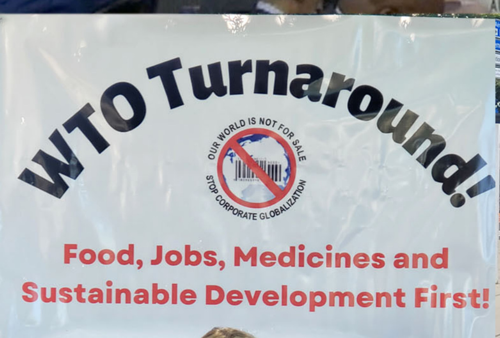
THIRD WORLD
RESURGENCE
ISSUE No. 351 e-ISSN: 2948-4766 www.twn.my

Another litany of WTO woes

Disappointment for developing countries as trade conference fails to deliver



Third World

RESURGENCE

www.twn.my

No 351 2022/2 e-ISSN 2948-4766

Two years on from its originally scheduled convening, the 12th Ministerial Conference of the World Trade Organization finally took place in Geneva on 12-17 June. But the meeting of the WTO's highest body was hardly worth the wait as it produced little of benefit to the developing countries. 10

THIRD WORLD RESURGENCE is published quarterly by the Third World Network, an independent non-profit international research and advocacy organisation involved in bringing about a greater articulation of the needs, aspirations and rights of the peoples in the South and in promoting just, equitable and ecological development.

Published by Third World Network Berhad (198701004592 (163262-P)), 131 Jalan Macalister, 10400 Penang, Malaysia
Tel: 60-4-2266728 Fax: 60-4-2264505.
Email: twn@twnetwork.org

Cover Design: Lim Jee Yuan

Editors: T Rajamoorthy, Lean Ka-Min
Managing Editor: Chee Yoke Ling, **Staff**: Linda Ooi (Design), Lim Jee Yuan (Art Consultant), Yap Bing Nyi (Editorial)

ECOLOGY

The Amazon rainforest is disappearing quickly – threatening the Indigenous people who live there

Nowhere is deforestation more marked than in the Amazon, and none in the region are more affected than its Indigenous inhabitants.

Félix Bhérer-Magnan

If deforestation in the Amazon continues at the same rate, more than a quarter of the rainforest will be devoid of trees by 2030, according to the World Wildlife Fund.

FORESTS throughout the world are shrinking year after year – and Brazil is the epicentre. According to the World Wildlife Fund, more than a quarter of the Amazon rainforest will be devoid of trees by 2030 if cutting continues at the same speed.

If nothing is done to stop it, an estimated 40% of this unique forest will be razed by 2050.

Beyond the material and environmental consequences, this deforestation also threatens human rights, including the rights of marginalised communities to life, physical integrity, a reasonable quality of life and dignity. Brazil is one of the most worrying cases in this regard.

As a PhD student in political science, my research interests include climate justice, the energy transition, the green economy and international environmental politics.

Chainsaw massacre

Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples rules that these communities fully possess the 'right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.'

This article is not being respected by the Brazilian government in the Amazon.

Although the country had pledged to significantly reduce deforestation and limit clear-cutting to 3,925 square kilometres, data from Human Rights Watch shows that chainsaws have razed nearly 13,000 square kilometres of tropical forests, making communities of Indigenous peoples even more vulnerable.

The rate of deforestation in these territories increased by 34% between 2018 and 2019, despite Brazil's commitment in 2009 to reduce it by 80%. This has led to the forced displacement of communities over hundreds of kilometres, as well as major health problems and a loss of reference points. According to Human Rights Watch, nearly 13,235 square kilometres of the Amazon rainforest was clear cut between August 2020 and July 2021, a 22% increase compared with the same period in the previous year.

This coincides with Jair Bolsonaro's accession to power. In the month of January 2022 alone, 430 square kilometres of tropical forest was destroyed, five times more than in January 2021.

Multiple abuses have been documented in Brazil since the beginning of colonisation, including the illegal encroachment of the Brazilian state on Indigenous territories. Under Bolsonaro, the number of criminal networks contributing to the deforestation of the Amazon has multiplied. Organised crime views the large timber and agriculture industries as opportunities to move and launder money. The groups illegally exploit forest land, then hide drugs in timber shipments destined for Europe or Asia.

Experts qualify this illegal activity as 'narco-deforestation'. Numerous illegal gold and mineral extraction sites are also operating in the Amazon, and the companies running them often make threats to the Munduruku that live there.

People and activists who have protested the ongoing deforestation have been threatened, harassed and killed. In 2019, the NGO Global Witness recorded 24 deaths of environmental activists and land defenders, almost all occurring in the Amazon. This puts Brazil in third place among the countries with the highest number of deaths of environmental defenders, after Colombia and the Philippines.

There are reminders of this in the news. Bruno Araujo Pereira, a defender of environmental and Indigenous rights, and British journalist Dom Phillips were reported missing on 5 June in an area called the Javari Valley, which has a reputation of being 'lawless'.

According to a local organisation, the two had received death threats shortly before disappearing. Brazilian police first said search teams had discovered their belongings and later that bodies were spotted in the area of their disappearance. Police reported on 15 June they had found human remains while searching for the pair and that a fisherman who had fought with the pair had confessed to their killing.

The number of deaths of people involved in environmental and territorial defence may be greatly underestimated, as data are not available and transparent for all countries.

Indigenous communities are disproportionately affected by deforestation.

Women and children the main victims of deforestation

A recent United Nations report reveals a strong correlation between worsening climate change and deteriorating human rights around the world.

Deforestation disproportionately affects Indigenous communities, especially women and children. It increases the pressure already placed on women to feed their children and families, while limiting their access to essential goods, including medicine.

Indeed, the health of these communities depends on access to natural medicinal products found in biodiversity. The Amazon is a major reservoir of substances used in the manufacture of several pharmaceutical products available on the South American continent.

Nearly 80% of the population in developing countries relies on natural medicinal products for their primary health care. In the majority of communities, it is also women who are responsible for cultivating the land and providing transportation and water treatment.

Children are equally at risk. For example, a study conducted in sub-Saharan African countries shows a link between the loss of forest cover and the deterioration of health conditions of the youngest. Malnutrition, caused by reduced availability of fruits, vegetables and nuts, can affect children's growth. The exposure to smoke from the multiple fires in the Amazon is also likely to cause respiratory problems and even more serious conditions in children.

Deforestation in Brazil offers a preview of the impact that climate change will have on human rights, both in Latin America and elsewhere in the world. In addition, due to the war in Ukraine, Brazil is looking to fill the food gap on world markets with crops such as wheat and grain.

Brazil's contribution is appreciated by countries such as Sudan, Pakistan and Haiti, which are among those most affected by the food crisis. But increased production may dangerously accelerate deforestation and human rights abuses can be expected to increase.

One thing is certain, one of the lungs of our planet is seriously ill and time is running out. ◆

Félix Bhérer-Magnan is a PhD student in political science at Université Laval in Canada.

This article, translated from the French, was originally published in The Conversation (theconversation.com) under a Creative Commons licence.

CARICOM plans to boost disaster resilience

Regional institutions in the Caribbean are girding up against the increased threat of hurricanes supercharged by climate change.

Marjorie Pons Piñeyro

A scene of the devastation wrought by Hurricane Maria in Puerto Rico in 2017. Hurricanes in the Caribbean are becoming more extreme due to global warming.

THE Caribbean archipelago has 13 independent countries and 15 dependent territories. Thanks to the warm tropical climate, it attracts tourists, especially in winter. The downside is the exposure to hurricanes, which are becoming more dangerous due to global warming.

Hurricanes are a natural hazard that forms over ocean areas close to the equator. They are powered by moist and warm air. The same kind of storm is known as 'typhoon' in the Pacific and 'cyclone' in the Indian Ocean.

In the Caribbean region, hurricanes occur in the months June to November. The 'hurricane season' peaks between mid-August and mid-October. These extreme weather events can be very destructive. In 1979, for example, Hurricane David killed 2,068 people. The Dominican Republic suffered more than half of those casualties, and 70% of the electrical system was destroyed.

A more recent example was Hurricane Maria, which devastated Puerto Rico in 2017. According to research done by scholars from George Washington University, close to 3,000 people died. The entire population of this US territory was left without electric power, which was fully restored only after 11 months.

Small-island nations are particularly exposed to climate risks, but in most cases, the international public only takes note of the damage in the worst-hit places. Other islands suffer too, however. In 1979, Hurricane David made some 60,000 people – or about 75% of the population – homeless in Dominica, a small island that was a British colony in the past. In 2017, Hurricane Maria caused damage amounting to $930 million there. According to the UN, four months later, 80% of the houses still had inadequate roofing and 15% of the children had not returned to school. The island counted 31 dead and 37 missing people.

Extreme weather is becoming more extreme

It is important to understand that natural disasters cannot be avoided. Societies must learn to live with them. However, global warming is compounding the problem, with extreme weather becoming more extreme. This is an important reason why Caribbean societies are not better prepared for these calamities. The risks are familiar, but they have become greater than they were in the past.

Hurricanes, as stated above, gain their strength from warm and moist air. Hotter temperatures lead to stronger hurricanes that last longer, bring more rain and cause more damage. Once a hurricane reaches land, it becomes weaker. The problem, however, is that they are now gaining more power as they build up over the sea water and accordingly take longer to dissipate after landfall. Research has shown that hurricanes used to lose 75% of their intensity during the first day over land. Now, that ratio is merely 50%. If the climate crisis continues to escalate, it will be further reduced.

Hotter temperatures lead to more devastating storms. The future of the Caribbean looks bleak unless climate change is mitigated. At the same time, the region obviously must adapt to the change that has already occurred or is no longer preventable. The archipelago must become more resilient. That requires new approaches and coherent action.

Regional institutions are rising to the challenge. The Caribbean Community (CARICOM) and the Caribbean Disaster Emergency Management Agency (CDEMA) have done important work in this regard.

First of all, they adapted the UN definition of 'resilience' to regional needs. According to the UN Office for Disaster Risk Reduction (UNDRR), resilience means that a system, community or society which is exposed to hazards is able 'to resist, absorb, accommodate to and recover from the effects in a timely and efficient manner'. This includes the 'preservation and restoration of essential basic structures and functions'. CARICOM and CDEMA added that resilience also means 'bouncing forward quickly and in a manner that reduces susceptibility' to the same kind of hazard in the future.

Pillars of resilience

On this basis, they have listed five 'pillars of resilience':

- social protection for vulnerable and marginalised people,
- safeguarding infrastructure,
- improved economic opportunities,
- environmental protection, and
- operational readiness for recovery.

The supra-national policymakers have made detailed recommendations for each pillar.Moreover, they spelled out that policy and regulations should create an 'enabling environment'. Good governance, in their eyes, also includes involving the public – especially the young generation – in meaningful ways. They have called for capacity development, research, data management and funding for better disaster-risk control. Finally, CARICOM and CDEMA have stressed that good plans are worthless unless they are properly implemented.

It matters, of course, that 11 of the 13 independent Caribbean nations are developing countries. They cannot be expected to build resilience by themselves. After all, they are struggling to cope with worsening disasters they did very little to bring about. Caribbean countries are not major emitters of greenhouse gases, but repairing disaster damage requires considerable resources which they could otherwise use for developmental purposes.

After a particularly devastating hurricane season, the CARICOM-UN High Level Pledging Conference took place in New York in November 2019. It resulted in donor commitments worth $1.3 billion, including over $1 billion in loans and debt relief. Major partners included the European Union and its members, the United States, the World Bank and many others. UN Secretary-General António Guterres stated: 'Countries in the Caribbean need support now to rebuild, and to take effective climate action.'

Two of the world's most climate-affected territories

According to the Global Climate Risk Index 2021, which was compiled by the German civil society organisation Germanwatch, two Caribbean territories were among the countries most affected by extreme weather events from 2000 to 2019. In that list, Puerto Rico ranked first and Haiti came in third.

While the exposure to hurricanes is basically the same, Puerto Rico's and Haiti's sociopolitical circumstances differ considerably. Puerto Rico is a US territory, though not a state, so its scope for self-government is limited. Its people are US citizens, but do not get to vote in national elections. A serious debt crisis has compounded the problems. Though the standard of living is comparatively high, half of Puerto Rico's people live in conditions of poverty. Migration to the mainland USA is easy, however, and Puerto Rico's population indeed dropped by almost 12% to 3.3 million in the past decade.

Haiti, by contrast, is one of the countries the UN lists as 'least developed' – and the only one in the Americas. It is struggling with a dreadful combination of high poverty, disintegrating statehood and multiple disasters, not all of which are related to climate change. Examples were the earthquake of 2010 and the subsequent cholera outbreak. The country's population has increased by about 12% to nearly 11.4 million in the past decade.

In view of Haiti's multi-layered misery, the global media do not pay much attention to how much suffering hurricanes regularly cause. It is well known, for example, that Hurricane Sandy hit New York in 2012, but the global public is unaware of the same storm killing at least 108 people, leaving 21 missing and depriving 200,000 people of their homes in Haiti.

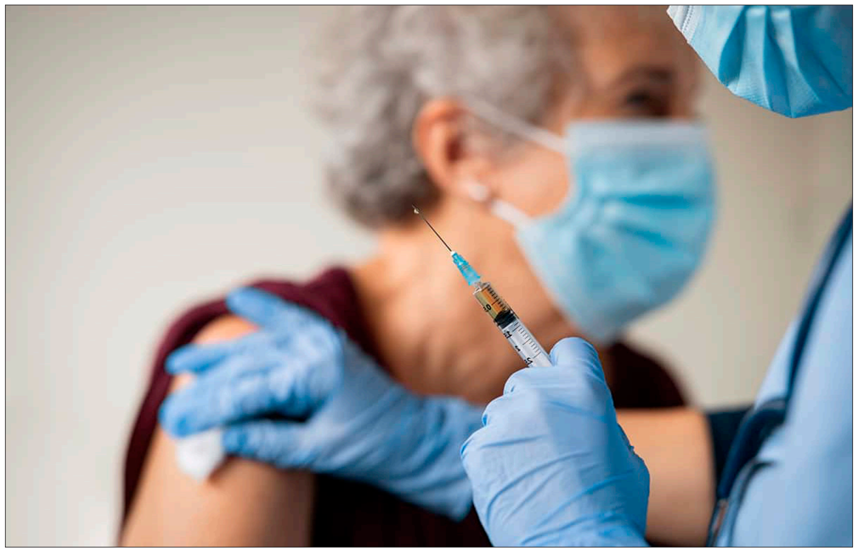
The Caribbean finds itself in an attractive but tricky location. Thanks to its constant warm weather, many outsiders think of it as a kind of paradise. Widespread poverty and the poorly developed infrastructure, especially in remote villages, tell a different story. The relentless rise of temperatures is leading to increasingly extreme hurricanes. Caribbean people cannot rise to the challenges on their own. They deserve support for adapting to climate change – and their future also depends on major greenhouse-gas emitters radically reducing their carbon footprints. ◆

Marjorie Pons Piñeyro is a master's student at Bauhaus University in Weimar, Germany, specialising in natural hazards and infrastructure.
This article is reproduced from the D+C (Development and Cooperation) website (www.DandC.eu).

The (vaccine) hoard heard around the world

The world has confronted racist global health policies before. We can do so now.

Vidya Krishnan



Eighty percent of COVID-19 vaccines were administered in the 10 richest countries last year, leaving about half of the world's population waiting for their first shots.

IN a world where pandemics are the norm, medical apartheid has become the civil rights issue of the 21st century. With most deaths occurring in 20 Black and Brown nations, about 14.9 million people died between 1 January 2020 and 31 December 2021. The highest number of deaths are in India, despite, or perhaps because of, it being the pharmacy of the world.

The predicament of people dying of COVID-19 despite viable vaccines exemplifies the malignancy in the bone marrow of global health structures. This is not due to a dearth of resources or expensive technology, but because of racism: We must hold governments responsible for mismanagement, underinvesting in health systems, and allowing misinformation to spread – but not before we address vaccine inequality.

Nothing has prolonged the coronavirus pandemic more.

Humanitarian aid organisations Doctors Without Borders and Human Rights Watch have called on the administration of US President Joe Biden to use the legal leverage afforded by the Defense Production Act (recently invoked to tackle the US baby formula crisis) to get pharmaceutical companies to share vaccine technology with the World Health Organization (WHO)'s 'tech transfer hub'. This would allow the speedy scale-up of manufacturing in developing nations. Former heads of state and Nobel laureates recently urged Biden to exert more forceful leadership in the global pandemic response.

The urgency is real: It has been a year since India's traumatising second wave in which, by conservative estimates, 2.7 million people died in a four-month period. These staggering losses are unconscionable, especially given that COVID-19 was, by then, a vaccine-preventable disease.

Here, in my home country, lower-caste communities were unequally affected by COVID-19 much the same way as African American communities or refugees and immigrants in Europe, the United States, Canada and Japan: 80% of COVID-19 vaccines were administered in the 10 richest countries last year, leaving nearly three billion people – about half of the world's population – waiting for their first shots.

Globally, we are witnessing parallel pandemics, repeating historical mistakes of letting racism prolong curable infectious disease outbreaks. The denial of vaccines to poorer countries in the Global South, post-colonial nations in Asia, Africa and Latin America, is a deep violation of every code of bioethics arrived at in the aftermath of World War II when medicine became an extension of politics, used as a weapon to maim the most vulnerable.

Universal crime meets universal justice

After the war, a first-of-its-kind international military tribunal made up of judges from the four allied powers, the United States, Britain, France and the Soviet Union, brought Third Reich leadership to justice. The first of the Nuremberg Trials charged 23 defendants for conducting unethical medical experiments, such as removing bone, muscle and nerves, including whole legs, to transplant to other victims. The case led to the Nuremberg principles, a landmark document in medical ethics.

These trials are one of history's

shining examples of a universal crime being met with universal justice. And the code created a set of ethical research principles for human experimentation that massively influences global health practices, including in the US.

These trials were also an exercise in overwhelming hypocrisy: Over a decade before, and for three decades after Allied forces dispensed death sentences to Nazi doctors, Black US citizens were denied life-saving medicines to treat syphilis as part of the Tuskegee Syphilis Study. History is replete with examples that systematic denial of salve to Black and Brown bodies is not an accident but a feature of the White medical establishment.

Medicine has once again become politics writ large and the US government is, once again, taking a hypocritical stand despite being in a unique situation to get vaccines to people around the world. In May 2021, when the Biden administration backed a World Trade Organization (WTO) proposal to temporarily waive intellectual property rights claims on COVID-19 vaccines, drugs and diagnostic technologies, called a TRIPS waiver, the world heaved a sigh of relief. Follow-through would have made the flow of vaccines to majority-Black and -Brown nations a real possibility.

Since then, nothing has been done to change the status quo in a world where pandemic response leaders, Big Philanthropy and Big Pharma (raking in record profits) have us headed into yet another wave of a preventable disease. Global health czars and institutions in wealthy, White countries have been mulling over the subject with spectatorial passivity, as if this were a rare and theoretical matter that must not set a precedent.

It is not rare for patients in less-wealthy countries condemned to die from treatable illnesses because life-saving remedies remain locked in patent monopolies. No one who lived in Delhi during the second wave, as the city ran out of beds, ambulances and oxygen, then wood for funeral pyres and fabric for shrouds, will consider this a theoretical matter. A vaccine-preventable illness decimated the capital of India, which was making vaccines for the rest of the world. India must fulfil its role as the pharmacy of the world but not at the cost of its own vaccine programmes.

When India and South Africa asked for a WTO waiver, *The Wall Street Journal* questioned those nations' ability to produce enough, calling it a 'global COVID vaccine heist'. But they have since proved more than able to do the manufacturing, so long as they have the information and legal permission. Still, vaccines are being made in India at a fraction of the cost but being denied to the poorest among us.

Antiracist policy can heal the world

The failure to arrive at a proportionate response to extending vaccines to the poorest countries is a failure of our moral imagination. The most immediate need is to stop the pandemic, which cannot be done without a total waiver of intellectual property on drugs and diagnostics, in addition to vaccines.

Medical apartheid can only be addressed by an actively antiracist stand on vaccines. Instead, the Biden administration has passed on the burden to vaccinate the world to India. While the people of wealthy nations in the Global North are boosted and impatient with an irrational longing to go back to a world before pestilence, the rest of us are waiting for vaccines to arrive.

The reality of being global citizens means the world is one family. The pathogens see that. We should, too. ◆

Vidya Krishnan is a global health reporter who works and lives in India, and author of Phantom Plague: How Tuberculosis Shaped History *(PublicAffairs, 2022). The above article was originally published by The Emancipator, a collaboration between Boston University and The Boston Globe. Visit theemancipator.org.*

Anti-racism body decries skewed distribution of vaccines

The following is the text of a statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines issued by the Committee on the Elimination of Racial Discrimination on 25 April during its 106th session. The Committee is the body of independent experts that monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) by its member states.

THE Committee on the Elimination of Racial Discrimination, meeting in Geneva at its 106th session from 11 to 29 April 2022,

Acting under its Early Warning and Urgent Action Procedure,

Concerned about the devastating disparate impact of the COVID-19 pandemic on individuals and groups vulnerable to racial discrimination as defined in Article 1 of the Convention, in particular persons of African or Asian descent, those belonging to national or ethnic minorities, Roma communities, Indigenous Peoples, non-citizens, living in both global north and south countries;

Concerned further that the disproportionate impact of the pandemic on those groups protected by the Convention in terms of higher levels of morbidity and mortality is in significant part attributed to consequences of the historic racial injustices of slavery and colonialism that remain largely unaccounted for today and the contemporary racially discriminatory effects of structures of inequality and subordination resulting from failures to redress the effects of racism rooted in slavery, colonialism and apartheid;

Acknowledging that failures to redress these injustices have impeded the ability of communities to enjoy fully the right to life, health and health care, and the capacity of States to address entrenched structural inequities which have been exposed and deepened by the pandemic and enduring practices of discrimination and exclusion;

Further concerned that across the globe higher rates of COVID-19 morbidity and mortality have been reported among persons and groups protected under the Convention due to little or no access to vaccines as well as living conditions, with limited or no access to clean water and sanitation facilities, healthcare, medication, medical services, social security and social services;

Reaffirming that States must protect against and mitigate the impact of the pandemic on individuals and groups subject to structural discrimination and disadvantage on the basis of the grounds in the Convention, taking into account the gender-related dimensions of racial discrimination;

Reaffirming further that States have an obligation to ensure equal access to lifesaving healthcare services, including testing, vaccines and medical treatments, which have been key in order to prevent the spread of COVID-19 and reduce fatalities as a consequence of infection with the virus;

Deeply concerned that the vast majority of COVID-19 vaccines have been administered in high- and upper-middle-income countries and that, as of April 2022, only 15.21% of the population of low-income countries has received even one vaccine dose,[1] creating a pattern of unequal distribution within and between countries that replicates slavery and colonial-era racial hierarchies; and which further deepens structural inequalities affecting vulnerable groups protected under the Convention;

Deeply concerned that the pattern of unequal distribution of lifesaving vaccines and COVID-19 technologies between and within countries manifests as a global system privileging those former colonial powers to the detriment of formerly colonised states and descendants of enslaved groups;

Recalling that under established ICERD provisions and practice, States are obligated to eliminate all forms of racial inequities whether they are by purpose or effect, de jure or de facto, and ensure substantive equality without discrimination on the grounds of 'race, colour, descent or national or ethnic origin';

Noting that most of the vaccines approved are subject to an intellectual property rights regime and that the insufficient supply of vaccines due to unequal global distribution necessitates urgent measures in relation to the intellectual property regime;

Noting also the proposal within the World Trade Organization (WTO) on a temporary waiver on part of the Trade-Related Intellectual Property Rights Agreement (TRIPS) for COVID-19 vaccines and treatment, supported by the Committee on Economic, Social and Cultural Rights[2] and a number of special procedure mandate holders of the Human Rights Council,[3] and noting the Report of the United Nations High Commissioner for Human Rights to the Human Rights Council on the human rights implications of the lack of affordable, timely, equitable and universal access and distribution of coronavirus disease (COVID-19) vaccines and the deepening inequalities between States;[4]

Noting that the States parties of Germany, Switzerland, the United Kingdom of Great Britain & Northern Ireland have opposed a request spearheaded by India and South Africa in October 2020 at the WTO to temporarily waive intellectual property protections on healthcare technologies concerning COVID-19 prevention, containment or treatment imposed by the TRIPS Agreement (later revised in May 2021) and in addition, Germany, Switzerland, and the United Kingdom of Great Britain & Northern Ireland have failed to mandate technology transfers by nationally based pharmaceutical companies that insist on guarding their intellectual property monopolies on COVID-19 healthcare technologies;

Noting further that, while the State party of the United States of America has declared support for a narrow vaccines-only waiver, it has failed to use all its available tools, including activating its Defense Production Act, to mandate COVID-19 healthcare technology transfers from nationally based pharmaceutical companies;

Recalling its Statement of 7 August 2020 on the 'Coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination';[5]

1. ***Reiterates** its call on* States parties to ensure, including through international cooperation, effective and non-discriminatory access to COVID-19 vaccines and treatment technologies taking into account the situation and needs of groups which are marginalised and subjected to discrimination;

2. ***Reiterates further** its call on* States parties, in particular Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to combat the COVID-19 pandemic guided by the principle of international solidarity through international assistance and cooperation, including by supporting the proposal of a

comprehensive temporary waiver on the provisions of the TRIPS Agreement, and taking all additional national and multilateral measures that would mitigate the disparate impact of the pandemic and its socioeconomic consequences on groups and minorities protected under the Convention. ◆

Endnotes

1. Global Dashboard for Vaccine Equity – UNDP Data Futures Platform (last accessed on 25 April 2022).
2. See: 'Statement on universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property', 23 April 2021. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/2021/1&Lang=en
3. See: 'COVID-19: UN experts urge WTO cooperation on vaccines to protect global public health', 1 March 2021. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26817&LangID=E; statement by United Nations human rights experts, 'Universal access to vaccines is essential for prevention and containment of COVID-19 around the world', 9 November 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E; statement by United Nations human rights experts, 'States must prioritize health and equality over profits and vaccine hoarding, UN experts say. Omicron and other new variants underline urgency to act', 29 November 2021. Available at https://previous.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27875&LangID=E
4. Report A/HRC/49/35. Available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session49/list-reports
5. See 'Statement on the Coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination': https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/SWA/9234&Lang=en

The World Trade Organization after the 12th Ministerial Conference

After a paucity of progress over the years, the World Trade Organization finally produced some tangible results at its latest Ministerial Conference. Unfortunately, these pro-corporate, anti-development outcomes were not what a troubled world needed from the international trade body, writes *Deborah James*.

Civil society activists, including the writer ***(fifth from left)*****, at a press briefing on the occasion of MC12 calling for pro-development outcomes. However, the struggle to transform the WTO system into one that serves people and the planet was set back at the meeting.**

THE World Trade Organization (WTO)'s 12th Ministerial Conference (MC12) in Geneva on 12-17 June concluded with pro-corporate, anti-worker and anti-development outcomes on all major issues of access to medicines, agriculture, digital trade, and the future of the WTO itself. The spin of 'unprecedented outcomes' of MC12 is a cynical ploy to paper over major differences to bolster the institution's flailing reputation.

The agreements should herald a warning to all: rich-country governments professing new commitments to sustainable and worker-centred trade are just as likely to push anti-development outcomes and cosmetic window-dressing when it comes to protecting Big Business profits above the public interest. Their version of WTO 'reform' will facilitate the further deterioration of multilateralism and lock in discredited pro-corporate rules on globalisation.

MC12: Setting the scenario

Developing countries made several key demands in advance of MC12: to put flexibility to address the global health crisis ahead of excessive protection of intellectual property rights for Big Pharma, and deal with the ongoing food security crisis by adopting new flexibilities on harmful agricultural rules. Most of their interests were defensive, trying to deal with problems in existing WTO rules.

In advance of MC12, global union federations published a united statement: the WTO reform 'should focus on inclusion: put workers' interests first, bring corporate power under democratic control, and deliver on the development mandate agreed upon in Doha'. (It failed on all accounts.)

Leading into MC12, the Our World Is Not for Sale (OWINFS) global network of civil society organisations (CSOs) held a press briefing to help journalists understand the real issues ranging from agriculture and fisheries subsidies to access to medicines, development, and WTO reform that were being glossed over in the WTO's official statements.

On the opening day of MC12, CSOs received a rude shock with the unprecedented act of being banned from the premises during a Ministerial. Fortunately, they had organised a press conference including a dozen activists from around the world to testify to the importance of the broad range of issues on the table. The briefing garnered some of the only press coverage for little-known issues like WTO reform during the Ministerial meeting.

Civil society participants in Geneva for MC12 later held a demonstration at the Place des Nations. Some activists were then harassed by the police for holding banners or wearing T-shirts that called for a genuine response to COVID-19 and action to stop big fishing fleets from decimating fish stocks, even when they were standing outside of the 200-metre perimeter around the WTO.

Anticipating a hard week of talks and few potential benefits for workers, farmers or the public interest in any country, activists with the OWINFS network staged a lively 'mic check' protest the first day they were allowed inside. Using a 'call and response' format, they called for positive outcomes on development, access to medicines, agriculture and fisheries, while denouncing the corporate agenda of continuing Big Pharma monopolies, fake WTO reform and other issues.

Waiver or non-waiver

The most devastating outcome of MC12 for the world is the failure of WTO member states to remove obstacles created by the WTO to help resolve the pandemic by adopting a comprehensive waiver of intellectual property (IP) restrictions on vaccines, treatments and tests related to COVID-19 within the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The WTO's IP rules are the opposite of free trade – they restrict trade by protecting monopolies, eliminating competition and driving up prices. South Africa and India, along with 60 co-sponsors and supported by over 100 developing countries, proposed a waiver on these invented protections so that countries in the Global South can manufacture their own vaccines, treatments and tests. Groups across developing and developed countries like the People's Vaccine Alliance have mobilised a massive campaign on this issue for nearly two years.

The European Union, Switzerland and the United Kingdom worked diligently throughout the Ministerial to include even more restrictions and limitations in the agreement. They violently oppose any recognition that IP rules have posed any challenges during the pandemic, even though only a fraction of people in poor countries have access to COVID-19 vaccines, let alone treatments or tests.

