

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Threat of debt distress looms

The debt level worldwide has reached a record high, sparking fears of renewed global financial turmoil. And with some developing countries already facing debt crises, the need for a sovereign debt workout mechanism has become all the more pressing.

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New debt crises threaten global stability

Global debt has jumped alarmingly to \$152 trillion and as capital flows out from developing countries, some are facing new debt crises.

by Martin Khor

Debt worldwide has grown to unprecedentedly high levels and has to be brought down to prevent another financial crisis.

This was highlighted by the International Monetary Fund (IMF) at its 7-9 October annual meeting in Washington.

Other problems facing the global economy include the stagnation in world trade, a decline in commodity prices, and the reversal of capital flows to developing countries.

A recently released United Nations report has analyzed the situation as a third phase in the global crisis that began with the United States in 2008, then spread in a second wave to Europe, and is now moving on to the developing countries.

Debt risk

The IMF said that world debt had reached \$152 trillion, a record level. It was 200% of the value of global gross domestic product (GDP) in 2002, but rose to 225% in 2015.

The private sector holds two-thirds of the total, but government debt has also risen fast, and the IMF warned about the risk of another financial crisis.

"Excessive private debt is a major headwind against the global recovery and a risk to financial stability," said Vitor Gaspar, IMF director of fiscal affairs. "Rapid increases in private debt often end up in financial crises."

Most of this global debt is concentrated in developed countries. The huge jump there has been due to policies of easy money and low, zero or even negative interest rates, and especially to quantitative easing in which central banks bought bonds and pumped trillions of dollars into the banking system.

It was hoped that this massive infusion would cause the banks to increase lending to consumers and businesses and thus stimulate economic growth. However, the real economy did not benefit much. Instead, much of the money went into the equity markets, boosting

prices, and to the developing economies as investors searched for higher yield, and this helped to fuel the growth of their debt.

The debt of non-financial corporations in emerging economies jumped from \$9 trillion at end-2008 to over \$25 trillion by end-2015, or from 57% to 104% of their GDP.

Foreigners now own unprecedentedly high shares of bonds and equities in the developing countries, which have become vulnerable to the swings of investors' moods and funds, and to resulting financial crises.

When market sentiment or conditions change, the massive inflows can turn into equally large outflows. Indeed, the boom-bust cycle of capital flows has gone through many turns through the years.

Huge amounts left developing countries in the fourth quarter of 2015, and for that year as a whole, there was a net outflow of \$656 billion or 2.7% of their GDP, according to the UN Conference on Trade and Development (UNCTAD). This was a big change from a net inflow of 1.3% of GDP in 2013. This turnaround was much larger than the reversals of capital flows in 1981-83, 1996-98 and 2007-08.

But in recent months the cycle turned again, with the return of fund investors to emerging economies. For example, Malaysia, after suffering large outflows in 2015, has seen net inflows of funds into the equity and bond markets in the past few months.

Going through these cycles, the debt of developing countries has grown. "Easy access to cheap credit in boom times has led to growing debt levels across the developing world," says UNCTAD's *Trade and Development Report 2016*.

Developing countries' external debt rose from \$2.1 trillion in 2000 to \$6.8 trillion in 2015. Overall debt (foreign and domestic) jumped by over \$31 trillion, with total debt-to-GDP ratios reaching over 120% in many countries and over

200% in some others.

Now a nightmare scenario is emerging. For many countries, the tide is turning and access to cheap credit has begun to dry up. Says UNCTAD: "Against the backdrop of falling commodity prices and weakening growth in developed economies, borrowing costs have been driven up very quickly, turning what seemed reasonable debt burdens under favourable conditions into largely unsustainable debt."

In some countries, the problem is compounded by currency devaluation (which increases the value of external debt) and lower commodity prices. These countries are thus hit by multiple whammies – lower commodity prices and export earnings, net outflow of funds, devaluation (which causes their foreign debt to increase), a higher cost of servicing debt, and a slowdown in economic growth.

More and more low-income countries are in a downward economic spiral that has led them into a new debt crisis. They have had to turn to institutions like the IMF and the World Bank for bailouts. UNCTAD lists Angola, Azerbaijan, Ghana, Kenya, Mozambique, Nigeria, Zambia and Zimbabwe as countries that have already asked for financial assistance or are in talks to do so.

This points to a shortfall in the international financial system – the lack of an orderly and fair debt workout mechanism to which countries facing a debt crisis can have recourse.

At the national level, the developed countries and some developing countries have corporate bankruptcy laws aimed at helping companies to recover from a debt crisis through an orderly debt workout. But there is no such debt workout mechanism, with fair burden sharing between debtor and creditors, when countries fall into a debt crisis.

In its absence, indebted countries often face many years of austerity and recessionary conditions imposed by the creditors and rescuing agencies, and with no guarantee that their debt level will even decrease.

With the present record level of worldwide debt and the emergence of a new debt crisis in several countries, especially the poor countries, it is time to consider smarter policies that prevent debt crises and manage them properly if they happen. □

Martin Khor is Executive Director of the South Centre, an intergovernmental think-tank of developing countries, and former Director of the Third World Network. This article was first published in The Star (Malaysia) (10 October 2016).

New UNSG urged to hold global meet on tax havens

A UN human rights expert has called upon the incoming new UN Secretary-General to convene an international conference to discuss measures to combat tax dodging and illicit financial flows, abuses which he says "shock the conscience of mankind".

by Kanaga Raja

GENEVA: A United Nations human rights expert has called on newly elected UN Secretary-General Antonio Guterres to convene a world conference to discuss the issues of tax avoidance and evasion, the abolition of tax havens as well as the protection of whistleblowers.

In a UN news release, the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas (United States), said: "The choice of Mr Guterres as the next UN Secretary-General offers a unique opportunity to advance the fight against tax evasion and illicit financial flows, at a moment where the world is paying increasing attention to these crucial issues."

"I sincerely hope that the abolition of tax havens and the creation of a United Nations Tax Authority with a mandate to combat offshore tax avoidance and evasion, and to outlaw tax havens, will be among Mr Guterres' priorities."

"Trillions of dollars necessary for combatting extreme poverty and addressing climate change are being kept offshore, thus escaping just taxation and effectively stealing hundreds of billions of dollars each year from the public treasuries," the rights expert said.

De Zayas pointed out that widespread tax avoidance, tax evasion, tax fraud and profit-shifting, facilitated by bank secrecy and a web of shell compa-

nies registered in tax havens, are now routinely documented, but their true human cost is only revealed progressively.

Noting that an increasing number of human rights experts are reporting on the issue, de Zayas highlighted the need to put the issue of taxation on the agenda of the UN General Assembly and of the UN Human Rights Council, in particular through the Universal Periodic Review and the 2016 Forum on Human Rights, Democracy and the Rule of Law.

"Corruption, bribery, tax fraud and tax evasion have such grave effects on human dignity, human rights and human welfare that they shock the conscience of mankind. They should be prosecuted nationally and internationally," he said.

"The United Nations must take concerted action against abuses and crimes perpetrated by individuals, speculators, hedge funds and transnational enterprises who skirt taxes and loot governments."

In particular, the rights expert urged the UN General Assembly to draft a convention to outlaw tax havens worldwide and declare so-called "sweetheart deals" (of countries / governments) with transnational corporations such as Apple, Google and Starbucks to be contrary to international *ordre public*.

De Zayas also stressed the need for effective protection of whistleblowers.

"Whistleblowing is one of the most effective methods of shining light on corruption. Thanks to the revelations of the Panama Papers, Bahamas Papers, Luxleaks and the UNAOIL scandal, a public debate on corruption, bribery and tax havens has started that is providing momentum for legislative changes to abolish secrecy jurisdictions," he said.

But whistleblowers, who should be considered as human rights defenders as they significantly contribute to a culture of transparency and accountability, often pay a heavy price, he noted.

"It is in the spirit of a democratic and equitable international order to adopt legislation to protect whistleblowers and witnesses from reprisals and to provide them with easy-to-access avenues to make disclosures," said de Zayas.

According to the news release, the Independent Expert would be convening on 14 October an expert consultation at which "strategies will be discussed, including the mainstreaming of human rights into the activities of the World Bank and International Monetary Fund,

which should henceforth refuse funding to any project or country that participates in or allows illicit financial flows into tax havens”.

De Zayas's statement came on the heels of a call by the UN Independent Expert on foreign debt and human rights, Juan Pablo Bohoslavsky, and two members of the UN Human Rights Council's Advisory Committee, Obiora Okafor and Jean Ziegler, for governments to eliminate tax haven secrecy and offshore tax evasion. That call was made in light of revelations in September by investigative journalists of large-scale misuse of offshore accounts by financial service providers and wealthy individuals in the Bahamas.

