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Report

The WTO and human rights.

For the primacy of human rights

For the creation of an NGO consultative status

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"Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

Universal declaration of human rights, art.28

The numerous accusations voiced against the WTO have shown that an intergovernmental organization should have no other goal than promoting general interest, even if this organization deals with trade and the main economic players are private. There is only way to guarantee the protection of general interest : this organization must acknowledge the pre-eminence of human rights. International human rights law is the only coherent and comprehensive framework within which the WTO should conduct its activities. Civil society has an essential role to play : making sure States are fulfilling their mission.

In this paper, the FIDH will first of all recall the principle of pre-eminence of human rights over WTO trade agreements, and put forward a contribution for the present debate on the role of civil society in the WTO.

FIRST PART : FOR THE PRIMACY OF HUMAN RIGHTS

INTRODUCTION: SCHIZOPHRENIC STATES

One of the striking characteristics of globalization is the multiplication of decision taking entities, i.e. entities that have huge economic, political or social power, without any of the responsibilities, which this power should entail.
This leads to a remarkable phenomenon, which could be called State schizophrenia.
States have become schizophrenic, accepting obligations one day, undoing them the next, committing themselves to do something and then coming back on their commitments, ratifying treaties which will soon be contradicted by another treaty signed in another international forum.
The same States that at the WHO commit themselves to protect the right to health, then sign the TRIPS agreement at the WTO, which invalidates the very rights guaranteed by the WHO. These same States ratify international treaties for human rights, and then, in trade negotiation fora such as the WTO, take decisions that endanger the fundamental rights that they had freely agreed to protect and implement. These same States condemn and even take measures against countries that violate human rights, and then lead a trade or military policy that strengthens the guilty regime.
These contradictions between the State's actions have given rise to a debate about the weakening of Nation-States. It seems likely that the growing incoherence between State policies weakens State sovereignty and international co-operation. The fact that States are increasingly active on the international level cannot be denied. States remain the main players of international relations and the main subjects of international law. Yet because of the contradictory nature of their own engagements, their activism on the international stage seems aimed at eliminating their own prerogatives, as if they were, in a way, trying to eliminate themselves. Torn between contradictory obligations, States progressively sink into lethargy that gives free rein to other sources of power, in particular private ones.

A hierarchy between norms could solve this schizophrenia. By classifying international commitments using the principle of subordination to a supreme standard, State decisions and co-operation become coherent.
International human right law is the only supreme standard within international law (I). The example of Mauritius, which for the first time recalls its human rights obligations to oppose the implementation of a WTO agreement (Agreement on Agriculture, AA) is an encouraging step (II).

1. THE PRINCIPLE OF PRIMACY OF INTERNATIONAL HUMAN RIGHTS LAW

The primacy of international human rights law stems from the United Nations Charter (A) alongside the Universal Declaration of Human Rights (B). Article 1§3 of the Charter sets human rights as a founding stone, which must be abided by, as the privileged means of reaching the United Nations fundamental goals.

A. The UN Charter and human rights.

1). Universal respect for human rights, a founding principle of the Charter.

Article 1 of the UN Charter sets respect for human rights as a founding stone and a privileged means of fulfilling the United Nations fundamental goals.

Article 55 (c) of the Charter provides that the United Nations will encourage:

"Universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion."

Article 56 defines a concrete obligation to cooperate to promote universal and effective respect for human rights:

"all members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55"

2) The obligations under the Charter should prevail over any other international agreement.

It is clear that UN member States have the obligation to respect human rights. Article 103 of the Charter confirms the pre-eminence of this obligation:

"in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

B. Universal Declaration of Human Rights: a supreme standard.

1) Interpretation of the UDHR: the link between the Charter and the UDHR.

Since the pledge to observe human rights prevails over any other obligation under any other international agreement, the nature of this "pledge" must be specified. This is where the UDHR re-emerges. Indeed, the UDHR was drawn in order to specify the general obligations included in the Charter. This is because in an effort to steer clear from dilatory controversies, the authors of the Charter did not attempt to specify those rights but left it to the new organization to elaborate a declaration to this effect. The principle of pre-eminence concerns economic, cultural and social rights (articles 21 to 27 of UDHR) as well as civil and political rights.

2) Legal standing of the UDHR

The standing of the UDHR in the international legal framework is a special one - its is, at the very least, a principle of international customary law if not a peremptory norm (jus cogens) of international law.

The constant references to the high status of the UDHR in multilateral discussions within the UN or other fora, the fact that a number of international treaties mention it as a fundamental source and that it features in the legislative and judicial proceedings of a good many countries: all contributes to show that the UDHR has become a part of international customary law. As one of the most prominent authors of the bill once wrote: "Today the bill is binding on all countries, including those which did not approve it in the first place in 1948[1]."

Moreover, norms that are part and parcel of international customary law are deemed as binding "erga omnes", which means that all states have a vested legal interest in the protection of such rights[2].

