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Question 4

> "That the debate on intellectual property and public health is sui generis has been explicitly recognised by WTO members when they confirmed that medicines are not just an ordinary tradable commodity"[1]. (Pascal Lamy)

Introduction

Nowadays 162 States are members of WTO[2] and 164 countries have ratified ICESCR[3]. That means that there are two global legal regimes which play an important role in economic and social life. On the one hand, the WTO has a mission to promote free trade among all parties of the organization. Moreover, The TRIPS Agreement, which provides minimum standards of trade related IPRs protection, is a substantial part of the WTO bill. The protection concerns patent regulation for pharmaceutical industry as well. On the other hand, many countries ratified ICESCR, which focus on human rights issues. For example, the Article 12 of the Covenant says that "states Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Is there conflict or competition between these two aims of free trade and right to health? If yes, how is the concerns balanced in the TRIPS Agreement?

In the study I will consider two positions. The first position is provided by Oscar and sounds as the TRIPS Agreement primarily is a tool for maximizing profit and keep the investments from the innovation in pharmaceutical industry and only after the commercial interests the Agreement concerns about access to medicines. The second opinion, which is supported by Mary, is that the TRIPS Agreement have enough channels for implementation human rights "as and when" it necessary.

1 "Access to medicines has been improved", Pascal Lamy, speech, 2008, https://www.wto.org/english/news_e/sppl_e/sppl111_e.htm, [Accessed: 24th of December]

2 WTO: Members and Observers, 30 December 2015 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm, [Accessed: 23th of December]

3 International Covenant on Economic, Social and Cultural Rights, [Accessed: December 30, 2015] https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

How to deal with different rights

It is not enough to consider right to health "as a right to be healthy". According to The General Comment No 14 for ICESCR "the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health". (General Comment No.14) And article 5 ICESCR says that it is nothing may be interpreted in lesser extend or for limitation rights and freedoms recognized by the Covenant (*ICESCR*). Moreover, UN Report emphasizes that "all members of society, including the private business sector, have responsibilities regarding the realization of the right to health" (UN Report 2001, p.12).

The TRIPS Agreement in the Article 7 (Objectives) declare that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology" and the protection exists in favour of the "mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a **balance** of rights and obligations" [student's emphasis].

The Universal Declaration of Human Right in article 27 declares that "[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits" as well as "[e]veryone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". The ICESCR repeat in article 15 the points importance to "recognize" the set of rights of everyone: "to take part in cultural life; to enjoy the benefits of scientific progress and its applications; to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". The two sides of ICESCR article 15 say for members that current IPRs construction should be "**balance**[d] between promoting general public interests in accessing new knowledge as easily as possible and in protecting the interests of authors and inventors in such knowledge" [student's emphasis] (UN Report 2001, p.6).

Can we consider the two “balances” (in TRIPS and ICESCR) as equal or each of the international organizations has own understanding of the trend? The UN rapporteurs point out that “[t]he balance identified in the TRIPS Agreement might not equate with the balance required under article 15 of ICESCR” (UN Report 2001, p.9). and they add that “[the] balance is struck between private and public interests in intellectual property, the balance should not work to the detriment of any of the other rights” (UN Report 2001, p.6).

Sheldon Leader develops the room of defining the “balance” regarding to what approach will be used for interpretation TRIPS norms: “functionalist” or “civic”. If we follow to the first one the “balance” will be moved to narrow understanding of WTO and TRIPS goals just in their “domains of responsibility”, if we goes pursuants to a civic way the “necessity” and “least impact” start to play important role for finding better solution in the case with competition of different rights (Leader, 2004, pp.2256-2257). The “necessity” requires “the balance between trade and non-trade interests” (Leader 2004, p.2257) and refers to the TRIPS articles 8 and 27, for example, “to protect public or morality, including to protect human, animal or plant life or health” . The “least impact” can describe different directions such as “core value of advanced by trading system” or “human life”. (Leader Sheldon 2004, p.2260, p.2262).

In the further material it is important to consider the legal and practical the TRIPS tools which provide wide “civic” or narrow “functionalist” approaches for respecting, protecting and fulfilling “access to drug”.

TRIPS primary focuses on investment protection

To begin with, it will be discussed Oscar’s position where he insists that before all the TRIPS Agreement (further, TRIPS) concerns about IP holders’ interests in pharmaceutical industry and only after remain place for affordable access to drugs.

