

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Privatization is undermining human rights – UN expert

As the provision of more and more public goods and services ends up in public hands, a UN rights expert has cautioned that such widespread privatization is having detrimental effects on human rights protection and the poor. “States can’t dispense with their human rights obligations by delegating core services and functions to private companies on terms that they know will effectively undermine those rights for some people,” the Special Rapporteur on extreme poverty and human rights asserts.

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131 Jalan Macalister
10400 Penang, Malaysia
Tel: (60-4) 2266728/2266159
Fax: (60-4) 2264505
Email: twm@twnetwork.org
Website: www.twm.my

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Human rights at risk from "tsunami" of privatization

A UN rights expert has drawn attention to the adverse effects of large-scale privatization on the poor.

by Kanaga Raja

GENEVA: Widespread privatization of public goods is systematically eliminating human rights protections and further marginalizing the interests of low-income earners and those living in poverty, a United Nations human rights expert has said.

In a recent report to the UN General Assembly, the Special Rapporteur on extreme poverty and human rights, Philip Alston (from Australia), said that existing human rights accountability mechanisms are clearly inadequate for dealing with the challenges presented by large-scale and widespread privatization.

"Privatizing the provision of criminal justice, social protection, prisons, education, basic healthcare and other essential public goods cannot be done at the expense of throwing rights protections out of the window," Alston said.

"States can't dispense with their human rights obligations by delegating core services and functions to private companies on terms that they know will effectively undermine those rights for some people," he added.

According to the report by the Special Rapporteur, neoliberal economic policies are aimed at shrinking the role of the state, especially through privatization. This agenda has been remarkably successful in recent years and continues to be promoted aggressively by the World Bank, the International Monetary Fund (IMF), parts of the United Nations and the private sector.

"The logic of privatization assumes no necessary limits as to what can be privatized, and public goods ranging from social protection and welfare services, to schools, pension systems, parks and libraries, and policing, criminal justice and the military sector, have all been targeted," it said.

There is no substitute for the public sector to coordinate policies and programmes to ensure respect for human

rights. Yet privatization directly undermines the viability of the public sector and redirects government funds to subsidies and tax breaks for corporate actors.

"The consequences for human rights are overwhelmingly negative. Human rights standards are rarely included in privatization agreements. They are systematically absent from guidelines governing both processes and outcomes."

With some exceptions, privatized entities are rarely held meaningfully to account, and government and quasi-government agencies responsible for such tasks are often either under-funded or captured by the relevant industry.

The Special Rapporteur said while it is clear both from the evidence that exists and from the basic assumptions underpinning privatization that it negatively affects the lives and rights of people living on lower incomes or in poverty, the unsurprising fact is that few detailed studies have been undertaken and relevant data are often not collected.

In the face of externally or internally driven demands for "fiscal consolidation" (austerity), governments retreat from direct service provision, trade short-term deficits for windfall profits from the sale of public assets, and push hidden financial liabilities down the road for future generations. The opportunity to shed responsibility, rather than to exercise it at arm's length, becomes irresistible, he added.

"Privatization also undermines democracy by marginalizing the role of Governments in deciding on the allocation of public goods and services, thus giving citizens even less incentive to participate in elections."

The rights expert noted that a trend towards political demobilization, especially affecting low-income persons, has occurred in many states in recent years, and austerity policies closely linked to privatization have created fertile ground

for the rise of populist, anti-human-rights politicians.

Waves of privatization

The Special Rapporteur explained that privatization is a process through which the private sector becomes increasingly, or entirely, responsible for activities traditionally performed by government, including many explicitly designed to ensure the realization of human rights. It can take many forms, ranging from the complete divestiture of government assets and responsibilities to arrangements such as public-private partnerships.

Since the 1970s, several waves of privatization have swept the world. In 2017, the Privatization Barometer concluded that “the massive global privatization wave that began in 2012 continues unabated”.

According to the rights expert, that wave has been driven not only by governments and the private sector, but also by international organizations, especially the IMF, the World Bank and the United Nations.

While some proponents present privatization as just “a financing tool”, others promote it as being more efficient, flexible, innovative and effective than public sector alternatives. In practice, however, privatization has metamorphosed into an ideology of governance.

Large-scale privatization was first championed by General Augusto Pinochet, President of Chile, in the early 1970s and then taken up by Margaret Thatcher, Prime Minister of the United Kingdom, after her election in 1979.

In the UK, the first national industries to be sold were in competitive markets, such as aerospace, road freight and storage, shipbuilding, oil and council housing. By the mid-1980s, “natural monopolies”, or public utilities such as rail, water, sewerage, electricity, gas and telecommunications, were sold. And in 1992, the private finance initiative was introduced as a means by which to rely on private investment to deliver a wide range of public sector services and infrastructure, in accordance with government specifications.

Internationally, privatization was promoted as an antidote to patronage through public sector employment and as a means of reducing the size of gov-

ernment. It became a central feature of the programmes promoted in the post-communist states of Eastern Europe and spread to Africa, Latin America and Asia under the auspices of the Washington Consensus.

Development finance and structural adjustment support were made conditional upon the transfer of ownership of “burdensome and inefficient public enterprises” to private companies. Public utilities, especially in water and sanitation, were the subject of large-scale privatization.

By the early 2000s, as the pitfalls of structural adjustment became more apparent, proponents of privatization talked less of downsizing the state and more about correcting market failures, creating markets and enabling the private sector to thrive.

Public-private partnerships also emerged, especially in the infrastructure context, as a favoured mechanism.

According to the Special Rapporteur, another wave followed the global financial crash of 2007-08 and the resulting push for austerity and budget reductions. Privatization generated funds for cash-strapped governments, reduced liabilities, allowed major projects to be pursued “off-budget” without being reflected in government spending, and provided an occasion to push public sector reforms.

Alston said the current wave of privatization emphasizes the concept of “blended finance”, defined as “the use of development capital (from public sources like government aid or development banks, or philanthropic sources like foundations) to de-risk Sustainable Development Goal-related investments ... in order to attract commercial capital from private investors who would otherwise not have participated”.

Whereas public-private partnerships are project-based and define the contractual relationship between the parties involved, “blended finance” refers to the sources of finance. The role of the government is in part to “provide a significant risk cushion”. In other words, corporations take the profits, but governments will bear much of the losses if they are significant.

Assessing the extent to which privatization has occurred in global terms is difficult, if not impossible, given the wide variation among countries and

sectors, and over time.

In the European Union, 1,749 public-private partnerships, worth some €336 billion, have been transacted since the 1990s, primarily in transport, healthcare and education.

“There is a real risk that the waves of privatization experienced to date will soon be followed by a veritable tsunami,” Alston warned.

Some observers suggest that privatization, at least in some industries and sectors, is slowing down in the face of “re-municipalization”. One study documented 235 cases of water re-municipalization in 37 countries between 2000 and 2015. A later study of essential services such as energy, waste collection, transport, education, health and social services found 835 examples of re-municipalization, involving more than 1,600 cities in 45 countries.

Privatization has long been a key part of the agenda of the IMF. Although the Fund claims to have introduced major changes to some of its Washington Consensus-era policies, the emphasis on the privatization of a range of public sector enterprises and activities continues to feature prominently in the advice given to governments and in the conditions attached to its loans. A review of the 10 most recent Article IV staff reports dealing with countries in Africa shows that the IMF was actively advocating privatization in six cases, while in virtually all of the others the governments themselves noted their commitment to public-private partnerships and related projects.

In 2015, the World Bank promoted the concept of increasing private sector financing “from billions to trillions” to meet the Sustainable Development Goals. In 2017, it announced its “Maximizing Finance for Development” agenda, which “prioritizes private financing and sustainable private sector solutions” to achieve the Sustainable Development Goals by 2030.

Using a “cascade approach”, the Bank seeks to “crowd the private sector in” and to “reserve scarce public financing for those areas where private sector engagement is not optimal or available”. In effect, profitable enterprises will be reserved to the private sector, while unprofitable activities will be publicly financed.