Systematic looting

Meanwhile, in his latest report to the UN General Assembly on the human rights impact of tax avoidance, tax evasion, tax fraud and profit-shifting, de Zayas said that a human rights-based approach to taxation and stricter measures against tax fraud, tax evasion and tax havens are urgently needed because a shortfall in tax revenues handicaps governments in meeting human rights treaty obligations.

The Independent Expert pointed to “white-collar criminality” that has enjoyed a high level of anonymity and impunity. Indeed, it is the infrastructure of intermediaries, including tax advisers, law firms, accountants and trust service providers, that facilitates tax evasion and avoidance as well as cross-border illicit financial flows.

Every strategy to tackle the intermediaries, euphemistically called “enablers” or “service providers”, must be part of the effort to tackle tax evasion, said de Zayas.

Part of the problem lies in the mantras of market fundamentalism and the belief that financial markets should be deregulated because this ultimately benefits everyone, including the poor. Although no empirical evidence exists to back this up, transnational corporations and the super-rich have succeeded in creating an enabling environment for systematic looting of society.

“Collusion between the world's biggest banks, specialized law firms, and consulting and accounting firms has led to a global system designed to hide money and avoid taxes by virtue of se-

cretive offshore structures. This is unethical, and should be perceived as such by professional associations, law schools and business schools,” he said.

Yet, instead of prohibiting activities that are clearly *contra bonos mores* and may amount to conspiracy, or even a form of racketeering, states have entered into a kind of self-destructive competition among themselves to see which jurisdiction offers greater secrecy facilities.

“The situation has been a bonanza for lawyers and accounting firms and become toxic to the fiscal health of many countries, particularly since financial globalization expanded in the 1980s and 1990s. The offshore world corrupts and distorts markets and investments, shaping them in ways that have nothing to do with efficiency,” said de Zayas.

The Independent Expert cited the Tax Justice Network as stating that there are over 100 “secrecy jurisdictions” – a term preferred to “tax havens”, for which there is no definition based on objectively verifiable criteria. The Network's global analysis reveals that there is a spectrum of financial secrecy in most jurisdictions assessed and that what is needed is a reform of the system, rather than looking for “unproblematic” jurisdictions.

Also according to the Network, an estimated \$21-\$32 trillion of private financial wealth is located offshore, untaxed or lightly taxed, in secrecy jurisdictions around the world. Estimated revenue losses are in the order of \$190 billion annually. According to the UN Conference on Trade and Development (UNCTAD), this costs developing countries more than \$100 billion annually.

The Tax Justice Network's Financial Secrecy Index ranks jurisdictions according to their secrecy and the scale of their offshore financial activities. The top three jurisdictions listed in the 2015 index, said de Zayas, were Switzerland, Hong Kong-China and the United States. Other high-profile jurisdictions include the United Kingdom of Great Britain and Northern Ireland and its Overseas Territories and Crown Dependencies, Luxembourg, the Netherlands, Belgium, Malta, Cyprus, Singapore, Liberia and Panama.

According to the Tax Justice Network, illicit cross-border financial flows have been estimated at \$1.6 trillion per year, dwarfing the \$135 billion devoted globally to “foreign aid”. It is estimated that since the 1970s African countries alone have lost over \$1 trillion in capital

flight, while combined external debts are less than \$200 billion.

“Viewed from this perspective, Africa is a major creditor to the world, but its assets are in the hands of a wealthy elite, protected by offshore secrecy, while the debts are shouldered by populations already suffering from extreme poverty,” said the Independent Expert.

According to the Organization for Economic Cooperation and Development (OECD), the artificial schemes of base erosion and profit-shifting result in global corporate income tax revenue losses of \$100-\$240 billion annually.

According to Oxfam, US corporations hide at least \$1.3 trillion in tax havens, and profit-shifting by US multinationals suggests that about 25-30% of global profits are shifted into jurisdictions with no corresponding real economic activity.

“Because the tax activities of domestic and transnational corporations have significant direct and indirect socioeconomic impacts, a binding legal instrument on corporate social responsibility stipulating the obligation to pay taxes where the profits are generated and a prohibition on shifting profits should be adopted,” said de Zayas. “This would encourage responsible tax behaviour that does not harm global financial stability, development and human rights.”

Recommendations

Taxation should be used to advance human rights, maintained the rights expert. Fiscal and budgetary policy should be reformed with a view to achieving fair taxation by abolishing tax havens and sweetheart deals, closing loopholes and rejecting *contra bonos mores* schemes and abuse of rights. Progressive redistributive taxation policies will produce funding for vital public services that will reduce inequality and poverty and lead to sustainable development, said de Zayas.

In his report, the Independent Expert called on states to establish an intergovernmental tax body under the auspices of the UN with the mandate to elaborate a UN convention on taxation and international cooperation in tax matters.

States should also adopt a common UN standard for multilateral and automatic exchange of tax information, and implement corporate tax and financial transparency, including public registries

of ultimate beneficial ownership.

In addition, states should enact legislation to protect whistleblowers and witnesses, and ensure that individuals who want to share information about corporate tax practices which harm human rights are not prosecuted or subjected to reprisals. "States should cease punishing individuals for disclosing information that the public has a right to receive pursuant to article 19 of the International Covenant on Civil and Political Rights."

Furthermore, a charter on the rights of whistleblowers and a "protected disclosure defence" should be adopted, pursuant to which criminal or civil liability for protected disclosures is waived and an "authorized channel" is provided for such disclosures.

The Independent Expert called on the UN General Assembly to revise the Guiding Principles on Business and Hu-

man Rights and support the adoption of a legally binding instrument on corporate social responsibility prohibiting "aggressive tax avoidance", tax fraud, tax evasion and tax havens.

He said UNCTAD should develop a strategy to protect the policy space of states in controlling capital flows, in particular to curb and criminalize illicit financial flows and the flight of money to tax havens, in cooperation with the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime.

The International Monetary Fund, the World Bank and central banks should refuse loans to countries that harbour tax havens.

"No project should be subsidized if the enterprises involved use secrecy jurisdictions," said de Zayas. (SUNS8333) □

UN rights body creates new mandate on right to development

The UN Human Rights Council has established the position of a Special Rapporteur on the right to development who will be tasked with engaging in and supporting efforts to fulfil this right.

by Kanaga Raja

GENEVA: The United Nations Human Rights Council decided on 29 September to appoint, for a period of three years, a Special Rapporteur on the right to development.

The mandate of the new Special Rapporteur will include contributing to "the promotion, protection and fulfilment of the right to development" in the context of the coherent and integrated implementation of the 2030 Agenda for Sustainable Development and other internationally agreed outcomes of 2015. These outcomes include the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, and the Paris Agreement on Climate Change.

To this effect, the Special Rapporteur is to engage with member states and other stakeholders and participate in relevant international meetings and conferences.

A draft resolution proposing the appointment of the Special Rapporteur on the right to development had been tabled at the Human Rights Council by Venezuela on behalf of the Non-Aligned Movement (NAM). The resolution, as orally revised, was adopted by a vote of 34 in favour, two against and 11 abstentions.

Those that voted in favour were: Algeria, Bangladesh, Bolivia, Botswana, Burundi, China, Congo, Cote d'Ivoire, Cuba, Ecuador, El Salvador, Ethiopia, Ghana, India, Indonesia, Kenya, Kyrgyzstan, Maldives, Mexico, Mongolia, Morocco, Namibia, Nigeria, Panama, Paraguay, Philippines, Qatar, Russian Federation, Saudi Arabia, South Africa, Togo, United Arab Emirates, Venezuela and Vietnam.

France and the United Kingdom voted against the resolution.

Those that abstained were: Albania, Belgium, Georgia, Germany, Latvia, Macedonia, Netherlands, Portugal, Republic of Korea, Slovenia and Switzer-

land.

As set out in the adopted resolution, the mandate of the new Special Rapporteur also includes:

(i) to engage and support efforts to mainstream the right to development among various UN bodies, development agencies, international development, financial and trade institutions, and to submit proposals aimed at strengthening the revitalized global partnership for sustainable development from the perspective of the right to development;

(ii) to contribute to the work of the Working Group on the Right to Development with a view to supporting the accomplishment of its overall mandate, taking into account, inter alia, the deliberations and recommendations of the Working Group while avoiding any duplication;

(iii) to submit any specific study requested by the Human Rights Council in accordance with its mandate;

(iv) to submit an annual report to the Human Rights Council and to the UN General Assembly covering all activities relating to the mandate, with a view to maximizing the benefits of the reporting process.

