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WTO membership still far apart on trade facilitation, food security

A solution to the impasse in WTO talks over trade facilitation and public food stocks remains out of reach. Briefing trade diplomats on this state of affairs at a meeting on 31 October, WTO Director-General Roberto Azevedo outlined “three potential scenarios” to break the deadlock, including the contentious option of a non-multilateral trade facilitation agreement.

- Still no solution on TFA/food security, consultations to continue – p2

Also in this issue:

- | | | | |
|--------------------------------------------------------------|------------|---------------------------------------------------------------------|------------|
| <i>Need for rights-based approach to food security</i> | <i>p7</i> | <i>Tobacco, health and trade rules</i> | <i>p13</i> |
| <i>Bretton Woods institutions' birthday party turns sour</i> | <i>p12</i> | <i>Put people, not “empire of capital”, at heart of development</i> | <i>p14</i> |
-

Contents

CURRENT REPORTS

- 2 Still no solution on TFA/food security, consultations to continue
- 7 Need for rights-based approach to food security
- 8 Stringent plant variety protection may impinge on right to food
- 12 Bretton Woods institutions' birthday party turns sour
- 13 Tobacco, health and trade rules
- 14 Put people, not "empire of capital", at heart of development

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Still no solution on TFA/food security, consultations to continue

A resolution of the deadlock over trade facilitation and public food stocks continues to elude WTO member states.

by Kanaga Raja

GENEVA: WTO members remain sharply divided in their views on three possible scenarios for a post-Bali work programme and resolving the current impasse over implementing the Bali decisions including over food security issues and a trade facilitation agreement (TFA), in particular over a non-multilateral approach to a TFA in the WTO.

The sharp divide, more or less along North-South lines, was evident at an informal meeting of heads of delegation (HOD) of member states on 31 October, where WTO Director-General (D-G) and Chair of the Trade Negotiations Committee (TNC), Roberto Azevedo, reported on his consultations and said that there is still no solution to the TFA/food security impasse. He outlined three possible scenarios, including a non-multilateral approach to the TFA.

In his report, the D-G said that while there was not much support for a plurilateral TFA outside the WTO, there was a whole spectrum of options for a standalone TFA on a plurilateral basis inside the WTO, which he added would leave the other Bali decisions and a post-Bali work programme behind.

In their responses to the D-G's "three scenarios" (which he had mooted in consultations over the last week with groups of envoys), while the US, the EU and other industrialized countries seemed receptive to his scenarios including for a possible non-multilateral approach (an euphemism for a plurilateral agreement in the WTO), a range of developing countries – including India, Brazil, South Africa, the least developed countries (LDCs), the G33 group of developing countries, the African, Caribbean and Pacific (ACP) Group and the African Group – expressed opposition to any non-multilateral solution to the trade facilitation issue, leaving little doubt that they will reject such an attempt for a standalone TFA at the WTO.

[In terms of the Marrakesh treaty establishing the WTO, such a plurilateral agreement within the WTO has to be in

conformity with Article X:9 of the treaty, which stipulates: "The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide *exclusively by consensus* (emphasis added) to add that agreement to Annex 4..."

[There are several trade experts, and those who negotiated the Marrakesh treaty, who challenge whether such a route is even possible or feasible in respect of trade subjects already covered by existing WTO agreements. In the case of the TFA, which involves issues covered by customs procedures and the pre-shipment agreement in Annex 1A, these experts underline that such a procedure is untenable, and developing countries agreeing to any consensus would be doing so to their own detriment, acquiescing in virtually winding up the WTO, à la the League of Nations before World War II. – SUNS]

The D-G, at the informal HOD meeting on 31 October, reported that there is still no solution to the TFA/food security impasse, adding that, together with the General Council Chair, he will continue his consultations with members.

Azevedo also urged members to continue talking to each other and think about the three potential scenarios outlined by him which had emerged from the discussions.

A number of delegations spoke following the D-G's report at the informal HOD meeting.

The African Group said that the other Bali decisions should not be held at ransom pending the resolution of the impasse, while the LDC Group underlined that it strongly supports multilateralism and that plurilaterals "are isolationist and undermine multilateralism." The LDCs and their issues should not be sacrificed, the LDC Group stressed.

The ACP Group urged the main parties in the impasse to redouble efforts to resolve the matter expeditiously, and said that at the same time, the member-

ship should continue the ongoing work to implement other Bali decisions, including the Bali declaration provision to define a post-Bali work programme. The LDC decisions and other work in the WTO should not be held to ransom, the ACP Group said, stressing that other decisions, in particular the LDC decisions, should be prioritized and not linked in any way to the impasse.

India said that members have faced several challenges in the past, both under the GATT as well as in the WTO, but that they have also managed to overcome most of them successfully and moved forward. It remained optimistic and did not subscribe to the characterization of the present situation by some members as a "doomsday scenario" or an existential crisis for the multilateral trading system.

Three potential scenarios

In his statement at the informal HOD meeting, D-G Azevedo reported that there had been an intensive process of consultations in a range of configurations in the weeks since the meeting of the TNC on 16 October.

He recalled the four questions that he had set out two weeks earlier and which members have tried to answer: What should we do with the decisions on trade facilitation and public stockholding?; What should we do with the other Bali decisions, including the LDC package?; How should we respond to the ministerial mandate to develop a work programme on the post-Bali agenda?; And how do we see the future of the negotiating pillar of the WTO?

"We still do not have a solution to the impasse before us – the impasse that establishes a political link between the Public Stockholding programmes and the Trade Facilitation Agreement," said Azevedo. In this context, he said, members have been trying to map out what may lie ahead, and from these discussions, three potential scenarios have emerged, "which we explored during the consultations."

"Scenario 1 is that we find a solution for the impasse quickly," said the D-G. Unfortunately "it is not in our hands – and I have no concrete indications that it is about to happen."

Even if a solution to the impasse were found tomorrow, "we would still have a problem as regards the post-Bali work programme. The detailed and pre-

cise modalities-like work programme that we had been discussing previously would be virtually impossible to achieve by the agreed December deadline."

Scenario 2 is that members continue their search for a solution to the current impasse, he said. However, "while we wait for a solution, continuing our essential work on the other Bali decisions – or anywhere, frankly – is proving very difficult."

"Members are disengaging ... So, under this scenario, while we keep looking for a solution to the impasse, progress in other areas seems impossible. In the consultations, many members – both developed and developing members – indicated they did not support a scenario where we keep looking for a solution to the impasse indefinitely – they want to move forward."

Under Scenario 3, the D-G said that in the absence of a solution to the impasse, some members have indicated an openness to look for alternative ways to make progress, noting that some members are already talking about alternative ways to take the TFA forward.

He pointed out that there are basically two alternatives here, namely, scenarios 3A and 3B. Scenario 3A is that members seek implementation of the TFA as a plurilateral agreement outside the WTO. "If this happens then I am afraid that the other Bali decisions and the post-Bali agenda will not have a bright future. But, overall, I have not heard much sympathy for this approach during my consultations," the D-G reported.

Scenario 3B is that members seek implementation inside the WTO – an open-ended approach to implementation where those that want to move forward with implementing the agreement would do so. It would therefore be less than multilateral, at least in the first instance, but would also leave open the possibility of a full multilateral agreement at some point in the future.

According to the D-G, there is a whole spectrum of possible ways that this could happen. It could be taken up as a traditional, standalone plurilateral agreement, and this option could leave the other Bali decisions and the post-Bali work programme behind. "Right now, I do not hear anybody proposing this course of action."

He highlighted that there are many options between this and the other end of the spectrum, in that members, for

example, could take an approach where the terms of the TFA are simply put in place by those parties who are willing to do so, on an MFN (most favoured nation) basis. Section II (provisions on special and differential treatment for developing countries and assistance and capacity-building support) of the TFA would be an integral part of this, and technical assistance would be available to developing countries which want to participate in this approach.

This approach could also be linked to bringing some or all of the other Bali decisions forward. "In saying this, of course, some pointed out that public stockholding, unlike the rest of the Bali issues, would be more problematic to take forward in the absence of a fully multilateral solution," Azevedo said.

Summarizing that these, broadly, were the scenarios which members had explored in the conversations of the last two weeks, he said that how this would play out was not for him to say. "It depends on many factors which are, ultimately, in your hands."