Alston pointed out that the volumi-

nous materials promoting this entirely one-sided solution to development financing make no mention of the human rights implications of the resulting public/private division of labour, and the implications for those living in poverty are given short shrift.

He said it is, however, important to make the point that the arguments that are systematically invoked to justify privatization are often challenged or contradicted by the available evidence. In this context, the Special Rapporteur drew attention to the results of two very recent detailed official studies.

The first study, conducted by the National Audit Office of the United Kingdom, concluded that the private finance initiative model had proved to be more expensive and less efficient in providing hospitals, schools and other public infrastructure than public financing.

The second study, conducted by the European Court of Auditors of the European Union, examined 12 public-private partnerships in France, Greece, Ireland and Spain in road transport and information and communications technology. It concluded that the partnerships were characterized by "widespread shortcomings and limited benefits".

In terms of costs, private finance is more expensive than public finance, and public-private partnerships can also incur high design, management and transactional costs due to their complexity and the need for external advice. In addition, negotiations on issues other than traditional procurement can cause project delays of some years.

Similar findings emerged from a review of public-private partnerships in health and education in Africa, Asia and Latin America that pointed to high public costs and onerous ongoing administrative burdens for the public sector.

The rights expert noted that privatization arrangements are rarely conducive to human rights impact assessments. First, human rights criteria are systematically absent from almost all such agreements. Second, sustained monitoring is rarely undertaken on issues such as the impact on the poor, access to services and service quality.

But available reports attest to innumerable ways in which those living in poverty or on low incomes can be negatively affected by privatization, said the Special Rapporteur.

Citing some examples, Alston said that as aspects of criminal justice systems are privatized, many different charges and penalties are levied with far greater impact on the poor, who then must borrow to pay them or face default. The quality of the services that they can afford diminishes, and their prospects of obtaining justice recede even further.

The privatization of social protection often results in the poor being "relegated to a new even more under-funded public sector".

Alston also noted that social security systems are increasingly being privatized, which is leading to service outsourcing, social insurance marketization, commercializing administrative discretion and paying by results.

"These approaches empower private for-profit actors to make determinations about the needs and capacities of individuals, incentivize them to do so within a corporate rather than a public goods framework, and reward spending reductions rather than the achievement of positive human outcomes."

Infrastructure projects will be most attractive to private providers where significant user fees can be charged and construction costs are relatively low. But the poor are badly placed to pay, cannot afford to use many services, and often live in distant or otherwise under-served areas.

Water, sanitation, electricity, roads, transport, education, health-care, social services and financial services are far less likely to be provided adequately or at good-quality levels to the poor. Instead, such persons either go without those services or pay even higher prices for substitute services.

The Special Rapporteur noted that institutions and commentators consistently emphasize the importance of developing guidelines to ensure that public-private partnerships achieve the full range of desired objectives. But in fact, truckloads of guidelines have already been adopted, and most ignore human rights in any comprehensive sense and pay scant regard to the negative outcomes that privatization can have in terms of poverty and inequality. A recent review of 12 sets of guidelines found that they focus mainly on transactional aspects, overlook gender concerns and ignore other relevant environmental and social safeguard policies.

The need for new strategies

The Special Rapporteur underlined that new strategies are required in rethinking the human rights implications of privatization. These should include acknowledging past inadequacies, reasserting basic values, relegitimizing taxation, reclaiming the moral high ground, and resetting the default setting of privatization.

He said that few problems can be resolved without first being acknowledged. The patent inadequacies of existing responses to the dramatic spread of the privatization of formerly public goods and services must thus be recognized.

Procedural fixes have not worked precisely because privatization is a philosophy of governance rather than just a financing mechanism. A new strategy therefore needs to be focused first and foremost on basic values. According to the rights expert, the human rights community needs to reassert the centrality of concepts such as equality, society, the public interest and shared responsibilities.

Alston noted that since the 1980s, neoliberals have undertaken highly successful efforts to delegitimize taxation. The rise of privatization has reinforced this thrust. As corporations become more politically powerful, they exert greater pressure for lower corporate tax rates, expanded tax concessions or exemptions, and wider loopholes to facilitate tax avoidance.

"Human rights groups need to highlight the dire consequences, not just for inequality but for human rights in general, of starving Governments of revenue. They need to make the case in favour of a balanced and progressive fiscal regime in the interests of society at large."

The longer-term challenge, which human rights actors certainly cannot achieve on their own, is to reverse the presumption, now fully embraced by actors such as the World Bank, that privatization is the default setting and that the role of the public sector is that of a last-resort actor that does what no one else can or wants to do.

Human rights groups need to begin systematically addressing the implications of privatization and documenting and exposing situations in which privatization has generated rights-defi-

cient outcomes, said Alston.

The challenge is to uphold human rights standards, and not just to ask whether public or private actors have performed better.

While in theory privatization is neither good nor bad, the ways in which it has most often occurred in recent decades and the ideological motivations driving much of it call for a different set of responses from the human rights community.

According to the Special Rapporteur, immediate steps should be taken to:

- Insist that appropriate standards be set by public and private actors involved with privatization to ensure that

data on human rights impacts are collected and published, and that confidentiality carve-outs are strictly limited;

- Undertake systematic studies of privatization's impact on human rights in specific areas, and on poor and marginalized communities;

- Insist that arrangements for the privatization of public goods specifically address the human rights implications; and

- Explore new ways in which treaty bodies, Special Procedures, regional mechanisms and national institutions can meaningfully hold states and private actors accountable in privatization contexts. (SUNS8797) □

in homeless deaths is just one result of the housing crisis," says Katya Nasim, one of the co-founders of the London Renters' Union, which was launched this year. This member-led union has already grown to over 600 members that support each other in fighting evictions or pressuring landlords to do repairs. The London Renters' Union also campaigns for security of tenure.

"In London, private renting is horrendous, with high prices and few rights for renters. Home ownership is beyond the reach of most people and social housing is unavailable," Nasim explains. "The situation has worsened severely since austerity and the financial crash."

The Shift campaign for housing rights

The UN also recognizes the deepening global housing crisis. In June 2017, the first meeting was called for a campaign named The Shift demanding a paradigm shift in how we see housing: not as a commodity, but that decent housing is considered within the international human rights framework. The campaign is spearheaded by the UN Special Rapporteur on the right to housing, Leilani Farha.

Farha tells Equal Times: "We are seeing a perfect storm. Firstly, a manifestation of housing policies that started in the 1980s, with neoliberal deregulation and reduced social housing. Deregulation means the cost of housing has risen, whilst people's rights decay. Globally, there has also been rapid urbanization."

"The financial crisis should have been called a global housing crisis," she adds. "Not just because it was sparked by mortgage defaults which led to many people losing their homes. It gave private equity firms, vulture funds and many financial institutions so much liquidity compared to cash-strapped banks and governments they were able to march into this unregulated domain and start purchasing in an unwieldy fashion."

Farha wants to see housing considered a social good. This would reduce real suffering, such as homelessness, that strips people of personal dignity. However, governments and institutions are trying to solve housing problems "using the same framework that created the problem".

The rising global movement to demand housing as a human right

Movements across the world that are engaged in putting a roof over people's heads see housing as a right, not a commodity.

by Fanny Malinen and Steve Rushton

"Cape Town, like so many cities across the world, has found itself to be the piggybank for global surplus capital looking to invest in property. We have seen wave after wave of exclusive developments catering to the super-wealthy jack up prices and strip our homes of their basic function – to house families. It has had a devastating effect on the last remaining poor and working-class communities in well-located areas who now find themselves unable to pay rents and property taxes," Jared Rossouw, a member of the coordinating committee of Reclaim the City, told the Equal Times website.

Through direct action, legal action and lobbying, the participative tenants and workers' movement has brought pressure on the provincial Western Cape government to make a U-turn on their housing policy. Last year, the administration announced 10 more social housing developments downtown.