The Human Rights Council invited all governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by providing all necessary information requested, and to give due consideration to the recommendations of the mandate holder.

It requested the UN Secretary-General and the UN High Commissioner for Human Rights to provide the Special Rapporteur with the administrative, logistical and staff support necessary for the implementation of the mandate under the present resolution.

Realizing the right to development for all

The Council encouraged relevant bodies of the UN system, within their respective mandates, including UN specialized agencies, funds and programmes, relevant international organizations, including the World Trade Organization, and relevant stakeholders, including civil society organizations, to give due consideration to the right to development in the implementation of the 2030 Agenda for Sustainable Development, and to contribute further to the

work of the Working Group and to cooperate with the High Commissioner and the Special Rapporteur in the fulfilment of their mandates with regard to the implementation of the right to development.

In its resolution, the Council emphasized the urgent need to make the right to development a reality for everyone.

It also emphasized that all human rights and fundamental freedoms, including the right to development, can only be enjoyed in an inclusive and collaborative framework, at the international, regional and national levels.

In this regard, it underlined the importance of engaging the UN system, including UN specialized agencies, funds and programmes, within their respective mandates, relevant international organizations, including financial and trade organizations, and relevant stakeholders, including civil society organizations, development practitioners, human rights experts and the public at all levels, in discussions on the right to development.

The Council stressed that the responsibility for managing worldwide economic and social issues and threats to international peace and security must be shared among the nations of the world and should be exercised multilaterally, and that, in this regard, the central role must be played by the UN as the most universal and representative organization in the world.

It welcomed the adoption of the 2030 Agenda for Sustainable Development, and emphasized that the 2030 Agenda is informed by the Declaration on the Right to Development and that the right to development provides a vital enabling environment for the full realization of the Sustainable Development Goals.

The Human Rights Council recognized that achieving the internationally agreed development goals, including the unmet Millennium Development Goals and the Sustainable Development Goals, requires effective policy coherence and coordination.

It also recognized that hunger and extreme poverty, in all its forms and dimensions, “are the greatest global challenges and require the collective commitment of the international community for their eradication.” It therefore called upon the international community to contribute to the achievement of that goal, in accordance with the Sustainable

Development Goals.

The Council emphasized that all human rights and fundamental freedoms, including the right to development, are “universal, indivisible, interdependent and inter-related”.

It underlined that the successful implementation of the Sustainable Development Goals will require the strengthening of “a new, more equitable and sustainable national and international order”, as well as the promotion and protection of all human rights and fundamental freedoms.

The Council took note of the commitment declared by a number of UN specialized agencies, funds and programmes and other international organizations to make the right to development a reality for all.

In this regard, it urged all relevant bodies of the UN system and other international organizations “to mainstream the right to development into their objectives, policies, programmes and operational activities, as well as into development and development-related processes, including the follow-up to the Fourth United Nations Conference on the Least Developed Countries”.

State responsibility

The Council stressed the primary responsibility of states for the creation of national and international conditions favourable to the realization of the right to development.

It recognized that member states should cooperate with each other in ensuring development and eliminating lasting obstacles to development, that the international community should promote effective international cooperation, in particular global partnerships for development, for the realization of the right to development and the elimination of obstacles to development, and that lasting progress towards the implementation of the right to development requires “effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level”.

It affirmed that the 30th anniversary of the Declaration on the Right to Development presents a unique opportunity for the international community to demonstrate and reiterate its unequivocal commitment to the right to development,

recognizing the high profile it deserves, and redoubling its efforts to implement this right.

The Council requested the High Commissioner to continue to submit to the Council an annual report on the activities of the Office of the High Commissioner, including on inter-agency coordination within the UN system, that have direct relevance to the realization of the right to development, and to provide an analysis of its implementation, taking into account the existing challenges and making recommendations on how to overcome them, in its next annual report.

The Council urged the High Commissioner to pursue his efforts, in fulfilment of his mandated responsibility, to enhance support for the promotion and protection of the realization of the right to development, taking as reference the Declaration on the Right to Development, all resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council on the right to development, and agreed conclusions and recommendations of the Working Group.

It acknowledged the need to strive for greater acceptance, operationalization and realization of the right to development at the international level, and urged all states to undertake at the national level “the necessary policy formulation and to institute the measures required for the implementation of the right to development as an integral part of all human rights and fundamental freedoms.”

The Council decided to continue to act to ensure that its agenda promotes and advances sustainable development and the achievement of the remaining Millennium Development Goals and the Sustainable Development Goals and, in this regard, lead to raising the right to development, as set out in paragraphs 5 and 10 of the Vienna Declaration and Programme of Action, to the same level and on a par with all other human rights and fundamental freedoms.

It also decided that the Working Group, taking into account Human Rights Council resolution 9/3, shall finalize consideration of the criteria and operational sub-criteria, preferably no later than the nineteenth session of the Working Group, in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, and “shall

also take appropriate steps to ensure respect for the practical application of these standards, which could take various forms, including guidelines on the implementation of the right to develop-

ment, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement.” (SUNS8324) □

Development as human right – an unfulfilled promise to billions

A UN event commemorating the 30th anniversary of the adoption of the Declaration on the Right to Development resounded with calls to realize this fundamental right in the face of the myriad challenges along the development path.

NEW YORK: As the United Nations commemorated the 30th anniversary of the “Right to Development”, the Group of 77 (G77) and the Non-Aligned Movement (NAM) expressed strong collective support for one of the basic human rights described as a key element in the implementation of the UN’s post-2015 development agenda.

“Development as a human right is still an unfulfilled promise for billions of people,” said a joint statement issued on 22 September by two of the largest economic and political groupings at the UN.

The 133-member G77 (joined by China) and the 120-member NAM said that 30 years ago, “we recognized the human person as the central subject of the development process and therefore development policy should make the human being the main participant and beneficiary of development.”

And it placed people at the centre of development while demanding equal opportunities and equitable distribution of economic resources.

Since then, said the joint statement, the international community has embraced the concept of “people-centred” development.

At the same time, it has recognized that, despite continuous efforts on the part of the international community, “the gap between developed and developing countries remains unacceptably wide, that most of the developing countries continue to face difficulties in participating in the globalization process and that many risk being marginalized and effectively excluded from its benefits.”

New challenges, new prospects

The resolution on the Declaration on the Right to Development was adopted at the 97th plenary meeting of the UN

General Assembly back in December 1986.

Addressing a high-level meeting of the General Assembly commemorating the 30th anniversary of the Right to Development on 22 September, UN Secretary-General Ban Ki-moon said despite great strides forward, developing countries still struggle with the diversification of their economies, international trade, macroeconomic and fiscal issues, and ensuring equitable and sustainable frameworks for the use of natural resources.

There are more least-developed countries (LDCs) now than in 1986. Even among middle-income countries, few are on paths that can ensure sustained, sustainable and equitable growth and poverty eradication. Developed countries also face new challenges, such as rising inequality and financial crises, Ban said.

“We have new prospects for realizing the right to development, thanks to the 2030 Agenda for Sustainable Development and SDG [Sustainable Development Goal] 17 on strengthening the means of implementation and revitalizing the global partnership, together with the Addis Ababa Action Agenda.”

The 2030 Agenda explicitly recognizes the Declaration on the Right to Development and reflects its spirit. Its emphasis on equality, participation, empowerment and ensuring that no one is left behind, echoes the definition of the right to development as “an inalienable human right”.

It recognizes, like the Declaration, that each country has primary responsibility for its own economic and social development while affirming that international cooperation and partnership are essential to ensure implementation.

The 2030 Agenda has unprecedented potential to fulfil the aspirations

that motivated the Declaration on the Right to Development and that remain critical to this day.

“Let us celebrate the Declaration for its past – and more importantly for the promise it holds for the future,” Ban declared.

The President of the UN General Assembly Peter Thomson told the high-level meeting that many of the commitments on the UN’s post-2015 development agenda mirror duties arising from the Declaration on the Right to Development.

It includes a duty on each government to put the well-being of the entire population, and of all individuals, at the heart of its policies and strategies. This includes ensuring their free and meaningful participation in development efforts and decision-making process, and in the distribution of the resulting benefits.

It includes the duty to remove structural obstacles and to address both historical and contemporary inequities that are holding back developing countries, he noted.

