

Sexual Rights and Trade

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The theme of human rights and their tangled relationships with international trade or its inverse, trade negotiations, and how they can be tied to situations that put human rights at risk, is a challenge for democracy and for the struggle of social movements for a just and better world. Trade negotiations between countries are complex and technical, above all in the consolidation of globalization that, in the area of trade, creates a totally new environment for regulation. Further, the many interests at play include the international debate about the field of human rights as a component in these negotiations.

We should recall the importance of human rights in the discussion panel, brought by the United States against Brazil in the World Trade Organization (WTO) in 2001, concerning the compulsory licensing of medicines for the treatment of HIV/AIDS. Anticipated in the Brazilian legislation, compulsory licensing was the target of a dispute by the United States, the country in which the largest number of laboratories retaining medical patents for HIV/AIDS is concentrated. Pressured by international public opinion and the nongovernmental organizations that work in this area, the United States withdrew the complaint against Brazil. Similarly, the multinational pharmaceutical companies were obliged to withdraw their lawsuit brought against the government of South Africa, due to the accusation that the international accords on patents create obstacles to national public health policies and dramatically affect poor populations and less developed countries. In the same year, Brazil succeeded in approving a resolution in the United Nations Commission on Human Rights (CHR) in which it is affirmed that, “access to essential medicines should be considered a fundamental human right. The proposal was approved by all of the countries that composed the CHR with the exception of the United States, which abstained from the vote.”

The links between trade and human rights can be more or less perceptible depending on the disputed factors in the international negotiations. In the case of patents versus public health, it was clear that they had to do with the

struggle between preserving the capital of the U.S.-defended pharmaceutical industry, and the quality of life of those with HIV, represented by Brazil's determination to guarantee the right of access to medicines and which, as a function of the TRIPs (Trade-Related Aspects of Intellectual Property Rights Agreement) Accord, imposed a financial burden that compromised this right.

But these barely perceptible links have a perverse impact on daily life, especially women's lives. During the XI Meeting of UNCTAD (United Nations Conference on Trade and Development, June 2004), a panel promoted by the "Global Program" (UNCTAD—UNDP) on globalization, liberalization, and sustainable human development—whose main issues are the information economy, energy, and water—presented results of the activities undertaken in African, Southeast Asian, and Latin American countries. Among these activities were the use of New Technologies of Information and Communication (TICs)—computers, the Internet, mobile phones—by developing countries and less developed countries to achieve international competitiveness with social efficiency because TICs create innumerable jobs.

Among the positive factors emphasized were the benefits to women of TICs because jobs in this economic sector are filled, for the most part, by women, as is the case in Southeast Asia. But the increase in female employability and the greater competitiveness of these countries is achieved at the expense of low compensation and of double-shift workdays. Women (who, it is known, are compensated at a lower rate than men for the same job and the same work) continue to be responsible for social reproduction (housekeeping, care of children and of the infirm, and so forth), as if this was inherent to the female condition and only women were capable of such work.

In other words, governments and businesses make use of the invisible and unpaid work of women in the domestic arena as well as the low remuneration of the female workforce in order to leverage economies in the South, thus lowering the production cost of consumer goods sold in the international market. It goes without saying that in the division of the productive activities of the electronic multinationals, the activities that add less intellectual value, that is, the phases of manual production, fall to these countries. Many companies set up operations in those countries that offer such special conditions, for example, as an exemption from labor laws.

But it is when we bring so-called sexual and reproductive rights to the debate on human rights that the relationships with trade become as imperceptible as they are perverse. In the global sphere of activity, the great forum of debate on human rights is the United Nations. The member states that compose the Commission on Human Rights (CHR) meet in Geneva annually. In these meetings, the UN reporters of violations of

human rights offer information, according to specific topics or cases. Recommendations are also made to particular countries, and as Ana Elena Obando states, “the Commission on Human Rights is not an exception in the war of ideological values that work against the principles and standards of international law in the field of human rights.”