According to Azevedo, all delegations agreed that scenario 1 – whereby a solution is found – is the preferable option.

Scenario 2, "under which we would keep looking for a solution, was not greeted with any enthusiasm by many delegations. They pointed out that developments since 31 July are not encouraging and that we need to face reality. Anyway, this scenario would only exist until such a time as some members table proposals to move ahead."

On Scenario 3, Azevedo reported that there were different views. 3A – an undertaking outside the WTO – seems to find no supporters anymore. At this stage no one wants to consider implementing the TFA outside the WTO.

In contrast, "many were more ready to explore the options that may be possible around 3B", he said, adding that there is clearly already an active discussion taking place between members on what the options in 3B might be.

He sensed that these members want to find a way of implementing the TFA inside the WTO, but only they can tell how long it would be before they act. In their view, the WTO needs to deliver on the negotiating pillar or the organization will suffer probably irreparable damage.

Others are more reluctant. They are concerned about taking a non-multilateral approach – even if it could poten-

tially be multilateralized in due course, said the D-G.

Nonetheless, there was a widespread feeling that with any approach on trade facilitation, Section II must be delivered and the Trade Facilitation Agreement Facility must become operational for those who decide to implement the TFA. Similarly, there was a clear desire that the other Bali decisions – particularly those concerning the LDCs – must also be delivered.

But in the conversation, a large number of questions were raised: How exactly would this happen – how would Scenario 3B be developed? How can we be sure that Section II is delivered? How can we ensure that any such approach is only a transitory measure leading to a multilateral solution in the longer term? What happens to the other Bali decisions – how would they be taken forward – and what assurances can be given on this? Is it possible to leave the door open to get the full implementation of the Bali package at a later stage? Does this set a precedent for future negotiations? And how do we ensure that such an undertaking would enable the resumption of work on the post-Bali work programme?

"So this is where we are today. The question we must address now is how we should proceed. And the answer must come from you," Azevedo told the members.

Pointing out that there were just a few more weeks until the December General Council meeting (10-11 December), he said that at that meeting "we have to be clear about how we see the future of the organization. At a minimum we have to decide on how to proceed with the post-Bali work programme mandated by ministers in Bali."

The D-G highlighted a series of major international meetings between now and then, and which he planned to attend: the Second United Nations Conference on Landlocked Developing Countries; the APEC trade ministers' meeting; the G20 leaders' summit; the East African Community leaders' summit; and the African Union trade ministers' meeting.

His intention was to seize these opportunities to discuss the situation at the WTO. He urged the members to continue talking to each other and think about the scenarios that he had outlined. He said that together with the General Council Chair, he would continue his consultations with members, with a focus on the

two or three weeks directly before the General Council meeting.

Held at ransom

Speaking on behalf of the African Group, Lesotho said that the cardinal principle of pursuing consultations with an aim to break the current impasse should be the centre of members' attention.

The continental recognition of the importance of both trade facilitation and food security is well documented in the summit decisions of the African Union, it said, adding that this leaves the African Group with no other option save for a desire to see a positive resolution of the impasse.

As for the other Bali decisions, the African Group continued to maintain the position that these decisions should not be held at ransom pending the resolution of the impasse. The Group failed to see the logic behind apportionment of blame concerning the current impasse yet by the same token the other Bali decisions including the LDC issues, which in effect are non-binding, are held at ransom. Clearly there is a gaping question on the moral conscience and sensitivity of members to the issues of interest to the most indigent members of the WTO particularly because they are not the source of the impasse, said the African Group.

The view of the African Group is that "there is only one source of our mandate in carrying out our work and that is the Bali mandate. There is no declaration of failure on food security and trade facilitation by those members undergoing consultations. For that matter, [the] Bali mandate is the only relevant mandate for our work."

Uganda, on behalf of the LDC Group, said that "none of the issues of interest to us were ever captured in binding language in Bali. In fact, the Ministers in Bali had elected that for issues such as ours, priority should have been accorded to them. That never was. It is now less than forty days to the appointed deadline."

Uganda reiterated that "time is not on our side in the preparation of a post-Bali work programme. A lot of water has gone under the bridge. We have engaged in discussions that have not been reduced to text."

However, instead of a work programme, there is a series of circles

that do not seem to answer nor speak to the LDCs' specific needs and interests. "It was never the intention of our forefathers for our needs and interests to be put at the periphery. In fact, on the contrary, they pledged themselves to seek to place our needs and interests at the heart of the Work Programme."

The LDCs' view therefore is that everything else "should not necessarily revolve around the circles the way they were presented to us. Why are we not asking what it is that we can do for LDCs as the starting point of reference? For once let this organization change its narrative. It was never meant to deliver for one group of members. On the contrary, it was meant to deliver for developed, developing and least developed members alike."

The LDC Group said that it has heard from some that they would not seek to hold LDC issues hostage because of the current impasse. It welcomed such positive statements of solidarity, and urged members to take a leap of faith and move beyond the statements of solidarity.

Uganda noted that the LDCs had submitted a collective request on the services waiver in July, and that they are working on holding a high-level meeting in mid-January 2015 where non-LDCs in a position to do so would indicate areas where they would grant preferences. Highlighting that this is one of four outcomes for LDCs in Bali, Uganda expressed hope that members will be in a position to turn these into concrete preferences to LDCs during the high-level meeting.

Specifically on the current stalemate, the LDCs' view is that the issues characterizing the impasse are not insurmountable. It urged all parties to remain actively engaged with a view to an expeditious resolution of the same, taking into account the interests of all the parties concerned.

The LDC Group is committed to the full implementation of all Bali outcome decisions including but not limited to the TFA. Its view is that what "we are seeing manifested today is a symptom of a major underlying systemic current. The huge imbalance in the way we negotiate and the way we conduct our business."

"... is it possible that had we adopted at least one binding outcome out of the many developing and LDC decisions in Bali; could we have been where we are today, where we have this high degree

of mutual mistrust and suspicion?" it asked.

"We therefore have to find a way of curing this malaise with the view to changing the way we negotiate, as opposed to our rules of procedure."

In concluding, Uganda said that the LDCs strongly support multilateralism. It is inclusive and transparent. Plurilaterals are isolationist and undermine multilateralism. "We should not forget that in the past, members have pursued plurilateral agreements seeking neither prior approval nor blessing from this house. They continue to do so today. What is the difference this time round? I am not even sure that we have exhausted all the tools that multilateralism has put at our disposal." The LDCs and their issues should not be sacrificed, Uganda stressed.

"Roll up our sleeves"

Kenya, on behalf of the ACP Group, said that the collective view of the Group is to urge the main parties in the impasse concerning the Bali decisions on public stockholding and trade facilitation to redouble efforts to resolve the matter expeditiously.

At the same time, it added, the membership of the WTO should continue the ongoing work to implement other Bali decisions, including the Bali declaration provision to define a post-Bali work programme. LDC decisions and other work in the WTO should not be held to ransom. In fact, other decisions, in particular the LDC decisions, should be prioritized and not linked in any way to the impasse.

There is a need to quickly "roll up our sleeves" and, in a bottom-up approach, work towards finalizing a post-Bali work programme. "The Doha Declaration, the July Framework, and the Hong Kong Declaration are all existing mandates from Ministers that continue to guide our work on the DDA [Doha Development Agenda] negotiations. In this regard, members should be tabling their ideas on issues central to concluding the DDA with or without a post-Bali work programme."

Kenya noted that a lot of material and work is already on the table in all the areas, which provides the basis for defining a post-Bali work programme.

As it had highlighted in its principles document put forward earlier in October, the ACP Group was not part of the breakdowns in 2008 and 2011. "We

have always remained constructive and in fact played a pivotal role in arriving at the Bali package agreed upon last year."

The ACP Group believes that the momentum must be restored. The founding fathers of the WTO created built-in rules to deal with a lack of consensus. It urged members to uphold the legal commitment of those founding fathers, under the same rules, to continue the practice of taking decisions by consensus. (This is seen as a reference to the second sentence of Article IX:1 of the Marrakesh treaty that provides for decisions by voting where consensus is not found.)

Kenya also urged a quick resolution of the impasse over the public stockholding and trade facilitation decisions in a manner that maintains the core principles of trust, inclusiveness and commitment to multilateralism.

Huge imbalances

India said that it could not agree more with the statement that "the present situation is a manifestation of the huge imbalances in the way we have functioned. It is high time that the needs and interests of the poorest of the poor are brought centre stage in this house."