Civil society organisations denounced the (in)action of the EU, UK, United States and Switzerland for stalling any effective action in the WTO during the entire COVID-19 pandemic by staging a first-ever 'die-in' in the WTO. One by one, activists symbolically 'died' as they explained how these four members prioritised patents over vaccines, leading to millions of deaths around the world. CSOs in countries like South Africa and Indonesia lobbied their governments heavily to stay strong while those in countries like the UK, Switzerland, Australia, the US and across Europe pressured governments to put lives over profits.

Other geopolitical factors complicated the issue. Negotiations were extended into the night so the US and China could find a landing zone on eligibility to use any IP flexibilities, as the US demanded clear language that excluded China.

What was agreed was not a real waiver, due to EU, US, UK and Swiss determination to protect Big Pharma's profits. The agreement only grants a limited flexibility on one provision; excludes all forms of IP except patents; excludes treatments and tests; and requires far more intrusive monitoring and reporting than the existing rules (among other excessive restrictions), resulting in a 'TRIPS-plus' agreement rather than a real waiver. The final text on this issue even states that 'developing countries with existing capacity to manufacture COVID-19 vaccines are encouraged to make a binding commitment not to avail themselves of this agreement'. So, any country with the capacity to manufacture is supposed to agree not to use the agreement?

A Médecins Sans Frontières (MSF) headline best summarised the outcome: 'Inability to agree a real pandemic intellectual property waiver at WTO is a devastating global failure for people the world over.' The agreement 'does not adequately waive intellectual property on all essential COVID-19 medical tools, and it does not apply to all countries. The measures outlined in the decision will not address pharmaceutical monopolies or ensure affordable access to lifesaving medical tools and will set a negative precedent for future global health crises and pandemics,' according to MSF.

A second COVID-related declaration adopted at MC12, on the 'WTO response to the COVID-19 pandemic and preparedness for future pandemics', was designed as a fig leaf for the utter failure of the WTO to remove its own obstacles to resolving the pandemic and will not save one human life from COVID-19.

Instead of addressing WTO constraints on managing the pandemic, the declaration presents a false narrative that current WTO rules supported rather than hindered the response to the pandemic. It actually promotes further liberalisation as a 'solution' to pandemics and suggests that unilateral liberalisation and regulations should be locked at a standstill as a way to address pandemics; fortunately, the false solutions indicated do not appear to be enforceable.

That's why already around 300 labour, health and other organisations have condemned the lack of a real waiver at the WTO, criticised those responsible, and urged governments to take action outside of the WTO, whether they promise not to endorse IP rules (in developed countries) or for all countries to work harder to save lives, including by using existing flexibilities, circumventing rules or defying them when needed. CSOs in South Africa have already put forward a clear path of how this can be implemented on the national level.

Exclusionary processes

The final package of deals at MC12 was only possible because the majority of WTO members were excluded from the decision-making process. Rather than conduct the negotiations according to the rules and procedures of the organisation, the WTO Director-General (DG) convened exclusive 'Green Rooms' in which certain delegations were invited to negotiate, with the majority excluded.

In these Green Rooms, developed countries are present individually whereas the vast majority of developing countries are only present through group coordinators, such as the Africa-Caribbean-Pacific (ACP) group or the group of least-developed countries (LDCs). This configuration leaves out the majority of Latin American and Asian countries, and consigns nearly 50 members to one voice, with only a few other developing countries in the room to face off against an often-unified front of rich-country obstinacy. At some points even entire groups were excluded: the LDC coordinator was not in the negotiations on the Ministerial Outcome Document; India was excluded from some of the Green Room talks on fisheries subsidies.

Civil society representatives at the Ministerial also heard delegations repeatedly complain about the WTO Director-General's extensive bullying and intimidation tactics. In the case of at least one African country resisting on a particular issue, the DG actually called the president of his country! In another, the DG came off the podium (where she was not supposed to be presiding) and verbally dressed down a delegate representing his country's position in front of the entire room. There have been many complaints about bullying at previous WTO Ministerial Conferences, but the number of complaints heard by CSOs from developing countries that the DG had harassed their delegation into conforming was totally without precedent.

Civil society groups highlighted the exclusion issue in their action on the second day of the conference by creating a visual representation of the Green Room with developed countries inside negotiating. Those representing excluded developing countries chanted 'Let us in! Let us in!', to which rich countries retorted 'You are not invited!', repeated by security guards.

The DG and the chairpersons of the negotiations on various issues at the Ministerial used several other exclusion tactics. Members received four of the texts that had been negotiated by small groups in Green Rooms only in English, at 1:30 in the morning. After multiple postponements, the heads-of-delegation (HOD) meeting, with all members, was convened but postponed again at 3:22 a.m. for another half-hour. After many delays, by 4:59 a.m. messages were sent that everything had been agreed upon. Delegates received the other three texts (the TRIPS non-waiver, fisheries subsidies, and the e-commerce moratorium) only hours later, after they had been gavelled through by the chair in front of ministers representing perhaps half of the membership.

There are good reasons to doubt the legality of these procedures under the WTO's rules. The 'exclusionary unrepresentative processes behind the celebrated MC12 "Package"' should be taken up at the WTO by members. Unfortunately, the new DG is now celebrating her machinations as effective deal-making. Evidently, if breaking the rules and procedures of the institution is required for its expansion, she is ready and able to take on that role.

Fisheries subsidies

WTO members were mandated in the Sustainable Development Goals (SDGs) to agree to reduce fishing subsidies that have resulted in a collapse of fish stocks worldwide. This mandate also includes an affirmation that developing countries need flexibilities, called 'special and differential treatment' (SDT) in the WTO, to continue fishing for sustenance and livelihoods.

Unfortunately, the draft agreement that ministers considered for the Ministerial fell short on both counts. The Pacific Network on Globalization (PANG) and the Third World Network provided extensive research on the negative impacts of the potential fishing subsidies disciplines for small fisherfolk and developing countries. They revealed how the draft Ministerial text let the biggest subsidisers responsible for the collapse in fish stocks globally off the hook regarding subsidy reductions. At the same time, the draft agreement would have jeopardised small-scale fishers' access to tiny subsidies that are critical for their livelihoods, and harm developing countries' rights under international law to develop this sector for sustenance and livelihoods.

Over 80 civil society groups wrote a letter 'calling on Ministers to make sure that any outcome on fisheries subsidies negotiations targets those who have the greatest historical responsibility for overfishing and stock depletion, excludes all small-scale fishers from any subsidy prohibitions, prevents the WTO from ruling on the validity of conservation and management measures of members, and upholds the sovereign rights of countries under UNCLOS [the UN Convention on the Law of the Sea]'.

Indonesian CSOs also wrote a letter to their government urging them 'not to approve the current fisheries subsidy text as it will jeopardise the livelihoods and food security of fisherfolks and the fisheries sector as a whole'. The Indian National Fishworkers' Forum sent a similar letter calling on the government to reject the text on the table.

The US had introduced a provision on forced labour in the fishing industry, focused on China. Workers in seafood processing on ships are some of the most exploited in the world, according to the International Union of Foodworkers, which has long advocated in the International Labour Organization (ILO) for their protection against horrendous violations of their rights and lives.

Some developing countries do not agree with the introduction of labour rules in the WTO, as developed countries often use these as protectionist measures. In this case, it is particularly striking that the US has not signed the ILO convention on forced labour, because of the extensive use of forced labour in prisons, which is also a corporate subsidy. In the end, the issue was dropped, likely for some other trade-off.

Under what was agreed at MC12, there are new disciplines on subsidies for boats on the high seas in areas of common jurisdiction. But the final text is unbalanced overall, and major areas of the proposed agreement were set aside.

The fundamental flaw in the agreement is that large subsidisers, responsible for the collapse of stocks, are allowed to maintain subsidies provided the fishing is within the waters of any country's jurisdiction. They are also able to subsidise fishing overfished stocks provided they can demonstrate that there are 'sustainable' measures in place. Those countries with the most responsibility for overfishing that is causing the collapse in fish stocks will be let 'off the hook', as they not only have the financial resources to continue subsidising but also have extensive monitoring and measurement capacities.

Most flexibilities for developing countries were removed. The provisions disciplining subsidies for illegal, unreported and unregulated (IUU) fishing extend the flexibility for developing countries to 200 nautical miles (from the previous proposal of an insufficient 12) but only for a paltry two years. This is far less than needed for developing countries to build capacity for extensive burdensome monitoring requirements, especially when these subsidies do not contribute to collapsed stocks.

A strange new provision will keep the talks going: WTO members must continue to negotiate these aspects towards a comprehensive agreement in four years, otherwise the partial agreement ceases to be in force.

As PANG concluded, 'The agreement remains fundamentally flawed and in favour of those countries with large capacity for subsidising and reporting. Its failure to target those most historically responsible for overfishing is ensuring that the burdens of the agreement are being carried by those least responsible. The minimalist SDT only offers a brief peace clause which fails the mandate of the SDG. Finally, the lack of commitments on technical assistance and capacity building represents a failure to ensure that developing countries and LDCs are able to meet the burdens of this text, instead, we will see resources being diverted from elsewhere. This text fails the mandate...'

Sustainability and fisherfolk advocates will need to ramp up their campaigning to improve the outcome in the coming negotiations.

Agriculture

Along with the TRIPS waiver, developing countries' second key demand was to be able to invest more in their own domestic production to promote food security, for which they need flexibility from harmful WTO rules which handcuff their ability to subsidise food production for the poor. Years ago, a coalition of developing countries won a conditional, temporary reprieve on public stockholding programmes – and were promised a permanent solution by this Ministerial.

A unified push by around 80 developing countries in advance of the Ministerial should have resulted in a positive outcome for a permanent solution to allow them the freedom to engage in public stockholding practices, so these countries can increase production and feed their own poor.

Again, rich countries – who subsidise their farmers hundreds of times more per farmer than developing countries subsidise – blocked this outcome. There is no affirmation of the importance of resolving this mandated life-or-death issue in the outcome texts.

But the current food price crisis since the Russian invasion of Ukraine necessitated some response from the WTO. Instead of loosening WTO rules to promote more production, rich countries called for more restrictions on the domestic mechanism of export bans that some countries use during food crises. Export bans can be harmful, but are necessary in some countries to keep critical domestic food stocks from flowing out to the highest bidder.

In the end, the two decisions taken at MC12 framed as addressing the crisis of food insecurity fail to address the core issue, instead exhorting countries not to ban food exports. They ignore the fundamental problems driving food price spirals due to speculation in food trading, and the over-use of grains for fuel and animal feed, both of which originate in rich countries and are problems they could solve without resorting to the WTO.

Farmers and workers in all countries are harmed by existing

WTO rules, which must be transformed for the farmers and workers of tomorrow to grow up adequately nourished and with hopes of decent nutrition and livelihoods.

E-commerce duties moratorium

Early in the Internet age, a few rich countries got a deal that normal customs duties on trade would not apply to the barely understood 'electronic transmissions'. This agreement represents a loss of potential revenue of $48 billion for developing countries and $8 billion for LDCs, roughly, since the last time it was extended in 2017. This is according to a recent study, 'WTO moratorium on customs duties on electronic transmissions: How much tariff revenue have developing countries lost?', by an economist at the UN Conference on Trade and Development (UNCTAD). To put this in context, with a combined population of around one billion, LDCs needed approximately $4 billion to finance two shots of the cheapest Oxford-AstraZeneca vaccine.

'With no clarity on the definition of electronic transmissions, the continuation of the moratorium is not only depriving developing countries of their precious financial resources but is also taking away their regulatory power as unchecked imports of luxury items like video games, movies, and music are rising rapidly leading to an exponential rise in the profits of digital giants like Apple and Amazon,' according to the author of the study.

But why should Netflix, Apple and Amazon enjoy duty-free exports to Uganda or Bolivia or Indonesia, while most countries' non-digitalised film, music and booksellers have to pay normal import duties, which help fund public infrastructure and services to a far greater extent in developing countries? That's why many developing countries, including Pakistan, South Africa and Indonesia especially, fought to end the tax-free holiday for Big Tech. Countries hosting Big Tech firms are now attempting to stave off this resistance by redefining these transactions as 'digital services' which don't attract tariffs in the way that goods do, as a backdoor way to expand the coverage of the moratorium manifold.

Big Tech yanked the chain of the EU (and likely the US) during MC12, conjuring up rich fantasies about e-commerce collapsing if it had to compete on a level playing field. In the end, it got its way, and the moratorium was extended. Developing countries including Pakistan, Sri Lanka and Indonesia were able to secure an expiration date of the next Ministerial or March 2024, unless it is extended. There is likely to be even more momentum towards its expiration next time.

US Trade Representative Katherine Tai's tweet celebrating this outcome was striking. Why would an administration that is supposedly focused on reining in Big Tech toss them such a huge bone at the expense of workers? The administration did nothing at the Ministerial to concretely advance workers' interests – but maintained strong stances on agriculture, fisheries and development that consign millions of poor around the world to ignominious impoverishment.

WTO reform

In their respective pre-Ministerial briefings, both the DG and the EU stated that paragraph 3 of the Ministerial Outcome Document, on WTO reform, was their primary goal for MC12. They achieved it. The subtext of their agenda is a clear plan to weaken the structure of multilateral and consensus decision-making at the WTO in favour of increasing corporate participation and debilitating developing countries' limited power.

When the WTO was founded in 1995, developing countries never would have agreed to allow its formation without flexibilities and promises to address many of its harmful rules which obviously favoured rich countries and their corporations at the expense of their development. These flexibilities are called special and differential treatment in the WTO. Within the first few years, it became obvious that the flexibilities were inadequate and the promises were unfulfilled. After developing countries resisted a WTO expansion at the Seattle Ministerial Conference in 1999, members agreed at the next Ministerial, in Doha in 2001, to include a development agenda to address these inequities and strengthen and operationalise SDT.

Even that Doha 'development' agenda was a compromise. But it offered the possibility for developing countries to weaken WTO rules that constrain their ability to build domestic manufacturing or agricultural production, and to regulate and support local services. In the more than 20 years since then, the US and the EU have blocked conclusion of these reform demands, and now even refuse to recognise the agenda.

At the same time, Big Business has complained that the WTO's rules on consensus and SDT have blocked the WTO's development of disciplines on public interest regulation of investment and new services and digital sectors, among others. They tried to finesse the WTO's processes with a Trade in Services Agreement and failed. At the last Ministerial Conference, a group of hyper-neoliberal countries launched so-called 'Joint Statement Initiatives', then set about negotiating new plurilateral agreements among themselves that they plan to globalise through the WTO. Developing countries that are convinced to participate have no influence in this process. The first agreement, to handcuff public interest regulation of services, aims to set a precedent for many more to come.

Other parts of the WTO have been deliberately collapsed, notably the US-enforced paralysis of the dispute settlement system.

Into this scenario, rich countries created new demands for 'WTO reform'. Their intention was to legitimise non-consensus and non-multilateral methods of concluding agreements in the WTO to erode the possibility of developing countries resisting WTO expansion. This author previously argued that WTO 'reform' was the most dangerous, and yet unknown, potential outcome of MC12. Developing countries, including the entire Africa Group, as well as India, Pakistan and others, tried to include safeguards in paragraph 3, at least insisting that the work be carried out under the auspices of the WTO's General Council. At the same time, rich countries sought to legitimise formal corporate influence inside the WTO by creating official channels for 'stakeholders'.

In the end, members agreed to launch a new process on WTO reform. The mandate does not abolish consensus and multilateralism per se but does not include enough of the safeguards demanded by developing countries to prevent against the erosion of these fundamental principles in the WTO.

And the agreement states that the work must 'address the issues of all Members, including development issues'. But many rich countries slap the development moniker on any liberalisation agenda they push. The 'WTO reform' mandate fails to incorporate the development agenda, and instead merely instructs officials to continue working on it to 'report on progress' (rather than conclude it) by the next Ministerial Conference, MC13.

This is a huge loss for developing countries, which will find the negotiating scenario even more difficult under this new mandate.

Conclusion

Throughout the Ministerial, developed countries worked to create a media narrative to place the blame for the lack of consensus outcomes on developing countries, particularly India. But in reality, as one headline put it, it was the EU, 'UK, Swiss and US positions [that were] likely to stymie WTO negotiations'.

After the Ministerial was extended for another day, activists dramatised the 'blame game' by asking, 'Who blocked a real TRIPS waiver? Who's blocking fisherfolk protections? Who blocked REAL food security? Who blocked WTO transformation? EU, US, UK, Switzerland! Give them the blame award!' and handing over an award that those countries appeared to celebrate. Another CSO statement urged developing countries to stand firm in the face of unfair blame.

The key win for the WTO from MC12 is the avalanche of corporate media coverage extolling the WTO's renewed relevance and lauding the results of the DG's bullying and rich-country obstructionism towards pro-human, pro-development outcomes.

Don't believe the hype. This was not multilateralism – countries working together to address common problems. The outcomes were the result of extreme bias of the DG in favour of developed countries, and bullying by rich countries and the DG of developing countries and their agendas. The conclusion opens the door to 'WTO reform' through even more biased processes in the future, whether by undemocratic secretive 'Green Rooms' that exclude the vast majority of countries, a pressure-cooker environment to accept whatever is on the table, or breakaway groups of developed countries launching negotiations on their wishlist and leaving development priorities behind.

Disgracefully, the outcome on vaccines will probably not save a single life from COVID, and the agriculture outcomes will not address the fundamental problems causing food insecurity. On each of the issues – flexibilities from harmful WTO rules on IP and agriculture – developing countries did not achieve their main outcome, and instead were left trying to mitigate the damage of developed countries' demands to extend the free rides for Big Tech and Big Fish. The WTO failed to deliver what the world needed in each and every arena.

Now there is talk of setting the next Ministerial Conference, MC13, for the accelerated date of March 2023. The United Arab Emirates has offered to host, in Abu Dhabi.

The struggle to transform the current trade system into one that serves people and the planet was set back at MC12. In the aftermath, civil society must regroup and strengthen its resources to continue resisting WTO pro-corporate expansion, including expanding outreach to and participation of more affected communities. In the Global North and South, public interest advocates must accelerate calls for a new system of rules, such as is detailed in the CSO statement 'Turnaround: New Multilateral Trade Rules for People-Centered Shared Prosperity and Sustainable Development', to deliver food, jobs, access to medicines, and sustainable development.

Solidarity among developing countries will be even more crucial going forward. Developing countries have varied interests, sizes and influence – as they always have – but it is clear that rich countries will divide and conquer if developing countries do not engage in a unified front.

The world surely needs a new Bretton Woods on trade. But we cannot possibly get there without stopping the expansion of corporate globalisation in the WTO first. ◆

Deborah James is Director of International Programs at the Center for Economic and Policy Research based in Washington, DC. *This article is reproduced from the website of the Institute for New Economic Thinking (www.ineteconomics.org).*

COVER

TRIPS Decision comes up short

Arguably the most pressing need facing WTO member states at MC12 was to reach agreement on lifting intellectual-property-related barriers to the supply of COVID-19 medical products. Blunted by developed-country intransigence, the eventual decision is a major disappointment that could end up costing lives.

Sangeeta Shashikant

The negotiating process that led to the adoption of the MC12 decision on TRIPS has highlighted the challenge of timely and affordable access to vaccines and other COVID-19 medical products.

THE MC12 Ministerial Decision on the TRIPS Agreement (WTO document WT/MIN(22)/30) gavelled in the wee hours of the morning of 17 June may perhaps best be described as a bittersweet outcome for developing countries. Bitter, for even after 20 months of intensive discussion and negotiation, the outcome falls severely short of the comprehensive TRIPS waiver proposed by India and South Africa in October 2020. That proposal sought a waiver of at least 35 articles of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) covering patents, protection of undisclosed information, copyright and industrial designs in relation to health products and technologies for the prevention, treatment and containment of COVID-19.

The proposal was motivated by the 'growing supply-demand gap' since the onset of the COVID-19 pandemic, arguing that '[t]he rapid scaling up of manufacturing globally is an obvious crucial solution to address the timely availability and affordability of medical products to all countries in need', and stressing the need for 'unhindered global sharing of technology and know-how in order that rapid responses for the handling of COVID-19 can be put in place on a real time basis'. At its core, the comprehensive TRIPS waiver proposal sought to create 'freedom to operate' to scale up and diversify global manufacturing to address the global inequity in access to all health products and technologies for the prevention, treatment and containment of COVID-19.

The proposal, which was co-sponsored by 65 WTO Members and supported by many other Members, received tremendous backing from various international organisations such as the World Health Organization (WHO) and UNITAID, civil society, intellectual property (IP) experts, parliamentarians, Nobel laureates and world leaders.[1]

However, persistent opposition and uncompromising positions of developed countries, especially the European Union (EU), the United States, the United Kingdom and Switzerland, amply supported by the WTO Secretariat's manoeuvring, ultimately resulted in a very limited and conditional TRIPS Ministerial Decision at MC12.

This outcome was inevitable once negotiations commenced on the basis of a narrow draft text communicated by the WTO Director-General (DG) to the WTO's TRIPS Council on 3 May. The DG's text (already publicly circulating following a leak in mid-March) was globally criticised for its 'TRIPS-plus' elements that went beyond TRIPS Agreement requirements and for its inadequacy in times of a global pandemic.[2] It reflected the obstructive positions of the EU, which could agree only to a decision framed in the context of a compulsory licence of patents, and the US' insistence that the decision should cover only COVID-19 vaccines (and not therapeutics and diagnostics) and set criteria limiting which Members can make use of the decision (in particular excluding China).

While the TRIPS Ministerial Decision that was eventually adopted does not deliver the desired comprehensive TRIPS waiver, it is nevertheless a marked improvement over the DG's text. It is worthy of note in view of the vicious hostility of developed countries that had been observed in the course of the negotiations leading to its adoption. The UK and Switzerland in particular had relentlessly sought to narrow the scope and application of the Decision.[3]

Making sense of the Ministerial Decision

The TRIPS Decision is built on the existing compulsory licensing flexibility under Article 31 of the TRIPS Agreement, and waives the limit on quantities of vaccines that may be exported when produced under a compulsory licence issued to override potential and existing patent barriers for the manufacture of COVID-19 vaccines.

Article 31 of the TRIPS Agreement allows governments to issue a licence to authorise a third party to use and exploit a patented product/process without the consent of the patent holder. This important flexibility is often referred to as a non-voluntary licence or compulsory licence (CL); where a CL is issued for public non-commercial use, it is also commonly known as a 'government use' licence.

The use of a compulsory licence is subject to various conditions. Among these, Article 31(f) of the TRIPS Agreement states that CLs must be used predominantly for supplying the domestic market, thereby limiting the quantities of the licensed products that may be exported. Paragraph 3(b) of the TRIPS Ministerial Decision now waives this condition; with this waiver, most or all of the production may be exported. This is the only waiver contained in the TRIPS Decision.

Previously, a mechanism to waive the Article 31(f) condition was adopted on 30 August 2003, and in 2005 it was translated into a permanent amendment of the TRIPS Agreement as Article 31*bis*. But this mechanism has mostly proven to be ineffective and unworkable due to the numerous rigid procedures attached to its use. [4] The MC12 TRIPS Decision offers a mini-version of that mechanism.

Another interesting element in the TRIPS Decision is paragraph 4, which relates to Article 39.3 of the TRIPS Agreement concerning protection of test data. Historically, developed countries and developing countries have held different interpretations of Article 39.3. Developed countries have typically argued that Article 39.3 requires the granting of exclusive rights for a specified time-frame over test data submitted by the originator pharmaceutical companies to regulatory authorities for purposes of obtaining marketing approval, thereby delaying the entry of generic and other follow-on manufacturers.[5] Developing countries maintain that such an interpretation is not supported by Article 39.3 and most developing countries do not implement such a requirement at the national level. However, often due to pressure exerted especially through free trade agreements, some developing countries have implemented data exclusivity at the national level. Evidence suggests that implementation of data exclusivity delays generic competition, enabling the originator company to charge monopoly prices with significant implications for public sector budgets and access to affordable medicines.[6]

Against this background, paragraph 4 of the TRIPS Decision confirms developing countries' interpretation of Article 39.3 that undisclosed test data submitted by originator companies to regulatory authorities may be relied on and used for purposes of granting rapid regulatory approval. Article 39.3 also allows disclosure of data in certain circumstances. Paragraph 4 reinforces that flexibility in the context of 'timely availability of and access to COVID-19 vaccines'. Towards that end, paragraph 4 states that Article 39.3 does not prevent a Member from 'enabling the rapid approval for use of a COVID-19 vaccine', which also supports disclosure of undisclosed test data for the purpose of rapid approval for use of a COVID-19 vaccine produced under this Decision.

Paragraph 3(a) of the Decision reinforces the existing flexibility in Article 31(b) of the TRIPS Agreement that an eligible Member may grant a compulsory licence without first having to make attempts to get a voluntary licence from the patent holder.

Paragraph 3(d) of the Decision adds elements which may be considered when determining payment of adequate remuneration to the patent holder under Article 31(h) of the TRIPS Agreement. Payment of adequate remuneration is in any case subject to national discretion under the Agreement.

Use of the Decision is subject to several conditions that are not normally applicable when using the compulsory licensing flexibility under the TRIPS Agreement. Hence these can be said to be TRIPS-plus conditions:

- Paragraph 3(c) prevents re-exportation of products manufactured under the authorisation in accordance with the Decision that have been imported under the Decision, with exception made for situations of 'humanitarian and not-for-profit purposes' (footnote 3). In a public health emergency, there is no logic or basis for such a condition, and yet despite the opposition of most developing countries to the condition, the EU had insisted on maintaining this paragraph, only making leeway for the small exception in footnote 3. However, this condition is only applicable when both the manufacturing and importing countries are using the Decision.

- Paragraph 5 and footnote 5 of the Decision require notifications to the WTO's TRIPS Council. These notifications will be post facto, i.e., after adoption and implementation, as paragraph 5 refers to 'after the adoption of the measure' while footnote 5 refers to 'shall be notified as soon as possible after the information is available'. On several occasions during the negotiations, the UK had insisted on pre-shipment notification, which was in the end not agreed to by WTO Members.
- The eligibility criteria in footnote 1 of the Decision reflect the US' intent that China legally commit to opting out of using the Decision. The DG's text had reflected the US proposal that 'For the purpose of this Decision, developing country Members who exported more than 10 percent of world exports of COVID-19 vaccine doses in 2021 are not eligible Members'. China was not agreeable to this formulation, which was clearly targeted at singling it out. A counter-proposal was reflected in the DG's text: 'For the purpose of this Decision, all developing country Members are eligible Members. Developing country Members with capacity to export vaccines are encouraged to opt out from this Decision.'

On 10 May China formally announced to the WTO General Council that it was opting out of using the Decision. However, the statement was insufficient for the US. Due to domestic anti-China sentiment, the US sought a binding commitment that would exclude China, although China had significant production capacity that could have greatly supported access in developing countries.

The final text of footnote 1 in the TRIPS Decision states: 'For the purpose of this Decision, all developing country Members are eligible Members. Developing country Members with existing capacity to manufacture COVID-19 vaccines are encouraged to make a binding commitment not to avail themselves of this Decision. Such binding commitments include statements made by eligible Members to the General Council, such as those made at the General Council meeting on 10 May 2022, and will be recorded by the Council for TRIPS and will be compiled and published publicly on the WTO website.'

This final text was the outcome of a bilateral negotiation between the US and China; most WTO Members had not even seen the text of footnote 1 even as the TRIPS Decision was gavelled. While the stated objective of the Decision is 'production and supply of COVID-19 vaccines', footnote 1 discourages developing countries with manufacturing capacity from using the Decision, revealing the absurdity, irrational power politics and Big Pharma interests that influenced the textual negotiations.

In implementing the TRIPS Decision, paragraph 2 may be useful for it presents a simplified approach to implementation. It makes clear that the 'law of a Member' referred to in Article 31 of the TRIPS Agreement is not limited to legislative acts such as those laying down rules on compulsory licensing, but also includes other acts, such as executive orders, emergency decrees, and judicial or administrative orders.

Paragraph 6 of the TRIPS Decision provides that the duration of the Decision is for five years. The duration effectively applies to the waiver of Article 31(f) of the TRIPS Agreement contained in paragraph 3(b) of the Decision, as the other elements of the Decision are mere clarifications and reiterations of existing TRIPS Agreement flexibilities. Importantly, nothing in the Decision prevents any Member from issuing a compulsory licence for a period beyond five years.

Paragraph 7 safeguards against 'non-violation and situation' complaints for the duration of the TRIPS Decision. For the time being until MC13, there is a moratorium on non-violation complaints with respect to the TRIPS Agreement. The Decision does not however stop challenges under the usual WTO dispute settlement mechanism for failing to comply with the TRIPS Agreement pursuant to Article XXIII.1(a) of the General Agreement on Tariffs and Trade (GATT).

Paragraph 9 clarifies that except for the granted waiver lifting the restriction on export of vaccines, the Decision does not affect the rights and flexibilities of WTO Members provided by the TRIPS Agreement.

As noted above, the final outcome in the shape of the adopted TRIPS Decision is an improvement over the DG's text for several reasons, including:

- reference in the DG's text to 'patented subject matter' was changed to 'subject matter of a patent', ensuring consistency with Article 31 of the TRIPS Agreement and that the Decision is applicable not only in situations where the subject matter to be licensed is patented but also to subject matter at the application stage, i.e., pending patents;
- deletion of the requirement to list all patents to be covered by the CL, which if maintained would have been difficult to comply with, given the uncertainty over the patent landscape of a particular product and process;
- addition of an exception in footnote 3 to the re-export restriction in paragraph 3(c) of the Decision;
- amendment of paragraph 4 of the Decision;
- addition of a new paragraph 9.

What next for developing countries?

Footnote 1: Setting the record straight

On 22 June, the WTO Secretariat issued WTO document IP/C/W/690 titled 'Record in accordance with footnote 1 of the Ministerial Decision of 17 June 2022'. It states: 'This document provides a record of developing country Members that have made a binding commitment not to avail themselves of the Ministerial Decision on the TRIPS Agreement of 17 June 2022. This record will be updated as appropriate.' China's opt-out statement at the May General Council meeting is mentioned.

