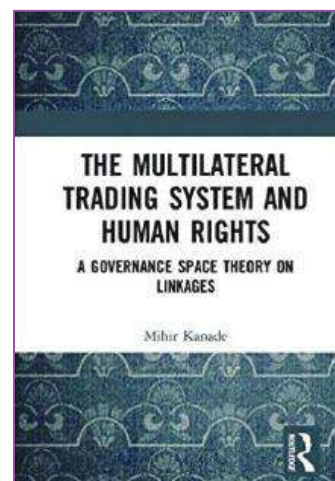


## Book Review

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# The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages

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*Pratyush Sharma\**

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The Governance Space framework provides the theoretical framework for appropriately identifying linkage-categories with distinct features wherein linkage-issues between MTS and Human Rights arise.

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### Introduction

The discourse and debate around perpetual and continued peace, effective human rights, multilateral trading system and financing originated after the end of the Second World War. These sectors were considered to be important areas to be worked on in order to stop the repeat of war. Understanding of peace and human rights developed as a direct response towards the Holocaust, loss of young men at the battlefield and other associated tragedies. Protectionist trading practices and inward-looking financial structures, on the other hand, were understood to be the causes of the war as 1930s saw the Great Depression in United States and unsustainable economic, financial and trading practices which led to rise in nationalism across Europe.

After ravages of Second World War, the victors were better prepared this time with respect to institution building of Global Governance as compared to after the First World War. Global institutions were differentiated into issue areas concerning peace and human rights; reconstruction, development and macroeconomic stability; and international trade. United Nations (UN) was conceptualised as a global body to work towards peace and human rights which got established in 1945. Bretton Woods Institutions (the World Bank and International Monetary Fund) were established to provide loans to countries of the world for capital projects (to reconstruct Europe and later to the global South) and

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\* Ph.D student at UN University of Peace, Costa Rica; Correspondent, DCR.

infuse in them macroeconomic stability in the countries of the world, respectively. In trade, the idea of having an International Trade Organisation (ITO) was conceived but could not be realised. However, ITO was refurbished as General Agreements on Tariffs and Trade in 1947 and post various negotiations, the World Trade Organisation (WTO) was established in 1994.

As described above, human rights centric UN and trade concerning WTO were set up in this way not by coincidence but, by design (both, normatively and operationally) through independent rounds of negotiations thus, having different value systems from each other. Any issue arising in international relations concerning human rights is directed to be addressed at UN and WTO receives only trade related disputes, apart from framing trade policies. Issues and disputes arising due to intersectional nature of human rights and trade falls through the interstices of these global bodies. Disputes concerning human rights violations originating due to trade agreements cannot be addressed completely in either of these organisations owing to their workings in a separate tight compartment. This problem in redressal mechanism due to differentiation in value system espoused by these international organisations has been referred to by the author as 'Fragmentation of International Law'. There have been some convergences between the two. For example, WTO now has been seen to be sympathetic towards human rights and environment related issues, but still leaves a lot to be desired.

The author in first chapter provides an introduction to study of linkages by talking about the strands of human rights system which has been differentiated

into capitalist block-led International Covenant on Civil and Political Rights (ICCPR) and communist block-led International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite the end of Cold War rhetoric, these differences in understanding of human rights have not disappeared. There is also a discussion on basic rules of WTO's legal architecture. They are: maximum permissible tariff or 'tariff bindings'; two limbs of non-discrimination principle between States (Most Favoured Nation status and National Treatment principle); and elimination of quantitative restriction.

### Governance Space Theory

The existing literature in the field of linkages between multilateral trading system (MTS) and human rights (HR) lacks a systematic theory to analyse such a linkage. Most of the literature has looked on individual linkages between MTS and HRs, or compilations of different essays dealing with different linkages. The other set of literature have looked at MTS and HRs linkages without a theory and theoretical framework. Studies, therefore, reflect a complete issue-by-issue segregation so that there is no coherent framework for analysing the linkages. The other set collectively deals with all human rights issues affected by trade as if they were a single issue which deserve a common solution. This book, thus, fills an important knowledge gap by constructing a systemic and systematic theoretical framework on linkages, which the author names 'Governance Space Theory'. The author explains in detail as to why the popular concept of 'policy space' is limiting and does not capture the entire gamut of linkages between MTS and HRs.

This 'governance framework' develops three 'linkage categories':

- Issues where WTO laws and policies limit the governance space of States in fulfilling their HRs obligations. This linkage category has been explained through the General Exception Clauses in Article XX of GATT 1994. It is despite the presence of Art XX that States' ability to invoke it in order to protect HRs is seriously circumscribed.
- Issues where WTO laws and policies do not limit governance space but creates a permissive environment for States to abuse that space. This linkage category has been explained through the case study of MTS and labour rights at WTO.
- The third linkage category includes issues where MTS inherently creates a limiting environment for States to use the governance space they already have by tapping into their unequal capabilities to benefit from the system. The case study on the inability of various developing and least developed countries to benefit from Aid-for-Trade policy of WTO.

The author prior to getting into the linkage categories and case studies, devotes several pages to conceptualising the 'governance space' of states by dealing with topics like 'governance and the role of the state'; 'governance and governance space of states'; 'good governance'; relationship between governance space, governance and good governance (the governance space-human rights vector) and ultimately proposing and explaining the governance space framework.

The author in succinct manner explains that States continue to be under an obligation to ensure their HRs obligations

while fulfilling their WTO obligations. This is because States have undertaken both sets of obligations, and since they have equal normative value, both must be fulfilled. However, in order to manage their international obligations, it is a *sine qua non*, that States must first be able to understand the nature and scope of the linkage-issues, how they arise, and what impacts are on their abilities to fulfil their human rights obligations. It thus, becomes extremely important that the governance space framework enables policy makers within and beyond States to understand the nature of the diverse linkages and devise appropriate approaches to solutions.