It reiterated that "we have faced several challenges in the past, both under the GATT system as well as in the WTO. But, we have also managed to overcome most of them successfully and move forward respecting the needs and interests of all members. We therefore remain optimistic and do not subscribe to the characterization of the present situation by some members as a 'doomsday scenario' or an existential crisis for the multilateral trading system."

India said it is hopeful that members would be able to show flexibility and understanding towards each other's concerns to enable further progress. On its part, it is prepared to take a step forward towards an acceptable resolution of the issues in a manner that meets the aspirations of the membership.

On the suggestions by some members for exploring alternative approaches for the implementation of the TFA, India once again urged members "to abjure the temptation of seeking alternative approaches without assessing carefully the systemic implications of rearranging our founding value system, enshrined in the Marrakesh Agreement that underpins the principles and objectives of the multilateral trading system."

India firmly believes in the multilateral trading system and remains fully committed to its objectives and to ensuring that it works for all. It strongly urged members to advance discussions on all non-binding decisions in the Bali package "so as not to lose time as we try and resolve the current situation". It reiterated its commitment to the implementation of all Bali decisions.

The post-Bali work programme towards a balanced and successful conclusion of the DDA must also receive due attention of the membership, said India.

That an agenda for development should take almost 13 years to negotiate goes against the very basis of the Marrakesh Agreement which recognizes, *inter alia*, that there is a need for positive efforts to ensure that developing countries, especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development, India added.

South Africa associated itself with the statements made by Lesotho on behalf of the African Group, Kenya on behalf of the ACP Group, and Uganda on behalf of the LDCs.

South Africa's commitment to the WTO – and to multilateralism – is premised on the core, founding principles that bind the organization and includes, notably, the full participation of all members in all its decision-making processes.

"We hold fast to agreed negotiating principles that facilitate equitable and balanced outcomes, and we are particularly attached to the vision set out in the Doha Declaration that recognizes that the majority of WTO members are developing countries, and that we should 'seek to place their needs and interests at the heart of the Work Programme'."

The recent exchanges on the question of public stockholding and trade facilitation suggest that a resolution "is not out of reach and, therefore, it would be incumbent on us all to do whatever we can to support efforts towards a positive resolution of the matter – as soon as possible."

South Africa encouraged the central players to engage directly to find a durable solution that – in the first place – serves the food security needs of millions of poor people around the world. It would be a serious indictment against the organization if a solution to this matter is not found, particularly when a solution appears to be possible, it added.

"The initial consultations we have had this week also seem to suggest that

most members are ready to pursue further work on the other Bali decisions, particularly on those rather modest decisions in favour of LDCs. South Africa gives its support to this effort as the LDC issues have languished despite the Bali Declaration injunction that we prioritize work in areas where legally binding outcomes were not achieved."

South Africa added: "We need to 'catch up' in these areas, and we hope that members do not compound current difficulties by continuing to refuse to constructively engage on other issues, including on the post-Bali work programme, until the public stockholding and trade facilitation matters are settled."

The final question posed to the membership on "the future of the negotiating pillar of the WTO" is of serious concern to South Africa, because it appears to signal the beginning of an effort to further erode the principles and legal framework that underpin the WTO.

The proliferation of plurilateral and regional arrangements already marks a retreat from multilateralism, and this organization should not be entertaining discussions that would encourage non-multilateral and non-inclusive outcomes, South Africa emphasized.

South Africa said it supports multilateral approaches to trade negotiations in the WTO in which decision-making is by consensus and in which the single-undertaking principle is preserved.

"We cannot lightly enter a discussion that would lead to questioning the very foundations of multilateralism, and we would not support any approach that over time replaces the existing inclusive and participatory formats for negotiations that are far better suited to advancing the interests of all members in a balanced and equitable manner," it said.

China said that it is deeply concerned over the current crisis. It noticed that some people are questioning whether the Bali package could be duly implemented. It also noticed that some other people are losing patience and trying to explore other options.

"The Bali package represents a delicate balance of interests achieved through consensus among all members. We have no reason at all to break such balance or ignore the decisions and mandate made by our Ministers in Bali last December."

The TFA implementation should be multilateral in nature and let all the members benefit and the overwhelming majority of WTO members participate.

The door should be open to all without any condition, said China.

"We must make sure that any new ideas must be conducive to promoting the multilateral trading system, conducive to strengthening the solidarity and trust among members and conducive to finding solutions that must be the multilateral and continuous process of Bali and eventual conclusion of the Doha Round."

China believes that any discussion of the TFA implementation outside the WTO is counterproductive, and it will not join such discussion. "To translate the multilateral agreement into a plurilateral one is not a good idea either."

In the most exceptional circumstances, should trade facilitation be moved as the continuous process of Bali on a multilateral basis, all the other elements in the Bali package should follow and be seriously moved ahead. In this regard, concerns of the least developed members should be the top priority of the work, it said.

According to trade diplomats, Cuba stressed the need to fulfil the Bali mandate, adding that plurilaterals are not acceptable.

Venezuela called for all the Bali issues to be implemented. It said that plurilateralism saps the multilateral trading system.

According to trade diplomats, the US said that there is a need to be realistic, and that it is less and less hopeful of finding a solution to the impasse. Chile meanwhile stressed on the need to implement the Bali package. Japan said that it is prepared to consider alternatives, trade diplomats said.

Negative impact

In its statement, the European Union said that it deeply regrets the decision of individual members not to implement the consensual decisions taken by all ministers in Bali. It maintained that this is already in a visible way having a profoundly negative impact on the entire multilateral system. The timelines agreed in Bali and the trust created by the Bali Ministerial Conference have been severely disrupted, if not entirely lost already.

According to the EU, what is particularly troubling today is to see those very members who are at the heart of the current crisis trying to divert attention from the essence of the current stalemate and convince others to forget about the compromise achieved in Bali, to dismiss

the deal reached and to pretend to go back to business-as-usual while in fact nothing can move forward. This is simply not possible, it said.

From the EU's perspective, there is one solution to the current crisis: "We need to make good on the commitments made in Bali and implement them. This is the one solution that is in the interest of each and every member of this organization. The Trade Facilitation Protocol should be adopted while negotiations resume on the post-Bali work programme and on a permanent solution to the public stockholding issue. This is the only approach that can allow us to advance on all of these issues, in the best interest of all."

The EU said it remains fully committed to the multilateral system and to the organization, and has a strong preference for finding a multilateral solution to the current stalemate.

While those at the origin of today's situation should also be responsible for putting forward acceptable solutions, nothing of the sort has been done up to now. In this situation, business-as-usual is not possible, it said. At the same time, the EU said it feels strongly that a collective effort needs to be made to minimize the impact of the current situation on those countries depending the most on a functioning multilateral system.

In this context, it said it is ready to continue its engagement on the follow-up and implementation of the LDC and development decisions taken in Bali which are set out in Part 2 of the Declaration.

The EU said that it should be well understood by all that the current situation cannot last forever. Each WTO member has to of course continue defending its trade interests, but there is a fine line between negotiating tactics leading to success and to disaster. "We are perilously close to the latter."

In these circumstances, the EU as well as other WTO members will evaluate the options and see how best to move forward and how best to salvage the years of work that went into the preparation of the TFA.

The EU said that it has a clear preference to achieve a multilateral TFA. Anything less can only be seen as a temporary measure on the road to the full implementation of the Ministerial Decision on Trade Facilitation. Only once a multilateral outcome is secured can the trust that is necessary to move on the rest of the DDA be rebuilt, it said. (SUNS7908) □

Need for rights-based approach to food security

In her first report to the UN General Assembly, the newly appointed UN Special Rapporteur on the right to food has underscored the importance of a rights-based approach to food security and outlined some of her priority areas of focus.

by Kanaga Raja

GENEVA: It is imperative that a human rights-based approach to food security is adopted in order to eliminate hunger and provide access to healthy, nutritious and affordable food for all, the new UN Special Rapporteur on the right to food, Hilal Elver, has said.

In her first report to the UN General Assembly, which is holding its 69th session in New York, the rights expert, who is from Turkey, said that in order to advance the implementation of the right to adequate food, renewed political commitment is essential and stakeholders must look to those countries that have made significant progress in adopting policies and legislation in this regard.