The Secretariat's approach of unilaterally creating such a record is inconsistent with the text in footnote 1, which lists a two-step process: 'will be recorded by the Council for TRIPS' 'and will be compiled and published publicly on the WTO website'. Footnote 1 requires that any intention to opt out of using the Decision should officially be communicated to the TRIPS Council by the Member concerned, for only then can it be recorded by the TRIPS Council. The Secretariat's role is to compile and publish it publicly once it has formally been recorded by the TRIPS Council.

WTO Members should set the record straight with the Secretariat.

Therapeutics and diagnostics

WHO has said that 'it is simply not acceptable that in the worst pandemic in a century, treatments that can save lives are not reaching those that need them', calling the inequitable access a 'moral failing' and adding that 'We're playing with a fire that continues to burn us.'[7]

On 29 June, WHO Director-General Tedros Adhanom Ghebreyesus noted: 'On COVID-19, driven by BA.4 and BA.5 in many places, cases are on the rise in 110 countries, causing overall global cases to increase by 20% and deaths have risen in three … WHO regions.' He stressed that 'Now is the time for Ministries of Health to integrate tests and anti-virals into clinical care so that people that are sick can be treated quickly.'[8]

The crucial role of therapeutics and diagnostics in controlling COVID-19 is undisputed. They are recommended by WHO as well as by national strategies, increasingly as part of test-and-treat strategies. Yet timely, affordable access remains a challenge in most developing countries. According to Airfinity data as at February 2022: 'Current global outpatient treatment production is less than what is needed if 10% of the high-risk population contracts SARS-CoV-2. Using estimates of the population with at least one co-morbidity for progression to severe COVID-19, a total of 1.7 billion people globally are at high-risk. If 50% of those at high-risk were infected, 872.8 million courses of outpatient treatment would be needed if there was equitable access to diagnostics and treatment. Current global production of outpatient treatment stands at 160 million courses which is currently less than the 174.6 million courses needed to treat 10% of the global high-risk population.'[9]

Most of the limited supply of COVID-19 therapeutics has been procured by wealthy countries that represent a mere 16% of the global population. Even when available, they are unaffordable to most developing countries. For some products, voluntary licences (VL) have been offered by originator companies to some developing-country manufacturers but these VLs are subject to various conditions that are often difficult for the developing-country manufacturers to comply with, such as that the latter have to be prequalified by WHO. The VLs also exclude supply to many developing countries. Supply constraints are thus expected to continue for most of 2022 even for products where VLs exist.[10]

Expanding supply options requires lifting the intellectual property barriers to the entry of generic manufacturers, especially as patent filings related to therapeutics considerably outnumber those on vaccines by some fourfold. Extending the scope of the TRIPS Decision beyond vaccines to cover therapeutics and diagnostics could secure the availability of compulsory licences to override the patent barrier to production and export. It is a no-brainer from a public health perspective and yet it was one of the most contentious aspects of the negotiations on the Decision.

Paragraph 8 of the Decision states: 'No later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics.' This two-track approach of 'vaccines first, therapeutics and diagnostics later' reflects the US' obstinate position during the negotiations. Even when the US concerns were addressed with the two-track approach, paragraph 8 was bitterly disputed till the end of the negotiations as the UK and Switzerland attempted (although unsuccessfully) to dilute the definitive commitment to address therapeutics and diagnostics, proposing 'whether to extend this decision' instead of 'on its extension'.

Clearly, the challenge for developing countries in the next six months will be to extend the Decision to therapeutics and diagnostics, without the addition of further conditions or narrowing of the Decision.

Implementing and using the Decision

Compulsory licensing is one of the most important tools that developing countries have to address patent barriers to production and access. The Decision motivates the use of compulsory licences for COVID-19 vaccines. The main beneficiaries of the Decision are developing countries manufacturing or planning to manufacture COVID-19 vaccines with the intent to export the majority or all of the vaccines and facing existing or potential patent barriers. Countries that are importing vaccines or exporting a non-predominant portion under a compulsory licence need not use the Decision. These countries may continue to import or export under Article 31 of the TRIPS Agreement.

Least developed countries (LDCs) enjoy full exemption from the TRIPS Agreement obligations at least until 1 July 2034 and should utilise this exemption to import, export or use any patented products.[11] They do not need to use compulsory licensing, including under the Decision, to address potential/existing patent or other IP barriers.

For other products (beyond COVID-19 vaccines), developing countries that wish to import and export may continue to use compulsory licences under Article 31 of the TRIPS Agreement to override any patent barriers. Article 31 limits neither the products that may be compulsory licensed nor the duration of the licence, which may be for the duration of the patent term. Apart from compulsory licensing under Article 31, developing countries may also use other TRIPS Agreement flexibilities to address patent or other IP barriers to access.

At the global level, the process that began in October 2020 has provided a platform for developing countries and the international community to highlight the challenge of timely and affordable access, exposing the hypocrisy of developed countries and their failure to deliver on promises of global solidarity and equitable access. Most notably, it has brought immense global visibility and awareness to the IP monopolies that underpin and enable highly concentrated supply chains that are unsuitable for addressing public health needs in developing countries especially during a public health emergency, and consequently the need for greater freedom to operate for local manufacturers to diversify production and expand supply options. ◆

Sangeeta Shashikant is a legal advisor to the Third World Network and Coordinator of its Development and Intellectual Property Programme.

Endnotes

1. https://www.twn.my/title2/intellectual_property/trips_waiver_proposal.htm
2. See 'Proposed TRIPS waiver outcome not yet agreed among the Quad' at https://www.twn.my/title2/intellectual_property/info.service/2022/ip220305.htm; and 'WTO DG's proposed solution unsuitable for global public health crisis' at https://www.twn.my/title2/intellectual_property/info.service/2022/ip220501.htm
3. 'UK & Switzerland attempt to limit scope of COVID-19 TRIPS Decision', available at https://www.twn.my/title2/intellectual_property/info.service/2022/ip220601.htm; 'Intense IP negotiations are underway, resolution on eligibility criteria outstanding', available at https://www.twn.my/title2/intellectual_property/info.service/2022/ip220608.htm
4. 'Neither Expeditious nor a Solution: The WTO August 30th Decision Is Unworkable', https://msfaccess.org/neither-expeditious-nor-solution-wto-august-30th-decision-unworkable. Also see paragraph 28-53 of WTO document IP/C/W/673 at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W673.pdf&Open=True
5. For example, see https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157937.pdf, in which it is reported that the 'EC [European Commission] reminded Turkey, as a member of the WTO, that Article 39 of the TRIPs Agreement provides data exclusivity for medicines.'
6. Malpani R (2009), 'All costs, no benefits: how the US-Jordan free trade agreement affects access to medicines', *Journal of Generic Medicines*, 6(3): 206-217, http://jgm.sagepub.com/content/6/3/206.short; Cortés Gamba M, Rossi Buenaventura F, Vásquez Serrano M (2012), 'Impacto de 10 Años de Proteccion de Datos en Medicamentos en Colombia', IFARMA and Fundación Misión Salud, Bogota, http://www.mision-salud.org/wp-content/
7. htts://www.who.int/multi-media/details/who-press-conference-on-covid-19--ukraine-and-other-global-health-issues---4-may-2022
8. https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing---29-june-2022
9. https://mcusercontent.com/2fe57162f164ecead64629b83/files/470fc4ab-ab44-5d47-4aff-7d9257ded369/Final_V1_Treatments_Report_20220225_Airfinity_WB_1_.pdf?utm_source=Airfinity&utm_campaign=f524e37c7a-EMAIL_CAMPAIGN_2022_01_28_09_46_COPY_01&utm_medium=email&utm_term=0_41a531e556-f524e37c7a-513654961
10. https://launchandscalefaster.org/covid-19/therapeutics
11. See 'Lessons from the pandemic for LDCs: Implementing intellectual property flexibilities' at https://twn.my/title2/briefing_papers/twn/LDC%20IP%20flexibilities%20TWNBP%20Mar%202022%20Shashikant.pdf

MC12 and the WTO's pandemic response

Along with the TRIPS Decision, MC12 also adopted a declaration on the WTO's pandemic response. This declaration, notes *Kinda Mohamadieh*, often accords less emphasis to developing countries' interests in favour of elements that could potentially impede their very capacity to deal with pandemic situations.

Testing for COVID-19. While many developing countries have needed to impose export restrictions on COVID-19 medical products such as test kits in order to meet domestic needs, the Ministerial Declaration on the WTO's pandemic response could make it politically more difficult for them to do so.

ONE main element of the declared 'success' at MC12 pertains to the WTO response to the COVID-19 pandemic. MC12 resulted in the Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics,[1] as well as the Ministerial Decision on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).[2] This article focuses on the former. (For more on the latter, see the article 'TRIPS Decision comes up short' in this issue.)

The Ministerial Declaration is a soft-law instrument that tackles a multitude of issues including the role of the multilateral trading system in times of pandemics, stability and predictability of the trading environment, transparency and notification of 'trade-related measures with respect to COVID-19 and future pandemics', disciplines on 'any emergency trade measures designed to tackle COVID-19', the application of export restrictions on vaccines, therapeutics, diagnostics and other essential medical goods and their inputs, the importance of trade facilitation measures, regulatory cooperation and sharing of regulatory information on a voluntary basis, the role of services trade in regard to resilience during pandemics, along with issues pertaining to intellectual property and food security.

Background to the negotiations on the Declaration

In June 2021, the WTO General Council Chair unilaterally selected Ambassador David Walker of New Zealand to facilitate a series of negotiations supposedly focused on ensuring a WTO response to the COVID-19 pandemic. Consequently, this process came to be known as the 'Walker process'. Ambassador Walker's work, reflected in his reports to the WTO General Council, revolved around a premise that what is needed is more liberalisation, interventions that will further constrain regulatory space and policy tools available to WTO Members, and more reliance on the private sector.

From among the voices and proposals that Ambassador Walker had heard in his consultations, he chose to focus on pushing trade facilitation and regulatory coherence in a way that undermines developing countries' flexibilities under the existing rules, promoting services liberalisation as one of the answers to the pandemic, limiting the ability to use export restrictions, pushing an expansive notification and monitoring regime that will further put pressure on developing countries in implementing their trade policies, and opening the door wider for the private sector's influence on WTO processes. Many of these propositions were rooted in submissions by the Ottawa Group[3] on trade and health issues. Issues raised by developing countries such as food security, economic resilience and intellectual property barriers were sidelined by Ambassador Walker, who also repeatedly refused to cover the issues pertaining to the TRIPS waiver.

The process at that point was clearly leaving most WTO Members in the dark and did not involve proper consultations or proper opportunities for Members to meaningfully engage in the negotiations. Ambassador Walker conducted discussions with a small group of WTO Members and produced multiple draft texts with almost no brackets (in WTO negotiations, brackets around text are meant to indicate there is still no agreement on that text) and proposed them as the basis for deliberations among a very small group of selected countries.

In October 2021, a group of developing countries including Pakistan, Egypt, Tunisia, South Africa, Sri Lanka, and Uganda came together and presented a submission (WTO document JOB/GC/278/Rev.1) that sought to capture a lot of the concerns of developing countries. The submission noted that developed countries can and have employed exceptional fiscal and monetary policies to manage the shock from the COVID-19 crisis and to cushion the economic and social impact in ways that developing countries and least developed countries (LDCs) could not. Developing countries and LDCs do not possess the tools that would allow them to respond and recover and maintain resilience to withstand a global crisis of such scale.

The submission also emphasised that the focus of the work under the 'WTO response to the pandemic' ought to shift from liberalisation and regulatory constraints to policy space and enablers of structural transformation and resilience building, including economic resilience and food security. It also stressed that any proposals considered under the WTO pandemic response should in no way constrain the policy tools and space that developing countries and LDCs need in order to respond to pandemics and similar crises, nor restrict tools and flexibilities available to them under the WTO agreements. The submission also emphasised that a waiver from certain provisions of the TRIPS Agreement is central to the WTO's response to the COVID-19 pandemic. It also added that Members shall not directly or indirectly prevent or discourage another Member(s) from fully utilising the flexibilities of the TRIPS Agreement or in any way limit such flexibilities.

The Declaration does not accord sufficient priority to developing-country concerns such as the need to improve food security.

This collective submission of a number of developing countries, along with cooperation among this group and other developing countries actively participating in the process, such as India, was crucial to ensuring that the voices of developing countries and LDCs would be better heard in these negotiations.

The content of the Declaration on the WTO response to the pandemic

The way the adopted Declaration is worded often gives more emphasis to elements of interest to developed countries (such as 'committing to' transparency and notifications in paragraph 5), while lighter language is used in regard to issues of interest to developing countries and LDCs (such as simply 'recognising' food security challenges of developing countries and LDCs in paragraph 21).

Over the course of negotiating this Declaration in the run-up towards MC12 and during the preceding year of 2021, negotiators of developing countries and LDCs had succeeded in removing from the draft text several problematic elements that developed countries were asking for, such as language that could be restrictive of policy space or specifically burdensome on developing countries and LDCs in terms of implementation. Yet, the final Declaration does not offer much new of major value for developing countries and LDCs (such as in relation to addressing food security or intellectual-property-related barriers).

Developing countries had called for a recognition in the Declaration that trade rules should accommodate the policy space that is particularly important for developing countries and LDCs.[4] This is because the COVID-induced crisis shed new light on the special needs of developing countries and LDCs, and the special considerations that developing countries and LDCs require under trade rules to allow for a multilateral trading regime that enables rather than hinders economic resilience and developmental progress in these countries.

Most elements that developing countries had sought to include in this Declaration in order to recognise the specific needs of developing countries and LDCs have either not been included or were covered in a very diluted manner. These include their request to address barriers emanating from the intellectual property regime and to address the difficulties faced by developing countries and LDCs in using flexibilities of the TRIPS Agreement to protect public health. Developing countries had also asked for addressing existing gaps in rules and flexibilities pertaining to the needs of developing countries in promoting structural transformation, industrialisation and resilient economies. They also sought recognition of solutions to tackle food security as particularly linked to strengthening local agricultural productivity and production, supporting efficient public stockholding for food security purposes, enhancing the livelihoods of farmers, and extending the needed specific consideration to net food-importing developing country (NFIDC) Members.

In the final Declaration, the paragraphs addressing food security (paragraphs 21 and 22) are a mere statement about the global food security crisis rather than a commitment to address issues of concern to developing countries, NFIDCs and LDCs. The paragraphs on intellectual property issues (paragraphs 12 and 13) recall existing agreements and instruments such as the 2001 Doha Declaration on the TRIPS Agreement and Public Health rather than committing to address intellectual-property-related barriers and acknowledging the difficulties faced by many WTO Members in making use of the TRIPS Agreement flexibilities.

At the same time, the adopted Declaration still includes certain elements that could potentially impact the policy space of developing countries and LDCs and the discretion and flexibilities they have under existing WTO rules. For example, the Declaration includes language reflecting a political commitment 'to exercise due restraint in the imposition of export restrictions on [COVID-19 vaccines, therapeutics, diagnostics and other essential medical goods], including their inputs' (paragraph 8). This paragraph refers to all WTO Members without any special and differential treatment, which could be taken to mean that LDCs and developing countries which have any supply of masks or COVID-19 vaccines or other products relevant to addressing the pandemic also intend to exercise due restraint in imposing export restrictions. This could make it politically more difficult for developing countries and LDCs to impose export restrictions on these products. It is well documented that many developing countries and LDCs needed to use export restrictions on COVID-19 medical products including masks and test kits in order to meet domestic needs.[5] Without export restrictions, those developing countries and LDCs would be required to sell them on the international market where developed countries can pay the highest price for such products.

The Declaration includes a recognition of 'the importance of ensuring that any emergency trade measures designed to tackle COVID-19, if deemed necessary, are targeted, proportionate, transparent, temporary, and do not create unnecessary barriers to trade or unnecessary disruptions in supply chains…' (paragraph 7). This commitment could expose the emergency COVID-19 trade response measures undertaken by Members (including, potentially, measures taken under TRIPS exceptions and flexibilities) to scrutiny based on the complex standards set here. This would in effect be in tension with the assumption that the Declaration is supposed to make it easier to respond to COVID-19 and future pandemics.

The Declaration also includes a commitment that 'notifications of trade-related measures with respect to COVID-19 and future pandemics are submitted in a timely and comprehensive manner in accordance with the WTO rules' (paragraph 5). This commitment does not provide for special and differential treatment (S&DT) to developing countries and LDCs. Although the wording recognises the constraints facing these countries and the importance of technical assistance and capacity building, it does not imply any intention or commitment to address these constraints, or express any willingness by developed countries to contribute in this regard, nor does it link the requirement for developing countries and LDCs to implement additional notifications to their capacity to do so.

The above are a few examples of how the Declaration's impact on policy and regulatory space could manifest. Furthermore, the Declaration includes statements that give a false narrative about how trade rules operated during the pandemic, by referring for example to 'the importance of understanding how the WTO rules have supported Members during the COVID-19 pandemic' (paragraph 23). In fact, WTO rules, including those on intellectual property, clearly present challenges to Members and not only support. If WTO rules already supported Members in the pandemic, then a solution pertaining to the application of the TRIPS Agreement in relation to production of COVID-19 vaccines, therapeutics and diagnostics would not be needed.

The Declaration also includes terminology that tends to differentiate between developing countries, by using the qualifying term 'some' before 'developing countries' in multiple paragraphs. This could potentially feed into the attempts to normalise differentiation among developing countries and their access to special and differential treatment. This is also a step backwards from existing WTO rules that do not include such differentiations. The Declaration includes a paragraph providing that the 'declaration does not create sub-categories of developing country Members' (paragraph 29). This language, while being a useful clarification, does not eliminate the potential implications resulting from setting a political precedent that is likely to make it more difficult to resist ongoing attempts to differentiate amongst developing countries.

The Declaration can have an effect on existing rights, obligations and flexibilities, particularly when applied as a subsequent agreement or subsequent practice. WTO ministerial declarations could operate as subsequent agreements as opined by the WTO Appellate Body.[6] Subsequent agreements contribute, in their interaction with other means of interpretation, to the clarification of the meaning of a treaty (i.e., existing rights and obligations). This may result in narrowing, widening, or otherwise determining the range of possible interpretations, including any scope for the exercise of discretion which the treaty/existing rights and obligations accord to WTO Members.[7] The Declaration includes a paragraph providing that 'this declaration does not alter the rights and obligations of WTO Members' (paragraph 29). Yet, this language does not necessarily restrict the influence of this Declaration on the interpretation and application of existing rights and obligations.

The way forward

The Declaration integrates a mandate towards work to be undertaken post MC12 to 'analyse lessons that have been learned and challenges experienced during the COVID-19 pandemic', including in areas of 'balance of payments, development, export restrictions, food security, intellectual property, regulatory cooperation, services, tariff classification, technology transfer, trade facilitation, and transparency' (paragraphs 23 and 24).[8] This work is to be undertaken in the 'relevant WTO bodies', including the Council for Trade in Goods or its subsidiary bodies (such as the committees on trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, market access, and agriculture), along with the Council for Trade in Services, Council for Trade-Related Aspects of Intellectual Property Rights, Committee on Trade and Development, Working Group on Trade and Technology Transfer, and Working Group on Trade, Debt and Finance.

This work might come to define the focus of attention in the work of multiple WTO bodies and committees. In the way forward, it is important to ensure that the issues of concern to developing countries and LDCs, which were not effectively addressed in the Declaration, be given priority attention. These include food security, protection of public health and the need for flexibilities in regard to intellectual property, and the need for policy space and tools to bolster economic resilience. These processes should be accompanied by proper safeguards to ensure meaningful and effective participation of developing countries and LDCs, taking into account the limited resources and institutional capacities available to them. Towards this end, the work ought to be organised in a way that allows Member state missions with limited resources to adequately participate and affords them enough time to consult their capitals. Furthermore, this work ought to remain Member-driven. ◆

Kinda Mohamadieh is a legal advisor and senior researcher with the Third World Network.

Endnotes

1 WTO document WT/MIN(22)/31
2 WT/MIN(22)/30
3 The Ottawa Group consists of 14 WTO Members: Australia, Brazil, Canada, Chile, the European Union, Japan, Kenya, South Korea, Mexico, New Zealand, Norway, Singapore, Switzerland and the United Kingdom. See, for example, the submission by the Ottawa Group and other WTO Members entitled 'COVID-19 and Beyond: Trade and Health' (JOB/GC/251/Rev.3).
4 See for example: submission JOB/GC/304 by the ACP Group and 278 co-sponsors; and submission JOB/GC/278/Rev.4, 'Trade rules that support resilience building, response and recovery to face domestic and global crises', communication from the Plurinational State of Bolivia, Egypt, Indonesia, Pakistan, South Africa, Sri Lanka, Tunisia, Uganda, Republic of Venezuela
5 These include LDCs such as Bangladesh and Cambodia as well as many developing countries including Brazil, Colombia, Cote d'Ivoire, Ecuador, Egypt, India, Indonesia, Kazakhstan, Malaysia, Morocco, Oman, Pakistan, Sri Lanka, Thailand, Vietnam and Zimbabwe. See https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm
6 The WTO Appellate Body (AB) (in the US – Clove Cigarettes case) has noted that a decision adopted by Members, other than a decision adopted pursuant to Article IX.2 of the WTO Agreement (i.e., authoritative interpretation), may constitute a 'subsequent agreement' on the interpretation of a provision of a covered agreement. Source: AB report US – Clove Cigarettes, paragraphs 256-260. See: https://www.wto.org/english/tratop_e/
7 In 2018, the International Law Commission (ILC) released the draft conclusions on 'subsequent agreements' and 'subsequent practice' (https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_11_2018.pdf). In this report, the ILC noted that: 'Subsequent agreements and subsequent practice under article 31, paragraph 3 (a) and (b), … are authentic means of interpretation, in the application of the general rule of treaty interpretation reflected in article 31', 'may take a variety of forms', and 'contribute, in their interaction with other means of interpretation, to the clarification of the meaning of a treaty. This may result in narrowing, widening, or otherwise determining the range of possible interpretations, including any scope for the exercise of discretion which the treaty accords to the parties…'.
8 See paragraphs 23 and 24 of WT/MIN(22)/31.

Meagre harvest on agriculture and food security issues

The Ministerial Conference yielded little in the way of concrete farm trade reform outcomes, with longstanding concerns of developing countries still awaiting resolution.

Ranja Sengupta

AGRICULTURE has always been a critical component of any WTO Ministerial and MC12 was no exception. Critical issues such as the permanent solution on public stockholding (PSH), the special safeguard mechanism (SSM), and issues related to ensuring fair markets for cotton have been long pending. The importance of addressing agriculture-related issues was compounded by the cumulative food crisis triggered by the pandemic and followed by the Russia-Ukraine war in the Black Sea region. The explosive inflation in food prices, further reinforced by the price hikes in fuel and fertilisers, has created massive challenges for meeting food security, ensuring nutrition and eradicating hunger worldwide. For developing countries, in particular net food-importing developing countries (NFIDCs) and least developed countries (LDCs), this problem is particularly acute as many of them are net importers without adequate capacity to produce enough to meet domestic demand, and a volatile and explosive global market has also eroded their already fragile financial capacity to fund such imports.

The proposed Decision on Agriculture

MC12 saw three major initiatives gain traction in the area of agriculture and food security. The first was a Decision on Agriculture (tabled as WTO document JOB/AG/232) comprising a work programme covering a number of issues that have been discussed or raised in the WTO Committee on Agriculture.

Of these, the PSH issue has a clear mandate and a strong deadline of 2017 that was already unmet. The SSM and cotton issues also have strong mandates. In addition, the Cairns Group of agriculture exporter countries had tabled a proposal for disciplining domestic agricultural support, a longtime demand of developing countries, but without recognising special and differential treatment (S&DT) for developing countries in their use of the Development Box (Article 6.2 of the WTO Agreement on Agriculture (AoA)) or the *de minimis* provisions (Article 6.4 of the AoA). Issues of newer origin such as disciplines on export restrictions and transparency, along with that of market access, were also included.

Interestingly, in spite of several constructive proposals submitted on the permanent solution on PSH in 2021 by the African Group (JOB/AG/204) and the G33 (JOB/AG/214), and then a combined proposal submitted on 31 May 2022 by the African, Caribbean and Pacific (ACP) Group, the African Group and the G33 (JOB/AG/229), the much-delayed outcome was outright refused even in MC12. In addition, there were attempts to bring in similar deadlines and mandates to 'agree and adopt by MC13' outcomes across all the issues being negotiated. This would have meant developing countries would have had to make commitments to agree and adopt expected adverse outcomes on issues such as market access, export restrictions and transparency if they wanted to secure outcomes for PSH, SSM and cotton.

Due to disagreements among Member States, this Decision on Agriculture was finally not adopted. While for PSH, SSM and cotton, it would have been useful to get strong timelines for outcomes, the mandates to negotiate and reach outcomes still hold.

For PSH, even in the absence of new clear modalities, the earlier mandate given by the Bali Decision of 2013 and the modalities of the Nairobi Decision of 2015 will continue to hold and the mandate of negotiating a permanent solution continues to exist until the permanent solution is found, irrespective of the MC11 deadline. Paragraph 1 of the Bali Decision (WT/MIN(13)/38 – WT/L/913) of 2013 says: 'Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.' The Nairobi Ministerial Decision (WT/MIN(15)/44 – WT/L/979) of 2015 says that Members 'shall engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes. In order to achieve such permanent solution, the negotiations on this subject shall be held in the Committee on Agriculture in Special Session

("CoA SS"), in dedicated sessions and in an accelerated time-frame, distinct from the agriculture negotiations under the Doha Development Agenda ("DDA")'. Therefore, an outcome must be reached at the earliest. The outcomes on SSM and cotton must also be pursued to be delivered by MC13, and domestic support discussions must integrate effective and appropriate S&DT. Further, these outcomes must be delivered without being linked to other issues.

The Food Insecurity Declaration

The second agriculture-related initiative at MC12 resulted in the adoption of a 'Ministerial Declaration on the Emergency Response to Food Insecurity' (WT/MIN(22)/28 – WT/L/1139). The Declaration comprises soft law and directives on issues that aim to enable Member States to deal with critical food crisis situations. It however fails to provide any immediate new tools to developing countries, NFIDCs and LDCs to deal with issues related to food crises, more of which are expected to emerge in the future. The language consists largely of reaffirmations of existing commitments, such as those already agreed in the AoA, the Marrakesh Decision of 1994 on NFIDCs (paragraph 8) or the Nairobi Decision on Export Competition (paragraph 7) with special reference to international food aid.

Language on increasing production and productivity, much needed for developing countries, NFIDCs and LDCs, faced strong resistance and found some mention only after persistent demands by the latter. This is notwithstanding the fact that increasing production would immensely boost efforts to stabilise a highly volatile and concentrated global market by diversifying and supplementing food supplies, and can strengthen the fight against food crises in the future. Boosting production and productivity is not inimical to the interests of a strong global trade regime but is so to the interests of global trade monopolies.

In contrast, paragraph 4 on export restrictions and paragraph 5 on emergency trade have been the key targets of developed countries and represent their major area of commercial interest in this Declaration. It is clear that one of the key reasons behind developed countries' push for the removal of export restrictions in developing countries is to access their raw materials, as also evident in the push to remove export taxes under bilateral free trade agreements.

The Food Insecurity Declaration fails to provide any immediate new tools to developing countries to deal with issues related to food crises, more of which are expected to emerge in the future.

While paragraph 4 purports to be a reaffirmation of existing commitments, along with the flexibilities, to use export restrictions according to relevant WTO provisions, this paragraph in fact urges Members not to use export restrictions. This is also an attempt to accelerate the currently ongoing push for negotiations on this issue under the Committee on Agriculture and to reach an outcome at the earliest.

The use of export restrictions is a complex issue. While there are adverse impacts on importing countries especially NFIDCs and LDCs if export restrictions are imposed, the domestic food security needs of the exporting country also have to be recognised, especially if it is a developing country, NFIDC or LDC. This is recognised by Article XI.2(a) of the General Agreement on Tariffs and Trade (GATT) and Article 12 (in particular 12.2) of the AoA.

Paragraph 5 of the Declaration is also problematic as it advances language earlier adopted by the G7 major developed countries to 'ensure that any emergency measures introduced to address food security concerns shall minimise trade distortions as far as possible; be temporary, targeted, transparent, and proportionate'.

Together, paragraphs 4 and 5 attempt to limit export restrictions and other emergency measures, without any S&DT including for NFIDCs and LDCs, which are then in principle required to restrict their existing flexibilities. It is important to note that Article XI.2(a) of GATT provides exemption for 'export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party'. Therefore countries already need to pass tests related to length of the period of application, as well as shortage and essential nature of the product. Paragraph 5 provides additional tests currently not required by WTO rules for all Members including NFIDCs and LDCs. At a minimum, Paragraph 5 is a commitment that will make it politically more difficult for LDCs and developing countries to impose emergency measures to address food security.

These restrictions in paragraph 5 may lead to a subsequent agreement that affects the interpretation of and thus restrict existing flexibilities such as GATT Article XI.2(a). Even 'soft rules' related to export restrictions or emergency trade measures under paragraphs 4 and 5 should not prejudice future negotiations in the Committee on Agriculture and erode policy space provided by the current WTO agreements.

Another issue to watch out for is the push for language related to 'sustainability' of agriculture and food systems. While such language comes from Sustainable Development Goal (SDG) 2, it can be used to push specific interpretations of such systems that are then used to bring in disciplines on environmental issues without there being a specific mandate to do so. It is to be noted that there is no internationally agreed definition, including at the UN Food and Agriculture Organization (FAO), of a sustainable food system. But there have been attempts by some developed countries to manipulate such definitions and use these in trade agreements to push certain disciplines related to environment and trade as well as set standards that would help their commercial interests. However, a sustainable agriculture and food system must be a system that balances the three pillars (i.e., economic, environmental and social) of sustainable development, works for developing countries and LDCs, and gives them the necessary policy tools to support smallholder agriculture, enhance productivity and production and meet the targets of SDG 2.

