

Contract Law and Dispute Resolution as Novel Means to Resolve International Human Rights Violations in International Trade*

Lindsey L. Carpenter

Is an attorney based in Washington, D.C. She received her L.L.M. in Dispute Resolution from Pepperdine University in Malibu, California. She received her J.D. from Regent University School of Law and holds a B.A. from Wake Forest University in Political Science and International Relations and Chinese Language and Culture. E-mail: carpl1996@gmail.com. ORCID ID: <https://orcid.org/0009-0009-1768-297X>

Abstract: This article examines the relationship between international trade and the growth of human rights abuses. It offers dispute resolution, contract law, and a corporate social agreement to resolve these human rights issues. This article aims to present solutions to the growing human rights abuses in international trade because, throughout history, international trade has been a pillar in uniting societies, cultures, and peoples. With the growth of international trade, international trade law also grew. A key feature of the post-Modern era is the infusion of transnational corporations into every element of international society and culture. A direct result of this influence is a drastic rise in international human rights violations where individuals cannot find protection under international human rights laws or foreign domestic courts because such laws and courts do not have jurisdiction over transnational corporations, creating a perpetual cycle of human rights violations in international trade. This article presents a potential option to remedy these violations through alternative dispute resolution, contract law, and a corporate social agreement. This article employs qualitative and comparative research methodologies. The article includes an overview of historical and philosophical literature to establish how international trade and human rights development have consistently been connected. Additionally, the article analyzes international and state laws to delve into the gaps created by modern-day legal precedents to curtail human rights violations in international commercial trade. Through studying human rights violations within the context of international commercial trade and the existing, relevant international law, this article finds that a combination of alternative dispute resolution, contract law, and corporate social offers an innovative approach to resolving human rights issues faced by the international community. The significance of this article is to draw attention to the human rights violations occurring in the post-modern era due to international trade. Specifically, this article aims to present a workable solution to international human rights violations that can be implemented where international law fails to protect individuals in these situations.

Keywords: Contract. Dispute Resolution. International Trade. International Law. Labor and Transnational Corporations.

Summary: **1** Introduction – **2** Background – **3** The Evolution of International Trade, International Public Policy, and Human Labor – **4** Human Rights Violations in International Trade – **5** Current International Human Rights Laws On International Trade – **6** Filling in the Gaps: Recommendations to Increasing Human Rights Laws in International Trade – **7** Final Considerations – References

* Thanks to Dr. Jair Gevaerd for all of his assistance with this paper.

1 Introduction

This paper deals with the interplay between human rights, international commercial trade, and dispute resolution. The paper shall proceed as follows: Section three provides the paper's background and proffers a brief overview of the direction and summation of this work. Sections four to six contain the primary analysis and reviews the history of international trade, an overview of the rise of transnational corporations ("TNCs"), a synopsis of the current human rights violations, the need for human rights laws, and the current international human rights laws and the effectiveness of such. The analysis then ends with a recommendation to use contractual clauses in international trade agreements as a new form of international human rights law, with dispute resolution as an enforcement mechanism, and to create a corporate social agreement to promote an internal policy amongst TNCs in favor of human rights.

2 Background

International trade is the cornerstone of modern-day society. Trade is no longer the simple exchange of goods, but rather is a widespread, global exchange of production, labor, human rights, laws, and products. From the bread we eat to the clothes we wear, most goods have traveled to multiple states¹ prior to arriving in one's household. The globalization of trade and rise of TNCs have brought an increase in international trade unseen in the history of trade to date. At the same time, human rights violations have also increased because of the unchecked expansion of international trade conducted by TNCs.

International trade has always been global in the sense of connecting different people groups. From the beginning of history to prior to the post-modern era, trade is generally dictated by the governing officials and elite. In any era of trade's history, goods are consistently produced by human labor. Thus, these governing individuals created rules and norms of trade in order to protect the flow of goods produced by other individuals.

The end of World War II ushered in an evolution of how international trade is conducted through the rise of TNCs. The prevalence of TNCs has given wealth and power to individuals previously only held by governments and the ruling elite. In the post-modern era, governments are no longer primarily controlling international trade, instead, the TNCs are. TNCs began offshoring production, development, and shipment of goods such that the final product sitting in one's household is

¹ "States" as used herein refers to countries.

truly international in every sense of the word. Although society had developed international laws, in the forms of international trade laws and human rights laws, to curb the appetite of profit driven government entities, these laws do not directly apply to TNCs. As a result, the rise of human rights violations and forced human labor has been rapidly increasing as globalization continues to touch every corner of the world. Philosophy and history agree such human rights violations cannot continue forever. At some point, the disproportionate treatment of human beings will result in a decline of international trade in the form of internal revolutions, high turnover rates, or decreases in production.

Given this, human rights laws must be implemented to protect individuals in the chain of international trade. However, there is little applicable human rights laws available. Although society has agreed with the notion human rights should be protected through the various treaties, covenants, and forms of international law passed by governing bodies such as the United Nations, such forms of international human rights laws are tailored to the time before the post-modern era. These laws only address and curtail states' actions, not the actions of TNCs. Thus, TNCs can operate in a realm outside of domestic law as the production of their goods occurs outside of the countries of their incorporation and outside of the realm of applicable international law.

This paper thus presents the novel idea of utilizing contract law, dispute resolution, and a corporate social agreement to resolve these issues. Contracts are the cornerstone of international trade in the form of international commercial agreements amongst TNCs. These agreements represent the promises and obligations which form a binding, enforceable promise upon the parties to them. Therefore, this paper proposes TNCs should add human rights clauses to these international commercial agreements. By doing so, their promise to enforce human rights would become binding, enforceable law. Dispute resolution, in turn, operates as the enforcement mechanism for such international commercial agreements. Currently, very few international trade disputes proceed to a court of law as most agreements contain a dispute resolution clause. Thus, dispute resolution in the context of international commercial trade operates as the rule of law and enforcement mechanism for the parties' agreements. In addition to these legal measures, a corporate social agreement amongst TNCs to uphold human rights in international trade offers additional protection for human rights by creating social responsibility amongst these TNCs. Therefore, when agreements contain human rights clauses, dispute resolution will create an enforcement mechanism for such.

3 The Evolution of International Trade, International Public Policy, and Human Labor

International trade, international public policy, and human labor have always been intertwined. From caveman bartering for goods with simple grunts in the prehistoric era, to complex international mergers and acquisitions in the post-modern era, international trade has always been present throughout history. Trade itself necessitates human interactions. These interactions, in turn, form the cornerstone of international trade. Through the exchange of goods to fulfill human needs, humans interacting to conduct the trade and the human labor needed to produce the goods, humans are necessary for trade to occur. Individuals need international trade to meet basic human needs. For instance, the bread on your table may have been packaged in a factory in America, the material may have been shipped by a Brazilian corporation, and the grain may have been grown in Mexico. Thus, the basic human need for food is satisfied solely because of international trade among humans, states, and corporations.

Unsurprisingly, where human interactions occur, conflicts arise. In the context of international trade, conflicts arising from human interaction create a complex paradigm. Although a person's natural inclination when conflicts arise may be to ignore the source of the conflict, or on a more extreme measure initiate hostilities, this is not a productive solution when conflicts arise regarding international trade. Because international trade is necessary to meet basic human needs, all-out hostility or ignoring the source of conflict is not an option, as the very fabric of the modern-day economy must be safeguarded. As such, individuals, corporations, multinational corporations, and governments have put into place rules and regulations to encourage peaceful international trade and, if needed, to offer methods for dispute resolution should a conflict arise.²

3.1 Early Trade and the Silk Road

The history of international trade originated from the dawn of creation with simple trading and bartering by the earliest civilizations.³ "Some primitive societies used shells or pearls as currency[;] [i]n Mesopotamia and Egypt, they used gold

² WOLFF, A. Speech on Paradigm Lost? US Trade Policy as an Instrument of Foreign Policy. https://www.wto.org/english/news_e/news18_e/ddgra_09feb18_e.htm (accessed April 15, 2024) ("Trade and foreign policy have been intertwined throughout history, with foreign policy often tailored to promote trade interests.").

