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Social, Economic and Cultural Human Rights Within the Legal System of the International Economic and Trade Regime

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presented by

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There is no effective universalization of human rights equivalent to globalization at the economic level. We are therefore being challenged at present to bridge the artificial division into human and economic rights (mainstreaming human rights in the UN-system). The fact that political and social human rights are equally binding in nature needs to be emphasized as the legal point of departure. This study proceeds in three steps

- 1) What type of human rights do we have in mind when we aim to correct the disastrous world trade regime?
- 2) What is their normative status and to what extent are they legally binding?
- 3) What influence do they exert on the world trade regime and how can they be enforced?

We need to recognize that the notion of an inferior status of economic, social and cultural rights compared to that of civil and political rights has become outdated, although some people still hold that view. In addition, a hierarchy of rights has gradually been emerging, depending on the extent to which they are regarded as legally binding; accordingly, some rights are regarded as non-negotiable absolute standards (*ius cogens*) to be enforced as binding obligations undertaken by all states. They are legally binding not only on States parties but on the large international organizations such as the World Bank, IMF and WTO whose existence is based on the foundation by and membership of individual states. This applies to both the classic political human rights and, in particular, the so-called „core labour standards“ (the right to form associations and to bargain collectively, the ban on forced and child labour and discrimination at the workplace) which were adopted by the International Labour Organization in 1998.

According to the dogma of law, trade, economic and human rights are inter-connected. Social human rights describe the fundamental aspirations and objectives of a community, and property and freedom rights have to fit in with them – not the other way round.

While abolishing the dividing line between economic and human rights is the theoretical point of departure, it is far more difficult to choose the right procedure, ie the political process and the legal instruments to enforce this. A key component in the enforcement of human rights would be to ensure respect for them in the early phases of policy formulation, and not in retrospect. An approach which seeks to prevent potential conflicts between treaty rights and human rights needs to pay attention to the following principles:

1. In the event of conflict between the rights and obligations resulting from treaties concluded by States parties within the framework of the WTO and the international code of human rights accepted by that same state, the latter shall take priority.
2. No provision in the WTO-treaties shall prevent the member State from taking the necessary steps to uphold, protect and respect both human rights - especially the rights to health, to food including water, housing and education - and core labour standards.
3. All economic and trade agreements concluded between individual states in the context of WTO-treaties shall contain explicit regulations specifying the obligation to respect, protect and uphold the relevant human rights. This

applies to the GATS- and TRIPS-Agreements as well; they shall be so supplemented as to regulate that in the event of conflict between States parties' obligations derived from the treaties and from human rights, the latter shall take priority.

4. In the event of proceedings before the Dispute Settlement Body, all regulations contained in the various agreements of the WTO-system which specify States parties' obligations shall be so interpreted as to be compatible with the relevant codified human rights.

Recently, proceedings in national law courts against human rights abuses have come to play an increasingly important part in the enforcement of social human rights. The study highlights the crucial role of such legal proceedings by citing the case of South Africa, where pharmaceutical companies attempted to enforce their property rights against South African legislation which sought to ensure the supply of affordable medicine for the population. In the end, the companies had to drop their court action. This example highlights the true hierarchy of rights: it is not property but the fulfilment of social rights and needs that comes first for the majority of people. Moreover, it illustrates the key role played by trade unions and non-governmental organizations in the enforcement of social human rights.

The study concludes that the prospects of claiming and implementing social human rights are good. Under the human rights regime, no distinction is made between economic and social human rights and the classic civil and political rights. They usually take precedence over property-related economic rights. This trend is further reinforced by the fact that human rights are increasingly being enshrined in national constitutions; in consequence, it becomes easier to enforce them or to sanction non-compliance. This effect is enhanced by more widespread recourse to the grievance, reporting and monitoring facilities at the UN-level, by the civil society as a form of counter-public and by legal action in national law courts. Yet this tendency can only be upheld successfully if the State maintains its capacity to meet human rights commitments even under pressure of privatization and deregulation in the wake of globalization. This capacity must be in place and be defended again and again. Trade unions have a special responsibility in this respect because, as organizations, they have a mandate to represent the concerns and rights of the working population and of those who depend on social, economic and cultural rights.

The complete text of the expert opinion comprising some 90 pages is available in German from lisette.kloeppe@fes.de (Ms. Lisette Kloeppe, Friedrich Ebert Stiftung, Godesberger Allee 149, 53170 Bonn).

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