The only substantial and positive contribution that this Declaration makes is to set up a 'dedicated work programme in the Committee on Agriculture to examine how this Decision [i.e., the 1994 Marrakesh Decision on NFIDCs] could be made more effective and operational pursuant to Article 16 of the Agreement on Agriculture and to consider concerns raised by Members in their current and future submissions. The work programme shall consider the needs of LDCs and NFIDCs to increase their resilience in responding to acute food instability including by considering the best possible use of flexibilities to bolster their agricultural production and enhance their domestic food security as needed in an emergency'. The 1994 NFIDC Decision places the onus on donor countries and international financial institutions (IFIs) to provide food aid and technical and financial support to NFIDCs and LDCs to help them cope with the adverse impacts of the reform programme under the AoA. However, this Decision has never been very well implemented. In the dedicated work programme, apart from exploring the implementation gaps, several tools could be suggested to ensure the implementation of the NFIDC Decision meets current challenges as a significant part of the special vulnerability of NFIDCs and LDCs arises from the impacts of AoA reform which has brought in unfair rules on subsidies and constrained the policy space of NFIDCs and LDCs to increase production and productivity.

Such tools can include:

- Setting up of a fund with contributions from donor countries and IFIs but to be managed and disbursed by NFIDCs and LDCs themselves.
- Support for building stocks under PSH programmes of key food products of which the country is a net importer. This may include price support to farmers and to consumers which may exceed currently prescribed WTO limits. In the case of price support subsidies, the principle of Article 18.4 of the AoA may be applied.
- Allowing long-term policy flexibility by adjusting WTO rules to give subsidies and grants to farmers to augment productivity and production in NFIDCs and LDCs, especially to small-scale farmers for food products of which the country is a net importer.
- The Nairobi Decision on Export Competition already gives a good framework and safeguards for aid. But aid itself has to be increased under a crisis situation, and certain safeguard conditions may be waived if requested specifically by the recipient NFIDC/LDC.
- The option of keeping supply and financial payment channels open for food exports to NFIDCs and LDCs during a period of food crisis, can be included as a short-term measure.

The Decision on the World Food Programme (WFP)

A key outcome much touted as another of the great successes of the Ministerial was the 'Ministerial Decision on World Food Programme Food Purchases Exemptions from Export Prohibitions or Restrictions' (WT/MIN(22)/29 – WT/L/1140). This Decision includes a legal commitment that 'Members shall not impose export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by the World Food Programme' (paragraph 1). However, the right of Members to ensure their domestic food security in accordance with the relevant provisions of the WTO agreements is recognised in paragraph 2.

This Decision, though a positive initiative in principle, cannot be seen as a solution to the gigantic problem of assuring long-term food security to all, especially in developing countries, NFIDCs and LDCs. The WTO needs to provide more constructive solutions that address the structural causes of an inequitable global trading system. But in addition, there are some key issues that need to be kept in mind.

Since this Decision imposes a permanent commitment, a pertinent linkage arises with the permanent solution on PSH which was not delivered in MC12. PSH programmes remain an important policy instrument across developing countries and LDCs for ensuring domestic food security and dealing with situations of crises including but not limited to food crises as witnessed during the COVID-19 pandemic. Since the WFP Decision is now agreed, the permanent solution is even more justified and must be agreed at the earliest.

There are also questions related to the obligations that are imposed on NFIDCs and LDCs, the possible impact on global markets, and whether this would lead to and also prejudge future obligations related to export restriction disciplines on agricultural or even non-agricultural products.[1]

Some strategy-related concerns in relation to agriculture and food security

Prior to MC12, a few strategies or approaches seemed to have been deployed by the developed countries as well as leading agricultural exporters of the Cairns Group, supported by the WTO Director-General (DG) and WTO Secretariat, to use both the pandemic and the food crisis to their advantage.

First, right from 2020 until MC12, the developed countries consistently recommended further trade liberalisation and keeping 'trade open' at all costs, primarily through the removal of or constraints on export restrictions and the removal of import tariffs in order to address the adverse impacts of the pandemic and the food crisis. At the same time, there was an active discouragement of efforts to augment domestic productivity and production across developing countries and LDCs. There was a complete hijacking of the narrative and advancement of false solutions.

Second, the developed countries effectively used a dual strategy, though not unseen before, regarding proposals put forward in the WTO. On the one hand, they were the first to table proposals, and on the other hand, they persistently blocked any discussion or negotiations on developing-country proposals, even when the issue was of key interest to developing countries. The perfect example of this was the initiative by the DG and the G7 to table the proposal on food security while refusing to even consider proposals from NFIDCs and LDCs. This forced other developing countries, NFIDCs and LDCs to be in response mode and work on a base text which was already biased in favour of the commercial interests of the developed countries. On the issue of PSH, this combination of options was turned around by first blocking proposals submitted by the African Group (JOB/AG/204), the G33 (JOB/AG/214) and then a combined proposal submitted by the ACP Group, the African Group and the G33 (JOB/AG/229), and following it up with some counterproposals such as by Brazil.

The third strategy is the extensive use of exclusive 'Green Room' negotiations in the lead-up to and during MC12, justified this time in the name of the Russia-Ukraine conflict. The agriculture texts were negotiated completely in Green Rooms with very few Members present, and were not presented to the entire Membership until the beginning of June. This kept most developing countries and LDCs from participating effectively and promoting proposals of interest to them, and from resisting proposals and language inimical to their interests.

Another strategy is the use of issues that have a strong moral overtone across the WTO negotiations in general and in the context of MC12 in particular. These include issues such as gender, environment, human rights and sustainability, WFP and so on. It is difficult to resist discussion of these issues or question their framing as they are pitched on moral high ground. However, most often these issues are framed in such a manner as to set the stage for incrementally securing commercial advantage and market access for the proponents, rather than actually taking a comprehensive and balanced look at the issue. For example, 'environment and trade' discussions are pitched to set standards for developing countries, thereby constraining their export and domestic markets, undermining their productive capacity and production of certain goods and services. But there will never be any provision to assess, for example, the impact of foreign direct investment from developed countries on resource grabs and environmental conservation efforts in the Global South. Developing countries need to be able to resist such imbalanced discussions without feeling defensive about it. These are areas where the developed countries already enjoy some advantages. If developed countries are truly committed to these causes, they should provide developing countries with the finance, technology and capacity-building tools to address these issues and must also uphold the principle of 'common but differentiated responsibilities' (CBDR) among developed and developing countries. However, there is always major resistance towards advancing such tools and towards operationalising CBDR.

Overall, the key mandates on agriculture and food security important for developing countries and LDCs still remain undelivered. It will require significant engagement and commitment from the Membership to meet these mandates and deliver critical policy tools. A lot of work remains ahead for developing countries and LDCs including ensuring outcomes on the permanent solution on PSH, SSM, cotton, as well as disciplines on domestic support that integrate effective S&DT. In addition, they need to ensure that the dedicated work programme on NFIDCs and LDCs promised under paragraph 8 of the Food Insecurity Declaration to further expand and revitalise the implementation of the NFIDC Decision of 1994 actually delivers useful and additional policy tools for them. ◆

Ranja Sengupta is a senior researcher with the Third World Network.

Endnotes

1. For a more detailed analysis, see Sengupta, Ranja (2022): 'Agriculture and Food Security Negotiations Text at WTO MC12: Implications for Developing Countries', TWN Briefing Paper, June, https://twn.my/title2/briefing_papers/MC12/briefings/Agriculture%20food%20security%20TWNBP%20MC12%20Sengupta.pdf

No final fix (yet) on fisheries subsidies

WTO negotiations on regulating fisheries subsidies in order to curb overfishing delivered an incomplete and inequitable deal at MC12.

Ranja Sengupta

THE WTO has been negotiating an agreement on fisheries subsidies from 2016 based on a mandate from Sustainable Development Goal (SDG) 14.6. The negotiations have been complex and difficult, with major conflicts over securing special and differential treatment (S&DT) for developing countries and least developed countries (LDCs) on the one hand and over developed countries with industrial fishing activities getting exemptions on the other.[1]

After significant last-minute negotiations, MC12 secured a partial, interim agreement with the objective to reach a comprehensive agreement in the near future. This partial agreement is to be ratified by Members based on Article X.3 of the WTO's foundational Marrakesh Agreement.

It is to be noted that paragraph 4 of the Ministerial Decision (WTO document WT/MIN(22)/33 – WT/L/1144) gives the mandate to negotiate the comprehensive agreement 'with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions'. The MC13 deadline is not very stringent and negotiations may continue beyond that deadline. However, according to Article 12 of the current agreement, the agreement will terminate by four years after its entry into force (unless otherwise decided by the WTO General Council) if the comprehensive agreement is not reached by then. Therefore, it seems there is an apparent deadline of four years after entry into force of the current agreement to reach the comprehensive agreement. However, based on the mandate given by paragraph 4 of the Decision, there is nothing in principle to stop negotiations even if this four-year period is breached. But it may then have to deliver an entirely new agreement rather than simply the additional provisions that are mandated to be negotiated.

Below, some key features of the current agreement are summarised and some implications for further negotiations are explored.

- While developing countries and LDCs managed to extend S&DT (under Articles 3.8 and 4.4) to the Exclusive Economic Zone (EEZ) from the previous 12 nautical miles (NTM) under the provisions on illegal, unreported and unregulated (IUU) fishing (Article 3) and on overfished stocks (Article 4) in the current agreement, the entire S&DT ceases to be applicable after two years, after which even LDCs have to cut subsidies under these pillars.
- Under Article 4.3, the sustainability exemption which amounts to reverse S&DT for developed countries remains. In spite of counter-proposals by several developing countries and LDCs, this exemption to historically large subsidisers and industrial fishing nations has not been conditioned, qualified or narrowed in any manner over the last two years of the negotiations. There is still no recognition of the concept of common but differentiated responsibilities (CBDR) which would place higher responsibility on those historically responsible for overfishing and subsidising.
- The disciplines under Article 5 (on overcapacity and overfishing or OCOF) have been largely postponed and are to be agreed under the comprehensive agreement. But in the meantime, there is no S&DT in Article 5. LDCs, developing and developed countries all enjoy the same exemption up to the EEZ.

There is still no recognition of the concept of common but differentiated responsibilities (CBDR) which would place higher responsibility on those historically responsible for overfishing and subsidising.

- Under Article 5.1, disciplines on distant water fishing will apply but government-to-government payments under access agreements are not covered under the scope of this agreement (footnote 2), thereby largely exempting the EU's distant water fishing activities.
- Under a due restraint clause (Article 5.2), the issue of subsidies for flying under a different Member's flag has been settled by placing the onus on the Member who gives the subsidies.
- Another due restraint clause (Article 5.3) says: 'A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities

regarding stocks the status of which is unknown' (emphasis added). This is likely to affect developing countries and LDCs more as they do not always have the mechanisms to monitor the status of stocks. Due restraint clauses in other WTO agreements, such as in Article 13 of the Agreement on Agriculture, have been quite seriously adhered to. It is not clear how binding this due restraint clause is likely to be.

- The provision on non-specific fuel subsidies, which was earlier square-bracketed (indicating lack of agreement) under Article 1.2, is now completely deleted. It had been a persistent demand of India and many other developing countries to discipline these subsidies while integrating S&DT.
- Technical assistance and capacity building (Article 7) remains critically important for developing countries and LDCs even to put in place the necessary infrastructure to meet sustainability objectives. However, the funding mechanism continues to be voluntary and the initial pledges seem grossly inadequate compared with the needs.
- The notification conditions under Article 8 continue to be quite stringent and detailed compared with the capacities of many developing countries and LDCs. If this agreement gets enforced, these provisions are likely to continue and not be renegotiated at all. However, there is no mandatory requirement for additional notification for using S&DT provisions, unlike in earlier versions of the text (earlier Article 8.7).

As the agreement stands now, the SDG 14.6 mandate is unlikely to be met as those who subsidise most remain free to subsidise. For those Members who do not subsidise much but are dependent on the conservation of fish stocks for meeting livelihood and food security needs, this will be an important consideration. However, many developing countries have large fisher populations, and therefore their subsidies need to be looked at in that context. While China, Japan, the US, Brazil, Canada and Indonesia are at the top in terms of total subsidies (2014-2016, OECD estimates), the picture is somewhat different if we look at per-fisher subsidies. Denmark, Sweden, the Netherlands, New Zealand, Norway, Canada, Ireland, Germany, Australia and Japan are the top 10 subsidisers in terms of per-fisher subsidies, with amounts ranging from $75,000 to $7,729 per fisher. In comparison, China gives a subsidy of $485, Mexico $290, Indonesia $90 and India $15 per fisher.

As we go forward, several questions remain.

It may not be prudent to ratify the current agreement without knowing the substance of the comprehensive agreement. Developing countries and LDCs could at least adopt a wait-and-see policy for the next few months. There are several considerations here:

- The agreement has to be ratified by two-thirds of the Membership, according to Article X.3 of the Marrakesh Agreement. Those who do not ratify will not have obligations, so many Members may not ratify. There may be pressure on developing countries and LDCs to ratify first while developed countries do not take on these obligations;
- There is a lack of clarity from a legal perspective on several points, which need to be reviewed and addressed before the ratification process even begins;
- Any Member's ability to negotiate on the final and comprehensive agreement and ensure its interests are protected may be reduced if it ratifies the current agreement too early;
- If the comprehensive agreement does not get done but the current agreement gets extended (as allowed under Article 12 of the agreement), then Members may have to live with this incomplete and inequitable version;
- A lot of domestic work is involved in the ratification process but this may finally not lead to desired outcomes;
- One important point to note is that for two years after entry into force of this agreement, developing countries and LDCs will have to stop providing subsidies related to IUU fishing and overfished stocks, but then can start again if the comprehensive agreement is not agreed in another two years. At the minimum, S&DT should be extended till the comprehensive agreement is reached.

Finally, the interface between the current truncated agreement and the postponement of the final and comprehensive agreement poses complex challenges for developing countries and LDCs. In the comprehensive agreement, can developing countries and LDCs, firstly, ensure effective and appropriate S&DT, and avoid adopting a principle of differentiation of S&DT exemptions based on arbitrary thresholds? Secondly, how can they ensure stronger disciplines on those who subsidise most and are industrial fishing nations? Given the history of the negotiations thus far, whether the comprehensive agreement can deliver anything additional to developing countries is debatable. But in the absence of it, they may be stuck with the challenges posed by the current agreement. Further, there is significant lack of clarity on when each agreement and the processes around them are supposed to end.

Given this complex situation, each Member may have to undertake its own assessment on the ratification and the forthcoming negotiations depending on how it sees the costs and benefits of the current agreement and based on the realities of negotiating the comprehensive agreement. ◆

Endnotes

1. For detailed analyses by the Third World Network of previous draft texts tabled in the fisheries subsidies negotiations, please read https://twn.my/title2/wto.info/2022/ti220613.htm and https://twn.my/title2/briefing_papers/MC12/briefings/Fisheries%20subsidies%20TWNBP%20MC12%20Sengupta.pdf

The MC12 Ministerial Outcome Document and the work on WTO reform

MC12 set in motion a 'WTO reform' process that could fundamentally reshape the organisation – but will it be for the better or worse?

Kinda Mohamadieh

THE Ministerial Outcome Document (what is also referred to as Ministerial Declaration) embodies a political mandate adopted by the highest decision-making body of the WTO that provides guidance for the negotiations and the future work of the organisation. The latest Ministerial Declaration before MC12 was that delivered at MC10, held in Nairobi in 2015, given that MC11 in Buenos Aires in 2017 did not result in a Ministerial Declaration. The document resulting from MC12 replaces the Nairobi Ministerial Declaration in being the latest guidance by the Membership for the future work of the WTO.

The most striking features of the MC12 Ministerial Outcome Document

One of the most striking features of the MC12 Ministerial Outcome Document is the lack of any reference to the Doha mandate and its development agenda.[1] This is unlike the Nairobi Ministerial Declaration, which included several references to development and the Doha mandate. Since the Doha Ministerial Conference in 2001, subsequent Ministerial Declarations and General Council Decisions had reaffirmed the Doha mandate. In the run-up to the Nairobi Ministerial conference, developing countries had taken a consistent position calling for the reaffirmation of the Doha Development Agenda. The Nairobi Declaration provided, for example, that 'there remains a strong commitment of all Members to advance negotiations on the remaining Doha issues…' and that 'any decision to launch negotiations multilaterally on … [new] issues would need to be agreed by all Members'.[2]

Those who want to argue that the Doha mandate has lapsed might see in the lack of references to development and the Doha mandate in the MC12 Ministerial Outcome Document a point to support their arguments.[3] That would require the attention of developing countries, which would need to exert more political and negotiating effort to reconfirm the commitment of the WTO to issues and mandates of concern to them that stem from the 2001 Doha negotiations mandate.

Developing countries and least developed countries (LDCs) did however succeed in defending a paragraph in the MC12 Ministerial Outcome Document that reaffirms 'the provisions of special and differential treatment for developing country Members and LDCs as an integral part of the WTO and its agreements' and that captures wording from the Doha mandate that requires that 'special and differential treatment in WTO agreements should be precise, effective and operational'.[4]

Special and differential treatment (S&DT) is a fundamental pillar of the international trade rules and an integral part of all WTO agreements. It was central to the original bargain that enabled the establishment of the WTO. The COVID-19-induced crises further highlighted that S&DT is essential for developing countries if they are to retain policy space to develop key sectors and industries and deal with the current and future crises.

Since 2001, developing countries have tried tirelessly to fulfil the Doha mandate pertaining to reviewing S&DT provisions to make them precise, effective and operational.[5] Organised in the Group of 90, which is comprised of the Organisation of African, Caribbean and Pacific States, the African Group and the group of LDCs, they had submitted and resubmitted their proposal to strengthen selected S&DT provisions in various WTO agreements, which include elements related to transfer of technology, trade-related investment measures, technical barriers to trade, sanitary and phytosanitary measures, customs valuation, subsidies and countervailing measures, and the accession of LDCs to the WTO. However, this process has been continually undermined by developed countries, either by not engaging in the negotiations or through watering down the proposed language to the point that it would be of no value and certainly would not fulfil the Doha mandate.

The MC12 Ministerial Outcome Document further rolls down any possible deliverables on this mandate. The agreed language 'instruct[s] officials to continue to work on improving the application of special and differential treatment in the CTD SS [WTO Committee on Trade and Development meeting in special session] and other relevant venues in the WTO, as agreed and report on progress to the General Council before MC13'.[6] Thus, even MC13 might be limited to mere reporting, rather than taking an operational decision, regarding the S&DT rules.

Paragraph 3 of the MC12 Ministerial Declaration on WTO reform

Paragraph 3 of the Ministerial Outcome Document sets a mandate to 'work towards necessary reform of the WTO … to improve all its functions'. It was agreed that '[t]he General Council and its subsidiary bodies will conduct the work, review progress, and consider decisions, as appropriate, to be submitted to the next Ministerial Conference'. It was also agreed that '[t]he work shall be Member-driven, open, transparent, inclusive, and must address the interests of all Members, including development issues'.[7] Paragraph 3 is complemented by another paragraph, under which Ministers 'commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024' (paragraph 4 of the Ministerial Outcome Document).

The negotiations on paragraph 3 were mainly held in a small-group configuration before and during the days of the Ministerial Conference. This meant that most of the WTO Members were not present and did not take part in these negotiations. The main contention in the negotiations was over where the WTO reform process was to be undertaken. In the run-up towards MC12, the way of handling this contentious paragraph was problematic, because the Chair of the General Council had presented his own formulation of this paragraph a few days before the conference, which sidelined propositions that several developing countries had put forward. Upon the objection of a number of developing countries, particularly India, the Chair adjusted his approach and raised to the Ministerial a paragraph that included two brackets (indicating lack of agreement) that read '[The General Council will oversee the work] [The General Council and its subsidiary bodies will conduct the work]'.

Developing countries were insisting that this process, important as it is, should be undertaken in the General Council, which would allow for a democratic and inclusive process in which each and every Member will have the chance to participate. Some developed countries suggested that the process should be undertaken in different configurations besides the General Council and its subsidiary bodies.

The paragraph that was eventually adopted emphasises the centrality of the General Council's role in conducting this mandate, by providing that '[t]he General Council and its subsidiary bodies will conduct the work, review progress, and consider decisions, as appropriate, to be submitted to the next Ministerial Conference'.[8] However, the ways to operationalise this mandate are not yet clear. The post-MC12 period will be crucial in determining the procedural steps to handle this mandate, the direction in which the debate on WTO reform will unfold, and what it will potentially mean for the future of the WTO. The collective inputs from developing countries and LDCs in this regard will be crucial.

The safeguards mentioned in paragraph 3, including that the reform process should be Member-driven, open, transparent, inclusive, and must address the interests of all Members, ought to be further substantiated and clarified. The process ought to allow developing countries and LDCs the opportunity to keep a comprehensive understanding on how the different elements to be considered under 'WTO reform' will be evolving. Furthermore, the scope of the 'reforms' to be addressed ought to be clarified. Paragraph 3 provides that WTO Members 'commit to work towards *necessary* reform of the WTO' (emphasis added), which requires Members to identify and agree to what reforms are necessary, thus filtering out those on which there is no consensus among all Members on their necessity.

The contention over 'WTO reform' and what it could mean for the future of the WTO

'WTO reform' was one of the most contentious issues in the run-up towards MC12 and remained so throughout the deliberations that were undertaken during the days of the ministerial meeting. It is contentious because of its systemic implications on the future of the WTO and because of the significant divergences between what developed-country Members are proposing and what developing countries understand reform should encompass.

Developed countries, among which the US and the EU are most vocal, have repeatedly pushed under the guise of 'WTO reform' new approaches on special and differential treatment that will eventually limit the availability of these flexibilities to developing countries and LDCs. They have also been pushing new approaches to decision-making pertaining to launching negotiations and accepting the outcomes of negotiations at the WTO; these approaches seek to normalise plurilateral negotiating arrangements (which involve only a subset of the Membership) rather than strengthen the WTO as a body for multilateral negotiations. They also seek to inject into the WTO agenda new issues, such as rules on industrial subsidies, that will further constrain the policy tools available to developing countries. Further, developed countries seek to extend the WTO monitoring mechanisms in a way that would put further pressure on developing countries in implementing their trade policies, and to open up more space for big business in the WTO under the umbrella of 'multi-stakeholderism'.

It is worth noting here that in the MC12 Ministerial Outcome Document, WTO Members 'recognize the importance of strengthened collaboration and cooperation with other intergovernmental organizations and *other relevant stakeholders* that have responsibilities related to those of the WTO, in accordance with the rules and principles of the WTO...' (paragraph 12 of Ministerial Outcome Document, emphasis added). The term 'relevant stakeholders' is new to WTO rules. It is not a term used in existing WTO agreements and so it is unclear what exactly it refers to. For example, Article V of the Marrakesh Agreement Establishing the WTO refers to cooperation with other 'intergovernmental organizations' and 'non-governmental organizations concerned with matters related to those of the WTO'. It is crucial that these new terms do not create an opening to increase the influence of big business on WTO processes and decision-making, which could eventually come to undermine the Member-driven nature of the WTO. For these reasons, it is important that developing countries and LDCs seek to clarify the boundaries of this terminology pertaining to 'stakeholders' and what it reflects, and to stress safeguards against conflicts of interest that could emerge when businesses that have vested commercial interests in international trade come to deepen their influence on the WTO negotiations.

The WTO Secretariat released a brief note before MC12 stating that the general concerns covered under WTO reform are 'the challenges WTO members face in initiating, negotiating and concluding trade agreements, both for outstanding issues as well as for new issues', 'the need to strengthen the work of the WTO's regular bodies and committees as well as strengthen notification and transparency disciplines under existing agreements', 'the question of whether, and to what extent, the WTO's more advanced emerging economies should take on greater obligations under the WTO agreements, and whether existing special and differential treatment provisions for developing and least developed countries are sufficient or effective' and 'improvements in the functioning of the WTO's dispute settlement system and overcoming the four-year impasse on the appointment of new Appellate Body members'.[9] This summary seems inclined to capture the point of view of developed countries that are active in pushing a certain understanding of 'WTO reform' rather than being an objective summary that also captures the views of developing countries reiterated in multiple submissions to the WTO.

'"WTO reform" does not mean accepting either inherited inequities or new proposals that would worsen imbalances.'

Developing countries have for long stressed that central to any reform agenda at the WTO is the need to review and rebalance existing WTO rules, in order to address the implementation challenges that developing countries and LDCs have been facing and to strengthen and improve operational special and differential treatment.[10]

A number of developing countries articulated a collective stand on WTO reform in their submission entitled 'Strengthening the WTO to promote development and inclusivity'.[11] In this submission, they stressed the imbalances in the WTO rules that need to be corrected as part of WTO reform, and stressed that '"WTO reform" does not mean accepting either inherited inequities or new proposals that would worsen imbalances'.

In regard to the negotiating function of the WTO, they stressed that WTO negotiations are 'negotiations concerning multilateral trade relations as decided by the Ministerial Conference' and are underpinned by 'the core principles of the Multilateral Trading System', 'the Special and Differential Treatment architecture' and 'the central role of development'. In regard to the crisis of the dispute settlement function of the WTO, the submission stressed that '[a]bandoning the AB [Appellate Body] will fragment the dispute settlement system and will have a negative impact on the balance of rights and obligations that have been carefully negotiated in the DSU [Dispute Settlement Understanding]'. The submission added that 'a two-stage dispute settlement system is essential to ensure security and predictability of the multilateral trading system, including prompt, efficient and effective resolution of disputes to the benefit of all Members' and that '[t]here is also a need to reflect on the structural imbalances underlying the dispute settlement system, and the challenges faced by developing countries in accessing the dispute settlement system'. In relation to the monitoring function of the WTO, the submission noted the importance of '[r]eaffirming existing commitments and not adding more obligations in the areas of transparency' and stressed that '[t]he WTO must also allow for different economic models rather than push for one form or another'.

Furthermore, a major group of developing countries including Members of the African Group, India, Pakistan and Sri Lanka released a ministerial statement during the days of MC12[12] in which they underlined 'institutional challenges that the WTO is facing, including the imbalances in the rules that have impacted Members, particularly developing countries, including least developed countries, from effectively shaping rules, or influencing decision-making in the WTO'.[13] For this group of developing countries, 'the review shall consider measures to facilitate the effective, full, and inclusive participation of developing countries, including least developed countries, in the multilateral trading system and its decision-making processes, and rebalance the inequitable trade rules from the Uruguay Round. It shall also safeguard the necessary policy space needed for developing countries for their structural transformation, industrialization and economic recovery'.[14] The group also stressed that 'the review shall be consistent with the principles and objectives of [the Marrakesh Agreement Establishing the World Trade Organization] and its multilateral trade agreements'.[15]

The way forward in deciphering WTO reform

It is important to read what was agreed in MC12 in light of, and together with, the developments since the earlier two Ministerial Conferences held in Nairobi in 2015 and in Buenos Aires in 2017. Back then, the developed countries succeeded in pushing back on the existing negotiation mandates of interest to developing countries, although they did not succeed in fully killing the Doha Round. They also commenced an intensive push towards illegally expanding plurilateral approaches to defining issues of negotiations and to changing WTO rules. Some developed countries have attempted an assault on special and differential treatment, which is a central pillar of the multilateral trading system and a right for developing countries and LDCs. What could unfold in the context of pursuing 'WTO reform' could further serve these attempts.

In light of the above, MC12 could go down in the history of the WTO as the ministerial meeting that opened the door to reshaping the multilateral trade institution and its functions. The mandate that WTO Members accepted through signing off on paragraph 3 of the MC12 Ministerial Outcome Document could be the basis for such a fundamental change. In effect, what WTO Members did through paragraph 3 is open the field for direct engagement over how the WTO will handle its functions in the future.

Developing countries and LDCs face the collective challenge of ensuring that this process does not circumscribe the fundamental rules of decision-making that the WTO was built around in order to remedy the major deficiencies that characterised the GATT (General Agreement on Tariffs and Trade) system that preceded it. Otherwise, this process of seeking 'WTO reform' could lead to reinventing the WTO as a power-based rather than rules-based organisation, the result of which will be to grab space away from developing countries and their development issues in order to facilitate a corporate power grab of the WTO. ◆

Endnotes

1 https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm
2 https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm
3 See for example: Shawn Donnan (2015), 'Trade talks lead to "death of Doha and birth of new WTO"', *Financial Times*. Available at https://www.ft.com/content/97e8525e-a740-11e5-9700-2b669a5aeb83
4 See para. 2 of MC12 Ministerial Outcome Document (WTO document WT/MIN(22)/24 – WT/L/1135), available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True
5 See para. 44 of Doha Ministerial Declaration.
6 See para. 2 of WT/MIN(22)/24.
7 See para. 3 of WT/MIN(22)/24.
8 Para. 3 of WT/MIN(22)/24. Para. 3 also provides a footnote that reads as follows: 'For greater certainty, in this context, this does not prevent groupings of WTO Members from meeting to discuss relevant matters or making submissions for consideration by the General Council or its subsidiary bodies.'
9 https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm
10 See a collective submission by the group of African States at the WTO, India and Cuba (WT/GC/W/778/Rev.3) of December 2020.
11 WT/GC/W/778/Rev.5, Communication from African Group, Cuba, India and Pakistan.
12 WT/MIN(22)/18 – WT/GC/250 (14 June 2022), Ministerial Statement on WTO Reform, circulated at the request of the African Group (Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Egypt, Eswatini, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe), India, Pakistan and Sri Lanka.
13 Para. 1 of WT/MIN(22)/18 – WT/GC/250.
14 Para. 3 of WT/MIN(22)/18 – WT/GC/250.
15 Para. 4 of WT/MIN(22)/18 – WT/GC/250.

Exclusionary unrepresentative processes behind the MC12 outcome

The 'real' negotiations at MC12 took place in meetings from which most delegations were excluded, continuing a controversial practice from past WTO conferences.

Kinda Mohamadieh

MC12 delegates at the entrance to WTO headquarters in the early hours of 17 June. The major decisions at MC12 were reached in negotiations that excluded most delegations.

BEHIND the WTO MC12's 'Geneva Package' deal was a highly orchestrated process privileging exclusive small-group negotiation settings and keeping the majority of the WTO members outside negotiation rooms.

Small-group configurations, or what are sometimes referred to as 'Green Rooms', dominated negotiation processes in the run-up to and during the Ministerial meeting.[1] They were the privileged format in which all negotiations took place, including those on the Ministerial outcome document (i.e., the main Ministerial Declaration), on items on agriculture and food security, on fisheries subsidies, as well as those on the TRIPS Agreement decision and the e-commerce moratorium.