On World Homelessness Awareness Day, 10 October 2018, the Western Cape government set up a safe zone to distribute food, water and support. The administration promised it would conduct a

new census of homeless figures. It has not conducted one since 2015, when it estimated that 7,000 people were street homeless.

Cape Town is not the only city where finding homelessness figures is challenging. There are many hidden homeless, including those sofa-surfing with friends or family. In 2005, the United Nations Economic and Social Council estimated that there were 100 million people without homes worldwide, 2% of humankind. But given the impact of the 2008 financial crash and general population growth, the current figure is probably much higher. A further 1.6 billion people are estimated to lack access to adequate housing.

In sub-Saharan Africa, 60% of urban residents live in slums, and this figure is only set to increase with the increasing urbanization of the continent.

The problem also applies to the Global North. A recent investigation by the Bureau for Investigative Journalism found that at least 449 homeless people died in Britain in the last 12 months.

"There are many more people sleeping on the streets, but the huge increase

She made a country visit to Egypt in late September. "The IMF [International Monetary Fund] still says they must liberalize their rental market. At one point the IMF said trickle-down neoliberalism did not work. But they have gone back to this model."

Governments around the world have already signed up in principle to the right to housing, as it is enshrined in many international human rights declarations and conventions. The Shift campaign is pushing cities and governments to affirm this. Many cities, including Amsterdam, Barcelona, Berlin, Paris, Montreal, Seoul, Montevideo and New York, have already signed up to the campaign.

In Montevideo, Uruguay's capital, this means supporting housing cooperatives. The city makes urban land available for cooperatives through land banks. 25,000 families are organized into 560 cooperatives through the Uruguayan Federation of Mutual-Aid Housing Cooperatives (FUCVAM). In 2017, the government awarded FUCVAM support to build over 400 homes for 11 cooperatives across Uruguay.

In Barcelona, Spain, the city government has fined banks for keeping properties empty. Last year it began regulating tourism, by reducing licences for hotels and houses used for tourism in the city's central areas.

Farha sees the Shift campaign as an umbrella for ideas and activities. "For instance, Barcelona is dealing with Airbnb differently from Toronto. Human rights provide the frame where the culturally appropriate content can then be filled in. Things like promoting equality and protecting the most vulnerable groups come under human rights, and the state or city can work out how to do this in their context."

Varying problems, shared solutions

In most urban areas, city centres are for the affluent. But economic inequalities are not the only ones exacerbated by spatial distribution.

In South Africa, this is extreme: during the apartheid era, it was official policy to house people of colour in townships far from services or jobs, with city

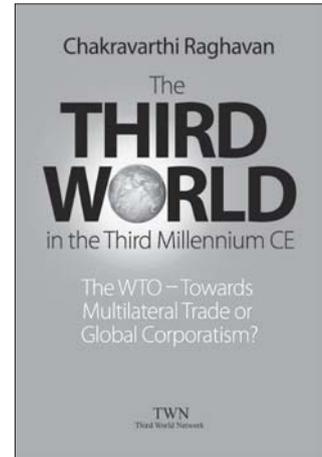
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The Third World in the Third Millennium CE
The WTO – Towards Multilateral Trade or Global Corporatism?

By *Chakravarthi Raghavan*

THE second volume of *The Third World in the Third Millennium CE* looks at how the countries of the South have fared amidst the evolution of the multilateral trading system over the years. Even at the General Agreement on Tariffs and Trade (GATT) gave way to the World Trade Organization (WTO) as the institution governing international trade, this book reveals, the Third World nations have continued to see their developmental concerns sidelined in favour of the commercial interests of the industrial countries.

From the landmark Uruguay Round of talks which resulted in the WTO's establishment to the ongoing Doha Round and its tortuous progress, the scenario facing the developing countries on the multilateral trade front has been one of broken promises, onerous obligations and manipulative manoeuvrings. In such a context, the need is for the countries of the Third World to push back by working together to bring about a more equitable trade order. All this is painstakingly documented by *Chakravarthi Raghavan* in the articles collected in this volume, which capture the complex and contentious dynamics of the trading system as seen through the eyes of a leading international affairs commentator.



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Rising debt in developing countries becoming a formidable obstacle

A recent UN meeting highlighted the difficulty of sustainably harnessing debt to finance development strategies in a financially fragile economic environment.

by Kanaga Raja

GENEVA: Rising debt and financial vulnerabilities in the developing world are fast turning into a formidable obstacle for sustainable development in general, and for the implementation of the 2030 Agenda for Sustainable Development in particular, the United Nations Conference on Trade and Development (UNCTAD) has said.

This assessment is in an UNCTAD Secretariat Note prepared for the second session of the Intergovernmental Group of Experts (IGE) on Financing for Development, which took place here on 7-9 November.

According to UNCTAD, amelioration of debt and financial distress requires that the causes be addressed. Policy and regulatory measures that help reduce international capital flow volatility and ensure that external finance can be channelled reliably into long-term productive investment and developmental projects are paramount, it said.

The second session of the IGE was on the topic "Debt and debt sustainability and interrelated systemic issues", and sought to address the following questions:

(a) How can current debt vulnerabilities in developing countries be mitigated and developing-country sovereign debt and financial crises be prevented?

(b) How can sovereign financing, both external and domestic, be leveraged successfully for sustainable development in future?

(c) What institutional, policy and regulatory changes are required at the international level to ensure that global economic governance structures better support the use of responsible financing, by borrowers and lenders, for sustainable development?

(d) How can existing frameworks

and tools be improved to ensure effective, fair and transparent sovereign debt crisis resolution?

According to the UNCTAD Secretariat Note, relevant policy discussion and analysis of developing-country debt sustainability requires a holistic approach to reform at the international, regional and domestic levels.

Ultimately, attention should be focused on conditions at all levels that are consistent with two main objectives: first, to promote a return to positive net resource transfers from the developed to the developing world in the short run; and second, to ensure that, in the long run, developing countries establish the productive and export capacities required to reduce their reliance on external financing and support their own development process.

The challenge of this task is that it requires not only a review and discussion of a wide range of policy options, but also the careful balancing of national policy spaces to respond to debt challenges with international regulation to support developing-country debt sustainability, said UNCTAD.

Great concern

The second session of the IGE heard opening remarks by the President of the Trade and Development Board of UNCTAD, Ambassador Salim Baddoura of Lebanon; UNCTAD Deputy Secretary-General Isabelle Durant; the chair of the session, Paul Oquist, Nicaragua's Minister of National Policies; and the vice-chair, Ambassador Nozipho Joyce Mxakato-Diseko of South Africa.

The session also heard video statements from Maria Fernanda Espinosa Garces, President of the UN General As-

sembly, and Inga Rhonda King, President of the UN Economic and Social Council (ECOSOC).

Richard Kozul-Wright, Director of the UNCTAD Division on Globalization and Development Strategies, made a presentation of the Secretariat Note.

In her opening remarks, Deputy Secretary-General Durant said that the growth in world debt and the debt of vulnerable countries is giving rise to increasing interest but also especially worry. The facts are indeed of great concern, she said, highlighting that at the end of 2017, the ratio of global debt to gross domestic product (GDP) was almost one-third higher than it was on the eve of the most serious financial crisis in 2008.

"The systemic causes of this increasing debt means that we must be consistent if we wish our analyses and recommendations to represent a useful step in the progress to be achieved in the months and years to come."

Durant cited the Institute of International Finance as stating that global debt represents three times global GDP, the main concern being the growth in the debt of non-financial institutions.

While the main banking sectors of developing countries have begun reducing their debt in line with regulations that were adopted since the crisis, it is currently the markets for bonds issued by companies in non-bank intermediaries which are becoming predominant.

Additional concerns are that consumer demand is being fed by credit, non-financial businesses depend increasingly on financial activities to get their profits, and national governments especially in developing countries are becoming more vulnerable as the debt increases.

These three cumulative trends, in addition to the fact that the modest worldwide recovery since the global financial crisis was and continues to be upheld by debt, lead to an increase in the mountain of debt, she said.

