WTO must consider human rights implications of GATS

A UN human rights body has called for human rights obligations and principles to be fully taken into account in the formulation and implementation of international economic policies, including in the area of trade in services. These recommendations of the Sub-Commission on the Promotion and Protection of Human Rights have been issued at a time when the ruinous effects of services liberalization programmes are increasingly coming to light.

by Chakravarthi Raghavan

GENEVA: The secretariat of the World Trade Organization and the WTO’s members in the Council for Trade in Services should include consideration of the human rights implications of international trade in services and the relevant reports of the UN High Commission for Human Rights in assessments of the trade in services and in services-related capacity-building and technical assistance activities, a UN human rights body of jurists and experts has urged.

The Sub-Commission on the Promotion and Protection of Human Rights has made this recommendation in a resolution on human rights, trade and investment.

The 26-member Sub-Commission of jurists and experts, a subordinate body of the UN Human Rights Commission, requested the High Commissioner for Human Rights to submit a report to the Sub-Commission at its session next year (usually in August) on human rights, trade and investment, and to present a comprehensive submission on human rights, trade and investment to the 5th Ministerial Conference of the WTO due to take place in Cancun, Mexico in September 2003. The High Commissioner was also requested to provide to the WTO her reports on trade in services and the impact of agriculture trade liberalization on development and the right to food.

This is one of a slew of resolutions and measures on economic, social and cultural rights, as also on several specific human rights issues including on women and contemporary forms of slavery, that were adopted by the Sub-Commission on 14 August. Other issues covered in the resolutions and measures were on the right to food, drinking water and attacking poverty. The Sub-Commission was due to consider some more resolutions and issues before winding up its 54th session on 16 August.

Heightened awareness

The Sub-Commission had before it a report on the WTO’s General Agreement on Trade in Services (GATS) and liberalization, the third in a series of reports on trade and human rights issues, from the High Commissioner Mary Robinson. Earlier reports from her had dealt with TRIPS and public health, and agriculture trade.

The resolution on GATS, human rights and investment, and the reaffirmation of rights to drinking water etc. come at a time of heightened awareness across the globe of the several deleterious consequences of the WTO and policies of privatization of water and other utilities, as well as the broader range of services liberalization, including the latest manifestations of their effects in Latin America.

The civil society movements in developing countries and elsewhere against GATS and liberalization of water and health services recently got a boost from an unexpected quarter: French President Jacques Chirac, who has been reported as having asked the EU Commission to reconsider such issues in the context of the EC single market and the Brussels Commission’s attempts to promote competition in all services inside Europe.

The French conservative newspaper, Le Figaro, recently undertook an investigation of the effects of water privatization in Africa and also a survey in other parts of the world. French companies have been taking the lead in getting contracts for privatized water supply, promoted in the developing world by the IMF and World Bank. The assessment of Le Figaro, in its 3-4 August issue, was negative.

In India, popular agitation is mounting over a French company, Suez, which under the new water policy has been given a contract to set up a water purifying plant and supply water to a residential colony of the upper middle class near Delhi, by tapping water from the Ganges from an irrigation canal that may deprive agriculturists of water, and laying pipelines to transport the water to near Delhi. In Kerala state in the south-west of India, tribals are campaigning against several corporations, but mainly the US giant Coca-Cola, for drawing some 150,000 litres of water a day for the plant, which has resulted in drying aquifers in the area within two years.

The WTO secretariat and Ambassador Alejandro Jara, the Chilean chair of the Special Sessions of the Council for Trade in Services which are running the WTO services negotiations, claimed recently that the new round of GATS liberalization is no threat to public services.

Separately, the EU Trade Commissioner Pascal Lamy denied, at a July consultation forum (of NGOs and businesses) on GATS in Brussels, that the EC was seeking the “dismantling of public services or privatization of public companies.” When some NGOs challenged him and asked him to explain the EC demands on some countries on water services, Lamy responded that the EC had made “requests on water distribution” and that a number of developing countries “need big change in distribution.”

The EC has submitted “requests” to various countries at the WTO (India is one such) on water supply services. In terms of GATS, in any WTO member where a private operator is allowed to provide services along with the government as in Delhi, the general GATS disciplines, including most-favoured-nation (MFN) treatment to all member countries, might apply to that service. However, in the light of these concerns (e.g., in Canada where the water issue is high on the political agenda in terms of supplying water to the US), the WTO secretariat (like the EC’s Lamy in Brussels) have tried to distinguish between privatizing water and privatizing water distribution to customers through pipes etc.

Human rights and globalization

On globalization and its full impact on human rights, the UN Sub-Commission requested the special rapporteurs Joseph Oloka-Onyango and Deepika Udagama to present in person their report to the Sub-Commission next year, in the expectation that their final report will be submitted to the Human Rights Commission at its 60th session. Oloka-Onyango and Udagama had been members of the Sub-Commission till last year but have been replaced this year, though they still continue to be the special rapporteurs. The Sub-Commission’s resolution would enable them to finalize their report and present it in person.