This meant that MC12 kept with previous controversial experiences at the WTO[2] and took them to a new extreme, making it highly challenging for developing countries and least-developed countries (LDCs) to effectively take part in the negotiations on key documents that would shape the future of the organisation and the multilateral trading system.[3]

Negotiations in small groups are often promoted by personnel of the WTO secretariat as facilitative of multilateral negotiations and delivering agreed outcomes. Some claim that small-group meetings are unavoidable for any agreement to be struck at the WTO.[4] However, in reality, and as the MC12 experience clearly exposed, such processes effectively undermine the member-driven multilateral inclusive process.

The conference had been extended by one day from 15 June as initially planned,[5] and the extension was supposed to be until 3 pm of 16 June. Yet, 3 pm of the 16th passed with no clarity about where the negotiations stood and when the closing of the conference would take place. Negotiations continued in small-group configurations all through the night until an informal heads-of-delegation (HoD) meeting was convened at around 4 am in the early morning of 17 June.

The informal HoD meeting format was supposed to be the main multilateral space at the Ministerial that would allow delegations not involved in the small-group negotiations to study any text arising from the negotiations and assess the extent to which it meets their country's concerns. Yet, this 17 June HoD meeting together with the formal closing ceremony[6] did not last more than an hour. The gavel was heard in the closing ceremony at around 5 am. No delegation took the floor during these two meetings.

Members had in their hands copies of four declarations and decisions (which came up to around 11 pages of legal text) that were supposed to be considered for adoption.[7] However, they did not have with them the latest copies of the draft Ministerial decision on the TRIPS Agreement, the draft Ministerial decision on the work programme on electronic commerce as well as the draft Ministerial decision on the agreement on fisheries subsidies. These had been among the most contentious negotiation areas until the last minute of the Ministerial. According to a participant who attended the informal HoD meeting, the text on fisheries subsidies and the changes that had been introduced in it as a result of small-group negotiations were presented verbally during the meeting. The text was not even projected on the screen.[8] Similarly, not all delegates had the latest text on the TRIPS Agreement decision at that point.

WTO Director-General Ngozi Okonjo-Iweala has sought to justify the resort to small-group negotiations at MC12.

Taking small-group configurations to a new extreme

Negotiations on the Ministerial outcome document took place in small groups – with most of the WTO membership kept outside the process – instead of being deliberated in a setting involving the entire membership. It is particularly important that all WTO members have a proper opportunity to effectively participate in negotiating such a text that will set the political guidance for the WTO's future work. Yet, this was not the case at MC12.

Meanwhile the TRIPS Agreement decision was negotiated in a small-group configuration based on the text that emerged from the process set up and facilitated by the WTO Director-General (DG) and her team. The latter process had involved only four countries. One of the most contentious elements of the text, the eligibility criteria, was ultimately negotiated among only two members, the United States and China. The rest of the small group involved in negotiating the decision finished their work on 16 June but were waiting for a bilateral resolution on the issue of the eligibility criteria, which was only concluded at the latest hour of the conference.[9]

These are only two examples from among many that could be cited. To a large extent, small-group meetings replaced the multilateral process at MC12, and by default undermined full effective participation by many members and the possibility of a meaningful inclusive process driven by the entire membership.

At the beginning of the Ministerial Conference, some delegates had complained that they spent a significant amount of time just to identify the multiple meetings that were ongoing so as to be able to gather needed information and update their delegations. Some small-group meetings were organised with a seeming intention to put pressure on certain developing countries active on a particular issue under negotiation, for example by bringing one developing-country delegation into a late-night meeting that was attended only by other developed countries with opposing views on that issue. According to one observer, there were cases where a number of developing countries had raised concerns collectively or raised similar concerns but only one or two were brought into the small-group meeting while others were taken into bilateral meetings. Such orchestrated small groups seemed to follow the tactic of 'divide and conquer' in order to undermine or dilute the positions of developing countries trying to reflect common national positions and interests in the negotiations.

These opaque small-group processes, where what happens – positions taken or pressures exerted – is not fully known to members that are not present in the room or to the broader public, enable a game of blame shifting to be played. On this point, civil society organisations present at MC12 highlighted that 'the undemocratic, exclusionary "Green Rooms", in which most developed countries are invited but from which most developing countries are excluded, have resulted in proposed texts for MC12 that are highly biased towards the proposals of rich countries …'.[10]

In one briefing with civil society organisations, the WTO DG was asked about the abundance of Green Rooms or small-group negotiation meetings and its implications for the meaningful and effective participation of developing countries and LDCs. The DG claimed that such style of work was dictated by the war in Ukraine, as some states did not want to be present with others in one room. This answer did not convince those posing the question.

It could be argued that small meetings could enable negotiations to be undertaken in parallel on multiple issues and allow delegations to choose where to participate. However, if that were the case, then the participants in the small meetings should not be pre-selected and those meetings should not be closed to members interested in participation. Instead, the meetings ought to be announced to the whole membership and members should be given the opportunity to choose where they want to participate. This was not the case in the context of MC12.

(It is to be noted that the United Nations practice in negotiations is that small groups are open to all Parties and no decision is accepted until a plenary of all Parties agree. There is also conscious effort to ensure that there are not too many parallel small-group negotiations scheduled in view of the small delegation size of most developing countries and LDCs.[11])

Who selected the participants in each small meeting was not clear; was it the DG, was it the DG's staff in the WTO secretariat, was it the facilitators assigned to handle different issue areas on the agenda of the Ministerial, or was it a combination of those?

It was often repeated that the small meetings included representatives from the core member groups[12] and countries with specific positions or interests in the matter being deliberated. Yet, this did not apply to all meetings. For example, negotiations on parts of the Ministerial outcome document did not always involve representatives from the LDC group. It has also been revealed that at least two small developing-country delegations who asked to participate in small-group meetings in the run-up towards MC12 on issues of interest to them were not let into the room.

Furthermore, the idea that including group coordinators in the small-group meetings is enough to guarantee an inclusive and transparent process involves multiple over-assumptions. First, it over-assumes the capacity of group coordinators to effectively follow the different and often simultaneous tracks of negotiations and to relay them back to their group members properly and with the needed details. Second, it assumes that the group operates homogenously on all issues. By doing so, this practice could end up further undermining the possibility for a member to raise concerns particular to it, especially where these concerns may not coincide with the overall group position or how that position is presented in small-group meetings.

It is often at a late stage of the negotiation process that a text emerges from a small-group process and is presented to the rest of the WTO membership. At that stage, the political stakes are usually very high, and the text is often presented as agreed by the 'big players'. So, for any member to stand up in the room where all other members are present and ask to reopen the text, present an objection or request an addition or adjustment, carries significant political implications, which by itself creates a barrier. Thus, by default, the processes described here result in texts that are akin to 'take-it-or-leave-it' texts, although rejecting the text might not even be an option. Any member who is considering taking the floor at such a late stage could be blamed for undermining the 'delicate balance' that the text reflects, might face a line-up of defenders of the text (often from bigger, richer countries), or might be accused of delaying or jeopardising the deal.

This is exactly what the DG, the chair of MC12 and the chair of the WTO General Council warned in their letter to delegations circulated at around 1.30 am in the morning of 17 June, where they said to members: '… we appeal to you to take into account the delicate balance struck within and across the four-plus pillars … this unprecedented package is the result of compromises based on tough negotiations…'.[13]

HoD meetings more of a cosmetic arrangement

Open HoD meetings were held at the end of almost every day of MC12. According to the WTO secretariat, these kinds of meetings are '[o]ne step away from the formal meetings … that still include the full membership'.[14] In principle, such HoD meetings are supposed to be the space where all WTO members collectively consider what emerged out of small-group deliberations, thus allowing all the members to substantively review those results and reveal their positions in that regard.

But during MC12, the HoD meetings organised at the end of the day did not present a real opportunity for members not invited to the small negotiation groups to effectively take part in the negotiations. They lasted for only a short time and mainly consisted of updates from the facilitators of various negotiation tracks. Generally, members did not take the floor during these meetings.

It is worth asking whether these meetings presented a genuine space for members to effectively intervene and reflect their country's concerns or whether they were a mere cosmetic addition to the agenda of the Ministerial for the sake of allowing some to claim that everyone had an opportunity to intervene.

Longstanding concerns for developing countries

Developing countries have repeatedly raised serious concerns and objections on the ways in which the process in the lead-up to and during WTO Ministerial Conferences has been handled, which they see as undermining their participation in the negotiations. They have also sought to clarify the principles that ought to guide such processes.

For example, in November 2017, after the Ministerial Conference held in Buenos Aires, the African Group, Bolivia, Cuba and Venezuela presented a submission in which they stressed the 'importance of creating a transparent, democratic, bottom-up, all-inclusive and consultative decision-making process in the WTO, as this is vital to preserving the credibility of the WTO and the multilateral trading system'.[15]

They also stressed that 'the Ministerial Conference is the forum for decision-making. All meetings in this configuration should be open to all Members'. They added that 'there should be sufficient time for delegations to consider documents to facilitate proper consideration by, and consultation with the capital. Any documents to be presented for decision-making shall be shared with all Members at least 12 hours before the Session as to enable sufficient consultations…'.

In an earlier submission in 2002, a number of developing countries had submitted similar propositions on the process, and also stressed that 'consultations by chairperson/facilitator [who conducts consultations and meetings on a specific subject at the Ministerial Conference] should be at open-ended meetings only. The chairperson/facilitator could convene meetings of proponents and opponents on the subject assigned and any other interested Member should be free to join such meetings. For this to be achieved, the schedule of each meeting shall be announced at least a few hours before the meeting'.[16]

Processes characterised by exclusion, which often keep most delegations in the dark till the last minute, were a determining factor of the level of engagement of delegations in shaping the outcomes of MC12. The experience of this last Ministerial Conference, as with previous ones, has made it clear that one of the main issues that need to be addressed in the functioning of the WTO is the lack of meaningful transparency and the dominance of exclusive processes that end up keeping the overwhelming majority of the membership outside the decision-making processes. ◆

Endnotes

1 According to Peter Ungphakorn, 'Green Rooms' stand for meetings held in the WTO Director-General's office meeting room, which has a capacity for 20-plus persons (with extra chairs), but such meetings often include a smaller group of participants. See: https://mobile.twitter.com/CoppetainPU/status/1537374431785402368. According to the WTO website: 'The "Green Room" is a phrase taken from the informal name of the director-general's conference room. It is used to refer to meetings of 20-40 delegations, usually at the level of heads of delegations. These meetings can take place elsewhere, such as at Ministerial Conferences, and can be called by the minister chairing the conference as well as the director-general. Similar smaller group consultations can be organised by the chairs of committees negotiating individual subjects.' See: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

2 See: 'No Legitimacy or Credibility in Seattle Process and Results: Third World Groups Denounce Undemocratic and Bullying Tactics at Seattle', at https://www.twn.my/title/bully-cn.htm; Martin Khor, 'How the WTO's Hong Kong Ministerial Adopted Its Declaration', at https://www.twn.my/title2/twninfo336.htm; and Chakravarthi Raghavan, 'Two winners, one loser at WTO Conference', at https://www.twn.my/title/loser-cn.htm

3 WTO document WT/MIN(22)/W/16/Rev.1, available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W16R1.pdf&Open=True

4 Supra n. 1.

5 D Ravi Kanth, 'WTO: MC12 extended to 16 June due to differences on deliverables', *SUNS* #9596, 16 June 2022. Available at https://www.twn.my/title2/wto.info/2022/ti220620.htm

6 The recording can be found at https://www.wto.org/english/thewto_e/minist_e/mc12_e/webcasting_closing_e.htm

7 These were: the draft Ministerial declaration on the WTO response to the COVID-19 pandemic and preparedness for future pandemics; the draft Ministerial declaration on the emergency response to food insecurity; the draft Ministerial declaration on World Food Programme food purchases exemption from export prohibitions and restrictions; and the draft MC12 outcome document.

8 One observer noted that copies of the text were kept at the entrance of the meeting room but not circulated in the room, leaving many delegates with no text in their hands. The text on fisheries subsidies was posted on the WTO website only in the late morning of 17 June.

9 More on this issue can be found in: Sangeeta Shashikant, 'Intense IP negotiations are underway, resolution on eligibility criteria outstanding', 16 June 2022, at https://twn.my/title2/wto.info/2022/ti220623.htm

10 https://ourworldisnotforsale.net/2022-06-15_R_blame

11 This is based on the experiences of the Third World Network as an accredited observer in several UN processes including those of the UN Framework Convention on Climate Change and its Paris Agreement, Convention on Biological Diversity and its protocols, etc.

12 https://www.wto.org/english/tratop_e/dda_e/groups_by_country_e.htm. It is worth noting that not all WTO members are represented under such groups, many among which are small countries.

13 Attached to this letter were only four texts of the seven that were to be adopted at the closing session that would follow less than three hours afterwards. Under the WTO rules of procedure for sessions of the Ministerial Conference, 'Proposals and amendments to proposals shall normally be introduced in writing and circulated to all representatives not later than twelve hours before the commencement of the meeting at which they are to be discussed' (rule 23, 'Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council', WTO document WT/L/161, 25 July 1996).

14 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

15 See: WTO document JOB/GC/158, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx

16 See: WTO document WT/GC/W/471 (24 April 2002), presented by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx

Debt restructuring, austerity and the urgency of fiscal justice: The case of Sri Lanka

As Sri Lanka officially defaults on its sovereign debt repayments and enters negotiations with the International Monetary Fund (IMF) for access to loans in return for structural macroeconomic change in response to the ongoing economic crisis, three Sri Lankan groups – the Women and Media Collective, the Social Scientists' Association and the Feminist Collective for Economic Justice – jointly organised an online talk with the Third World Network's Bhumika Muchhala on 18 April to inform a critical understanding of these developments and alternatives that are preferential to dominated classes and oppressed groups. The following is an expanded and edited version of her talk, transcribed by Treshan Fernando.

TODAY [18 April 2022], discussions will start in Washington D.C. between the new Sri Lankan Finance Minister and his senior officials and the IMF on yet another IMF loan. Sri Lanka has been through several IMF loans, approximately 16 since the 1960s. So, this is a moment when the country has had to resort to another IMF loan in the context of its debt and economic crisis. This loan will have a repayment period of about two to five years and will have policy conditionalities attached to it.


UNICEF Sri Lanka

Fiscal austerity conditions attached to IMF loans like the one Sri Lanka is negotiating include budget cuts for essential public services such as education.

Fiscal consolidation = austerity

My talk will look at the resurgence of austerity in the era of COVID-19. By austerity I am referring to fiscal consolidation measures which the IMF has been recommending in both its loans to developing countries as well as its economic surveillance reports. Austerity measures take the form of cuts to the public budget, particularly social protection, social safety net measures, and essential public services of healthcare and education; regressive taxation such as value-added tax (VAT), indirect taxes and general sales taxes; privatisation of state-owned enterprises as well as of public services and public goods, and putting in place public-private partnerships; further liberalisation of government procurement and trade; labour flexibilisation in terms of reducing wages and loosening labour rights regulations; facilitating corporate access to natural resources; increased independence of the central bank; pension reductions; and tightening monetary policy by increasing interest rates, including on consumer loans.

These measures have the key impact of intensifying social, economic and particularly gendered inequalities and undermining the social contract between the citizens and the State. The public sector that is already eroded, under-financed and under-invested can then become even more broken, laying the groundwork for the argument to be made – 'Oh look, it's so inefficient, we need the private sector to make our health services more efficient.' It opens the road for the privatisation of the public sector.

Each country is provided with its own specific menu of recommendations on fiscal consolidation, where the pressure is exerted to carry out some or many of these measures in order to receive the IMF loan money. As we all know from decades of adverse impacts of austerity measures, the effects on the majority of people in society, particularly on the poor and poor and rural women, as well as on the marginalised and the discriminated, are very serious.

While fiscal consolidation was also imposed in the aftermath of the 2007-08 global financial crisis, the measures that are being demanded of Global South countries in the COVID-19 era are even more aggressive and concentrated.

I will then talk of the possibilities, alternatives, solutions and strategies that can be employed, including independent debt audits, national dialogue, and advocacy within the negotiation process with the IMF to ensure that there are real, universal, unconditional, untargeted social protection measures to help minimise the enormous negative impacts of debt restructuring on poverty, labour and well-being.

Resurgence of debt and austerity

In the COVID-19 era, we are seeing a resurgence of austerity measures, even though ironically, it is austerity measures which gave rise to a crisis of public systems and services during the pandemic. Yet, we see a consensus among political and economic elites around the world – from Wall Street to the biggest commercial banks to private creditors, investment funds, as well as most of the finance ministries and central banks of developing countries – that has normalised a bias towards fiscal austerity, in that restraining public expenditure has become a normative characteristic of prudential economic governance, rather than being only a repercussion of unsustainable external debt.

Developing countries have for decades been in and out of cycles of debt because their resilience and economic independence have been eroded due to centuries of colonisation. There is now a structural dependency on external debt. Debt in terms of borrowing money from foreign lenders is not necessarily a bad thing in and of itself. It's how individuals, nations and corporations have financed themselves; it's a part of the economic machine. But the nature of debt dependency and the deep asymmetries in the world economy mean that rich countries can access external financing at rock-bottom (near zero) interest rates, while developing countries have no choice but to borrow at high interest rates. For example, Sri Lanka's interest rate is on average 7%, whereas the rich world has interest rates of less than 1%. This is a huge difference in the cost of borrowing.

Faced with constraints in implementing industrial policies to support economic diversification, developing countries like Sri Lanka have to rely on a narrow range of sectors often linked to exports and foreign corporate control, such as the garments sector.

Moreover, countries like Sri Lanka encounter serious constraints in securing sovereign self-reliance through a diversified economic sector that produces a broad range of products and services, with technological development and where raw materials and primary commodities are vertically linked to the manufacturing and services sectors. What has happened – in great measure due to the pressures by international financial institutions like the World Bank as well as donor governments of the North to liberalise, deregulate and privatise the national economy – is that developing countries have been constrained from implementing industrial policies and efforts to support and protect new sectors, skills and labour markets. The importance of such policies is that they create domestic revenue and a back-and-forth flow between that revenue and employment generation, productive investments and technological development that alleviates poverty and supports the economic and social rights of people.

In the absence of a robust and sustained industrial policy and national development priorities, there is a disproportionate reliance on a narrow range of resources, commodities and sectors that are often overwhelmingly linked to exports and foreign corporate control, such as in the case of the garment and footwear export processing sector. This leads to a reality where national expenses are often greater than national revenues, thus creating a structural need to borrow foreign exchange to meet domestic financing needs, which often include repaying old debts and the interest on them.

Role of the IMF

Since the onset of the COVID-19 pandemic, the role of the IMF has heightened to an unprecedented level, with 221 loans being arranged with 88 developing countries as of August 2021. Through both loans and country surveillance reports, the Fund has advised 154 developing countries in 2021 and 159 in 2022 to commence fiscal tightening measures, following a brief duration of fiscal spending in 2020 to respond to the immediate health and economic damage inflicted by the pandemic.

The austerity measures are more premature and severe than in the aftermath of the global financial crisis of 2007-08. It is important to note that 80% of the affected population are in developing countries across the Middle East and North Africa, Sub-Saharan Africa, South and East Asia and the Pacific, and Latin America and the Caribbean.

Yet another era of austerity will no doubt generate multi-dimensional and layered fractures and inequities from the individual to society to economy and on the registers of gender, race, sexuality, ability, ethnicity, caste and citizenship. Critics, advocates and social movements for global economic justice warn that with an additional 100 million pushed into poverty as a direct result of the pandemic and an economic recession exacerbated by the war in Ukraine, a 'lost decade' for the Global South is imminent.

However, empirical, data-based evidence across time, geography and context demonstrates that austerity has neither restored income growth nor reduced unemployment. Indeed, academic research illustrates how the economic methodology in support of austerity is conceptually flawed. Reams of impact analysis literature illustrate how austerity has led to structural inequalities, material deprivations, intergenerational cycles of poverty, intensified discrimination, and a subterranean stream of social fissure and emotional-spiritual alienation. Mass protests and counter-movements have surged across the globe over the course of decades, decrying austerity's devastating toll and castigating it for deepening social injustices.

The IMF, in the beginning of the pandemic from March to May 2020, made a rhetorical statement to the effect that it will not impose austerity and will let governments spend. That was true for the first couple of months of the pandemic in 2020. However, as soon as December 2020, all austerity measures were back in place. This flexibility to spend was temporary; it was targeted and wholly insufficient. Usually, it is during an economic downturn, during a time of crisis, that countries should be spending in a countercyclical manner, meaning spending more than usual in order to support economic and health recovery through social provisioning. In fact, this is exactly what rich countries did through amplifying their existing social welfare systems and enacting huge fiscal stimulus programmes, which most developing countries did not have the public funds to do.

While the IMF is being positioned as the primary international institution enforcing austerity, we have to remember that we are actually talking about the finance ministries of the rich countries: of the G7 countries in particular. And we are also then talking about the financial players, from big global banks to investment and equity funds to multinational corporations, that have an entrenched influence over these finance ministries' positions, decisions and overall political will. Governance power in the Fund's Executive Board is disproportionately skewed towards rich countries, which hold over half of the voting power; developing countries, which together constitute 85% of the world's population, have a minority share. For example, for every vote that the average person in the Global North has, the average person in the Global South has only one-eighth of a vote. This has been called 'economic apartheid' by some critical voices.

Indeed, the key point here is that the IMF is merely the messenger. The actual players are the finance ministries of the US, the European countries and Japan. Perhaps even more importantly, the movers and shakers that determine the IMF's mission are the financial and banking sectors of these countries. So, as you can now see, the IMF is governed by the finance ministries and central banks of the rich countries, who are in turn largely governed by Wall Street, the City of London, commercial banks, investment funds and, in particular, asset management companies (AMCs) that have risen in the last 10-20 years. These asset management firms are the key actors that buy a huge amount of government bonds.

For a sense of the scale of AMCs, the 'Big Three' asset management firms – BlackRock, Vanguard and State Street – manage over $15 trillion in combined global assets, an amount equivalent to more than three-quarters of the US domestic economy (gross domestic product, GDP). The outsized footprint of a few large financial companies and the concentration of their political power poses serious issues for the world economy and for global financial stability, which more severely affects the rights of working people and women across the Global South than they actually affect the global rich.

In Sri Lanka's debt composition, it's striking that China has 10% of Sri Lanka's sovereign debt, India has about 3%, but private creditors possess almost 40-50%. So first and foremost, we have to see the IMF not as the perpetrator of austerity, but as the messenger of private creditors in the international financial markets through the channel of finance ministries. At the same time, these financial markets are providing fast and significant credit to developing countries attached to high interest rates with one hand, while the other hand is siphoning national money through debt repayments and those same high interest rates.

To return to the point about austerity, there have been innumerable campaigns, protests, resistance efforts and international petitions to the IMF over the years. At the outset of the pandemic in 2020, over 500 organisations and individuals signed a petition calling on the IMF to immediately stop prescribing austerity measures to developing countries and instead advocate policies that advance human rights, sustainable development, climate justice, and gender and income equality. The petition emphasises that fiscal austerity will undermine the achievement of economic and social rights while deepening poverty in a context where the UN estimates 70-100 million people will be pushed into extreme poverty. The consequences are grave. Many developing countries are in danger of facing a 'lost decade' as their pathways to achieving the Sustainable Development Goals (SDGs) and the Paris Agreement targets on climate change are effectively blocked.

The petition also said that we must protect the developmental role of the State in guiding economic development and social policy by retaining ownership of key sectors like industry and banking and allocating fiscal resources to meet the social and economic needs of people. First and foremost, through a rights-based economic framework that prioritises economic and social rights of the people, such as through maximising available resources, doing no harm, and having an ex-ante human rights and gender equality assessment process. This petition really laid the groundwork for some of our civil society advocacy, campaigning, social media work, and messaging to policymakers.

Extended Fund Facility (EFF) loan programme of the IMF

Sri Lanka will most probably sign on to the Extended Fund Facility (EFF) loan facility granted by the IMF. These EFF loan programmes are the bread and butter of the IMF. They are for serious medium-term balance-of-payments problems. They are of three to four years' duration and have to be repaid within 4.5 to 10 years. You can pay it in semi-annual instalments. The difference between the EFF programme and the other longer-term programme of the IMF, called the Stand-by Arrangement (SBA), is that the EFF has to be paid back in 4.5 to 10 years, and the SBA, which is usually used when there is no crisis, in a much shorter repayment period of about three to five years.

Unfortunately, the EFF is not a concessional loan. Concessional loans, where the interest rates are lower, are usually from the Poverty Reduction and Growth Trust facility which is for low-income countries only. Sri Lanka, as a middle-income country, is probably going to sign an EFF type of loan. The problem with the EFF is that it is the key loan programme that focuses on structural reforms, in that there are numerous types of policy conditions that are recommended or pushed by these loans.

I provide here a quick snapshot of Ecuador's EFF signed in 2019 and renewed in 2020. In most cases across the Global South, signing a loan with the IMF is a precondition in the process of carrying out a restructuring of a nation's sovereign debt. Ecuador's sovereign debt restructuring involved $17.4 billion, where its creditors de facto required that country to sign on to a $6.5 billion loan with the IMF in order to restructure the debt.

Some of the key measures in Ecuador's EFF included:

- Reduction of public expenditure by 4.2% of GDP between 2022 and 2025;
- Privatisation of state-owned enterprises (SOEs), mainly in the gas sector because Ecuador is a petro-economy;
- Labour flexibilisation through a decrease in the official minimum wage;
- Reduction of pensions, as pensions were deemed to be excessively generous relative to the contributions to social security;
- Liberalisation of public procurement, allowing all kinds of government procurement of infrastructure by foreign companies;
- Increasing VAT and customs duties;
- Increasing interest rates for borrowers but without necessarily placing any responsibilities on the lenders;
- Expansion of foreign investments and facilitating resource extraction.

However, these recommendations needed to be passed in the Ecuadorian Parliament. So, the silver lining is that not all of these recommendations may get passed, even though the pressure is always present to reduce the fiscal deficit through public expenditure reductions and regressive taxation increases.

Many of these conditions that the IMF imposes in the loan agreement often also go against the Constitution of the nation. That is one of the key things to monitor. What is being proposed in the EFF package for Sri Lanka? Which parts are against the very Constitution and very laws of Sri Lanka? Look at the details. Are there any provisions, measures or recommendations that will directly go against the laws of your country? Get the human rights and pro-bono lawyers to make a case that these are constitutionally illegitimate and illegal and not within the remit of the national Constitution. So that is one of the key things to consider from the time the loan proposal is put in place: to do a thorough legal check.

Gendered implications of austerity

Another key thing is to demand that there has to be an ex-ante overall economic and social rights assessment, including a gender assessment. You have to demand that such an assessment be done before the loan is put in place. I think all of you know very well that the gendered nature of austerity means that women become the shock absorbers of these austerity measures. We know that the care economy upholds the social services and public services that the State is failing to provide. We know that a feminist political economy lens is about going from viewing women as individuals to instead seeing gender as a system that structures power relations and seeing fiscal austerity as a system that violates collective rights. The predominant channels through which women are affected are: diminished access to essential services, loss of livelihoods and workers' rights violations, and increases in unpaid work and time poverty. So let me just quickly expand on these.

You know well that reductions and eliminations, freezes to the public wage bill, and budget cuts to public health, education and social protection systems are going to affect the very programmes and services that benefit women. The IMF will put in place temporary, targeted and conditional social protection programmes rather than universal and holistic programmes. Ever since the global financial crisis of 2008, the IMF has been putting in place something called social safety nets. That's their language. They will say that the budget cuts are a certain percentage of GDP but that you can also implement social safety nets that are temporary, conditional and targeted. They have very robust language on why these need to be targeted and conditional; it is to prevent inefficient spending, to make the investment in social protection programmes more efficient, to make sure there's no wasted funds.

They're very concerned about any kind of inefficiency in spending when it comes to human needs, but not necessarily when it comes to debt servicing and all the debt payments that will be made from squeezing the public sector. You see where the priorities are! And of course that fiscal contraction will displace women into unemployment and precarious work. Women are already in precarious work, already migrant workers, already in the informal economy, and this exacerbates and intensifies that kind of loss of livelihood and workers' rights violations.

We know that women, especially in a nation like Sri Lanka, form the backbone of the economy, from migrant workers to garment workers in the export processing zones to workers in tea plantations. Women are the absolute economic foundation of your economy. But also when it comes to the care economy – they take care of your households, domestic work and children. The cuts in social welfare will impact especially low-income women, their physical and mental health and emotional well-being. It will also lead to the complete erosion of their time.

Time poverty is really a key issue when it comes to a feminist analysis of austerity measures because it is often misunderstood. Time poverty is often understood as not having enough leisure time available, or not having enough time for socialising or personal self-care. No. Time poverty means there's not enough time to sleep, there's not enough time to do the care provisioning for the children, the cooking for the household, the cleaning and maintenance, getting of groceries for the household. It means more than just loss of leisure time. It is about the material deprivation to the household because of the loss of time for women, because they have to work overtime and engage in many different kinds of employment. This material deprivation of the household points to the fact that the unpaid care economy has a huge macroeconomic role. It is subsidising the wage economy. It is subsidising the formal economy. And the children and the household depend on the provisioning that is done by the care economy. Time poverty has to be looked at as a real violation of the care provisioning for the household.

The other way to look at the care economy is that, unlike in rich countries, where the care economy is often outsourced, the care economy in developing countries is linked to public services, social policies and social protection. So, all the care-related infrastructure is also about water and sanitation and gas and fuel. All the things that austerity hits, hit the care economy directly. The care economy is not a side consideration, it's not a footnote. It's at the centre of what is being attacked by austerity measures.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified by Sri Lanka. It is possible to invoke CEDAW to argue that fiscal and macroeconomic measures cannot override CEDAW. The State has a fundamental obligation to protect women's human, economic and social rights.

Regressive taxation

On the very important issue of tax, the IMF, the World Bank and donor governments in the Global North often point the finger at tax and tax compliance. But they don't look at the way the economy is structured. Most developing economies are based on remittances and informal sector labour. So, income tax is not the same story as it is in wealthy nations where a majority of the workforce is in the formal sector, where income tax payment is reciprocated by the government through access to social security and various other types of welfare system benefits.