And it includes the need for international cooperation in support of those countries that remain in vulnerable situations, whether they be the least-developed countries; those affected by conflict and instability; or those struggling to adapt to the impacts of climate changes, Thomson told delegates.

“As we mark this anniversary, let us recognize that if we are to realize the Right to Development, we must do so together; working in responsible and ethical partnerships between governments, the UN system, civil society, the private sector and others.”

Rights-based approach

Addressing the high-level meeting, the European Union’s Special Representative for Human Rights Stavros Lambrindis said: “We wish to reiterate our support for the right to development, as based on the indivisibility and interdependence of all human rights as outlined in the Vienna Declaration and Programme of Action, the multidimensional nature of development strategies and the role of individuals as the central subjects of the development process.”

He pointed out that the EU is fully committed to a rights-based approach to development, encompassing all human rights, including the right to development.

The right to development requires

the full realization of civil and political rights, together with economic, social and cultural rights, and a mix of policies, creating an enabling environment for individuals, involving a wide range of actors, at all levels.

"We emphasize that the primary responsibility for ensuring that the right to development is realized is one owed by States to their citizens. We must recognize that divergent views in the understanding of the right to development remain."

But Lambrindis restated the EU position that it is not in favour of the elaboration of an international legal standard of a binding nature "as we do not believe that this is the appropriate mechanism to realize the right to development."

With its universal applicability and its importance in shaping development priorities, the 2030 Agenda for Sustainable Development will open up new avenues to integrate human rights into global and national policies in both developed and developing countries over the next 15 years, he added.

Unequivocal commitment

Meanwhile, in its joint statement, the G77 and NAM said that the Right to Development is crucial to three agreements reached last year: the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda on Financing for Development, and the Paris Climate Agreement under the United Nations Framework Convention on Climate Change, which have vowed to "leave no one behind."

"There is no doubt that in order for us to reach that goal, the right to development must be central to the implementation of the 2030 Agenda for Sustainable Development taking into account countries and peoples who face specific challenges, in particular, African countries, least developed countries, landlocked developing countries and small island developing States as well as specific challenges that many middle-income countries face, as well as countries facing conflict and post-conflict situations, humanitarian emergencies, the effects of climate change and global pandemics."

The statement also said: "We must take resolute steps to eliminate the massive and flagrant violations of human rights of peoples and human beings affected by situations such as those result-

ing from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination."

According to the statement, the 30th anniversary coincided with the first year of implementation of the 2030 Agenda for Sustainable Development. "So it is an opportune time to demonstrate and reiterate our unequivocal commitment to the right to development, in particular the need to strive for greater acceptance, operationalization and the realization of this right at the international level."

"We must continue our efforts also, to mainstream this right in our work at the national and regional level and in the United Nations, particularly in the Human Rights mechanisms, as well as international financial and multilateral trading systems in the context of the elaboration of their policies in line with the 2030 Agenda."

One of the recurring themes in recent conversations and panel discussions was the understanding that the realization of the right to development is a necessity now more than ever.

"The ambitious goals we have committed ourselves to, the massive challenges and violations of human rights caused by situations resulting from, among others, unilateral coercive mea-

sures and unfair sanctions, can only be reached and overcome if we embrace the tenets of the Declaration."

In this regard, the statement said: "We urge all States to expand and deepen mutually benefiting cooperation with each other in promoting development and eliminating obstacles to it, in the context of promoting an effective international cooperation for the realization of the right to development, bearing in mind that lasting progress towards the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations and a favourable economic environment at the international level; and to work together towards the elaboration and adoption of a Convention on the Right to Development."

The G77 and NAM pointed out that there are different approaches, visions, models and tools available to each country to achieve sustainable development, in accordance with its national circumstances and priorities as well as its own development context.

"It is our collective hope that on this auspicious 30th anniversary of this landmark Declaration, we are rightly reminded of the work that still needs to be done to realize this fundamental right."

(IPS)

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Efforts on to formally bury DDA talks at Buenos Aires next year?

The 2017 Ministerial Conference of the WTO, to be held in Buenos Aires, could be the scene of a fierce debate among member states that determines the future of the Doha Round talks and of new issues mooted for negotiation.

by D. Ravi Kanth

GENEVA: Major developed countries and their developing-country allies along with the World Trade Organization Director-General Roberto Azevedo have begun preparing the ground for formally burying the Doha Development Agenda (DDA) trade negotiations while launching negotiations for plurilateral deals on electronic commerce/digital trade or other new areas at the eleventh WTO Ministerial Conference (MC11) in Buenos Aires next year, people familiar with the development told the *South-North Development Monitor (SUNS)*.

A meeting of the WTO General Council on 3 October formally agreed that Argentina will be the host of MC11 in 2017. This came following Uruguay's decision to withdraw its bid to host the conference in Punta del Este. Both Argentina and Uruguay had earlier in July offered to host MC11.

According to trade officials, the dates of the conference have not yet been agreed. However, the Chair of the General Council, Ambassador Harald Neple of Norway, informed members that the dates of 4-7 December 2017 are being looked at.

An early indication of what is in the offing for MC11, to be hosted by Argentina's new right-wing government, came at the informal heads-of-delegation (HoD) meeting on 30 September and the 3 October General Council meeting.

Ahead of these two meetings, the Director-General Azevedo had spoken his mind to the London-based *The Economist* magazine in its 1 October issue about imagining "the WTO brokering another global trade deal, but only when expectations have been managed down from Doha."

(When Azevedo was Brazil's envoy to the WTO, he had insisted that the revised 2008 draft modalities for the Doha agriculture package provided clear landing zones in a balanced and equitable framework. He had said: "The December 2008 draft modalities are the basis for

negotiations and represent the end-game in terms of the landing zones of ambition. Any marginal adjustments in the level of ambition of those texts may be assessed only in the context of the overall balance of trade-offs, bearing in mind that agriculture is the engine of the Round.

("The draft modalities embody a delicate balance achieved after ten years of negotiations. This equilibrium cannot be ignored or upset, or we will need readjustments of the entire package with horizontal repercussions. Such adjustments cannot entail additional unilateral concessions from developing countries.")

The Director-General, according to *The Economist*, "remembers only too well how the WTO's Doha round collapsed under the weight of its own ambition." Therefore, he said, "Let's do the trade deals that are in reach."

The Economist wrote based on the interview with Azevedo: "[The WTO] will for now push 'plurilateral' deals of its own, which embrace enough WTO members to be significant but which avoid the quagmire of having to secure the agreement of all its 164 members."

It said the WTO "already boasts some successes [in crafting plurilateral agreements]: in September, for example, China started cutting tariffs on technology goods as part of the plurilateral Information Technology Agreement."

"From reflection to action"

In sharp contrast to his comments to , the Director-General told members at the informal HoD meeting on 30 September that they "need to change the pace of our engagement in order to make progress."

"I also said that we would need to move from reflection to action," Azevedo emphasized.

He urged members to talk to each other "so that we avoid mistrust and misperceptions about what you your-

selves are trying to achieve."

Azevedo mentioned two things that would help to deal with mistrust and misperception. "First, we need clarity from the proponents on what they would like to see as a final outcome of these conversations. Some are not engaging partly because they do not have a clear sense of what others want to achieve.

"Second, we should be mindful that, in order to advance multilaterally, we should be flexible to accommodate the circumstances of different Members."

The immediate priority, said Azevedo, is to "deepen conversations between Members to scope out the issues for MC11 – or between now and MC11" – and "go as far as our legs allow."

"Whatever we do – on any issue – will not be the end of the road. It will be a first step," he said.

He urged members to "look for those balancing elements that take into account Members' different interests and positions – elements that respond to the needs of developed, developing and least-developed Members."

"Clearly, some issues are starting to draw more attention," Azevedo said. "These include public stockholding [programmes for food security], other agriculture-related topics, such as domestic support, and services; but also other issues such as SMEs [small and medium-sized enterprises], e-commerce, services facilitation and fisheries subsidies."

The Director-General, however, did not mention the Doha Work Programme at all.

Several developed countries such as the United States and the European Union spoke almost in tandem with what Azevedo espoused at the meeting. The US, for instance, said it is working hard for a plurilateral outcome with a group of countries on fisheries subsidies.

The EU called for outcomes in a number of areas, in particular on e-commerce, services facilitation and domestic regulation along with trade-distorting domestic subsidies and fisheries subsidies. The EU said that fisheries subsidies is a global issue, arguing that it must be addressed at the WTO.

Peru's trade envoy Ambassador Luis Enrique Chavez Basagoitia, who is spearheading the campaign for a multilateral outcome on fisheries subsidies, said that Peru and Argentina will soon present a joint proposal to negotiate the possible elements for fisheries subsidies.