Some authors go further and consider the UDHR as a binding principle of jus cogens within the meaning of Article 53 of the Vienna Convention on the law of treaties[3].

3) The scope of the UDHR

In the last paragraph of its preamble, the UDHR refers to itself as " a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society (...) shall strive to secure their universal and effective recognition and observance."

The above paragraph clearly means that human rights promotion is not confined to governments only. A comprehensive view would indeed end up with a requirement that any individual or institutional action that failed to condone or uphold basic liberties must be opposed. This commitment similarly applies to multilateral institutions as well as to transnational corporations[4].

This legal recognition of the primacy principle means than obligations under human rights must systematically prevail on all other obligation. States must make sure that all their commitments, including economic, trade or financial ones, are compatible with the universal principles of human rights law.

Notes :

1. John Humphey, No distant millenium : the international Law of human rights, (Paris, Unesco, 1955)

2. IJC, Barcelona traction ruling, 5/2/70, Rec., 1970, p32

3. article 53, Vienna Convention on the Law of Treaties, " a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent
norm of general international law having the same character "

4. See Working document E/CN/sub2/1999/11, Sub-commission for fight against discriminatory measures and minority protection.

II. THE PRINCIPLE AS APPLIED BY THE WTO[5]

So far, the WTO and its membership are hardly concerned by these principles. Human rights are perceived as a hindrance to trade liberalization. At the most, they emerge in a roundabout way whenever they represent "unfair advantage" or "technical barriers to trade".

Human rights are therefore only considered in an indirect connection with the facilitation or hindrance of trade liberalization. This means that the scale of values has been completely overturned. At this day, with the WTO, trade is not required to conform to fundamental human rights; rather, the reverse is true.

The various Marrakech Agreements, in their institutional or material section, never refer to the notion of human rights or to the related international instruments, and even less to assert their primacy.

The leitmotiv of the signatory States is very clear: liberalizing trade through contracting. Therefore, it is patently obvious that WTO's member States clearly have the will to apply only trade agreements, in the name of the sacrosanct rule of contractual freedom (according to which, obligation can only result from consent). This means denying the primacy of international law on human rights over trade conventions.

Absolutely nothing, either in practice nor in States' interpretation of these agreements, invalidates this finding.

Yet, further examination of the Agreements enables us to argue legitimately that certain universal values should prevail over any provision aimed at facilitating trade.

A. Provisions made in the Preamble to the Agreement establishing the WTO

- The first paragraph of the Preamble to the Agreement provides that:

"relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand".

As for Article 55(a) of the UN Charter, it provides that : "the United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development in the economic and social order".

Therefore, the authors of the Agreement establishing the WTO were keen, in the preamble, to make a clear reference to Article 55 as mentioned above. This means that in fact, they recognized that WTO rules were subordinated to the principles of the UN Charter.

- The reference to sustainable development:

Relations in the field of trade and economic endeavor must allow for "the optimal use of the world's resources in accordance with the objective of sustainable development."

This is another instance where the WTO preamble refers to a concept developed by the United Nations and, more particularly, the UN Development Program (UNDP). The impact of the WTO Agreements on sustainable development will have to be studied in particular at the UN Conference on sustainable development in Johannesburg in September 2002 (Rio+10).

B. General exceptions

1) Article XX, GATT 1994

Every country is entitled to take any measures required for the protection of its public order. In this perspective, the provisions in article XX allow a WTO member state to implement measures which are in breach of a rule of GATT 1994 by limiting international trade. Any such measure taken must however be necessary, non-discriminatory, and must not be a disguised restriction on international trade (heading of Article XX).

Article XX allows specific exceptions in the following cases:

- protection of public morals (sub-paragraph a)

- protection of human or animal life or health (sub-paragraph b)

- exceptions concerning products made in prisons (sub-paragraph e)

Therefore it would seem that all these areas combined define the notion of public order. Maintaining public order

is a key function of any state, and it is therefore accepted as such by international law.

2) Agriculture Agreements AA

Here again article XX enables countries to take account of non-trade concerns.

For the first time, at a Conference organized by the European Commission, Japan, Mauritius, the Republic of Korea, and Switzerland in July 2000, Mauritius made a submission to the WTO Committee on Agriculture in which it underlined the relevance of international obligations (in particular under the International Covenant on Economic, Social, and Cultural Rights) when negotiating WTO agreements .

In its contribution, Mauritius underlines the fact that the AA must be interpreted in conjunction with other obligations, in particular under the International Covenant on Economic, Social and Cultural Rights. Article 11 of the Covenant relating to an adequate standard of living is explicitly quoted[6].

Very justly, Mauritius ends its contribution by stressing that:

"the text of the WTO Agreement appears to have been ...drafted so as to avoid countries having to make commitments which would contradict their obligations under other multilateral frameworks "

For the first time, a State intends to refer to its human rights obligations to oppose itself to the implementation of a WTO agreement.

