



Towards Development: Human Rights and the WTO Agenda

Cancun, Mexico, September 12, 2003

The *Towards Development* panel discussion was co-sponsored by *Rights & Democracy* (Montreal) and *3D? Trade - Human Rights - Equitable Economy* (Geneva). The panel was scheduled during the WTO's Fifth Ministerial Conference as it offered a unique forum for bringing people together to examine international trade rules and practice from a human rights perspective. The panel, and this report of it, aim to depolarise discussions about human rights in trade by dispelling some of the recurring concerns expressed both by developing and developed countries.

Jean-Louis Roy (President, Rights & Democracy) **stressed** in his introduction that the purpose of the discussion was for experts to exchange views about what a human rights framework could offer to the international trading system, and in particular, how it could further the sustainable development agenda within the WTO.

Mary Robinson (Director, Ethical Globalization Initiative and former UN High Commissioner for Human Rights¹) **welcomed** the opportunity for dialogue that this panel provided, recalling that such dialogue is urgently needed in light of the worrying trend towards a "two-speed" world. 'Violence and unrest cannot be separated from the growing disparities between rich and poor, between the powerful and the powerless.'

Mary Robinson stressed the necessity of dialogue between trade, human rights and environmental practitioners as a step towards greater coherence in the international system, and towards achieving globalization that promotes the enjoyment of human rights for all. She made it clear that she was not suggesting that the WTO should take over responsibility for international human rights. She reiterated the need for a more supportive relationship between economic organization and social objectives, and described how the international human rights framework can contribute to this.

Before doing so, she pointed out some of the misunderstandings surrounding discussion of human rights in the WTO. For example, the term 'human rights' has been associated with conditionality and with requirements that all countries immediately implement strict labour standards. She recalled that human rights include the right to adequate food, to safe water, to education and to health as much as to freedom from torture or freedom of religion. Ms Robinson acknowledged the fear that the economically strong might use human rights arguments hypocritically, saying that such fears are part of a wider concern that international rules must not be abused.

¹ The full text of Mary Robinson's presentation is available on the Ethical Globalization Initiative's website at www.eginitiative.org/documents/wtocancun.html

The speaker stressed that there is no essential conflict between the objectives of international human rights law and international trade law, which both seek to improve standards of living. Yet she recognized the potential for conflicts, citing as examples the current WTO negotiations relating to agriculture, access to essential medicines, and provision of basic services such as water and education, where trade policies can have potentially negative impacts on people's enjoyment of their human rights. She cited the example of rules on intellectual property that have led to excluding many people from access to medicines. Such failures of equity, she said, undermine the legitimacy of national and global political institutions, as well as the quality of life of millions of people.

Mary Robinson called for a values-led, human rights approach to trade policy. Such an approach would increase participation by those affected by trade policy, as well as contribute to trade policy which is more transparent, accountable and responsive to the needs of the people it is said to serve, as well as being more sustainable and more legitimate.

A human rights approach adds value also because it is based on legal standards agreed to by governments. As all WTO Members are parties to at least one of the six principal human rights treaties, they have voluntarily undertaken to enforce trade rules *and* to respect and fulfill human rights. Mary Robinson referred to the accountability mechanisms that the UN human rights treaty monitoring bodies offer to all those concerned with human rights.

The speaker referred to the Consultative Board on the future of the multilateral trading system, chaired by Peter Sutherland, saying that civil society should encourage the Board to address how to create a stronger sense of shared purpose between trade and human rights experts, how to practically apply human rights principles to ensure that new trade rules respond to the needs of all countries, and to examine what possible levers there are in rich nations which will turn the tide away from narrow self-interest action towards more inclusive and fair policies. She said that through reform of the WTO, we can shape a more values-led globalization, one that ensures the fundamental rights of all people are met in a sustainable way.

'The Millennium Declaration's objective was to make globalization work for all the world's people. It doesn't. If we had a more human rights-based approach it could,' Mary Robinson concluded.

Susan Whelan (Minister for International Cooperation, Canada²) **recalled** that the connections between trade and human rights affect all of us, adding that Canada believes that trade and human rights are mutually reinforcing, and that trade plays a significant role in furthering human rights. She described the Canadian International Development Agency (CIDA)'s view that the rule of law, good governance, democratization and human rights are necessary for sustainable development.