³ CONNECTAMERICAS. The Evolution of Trade: From Barter to Mobile Commerce. <https://conexionintal.iadb.org/2017/03/06/la-evolucion-del-comercio-del-trueque-al-movil/?lang=en> (accessed April 17, 2024).

bars, but these had to be weighed each time something was traded”.⁴ Although a few of the earliest civilizations experimented with currencies, these primal currencies lacked a uniform value or standard. A uniform form of currency did not take off until the development of metal coins between 700 and 500 B.C.⁵ Thus, trade in early civilizations focused more on a barter system amongst the nations’ immediate neighbors.

The development of international trade, and international trade itself, truly entered the world stage for the first time with the rise of the Silk Road.⁶ The Silk Road began with the Han Dynasty around 200 B.C.⁷ As the Han Dynasty rose to power and prominence, the Hans expanded over China, bringing with them an increase in trade routes.⁸ The Silk Road was an economic investment for the Han Dynasty: As the trade routes increased, more nations and individuals traveled to central Asia to start businesses there.⁹ The Silk Road’s profitability was such that “the Han court sent General Zhang Qian (200-114 BC) as an envoy to build relationships with the Central Asian states and to find their former allies [...]”.¹⁰ General Qian reached the Fergana Valley and realized the people there were operating “a rich trading network with India, the Near East, the Middle East, and the countries of the ancient world”.¹¹ To secure the Silk Road, the Han Emperor sent trade emissaries to various nation-states along Silk Road.¹² In other words, the Han dynasty’s method of international law for maintaining the international trade occurring along the Silk Road was diplomacy and forming alliances.

Although international trade was thriving due to the Silk Road, human labor was still the primary source for the development, acquisition, and barter of goods.

⁴ CONNECTAMERICAS. The Evolution of Trade: From Barter to Mobile Commerce. <https://conexionintal.iadb.org/2017/03/06/la-evolucion-del-comercio-del-trueque-al-movil/?lang=en> (accessed April 17, 2024).

⁵ CONNECTAMERICAS. The Evolution of Trade: From Barter to Mobile Commerce. <https://conexionintal.iadb.org/2017/03/06/la-evolucion-del-comercio-del-trueque-al-movil/?lang=en> (accessed April 17, 2024).

⁶ UN Tourism. Silk Road. <https://www.unwto.org/silk-road> (accessed April 17, 2024).

⁷ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024); SONG, C. The History of the Silk Road in China. <https://www.chinahighlights.com/silkroad/history.htm> (accessed April 17, 2024).

⁸ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

⁹ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

¹⁰ SONG, C. The History of the Silk Road in China. <https://www.chinahighlights.com/silkroad/history.htm> (accessed April 17, 2024).

¹¹ SONG, C. The History of the Silk Road in China. <https://www.chinahighlights.com/silkroad/history.htm> (accessed April 17, 2024). The Fergana Valley is a region located in Uzbekistan and Kyrgyzstan.

¹² See AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

Slaves themselves were frequently traded on the Silk Road.¹³ Absent slavery and forced human labor during this time, the production of goods for the Silk Road would have slowed significantly. This is not to say slavery itself was not a concept solely characteristic of Asia. Other dominant civilizations of the era, such as Rome or Egypt, depended upon slaves for the manufacturing of their goods which were ultimately placed into the stream of international trade.¹⁴ All in all, the nations during the Silk Road depended upon slavery and forced human labor as a mode of production for trade.¹⁵

3.2 Trade in the Middle Ages

The dominance of slavery as the primary mode of production under the Silk Road era shifted around 500 to 600 A.D. after the fall of the Roman Empire. The fall of the Roman Empire sent the then-existing civilizations into chaos. “For about a thousand years after the collapse of the Roman Empire [...] Western Europe become decentralized and chaotic, struggling to reclaim some organization structure in a more localized manner [...] call[ed] the feudal system”.¹⁶ As a result, “[t]he standard interpretation of the economic changes of late Rome is that the slave mode of production gives way to the feudal mode of production: slavery is replaced by serfdom”.¹⁷ With the rise of the Middle Ages, “society [was] crudely divided into three estates: those who fought [...], those who prayed [...], and those who worked (the vast majority of the population – mainly serfs who were tied to the land and a minority of free peasants.)”.¹⁸

The feudal system represented a drastic shift in human labor in the context of trade. Under the Silk Road era, human labor was represented by nations enslaving individuals (usually from another nation) for the production of goods. However, the feudal system shifted human labor from slavery tied to production of goods under the direction of a government, to serfdom tied to a plot of land.¹⁹ “[F]

¹³ WHITFIELD, S. Slaves on the Silk Road. <https://www.ucpress.edu/blog/36815/slaves-on-the-silk-road/> (accessed April 17, 2024) (“Slaves like silks, were Silk Road goods, to be bought, used and sold for profit, and often transported long distances. By land and sea to trade in foreign markets.”).

¹⁴ WICKHAM, C. The Other Transition: From the Ancient World to Feudalism, *Past & Present*, n. 103, p. 3-36, 1984, p. 4.

¹⁵ WICKHAM, C. The Other Transition: From the Ancient World to Feudalism, *Past & Present*, n. 103, p. 3-36, 1984, p. 4.

¹⁶ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p.1 (internal citation omitted) (citation omitted).

¹⁷ WICKHAM, C. The Other Transition: From the Ancient World to Feudalism, *Past & Present*, n. 103, p. 3-36, 1984, p. 4.

¹⁸ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 1-2.

¹⁹ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p.5 (“There was a ‘tremendous

feudal relations are represented simply by tenants paying rent to (or doing labour service for) a monopolistic landowner class; such landowners will always, while the system is stable, have the non-economic coercive powers necessary to enforce their control [...]”.²⁰ The landowner’s power rested in their ownership of land. The production which arose from such created further wealth for these landowners. As a result, “the economy, wealth, and power of the feudal lords depended on their non-title subjects [...]”.²¹ Therefore, an individual’s wealth in the Middle Ages was not bound to goods produced by slave labor, but to their land and the production occurring thereon by the serfs.

As the Middle Ages progressed, cities developed as more people congregated around a certain landowner or location. This “rise of cities went hand-in-hand with” an increase in trade with “the rise of merchant capitalists”.²² As more people gathered in cities, people began to trade their surplus goods within the city and with their neighboring cities. This new class of people engaging in trade became “called the ‘bourgeoisie’ or ‘capitalists’”.²³ Unlike the feudal society who “based themselves on the control of agriculture and fought to expand their holdings. The capitalists, in contrast, based themselves on money and the control of trade and production”.²⁴ Around the end of the eleventh century, “the artisan class and the merchant class, having become much more numerous and much more indispensable to the life of the community, made themselves felt more and more vigorously in the urban settings”.²⁵

The medieval economy and rise of the merchant class represented a significant shift in international trade because, for the first time, the economy was not dominated by the producer, but by the trade itself.²⁶ In other words, it was no longer the wealthy individuals or governments who dominated trade in the Silk Road era, or the wealthy landowners who dominated trade in the beginning of the Middle Ages. Rather, the Middle Ages initiated the modern-day concept of

increase in the numbers of slaves during the great wars of the fifth to sixth centuries A.D., but showed how they were not enrolled in the traditional slave plantations [...] these slaves became tenants[]”).

²⁰ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 6.

²¹ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 14.

²² PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 15.

²³ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 15.

²⁴ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 15.

²⁵ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 1 (cleaned up) (citation omitted).

²⁶ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 1.

merchants, traders, and sellers as the primary players in trade. Despite this, the goods sold by the merchant class were still created by intense human labor: “[T]he most significant economic activities in most European countries were small-scale farming and artisan handicrafts, social structures [...]”.²⁷ As a result, the revival in trade during the Middle Ages was modest in nature.²⁸

3.3 Industrial Revolution

Although the Middle Ages signaled the shift of power in international trade from producers to the merchant class, the goods produced were still made by intense human labor.²⁹ As a result, trade and international trade expanded slowly during this era. This slow expansion ended with the dawn of the Industrial Revolution. The Industrial Revolution was a pivotal moment for the relationship between international trade, trade policy, and human labor. For the first time, production was no longer tied to human labor; instead, production became tied to land and the means of production.

