

# **SOME ASPECTS OF GLOBAL GOVERNANCE AND DECISION-MAKING PROCESSES**

**By Martin Khor**

## **GENERAL INTRODUCTION**

This paper deals with some aspects of global governance as well as decision-making processes in areas which have a bearing or impact on global policy issues.

It contains five main topics, categorised in the following Parts:

Part A deals with issues of transparency and participation of developing countries in the decision-making processes of the World Trade Organisation (WTO).

Part B presents the case of the Cartagena Biosafety Protocol experience as a model for a more transparent and inclusive system of global negotiations.

Part C describes the efforts of indigenous people to deal with the issue of the global and national regimes of intellectual property rights. In these efforts the indigenous communities have striven for a more ethical response to the globalisation challenge.

Part D gives an account of the transfer of influence and authority from the UN system to the Bretton Woods and WTO systems in economic and social policy issues and describes the implications for development policies.

Part E deals with some critical aspects of the debate on ownership, conditionality and accountability in relation to IMF policies.

The paper attempts to throw light of the above contemporary issues that all reflect parts of the debate surrounding the globalisation process, the governance of this process, and the participation of developing countries and civil society in the process and its governance.

## **PART A.**

### **ISSUES OF TRANSPARENCY AND PARTICIPATION IN THE WTO DECISION-MAKING PROCESS AND PROCEDURE**

#### **1. INTRODUCTION**

This Part of the paper examines the issue of the decision-making process and the procedures of negotiations and discussions in the World Trade Organisation, with special reference to the ability of developing countries to adequately participate in the process. It summarises the problems facing developing countries in participating in the system. It describes some of the features of the decision-making process, and then provides several case studies to illustrate the problems. It also looks at the "external transparency" issue (i.e. the openness of the system to the public, including to NGOs and civil society organisations). Finally some suggestions are made to improve the decision-making process and the transparency in the system.

#### **2. PROBLEMS FACING DEVELOPING COUNTRIES IN PARTICIPATING IN DISCUSSIONS/NEGOTIATIONS IN THE WTO**

Developing countries in general face several problems in participating in the discussions, negotiations and decisions in the WTO system.

Firstly is the problem of lack of presence or capacity. Several of the poorer or smaller developing countries do not even have a Mission in Geneva, and are thus unable to follow the day-to-day developments in the WTO. Many other countries do a Mission, but are inadequately staffed. According to one study, only 65 developing countries maintain WTO missions in Geneva, 26 are represented by missions or embassies in Europe or elsewhere and 7 more list as their representatives people located in their own capitals. Based on the year 2000, the study find that 24 countries have no permanent presence in Geneva. (South Centre 20001, p6). In most developing country Missions, the Ambassador and his few officials have to cover events in a range of international organisations in Geneva, of which the WTO is only one. There may be several meetings in a single day at the WTO alone. Thus, many countries are unable to attend many of the meetings in the WTO. Even if a staff member is able to attend a meeting, he or she may not have the time or expertise to be adequately briefed, and thus is unable to participate adequately. The small Mission has also to keep in constant contact with officials in their capitals, and await instructions. Meanwhile in the capitals, there are also usually too few officials overseeing or involved in following and making decisions on WTO and other trade issues.

Secondly, the system of negotiations and decision-making in WTO is also often not conducive to the participation of developing countries. Although theoretically decisions are made according to the principle of one-country-one-vote, in reality there has not been a vote in the WTO nor its predecessor, the GATT. Decisions are made by "consensus." Often, this

system works against the developing countries, as explained below. Also, the old GATT style in which a few major countries make the key decisions, and use methods to get the others to agree, still operates in important areas in the present WTO. Among the methods is the convening of small informal meetings, in which a majority of countries are excluded, but at which major decisions are taken, and then the absent countries are persuaded to "join in the consensus"; this has been dubbed the "Green Room process." Finally, whilst the Secretariat is supposed to play a neutral role, in fact some of its staff members are partisan in some issues, and the Secretariat plays an important role in the untransparent decision-making process. These features are described in greater detail below.

The combination of inadequate capacity and unfavourable procedures has placed developing countries in general (and the smaller or poorer countries in particular) at a disadvantage. This is now increasingly realised by the developing countries themselves, which have from time to time made demands that the transparency and participation in the system be improved. Although several developing countries have now strengthened their capacity to monitor events, obtain information, take part in meetings, and put forward proposals, the non-transparent procedures of decision-making still work against the developing countries at critical periods such as the Ministerial Conferences and the processes preceding and surrounding it.

### **3. LACK OF TRANSPARENCY AND PARTICIPATION IN THE WTO SYSTEM**

The WTO has been and remains one of the most non-transparent of international organisations. Many developing-country member states have been unable to participate adequately in the negotiations and decision-making processes. Moreover, the WTO is also an agency in which NGOs and other civil society organisations have little effective participation. This is despite moves by the WTO Secretariat in recent years to increase the WTO's interaction with NGOs and the recent pronouncements by some WTO Member states about the importance of involving NGOs in the WTO.

The main reason for this lack of transparency and participation is the working methods and the system of decision-making of the WTO system.

In terms of formal arrangements, decisions are made on the basis of "one country, one vote" and by consensus, thus giving the WTO the appearance of an organisation in which decision-making is democratic. Decisions are taken by the General Council (comprising WTO Ambassadors of Member states based in Geneva), or representatives in subsidiary bodies (such as the TRIPS Council or the Agriculture Committee). Major decisions are also made or endorsed by the WTO Ministers meeting at a Ministerial Conference, held normally once in two years.

In practice, the GATT (the WTO's predecessor) and WTO have been dominated by a few major industrial countries. Often, these countries negotiate and decide among themselves, and embark on an exercise of winning over (sometimes through intense pressure) a selected

number of the more important or influential developing countries, in "informal meetings". Most WTO Members may not be invited to these informal meetings and may not even know that these meetings take place, or what happened there. When agreement is reached among a relatively small grouping, the decisions are rather easy to pass through the Committees or the General Council. The meeting of a limited number of countries to work out an agreement among themselves is referred to in WTO jargon as 'the Green Room process,' so named after the colour of the room of the GATT Director-General in which many such meetings took place during the Uruguay Round. In the WTO era, this Green Room process has taken place especially in the intense negotiation period prior to and at Ministerial Conferences, including the first Ministerial in Singapore and the third Ministerial in Seattle. At the Doha Ministerial Conference in 2001, a marathon Green Room meeting was also held on the extended last night of the meeting.

The system of decisions by consensus is also odd in its implementation. On issues where a majority of developing countries, who form the vast majority of overall WTO membership, may agree, it is said that "there is no consensus" should even a few developed countries disagree with the majority, and the issue concerned is practically killed or have no chance of being successfully dealt with. However, should the major powers (especially US, EU, Japan) agree on a particular issue, whilst a sizable number of developing countries disagree with them, and a large number remain silent, the major powers are likely to embark on a process which they call "building a consensus". In reality this means a process (sometimes prolonged) of wearing down the resistance of the outspoken developing countries until only a few or even one or two remain "outside the consensus." It is then relatively easy to pressurise these few remaining countries to also agree, to "join the consensus."

The WTO has many Committees and Councils and there are often many meetings in a single day. Decisions and negotiations go on at these formal meetings. However, a significant part of the important bargaining and negotiation goes on in private, in informal meetings that are called by one of the countries, or at meetings initiated by senior officials of the Secretariat, or the Chairperson of the General Council or some of the Committees and Councils.

Countries that are not considered significant are often not invited to the private negotiations. Even in many of the formal meetings (which are scheduled and which every Member is entitled to attend), the developing countries are poorly represented. Several do not have a Mission or presence in Geneva; or else the Mission is understaffed and the few officials (who also cover meetings in the United Nations agencies) are unable to be present at the several meetings taking place in the WTO. Even if present, many officials from developing countries are unable to adequately keep up with the often complex issues involved in the negotiations, and thus are unable to effectively make an impact.

