷ Ball & Dagger. “Political Ideologies and Democratic Ideals”. 1999, Longman. Pp.

The law relating to international trade is likely to face a serious challenge particularly with the changing political ideology in Latin America.⁴⁸ Of particular importance is the establishment of regional trading bodies with regulations independent of the liberal policies of the west. According to the Rules on Regional Trade Agreements-African Perspective,⁴⁹ it states that Regional trade agreements currently do threaten the multilateral trading system.

The reluctance, by most of the Nations in Latin America to endorse the Free Trade Area of the Americas is a clear testimony of the eminent reconfiguration of trade laws. The Latin American States have also pushed for the establishment of the **Mercosur**. Mercosur, which takes its name from Mercado Comun del Sur (Common Market of the South), and aims to bring about a common market by lowering tariffs between member countries (Argentina, Brazil, Paraguay, and Uruguay). It also aims to adopt regional trade policies; pool resources; give the region more influence in trade forums; and act as a precursor in the development of a western hemisphere free-trade zone. The group is regulated by guiding principles that are meant to selectively sponsor the trade activities of Latin American States ahead of any other trade agreements entered into, the WTO inclusive.⁵⁰ The Mercosur agreement stands parallel to internationally acclaimed standards of international trade that call for less trade barriers between states. Its fundamental part is a common external tariff (CET), a complex schedule of taxes that apply to imports from non-member countries.

⁴⁸ Geiger, T., and D. Kennedy, ed Regional Blocs, Multilateral and the GATT. London: Pinter, 1996

⁴⁹ "WTO Negotiations on Rules on Regional Trade Agreements: African Perspective.-COMESA Regional Integration Research Network Project 2002

⁵⁰ Panagariya, A., et al. New Dimensions in Regional Integration. Cambridge: Cambridge University Press, 1993

However, Under **Article XXIV of the WTO agreement**, particularly in paragraph 13 provides that GATT regional and local governments of nations should comply with GATT rules. Some of these require that the formation of any regional grouping be consistent with GATT, thus they not be an affront to established norms of international trade.

With the rise of radical leftist leaders some Latin American leaders like in Chile, Venezuela, and Bolivia for instance have in recent times ignored the trade agreements standing between it and the west and instead opted to enter into new separate agreements with the East, particularly China.⁵¹ From the above, it is evident that the trade law regulations under the WTO which provides that member states shall adhere to the principles enshrined therein which require all states not to engage in any trade activity with a non member state if that trade relation threatens the existing regulation under the WTO. This duty is provided for in **Article ii (b) of the GATT 1994**.

2.8 CONCLUSION

The legal point of debate is clearly that that the rise of leftist leaning regimes can not go unchecked. The significance of this development has great implications on the global legal systems. The reasons why the South American populous and other third world peoples are overwhelmingly opting for socialist leaning political ideologies is evidently because of the failed western capitalist policies that have failed to address the economic plight of the people in those areas.

⁵¹ *ibid*

The underlying factor of this development is that, there is a danger of some branches of international law being challenge, particularly international human right and the international trade law. The world can not be oblivious to the human rights record of socialist leaning regimes in world history, neither should the international community play down the growing discontent with the economic policies in Latin America that have been pioneered by the west. The implications are great on Human rights laws as well as trade laws as can be observed by the established of regional trading blocks that are exclusive of the United States for instance. This is also reflected in most of the Latin American States reluctance to endorse the Free Trade Area of the Americas (FTAA) that includes the USA and thus perceived as another way of the United States' neo-colonising the region.

CHAPTER THREE

3.0 A HIGHLIGHT OF THE GLOBAL COMMUNIST (LEFTIST) INFLUENCE AND THE SOUTH AMERICAN DEMOCRATIC STATUS

3.1 INTRODUCTION

The international community is faced with a great political shift to socialist leaning ideologies primarily for reasons stated in the preceding Chapter. The impact of this shift on international law is significant. Since the fall of the former Soviet Union, the socialist influence has to a greater extent been overwhelmed by capitalist ideologies of the west. Many scholars argue that pure communist or socialist countries do not exist. However, current global events reflect a contrary situation that socialism is still highly appreciated by a number of countries particularly those of the developing world. Socialist or Communist influences can still be traced in many parts of Africa, Europe, Asia and the Americas. This can be seen from most regional laws and agreements being established by particularly the countries of the third world which are usually motivated and do reflect a common political ideology or understanding.