The Deputy Secretary-General pointed out that a fifth of emerging and middle-income countries have a debt-to-GDP ratio which is beyond 70%, while a fifth of low-income countries have a ratio of over 60%. By mid-2018, the number of low-income developing countries which are over-indebted or exposed to the risk of being so reached 31 as against

13 in 2013.

In presenting the UNCTAD Secretariat Note, Kozul-Wright referred to the decade since the global financial crisis in 2008 and the decade leading to 2030 when the international community has promised to complete the most comprehensive development agenda on record. Debt is one of the big threads running across those two decades, he said.

Kozul-Wright cited a 2010 special report by the *Economist* magazine which concluded: “[F]or the developed world, the debt-financed model has reached its limit. Most of the options for dealing with the debt overhang are unpalatable. As has already been seen in Greece and Ireland, each government will have to find its own way of reducing the burden. The battle between borrowers and creditors may be the defining struggle of the next generation.”

The thing about this conclusion, said Kozul-Wright, is not just its failure to anticipate a return to business-as-usual – the debt finance model survived – or its inability to actually read the Greek and the related European bond financial crisis. What is surprising about the comment is its unawareness that debt had been a defining struggle particularly for developing countries in the previous 30 years of what UNCTAD has called hyper-globalization, namely the combination of neoliberal economic policymaking, financialization and the growing concentration of corporate power.

In that world, debt has essentially been both its glue and its solvent – a world that has become much more highly unequal, more unstable and under-invested in, he said.

Kozul-Wright referred to the book *Payback* written by Canadian novelist Margaret Atwood, in which she calls debt “the shadow side of wealth”. And like many shadows, it has a long and troubled history which developing countries are particularly familiar with, he said.

In this context, he referred to the debt crisis in Latin America in the early 1980s which began in Mexico and led to a “lost decade” for many parts of the developing world, the Mexican “tequila” crisis in 1994, the Asian financial crisis in 1997, the Russian bond crisis the following year with contagion to East Asia

after that, and culminating in the aftermath of the global financial crisis in 2008-09.

He noted that more than a third of the 34 countries classified as being in debt distress are countries that actually received debt relief in the years before the financial crisis.

Kozul-Wright said that the big question that UNCTAD began to ask in the 1970s still remains today: how to harness the potential of external finance, including debt, to support national development strategies while minimizing the risks arising in an uncertain and volatile global environment?

He also posed some further questions:

- Why haven’t we found effective mechanisms to provide sufficient and timely international liquidity?

- Why is the burden of debt and the adjustment required still borne to a very large extent by deficit countries?

- Why are capital controls still seen as a toxic part of the policy toolkit, and blended finance, for example, is being paraded as a solution when in fact it is almost certainly more toxic in terms of dealing with these problems?

- Why has it been so difficult to gain real traction for “soft law” principles that UNCTAD, for example, has been promoting?

- Why has it been difficult to build consensus on more comprehensive criteria for determining eligibility and scale of debt relief and, related to that, understanding and measuring debt sustainability?

Kozul-Wright said UNCTAD insists that the systemic problems that debt poses require systemic solutions. In this context, he highlighted the need for a sovereign debt workout mechanism, which UNCTAD has been promoting for over 30 years but has been resisted by the international community.

“We are living through a time where the international community wants to defend a rules-based international multilateral system but apparently it is a rules-based system that doesn’t extend to the issue of debt” – the one area where developing countries know that the damage that they can face when things go wrong is particularly severe and significant.

Record debt levels

According to the UNCTAD Secretariat Note, global debt levels continue to reach new record highs a decade after the global financial crisis.

The Institute of International Finance estimates that by the end of March 2018, global debt stocks had reached \$247.2 trillion, up from \$168 trillion at the onset of the financial crisis of 2007-08.

UNCTAD estimates that the ratio of global debt to GDP is nearly a third higher than in 2008, with global debt stocks amounting to more than three times global GDP.

The high dependence of a modest global recovery on debt reflects systemic fragilities in global growth dynamics that have persisted, despite the profound shock of the financial crisis.

In a policy context where the burden of recovery has shifted to strongly accommodative monetary policies by central banks in lead economies, global economic growth has remained heavily reliant on easy financing conditions and short-term expectations of appreciations in asset values.

While core banking sectors in most developed economies have consolidated their positions and deleveraged substantially, regulatory loopholes have facilitated the reemergence of unregulated financial credit default swap (insurer) markets “in the shadows”, significantly augmenting the danger of cascading financial vulnerabilities in the event of a collapse of underlying markets.

More generally, the financialization trends that led to financial collapse a decade ago – high profitability in financial sectors outpacing that in real sectors, a growing dependence of non-financial firms on financial activities for their revenue flows, the prevalence of short-term investment strategies (including mergers and share buybacks), as well as consumer behaviour tied to asset bubbles and easy access to credit – continue to thrive. An additional source of concern is the widely observed sharp increase in market concentration in leading non-financial (especially high-technology) sectors.

Together, these trends result not only in heightened financial fragilities, but in persistent downward pressures on aggregate demand, income and employ-

ment and thus slow global growth, said UNCTAD.

The abundance of cheap credit has favoured booming cross-border private capital flows. Such booms failed to support global capital formation in the 1990s, and their volatility and procyclicality – inflows of cheap credit in good times and sudden large outflows of capital at the first sign of potential difficulties – were a core cause of developing-country financial and currency crises at the time, such as the Asian financial crisis of 1997.

The post-crisis period has not seen any progress in improving the management of private capital flows for purposes of longer-term productive investment and development, said UNCTAD. Not only are private cross-border capital flows today at least as volatile as in the 1990s, they involve larger magnitudes and more pronounced reversals.

An important implication is that developing countries' debt sustainability has, on average, been affected by private capital flow reversals, whether or not governments promoted strong economic fundamentals, such as relatively low public debt, small budget deficits, low inflation rates and high reserve holdings.

At the same time, the sectoral dynamics driving ballooning debt burdens and potential debt crises have changed. A decade ago, unsustainable household debt in the United States and excessive borrowing by financial institutions triggered disaster. The main focus of worry has now shifted to fast-rising non-financial corporate debt in developed and larger emerging economies, with corporate bond markets and non-bank intermediaries playing an increasingly important role.

According to Standard & Poor's Global, corporate non-financial debt has grown faster than nominal GDP for much of the past decade. Globally, over one-third of non-financial corporations are now highly leveraged with gearing (debt-to-earnings) ratios of 5 and above, up from only 5% in 2007, while non-investment-grade corporate bonds have quadrupled since 2008.

Corporate bond markets have grown particularly fast in large emerging economies in Asia and Latin America, with around 20-25% of corporate bonds at growing risk of default, despite still relatively low interest rates.

Challenges for debt sustainability

According to UNCTAD, this fragile financial and economic environment poses serious challenges for developing-country debt sustainability. While the bulk of global debt is still held in developed countries, emerging- and developing-country debt rose from just under 40% of global GDP in 2008 to 93.2% in 2017.

For developing countries as a whole, total external debt stocks are estimated to have reached \$7.64 trillion in 2017, having grown at an average yearly rate of 8.5% between 2008 and 2017, or more than 80% over the period. Over the same period, total external debt stocks increased from \$155 billion to \$293.4 billion in the least developed countries, representing an average annual growth rate of 7.4%. Emerging economies registered a slightly higher average growth rate of their external debt stocks at 9.5%.

For all developing countries, the debt-to-GDP ratio rose from 21.8% in 2008 to 25.7% in 2017. However, said UNCTAD, this aggregate figure masks more worrying trends in a growing number of developing countries.

According to the International Monetary Fund, by 2017, debt-to-GDP ratios had climbed to above 70% in one-fifth of emerging and middle-income countries and to above 60% in one-fifth of low-income developing countries. Including implicit liabilities, such as pension and healthcare spending, these figures increase to 112% for emerging and middle-income countries and to 80% for low-income countries, respectively.