A study by the South Centre (2001) finds that: "The principle of one-country-onevote may allow a theoretical equality to developing countries with their more developed counterparts, but the consensus-based method of decision-making assumes the informed presence of developing countries in all meetings. Many developing countries find that they are unable to fulfil this requirement and find themselves considerably disadvantaged in comparison to

the developed countries that have large and well-prepared delegations....As a result the power asymmetries outside the institution also get translated into the decision-making processes of the WTO. The importance of informal processes in building consensus among over 40 members offers some advantages, but also produces additional costs for developing countries. These costs include lack of transparency in extending invitations to small group meetings, certain protocols of interaction that have led delegates to speak of the "English Club atmosphere" of the WTO, excessive reliance on the chairpersons as mediator and facilitator of the negotiations in the absence of rules and so forth. Finally, procedural issues, such as the timing and venue of the Ministerials, the nature of technical assistance, and problems of both omission and commission that derive from the nature of the WTO Secretariat also affect the participation of developing countries in an adverse way." (South Centre, 2001, ix).

#### 4. CASE STUDIES OF THE UNTRANSPARENT PROCESS

##### *Selection of New Director-General, 1999*

In the process of selection of a new Director General of WTO, that occupied the organisation for several months in 1999, there was a lack of transparency in the entire process. One of the candidates (Dr Supachai Panitchpakdi, who was then the deputy prime minister of Thailand) was in the lead by a significant margin for much of the period but there was no attempt by the General Council chairman to "form a consensus" around him. The United States campaigned strongly for the other candidate (Mr Mike Moore, a former prime minister of New Zealand). When support was mustered so that it was claimed he had one or two more supporters than Mr Supachai, the General Council chairman announced that a consensus should be formed around Mr Moore. Many developing countries among the Supachai supporters (there were also some developed country supporters for him) cried foul, decried the untransparent process and demanded that a vote be taken. The US and other developed countries did not want voting, since this would set a precedence (there has not been a vote taken in the WTO) and damage the "decision by consensus" system. In the end, a compromise was made, with Moore taking a three-year term to be followed by a three-year term for Supachai. The whole process, lasting several months, was most bitter, unsatisfactory and untransparent. In a more transparent exercise, voting at a predetermined date would have resolved the issue.

##### *1996 Ministerial Conference, Singapore*

The unsatisfactory decision-making process and procedures are most evident in the developments preceding and surrounding the M

bjbjâ=â=  
 -0 €W €W pÁ  
 ÿÿ p p p p p p p p p p  
 \$ ðÁ M ð ÿ Æ 8 Bb

bjbjâ=â=  
 -0 €W €W pÁ  
 ÿÿ p p p p p p p p p p  
 \$ ðÁ M ð ÿ Æ 8 Bb

bjbjâ=â=  
 -0 €W €W pÁ  
 ÿÿ p p p p p p p p p p  
 \$ ðÁ M ð ÿ Æ 8 Bb



bjbjâ=â=

-0 €W €W pÁ  
 ÿÿ ÿÿ ÿÿ  
 l p p p p p p p  
 p t b b p b

8 Bb \$ ee issues on which there was no consensus, thus transmitting issues on which there had been no consensus among the Ambassadors in Geneva, onto the Ministerial Conference. It is noteworthy that this transmission of issues via a letter was not a decision of the General Council or of the membership, but an initiative of the Secretariat (in this case the Director-General) and his letter had not been vetted by the General Council before its being sent. This is in contrast to the normal practice of Ministerial Conferences or Summits organised by the United Nations, in which decisions to transmit a text worked out in the preparatory process, and the treatment of the text in terms of further decisions (if any) required at the Ministerial Conference or Summit, are taken collectively by the Member States.

â=â=

-0 €W €W pÁ  
 ÿÿ ÿÿ ÿÿ l  
 p p p p p p p p  
 t b b b 8 Bb  
 \$ iÑÁ M ð ÿ Æ

bjbjâ=â=  
 -0 €W €W pÁ  
 ÿÿ p p p p p p p p p p  
 \$ ðÁ M ð ÿ Æ 8 Bb

bjbjâ=â=

-0 €W €W pÁ  
 ÿÿ ÿÿ ÿÿ  
 l p p p p p p p  
 p t b b p b

8 Bb \$ ee issues on which there was no consensus, thus transmitting issues on which there had been no consensus among the Ambassadors in Geneva, onto the Ministerial Conference. It is noteworthy that this transmission of issues via a letter was not a decision of the General Council or of the membership, but an initiative of the Secretariat (in this case the Director-General) and his letter had not been vetted by the General Council before its being sent. This is in contrast to the normal practice of Ministerial Conferences or Summits organised by the United Nations, in which decisions to transmit a text worked out in the preparatory process, and the treatment of the text in terms of further decisions (if any) required at the Ministerial Conference or Summit, are taken collectively by the Member States.

=â=

-0 €W €W pÁ  
 ÿÿ ÿÿ ÿÿ l  
 p p p p p p p p  
 t b b b 8 Bb  
 \$ iÿÁ M ð ÿ Æ

bjbjâ=â=  
 -0 €W €W pÁ  
 ÿÿ p p p p p p p p p p  
 \$ ðÁ M ð ÿ Æ 8 Bb

bjbjâ=â=

-0 €W €W pÁ  
ÿÿ ÿÿ ÿÿ  
l p p p p p p  
p t b b p b

8 Bb \$ ee issues on which there was no consensus, thus transmitting issues on which there had been no consensus among the Ambassadors in Geneva, onto the Ministerial Conference. It is noteworthy that this transmission of issues via a letter was not a decision of the General Council or of the membership, but an initiative of the Secretariat (in this case the Director-General) and his letter had not been vetted by the General Council before its being sent. This is in contrast to the normal practice of Ministerial Conferences or Summits organised by the United Nations, in which decisions to transmit a text worked out in the preparatory process, and the treatment of the text in terms of further decisions (if any) required at the Ministerial Conference or Summit, are taken collectively by the Member States.

ÿÿ ÿÿ ÿÿ  
l p p p p p  
p t b b  
p b 8 Bb \$ ee issues on which there was no consensus, thus transmitting issues on which there had been no consensus among the Ambassadors in Geneva, onto the Ministerial Conference. It is noteworthy that this transmission of issues via a letter was not a decision of the General Council or of the membership, but an initiative of the Secretariat (in this case the Director-General) and his letter had not been vetted by the General Council before its being sent. This is in contrast to the normal practice of Ministerial Conferences or Summits organised by the United Nations, in which decisions to transmit a text worked out in the preparatory process, and the treatment of the text in terms of further decisions (if any) required at the Ministerial Conference or Summit, are taken collectively by the Member States.

(a) ÿÿ ÿÿ ÿÿ  
l p p p p p  
p t b b  
p b 8 Bb \$ ee issues on which there was no consensus, thus transmitting issues on which there had been no consensus among the Ambassadors in Geneva, onto the Ministerial Conference. It is noteworthy that this transmission of issues via a letter was not a decision of the General Council or of the membership, but an initiative of the Secretariat (in this case the Director-General) and his letter had not been vetted by the General Council before its being sent. This is in contrast to the normal practice of Ministerial Conferences or Summits organised by the United Nations, in which decisions to transmit a text worked out in the preparatory process, and the treatment of the text in terms of further decisions (if any) required at the Ministerial Conference or Summit, are taken collectively by the Member States.

(b) The establishment early during the Conference itself of a small "informal group" of about 30 countries to negotiate the final text of the Ministerial Declaration. This was known as the convening of a "Green Room meeting", or an exclusive meeting to which only a few countries were invited to participate. Those Ministers or officials whose

countries were not on the list were not allowed to enter the meeting room. Who selected the 30 countries, on what basis, and what they were discussing, were not known to the Conference delegates as a whole. Only on the night before the Conference ended were all the delegations summoned, given the final draft that had been worked out in secret by the small group, and asked to endorse it without change. Although several of the Ministers protested at the whole untransparent and undemocratic process, the draft was eventually adopted, unchanged, as the Ministerial Declaration. In it were the decisions to establish three new working groups on investment, competition and government procurement, which had only a few days earlier been objected to by many developing countries. At a media conference after the meeting, the Director General admitted that several Ministers that had not been invited to take part in the "Green Room" had made complaints. He justified the convening of the exclusive Green Room meeting as necessary for the sake of efficiency, i.e. to get decisions made within the time frame of the meeting. He however stated that such a non-participatory process would not be repeated in future Ministerial Conferences.