This chapter will focus on highlighting the countries that in practice still have manifest socialist or communist related movements or governments. South American governments, arguably falling in this category, will be central in this highlight. An analysis of the democratic tendencies of the South American countries will be done as well as their efforts to ensure protection of fundamental human rights and global trade.

3.2 SOCIALISM OR LEFTISM - A GLOBAL PERSPECTIVE

Socialist influence has had its impact in so many countries around the world, particularly those of the third world. These countries have in the past couple of decades been influenced by the liberal and capitalist policies of the western world. After the failure of these policies, most developing countries have in one way or the other turned to socialist ideals seeking economic freedom. Recently Communist China hosted a summit for the China- Africa Forum at which over forty eight Africa countries were in attendance. This is a clear sign of the growing political and economic solidarity of the third world countries with each other.

3.3 SOCIALIST LEANING COUNTRIES

Following the October Revolution in 1917, which established what later became the Soviet Union, there was a revolutionary wave throughout Europe. Communist revolutions, uprisings or attempted uprisings took place in many European countries.

These uprisings then resulted in the Finnish Socialist Workers' Republic in 1918, the Bavarian Soviet Republic from November 1918 until May 3, 1919. There was also established the Slovak Soviet Republic in 1919, the Hungarian Soviet Republic in 1919, and the Persian Soviet Socialist Republic from 1920 to 1921.

The Red Army arranged for the establishment of Communist governments in Poland, East Germany, Hungary, Bulgaria, Czechoslovakia and Romania, which became Soviet satellite states. Communist partisans established Communist governments which were

initially pro-Soviet in Albania and Yugoslavia. Furthermore, in East Asia, the Red Army joined the war against Japan and established a Communist state in North Korea. In 1959, the Cuban Revolution eventually led to the first Communist state being established in the Western Hemisphere, the Republic of Cuba.

For several years, socialist regimes existed in Afghanistan, Ethiopia, Angola, Mozambique, Benin, Somalia, and the Republic of the Congo. However, most of these countries are now under capitalist influence. Angola, Mozambique, Afghanistan are all running on capitalist principles. Better still many countries in Africa, though working under capitalist ideals still see the need to adopt some socialist policies as a way of helping its peoples. The Africa National Congress(ANC) Governmnet in South African, an undoubtedly capitalist state has, however, for many years continued with its working relationship with the South African Communist Party. Dr Blade Nzimande, the Secretary Genaral of the Communist Party of South Africa, on his recent visit to Zambia pointed out what the rise of leftist governments in Latin America meant for Africa when he said:

the shift to the left, by our comrades in Latin America, is a clear manifestation that capitalism is not and has never been a solution to the economic problems of the world. What South America is telling the world is to take a rethink at our departure from the communist way of helping our people. The events there portray a significant, yet challenging tide towards economic emancipation of mankind and the only way Africa will be saved is by ensuring that we embrace the socialist ideologies that are able to be a uniting factor-and that, should be the starting point.⁵²

⁵² Speech at Mulungushi International Conference Centre “ *The rise of leftist governments and what it means for Africa*”. 2006

As at 2006, the countries that can still be referred to as leftist or communist and their ruling parties include the People's Republic of China, under the Communist Party of China, the Republic of Cuba under the Communist Party of Cuba. Lao People's Democratic Republic led by the Lao People's Revolutionary Party. Democratic People's Republic of Korea through the Korean Worker Party. Despite a common communist ideology, they possess certain distinct characteristics, both politically and economically.

This is particularly due to the fact that a number of these countries although maintaining the socialist principle, have more or less adopted some capitalist ideals. Because of that reason, they cannot be said to be practically pure communist states and China is one example.

3.4 IMPLICATIONS OF GLOBAL LEFTIST MANIFESTATIONS AND PRACTICE

As alluded to in the preceding Chapter⁵³, the rise of leftist or socialist leaning governments is poised to reconfigure the international legal order. The implications of the above highlight of leftist manifestations on international law can not be underestimated. International trade law implications will include regional trade groups based on political ideology. This can be seen by the regional trade block established by Communist Countries in 1949 called the **Council for Mutual Economic Assistance (COMECON or CMEA)**. It was established to assist and coordinate the economic development of its members. This trade group was established specifically on communist grounds⁵⁴. The

⁵³ Supra, see detailed analysis of the impact of leftism on International Law in Chapter Two pages 9-17.