Furthermore, and very critically, the IMF has long imposed regressive taxation, such as value-added taxes and general sales taxes, which are flat taxes that most hurt those who have the least purchasing power. There is a significant and ever-growing amount of evidence that also points to how poor women are hurt the most from regressive taxes, as they are often responsible for household purchases of food and commodity items. The antidote to such harmful regressive taxes is progressive taxes, such as taxes on income that target high-net-worth individuals, focusing on financial assets, income from capital investment and real estate, big domestic firms and particularly foreign multinational corporations.

It's unimaginable that, with Sri Lanka's economic situation – where there's double-digit inflation, shortages of fuel, many hours of power cuts – there would be regressive taxation that would be imposed on the food commodities that are already so expensive, already in shortage. So, regressive taxation measures have to be resisted, and we need to talk about progressive taxation measures that are direct, not indirect, and that are investment- and capital-based, not consumption-based.

There is also a need to address illicit financial flows and tax evasion and tax avoidance. Corporate taxation is a significant elephant in the room, precisely because the systematic tax evasion and avoidance committed by corporations result in literally billions of dollars of taxable profit being siphoned into tax havens around the world. Profits produced by economic activities of companies in the actual physical sites of production should be liable to tax within those countries. Measures to combat such tax evasion and avoidance could yield massive sums of money to countries like Sri Lanka and many others across the developing world.

However, the core question is really that of the political will to tax the actual holders of wealth rather than squeezing the poorest. The power politics at hand is about the influence and sway of financial and economic elites to create entire architectures of tax loopholes that allow them to hide their profits in tax havens, as well as exert a strong hold over local politicians to avoid paying their fair share of taxes, often a guarantee demanded by foreign companies in return for investing or manufacturing in the country.

Moreover, political elites, including Sri Lanka's Rajapaksas, are reported to have quite a lot of money in tax havens. The rich and the elite across the developing world have so much money in tax havens, whether it's the Cayman Islands, Switzerland, you name it. This has to be addressed. These are huge amounts of funds that are actually the people's funds, which is why an independent debt audit is very necessary to really look at which parts of the debt ledger are legitimate and which are not. Which were used for corrupt deeds? Where did the money go? What did it finance? Has it been repaid? If not, why not? That kind of audit must be done.

Role of the central bank

A key policy recommendation in many IMF loan programmes, which often falls outside the rubric of fiscal austerity, is that of encouraging the independence of the central bank from the national government. This debate of whether central bank policies should or should not be influenced by the government is critical. Economic justice advocates say that central bank independence reduces or even erases the accountability of the central bank to the government, and that taking monetary policy out of the hands of elected politicians is undemocratic.

As economist and former Minister of Finance for Greece Yanis Varoufakis argues, 'so-called independent central banks are independent only of their parliaments and the people and, thus, fully in the pockets of the financiers and the broader oligarchy'. While IMF staff have commented that central bank independence is aimed at 'politics-free monetary policy decisions', as Varoufakis suggests, removing government authority over central banks does not make them free of politics, only free of democratic accountability.

The argument of the rich-country finance ministries that govern the IMF is that central bank independence controls inflation by taking interest rate management out of the hands of 'short-sighted politicians'. As IMF staff write, 'if politicians manipulate monetary policy to bolster their pre-election popularity, their prioritization of short-term political gains could invite long-term pain for the economy, in the form of higher inflation or even hyper-inflation'.

However, this very 'political interference' means that governments will not have the ability to encourage or mandate their central banks to lower interest rates to support the domestic economy, for example. Indeed, interest rates are central to the stability of the domestic economy. Lower interest rates make it cheaper for businesses to borrow and expand, thereby creating employment. Accountability between governments and central banks also allows national policymakers to turn to central banks to fund their public spending in times of crisis. On the other hand, there are real risks of higher inflation and increasing public debt to unsustainable levels. This does not mean that the central bank should not help the local economy; it just means that there must be careful management and moderation of policy moves, through channels of accountability.

Conclusion

Let me conclude by saying that austerity has no evidence supporting it. There is four decades' worth of evidence, from Greece to Indonesia to Egypt and Tunisia during the Arab Spring, that austerity does not work. During times of crisis and recession, you cannot reduce the fiscal deficit and keep servicing debt by squeezing the public sector. It only makes the economic recession and crisis worse. It exacerbates inequalities and deepens the crisis. This is the evidence provided by Greece just recently in 2013, and Egypt and Tunisia in 2011. In fact in 2016, the IMF's own research staff penned a paper called 'Neo-liberalism: Oversold?'; and the IMF's Independent Evaluation Office has produced various reports acknowledging that fiscal austerity has not delivered as expected. They know it doesn't deliver. They know it has no moral grounds. They know it is precisely about private creditors and international lenders and the finance ministries and central banks wanting to see austerity measures in place so that their debt repayments will be prioritised and they will be getting their resources back.

The number one issue around this is the absence of a multilateral mechanism to restructure the debt, to burden-share the debt. Private creditors need to be put in a position where they are regulated. Where private creditors are purchasing sovereign bonds at attractive interest rates, it means that they are profiting very well from those bonds, like in the case of Sri Lanka. In turn, when there is an economic downturn, they have to take a loss, they have to take a haircut, and they have to share the burden of losses from a fair debt restructuring.

This type of debt restructuring is, however, not happening in Sri Lanka and many other developing countries. What is happening in Sri Lanka is a reprofiling of debt, not a burden sharing of debt in a more legitimate, multilateral manner that avoids austerity. We need the kind of debt restructuring and careful assessment of the debt ledger, the auditing, that really looks at how to burden-share, how to do responsible lending and borrowing.

Debt justice advocates, as well as developing countries within the UN General Assembly, supported by the UN Conference on Trade and Development (UNCTAD), international civil society and various policy institutes, have long called for a binding debt workout mechanism within a multilateral framework for debt crisis resolution. Such a mechanism can address unsustainable and illegitimate debt, and provide systematic, timely and fair restructuring of sovereign debt, including debt cancellation, in a process convening all – bilateral, multilateral and private – creditors.

Real debt restructuring should not come with fiscal austerity. Fair, accountable and effective debt restructuring should free up fiscal space for economic and social rights, for the needs of the people, for provisioning socially, for food distribution, for public services. Real debt restructuring would also work in tandem with addressing tax evasion and tax avoidance, implementing progressive taxation as well as reallocating public expenditure. Real debt restructuring will take out all the corporate giveaways, corporate tax holidays and all the ways in which businesses, especially foreign businesses, are not being regulated properly. It has to be accompanied by the political will to spend, through the public budget, specifically for social protection and public services and goods. During times of crisis, there should be a countercyclical agenda on spending on welfare and the public sector, in order to support social and economic recovery and specifically to ensure protection against hunger and malnutrition and other deprivations related to poverty and lack of access to basic needs.

It also needs to be stressed that national public dialogue is essential to generate consensus and political will within Sri Lanka. Public dialogue strengthens citizens' awareness of their rights and entitlements and regulates the behaviour of vested interest groups, both domestic and international.

For example, expansion of social security coverage by increasing the number of people who contribute into the system tends to be welcomed politically; however, increasing the contribution rates may face resistance by employer groups. Similarly, raising revenues through higher tax rates may be resisted by those who have to pay more, just as certain groups will oppose proposals to reallocate the government budget away from defence or fuel subsidies. On the other hand, using fiscal and central bank reserves and issuing government bonds are relatively less contentious options since they are under the sole discretion of most governments, unless fiscal restrictions were in place. Ultimately, successfully creating fiscal space for economic recovery in times of crisis requires understanding the winners and losers of a specific option and effectively debating the pros and cons in an inclusive public national dialogue.

These are just some of the ways of thinking about alternatives, of rethinking the possibilities of prioritising social protection, progressive taxation and independent debt audits. All of this should be underpinned by national public dialogue. This is about national social movements really leading the national public dialogue sitting down with trade unions, government members, feminist collectives, human rights groups, NGOs and community development organisations in a transparent manner, where there is an open dialogue, where the behaviour and agendas of vested interest groups, both domestic and external, are checked. ◆

Bhumika Muchhala is a political economist and senior policy advisor at the Third World Network, and a coordinator and active member of numerous advocacy coalitions on fiscal austerity, feminist justice, debt and climate justice, and international financial reform. She has 20 years of experience in global economic policy advocacy and thought leadership for reform of the international financial system, engaging in UN conferences and negotiations, the IMF and the G20. She is currently a PhD candidate in global political economy at The New School, New York, and a public educator with global social movements.

The above is reproduced from Polity, *a publication of the Social Scientists' Association of Sri Lanka.*

World sees 'unprecedented' hunger as farm subsidies boost unhealthy foods

A new UN food security report paints a grim picture of global hunger and advocates a restructuring of farm subsidies towards boosting healthier, climate-friendly food production.

Elaine Ruth Fletcher

BETWEEN 702 million and 828 million people suffered from hunger in 2021, more than at any time since 2005, five UN agencies have reported.

The proportion of people affected by hunger had remained relatively unchanged since 2015, affecting 8% of the global population in 2019. Once the COVID-19 pandemic hit in early 2020, those numbers soared to 9.3% in 2020 and to 9.89% in 2021, according to *The State of Food Security and Nutrition in the World 2022* report published by the Food and Agriculture Organization (FAO), World Health Organization (WHO), UNICEF, World Food Programme (WFP) and International Fund for Agricultural Development (IFAD), and released on 6 July.

That represents an increase of about 46 million people since 2020 and 150 million people since the outbreak of the pandemic.

At current rates, 8% of the global population will still face hunger in 2030, unchanged from when the UN's 2030 Agenda for Sustainable Development launched. Among the key goals of that ambitious plan, adopted at the UN Sustainable Development Summit in September 2015, was a determination 'to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment'.

Almost 3.1 billion people couldn't afford a healthy diet in 2020, the report says. Massive food subsidies behind the production and consumption of milk, rice, sugar and meat also are disincentivising production and consumption of healthy fruits, vegetables and protein-rich legumes, the report finds.

Critically, the report calls for a restructuring of global and national food subsidies to encourage more consumption of healthier foods including fruits and vegetables – which would also reduce carbon emissions from agricultural production of livestock and products that contribute to climate change.

'Transformed agro-food systems need to be part of the solution to climate change and biodiversity loss … our very existence depends on it. Hundreds of millions of hungry and malnourished fellow human beings depend on it,' said Botswana's Collen Vixen Kelapile, president of the UN Economic and Social Council (ECOSOC), which hosted the report's launch in New York City.

'Starvation and mass migration on an unprecedented scale'

WFP's Executive Director David Beasley noted the world already faced 'a perfect storm from the combined effects of conflicts and climate change and COVID economic ripple effects and global inflation' as this year was getting started.

'And just when you think it can't get any worse,' he said, 'because we had Ethiopia and Afghanistan, then boom, Ukraine happens, the breadbasket of the world. The impact this conflict is having on global food security means the number of chronically hungry people in the world is likely already much higher than the 828 million people outlined in this work.' Beasley said the latest analysis shows a record 345 million acutely hungry people are marching to the brink of starvation today, a huge increase from 276 million at the start of 2022 and from 135 million in the pre-COVID era. 'There's a real danger it will climb even higher in the months ahead,' he warned.

The global price spikes in food, fuel and fertilisers resulting from the crisis in Ukraine threaten to push countries around the world into famine, Beasley said. 'The result will be global destabilisation, starvation and mass migration on an unprecedented scale. We have to act, and we have to act today to avert this looming catastrophe.'

The prevalence of hunger, childhood wasting and stunting is highest in Africa, with a substantial burden in Asia, and Latin America and the Caribbean (LAC), the report says.

Hunger affected 278 million

people in Africa; 425 million people in Asia; and 56.5 million people in LAC in 2021. Women are more likely to go hungry across the developing world, the report stresses.

Globally, 149.2 million children under the age of five, or 22% of the total population, suffered from stunting, and 6.7% suffered from wasting. Both are nutrition indicators of low height and weight in proportion to age.

Another 38.9 million children under the age of five, or 5.7% of babies and toddlers globally, are overweight, reflecting a rise in unhealthy diets.

Healthy diets became even more unaffordable in 2021.

Almost 3.1 billion people could not afford a healthy diet in 2020, up by 112 million people from 2019, reflecting what the report describes as the effects of inflation in consumer food prices stemming from the economic impacts of the pandemic and the measures put in place to contain it.

The poor in Asia, Africa and Latin America are also among those least able to afford a healthy diet, with Asia seeing the highest surge in costs – 4% in just one year.

Political solution to Ukraine among the most immediate measures

An end to the Russian blockade of Ukrainian ports is an important first step in addressing the crisis but only the beginning, Beasley said, listing the top priorities as follows:

'Firstly we urgently need a political solution to Ukrainian wheat and grain so they can re-enter global markets. Open up the ports. Let's get it moving.

'Number 2, humanitarian organisations need substantial new funding to deal with the skyrocketing levels of hunger that we're seeing around the world.

'Thirdly, governments have to resist protectionism and keep trade flowing across borders. And fourthly, we need to learn the lessons of this crisis and invest in resilience programmes to help the poorest communities protect themselves against hunger and against shocks.

'If we had successfully threaded this needle in the past, the war in Ukraine wouldn't be having such a disastrous global impact today.'

Rewriting the rules on agricultural and food subsidies to promote healthier foods

Fundamentally, the report calls for a major restructuring of deeply embedded global and national subsidies that are currently driving a significant portion of agricultural production – and unhealthy consumption of meat, sugar and basic commodities such as rice – at the expense of healthier and less-carbon-intensive alternatives.

FAO chief economist Máximo Torero Cullen said overall support for agricultural production largely concentrates on staple foods such as dairy and other animal-source protein-rich foods, especially in high- and upper-middle-income countries.

'Rice, sugar and meat of various types are the foods most incentivised worldwide, while producers of fruits and vegetables are less supported overall, and even penalised in some low-income countries,' he said. 'This needs to change. We are doing the opposite of what we are talking about. We need to change abruptly what is happening.'

The new report offers scenarios through 2030 in which public support to all farmers is reallocated around priority foods needed for healthy diets.

FAO says adjusting price incentives will also reduce the cost of nutritious foods, which can make healthy diets more affordable.

That would also lower greenhouse gas emissions, particularly with livestock production, which has a high carbon pricetag.

Shifting certain kinds of subsidies could, however, also create negative impacts on some farmers – who would then need new kinds of support, he pointed out.

Needed: new flexibilities in national and WTO subsidy rules

Cullen said understanding the tradeoffs is key to mapping out the future, and comes further into play with the World Trade Organization (WTO).

'We need commitments and flexibilities, and we need to follow what we have agreed with the WTO rules,' he said. 'It may be necessary to set up new fiscal subsidies to consumers or to use proper social protection systems. International development finance will be needed for low-income countries and lower-middle-income countries, given that they have smaller amount of mechanisms.'

Agricultural subsidies rules, however, tend to penalise small farmers in low-income countries, delegates from Latin America, Africa and Asia told the ECOSOC meeting.

'Massive subsidies distort global markets and make it impossible for farmers from developing countries to produce food at competitive prices,' said Pakistan's UN representative Munir Akram.

Gilbert Houngbo, president of IFAD, said the report highlights ways to repurpose agricultural and food policies to support small-scale producers and to build their resilience.

'Policies on subsidies often fall short of reducing hunger or improving food security and inclusion,' he said. 'Instead, they have promoted an overreliance on starches, sugars, high protein and processed foods, while not supporting the production of healthier fruits and vegetables, for example.' ◆

Elaine Ruth Fletcher is Managing Editor of Health Policy Watch, from which this article is reproduced (https://healthpolicy-watch.news/world-sees-unprecedented-hunger-as-farm-subsidies-boost-unhealthy-foods/).

Our global economic system is broken. Are we headed for a mass revolt?

How long can billionaires continue to amass wealth while the world's poorest struggle to buy food?

Paul Rogers

WHILE it has long been blatantly obvious that the global economic model is not working for all, the rate of accumulation of wealth by a small minority is now breathtaking – if not totally obscene.

With the situation only being worsened by the economic impact of the Ukraine war – which has come on top of the effects of the COVID-19 pandemic – could we be headed for mass revolts sparked by a desperate need for change?

The war is causing food shortages, with the world's poorest the most affected. Though the full impact is yet to be felt, the number of severely food-insecure people has already 'doubled from 135 million to 276 million' in just two years, leaving 'almost 50 million on the edge of famine'.

Though the Global South is the worst hit, poorer communities in richer states are also affected. In the UK, where millions of people already live close to the edge, there has been a surge in the need for food banks as many are pushed into critical need. Many schools in more deprived areas are forced to provide breakfasts every morning, not least to avoid having to teach hungry children who cannot concentrate.

Meanwhile, the rich are getting richer. In one three-month period in 2020 – which coincided with the start of the pandemic – the world's then 2,189 billionaires increased their wealth by 27.5% to $10.2 trillion, according to Swiss private bank UBS. This represented a 70% increase in their wealth in just three years.

Iraqis took to the streets in October 2019 to protest unemployment, low wages and rampant corruption, but such revolts did not spill over into a transnational anger.

Two years on, there are now 2,668 billionaires. In May, Britain's *Sunday Times* published its annual 'rich list' of the country's most wealthy – reporting the richest 10 individuals and families have a combined £182 billion.

In this context, two questions arise. Why has the global rich-poor divide grown so wide? And why has there not been a bigger uprising against it?

The latter is particularly confusing, given that our global system has seen such a vast increase in overall wealth in the past 75 years. After all, following the end of World War Two, many countries in the West put considerable effort into public services, developing much-improved health systems, public education, housing, and basic social assistance support for the most marginalised.

What has happened since? The answer is widely recognised to be 'neoliberalism', an approach whose essence is that the true foundation of economic success is strong and determined competition, which a political system must work towards to have any chance of success.

This approach was developed in the 1950s, with the work of economists including Friedrich Hayek and Milton Friedman, and has since been shaped by a network of more than 450 right-wing think-tanks and campaign groups.

Neoliberalism is aided by taxation designed to benefit the more successful; the firm control of organised labour to minimise opposition; and the maximum privatisation of transport, utilities such as energy, water and communications, housing, health, education and even security.

There are obviously losers from this system, but typically enough wealth will 'trickle down' to prevent serious opposition. It is a line of thinking that can reach the fervour of a religious belief and is certainly best seen as an ideology.

The switch to neoliberalism was boosted by the huge economic upheavals that followed the 1973-74 oil price hikes (over 400% in eight months). Stagflation became the order of the day and in the UK and the US, key elections at the end of the decade brought in the Thatcher and Reagan administrations.

Both newly elected leaders were convinced of the need to embrace the new thinking. Throughout the 1980s, the US pursued a firm belief in the need to accelerate tax changes and financial deregulation, while Britain sought to control the trade unions and oversee the large-scale privatisation of state assets – Thatcher's mantra being 'there is no alternative'.

Two global processes also did much to speed up the transition towards neoliberalism. The first was the 'Washington Consensus', introduced in 1989, which set out free-market economic policies for 'developing countries'. The World Bank and the International Monetary Fund (IMF) led the way in ensuring the Global South followed the new model.

The second was the collapse of the Soviet bloc. Russia's immediate embrace of hyper-capitalism was surely the proof, if any was needed, of the value of the neoliberal approach and the obsolescence of a centrally planned system. Even China was moving towards hybrid authoritarian capitalism.

But now, more than three decades on, neoliberalism does much to explain the obscene levels of wealth for the few, not the many. So, why has it had so little resistance? Part of the answer is the residue of the experience of pre-neoliberal economics, a sense that things were worse before the likes of Thatcher and Reagan came on the scene. That view persists but is rapidly losing its potency in the face of the widening divide.

A more realistic explanation lies in so much of the West's mainstream mass media being controlled by singularly wealthy individuals, families and corporations. In the UK, the print media is dominated by just three billionaire families, who set much of the news agenda. They are hardly likely to focus too much on deep inequalities that, if addressed, would strike at their own power.

The number of severely food-insecure people has doubled from 135 million to 276 million in just two years.

That doesn't rule out radical responses, though. ISIS and other Islamist paramilitary movements have benefited enormously from their ability to recruit marginalised and angry young men with very limited life prospects, offering a cult-like alternative to their deep frustrations.

There are, of course, current instances of revolt elsewhere, such as in Sri Lanka, which have specific causes, invariably in a much wider context. But we have not yet seen any truly transnational movement, though it is worth remembering the coincidence of many revolts in a few months during the latter part of 2019.

In October of that year, thousands took to the streets in Iraq to rebel against levels of unemployment and low wages, which came amid rampant corruption in a country basically rich in fossil fuels. At the same time, Lebanon witnessed repeated street demonstrations against inequality and corruption, and Chile experienced protests that were framed 'as a response to both the failed promises of neoliberalism and the inequality that neoliberal policies have arguably created in the country'. Elsewhere France had the Yellow Vests protests, and Ecuador, Bolivia, Haiti, Albania, Ukraine, Serbia and even Russia saw civil unrest.

As an Oxford Research Group analysis put it at the time: 'In most cases there are specific factors which push unease and resentment over into demonstrations often followed by repression and violence.

'A few may have little to do with rising inequality and diminishing life prospects, but for the majority, these are very much part of the wider social and political context.'

Those revolts did not spill over into a transnational anger, though, let alone violence. The individual protests have not been seen as part of a more global process and there is little sense of a worldwide movement of revolt. But now, the economic effects of the pandemic and the Ukraine war, combined with the growing impact of climate breakdown, suggest that it is only a matter of time. If that is the case, then we really are moving into uncertain times. ◆

Paul Rogers is Emeritus Professor of Peace Studies in the Department of Peace Studies and International Relations at Bradford University in the UK, and an Honorary Fellow at the Joint Service Command and Staff College. He is international security correspondent for openDemocracy (www.opendemocracy.net), from which this article is reproduced under a Creative Commons licence (CC BY-NC 4.0).

SWIFT dollar decline

The dollar is the international currency of choice, but can the US maintain its financial hegemony?

Anis Chowdhury and Jomo Kwame Sundaram

US-LED sanctions are inadvertently undermining the dollar's post-Second World War dominance. The growing number of countries threatened by US and allied actions is forcing victims and potential targets to respond proactively.

SWIFT strengthened dollar

The instant messaging system of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) informs users, both payers and payees, of payments made. Thus, it enables the smooth and rapid transfer of funds across borders.

Created in 1973 and launched in 1977, SWIFT is headquartered in Belgium. It links 11,000 banks and financial institutions (BFIs) in more than 200 countries. The system sends over 40 million messages daily, as trillions of US dollars (USD) change hands worldwide.

Co-owned by more than 2,000 BFIs, it is run by the National Bank of Belgium, together with the G10 central banks of Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the UK and the US. Joint ownership was supposed to avoid involvement in geopolitical disputes.

Many parties use USD accounts to settle dollar-denominated transactions. Otherwise, banks of importing and exporting countries would need accounts in each other's currencies in their respective countries in order to settle payments.

US and allied – including European Union (EU) – sanctions against Russia and Belarus followed their illegal invasion of Ukraine. Created during the US-Soviet Cold War, SWIFT remains firmly under Western control. It is now used to block payments for Russian energy and agriculture exports.

US-led sanctions are inadvertently undermining the dollar's dominance.

But besides stopping income flows, it inadvertently erodes USD dominance. As sanctions are increasingly imposed, such actions intimidate others as well. While intimidation may work, it also prompts other actions.

This includes preparing for contingencies, e.g., by joining other payment arrangements. Such alternatives may ensure not only smoother but also more secure cross-border financial transfers.

As part of US-led sanctions against the Islamic Republic, the EU stopped SWIFT services to Iranian banks from 2012. This blocked foreign fund transfers to Iran until a compromise was struck in 2016.

Based in Brussels, with a data centre in the US, SWIFT is a 'financial panopticon' for surveillance of cross-border financial flows. About 95% of world USD payments are settled through the private New York-based Clearing House Interbank Payments System (CHIPS), involving 43 financial institutions.

About 40% of worldwide cross-border payments are in USD. CHIPS settles $1.8 trillion in claims daily. As all CHIPS members maintain US offices, they are subject to US law regardless of headquarters location or ownership.

Hence, over nearly two decades, CHIPS members like BNP Paribas, Standard Chartered and others have paid nearly $13 billion in fines for Iran-related sanction violations under US law!

Exorbitant privilege

The USD remains the currency of choice for international trade and foreign reserve holdings. Hence, the US has enjoyed an 'exorbitant privilege' since World War Two after the 1944 Bretton Woods conference created the gold-based 'dollar standard' – set at $35 for an ounce of gold.

With the USD remaining the international currency of choice, the US Treasury could pay low interest rates for bonds that other countries hold as reserves. It thus borrows cheaply to finance deficits and debt. Hence, it is able to spend more, e.g., on its military, while collecting less taxes.

Due to USD popularity, the US also profits from seigniorage, namely, the difference between the cost of printing dollar notes and their face value, i.e., the price one pays to obtain them.

In August 1971, President Nixon unilaterally 'ended' US obligations under the Bretton Woods international monetary system, e.g., to redeem gold for USD as agreed. Soon, the fixed USD exchange rates of the old order – determining other currencies' relative values – became flexible in the new 'non-system'.

In the ensuing uncertainty, the US 'persuaded' Saudi King Feisal to ensure all oil and gas transactions are settled in USD. Thus, OPEC's 1974 'petrodollar' deal strengthened the USD following the uncertainties after the Nixon shock.

Nevertheless, countries began diversifying their reserve portfolios, especially after the euro's launch in 1999. Thus, the USD share of foreign currency reserves worldwide declined from 71% in 1999 to 59% in 2021.

With US rhetoric more belligerent, dollar apprehension has been spreading. On 20 April 2022, Israel, a staunch US ally, decided to diversify its reserves, replacing part of its USD share with other major trading partners' currencies, including China's renminbi.

SWIFT, a 'financial panopticon' for surveillance of cross-border financial flows, is firmly under Western control.

Sanction reaction

The EU decision to bar Iranian banks from SWIFT prompted China to develop its Cross-border Interbank Payment System (CIPS). Operational since 2015, CIPS is administered by China's central bank. By 2021, CIPS had 80 financial institutions as members, including 23 Russian banks.

At the end of 2021, Russia held nearly a third of world renminbi reserves. Some view the recent Russian sanctions as a turning point, as those not entrenched in the US camp now have more reason to consider using other currencies instead. After all, before seizing about $300 billion in Russian assets, the US had confiscated about $9.5 billion in Afghan reserves and $342 million of Venezuelan assets.

Threatened with exclusion from SWIFT following the 2014 Crimea crisis, Russia developed its own SPFS (Financial Message Transfer System) messaging system. Launched in 2017, SPFS uses technology similar to SWIFT's and CIPS's.

Both CIPS and SPFS are still developing, largely serving domestic BFIs. By April 2022, most Russian banks and 52 foreign institutions from 12 countries had access to SPFS. Ongoing developments may accelerate their progress or merger.

The National Payments Corporation of India (NPCI) has its own domestic payments system, RuPay. It clears millions of daily transactions among domestic BFIs and can be used for cross-border transactions.

Unsurprisingly, those not allied to the US want to change the system. Following the 2008-09 global financial crisis, China's central bank head called for 'an international reserve currency that is disconnected from individual nations'.

Meanwhile, China's USD assets have declined from 79% in 2005 to 58% in 2014, presumably falling further since then. More recently, China's central bank has been progressively expanding use of its digital yuan or renminbi, e-CNY. With over 260 million users, its app is now 'technically ready' for cross-border use as no Western bank is needed to move funds across borders. Such payments for imports from China using e-CNY will bypass SWIFT, and CHIPS will not need to clear them.

Russia has long complained of US abuse of dollar hegemony. Moscow has tried to 'de-dollarise' by avoiding USD use in trade with the other BRICS countries – Brazil, India, China and South Africa – and in its National Wealth Fund holdings.

Last year, Vladimir Putin warned the US is biting the hand feeding it by undermining confidence in the US-centric system. He warned that 'the US makes a huge mistake in using dollar as the sanction instrument'.

The scope of US financial payments surveillance and USD payments will decline, although not immediately. Thus, Western sanctions have unwittingly accelerated erosion of US financial hegemony.

Besides worsening stagflationary trends, such actions have prompted their targets – current and prospective – to take pre-emptive, defensive measures, with yet unknown consequences. – *IPS* ◆

Anis Chowdhury, Adjunct Professor at Western Sydney University (Australia), held senior United Nations positions in New York and Bangkok. Jomo Kwame Sundaram, a former economics professor, was UN Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

NATO and a war foretold

Warnings of Russian hostility had already been sounded decades before the Ukraine conflict, but these went unheeded by the institution that was the very source of Russian ire – the NATO military bloc.

Medea Benjamin and Nicolas JS Davies

THE war in Ukraine took centrestage as NATO held its summit in Madrid on 28-30 June. During a pre-summit 22 June talk with Politico, NATO's Secretary General Jens Stoltenberg bragged about how well-prepared NATO was for this fight because, he said: 'This was an invasion that was predicted, foreseen by our intelligence services.'

Stoltenberg was talking about Western intelligence predictions in the months leading up to the 24 February invasion, when Russia insisted it was not going to attack. Stoltenberg, however, could well have been talking about predictions that went back not just months before the invasion, but decades.

Stoltenberg could have looked all the way back to when the USSR was dissolving, and highlighted a 1990 US State Department memo warning that creating an 'anti-Soviet coalition' of NATO countries along the USSR's border 'would be perceived very negatively by the Soviets'.

Stoltenberg could have reflected on the consequences of all the broken promises by Western officials that NATO would not expand eastward. US Secretary of State James Baker's famous assurance to Soviet President Gorbachev was just one example. Declassified US, Soviet, German, British and French documents posted by the Washington-based National Security Archive reveal multiple assurances by Western leaders to Gorbachev and other Soviet officials throughout the process of German unification in 1990 and 1991.

The NATO Secretary General could have recalled the 1997 letter by 50 prominent foreign policy experts calling US President Bill Clinton's plans to enlarge NATO a policy error of 'historic proportions' that would 'unsettle European stability'. But Clinton had already made a commitment to invite Poland into the club, reportedly out of concern that saying 'no' to Poland would lose him critical Polish-American votes in the Midwest in the 1996 election.

Stoltenberg could have remembered the prediction made by George Kennan, the intellectual father of US containment policy during the Cold War, when NATO moved to incorporate Poland, the Czech Republic and Hungary. In a 1998 *New York Times* interview, Kennan called NATO expansion a 'tragic mistake' that marked the beginning of a new Cold War, and warned that the Russians would 'gradually react quite adversely'.