### *1999 Ministerial Conference, Seattle*

The WTO's third Ministerial Conference was held at the end of November and the beginning of December in 1999. In the many months preceding this Conference, the developing countries were active in putting forward many proposals for inclusion in the Ministerial Declaration. These proposals were issued as official documents of the WTO as part of the preparation process. Many of these proposals from developing countries were included in the draft of the Ministerial text (together with the proposals made by developed countries) that was prepared and discussed in Geneva. The text itself was thus rather "democratic" in that it reflected the various positions taken by different countries on the various subjects.

However, the process of discussing the different proposals (in order to come up with revised texts that reconciled the different positions) was neither transparent nor democratic. In the few months before the Seattle Ministerial Conference, the "Green Room process" was put into effect again in Geneva by the new WTO Director General, Mike Moore. This was despite the assurances made by his predecessor, Renato Ruggiero, that the Green Room practice would cease in the WTO, after the Singapore Ministerial Conference of 1996. Several small negotiating groups were set up to discuss various issues of contention. Most developing countries were not invited to be in the small groups.

At the Seattle Conference itself, small negotiating groups were set up, with each group having its own topic (agriculture, investment, etc). Again, the "Green Room" mechanism was put into effect. The negotiating groups were exclusive, in that only the small number of countries selected could participate, and officials of those countries not invited were barred from entering the rooms. Many developing countries were not invited to be in any of the

groups. Even within the small groups, developing countries' representatives were unhappy with the way the meetings were conducted, and how conclusions were sought to be made. For example, some Ministers or officials who made proposals to amend the texts found that their suggestions were not taken into account nor included in the revised texts. They concluded that views that were not in line with what had been already designed to be in the text or revised text would not be entertained.

Many of the Ministers and their officials were upset and later outraged at how their countries had been excluded from the negotiating process, and at the manipulative methods being used to push through decisions in a Declaration in which they were not given the opportunity to discuss. Eventually the developing countries in the Africa Group and the Caribbean Group made clear in statements on the eve of the Conference's closure that they would not "join in the consensus" if a draft Declaration were to be put forward on the final day. This was a major contributory factor why the Seattle meeting ended in failure, without the issuing of any Declaration or statement.

### ***The Doha Ministerial Conference, 2001***

The WTO's fourth Ministerial Conference took place in Doha on 9-14 November 2001. It was scheduled to end on 13 November but a decision was taken (it is still unclear by who) to extend it by another day when a deadlock remained on some key issues. Due to this last-minute change, Ministers or senior officials of some countries left before the conclusion of the meeting.

The most contentious aspect of the Doha Conference, and the preparatory process before it, involved the proposals by the major developed countries, led by the EU, to introduce new issues (including investment, competition, transparency in government procurement and trade facilitation) as subjects for negotiating new agreements, and thus expanding the mandate of the WTO immensely. These four issues are known as the "Singapore issues" as they had been first introduced at the 1996 Singapore Ministerial Conference as subjects for discussions or study (though not for negotiations) in the WTO. During the preparatory process, a large number of developing countries (mainly from Asia, Africa, the Caribbean and Central America) had made their views known that they were opposed to the commencement of negotiations on these issues, and that instead the "study process" on these subjects should continue in the WTO. "Negotiations" imply a commitment to draw up a new agreement, whereas "discussions" or a "study process" do not. For three of these issues (except trade facilitation), working groups had been established by the 1996 Singapore Ministerial Conference and in the opinion of these developing countries, the working groups should continue to discuss the issues; whilst trade facilitation should continue to be discussed in the relevant WTO organs. These views were expressed by many countries at the WTO meetings in Geneva to prepare for Doha, as well as in joint statements made by the Ministers of the least developed countries at their meeting in

Zanzibar in July; by African Trade Ministers at their meeting in Abuja in September; and by Ministers of the Africa, Caribbean and Pacific (ACP) group at their meeting in Brussels in November.

The first draft of the Ministerial Declaration was issued in Geneva in September 2001 by the General Council chairman and the WTO Director General. In this draft, for two of the Singapore issues (investment and competition), two options were provided: the first, that negotiations begin after the Doha Ministerial; the second, that the study process continue. For the other two issues, only one option was provided, that negotiations commence. This draft was met with dismay by many developing countries, which in the consultations of the following month, conveyed their views that the study process should continue for all the four issues. A second draft of the Declaration (WTO 2001b) was issued in late October, just days before the Doha meeting. This draft was worse than the first, in that the option for continuing the study process had even been removed for the two issues of investment and competition. In fact, the draft was issued as a "clean text", in that there were no "square brackets" or no indication of contending positions that existed on many of the issues. The text thus favoured the countries whose position was solely reflected on the particular issue. Although the developing countries were invited to take part in "consultations", their views expressed at these consultations were not fairly reflected in the drafts.

Many developing countries protested that this second draft reflected their positions even less, and proposed that a method be found to convey the differences in positions. The methods they suggested included: issuing a new draft that honestly reflected the different positions; attaching an annex to the draft containing the written views on the text of different countries; or at the least, that the text should be accompanied by a cover letter from the General Council chairperson, which would outline what were the differences of positions on the critical issues and paragraphs of the draft. However, none of these suggestions was implemented. The draft was transmitted by the Chairman of the WTO General Council and the Director-General of the WTO secretariat to the Doha Ministerial Conference unchanged, without an annex of written views, and accompanied by a short cover letter that did not indicate the disagreements on the various issues. This draft became the basis for negotiations when the Doha meeting commenced. The draft thus favoured those countries whose views were reflected, whilst putting at great disadvantage those countries holding positions contrary to those in the text.

The draft committed the members to negotiations on all the four issues, immediately for transparency in government procurement and trade facilitation, and in two years, after the Fifth Ministerial Conference, for investment and competition. Moreover, the least developed countries group and several non-LDC African countries had presented views that negotiations should not begin on industrial tariffs (or non-agriculture market access) but instead a study process be initiated to take account of their concerns that previous industrial tariff cuts had resulted in de-industrialization and closure of local firms; however, the draft ignored these views and committed members to immediate negotiations on industrial tariffs following the Doha meeting.



In Doha, a series of untransparent procedures were also put in place. At the first business meeting, six "friends of the Chair" were appointed to conduct consultations on controversial issues; how they were appointed, what their specific powers were, and why they all came from a similar camp (that was known to advocate a New Round), were not explained nor subjected to approval by the Members.

As in the Geneva preparatory process, a process of "consultations" was initiated in which the "friends of the Chair" held a series of meetings to consult with countries bilaterally, or as regional groupings and in informal plenary meetings. At these consultations, countries could put forward their positions. However, as in Geneva, the views of many developing countries on the Singapore issues were again not reflected in the two further drafts that were issued in Doha. As in the last Geneva draft, these Doha drafts were "clean" in that it did not reflect the various views even when there was no consensus on an issue.

At Doha many developing countries again stated (in their Ministers' statements presented at the official plenary, and during informal consultation meetings) their opposition to the draft Declaration committing the WTO to negotiate the Singapore issues. However, once again such a negoti

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ì¥Á M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 Æ



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 P b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b Æ  
 p b 8  
 l

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=

-0 €W €W þÁ

þÁ

ÿÿ

l

ÿÿ

ÿÿ

p

p

p  
t

p  
b  
ð ÿ

p  
b

p  
b 8  
Æ

p  
Bb

\$ ÿÁ M

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 Æ



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ð ÿ Á M ð ÿ  
 p ÿÿ  
 p b p b p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ i¥Á M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ  
 l

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ð Á M ð ÿ  
 p ÿÿ  
 p b p b 8  
 p b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ì¥Á M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ





bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð ÿ M ð ÿ  
 P ÿÿ P P P  
 b b b 8 l  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ð ÿ Á M ð ÿ  
 p ÿÿ  
 b b  
 p b Æ  
 p b 8  
 l

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ i¥Á M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð ÿ Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=

-0 €W €W þÁ

-0 €W €W þÁ

ÿÿ

ÿÿ

ÿÿ

l

p

p

p

p

p

p

p  
Bb

\$ ðÁ M

t  
ð ÿ

b

b

Æ

b

8

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ  
 l

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð ÿ Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b Æ  
 p b 8  
 l