The Dispute Settlement Body, when faced with a dispute involving the interpretation of a provision, must widen the scope of the clauses. In this way, it will be possible to reintroduce (through the back door) the principle of human rights primacy and their pre-eminence over trade agreements. But the ball is on the side of States, which must draw the consequences from their commitments under human rights, by ensuring that these obligations prevail on trade agreements.

The FIDH believes that the WTO as an institution, as well as all member States must abide by the fundamental principles of human rights, and promote them. The FIDH believes it is essential that the validity of trade agreement be subject to the observance of human rights. To this respect, the UDHR norms must serve as a reference.

To this end, the FIDH calls for the insertion of a " human rights clause " in the Marrakech Agreements. This clause calls for unconditional observance of the international human rights norms set out by the UDHR.

Notes :

5. For a complete study, see "Accreditation Schemes and Other Arrangements for Public Participation in International Fora", International Center for Trade and Sustainable Development, Nov. 2000.

6. Committee on Agriculture, Special Session, g/AG/NG/W/36/rev1, 9 november 2000.

SECOND PART : FOR A FORMAL PARTICIPATION OF CIVIL SOCIETY

The FIDH is proposing an institutionalized system of NGOs consultation within the WTO. This does not mean that accredited NGOs g would be the only legitimate ones - nor that participating to such a system would be the only legitimate means of action to contribute to a democratic control of the WTO. The FIDH feels that all non-violent means - including public demonstrations - are complementary, rest on the same findings and aim at common goals. As such, they cannot be understood as being exclusive of one another.

I. LEGITIMACY OF REPRESENTATION OF CIVIL SOCIETY WITHIN THE WTO

A. General grounds

The rise of civil society cannot be dissociated from globalization, which confirms an increasing gap between power and responsibility. Indeed, the entities that are liable in international law (the States) are losing power, whereas those that have acquired important power are not liable (TNCs, IMF, WB, WTO...). In other words, the States, supposedly the political power par excellence, are gradually deprived of this power to the advantage of other entities which "are not political ". This depoliticization and deresponsibilization are accompanied by an increasing lack of democratic control; in this context, the rise of civil society symbolizes the effort to reconquer the political power, scene of concerted plurality and common decision. International relations are no longer shaped only by the relations between States. A multiplicity of actors must now be taken into account. Besides, the increasing interdependency between all the fields in international relations deepens this substantial change in the nature of international relations. In particular, it means that isolating one specific aspect of the international scene from the others is no longer possible. That is particularly true concerning international trade, whose impact on fields such as human rights, the environment or development, must be assessed and taken into account when negotiating trade agreements. More generally, this also means that decisions that affect populations so widely cannot be left to the sole discussions between governments, since they represent only imperfectly public opinion and do not always guarantee public interest (as they are supposed to) anymore. On the contrary, the positions of other entities, in particular non-governmental organizations, must be integrated to the process.

It goes without saying that civil society is constituted by very heterogeneous elements, including organizations that supposedly defend general interest, but are actually defending governmental politics or private interests. Still, legitimate NGOs - whose expertise and competence are acknowledged - enable populations whose interests are often ignored to be heard. They can also remind the governments of their commitments freely contracted in the form of international conventions, in particular those concerning human rights. That is why it must be possible for those organizations to be heard in the fora where decisions affecting whole populations are made. In this way, decisions would be in step with the general interest. On the contrary, it is too often today a bad compromise between private and public interests, which tends to be contrary to the general interest.

NGOs have long been recognized as legitimate and competent partners within the UN system. This is certified by the existing mechanisms of consultative status within the various agencies of the UN, the OECD, the ILO, among others[7].

The WTO is lags behind on this point and it has been accused of lacking transparency and legitimacy. This can be partly explained by the absence of formal representation of the civil society. It is important to note that the International Trade Organization, the ancestor of the WTO, had planned a much more elaborate system of NGO participation in the decision process, which was never implemented (cf. art. 87(2) of the ITO Charter, cf. infra). This enables us to refute the theory that NGOs do not have their place within an international trade organization.

NGOs provide expertise along with a global or very localized vision of the impact of trade agreements. They are useful to decompartmentalize debates, which tend to focus on the strictly technical aspects of the agreements and ignore their general international dimension. Therefore they improve the decision process. They represent and protect interests of vulnerable groups that are affected by trade agreements but lack the power or the

means to express themselves. Besides, they ensure the public support necessary to the adoption of such agreements and confer them the legitimacy they are lacking today. This is even truer today, when WTO agreements are covering new fields, such as investment or corruption and bribery. Finally, they can contribute to ensuring the effective implementation of the measures.

B. The objections to NGO formal participation are unfounded

The objections regularly raised against formal participation of NGOs in the WTO must be reviewed:

1) NGOs are illegitimate.

