

In search of the center in US economic policy

WOA's Millennial Campaign for Africa: Focus on trade

This issue of the *Washington Notes on Africa* focuses upon trade issues as a key aspect of our economic justice concerns.

Economic justice in US policy toward Africa is one of the three rubrics of our Millennial Campaign. The other two are *peace and reconciliation*, and *health and human welfare*.

Trade policy not only is an aspect of economic justice *per se*, it is also a key factor in peace and reconciliation and health. Articles in this issue on capital market sanctions against foreign oil companies doing business in the Sudan, on conflict diamonds, and on the Doha declaration giving priority to public health over patents are striking examples.

To know more about our Millennial Campaign, visit our website at www.woafrica.org.



It may seem odd, an Africa advocacy organization with the kind of progressive history that the Washington Office on Africa (WOA) has, talking about searching for the *center*. But we're not talking about *us*. Rather, as we engage more and more in economic justice issues, especially dealing with US trade policy, we have come to appreciate the degree to which the economic right has captured the center in the debate over US policy.

Consider this: The Bush administration claims that its objections to strong conflict diamond legislation are because import prohibitions of conflict diamonds may violate World Trade Organization (WTO) rules. Why not ask whether trade rules exist in their own untouchable domain, or whether trade rules should serve a broader social agenda, where a just community restricts products that fund rebel movements that cut off the hands and feet of children?

What are trade rules for? The free marketers give absolute priority to the right of businesses, including multinational corporations, to exchange goods, unhindered by regulation. Make no mistake about it. This is a

The right has captured the center, and by so doing controls the agenda and the debate. We need to reclaim it in the name of economic justice.

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In search of the center

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right wing agenda that places corporate needs ahead of community needs, multinationals ahead of fledgling African businesses, Lesotho sweatshops ahead of workers' rights, patents ahead of health, oil ahead of peace, profit ahead of the common good.

And the catch is, when we say such things, we are cast as remnants of a strident left that is to be dismissed as irrelevant to the discourse. But let's look at what is presented as "reasonable." A reluctance to support strong legislation on conflict diamonds is paralleled by

- ❧ An unwillingness to impose capital market sanctions against foreign oil companies doing business in the Sudan, despite a clear correlation between increased oil revenues and increased military expenditures by the Khartoum government. The US government should not interfere with the "independent" workings of the stock market.
- ❧ Resistance to actively helping Africans obtain affordable medicines, especially for AIDS treatment. In an article in this issue of *Notes* we acknowledge the progress made at Doha, but progress was secured not without a US fight against it. And the US is continuing that pro-patent-pro-trade battle against the rights of African nations to purchase generic medicines from third-party countries.
- ❧ A World Bank projection that climate changes "will result in more adverse socio-economic impacts in Africa" than anywhere else in the world, yet the US response is to avoid the internationally-endorsed Kyoto process on global warming because it will hurt US corporations. In place of Kyoto the Bush administration suggests voluntary reductions of pollutants. Leave business alone and it will do the right thing.
- ❧ A willingness, domestically, to violate free market principles when it is convenient to do so – the recent steel protectionism and the long-standing agricultural subsidies are cases in point. But the US continues to insist that a free market is the solution to Africa's economic problems, and that similar intervention by their governments in their economies is unacceptable.

I spoke recently at a Bread for the World conference on biotechnology. Monsanto – one of the world's largest

pesticide companies, now aggressively promoting biotechnology in Africa – was there. Their message is, "Trust us." Two weeks before, an Alabama jury convicted Monsanto of releasing tons of PCBs into a poor section of the city of Anniston, then covering up its actions for decades. Guilty on all counts, the verdict on the legal claim of "outrage" was the most compelling: Conduct "so outrageous in character and extreme in degree as to go beyond all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in civilized society." Trust us.

And yet, in a very real sense, our message is neither anti-business nor anti-trade. We are simply suggesting the obvious, that corporations will act to protect and secure their own interests and their own profits, and that the history of the last two centuries demonstrates repeatedly that left to their own devices, companies will give precedence to their agenda over community needs. That should be neither surprising nor unexpected.

What is before us these days, however, are the lies that corporations, left alone, will serve the common good, and that the international trade regimen that the US has been so instrumental in creating will enhance Africa's economic development – lies presented as undebatable gospel. Business and trade, properly regulated to protect workers and the environment, and with sufficient flexibility to permit African governments to support small business initiatives against multinational giants, *will* help African economies. Business and trade, placed in the context of human rights and conflict resolution and a broad vision of societal good, *will* contribute to poverty alleviation. But that's not the US agenda, neither generally nor in regard to Africa.