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8  
 Æ

bjbjâ=â=

-0 €W €W þÁ

-0 €W €W þÁ

ÿÿ

ÿÿ

ÿÿ

l

p

p

p

p

p

p

p  
Bb

\$ ðÁ M

ð ÿ

b

b

b

8

Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ìŸÁ M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð ÿ Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

$b_j \hat{a} = \hat{a} =$   
 $\begin{matrix} -0 & \in W & \in W & \text{p} \acute{A} \\ \mathcal{A} & & & \end{matrix}$

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b Æ  
 p b 8  
 l

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 p p p  
 p t  
 Bb \$ ìŸÁ M ð ÿ  
 p ÿÿ  
 b b  
 p b 8  
 Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ i¥Á M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ

$\text{bjbj}\hat{a}=\hat{a}=-$   
 $\text{Æ} \quad -0 \quad \text{€W} \quad \text{€W} \quad \text{pÁ}$

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ i¥Á M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ



bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ i¥Á M ð ÿ  
 P ÿÿ  
 b b b 8 l  
 P b Æ

bjbjâ=â=  
 -0 €W €W þÁ  
 ÿÿ ÿÿ  
 P P P  
 P t  
 Bb \$ ð Á M ð ÿ  
 P ÿÿ  
 P b P b P b 8 l  
 P b Æ

bjbjâ=â= -0 €W €W þÁ  
 ÿÿ ÿÿ ÿÿ  
 p p p p p p p  
 p t b b b 8

Bb \$ icipate in decision-making. Although the developing countries prepared themselves well and played an active role in making their views known at the WTO meetings and consultations in Geneva, their views were not reflected properly (and in some areas not at all) in the several drafts of the Ministerial Declaration that were produced in Geneva and subsequently at Doha. Although the contents of the last Geneva draft were heavily disputed by many developing countries, it was nevertheless transmitted without change and in a form that did not incorporate the various diverging views and options, thus placing the dissenting developing countries at a grave disadvantage. The manipulative process continued in Doha, with the appointment of the six "friends of the chair", the convening of a Green Room meeting on the last night, and the organising of "consultations" without fair representation of views on the all-important main Conference text.

ÿÿ ÿÿ ÿÿ  
 p p p p p p p  
 p t b b b 8

Bb \$ icipate in decision-making. Although the developing countries prepared themselves well and played an active role in making their views known at the WTO meetings and consultations in Geneva, their views were not reflected properly (and in some areas not at all) in the several drafts of the Ministerial Declaration that were produced in Geneva and subsequently at Doha. Although the contents of the last Geneva draft were heavily disputed by many developing countries, it was nevertheless transmitted without change and in a form that did not incorporate the various diverging views and options, thus placing the dissenting developing countries at a grave disadvantage. The manipulative process continued in Doha, with the appointment of the six "friends of the chair", the convening of a Green Room meeting on the last night, and the organising of "consultations" without fair representation of views on the all-important main Conference text.

Many of the developing countries came to the conclusion that although the process of "consultations" had been undertaken in the WTO, and thus they had their share of "participation", yet the draft text was untransparent and undemocratic in that it did not reflect the different positions of various countries. The participation of developing countries had been confined to their going through the motions of "consultation", but was absent in the most important aspect, i.e. a fair reflection of their views and positions in the text. This was the opposite to the situation prior to and at the Seattle Ministerial conference, in which the drafts of the Ministerial Declaration were transparent and democratic, reflecting the various positions and thus the differences in views; but the process of attempting to resolve these differences was untransparent and non-participatory.

The non-transparent and undemocratic processes and methods used in Doha has led to expressions of frustration and exasperation by some developing countries as well as NGOs which witnessed the events and the processes. As India's Commerce and Industry Minister, Mr Murasoli Maran, himself a major player at Doha, remarked about his experience at the Conference:

"Apart from not seriously reflecting the views of the developing members, the draft Declaration and the manner in which it was transmitted from Geneva to the Ministerial left a lot to be desired. Even at Doha, when the process reached nowhere on 13 November, the scene shifted to the so-called 'Green Room', where only a handful of WTO members were requested to participate. The remaining members virtually had no say. Even during discussions on the entire night of 13-14 November (the non-stop session lasting for 38 hours), texts were appearing by the hour for discussions without giving sufficient time to get them examined by the respective delegations. Who prepared the avalanche of Draft after Draft? Why? We do not know. In the eleventh hour, probably after 37 hours 45 minutes, they produced a Draft --like a magician producing a rabbit out of his hat -- and said that it was the Final Draft. The tactics seemed to be to produce a draft at the wee hours and force others to accept that or come nearer to that. Has it happened in any other international Conference? Definitely not. Therefore with pain and anguish I would say that any system which in the last minute forces many developing countries to accept texts in areas of crucial importance to them cannot be a fair system. I would strongly suggest that the WTO Membership should have serious introspection about the fairness of the preparatory process for Ministerial Conferences. At a minimum, there should be a stipulation that during Ministerial Conferences, no new text on any issue will be put for adoption without the delegations getting sufficient time to study the text and to consult their polity. The last minute Draft, which often comes like a bolt from the blue, will not contribute to the strength of the multilateral trading system, since the decisions are likely to affect the lives of billions of people all over the world." (Maran 2001: 5-6).

Although promises have been made many times (notably at the Singapore Ministerial Conference and after the Seattle Ministerial Conference), by the developed countries and by the management of the WTO Secretariat, to do away with untransparent and selective processes such as the exclusive "Green Room meetings", and to ensure greater participation of developing country Members, the unsatisfactory procedures and methods used before and at Doha have made clear that the situation is even less satisfactory than ever and thus that there is an imperative for reform in the decision-making processes and procedures of the WTO. Until this is undertaken, it is unlikely that the developing countries' efforts to improve their position and promote their interests in the WTO and in the multilateral trading system will bear fruit.

## **5. POST DOHA DEVELOPMENTS ON 'INTERNAL TRANSPARENCY' IN THE WTO**

The delegations of several developing countries which were unhappy with the lack of transparency in the way Ministerial Conferences (and their preparatory processes) have been managed have taken an initiative in the WTO to have these processes subjected to fairer procedural rules or guidelines.

In April 2002, a group of 15 developing countries (Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe) submitted a joint Communication to the WTO entitled "Preparatory Process in Geneva and Negotiating Procedure at the Ministerial Conferences" (WTO 2002). It notes that four WTO Ministerial Conferences have been held so far and the procedures adopted in the preparatory process and the Conferences have been different, and that this uncertainty in the process makes it difficult for Members to prepare themselves. The Communication then states that: "Some basic principles and procedures for this Member-driven organisation need to be agreed upon, so that both the preparatory process and the conduct of the Ministerial Conference are transparent, inclusive and predictable." The paper then provides detailed proposals.

For the **process at Ministerial Conferences**, the 15 developing countries countries made the following proposals:

- The agenda for the conference should not be adopted at the ceremonial opening session, but at the first formal plenary session immediately thereafter.
- A Committee of the Whole should be established at all Ministerial Conferences. This Committee should be the main forum for decision-making. All meetings of the Committee of the Whole should be formal.
- The chairpersons including facilitators, who would conduct consultations and meetings on specific subjects at the Ministerial Conference, should be identified by consensus in the preparatory process in Geneva, through consultations among all Members. Such persons should be persons from Members that do not have a direct interest in the subject assigned for consultations.
- Consultations by chairperson/facilitator should be at open-ended meetings only. The person/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.
- Consultations should be transparent, inclusive and all Members should be given equal opportunity to express their views. Chairpersons/facilitators should report to the Committee of the Whole periodically and in a substantive way.
- All negotiating texts and draft decisions should be introduced only in open-ended meetings.

- Late night meetings and marathon negotiating sessions should be avoided.
- Language of declaration should be clear and unambiguous. All drafts shall be considered and finalized in a drafting committee to be appointed for that purpose by all Members and membership of which should be open to all Members.
- The Secretariat and the Director-General of the WTO as well as all the chairpersons/facilitators should assume a neutral/impartial and objective role. They shall not express views explicitly or otherwise on the specific issues being discussed in the Ministerial Conference. Specific rules to conduct the work of the Chairs and Vice-Chairs of the Ministerial Conference should be elaborated.
- Discussions at the Ministerial Conference on the draft ministerial declaration should focus on issues not agreed upon in the Geneva process and the various alternate texts developed at Geneva.
- Any new draft on specific issues should be circulated to all Members well in advance so that Members have sufficient time to consider them. To ensure transparency in the negotiating process any draft on specific issues should clearly indicate the Member(s) suggesting the draft.
- The duration of Ministerial Conferences should be in accordance with the schedule agreed upon in Geneva, as many delegations make their travel and accommodation arrangements accordingly. If an extension is required, it shall be formally approved through consensus.
- In various meetings, formal as well as informal, during the Ministerial Conference arrangements should be made for the Ministers to be accompanied by at least two officers. It is the right of any Member to designate its representative and in this connection the Heads of Delegations has the discretion to mandate his/her officials to speak on his/her behalf.