This argument is less and less pertinent . It is now recognized that NGOs are indispensable in the process of democratic control of international entities. They are also essential to represent the interests of populations which are hardly heard on the international level. A selection criterion for NGOs is clearly needed. But it is essential that general interest NGOs that are independent, non-profit making and recognized as competent be able to contribute to the debates affecting whole sectors of the world population . Besides, the legitimacy and the usefulness of NGOs and their activities have already been recognized in numerous international fora, for instance at the adoption of the Convention on antipersonnel landmines or in the International Criminal Court negotiations. Finally, legitimacy is not only based on democratic vote, as the existence and legitimacy of an independent judiciary power shows.

2) The WTO is an inter-State structure and States appropriately represent the balance between the various components of their population.

It is more and more widely accepted that States only imperfectly represent the interests of their population, all the more so when they are not democracies. It is also true that the interests of the minorities are often ignored. Besides, States often tend to privilege strictly nationalist perspectives, without any consideration for the global impact of agreements. Finally, States are today regarded as gradually losing their own legitimacy. On the contrary, the presence of NGOs would strengthen the validity of the decisions taken and improve the exercise of sovereignty. The participation of NGOs to the Dispute Settlement Body - opportunity to observe and submit amicus curiae - would make its action more credible . NGOs would not have deliberative status, but only a consultative one. The presence of NGOs within other inter-State authorities (such as the UN or the World Bank) has already been accepted and has been regarded as beneficial for a long time, without it harming the negotiation process.

3) NGOs represent special interests and their presence would distort the balance in State-led negotiations.

It would be an illusion to believe that special interests are absent from trade negotiations: lobbies are already massively present, though discreetly. One of the main reasons for the WTO's loss of credibility is precisely the over-representation of business and TNCs' private interests. This creates a distortion to their benefit and to the detriment of the general interest. An institutionalized presence of NGOs would enrich the debates and make it possible to take into account all points of view and interests at stake. This would improve decision-making and make it more complete.. Besides, it must be stressed that truly independent NGOs should not serve private or public interests but general interest (cf. infra).

4) The presence of NGOs would rigidify a currently flexible process - the system of ad hoc consultation must be maintained.

The existing ad hoc system is partly responsible for the existence of opaque and secret transactions, that are often carried out to the detriment of weaker developing countries. Institutionalizing to promote greater transparency is not an ossification, but enables the WTO to play its role in a more complete and legitimate way, and thus, to finally ensure the public support it lacks today.

5) NGOs must exercise their action "upstream", at the national level, and not within an international entity such as the WTO.

This argument cannot be valid for international NGOs, which do not correspond to the traditional associative model of the debate between citizens and their government, but which represent trans-national positions that need the combined action of several or allStates. Besides, the NGOs originating from countries not belonging to the WTO could not be represented in this framework, whereas they can provide important information and expertise. Thirdly, non-democratic States are hardly likely to take into account the positions

developed by NGOs in their country. Finally, even democratic States are likely to ignore the points of view of the society, because of political conflicts of interests: a government cannot defend a point presented by an NGO if that might be subsequently harmful in another WTO procedure , before an internal jurisdiction or for national elections.

6) Trade negotiations must be kept secret to ensure a better efficiency.

The lack of transparency never guarantees a good decision. On the contrary, it encourages all the bargaining in favour of private interests, as is too often the case today. Only through open and transparent negotiation is it possible to reach a real balance with a view to defending the general interest all the more so when discussions are wider that the mere negotiation of tariff barriers. It has to be stressed that the goal is not to authorize NGOs to attend all negotiations within the WTO but to enable them to be heard at each of them.

7) The presence of NGOs, often Northern ones, would tip the balance of trade negotiations even more in favour of the North, to the detriment of the South

It would be simplistic to believe that NGOs based in the North represent the interests of Northern countries. Well on the contrary, they are often the first ones to force them to take into account a more global perspective. The international NGOs are often more concerned with the interests of the populations of the South than the governments of those countries. Besides, the increasing number of Southern NGOs dealing with development issues and links with trade means that the opinion of the South will be presented in any case.

8) An accreditation process for NGOs would shift the decision process towards informal meetings - to the detriment of developing countries, which would de facto be even more excluded from crucial debates.

An astonishing argument: if two entities are currently opaque and unaccountable (formal sessions and informal meetings), they must both be made transparent and open and not maintain secrecy. The interests of developing countries will not be better taken into account by maintaining an unacceptable status quo that already stands de facto in the way of developing countries. More generally, this means that a mechanism of NGO consultation cannot be dissociated from a wider institutional reform of the WTO.

9) NGOs are much too diverse and numerous to implement a consultation system that would be truly representative of civil society.

This argument is irrelevant. If the diversity of civil society effectively prevents it from being represented by one single point of view, there are means to select NGOs to ensure a fair balance. The accreditation systems existing in numerous international organizations illustrates this, at least in theory.

Notes :

7. For a complete study, see "Accreditation Schemes and Other Arrangements for a Public Participation in International Fora", International Center for Trade and Sustainable Development, Nov.2000.