⁵⁴ Microsoft Encarta Encyclopaedia. "*Council for Mutual Economic Assistance*" Standard 2005 Edition.

original members were Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and the Soviet Union. Albania, East Germany joined in 1950, the Republic of Mongolia in 1962, Cuba in 1972, and Vietnam in 1978. In 1964 Yugoslavia became a partial member; other countries, including Angola and Ethiopia, held observer status. In 1973 Finland was the first non-Communist country to sign a cooperation agreement with COMECON. In 1975 similar agreements were signed with Iraq and Mexico.

The above membership clearly shows the likelihood of trade laws being reconfigured by the possible growth of regional groups based on political ideology⁵⁵. Leftist influence in the world has the effect of impacting on World Trade Organization Regulations which are based on the principle of global existence. However, with the trade imbalances of the current global market, the emergence of these regional groups can to some extent be justified. The socialist influence has thus continued to manifest itself in trade related aspects as well as new diplomatic ties between countries of the third world. The China-Africa Forum is one additional manifestation of increasing diplomatic ties amongst countries that to a larger extent appreciate the unending economic values of socialism. An Action Plan was adopted, and China signed trade deals with ten African nations worth 1.9 billion dollars. Among the other nations to have signed trade deals with China were South Africa, Sudan, Kenya, Nigeria, Zambia and Ghana.⁵⁶

Communist China has also strengthened diplomatic ties with Korea, Russia, Iran, Sudan, Chile most of which are governed on nationalist ideologies.

⁵⁵ *supra*, Chapter Two at page 17-18

⁵⁶ The Ethiopian Herald, all.Africa.com (7th November, 2006)

3.5 A CASE STUDY OF SOUTH AMERICA

The current state of events in South America where many states have turned left leaves the question as to whether these governments can pursue democratic values. With the potential of being totalitarian, and sometimes despotic, these socialist oriented governments may pose a threat on the South American democratic system. This is based on the fact that socialist countries having struggled against exploitation and misery, they perceive abuse of human rights to be a function of the economic system.⁵⁷ Economic equality is seen as a pre-condition for the achievement of civil and political rights.

When asked about Latin America's turn to the left and whether this was fracturing into a moderate, social democratic current Bolivian president Evo Morales replied:

"There are social democrats and others who are marching more in the direction of equality, whether you call them socialists or communists. But at least Latin America no longer has racist or fascist presidents like it did in the past. Capitalism has only hurt Latin America".⁵⁸

President Morales' statement is to some extent correct. The events in Latin America show that, despite this leftist movement, most of these countries are on course in putting up safeguards to ensure human rights protection. This is in addition to their efforts in keeping their trade aspects and agreements particularly for the benefit of the welfare of all and not just the elite and bureaucrats.

3.6 STATUS OF THE SOUTH AMERICAN DEMOCRACY

HUMAN RIGHTS

⁵⁷ Anyangwe, Carlson. "*Human Rights: Generations, Holism And Relativity*". Zambia Law Journal Vol. 25-28, pg 92. (1993-1996).

⁵⁸ Interview carried by Jens Giasing and Hans Hoyng for ZNet. 4th September, 2006

The South American human rights system is guided by the Inter- American human rights system under the umbrella of the Organisation of American States (OAS), a 35 member regional political organisation spanning the entire western hemisphere⁵⁹. The OAS was established in 1948 by the Charter of Bogota (Columbia) and entered into force in 1951. The main purposes of the OAS among others, as described in its charter, are to strengthen the peace and security of the continent and to promote and consolidate representative democracy.

The OAS Charter (Pact of Bogota) states that ‘the American states proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex’. It says in the attempt by each member to exercise their rights to economic, social and cultural development, they ‘shall respect the rights of the individual and the principles of universal morality.’⁶⁰ Therefore, the Charter provides for the Inter-American Commission on Human Rights as one of the principle organs through which the OAS accomplishes its purposes. It mandates the Commission to promote the observance and protection of human rights.⁶¹

South American states have also signed a human rights treaty called the American Convention on Human Rights (Pact of San Jose, Costa Rica). This treaty was signed in 1969 and over twenty five countries have ratified or acceded to the convention. This Convention makes provision for the establishment of the Inter American Commission on Human Rights and the Inter American Court of Human Rights. The Court has jurisdiction to matters relating to the member states’ fulfilment of commitment made to the

⁵⁹ Anyangwe, Carlson. “*Introduction to Human Rights and International Humanitarian Law.*” p. 163 Lusaka, Unza Press. 2004

⁶⁰ Preamble

⁶¹ Article 106 which provides that ‘There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.’