The Communication of the 15 countries also dwelt on the issue of the **venue of Ministerial Conferences**. It noted that this issue had been discussed during the Uruguay Round, when it was felt that the Conferences should be held in the WTO itself. It said that apart from convenience this would also result in savings in costs and efforts as many developing countries find it prohibitively expensive to participate in the Conferences. It concluded that there could be a case for having all the future Ministerial Conferences after Mexico in Geneva itself. Finally, the Communication recognised that Ministerial Conferences are to be held at least once every two years, and strongly recommended that Members review the evolving tendency of holding Ministerial Conferences that are primarily focused on the launching or review of negotiations.

It is clear that these recommendations were made by the 15 countries in light of the frustrating experiences that they and other delegations from developing countries have

had in previous Ministerial Conferences and their preparatory processes. The principles and guidelines were formulated as means to offset or overcome the non-transparent and non-inclusive processes and practices to date. In introducing the paper of the 15 countries during a session of the WTO on 13 May 2002, India's Permanent Representative to the WTO, Ambassador K.M. Chandrasekhar, stated, in relation to the consultation process at the Doha Ministerial Conference: "Many developing countries were unhappy at being excluded from crucial meetings; in some cases the exclusion was despite specific request for being involved in some meetings. It is necessary for the long-term health of the organisation and the multilateral trading system it seeks to promote and preserve, that we collectively address the issue of transparency and inclusiveness in the decision-making process." (Chandrasekhar 2002).

He also identified the following issues that need focussed attention:

- The general issue of procedures to be adopted at Ministerial Conferences and the Geneva process leading up to the Ministerial Conference -- different procedures had been followed at the previous Ministerials in Singapore, Geneva, Seattle and Doha.
- Preparation of the draft Ministerial Declaration -- the different views were not fully and clearly reflected and options for decisions were not precisely laid out.
- There had been no discussion by the General Council or the Committee of the Whole on procedures to be followed by the Ministerial Conference. A decision on appointment of facilitators and selection of facilitators appears to have been taken prior to the meeting and then communicated to the Committee of the Whole. There was no inclusiveness or transparency in this process.
- Organization of meetings -- Ministers had to sit for more than 40 hours at a stretch.
- Last-minute drafts had been placed on important issues --- thus, there had been no time for consultations with stakeholders, and other Government Departments and no time for proper reflection on implications of the drafts.

Chandrasekhar (2002) also stated that the procedures adopted in various Ministerial Conferences so far had not been uniform. He added: "This uncertainty makes it difficult for many members to prepare themselves for the conferences. Many developing countries are of the view that some basic principles and procedures would need to be agreed upon for this member-driven organization, so that both the preparatory process and the conduct of the Ministerial Conference are efficient, transparent, inclusive and predictable." He said it was with this view to commencing a debate on this issue that the 15 countries had circulated their paper.

It remains to be seen whether the proposals of the 15 developing countries will be accepted by the WTO membership. In the debates at the WTO, several developed countries have already stated their opposition to the set of guidelines and procedures

proposed by the 15 countries, giving the view that it would hinder the ability of the Ministers at the Conferences from making decisions.

## **6. THE ROLE OF THE SECRETARIAT**

The WTO Secretariat, especially its leadership, has also been perceived as not playing a neutral role, often showing partiality towards the more powerful members. For example, the Director-General, Mike Moore, very actively and openly campaigned for a comprehensive New Round, including new issues, in the many months of the preparatory process before the Fourth Ministerial Conference at Doha in November 2001, even though the Membership was divided on this topic, with many developing countries opposed. Mr. Moore held meetings and seminars in many regions and countries in the developing world, canvassing for the inclusion of the "new issues" as subjects of multilateral rules. He also published opinion articles in newspapers, including the Financial Times, promoting that negotiations should start on investment and competition agreements in the WTO.

At the Third Ministerial Conference in Seattle, the Secretariat played a major role in organising the "Green Room" process of exclusive meetings. The Director General and some Deputy Director Generals even chaired some of the "Green Room" meetings. At the Doha Ministerial Conferences, the Secretariat also played the crucial role of convening the marathon last-night Green Room meeting, with the Director-General playing a very active role during the meeting.

In the day-to-day operations of the WTO in Geneva, the Secretariat also plays an important and sometimes partial role. For example, the WTO secretariat has been playing too large a role, and an inappropriate role at that, in guiding the dispute settlement process. According to C. Raghavan:

From the time a dispute is sent to a panel process until the end of the proceedings, the system now works such that the secretariat has assumed a very important role -- from the choice of panelists (in view of the increasingly few cases where the disputants themselves agree on the composition of a panel, the naming of panelists by the WTO Director-General now threatens to become the general practice rather than an exception) through to the panel proceedings' (quoted in Khor 2000).

Some panelists have privately indicated that the secretariat provides notes and briefs to panels, including on items that negotiators had intended in the texts, without the knowledge of the parties, including when the hearing is over; and the secretariat also guides the drawing up of conclusions and reports. Thus, the WTO secretariat services the negotiations and the administering/supervisory bodies, namely the Councils on Trade in Services, Trade in Goods and the TRIPS. It also has a hand in the adversarial dispute process, in what is clearly a violation of the norms of judicial or quasi-judicial systems,



either Anglo-Saxon or droit administrative, and brings into question the impartiality of the multilateral trading system (ibid.; Raghavan 2000).

## **7. PARTICIPATION OF CIVIL SOCIETY IN THE WTO.**

When even developing countries' delegations find it difficult to participate in the WTO's decision-making system, it is no surprise that the situation is also inadequate with regard to civil society's knowledge of and participation in developments and decision-making in the WTO.

Until a few years ago, there was hardly any public knowledge of the workings of and negotiations in the WTO. Even today, in most countries, Parliamentarians and politicians have remained in the dark about important negotiations and even Agreements in the WTO, which bind their countries to change their national policies. Often these have very serious economic, social and cultural implications that very deeply affect the present and future of shape of their economies and societies. Even bureaucrats or Ministers that are not in the lead Ministry (usually the Ministry of Trade or Commerce) are largely or wholly unaware of the developments in the WTO. The media, academics, trade unions, farmers' groups, businessmen and NGOs, are usually not consulted and have little or no knowledge of what is happening in the WTO or the position taken by their government on the many issues under discussion at the WTO.

Up to a few years ago the situation was even worse. About the only independent source of detailed information on what was happening in the WTO was from the SUNS (South North Development Monitor) Bulletin, edited by Mr Chakravarthi Raghavan, a veteran Indian journalist based in Geneva. The SUNS published almost daily reports of negotiations in the various bodies of the GATT before, during and after the Uruguay Round that took place in 1986 to 1995. Although the negotiations took place behind closed doors, the SUNS was able to piece together what happened through interviews with the WTO diplomats and through obtaining and reporting of the official and unofficial documents and negotiation processes. The SUNS reports and analyses have become the best unofficial record of the negotiating history of the Uruguay Round and of the first years of the WTO.

Besides the SUNS, information was also made available to NGOs by UNCTAD, which in the late 1980s began a series of annual two or three day Dialogue Workshops between UNCTAD officials and NGOs (organised by the NGLS). UNCTAD papers, booklets and documents were also made available to NGOs and the public, and these helped to make information available to the NGOs.

Due mainly to the information base generated by the SUNS and UNCTAD, a few NGOs began to organise meetings, conferences and campaigns on the Uruguay Round. As the implications of the WTO agreements became more widely known, these meetings and campaigns gathered faster pace and momentum from the end of the 1980s to the present.