By mid-2018, the number of low-income developing countries at high risk of debt distress or already in debt distress had risen from 13 in 2013 to 31 (24 at high risk and seven in debt distress). These categories include 14 of the 34 low-income developing countries that received debt relief under the Heavily Indebted Poor Countries Initiative or the Multilateral Debt Relief Initiative.

An immediate implication of rising debt ratios is higher debt service burdens, even under favourable financing conditions. For developing and transition countries as a group, the debt-service-to-export ratio rose from 8.7% in 2011 – its lowest point since the onset of the global financial crisis – to 15.4% in 2016. In 2017,

this fell to 13.6%, largely due to a recovery of some commodity prices since mid-2016. In the least developed countries, this ratio also saw a pronounced increase from 4.1% in 2008 to almost 10% in 2017, and in sub-Saharan Africa it more than tripled from 3.8% in 2011 to 12.9% in 2017.

In poorer economies, interest payments as a percentage of government revenue more than doubled from 5.7% in 2008 to 14% in 2017, and to 18.5% in sub-Saharan Africa, reaching as much as 30% of tax revenue in some sub-Saharan economies.

These developments effectively reverse the substantial achievements of the 2000s in developing-country debt sustainability, when average regional debt-to-GDP ratios fell to levels ranging from 40% to less than 20% across the developing world, and debt service costs also declined significantly, said UNCTAD.

Implications for development strategies

The most important common denominator of rising debt vulnerabilities across developing countries is that the more conventional triggers of debt distress have been amplified by the rapid integration of developing countries' shallow financial and banking systems, both public and private, into volatile and largely unregulated international financial markets.

In short, said UNCTAD, in a global economic environment dominated by largely unregulated international financial markets and the ad hoc sensitivity of financial players to day-by-day economic news, developing countries have limited policy space to leverage debt sustainably for long-term development strategies.

Instead, such strategies, whether reliant on international sovereign bond issuance, domestic bond markets or corporate debt, are likely to be thwarted by sudden reversals of international cheap credit flows in response to changes in policy variables beyond the control of developing-country governments, as well as subsequent domestic capital flight.

External financing through debt-related mechanisms is a key element of any

development strategy as developing-country productive and financial structures become increasingly complex. With global financial integration continuing apace, the question for policymakers, in developing countries and the international community alike, is how to harness the potential of external finance, including debt, to support national development strategies, while minimizing the risks arising in an uncertain and volatile global economic environment.

The fact that developing countries have experienced a continuous net negative transfer of their resources to developed countries in recent decades serves to underline the magnitude of the challenge. One estimate suggests that since 1980, developing countries have been net providers of resources to the rest of the world to the tune of about \$16.3 trillion.

Policy measures

Given the global nature of many of the determinants of developing-country debt sustainability, policy reform at the level of international monetary and financial governance is indispensable, said UNCTAD. Regulatory reforms to stabilize international financial markets have made only muted progress, however.

In the absence of more concerted international policy action to rein in financialization, developing countries are well advised to consider the adoption of capital control measures as a key management mechanism of financial flows and external debt burdens over global credit and financial cycles. Additionally, proactive debt management policies to lock down favourable financing conditions over long periods of time are essential.

In view of rising instances of high debt distress and debt default in developing countries, longstanding debates about necessary improvements to existing restructuring mechanisms for sovereign debt take on new urgency. Existing processes to deal with the resolution of sovereign debt crises are fragmented and slow and often result in unfair burden sharing and high economic, social and political costs for the sovereign debtor.

UNCTAD has argued since the onset of the first major developing debt crises in the late 1970s and early 1980s that orderly workout procedures for sover-

eign debt should meet two objectives: help prevent financial meltdown in countries facing difficulties servicing their external obligations, and provide mechanisms to facilitate an equitable restructuring of debt that can no longer be serviced according to the original contract.

According to the UNCTAD Secretariat Note, a multilateral framework for sovereign debt restructuring can start from a few basic features:

(a) A temporary standstill for public and/or private debt, to be declared unilaterally by the debtor country and sanctioned by an independent panel to avoid conflicts of interest;

(b) Standstills should be accompanied by exchange controls, including the suspension of convertibility for foreign currency deposits and other assets held by residents as well as non-residents;

(c) Provision should be made for debtor-in-possession financing, automatically granting seniority status to debt contracted after the imposition of a standstill, as well as for lending into arrears for financing imports and other vital current account transactions;

(d) Debt restructuring, including rollovers and write-offs, should take place based on negotiations between the debtor and creditors. (SUNS8793) □

(continued from page 6)

centres mainly whites-only. Nearly 25 years later, much of the division still persists.

Rossouw from Cape Town's Reclaim the City explains: "Many new government houses have been built but tend to replicate spatial apartheid. At a time when we should be restructuring the city – and advancing the right to housing and the equitable access to land – the opposite is happening. Wealthier areas have become more exclusive and poorer areas remain locked in limbo."

Currently, the group is occupying empty buildings including a former nurses' home in the heart of the city's exclusive waterfront. They aim high, campaigning for the best land in the best locations for the people who need housing the most: "If we are to change the city as a whole and disrupt the system replicating spatial apartheid, we must take the struggle to the heart of the city, to the seat of government and the people who live there. If we are to address the poverty and inequality that is hidden on the periphery of our city, we must be visible where the decisions are made by those with the power and the wealth."

The London Renters' Union also engages in direct action, such as protesting at letting agencies and eviction resistance.

Both movements emphasize education and participation. Reclaim the City runs weekly local advice assemblies, and

in London, the Renters' Union puts an emphasis on leadership development and skill-sharing.

Nasim explains: "The branches of the union run on a peer-to-peer model, so it is not just about getting advice: we talk collectively and collaborate on a plan of action. Like other unions, we work on the basis that collectively, we have power."

She reflects on previous housing campaigns she has been part of: "[They] were often shortlived. People come in for the duration of their issue, and leave when [their individual] problem is solved." Education and analyzing power, including collective power, nurtures continuity and leadership.

Farha echoes this approach: "Money and power [in the housing market] are much bigger than a special rapporteur or any one organization or city. We must galvanize together to realize the right to housing and recommit to the idea that people can live dignified lives in decent housing." □

Fanny Malinen is a London-based independent journalist, writing on and campaigning for social and economic justice. She is particularly interested in debt and financialization as well as finding sustainable alternatives. Steve Rushon is a London-based freelance journalist, writing on social and environmental justice. He is particularly interested in movements for democratic alternatives. The above article first appeared on the Equal Times website (<https://www.equaltimes.org/the-rising-global-movement-to>).

China comes out against ambitious e-commerce rules

In contrast to the far-reaching aims of developed-country proponents of WTO rules on electronic commerce, China has called for an “inclusive and pro-development” approach that would, among others, preserve member states’ right to regulate data flows.

by D. Ravi Kanth

GENEVA: China has inveighed against binding provisions for free cross-border data flows, preventing data localization, and protection of source code, among others, in the ongoing informal plurilateral discussions on e-commerce at the World Trade Organization, dealing a setback to efforts for developing ambitious rules as demanded by the United States, Japan, Australia and Singapore, trade envoys told the *South-North Development Monitor (SUNS)*.

During a meeting of the members of the plurilateral Joint Statement on Electronic Commerce Initiative on 31 October, China delivered the strongest statement yet for “open, transparent, inclusive and pro-development” outcomes, “without imposing any preconditions on the participation of any member and without prejudice to members’ positions in future discussion.”

China, which did not initially join the plurilateral initiative on e-commerce when it was announced by the trade chiefs of the US, Japan, Australia and Singapore along with other industrialized and several developing countries at the WTO’s eleventh Ministerial Conference in Buenos Aires in 2017, said “full account shall be given to the concerns and needs of developing members including those who have not joined the discussion, particularly the LDCs [least developed countries].”

China said it will work closely with countries that are outside the plurilateral initiative group.

China’s strong statement has apparently resulted in the cancellation of a planned meeting of several trade ministers of the plurilateral group on e-commerce in January 2019 on the margins of the annual World Economic Forum meeting in Davos, Switzerland, said a trade envoy who asked not to be quoted.