In 2004, during the 60th reunion of the CHR (April–May, Geneva), when Brazil presented a Resolution on Human Rights and Sexual Orientation for the second time, the trade component was used to apply pressure in an attempt to withdraw the text from the Commission agenda. In order to have conservative ideological values prevail—values founded largely in religion—the block opposing the Resolution (Islamic countries, the Vatican, and the United States) launched an attack that included, among other things, a subtle threat to boycott the Summit proposed by Brazil between the South American and Arab countries. This could have also imposed constraints during the XI UNCTAD negotiations and, in addition to disgrace, would have created a lack of confidence in Brazil.

For its part, Brazil persists in its leadership role—in the international arena. The Lula government explicitly seeks the expansion of the export market for Brazilian products. Brazil is expanding its foreign trade activities to Arab countries and China, in addition to consolidating its alliances with India and South Africa. This trade positioning demands of our diplomacy the responsibility to maintain balance between trade partners and divergent positioning with these countries in whose legal advisers dictate, with regards to polemical topics, what human rights—and even more so, sexual and reproductive rights—are.

At the 59th annual reunion of the CHR in 2003, Brazil presented a Proposal of Resolution (E/CN.4/2003/L.92), titled the Resolution on Human Rights and Sexual Orientation, to challenge the constant violations of human rights suffered by lesbians, gays, bisexuals, transgendered, and transsexual individuals (LGBT). Despite the fact that the CHR’s reports on violations routinely denounced this kind of violation, including violations by legislation in countries like India (which criminalizes homosexuality, considered sodomy), this was the first time that a proposal specifically intended to examine the issue of sexual orientation was presented to the Commission. Based on the Universal Declaration of Human Rights, the text of the Brazilian Resolution affirms, among other rights, that the rights of all people should be protected independently of their sexual orientation, and it asks the High Commissioner to give special attention to this type of violation.

In many countries, discrimination and intolerance based on sexual orientation and gender identity have provoked violence against lesbians, gays, transgendered, and transsexual individuals. Such violence ranges from embarrassment to imprisonment and physical aggression of all types,

including torture, death threats, and assassination. In Brazil, in 2001 alone, 130 deaths were documented. In the last 20 years, 2,092 homosexuals were murdered.

The Resolution on Human Rights and Sexual Orientation, called simply the Brazilian Resolution, was favorably supported in informal negotiations by many countries. But during the 2003 meeting, in the face of opposition, those who had supported the Resolution proposed a shorter text than that discussed by the Commission. Even so, the opposition by the block of conservative countries and the Vatican was decisive, even to the point that Pakistan's Ambassador declared, in plenary session, that he considered the proposal an insult to the 1.2 billion Muslims in the world because it dealt with a cultural expression that is exclusive to the West, and asserted that there were no homosexuals among the practitioners of Islam. The Vatican also pressured "certain countries of Latin America" to vote against the proposal. In the battle for the approval of the Resolution, the opposition block even asked that the term "sexual orientation" be removed from the text. Facing an impasse, the president of the Commission proposed a strategic postponement of the vote on the text until the following year.

Although the question of sexual orientation had already been dealt with in prior meetings of the CHR in 2002, resolutions against the death penalty and summary executions were approved, exclusively mentioning sexual orientation as causes despite the intense attack brought by the conservative block. In 2003, the "Brazilian Resolution" caught the conservative groups by surprise. Even if they had rapidly organized themselves so as to preclude that the Resolution had any chance of approval, the argument that justifies the text presented at the CHR was well constructed, based on the principles of human rights and of the defense of the human person. Thus, if on the one hand there was an impasse in the plenary between the groups for and against the Resolution, on the other hand, the strong argument by the Brazilian government sustained the alliance in favor of the measure, an alliance formed by several countries of the European Union, Canada, the Czech Republic, Finland, and Australia, among others. Within Latin America, Mexico, and Costa Rica stand out: they were initially in favor of the Resolution but the pressure from the Vatican forced them to withdraw support.

Between the two meetings of the Commission on Human Rights, there was an intense negotiation with regard to the Brazilian Resolution that became more incisive as the meeting of 2004 approached. Pressure applied principally by the countries of the Islamic block, which at the CHR was headed by Pakistan and Egypt, combined with the re-staffing of the Brazilian mission in Geneva, created an atmosphere of doubt that

Brazil could sustain the Resolution and present it again at the meeting of 2004.