There are various civil society groups that have become involved in GATT/WTO issues. They include: (a) groups involved in development and poverty issues, in the South as well as the North, concerned about the further marginalisation of developing countries; (b) environment groups concerned about how trade liberalisation and the GATT/WTO system affect the environment; (c) labour unions that sought to use the WTO system to further the cause of labour standards; (d) consumer organisations and other citizen groups that are concerned that the WTO process undermines national sovereignty, and dictates economic and social policies of their countries, having negative effects such as higher drug prices and economic monopolisation by TNCs; (e) radical social movements and people's organisations, especially farmers' organisations in both South and North.

The WTO has increasingly felt the influence of civil society not so much as a result of NGO activity within the WTO but rather because of the highly publicised criticisms against the WTO emanating from various public groups and social movements.

During the closing years of the Uruguay Round, Southern and Northern NGOs became increasingly aware and vocal about the adverse effects of the impending agreements. They organised meetings among themselves, including parallel NGO meetings during major official WTO meetings. The NGOs began lobbying their governments and produced pamphlets, booklets and books about the ille effects of GATT and the WTO.

Social movements in some countries also began actions to demonstrate their unhappiness over the draft agreements. In India, farmers and citizen groups held demonstrations, especially regarding the effects of the TRIPS and Agriculture agreements, and copies of the so-called Dunkel Draft (the compilation of the draft Agreements) were burnt. In 1993, in Bangalore, a rally of 500,000 farmers pledged to fight and defy the Uruguay Round agreements. Farmers' groups in France also held large scale protests against the Agriculture Agreement.

Environmental and consumer groups in the West became increasingly critical (and then some became incensed) of the perceived blocking by WTO rules of the viability of some consumer and environmental policies and measures in their countries. Public health groups have campaigned against the effects of the TRIPS Agreement on the prices of medicines, especially for treating AIDS and other serious ailments. Environment and consumer groups have decried the threats posed by the WTO to environmental and food safety standards. Labour unions have been campaigning for linking labour standards to the WTO system.

Many citizen groups in Northern and Southern countries took up the issue of how international laws in the WTO were undermining national sovereignty by determining changes to national policies and "locking in" national policies and laws for the foreseeable future. Third World groups as well as development NGOs in the North criticised the WTO agreements as being unequal in results, bringing gains to transnational companies but causing firms and farms in developing countries to be threatened by competition from gianjt foreign firms due to liberalisation. All the groups criticised the WTO for its secrecy, the lack of transparency, the dearth of information coming out of the WTO, and the inability of NGOs to observe the WTO's negotiations or to otherwise participate in its activities.

This wide range of groups and their criticisms have had good media coverage, and many influential newspapers have published articles criticising the WTO and its rules for destroying the environment, for causing Third World poverty, for coming under the influence of transnational companies, and for eroding the sovereignty of countries and the rights and interests of local communities.

This caused concern to some of the major WTO members which feared that the credibility of the WTO system was being challenged by adverse public reaction.

In the last few years there has also been an increasing public reaction against globalisation and the increasing power of TNCs and their behaviour, and the abandonment by the state of its role as defender of the rights or welfare of people. Globalisation is popularly perceived by many groups as causing job losses, destruction of the environment and erosion of social rights, as well as exploitation of Third World people. The WTO is now perceived as one of the main agents of globalisation, in fact replacing the IMF and World Bank as the premier global institution promoting the interests of TNCs and restricting the right and ability of governments to fulfil their national and social responsibilities.

The unpopularity of the WTO and the fact that the public is putting the blame on the WTO for the ill effects of globalisation, was highlighted by the mass protest actions taken by social movements in Geneva during the WTO's second Ministerial Conference in May 1998, and especially at the Seattle Conference in November/December 1999. These demonstrations, expressing loathing for the WTO and its role in globalisation, had a major psychological effect on the official delegations who participated in the WTO Conferences in Geneva and Seattle. The protests spurred some governments (especially the US administration) to launch public relations exercises to win back public opinion.

The increasing influence of the NGOs came not from their participation within the WTO system but from their outside the WTO system: through their impact in the media; through lobbying of government and Parliaments; through street protests. Their participation in the formal structures of the WTO remains extremely limited.

In response to the upsurge of NGO interest and activities, the WTO has responded by increasing its interaction with civil society groups. In recent years there have been some initiatives from the side of the Secretariat and the members, which include employing a few staff to liaise with NGOs, the provision of more documents to the public, the holding of NGO-government dialogue seminars, briefing sessions for NGOs based in Geneva, the circulation of a bulletin of information to NGOs, and the provision of facilities for NGOs (whose accreditation to the WTO Conference is approved) to participate at the WTO Ministerial Conferences (including attendance at the largely ceremonial opening and closing sessions).

As a result, there has been more interaction between the civil society organisations and the WTO secretariat as well as WTO members. However this interaction is still very limited. NGOs are not allowed to observe the proceedings of the WTO meetings in Geneva. The

structured interaction between NGOs and the delegations is confined to the seminars or symposia organised by the Secretariat on selected topics a few times a year. There is no accreditation of NGOs to the WTO as an organisation (accreditation is given only to participate in the Ministerial Conferences, one conference at a time). This contrasts with the accreditation of NGOs to the UN and its various bodies and agencies, and the increasing participation of NGOs in the United Nations system, where the accredited NGOs have access to several meetings and also access to the delegates.

## **8. CONCLUSIONS AND PROPOSALS**

Although the WTO is held up as a rules-based and democratic organisation based on the principle of one country one vote, in reality it remains a very untransparent organisation, and one lacking in genuine participation, where most key decisions are taken in "informal" settings, where manipulative methods are used by the major powers to "build" and obtain "consensus".

In recent years the powers of the WTO have increased, as more and more issues come under its jurisdiction (from mainly trade in goods, the issues have expanded to cover agriculture, services, investment measures, intellectual property) and more issues are waiting in the wings to enter the system (including investment policy, competition policy, government procurement, environment, labour standards).

Given the immensely increased mandates and powers of the WTO, and especially in light of the extremely heavy work programme following the 2001 Doha Ministerial Conference, the ability and capacity of officials of developing countries is lagging further behind the many tasks they have to undertake.

Where "external transparency" or the participation of NGOs is concerned, the gains made in terms of increased access to documents and participation in "dialogue symposia" and the very limited access to observation of ceremonial functions in Ministerial Conferences are little. In relative terms, therefore (ie the increased powers of WTO relative to the not very significant improvements in NGO-WTO interaction), the situation can be said to be just the same or even worse than before. It is true that in the past, in the days of GATT, there was little access by NGOs to the system, and this was also partly due to the lack of interest of civil society in the affairs of GATT, which were then confined mainly to the more narrow issues of the conduct of trade at the border.

Today the WTO is the most intrusive international organisation, as its rules and dispute settlement system have extended to issues at the very heart of domestic and national policies, affecting sovereignty, development strategies, economic policies, and social and cultural issues. The issues being negotiated by the diplomats at the WTO in Geneva have critical significance to a wide range of national policies. Yet, there is still limited public knowledge of what is being discussed, how it is being discussed, what are the international

rules that are being proposed, what are the options, and what are the implications if certain proposals are adopted.

In this context, it is important not only that civil society but also Parliamentarians and even diplomats and policy makers (especially of the South but also including of the North) are given more rights to information and participation.

The non-transparent and non-participatory systems of decision-making among WTO Members is at the heart of the undemocratic nature of the WTO system. This reality is in stark contrast to the image of equal participation by all members through "consensus" that the WTO tries to project.