More important, China told the

plurilateral participants that “discussion shall focus on ‘trade-related aspects’ of e-commerce as the 1998 Work Programme so mandated.”

“Let’s stick to e-commerce without substituting its concept or generalizing its expanded scope,” China said, in opposition to ongoing attempts by the US, Japan, Australia, Singapore and Canada among others to incorporate rules from the failed Trans-Pacific Partnership (TPP) agreement.

Many developing countries led by India and South Africa have repeatedly maintained that the integrity of any outcome on e-commerce will hinge on how members proceed according to the 1998 WTO work programme on e-commerce.

Clearly, China’s latest position comes somewhat close to what a large number of developing countries are calling for as per the 1998 work programme.

Significantly, China remained silent on a permanent moratorium against imposing customs duties on electronic transmissions.

It remains to be seen what China will say during the WTO General Council meeting in the week of 26 November which is slated to discuss a proposal from India and South Africa for re-examining the moratorium because of the fiscal burden it would impose on developing and poorest countries.

Right to regulate

Further, China said that “members’ right to regulate shall be fully respected and members’ sensitivities be accommodated in scoping the discussion” at the plurilateral proceedings.

Without naming the US, Japan, Australia and Canada, which want to discuss all regulatory issues at the plurilateral meetings, China said “any future disciplines that might be foreshadowed in the

exploration shall in no way prevent the WTO members from exercising their right to regulate and fulfilling legitimate public policy objectives”.

Clearly, China is calling for policy space as “most developing countries are still at the lower end of the learning curve or just starting to formulate domestic regulatory frameworks on e-commerce.”

“Therefore, their policy space, the right to regulate and the right to develop need to be duly preserved,” China emphasized.

China criticized the US and other developed countries that are calling for free cross-border data flows, saying that “there is no member that permits completely free flow, nor any member that absolutely prohibits such flow.” Hence, members may apply different regulatory systems due to various concerns and priorities, China said.

All countries, according to China, “are entitled to [implement] reasonable regulation in this regard, including allowing lawful and orderly free flow of information on the precondition of protecting privacy and public interests, as well as safeguarding national security and network security.”

Against this backdrop, “any multilateral coordination of possible rules cannot neglect members’ legal and institutional arrangements as such,” China cautioned the proponents which are seeking ambitious rules.

China explained that it has witnessed phenomenal development in its e-commerce sector. Given the explosive growth in its e-commerce involving an enormous amount of data “from more than 800 million Chinese citizens, representing one fifth of the global online population,” China said it is imperative that there is a proper “regulation of such data, especially the cross-border data flow [which] is among the top priorities of regulators.”

“At the same time, we are also aware of the need for justifiable flow of e-commerce data across borders in order for this business model to operate globally,” China maintained.

“The Cyber Security Law of China stipulates that personal information and other important data gathered or generated by critical information infrastructure operators during operation in China shall be stored within the Chinese territory, and those [that] really need to be

provided to overseas shall be subject to security assessment," China pointed out. Elaborating on the law, China said it ensures "the lawful and orderly free flow of network information."

Further, China referred to its "newly-publicized E-commerce Law [which] also stipulates that the state safeguards the security of e-commerce transaction and customer information, encourages the development of utilization of e-commerce data and safeguards the lawful and orderly free flow of e-commerce data."

Without naming the US, which is calling for completely free data flows and prohibitions against localization of servers, China expressed serious doubts as to whether the WTO must develop rules on what are sensitive issues for many members, developing or even developed.

"It is no coincidence that, according to the [WTO] Secretariat Note on E-Commerce in RTAs [Regional Trade Agreements], only less than 5% of the notified RTAs with e-commerce related disciplines contain binding provisions on cross-border information flow, location of computing facilities and source code," China said.

It argued that "very few RTAs that contain such rules are yet to stand the

test of time when it comes to the enforcement of such rules."

Citing the Chinese saying "High-brow songs find few to join in chorus", China said "what we [WTO members] need now in this exploration work is indeed chorus," implying that the ambitious proposals by the US and its allies will not fly.

China urged members to "embrace a pragmatic ambition, and take forward the elements of wider convergence shown in the discussion."

In sharp contrast to the US proposal, China said that it wants rules on "e-signatures, e-authentication, e-contract, paperless trading, consumer protection, anti-spam, international regulatory cooperation, and facilitation of trade in goods enabled by the internet" among others.

"In our view, a multilateral framework would be optimum, or a widely participated MFN-based pro-multilateral framework that is flexible and inclusive enough to reflect everybody's interest could be an alternative," China said at the meeting.

Effectively, China struck a body blow to the aspirations of the e-commerce plurilateral sponsors, said trade envoys familiar with China's stand. (SUNS8800) □

ground at the 24-25 October informal trade ministerial meeting of 13 countries in Ottawa, led by Canada, the EU, Japan, Australia and Brazil among others, which had also called for strengthening transparency and notification requirements at the WTO.

Instead of pursuing the issue at either the Doha negotiating body or the WTO General Council, the US, the EU, Japan, Costa Rica, Chinese Taipei and Argentina brought it before the Council for Trade in Goods.

"Fundamental elements"

In the proposal, which was circulated on 1 November, they made a case that "transparency and notification requirements constitute fundamental elements of many WTO agreements and a properly functioning WTO system, and thus of Members' obligations."

The proponents complained about "the chronic low level of compliance with existing notification requirements under many WTO agreements."

Therefore, they called for strengthening transparency and notification requirements.

The proposal has listed the following WTO agreements that would be subjected to the proposed transparency and notification requirements:

- (a) Agreement on Agriculture;
- (b) Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping);
- (c) Agreement on Subsidies and Countervailing Measures;
- (d) Agreement on Safeguards;
- (e) Understanding on the Interpretation of Article XVII of the GATT 1994 (State Trading);
- (f) Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation);
- (g) Agreement on Import Licensing Procedures;
- (h) Agreement on Rules of Origin;
- (i) Agreement on Preshipment Inspection;
- (j) Decision on Notification Procedures for Quantitative Restrictions;
- (k) Agreement on Trade-Related Investment Measures;
- (l) Agreement on the Application of Sanitary and Phytosanitary Measures;
- (m) Agreement on Technical Barriers to Trade.

South countries strongly oppose joint proposal on WTO notifications

A proposal to strengthen requirements for WTO member states to notify how they are implementing international trade rules has met with resistance from many developing countries wary of the onerous obligations it would entail.

by D. Ravi Kanth

GENEVA: Many developing and poorest countries have opposed a proposal by the US and five other countries for enhanced transparency and notification requirements in WTO agreements, saying that it would impose "punitive measures and sanctions" and burdensome requirements on members, trade envoys told the *South-North Development Monitor* (SUNS).

At a meeting of the WTO's Council for Trade in Goods on 12 November,

many developing countries, particularly the African Group, spoke against the proposal circulated by the US, the EU, Japan, Costa Rica, Chinese Taipei and Argentina for enhancing transparency and for strengthening the notification requirements.

The joint proposal by the six countries stemmed from a draft prepared by the Trilateral Group – the US, the EU and Japan – for the proposed rule-making reforms at the WTO. It later gained

The proposal says that “appropriate committees, working groups or other bodies, such as the Working Group on Notification Obligations and Procedures (Working Group)”, will “assess and report annually to their designated supervisory bodies on Members’ compliance with notification obligations” for the above agreements.

The committees will also suggest “appropriate steps to reinforce compliance with the notification requirements under such agreements (for example, by carrying out notification workshops), and to make recommendations, as appropriate, on means by which greater compliance can be encouraged and achieved.”

The General Council, according to the proposal, will “instruct the Working Group to meet before [x date] to develop recommendations on improving Member compliance with notification obligations under the agreements” listed above.

It argues that “the Working Group will consult with appropriate committees, other working groups and bodies as appropriate, and consider both systemic and specific improvements that can help Members improve compliance with notification obligations.”

