TOWARDS DEVELOPMENT: HUMAN RIGHTS AND THE WTO AGENDA

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Mary Robinson (former UN High Commissioner for Human Rights)
Susan Whelan (Minister for International Cooperation, Canada)
Paul Hunt (UN Special Rapporteur on the Right to Health)
Mariclaire Acosta Urquidi (former Under-Secretary for Human Rights and Democracy, Mexico)
Jean-Louis Roy (President, Rights and Democracy)
Dominique Njinkeu (Executive Director, ILEAP)

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THE PANEL PRESENTATION OF PAUL HUNT

At the close of the Second World War, international law did not even mention the term human rights. Today, human rights are a firmly established feature of international law. They form part of the UN Charter and have been elaborated in a large number of international instruments - some of them legally binding treaties.

Since 1945, the human rights focus of the international community has been to negotiate and agree this basic corpus of international human rights law - and the international community deserves credit for its remarkable success.

But now the human rights focus is changing. The basic corpus of international human rights law is established and now it has to be applied - operationalised - brought to bear on national and international policy making. It has to be factored into policies relating to economics and trade.

This new focus, new challenge, demands new skills, a new human rights approach. It is no longer enough simply to insist that there is a right to health and that it must be constitutionalised and respected. We have to work out how the right to health can be implemented - how it bears upon economics - and how it can help to formulate robust and equitable trade policies.

In other words, human rights have come of age. They have matured, reached a new stage of development that brings new priorities and responsibilities - and they need new approaches and skills. The old skills are still essential - but they are not enough - additional skills are now needed.

We have a more detailed grasp of human rights - including economic, social and cultural rights - than is often realised. As UN Special Rapporteur on the right to health, I recently completed a mission to the World Trade Organisation, meeting with numerous members of the WTO secretariat, trade Ambassadors as well as other diplomats assigned to the WTO, and non-governmental organisations. A specific objective of the mission was to look at the right to health, trade and gender. Without exception, the meetings were constructive. The mission has only recently finished and I have not yet finalised my report - but what became clear to me during the mission was that it is not well understood that the right to health is supported by an extensive and nuanced body of law.

The right to health includes the right to health care - but it goes beyond health care to encompass adequate sanitation, healthy conditions at work, and access to health-related information, including on sexual and reproductive health. It includes freedoms and entitlements. It has numerous elements, including access to essential drugs. Like other human rights, it has a particular preoccupation with the disadvantaged, vulnerable, and those living in poverty. Although subject to progressive realisation, the right to health imposes some obligations of immediate effect. It demands indicators and benchmarks to monitor the progressive realisation of the right. Developed states have some responsibilities towards the realisation of the right to health in poor countries - we learn this from the Millennium Declaration, including MDG8, as well as the provisions on international assistance and cooperation in international human rights law.

In short, we know quite a bit about what the right to health means. Of course, there are grey areas - some of them extensive. And there are good faith disputes and disagreements, just as there are in economics and trade. But the important point is that the right to health is not just a slogan - it is not a bumper sticker - it has normative depth and something constructive and concise to say to economics and trade.

The right to health brings something else, too. It brings an analytical framework which policy makers - including those working in trade - might find useful.

Take one established element of the right to health - essential medicines - and consider it in relation to a Least Developed Country (LDC).

Under the right to health, the LDC has to do it all reasonably can to make an essential drug *available* to its people. For example, it might have to pass and use compulsory licence legislation - in other words to use the TRIPS flexibilities that are quite properly available to it. This analytical concept of *availability* is found in the literature on the right to health.

But the availability of the essential medicine is not enough. According to the right to health, the LDC has to do all it reasonably can to ensure that the essential drug is *accessible* to all, especially those living in poverty. The drug cannot just be accessible in the urban areas or to the rich or to some ethnic groups and not others. This right to health requirement of accessibility means one has to think creatively about delivery mechanisms: mobile clinics, mopeds for nurses, para-medics and so on.

The right to health requirement of *accessibility* might also mean that the LDC has to revisit any import duties it imposes on the essential drug, because import duties could make the drug inaccessible to people living in poverty.

But the right to health notions of availability and accessibility are not enough either - the essential drug has to be of *good quality*. Sometimes drugs have passed their expiry date and so have been rejected in the North - and only then are made available in the South. Sometimes the drugs have been interfered with. So the right to health requirement of *good quality* essential drugs means the LDC must have in place a basic system for the monitoring and checking of 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.[1]

[1] For completeness I note that the analytical framework mentioned here includes a fourth component - *acceptability* - which I have omitted in these remarks in the interests of brevity. Acceptability is identified in CESCR's General Comment 14.

This sketch underscores two other crucial elements of the right to health: *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.

I suggest that the rich states should not discourage a developing country from using the TRIPs flexibilities. On the contrary, they should actively facilitate the use of the flexibilities. They should help the LDC deliver the essential drug to all at affordable prices. They should help the LDC develop a sound health infrastructure. Health-related ODA deserves the most sympathetic consideration, especially given that at least four of the eight MDGs are health-related.

It is also crucial that rich states tackle the problem of neglected diseases. Today, 90% of the world's health research and development relates to the health problems of 10% of the world's population. This is unconscionable and a human rights issue of non-discrimination, equality and enjoyment of the right to health.

As for accountability - the right to health brings with it the crucial requirement of accessible, transparent and effective mechanisms of accountability. Those with human rights responsibilities must be held to account in relation to the dischange of their duties, with a view to identifying difficulties and making the necessary policy adjustments.

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

I close with four points.

One, there is no inherent or essential conflict between the objectives of international human rights and the objectives of international trade. At root, both aim to improve the well-being of individuals and communities. Of course, there *can* be conflicts between human rights and trade - but there is no fundamental contradiction which means they *must* be in conflict.

Two, an economic or trade policy that carefully takes human rights into account is more likely to be fair, sustainable, robust and meaningful to those living in poverty. The old fears that human rights will only be used negatively as a form of trade conditionality - as a form of disguised protectionism - those fears are being replaced by an 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, while human rights have a real contribution to make to economic and trade policies, we also have to recognise that this represents a major new challenge for the human rights community. We should approach this challenge with some humility because human rights do not provide all the answers. Moreover, this new challenge demands as much creativity, commitment and vigour as earlier stages in our collective struggle for human rights.

Professor Paul Hunt
Human Rights Centre

Law Department
Essex University
England

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