The US agenda – both within the Bush administration and in corporate circles – is to give unchallenged primacy to business to exploit, both resources and people. Africa suffers from such a US mentality. So do the rest of us. For such a view of human relationships to be the "reasonable" view, claiming the center, is wrong. And we have to find a way to challenge it.

Leon Spencer
Executive Director



Affordable access to medicines and the WTO in Qatar

The Africa Group came to Doha, Qatar, last November seeking a declaration that “the TRIPS Agreement [intellectual property rights, here referring to patents on medicines] shall not prevent Members from taking measures to protect public health.” They came away with a statement that said that “the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health.”

This is progress. The Washington Office on Africa has been engaged for some time on issues related to affordable access to medicines, especially as applied to AIDS in Africa. (*Our most recent discussion of this issue is in Notes in summer 2001; a detailed outline of developments regarding pharmaceuticals appears on our website.*) We have complained that as recently as the beginning of 2001, the US was continuing to give priority to patent holders over affordable African access to medicines. We’ve noted that, at Qatar itself, the US delegation fought against the Africa Group’s *shall* agenda – *shall* being legally binding, *does not and should not*, a statement of perception.

The US, however, found itself in an awkward position after the anthrax scares last fall. As one of WOA’s sponsoring organizations, Maryknoll, reports in its current issue of *NewsNotes*, Tommy Thompson, the US Secretary for Health and Human Services, threatened to seize Bayer AG’s patent on Cipro (the antibiotic most effective against anthrax) if Bayer did not lower its price. Pharmaceutical patents now seemed more vulnerable to societal considerations.

The Doha declaration went on to say that “while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.”

The declaration also helpfully gives least developed countries a ten-year extension (until 2016), to put in place laws that bring them into compliance with TRIPS.

This was a political, not legally-binding, declaration. Nevertheless, it does endorse the steps an African nation might wish to take to secure or manufacture quality medicines at cheapest prices from generic sources, and thereby it discourages the US in particular from challenging such steps. But it is worth recalling that the US and the pharmaceutical industry sought to portray their challenge against Brazil over AIDS medicines as other than a TRIPS issue. Thus while the US might find it diplomatically unwise to challenge an African nation over TRIPS, it may be willing to take a particular action on by claiming that the action addressed different trade issues. This bears watching.

What Doha failed to resolve has to do with the limited capacity of some African nations to take advantage of compulsory licensing, the TRIPS term for claiming the right to manufacture drugs while those drugs are still under patent. Some African nations simply lack the manufacturing capacities to produce drugs. The Doha declaration calls on the WTO’s Council for TRIPS to “find an expeditious solution” by the end of this year.

This is a serious issue, for there is legitimate debate as to whether, say, Kenya – with an established pharmaceutical industry – could export drugs to other African countries, or would be restricted to manufacturing drugs under compulsory licensing only for its own domestic use.

The negotiating role the US has taken since Doha marks a disturbing sign that the US views the Doha declaration as a negative restriction upon corporate trade rights and will work to restrict its effect. As HealthGAP reports, the US has informally advanced a number of ideas, most of which would dramatically limit the scope and effectiveness of the Doha declaration.

These include limits on access to such medicines to the public sector alone, perhaps excluding NGO and mission hospitals; limits on countries that could import such drugs, by excluding small market countries that theoretically have

“The TRIPS Agreement does not and should not prevent [nations] from taking measures to protect public health.”

technical capacity to produce medicines but insufficient market size to make it likely, or by excluding developing countries at a certain per capita income level. The US also wants to place barriers to licensing by insisting on prior negotiation with the patent holder on commercially reasonable terms; requiring protracted determinations of the legitimacy of compulsory licenses on a case-by-case basis; and proof of a “serious” or “urgent” public health need and of technical incapacity to produce a particular medicine.

This is disturbing. The US subscribed to the declaration that “the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health.” Integrity, and the crying need for affordable medicines in Africa, demands that it honor the spirit of that declaration.



African smallholder farmers' draft legislation now a resolution before the House

The US is stressing economic development as the key to Africa's future. And yet, as current global trade rules stand, individuals and organizations from outside of Africa have the ability to patent and profit from Africa's agricultural and biological resources, traditional knowledge and technologies, without the prior agreement of African farmers, breeders or local communities. It's another TRIPS issue – the WTO's intellectual property rights rules – this time patenting life itself.

As we reported in our summer 2001 issue, back in 1997 the Organization of African Unity (OAU) began to draft African model legislation that sought to protect Africa from such threats. Through our Africa Trade Policy Working Group here in Washington, we've been trying to be a voice in solidarity with our African colleagues on this issue ever since.