The Industrial Revolution originated in England in the eighteenth century with King James II’s ascension to England’s throne.³⁰ King James II’s ascension was tumultuous as it followed a series of English Civil Wars, the dissolution of the monarchy, and the creation of a Commonwealth government.³¹ To balance the reinstatement of the monarchy, Parliament passed varying acts, including the Bill of Rights in 1689, which operated to decrease the monarch’s power over England.³² “Power was gradually decentralised and the middle class saw their position in society strengthened, while the landowning aristocracy lost its monopoly on political power”.³³ The middle class’ newly founded freedom, paired with England’s easy access to resources through its empire, strong economy, rapid increase in birth rate, strengthening of patent law, and increased use of the scientific method, caused individuals to rapidly begin experimenting and developing new means of

²⁷ NATIONAL GEOGRAPHIC. Industrialization, Labor, and Life. <https://education.nationalgeographic.org/resource/industrialization-labor-and-life/> (accessed April 17, 2024).

²⁸ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 6.

²⁹ NATIONAL GEOGRAPHIC. Industrialization, Labor, and Life. <https://education.nationalgeographic.org/resource/industrialization-labor-and-life/> (accessed April 17, 2024) (“Before industrialization, when the most significant economic activities in most European countries were small-scale farming and artisan handicrafts, social structures remained essentially as they had been during the Middle Ages [...]”).

³⁰ 50 MINUTES. The Industrial Revolution, 2017, p.5.

³¹ 50 MINUTES. The Industrial Revolution, 2017, p.5.

³² 50 MINUTES. The Industrial Revolution, 2017, p.5.

³³ 50 MINUTES. The Industrial Revolution, 2017, p.5.

production.³⁴ Ultimately, the invention of the “factory-based industry, the coal fired steam engine and other machinery” ushered in “a new, faster pace for labor”.³⁵

The increased use of machinery for production during the Industrial Revolution meant “[l]arger firms that could achieve economies of scale held an advantage in the competitive sphere of international trade. In the industrializing world, the new means of production meant the demise of earlier, slower modes of labor and life”.³⁶ This faster pace of production allowed for a boom in international trade. The increase in quantity of products paired with the widespread commerce routes created by the British Empire, caused international trade to rise to a level unseen in the Middle Ages.

In response to this increase in production and international trade, governments issued laws to protect their economic growth. England, for example, expanded their international trade laws and laws on corporations. Domestically, England started granting monopolies to corporations to encourage production and growth of corporations.³⁷ As previously mentioned, the rise of patent law further encouraged development of techniques and inventions as “[p]atent laws allowed inventors to benefit financially from the ‘intellectual property’ of their inventions”.³⁸ Internationally, England grew its military and increased its military presence around the globe to protect international trade.³⁹ England began granting charters to trade companies to encourage international trade.⁴⁰ Over time, these charters began to transition trading companies “to a territorial sovereign, vested with powers of civil and military government and [...] power to coin money”.⁴¹ England’s chartering of these trade companies established, for the first time in the modern era, a government-backed international trade corporation. The rise and creation of these trading companies brought into unity the international movement of goods from the

³⁴ 50 MINUTES. The Industrial Revolution, 2017, p. 3-7.

³⁵ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 6.

³⁶ PELZ, W. A People’s History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024), p. 6.

³⁷ HUSTON, R. People, Places & Cultures. <https://open.library.okstate.edu/culturalgeography/> (accessed Sep. 7, 2023).

³⁸ HUSTON, R. People, Places & Cultures. <https://open.library.okstate.edu/culturalgeography/> (accessed Sep. 7, 2023), ch. 7.1.

³⁹ HUSTON, R. People, Places & Cultures. <https://open.library.okstate.edu/culturalgeography/> (accessed Sep. 7, 2023), ch. 7.1.

⁴⁰ HOOKER, M.B. The East India Company and the Crown 1773-1858, *Malaya Law Review*, v. 11, n. 1, p. 1-37, 1969.

⁴¹ HOOKER, M.B. The East India Company and the Crown 1773-1858, *Malaya Law Review*, v. 11, n. 1, p. 1-37, 1969, p. 2. For instance, “[u]nder the Charter of 1683, the Company could exercise martial law, it could raise forces and a Court of Admiralty was established. [...] [It was authorized] to establish a court of judicature [...]” HOOKER, M.B. The East India Company and the Crown 1773-1858, *Malaya Law Review*, v. 11, n. 1, p. 1-37, 1969, p. 2.

Industrial Revolution, increased expansion of human labor, and international trade laws.

This explosion in production in international trade and governments' focus on protecting it through various legal measures created a necessity for the actual production of the goods to be placed into the market. Although such goods were produced more efficiently with the rise of industrial machines, human labor was still needed to work the machines. As a result, human labor shifted from a "more agrarian way of life to that of labor for wages".⁴² However, "[t]he working conditions in factories were often harsh. Hours were long, typically ten to twelve hours a day. Working conditions were frequently unsafe and led to deadly accidents. Tasks tended to be divided for efficiency's sake which led to repetitive and monotonous work for employees".⁴³ The increase in production and international trade during the Industrial Revolution, although expanding countries' and companies' wealth, saw a marked increase in the exploitation of human labor. As the desire for wealth increased, so did the demand for production, regardless of the toll it took upon individuals.

3.4 The Post-Modern Era

The climate of international trade created by the Industrial Revolution remained essentially unchanged until after World War II. The end of World War II brought the world into an environment with an increased efficient means of transportation through airplanes and more reliable sea travel, and more solidified multinational political units such as the United Nations and World Trade Organization. "The post-World War II period saw a significant increase in international trade and an increasing number of countries joining the UN, which brought about more free trade agreements between member states".⁴⁴ The increase in international trade agreements created the opportunity for easy of trade amongst nations and corporations along with set standards, rules, and parameters for such trade.

Perhaps most significant to international trade was the rise of TNCs after World War II. "In the post-World War II period, multinational corporations have

⁴² LIBRARY OF CONGRESS. America at Work, America at Leisure: Motion Pictures from 1894 to 1915. <https://www.loc.gov/collections/america-at-work-and-leisure-1894-to-1915/articles-and-essays/america-at-work/> (accessed April 17, 2024).

⁴³ LIBRARY OF CONGRESS. America at Work, America at Leisure: Motion Pictures from 1894 to 1915. <https://www.loc.gov/collections/america-at-work-and-leisure-1894-to-1915/articles-and-essays/america-at-work/> (accessed April 17, 2024).

⁴⁴ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

been a key to the internationalization of business”.⁴⁵ TNCs can “produce[] goods cheaply thanks to economies of scale and mass production techniques”.⁴⁶ Often, TNCs will divide the varying stages of production and offshore each stage to the country who has the lowest costs of production. TNCs will then sell these goods to higher capital markets like the United States. These TNCs “control [] much of the global trade and [have] bec[ome] extremely powerful entities in their own rights”.⁴⁷ “[T]he overall concentration of economic activity in the hands of these institutions has dramatically increased. It is estimated that multinational corporations currently account for one-quarter of world-market output”.⁴⁸

As a result, TNCs’ leaders are now able to “enjoy an influence over the global allocation of economic resources previously associated only with empires”.⁴⁹ Up until the post-WWII era, it was generally nations and governments who were able to enjoy the benefits of expansive international trade. The capital, enforcement mechanisms, and workforce necessary to build and protect international trade were truly only obtainable by governments in the pre-World War II era. Nonetheless, the post-modern era’ is widespread usage of the internet, ease of travel, and global connections allow individuals through corporations to create their own “empire” of sorts.⁵⁰

“[T]he overall concentration of economic activity in the hands of these institutions has dramatically increased. It is estimated that multinational corporations currently account for one-quarter of world-market output”.⁵¹ Nike, for example, may be considered a TNC. Nike has 1,978 stores located across seventy-seven countries, and in 2022, it grossed \$21.479 billion.⁵² The level of territorial control and annual gross income TNCs possess would have been unfathomable for businesses or individuals in the pre-World War II era. In the post-modern era, however, Nike is only one of the many TNCs exercising an empire level of power

⁴⁵ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 358.