A large majority of developing coun-

tries and their major coalitions, however, called for continuing with work on outstanding issues in the Doha Work Programme, including on e-commerce based on the 1998 mandate.

The Africa, Caribbean and Pacific (ACP) Group called for a “development-oriented outcome at MC11, consistent with various recent global commitments and goals, in particular the UN Sustainable Development Goals (SDGs) and our respective national development objectives.”

Rwanda, on behalf of the ACP Group, mentioned two issues, namely agriculture domestic support and fisheries subsidies.

On agriculture, the Group said: “We must achieve a tangible outcome leading to substantial reductions in trade-distorting domestic support, with aim to achieving the longstanding agriculture reform. Trade-distorting domestic support continues to lead negative factors hindering the emergence of inclusive, free, fair and efficient trade in agriculture products. Gradual reduction towards full elimination of those subsidies are essential conditions to levelling playing field in the agriculture trading system.”

As regards fisheries, the ACP Group emphasized that “there is an urgency to address the dramatic situation of world’s marine fish stocks that are faced with depletion.” It maintained that members “can’t continue with business as usual in this critical situation which has heavy and multifaceted consequences at social, economic, political and environmental levels.”

Therefore, members “need to find a consensus to discipline subsidies which contribute to overcapacity and overfishing, and also to eliminate subsidies provided to illegal, unreported, and unregulated (IUU) [fishing].”

The ACP Group reiterated its position on “the Doha development-oriented issues”, emphasizing that “without the trade-development nexus as entrenched in the DDA and in the SDGs, the engagement of developing countries and especially LDCs [least-developed countries] in the multilateral trading system loses most of its sense.”

Morocco (on behalf of the African Group) and Benin (on behalf of the LDCs) emphasized the importance of delivering on developmental priorities such as cotton, and duty-free and quota-free market access for the LDCs. Several developing countries such as India and South Africa also touched on the unfinished

Doha issues.

In short, the stage for the WTO’s eleventh ministerial meeting in Buenos Aires is set for a fierce battle between the developed countries and their developing-country allies on the one side, and the large majority of developing and poorest countries on the other, over the launching of negotiations on new issues while burying the Doha Work Programme, according to several trade envoys who attended the HoD and General Council meetings.

DG selection

On other matters, according to trade officials, the General Council Chair announced at the 3 October Council meeting that the process for the selection of the new WTO Director-General is now underway.

According to trade officials, Azevedo has informed the General Council Chair that he will submit a letter to him indicating his candidacy for a second term and that he will do that before the process formally begins on 1 December 2016.

Azevedo began his first four-year term of office as Director-General on 1 September 2013. At a media briefing on 27 July 2016, Azevedo said that even

though the formal process had not yet started, he had indicated to members that he “will make himself available, if members feel that this is helpful, I will be there to go for a second term at that point in time.”

When the General Council Chair launches the process, “I will formalize this decision, but it was just an indication to avoid the rumours and avoid speculation and uncertainty,” he said at the time.

According to trade officials, under the procedures adopted in 2002 for the appointment of Directors-General, in the period of 1-31 December 2016, other candidates can be nominated by WTO members for the post.

The procedures stipulate that the appointment process shall start nine months prior to the expiry of the term of an incumbent Director-General with a notification from the Chair to the General Council. The process shall conclude with a meeting of the General Council convened not later than three months prior to the expiry of an incumbent’s term, at which a decision to appoint a new Director-General shall be taken. (SUNS8326) □

Additional reporting by Kanaga Raja

US, EU foisting e-commerce agenda at WTO amidst disarray in South ranks

With the developing countries not putting up a coordinated front, the US and the EU are ratcheting up focus on electronic commerce at the WTO.

by D. Ravi Kanth

GENEVA: The continued disarray and lack of coordination among developing and least-developed countries in advancing their core developmental concerns in the Doha Work Programme is enabling the United States and the European Union along with their allies to foist the electronic commerce agenda at the WTO, trade envoys told the *South-North Development Monitor* (SUNS).

Under the pretext of development and “inclusiveness,” which have been hollowed out in the unfinished Doha Development Agenda trade negotiations since 2001, the WTO Director-General Roberto Azevedo along with the US, the EU and several other countries are making a collective/concerted effort to ram through the e-commerce agenda without

completing work on the remaining issues of the Doha Work Programme, according to several trade envoys who asked not to be quoted.

Azevedo is ably supporting the US and the EU for the launch of e-commerce negotiations at the eleventh WTO Ministerial Conference in Buenos Aires next year even though the subject is being currently negotiated in the closed-door meetings of the plurilateral initiative on a Trade in Services Agreement (TiSA) and the Transatlantic Trade and Investment Partnership (TTIP) agreement, trade envoys said.

Despite lack of progress and consensus among WTO member states on the e-commerce work programme that has been discussed in different WTO bodies

since 1998, a concerted effort is now being made to bring e-commerce under the direct purview of dedicated sessions being chaired by Panama's trade envoy Ambassador Alfredo Suescum.

He is going to discuss different themes of e-commerce notwithstanding the fact that there is no mandate for a combined/comprehensive discussion.

Suescum, for example, is going to discuss e-commerce and development in the dedicated session on 18 October, knowing full well that there is no mandate to discuss the issue in the dedicated session.

E-commerce proposal

In a separate development concerning e-commerce, the US and the EU along with their allies have insisted that the WTO secretariat include a section "dedicated to electronic commerce" in each WTO member's trade policy review report.

At a time when there is no clarity on what constitutes e-commerce and how it needs to be addressed in different WTO bodies, a group of countries – the US, the EU, Canada, Hong Kong-China, Japan, New Zealand, Norway, Singapore, Switzerland and Chinese Taipei – circulated a restricted proposal on 10 October prescribing how trade policy review reports must monitor e-commerce commitments.

The proposal says: "Electronic Commerce has been an important element of the work of the World Trade Organization since Ministers adopted the Declaration on Global Electronic Commerce in May 1998."

"Since that time," according to the sponsors of the proposal, "the evolution of the internet and digital technology had a transformative impact on the global economy and the nature of international trade."

Further, "WTO Members, both developed and developing, have been making efforts to address the public policy challenges that this transformation presents, while also seeking to fully realize its benefits," the sponsors argued.

"Recently, a number of Members have made submissions to the General Council seeking substantive discussions on the role of trade policy in this equation," the 10 countries maintained.

Since "trade policy and trade monitoring reports already look comprehensively at Members' trade and investment regime and trade policies and practices

by measure," it is important to examine in these reports how members are engaging in electronic commerce, the sponsors said.

"However, restrictive measures in the digital space are increasingly common and are not well understood or captured by the existing reviews," claimed the 10 countries.

Therefore, "in order to improve the information available to Members regarding the nature and prevalence of digital measures that are being adopted and to better inform Members on the trade implications [of] such measures, we propose to explicitly examine measures impacting electronic commerce in the TPRM [Trade Policy Review Mechanism]".

Pushing the e-commerce agenda

In the normal course, such a proposal could not have been conceived, as the WTO work programme of 1998 remains far from any convergence. Yet, the 10 countries are creating an unusual situation in foisting the e-commerce agenda, according to several developing-country trade envoys who asked not to be quoted.

The Director-General and major industrialized countries, for example, made an extraordinary effort in facilitating more than 20 sessions on e-commerce at the WTO's Public Forum that was held in September.

Azevedo also campaigned relentlessly for digital trade/e-commerce during his recent visit to Washington. In his speech on "How to make trade an engine of growth for all" at an IMF-World Bank seminar, Azevedo spoke about four priorities:

- how to better support small and medium-sized enterprises (SMEs);
- how to harness the power of digital trade to foster inclusive growth;
- how to lower the costs of trading (including in services); and
- how to reduce subsidies that harm the environment – like those that lead to overfishing.

Three out of these four priorities – SMEs, digital trade and fisheries subsidies – are at the core of the US trade agenda.

The Director-General, however, is conspicuously silent on areas which are inimical to the US trade agenda. Issues such as the drastic domestic support reduction commitments in agriculture set out in the 2008 revised draft modalities;

the elimination of zeroing methodology in anti-dumping as demanded by more than 160 countries; and the harmonization of non-preference MFN rules of origin for textiles, leather and other products, which ought to have been concluded by 1998 and inaction on which is causing a major bottleneck in global trade for the developing and poorest countries – all did not figure in Azevedo's thundering speech on "How to make trade an engine of growth for all."