The two jurists earlier, and Mary Robinson in her own reports, have underscored that the obligations of the Human Rights Declaration as well as of the economic, social and cultural rights, make it incumbent on all governments, as well as organizations and institutions like the WTO, IMF and World Bank, to observe the human rights obligations in all their instruments and activities.

The resolution on human rights, trade and investment:

   \*  reaffirmed the relevance of human rights obligations in all areas of governance and development, including international and regional trade, investment and financial agreements, policies and practices, and requested all governments and economic policy forums, including the WTO, World Bank and the IMF, to take international human rights obligations and principles fully into account in international economic policy formulation and implementation;

   \*  reiterated that sanctions and negative conditionalities are not appropriate ways of promoting integration of human rights in international economic policy and practice;

   \*  recommended that the WTO Working Group on Trade and Investment, the WTO Ministerial Conference and other relevant bodies include consideration of human rights and sustainable development implications of foreign direct investment and international investment frameworks in their decision-making about future work, and

   \*  encouraged the High Commissioner to request observer status with the WTO Council for Trade in Services.

The Sub-Commission also called for the establishment of a group of experts, a special rapporteur or a working group to receive information and undertake effective measures with regard to human rights violations or abuses committed by transnational corporations (TNCs) and other enterprises.

On the right to drinking water and sanitation, the Sub-Commission subscribed to the view that various obstacles linked to realization of the right impeded economic, social and cultural rights, and that equality was an essential element for effective participation in realization of the right to development and to a healthy environment.

On housing and property restitution, in the context of refugees and displaced persons, the Sub-Commission urged all states to ensure free and fair exercise of the right to return to one’s home and habitual residence and to develop effective and expeditious legal, administrative and other procedures to ensure free and fair exercise of this right. Adoption and application by states of laws designed to or resulting in loss or removal of this right posed serious impediments to return and reintegration of refugees and internally displaced persons. The compensation remedy should only be used when the restitution remedy was not possible.

The issue of human rights and TNCs proved at this, as in earlier sessions, to be a matter of some controversy and difference between a whole range of public interest human rights NGOs and the Sub-Commission expert David Weisbrot of the USA, particularly on issues about non-binding norms and guidelines or enforceable rules and regulations.

In a resolution, the Sub-Commission suggested that the draft norms on responsibilities of TNCs and other business enterprises with regard to human rights should be widely circulated, and that the relevant working group and the Sub-Commission itself should continue efforts to explore possible mechanisms for implementing the draft norms - such as use of norms as a basis for determining purchase of goods and services from and the partnerships developed with TNCs.

The Sub-Commission also suggested the establishment of a group of experts, a special rapporteur or a working group to receive information and undertake effective measures on human rights violations or abuses by TNCs and other enterprises.

Combating extreme poverty

Extreme poverty, the Sub-Commission reaffirmed in another resolution, is a major issue to be addressed by governments, civil society organizations, and the organs and agencies of the UN system, including international trade and finance institutions. Political commitment, the Sub-Commission insisted, is a prerequisite for eradication of poverty.

The existence of widespread extreme poverty inhibited the full and effective enjoyment of human rights and might, in some situations, constitute a threat to the right to life, the resolution said, adding that its immediate alleviation and eventual eradication must remain a high priority.

Five members of the Sub-Commission (Iulia Antonella Motoc, Asbjorn Eide, Yozo Yokota, El Hadji Guisse and Jose Bango, with Emmanuel Decaux and Paulo Sergio Pinheiro as alternates) were asked to prepare a joint working paper in three stages on the need to develop guiding principles in the implementation of existing human rights norms and standards in the context of the fight against extreme poverty. The group was asked to consider the situation of poverty in Asia, Africa, Europe and Latin America.

In a number of separate resolutions and measures on indigenous people, the Sub-Commission:

   \*  expressed full support for the continuing need and the continuation of the Working Group on Indigenous Population, and

   \*  asked the High Commissioner to organize meetings and other activities in all regions of the world to raise public awareness about indigenous issues, and asked the High Commissioner to explore the possibility of convening a world conference on indigenous people in 2004 to review the achievements of the UN Decade of the Indigenous People.

In a measure on specific human rights issues, the Sub-Commission focussed on the humanitarian situation of the Iraqi population, and decided to appeal again to the international community, and to the Security Council in particular, for the lifting of the embargo provisions affecting the humanitarian situation of the Iraqi people.

The international community, and all governments including that of Iraq, were urged to alleviate the suffering of the population, in particular by facilitating the delivery of food, medical supplies and wherewithal to meet basic needs.

In another measure, the Sub-Commission urged the international community to make greater efforts to address the needs of asylum seekers, by ensuring access to fair and efficient asylum procedures or, where they did not exist, facilitating access to the Office of the High Commissioner for Refugees so that it may determine their status. (SUNS5183)

From Third World Economics No. 287 (16-31 August 2002)