⁴⁶ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

⁴⁷ AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

⁴⁸ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 358.

⁴⁹ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 358.

⁵⁰ See MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 39-40 (“[TNCs] extend[ed] the individuals perception of authority, repression, and alienation beyond the apparatus of the state.”).

⁵¹ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 358.

⁵² NIKE. Find a Nike Store. <https://www.nike.com/retail/directory> (accessed April 17, 2024); MACROTRENDS. NIKE Gross Profit 2010-2023/NKE, <https://www.macrotrends.net/stocks/charts/NKE/nike/gross-profit> (accessed April 17, 2024).

and control over many territories and people groups. These TNCs are “undoubtedly a powerful and influential global actor central to the trade regime”.⁵³

In short, the historical development of international trade, production, and human labor as examined in this article reveals the ever increasing sense of “international” in each category. The earlier periods of trade illustrate a simpler form of production by humans which yielded international trade primarily conducted by key individuals and states’ governments. The latter periods of trade beginning with the Industrial Revolution symbolized the truly international nature of human labor, production, and trade as goods became higher in demand and the ease of international trade increased. In all these periods, governments protected international trade and the production of goods through the issuance of varying laws, increase in trade capacity, and creation of political relations.

The rise of TNCs represents a new era of international trade, production, and human-labor relations. Rather than the production itself being domestic, with the goods developed domestically and then put into the stream of international trade, the production of goods is now international in and of itself. As a result, TNCs create, as a norm, the phenomenon that a foreign corporation is now in control of the labor of nations’ citizens. Such shift in the concept of international trade yields the following conclusion: International trade is no longer a simple exchange of goods amongst individuals, but rather encompasses production, human labor, and trade process in their entirety in the realm of international trade and human relations.

4 Human Rights Violations in International Trade

The question then arises in an environment where international trade is mainly conducted by corporations in lieu of government entities, to what extent is this form of international trade regulated? Put more precisely, because international trade conducted by TNCs necessitates international human labor, to what extent are human rights protected? As explained below, modern-day international trade conducted by TNCs is fraught with human rights violations.

A TNC’s ability to conduct international trade hinges on commercial contracts. It is through contracts TNCs can strike deals and promulgate their businesses. Because the crux of TNCs’ productivity lies in the internationalization of labor and the ability to divide labor and mass produce goods for international trade, TNCs’ international commercial contracts naturally include the use of human labor. Western countries tend to have a plethora of employment and labor laws. Thus,

⁵³ HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 83.

TNCs may be based in developed countries, but often look to overseas locations to offshore production and avoid the cumbersome laws of the Western states.⁵⁴ Typically, they favor locations where such government restrictions are *de minimis* or nonexistent.⁵⁵ For instance, the top two hundred TNCs are incorporated in only ten countries, namely the United States and Japan.⁵⁶ As a result, “[i]n recent years there has been an upsurge of concern over human rights and [...] [TNCs]. A number of significant cases have been documented of apparent collusion between [...] [TNCs] and host governments in major violations of human rights”.⁵⁷

A prime example of human rights violations propagated by a TNC is the forced enslavement of the Uyghur people in China. China’s rise to economic prominence after the Opening and Reformation in 1978 brought an onslaught of TNCs entering the Chinese market. These TNCs aim to capitalize on China’s loose employment and labor laws and take advantage of the plentiful and cheap labor available in China. In 2020, the Australian Policy Institute issued a report TNCs were utilizing forced labor by the Uyghur people in China to produce their goods.⁵⁸ The Uyghur people group “are a Muslim minority in China, living in Xinjiang province [...]”.⁵⁹ The Uyghurs are often subject to human rights violations from the People’s Communist Party such as sterilization, torture, forced imprisonment, and detention in labor camps.⁶⁰

As part of this inhumane treatment, the report stated “more than 80,000 Uyghurs were transferred out of Xinjiang to work in factories across China between 2017 and 2019, and some of them were sent directly from detention camps”.⁶¹ Thereat, the Uyghurs “undergo organised Mandarin and ideological training outside working hours, are subject to constant surveillance, and are forbidden from participating in religious observances”.⁶² The People’s Communist Party

⁵⁴ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 361.

⁵⁵ KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982, p. 361.

⁵⁶ FORSYTHE, D. Human Rights in International Relations, 2000, p. 191.

⁵⁷ MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 31.

⁵⁸ XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).

⁵⁹ ARABLOUEI, R. & ABDELFAH, R. Who The Uyghurs Are and Why China Is Targeting Them. <https://www.npr.org/2021/05/31/1001936433/who-the-uyghurs-are-and-why-china-is-targeting-them> (accessed April 17, 2024).

⁶⁰ ARABLOUEI, R. & ABDELFAH, R. Who The Uyghurs Are and Why China Is Targeting Them. <https://www.npr.org/2021/05/31/1001936433/who-the-uyghurs-are-and-why-china-is-targeting-them> (accessed April 17, 2024).

⁶¹ XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).

⁶² XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).

forces these prisoners to perform the labor TNCs have outsourced to China.⁶³ The Australian Report found eighty-two TNCs who benefitted from the use of forced Uyghur labor, many which are well-known corporations in the international market: Amazon, Apple, Skechers, Polo Ralph Lauren, Samsung, Tommy Hilfiger, Victoria's Secret.⁶⁴ These TNCs are directly, or indirectly, benefitting from the forced Uyghur labor as they are able to keep their cost of production low, and garner a larger profit when the products are put into international trade. The Uyghur case study is a prime example of the "collusion between [...] [TNCs] and host governments in major violations of human rights".⁶⁵ Because TNCs have "more economic power than many individual States, [they] are able to use their new-found mobility to exercise considerable political pressure on national governments anxious to attract and maintain inward investment".⁶⁶

As explained in the history of international trade, forced human labor for the benefit of international trade is not a new occurrence. Notwithstanding, the international trade route itself was often maintained and managed by sovereign entities. The rise of TNCs in international trade, and the Uyghur case study itself, illustrate a new phenomenon: TNCs "can take part in alleged violations of human rights".⁶⁷ As such, the laws and scholarships regarding international human rights in the context of the pre-modern point of view is not easily applied to TNCs. No longer is the world dealing with individuals or governments who are committing human rights violations, but now it is dealing with corporations which commit human rights violations. Accordingly, a new method of approach is needed to remedy human rights committed by TNCs in the context of international trade.

5 Current International Human Rights Laws On International Trade

5.1 Philosophical Principles Necessitating Laws to Protect International Trade

The concept laws are necessary to protect human rights in international trade, and international trade itself, is grounded in philosophy as much as it is in legal

⁶³ XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).

⁶⁴ XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).

⁶⁵ MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 31.

⁶⁶ FREDMAN, S. Human Rights Transformed Positive Rights and Positive Duties, 2008, p. 40.

⁶⁷ MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 31.

scholarship. Although TNCs, as corporations, are treated as separate entities, they are nonetheless created and ran by human beings. When looking at the common element of shared humanity in the chief executive officer and the human subject to oppression, the need to promote human rights should prevail.⁶⁸

TNCs' continuous oppression of individuals is not sustainable as it violates the social contract shared by all individuals existing in a shared space. When men encounter "obstacle[s] that are harmful to their maintenance in the state of nature" and such obstacles predominate that person's life to a greater extent than "that each individual can bring to bear to maintain himself in that state[,] [...] that original state cannot subsist any longer, and the human race would perish [...]".⁶⁹ Such is the current state of human rights violations in international trade. Individuals in third world countries are forced to surrender their freedom and liberty and work for an un-meaningful wage to produce goods for TNCs. At the end of their labor, they are left with no source of comfortable income, a life defined by harsh labor, and loss opportunities to enjoy life. This lower level of living cannot continue. The only option is for the "human race [...] [to] alter its mode of existence".⁷⁰

Under Jean-Jacques Rousseau's theory of social contract, the "cooperation of many" is necessary to create a sum of actionable forces in a society and an organized society itself.

