

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Agriculture, development key in Doha Round, say developing countries

Developing-country representatives at a 14 March meeting of the WTO's governing General Council stressed that agriculture and development are central issues to be addressed in the Doha Round trade talks. They also pointed to the need to conclude the Round as a single undertaking in order to ensure that their concerns are adequately dealt with.

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Agriculture and development central to post-Bali work, insist South

Developing countries in the WTO have underlined the priority to be attached to agriculture and development issues in the Doha Round trade talks, reports *Kanaga Raja*.

GENEVA: The centrality of agriculture and development in the post-Bali work programme as well as the importance of concluding the Doha Round as a single undertaking were highlighted by developing countries at a meeting of the WTO General Council on 14 March.

Developing countries also stressed that the December 2008 draft modalities texts (or Rev.4 texts) on agriculture and non-agricultural market access (NAMA) should be the basis for future work.

These views came in their statements under the agenda item of the report by the Chair of the Trade Negotiations Committee (TNC).

State of play

In his statement as TNC Chair, WTO Director-General Roberto Azevedo provided a brief summary of the progress to date on each of the Doha Round negotiating areas including agriculture, NAMA, services, rules, TRIPS issues, trade and environment, and trade and development.

(The Chair of the Preparatory Committee on Trade Facilitation gave his report under a separate agenda item.)

In his summary, Azevedo said: "It seems that some factors were common among some of the Groups. For example, in Agriculture, [Non-Agricultural] Market Access and Services, it came across strongly that our approach should be balanced across all three issues – and that all three should [be] tackled together, simultaneously."

"There was also a clear emphasis on the parameters during the discussions – particularly on the importance of development, and on ensuring that we focus on outcomes that are doable," he added.

Starting with agriculture, Azevedo said that the consultations by the chair of the agriculture talks so far have highlighted a range of views:

- Most members acknowledged the need for a balanced approach among the three key pillars of agriculture in the areas of market access, domestic support

and export competition. Among the three pillars, export competition is recognized as an important priority for a large group of members.

- Many members highlighted the importance they attached to the draft modalities, while other members have placed less emphasis on this.

- Ensuring that further discussions are assisted by appropriate updated data and information on member policies was highlighted by some members.

- The need to ensure a coherent approach to the work within the regular Committee on Agriculture to implement Bali outcomes and the ongoing work in the Special Session of the Committee (on the negotiations) was also mentioned.

On the Negotiating Group on Market Access, Azevedo said that in relation to "what went wrong?", several factors were cited. These include negotiating approaches, the different expectations among members regarding the NAMA outcome and the different perceptions about the balance in the current modalities text.

As to "what should be done?", he said that several questions were discussed including whether or not to continue where members left off, the possibility of updating the technical negotiating base and whether to discuss in a more generic manner the question of what is doable in this area.

Some delegations expressed their views on the latest draft modalities, but as he understood it, no common position was reached.

According to Azevedo, the Group's discussion will need to continue in order to establish how members can contribute to a meaningful result on NAMA.

As to the services talks, Azevedo said there was broad convergence that, in addition to balance across the three market access pillars, there would also need to be a balance within the services agenda itself. And such an outcome would require the exploration of new approaches.

"Many said that, with any outcome

in services, the development dimension of the round will need to be fully reflected," said Azevedo.

He added that the need to avoid previous mistakes was also seen as crucial. Some wished to avoid the sequencing of the Doha Round negotiations, which in their view had placed services at a disadvantage, while others stressed that progress in services must be contingent on progress elsewhere.

"While further deliberations are needed, it was widely accepted that an appropriate level of ambition in services would have to be commensurate with those in agriculture and NAMA," said Azevedo.

On the plurilateral negotiations on services taking place outside the WTO, some saw these as complementary to the WTO negotiations and emphasized the potential for cross-fertilization between the two tracks. Others took the view that such initiatives could undermine the multilateral process, he said.

On the Negotiating Group on Rules, Azevedo said that most members agree that there needs to be serious horizontal reflection as to the overall scope and level of ambition of post-Bali activity, and that this should be the basis for determining whether any or all of the rules issues will be included in the next phase of the work.

According to Azevedo, a substantial number of delegations were open to including rules in the work programme but considered that this could only be addressed once clarity has been achieved on the level of ambition for the three "core issues". In contrast, a few delegations considered that rules itself constitutes a "core issue" and that outcomes on at least certain rules will be essential.

On the Special Session of the TRIPS Council, Azevedo reported that based on the interim chair's consultations earlier in the week, "it seems that negotiations on a register for wine and spirit geographical indications would depend on the relationship of this work to other TRIPS issues and the wider Doha Round".

In addition, some members have expressed interest in recommencing the consultations process on TRIPS implementation issues. "We need to look into this further," said Azevedo.

On the Special Session of the Committee on Trade and Environment, he said that in these discussions, members have reiterated the view that environmental negotiations remain an important element of the overall Doha mandate and

continue to be high on delegations' political agendas.

With respect to the Special Session of the Committee on Trade and Development, Azevedo said that its chair has encouraged members to review the three areas of outstanding work, specifically the remaining agreement-specific proposals, including the 28 Cancun proposals.

"The indications are that delegations recognize the centrality of development in our post-Bali work and have an open mind on the possible elements in the development pillar of the post-Bali work programme. Some Members observed that this work programme will inevitably influence the contours of the work programme on S&D [special and differential treatment]."

According to Azevedo, the chair (of the Committee) reports that there is a sense of preparedness for serious engagement among the members and an acceptance of the need for creative approaches.

"However, for this to happen, Members will need a clear road map with tangible substance. A clear articulation of concerns and interests will help us to move towards a successful outcome in the work of the Special Session."

On the Special Session of the Dispute Settlement Body, Azevedo reported that work has continued on the basis of the "horizontal process" launched in June last year, which is geared towards identifying achievable outcomes across the board.

In three areas, namely, remand, post-retaliation and third-party rights, some elements were presented as possible bases for solutions.

According to Azevedo, this effort was very well received and will set the tone for further work. "Further progress now requires willingness to be flexible across-the-board to develop achievable outcomes that reflect the interests of all participants."

Azevedo also reported that following consultation with the group of least developed countries (LDCs), he has asked Ambassador Steffen Smidt (of Denmark) to continue as the facilitator for the LDC issues this year.

In his statement, Azevedo highlighted that the chairs of the various negotiating groups have held an initial round of consultations with the members, and that they would be issuing the full written reports of their consultations at the end of the General Council meet-

ing.

He said that he would instruct the chairs to continue their work as well as the process of consultations.

Noting that the first quarter of 2014 "is almost behind us" and that in "the space of just nine months, we must complete this work", Azevedo said it is essential that all members are fully engaged in these consultations.

Urging members to redouble their efforts, he said that he would convene a meeting of the TNC on 7 April to report on further progress.

In closing, he said that "I think we have made an excellent start. I have heard a lot of good feedback – and I think there is much which we can build on constructively. But, nevertheless, there remains a lot to do."

Central priority

A number of delegations spoke following the report by the TNC Chair.

According to trade officials, Bolivia said that the Bali result was unbalanced against the interests of developing countries and this cannot be repeated. Development must be the central priority, and agriculture has to be at the centre of any upcoming decisions in the near future.

It said that the Doha Development Agenda (DDA) agriculture work should be the pillar of these negotiations – the level of ambition here will set the tone and ambition in other areas must be commensurate with what progress is seen in agriculture.

Bolivia said that it does not support any future "early harvests" and that the single undertaking is the only way to ensure that developing-country concerns are adequately addressed. Before turning to any new issues, the twentieth-century problems that are part of the Doha mandate must be taken up first, it added.

Lesotho (on behalf of the African Group) said that although there was an important agreement reached at the ninth Ministerial Conference in Bali, it is very important that members live up to the commitments made, particularly those going beyond trade facilitation that are non-binding in nature.

It said that the work programme must give priority to these pending Bali issues. It is also very important for members to take into account the amount of time that is ahead of them and not to delay until the eleventh hour to make progress on these issues.