**The following are some proposals for improving transparency and participation in the WTO system.**

**1. The processes of consultations, discussion, negotiations and decision-making in the WTO have to be made truly transparent, open, participatory and democratic. To operationalise this principle, the following measures could be taken:**

- The discussions and negotiations that are being planned and are taking place at the WTO must be made known, and all Members must be allowed to be present and participate.
- The practice of small informal groups making decisions on behalf of all Members should cease. The "rationale" usually put forward (for example by the Director General at the Singapore Ministerial) that for the "sake of efficiency" only a few countries can be invited to negotiate cannot be accepted. The decisions at the WTO are too important to be "rushed through". They should instead arise out of well considered discussions where every Member (big or small, weak or strong) has opportunities to effectively express its opinions.
- To facilitate fair representation of the various positions held by all Members, a system and procedure of negotiations combining full participation by all Members with the efficiency of a representational mechanism could be considered. An interesting model for the WTO to look at is the experience of the Cartagena Protocol on Biosafety (see Part B of this Paper). In this model, countries are categorised according to the positions or interests that they have. Each of the interest-based category of countries can select representatives or spokespersons. Spokespersons of the various groupings could then sit within a roundtable for discussions and negotiations. The number of spokespersons allowed for each grouping may differ, depending on the size of the grouping. The chairperson will solicit the views of all the groupings around the table. Delegates from all countries should be allowed to be present, and the seating arrangement could be such that countries are seated according to their grouping. The members can consult with their grouping's representative or representatives during the negotiations. Adequate time should also be allowed for members of each grouping to consult among themselves, and

for the representatives to seek the opinion of their members. In this manner, whilst the negotiations are conducted by the representatives of the groupings, every Member is allowed to be present. Besides this "Biosafety Protocol model", the trade expert Bhagirath Lal Das (Das 2000) has also proposed a representational system in which countries with common interest and common positions can form a representative negotiating group made up of a few negotiators selected by and who would negotiate on behalf of the set of countries. The selected negotiator or negotiators would get the brief from the group and will come back constantly to the group to consult and if necessary to get a fresh brief. Das proposes that the groups be formed according to three broad clusters, i.e. the developed countries, developing countries and countries in transition. Given the present composition of WTO membership, there could be three developed country representatives, twelve from developing countries and one from the transition economies. The developed countries may divide themselves into three groups, each having one negotiator; the developing countries may divide themselves into a number of groups, depending on their commonness of interest, each being represented by one or more negotiators. A country can also shift its group, if the new group accepts it.

- To take into account the lack of human and financial resources of developing countries, there should not be more than one or at most two meetings taking place at the same time.
- The position or views of all countries should be adequately and fairly represented and reflected in the text of discussion or negotiation. The various views should then be placed together in a document, which should form the basis for negotiations. The practice prior to and at Doha, where the different views were not reflected, should not be repeated.
- The authority or mandate of the chairperson of the General Council, the Trade Negotiating Committee, and the various councils and committees, as well as negotiating groups, should be clearly spelt out. Their authority should be derived from the Members, who have the right to make decisions on any texts prepared. The practice prior to Doha in which the General Council chairperson and the Director General transmitted the draft Declaration to the Ministerial Conference on their own responsibility should not be repeated.
- Clear rules of procedure for Ministerial Conferences should be spelt out. The practice at Doha, where the Chairperson of the Conference selected six "friends of the Chair" to conduct negotiations, should not be legitimised or repeated. Roles given to delegates and procedures for conducting negotiations, including in informal meetings, should be decided upon by the entire Membership in a transparent, open and democratic manner.

## **2. The WTO secretariat should also be impartial and be seen to be impartial.**

The WTO secretariat has in the past shown partiality towards the major developed countries, as pointed out above. In future, it should be impartial and also seen to be

impartial, In particular Members of the Secretariat, especially the Director-General, the Deputy Director Generals and the Directors of the Divisions should not be seen to be taking sides with the more powerful countries at the expense of the interests of developing countries. The system should reflect the fact that the majority of members are now developing countries, which have as great (or greater) a stake in a fair and balanced multilateral system as do developed countries, and therefore provide developing countries with adequate means as well as procedures to enable them to voice their interests and exercise their rights. There should also be fairer representation of citizens of developing countries in the Secretariat, especially in senior positions.

**3. There should be much greater transparency of the WTO (including proposals made there and its decisions) in relation to civil society.**

- Any proposals for changes to the rules, or new agreements, or new commitments on countries should be made known in their draft form to the public at least six months before decisions are taken, so that in each country civil society (including groups representing labour, business, consumers, the environment, health and all other interests) have a full opportunity to study them and influence their parliaments and governments on the stand they should take.
- Parliaments and Parliamentarians should be kept constantly informed of proposals and developments at the WTO, and they should have the right to make policy choices regarding proposals arising in the WTO that have an effect on national policies and practices.
- Civil society should be given genuine opportunities to know what are the issues being discussed and the status of the discussions in the various committees and on the various issues. Civil society groups and institutions must be given genuine opportunities to express their views and to influence the outcome of policies and decisions. The issues and options being discussed at the WTO and its organs must be presented to the public in all WTO Member countries and subjected to public debate and scrutiny. The views of civil society organisations (including labour unions, farmers' organisations, groups dealing with consumer, environmental, health and social issues, professional organisations, the business community including small businesses, and the media) should be actively sought by the Member states.

## **PART B.**

### **THE BIOSAFETY PROTOCOL EXPERIENCE AS A MODEL FOR MORE TRANSPARENT AND INCLUSIVE GLOBAL NEGOTIATIONS**

Global negotiations have taken on a much more prominent and important stature in recent years, particularly when they involve legally-binding agreements. The proliferation of global negotiations has led to a comparison of different modes of negotiations in the various fora, as well as a search for more transparent and democratic models. In particular, participants and critics of negotiating fora that are less participatory (for one reason or another) are looking for ways to improve the methods of decision-making and the modalities of negotiations, so that all participating countries can have a fair say.

The Cartagena Biosafety Protocol (which was established under the Convention on Biological Diversity) offers an example of a creative and positive approach to global negotiations. The negotiations started in July 1996 and concluded in January 2000.



At one stage, as the target date for concluding the negotiations neared, and the differences among the contending parties still looked wide, there were fears that the entire talks would break down. This was when a combination of transparent and innovative processes with an active but impartial chairperson created the necessary atmosphere for the successful conclusion of one of the most contentious negotiations in international law.

The biosafety protocol negotiations, under the CBD, started in July 1996, with the convening of an ad hoc working group. This group held six meetings altogether. The last of its meetings was held in Cartagena in February 1999. At that meeting, the working group was scheduled to conclude its work with the production of the draft of the protocol. This would have been immediately followed by the convening, of an extraordinary meeting of the CBD Conference of Parties (COP) whose task would have been to review and adopt the protocol.

However, at Cartagena, the Working Group was still divided and could not come to a conclusion. The group was then dissolved, and the extraordinary meeting of the COP did convene, but could not adopt a protocol. Subsequently, an informal consultation was organised in Vienna in September 1999. Finally, the COP held a resumed meeting in Montreal in January 2000, during which the negotiations came to a successful conclusion and the protocol was adopted.

The innovative methods were initiated by the Colombian Minister of Environment, Juan Mayr Maldonado, when he took the chair of the Extraordinary Meeting of the Conference of the Parties of the Convention on Biological Diversity, at Cartagena in February 1999, and he continued to make use of these methods at an informal consultation of the members in Vienna in September 1999 until the conclusion of the negotiations at a resumed extraordinary meeting of the Conference of Parties in Montreal in January 2000.

The main features of the set of procedures and methods that evolved were as follows:

--- The categorising and division of participating members according to their interests and positions, rather than geographical/regional identity or along pure North-South lines. The interest-based categories were: (i) The like-minded group (or LMG) of developing countries (comprising most members of the Group of 77 and China, excluding a few countries which joined another category of countries) that were in favour of a strong and comprehensive protocol; (ii) the "Miami Group" (comprising three developed and three developing countries) which ; (iii) the European Union; (iv) the Compromise Group comprising a few developed countries. A significant innovation was the formation of the like-minded group, under whose umbrella most of the developing countries could caucus, whilst a few developing countries that held a different position joined another interest-based grouping. This was a departure from the norm, in which the developing countries would come under the single umbrella of "the Group of 77 and China."

--- Each category was asked to select representatives to act as spokespersons. The number of spokespersons allowed for each category would depend on the membership

size of the category, in order to enable more equitable representation of views. (For example, the LMG had four representatives, the "Miami Group" two, and there was one representative each for the "Compromise Group", EU, East and Central Europe (including Russia), and Central America/Caribbean. This configuration of spokespersons was used in the various negotiations, i.e. in informal "contact groups", in the official and unofficial plenary sessions. At a later stage of the negotiations, each negotiating group had one chief and one alternate spokesperson. The LMG, given its size, was asked to elect a chief spokesperson and an alternate spokesperson, and 2 others from each of the 3 regions (Asia, Africa and Latin America/Caribbean) as regional spokespersons to assist the chief person. Any of the regional advisers could join the discussions when asked by the chief spokesperson.