These clauses, properly understood, are all reducible to a single one, namely, the total alienation of each associate together with all of his rights to the entire community. For first of all, since each person gives himself whole and entire, the condition is equal for everyone; and since the condition is equal for everyone, no one has an interest in making it burdensome for the others.⁷¹

As such, a system of international trade where production is off-sourced and divided should not create a system of power imbalance where one person asserts dominance and obstacles over another, such as the current situation today.

According to Rousseau, such a system cannot continue in perpetuity as "a society is required to treat each being with equal importance[]" in order for the society itself, and the individuals therein, to survive.⁷² It is therefore necessary to amend the current system of international trade created by TNCs to create a more fair and equal form of international trade for all.

⁶⁸ See HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 67.

⁶⁹ ROUSSEAU, J. *On the Social Contract, Or Principles of Political Rights*, 2019.

⁷⁰ ROUSSEAU, J. *On the Social Contract, Or Principles of Political Rights*, 2019.

⁷¹ ROUSSEAU, J. *On the Social Contract, Or Principles of Political Rights*, 2019, p. 12.

⁷² BILCHITZ, D. *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*, 2007, p. 181.

5.2 Human Rights Laws as a Form of Protecting International Trade

The current sources of laws protecting international trade and human rights tend to focus on state's actions, not corporation's actions. Notwithstanding, it is worth reviewing the pertinent laws as "[a] special responsibility to seek consistency between trade and human rights rule exists because of the universal recognition that human rights treaties define the standards of right and wrong treatment of civil society".⁷³

International law encompasses the "rules and principles of general application on dealing with the conduct of states and of international organizations with their relations inter se, as well as with some of their relations with persons, whether natural or juridical."⁷⁴ International law is not "law" in the common law sense where legislation and court rules create the law. Rather, international law includes:

[I]nternational conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.⁷⁵

Under this explanation of international law, the following documents constitute important sources of international human rights law. First, the charter to the United Nations. The beginning portions of this document provide: "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED, [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights to men and women and of nations large and small [...]".⁷⁶ By placing this emphasis on human rights at the beginning of the charter to the United Nations, the U.N. is signaling its dedication to promoting and protecting human rights. Other sources of international law include the (1) Universal Declaration of Human Rights (1948); (2) International Covenant on Civil and Political Rights (1996); (3) International Covenant on Economic, Social, and Cultural Rights (1966); (4) United Nations Convention on the Rights of the Child; (5) International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; (6) Declaration

⁷³ See HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 67.

⁷⁴ See HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 14.

⁷⁵ INTERNATIONAL COURT OF JUSTICE. Statute of the International Court of Justice, Article 38(1). <https://www.icj-cij.org/statute> (accessed April 17, 2024).

⁷⁶ BISSET, A. *International Human Rights Document*, 2014, p. 2.

on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1990); and (7) Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000).

5.3 Gaps in International Trade Human Rights Laws

Despite this plethora of international laws present to protect international human rights, there is a general inability to enforce international human rights law amongst state actors. The United Nations provides for few enforcement mechanisms. The Rome Statute of the International Criminal Court allows for “[j]urisdiction over some human rights violations via Art. 7 (enslavement, forceable transfer or persons, and sexual slavery) [...]”.⁷⁷ The Human Rights Council is another avenue, but even though it offers a periodic review for human rights violations, this is reserved for “[h]uman rights instruments to which a State is a party”.⁷⁸ Since these legal tools are aimed towards states, TNCs are automatically precluded from such review unless they are joined in with a case against a party state.

Under the Rome Statute of the International Criminal Court of the U.N. Human Rights Council, a state must sign and ratify the pertinent documents to be subject to the terms therein. Failure to do so equates to the institutions’ inability to offer an enforcement mechanism. In either case, a TNC likely will not come under the jurisdiction of either because it is a corporate entity, not a state actor or agent. It can neither sign nor ratify these statutes. Thus, the only conceivable way a TNC may come under the jurisdiction of either organization is if a state who had signed and ratified either document joined the TNC as a necessary third party. Even then, the TNC may have a strong argument the organization lacks jurisdiction to render a decision in relation to it.

Furthermore, international law is difficult to enforce against individuals and TNCs. This is because, as explained above, international law is not “law” as used in the ordinary legal sense. There is no international legal realm in which international law is able to exist, establish precedent, and mandate enforceability. Whatever jurisprudence may be established, TNCs can operate in the grey space between domestic law and international law. On one hand, they are subject to domestic law where they incorporate and carry out their principle places of business. On the other hand, their crimes are outside their domestic jurisdiction, and occur in the non-existent international law jurisdiction. As a result, the substantial jurisprudence coming out of domestic courts which safeguard human rights do not transfer to the international legal realm. At the same time, the human rights law which does exist

⁷⁷ BISSET, A. International Human Rights Document, 2014, p. 247.

⁷⁸ BISSET, A. International Human Rights Document, 2014, p. 247.

in the international realm cannot be applied to TNCs.⁷⁹ This juxtaposition creates a legal dilemma which requires new avenues to be pursued to enforce human rights in international trade.

6 Filling in the Gaps: Recommendations to Increasing Human Rights Laws in International Trade

As discussed up to this point, TNCs are the next phase of evolution in international trade.⁸⁰ International trade law is necessary to protect human rights and international trade itself. “Leaving the conceptual difficulty surrounding the notion of ‘corporate human rights’ to one side, what is now expected is that corporations-not unlike states-can be holders of duties to observe human rights”.⁸¹ However, TNCs are now able to mainly operate in a legal grey space in-between the requirements of domestic law and guidance of international law. Novel methods are thus needed to guide international law into filling in this grey space. Indeed, “international human rights law must be the blueprint used to design new trading rules and it must be the yardstick by which the success of these rules is measured”.⁸²

Although TNCs may dispute that the introduction of human rights law into their operation of international trade is not a practical notion, this argument is misplaced. The “legal protection of human rights inevitably give rise to economic markets [...] that are closely interrelated with political markets for the collective supply of public goods”.⁸³ “Well-fed, healthy, educated, enfranchised, rested, comfortably clothes, non-oppressed, non-marginalized, trusting workers are the essence of efficient, reliable, and loyal humanized engines of business”.⁸⁴ Additionally, the United Nation’s treaties addressing human rights were not per se enacted only to stop bad state actors. The concepts embodied within these treaties represent a global agreement human rights are necessary and should be respected by those in power.⁸⁵ Currently, the power of the State to protect international trade

⁷⁹ This is not to say that TNCs should not abide by these international treaties. Indeed, “it must ensure that third parties do not jeopardize people’s access to [the conditions established in United Nation human rights treaties.]”. BILCHITZ, D. *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*, 2007, p. 184.

⁸⁰ See MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 39-40.

⁸¹ MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 32.

⁸² HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 279.

⁸³ COTTIER, T.; PAUWELYN, J.; BÜRGI, E. *Human Rights and International Trade*, 2005, p. 51.

⁸⁴ HERNÁNDEZ-TRUYOL, B. & POWELL, S. *Just Trade*, 2009, p. 275.

⁸⁵ See BILCHITZ, D. *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*, 2007, p. 184.

is diminishing “in the face of globalization”.⁸⁶ Therefore, whether those in power are the states or powerful third-party actors in the form of TNCs, both have a duty to abide by human rights treaties under the spirit of this area of international law.

By protecting the basic human rights of laborers, these individuals’ productivity will increase, causing labor output and profits to rise so that the introduction of international human rights law into international trade will benefit TNCs in the long run. Many scholars have offered varying options for creating a method of enforceability in regards to TNCs and human rights.⁸⁷ Despite this, two optimal methods of integrating human rights into international trade law which is most likely to succeed and foster international human rights is through (1) contract law and dispute resolution and (2) a corporate social agreement.