Agriculture has to be at the centre

of the DDA work programme and the process that is employed must involve the key principles that have been the basis for the work pre-Bali, said the African Group.

With respect to the December 2008 draft modalities texts (on agriculture and NAMA), the African Group said that thousands of hours have gone into them, and that is why they should be the principal basis on which members go forward.

On trade facilitation, the African Group said that there has been good progress made so far but it is very important that developing countries are assisted in determining their needs assessments. They will also need technical assistance to update existing needs assessments. This is particularly the case with Category B and Category C commitments in Section II (on S&D provisions) of the Trade Facilitation Agreement.

(According to the Trade Facilitation Agreement, Category B contains provisions that a developing country member or a least developed country member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement. Category C contains provisions that a developing country member or a least developed country member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity-building.)

The African Group further said that the rules that have been laid out in Section II and access to technical assistance which is critical to that, must be extended to those developing countries that are in the accession queue. Section II should not be used as a barrier to universal membership.

The African Group said that the principle of the single undertaking should be adhered to in word and deed. While trade liberalization is obviously important, it cannot in and of itself deliver on the development promise, it added.

Cuba supported Bolivia and said that priority should be given to the pending Bali issues, adding that there should be a transparent, inclusive and bottom-up approach.

It stressed that the single undertaking must be at the heart of the work, and that agriculture and development are the central issues. On trade facilitation, it said that the guidelines that were laid out by ministers (at Bali) must be followed.

It was discouraged that some members are putting forward a plurilateral agenda, noting that in Room W (at the WTO) recently, a small group of countries had given updates on the TISA (Trade in Services Agreement) negotiations while encouraging others to join. It rejects the plurilateral initiative, like all other plurilateral initiatives.

Agriculture focus

Indonesia (on behalf of the G33 grouping) said that it wants a transparent, inclusive and bottom-up process. It also wants agriculture to be at the centre of the post-Bali work programme.

It believed that food security, livelihood security and rural development should be at the centre. It further believed that implementing the Doha mandate means doing it through the single undertaking.

The December 2008 draft agriculture modalities text should be the basis of future work, the G33 said, adding that there is a need for a permanent solution for food security and public stockholding. There is also a need to address as rapidly as possible the issues of trade-distorting domestic support and export competition in developed countries, it further said.

Kenya [on behalf of the African, Caribbean and Pacific (ACP) Group] said that members must not devote all of their resources to the implementation of the Trade Facilitation Agreement alone. It would like attention paid to other Bali issues apart from trade facilitation this year that were of importance to developing countries.

It stressed that the single undertaking must be applied not only for the DDA but also for the Bali package, binding and non-binding issues alike. Development, agriculture and LDC issues were of great importance to the ACP Group.

It would like to see the December 2008 draft modalities texts as the basis for future work in the post-Bali work programme.

The ACP Group took note of the work in the Preparatory Committee on

Trade Facilitation, saying that it noted that the work of the Committee comes under the General Council, and that what should be taken into account in the Committee's work are the capacity constraints of developing countries, as well as the consensus rule.

Uganda (on behalf of the LDCs) welcomed the Bali outcome, noting that while the non-binding outcomes for LDCs were important, a lot of work remains to be done.

On the question of the services waiver for LDCs, it is very important that developed countries are working to improve the access for LDC services providers so that they can be given the capacity to do business in developed-country markets through extended preferences which have real commercial value and economic benefits for LDCs, it said.

Uganda underscored the need to ensure that Section II of the Trade Facilitation Agreement addresses LDC interests that pertain particularly to needs assessments and said that this is something where the Enhanced Integrated Framework has been very important in helping to assess these needs.

It also said that acceding LDCs should have greater certainty and clarity with respect to Section II and that the technical assistance elements of Section II should be extended to acceding LDCs as well as LDC members.

Uganda also pointed to what it said is a contradictory message in terms of plurilateral issues – the triumph of multilateralism at Bali but at the same time there is an energetic pace of plurilateral and regional agreements, many of which account for 70% or more of global trade. There is no understating the potential damage these agreements could bring to the LDCs, it added.

On the Preparatory Committee on Trade Facilitation, it said that there should be technical assistance extended to fund participation of capital-based officials in the meetings of the Committee. It welcomed a pledge from the European Union in this regard.

It also said that the single undertaking should be the guiding principle, with development as the central pillar. Efforts should be made to take into account the resource constraints of LDCs.

Brazil (on behalf of the G20 grouping) said that the post-Bali work programme must focus on the implementation of the Doha development

mandate which is centred on agriculture.

For too long, it said, agriculture has been left behind and it is high time that the distortions that are prevalent in agriculture trade are addressed. The level of ambition that comes in agriculture will be the key determinant for determining the level of ambition in other elements, and they will be the benchmark for the landing zones everywhere.

The December 2008 draft modalities text should be the basis for the work, said the G20.

Jordan (on behalf of the Arab Group) said that the Bali package, while important, did not fully take into account the Arab Group's needs. The WTO needs to fulfill the mandate of the Doha Round to deliver on real development outcomes.

The single undertaking must be employed, as must a transparent and inclusive process, it said, adding that no new issues should be put on the table before concluding the DDA. The new issues could be discussed in other formats, such as workshops and seminars, but the idea that new issues will be taken up before the Doha Round is concluded is unacceptable, it added.

The Arab Group stressed that agriculture is central and that without an agriculture outcome, there will not be additional successes like what members had in Bali. Food security and public stockholding should be prioritized. The issues of export competition and cotton should also be prioritized.

On the Preparatory Committee on Trade Facilitation, the Arab Group said that members need to address concerns about Section II of the Trade Facilitation Agreement.

Nigeria supported the African Group, ACP Group, G33 and G20 statements. It expressed hope that the momentum launched in Bali will be sustained. It agreed that implementation as well as a clearly defined work programme for the DDA are important.

It called on all members to adhere to the Bali mandate for the Preparatory Committee on Trade Facilitation. The Rev.4 texts should be the basis for discussions going forward on agriculture and NAMA. There is a need for a balanced outcome across all the issues and the process must be conducted in a transparent and inclusive way, it said.

Chinese Taipei (on behalf of the grouping of recently acceded members) said that the multilateral trading system

is the central means for regulating and liberalizing global trade, and this means that the DDA needs to be concluded. But there is a need for flexibility and to look at all possible approaches.

The development dimension is the central pillar, it said, adding that in view of the extensive contributions made by the recently acceded members, they must be given a degree of flexibility and this must be given due consideration.

The issues of agriculture, NAMA and services should be treated together and the Rev.4 texts should be the basis for future work in agriculture and NAMA, it said.

Pakistan said that the path ahead must take into account progress already made, and that the transparent and inclusive nature of the pre-Bali work needs to be continued. The LDC issues must be prioritized, and the issues of agriculture and development are central, it said, voicing agreement with the statements of the G33 and the G20.

The Solomon Islands endorsed the LDC and ACP Group statements. Members must make some tough decisions, now that they have achieved success in Bali. While the outcome at Bali was important, it was far from delivering everything that was needed.

There is a need for permanent and binding solutions in areas of importance to LDCs, including duty-free quota-free (DFQF) market access (for LDC products) to rich-country markets as well as the services waiver, it said.

On trade facilitation, it called for a simple and transparent mechanism for the delivery of technical assistance.

All-round flexibility

According to trade officials, India endorsed the African Group, ACP Group and LDC statements as well as the G20 and G33 statements. It agreed that members have to be flexible, but they have to be flexible all around, and this has to be the approach to the level of ambition.

Then there is also the whole question of whether there is a single undertaking or an early harvest, and where do members start from, it said. Do members start from the December 2008 draft modalities texts or do they use the 2011 texts, it asked.

Members need to approach the rationale for moving forward in a low-key setting, it said, adding that there is a need to conclude the Doha Development

Agenda in one go.