In addition, the proposed Working Group “will also consult with the WTO Secretariat as appropriate, including the WTO Institute for Training and Technical Cooperation (ITTC) to assess the contribution of WTO trade-related technical assistance to improving notification compliance, as well as the Central Registry of Notifications.”

The US, which is particularly targeting China and India among others on market access for agricultural products, has insisted on the importance of strengthening and enhancing “the effectiveness of the review process of the implementation of commitments in the Agreement on Agriculture.”

Further, the Trade Policy Review Body, according to the proposal, will “ensure that beginning in 2019, all trade policy reviews include a specific, standardized focus on the Member’s compliance with its notification obligations under [all] the agreements”.

More important, the proposal calls on members “to provide a counter notification on behalf of another Member concerning notification obligations under the agreements.”

Recently, the US had filed a counter-notification for the first time against India over New Delhi’s notification on domestic support payment programmes for rice and wheat. Subsequently, the US also filed another counter-notification against India on cotton, challenging India’s notification on cotton subsidy programmes.

In short, the proponents are seeking to undermine the “sovereign” functions of a WTO member country by filing counter-notifications and by resorting to a heightened form of naming and shaming, said a trade envoy who asked not to be quoted.

“Numerous and serious difficulties”

During the meeting of the Council for Trade in Goods, the African Group issued the strongest statement yet on the deleterious implications of the proposal.

The African Group, which includes more than 50 countries, said while the Group agrees that transparency and compliance with notification obligations in the WTO are important, the proposal presents them with “numerous and serious difficulties.”

The African Group said “first, and most importantly, it proposes a series of punitive measures and sanctions without having offered a proper assessment of the varied reasons why Members do not or are unable to comply with their notification obligations.”

It is well documented in several studies that several developing and poorest countries lack appropriate institutions for collecting data and complying with timely requirements.

“For many of us, the heart of the problem is the lack of institutional capacity to comply with notification requirements on technically complex matters,” the African Group said.

It pointed out that “this should be evident in the WTO Notification Compliance Reports that set out reasons why some developing and least developed countries are unable to meet their notification requirements.”

According to the African Group, the second biggest difficulty arising from the proposal is that it shifts the burden of implementation “disproportionately on developing and least developed countries.” Consequently, “countries that are least able to comply with existing commitments” will be severely penalized,

instead of being supported and assisted. More disturbing, several poor countries are “in arrears and have already lost access to WTO resources and support,” the African Group said in its statement.

The proponents of enhanced transparency and notification requirements also failed to provide adequate special and different treatment flexibilities, the African Group maintained. The “woefully inadequate” special and differential treatment provisions “do not provide any solution to the real reasons that many countries are unable to comply with their notification obligations.” The “idea of limited time extension for notification and vague offers of technical support do not provide any comfort,” the African Group argued.

More dangerously, “the idea to enhance the role of the [WTO] Secretariat in notifications would open the way for actions that could both compromise the Secretariat’s impartiality in the work of the organization and pressure Members to comply with notification requirements in ways that impinge on national sovereignty,” the African Group cautioned.

The African Group added that “the idea of introducing counter-notifications in some WTO agreements will simply create a new source of division and conflict between Members.”

The Group characterized the proposal as “a negotiating proposal that will introduce significant changes to current agreements,” maintaining that “any substantive negotiating proposal must obtain a negotiating mandate that is agreed by all Members.” Further, “a negotiating mandate would also need to establish a negotiating body in which to pursue the negotiations,” the African Group said.

It reminded the proponents that “there is no negotiating mandate on this matter and the CTG [Council for Trade in Goods] is not a venue for negotiations.”

“According to the Marrakesh Agreement [the WTO’s foundational agreement], ‘The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A.’ In principle, the role of the CTG is to implement existing agreements, not to engage in discussions that would change or add to those obligations,” the African Group said.

Against this backdrop, the African Group said it cannot support the pro-

posal. "Nevertheless, we may be able to agree that the CTG engage in an assessment of compliance of existing notification obligations and on the real reasons for non-compliance," it added.

The African Group said the proposal is unlikely to get the support it needs "so long as there is no clarity on the more fundamental and more urgent question on the future of the Appellate Body and dispute settlement mechanism, which we view as an indispensable part of a proper functioning WTO system."

For its part, the US, at the Council for Trade in Goods meeting, underscored the need for improving WTO notifications so as to facilitate negotiations on a strong footing.

The EU defended the joint proposal, saying that it formed part of its comprehensive paper for modernizing the WTO in all three pillars – the negotiating function, the dispute settlement system, and the strengthening of the secretariat, specifically on the transparency and notifications side.

Japan maintained that the rules-based multilateral trading system was founded on transparency and predictability involving strong compliance and notification obligations.

China criticized the proposal, saying that there is not one single country that has completely fulfilled all the notification obligations as set out in the WTO agreements. Punitive approaches for improving compliance are not a good option, China said. Beijing sought to know whether the sponsors of the proposal will also file their respective notifications on how they implemented their commitments in the area of services trade.

In short, the developing and poorest countries need to remain vigilant about the combined assault by the US along with other industrialized and developing countries which want to transform the multilateral WTO into a plurilateral trade body, said trade envoys who asked not to be quoted. (SUNS8796) □

discussions with the US on DSU reforms but did not divulge what the US Trade Representative Robert Lighthizer or his deputies had conveyed until now, according to the trade envoys present at the meeting.

US concerns

The US deputy trade representative and envoy to the WTO, Ambassador Dennis Shea, who took part in the meeting, insisted that his country would discuss issues concerning reforms of the dispute settlement system only on the basis of a "non-negotiating framework", without committing what the US plans to do, said trade envoys present at the meeting.

Shea said the US had already listed several concerns about the functioning of the AB, the highest adjudicating arm for resolving global trade disputes.

The US has consistently blocked repeated attempts by a large majority of countries to launch an expeditious selection process for filling the four vacancies at the AB. It has raised various concerns about the AB at meetings of the WTO Dispute Settlement Body over the past several months.

According to the *Washington Trade Daily* of 2 November, the US concerns include:

- AB interpretations that significantly restrict the ability of WTO members to counteract trade-distorting subsidies provided through state-owned enterprises;
 - Creation of a new category of prohibited subsidies that was neither negotiated nor agreed by WTO members;
 - Ignoring the 90-day deadline for completing appeals;
 - Disregarding the requirement in the DSU to provide within 60 days an estimate of the period within which it will submit its report;
 - Continued service by persons who are no longer AB members;
 - Failure to follow rules that prohibit non-AB members from deciding appeals;
 - Issuing advisory opinions on issues not necessary to resolve a dispute.
- The US has been increasingly concerned by the tendency of WTO reports to make findings unnecessary to resolve a dispute or on issues not presented in the dispute. The purpose of the dispute settlement system is not to produce reports or to

Dedicated process to begin addressing AB crisis

Member states will enter into dedicated discussions on reforming the WTO's mechanism for resolving trade disputes, including on ways to unlock the longstanding impasse over appointments to the Appellate Body.

by D. Ravi Kanth

GENEVA: Trade envoys from more than two dozen countries on 31 October gave their approval for initiating a dedicated process on a "non-negotiating framework" at the WTO General Council to address the current crisis caused by the United States at the Appellate Body (AB), which has now been reduced to three members, trade envoys told the *South-North Development Monitor* (SUNS).

At a closed-door "green room" meeting urgently convened by the WTO Director-General Roberto Azevedo, the DG informed the participants about starting a dedicated process for discussing the proposals raised by several members – including the EU, Canada and Honduras – to address the AB crisis and reforms

to the WTO's Dispute Settlement Understanding (DSU).

Close on the heels of a 24-25 October trade ministerial meeting in Ottawa to discuss WTO reforms, the DG suggested that issues involving DSU reform could be addressed at the General Council on a sustained basis, said several trade envoys who asked not to be identified.

The DG urged the participants at the green room meeting to come up with proposals in addition to those proposals that were circulated by some members.

He suggested that the EU would soon circulate a non-paper to start the discussions at the General Council meeting in December, trade envoys said.