Among the factors generating uncertainty with regard to the Resolution, therefore, was Brazil's resistance to external pressure, to the point where countries of the Arab block solicited the direct action of their diplomatic representatives in Brazil. In an atmosphere marked by the emphasis on economic growth and on the establishment of trade partnerships (Arab countries and China), there was no way to foresee what the reaction of the Brazilian government would be. It was necessary, therefore, to know whether Brazil would continue the negotiations once the confrontation with the Islamic countries—represented by the Organization of Islamic Conferences (OIC) that constitutes the opposition block to the resolution, together with the Vatican and the United States—was reinitiated. In concert with the presentation of the Resolution in Geneva, Brazil began negotiations to hold a summit meeting between Arab countries and South America in Brazil. During Lula's August 2004 visit to Chile, this summit meeting was finally announced for April of 2005 in San Paulo.

After the vote on the Brazilian Resolution, and as a response to the opposition block, organizations of international civil society initiated campaigns of support for the Resolution and visits to the Brazilian missions and embassies. Noteworthy among these actions are the campaign of the International Lesbian and Gay Association (ILGA). There were also public campaigns against the Resolution by the opposition, led mainly by Catholic conservative groups and associations in the United States.

In a certain sense, civil society and the LGBT movements also registered surprise. The combination of Brazilian organizations did not immediately realize what process was taking place in the CHR. It was necessary for organizations present at the 2003 meeting to issue an alert and propose a global mobilization supporting both the Resolution and the Brazilian government. Thus, the December 2003 meeting that took place in Rio de Janeiro, with nongovernmental organizations and movements from all parts of the world, created a coalition to organize and implement advocacy actions in anticipation of the 2004 meeting. The Rio meeting included the participation of international networks of human rights, like Human Rights Watch and Amnesty International, as well as organizations specializing in issues of LGBT, population and development, and health, in addition to feminist organizations. Two Brazilian diplomats who negotiated the Resolution participated in the event.

Sexual orientation and the exercise of sexuality are not new topics in the area of human rights or in the sphere of U.N. multilateral negotiations. In this regard, we should recall the importance of the International Conference on Population and Development because one of its most significant results

was the consecration of the term “health and sexual and reproductive rights.” Since then, considerable progress in the field and in the conceptual definition of these terms has been made. Today a distinction is made between reproductive rights and sexual rights. This distinction is important when considering the broad area of sexuality in its political dynamics and implications. Sexual orientation is not a term removed from the international debate, nor is the concept of gender identity. They comprise a complicated scheme of issues, given the reaction they produce in those who defend the strict regulation of human sexuality. One example of this is the imposition of the Vatican with regard to sexual intercourse, insisting that it should be practiced only for the purpose of procreation.

The government of George W. Bush declared war against same-sex marriage and reiterated the declarations of the Pope (including the argument that the effective battle against HIV/AIDS is fought with sexual abstinence), using the entire media apparatus at the disposal of the White House. Because the United States is the major military and economic force in the post-war world, at present each and every negotiation, debate, or decision in the international sphere is slanted by the positions and unilateral actions of the Bush government.

The events of September 11, 2001 aggravated the conservative policies promoted by the White House, and its principle aim in the area of human rights was the restriction of self-determination. Constant attacks on sexual and reproduction rights are part of the indelible mark of this government. This combination of the political with the religious, besides representing a frontal attack to the secular state, runs counter to the individual’s autonomy in the area of sexuality. This autonomy has, as a principal and direct goal the right to self-determination of women and the recognition of sexual diversity, the latter being the strongest link between conservative religious groups (for example, between Catholics and Muslims) and between the United States and Arab countries.

Even after the events of September 11 and Bush’s affirmations of retaliation against the so-called “axis of evil” (North Korea, Saddam Hussein’s Iraq, and Iran) there was no change in the alliance of the Vatican, the United States, and the OIC. Thus, conditions for a great struggle were created. On one side was a powerful opposition block that allied the interests of capital with the ideological values of religion. On the other were groups organized by civil societies from various parts of the world that, for the most part, confront the daily reality of the assassination, imprisonment, and torture of homosexuals. In the middle was Brazil, attempting to establish a balance in the tenuous border zone between an extremely advanced agenda in terms of human rights and the desire of becoming a leader in the area of international trade, consolidating partnerships with countries against which there are numerous accusations of violations of

individual liberties and a brutal regulation of the sexuality of adult individuals. All of this exists in a context where the United Nations is under strong political and financial attack.