The central idea of the WTO as well as TRIPS as the substantial part of WTO Agreement to foster free trade in the globe. At the same time the TRIPS in comparison with previous agreements provides IP protection (enforcement) for “all form of technology, including pharmaceuticals” (UN Report 2001, p.9). In addition, the main

beneficiaries of the IP legal regime are well-developed countries (UN Report 2001, p.9), where the main IPRs owners are huge companies and multinational corporations, which use the IPRs as a market tool in different stocks (UN Report 2001, p.13).

In the TRIPS there are at least two regimes which stimulate free trade: most-favoured-nation treatment (art.4) and national treatment (art.3). Most-favoured-nation refers to spread "immediately and unconditionally" any benefits "granted by a Member to the nationals of any other country ... to the nationals of all other Members" (art.4). And "national treatment" says that "[e]ach Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property" (art.3). Ex-Director-General of WTO Pascal Lamy repeat the spirit of the legal text that "the TRIPS Agreement tells us that members are free to adopt higher standards of [IP] protection"[4].

TRIPS, preferential trade agreements and "TRIPS Plus"

The TRIPS was implemented in 1995 from the time developing countries started to use different exceptions regarding to epidemic issues. Since US and industrialized country have continued to promote increasing a minimum patent protection standard which was provided by the TRIPS. The developed members commenced to establish preferential trade agreement (further - PTA) with lower trade barriers between contracting parties (Lindstrom 2010, p. 919). It is important to note that the United States was the world's biggest exporter of IP when TRIPS was signed. So, the TRIPS helped to increase profit from IP exports for the actor (Collins-Chase 2008, pp. 778-779).

The "principle of minimum standards" stimulate each bilateral or multilateral IP treaties include a points which allow higher protection "than is required under the the treaty or that the agreement does not derogate from other agreements providing even more favourable treatment". The strategy create "ratcheting" effect when "each subsequent bilateral or multilateral agreement can establish a higher standard" (Drahos 2003, p. 7).

[4] Pascal Lamy, 9 December 2008, speech, https://www.wto.org/english/news_e/sppl_e/sppl111_e.htm, [Accessed: 24th of December]

As a result of the bilateral activities developed countries create new sets of treaties. There were more than 130 preferential trade agreement in 2001 (Collins-Chase 2008, p.779) and more than 330 in 2011[5] with developing countries where IP protection became stronger than it provides by TRIPS. This sets of bilateral agreements are known as "TRIPS plus" and create a new room for understanding TRIPS tools for human rights issues. Moreover, Beatrice Lindstrom, a human rights lawyer, maintains that TRIPS-plus provisions made a huge impact on economic and social situation in countries and regions who are not represented as part of the treaties not only regarding to IP industry (Lindstrom 2010, pp. 919-920).

The World Health Organisation notices that the "TRIPS plus" defines "extend patent life beyond the 20-year TRIPS minimum[,] limit compulsory licensing in ways not required by TRIPS[,] and limit exceptions which facilitate prompt introduction of generics" (UN Report 2001, p.10). The term "TRIPS plus" is also used for describing situations where countries implement TRIPS legislation before they are ready to maintain the level of IP protection inside their territories. Furthermore, in a number of cases the PTAs establish IP legislation for WTO which tend demand to implement IP standards that are "inconsistent with States' responsibilities under human rights law" (UN Report 2001, p.10).

The TRIPS crisis and Doha declaration

[5] Global Preferential Trade Agreement Database http://data.worldbank.org/news/global-preferential-trade-agreement-database, [Accessed: 23th of December]

The UN Reports argues that “the protection and enforcement of TRIPS can ... provide a basis for charging higher prices for drugs and for technology transfer which can restrict access for the poor” (UN Report 2001). The was a claim of many less developing countries, which in 2001 the Doha declaration on the TRIPS Agreement on Public Health (further, Declaration) try to actualize interpretation and implementation the TRIPS “in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all”[6]. Moreover, the private institution “should respect the letter and spirit of the Doha Declaration” (Report of the Special Rapporteur 2008, p.21).