Convention. The treaty provides the states commitment to reaffirm 'their intention to consolidate... a system of personal liberty and social justice based on respect for essential rights of man.'

The two mention documents are instrumental to the South American Human Rights system. South America countries, mostly with their leftist governments have shown some commitment to these instruments. A critical highlight of some of these efforts made by most of these leftist regimes in upholding human rights will show that some steps have been taken to remedy the impression that leftist regimes usually cause the worst human rights violations.

3.7 STRIDES TOWARDS HUMAN RIGHTS AND DEMOCRACY

Although leftist type of politics has always been associated with radicalism and human rights violations, the present status in Latin America reflects a slightly opposite position. A closer outlook at the current communist related regimes emerging as leftist have to an appreciable extent made efforts in remedying this negative legacy impressed on communist or socialist governments.

According to the current human rights index advanced by the internationally acclaimed Human Rights Watch⁶² and many other Organizations, the position of Latin America, vis a vis human rights, has significantly improved particularly following the assumption of power of these (leftist) governments. This is completely in contrast to most human rights records left by most right-wing governments in the Latin Americas. Latin America is

⁶² The 2003 Human Rights Watch Report.

currently waking up from a decades-long nightmare brought on by military dictatorships which came to power throughout the region in the 1970s and 80s, including Augusto Pinochet in Chile, Jorge Videla in Argentina and General Rios Montt in Guatemala among others.⁶³

In his reference to the Latin Americas recent great efforts in championing democracy and individual freedoms UN Secretary General Kofi Annan hailed the day by stating as;

“a day for celebration, a day for remembrance, and a day for commitment.”⁶⁴

Clearly Kofi Annan’s comments are justifiable as there is no basis for comparing the human rights record of Augustin Pinochet, for instance, with those of the current regimes in the region. Amnesty International said justice for Pinochet “would send a clear message to the world’s torturers and death squads that they cannot commit their crimes with impunity.” Pinochet had been guilty for the presumed murder of dozens of Spanish and Chilean citizens during the seventeen years in which Pinochet and the military governed Chile, a time of widespread and egregious violations of the right to life, liberty, and physical integrity, including some 3,000 assassinations or "disappearances."

A number of steps taken by some of the Latin American Governments stand to show that some of these regimes can live up to the demands of the International Law Order. This is in line with the American States affirmation of this principle in the OAS Charter under article 3 which states:

⁶³ Arendt, Hannah. *The Origins of Totalitarianism*. P. 203. Cleveland: Meridian Books, 1958

⁶⁴ Speech by Kofi Annan at the United Nations during the commemoration of 58th anniversary of the United Nations’ “Universal Declaration of Human Rights”.2006

“b) International order consists essentially of respect for the personality, sovereignty, and independence of States and the faithful fulfillment of obligations derived from treaties and other sources of international law”

For instance, Mexico and Peru in 1998 developed legislation that chipped away at due process rights of individuals suspected of common crimes. This was an effort to remove immunity of persons who had been suspected of committing great human rights crimes against the people of those countries and bring them before the law.

In a positive development, Peru's Congress in February 1998 passed a law specifically outlawing torture, providing appropriate penalties, and ensuring that military and police officers accused will be tried in civilian courts.

In 2003, the Officials responsible for the Penitentiary and Prison Policies of the OAS member states (GAPECA) met at the OAS headquarters in Washington, D.C., in accordance with the recommendations adopted at the IV Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-IV) and with **Resolution AG/RES. 1849 (XXXII-O/02)** adopted by the OAS General Assembly and **Resolution CP/RES. 839 (1359/03)** adopted by the Permanent Council of the OAS which all called for the improvement of prison conditions in the Americas.