Now there is a US-based "vehicle" for our advocacy. Last November, Rep. Maxine Waters (D-CA) introduced the Agriculture and Farm Resources for Indigenous Communities of Africa (the AFRICA Resolution – H. Con. Res. 260),

essentially endorsing the OAU model legislation.

The AFRICA Resolution declares as "the sense of Congress" that the patenting of life forms that are part of African agricultural and biological resources violates African rights, and it calls for "the trade and economic development policies of the United States toward Africa [to] respect and support the rights of African farmers... and the provisions of the African Model Legislation."

The resolution now has 41 co-sponsors. It has been referred to both Ways and Means and International Relations committees.

We recognize, of course, the essential weakness of congressional resolutions. They do not mandate anything. They simply declare what a majority in Congress are thinking. Nevertheless, H. Con. Res. 260 can be an effective means to raise awareness and stimulate more concrete action on this issue.

Meanwhile, work with African partners continues. Larry Goodwin of the Africa Faith and Justice Network, an organization with which WOA works closely, attended a Conference on Community Rights in Natal in March. They issued "The Valley of

1000 Hills Declaration," asserting that "community rights over biodiversity and indigenous knowledge are collective in nature, and therefore cannot be privatised or individualised."

Strikingly, the notion of *community* rights seems quite foreign to those – including US officials – engaged in TRIPS negotiations, and it is a cause for grave concern. The dominant privatization agenda in US trade policy – that everything, including life itself, can be owned and can, therefore, be controlled and marketed – is an affront to community. We have seen it articulated in structural adjustment programs, where mandates for African countries to have fees for health care and education and private control of water were considered appropriate.

Now, we at WOA do not know how beneficial biotechnology may prove to be for Africa – though the precautionary principle seems to us to be so sensible as to be obvious. But we *are* clear that who controls life is not a matter for the free market to decide. Rep. Waters' resolution is one way to put that view forward.



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SUBSCRIPTION RATES: We request a \$30 annual contribution to receive the newsletter plus periodic legislative alerts on African issues.

Capital market sanctions in the Sudan Peace Act

The Sudan Peace Act (HR 2052) is stuck. The Sudan Peace Act, as reported to many of you in our November action alert, passed both the House and the Senate but was then set aside. It still awaits a conference committee. Part of the delay reportedly is Bush administration opposition to the capital markets sanctions provision in the House version of the bill.

Elsewhere, much is going on in and about the Sudan. Former Sen. John Danforth, named by President Bush to be his special envoy in November, set four criteria to test the will of both the rebel movements in the south and the Khartoum government for peace: An end to the bombing of civilians, “zones of tranquillity” to permit humanitarian assistance, a cease-fire in and access to the Nuba Mountains, and an end to the taking of slaves. Danforth returned to the Sudan in January, and is expected to report within weeks.

As the International Crisis Group observes, “a small window for peace has opened.” The Khartoum government did violate its commitments to Danforth by bombing World Food Programme distribution centers in Akuem and Bieh in February, leading to the US’ suspension of its peace-making efforts. But Khartoum also entered into a cease-fire in the Nuba Mountains. Factor in the recent merger between the SPLM/A led by John Garang and the Sudan People’s Democratic Front led by Riek Machar, and the situation seems promising and fragile all at once.

After the cease-fire was declared, the *Congressional Quarterly* reported that Rep. Tom Tancredo (R-CO), who introduced the Sudan Peace Act, now felt it would be worked on again only if peace efforts stopped moving forward, calling the bill “leverage.”

Which brings us back to oil. Even in this changing environment, it remains difficult to see how capital market sanctions against foreign oil companies operating in the Sudan would *not* be meaningful leverage to sustain pressure upon the Khartoum government to act in good faith. The correlation between oil revenues and military expenditures

has been noted before. So has the consistent call from our African partners, reiterated in January at the New Sudan Council of Churches’ Round Table, urging the international community “to take all possible measures to suspend the exploration, exploitation and exportation of oil from Sudan until there is a just and lasting peace, and to prevent transnational oil companies from involving themselves in Sudanese ‘blood’ oil.”

A key target against foreign oil operations in Sudan has been Talisman Energy of Canada, now faced with a lawsuit in a US district court for “complicity in gross human rights abuses.” A class action suit, plaintiffs include the Presbyterian Church of Sudan. Meanwhile, Sweden’s Ludin Oil has suspended operations there.

US Assistant Secretary of State Walter Kansteiner hosted a conference in London earlier this year, looking at oil revenue sharing arrangements as an alternative to sanctions. The notion is that if oil revenues benefited north and south equally, oil production ought to continue.