In spite of Declaration was adopted the Special UN Rapporteur wrote in 2008 that the problem still exists:

> “...[P]ublic officials and others have argued that the policies and practices of some pharmaceutical companies constitute obstacles to States’ implementation of the right to the highest attainable standard of health and, in particular, their endeavours to enhance access to medicines.” “...They have mentioned, for example, excessively high prices, inadequate attention to research and development concerning diseases” (Report of the Special Rapporteur 2008, p.7).

TRIPS is flexible for HRs provisions

Now move to Mary’s opinion where she considers that the TRIPS includes tools which can prioritize human rights “as and when it is necessary” in pharmaceutical cases. Pascal Lamy, an ex-Director-General of WTO, supports Mary’s position and he argues that since 2001 when Doha Declaration was adopted, there have occurred a number of cases with flexible tools such as “parallel imports, defining patentability criteria, and permitting exceptions to patent rights” for developing countries where the balance “of rights and obligation” was negotiated[7].

In Article 66 of the TRIPS there are direct points that least-developed countries have special requirements regarding to their economic, financial and administrative

[6] Declaration on the TRIPS agreement and public health, Article 4, Adopted on 14 November 2001 https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm, [Accessed: 22th of December]

[7] Pascal Lamy, 9 December 2008, speech, https://www.wto.org/english/news_e/sppl_e/sppl111_e.htm, [Accessed: 24th of December]

conditions and they need flexibility for creating developed technological infrastructure (UN Report 2001, p.8). For example, the countries had 10-year period for adaptation their economies (the terms was prolonged up to 2016[8]) to TRIPS provisions.

Compulsory licence

The TRIPS in the Article 31 "Compulsory licence" allows patent uses without right holder's permission. The exploitation can be implemented "by the government or third parties authorized by the government" for public non-commercial purposes, and the activity should be respected by other parties of the TRIPS Agreement. (art.31, TRIPS) The article contains a number of additional conditions which have to be met in order to keep the patent owner's interest. For instance, the using produced medicines with the patent mostly on domestic market of member who authorized the activity. Another example of the conditions is that "the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization" (art.31(h), TRIPS) Article 31 allows to balance rights with responsibilities of TRIPS members and provides the members to hold obligation required article 15 of ICESCR (UN Report 2001, p.7).

There are two examples where compulsory licence and parallel import had success for fulfilling access to drug in least-developed countries below.

The first examples is about Indian Generic Industry. In 2000 the year price of drug against HIV/AIDS was 10,000 USD. In 2006 its cost fall dramatically more than 80-90 times and achieved around 140 USD. The result became possible because the Indian generic pharmaceutical industry was allowed by "national legal regime" to make reverse-engineering of the patented drug and after the industry was protected "from foreign competition by regulatory controls, high tariffs, foreign equity restrictions, and price controls" (Hestermeyer 2008, p.10).

The second case is from Brazil where TRIPS provision as compulsory license had important influence on access to health (to protect public interest). The price for

[8] WTO. TRIPS pharmaceutical patents: Obligations and exceptions, https://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm, [Accessed: 26th of December]

patented non-generic AIDS drugs fall only a 9 percent between 1996 and 2000. Meanwhile in 1997 Brazil enacted Industrial Property Law which allowed to use compulsory licenses for products which are not manufactured in Brazil and "if they are sufficiently important". As a result the cost of non-patented AIDS medicines lost 79 percent from 1996 to 2000 (Collins-Chase 2007, p.775). Furthermore, Brazilian case shows how "provisions of the TRIPS Agreement can be implemented in ways that respect, protect and fulfil the right to health" (UN Report 2001, p.19). Furthermore, "[b]razilian Government has successfully married implementation of the [TRIPS] with its obligations under human rights law - in particular its duty to provide affordable essential drugs (UN Report 2001, p.19).

Conclusion

Firstly, for understanding TRIPS it is necessary to consider not just WTO related Treaties but pay attention on practice and the new circle of bilateral trade treaties (TRIPS Plus) which promote the higher level of IP protection and very often develop international pharmaceutical trade outside of HRs developing countries obligation (UN Report 2001, p.10).

Secondly, The rights balance in trade related treaties and international HRs Covenants can have different understanding. It is necessary to make analysis of the provisions for particular situations. In order to develop the balanced vision HR-activists can use "civic" approach for promoting right to health in the TRIPS realms. This theoretical method expands space for inclusion HR agenda based on existing regulations and positive practice.