South Africa said that it had read the speech by the WTO Director-General to the US Chamber of Commerce in Washington and that the DG was right about US leadership. Certainly, US leadership was instrumental in the creation of the multilateral trading system as well as the Bretton Woods institutions, it said.

It noted that the US was also the driving force behind each of the previous trade negotiating rounds, adding that for developing countries, this experience has been mixed. Agriculture was excluded from the GATT rounds at the initiation of the US and due to the Common Agricultural Policy of the European Union. In addition, said South Africa, the issue of textiles was largely sidelined and the Multi-Fibre Arrangement was put in place which was not exactly a system of opening trade.

It said that the Uruguay Round went some way to addressing these problems but many writers would say that the situation now – the rules of the WTO – remains unbalanced, hence the importance of the DDA in redressing this.

Bali was important on many levels, not least the fact that it deflated the doomsday scenario and the notion that the DDA was dead, said South Africa.

It took issue with some analysts who say that tariffs are no longer an issue because global value chains have dealt with this. These analysts, rather than criticizing key players today for prioritizing plurilateral and regional agreements, say that these governments should impose whatever comes out of these other plurilateral or regional negotiations on the wider WTO membership.

It said that developing countries agreed to trade facilitation in Bali on the basis that issues like cotton and DFQF market access will be taken up afterwards.

It agreed that there have been a lot of changes in the world, but the US remains the largest economy while many emerging countries continue to face difficult development challenges. US leadership will be important in terms of concluding the round but in fact all must work together if the multilateral trading system is to move forward, it added.

The European Union said that what members are doing this year holds the potential to shape the activities of the WTO for many years to come. The top priority should be implementation of the Bali package and the development of a

DDA work programme.

Only a balanced approach can provide a recipe for success. The DDA does not end with the “troika” of issues (agriculture, NAMA and services) for there are other important issues as well, it said, adding that development and the LDC issues are also of paramount importance.

Qatar endorsed the Arab Group statement, while Paraguay endorsed the G20 statement.

Saudi Arabia said that there has to be a horizontal balance across the issues and that the interests of the recently acceded members must be taken into account.

Jamaica endorsed the ACP Group and G33 statements. It said that there must be faithful implementation of the Bali package. There must be a bottom-up approach and transparency and inclusiveness, and the process must be member-driven.

According to trade officials, the US said that it is worth recalling the buoyant mood of Bali. Bali was an enormous test and members met that test. It was a remarkable signal to the world and now the members have a new test – whether they can implement successfully. From what it has seen so far, the US said, it is very encouraged.

It said that there had been some strange comments made in the General Council meeting about the US, noting that the US will be having its trade policy review this year and that there can be intensive comments made at this point. The last trade policy review of the US indicated that it was the most open large economy in the world.

It said that it is proud of its role in building the multilateral trading system. It is proud as well of the official development assistance that it has spent, it said, noting that it has spent billions of dollars on ODA, specifically on trade capacity-building.

The US further said that not only does its commitment to the trading system pertain to the past, it also pertains to the present. It noted that President Barack Obama met with Director-General Azevedo in Washington on 10 March, and it was not an accident that the DG was able to meet with Obama.

Japan noted that there have been rapid changes in the world economy today from where they were in 2008.

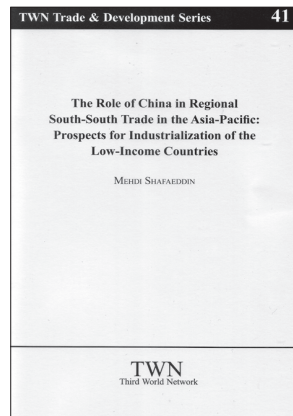
Bangladesh supported the LDC group statement.

Egypt voiced support for the African Group, LDC, ACP Group and Arab Group statements, as well as those of the G33 and G20. It stressed that the development dimension must be at the heart of the work of the WTO and the DDA. (SUNS7764/7766)

The Role of China in Regional South-South Trade in the Asia-Pacific: Prospects for Industrialization of the Low-Income Countries

By Mehdi Shafaeddin

BASED on his proposed alternative theoretical framework for South-South trade as a vehicle for industrialization and development and refuting the “decoupling” thesis – that is, that East Asian countries are decoupled from the business cycle in developed countries – the author analyzes the merits and shortcomings of China’s regional trade with its partners. Moreover, considering the growing weight of China in the global production network and international trade, he proposes policies for the industrialization and development of the partner countries in the context of strengthening China’s role as a growth “pole”. He suggests, inter alia, the need for industrial collaboration among the low-income countries of the region – which benefit less than others from the dynamics of the Chinese economy as a “hub” – complemented by adjustment assistance by China and the newly industrializing economies (NIEs). He also proposes technological cooperation among China’s trading partners which are currently involved in production sharing in a limited number of electrical and electronic products for export to third markets in developed countries. Such cooperation would be aimed at upgrading their industrial structure and reducing their vulnerability to changes in the economic strategy of China and to the business cycle in the developed countries.



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Making a difference with rigorous analysis and authentic information

A book that brings together writings over the years by veteran journalist Chakravarthi Raghavan on the Third World's pursuit of development was launched at the South Centre on 17 March.

by Kanaga Raja

GENEVA: The South Centre, an inter-governmental organization of developing countries, on 17 March launched the publication *The Third World in the Third Millennium CE*, written by Chakravarthi Raghavan, Editor Emeritus of the *South-North Development Monitor (SUNS)*.

The launch took place during an evening reception at the Centre which was attended by some South Centre Board members as well as ambassadors and other officials.

The book, subtitled *The Journey from Colonialism Towards Sovereign Equality and Justice*, is the first of two volumes and is published by the Third World Network.

At the South Centre reception, Martin Khor, the Executive Director of the South Centre, introduced Raghavan to the assembled audience, saying that Raghavan had been associated with the South Centre long before the Centre was even born.

He noted that Raghavan had brought to the attention of the then South Commission, whose Secretary-General was Manmohan Singh (now India's Prime Minister), the Uruguay Round of multilateral trade talks taking place at the time under the auspices of the General Agreement on Tariffs and Trade (GATT).

Khor recalled that Raghavan had written a 20-page paper on this subject that was later publicized by the Third World Network. (The paper was later expanded into the book *Recolonization: GATT, the Uruguay Round and the Third World*.)

He went on to say that Raghavan has been writing about multilateral negotiations, not only in the GATT and later the World Trade Organization (WTO), but also on many other issues.

Referring to Raghavan's new book, Khor said it is the first volume of a compilation of the many papers that Raghavan has written over the past 20 to 30 years.

He noted that the foreword to the book was written by Rubens Ricupero, a South Centre Board member and a former Secretary-General of the UN Conference on Trade and Development (UNCTAD) (from 1995-2004).

(In his foreword, Ricupero writes: "If

I had to sum up in a single sentence Chakravarthi Raghavan's life achievements, I would say: here is a man who does make a difference. This idea of a man alone with his knowledge and the strength of his moral commitment has always embodied Raghavan's enduring essence in my eyes."

(He adds: "The late Glauber Rocha, the movie director who created Brazilian *cinema novo*, used to describe his attitude towards art and reality in a powerful formula: 'an idea in mind and a camera in hand.' Paraphrasing the sentence, one could say about Raghavan: 'an idea in mind and a typewriter at hand', the idea being the promotion of development through fairness and justice in trade."

(Ricupero further says in the foreword: "A journalist's victory should be defined in terms of being right in finding out the facts, in telling things as they are and extracting the correct conclusions from the facts. In other words, journalists are the historians of the present time, of contemporary life. Their vindication should come in the form of history confirming their perceptions and informed predictions. In that sense, what better vindication could one ever expect than this terrible financial and economic crisis that Raghavan's analyses had foreseen, this complete moral and intellectual bankruptcy of market fundamentalism in financial and commercial matters?"

("Not that he will be given credit for it. His reward lies elsewhere, in the gratitude, admiration and esteem of those, among whom I count myself, who are indebted to him for the gift of recovering 'the knowledge we had lost in information and the wisdom we had lost in knowledge'," Ricupero concludes in his foreword.)