II. RELATIONS BETWEEN THE WTO AND NGOs: A CONSTANT EVOLUTION, FAR FROM SUFFICIENT

A. The WTO and NGOs

Within the International Trade Organization, the ancestor of the WTO, the adoption of an institutional framework formalizing NGO participation had been envisaged. The Havana Charter, article 87§2, provided the following :

" the organization may make suitable arrangements for consultation and co-operation with non governmental organizations concerned with matters within the scope of the Charter "

The Interim Commission Secretariat had drafted a report defining the modalities of NGO involvement in the light of article 87. The main points were as follows :

- the Director General, with the approval of the Steering Committee, draws a list of " consultative " NGOs taken from the list of NGOs with ECOSOC consultative status.

- these NGOs, once selected, can send " observers " to annual conferences and receive the relevant documents. The possibility for NGOs of including items on the agenda is envisaged.

- the Director General is in charge of organizing consultations with the relevant NGOs.

- a committee or commission can, if necessary, invite NGOs to express their views during a meeting.

- an Advisory Committee, made up of representatives of the selected NGOs, can be created, on the Secretary General's initiative.

- The Secretary General has the obligation to circulate to member States a comprehensive list of all documents sent by consultative NGOs to the Secretariat

The Havana Charter never came into force, because of the refusal of the US Congress to ratify it. Up until 1994, the GATT was the only multilateral instrument organizing world trade. Flexibility and informal relations govern GATT relations with NGOs.

B. Present principles governing relations between WTO and NGOs

1) Article V.2 of the Marrakech Agreement.

When Ministers adopted the Marrakech Agreement, they decided to explicitly mention NGOs, in article V.2
" The General council may make appropriate arrangements for effective consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO. "

2) The 1996 Guidelines : no formal dispositions, preponderant role of the Secretariat.

On 18 July 1996, the General Council outlined the framework for relations with NGOs by adopting a series of guidelines (WT/L/162) in which member States " recognize the role NGOs can play to increase the awareness of the public in respect to WTO activities "

There are two main points in these Guidelines :

- informal and ad hoc co-operation is preferred to institutionalized participation : see provisions forbidding direct NGO participation to committee and council meetings, and the reminder that co-operation and collaboration must be carried out first and foremost at national level.

"If chairpersons of WTO councils and committees participate in discussions or meetings with NGOs it shall be in their personal capacity unless that particular council or committee decides otherwise. "

" As a result of extensive discussions, there is currently of broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings "

" Closer consultations and cooperation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making. "

- the preponderant role of the Secretariat.

" the Secretariat should play a more active role in its direct

contacts with NGOs who, as a valuable resource, can contribute to the accuracy and richness of the public debate. This interaction with NGOs should be developed through various means such as inter alia the organization on an ad hoc basis of symposia on specific WTO related issues, informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegations and the continuation of past practice of responding to requests for general information and briefings about the WTO. "

It is crucial to increase the budget of the Secretariat in relation to this question. As it stands, the Secretariat, and in particular the External Relations Division, does not dispose of the sufficient means to play a " more active role ". It needs to find " ad hoc " funding for many activities, which is not acceptable.

C. Participation to ministerial conferences.

Since 1996, arrangements concerning NGOs have dealt mainly with their participation to ministerial conferences. It was at the Singapore Ministerial Conference, in December 1996 that NGOs participated for the first time in a large WTO conference.

The following arrangements had been decided :

i) NGOs were authorized to participate to plenary sessions of the Conference

ii) Applications by NGOs were accepted by the WTO Secretariat on basis of article V.2, i.e. accreditation given to NGOs " concerned with matters related to those of the WTO. "

The Secretariat, and more precisely the External Relations Division is in charge of selecting applicants. The short list is then submitted to member States for opinion.

According to the Secretariat, no member country has ever vetoed the accreditation of an NGO. Up until now, Member States have not been greatly interested in the accreditation process. It is true that accredited NGOs have very limited prerogatives, since their status mainly enables them to attend plenary sessions of Ministerial Conferences. It is to be noted that the Secretariat seldom rejects an application, in so far as it is relevant and shows that the NGO is concerned with " matter related to those of the WTO "

1) Singapore Ministerial Conference (9/12 December 1996)

Out of the 159 NGOs registered for the fist WTO Ministerial conference, (108 NGOs actually went to Singapore), nearly 45% of accredited NGOs represented private interests (BINGOs- Business initiated NGOs), 25% were development organizations, 17% environment organizations, 17% trade unions. Then came consumer rights associations (slightly less than 5%) and farmers associations[8].

To our knowledge, no human rights NGO were accredited for the Singapore Conference.

2) The Geneva Ministerial (18/20 May 1998) showed the same imbalance in NGO representation in favour of BINGOs. Out of 152 NGOs that registered, 128 attended the Conference. Once more, over 35% of accredited NGOs came from the private sector. Once again, no human rights NGO was present.