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Question 5

Introduction

Today, cross border trade has significant influence on range of aspects in our life: social, political, economic, ecological etc. There are public as well as academic debates about efficiency and basic principles of the World Trade Organization (WTO), which become a main actor of trade development and regulation. In the essay I will analyze two controversial positions regarding international commercial law and its enforcement practice in the WTO.

On the one hand, there is a room which is pessimistic for HR-activists and initiatives because it insists that the WTO concerns primarily about commercial interests and minimum tariffs conditions for trade among country Members, but not about non-trade issues which follow from the relation. On the other hand, another room argues that the WTO includes enough levers for promoting social-based purposes and it is possible for contracting parties to prioritize the goals in particular cases.

However, after more deep consideration of the current situation in the WTO is not so obvious and even for choosing one of above-mentioned houses. In my opinion for solving precise cases it is necessary to consider situation which forms outside the WTO procedures or legal texts. It can help to find answers or balance between “non-commercial” and trade concerns.

How to understand “non-commercial”

At the beginning it is important to discuss what “non-commercial” (“non-trade”) concerns (further, NTCs) are. There are no precise legal definition in WTO agreements what “non-commercial” means. Only the Agreement on Agriculture (further, AoA) explicitly refers to “non-trade” issues (Krajewski, 2005, p.2). Here “non-trade” concerns (NTCs) include: “food security”, “the need to protect the environment”, “special and differential treatment for developing countries” (AoA, preamble). Krajewski offers academic variants of different social phenomenons which include “non-trade” component such as “environmental policies, labour rights and issues, competition, investment, intellectual property rights, cultural issues, health and safety concerns, human rights, universal and public services and political questions such as promotion of democracy or reducing support for terrorism” (Krajewski, 2005, p.2).

However, there are no common understanding NTCs even in precise spheres such as intellectual property rights (IPRs) or agriculture. For examples, Doha Negotiation Round released declaration with further assertion:

> “We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the [AoA]” (Simpson, 2003, p.3).

The statment is still not enough for practical implementing non-commerce interests, for instance, “food security or NTCs to the WTO Dispute Settlement Body”, because “there is no international law on the issue of food security or Non-Trade Concerns” (Simpson, 2003, p.9). Simpson argues that there is a lack not only common recognized definition of NTCs but also there are no precise criteria for using the NTCs in practice. Moreover, above-mentioned “non-trade concerns” in AoA is “unclear” for further practice (Simpson, 2003, p.3).

The WTO as a tariff and trade agent

Regarding Leyla's position the WTO was created for promotion free trade regime primarily. The trade regime is fostered by GATT provisions and related agreements (TRIPS, AoA, GATS etc). GATT in 1947 as well as WTO legal test in 1994 develops two main objectives, first one is to reduce tariffs and second one is stimulate "integrated" (Leader, 2004, p.2255) trade without barriers around the globe (Noordhoek, 2010, p3, p.5). For instance, in the preamble of the WTO establishing legal text there are next statements which describe commercial component and spirit of the WTO goals: to foster "a large and steadily" growth of "income and effective demand" as well as to extend trade by producing "goods and services". What is more, the "tariffs and other barrier" will be reduced "reciprocal and mutually" by the WTO countries. (Leader, 2004, p. 2241) Even least-developed Members behaviour should correlate with "the growth in international trade" (Leader, 2004, p. 2241).

Moreover, according to Jones, the WTO "is an organization devoted to trade liberalization, not trade sanctions" (Kent Jones cited by Noordhoek, 2010, p.7). This approach of understanding WTO usually is called as "'separate fields" theory" (Noordhoek, 2010, p.7). The main basis of the concept that the WTO should not mix trade goals with any other objectives (Noordhoek, 2010, p.7).

The free trade regime is fostered by GATT provisions and related agreements where central role play "most-favoured-nation treatment", "national treatment". To begin with, the Most-Favored-Nation principle requires all WTO states to implement equal conditions for importation from every Members that their most favored partner is provided (Article 1, GATT 1947). In other words, the clause establishes that any Member, which shares certain commercial conditions with another Member in any trade operation such as importation or exportation, have to share the those privileges with all other the WTO Members in an equal basement. The concept is called to provide the harmonized trade rules covering all Members (Noordhoek, 2010, p.3).