After seven more Eastern European countries joined NATO in 2004, including the Baltic states of Estonia, Latvia and Lithuania, which had actually been part of the former Soviet Union, the hostility increased further.

Stoltenberg could have just considered the words of Russian President Putin himself, who said on many occasions that NATO enlargement represented 'a serious provocation'. In 2007, at the Munich Security Conference, Putin asked, 'What happened to the assurances our Western partners made after the dissolution of the Warsaw Pact?'

But it was the 2008 NATO summit, when NATO ignored Russia's vehement opposition and promised that Ukraine would join NATO, that really set off alarm bells.

William Burns, then US ambassador to Moscow, sent an urgent memo to Secretary of State Condoleezza Rice. 'Ukrainian entry into NATO is the brightest of all redlines for the Russian elite (not just Putin),' he wrote. 'In more than two and a half years of conversations with key Russian players, from knuckle-draggers in the dark recesses of the Kremlin to Putin's sharpest liberal critics, I have yet to find anyone who views Ukraine in NATO as anything other than a direct challenge to Russian interests.' Instead of comprehending the danger of crossing 'the brightest of all redlines', US President George W Bush persisted and pushed through internal opposition within NATO to proclaim, in 2008, that Ukraine would indeed be granted membership, but at an unspecified date.

Stoltenberg could well have traced the present conflict back to that NATO summit – a summit that took place well before the 2014 Euromaidan coup or Russia's seizure of Crimea or the failure of the Minsk Agreements to end the civil war in the Donbas.

This was indeed a war foretold. Thirty years of warnings and predictions turned out to be all too accurate. But they all went unheeded by an institution that measured its success only in terms of its own endless expansion instead of by the security it promised but repeatedly failed to deliver, most of all to the victims of its own aggression in Serbia, Afghanistan and Libya.

Now Russia has launched a brutal, illegal war that has uprooted millions of innocent Ukrainians from their homes, killed and injured thousands of civilians and is taking the lives of more than a hundred Ukrainian soldiers every day. NATO is determined to keep sending massive amounts of weapons to fuel the war, while millions around the world suffer from the growing economic fallout of the conflict.

We can't go back and undo Russia's catastrophic decision to invade Ukraine or NATO's historic blunders. But Western leaders can make wiser strategic decisions going forward. Those should include a commitment to allow Ukraine to become a neutral, non-NATO state, something that Ukrainian President Zelenskyy himself agreed to in principle early on in the war.

And, instead of exploiting this crisis to expand even further, NATO should suspend all new or pending membership applications until the current crisis has been resolved. That is what a genuine mutual security organisation would do, in sharp contrast to the opportunistic behaviour of this aggressive military alliance.

But we'll make our own prediction based on NATO's past behaviour. Instead of calling for compromises on all sides to end the bloodshed, this dangerous alliance will instead promise an endless supply of weapons to help Ukraine 'win' an unwinnable war, and will continue to seek out and seize every chance to engorge itself at the expense of human life and global security.

While the world determines how to hold Russia accountable for the horrors it is committing in Ukraine, the members of NATO should do some honest self-reflection. They should realise that the only permanent solution to the hostility generated by this exclusive, divisive alliance is to dismantle NATO and replace it with an inclusive framework that provides security to all of Europe's countries and people, without threatening Russia or blindly following the United States in its insatiable and anachronistic, hegemonic ambitions. ◆

Medea Benjamin, co-founder of Global Exchange and CODEPINK: Women for Peace, is the author of the 2018 book Inside Iran: The Real History and Politics of the Islamic Republic of Iran. *Her previous books include* Kingdom of the Unjust: Behind the US-Saudi Connection *(2016);* Drone Warfare: Killing by Remote Control *(2013);* Don't Be Afraid Gringo: A Honduran Woman Speaks from the Heart *(1989), and (with Jodie Evans)* Stop the Next War Now (Inner Ocean Action Guide) *(2005).*

Nicolas JS Davies is an independent journalist, a researcher with CODEPINK and the author of Blood on Our Hands: The American Invasion and Destruction of Iraq.

NATO triumphant, but the real victors are US war merchants

With the Ukraine war thrusting NATO to centrestage, *T Rajamoorthy* sheds light on the big US military contractors that stand to make a killing from the alliance's resurgence.

The mood of confidence that pervaded the NATO summit in Madrid in June has been described as 'historic', 'transformative' and 'game-changing'. However, NATO's current triumphal state is no reason for ignoring its dubious past.

WHEN the North Atlantic Treaty Organization (NATO) celebrated its 73rd anniversary earlier this year, there was inevitably an air of triumphalism. Likewise, the mood of confidence that pervaded the NATO summit in Madrid in June has been variously described as 'historic', 'transformative' and 'game-changing'. There is nothing surprising about all this euphoria given the fact that until quite recently the inevitable question that any discussion of NATO would engender was: Has NATO a future?

The answer its proponents would now give to that question is probably a resounding 'Yes!'. They would argue that NATO has not only survived but grown. When it was established in 1949, it had only 12 members. Now it has 30. When the membership applications of both Sweden and Finland are approved (a mere formality), the final tally should be 32.

However, NATO's current triumphal state is no reason for ignoring its dubious past. For example, the fact that NATO was founded on a lie. The lie that Russia in 1948 was poised to invade and take over Europe.

This was a palpable falsehood as it was plainly evident that Russia was in no position to execute such a blitzkrieg. The country had just emerged from the Second World War still bleeding, having lost some 27 million lives in the conflict. Much of its industry was in ruins while its housing and other urban structures were devastated. Given its ruinous state, Russia was in no position to launch a full-scale war against the West.

Moreover, Western intelligence reports did not lend any support to this claim.

George Kennan, who as Director of the Policy Planning Staff of the United States State Department had been tasked with the goal of countering the alleged Russian offensive, admitted some two decades later that there was no basis for the claim of Soviet military expansionism.

In May 1965, in a lecture delivered at the Graduate Institute of International Studies in Geneva, Kennan pointed out that 'It was perfectly clear to anyone with even a rudimentary knowledge of the Russia of that day that the Soviet leaders had no intention of attempting to advance their cause by launching military attacks with their own armed forces across frontiers.' He criticised NATO as a military defence against 'an attack no one was planning'.[1]

Despite all this, the US administration of President Harry Truman and other Western governments managed to hoodwink their people into believing that the Russians and the Communist bloc were about to launch a war against them.

What was the objective of this 'war scare'? What did the US under Truman hope to achieve by propagating this myth?

The late Frank Kofsky, in his illuminating and thoroughly researched *Harry S. Truman and the War Scare of 1948*,[2] provides the answer.

When the US entered the Second World War, its economy had still not fully recovered from the Great Depression. However, the war expenditure served to bolster the economy. The principal beneficiaries of such military expenditure were a handful of US defence contractors.

Many of these were contractors which were wholly dependent on government contracts for their sustenance. So long as the war continued, they wallowed in the fat profits which came from this source. However, as the war began to wind down, there was general alarm at the fall in profits, with some pleading that they were on the verge of bankruptcy.

President Truman decided to respond positively to these pleas, but to persuade the US Congress to loosen its purse strings, it was deemed necessary to create a 'war scare' along the lines that 'Communist Russia is about to invade your country'.

Kofsky demonstrates that Truman and his chief officials – notably Secretary of State George C Marshall and Secretary of Defense James V Forrestal – contrived this scare to terrify Congress and the electorate into acquiescing in the administration's expensive and unpopular military buildup programmes unprecedented in peacetime.

The 'war scare' evidently did the trick. Congress approved the programmes and the supporting budget outlays.

The military buildup was precisely what the defence contractors needed to revive their fortunes. As the orders for more aircraft and arms came in, their business picked up, as did the economy as a whole.

The lesson was not lost on policymakers as it became clear that defence spending played a critical role in peacetime as in wartime, in reducing unemployment. The millions in defence expenditure accrued mainly to the defence contractors but also indirectly to a host of other actors who interacted with the implementation of these programmes. The moral of this story was that the US had to maintain something of a permanent war economy if only to keep its economy humming.

Kofsky argues that there was a European component to the scare as well. The Truman administration sought to use it to panic otherwise reluctant European countries, especially in Scandinavia, into joining NATO. On this score, Truman succeeded only partially. While Denmark and Norway entered NATO, Sweden and Finland did not.

Ironically, it is Russian President Vladimir Putin's launching of war against Ukraine that, according to these countries, has now finally persuaded both Sweden and Finland to join NATO. Herein lies the folly of Putin's action: it is not only illegal but it has lent credence to the continued existence of NATO.

In fact, until the Ukraine war, NATO had no raison d'etre. The basis on which it was founded in 1949, as we have shown above, was a lie. There was no threat of a Russian invasion. In any case, with the collapse of the Soviet bloc in the 1990s, there was not a shred of justification for NATO to remain.

NATO however has sought to justify its continued existence by adopting new causes, intervening in the civil wars in Yugoslavia, Libya and Afghanistan, avowedly to bring peace to these countries. However, none of these interventions brought real peace. All that NATO succeeded in doing was to sow death and destruction on an epic scale. Hundreds of thousands of innocent men, women and children were slaughtered. In the case of Libya and Afghanistan, the people were worse off, with neither bread nor peace after NATO's intervention.

At its recent Madrid summit, NATO reiterated its oft-repeated claim that it is a defensive alliance and poses no threat to any country. It has also made the claim that it is essential to world peace. The truth is that NATO is a *threat* to world peace.

The problem really lies in the US military establishment and its relationship with the defence corporations that supply it. This is the infamous 'military-industrial complex' which President Dwight Eisenhower in his farewell speech in 1961 had warned his countrymen about. He specifically warned about 'the unwarranted influence' which this complex could acquire in the absence of an alert and informed citizenry.

What is particularly worrying today is the phenomenal growth in the power and influence of the US defence contractors. At present, these contractors are not merely producing and supplying weapons and armaments for the US Defense Department. They are also shaping and decisively influencing US foreign policy.

The most notable of the contractors are Lockheed Martin Corp, Raytheon Technologies Corp, General Dynamics Corp, Boeing Co and Northrop Grumman Corp.

The case of Lockheed Martin, the world's biggest defence contractor, provides a good illustration of such 'unwarranted influence'. William D Hartung, in his *Prophets of War: Lockheed Martin and the Making of the Military-Industrial Complex*,[3] has documented the enormous power and sway this behemoth has on American foreign policy.

Like all defence contractors, Lockheed Martin thrives on conflict. Its motto could very well be 'War is good business'. And there is enough evidence to show that it has played an important role in fomenting US involvement in two major conflicts.

The first is the Iraq War. Here Bruce Jackson, who served as Lockheed Martin's Vice President for Strategy and Planning from 1993 to 2002, was a key figure. To say that he was a strong advocate of US intervention in Iraq would probably be an understatement. 'Bruce Jackson was championing the invasion of Iraq long before it was fashionable,' says Hartung. Jackson headed a think-tank called the Committee for the Liberation of Iraq which described itself as a 'distinguished group of Americans' who wanted to 'free Iraq from Saddam Hussein'.[4]

But the think-tank which was more consequential in mobilising American public opinion on Iraq was the Project for the New American Century (PNAC), a neoconservative outfit based in Washington that focused on US foreign policy. It was established as a non-profit educational organisation in 1997 'to promote American global leadership'. Of the 25 people who signed PNAC's founding statement of principles, 10 went on to serve in the administration of President George W Bush – the administration that launched the war against Iraq.[5]

The other conflict which Lockheed Martin exacerbated to its very limit was the West's conflict with Russia. The flashpoint was NATO's eastward expansion. The 1991 collapse of the Soviet Union had opened up the opportunity for former Soviet bloc countries to join NATO. But it was clear that such a move would antagonise Russia as it would pose a security threat. And Russia had made clear its objection. Above all, the Russians argued that when they allowed the reunification of Germany (and for the united Germany to remain in NATO), German Chancellor Helmut Kohl and other Western leaders had promised not to expand NATO eastwards.

Despite this pledge, the West ignored Russian concerns and objections and proceeded to admit Poland, Hungary and the Czech Republic in 1999; Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia in 2004; Albania and Croatia in 2009; Montenegro in 2017; and North Macedonia in 2020. Ukraine was obviously the last straw.

There cannot be any doubt that the West's decision to ride roughshod over Russian objections received the full support of US military contractors, especially Lockheed Martin. The contractors were gung-ho about NATO expansion eastwards, and already in the 1990s, Bruce Jackson had set up the US Committee to Expand NATO to mobilise political opinion in Washington in favour of such expansion, ignoring Russian objections. Jackson lobbied the US Congress furiously and made frequent trips to Eastern Europe, making contacts (and deals) with the region's starry-eyed leaders. He exploited to the full the opportunities afforded to him by the fact that he headed both an organisation which agitated for the expansion of US power in the Middle East and another which pushed for extension of US influence in Eastern Europe.

Hence when there was strong resistance by Western European countries (led by France and Germany) to the US-led campaign against Saddam Hussein, Jackson persuaded some 10 Eastern European countries to sign a letter pledging their support for US intervention in Iraq (the infamous 'Vilnius letter' organised at a meeting in the Lithuanian capital). Likewise, when Western European countries refused to send troops to Iraq to back the US war effort, he persuaded the Eastern European countries to do so, claiming it would strengthen their case for NATO membership.

According to him, when he began his campaign in 1995 to secure NATO accessions for Eastern European countries, 'around 70% of editorial boards and 80% of think tanks were on record as being opposed to NATO expansion'. More critically, within NATO itself, there was considerable opposition from countries like France and Germany, which feared Russian antagonism.

Undaunted, Jackson claimed that he and his supporters organised well over 1,000 meetings with US Senators and Congressmen. The hard work paid off and by 1999, the tide had turned, with some 89% Congressional support for the Eastern European countries' claim for NATO accession. Such was the zeal and commitment which Johnson displayed in his drive to secure NATO membership for these countries that Jules Evans profiled him in an article on the Global Dashboard international affairs website as 'the man who took NATO east'.

But the single-mindedness with which Jackson pursued his cause cannot be explained merely by altruism. The hard truth is that he viewed NATO expansion as opening up opportunities for the profitable sale of arms and armaments. He was obviously confident that Lockheed Martin, as the world's largest military contractor, would be able to secure a large portion of the contracts.

His confidence was not misplaced. In an article entitled 'Lockheed Martin and General Dynamics Poised for NATO Expansion', one market analyst writes: 'Looking forward, I see the ongoing Ukraine war and the recent development in NATO countries to provide tailwinds for these two defence leaders [Lockheed Martin, LMT, and General Dynamics, GD] for years to come. The [US Defense Department] now recognises Russia as one of its "principal priorities in the context of renewed great power competition". And recent requests from Finland and Sweden to join NATO have the potential to trigger another round of defence spending in Europe too. Leading defence contractors like LMT and GD are already deeply embedded in NATO. For example, GD was awarded a contract back in 2020 to deliver 624 of its Land Systems Multi-Utility Tactical Transport ("MUTT") systems by 2025 to NATO, the large NATO unmanned ground vehicle fielding. Going a bit further back to 2017, NATO gave GD a five-year \$140M contract to provide cloud and IT services, which will "fundamentally reshape NATO's nervous system".

'And I anticipate them to play an even larger role with NATO's heightened awareness of security after the Russian/Ukraine war. An immediate example includes Germany's announcement to sharply increase defence spending shortly after the war broke out and the plan to order more F35s (made by LMT), and also Ukraine's recent request for M270 and M142 Launch Rocket Systems (both made by LMT).'[6]

Another senior analyst, Jon Markman, writing on the *Forbes* website, broadly concurs with the view that big US defence contractors stand to gain most from recent NATO expansion. He argues: 'Treaty obligations will mean a significant increase in defence spending … More importantly, aligning with NATO is a commitment to interoperability with the American defence ecosystem. This directly benefits the big US contractors. The market for their goods is expanding and they will face no competition for the foreseeable future.'[7] ◆

T Rajamoorthy is Editor of Third World Resurgence.

Endnotes

1 Cited in Isaac Deutscher (1967), 'Myths of the Cold War', in David Horowitz (ed.), *Containment and Revolution: Western Policy Towards Social Revolution: 1917 to Vietnam*, London: Anthony Blond.

2 Frank Kofsky (1995), *Harry S. Truman and the War Scare of 1948*, New York: St Martin's Press.

3 William D Hartung (2011), *Prophets of War: Lockheed Martin and the Making of the Military-Industrial Complex*, New York: Nation Books.

4 Wikipedia entry, 'Committee for the Liberation of Iraq', https://en.wikipedia.org/wiki/Committee_for_the_Liberation_of_Iraq

5 Wikipedia entry, 'Project for the New American Century', https://en.wikipedia.org/wiki/Project_for_the_New_American_Century

6 Envision Research (2022), 'Lockheed Martin and General Dynamics Poised for NATO Expansion', Seeking Alpha, 2 June, https://seekingalpha.com/article/4515906-lockheed-martin-and-general-dynamics-poised-for-nato-expansion

7 Jon Markman (2022), 'Expanded NATO Will Shoot Billions to US Defense Contractors', Forbes, 23 May, https://www.forbes.com/sites/jonmarkman/2022/05/23/expanded-nato-will-shoot-billions-to-us-defense-contractors/

Arms industry sees Ukraine conflict as an opportunity, not a crisis

Western weapons manufacturers' ruthless drive for markets – intertwined with imperialism – has propelled NATO expansion while inflaming wars from Eastern Europe to Yemen.

Jonathan Ng

Reprinted from Truthout (https://truthout.org/articles/arms-industry-sees-ukraine-conflict-as-an-opportunity-not-a-crisis/)

Lockheed Martin CEO Jim Taiclet has highlighted the benefits of 'great power competition' in Europe to shareholders.

IN February, a photograph of Russian President Vladimir Putin sitting hunched over a 13-foot table with French President Emmanuel Macron circulated around the globe. News about their sprawling table and sumptuous seven-course dinner was reminiscent of a Lewis Carroll story. But their meeting was deadly serious. Macron arrived to discuss the escalating crisis in Ukraine and threat of war. Ultimately, their talk foundered over expansion of the North Atlantic Treaty Organization (NATO), yielding little more than the bizarre photograph.

Yet the meeting was surreal for another reason. Over the past year, Macron, the leading European Union (EU) peace negotiator, has led an ambitious arms sales campaign, exploiting tensions to strengthen French commerce. The trade press even reported that he hoped to sell Rafale fighter jets to Ukraine, breaking into the 'former bastion of Russian industry'.

Macron is not alone. NATO contractors openly embrace the crisis in Ukraine as sound business. In January, Raytheon CEO Greg Hayes cited 'tensions in Europe' as an opportunity, saying, 'I fully expect we're going to see some benefit.' Likewise, CEO Jim Taiclet of Lockheed Martin highlighted the benefits of 'great power competition' in Europe to shareholders.

On 24 February, Russia invaded Ukraine, pounding cities with ordnance and dispatching troops across the border. The sonic boom of fighter jets filled the air, as civilians flooded the highways in Kyiv, attempting to flee the capital. And the stock value of arms makers soared.

The spiralling conflict over Ukraine dramatises the power of militarism and the influence of defence contractors. A ruthless drive for markets – intertwined with imperialism – has propelled NATO expansion, while inflaming wars from Eastern Europe to Yemen.

Selling NATO

The current conflict with Russia began in the wake of the Cold War. Declining military spending throttled the arms industry in the United States and other NATO countries. In 1993, US Deputy Secretary of Defense William Perry convened a solemn meeting with executives. Insiders called it the 'Last Supper'. In an atmosphere heavy with misapprehension, Perry informed his guests that impending blows to the US military budget called for industry consolidation. A frantic wave of mergers and takeovers followed, as Lockheed, Northrop, Boeing and Raytheon acquired new muscle and smaller firms expired amid postwar scarcity.

While domestic demand shrank, defence contractors rushed to secure new foreign markets. In particular, they set their sights on the former Soviet bloc, regarding Eastern Europe as a new frontier for accumulation. 'Lockheed began looking at Poland right after the wall came down,' veteran salesman Dick Pawlowski recalled. 'There were contractors flooding through all those countries.' Arms makers became the most aggressive lobbyists for NATO expansion. The security umbrella was not simply a formidable alliance but also a tantalising market.

However, lobbyists faced a major obstacle. In 1990, US Secretary of State James Baker had promised Soviet leader Mikhail Gorbachev that if he allowed a reunited Germany to join NATO, the organisation would move 'not one inch eastward'. Yet lobbyists remained hopeful. The Soviet Union had since disintegrated, Cold War triumphalism prevailed, and vested interests now pushed for expansion. 'Arms Makers See Bonanza In Selling NATO Expansion,' *The New York Times* reported in 1997. The newspaper later noted that 'Expansion of the North Atlantic Treaty Organization – first to Poland, Hungary and the Czech Republic and then possibly to more than a dozen other countries – would offer arms makers a new and hugely lucrative market.'

New alliance members meant new clients. And NATO would literally require them to buy Western military equipment.

Lobbyists poured into Washington, DC fêting legislators in royal style. Vice President Bruce Jackson of Lockheed became the president of the advocacy organisation US Committee to Expand NATO. Jackson recounted the extravagant meals that he hosted at the mansion of the Republican luminary Julie Finley, which boasted 'an endless wine cellar'.

'Educating the Senate about NATO was our chief mission,' he informed journalist Andrew Cockburn. 'We'd have four or five senators over every night, and we'd drink Julie's wine.'

Lobby pressure was relentless. 'The most interested corporations are the defence corporations, because they have a direct interest in the issue,' Romanian Ambassador Mircea Geoană observed. Bell Helicopter, Lockheed Martin and other firms even funded Romania's lobbying machine during its bid for NATO membership.

US Secretary of State Madeleine Albright with the foreign ministers of the Czech Republic, Hungary and Poland at the ceremony marking the three Eastern European countries' accession to NATO in 1999. NATO's expansion over the past two decades benefited arms makers both by increasing their market and by stimulating conflict with Russia.

Ultimately, policy makers reneged on their promise to Gorbachev, admitting Poland, Hungary and the Czech Republic into NATO in 1999. During the ceremony, US Secretary of State Madeleine Albright – who directly cooperated with the Jackson campaign – welcomed them with a hearty 'Hallelujah'. Ominously, the intellectual architect of the Cold War, George Kennan, predicted disaster. 'Such a decision may be expected to inflame the nationalistic, anti-Western and militaristic tendencies in Russian opinion,' Kennan cautioned.

Few listened. Former US Assistant Secretary of Defense Chas Freeman described the mentality of policy makers: 'The Russians are down, let's give them another kick.' Relishing victory, Jackson was equally truculent: '"Fuck Russia" is a proud and long tradition in US foreign policy.' Later, he became chairman of the Committee for the Liberation of Iraq, which paved the way for the 2003 invasion, the biggest industry handout in recent history.

Within two decades, 14 Central and Eastern European countries joined NATO. The organisation originally existed to contain the Soviet Union, and Russian officials monitored its advance with alarm. In retrospect, postwar expansion benefited arms makers both by increasing their market and by stimulating conflict with Russia.

Targeting Ukraine

Tensions reached a new phase in 2014 when the United States backed the removal of President Viktor Yanukovych in Ukraine. Yanukovych had opposed NATO membership, and Russian officials feared his ouster would bring the country under its strategic umbrella. Rather than assuage their concerns, the Obama administration manoeuvred to slip Ukraine into its sphere of influence. Assistant Secretary of State Victoria Nuland coordinated regime change with brash confidence. Nuland openly distributed cookies to protesters and later capped a diplomatic exchange with 'fuck the EU'. At the height of the uprising, Senator John McCain also joined demonstrators. Flanked by leaders of the fascist Svoboda Party, McCain advocated regime change, declaring that 'America is with you'.

By then, newly minted NATO

members had bought nearly $17 billion in American weapons. Military installations, including six NATO command posts, ballooned across Eastern Europe. Fearing further expansion, Russia annexed the Crimean Peninsula and intervened in the Donbas region, fuelling a ferocious and interminable war.

NATO spokespeople argued that the crisis justified expansion. In reality, NATO expansion was a key inciter of the crisis. And the conflagration was a gift to the arms industry. In five years, major weapons exports from the United States increased 23%, while French exports alone registered a 72% leap, reaching their highest levels since the Cold War. Meanwhile, European military spending hit record heights.

As tensions escalated, Supreme Commander Philip Breedlove of NATO wildly inflated threats, calling Russia 'a long-term existential threat to the United States'. Breedlove even falsified information about Russian troop movements over the first two years of the conflict, while brainstorming tactics with colleagues to 'leverage, cajole, convince or coerce the US to react'. A senior fellow at the Brookings Institution concluded that he aimed to 'goad Europeans into jacking up defence spending'.

And he succeeded. The Stockholm International Peace Research Institute registered a significant leap in European military spending – even though Russian spending in 2016 equalled only one-quarter of the European NATO budget. That year, Breedlove resigned from his post before joining the Center for a New American Security, a hawkish think-tank awash in industry funds.

The arms race continues. After European negotiations gridlocked, Russia recognised two separatist republics in the Donbas region before invading Ukraine this February. Justifying the bloody operation, Putin wrongly accused Ukrainian authorities of genocide. Yet his focus was geopolitical. 'It is a fact that over the past 30 years we have been patiently trying to come to an agreement with the leading NATO countries,' he said. 'In response to our proposals, we invariably faced either cynical deception and lies or attempts at pressure and blackmail, while the North Atlantic alliance continued to expand despite our protests and concerns. Its military machine is moving and, as I said, is approaching our very border.'

In retrospect, three decades of industry lobbying has proved deadly effective. NATO engulfed most of Eastern Europe and provoked a war in Ukraine – yet another opportunity for accumulation. Alliance members have activated Article 4, mobilising troops, contemplating retaliation and moving further towards the brink of armageddon.

Yet even as military budgets rise, European arms makers – like their American counterparts – have required foreign markets to overcome fiscal restraints and production costs. They need clients to finance their own military buildup: foreign wars to fund domestic defence.

Yemen burning

Arms makers found the perfect sales opportunity in Yemen. In 2011, a popular revolution toppled Ali Abdullah Saleh, who had monopolised power for two decades. His crony, Abdu Rabbu Mansour Hadi, became president the next year after easily winning the election: He was the only candidate. Thwarted by elite intrigue, another uprising ejected Mansour Hadi in 2015.

That year, Prince Salman became king of Saudi Arabia, but power concentrated into the hands of his son, Mohammed bin Salman, who feared that the uprising threatened to snatch Yemen from Saudi Arabia's sphere of influence.

Months later, a Saudi-led coalition invaded, leaving a massive trail of carnage. 'There was no plan,' a US intelligence official emphasised. 'They just bombed anything and everything that looked like it might be a target.'

The war immediately attracted NATO contractors, who backed the aggressors. They exploit the conflict to sustain industrial capacity, fund weapons development and achieve economies of scale. In essence, the Saudi-led coalition subsidises the NATO military buildup, while the West inflames the war in Yemen.

Western statesmen pursue sales with perverse enthusiasm. In May 2017, Donald Trump visited Saudi Arabia for his first trip abroad as US president, in order to flesh out the details of a $110 billion arms bundle. His son-in-law, Jared Kushner, arrived beforehand to discuss the package. When Saudi officials complained about the price of a radar system, Kushner immediately called the CEO of Lockheed Martin to ask for a discount. The following year, Mohammed bin Salman visited company headquarters during a whirlwind tour of the United States. Defence contractors, Hollywood moguls and even Oprah Winfrey welcomed the young prince.

Yet the Americans were not alone. The Saudi-led coalition is also the largest arms market for France and other NATO members. And as the French Ministry of the Armed Forces explains, exports are 'necessary for the preservation and development of the French defence technological and industrial base'. In other words, NATO members such as France export war in order to retain their capacity to wage it.

President Macron denies that the coalition – an imposing alliance that includes Saudi Arabia, Egypt, Jordan, the United Arab Emirates, Kuwait, Bahrain, Qatar, Sudan and Senegal – uses French weapons. But the statistics are suggestive. Between 2015 and 2019, France awarded €14 billion in arms export licences to Saudi Arabia and €20 billion in licences to the United

Arab Emirates. CEO Stéphane Mayer of Nexter Systems praised the performance of Leclerc tanks in Yemen, boasting that they 'have highly impressed the military leaders of the region'. In short, while Macron denies that the coalition wields French hardware in Yemen, local industrialists cite their use as a selling point. Indeed, Amnesty International reports that his administration has systematically lied about its export policy. Privately, officials have compiled a 'very precise list of French materiél deployed in the context of the conflict, including ammunition'.

Recently, Macron became one of the first heads of state to meet Mohammed bin Salman following the assassination of journalist Jamal Khashoggi. Like Trump's trip, Macron's diplomatic junket was a sales mission. Eventually, Macron clinched a deal with the United Arab Emirates for 80 Rafale fighters. The CEO of Dassault Aviation called the contract 'the most important ever obtained by French military aerospace', guaranteeing six years of work for a pillar of its industrial base.

French policy is typical of NATO involvement in Yemen. While denouncing the war, every Western producer has outfitted those carrying it out. Spanish authorities massage official documents to conceal the export of lethal hardware. Great Britain has repeatedly violated its own arms embargo. And the United States has not respected export freezes with any consistency.

Even NATO countries in Eastern Europe exploit the war. While these alliance members absorb Western arms, they dump some of their old Soviet hardware into the Middle East. Between 2012 and July 2016, Eastern Europe awarded at least €1.2 billion in military equipment to the region.

Ironically, a leading Eastern European arms exporter is Ukraine. While the West rushes to arm Kyiv, its ruling class has sold weapons on the black market. A parliamentary inquiry concluded that between 1992 and 1998 alone, Ukraine lost a staggering $32 billion in military assets, as oligarchs pillaged their own army. Over the past three decades, they have outfitted Iraq, the Taliban and extremist groups across the Middle East. Even former President Leonid Kuchma, who has led peace talks in the Donbas region, illegally sold weapons while in office. More recently, French authorities investigated Dmytro Peregudov, the former director of the state defence conglomerate, for pocketing $24 million in sales commissions. Peregudov resided in a château with rolling wine fields, while managing the extensive properties that he acquired after his years in public service.