The declaration of the **Forum on Human Rights Second peoples' Summit of the Americas**⁶⁵ also made progressive recommendations towards the attainment of a broad based effort to promote democracy and human rights in the region. For instance, the summit in recognizing the continued biased dominance of the USA on the human rights

⁶⁵ Held in April 16-21, 2001. Canada, Quebec City.

policy in the Latin Americas has set guidelines and standards that will reflect a true picture of the human rights record in the region. Under its resolution the summit states:

“Having verified that the effects of all free-trade agreements signed in the Americas are incompatible with human rights, we as participants in the Forum on Human Rights, declare the following; we reject the Free Trade Area of the Americas (FTAA) Agreement and any other agreement based on the neoliberal model in the Americas.”

Furthermore Latin American states, with a notable exception of the USA⁶⁶, reaffirmed their commitment to the establishment of the International Criminal Court through the OAS. The Rome Statute of the **International Criminal Court**, adopted in July 17, 1998 establishes in its article 1 that the Court;

“...shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute”.

⁶⁶ Reservation by the United States: “The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide and crimes against humanity, but cannot support the flawed International Criminal Court. Thus, the United States has not ratified the Rome Statute and has no intention of doing so. In light of this position, the United States cannot join in the consensus on an OAS resolution that promotes the Court.”

The Statute entered into force on July 1st, 2002. To date, 139 states signed the Statute (including 27 member states of the OAS) and 100 of them ratified it (including 22 member states of the OAS).

Between 1999 and 2002, the General Assembly of the Organization of American States supported a resolution relating to the adoption of the Statute of Rome, and since 2003 the General Assembly has adopted a resolution on the promotion of the Court. It is worth underlying that, in accordance with this commitment, the **Committee on Juridical and Political Affairs** held on February 3, 2006 a “Working meeting on appropriate measures that states should take to cooperate with the international criminal court in the investigation, prosecution, and punishment of the perpetrators of war crimes, crimes against humanity, genocide, and crimes against the administration of justice of the international criminal court.” In 2006, the General Assembly adopted the resolution ⁶⁷ for the “Promotion of the International Criminal Court.”

Also importantly, most Latin American states have either ratified or acceded to a number of treaties and conventions related to human rights in recent times, which may also confirm their continued effort in ensuring the prevailance of democracy. For instance, Bolivia recently ratified the additional protocol to the American Convention on Human Rights in the Area of Social, economic and Cultural Rights “Protocol of El Salvador”⁶⁸. Similarly, on **September 28, 2006, Venezuela** deposited the instrument of ratification to the Inter-American Convention on the elimination of all forms of Discrimination against Persons with Disabilities and Ecuador follow suit on 27th July, 2006. On **December 22,**

⁶⁷ Resolution AG/RES. 2176 (XXXVI-O/06)

⁶⁸ October 5th, 2006.

2005, El Salvador deposited its instrument of accession to the Inter-American Convention on International Traffic in Minors with reservation. On **December 22, 2005, El Salvador** deposited its instrument of accession to the Inter-American Convention on International Traffic in Minors with reservation.

3.8 CONCLUSION

From the above, it is evident that the Communist effect has spread to many parts of the world. This has in recent cases manifested in the leftist tendency. South America in this regard provides an astonishing, yet important example. This intrinsic communist symptom in most of these South American countries is seen in the increased and strengthened trade and diplomatic ties between these countries and communist states like Cuba and China. It is of considerable importance to analyse the democratic state of these governments to ensure a substantiated meaning of this rise of such regimes on the international law Order. Facts, however, show that although these countries could pose a threat on international human rights and trade law particularly if based on the past experiences of most socialist related type of regimes, most of them are making frantic strides to ensure that their agenda be based on redeeming its people from poverty.

CHAPTER FOUR

4.0 CONCLUSIONS AND RECOMMENDATIONS

The emergence of leftist regimes in South America is an important episode in the international legal system. The rise of leftist regimes has a significant bearing on the direction of the international trade law as well as the future of the world's democratic fibre. The South American states' election of leftist governments or option to adopt socialist policies for their economic development can have major implications if not adequately addressed. The successful rise or proliferation of Socialist and anti-American governments throughout South America portends U.S. weakness and the inability of the American government and military to exert control over South American affairs. The West led by the U.S. can still hope and expect that many of the governments will fail in their social and economic endeavours and U.S. capital and advice will still be needed. However, that expectation has a significant impediment - the entry of China into South American affairs.