6.1 Contract Law

Contract law offers a promising method of integrating human rights into international trade. TNCs must execute “contracts sophisticated in kind, big in numbers, and with many different parties” to participate in international trade.⁸⁸ By adding a human rights clause into international commercial trade agreements and contracts, the recognition and enforcement of human rights will become binding law in international trade.

Contract law itself is an attractive avenue to pursue the enforcement of human rights because it is necessary. The existence of the free market requires the “enforceable laws of contract”.⁸⁹ Private contract law is a novel method of enforcing human rights in international trade because it lies within both common law and international law and allows parties to create their own law through the contract itself. Absent a contract contravening public policy or being generally unenforceable, “rule of law does not interfere with the freedom of persons to enter into contracts [...]”.⁹⁰ Moreover, a contract is enforceable as a matter of law.⁹¹ Because a contract is enforceable as a matter of law, inserting a human rights clause therein will cause the protected human rights in the contract to become law.

⁸⁶ FREDMAN, S. *Human Rights Transformed Positive Rights and Positive Duties*, 2008, p. 31.

⁸⁷ LIKOSKY, M. *Law, Infrastructure, and Human Rights*, 2006, p. 170.

⁸⁸ WÓJTOWICZ, P. “Better safe than sorry” – A company executing independent contracts with a common commercial nexus should rather provide for matching arbitration clauses than rely on the ‘group of contracts’ doctrine, *Brazilian Journal of Alternative Dispute Resolution*, v. 2, n. 4, p. 225-232, 2020, p. 228.

⁸⁹ FREDMAN, S. *Human Rights Transformed Positive Rights and Positive Duties*, 2008, p. 42.

⁹⁰ CLARK JR., WM L. *Handbook of the Law of Contracts*, 1914, p. 318; WILLISTON, S. *A Treatise on the Law of Contracts*, 2007, p. 7.

⁹¹ See WILLISTON, S. *A Treatise on the Law of Contracts*, 2007, p. 3 (“The traditional definition of the term ‘contract’ is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” (citation omitted)).

The “heart of a ‘contract’ is [...] found both in its promissory nature and in its enforceability”.⁹² It is for this very reason a contract is an ideal method for enforcing human rights in international trade. For a contract to be enforceable, there must be a bargained for exchange for a promise and consideration given in contemplation of such. A promise is a “manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promise in understanding that a commitment has been made”.⁹³ For instance, a promise is rendered when a TNC and Third World manufacturer enter into a commercial buy and sell agreement. The promise is the manufacturer’s agreement to produce the goods, and the consideration is the TNC’s payment for such. The contract which the TNC and manufacturer enter into reflects their rights and obligation in the context of the of this promise and consideration. However, “once a contract is entered, the parties’ rights and obligations are binding under the law [...]”.⁹⁴

These types of commercial contracts are a pillar of international trade. Most corporations will not enter into a trade deal without such an international commercial contract. Because of the prevalence of commercial contracts amongst TNCs in international trade, inserting human rights as a contractual term creates an obligation for each party to abide by. An example of a model human rights contract is as follows:

Section 1: Human Rights Commitment. Corporation and Manufacturer agree neither party shall violate any Human Rights in any manner. Violation of this section by either party shall be considered a breach of this Agreement, and all remedies available under section [insert breach section here] shall be made available.

1. “Human Rights” as used in Section 1 means all rights and privileges stated in the Universal Declaration of Human Rights (1948) (see Exhibit A).

Inserting such an obligation into an international commercial obligation causes this provision to become “binding under the law [...]”.⁹⁵ Therefore, should a party violate this clause, it would be in breach of the contract’s terms and liable under the contract and any applicable remedies available by law.

If TNCs were to adopt human rights clauses on a widespread scale, there is potential for our society to see human rights extended globally. As explained above, international trade concerns a myriad of people in all walks of life in over

⁹² WILLISTON, S. A Treatise on the Law of Contracts, 2007, p. 3.

⁹³ WILLISTON, S. A Treatise on the Law of Contracts, 2007, p. 16.

⁹⁴ WILLISTON, S. A Treatise on the Law of Contracts, 2007, p. 5 (citing *Transp. Workers Union of Am., Local 290 By and Through Fabio v. Southeastern Penn. Transp. Auth.*, 145 F.3d 619 (3d Cir. 1998)).

⁹⁵ WILLISTON, S. A Treatise on the Law of Contracts, 2007, p. 5.

multiple nations. Utilizing international trade as a vehicle for human rights will allow human rights protections to touch and concern individuals, people groups, and sectors current human rights treaties may not be able to access.⁹⁶ Thus, using international commercial contracts as the means of inserting human rights into trade will not only protect human rights in international trade, but also result in a global enhancement of welfare.⁹⁷

6.2 Alternative Dispute Resolution as a Means of Enforcing International Human Rights

Dispute resolution, especially international commercial mediation and international commercial arbitration, offers the ideal means of enforcing these international trade contracts with human rights clauses. The reason for this is threefold, first dispute resolution is widely used in international commercial contracts; second, dispute resolution creates a body of law such that international trade and TNCs are no longer in the grey area of law; and third, dispute resolution in the form of arbitration creates binding law upon the parties who agreed to arbitrate.

Dispute resolution clauses “are common in consumer contracts and employment contracts [...]”.⁹⁸ Mediation and arbitration are commonly used options for resolving disputes by TNCs in their international commercial trade agreements. These alternative dispute resolutions are truly international as they are a “complete detachment of the most traditional categories of any domestic legal system, [and represent] and entirely original, peculiar and functional category [.]” to resolve disputes.⁹⁹ Regarding arbitration, the effects of globalization are such that “it is impossible to conceive of [a] modern economy[.]” without arbitration.¹⁰⁰ “[C]ommerce today requires [...] an expediated justice[.]”¹⁰¹ as such, “the most typical international case is an arbitration agreement with ensuing arbitral proceedings between two parties [...]”.¹⁰² Looking to mediation, it is widely used by TNCs in international commercial trade disputes because mediation allows the parties to

⁹⁶ See FREDMAN, S. Human Rights Transformed Positive Rights and Positive Duties, 2008, p. 40 (explaining globalization itself “should not be seen as an end in itself, but only as a means of enhancing welfare[.]”).

⁹⁷ See FREDMAN, S. Human Rights Transformed Positive Rights and Positive Duties, 2008, p. 40.

⁹⁸ SHONK, K. What is an Arbitration Agreement? <https://www.pon.harvard.edu/daily/conflict-resolution/what-is-an-arbitration-agreement/> (accessed April 17, 2024).

⁹⁹ GEVAERD, J. Internationality and commerciality in the Uncitral Model law: a functional and integrative analysis, *Brazilian Journal of Alternative Dispute Resolution*, v. 1, n. 2, p. 19-38, 2019, p. 27 (explaining the internationality test as set up in the UNCITRAL Model Law on International Commercial Arbitration).

¹⁰⁰ ATHENS WORLD CONFERENCE ON WORLD PEACE THROUGH LAW. 1964, p. 386 (emphasis omitted).

¹⁰¹ ATHENS WORLD CONFERENCE ON WORLD PEACE THROUGH LAW. 1964, p. 386.

¹⁰² GRAHAM; TROTMAN; NIJHOFF, M., *Essays on International Commercial Arbitration*, edited by ŠARČEVIĆ, 1989, p. 5.

reach a peaceful solution and maintain their business relations.¹⁰³ In either case, the majority of international commercial trade cases arising from TNCs' agreements will be decided by a tribunal or mediator.