"The post-2015 sustainable development goals should give priority to sustainability and the adoption of a vigorous human rights approach," Elver added.

In her report, the Special Rapporteur stressed that non-discriminatory access to the resources required for sustainable food production, such as agricultural land, water, seeds, fertilizers and technical knowledge, must also be guaranteed.

Support for small-scale family farmers and food producers should be paramount in the adoption of future policies related to food security and food sovereignty, she underlined.

"Policy prescriptions that typically call for the expansion of industrial-scale agricultural development and ignore the real threats to global food supply (such as biofuel expansion, inadequate investment in climate-resilient agriculture, lagging support for small-scale farmers and women food producers and the massive loss of food to spoilage and waste) must be reconsidered."

The Special Rapporteur also outlined in the report some of the priorities that she has identified for taking the mandate forward.

She noted that the 10th anniversary of the adoption of the Voluntary Guidelines to Support the Progressive Realiza-

tion of the Right to Adequate Food in the Context of National Food Security was observed in 2014.

These guidelines were developed as a practical tool for states to assist them in implementing their obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights.

The Special Rapporteur said that while there has been considerable legislative and judicial progress in many countries throughout the world since the adoption of the Voluntary Guidelines a decade ago, many challenges remain.

"In order to ensure the progressive realization of the right to food at the domestic level, it is imperative that constitutional principles and framework laws are established as a means of providing an appropriate institutional structure," the rights expert emphasized.

She noted that the right to food is now enshrined in the constitutions of more than 20 countries, together with legal provisions that allow for judicial protection by invoking the right to life, respect for human dignity, the right to health, the right to land, respect for ethnic and cultural rights, the right to housing and consumer rights.

Empowering women

In her report, the Special Rapporteur highlighted in particular the role of women in the right-to-food agenda, saying she believes that the empowerment of women and the protection of their rights should be placed at the centre of the policymaking process on the right to food.

"Specific programmes and policies should be developed to empower women as agents of change. That means ensuring that they are granted equal access to resources, such as land ownership or tenure, water and seeds, and financial and technological assistance."

The empowerment of women should not be limited to rural areas, but should also be extended to urban

women, women from indigenous communities, those living in refugee camps and undocumented migrants.

The rights expert noted that as farm labourers, vendors and unpaid care workers, women are responsible for food preparation and production in many countries and regions throughout the world and play a vital role in food security and nutrition.

However, women and girls continue to be disproportionately affected by poverty and malnutrition, she said.

Women in rural areas are particularly affected, as female-headed households continue to grow, exceeding 30% in some developing countries, with women owning only 2% of agricultural land and with limited access to productive resources.

In many low-income countries, women are the backbone of the rural economy and 79% of economically active women in the least developed countries consider agriculture as their primary source of income.

The rights expert underscored that investing in rural women has been shown to increase productivity significantly and reduce hunger and malnutrition.

According to the UN Food and Agriculture Organization (FAO), women are responsible for 50% of world food production, mainly for family consumption.

The majority of rural women are "invisible" field workers in family plots; as a result, they have no recognized independent status as farmers and their work is considered as secondary both in the family and in society.

In sub-Saharan Africa, only 15% of landholders are women and they account for less than 10% of credit and 7% of extension services.

According to estimates, policies that address gender inequalities could, conservatively, increase yields on women's farms by 2.5-4%, said the Special Rapporteur.

She also noted that despite global efforts to eradicate child deaths due to malnutrition, more than 2 million children under age five die every year as a result of poor nutrition, and many of those deaths are associated with inappropriate feeding practices.

Under-nutrition among pregnant women in developing countries causes one out of six infants to be born with low birth weight, which is not only a risk factor for neonatal deaths but may also lead

to disability and learning difficulties.

In contrast to under-nutrition, developed and middle-income countries, as well as the poorest countries of the world, are now faced with rising levels of chronic diseases related to obesity, including heart disease, diabetes and some cancers.

"Dietary changes associated with urbanization, such as increased consumption of sugars and fats and declining levels of physical activity, are largely to blame. Marketing campaigns employed by the food and beverage industry, targeting children and adolescents, also bear much of the responsibility."

According to the Special Rapporteur, a right-to-food approach requires that states fulfil their obligation to ensure that safe, nutritionally adequate and culturally acceptable food is available; they must also respect and protect consumers and promote good nutrition for all.

Climate change

She also said that climate change, sustainable resource management and food security are now widely considered among the most complex, interdependent and urgent global policy challenges.

With average temperatures predicted by the world scientific community to rise by 2-4 degrees Celsius by the end of the century, the ability of entire regions to maintain current levels of agricultural production is being threatened and many of the adverse effects of climate change are now acutely felt.

Climate change is already having a significant impact on approximately 1 billion of the world's poor, said the Special Rapporteur. Without the implementation of serious measures to combat climate change, the number of people at risk of hunger is projected to increase by 10-20% by 2050.

She cited the most recent report by the Intergovernmental Panel on Climate Change as suggesting that climate change will "more likely than not" depress crop yields by more than 5% by 2050.

In addition, there is increased certainty about the effects of climate volatility on agricultural production and practices, with climate change shocks principally affecting smallholder agriculture, where the absence of crop insurance translates into adversity to risk.

"The threat posed by climate change to fresh water supplies, combined with the overuse of water in agriculture, is having a detrimental impact on food se-

curity. The consequent effects on food production are significant, putting the livelihoods of rural communities and the food security of city dwellers at risk."

The Special Rapporteur's report noted that with the global population expected to increase to 9.3 billion by 2050, the world's food calorie production will need to increase by 68% in order to meet growing demand.

Climate change is not only impacting on food security but rising carbon dioxide emissions are causing harm to staple food crops, reducing their nutrient content for the 280 million malnourished people in the world.

The report cited a study by the Harvard School of Public Health as estimating that 2 billion people suffer from zinc and iron deficiencies, resulting in a loss of 6.3 million lives annually from malnutrition.

Africa today has more children with stunted growth than it did 20 years ago, with up to 82% of cases improperly treated. That poses a huge threat to the future of the continent and access to food rich in nutrients has become imperative.

According to the Special Rapporteur, the principle of "common but differentiated responsibilities", as specified in Article 3 of the United Nations Framework Convention on Climate Change, is one of the innovative principles of international law that allows countries to participate in the responsibilities set out in the Convention to different degrees, depending on their development level.

"That principle should be used to inform future negotiations, especially in relation to countries facing severe threats

to food security, while not directly responsible for climate change themselves."

The report also highlighted the issue of global food loss and food waste, noting that approximately 1.3 billion tons, representing almost one-third of world total food production for human consumption, is wasted per year. "That is equivalent to more than half of world annual cereal production," said the rights expert.

In Europe and North America, per capita food loss and waste amounts to 280-300 kg per year, whereas in sub-Saharan Africa and South and South-East Asia, it amounts to 120-170 kg per year.

"Food waste has a considerable environmental impact, with the vast amount of food going to landfills adding to global warming," said Elver, who added that innovative ideas for tackling food waste are needed.

She further said that the world is currently blighted by a plethora of humanitarian crises and armed conflicts, which are having a devastating impact on the lives of millions of people around the globe.

While 19% of the poorest people in the world now live in fragile and conflict-affected places, it is estimated that this will increase to 40% by 2030 if current trends continue.

"The international community must take greater responsibility for emergency food crises derived from natural or human-made disasters, global economic crises, climate change, or as a result of armed conflict," said the Special Rapporteur. (SUNS7904) □

Stringent plant variety protection may impinge on right to food

The international UPOV 91 intellectual property standards for plant varieties impose tight restrictions on seed use, exchange and sale which could adversely affect the right to food of small farmers in developing countries, according to a new study.

by Kanaga Raja

GENEVA: Plant variety protection based on the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 91) will make it harder for small-scale farmers to access improved seeds, a key feature of the right to food of resource-poor farmers, says a new report.

The report, "Owning Seeds, Accessing Food", by an international group of

non-governmental organizations (NGOs), publishes the results of new research on the widespread practice of small-scale farmers in freely saving, replanting, exchanging and selling seeds.

These practices, the report says, clash with UPOV 91's provisions restricting or even prohibiting such practices for seeds arising from protected varieties of plants.

The NGOs said that developed countries regularly put pressure on developing countries to introduce stringent plant variety protection (PVP) regimes and to adhere to UPOV 91, without due consideration of its consequences on the enjoyment of human rights of vulnerable groups such as small-scale farmers and in particular women.