Two relevant facts must be added to this: the debates in the European Parliament in favor of legislation protecting LGBT rights, including same-sex marriage and the initiative of the Secretary General of the UN, Kofi Annan—still facing a vote—to extend benefits to partners and same-sex partners of UN employees from countries where such benefits are guaranteed. The initiative had the support of the Group of Latin American and Caribbean Countries (GRULAC) and of the European Union (EU), whereas the OIC was completely opposed.

The “Brazilian Resolution” was presented again, with the opposition block even more cohesive and determined to prevent a vote or to vote the Resolution down. However, this time there were more voices in defense of the Resolution. New Zealand and Canada—in their role as observers who had a voice but who could neither propose text in plenary sessions nor vote—were important allies in the negotiations and in sustaining the Resolution. Argentina and Mexico, sensitive to pressure from the Vatican, were also publicly in favor of the text. The nongovernmental organizations, for their part, were quite active and proposed an improvement of the text to include the term “gender identity,” as important as “sexual orientation” and with which it expands its scope in the protection and promotion of human rights for LGBT persons.

The alliance of the United States, the OIC, and the Vatican strategically attacked all of the references to sexual rights contained in other resolutions presented for a vote (“Violence Against Women, Torture, Summary or Arbitrary Executions, Health,” among others), increasing the tension. Closed-door negotiations invoked by the opposition focused on dissuading the Brazilian delegation from bringing the Resolution on Sexual Orientation to a vote. For this, as already mentioned, pressure included the subtle threat of a boycott of UNCTAD and the cancellation of the summit between South American and Arab countries. In Brazil, the archbishop Emeritus dom Eugenio Sales used his column in the newspaper *O Globo* to attack the resolution systematically, affirming that it would be contrary to human rights and that it represented the destruction of the family and a stimulus to religious discrimination. Some religious sites compared the Brazilian Resolution with the atrocities of Hitler.

Although there were sufficient votes to improve the text at the plenary, the environment was not favorable to a vote because victory would be achieved with a very small number of countries. This circumstance could prove worse than postponing the vote again because victory with a small margin of votes would make the Resolution vulnerable and

inefficient. Thus, the voting was postponed until 2005. According to Elena Obando:

... because of the positive dimension of the work realized at the CHR, and in spite of the postponement, there was a historic consensus in all regions for the action. The issue remains on the agenda on human rights to be discussed next year. In this way, and in terms of historical visibility, the voices of the southern LGBT and other voices were heard, both by the Commission and by the diverse representatives of the United Nations, as well as by representatives of the countries to the CHR, some of which were receptive to the LGBT lobby.

The scenario seems to be more positive for 2005, with regard to the change of the member states of the CHR, for example, Canada and New Zealand—who favor the Brazilian Resolution—that move from observer to member status. With the re-election of President George Bush, it is unlikely that the U.S. government's position with regard to human sexual and reproductive rights will radically change. Therefore, much work lies ahead given that the Brazilian government's decision to re-present the Resolution for a vote in 2004 was mostly attributable to the strong pressure of public opinion favorable to the text. In anticipation of 2005, it will be crucial to consolidate both the coalition of civil society created in December 2003 as well as its articulations: national—among different movements that fight for sexual rights and human rights, expanding the dialogue between sectors of society; and international—with diverse networks that accompany global processes. However, Brazil is still under pressure which might lead the government to remain on the sidelines.

But the resolution is only one step in the confrontation of violations of human rights of LGBT persons, the changes of punitive national legislation, the end of the death penalty for homosexuals, and the use of sexuality as a bargaining chip in trade negotiations. These are the challenges that we need to envisage in the battle for human dignity.

RECOMMENDED READINGS

<http://www.aids.gov.br/final/biblioteca/bol_html/boletim1.htm>
 <<http://www.brazilianresolution.com/>>
 <<http://www.ggb.org.br/crime.html>>
 <<http://www.jesussite.com.br/acervo.asp?Id=836>>
 <<http://www.whrnet.org/docs/tema-derechossexuales-0404.html>>

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