The warlords

Kuchma and Peregudov are hardly exceptional. Corruption is endemic in an industry that relies on the proverbial revolving door. The revolving door is not simply a metaphor but an institution, converting private profit into public policy. Its perpetual motion signifies the social reproduction of an elite that resides at the commanding heights of a global military-industrial complex. Leading power brokers ranging from the Mitterrands and Chiracs in France, to the Thatchers and Blairs in Britain, and the Gonzálezes and Bourbons in Spain have personally profited from the arms trade.

In the United States, the industry employs around 700 lobbyists. Nearly three-fourths previously worked for the federal government – the highest percentage for any industry. The lobby spent $108 million in 2020 alone, and its ranks continue to swell. Over the past 30 years, about 530 congressional staffers on military-related committees left office for defence contractors. Industry veterans dominate the Biden administration, including Secretary of Defense Lloyd Austin from Raytheon.

The revolving door reinforces the class composition of the state, while undermining its moral legitimacy. As an elite rotates office, members insulate policymaking from democratic input, taint the government with corruption and mistake corporate profit with national interest. By 2005, 80% of army generals with three stars or more retired to arms makers despite existing regulations. (The National Defense Authorization Act prohibits top officers from lobbying the government for two years after leaving office or leveraging personal contacts to secure contracts. But compliance is notoriously poor.) More recently, the US Navy initiated investigations against dozens of officers for corrupt ties to the defence contractor Leonard Francis, who clinched contracts with massive bribes, lavish meals and sex parties.

Steeped in this corrosive culture, NATO intellectuals now openly talk about the prospect of 'infinite war'. General Mike Holmes insists that it is 'not losing. It's staying in the game and getting a new plan and keeping pursuing your objectives.' Yet those immersed in its brutal reality surely disagree. The United Nations reports that at least 14,000 people have died in the Russo-Ukrainian War since 2014, and over 377,000 have perished in Yemen.

In truth, the doctrine of infinite war is not so much a strategy as it is a confession – acknowledging the violent metabolism of a system that requires conflict. As a self-selecting elite propounds NATO expansion, military buildup and imperialism, we must embrace what the warlords most fear: the threat of peace. ◆

The author would like to thank Sarah Priscilla Lee of the Learning Sciences Program at Northwestern University for reviewing this article.

Jonathan Ng received his Ph.D. in history at Northwestern University researching US interventionism. Currently, he is a postdoctoral fellow at the University of Tulsa.

How Patrice Lumumba's assassination drove student activism, shaping the Congo's future

Radicalised by the assassination of independence leader Patrice Lumumba, the student movement in the Congo pushed for full decolonisation of Congolese society and economy.

Pedro Monaville

DURING a recent visit to the Democratic Republic of Congo (DRC), King Philippe of Belgium made a speech to the national parliament in Kinshasa expressing his 'deepest regrets' for the exploitation and oppression of Belgian colonialism.

The European nation ruled the Democratic Republic of Congo from 1908 until 1960. Before that, it had been a personal colony of Leopold II, Philippe's great-great-granduncle, for more than 25 years.

Philippe also addressed students at the University of Lubumbashi, in the capital of the southeastern province of Katanga. 'Today, let's look towards the future,' he urged. Philippe declined to expand on his regrets, and only mentioned the colonial past, 'our shared history', in veiled terms.

His exhortation to dissipate colonial memories is particularly problematic in Lubumbashi. It is only a few kilometres away from where Patrice Lumumba, the Congo's first Prime Minister, was assassinated. This happened in the presence of the Katangese secessionist leader Moïse Tshombe and his Belgian advisers on 17 January 1961.

Lumumba's tooth, which had been kept by the Belgian policeman who destroyed his body, will finally be repatriated to the DRC – a gesture his family have been requesting for a long time.

Belgian researcher Ludo De Witte has described Lumumba's murder as the most important assassination of the 20th century. A charismatic leader, Lumumba embodied the struggle for pan-Africanism and Congolese unity. He unequivocally denounced Europe's racist oppression of Africa. His vision of decolonisation, as a process of total liberation, marked millions of people in the Congo and around the world.

While Belgium has partly acknowledged its responsibility for the murder, no protagonists have been brought to justice. A parliamentary commission found that King Baudouin, the monarch at Congo's decolonisation, was aware of plans to assassinate Lumumba. However, Baudouin's complicity remains to be officially recognised.

The commission 'tried in a way to limit the damages with its conclusions' and shied away from linking Belgium directly to the assassination. That was because 'the diplomatic, ideological and financial consequences would be extremely great'.

This might be why King Philippe is focusing on moving forward. His speech in Lubumbashi positioned Congolese students as a future-oriented group with whom Belgium could forge a new partnership.

But there's a crucial element missing from this logic: the specific role historically played by university students in further entrenching decolonisation in the Congo. This appeared most strongly during the 1960s.

In a forthcoming book on the history of this movement, as well as in previous publications, I argue that Lumumba's death triggered students towards the political left. It created a generation of intransigent activists. These students pushed for total liberation from exploitation and oppression, as Lumumba had envisioned.

Many students today still feel committed to this tradition, and might not easily accept the clean slate envisioned in the monarch's call to turn away from the past.

Shifts in the student movement

Congolese only began accessing universities a few years before the end of the Belgian regime. This was much later than in other colonial territories in Africa. This was a deliberate move by colonial officials, afraid that educated Congolese would challenge the status quo.

But as the anticolonial struggle was taking off, the Belgians revised their judgement and authorised the opening of two universities. They hoped that having been given access to the last echelon of European education, educated Congolese would support the maintaining of strong ties between Belgium and the Congo.

In the late 1950s, some students adopted the moderate tone that the Belgians had wished for. Several leading student figures from this period, whom I interviewed for my book, told me how they had criticised the politicians as demagogues unfit to rule the Congo. They argued that only a properly trained elite like themselves, and not uneducated politicans, could lead the country towards development and prosperity.

But, in the aftermath of Lumumba's assassination in 1961, the student movement shifted. Its orientation became a vocal voice in defence of a fully independent Congo and for a more radical break with the colonial era. Students became increasingly critical of their Belgian professors and began identifying with revolutionary figures from Africa, Asia and Latin America.

The murder opened the eyes of many to the violence of neocolonialism. Lumumba immediately became viewed as both a martyr and a hero by people around the world. This strongly impressed students and they felt like it was their role to continue the work he had started.

The student movement of the 1960s adopted Lumumba's commitment to pan-African unity. It built on his conviction that

(continued on page 64)

'We shall make the Congo the pride of Africa'

Patrice Lumumba's vision of liberation and justice for the Congo found powerful expression in his speech – reproduced below – at the ceremony of proclamation of the country's independence on 30 June 1960.

Men and women of the Congo,
Victorious independence fighters,
I salute you in the name of the Congolese Government.

I ask all of you, my friends, who tirelessly fought in our ranks, to mark this June 30, 1960, as an illustrious date that will be ever engraved in your hearts, a date whose meaning you will proudly explain to your children, so that they in turn might relate to their grandchildren and great-grandchildren the glorious history of our struggle for freedom.

Although this independence of the Congo is being proclaimed today by agreement with Belgium, an amicable country, with which we are on equal terms, no Congolese will ever forget that independence was won in struggle, a persevering and inspired struggle carried on from day to day, a struggle in which we were undaunted by privation or suffering and stinted neither strength nor blood.

It was filled with tears, fire and blood. We are deeply proud of our struggle, because it was just and noble and indispensable in putting an end to the humiliating bondage forced upon us.

That was our lot for the eighty years of colonial rule and our wounds are too fresh and much too painful to be forgotten.

We have experienced forced labour in exchange for pay that did not allow us to satisfy our hunger, to clothe ourselves, to have decent lodgings or to bring up our children as dearly loved ones.

Morning, noon and night we were subjected to jeers, insults and blows because we were 'Negroes'. Who will ever forget that the black was addressed as '*tu*', not because he was a friend, but because the polite '*vous*' was reserved for the white man?

We have seen our lands seized in the name of ostensibly just laws, which gave recognition only to the right of might.

We have not forgotten that the law was never the same for the white and the black, that it was lenient to the ones, and cruel and inhuman to the others.

We have experienced the atrocious sufferings, being persecuted for political convictions and religious beliefs, and exiled from our native land: our lot was worse than death itself.

We have not forgotten that in the cities the mansions were for the whites and the tumbledown huts for the blacks; that a black was not admitted to the cinemas, restaurants and shops set aside for 'Europeans'; that a black travelled in the holds, under the feet of the whites in their luxury cabins.

Who will ever forget the shootings which killed so many of our brothers, or the cells into which were mercilessly thrown those who no longer wished to submit to the regime of injustice, oppression and exploitation used by the colonialists as a tool of their domination?

All that, my brothers, brought us untold suffering.

But we, who were elected by

the votes of your representatives, representatives of the people, to guide our native land, we, who have suffered in body and soul from the colonial oppression, we tell you that henceforth all that is finished with.

The Republic of the Congo has been proclaimed and our beloved country's future is now in the hands of its own people.

Brothers, let us commence together a new struggle, a sublime struggle that will lead our country to peace, prosperity and greatness.

Together we shall establish social justice and ensure for every man a fair remuneration for his labour.

We shall show the world what the black man can do when working in liberty, and we shall make the Congo the pride of Africa.

We shall see to it that the lands of our native country truly benefit its children.

We shall revise all the old laws and make them into new ones that will be just and noble.

We shall stop the persecution of free thought. We shall see to it that all citizens enjoy to the fullest extent the basic freedoms provided for by the Declaration of Human Rights.

We shall eradicate all discrimination, whatever its origin, and we shall ensure for everyone a station in life befitting his human dignity and worthy of his labour and his loyalty to the country.

We shall institute in the country a peace resting not on guns and bayonets but on concord and goodwill.

And in all this, my dear compatriots, we can rely not only on our own enormous forces and immense wealth, but also on the assistance of the numerous foreign states, whose cooperation we shall accept when it is not aimed at imposing upon us an alien policy, but is given in a spirit of friendship.

Even Belgium, which has finally learned the lesson of history and need no longer try to oppose our independence, is prepared to give us its aid and friendship; for that end an agreement has just been signed between our two equal and independent countries. I am sure that this cooperation will benefit both countries. For our part, we shall, while remaining vigilant, try to observe the engagements we have freely made.

Thus, both in the internal and the external spheres, the new Congo being created by my government will be rich, free and prosperous. But to attain our goal without delay, I ask all of you, legislators and citizens of the Congo, to give us all the help you can.

I ask you all to sink your tribal quarrels: they weaken us and may cause us to be despised abroad.

I ask you all not to shrink from any sacrifice for the sake of ensuring the success of our grand undertaking.

Finally, I ask you unconditionally to respect the life and property of fellow-citizens and foreigners who have settled in our country; if the conduct of these foreigners leaves much to be desired, our Justice will promptly expel them from the territory of the republic; if, on the contrary, their conduct is good, they must be left in peace, for they, too, are working for our country's prosperity.

The Congo's independence is a decisive step towards the liberation of the whole African continent.

Our government, a government of national and popular unity, will serve its country.

I call on all Congolese citizens, men, women and children, to set themselves resolutely to the task of creating a national economy and ensuring our economic independence.

Eternal glory to the fighters for national liberation!

Long live independence and African unity!

Long live the independent and sovereign Congo! ◆

(continued from page 63)

independence involved more than a political transition. It had to be a revolutionary process that abolished economic exploitation and ensured mental liberation from colonial worldviews.

Student demands

Students denounced the continuous power of Belgian administrators and faculty at Congolese universities. They demanded the Africanisation of curricula and the democratisation of governing boards.

Their activism transformed higher education. It paved the way ultimately to the nationalisation of universities. But it also reverberated beyond university campuses, challenging the political elite's refusal to continue the unfinished decolonisation of Congolese society and economy.

After General Mobutu Sese Seko staged a coup in 1965, he attempted to co-opt students and change their ideas about radical independence.

However, Mobutu's uneven adherence to the ideal of Congolese nationalism alienated the students. By the end of the 1960s, university students continued to oppose Mobutu's increasingly dictatorial power. This was despite the fact that the regime suppressed critical voices.

Their protests were violently repressed and did not succeed in immediately challenging the president. Yet, they planted seeds that grew over the years and led to the powerful movement for democratisation of the 1990s. I believe that this significantly weakened Mobutu's power and contributed to his ultimate downfall in 1997.

In June 1970, when King Baudouin went on the first

Belgian royal visit of the Congo since independence, he stopped, together with President Mobutu, at Lovanium University in Kinshasa. In an interview with students from that time, they told me how they sprayed the royal delegation with water. It was an expression of their opposition to the regime and unfinished decolonisation of their university.

King Philippe didn't experience an incident like this. Yet, it doesn't mean that students aren't looking critically at the relationship between Belgium and the Congo. Students rose up in 2015 against then President Joseph Kabila's attempt to change the constitution. Recently, they have protested against the ongoing war and massacres of civilians in Eastern Congo. ◆

Pedro Monaville, a historian of modern Africa, is a Professor at New York University Abu Dhabi. His first book, Students of the World: Global 1968 and Decolonization in the Congo*, is coming out with Duke University Press in July 2022. This article was originally published in The Conversation (theconversation.com) under a Creative Commons licence.*

A letter from prison

Almost immediately after independence, the Congo plunged into crisis sparked by an army revolt, a secessionist movement in mineral-rich Katanga province and the intervention of Belgian troops. In the ensuing political disorder, Patrice Lumumba was detained in Thysville prison, where he wrote the following letter to his wife reaffirming his commitment to Congolese independence and dignity.

My dear wife,

I am writing these words to you, not knowing whether they will ever reach you, or whether I shall be alive when you read them.

Throughout my struggle for the independence of our country I have never doubted the victory of our sacred cause, to which I and my comrades have dedicated all our lives.

But the only thing which we wanted for our country is the right to a worthy life, to dignity without pretence, to independence without restrictions.

This was never the desire of the Belgian colonialists and their Western allies, who received, direct or indirect, open or concealed, support from some highly placed officials of the United Nations, the body upon which we placed all our hope when we appealed to it for help.

They seduced some of our compatriots, bought others and did everything to distort the truth and smear our independence.

What I can say is this – alive or dead, free or in jail – it is not a question of me personally.

The main thing is the Congo, our unhappy people, whose independence is being trampled upon.

That is why they have shut us away in prison and why they keep us far away from the people. But my faith remains indestructible.

I know and feel deep in my heart that sooner or later my people will rid themselves of their internal and external enemies, that they will rise up as one in order to say 'No' to colonialism, to brazen, dying colonialism, in order to win their dignity in a clean land.

We are not alone. Africa, Asia, the free peoples and the peoples fighting for their freedom in all corners of the world will always be side by side with the millions of Congolese who will not give up the struggle while there is even one colonialist or colonialist mercenary in our country.

To my sons, whom I am leaving and whom, perhaps, I shall not see again, I want to say that the future of the Congo is splendid and that I expect from them, as from every Congolese, the fulfilment of the sacred task of restoring our independence and our sovereignty.

Without dignity there is no freedom, without justice there is no dignity and without independence there are no free men.

Cruelty, insults and torture can never force me to ask for mercy, because I prefer to die with head high, with indestructible faith and profound belief in the destiny of our country than to live in humility and renounce the principles which are sacred to me.

The day will come when history will speak. But it will not be the history which will be taught in Brussels, Paris, Washington or the United Nations.

It will be the history which will be taught in the countries which have won freedom from colonialism and its puppets.

Africa will write its own history and in both north and south it will be a history of glory and dignity.

Do not weep for me. I know that my tormented country will be able to defend its freedom and its independence.

Long live the Congo!

Long live Africa! ◆

Source: Patrice Lumumba: The Truth about a Monstrous Crime of the Colonialists*, Moscow: Foreign Languages Publishing House, 1961. Transcribed by Thomas Schmidt.*

Military onslaught in Myanmar's eastern states amounts to collective punishment

An Amnesty International report uncovers widespread and systematic attacks by the Myanmar military against civilians in two eastern states.

MYANMAR'S military has been systematically committing widespread atrocities in recent months, including unlawfully killing, arbitrarily detaining and forcibly displacing civilians in two eastern states, Amnesty International has said in a new report released on 31 May.

The report, '"Bullets rained from the sky": War crimes and displacement in eastern Myanmar', found that Myanmar's military has subjected Karen and Karenni civilians to collective punishment via widespread aerial and ground attacks, arbitrary detentions that often result in torture or extrajudicial executions, and the systematic looting and burning of villages.

The violence in Kayin and Kayah States reignited in the wake of last year's military coup and escalated from December 2021 to March 2022, killing hundreds of civilians and displacing more than 150,000 people.

'The world's attention may have moved away from Myanmar since last year's coup, but civilians continue to pay a high price. The military's ongoing assault on civilians in eastern Myanmar has been widespread and systematic, likely amounting to crimes against humanity,' said Rawya Rageh, Senior Crisis Adviser at Amnesty International.

'Alarm bells should be ringing: the ongoing killing, looting and burning bear all the hallmarks of the military's signature tactic of collective punishment, which it has repeatedly used against ethnic minorities across the country.'

Post-coup surge in violence

For decades, ethnic armed organisations in Myanmar, including in Kayin and Kayah States, have been engaged in struggles for greater rights and autonomy. Fragile ceasefires in place in both states since 2012 broke down after the February 2021 coup, and new armed groups have emerged. In its operations, the military has relentlessly attacked civilians.

Some attacks appear to have directly targeted civilians as a form of collective punishment against those perceived to support an armed group or the wider post-coup uprising. In other cases, the military has fired indiscriminately into civilian areas where there are also military targets. Direct attacks on civilians, collective punishment, and indiscriminate attacks that kill or injure civilians violate international humanitarian law and constitute war crimes.

Attacks on a civilian population must be widespread or systematic to amount to crimes against humanity; in Kayin and Kayah States, they are both, for crimes including murder, torture, forcible transfer, and persecution on ethnic grounds.

Unlawful strikes

In its ongoing operations, Myanmar's military has repeatedly fired explosive weapons with wide-area effects into populated civilian areas. Dozens of witnesses told Amnesty International about barrages that lasted days at a time. The organisation documented 24 attacks by artillery or mortars between December 2021 and March 2022 that killed or injured civilians or that caused destruction to civilian homes, schools, health facilities, churches and monasteries.

For example, on 5 March 2022, as families were at dinner, the military shelled Ka Law Day village, Hpapun Township, Kayin State, killing seven people, including a woman who was eight months pregnant. A close family member of four of the people who were killed said he had to sit in his house all night looking at the bodies, for fear of being injured by further shelling, before burying them in the morning.

Many people described the military's use of fighter jets and attack helicopters as particularly terrifying. Witnesses described not being able to sleep at night out of fear of air strikes, or fleeing to seek shelter in bunkers and caves.

Amnesty International documented eight air strikes on villages and an internally displaced persons (IDP) camp in eastern

Myanmar in the first three months of 2022. The attacks, which killed nine civilians and injured at least nine more, destroyed civilian homes and religious buildings. In almost all documented attacks, only civilians appear to have been present.

In one case, at around 6pm on 23 February 2022, a fighter jet fired on Dung Ka Mee village, Demoso Township, Kayah State, killing two civilian men and injuring several others. Amnesty International interviewed two witnesses and a relative of one of the deceased as well as an aid worker who responded after the attack. They said there was no fighting that evening and that the nearest armed group base was a mile or more away.

A local resident, a 46-year-old farmer who witnessed the attack, said the military aircraft made three passes, firing guns and a rocket: 'When that fighter jet was flying toward us in a nose-down position, I was numb… When they fired the rocket, I got myself together and realised I had to run [to a bunker]… We were shocked to see the dust and debris come towards us… There is a two-story building… The family lives upstairs and the downstairs is a mobile phone store. This building collapsed and it was also on fire.'

Another witness, a 40-year-old farmer, saw the remains of a neighbour's body: 'We couldn't even put them in a coffin, we put them in a plastic bag and buried them. People had to pick up the body pieces and put them in a bag.'

In another incident, the military carried out an air strike on Ree Khee Bu IDP camp at around 1am on 17 January 2022, killing a man in his 50s as well as 15- and 12-year-old sisters.

Extrajudicial executions

The report documents how Myanmar's military carried out arbitrary detentions of civilians on the basis of their ethnicity or because they were suspected of supporting the anti-coup movement. Often, detainees were tortured, forcibly disappeared or extrajudicially executed.

In one of many cases where soldiers extrajudicially executed civilians who ventured out from displacement sites to collect food or belongings, three farmers from San Pya 6 Mile village in Kayah State went missing in January 2022. Their decomposed bodies were found in a pit latrine around two weeks later.

The brother of one of the victims said he identified the men by their clothes and the state of their teeth. Soldiers fired on him and others as they tried to retrieve the bodies; they could only return to finish the burial a month later.

In a massacre that prompted rare international condemnation, soldiers near Mo So village in Kayah State's Hpruso Township reportedly stopped at least 35 women, men and children in multiple vehicles on 24 December 2021, and then proceeded to kill them and burn their bodies. Doctors who examined the bodies reportedly said many of the victims had been tied up and gagged, bearing wounds suggesting they were shot or stabbed.

Amnesty International maintains that the incident must be investigated as a case of extrajudicial executions. Such killings in armed conflict constitute war crimes.

Witnesses also described Myanmar's military shooting at civilians, including those attempting to flee across a river along the border with Thailand.

Looting and burning

Following a pattern from past military operations, soldiers have systematically looted and burned large sections of villages in Kayin and Kayah States. Witnesses from six villages reported having items including jewellery, cash, vehicles and livestock stolen, before homes and other buildings were burned.

Four men who fled Wari Suplai village, on the border of Shan and Kayah States, said they watched from nearby farmland as houses went up in flames after most villagers fled on 18 February 2022. They told Amnesty International that the burning went on for days, destroying well over two-thirds of the houses there.

The violence has caused the mass displacement of more than 150,000 people, including between a third and a half of Kayah State's entire population.

'It's not a house anymore. It's all ashes – black and charcoal… It's my life's savings. It was destroyed within minutes,' said a 38-year-old farmer and father of two young children.

Amnesty International's analysis of fire data and satellite imagery shows how villages were burned, some of them multiple times, in parts of Kayah State. The burning directly tracks military operations from village to village in February and March 2022.

A defector from the military's 66th Light Infantry Division, who was involved in operations in Kayah State until October 2021, told Amnesty International that he witnessed soldiers looting and burning homes: 'They don't have any particular reason [for burning a specific house]. They just want to put the fear in the civilians that "This is what we'll do if you support [the resistance fighters]." And another thing is to stop the supply and logistics for the local resistance forces… [Soldiers] took everything they could [from a village] and then they burned the rest.'

The violence has caused the mass displacement of more than 150,000 people, including between a third and a half of Kayah State's entire population. In some cases, entire villages have been emptied of their populations; at times, civilians have had to flee repeatedly in recent months.

Displaced people are enduring dire conditions amid food insecurity, scant health care – including for the conflict's enormous psychosocial impact – and ongoing efforts by the military to obstruct humanitarian aid provision. Aid workers spoke of growing malnutrition and increasing difficulties in reaching displaced people due to the ongoing violence and military restrictions.

'Donors and humanitarian organisations must significantly scale up aid to civilians in eastern Myanmar, and the military must halt all restrictions on aid delivery,' said Matt Wells, Amnesty International's Crisis Response Deputy Director – Thematic Issues.

'The military's ongoing crimes against civilians in eastern Myanmar reflect decades-long patterns of abuse and flagrant impunity. The international community – including ASEAN and UN member states – must tackle this festering crisis now. The UN Security Council must impose a comprehensive arms embargo on Myanmar and refer the situation there to the International Criminal Court.' – *Amnesty International* ◆

The Amnesty International report is based on research carried out in March and April 2022, including two weeks on the Thailand-Myanmar border. Amnesty International interviewed 99 people, including dozens of witnesses or survivors of attacks and three defectors from Myanmar's military.

The organisation also analysed more than 100 photographs and videos related to human rights violations — showing injuries, destruction and weapon use — in addition to satellite imagery, fire data, and open-source military aircraft flight data.

Perilous journey of a journalist: The murder of Shireen Abu Akleh

Armed with microphone and camera, journalist Shireen Abu Akleh was killed by an Israeli occupying force determined to silence the Palestinian story.

Jamal Kanj

THE killing of Al Jazeera journalist Shireen Abu Akleh on 11 May is one more chapter of the 74-year-old Palestinian Nakba (catastrophe).

Shireen Abu Akleh.

Much has been argued about the creation of Israel and the ensuing ethnic cleansing of historical Palestine. Sadly, most of this has become a desensitised academic debate, a lifeless abstract portrayal failing to depict what it really meant to be a refugee without a country.

On 15 May 1948, Zionists danced and firecrackers burst over New York neighbourhoods celebrating the founding of Israel. At the same time, and on the other side of the world, Zionist terrorist military organisations waged a war to depopulate Palestine of its native population. The end result: in excess of 780,000 Palestinians were ethnically cleansed from more than 500 destroyed towns and villages.

For the new state, Palestinian refugees, like my own parents, were dispensable nuisances. In a 1948 foreign ministry study, Israel predicted the refugees 'will waste away. Some will die but most will turn into human debris and social outcasts' in other countries.

To Israel's chagrin, refugees rose from the ashes of burned villages, refusing to be cast into the oblivion of injustice. Shireen Abu Akleh, who grew up under occupation, armed herself with a microphone and a camera, making sure her parents' story is remembered and Palestinians do not become 'human debris'.

The murder of Abu Akleh is inseparable from Israel's continuum of crimes against Palestinian intellectuals. To name but a few, the assassinations in Beirut of magazine editor Ghassan Kanafani in 1972 and poet Kamal Nasser in 1973. The murders, like the razing of villages in 1948, were part of determined Israeli efforts to thwart the Palestinian narratives and hide crimes against humanity.

Unlike in Abu Akleh's case, when journalists were killed in Ukraine, the West rejected Russian inculpability, did not demand a joint investigation, and requested the International Criminal Court to investigate Russia's war crimes.

In this case, Israel (like Russia) denied responsibility and charged its Hasbara PR machine with a deflection strategy to cast doubt on the murder and escape liability. Unlike in the case of Russia, however, Western media became a willing extension of the Israeli PR machine.

American media outlets used nuanced terminology to explain Abu Akleh's death, or promoted, unquestioningly, the false Israeli PR narratives. For example, the initial *New York Times* headline said, 'Shireen Abu Akleh, Trailblazing Palestinian Journalist, *Dies* at 51' (emphasis added).

In their initial coverage, Western media outlets ignored testimonies of firsthand eyewitnesses and those of the journalist's colleagues. One was injured, and a second hid behind a tree two feet away from the journalist's body, unable to help her friend. She watched, terrified, as an Israeli soldier continued to shoot in their direction despite their blue media vests. Instead, Western media sought corroborations from Israeli PR professionals who were tens of miles from the crime site.

CNN waited almost two weeks before airing eyewitness accounts, and the Associated Press (AP) 12 days to eventually, in an overly cautious report, challenge the Israeli PR machine.

On the official level, the US Biden administration called for a joint Israeli and Palestinian investigation into the 'death' of the journalist. Palestinians rejected the call, asserting that murderers can't be trusted to investigate their crime.

Israel's previous sham investigations have almost always absolved its army's crimes or, at most, issued a slap on the wrist. In addition, Israel has in the past protracted its investigations as part of a dual strategy: squish calls for an independent inquiry in the short term, and deflate international outcry with the passing of time, in the long term.

To reference some examples, the 2003 murder of American activist Rachel Corrie, who was run over by an Israeli military bulldozer, and the murder in the same year of British cameraman James Miller. Or the 2000 murder of the 12-year-old Muhammad al-Durrah on live TV. The army probes following up on these well-publicised crimes, like all lesser-known murders, exonerated Israeli soldiers and blamed the victims for their own death.

Alas, when compared with life lost in Ukraine, American life, and all lives for that matter, seem to have less value when the alleged murderer is an Israeli soldier, who most likely used an American weapon.

As in the case of previously murdered journalists, activists, children, and the razing of the media tower in Gaza, Israel executed Shireen Abu Akleh to silence the Palestinian story. For the microphone in Abu Akleh's hand had become more perilous than a gun, and the camera more powerful than a bullet. ◆

Jamal Kanj (www.jamalkanj.com) is the author of Children of Catastrophe: Journey from a Palestinian Refugee Camp to America *and other books. He writes for various national and international commentaries. He contributed this article to The Palestine Chronicle (www.palestinchronicle.com), from which this article is reproduced.*

Derek Walcott (1930-2017), the Nobel-winning poet and playwright who hailed from the Caribbean island state of St Lucia, frequently addressed the legacy of colonialism in his works.

Lost empire

Derek Walcott

I
And then there was no more Empire all of a sudden.
Its victories were air, its dominions dirt:
Burma, Canada, Egypt, Africa, India, the Sudan.
The map that had seeped its stain on a schoolboy's shirt
like red ink on a blotter, battles, long sieges.
Dhows and feluccas, hill stations, outposts, flags
fluttering down in the dusk, their golden aegis
went out with the sun, the last gleam on a great crag,
with tiger-eyed turbaned Sikhs, pennons of the Raj
to a sobbing bugle. I see it all come about
again, the tasselled cortege, the clop of the tossing team
with funeral pom-poms, the sergeant major's shout,
the stamp of boots, then the volley; there is no greater theme
than this chasm-deep surrendering of power
the whited eyes and robes of surrendering hordes,
red tunics, and the great names Sind, Turkistan, Cawnpore,
dust-dervishes and the Saharan silence afterwards.

II
A dragonfly's biplane settles and there, on the map,
the archipelago looks as if a continent fell
and scattered into fragments; from Pointe du Cap
to Moule à Chique, bois-canot, laurier cannelles,
canoe-wood, spicy laurel, the wind-churned trees
echo the African crests; at night, the stars
are far fishermen's fires, not glittering cities,
Genoa, Milan, London, Madrid, Paris,
but crab-hunters' torches. This small place produces
nothing but beauty, the wind-warped trees, the breakers
on the Dennery cliffs, and the wild light that loosens
a galloping mare on the plain of Vieuxfort make us
merely receiving vessels of each day's grace,
light simplifies us whatever our race or gifts.
I'm content as Kavanagh with his few acres;
for my heart to be torn to shreds like the sea's lace,
to see how its wings catch colour when a gull lifts.