They warned that the expansion of intellectual property rights on seeds might well restrict small-scale farmers' practices of seed saving and use, exchange and selling in the informal seed supply system, limiting access to seeds and putting their right to food at risk.

The report, a human rights impact assessment of UPOV 91 based on case studies in Kenya, Peru and the Philippines, was published by the Berne Declaration, with the participation of Bread for the World – Protestant Development Service; the Zimbabwe-based Community Technology Development Trust; the Development Fund – Norway; Misereor, the German Catholic Bishops' Organization for Development Cooperation; Southeast Asia Regional Initiatives for Community Empowerment (SEARICE); and the Third World Network.

The NGOs, in raising concern over the lack of knowledge of potential human rights impacts of PVP laws that are based on UPOV 91, carried out a human rights impact assessment (HRIA) to analyze the ways in which such laws could affect the realization and enjoyment of human rights, particularly the right to food.

Three country case studies were carried out to collect empirical evidence on the potential impacts of UPOV 91-like PVP laws on the right to food. All of these case studies were *ex ante* as the current PVP system in the countries concerned either is not in line with UPOV 91 (the Philippines), has only been amended recently (Kenya), or has not yet been fully implemented and enforced (Peru).

According to the report, the UPOV model was designed with the commercialized farming systems of the developed countries in mind. Perhaps most significantly, agriculture in developing countries is characterized by small-scale farming – which relies heavily on the informal rather than the formal, commercial seed system – and is the basis for farmers' livelihoods and national food security in these countries.

One of the primary features of the informal seed system is the widespread practice of freely saving, replanting, ex-

changing and selling seed. Unlike in more formal, industrial agricultural systems, purchasing new seed on a yearly basis is relatively rare.

However, UPOV 91 partially restricts the use of farm-saved seeds/propagating materials of PVP-protected varieties and prohibits their exchange and sale by farmers.

"Concerns have therefore been raised that UPOV 91-type PVP laws overly restrict the traditions of seed management and sharing among farmers, thereby reducing the effectiveness and integrity of the informal seed system."

The report noted that many developing countries have been prevailed upon to adopt European-style PVP systems based on UPOV. Yet there is little evidence to demonstrate that a PVP system based on UPOV is beneficial for developing-country economies or agricultural systems. In fact, the benefits and drawbacks of UPOV are often the subject of heated debate.

Given the importance of the small-scale farming sector and the informal seed system for many countries, the lack of data about the impacts of UPOV 91-type PVP protection on them, and developing-country officials' need for policy guidance on how to design a PVP system suited to their needs, new assessments of the impacts of UPOV 91-type PVP systems have become necessary, said the NGOs.

Plant variety protection

According to the report, protecting plant varieties by means of intellectual property rights is a relatively recent practice, only becoming widespread in industrialized countries in the second half of the last century. In developing countries, the implementation of PVP is even more recent, triggered to a large extent by the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which came into force in 1995. Article 27.3(b) of the TRIPS Agreement requires WTO members to "provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof."

Due to concerns that the patent system would hinder breeding of new varieties, most WTO members tend to opt for a *sui generis* regime for plant variety protection.

Apart from requiring WTO members to put in place an "effective *sui*

generis system" for plant varieties, the TRIPS Agreement does not provide any more specificity and it is up to each country to implement a suitable PVP regime.

According to the report, about two dozen developing countries are members of UPOV, and of these, only a handful have adopted a PVP system in line with UPOV 91; the rest are members of the older UPOV 78. (UPOV 78 is now closed for ratification, and countries wishing to join UPOV can now only join UPOV 91.)

It noted that several of the developing countries joining UPOV 91 have done so under bilateral pressure or due to obligations under North-South free trade arrangements (e.g., US and EU FTAs) which require ratification of UPOV 91. This trend is continuing with not only regional and bilateral trade and investment agreements but also Memorandums of Understanding signed under the G8 New Alliance for Food Security and Nutrition requiring developing and least developed countries to model their PVP regimes on UPOV 91 standards.

To some countries, UPOV is understandably an attractive option, providing a ready-made legislative framework for PVP protection, said the report. However, the UPOV model "was designed with the commercialized farming systems of the developed countries in mind", and developing-country farming systems differ from these in many respects.

It is for this reason that some developing countries have designed *sui generis* PVP systems distinct from the UPOV model. For example, the Indian Protection of Plant Varieties and Farmers' Rights Act of 2001 grants plant breeders' rights and recognizes farmers' rights and interests on an equal footing.

The report found that one of the features of the informal seed system is the widespread practice of saving, replanting, exchanging and selling seed. Unlike in more formal, industrial agricultural systems, purchasing new seed on a yearly basis is relatively rare.

UPOV 91 does not allow farmers using a PVP-protected variety to freely use, exchange and sell farm-saved seeds/propagating materials. It does however allow, "within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder", a limited farmers' exception, i.e., use of farm-saved seeds for propagating purposes on the farmer's own holding. This limited exception is interpreted as being appli-

cable only to crops where there is a historical common practice of saving seed.

Concerns have been raised that UPOV-type PVP laws overly restrict traditions of seed management and sharing among farmers, thereby reducing the effectiveness of the informal seed systems.

"The exchange and sale of seeds through local social networks, as well as the use of farm-saved seeds, are essential components of small-scale farming systems and risk management in many developing countries," said the report.

"A human rights perspective reminds us that realizing the right to food means ensuring that food be accessible in ways that are sustainable (sustainability incorporates the notion of long-term availability and accessibility) and that do not interfere with the enjoyment of other human rights. Undermining agricultural biodiversity can harm the livelihoods and human rights of farmers, as well as weaken the genetic base on which we all depend for our future supply of food," it added.

Another human rights concern related to UPOV-type PVP laws regards potential effects on research priorities. As UPOV itself points out, PVP does not encourage research in crops where there is no significant commercial market, but could incentivize breeding in crops with high commercial potential such as flowers.

"Whilst these new agricultural sectors provide employment and may thus facilitate realization of the right to food and an adequate standard of living, it is also the case that incentivizing research in the commercial agricultural sector may shift resources away from research that could better benefit small-scale farmers," the NGOs argued.

They also noted that surveys of the literature reveal little empirical evidence which conclusively proves that UPOV 91 brings overall significant benefits particularly in terms of yields, trade, innovation, livelihoods or agro-biodiversity.

Constraints on seed management

The report went on to highlight the potential effects of UPOV 91-type laws on different aspects of seed management.

With respect to the practice of saving, replanting, exchange and sale of seeds, among the report's main findings is that small-scale farmers are highly dependent on the informal seed system

for having access to seed (including improved varieties which may be protected) and, thus, for their food security.

A comparative study on seed prices in all three case-study countries in the report offers unequivocal results: seeds procured through formal channels are significantly higher in price compared to seeds obtained through informal channels.

Its other findings are that there is interaction between the formal and informal sectors – seeds from the formal sector are integrated into the informal sector by replanting, exchange and sale of farm-saved seeds; women are more dependent than men on informal sources of seed and play a key role in local seed systems in many countries; and small-scale farmers use a mix of local varieties and "improved" varieties (which in some cases are protected by PVP).

"From a human rights perspective, therefore, it will be essential to preserve access to seeds (including improved seeds) through the informal seed system (which is based on the free use, exchange and sale of seeds)."

Citing some examples, the report found that in all of the three case-study countries there is a movement of varieties from the formal to the informal seed sector, and that if the varieties from the formal sector become protected under UPOV 91-type laws which restrict use, exchange and sale by farmers, the adoption and diffusion of such varieties by the informal seed sector will be limited.

The report further found that UPOV 91 restrictions on the use, exchange and sale of farm-saved PVP seeds will make it harder for resource-poor farmers to access seeds of protected varieties.

It said that with restrictions on the sale of protected varieties, farmers will lose an important source of income. UPOV 91 restrictions on the use, exchange and sale of farm-saved PVP seeds could negatively impact the functioning of the informal seed system, as beneficial inter-linkages with the formal system will be cut off, it added.

From a human rights perspective, restrictions on the use, exchange and sale of protected seeds could adversely affect the right to food, as seeds might become more costly, harder to access, or of less good quality. They also could affect the right to food, as well as other human rights, by reducing the amount of household income which is available for food, healthcare or schooling.