How that would actually work, given SPLM/A control of much of the south, is problematic, and without a detailed proposal, we see no reason why the House version of the Sudan Peace Act – containing provisions for sanctions – should not move forward.

Avoidance of such a step by the Bush administration is seen as an unacceptable deference to market forces (*discussed in our “Search for the center” reflection on p. 1*), the view that social and justice considerations should not interfere with the “free” expression of the stock market. In investment jargon, some have suggested that the civil war in the Sudan is not “material” to market considerations.

Given administration and some Senate hostility to capital market sanctions, and the current fluid situation, colleagues have described the Sudan Peace Act as “radioactive.” *With* the sanctions provision, it’s still worth doing.



WOA participants at the February child soldiers demonstration at the US Capitol include Sylvia Stern, Associate for Advocacy; Leon Spencer, Executive Director; and Kathy McNeely, Treasurer of WOA's Board. Child soldiers have been a tragic aspect of conflicts in the Sudan, Sierra Leone, and the Congo.



Bush administration obstacles over conflict diamonds

We thought we were almost there. In the last Congress, and now, industry and advocates together have worked to promote legislation to prevent the importation of conflict diamonds – diamonds that originate from areas controlled by rebels to fund military action and enable violence against civilians – into the United States. The tragedies in Sierra Leone, Angola and the Congo tell the story.

The bills have been through a number of incarnations, but finally a strong bipartisan version, the Clean Diamond Trade Act (HR 2722), emerged. It did what we felt was essential: A prohibition of the importation of diamonds unless certified as “clean” (i.e., not “conflict”) diamonds consistent with UN resolutions and an international certification scheme; prohibition of the import of polished diamonds and jewelry unless the exporting country had a system of controls; and a meaningful reporting requirement, including the “name and shame” reporting of countries that fail to implement controls.

Tragically for such a crucial human rights issue, the Bush administration so seriously undermined the integrity of the bill that we concluded that no bill was preferable to the meaningless gesture that passed the House of Representatives.

In February, the Senate held a hearing on “Illicit Diamonds, Conflict and Terrorism,” with witnesses once again speaking of the atrocities that result from trade in conflict diamonds: Children stolen, women raped, and men, women and children maimed and killed. Sen. Richard Durbin (D-IL) emphatically questioned the merit of the House bill, and pledged his commitment to work for an alternative. He has.

In mid-March he introduced a Senate version (S 2027, with the same title) that restores key features to the bill. What did he have to try to undo?

First, opposition from the Bush administration focused especially upon the issue of presidential discretion, despite the fact that the original House legislation provided a waiver, by which “the President may at any time waive the applicability of this Act with respect to a country....” We did not object to such a waiver authority, for the legislation was written to prevent the importation of conflict diamonds unless the President provided a waiver, at which time he had to report to Congress that he had done so, and why.

That was insufficient for this administration. Absurdly, under pressure from the Bush administration, the House passed a bill that

- ❖ no longer even required that the President prohibit the importation of conflict diamonds: Rather the bill said that “The President *may* prohibit such imports.”
- ❖ stood the idea of a waiver on its head: The President may prohibit such imports as long as the prohibition “is necessary to protect the essential security interests of the

United States” and is “consistent with the foreign policy interests of the United States.”

Normally in a waiver, a president is allowed not to take an action if not acting is considered in our national or security interest. As the Bush administration demanded in this bill, however, the President is not allowed to take action unless prohibiting the import of conflict diamonds itself is necessary to protect our essential security interests. Can we prove that prohibiting the import of conflict diamonds from, say, Burkina Faso or the Gambia is essential to our security?

The Bush version also undermined the Kimberley Process - an international plan for certification of “clean” diamonds from the mining stage to sale and processing – by accepting alternatives to the emerging international certification agreement. The bill also rendered the exclusion of polished diamonds and jewelry made from conflict diamonds less certain.

But what brings the House version most aggressively into the trade focus of economic justice is the issue of compliance with WTO rules. We’re not convinced that the issue deserves serious treatment. If the US has helped to establish an international trade system that prevents us from taking steps to protect people from horrendous suffering by restricting the flow of goods that support brutality, then we need to seriously reexamine the very nature and power of the WTO. In that sense, a dispute would be welcomed. On the other hand, the original bill was written in a manner that was sensitive to WTO issues, was linked to a multilateral process (the Kimberley Process), and met the criteria for exemptions based upon security concerns.