3) Seattle Ministerial Conference

More than 800 NGOs were accredited for the Seattle Ministerial. There again, the massive presence of BINGOs was denounced.

The accreditation of the TABD (Transatlantic Business Dialogue) is a good example. TABD is a public private partnership with a mandate of the US Government and the European Commission, which brings together 150 large firms on both sides of the Atlantic. The TABD is co-chaired by James J Shiro, CEO of Pricewaterhouse Coopers and Michael Treschow, CEO of Electrolux. No information about funding is available on its website[9].

The accreditation of TABD illustrates the flaws of the selection criteria used in the accreditation process.

4) Doha Ministerial (scheduled 9/13 November 2001)

-The choice of Doha is subject to strong criticism.

After the Seattle demonstrations, Qatar was the only WTO Member State willing to host the following Ministerial. In Qatar, freedom of assembly and association, and of demonstrating do not exist. Several NGOs, among which Human Rights Watch[10], pointed out how strange and significant it was to hold the WTO Ministerial in one of the few countries, which did not ratify the UN International Covenant on civil and political rights.

- De facto restriction on participation.

The accreditation process was one of a kind, since both accreditation and hotel reservation were needed in order to obtain a visa. Therefore only people who have received official accreditation can enter Qatar.
As underlined by Mike Moore, WTO Director General, Qatar will not authorize the entry of people who do not have a visa, and in order to obtain a visa, it is necessary to have a hotel reservation, and there are only 4400 hotel rooms...

- The rule " 1 NGO, 1 representative " has been set by the Secretariat for logistics reasons due to the shortage of hotel rooms in Doha. This will considerably limit the presence and impact of NGOs. It is to be reminded that government delegations are not submitted to any kind of limitation, and can send as many delegates as they wish to. For instance, there should have been 235 delegates in the US delegation (brought back to 150 people, for security reasons).

Also, the cheapest hotel on the Organizing Committee's list cost US$ 100. This is yet another obstacle for NGOs : it means BINGOs and northern NGOs will be the ones able to go to Doha. As a result, very few NGOs from the South have been accredited.

- Accredited NGOs : GONGOs and BINGOs on the front line.

As for the other Ministerial conferences, the same imbalance can be found in the list of accredited NGOs. Out of 647 accredited NGOs, more than half are in fact BINGOs. According to Friends of the Earth International (FOEI)[11] , more than 85 % of NGOs are lobbies representing private commercial interests, from OECD countries.

There is also the question of GONGOs (governmental NGOs). According to FOEI, there are more than 30 Trade Advisory Committees appointed by the US government on the list (US Government appointed bodies)[12]. As a result of this discovery, FOEI wrote an open letter to the WTO, asking it to refuse accreditation to these organizations considered as instruments in the hands of the Government and the American industry. This request remains unanswered.

D. Symposia.

Since 1996, the Secretariat has organized symposia for NGOs, on themes of interest for civil society. Three symposia dealt with trade and the environment, one with trade and development, another with trade facilitation.
In order to improve the dialogue between the WTO, Member States and civil society, those symposia should become systematic ; national delegates should participate and these events should be scheduled before any important Committee or Council meetings.

E. New provisions

At General Council meeting of 15 July 1998, the Director General informed members that he was taking provisions in order to strengthen the dialogue with civil society.
Since fall 1998, the WTO Secretariat organizes information meetings for NGOs and has a special section for NGOs on the WTO website.

In addition to this, a list of the information reports that the Secretariat circulates to NGOs will be drawn up each month and sent to member States for information.

All these provisions must be accompanied by an in-depth reform of the institutional framework relating to NGO participation in the WTO.

Notes :

8. Statistics available on the WTO website http://www.wto.org

9. " European industry in Seattle ", Corporate Europe Observatory Quartely Newsletter, issue 6, April 2000 and " TABD in troubled mater ", CEO issue briefing, October 2001, http://www.xs4all.nl/~ceo

10. see press release 23 January 2001, " WTO sends wrong message with Qatar choice " http://www.hrw.org

11. For a summary, see Bridges vol 5, number 29 and 37 http://ictsd.org

12. In particular Industry Sector Advisory Committee on Chemical or Allied Products for Trade Policy Matters

III. PROPOSAL FOR A CONSULTATIVE STATUS FOR NGOs AT THE WTO

The FIDH puts forward the institution of a mechanism to formalize NGO participation in WTO debates. This consultation must take place at all levels : negotiation and adoption of agreements, but also dispute settlement mechanism.

Partisan interests/ General interest The proposed mechanism aims at excluding from the NGO status all groups that defend private interests (BINGOs), e.g. among others, producer groups, private enterprise groups, but also governmental groups (GONGOs).

To clarify, it is necessary to establish a clear distinction between the general interest - defending all rights and liberties (environmental rights, right to peace, development rights, political and civil rights...) and partisan interest whether it be private (aiming at private and personal enrichment) or governmental (supporting one particular governmental policy).