"Therefore, from a human rights perspective, it is essential to safeguard the practice of freely using, exchanging and selling seed/planting materials particularly among smallholder farmers," said the NGOs.

The report cautioned that by curtailing options for accessing seed (like farm-saved seed or seed distributed through informal channels at affordable rates), the introduction of UPOV 91 could increase farmers' dependence on the formal seed sector, or reduce their access to improved seeds. This would raise additional concerns such as risk of indebtedness.

Traditional knowledge

On the issue of traditional knowledge related to seed conservation and management, the report found that farmers apply traditional knowledge in the selection, preservation and storing of seed; that traditional knowledge is the basis on which local innovation and *in situ* seed conservation take place; that women's knowledge is of particular relevance to local seed and food systems, especially in the Andean region; and that the possible adverse effects of PVP laws on traditional knowledge systems are usually ignored when adopting these laws.

From a human rights perspective, the report warned that UPOV 91-type restrictions could contribute to the erosion of traditional practices and seed management systems (which could incorporate protected varieties) and consequently adversely impact on cultural rights, minority rights, indigenous peoples' rights, women's rights, as well as on biodiversity and the right to food.

Evidence from all three case-study countries, particularly the Philippines, clearly suggests that if PVP laws modelled on UPOV 91 were introduced and restrictions on saving, exchanging and selling PVP seed were imposed, farmers would gradually lose their knowhow related to seed selection and seed preservation, to the extent that protected varieties play a role in their seed system.

They would also gradually lose their ability to make informed decisions about what to grow and on which type of land, how to respond to pest infestation, or how to adapt their seed system to changing climatic conditions.

The process of "de-skilling" of farmers – which is already underway with the

decline of local agro-biodiversity – could become more acute if restrictions on use of seeds were introduced through UPOV 91-style laws, the report said.

It noted that UPOV 91 does not acknowledge farmer knowhow regarding varietal selection nor the knowledge systems of women in the management of plant genetic resources. In addition, UPOV does not allow disclosure of origin and legal provenance in PVP applications – an important tool to deal with misappropriation of traditional knowledge.

The report highlighted some further findings, namely, that improved varieties often require more inputs compared to local varieties, pushing up production costs. In the case of protected varieties, seed costs drive production expenses further up.

In addition, higher production cost poses a risk for cash-strapped farmers as it affects the stability of their household budget and the increased production cost competes with other essential household expenditures.

From a human rights perspective, the report underscored that the higher (input) costs of PVP-protected varieties pose risks for vulnerable farmers by affecting the stability of their household budget and decreasing the financial resources available for basic needs such as food, healthcare and education.

The report observed that the experience in Europe and other regions with UPOV 91-type laws and seed laws on varietal registration and seed certification (which has been in place for several years) has shown that such laws translate into reduced options for farmers to access seed through informal channels, and that as a result, formal seed supply becomes the primary source of seed and farmers are left with few options other than buying seed from public or private seed suppliers.

On the processes for adopting, revising and implementing PVP laws, the report found, amongst others, that the processes lack transparency – none of the three governments in the case-study countries provided sufficient information on the process.

There has also been insufficient participation of affected stakeholders in the process of revising or adapting the PVP laws, especially in Kenya and Peru. None of the country research teams in the case studies could find evidence that the impacts or likely impacts of new or revised

PVP standards on livelihoods, human rights or nutrition, or on the poorest and most vulnerable sectors of the population, had been assessed.

“The lack of participation in the formulation of national PVP policies and the absence of human rights impact assessments of such new policies are inconsistent with the three countries’ human rights obligations. Moreover, it increases the likelihood of enacting laws and policies that are themselves not human rights-compliant,” said the report.

It noted that UPOV 91-type laws are often introduced to foster the introduction and importation of foreign planting materials. This requires a reliable and effective import control system to be in place. If the phytosanitary system of a state is not robust enough, increased imports of seeds or planting material will increase the risk of the introduction of pests and diseases, which may disproportionately affect smallholder farmers.

The impossibility of integrating a disclosure requirement into a UPOV 91-type PVP law limits the ability of a state to fulfil its obligations under the Convention on Biological Diversity (CBD), the Nagoya Protocol and UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the report further said.

Recommendations

The report offered a number of specific recommendations to a range of stakeholders, including governments, the UPOV members and secretariat, providers of technical assistance, and civil society organizations.

Among its key recommendations to governments is for an HRIA to be undertaken before drafting a national PVP law or before agreeing to or introducing intellectual property provisions in trade and investment agreements in the area of agriculture.

Governments should also ensure that they abide by a transparent and participatory process that includes all potentially affected stakeholders, when drafting, amending or implementing PVP laws and related measures.

They should further ensure that PVP laws and related measures do not restrict the implementation of other legal obligations and policies with regard to realizing farmers’ rights, the protection of indigenous peoples’ rights and traditional knowledge, sanitary or phytosanitary standards, or the protec-

tion and sustainable use of biodiversity (including the ability to take all measures necessary to prevent misappropriation of genetic resources and associated traditional knowledge).

Developed countries should refrain from requiring developing countries to ratify UPOV’s 1991 Act or to implement any other specified PVP law, whether through trade or investment agreements or through technical assistance or development cooperation programmes.

The report recommended that governments of developing countries should, amongst others, use all the flexibilities available to them when drafting PVP laws and related measures, taking into account in particular the needs of the most vulnerable groups particularly small-scale farmers, and refrain from participating in any agreements or donor programmes that would restrict these flexibilities.

They should also take effective steps towards meeting their right-to-food obligations when drafting, amending or implementing PVP laws and related measures, and allow small-scale farmers to save, exchange and sell farm-saved seeds/propagating material.

Among the report’s recommendations to the other actors are:

(i) UPOV members and secretariat to review those aspects of the UPOV rules and their workings that affect the informal seed sector, with a view to ensuring that in practice as well as on paper, these rules facilitate PVP systems that reflect the interests and needs of developing countries;

(ii) technical assistance providers to ensure that beneficiary countries undertake a thorough objective assessment of their agricultural situation covering the formal and informal sectors and their international obligations (e.g., human rights obligations and obligations under the Convention on Biological Diversity, the International Treaty on Plant Genetic Resources for Food and Agriculture, etc.) and draft a *sui generis* PVP law that is evidence-based and suitable for their respective conditions, needs and interests;

(iii) all concerned actors to raise awareness of the important role of the informal seed sector in many countries and the possible human rights implications of UPOV 91-type PVP laws; and

(iv) a call for civil society to get involved when governmental or regional bodies draft PVP-related laws. (SUNS7892) □

Bretton Woods institutions' birthday party turns sour

The recent International Monetary Fund (IMF)-World Bank annual meetings, which also marked the 70th anniversary of both organizations, saw the multilateral lenders having to grapple with both internal institutional and external economic challenges.

by Bodo Ellmers, Jeroen Kwakkenbos and Maria Romero

This year's annual meetings of the World Bank (WB) and the International Monetary Fund (IMF), on 10-12 October, coincided with the 70th anniversary of both institutions. But it was not a happy party, with global economic storm clouds looming, a growing Ebola pandemic and major internal problems at both institutions. The threat of a return to economic crisis and recession, now including Europe's largest economy Germany, also weighed heavily during discussions.

The meetings themselves were largely a talking shop focusing on how to keep the institutions relevant in a fragile global economy and amid the emergence of new players in the development arena. A recurring theme was leveraging infrastructure finance as if it is a "magic bullet" to foster economic growth and achieve development objectives. The real story, however, was behind the scenes, with the Bank in a state of revolt after a painful internal restructuring process while attempting to implement its controversial new strategy. At the same time the IMF's failure to implement its governance reform, which was approved four years ago, finds emerging markets questioning its legitimacy.

The implementation of the WBG strategy

One year after its endorsement, the new World Bank Group (WBG) strategy – centred around ending poverty and boosting shared prosperity – is in the process of being implemented. The Development Committee communiqué congratulated the WBG "for delivering increased lending, investment, mobilization of resources and advice ... while undergoing a fundamental internal change process." But it also noted that the committee "expect an important shift in the way the WBG operates to deliver more efficient support to client countries" as well as "better lending quality

with increased development impact."