The Minister welcomed the WTO's August 2003 decision on TRIPS and public health³ that allows developing countries without pharmaceutical manufacturing capacity to import cheap generic drugs in order to address public health problems. Although the decision is only a small part of the solution for those suffering from serious illnesses in developing countries, it does demonstrate that trade policy-makers are paying attention to human rights issues, she said.

Minister Whelan stressed that economic growth is critical to development and reducing poverty worldwide, as is progress on social and environmental matters. She emphasized the importance of taking the needs and interests of developing countries into account – for instance through improved market access for products from developing countries – if trade is to benefit those living in poverty.

² The full text of Minister Whelan's presentation is available on CIDA's website at www.acdi-cida.gc.ca/cida_ind.nsf/852562900065549f85256228006a0064/3dfc731aa5775ab085256d9f0052cafd?OpenDocument

³ *Decision of the WTO General Council of 30 August on the TRIPS Agreement and public health*, on the WTO website at www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm

The Minister referred to Canada's support for efforts to develop coherent political, economic and social policies, including policies that promote and protect human rights, recognizing that there is a role in this endeavour for non-governmental organizations, the private sector, labour unions, and local communities, as well as government. The Minister recalled that gender equality is an integral part of CIDA's programming, which includes working to ensure that the multilateral trade rules take into account the differential impacts of trade on women and men.

An important challenge that Minister Whelan highlighted is to enable people living in poverty to have a say in decisions that affect their lives. She recalled how those who already have access to markets, infrastructure and land are more likely to gain from trade liberalization than those without. Women, indigenous peoples, and the disenfranchised begin from a disadvantaged position, so work is needed to address the root causes of inequality, to ensure that trade liberalization does not exacerbate inequities.

Mariclaire Acosta Urquidi (former Under-Secretary of state for Human Rights and Democracy, Government of Mexico) **emphasized** that human rights are universal, indivisible, interdependent and interrelated, which means that the international community must promote and protect them all on an equal footing and with the same emphasis, within their domestic jurisdictions and internationally.

The Vienna Declaration adopted in 1993 by the 171 States at the World Conference on Human Rights, made it clear that “democracy, development and respect for human rights and fundamental freedoms are interdependent and reinforcing,” adding that “democracy is based on the fully expressed will of the people to determine their own political, economic and cultural systems and their full participation in all aspects of their lives.” It follows from this that development is not only about economic growth, but also about the enjoyment of rights. Development means the entitlement of all peoples to a minimum amount of human dignity brought about by economic growth with equity, freedom and participation. Development, like democracy, is a human right.

Ms Acosta said that implementation of human rights is difficult because of the deep-rooted underlying causes of human rights violations. She said that solutions must be obtained through a sustained effort coupled with international cooperation, including financial cooperation. She regretted the lack of binding legal consequences for States who violate human rights, and the even greater lack of consequences for non-state actors who contribute to the violation of human rights. The speaker further regretted that the ICESCR provides for 'progressive implementation' of the rights it protects, thus leading to the false impression that they are dependent on the available resources of the States to comply with their obligations.

Ms Acosta said that in theory human rights norms prevail over international trade and investment agreements by virtue of being *jus cogens* in accordance with the UN Charter. In practice however the opposite is true: contrary to human rights law, international trade law provides for strong sanctions for the States that violate its provisions.

The speaker challenged the widespread notion that development and enjoyment of human rights upon which it depends, are a consequence *solely* of economic growth, as it would follow from this argument securing of human dignity can only be achieved through these means. Rather, she asserted that the key variable in the mix of factors affecting human rights and hence development is the “political space” in which decisions are taken about who participates in policy decisions and who benefits from economic growth and socio-economic development.

High GDP or high governmental revenues do not explain socio-economic equity and civil freedom per se, but rather elite commitment to these values and to human rights standards. By the same token, repression and oppression do not lead to economic growth. Ms Acosta recalled D. Forsythe's findings that whilst some poor countries have achieved a respectable record on growth

and a respectable record on socio-economic equity, there are others where torture, mistreatment, political detention and denial of socio-economic goods and services has more to do with elite privilege than with national development.