The Director-General's emphasis on harnessing the power of digital trade to foster "inclusive growth" echoes what Microsoft has proposed in 78 public policy recommendations in 15 categories under its "A cloud for global good" initiative.

"Most intriguingly, Microsoft wants the computing clouds to be inclusive," *The Economist* magazine wrote in its 8 October edition.

"We really need to think about public policy that connects technology with inclusive growth," says Brad Smith, Microsoft's president and chief legal officer.

The slogans of "global good" and an "inclusive cloud" by Microsoft and "harnessing the power of digital trade to foster inclusive growth" by Azevedo all have a familiar ring of trying to win people's trust at a time when they have become the target of a global backlash against trade and globalization.

Also, at a time when the trans-Atlantic trade partners are still far from nearing consensus on e-commerce and given the EU's growing fears about data flows and localization requirements proposed by the US, there is uncertainty as to how the major developed countries are going to use the WTO to advance their core interests while turning their back on genuine "developmental" priorities of developing and poorest countries.

Despite these disturbing developments at the WTO and outside in plurilateral and bilateral negotiations, developing countries have not got their act together in pressing for their unaddressed issues in the Doha Work Programme to be resolved.

There is no coordination among developing countries for adopting common positions on the outstanding Doha issues or on new issues such as e-commerce being foisted by the major developed countries in collusion with the Director-General, said a trade envoy who asked not to be quoted. (SUNS8332) □

India's TFS initiative meets US road-blocks

An Indian proposal for a WTO agreement on easing services trade has come up against resistance from the US.

by D. Ravi Kanth

GENEVA: An Indian "concept note" for crafting a Trade Facilitation in Services (TFS) agreement at the WTO received support from various countries on 6 October, but the United States cast doubts on New Delhi's initiative.

The US questioned whether the Indian initiative can be compared to the Trade Facilitation Agreement (TFA) in goods and whether it will not lead to a developed-versus-developing-country battle, services negotiators told the *South-North Development Monitor (SUNS)*.

The US, however, welcomed another proposal from a group of industrialized and several developing countries for addressing "administration of measures" for developing licensing requirements and procedures, qualification requirements and procedures, technical standards and transparency.

That proposal was tabled by Australia, the European Union, Chile, Colombia, Mexico, Norway, Republic of Korea and Chinese Taipei and seeks to address elements related to "transparency, development and institutional provisions".

In presenting the proposal at a 6 October meeting of the WTO's Working Party on Domestic Regulation (WPDR), Australia said members needed more "certainty" in the administration of measures. It argued that the group will present more proposals in the coming days along with the negotiating texts.

The EU said that it is a co-sponsor of the proposal which needs to be addressed on a strong footing in the coming months.

Chile, Japan, and Chinese Taipei among others supported Australia in demanding negotiations on these issues.

The proposal on "administration of measures" for negotiation in the WPDR, according to Australia, covers elements of domestic regulation related to the administration of licensing requirements and procedures, qualification requirements and procedures, and technical standards. It also includes a "general provisions" paragraph on the scope of application to facilitate members' consultations on the proposed disciplines, Australia said, according to services negotiators present at the WPDR meeting.

The US said it is open to discussing

the issues listed in the Australian proposal, arguing that the "administration of measures" is important for trade in services.

Several developing countries raised questions on the proposal.

China sought to know whether it is consistent with Article VI.4 of the WTO's General Agreement on Trade in Services (GATS) which deals with developing general disciplines for all professional services and, where necessary, additional sectoral disciplines.

But the negotiations on improving disciplines on domestic regulation have remained in the doldrums since 1998 because of opposition from the US, which had opposed two draft texts issued in 2009 and 2011 by the then chairs of the WPDR.

TFS concept note

After the discussion on the joint proposal on "administration of measures", India formally introduced its two-page "concept note" on a "Trade Facilitation in Services" agreement for removing barriers and bottlenecks that impede global trade in services.

India said while the existing Trade Facilitation Agreement for goods, which was concluded at the WTO's ninth Ministerial Conference in Bali in 2013, addresses the simplification of customs procedures, it wants a similar agreement for doing away with the numerous hurdles in global trade in services.

The concept note, according to India, addresses several cross-cutting issues such as "transparency, streamlining procedures and eliminating bottlenecks" for facilitating trade in services.

India also listed specific issues in each of the four modes of supply of services under GATS. The issues include:

(i) Facilitation of free flow of data across borders for ensuring meaningful supply of Mode 1 services.

(ii) Facilitation of supply of Mode 2 services, including through cross-border insurance portability for availing of medical or tourist-related services in a foreign country. Endeavour to streamline temporary entry formalities, such as visa processing fees, procedures and

timelines, for consumers seeking entry into another country to avail of services (such as medical services, education services, tourism etc.).

(iii) Facilitation of supply of Mode 3 services, including through measures such as single window clearance for setting up commercial presence. Disciplines on charges applicable on Mode 3 service suppliers, in order to ensure that these do not unfairly disadvantage foreign service suppliers.

(iv) Facilitation of supply of Mode 4 services through simplification of procedures for temporary entry and stay, and clarity in respect of work permits and visas as relevant for the categories of the Mode 4 commitments. Disciplines on measures relating to taxation, fees/charges, discriminatory salary requirements, social security contributions in relation to temporary entry, etc. in order to ensure that these do not unfairly disadvantage foreign service suppliers.

China thanked India for its concept note. China, however, maintained that it would need time to offer concrete suggestions from its capital, which was currently on holiday.

The EU said it remained open to the Indian concept note. Several other developing and poorest countries from Africa, Asia and South America supported the concept note.

But the US posed a volley of questions on the Indian paper and asked what it intends to achieve, according to negotiators present at the meeting.

The US maintained that the TFA had consensus among all members when it attempted to bring about improvements in freedom of transit, fees and formalities connected with importation and exportation, and publication of administration of trade regulations.

The US position on the TFA, according to a developing-country negotiator, is inaccurate as there was no consensus on the TFA when it was introduced or even concluded at Bali. "The consensus was manufactured through strongarm tactics by the US when it forced the African countries in May 2014 to agree to the protocol [that would bring the TFA into effect]," the official said.

India's concept paper, according to the US, also posed the risk of transforming the discussion into a developed-versus-developing-country confrontation.

The US said that the special and differential flexibilities proposed in India's paper on TFS can only involve longer time periods for implementing the agreement, as in the TFA, but not result in new

(continued on page 16)

Pensions for all

Social pension schemes which provide a measure of income security for all persons in old age need not be beyond reach.

by Jomo Kwame Sundaram and Rob Vos

1 October is the International Day of Older Persons. Just another day?

Perhaps, but it should remind us that the world's population is ageing, brought about by the combined effects of declining mortality and fertility rates and longer longevity. By mid-century, one out of five people will be over 65, compared to over one in 10 now.

This is dramatic enough. What is equally compelling is that 80% of older persons in the world will be living in developing countries by then – within two generations.

This ageing of the world's population is one of humanity's major achievements. Yet, significant challenges are keeping in step with this historic and emerging trend. For example, can health systems adapt to growing and new demands for care? What about the sustainability of social protection schemes? How do we keep our pension systems viable?

These are serious, but solvable, challenges.

Solvable?

The challenges are greatest, of course, in developing countries, where the vast majority of older persons lack adequate income protection. In the absence of pension incomes or other social transfers for older persons, the risk of spending one's older years in poverty rises sharply.

Moreover, in most developing countries, poverty compels older persons to continue working as long as they are able to. But reduced capacities, limited job opportunities, low incomes and other factors often combine to reduce their earnings.

The situation is particularly acute in rural areas and, in many contexts, affects older women more than older men.

In some parts of the world, notably in Sub-Saharan Africa, the problem is compounded by added responsibilities for the care of grandchildren, e.g., due to migration, disease, disability or death. Many older persons who take on these added responsibilities are already deprived of the support from their adult children that they had expected for their

old age. Their own resources are often already seriously depleted when they are called upon to support their grandchildren.

While additional transfers from social networks and family members, particularly children, can provide additional security for older people, these are often unstable income sources.

Social attitudes to caring for older persons are also changing, even in developing countries. As families get smaller, their ability to meet the financial and care demands of ageing members is affected at a time when, paradoxically, family support assumes greater importance as assets decline and options narrow in old age.

Formal pension systems will thus need to expand as families are unable or unwilling to provide income security.

In recent decades, pension reforms in developing countries have focused on private ownership or management, ostensibly to make the systems more financially viable. In fact, many such reforms have had mixed if not dubious results.