While the communiqué paints a rosy picture, recent decisions taken by the Bank have been controversial. Campaigners organized two demonstrations outside the institution: one on the Bank's damaging impact on land use in developing countries; the second to raise concerns about the Bank's ongoing review of its social and environmental safeguards, which many feel diverges from a promise made by Bank President Jim Kim that there would be no safeguard dilution.

A house divided

These were not the only protests. A group of employees called for a 15-minute strike and requested the institution to "walk the talk" after a push from Bank management to increase internal savings was rumoured to have resulted in massive staff cuts on one hand and bonuses to senior officials amounting to \$94,000 on the other.

Internal discontent with Bank management reflected a previous Bank Group staff survey revealing that almost 60% of respondents did not feel that they have "a good understanding of the direction in which the WBG Senior Management is leading the institution." Particularly worrying was that less than half of the respondents felt they "can report unethical behaviour without fear of reprisal." No mention of this was made in the official communiqués or in Kim's statements at the Bank's concluding press conference.

The new panacea: leveraging private finance for infrastructure

To counter a renewed global slowdown, the IMF advocated an acceleration of public investments, particularly in infrastructure, in its flagship *World Economic Outlook* report and through several

of Managing Director Christine Lagarde's statements. The IMF communiqué noted that "additional public and private infrastructure investment is also important for supporting a recovery and lifting growth potential." The G24 communiqué went even further, saying that they "recognize the important role of the public sector in creating a supportive environment for quality investment in infrastructure, including through sound sector policies and institutional and regulatory arrangement, and adequate project identification and preparation."

The message across the street was not much different. The World Bank launched its Global Infrastructure Facility (GIF) with the objective of mobilizing private capital for infrastructure projects. This facility was welcomed by the Development Committee communiqué, which expressed hope "that the GIF will soon acquire the required scale and ambition." The G24 also noted that there are other options available: "We welcome the increased attention to augmenting financing and capacity-building mechanisms to support quality investments in infrastructure, including the BRICS' New Development Bank, the Asian Infrastructure Investment Bank, the Africa50 Fund, the Global Infrastructure Facility, and the recent G20 Global Infrastructure Initiative." This statement demonstrates the increasing diversity of actors providing development finance in a changing geopolitical environment.

Talks around infrastructure finance reinvigorated the push for public-private partnerships, something that is highly problematic from a civil society perspective. According to Kim, the GIF "was being designed to deliver complex public-private infrastructure projects," which is in line with WB strategy and with G20 plans. However, there is growing evidence, through research by civil society organizations (CSOs) and a recent report by the World Bank's Independent Evaluation Group (IEG), which shows that public-private partnerships – expensive and high-risk financing mechanisms – have several problems. Even the IMF itself presented a more sceptical view, and suggested that "it is critical that countries maintain maximum standards of fiscal transparency when using public-private partnerships for infrastructure provision."

A new strategy is still needed: The IFC investment in the financial sector

The World Bank's private sector arm, the International Finance Corporation (IFC), continues to be under pressure to be fully accountable for the development impact of its investments. The IFC's financial intermediary lending now comprises 62% of its portfolio, but evidence of highly problematic impacts on the ground is growing, such as the Honduran palm oil company Dinant – accused of several human rights abuses and environmental damage – and the agriculture projects involving land grabbing by Hoang Anh Gia Lai (HAGL)'s activities in Cambodia and Laos, among others.

CSO concerns were presented at several sessions, including one organized by the IFC on the Dinant case, in which a "Draft Enhanced Action Plan" was presented. CSOs remain concerned that the IFC cannot adequately ensure that sub-projects financed through third parties do no harm to people or the environment. In its Dinant audit, the Office of the Compliance Adviser/Ombudsman (CAO), the independent recourse mechanism for projects supported by the IFC, found that failures arose, in part, from staff incentives "to overlook, fail to articulate, or even conceal potential environmental, social and conflict risk", and that staff felt pressured to "get money out the door." CSOs have repeatedly demanded an inclusive review to develop a new group-level strategy for investments in the financial sector to fundamentally rethink the nature, purpose, modalities and limits of these investments.

The waxing and waning of the global economy

According to the *World Economic Outlook* launched by the IMF right before the meetings, "the growth forecast for the world economy has been revised downward" and global recovery is still uneven and weak. Delegates from emerging markets and developing countries heavily criticized the advanced economies' lack of action, as spillovers threaten to harm the global economy. Pressure on advanced economies to introduce growth-promoting policies is increasing. There are also increasing complaints about the Global North's beggar-thy-neighbour policies, such as reduction of

corporate tax rates or continuous use of subsidies. Ministers of low-income countries used the annual meetings to call for a more fundamental reform of the international tax system in order to get a fair share of global tax revenues, and for an equal seat at the negotiation table, which would be best provided by the United Nations.

Meanwhile, expectations that the IMF will ever come up with a sovereign debt restructuring regime that meets developing countries' needs remain low, as major shareholders in the IMF Executive Board continue to block the necessary reforms. The IMF did come up with a proposal to strengthen collective action clauses in bond contracts and to reform the *pari passu* clause whose recent legal interpretation by a US court has given new leverage to predatory vulture funds. But from developing countries' perspective, these reforms are too piecemeal and largely miss the point, and they have

turned to the UN instead.

IMF governance reform

No progress was made in getting the stalled IMF governance reform back on track, due to non-ratification by the US Congress. As a result, the G24 noted that "this remains a significant impediment to the credibility and effectiveness of the IMF and unjustifiably delays forward-looking commitments." At the same time, the International Monetary and Financial Committee (IMFC) "strongly urge[d] the US" to ratify the reform and reiterated its words from April saying that "if the 2010 reforms are not ratified by year-end, we will call on the IMF to build on its existing work and stand ready with options for next steps." □

Bodo Ellmers, Jeroen Kwakkenbos and Maria Romero are with the European Network on Debt and Development (Eurodad), from the website of which (eurodad.org) this article is reproduced.

Tobacco, health and trade rules

Malaysia is taking the lead on two fronts to prevent the use of trade and investment agreements to block anti-smoking measures, but will these initiatives succeed?

by Martin Khor

Smoking is the number one preventable cause of death. Some 6 million people die each year from tobacco use, and by 2030 this will rise to 8 million, most of them in developing countries.

Almost 200 countries signed the World Health Organization (WHO)'s Framework Convention on Tobacco Control (FCTC) and are obliged to take measures to curb tobacco use.

But the industry has hit back. A big tobacco company (Philip Morris) has taken Uruguay and Australia to tribunals under bilateral investment treaties, claiming billions of dollars in compensation for the two countries' measures to have big warning signs and small or no brand logos on cigarette packets.

Under trade agreements like the proposed Trans-Pacific Partnership Agreement (TPPA), companies can similarly sue governments, claiming loss of profits resulting from policy measures. At the World Trade Organization, cases are also being taken against countries for their tobacco control measures.

Now for the good news. Many governments are fighting back against the

Big Tobacco onslaught, with Malaysia taking a lead role on two important fronts, the FCTC and the TPPA.

Malaysian NGOs, including the Malaysian Council for Tobacco Control and the Bantah coalition, have linked up with government health and trade authorities to forge a position to exclude tobacco control measures from all the TPPA's disciplines.

The Malaysian initiative won it bouquets from international health groups and the *New York Times* published an editorial urging the United States to support it. Even the attorney-generals of many states in the US supported it.

However, reports indicate that the Malaysian position is not acceptable to the US. The tobacco lobby is fighting hard and the US is proposing a weaker kind of exclusion which health groups view as inadequate.

FCTC decision

At the Conference of the Parties to the FCTC held in Moscow on 13-18 October, Malaysia led a move to thwart the tobacco industry's use of trade and in-

vestment agreements to block anti-smoking measures.

Malaysia put forward a draft decision expressing concern over the tobacco industry's use of trade and investment rules to undermine the implementation of the Convention's measures, and the dissipation of time and resources caused by the industry's attempts to challenge governments' tobacco control measures through these rules.

Malaysia proposed that the Convention adopt four action points. The draft decision asked governments to explore options to prevent the industry from abusing trade and investment rules; and to deal with tobacco products uniquely, in accordance with the Convention, during trade negotiations. The draft also requested governments to support efforts to exclude tobacco from trade and investment agreements; and asked the Convention Secretariat to produce a report on the impact of the trade rules and to recommend mechanisms to safeguard tobacco control measures.