Ms Acosta pointed out that the same analysis is applicable to the international order, and concluded that the issue is really a political one, adding that human rights instruments have an extraordinary potential for mobilizing ordinary people. 'That's why they exist. We just have to push harder.' she said.

Dominique Njinkeu (Executive Director, International Lawyers and Economists Against Poverty) **affirmed** that economic empowerment through trade is necessary to promote and protect human rights. Economic analysis, particularly done in the South should help determine how such empowerment can be achieved – and a multidisciplinary approach is necessary to ensure we move towards development in the WTO. This requires bringing together two sets of scholars that have so far had very little working collaboration.

Dr Njinkeu said that an economics perspective is necessary to ensure that the WTO agreements result in more trade for all participants in the multilateral trading system, and in a way consistent with human rights. He shared the lessons he drew from participating in trade work in Africa over the last five years. He said that at the moment there is almost no relationship between commitments made in trade negotiations and actual production and trade expansion. He cited some of the reasons for this lack of relationship.

One reason is that, for many African countries, concessions are made in international trade agreements without adequate consideration of the impact on their development objectives. In several cases commitments made in the WTO contradict those made in other negotiating fora. A second – and well-documented – problem is the lack of proper understanding of the implications of WTO commitments. A third problem concerns institutional weaknesses in many developing countries. In telecommunications for example, there is only a weak link between a regulatory framework that could ensure that privatisation and liberalization lead to competition and price reduction and thus promote universal access. Another institutional weakness is inadequate coordination in the public sector, between the public sector and civil society, and between the national capital and Geneva trade-formulation processes, which prevent pro-development proposals from being formulated and negotiated in the WTO.

Dr Njinkeu stressed that trade rules that can promote human rights are those that enhance the capacity of developing countries to compete. For instance, in view of the decline in agricultural commodity prices, it is essential that some agro-processing takes place in developing countries. Otherwise growth may not be strong enough to improve welfare.

He argued that the priority should be to secure rights in crucial areas such as food security and access to essential services given the number of people involved in agricultural activities in developing countries who still lack access to water, health and education. The speaker raised a key question that faces us: 'How much do we know of the links between trade agreements, trade expansion, economic empowerment and human rights?'

Given the above the economic prerequisites, the speaker identified several requirements for human rights to be promoted in the WTO. First, one should address the fact that trade negotiations focus on exchanging market access concessions, rather than promoting development. The supply capacity and other participation difficulties of developing countries need to be given more prominent role beyond weakly worded acknowledgments of special and differential treatment. Dominique Njinkeu also reflected the need to better articulate negotiation objectives and reflect these in the negotiations. In turn, for these to promote long-term development and human rights, they should reflect developing countries' development concerns.

Paul Hunt (UN Special Rapporteur on the Right to Health⁴) stressed that human rights are a firmly established feature of international law. The right to health, for instance, has normative depth and is supported by an extensive body of law. The challenge now is to apply human rights, to factor them into national and international policies, including policies relating to economics and trade. Paul Hunt focused his presentation on how the right to health can help to formulate robust and equitable trade policies.

He recalled that the right to health includes the right to health care, but goes well beyond this, encompassing *inter alia* adequate sanitation, and access to health-related information. Like other human rights, it has a particular preoccupation with people who are disadvantaged, vulnerable, or living in poverty. Although subject to progressive realisation, the right to health imposes obligations of immediate effect. It demands indicators and benchmarks to monitor the realisation of the right. In addition, developed states have some responsibilities towards the realisation of the right to health in poor countries.

Professor Hunt stressed that the right to health brings an analytical framework which can be helpful to policy makers - including those working in trade. He illustrated this by considering an element of the right to health - essential medicines - in relation to a Least Developed Country (LDC).