"Courage of conviction"

In launching the publication at the reception, Deepak Nayyar, Emeritus Professor of Economics at Jawaharlal Nehru University and a member of the South Centre Board, said that he has known Raghavan longer than has

Ricupero (who had originally been slated to launch the book at the reception but had to excuse himself on account of being unwell on that day).

Nayyar said that he has known Raghavan for close to 30 years, adding that he first met Raghavan in the early 1980s when Nayyar had chaired some "contentious" committees on services in Geneva during the Uruguay Round.

"May I say that Mr Raghavan is a most unusual person. He is a person who has a belief system and a courage of conviction, and a moral strength that is increasingly difficult to find these days in almost every walk of life but particularly in the world of journalism," he said.

Nayyar said he remembered vividly the early days when Raghavan started *SUNS* – as Ricupero has said in the foreword to the book, "it was an idea in the head and a typewriter in hand" in a small cubicle in the Palais des Nations (the UN's European headquarters in Geneva) where his office was.

Nayyar recounted that Raghavan was banging away at the typewriter producing column after column of rigorous analysis and authentic information about what was happening in the world of multilateral trade negotiations.

"In this world of Internet and the information explosion, it's hard to recognize that this made an enormous difference."

Nayyar then said that he first met Ricupero soon after the latter came to Geneva as Brazil's Ambassador to the GATT, and Ricupero had told him – as had many of his colleagues who were ambassadors such as Ambassadors S.P. Shukla and Bhagirath Lal Das – that Raghavan was in a sense a "tutor" to all the ambassadors to the GATT.

According to Nayyar, this was because Raghavan had a kind of accumulated knowledge and internalized understanding which professional diplomats who had just arrived in Geneva found a wonderful reservoir to draw upon.

"And he was a fantastic support to all of them," observed Nayyar, who noted that Ricupero had also pointed that out in his foreword to the book.

Nayyar also recounted a story which he said he had not told Raghavan till now, when both he and former US Trade Representative Clayton K. Yeutter (1985-89) were at a small brainstorming session somewhere in Austria, where Yeutter had said to him over a drink in the evening, "You know, I hate Ambassador Shukla's guts. He's a real nuisance to me, but I would give 20 of my best people to have one Shukla on my side." Nayyar recalled Yeutter also saying about Raghavan, "I hate Raghavan's guts. He is a real nuisance but he has a capacity to tell the truth, to tell it clearly and to tell it firmly."

In that sense, Raghavan is very unusual, Nayyar said, noting that standards (in the world of journalism) "have slowly but surely deteriorated" in terms of morality, beliefs and convictions, but that the journalist's task is much more difficult because it is about writing contemporary history.

In this context, Nayyar noted that the historian Eric Hobsbawm, who passed away not so long ago, used to write the history of his own times.

"In many ways, I think Raghavan's perceptive writings over the years – and I'm sure these volumes will bring it to light – have had a kind of clairvoyant contact because they foresaw some things to come."

"For that, I think much credit is due," Nayyar said, adding, however, that this is not the credit Raghavan will get. The credit he will get, as Ricupero says (in his foreword), is the esteemed gratitude and admiration of those friends or professional colleagues who have known him for a lifetime, for the person that he is, not just for his professional qualities but for his human qualities (as well), said Nayyar.

He ended with an epitaph from Ricupero's foreword in that Raghavan "has helped us rescue knowledge from the world of information and wisdom from the world of knowledge because he is able to see the wood from the trees".

Yilmaz Akyuz, Chief Economist at the South Centre and a former chief economist of UNCTAD, recounted that when he was at UNCTAD, he followed in SUNS what was happening not only in Geneva but also at UNCTAD, and that in his writings, Raghavan often commented particularly on UNCTAD's flagship publication, the *Trade and Development Report*.

"And from time to time we could find things which we didn't realize that we [had] said," Akyuz said, adding that in discussions (among friends), it was asked, "Did we really say that? This is quite interesting."

He said that Raghavan was taking the report and putting the natural consequences – "perhaps we were too shy to do it, being in the UN bureaucracy" – and in this process, they learned a lot not just in terms of analysis and events but also in terms of the politics of the international system.

Connecting the past with the present

Raghavan then spoke and, in thanking the audience, remarked that fortunately God had given him a natural tan, hence he could not blush.

"I don't think I have done anything

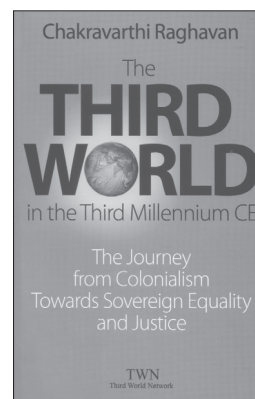
(continued on page 14)

The Third World in the Third Millennium CE
The Journey from Colonialism Towards Sovereign Equality and Justice

By Chakravarthi Raghavan

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Austerity measures in Greece undermine human rights

Budget-cutting measures demanded as part of a multilateral financing package are impeding the realization of human rights and contributing to poverty and social exclusion in Greece, according to a UN rights expert.

by Kanaga Raja

GENEVA: Stringent policy measures being implemented by Greece as part of an economic adjustment programme since May 2010 "have pushed the economy into recession and generally undermined the enjoyment of human rights, particularly economic, social and cultural rights", in the country, a United Nations Independent Expert has said.

Cephas Lumina, the UN Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, reached this conclusion in his report to the UN Human Rights Council, based on his visit to Greece from 22-27 April 2013.

The report was presented at the Council's regular twenty-fifth session, which took place here on 3-28 March.

Stringent measures

Summarizing his report, the rights expert noted that the Greek government has been implementing an economic adjustment programme as a condition for securing a total financing package of 240 billion euros from the International Monetary Fund (IMF), the European Commission and the European Central Bank.

The programme consists of stringent policy measures that entail deep public spending cuts, public sector job cuts, tax increases, the privatization of public enterprises and structural reforms (including labour market reforms), which are ostensibly aimed at reducing the country's fiscal deficit and debt to a "sustainable" level.

Nevertheless, said Lumina, the measures have pushed the economy into recession and generally undermined the enjoyment of human rights, particularly economic, social and cultural rights, in Greece.

"Significantly, the public spending cuts and labour market reforms have resulted in increased unemployment (in particular among young people), homelessness, poverty and social exclusion (with approximately 11% of the population living in extreme poverty), and severely reduced access to public services, such as health care and educa-

tion."

In his report, the Independent Expert noted that a large proportion of bailout loans "has been used to pay off the banks that lent money recklessly to Greece, while increasing the country's debt. Regrettably, the role of the State as provider of accessible public services has been subordinated to the increasingly elusive goal of restoring a sustainable public budget."

The Independent Expert said that the key purpose of his visit was to assess the impact of the economic adjustment programme adopted by the Greek government as a condition for financial assistance from the "troika" comprising the European Commission, the European Central Bank and the IMF to address the country's fiscal deficit and debt, on the realization of human rights, particularly economic, social and cultural rights.

He emphasized that it is increasingly accepted that non-state actors, including international financial institutions, have obligations to ensure that their policies and activities respect international human rights standards. This obligation implies a duty to refrain from formulating, adopting, funding, promoting or implementing policies and programmes that directly or indirectly impede the enjoyment of human rights.

In Greece, the European Union, the European Central Bank and the IMF play an important role in the design and monitoring of the measures under the country's adjustment programme, he noted. "It may therefore be contended that these institutions have a duty to respect the human rights of that country's population by ensuring that the programme does not undermine the capacity of the Government to establish and maintain the conditions for the realization of human rights, including by assuring equitable access to basic public services."

Background

Providing some background to the economic adjustment programme, Lumina said that in the mid-1990s, the

economy of Greece started to boom as the government borrowed large amounts from European banks to finance its imports, including military equipment, from countries such as Germany. This process intensified with the adoption of the euro in 2001. The government also borrowed extensively to fund the 2004 Olympic Games.