Azevedo said that he had held dis-

“make law,” but rather to help members resolve trade disputes among them;

- The AB’s approach to reviewing facts. Article 17.6 of the DSU limits an appeal to “issues of law covered in the panel report and legal interpretations developed by the panel.” Yet the AB has consistently reviewed panel fact-finding under different legal standards, and has reached conclusions that are not based on panel factual findings or undisputed facts.

- The US has also noted with concern the AB’s review of the meaning of the member’s domestic law that is being challenged. In a WTO dispute, the key fact to be proven is what a member’s challenged measure does (or means), and the law to be interpreted and applied are the provisions of the WTO agreements. But the AB consistently asserts that it can review the meaning of a member’s domestic measure as a matter of law rather than acknowledging that it is a matter of fact and thus not a subject for AB review;

- Without basis in the DSU, the AB has asserted that its reports effectively serve as a precedent and that panels are to follow prior AB reports absent “cogent reasons”.

Significantly, the US has until now only raised concerns about the functioning of the AB, while blocking moves to fill the four vacancies at the AB.

“The US, however, did not offer any concrete suggestions or proposals for addressing the DSU reform,” said a trade envoy from an industrialized country.

“So far, we only heard about the US concerns on the AB but not what it wants in terms of concrete changes at the AB or in the DSU,” the envoy added.

“Nobody knows whether the US will allow the resurrection of the AB, which will become ineffectual and dysfunctional from December 2019, when the AB will be reduced to one member,” said another trade envoy, who asked not to be quoted.

“Besides, the US insistence on having discussions for DSU reforms on the basis of a non-negotiating framework is somewhat puzzling,” the trade envoy said.

[When the dispute settlement system was set up at the time of the WTO’s formation, it was agreed that the DSU needed to be reviewed in the light of its working, and that this must be taken up within four years from the establishment

of the WTO in 1995.

[This issue was on the agenda of the WTO’s 1999 Ministerial Conference in Seattle but the meeting ended in failure. Since then, the review of the DSU has been on the WTO agenda, reiterated at the Doha Ministerial Conference in 2001. However, even modest reform proposals from developing countries (such as requiring any WTO secretariat brief to a dispute settlement panel to be made available to the parties to the dispute for comment) were blocked by the US, the EU and their camp followers. The secretariat played an important role from behind in blocking any review. It is thus ironical that the DG and the secretariat he heads are now pushing this issue. See also Chakravarthi Raghavan (2000), *The World Trade Organisation and Its Dispute Settlement System: Tilting the Balance Against the South*, TWN Trade & Development Series No. 9. – SUNS]

Diversions?

The DG’s decision to hold the green room meeting all of a sudden after the Ottawa ministerial meeting in which he took part cast serious doubts about the integrity of the process that will be taken up at the General Council for the next several months.

“Perhaps the dedicated, stand-alone discussions on DSU reforms [are] a red

herring for carrying out the proposed reforms in two areas – negotiating function and an enhanced role for the WTO secretariat – stealthily at the WTO’s 12th Ministerial Conference,” said another trade envoy who asked not to be quoted.

“While the discussions on the DSU reform will go on endlessly, the other two sides of reforms – the negotiating function and the WTO secretariat – could be sewn up by the time trade ministers congregate at Astana, Kazakhstan, in June 2020 [for the 12th Ministerial Conference],” the envoy said.

At the green room meeting, South Africa sought a clear roadmap and timetable for addressing the grave crisis affecting the functioning of the Dispute Settlement Body, particularly the AB that is now reduced to three members. Unless the AB crisis is resolved, it is meaningless to discuss or talk about new issues, South Africa suggested.

The EU said that it will suggest clear ideas for the discussions, while China welcomed the proposed discussions, including the EU’s non-paper.

In conclusion, the developing and poorest countries must remain cautious about the dedicated discussions on DSU reform, which could be a Penelope ruse to intensify discussions on the negotiating side and enhancing the role of the WTO secretariat, trade envoys said. (SUNS8788) □

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Developing a national digital economy policy

In crafting measures to navigate the digital economy, developing countries should be on guard against trade agreements that would restrict their policymaking options.

by *Martin Khor*

Many governments are now working on establishing a national policy on the digital economy. They correctly believe that the forces of computerization, robotics and artificial intelligence are fast changing production and consumption systems. The old ways of doing things are being “disrupted” and if we don’t change with the times, we will be left behind.

There is realization that in the new economy, “data is king”. Data is seen as the new oil; it fuels the digital economy and is its most valuable resource. Data is the raw material for the digital-based industry. Those that have access to data and put it to use can have control over digital-based activities.

Billions of pieces of data are being collected by the digital-based companies and entities to make profiles of millions or even billions of people which they can in turn target for the promotion of products and ideas. Masses of people can be persuaded to buy certain products, visit certain countries or vote in elections for certain candidates or parties. Collected data also provide information for identification, medical records, banking, security and so on.

In the commercial world, companies increasingly prefer to advertise through the Internet rather than the old media, threatening the survival of newspapers. Goods are bought online. The winners are Internet-based giants like Google, Facebook and Amazon, which make billions from advertisements and sales.

Many local companies in developing countries that use the old systems lose out, especially if they have to pay taxes while the online companies don’t. Hence the calls for imposing digital taxes so that there is more of a level playing field.

Digital economy policy measures

Some developing countries, notably

China and recently India, have taken steps to develop their own companies and also to protect their security through a number of measures that are elements of a national digital policy.

One such policy is “data localization”, or a regulation that data generated through online activities have to be retained inside the country. This means that data collected by international tech giants like Google and Facebook, or credit card companies like Visa and Mastercard, have to be retained in computer data storage centres located in the country and not abroad. The objectives include to protect data security (at least to some degree), to counter the high market concentration and anti-competitive practices in the digital economy, to get the global tech companies to invest in data centres in the country, and to develop local tech companies.

Linked to this are measures to regulate cross-border data flows. The free flow of data across countries is benefiting the global tech companies. “In the context of data as a raw material for the virtual world, the free flow of data without government regulation will have adverse consequences for establishing data-based business in developing countries in the future,” says Abhijit Das, director of the Delhi-based Centre for WTO Studies.

However, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a new trade agreement among countries in the Pacific Rim, has a chapter on electronic commerce that prohibits or restricts member governments from having data localization policies or from regulating cross-border data flows.

The CPTPP also restricts member governments from requiring that companies selling computer software in their countries allow access to their source code as a condition for the sale or use of

the software or products containing the software.

With such a prohibition, governments may not be able to access the source code, except in a few specified circumstances. Prohibiting access to or transfer of source code has the effect of discouraging the diffusion of software technology, thereby perpetuating technology dependency and deepening digital inequities by further entrenching the already established players in developing countries’ markets, according to a paper by R.S. Neeraj of the Centre for WTO Studies.

Another issue is the prohibition of government regulations on electronic authentication methods. Many governments have guidelines or regulations, for example, on the use of online banking to protect the safety of consumers. However, under the CPTPP, maintaining official regulations would be difficult because of a clause that the companies should be able to decide how secure their electronic transactions should be, except for one chosen category of transactions that can be regulated.

Some developed countries are also advocating that similar clauses be included in the Regional Comprehensive Economic Partnership, a trade pact for which negotiations are still ongoing. And there are also strong pressures to have an e-commerce agreement in the World Trade Organization.

The global technology companies that dominate the digital business are of course eager to maintain their dominance and prevent new rivals. However, developing countries that are trying to embark on their own digital industrial transformation should have the space and freedom to make use of policy measures to develop their own digital strategies. This could combine making use of the technologies of the existing tech giants with developing their own digital technological capacities.

Thus, we should keep an eye (or both eyes) open for trade agreements that have a bearing on what we can or cannot do, and negotiate to keep open our options to formulate policies that allow us to participate in and benefit from the digital industrial revolution. □

Martin Khor is adviser to the Third World Network. This article was first published in The Star (Malaysia) (5 November 2018).