



HUMAN RIGHTS advocacy

Integrating Human Rights into WTO!

FAYAZUDDIN AHMAD

As a successor of the General Agreement on Tariffs and Trade (GATT), the WTO since '95 has not only focused on setting rules for trade liberalization, but also for the implementation of these rules through its Dispute Settlement Body (DSB). However, as members of international society are becoming more and more interrelated, decisions of the WTO impact not only on trade relations among member states, but also various other factors such as human rights. Although there is no special onus - as such - on the WTO to consider human rights when they make decisions even so, the responsibility to protect human rights as members of global society is imposed on various international organizations through human rights mainstreaming movement by the United Nations (UN). In addition, member states of the WTO are also members of various international human rights treaties and have responsibilities to protect human rights as well.

Trade liberalization concepts that the WTO focuses are deregulation and removal of barriers to market access which operates under certain principles of trading system such as non-discrimination, reciprocity, binding and transparency. These principles are clearly expressed through various WTO legal agreements. It has been argued that the liberalization of international trade will lead us to a promotion of human rights, and effectiveness of international organizations. However, it is debatable whether the WTO's competency in promoting human rights along with the concept of free trade is compatible with the general idea of human rights, especially since, free trade does not always guarantee fair trade. The non-discrimination principle mentioned in International Covenant on Economic, Social and



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Cultural Rights (ICESCR) cannot be equated with equal treatment. After the WTO ruled that the European Committee is violating the concept of free trade and made them cut down barriers, a huge number of small producers has already gone out of production.

Many studies show that free trade policies adopted by the WTO widen gaps between rich and poor countries, and infringe individuals' Economic, Social and Cultural Rights instead of promoting them. Consequently, rights which are produced by the WTO's trade relationship are instrumental values rather than fundamental human rights that are recognized in international society. Yet, it does not mean that the WTO should not incorporate human rights into its policies and decisions. Most of human rights movements in the early days were focused on civil and political rights, and how to refrain states from violating individuals' human rights. However, in these days, not only states but also non-state actors such as Multi-National Corporations are

becoming violators of human rights. Therefore, efforts to regulate those non-state actors are being made through the UN and NGOs.

Member states of the WTO have responsibilities to protect the human rights of their citizens as they ratified other international human rights instruments as well. As of July 2007, the WTO had 151 member states and these states also ratified at least one of the basic international human rights instruments. States which ratified those instruments have an obligation to submit regular periodic reports to the Committees formed under those instruments and are monitored by these Committees. Unfortunately, the enforcement system of international human rights law is not as powerful as that of the WTO. Despite that the UN High Commissioner for Human Rights makes it clear in one report that trade law should be interpreted consistently with human rights law as it is an international customary law and it will bring attention to vulnerable individuals.

As of December 2007, 128 states

ratified ICESCR among 151 WTO member states. Unfortunately, there are some conflicts between protecting ESCR and promoting liberalism. For those states that ratified ICESCR have a responsibility to promote their citizens' ESCR progressively under the principle of non-discrimination and set minimum core standards to protect ESCR. Officially, the WTO does not have any formal agreements with the UN since it was the GATT. However, there has been an exchange of letters on cooperation between the UN Secretary General and the WTO Director General. Mainstreaming human rights programme by the UN is not only limited to its affiliated organizations but to all organizations which are relevant to the works of the UN, even though there are concerns about the possible institutionalization and materialization of human rights which threatens to accompany the incorporation of human rights into the WTO.

So, how to integrate human rights into the WTO? It is obvious that claims which are not directly related to trade law cannot be dealt with in the WTO. Therefore, one of the most practical ways to protect human rights from the perils of trade liberalization is to strengthen the international human rights monitoring system. Integration of human rights into the WTO can be achieved by a broader interpretation of the WTO legal agreements. If there are conflicts between human rights and WTO rules, WTO cannot favour human rights but can only interpret WTO rules in a way which is compatible with human rights obligations. Vienna Convention states how to interpret international treaties and advises state parties to interpret it in 'good faith' in accordance with its object and purpose.

In past cases the GATT decided to exclude any consideration of the

Convention on International Trade in Endangered Species (CITES) on the grounds that not all members of the GATT had ratified this convention. This can be seen as a narrow interpretation of WTO legal agreements. In addition to a broader interpretation of WTO agreements, adaptation of opinions from experts from diverse backgrounds is necessary before decision making. DSB panels should be independent from their own interest, but at the same time, should be proficient in international trade law and liberal trade system. This standard also applies to members of the Appellate Body, though access to dispute settlement system is only limited to WTO members and no one else can participate.

It is necessary to incorporate human rights into WTO, but at the same time, it is important to think of how to practice this in reality. Even though the WTO is not human rights focused organization, this change will help WTO to bear a responsibility as a member of the global society. The WTO was established to regulate international trade relationship among its member states based on liberalism. The WTO must take responsibility by considering factors such as human rights in all of its decisions. In reality, it would be difficult to incorporate human rights into trade liberalization because of the undervaluation of ESCR and weaker monitoring system of human rights. However, we should bear in mind that member states of WTO are also members of many international human rights conventions. In result this will undoubtedly lead to a bright future for global society in which all members including members of the WTO can cooperate harmoniously to improve current human rights situation.