All this has done little for those without access to any formal pension scheme. At face value, a universal pension system in poor countries may seem utopian. However, there is a growing consensus that pensions for all are in fact affordable, even for the poorest nations.

Some developing countries have managed to introduce social pensions that provide minimal income security to all persons in old age. These schemes are typically tax-financed rather than based on contributions made while employed.

Thanks to these schemes, everybody who has reached a certain age can get a pension, or benefits are given to all who can show they have no other means to survive.

In Bolivia, Botswana and Mauritius, for example, such pensions are granted to all who have reached 65 years of age. In Argentina, Namibia and South Africa, social pension benefits are targeted at the poor.

Affordable?

Is it reasonable to use general taxpayers' money for such purposes? Such

provisions keep older persons out of poverty, and thereby facilitate their fuller participation in society. Such social pension schemes significantly contribute to poverty reduction.

In Brazil, only 3.5% of older persons receiving a social pension remain poor, unlike 51% of those who do not. Similarly, the universal pension scheme in Mauritius has reduced poverty among older persons by more than 40%.

Moreover, such pension benefits are often shared with household and family members. For example, in Namibia, more than 70% of pension income is shared among household members and spent on food and education for grandchildren.

In Bolivia, higher caloric consumption, as well as lower school dropout rates, were recently observed in rural households benefiting from the universal pension benefit.

In Brazil, the rural pension has been linked to higher expenditure on seeds and tools to support agricultural production as well as improve household access to credit.

But can poor countries afford to provide all older persons with a minimum income?

According to a United Nations study, in two-thirds of developing countries, the cost of a pension benefit of that amount would cost their societies less than 1% of national income.

And, even a benefit of double the global poverty line is quite manageable, even in 2050, when the numbers of older persons will have become much larger.

It may be less affordable, though, for some of the poorest countries, which have far fewer fiscal resources and face many competing demands. In such cases, there could also be a role for the donor community, which may already be supporting education and health budgets, to also contribute by providing adequate budget support to support broader development efforts, including improved coverage of social services and social protection.

With international solidarity, a pension for all is affordable. Therefore, priorities should be set to ensure that ageing is an achievement that can be cherished by all humanity. (IPS) □

Jomo Kwame Sundaram was United Nations Assistant Secretary-General for Economic Development. Rob Vos is Director of Agricultural Development Economics at the UN Food and Agriculture Organization (FAO) and was Director of Development Policy Analysis at the UN Secretariat.

Business and human rights: The failure of self-regulation

While no effective international mechanism exists to safeguard human rights, the interests of transnational corporations are assiduously protected through a global web of binding legal frameworks. In light of this unequal state of affairs, a network of social movements and organizations from across the world is steering an initiative to dismantle the corporate-centred “architecture of impunity”.

by Erika González, Juan Hernández Zubizarreta and Mónica Vargas

“Self-regulation does not work. We need binding regulations. Now.” That was the message of Alfred de Zayas, the United Nations Independent Expert on the promotion of a democratic and equitable international order. He was addressing the Catalan Parliament as part of a day dedicated to the issue of “Transnational corporations and human rights: the road to binding regulations”, referring to the obligation that corporations have to respect human rights wherever they operate.

Surprising as it may seem, given that human rights are now universally recognized, there is a total void in effective protection at international level. This article will explain what this lack of protection means, and how a global process of mobilization can change this situation by putting forward real alternatives.

Asymmetrical relationship

One of the principal characteristics of capitalist globalization is the clearly asymmetrical relationship between transnational corporations and the people. Thus an unequal relationship has been created between corporations, whose interests are reflected in public policy, and the rest of the population, who see their rights being subordinated to the power of the major multinationals. This is the new *lex mercatoria*; the interests of the transnational corporations are very effectively safeguarded through contracts, trade regulations and multilateral, regional and bilateral investment agreements and by the decisions of international arbitration tribunals such as the World Bank’s International Centre for Settlement of Investment Disputes (ICSID). And yet no mechanisms exist to protect the rights of peoples or of Nature.

At a global level, the United Nations Conference on Trade and Development (UNCTAD) has identified more than 3,400 free trade agreements and treaties to protect investments, which involve binding legal frameworks.¹ In Europe, this issue gained prominence in the media during the controversial negotiation with the United States on the Transatlantic Trade and Investment Partnership (TTIP), and the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. These highlighted the erosion of democracy inherent in a secret negotiation process. Criticism also focused on specific aspects of the treaties such as regulatory cooperation – promoting downward harmonization of wages and social and environmental standards – and the arbitration mechanisms between investors and states, whereby transnational corporations can sue states if they consider their interests are being undermined.

These are very real issues for the majority of countries in Latin America, Africa and Asia, under pressure from the US and the EU to sign similar treaties. But such agreements would undermine regional dynamics that could potentially strengthen

the economies of poorer countries. This was what happened to the Andean Community, which split after signing bilateral treaties with the US and the EU. And yet it is difficult for these countries to say no to such agreements, as illustrated by the ultimatum the EU recently gave to a number of African countries, requesting they sign the Economic Partnership Agreements (EPAs) and approve their provisional entry into force (pending ratification by their parliaments). If countries refuse, they risk an unsustainable increase in customs duties on European imports, which will have immediate and negative consequences for those countries that have specialized in the export of raw materials.²

We will not go into the profoundly contentious and anti-democratic nature of the trade and investment regime, as there is already extensive literature available on the subject.³ What interests us here is to highlight the contrast between the binding regulations that protect the interests of investors, and the fragile legal framework represented by international human rights law, which is incapable of “resisting” the power of the *lex mercatoria*. This discrepancy is even more striking when one considers that *voluntary* standards or “codes of conduct” are the way in which multinationals are being requested to respect human rights.

In addition to the fact that this essentially results in a privatization of justice, through the existence of arbitral tribunals that overrule national legislation or international law, this asymmetry is also evident in the obstacles faced by communities and individuals attempting to assert their rights. That is where there is an inherent and systemic violation of human rights and the rights of peoples and the environment in the operations of transnational corporations. A real “architecture of impunity” is established,⁴ and the dispossession and appropriation of the commons goes on.⁵

Unfortunately, there are countless examples of impunity and many lives have been lost due to “accidents” caused by the unbridled quest for cost-cutting and by repressing the voices of the people: Bhopal in India, Rana Plaza in Bangladesh, the destruction of the Niger Delta by oil companies like Shell, the environmental disaster caused by Chevron-Texaco in the Ecuadorian Amazon and by Vale in Brazil, the Marikana massacre in South Africa ... the list goes on.

Resistance against corporate impunity

However, resistance to this situation has remained strong. It began firmly rooted in the local but has increasingly taken on a regional and international dimension. The Global Campaign to Dismantle Corporate Power and End Impunity⁶ comprises 200 organizations and social movements in Africa, Asia, Europe and the Americas. One of its main precursors is the bi-regional Enlazando Alternativas Network between Europe,

Latin America and the Caribbean.⁷

Among the different actions undertaken by the network, it is worth highlighting the Permanent Peoples' Tribunal, a descendant of the Russell Tribunal. The Tribunal has enabled communities affected by European transnational corporations in Latin America to have their voices heard and denounce violations in coordination with European civil society organizations. The sessions and hearings in Vienna (2006),⁸ Lima (2008),⁹ Madrid (2010)¹⁰ and Geneva (2014)¹¹ exposed the wrongdoings of a whole host of European corporations from a number of different sectors. Companies such as Repsol, BP, Shell, HSBC, Glencore, Suez (today Engie), Rabobank, BBVA, Unilever, Telefónica, Andritz, Benetton, Unión Fenosa-Gaz Natural, Iberdrola, Veolia, ThyssenKrupp, Syngenta, Bayer, Endesa, Louis Dreyfus, Nestlé and others were repeatedly singled out, condemned for systematically violating human rights. Further analysis also led the Tribunal to denounce lobbying within European institutions and governments which actively defend the interests of private European corporations.

The Enlazando Alternativas Network, comprising various organizations and networks, decided to form a global movement to curb the impacts and impunity of multinationals. That is how the Global Campaign to Dismantle Corporate Power and End Impunity came about. Launched in 2012 with the aim of compiling people's experiences and complaints, and creating spaces for resistance and alternatives, the intention was to extend the network beyond Latin America and Europe to the rest of the world.