Because international commercial mediation and arbitration are heavily relied upon by TNCs in their international commercial agreements to resolve disputes, any disputes regarding human rights will arise within these settings. It is precisely because of this international aspect of international arbitration and mediation that human rights violations occurring within international trade can be placed within a legal jurisdiction. Any decision rendered by a tribunal, or any new contract entered into as a result of a dispute resolution process, becomes, in effect, an expansion of public policy and new, binding law upon the parties.¹⁰⁴ Thus, when the TNCs adopt human rights clauses into their contracts, arbitration and mediation will become the means through which international human rights are enforced.¹⁰⁵ Dispute resolution's function as an enforcement mechanism creates, for the first time, some resemblance of a legal arena. As discussed above, because "[t]he laws which regulate commercial transactions [...] are different in each country[,]" and there is no true international legal realm, "articles of an arbitral agreement" eliminate the difficulties which arise from TNCs existing in the grey space between domestic and international law.¹⁰⁶

Through dispute resolution, TNCs are no longer able to freely operate outside of domestic law in the unenforceable international legal realm. Rather, arbitration and, in part, binding mediation offer enforcement mechanisms in this grey area in which TNCs can be held liable for breach of their international commercial trade agreements. When TNCs adopt the human rights clause this paper proposes, they are then obligated not to violate any human rights. This obligation, like all obligations within an international commercial trade agreement, is subject to the dispute resolution clause of the contract.¹⁰⁷ Accordingly, any violation of human rights will be sent to arbitration or mediation, where it will then be affirmed that a breach of the trade agreement occurred, and the violating party will be held liable.

In short, dispute resolution is the means through which human rights law will be enforced in international trade. Dispute resolution presents a novel mechanism

¹⁰³ ATHENS WORLD CONFERENCE ON WORLD PEACE THROUGH LAW. 1964, p. 395.

¹⁰⁴ See TRACHTMAN, J. The Domain of WTO Dispute Resolution, *Harvard International Law Journal*, v. 40, p. 333-377, 1999, p. 338-339.

¹⁰⁵ See DRAHOZAL, C. Is Arbitration Lawless? *Loyola of Los Angeles Law Review*, v. 40, n. 1, p. 187-215, 2019, as reprinted in *Brazilian Journal of Alternative Dispute Resolution*, v. 1, n. 2, p. 97-120, 2019, p. 101 ("An arbitrator's authority is based on contract [...]." p. 101 (citing WAT, S. Default Rules from Mandatory Rules: Privatizing Law Through Arbitration, *Minnesota Law Review*, v. 83, 1999, p. 725).

¹⁰⁶ ATHENS WORLD CONFERENCE ON WORLD PEACE THROUGH LAW. 1964, p. 386.

¹⁰⁷ WILLISTON, S. A Treatise on the Law of Contracts, 2007, p. 5.

for societies, governments, and individuals to enforce human rights on the global arena.

6.3 Corporate Social Agreement

In addition to these recommended legal measures, TNCs should consider entering into a corporate social agreement to respect and sustain human rights. In other words, TNCs' internal policies also need to be altered to effectuate change in international trade.¹⁰⁸

The proposed social contract would alter TNCs' corporate policies to incorporate a uniform commitment to honoring human rights. It would be a mere recognition on behalf of the corporation "no man has a natural authority over his fellow man"¹⁰⁹ and the "responsibility to respect human rights has its roots in the universal expectation that business enterprises should not harm the dignity of people".¹¹⁰ As the International Bar Association explained,

A human rights policy commitment is a high-level, public statement that the business will respect human rights. The commitment should serve as a critical source of the business's leverage – that is, its ability to influence others to respect human rights – because it sets a clear expectation for its business relationships, including entities in its supply chain, contractors, and customers. In order to be effective, a policy statement should be based on engagement with key stakeholders and embedded throughout the business through appropriate governance, internal controls, processes, incentives and training.¹¹¹

The TNCs corporate policy commitments would be a form of a social contract amongst the TNCs internally, the global trade network, and global citizenry. It should consist of a concise statement of what is considered acceptable and unacceptable treatment of human beings in the chain of international trade. The United Nations Global Compact has already started exploring how corporations can uplift human rights while conducting business by proposing seventeen goals human rights

¹⁰⁸ See FORSYTHE, D. *Human Rights in International Relations*, 2000, p. 191 ("[I]f one could affect the national policies of these TNCs in this small number of states, one could greatly affect TNCs' global impact.").

¹⁰⁹ ROUSSEAU, J. *On the Social Contract, Or Principles of Political Rights*, 2019, p. 6.

¹¹⁰ INTERNATIONAL BAR ASSOCIATION. *IBA Practical Guide on Business and Human Rights for Business Lawyers*. <https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4> (accessed April 17, 2024), p. 22.

¹¹¹ INTERNATIONAL BAR ASSOCIATION. *IBA Practical Guide on Business and Human Rights for Business Lawyers*. <https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4> (accessed April 17, 2024), p. 19.

goals and offering resources to assist TNCs in achieving such.¹¹² In addition to global policy, TNCs can also benefit from consulting with the heads of religious institutions to arrive at a universal agreement as to what constitutes human rights. In this case, the religious leaders could create an agreed-upon statement as to what is universally considered human rights across all religions.

After consulting global policy and uniform statements from religious leaders as to what is considered human rights, the TNCs will then have a firm basis from which to develop, adopt, and propagate this corporate social agreement. This, in turn, allows corporations to take a strong social stance in favor of human rights and against any breach of such in international trade. The adoption of such, furthermore, is likely to benefit the TNCs: “Businesses themselves may justify the adoption of human rights policies by reference to good reputation. The benefit to be reaped from espousing a stance supportive of human rights is seen as outweighing any ‘free rider’ problem”.¹¹³ Thus, the creation of a universal social corporate agreement amongst TNCs not only holds the TNCs socially responsible for uplifting human rights in international trade, but also offers another mechanism for protecting human rights.

7 Final Considerations

International trade is intricately connected to human labor. The laws associated with both international trade and international human rights are naturally intertwined. Up to and until the post-modern era, governments, rulers, and the political elite were the primary facilitators of international trade. The goods of which were produced by human labor. As a result, the international laws which were developed during this time were aimed, first, at protecting international trade and ensuring economic prosperity, and, second, at protecting human rights.

The dawn of the post-World War II era signaled a shift in the landscape of international trade with the rise of TNCs. For the first time, international trade was not led by the states themselves, but by private corporations led by various wealthy individuals. As a result of this new era of international trade, international human rights laws have yet to come into the post-modern era and continues to primarily focus on states’ actions. TNCs are thus able, and currently are, to commit human rights violations in the pursuit of profit. Although philosophy and history show such economic disparity cannot continue in perpetuity, current human rights

¹¹² See UNITED NATIONS GLOBAL IMPACT, 17 Goals to Transform Our World. <https://unglobalcompact.org/sdgs/17-global-goals> (accessed April 17, 2024).

¹¹³ See MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001, p. 38.

laws are generally insufficient to address these violations. Because international human rights laws are directed primarily towards states, and even then requires the states' assents, TNCs can operate in a grey space outside of domestic law in the arene of unenforceable international law.

Given all of this, a new method of international law is necessary to protect human rights from the widespread effects of globalization. Contractual clauses and dispute resolution provide such methods. Because international trade agreements are a pillar to the industries of TNCs, the insertion of human rights clauses into these agreements would create an obligation for the parties not to violate human rights. This obligation has the power of law because it is results from a bargained-for exchange. Dispute resolution provides for an enforcement mechanism. Through arbitration or mediation, dispute resolution eliminates the grey space TNCs are operating in by enforcing their international commercial trade agreements, including the human rights clauses. Additionally, the universal infusion of a social corporate agreement fosters social responsibility to protect human rights amongst TNCs. All in all, contract law, dispute resolution, and a social corporate agreement present novel methods of creating and enforcing human rights in the ever-evolving realm of international trade.