Under the right to health, the LDC has to do all it reasonably can to ensure that an essential drug is:

- (1) *available* to its people. To this end, the LDC should use available TRIPS flexibilities, for example, by using compulsory licence legislation.
- (2) *accessible* to all its people, especially those living in poverty. The drug cannot be accessible only in urban areas or only to the rich or only to some ethnic groups. He pointed out that the accessibility requirement might call for creative thinking about delivery mechanisms such as mopeds for nurses. Accessibility could also require the LDC to avoid imposing import duties that make that drug inaccessible to people living in poverty.
- (3) of *good quality*, for instance sold before its expiry date. The good quality requirement also means the LDC must have in place a system for monitoring and checking essential drug quality.

In summary, the right to health analysis of *availability*, *accessibility* and *good quality* can, in relation to essential drugs, help to identify practical and precise policy interventions that will help to ensure all in the LDC enjoy this element of the right to health.

Professor Hunt also underscored two other crucial elements of the right to health that arise in his LDC example: *international assistance and cooperation* (IAC) and *accountability*. Regarding IAC, rich states and other powerful actors have some responsibilities to help LDCs realise the right to health for their people - something LDCs cannot do alone. Rich states should for instance actively facilitate the use by the LDC of the flexibilities in the WTO TRIPs Agreement (TRIPs), and help LDCs develop a sound health infrastructure.

He also recalled the crucial importance of tackling the problem of neglected diseases, recalling that 90% of the world's health research and development relates to the health problems of 10% of the world's population, which is unconscionable and contrary to the human rights principles of non-discrimination, equality and enjoyment of the right to health.

Regarding accountability, the right to health brings with it the crucial requirement of accessible, transparent and effective mechanisms. The net of accountability extends to all actors with human rights responsibilities. So, in the example of an essential drug in an LDC, the LDC should be held

⁴ The full text of Paul Hunt's presentation is available on the website of 3D? Trade - Human Rights - Equitable Economy, www.3dthree.org (forthcoming, January 2004).

to account - as should rich states in relation to their responsibilities to assist the LDC, with a view to enhancing the effectiveness of the relevant policies.

Professor Hunt closed with four points. *One*, there is no inherent or fundamental conflict between the objectives of international human rights and the objectives of international trade. *Two*, an economic or trade policy that carefully takes human rights into account is more likely to be fair, sustainable, and meaningful to those living in poverty. The old fears that human rights will only be used negatively as a form of disguised protectionism are being replaced by awareness that human rights can play a *positive* role in identifying equitable, balanced, pro-poor trade policies. *Three*, human rights and their analytical frameworks can bring added rigour to economic and trade policies, especially in relation to those living in poverty. *Four*, whilst human rights have a real contribution to make to economic and trade policies, this represents a major new challenge for the human rights community, challenge which demands as much creativity, commitment and vigour as earlier stages in the collective struggle for human rights.

Morten Rostrup (International President of Médecins sans frontières – Doctors Without Borders) **warned** that it is too early to celebrate the WTO's August decision on TRIPs and access to medicines.⁵ He pointed out two reasons that should temper celebration. First, it might be difficult for small countries to take advantage of the flexibilities acknowledged in the August decision, particularly given the risk that many might come under pressure to apply strict intellectual property rules rather than facilitate access to low-cost medicine. Also, bilateral and regional trading agreements are also undermining the 30 August decision, so those concerned with human rights and access to medicines must watch developments in fora such as the Free Trade Area of the Americas (FTAA). Second, this decision is only a temporary arrangement, pending amendment of the TRIPs Agreement to confirm the access to medicines decision.

The discussion following the panellists' presentations raised the important point of the risks of seeking to integrate human rights in the WTO. One speaker who has worked on trade and the environment drew human rights advocates' attention to the environmentalists' experience that the more one increases the role of the WTO in dealing with non-trade issues, the more the WTO will impact on the development of these issues. He cited the environmental example: ten years ago, many environmentalists wanted to bring environmental considerations into the WTO. This resulted in the establishment of the WTO Committee on Trade and Environment (CTE), which has produced negligible results. More importantly, the environmental issue is reflected in the Doha Development Agenda, yet almost no environmentalists are happy with the mandate crafted by trade officials, nor with the way that negotiations have been going. He suggested that the strategy should aim to gain recognition of human rights and related values in the WTO, but in a way that insulates those issues from the trade regime, in order to avoid giving the WTO too much competence on human rights-related issues. Another speaker added that more dialogue between those working on human rights and on the environment in trade would be useful.