The government used its enhanced access to cheap credit (as a member state of the European Monetary Union, or eurozone) to fund public spending and offset the country's low tax revenues. It also borrowed to pay for imports that were not offset by tariffs or exports.

As a result, and despite annual gross domestic product (GDP) growth averaging 4.5% in the period from 2000 to 2007, revenue declined substantially while the budget and trade deficits increased.

Noting that widespread corruption, weak tax administration and tax evasion also put a strain on public finances, the Independent Expert said that to keep within the eurozone guidelines, previous governments had, for many years and with the help of foreign banks, also misreported the national economic statistics, as did a number of other European governments.

"In early 2010, it emerged that, with the help of Goldman Sachs, JP Morgan Chase and other banks, specific derivatives were developed so that the actual level of debt and deficits could be hidden and Greece could gain entry into the euro zone," he said.

In May 2010, Greece agreed a 110-billion-euro loan at market-based interest rates with the European Commission, the European Central Bank and the IMF. The loan was conditional on Greece implementing an economic adjustment programme entailing 30 billion euros of fiscal cuts over the period 2010-14.

The loan was to be disbursed in several instalments from May 2010 until June 2013. Owing to the worsening recession, however, in October 2011, the state's European partners agreed to provide it with a second bailout loan of 130 billion euros.

This was conditional not only on the implementation of another austerity package (together with the privatization and structural reforms outlined in the initial programme), but also on a restructuring of all Greek public debt held by private creditors (approximately 58% of total public debt) so as to reduce the overall public debt burden by about 110 billion euros. Under this debt restructuring (known as "Private Sector Initiative", or PSI+), creditors were asked to accept lower interest rates and a 53.5% face value loss.

Rigorous austerity

According to the Independent Expert's report, under the adjustment programme, the government committed itself to implementing rigorous austerity measures to bring the deficit down to 3% of GDP by 2014.

In addition to increases in value-added-tax rates, the measures included reducing public sector jobs by 150,000 through 2015, a recruitment freeze in the public sector, reduction of public sector wages, raising the retirement age, cuts in social benefits amounting to 1.5% of GDP (elimination of pension bonuses, a nominal pension freeze and the introduction of means testing for unemployment benefits), eliminating bonuses and allowances, and cutting investment spending.

According to the Independent Expert, the government has committed to further spending cuts over the fiscal period 2013/14.

A key component of the adjustment programme is the sale of state-owned enterprises and assets in order to contribute to the reduction of the public debt, he said.

It was initially assumed that 50 billion euros would be generated through the privatization process by the end of 2015. The privatization programme has not, however, been as successful as anticipated, said the report. For example, revenues generated by the end of 2012 amounted only to 1.6 billion euros, and proceeds in 2013 were "below expectations". The target has therefore been reduced to 24.2 billion euros by 2020.

The Independent Expert said he is concerned that several of the enterprises targeted for privatization provide essential public services, such as water and sanitation, transportation and energy, and that there is a likelihood of a significant increase in user fees for the services offered by these entities after privatization, with a potential negative impact on the enjoyment of basic rights.

According to the Independent Expert's report, the adjustment programme includes several "structural reforms" aimed at boosting competitiveness and enabling Greece to emerge from the crisis quickly, amongst which is ensuring greater labour market "flexibility" to reduce labour entry and exit costs.

Since 2010, said Lumina, a series of labour market reforms (laws 4019/2011, 3996/2011, 3986/2011, 4024/2011 and 4052/2012) have been implemented with the professed aim of increasing the competitiveness of the economy and boosting growth prospects.

Specific measures include labour

cost reduction and encouraging employment through the repeal of allowances and benefits; reduction of the time of notification of dismissals; making collective bargaining "more flexible", including by waiving the so-called "principle of favourability" in collective bargaining, and firm-level agreements taking precedence over any other favourable collective (sectoral or professional) agreement; introducing flexible forms of employment by extending the maximum duration of successive fixed-term contracts from two to three years; and reduction of the monthly minimum wage in the private sector by 22% for workers over 25 years and by 32% for those under 25.

"The above-mentioned measures may well violate the standards set out in the treaties to which Greece is a party; for example, the European Committee of Social Rights of the Council of Europe has held that the reduced minimum wage for employees under 25 years violates the right to a fair remuneration in article 4 (1) of the European Social Charter, as it provides a minimum wage below the poverty level," asserted Lumina.

He also noted that the economic and social costs of the adjustment programme have been substantial. The measures implemented as part of adjustment, in particular the job cuts and cuts to wages and pensions, have had the overall effect of compromising the living standards of the population and the enjoyment of human rights.

Human rights impacts

In this context, the Independent Expert highlighted the impact of the adjustment programme on the rights to work, social security, health, education and adequate housing, as well as its contribution to poverty and social exclusion.

He said that one of the most profound consequences of the adjustment programme has been the exponential rise in unemployment. Under the programme, the government committed to cutting 150,000 public sector jobs (about 22% of public employment) by 2015. He added that some 80,000 to 120,000 public sector workers had already lost their jobs at the time of his visit. As a result, unemployment grew from 7.3% in June 2008 to 27.9% in June 2013, the highest in the European Union.

There are now around 1.4 million unemployed people in Greece (population of 10.8 million, according to the 2011 census). About 778,000 persons lost their jobs during the period 2010-13 alone.

Further layoffs in the public sector are planned, he further said, adding that youth unemployment reached an un-

precedented rate of 64.9% in May 2013 (compared with an average of 24.4% in the eurozone).

"In addition, the labour market reforms under the adjustment programme have undermined the realization of the right to work. Together with successive wage cuts and tax hikes, the reforms have failed to achieve the stated goal of promoting secure growth and employment. Conversely, they have resulted in massive layoffs, a deterioration in labour standards, increased job insecurity and widespread precariousness, with over-flexible low-paid jobs, where women and young people are predominant."

The Independent Expert stressed: "It may be contended that this situation is at odds with the obligation of the State under article 22(1) of the Constitution to protect the right to work and to create conditions of employment for all citizens."

He also noted that significant spending cuts under the adjustment programme have affected a range of benefits, including unemployment benefits, pensions and family benefits.

To compound the problem, there are significant delays in issuing pension decisions, paying pensions and benefits and interpretative problems in the implementation of new pension legislation.

Owing to the rise in long-term unemployment, only a fraction of all registered unemployed persons receive benefits (27% as at February 2013). Moreover, unemployment benefits expire after 12 months, resulting in the loss of public health insurance cover.

The Independent Expert noted that a modified assistance scheme to be introduced as of 1 January 2014 will expand unemployment support to all long-term unemployed persons below retirement age. Those with a family income below 10,000 euros will be entitled to monthly assistance of 200 euros per month. Nevertheless, the Independent Expert said that he is of the view that this may be insufficient to protect the individuals concerned and their dependants from falling into poverty.

The Independent Expert said he shares the view of the European Committee of Social Rights that the "cumulative effect" of the various laws introduced as "austerity measures" in Greece since May 2010, restricting and reducing both public and private pension benefits, constituted a violation of the right to social security enshrined in article 12(3) of the European Social Charter.

A combination of cuts to healthcare spending to below 6% of GDP (approximately 12.4 billion euros in 2012) from around 10% in recent years, job cuts in

the public health sector, increased fees and co-payments, the closure/merger of hospitals and healthcare facilities, the reduction in the number of hospital beds and an increasing number of people losing public health insurance (mainly due to long-term unemployment) has undermined the availability of and access to quality healthcare, particularly for the poorest.

Since 2010, Greece has reduced healthcare spending significantly, to levels below the average in the European Union. Public health expenditure fell from 7.1% of GDP in 2010 to 5.8% in 2012, and was projected to drop to 5.3% in 2013, well below the 6.3% average for European Union member states. Overall, the health budget has been cut by about 40%.

"The austerity policies are also creating ancillary problems with serious health implications; for example, cuts to public health spending have meant that diseases thought to have long been eradicated in the country, such as malaria, have resurfaced owing to the discontinuation of anti-mosquito spraying programmes," said Lumina.