Direito contratual e resolução de disputas como meios inovadores para resolver violações internacionais de direitos humanos no comércio internacional

Resumo: Este artigo examina a relação entre o comércio internacional e o crescimento das violações aos direitos humanos, oferecendo a resolução de disputas, o direito contratual e um acordo social corporativo como meios para resolver essas questões. O objetivo deste artigo é apresentar soluções para o aumento das violações de direitos humanos no comércio internacional, pois, ao longo da história, o comércio internacional tem sido um pilar na união de sociedades, culturas e povos. Com o crescimento do comércio internacional, também houve o desenvolvimento do direito comercial internacional. Uma característica chave da era pós-moderna é a inserção de corporações transnacionais em todos os elementos da sociedade e cultura internacionais. Um resultado direto dessa influência é o aumento drástico nas violações internacionais de direitos humanos, onde os indivíduos não conseguem encontrar proteção sob as leis internacionais de direitos humanos ou nos tribunais domésticos estrangeiros, pois tais leis e tribunais não têm jurisdição sobre corporações transnacionais, criando um ciclo perpétuo de violações de direitos humanos no comércio internacional. Este artigo apresenta uma opção potencial para remediar essas violações por meio da resolução alternativa de disputas, do direito contratual e de um acordo social corporativo. Este artigo aplica metodologias de pesquisa qualitativa e comparativa. O estudo inclui uma visão geral da literatura histórica e filosófica para estabelecer como o desenvolvimento do comércio internacional e dos direitos humanos têm estado consistentemente conectados. Além disso, o artigo analisa as leis internacionais e estatais para explorar as lacunas criadas pelos precedentes legais contemporâneos, que falham em conter as violações de direitos humanos no comércio internacional. Ao estudar as violações de direitos humanos no contexto do comércio internacional e a legislação internacional pertinente, este artigo conclui que uma combinação de resolução alternativa de disputas, direito contratual e acordos sociais corporativos oferece uma abordagem inovadora para resolver os problemas de direitos humanos enfrentados pela comunidade internacional. A importância deste estudo é chamar a atenção para as violações de direitos humanos que ocorrem na era pós-moderna como resultado do comércio internacional. Especificamente, este

artigo visa apresentar uma solução viável para as violações internacionais de direitos humanos, que pode ser implementada nas áreas em que o direito internacional falha em proteger os indivíduos nessas situações.

Palavras-chave: Contrato. Resolução de Disputas. Comércio Internacional. Direito Internacional. Trabalho. Corporações Transnacionais.

References

AMERICAN TRADING INTERNATIONAL. A Brief History of International Trade and Its Importance Today. <https://www.american-trading.com/news/history-of-international-trade> (accessed April 15, 2024).

ARABLOUEI, R. & ABDELFAH, R. Who The Uyghurs Are and Why China Is Targeting Them. <https://www.npr.org/2021/05/31/1001936433/who-the-uyghurs-are-and-why-china-is-targeting-them> (accessed April 17, 2024).

ATHENS WORLD CONFERENCE ON WORLD PEACE THROUGH LAW. 1964.

BILCHITZ, D. Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights, 2007.

BISSET, A. International Human Rights Document, 9th ed., 2014.

CLARK JR., WM L. Handbook of the Law of Contracts, 1914.

CONNECTAMERICAS. The Evolution of Trade: From Barter to Mobile Commerce. <https://conexio-nintal.iadb.org/2017/03/06/la-evolucion-del-comercio-del-trueque-al-movil/?lang=en> (accessed April 17, 2024).

COTTIER, T.; PAUWELYN, J.; BÜRGI, E. Human Rights and International Trade, 2005.

DRAHOZAL, C. Is Arbitration Lawless? *Loyola of Los Angeles Law Review*, v. 40, n. 1, p. 187-215, 2019.

FORSYTHE, D. Human Rights in International Relations, 2000.

FREDMAN, S. Human Rights Transformed Positive Rights and Positive Duties, 2008.

GEVAERD, J. Internationality and commerciality in the Uncitral Model law: a functional and integrative analysis, *Brazilian Journal of Alternative Dispute Resolution*, v. 1, n. 2, p. 19-38, 2019.

GRAHAM; TROTMAN; NIJHOFF, M., Essays on International Commercial Arbitration, edited by ŠARČEVIĆ, P. 1989.

HERNÁNDEZ-TRUYOL, B. & POWELL, S. Just Trade, 2009.

HOOKE, M.B. The East India Company and the Crown 1773-1858, *Malaya Law Review*, v. 11, n. 1, p. 1-37, 1969.

HUSTON, R. People, Places & Cultures. <https://open.library.okstate.edu/culturalgeography/> (accessed Sep. 7, 2023).

INTERNATIONAL BAR ASSOCIATION. IBA Practical Guide on Business and Human Rights for Business Lawyers. <https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4> (accessed April 17, 2024).

- INTERNATIONAL COURT OF JUSTICE. Statute of the International Court of Justice, Article 38(1). <https://www.icj-cij.org/statute> (accessed April 17, 2024).
- KALIA, R. Multinational Corporations and the Third World, *India Quarterly: A Journal of International Affairs*, v. 38, n. 3-4, 1982.
- LIBRARY OF CONGRESS. America at Work, America at Leisure: Motion Pictures from 1894 to 1915. <https://www.loc.gov/collections/america-at-work-and-leisure-1894-to-1915/articles-and-essays/america-at-work/> (accessed April 17, 2024).
- LIKOSKY, M. Law, Infrastructure, and Human Rights, 2006.
- MACROTRENDS. NIKE Gross Profit 2010-2023/NKE, <https://www.macrotrends.net/stocks/charts/NKE/nike/gross-profit> (accessed April 17, 2024).
- MUCHLINSKI, P. Human Rights and Multinationals: Is There a Problem? *International Affairs*, v. 77, 2001.
- NATIONAL GEOGRAPHIC. Industrialization, Labor, and Life. <https://education.nationalgeographic.org/resource/industrialization-labor-and-life/> (accessed April 17, 2024).
- NIKE. Find a Nike Store. <https://www.nike.com/retail/directory> (accessed April 17, 2024).
- PELZ, W. A People's History of Modern Europe. <https://library.oapen.org/bitstream/handle/20.500.12657/45627/5/610071.pdf> (accessed April 17, 2024).
- ROUSSEAU, J. On the Social Contract, Or Principles of Political Rights, 2019.
- SHONK, K. What is an Arbitration Agreement? <https://www.pon.harvard.edu/daily/conflict-resolution/what-is-an-arbitration-agreement/> (accessed April 17, 2024).
- SONG, C. The History of the Silk Road in China. <https://www.chinahighlights.com/silkroad/history.htm> (accessed April 17, 2024).
- TRACHTMAN, J. The Domain of WTO Dispute Resolution, *Harvard International Law Journal*, v. 40, p. 333-377, 1999.
- UNITED NATIONS GLOBAL IMPACT, 17 Goals to Transform Our World. <https://unglobalcompact.org/sdgs/17-global-goals> (accessed April 17, 2024).
- UN Tourism. Silk Road. <https://www.unwto.org/silk-road> (accessed April 17, 2024).
- WHITFIELD, S. Slaves on the Silk Road <https://www.ucpress.edu/blog/36815/slaves-on-the-silk-road/> (accessed April 17, 2024).
- WICKHAM, C. The Other Transition: From the Ancient World to Feudalism, *Past & Present*, n. 103, p. 3-36, 1984.
- WILLISTON, S. A Treatise on the Law of Contracts, 2007.
- WÓJTOWICZ, P. "Better safe than sorry" – A company executing independent contracts with a common commercial nexus should rather provide for matching arbitration clauses than rely on the 'group of contracts' doctrine, *Brazilian Journal of Alternative Dispute Resolution*, v. 2, n. 4, p. 225-232, 2020.
- WOLFF, A. Speech on Paradigm Lost? US Trade Policy as an Instrument of Foreign Policy. https://www.wto.org/english/news_e/news18_e/ddgra_09feb18_e.htm (accessed April 15, 2024).
- XIUZHONG, V.; CAVE, D., LEIBOLD, J.; MUNRO, K.; RUSER, N. Uyghurs for sale. <https://www.aspi.org.au/report/uyghurs-sale> (Accessed April 17, 2024).
- 50 MINUTES, The Industrial Revolution, 2017.

Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

CARPENTER, Lindsey L. Contract Law and Dispute Resolution as Novel Means to Resolve International Human Rights Violations in International Trade. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 07, n. 13, p. 87-114, jan./jun. 2025. DOI: 10.52028/rbadr.v7.i13.ART05.USA