In response to a question about whether it would be possible to use the WTO to impose higher human rights standards on a country that has a poor human rights record, Mary Robinson responded that this is precisely a concern of developing countries: that human rights would be used as a pretext to limit exports of products from developing countries. She re-emphasized that it is not the WTO's role to implement improved enjoyment of human rights at the national level, but recalled that international law imposes duties to cooperate towards the realization of human rights, recommending the report of the International Council on Human Rights Policy on this subject: *Duties sans frontières*.⁶ Mary Robinson illustrated the practical impact of human rights rules and procedures in the economic context, citing her experience of how groups in China have been

⁵ Decision of the WTO General Council of 30 August on the TRIPs Agreement and public health, see footnote 3, above.

⁶ *Duties sans frontières: Human rights and global social justice*, May 2003, available on the website of the International Council, www.ichrp.org

turning to international human rights mechanisms to address issues such as HIV/AIDS, and domestic violence. Another speaker recalled that all WTO Members have ratified at least one human rights instrument, and that whilst WTO rules may challenge countries' ability to implement their social and human rights obligations, one needs to make human rights an ally of trade policies for developing countries.

Considerable discussion turned around whether trade liberalization promotes economic growth, and whether economic growth really leads to poverty reduction. One participant pointed out that in parallel to economic growth many countries have experienced increased poverty. Another speaker gave figures to illustrate that the world is not doing so well under trade liberalization: the only country that is doing well is China – which has been a WTO member for less than two years.

On governance issues, the discussion centred on (1) the responsibility of private actors (2) and global governance. Paul Hunt recalled that States' international human rights obligations include the responsibility to regulate transnational corporations (TNCs), and that States cannot shed that responsibility by pointing to a TNC that is acting inconsistently with human rights. Another speaker concurred that it remains the responsibility of governments to ensure quality of services and non-discrimination in accessing them, adding that business groups also have responsibilities. Speakers acknowledged the difficulty of defining which human rights norms apply to non-State actors. One participant highlighted the difficulty of identifying where the line should be drawn between the human rights responsibilities of private business operators and those of the State in countries with bad or failed government.

Mary Robinson referred to the Business Leaders' Initiative on Human Rights – modelled on the business leaders initiative on climate change – in which CEOs of major corporations are engaging on human rights issues. Several of these companies are taking the Sub-Commission draft norms on human rights responsibilities of TNCs⁷ and trying them out, these companies say saying that these norms are on the fact of it, acceptable to them.

On the question of interaction between the private sector and public interest NGOs, Mary Robinson raised the concern that we are today witnessing a privatization of power worldwide. Several speakers concurred that human rights groups should be part of trade policy-formulation and application at every stage of the process. One participant asked what kind of governance mechanisms we should be working towards in order to incorporate civil society and parliamentary dimensions much more vigorously into global governance. He pointed out that in many countries, there would be an outcry if economic and government policy at the national level was generating the kind of inequality as it is at the global level, adding that the international level does not provide for the separation of powers that we would expect in any democracy at the national level.

Some speakers felt that there is willingness in the international economic organisations to engage with civil society on equity and human rights issues, but stated the need for mechanisms to carry this through. The 'cultural' divide between trade and human rights delegations was recognized, and the work 3D? Trade - Human Rights - Equitable Economy and the Ethical Globalization Initiative on bridging this divide was welcomed.

Mary Robinson called attention to the need to strengthen the role of the World Health Organisation (WHO) and other public-interest organisations in relation to the WTO and the International Financial Institutions (IFIs) and said that civil society could play a role in promoting this. Susan Whelan added that it would be useful to look at strengthening the role of UNCTAD. She also recalled that for the first time, in June 2003, a meeting had been held at the WTO on how trade affects women and men differently and how trade should take into account gender and human rights issues.

⁷ *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, adopted by the UN Sub-Commission for the Promotion and Protection of Human Rights, 13 August 2003, on the web at www1.umn.edu/humanrts/links/norms-Aug2003.html