### **Right to Development: Sustainable Development and WTO**

The chapters in the book make it clear that adverse impacts of MTS on HRs obligations of State cannot be resolved under the framework of normative hierarchy of HRs norms over trade norms. The book further goes in detail in explaining that proposition of HRs obligation of States supersede WTO obligations by virtue of Article 103<sup>1</sup> of the UN Charter, as well as the principle of *jus cogens*<sup>2</sup>, operate only in a limited set of circumstances, which in any case, are not likely to occur. Thus, in order to ensure that States do not end up making trade rules and policies which undermine their own HRs obligations, it is necessary to not only provide moral arguments justifying internalisation of HRs considerations in WTO processes, but also legal arguments.

The legal rationale can be found in the Preamble of the Marrakesh Agreement which incorporates 'sustainable development' as one of the principal objectives of the WTO. Thus, Free trade is

not an end in itself. It is the means to an end, the end being achieving sustainable development which is the institutional objective of WTO. The 2030 Agenda and the Sustainable Development Goals (SDGs) give shape and texture to the institutional objective of the WTO with respect to sustainable development. Right to Development (RtD) as the appropriate pathway for ensuring that States engage in free trade in a manner that they fulfill their institutional objective of sustainable development and do not undermine them.

RtD is Sustainable Development in human rights form. It firmly makes development a human right<sup>3</sup>. RtD insists that a holistic Human Rights Based Approach to Development (HRBA), must not merely link human rights to development objectives, but must consider development itself a human right. RtD places obligations on States both internally to respect, protect, and fulfill human rights, but also externally at international organisations, in order to ensure that economic and other policies promote human rights and do not undermine them. This means that duty of States is to ensure the RtD is not limited to their own jurisdictions, but extends beyond borders and also permeates through international decision-making at International Organisations.

States must create conducive atmosphere within the country towards realisation of RtD and direct it's Foreign Policy and international relations towards cooperation with other states in order to realise RtD for itself. As a corollary, it can be understood that foreign aid and development cooperation in North-South flow shall not be looked at as a generosity or privilege, but as a duty of States as

part of the duty to ensure international cooperation as mentioned in the UN Charter (Art. 55) as well as the Declaration on RtD.

RtD allows States, especially Developing and Least Developed Countries (D-LDCs), to stake a claim as agents of their citizens that ensuring development within the State is their right, and that other States and international organisations have a duty to not undermine the same (coterminous with the first linkage-category, i.e. availability of Governance Space is a right).

All States, including the D-LDCs, have an obligation to respect, protect, and fulfill human rights internally to ensure development, and that they cannot pass off violations of the rights of their citizens under the false label of development (coterminous with the second linkage-category, i.e. not abusing Governance Space is a duty). Acknowledging the lower threshold of infrastructural and technological capabilities which D-LDCs have, RtD also frames international cooperation as a duty of States, particularly the Developed Countries (DCs) (coterminous with the third linkage-category i.e. capability to use Governance Space is a right).

The book has attempted to fill a significant theoretical void in the study of linkages between MTS and human rights, but has also attempted to be policy-oriented in terms of approaches to solutions. The Governance Space framework provides the theoretical framework for appropriately identifying linkage-categories with distinct features wherein linkage-issues between MTS and Human Rights arise. RtD, being coterminous

with the Governance Space framework, and in light of the institutional objective of sustainable development of WTO, is identified as the appropriate approach to resolving linkage-issues within each linkage-category. However, the author provides the caveat by mentioning that adopting an RtD approach as the way forward to addressing the impacts on governance space does not mean that there is a one-size-fits-all solution. Applying RtD approach to linkages-issues under the three linkages-categories (as briefly discussed above) not only permits, but requires different solutions to be adopted to different problems.

## Endnotes

- <sup>1</sup> Article 103 of UN Charter: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”
- <sup>2</sup> *Jus Cogens*: is a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted.
- <sup>3</sup> UN Commission on Human Rights (UNCHR) in a resolution approved in 1977 first recognised the RtD as a human right.

## DEVELOPMENT COOPERATION & CLIMATE DIPLOMACY

The India-France initiative of the International Solar Alliance (ISA) is one of the key global efforts towards climate-responsible international development cooperation. Celebrating 3 years of the launch of the initiative on 30th November 2015, ISA shifts the global attention towards renewable and sustainable energy, away from fossil fuels and coal based sources. The joint effort connects solar resource rich countries lying fully or partially between the Tropics of Cancer and Capricorn, with an opportunity to tap into the solar energy. A total of 71 countries have signed the ISA Framework Agreement out of which around 48 countries have ratified the same.

A climate friendly development cooperation aims to integrate the norms of sustainable development with the goals of achieving Agenda 2030. The International Solar Alliance is an effort in this direction through programmes and activities launched to build capacity, share knowledge, research and innovation and provide assistance towards solar financing and technical cooperation.

ISA also collaborates with other multilateral bodies like the International Renewable Energy Agency (IRENA), Renewable Energy and Energy Efficiency Partnership (REEEP), International Energy Agency (IEA), Renewable Energy Policy Network for the 21st Century (REN), United Nations bodies, bilateral organisations, Corporates, industries, and other stakeholders. The purpose to bring all stakeholders on one platform ensures that each can contribute towards the goal of increasing utilisation of solar energy in member countries.

*Source:* International Solar Alliance. (2018). About ISA. International Solar Alliance.