Partisan interests often go against the general interest, even though the two may sometimes coincide. Associations can be differentiated by their mandate and goal. This criterion does not exclude associations that defend the general interest in a particular sector, e.g. sectoral trade unions.

The FIDH believes that the WTO, as an intergovernmental organization whose goal is to negotiate global agreements between States responsible for the general interest, must not grant a special status to players whose particular interest, be it private or governmental, is directly at stake. Private agents try to influence governments to meet their own private interest ; therefore they distort the general interest in their favour. This is also the goal of GONGOs that defend the particular interest of the State they represent. This proposed mechanism aims at protecting truly independent associations, whose goal is to make sure that States are fulfilling their public interest mission. According to the FIDH, the accreditation mechanism must be based on this one and only criterion.

As a result, the FIDH recommends that general interest NGOs be the only ones to benefit from consultative status. The FIDH is conscious that such an exclusion of partisan groups may lead to an increase in the informal bargaining that already takes place, and to a worsening of the secrecy of decision-taking. It goes without saying that the NGO accreditation mechanism cannot be separated from a larger institutional reform of the WTO, so as to increase transparency and accountability. The derestriction of debates and negotiations is the best way of controlling the hidden influence of partisan groups.

The FIDH would also like to stress the fact that these clarification and accountability requirements within WTO do not only concern NGOs. These requirements must also apply to the other components of " civil society ", in particular to representatives of private corporations, so as to do away with the present hypocrisy.

A. Accreditation procedure.

1) Classification.

The FIDH recommends setting up 2 categories : international NGOs (will be considered international an NGO whose activities cover or are conducted across a region (at least 5 countries) a continent, or several) and national NGOs of recognized reputation. The international NGO category can be divided up into two subcategories :

-general status : NGOs whose mandate covers most of the subjects of interest to the WTO or areas affected by WTO activities.

-special status : NGOs with sectoral mandate, or whose mandate only covers one or a few of the subjects dealt with by the WTO.

2) Selection criteria

i) General interest organization. The NGO must prove, mainly through its statutes and activity, that it does not defend or promote any partisan interest, be it governmental of private.

ii) Effectiveness. The activities of the organization must be real, as shown by its publications, the stands it takes, its representativity.

iii) Non-profit goal, for the organization itself as well as for its members.

iv) Independence from all forms of political, governmental, economic or financial power. This means that leaders of an NGO must not have any other function within the national

or international executive power, or represent such a power. The NGO must be able to prove it is financed by funds from diverse origins, this diversity being a guarantee of its independence. Independence is also measured through the use the NGO makes of its freedom of expression, especially its criticism of partisan interests (private or governmental).

v) Transparency about organization activity and funding, for which information must be made available.

vi) Active interest in WTO activities. The NGO must be able to prove the relevance of its activities as regards the WTO work.

vii) Internal organization. The chief officers must be renewed at regular intervals.

viii) Historical character : the NGO must have been in existence for at least 2 years.

3) Selection body.

In order to avoid the accreditation depending only on the goodwill of member States, at this stage the procedure should remain in the hands of the WTO Secretariat. A mechanism enabling civil society participation in the decision process should be envisaged.

In case of refusal, a system of appeal by the NGO should be put in place.

The FIDH is conscious that this solution is not the best possible one. It would be better if this selection was carried out by an independent assembly, appointed by the Director General and sitting in tuitu personae. The FIDH has already supported this idea for the United Nations, instead of the present NGO Committee, hostage of the political interests of States that make it up.

As thing stands, the present procedure, in which member States have a say on the shortlist drawn up by the Secretariat, must be abolished. Facts show that this droit de regard has turned into a right to veto or impose a candidate, through BINGOs and GONGOs.

B. Attributes of the statute.

The attributes are identical for all three categories of NGOs.

For sectoral NGOs, in the limits of its field of competence.

For national NGOs, in the limits of its geographical mandate.

1) The NGO has the right to participate as an observer to Ministerial Conferences, to General Council meetings, to sessions of the different Councils (Council for Trade in Goods, Council for Trade in Services, Council for Trade-Related Aspects of Intellectual Property Rights), and Committees (Committee on Trade and Development, Committee on Balance-of-Payments Restrictions, Committee on Regional Trade Agreements, Committee on Budget, Finance and Administration, Committee on Trade and Environment) and to Working parties on Accessions and Working group on Transparency in Government Procurement. The NGO has the right to submit written report, to take the floor.

The number and duration of oral intervention can be limited. Other modalities for NGO participation can be envisaged, notably through the organization of specific sessions of the different councils, workgroups and committees, at regular intervals, to enable NGOs to submit reports and express their opinion.

2) The NGO has the right to participate as an observer in the General Council meetings when carrying out Trade Review Policy (TPRM). It has the right to submit written contributions, in particular alternative reports to those produced by States. It has the rights to take the floor for oral interventions to present its stand and remarks. The number and duration of oral intervention may be limited.