The Durbin bill in the Senate, to our mind, needs to be advanced. It is crucial that we have a substantive piece of legislation on this issue, and the Bush bill that passed the House is not such a bill. House leadership is portraying the House version as one that addresses the issue of conflict diamonds, but it does not. Our task is to say that this is unacceptable. It is wrong. And now we have an alternative.

The Washington Office has just released an action alert in support of S 2027, available on our website. As part of our Millennial Campaign, we are also producing a packet of materials on conflict diamonds for use in small groups and in congregations. Let us know if you are interested in it.



Conflict diamonds and the Kimberley Process

In order to stop the trade of conflict diamonds, the United Nations called for a diamond tracking system in December 2000.

Governments, the diamond industry and non-governmental organizations have been meeting ever since to create such a certification system. This effort to end the trade in conflict diamonds is called the Kimberley Process.

The idea has been to have a certificate of origin that would follow the diamond in every step of the diamond trade. Producing countries have agreed. However, trading countries such as Israel, Belgium, the US and the UK have balked at the complexity and cost of certifying a diamond after it has left its country of origin. The World Diamond Council has suggested an industry-managed "chain of warranties" in each producing and trading country.

In Ottawa in late March, participants in the process faced four key unresolved issues: The question of whether the system was compliant with the WTO; independent monitoring; a standardized statistical data base; and a permanent secretariat to coordinate the system.

We have written of WTO compliance in our article on p. 6. Initial reports on Ottawa – concluded the day before we go to press – are unclear about monitoring, although early indications are that monitoring will not be "independent." Ottawa rejected the creation of a secretariat, and some have spoken of national sovereignty issues as the basis for the rejection.

The statistics question is an especially important one. Regular reliable data on production and exports is key to any analysis of legitimacy in a nation's diamond industry. Ottawa agreed to semi-annual reporting on production and quarterly reporting on imports and exports. Some participants indicated reluctance to provide data for enforcement purposes. How this will evolve into a "harmonized" system is uncertain.

This does mark some progress, and attention may soon shift to implementing legislation in the various nations. The Kimberley Process looks toward simultaneous implementation by the end of this year. The next meeting of the Process group is scheduled for Switzerland in November.



Trade and economic justice: Some quotations to think about

'The free market is potentially a useful servant, although it is certainly a bad master.'

✻ J. Philip Wogaman

'There is a growing awareness that, while profit is the motivating factor in business, there is a critical need to place human values at the center of economic systems....'

✻ Archbishop of Cape Town Njongonkulu Ndungane

'Business and the market have their place, but this place cannot occupy the entire sphere of human existence.'

✻ Susan George, at the Conference on Economic Sovereignty in a Globalising World

'It is because many Christians want to see capitalism work for the poor that they continue to raise fundamental questions about it....'

'Few are committed to its overthrow, though many do have the imagination to conceive of a world transformed by people working for the common good rather than just because they "want things."'

✻ The Revd David Haslam and others, in the Church Times, January 11, 2002

'I know that the world does not change itself. People with vision change the world because they are able to dream of another way of doing things than what we presently think of as the only course open to us.'

✻ Archbishop Rember G. Weakland, in Center Focus

UJAMAA

At our annual Board meeting in December, WOA welcomed **Debra Braaksma** of the Reformed Church in America – our newest sponsoring church – and **Moses ole Sakuda** of Church World Service to our Board. The Board also offered thanks to **Mark Brown** of the Lutheran Church (ELCA), who served as

President of the Board and continues as a member of our Executive Council, and elected **Jon Chapman** of the Presbyterian Church USA as its new President, and **Clyde Anderson** of the United Methodist Church as Vice-President.

The Board met jointly with the Board of the Africa Faith and Jus-

tice Network, and they discussed various matters on the Africa advocacy agenda, including the New Partnership for Africa's Develop-

peace," rings true as we watch the struggles of the current Inter-Congolese Dialogue.



From left to right, Moses ole Sakuda, Debbie Braaksma, Sarah Muhoya, and Clyde Anderson.

ment. The Boards also heard from **Sarah Muhoya** of the National Council of Churches of Kenya.

This winter WOA hosted a discussion with **Archbishop Monsengwo of Kisangani**, initiated by **Michael Perry** of the US Catholic Conference of Bishops. The Archbishop's phrase, "we need to liberate the

The Advocacy Network for Africa, which our Executive Director facilitates, recently held discussions with Asst. Secretary of State **Walter Kansteiner** on a wide range of Africa issues.

In February **Sylvia Stern**

joined our staff. A graduate of Bryn Mawr, she has spent the last fifteen months in Senegal as part of the Mission Intern Program of the United Methodist Church's General Board of Global Ministries.



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