There has also been a rise in mental health problems. Suicides have risen by 37% since the onset of the debt crisis (from 677 in 2009 to 927 in 2011). According to some studies, the rise in suicides and suicide attempts can, to a large extent, be attributed to the financial and social strain imposed on individuals by the economic crisis.

While acknowledging the need for reform of the Greek healthcare system, the Independent Expert nevertheless considers that "the massive cuts to public funding to the health sector and the introduction of user fees, which have resulted in a large section of the population being unable to enjoy the minimum

essential levels of the right to the highest attainable standard of health, as enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights, constitute retrogressive measures."

According to the report, annual public spending on education was cut from 7.23 billion euros in 2009 to 5.84 billion euros in 2013, a reduction of 30%. The education budget has been reduced by cutting government spending on human resources, as well through drastic cuts in daily operational and maintenance costs for schools and costs for purchasing educational material. These expenditures were reduced by 24% in 2011 and by a further 19% in 2012.

As a result of the recession and the adjustment programme, said Lumina, there has been an increase in homelessness since 2009, estimated at 25%. Non-governmental organizations estimate that at least 20,000 people are now homeless. Many of the "neo-homeless" are relatively well-educated who have found themselves in this situation owing to the financial difficulties occasioned by loss of employment and benefits.

In 2009, the Independent Expert noted, the government took measures to protect low- and middle-income homeowners unable to service their mortgages from bank foreclosures. To this end, the government imposed a ban on banks repossessing primary residences worth up to 200,000 euros.

The Independent Expert said he understands, however, that the state's international lenders have pressed the government to end the ban. He called upon these lenders to avoid prescribing policy actions that may undermine Greece's international human rights obligations, including the right to adequate housing.

Recommendations

Among his recommendations, the Independent Expert called upon the country's international lenders to avoid providing financial assistance (to Greece) with intrusive and onerous policy conditions that may undermine the country's growth prospects and the realization of all human rights, and to support the undertaking by the Greek government to conduct an independent, transparent and participatory audit of the state's public debt.

Referring particularly to the IMF, the Independent Expert called on it to ensure that debt sustainability assessments take into consideration the other demands on the government's available resources, particularly those required for social investment and establishment of the conditions for the full realization of all human rights, particularly economic, social and cultural rights.

He further called on the country's international lenders to consider preparing a new adjustment programme for Greece with better conditions that will allow it to address its deficit and debt problems without undermining the enjoyment of human rights.

The Independent Expert recommended that the Greek government implement its international financial obligations, including those under the adjustment programme, without resorting to further public spending cuts and other austerity measures that may undermine the realization of economic, social and cultural rights in the country.

He further called on it to "conduct an independent, transparent and participatory audit of its debt in order to determine its origins and to identify and to hold to account those found responsible for the debt". (SUNS7771) □

(continued from page 16)

crisis in 2001, shows that claims keep coming some time after a crisis. The cases listed in "Profiting from crisis" are almost certainly just the beginning of a new wave of investor-state lawsuits against European countries.

These investor-state disputes are part of a broader pattern that has become deeply evident since the economic crisis broke – one where corporations are protected from risky investments while citizens are told that cuts are inevitable, where corporate losses are socialized and taxpayers pay the bill, and where corporations have recourse to justice while citizens' human rights are sidelined.

The European and American public were understandably angry about bailout of the banks. It is time now to turn a spotlight on the bailout of investors and call for a radical rewrite of today's global investment regime.

As a first step, EU governments should seek to terminate existing investment agreements. In particular, European citizens and concerned politicians should demand the exclusion of investor-state dispute mechanisms from new trade agreements currently under negotiation, such as the proposed EU-US trade deal. A total of 75,000 cross-registered companies with subsidiaries in both the EU and the US could launch investor-state attacks under the proposed transatlantic agreement. Europe's experience of corporate speculators profiting from crisis should be a salutary warning that corporations' rights need to be curtailed and people's rights put first. □

The above is the executive summary of the report "Profiting from crisis: How corporations and lawyers are scavenging profits from Europe's crisis countries", written by Cecilia Olivet and Pia Eberhardt (with contributions from Nick Buxton and Iolanda Fresnillo) and published by the Transnational Institute (TNI) and Corporate Europe Observatory (CEO) in March 2014. The full report is available on the websites of TNI (www.tni.org/sites/www.tni.org/files/download/profitting_from_crisis_0.pdf) and CEO (corporateeurope.org/sites/default/files/profitting-from-crisis_0.pdf).

South calls for human rights impact assessment of IP systems

A group of developing countries has proposed regular human rights impact assessments of intellectual property systems in order to strike a balance between the rights of creators and the wider needs of society.

by Kanaga Raja

GENEVA: International organizations in the field of intellectual property should perform regular human rights impact assessments of intellectual property systems, including on access to medicines and intellectual property, said Egypt on behalf of a group of developing countries at the UN Human Rights Council.

This call came in a cross-regional statement delivered by Egyptian Ambassador Walid M. Abdelnasser on behalf of a group of countries from several regional and political groups, including the African and Arab groups as well as the Organization of Islamic Cooperation (OIC), totalling some 90 countries.

The statement, titled "Towards a human rights approach to intellectual property", was made by Egypt on 14 March during the general debate segment of the Human Rights Council, which was holding its twenty-fifth regular session here from 3-28 March.

In its statement, Egypt said that intellectual property regimes should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to 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.

"Intellectual property regimes have been established on the fundamental trade-off that Intellectual Property Rights are a special privilege given to right-holders for the economic exploitation of their works, and designed to serve the public purpose of promoting the progress of Science and Culture," it noted.

For this reason, it said, international intellectual property systems should seek to balance the moral and economic rights of creators and inventors with the collective and wider interests and needs of the society.

Article 27 of the Universal Declaration of Human Rights recognizes the

right "to share in scientific advancement and its benefits" as well as to the "protection of the moral and material interests resulting from scientific, literary or artistic production of which he is the author", subject to limitations in the public interest.

According to the Egyptian statement, the right to enjoy the benefits of scientific progress and its applications is also recognized in Article 15(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Sharing of benefits

The Universal Declaration on Bioethics and Human Rights affirms a number of principles applicable to ethical issues raised by medicine, life sciences and associated technologies, it further noted.

"Perhaps the most relevant of these are found in article 15, which provides that 'benefits arising from scientific research and its applications should be shared with society as a whole and within the international community, in particular with developing countries'."

For instance, Egypt stressed, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health clearly stipulated that the framework of the right to health makes it clear that medicines must be available, accessible, acceptable and affordable to reach ailing populations without discrimination throughout the world.

"Benefits may take the form of special and sustainable assistance to, and acknowledgement of, the persons and groups that have taken part in the research, access to quality health care and access to scientific and technological knowledge."

Egypt recalled General Comment No. 17 on the right of everyone 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 [Article 15, paragraph 1(c) of the Covenant], adopted by the UN Committee on Economic, Social and Cultural Rights on 21 November 2005.

It also noted that it is important not to equate intellectual property rights with the human right recognized in Article 15, paragraph 1(c), and that the full realization of this human right requires measures necessary for the conservation, development and diffusion of science and culture.

"There may be apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement, on the one hand, and international human rights law, on the other, as the resolution 2000/7 of the UN Sub-Commission on promotion and protection of Human Rights stated," Egypt asserted.

Resolution 2000/7 further notes that apparent conflicts that may exist between the implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the realization of economic, social and cultural rights are in relation to, inter alia, impediments to the transfer of technology to developing countries, the consequences for the enjoyment of the right on access to patented pharmaceuticals and the implications for the full enjoyment of the right to health.

"These possible apparent conflicts are yet to be resolved, through a more balanced international Intellectual Property system that takes into account human rights," Egypt underlined.

In this regard, it recalled the reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (UN documents A/HRC/11/12, A/HRC/23/42) and the report of the Special Rapporteur on the right to food (A/64/170).