As well as focusing on popular mobilization and solidarity, the Global Campaign also developed the International Peoples' Treaty on the Control of Transnational Corporations¹² as a political instrument that lays the foundations for an alternative vision of the law and justice "from below". It also aims to provide a context where communities and social movements can join forces and reclaim the public space hitherto occupied by corporate powers. It thus has two dimensions: a legal aspect and a section focused on alternatives. This latter includes a number of relevant experiences, demands and practices that seek to reclaim democracy and re-establish the importance of the public interest, rebuild sovereignties and defend collective rights, and demonstrate that alternative economies can and do exist.

With regard to the legal dimension, the main objective of this initiative is to subordinate the juridical-political architecture that sustains the power of transnational corporations to human rights norms and rules. The Peoples' Treaty focuses on two main strategies.

Towards a binding UN instrument

The first of these strategies is being put into practice within the UN Human Rights Council, aiming to reclaim the multi-lateral space that has been taken over by transnational corporations. By asserting that international human rights law is hierarchically superior to national and international trade and investment norms, the campaign aims to establish binding regulations that force transnational corporations to respect human rights.

Since the 1970s, monitoring transnational corporations has been a problematic issue for the United Nations. There have been a number of unsuccessful attempts at establishing mechanisms that would force corporations to respect human rights,¹³ the most recent being that carried out by the Working Group created by the Sub-Commission on the Promotion and Protection of Human Rights – the United Nations Norms on the Responsibilities of Transnational Corporations and Other Busi-

ness Enterprises with Regard to Human Rights, approved by the Sub-Commission in 2003.¹⁴ The corporate world's reaction was to produce a document, signed by the International Chamber of Commerce and the International Organization of Employers, stating that the Sub-Commission's project undermined both human rights and the rights and legitimate interests of private business. It also stated that human rights obligations were the responsibility of states, not of the private sector, and it called on the then UN Commission on Human Rights to reject the project approved by the Sub-Commission. The Commission abandoned the project in 2005. Voluntary standards were set up instead, requiring companies to self-regulate: the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011. What is most striking about the Guiding Principles is that they comprise no legal obligation whatsoever, thus leaving the regime of impunity totally intact.

In light of this, a declaration was made at the UN in 2013, initiated by Ecuador and backed by the African Group, the Arab Group, Pakistan, Kyrgyzstan, Sri Lanka, Bolivia, Cuba, Nicaragua, Venezuela and Peru, which proposed binding regulations. In 2014, thanks to pressure from these governments and civil society, solidly aligned through the Global Campaign and the Alliance for the Treaty,¹⁵ the Human Rights Council took a historic step, adopting Resolution 26/9.¹⁶ The resolution established an open-ended Intergovernmental Working Group whose mandate consisted of the creation of a legally binding instrument for the regulation of transnational corporations and other businesses in international law and human rights.

The resolution was adopted despite strong opposition from the US and the EU, which did everything they could to derail the process, particularly during the Working Group's first session in 2015. Fortunately, their attempts were unsuccessful, and the Working Group's second session will take place in October 2016.

The Global Campaign has developed proposals based on the work done for the Peoples' Treaty. The Treaty's demands have been submitted to the UN via internal consultation mechanisms, in order to ensure that the binding UN mechanism responds to the specific needs of the communities and collectives affected by major corporations. For example, it proposes that the instrument focus specifically on companies that, precisely because of their transnational nature, are economically and legally adaptable and use their complex structures to evade national and international laws and regulations. It also states that the instrument should include all human rights, detailing specific obligations, as well as regulations that undertake to protect particularly vulnerable or affected groups, including young people, children, women, migrants, indigenous peoples and human rights defenders. Other essential points include: the importance of extra-territorial obligations; reaffirming the hierarchical superiority of human rights regulations over and above trade regulations; and establishing civil and criminal liability of companies and their directors, and the collective responsibility of companies for the activities of their subsidiaries, suppliers, licensees and subcontractors. Establishing obligations for regional and international economic and financial institutions is also among the proposals made, as is protecting the negotiators themselves from any influence from the private sector.

Obviously, the instrument cannot be binding without mechanisms monitoring its implementation. Another key proposal of the Global Campaign is thus to set up a World Court on Business and Human Rights, which will back up national, regional and international mechanisms. The Court would be

responsible for hearing, investigating and judging claims made against transnational corporations. A Committee would also be established to ensure that states and corporations are complying with obligations and respecting the treaty. Complementarily, the Campaign also undertakes to set up a Monitoring Centre on Transnational Corporations, which would analyze, investigate, document and investigate companies' practices and their impact on human rights.

Building from below

The other strategy proposed by the Peoples' Treaty involves creating a Centre that differs from the UN-based Centre in that it would be managed and run exclusively by social organizations, critical sectors of academia and affected communities. This would represent a step towards reaffirming the sovereignty of peoples. The Global Campaign believes that we can't simply wait for states to do something about transnational corporations through such channels as the UN; we need to start by putting objectives in the Peoples' Treaty into action.

Creating the Centre is a collective decision and it should be built "from below", from the communities and movements involved in the campaign. They need to orchestrate alternatives and actions against the overall system of impunity that allows transnational corporations to get away with so much. An internal consultation process is currently underway in order to lay the foundations for such a space. Its objectives include awareness-raising, providing support for social, political and legal processes, creating tools for training and support, systematizing research and documenting cases, and teaming up with organizations that are already documenting cases.

These are obviously all long-term processes which involve confronting economically powerful players that are facing the potential collapse of the very architecture of impunity that many of them are built on. It is therefore necessary to protect the spaces that have been created through the work of hundreds of organizations, networks and social movements across the planet. This is a very serious endeavour, requiring many hands and much wisdom, bravery and imagination. We owe it to ourselves and to the victims of the transnational corporations. There is no turning back. □

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Notes

1. See: <http://investmentpolicyhub.unctad.org/IIA>.
2. See for example: <http://aitec.reseau-ipam.org/spip.php?article1554>.
3. The site <http://bilaterals.org/> monitors all bilateral and multilateral trade agreements and treaties across the world.
4. Hernández Zubizarreta, J. (2015). "The New Global Corporate Law", *State of Power 2015*. <https://www.tni.org/en/briefing/new-global-corporate-law>.
5. See: George, S. (2015). *Los usurpadores. Cómo las empresas transnacionales toman el poder*. Barcelona, Editorial Icària.
6. See: <http://www.stopcorporateimpunity.org>.
7. See: <http://enlazandoalternativas.org>.
8. See: <http://www.enlazandoalternativas.org/spip.php?rubrique49>.
9. See: <http://www.enlazandoalternativas.org/spip.php?rubrique50>.
10. See: <http://enlazandoalternativas.org/spip.php?article983>.
11. See: <http://www.stopcorporateimpunity.org/declaration-hearing-of-the-permanent-peoples-tribunal-geneva-june-23rd-2014>.
12. See: <http://www.stopcorporateimpunity.org/wp-content/uploads/2015/02/PeoplesTreaty-ES-dec2014-1.pdf>.
13. See the work of the Europe-Third World Centre (CETIM), which has comprehensively monitored these processes (<http://cetim.ch/>).
14. See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/164/25/PDF/G0316425.pdf?OpenElement>.
15. See: <http://www.treatymovement.com/>.
16. See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/55/PDF/G1408255.pdf?OpenElement>.

(continued from page 12)

concessions for developing countries.

The US also sought to know from India whether its proposal will need a new mandate that goes beyond the current mandate of the WPDR.

Services subsidiary bodies

In a separate development, on 5 October, the US and Brazil joined hands in whittling away two other subsidiary bodies – the Working Party on GATS Rules (WPGR) and the Committee on Specific Commitments (CSC) – of the WTO's Council for Trade in Services.

Brazil, which refused to put a concrete proposal in writing for discontinuing these two bodies, succeeded in forcing a decision with the help of the US

despite opposition from many developing countries.

Disturbingly, the proponents seeking work in these two bodies remained silent when Brazil and the US managed their way through an oral brainstorming presentation.

The two countries claimed that these two bodies have become redundant over the years without any significant contribution, said a services negotiator from a South American country who asked not to be quoted.

The chairs of these two bodies (Argentina for the WPGR and China for the CSC) will hold consultations to determine if there is a need to convene a meeting.

The effect of this is the de facto suspension of the work in these two bodies,

said another trade official.

The question of continuing the work in another services subsidiary body, the Committee on Trade in Financial Services, also cropped up during the meeting of the CTFS.

It is an open secret that developed countries which refuse to acknowledge or even talk about the role they played in the global financial crisis have frustrated any work in the CTFS, the official said.

In a nutshell, the recent services meetings showed that while developing countries remain disunited in advancing their developmental proposals, the industrialized countries along with a group of developing countries are able to push their proposals with little resistance, several developing-country negotiators said. (SUNS8329) □