3) The NGO has the right to propose the inscription of one or several points in the agenda of Ministerial Conferences and the main Councils and Committees, which must justify any refusal decision.

4) The NGO has the right to attend as an observer the hearings of the Dispute Settlement Body. It also has the right to introduce witnesses or experts (in a possibly limited number) in the context of a current process. It has the right to submit amicus curiae, which will absolutely have to be taken into account by panelists and appeal judges.

C. Creation of a Liaison Committee

In order to carry out this reform, it is essential to raise the financial and human resources allotted to the Foreign

Relations Department, to enable it to play a more active role. Finally, an NGO Liaison Committee should be created within this Department. The mandate of this Committee would consist in:

- selecting NGOs.

- enabling NGOs to participate in ministerial meetings, councils and committees, by informing them of their date and agenda and providing accreditation to their representatives.

- providing information about the WTO's activities to make the Organization more transparent and adapt NGOs' work to the WTO's.

- passing on the information supplied by NGOs to the appropriate departments of the WTO Secretariat, as well as to the member States.

- in the framework of specific meetings (ministerial meetings, general councils), elaborating an executive summary of the different positions of the NGOs concerning the documents being negotiated.

- holding symposia more systematically.

- making propositions about the management of the consultative status and its selection body in order to eventually turn it into an independent body.

CONCLUSION :

The opaque working of the WTO largely explains its lack of legitimacy. In this respect, civil society's mobilization shows a growing awareness about the power of the WTO, which is left without surveillance. Yet, WTO agreements are affecting an increasing number of people worldwide. All the more so since transnational corporations, which are powerful and well organized, have an enormous weight at the WTO. This is true both within governmental delegations and in the WTO decision processes. Consequently, trade agreements systematically tend to largely favour the private interest, to the detriment of the general interest. Currently, the WTO can hardly be regarded as a body promoting development. It suffices to see the considerable influence of private groups: each of them is keen on its particular trade interest. It is particularly urgent to establish a principle of public debates and to undertake the structural reforms imposed by the principles of transparency and responsibility. Only those principles can contribute to the much-needed democratization of the WTO.

This is the aim of the FIDH's proposals in favour of the insertion of a "human rights" clause and the creation of a consultative NGO status. These proposals cannot be dissociated from larger reforms.

The FIDH recommends:

- the insertion of a "human rights" clause in the preamble of each of the Marrakech agreements (institutional and material ones); it would reaffirm the principle of unconditional respect for international human rights standards.

- a consistent NGO consultative system, including in particular:

- the establishment of a consultative status for the NGOs representing civil society

- the creation of an NGO Liaison Committee within the Foreign Relations Department

- a more systematic organization of NGO-WTO symposiums, dealing with all topics, and linked to important meetings of different Councils and Committees

- the increase in the resources allotted to the Secretariat in order to enable it to implement the recommendations on NGO consultation.

These proposals aim at contributing to the current debate about the role of civil society within the WTO. The FIDH is willing to work together with the WTO Secretariat and the other NGOs concerned, in order to implement all these recommendations concretely.

ANNEX :

CONSULTATIVE STATUS / SUMMARY

NGO with general status : Gen
NGO with special status : Spe
National NGO : Nat.

	Ministerial Conferences	Councils, Committees and Working Groups	Trade Policy Review Mechanism	Dispute Settlement Body
Participation as an Observer	Gen :yes Spe : yes Nat : yes	Gen : yes Spe : yes, Nat : yes, for its country	Gen : yes Spe : in within field of activity Nat : yes, when the policies of its country are been reviewed.	Gen : yes Spe : yes Nat : yes, if the country it's from is a party to the dispute
Submission of written statements and shadow reports (to the TPRM).	Gen : yes Spe : yes, within field of competence Nat :yes, for its country	Gen : yes Spe ; yes within field of competence Nat : yes, for its country	Gen : yes, for all countries Spe : yes, within field of activity Nat : yes, when the policies of its country are been reviewed	
Oral Statements	Gen :yes Spe : yes, within field of competence Nat : no	Gen : Yes Spe : yes within field of competence Nat : no	Gen : yes Spe : yes, within field of activity Nat : no	
Proposition of Agenda items	Gen : yes Spe : no Nat : no	Gen : Yes (on certain conditions) Spe : no Nat : no	Gen : no Spe : no Nat : no	
Presentation of Witnesses and Experts				Gen : yes Spe : yes, within field of activity Nat : yes, if own country is a party to the dispute
Submission of amicus curiae				Gen : yes Spe : yes, within field of activity Nat : yes, if the own country is a party to the dispute

FIDH represents 114 Leagues or Human Rights organisations

The International Federation of Human Rights (FIDH) is an international non-governmental organisation dedicated to the world-wide defence of human rights as defined by the Universal Declaration of Human Rights of 1948. Founded in 1922, the FIDH has 114 national affiliates in all regions. To date, the FIDH has undertaken more than a thousand international fact-finding, judicial, mediation or training missions in over one hundred countries.

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