"International relevant Organizations in the field of intellectual property should take fully into account the existing State obligations under international human rights instruments in conducting their activities, and ... perform regular human rights impact assessments of intellectual property systems, including on access to medicines and intellectual property," it recommended. (SUNS7765) □

Investment treaties in trouble

The tide is turning against investment treaties and free trade agreements that contain the controversial investor-state dispute system, as countries like Indonesia and Germany take action on this.

by Martin Khor

The tide is turning against investment treaties that allow foreign investors to take up cases against host governments and claim compensation of up to billions of dollars.

Indonesia has given notice that it will terminate its bilateral investment treaty (BIT) with the Netherlands, according to a statement issued by the Dutch embassy in Jakarta in March. "The Indonesian Government has also mentioned it intends to terminate all of its 67 bilateral investment treaties," according to the same statement.

The Dutch statement has not been confirmed by Indonesia. But if this is correct, Indonesia will join South Africa, which last year announced it is ending all its BITs.

Several other countries are also reviewing their investment treaties. This is prompted by increasing numbers of cases being brought against governments by foreign companies which claim that changes in government policies or contracts affect their future profits.

Many countries have been asked to pay large compensation sums to companies under the treaties. The biggest claim was against Ecuador, which has to compensate an American oil company \$2.3 billion for cancelling a contract.

The investor-state dispute settlement (ISDS) system empowers foreign investors to sue governments in an international tribunal, thus bypassing national laws and courts. ISDS provisions are contained in free trade agreements (FTAs) (especially those involving the United States) and also in BITs which countries sign among themselves to protect foreign investors' rights.

When these treaties containing ISDS were signed, many countries did not know they were opening themselves to legal cases that foreign investors can take up under loosely worded provisions that allow them to win cases where they claim they have not been treated fairly or their expected revenues have been expropriated.

Indonesia and South Africa are among many countries that faced such cases. The Indonesian government has been taken to the ICSID (International Centre for Settlement of Investment Disputes) tribunal based in Washington by

a British company, Churchill Mining, which claimed the government violated the UK-Indonesia BIT when its contract with a local government in East Kalimantan province was cancelled. Reports indicate the company is claiming compensation of \$1 billion to \$2 billion in losses.

This and other cases taken against Indonesia prompted the government to review whether it should retain its many BITs.

South Africa had also been sued by a British mining company which claimed losses after the government introduced policies to boost the economic capacity of the blacks to redress apartheid policies.

India is also reviewing its BITs, after many companies filed cases after the Supreme Court cancelled their 2G mobile communications licences in the wake of a high-profile corruption scandal linked to the granting of the licences.

Second thoughts

But it is not only developing countries that are getting disillusioned by ISDS. Europe is getting cold feet over the investor-state dispute mechanism in the Transatlantic Trade and Investment Partnership (TTIP) it is negotiating with the US.

In mid-March, Germany told the European Commission that the TTIP must not have the investor-state dispute mechanism.

Brigitte Zypries, an economy minister, told the German parliament that Berlin was determined to exclude arbitration rights from the TTIP deal, according to the *Financial Times*. "From the perspective of the [German] federal government, US investors in the EU have sufficient legal protection in the national courts," she said.

The French trade minister had earlier voiced opposition to ISDS, while a report commissioned by the UK government also pointed out problems with the mechanism.

The European disillusionment has two causes. Firstly, ISDS cases are also affecting the countries. Germany has been taken to ICSID by a Swedish company Vattenfall which claimed it suf-

fered over a billion euros in losses resulting from the government's decision to phase out nuclear power after the Fukushima disaster.

And the European public is getting upset over the investment system. Two European organizations last year published a report showing how the international investment arbitration system is monopolized by a few big law firms, how the tribunals are riddled with conflicts of interest, and the arbitrary nature of tribunal decisions.

That report caused shockwaves not only among civil society but also among European policymakers.

In January, the European Commission suspended negotiations with the US on the ISDS provisions in the TTIP, and announced it would hold 90 days of consultations with the public over the issue.

In Australia, the previous government decided it would not have an ISDS clause in its future FTAs and BITs, following a case taken against it by tobacco company Philip Morris International which claimed loss of profits because of laws requiring only plain packaging on cigarette boxes.

In Malaysia, ISDS is one of the major controversial issues relating to the Trans-Pacific Partnership Agreement (TPPA) which the country is negotiating with 11 other countries, including the US. Many business, professional and public-interest groups want the government to exclude ISDS as a "red line" in the TPPA negotiations.

Malaysian Prime Minister Najib Razak had also mentioned investment policy and ISDS as one of the issues (the others being government procurement and state-owned enterprises) in the TPPA talks that may impinge on national sovereignty, when he was at the APEC summit and TPPA summit in Indonesia last year.

So far the US has stuck to its position that ISDS has to be part of the TPPA and TTIP. However, if the emerging European opposition affects the TTIP negotiations, it could affect the TPPA as this would strengthen the position of those opposed to ISDS.

Meanwhile, we can also expect more countries to review their BITs. Developing countries seeking to end their bilateral agreements with European countries can point to the fact that more and more European countries are themselves having second thoughts about the ISDS provisions embedded in these agreements. □

Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

(continued from page 8)

very extraordinary, at least not very different from what people of my generation were taught or we learned," he said, pointing out that he grew up in colonial India, in Madras, where, over the years, he came into contact with some big personalities (of the independence movement).

Raghavan said that he had met Mahatma Gandhi and spent 10 days with him at a camp in 1945; that had changed his entire outlook in life and eventually led him to come to Geneva.

As far as his book is concerned, Raghavan said that the editors (at the Third World Network) had put together "what we thought, from all my writings, [were] things that may be of some more lasting value than the ephemeral daily reports of news and views".

He noted that most of the material had been typewritten and had to be digitalized. When this was done, it was found that there was a need to connect the past with the present, otherwise it did not make any sense in merely reporting what had happened in Geneva or in New York between those years that were covered in the book.

It was also decided that trade was to be separated from everything else, because "trade itself is a peculiar animal, and we don't know what kind of an animal it has come from and where it is going to go". (Trade will be the subject of the second volume of *The Third World in the Third Millennium CE*.)

Raghavan recalled that it took him quite a while to write the connecting history, asking "how do you write what happened before the war", as he did not write before the war.

He said that in India, he did not write under his own name, and that the first time he wrote under his own name was when he came to Geneva and that it was translated and published in Spanish. "And I suddenly became a very famous person in Latin America but not even in India."

Raghavan further said that he tried to connect the past with the present and he did look up material and, as far as possible, provided footnotes so that people can also look at it and see whether what he was saying was correct or whether he was just bluffing.

He had also tried to provide a different narration. He explained later that there were two kinds of narration of the past. One was a paternalistic view of imperialism and colonialism and the attempts of metropolitan powers to "civilize", modernize and improve the conditions of people and bring them up to self-governance. The other was the Niall Ferguson variety of justification and

praise of imperialism.

He said that he did what he could from a different perspective, merely in order to say that it is not as if people in the past have not lived through this and "those who forget the past cannot have a future or rather cannot influence the future. That is the one particular aspect of life we all need to remember."

He expressed hope that the audience would enjoy his book and draw some benefit out of it.

In any event, Mr Raghavan concluded, as the saying goes in his part of the world: "If you are prepared to discard what I have said [as] utter nonsense, then you should not hesitate to say so." (SUNS7769) □

PUTTING FOOD FIRST

Towards a Community-Based Food Security System in Indonesia

by Hira Jhamtani

Ensuring that every person in one of the world's largest and most populous nations has enough food on the table is understandably an undertaking of great import.

Putting Food First examines the food security situation in Indonesia with a view to determining how this can be done.

This book draws attention to serious shortcomings in food production and distribution in the country, which led to many cases of malnutrition, especially among children, in 2005. These flaws are ultimately rooted in policy failures, not only in the agriculture sector per se but also in the related spheres of trade, industrialization, rural development and environmental and natural resource management.