It was the first time the Convention had future trade and investment agreements on its agenda and the Malaysian proposal was the basis for discussion. The proposal received wide support, including from all countries in the South-east Asia and African regional groups in the Convention.

However, a number of Parties did not want any decision that expressly suggested an "exclusion" for tobacco products in trade negotiations and rules. Because the Conference makes decisions by consensus, the final decision omitted the term "exclusion". Instead, Parties are reminded to take into account their public health objectives when negotiating trade and investment agreements.

The other points proposed by Malaysia were adopted, through in diluted ways.

The result overall is positive. The issue of how tobacco companies make use of trade and investment agreements to threaten governments not to take anti-smoking measures is now firmly on the future agenda.

The decision can be used as guidance by policymakers and the public when their countries negotiate these agreements, reminding them that protection of public health should be given priority.

Investor-state disputes

Meanwhile opposition is growing to the kind of investor-sue-the-state system that enabled Philip Morris to claim mil-

lions or even billions of dollars from Uruguay and Australia. This kind of claim can also be made against TPPA member countries unless tobacco is excluded from the rules.

Uruguay was sued over its measure to increase the size of health warnings to 80% on cigarette packets. In its 500-page defence, the government said it has a duty to safeguard its citizens' health and it is complying with the WHO tobacco control treaty, according to an article in *The Independent*. After Uruguay's anti-smoking campaign, the smoking rate among adults fell from 40% in 2005 to the present 23%, according to the defence document.

A similar case is being brought by Philip Morris against Australia for banning logos on cigarette packets, which the company claims restricts its right to use brands and trademarks to sell its products.

Many countries are watching to see what is decided in the two cases, as they too may be sued if they introduce similar plain-packaging measures.

From a public health perspective, the misuse of trade and investment rules by the tobacco industry and its backers in order to continue to promote their

deadly products is unacceptable. Promoting tobacco use is immoral and governments have the responsibility to stop it.

According to WHO, tobacco kills up to half of its users. Tobacco kills nearly 6 million people each year. More than five million of those deaths are the result of direct tobacco use while more than 600,000 are the result of non-smokers being exposed to secondhand smoke.

WHO warns that unless urgent action is taken, the annual death toll could rise to more than 8 million by 2030.

Nearly 80% of the world's one billion smokers live in the developing countries. This is where tobacco use is growing fastest and where the industry hopes to find its future markets.

Preying on the public is bad enough but to do so on the most vulnerable is unconscionable. Hopefully the initiatives that began at the FCTC will accelerate and bear fruit. And the negotiators at the TPPA will exclude tobacco from their rules. □

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. This article first appeared in The Star (Malaysia) (27 October 2014).

Put people, not "empire of capital", at heart of development

In a recent lecture at the UN Conference on Trade and Development (UNCTAD), Ecuadoran President Rafael Correa made the case for a development founded on "people-oriented" instead of "capital-dominated" policies.

by Ravi Kanth Devarakonda

GENEVA: President Rafael Correa Delgado of Ecuador does not mince words when it comes to development.

"Neoliberal policies based on so-called competitiveness, efficiency and the labour flexibility framework have helped the empire of capital to prosper at the cost of human labour," he told a crowded auditorium at the 15th Raul Prebisch Lecture.

The Raul Prebisch Lectures, which are named after the first Secretary-General of the UN Conference on Trade and Development (UNCTAD) when it was set up in 1964, allow prominent personalities to speak to a wide audience on burning trade and development topics.

This year, President Correa took the floor on 24 October with a lecture on "Ecuador: Development as a Political Process", which covered efforts by his

country to build a model of equitable and sustainable development.

Development, he told his audience, "is a political process and not a technical equation that can be solved with capital". He offered a developmental paradigm that seeks to build on "people-oriented" socioeconomic and cultural policies to improve the welfare of millions of poor people instead of catering to the "elites of the empire of capital".

Proposing a "new regional financial architecture", he said that "the time has come to pool our resources for establishing a bank and a reserve fund for South American countries to pursue people-oriented developmental policies in our region" and reverse the "elite-based", "capital-dominated", "neoliberal" economic order that has wrought havoc over the past three decades.

"We need to reverse the dollarization of our economies and stop the transfer of our wealth to finance Treasury bills in the United States," Correa said. "South American economies have transferred over \$800 billion to the United States for sustaining US Treasury bills and this is unacceptable."

People-centric policies

According to Correa, people-centric policies in the fields of education, health and employment in Ecuador have improved the country's Human Development Index (HDI) since 2007.

The HDI, published annually by the UN Development Programme (UNDP), is a composite statistic of life expectancy, education and income indices used to rank countries into tiers of human development.

Ecuador's HDI value for 2012 is 0.724 – in the high human development tier – positioning the country at 89 out of 187 countries and territories, according to UNDP's *Human Development Report* for 2013.

Explaining his country's achievement, Correa said that public investments involving the creation of roads, bridges, power grids, telecommunications, waterworks, educational institutions, hospitals and judiciary have all helped the private sector to reap benefits from overall development.

"At a time when Hooverian depression policies based on austerity measures are continuing to impoverish people while the banks which created the world's worst economic crisis in 2008 are reaping benefits because of the rule of capital, Ecuador has successfully overcome many hurdles because of its people-oriented policies," he said.

Correa argued that by investing public funds in education, which is the "cornerstone of democracy", particularly in higher education or the "Socrates of education", including special education projects for indigenous and Afro-Ecuadoran people, it has been shown that society can put an end to capital-dominated policies.

"We need to change international power relations to overcome neo-colonial dependency," Correa told the diplomats present at the lecture. "Globalization is the quest for global consumers and it does not serve global citizens."

Protectionist strategies

The Ecuadoran president argued that developing countries have secured a raw deal from the current international

(continued on page 16)

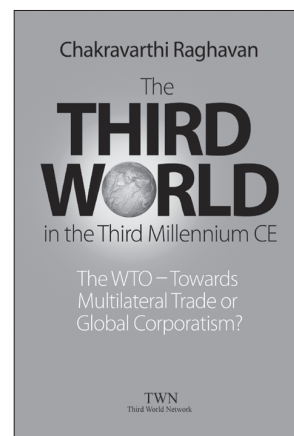
The Third World in the Third Millennium CE

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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(continued from page 15)

trading system which has helped the industrialized nations to pursue imbalanced policies while selectively maintaining barriers.

He urged developing countries to implement autonomous industrialization strategies, just as the United States had done over two centuries ago.

Developing countries, he said, must pursue "protectionist policies as the United States had implemented under the leadership of Alexander Hamilton [US Secretary of the Treasury under first president George Washington] when it closed its economy to imports from the United Kingdom."

Citing the research findings of Cambridge-based economist Ha-Joon Chang in his book *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism*, Correa said that protectionist policies are essential for the development of developing countries.

He stressed that developing countries, which are at a comparable stage of economic development as the United States was in Hamilton's time, must devise policies that would push their

economies into the global economic order.

The strategy of "import-substitution industrialization" (ISI) and nascent industry development is needed for developing countries, he said. "However, the developing countries must ensure proper implementation of ISI strategies because governments had committed mistakes in the past while implementing these policies."

"Free trade and unfettered trade," continued Correa, is a "fallacy" based on the Washington Consensus and neoliberal economic policies. In fact, while the United States and other countries preach free trade, they have continued to impose barriers on exports from developing countries.

Turning to the global intellectual property rights regime, which he said is not helpful for the development of all countries, Correa said that these rights must serve the greater public good, suggesting that the current rules do not allow equitable development in the sharing of genetic resources, for example.

In this context, he said that governments must not allow faceless international arbitrators to issue rulings that

would severely undermine their "sovereignty" in disputes launched by transnational corporations.

President Correa also called for the free movement of labour on a par with capital. "While capital can move without any controls and cause huge volatility and damage to the international economy, movement of labour is criminalized. This is unacceptable and it is absurd that the movement of labour is met with punitive measures while governments have to welcome capital without any barriers."

He was also severe in his criticism of the financialization of the global economy which cannot be subjected to the Tobin tax. "Nobel Laureate James Tobin had proposed a tax on financial transactions in 1981 to curb the volatile movement of currencies but it was never implemented because of the power of the financial industry," he argued.

Concluding with a hint that his government's social and economic policies are paving the way for the creation of a healthy society, Correa quipped: "The Pope is an Argentinian, God may be a Brazilian, but 'Paradise' is in Ecuador." (IPS) □

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