Another considerable the WTO principle, which promotes free trade, is "National Treatment". The concept requires Members to create the same competition rules for all imported goods in the local market like its products have as well as to eliminate any quotas and barriers on import and export for the type of trade assets (Powell, 2004,

p.3). A provision in Article 3.4 in GATT explains the national treatment idea with the following way:

> "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use".

There is an example in Agreement on Trade-Related Intellectual Property Rights (further, TRIPS) which concisely demonstrates the spirit and practice of the WTO. The TRIPS provides opportunity for least-developed countries which face with pandemic disease such as HIV/AIDS, malaria, and tuberculosis or other significant public health issues, where the particular country can implement measures for fixing the emergency by using legal and organizational tools like compulsory licence, generic production and parallel imports in spite of 20-year patent monopoly term. Despite Doha Declaration, which repeated and stressed the right for developing countries, the practice shows "pressures and politics of international trade limit" to implement the right to health (Report, 2005, p.4-5). The oppressive politics usually are implemented by preferential trade agreements (further, PTAs) which launch more restrictive IPRs protection (expand patent monopoly more than 20-year term), to shrink access to important health information or to create barriers for parallel import (Lindstrom, 2010, p.927).

Another example shows how GATS, one of the pillar agreement of trade in services under the WTO, stimulate "progressive liberalization" in lesser developed state Members. The GATS proponents' logic is very similar to "TRIPS plus" practices: to provide more access for business in service sectors in global South and create conditions for wide range privatization public sector at all ("GATS Plus"). For example, Philippine, where with global institution influence it occurred privatization of water systems that created inequality and austerity in access to water for citizens in Manila (Report, 2005, p.7-8).

Flexibility of the WTO: Non-commercial concerns

As we were aware from the essay first part the WTO documents have no legal definition of “non-commercial” interests, but in the section we will develop position that there are “non-trade” related points in official text as well as their implementation in practice.

The preamble of WTO consists not just commercial interests and it has points which declare that trade and economic goals should be adjusted to increase “standards of living, ensuring full employment”, allow “the optimal use of the world’s resources in accordance with the objective of sustainable development”, keeping environmental protection “contracting parties respective needs and concerns at different levels of economic development” (Leader, 2004, p. 2241). Furthermore, the Preamble to the Marrakesh Agreement Establishing “the WTO does not make free trade an end in itself, but a means to fulfill basic human rights such as the improvement of global standards of living, promotion of sustainable development, and preservation of the environment” (Powell cite, 2004, p.3). Theorist Noordhoek notes that “affected by trade” non-commercial interests “have become of some importance in international trade negotiations” (Noordhoek, p. 6).

Krajewski offers a bulk of grounds from GATT, GATS, TRIPS and other WTO agreements where there are social concerns. For example, that is for “public order and public morals (Art. XX (a) GATT, Art. XIV (a) GATS, Art. 27:2 TRIPS)”, for “national and international security (Art. XXI GATT, Art. XIV bis GATS, Art, 2.2 TBT, Art. 73 TRIPS)”, for “environmental protection (Art. XX (g) GATT, Art. 2.2 TBT, Art. 27:2 and 27:3 TRIPS)”, for “health concerns (Art. XX (b) GATT, Art. XIV (b) GATS, Art. 2.2 SPS, Art. 2.2 TBT, Art. 27:2 and 27:3 TRIPS), for “cultural issues (Art. IV GATT, Art. XX (f) GATT)” (Krajewski, 2005, p. 4) etc.

Now we consider several of this. The Article XX in GATT have provisions for protection “public morals” and “human, animal or plant life or health” (Noordhoek, p. 6). In this Article there is right to forbid any imports of goods which have been produced by prisoners (Article XX(e)). For instance, in Article XXI of the GATT import can be banned by Member in favour of “international peace and security”. (Leader, 2004, p.2249) What is more, the Article XIV in GATS almost repeat the points and concerns about public morals, public order and “human, animal or plant life or health” (GATS, Art.14).

Sheldon Leader notes optimistically that the TRIPS Agreement in Article 7 gives a more broad field for non-trade issues than “functionalist” understand this because the TRIPS forces “countries to adopt an intellectual property regime that provides both protection of intellectual property and room for overriding that protection” (Leader, 2001, p.2248), and he stresses that this points have the same legal force strength. In Article 8 WTO provides “ultimate priority to certain” (Leader, 2004, p.2263) non-commercial concerns in more detail by giving “[m]embers may ... adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development” (TRIPS, Art.8).