Recognizing the multidimensional nature of the problem, the author puts forward a set of short-and long-term policy recommendations aimed at attaining food security within a broader national framework of sustainable development. Realization of this goal will entail a shift from the existing industrial, monoculture-oriented farming system to a community-based and ecologically sound agriculture which indeed "puts food first".



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Making a killing in Europe's crisis countries

If it was previously developing countries which were the main targets of lawsuits filed by investors under international investment treaties, in the crosshairs now are crisis-hit European nations. A new report – the executive summary of which is reproduced here – looks at how investors are taking aim at states which implemented measures to protect their economies in the wake of the European debt crisis.

“Profiting from crisis”, a new report published by the Transnational Institute and Corporate Europe Observatory, is a story about how corporations, backed by lawyers, are using international investment agreements to scavenge for profits by suing governments from Europe's crisis countries. It shows how the global investment regime thrives on economic crises, but is very uneven in who it benefits. While speculators making risky investments are protected, ordinary people have no such protection and – through harsh austerity policies – are being stripped of basic social rights.

For a long time, European countries were left unscathed by the rising global wave of investor-state disputes which had tended to target developing countries. In the wake of the global financial crisis, however, corporations and investment lawyers have turned their eyes to potential pickings in Europe. An investment regime concocted in secretive European boardrooms and that gives corporations powerful rights to sue governments has finally come home to roost.

The report first explores the history of investor-state lawsuits as a result of economic crises across the world from Mexico in 1994 to Argentina in 2001. As crises struck, these nations scabbled desperately to protect their rapidly sinking economies; the measures they took have since come under systematic attack from corporations. Countries have been sued for measures to revive a domestic financial system or the freezing of public services' tariffs to keep them affordable for their people. Some measures such as sovereign debt restructuring (renegotiating terms with creditors) are even required as part of debt deals, yet have been similarly challenged by investment lawsuits.

Corporate carte blanche

The legal bases of these lawsuits are the over 3,000 international investment treaties in existence to date. They contain far-reaching protections of private property enshrined in catch-all clauses such as “fair and equitable treatment” and “protection from indirect expropriation”. The trouble is that these clauses have been interpreted so broadly that they gave carte blanche to corporations to sue states for any regulations that could be deemed to affect current or future profits. Moreover, investment treaties grant corporations rights to protection, without giving equivalent rights to states to protect their own citizens.

“Profiting from crisis” looks closely at how corporate investors have responded to the measures taken by Spain, Greece and Cyprus to protect their economies in the wake of the European debt crisis. In Greece, Postova Bank from Slovakia bought Greek debt after the bond value had already been downgraded, and was then offered a very generous debt restructuring package, yet sought to extract an even better deal by suing Greece using the bilateral investment treaty (BIT) between Slovakia and Greece. In Cyprus, a Greek-listed private equity-style investor, Marfin Investment Group, which was involved in a series of questionable lending practices, is

seeking 823 million euros in compensation for their lost investments after Cyprus had to nationalize the Laiki Bank as part of an EU debt restructuring agreement. In Spain, 22 companies (at the time of writing), mainly private equity funds, have sued at international tribunals for cuts in subsidies for renewable energy. While the cuts in subsidies have been rightly criticized by environmentalists, only large foreign investors have the ability to sue, and it is egregious that if they win it will be the already suffering Spanish public who will have to pay to enrich private equity funds.

“Profiting from crisis” reveals how:

- The public bailout of banks that led to the European debt crisis could be repeated with a second public bailout, this time of speculative investors. Corporate investors have claimed in arbitration disputes more than 700 million euros from Spain, more than one billion euros from Cyprus and undisclosed amounts from Greece. This bill, plus the exorbitant lawyers' fees for processing the cases, will be paid for out of the public purse at a time when austerity measures have led to severe cuts in social spending and increasing deprivation for vulnerable communities. In 2013, while Spain spends millions on defending itself in lawsuits, it cut health expenditure by 22% and education spending by 18%.

- Many of the investment lawsuits under way against European crisis countries are being launched by speculative investors. They were not long-term investors but those which invested as the crisis first emerged and were therefore fully cognizant of the risks. Yet rather than paying the costs of risky investments, they have been given an escape clause by investment agreements, which are being used to extract further wealth from crisis countries. Postova Bank, for example, bought bonds in early 2010 at the same time that Standard & Poor's categorized Greece's debt as “junk”. In Spain, out of the 22 companies involved in lawsuits, 12 invested after 2008 when the first restrictions to feed-in tariffs for solar energy were introduced; eight more continued to invest in the country despite the ‘threats’ to their investments.

- The investors involved in lawsuits have profited considerably despite the ‘threat’ to their investments by the crisis countries. Postova Bank reported a net profit of 67.5 million euros in 2012; renewable energy investor Abengoa SA reported a 17% increase in revenues to 5.23 billion euros in the first nine months of 2013. It has been a very different story for the citizens of the countries being sued. Greeks, for example, are on average almost 40% poorer than they were in 2008 and there has been a drastic rise in homelessness. One in three children (around 600,000) are now living under the poverty line.

- Corporate investors have been supported and encouraged by highly paid investment lawyers who continuously and actively identify litigation possibilities. In a few cases, arbitration firms suing cash-strapped countries were also advising the very same companies when they made the risky investments in the first place. UK-based law firm Allen & Overy, now counsel to investors in five out of seven known claims (at the time of writing) against Spain relating to sub-

sidy cuts in the energy sector, advised some of these investors in their original acquisition of the power plants. The corporate lawyers' marketing has paid off with a boom in cases and healthy profits and income for these elite firms. UK-based Herbert Smith Freehills, hired to represent Spain in at least two cases, for example, is retained at a fee of 300 euros an hour and could earn up to 1.6 million euros for the cases.

- Investment lawyers and corporations are using the threat of legal cases to try to change policies or prevent regulation that threaten profits. In an October 2011 client briefing paper, US-based law firm K&L Gates, for example, recommended investors should use the threat of investment arbitration as a "bargaining tool" in debt restructuring negotiations with governments. Similarly, UK-based firm Clyde & Co suggested using the "potential adverse publicity" of an investment claim as "leverage in the event of a dispute with a foreign government".

- The European Commission (EC) has played a complicit and duplicitous role, effectively abetting this wave of corporate lawsuits battering crisis-hit countries. Some of the lawsuits have arisen due to debt and banking restructuring measures that were required as part of EU rescue packages. Moreover, while the EC has been critical of BITs between EU member states (known as intra-EU BITs), they continue to actively promote the use of investor-state arbitration mechanisms worldwide, most prominently in the current negotiations for the controversial EU-US trade agreement (the Transatlantic Trade and Investment Partnership). Defending corporate protection while denying social protection is a disturbing indictment of current priorities in European trade and economic policies.

- The investment arbitration regime provides VIP treat-

ment to foreign investors and privatizes justice. Foreign investors are granted greater rights than domestic firms, individuals or communities, even when these are just as affected by the measures that led to the dispute. The cases are judged by a tribunal of three private, for-profit lawyers who get to decide on policies that affect the welfare of millions of people. Some of them have ignored international legal principles that allow for states to violate their international obligations when it is necessary to protect the interests of their citizens, especially in crisis situations.

Scavenging for profits

The deepening crisis in the European periphery has attracted more and more circling vultures scavenging for profits. In 2012, New York-based Greylock Capital argued that buying Greek bonds was "the trade of the year". At the time, investors were paying 19 to 25 cents for every dollar worth of bonds.

In April 2013, US-based law firm Skadden, which represents Cyprus Popular Bank (Laiki) in a looming multi-billion-euro investment treaty dispute against Greece, praised the "increasing appeal and novel use of Bilateral Investment Treaties". The firm noted, "The appeal of BIT tribunals, coupled with the economic uncertainty of recent times, has triggered an increased use of BITs to resolve disputes in ways that previously had not been encountered by arbitral tribunals, and we expect this trend to continue." The experience of Argentina, which faced 55 investor lawsuits in the aftermath of its

(continued on page 11)

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