The writer is an Advocate-Legal Researcher, recently completed his second LL.M. in International Development Law and Human Rights from the University of Warwick, UK as a Chevening Scholar.

RIGHTS corner

Protection of social rights

THOMAS HAMMARBERG

ENORMOUS sums of tax payers' money have been poured into the banking system in order to prevent a global financial meltdown. Ordinary people have been forced to pay for the reckless practices of a few. On top of this, there are already signs that it is the less wealthy who will suffer most from the recession the world is now facing.

Increased unemployment will place a further burden on state budgets and there will be less space for social assistance at a time when needs will inevitably grow. This is likely to cause tensions and perhaps even social unrest. There is a risk that xenophobia and other intolerance will spread further and that minorities and migrants may become targets. Extremists might seek to exploit and provoke such tendencies.

This is an extraordinary challenge for governments today - requiring wise leadership. It is also obvious that no country can resolve these major problems alone. Multi-lateral cooperation is a must and inter-state institutions should demonstrate political determination and solidarity beyond narrow national interests. Rules to regulate the financial markets are a necessary first step, but not sufficient alone. It is also necessary to develop concrete programmes which promote social cohesion and prevent any watering down of the already agreed human rights standards.

These standards include economic and social rights, several of which are listed in the 1948 Universal Declaration of Human Rights. One source of inspiration is the former US President Franklin D. Roosevelt, who had to deal with the aftermath of the financial crises at the end of the 1920s. One of the four freedoms he defined in his State of the Union speech in January 1941 was "Freedom from Want". Not only should human beings be able to express their opinions and to practice a religion freely, they should also be protected against repression and social misery.

The Universal Declaration of Human Rights establishes that human rights include the right to social security, the right to an adequate standard of living, the right to food, the right to education, the right to housing, the right to health, the right to work and the right to rest and leisure.

Such rights have since been legally recognized in United Nations and the Council of Europe treaties the latter through the European Social Charter of 1961 revised in 1996. These rights are furthermore covered through International Labour Organization (ILO) core conventions. They cover, for example, trade union rights, protection against forced labour and rules against the exploitation of child labour.

While economic and social rights must be regarded as an integral part of international human rights law, they have still not been fully recognised as justiciable rights in some European countries. This was obviously one reason why these rights were not incorporated into the 1950 European Convention of Human Rights but only later codified in the separate Social Charter. Some countries have been slow in ratifying the Revised Social Charter.

There may well be an ideological background to this hesitation. Some believe that government administration should not take full responsibility for providing possibilities for education, healthcare and a decent standard of living for all citizens. Some regard these rights as mere political aspirations. However, the fact that the implementation of economic and social rights could be controversial is no rational basis for treating these rights as less important or as radically different from others.

They deal with some of the most crucial issues on today's political agenda: the right to a job and acceptable working conditions, the right to go to school and have a meaningful education, the right to protection and care in situations of crisis.

They are agreed in international treaties and must not be seen as the "poor cousins" of civil and political rights. All human rights are interrelated, interdependent and indivisible and therefore should not be ranked in any hierarchy.

There are governments that accept this approach in principle but state that they just do not have the resources to meet these obligations. What is the answer to them?

Implementation of most human rights has a cost. It is true that some economic and social rights tend to be particularly expensive, for instance, the right for everyone to education or to health care. For this very reason, the agreed standards allow for a gradual implementation of rights - anything else would be unrealistic. Governments should establish minimum acceptable standards or core entitlements and at the same time strive to attain full implementation as soon as possible. They cannot postpone the realisation of these norms indefinitely.

To help achieve this goal, the definition of socio-economic indicators is particularly important. Such benchmarks have been developed in certain areas for instance, by UNICEF in the field of children's rights and the WHO in the field of healthcare and could be defined in other areas as well. If we do not implement economic and social rights, large numbers of the poor will remain marginalised on the edges of our society, and ultimately political and civil rights become devoid of all meaning. The notion of human dignity is key here and builds the bridge between civil and political rights on the one hand and social and economic rights on the other. By way of example, the European Court of Human Rights has commented that a wholly insufficient amount of social benefit or pension may, in principle, raise an issue under Article 3 of the European Convention on Human Rights, which prohibits inhuman or treatment.

Economic and social rights have not been defined in a vacuum; they are based on the experience of past crises and on the knowledge that ignoring social justice comes at an enormous cost. They can also serve as very useful guiding principles for political decision makers at a time when difficult choices have to be made.

We are in such a situation now and I would therefore like to support the statement of the Director-General of the ILO that we need 'prompt and coordinated government action to avert a social crisis that could be severe, long-standing and global.'

This requires a serious programme for the protection of economic and social rights.

Thomas Hammarberg is Commissioner for Human Rights, Council of Europe.

Source: Council of Europe. *Also available at the Commissioner's website at www.commissionercoe.int*

RIGHTS monitor

Hold torturers accountable



of the detention, and were not informed of the whereabouts of their relatives even when they made inquiries at police stations or lodged missing person complaints.