In case *United States – Shrimp* the non-commercial point “exhaustible natural resources” (Article XX(g), GATT) was accepted by the Appellate Body “with reference to the United Nations Conventions on the Law of the Sea (UNCLOS), the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES), Agenda 21 and a resolution adopted in conjunction with the Convention on the Conservation of Migratory Species of Wild Animals” (Krajewski, 2005, p.5).

Autonomy of the Enabling Clause

One of the controversial non-commercial tools in the WTO is the Enabling Clause (Generalized System of Preferences - GSP). The Clause provides exemption from Most-Favoured-Nation regime. In accordance to this condition, well-developed countries can give some trade preferences (for example, lower tariffs) for less developed countries. The decision depends on developed countries economic policy and it has *ad hoc* criteria. The idea is expressed in Art.1 of the Clause: “contracting parties may accord differential more favourable treatment to developing countries without according such treatment to other contracting parties”.

There are a house which considered the GPS as a fully voluntary act (Leader, 2004, p.2251) which lies “outside the purview of WTO regulation”. (Leader, 2004, p.2253) In the case the “preferential access must be focused on the development needs of the recipient”. (Leader, 2004, p.2253) Thus, the GSP are often used as a “political tools”. In other words, a most-developed partner can “unilaterally” make

decision what condition was broken by his less developing country for declining the GSP. (Leader, 2004, p.2252)

India - EC GSP case showed how developed country (European Community) can manipulate Enabling Clause between two developing contracting parties (India and Pakistan). The case demonstrate how garment industries in the both South countries can be "regulated" by establish or eliminate preferential trade regime (Dhar, 2006, p.23-24). Furthermore, there are no precise criteria how to get or lose the special treatment and work with the situation in the WTO Dispute Settlement Body. Anyway, in the panel India as country from global South made "legal challenge" for possible shaping EC GSP system to be more transparent and less politically depended (Leader, 2004, p.2253).

Disturbance

As it was mentioned above it is not so obvious and even to choose one of margin positions (Leyla's or Alexe's) because there are bulk of issues which often can lie outside the WTO. For example, for different reasons states Members (it does not matter global North or South) of the WTO do not know (and often want) how to deal with issues where two rights compete: non-commercial and trade related (Powell, 2004, p.11). Other research define that there is lack of enforcement mechanisms in different "non-trade" treaty bodies [,for instance, ICESCR] "[to] effectively hold State actors to their obligations" (Report, 2005, p.9). Or, for instance, Simpson writes that there is a scarcity of legal basement or will in the WTO panels to make decision what human right claim "because there is no provision in the WTO Agreement on Agriculture asserting a food security right". (Simpson, 2003, p.8) The report after Ministerial Conference in Hong Kong (2005)[9] argues that the WTO need to be more transparent because public don't know how different WTO bodies in the organization work, for instance, "the Secretariat" which coordinates different "working groups" as well as "accession, monitoring, and dispute settlement" (Report 2005, p.9).

Another opinion about the WTO, Powell notes that "much of human rights law is not so widely accepted" (Powell, 2004, p.10) in the WTO dispute settlement apparatus

[9] Report & Resource Guide for National Human Rights NGOs in View of the 2005 WTO Ministerial Conference, Hong Kong was prepared by International Federation of HRs. Source: https://www.fidh.org/IMG/pdf/wto423a.pdf Access: 31 December 2015

and there is a shortage of knowledge about WTO “non-trade” provisions. After he adds one more pessimistic view in the WTO picture of issues that “we face the issue of which human rights principles have become customary only because states have been unwilling in either trade or human rights treaties explicitly to give instruction on which provisions should prevail in the event of conflict”. (Powell, 2004, p.10)

Conclusion

Both Leyla’s and Alexe’s positions have foundations. However, in practice, on the one hand, developed state Members of the WTO tend to use the organization for promotion neoliberalism concept in emerging markets. They use many different tools, for instance, PTAs or global policy-making institutions such as IMF or World Bank. Their behavior makes trends in WTO panels. On the other hand, the WTO in the legal document has enough links for possible promotion “non-trade” interests. There are many provisions which touch fundamental human rights (right to health, life) on other social interests (public morals) in WTO Agreements, but they do not work always smoothly and even.

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