This dissatisfaction by the third world with capitalism is also manifesting itself in economic and political ideological changes. There is a growing realignment on the economic front with most of the third world countries partnering in global trade. An interesting development is the holding of the first ever Anti-American Summit of Arab (Islamist) and Latin American (Communist/Leftist) regimes⁶⁹. Top government officials from the eleven South American nations and twenty two Middle Eastern and North

⁶⁹ Held in Rio de Janeiro, From December 12-14, 2006

African countries attended the summit. The talks lead to a commitment to negotiations for a South American Arab free trade zone -part of an effort to counter U.S. political and economic influence.

There has also been an increase in the number of regional trade groups, most of which are based on the need to promote and protect trade, between the countries of the particular region. The South America countries have gone ahead and pushed for regional groups with a deliberate intention to protect its trade from the continued intervention of the west led by the USA.

On the Human Rights front, history shows that, Communist States in the past have been guilty of some of the worst human rights violations. The element of state control of almost all economic activities has resulted in the deprivation of individuals of their liberties. There is no doubt that many other capitalist countries like the USA have, and continue to be guilty of many actions against international human rights law. The rising leftist regimes in Latin America have adopted socialist and communist policies in their economic struggles. The need to ensure that a repeat of what was witnessed in the Soviet Union and its Satellite states does not recur is crucial. A state of the human rights record in the Americas, ironically, shows a greater but not satisfactory effort to protect individual freedom. Most of the countries there have made great strides in ensuring human rights protections by acceding and ratifying a number of human rights instruments.

4.1 RECOMMENDATIONS

Following from the above analysis, the following recommendations are proposed;

1. There is need that the developed countries, most of which are thriving on capitalist policies reevaluated their imposition of these policies on the third world. There is need for an international economic system in favour of Third World countries, replacing the Bretton Woods system, which has benefited the leading states that had created it, especially the United States. There is need for a more progressive reform in Latin America and other third world countries particularly in there demands. This should be as a result of the realization that the shift to the left by most third world countries with particular reference to South America is an expression of dissatisfaction of the capitalist policies of the west.
2. In order to avoid the proliferation of Regional Trade Groups ideologically motivated, International trade should be based on the need to ensure stable, equitable, and remunerative prices for raw materials, generalized non-reciprocal and non-discriminatory tariff preferences, as well as transfer of technology to developing countries; and should provide economic and technical assistance without any strings attached.

The General Agreement on Trade and Tariff (GATT) needs to be revised and further provisions included to ensure that favourable measures for least developed nations are put in place particularly in the area of trade restrictions on exports from developing countries into developed countries. **Article XXIV of the GATT**, which relates to regional agreements need to be revised so to as ensure the absolute independence of regional countries to establish there own trade groups for economic purposes.

3. The USA should support Latin American's efforts to foster well-being through new socio-economic bargains like the **Mercosur**. This would do more to promote democratic values and a peaceful modern world than military intervention ever could as has always been the case. The United States has a new role with South America nations. These nations are growing and expanding their trade. The west needs Latin American raw materials and Latin America needs capital and high technology goods from the west. If South American leaders want to establish a regional Order that guarantees their sovereignties and buffers them from being continually disrupted by the West old world disorder, the U.S. for instance, can assist in this realization and greatly profit from it.
4. There is need that the international community takes adequate measures to ensure that the Latin American states which have adopted socialist ideologies do not end up in the same ordeal of human-rights violations as was historically the case in most communist states.

Human Rights groups need to intensify Coordination and conduct campaigns to encourage human-rights organizations in these states to join the perspective of the primacy of human rights. By virtue of international law and, in particular, the Charter of the United Nations, Charter of the Organization of American States, Universal Declaration of Human Rights, American Declaration of the Rights and Duties of Man, and American Convention on Human Rights, the primary obligation of States should be to respect, protect, and promote the use and fulfilment of all universal and indivisible human rights. All other social and economic players must also respect human rights.

4.2 CONCLUSION

The rise of left governments in Latin America must, however, be understood in the context that this shift has more to do with economic rather than political reasons. It is cardinal that this movement be met with a response it deserves. There is no need for the western countries to insist with the imposition of their economic ideology on the third world. The events in Latin America could be an indicator of what is to come. Many other third world countries could just follow behind Latin America. The growing alignment and partnerships being consolidated by the Americas, Asia and Africa are an indication of the need by many of these nations to reevaluate the economic approach by incorporating aspects of socialism. The west, led by the USA needs to take a broader perspective in their approach of the demands of the third world, some of which have been recommended above.

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