Some detainees said they were beaten during interrogation, and others said they were subjected to so-called "third degree" methods that amounted to torture. The detainees were stripped, hung upside down, severely beaten, subjected to electric shocks, and otherwise ill-treated. They were also threatened with the torture of their relatives, particularly female relatives. In 2007, the Andhra Pradesh Minorities Commission investigated the allegations. After interviewing those charged while they were still in jail awaiting trial, it reported that their injuries were "not self inflicted, these obviously arose during police custody custodial atrocities on young detainees all minority persons stand proved," and added that the fact that the detainees were not brought before magistrates within 24 hours "shows how the system has failed to protect the rights of detainees." The commission said that the detainees bore scars from violence, including some who showed signs of electric shocks.

In February 2008, relatives of victims and human rights defenders told a visiting team of investigators from the National Commission for Minorities about the illegal detention and torture of the young Muslims during the bomb blast investigations. In its report, the commission noted that it had received complaints that some were detained illegally and subjected to physical and mental torture, and that no lawyers were present during interrogation.

The team also noted that suspects said that they were not brought before a magistrate within the required 24 hours, and instead that the arrest dates were altered to indicate that officials had complied with the law. In its report, the commission expressed concern that police denied all accusations of torture, and noted that "action should be taken against those who failed to carry out their responsibilities within the framework of law and established procedures."

To date, no member of the state police involved in the cases has been charged with committing human rights violations. The Andhra Pradesh minister for minorities' welfare, Mohammad Shabbir Ali, who announced the compensation awards to the victims, told the Indian Express on November 13 that he does not want to blame the police because they "do their work based on information, and sometimes information can be wrong." "This stigmatises and alienates an entire community and makes counterterrorism efforts even more difficult. The police have a long way to go before they can build public trust that they are capable of addressing the scourge of terrorism," said Ganguly.

Source: Human Rights Watch.

LAW campaign

Ratify the Optional Protocol of CAT

SAIRA RAHMAN KHAN

GOVERNANCE in Bangladesh has its own culture of "power politics", that most leaders do not know how to exercise in a democratic framework. 'Power' in Bangladesh society and mindset is linked to 'control' and its demonstration in all relationships; as heads of family, organisations, and institutions and in the 'controlling power' of ministers and prime minister etc. It is this misuse of 'power' that creates corruption and impunity within the government system, regardless of what kind of government. Bangladesh has been ruled by martial law, elected governments and caretaker governments human rights violations by the state have never stopped. In a country known for the torture of accused persons in police remand and for oppressive laws, that will need very, very long and consistent campaign and a significant amount of pressure from all corners for any government to accede to such a process.

The UN Convention against Torture (CAT) was ratified by the Bangladesh government in October 1998 with a declaration regarding article 14 paragraph 1. In this regard, Bangladesh declared that it "will apply article 14 para 1 in consonance with the existing laws and legislation in the country." Bangladesh still does not have any legislation protecting victims/witnesses and criminal laws that offer compensation to the victim directly are rare. Furthermore, a state-appointed public prosecutor represents the victim and he/she conducts the case, assisted by the investigating police. The prosecutor's interaction with the victim is minimum and there are no reported cases where he/she has asked the court to award compensation directly to the victim (unless the law specifically says so).



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The reservation on article 14 paragraph 1 of the Convention, still in place 10 years after ratification, shows that the government does not want to do anything to ensure compensation and adequate medical treatment for victims. To date, no police officer or anyone belonging to any law enforcement agency in Bangladesh has been prosecuted for torture in Bangladesh and there is yet to be any legislation criminalising torture in compliance with the CAT. Instead, act of impunity have only been encouraged with the passing of 'bad laws' such as the Special Powers Act of 1974, the Indemnity Act-2003, which was made to ensure impunity to the armed forces and the police for killing, torture, arbitrary arrests and detention during the Operation Clean Heart in the late 2002 and early 2003, and the Emergency Powers Ordinance of 2007.

In order to initiate a campaign for the OP-CAT, the tools used in the present ICC campaign by the BCICC is not enough. "Power" does not mean misuse of authority or unlimited authority. Unfortunately, this way of thinking is prevalent in Bangladesh at all levels and spheres. In Bangladesh, even petty thieves are given a mass

beating before being handed over to authorities (in whose hands they will suffer more). Torture is commonly considered a 'just desert' for committing a crime. It will be a preliminary and difficult task for campaigners to alter this thought process, but this has to be tackled as a prerequisite to the OP-CAT campaign.

Therefore, in relation to the OP CAT campaign in Bangladesh, the campaign has to be more pro-active in doing all activities, like analysing laws, producing draft quality legislations in consultation with all stakeholders so that government officials can use it, work more at policy level as well as at grassroots, developing good working relationships with security forces through dialogues, education and trainings, working with the local government, etc. The campaign has to work on many areas at the same time. It should also be full time campaign, not occasional and not contingent on availability of funds.

This is the abridged version of the report "Why Bangladesh needs to ratify the Optional Protocol of Convention Against Torture".

The author is member, Odhakar.