--- Although the negotiations were carried out among the spokespersons of the groupings, all member countries were allowed to be present in the room, even during the informal "contact group" meetings convened to thrash out contentious issues. At a previous stage of negotiations, it was a usual practice that only the representatives of groupings could attend the small informal "contact group" meetings, but even these meetings were opened to all members at the last two meetings of the Protocol negotiations, i.e. the informal consultations in Vienna in September 1999 and in the COP meeting in Montreal in January 2000. The Members could consult with their representatives and spokespersons, who in turn could get feedback from their members. Thus, whilst negotiations were conducted by representatives selected by the interest-based groupings, the meetings were transparent and open to the participation of all members. This method could thus combine the need for "efficiency" (in that selected spokespersons speak on behalf of interest-based groupings of countries) and the need and principle for transparency and participation (in that all members are allowed to be present, could follow the proceedings, and could consult with their representatives and these representatives could thus be held accountable to the members of their respective groupings.

--- The arrangement of countries in the room was also seen to be important. The spokespersons of the various groupings were placed within an inner circle (or a roundtable) in the room, and could address one another around the table, allowing a more communicative group dynamics. Instead of sitting in their country seats by alphabetical order in the usual United Nations fashion, delegates sat as their respective Groups. The advisers sat behind the chief spokespersons, and in the case of the LMG, delegates from each region sat behind their regional advisers. This arrangement enabled easy consultations amongst delegations. The physical setting of a roundtable (in Montreal) with delegates actually seeing each other as they spoke was a basic but important additional feature in group dynamics. It also made consultations among the members of each group more convenient during negotiations.

--- The order of speaking in plenary then followed a pattern. Minister Maldonado used coloured balls, with each chief spokesperson picking one from a bag at the start of each plenary session. Each session had a different colour sequence. All groupings were given an opportunity to present their views, in the order determined by the drawing of the balls.

This approach eased the flow of discussion. By going round each Group to elicit views in this way, and by the Chair actively asking questions to clarify positions, the atmosphere was significantly transformed. Delegates and observers alike felt that the result was exchanges that were more frank and less couched in obtuse diplomacy. This method of conducting a plenary became known as the “Cartagena/Vienna setting”.

--- There was also a conscious decision to set aside adequate time for consultations within and among groupings, between the Chairperson and the various groupings. Participation of the NGO community was also encouraged. At the Vienna informal consultation meeting (September 1999), the first two days were set aside for members of each grouping of countries to meet as a group to reach their own joint positions. In Vienna and Montreal, the Chairman informally met with the spokespersons and representatives of each negotiating group.

--- Transparency on the state of play of consultations and negotiations was also aimed at, with the provision of information to member countries, even in between the convening of meetings. In his summary of an informal consultation on 1 July, the minister stated that he “consider(ed) transparency as being critical to the preparations of the (Vienna) meeting”. He thus promised to keep all governments informed about his consultations by forwarding to all national focal points, through the Secretariat, “all correspondence and minutes”. He also highlighted the important role of the Bureau and Secretariat in achieving transparency of the process. As negotiations intensified, and plenaries had to be postponed, notices were prominently displayed and ample time given for delegations to re-convene.

-- Participation of NGOs was also encouraged. In Vienna, the Chairperson met separately with NGOs and industry. It was in response to the NGO request for access that a decision was made to have instantaneous audio reception in a “spill-over” room next to the government consultation room. NGOs and international organisation representatives, as well as government delegates (if there was lack of space in the other room) were thus able to follow the discussions. In Montreal, all observers, including the media, were able to sit in the plenary sessions.

This set of procedures, methods and arrangements was to prove effective in navigating the complicated and often contentious negotiations to a successful conclusion. It was able to combine the need of efficiency in enabling the process of discussion and negotiations among so many countries to flow within time constraints; with the need for transparency and openness so that members could have the information to follow the state of play; the principle of the rights of participation of all member countries, which could channel their views via the representatives of the groupings and which could be present at the formal and informal meetings; as well as information flow to and the participation of NGOs.

**[ACKNOWLEDGEMENT NOTE: This account draws from the paper, “The Cartagena/Vienna Setting: Towards more transparent and democratic global**

**negotiations" by Chee Yoke Ling (2000)]. A more detailed account, based on this paper, is in the Annex].**

## **PART C.**

### **INDIGENOUS PEOPLE'S EFFORTS TO DEAL WITH IPRS AS AN EXAMPLE OF STRIVING FOR A MORE ETHICAL GLOBALISATION**

#### **1. Background**

In recent years there has been growing public concern worldwide about the heightened standards of intellectual property rights (IPRs), as a result of the World Trade Organisation's TRIPS (trade-related intellectual property rights) Agreement. The role and effects of IPRs have become one of the most contentious issues surrounding the ethics of globalisation.

The advocates of TRIPS have claimed that high standards of IPRs are required to provide adequate incentives to firms and researchers to innovate, and that such innovations give a boost to the economy. However, detractors claim that TRIPS has fostered monopolisation of technology and resources in a few giant companies and has worked against the interests of consumers, small producers, farmers and indigenous people.

The developed countries have been the strongest promoters and defenders of TRIPS, as most of the technology suppliers are companies belonging to the developed countries, and they hold most of the world's patents. In contrast, several officials and experts from developing countries consider that the Agreement has adverse effects on their development prospects. Consequently, many of the countries have put forward proposals in the WTO to review and revise parts of the Agreement.

The non-governmental community has been even more vocal in its criticisms of TRIPS, claiming that its implementation is having or will have negative impacts on the environment, human health, livelihood of farmers, food security and human rights.

The issue of how patents can restrict the consumer's access to medicines has been the subject of high publicity in the past few years. Another equally contentious issue has been the patenting of "life", or biological materials.

Before the establishment of TRIPS many countries had prohibited the patenting of life forms; however, the provisions in TRIPS now make it mandatory for WTO member countries to patent some categories of life forms and living processes. This has raised ethical, religious, environmental and development concerns.

There is a great patents race and patents rush taking place for genes and other biological substances. Information on this "gene patent rush" has recently been obtained by the London-based newspaper The Guardian (from a search conducted by GeneWatch UK) and published in its special report on The Ethics of Genetics (15 November 2000). Using a comprehensive commercial database, its study covered the patents on DNA sequences (partial and complete gene sequences) in 40 patent authorities worldwide including the US, European, Japanese and German patent offices.

As of November 2000, patents are pending or have been granted on more than 500,000 genes and partial gene sequences in living organisms. Of these, there are over 9,000 patents pending or granted involving 161,195 whole or partial human genes in early November 2000. The increase in this category of genes is phenomenal as the previous month the number had been 126,672; thus the increase in a single month was 34,500 or 27 per cent. (Guardian 2000). The remainder of the genes where patents are pending or granted are related to plants, animals and other organisms.

Some countries have already established the patenting of genetically-modified organisms as well as some types of naturally occurring organisms and their parts, including genes of animals, plants and human beings. Many of these organisms originate in the developing world.

There is also a concern that TRIPS and IPRs, due partly to the definitions and criteria used, favour private persons or companies and modern technology. At the same time they do not recognise the crucial role traditional knowledge plays or the legitimate rights of farmers, indigenous people and local communities; all of which have been major contributors to knowledge and innovations in the sustainable use of biological resources.

There is growing evidence of the misappropriation of traditional knowledge and the rights of farmers and local communities by the corporations and private research institutions that have been patenting biological and genetic materials and knowledge relating to their use. As the rush for patenting genes, plant varieties and medicines increases, so does the evidence of "biopiracy", in which resources and knowledge of the developing world is patented by institutions of developed countries.

## **2. Indigenous people and traditional knowledge**

The knowledge of local communities, farmers and indigenous people, on the use of biological resources as well as on how to conserve these resources, is now recognised as a resource vital for sustainable development. This knowledge is maintained and thrives in the context of the traditional ways of life and customary practices of the traditional communities. These communities require recognition of their rights and access to natural resources as well as their rights to their knowledge and to the products arising from the use their knowledge. The misappropriation of their resources, their knowledge, or the products of their knowledge, (including through IPRs owned by others outside their communities) would not only violate their rights, but also adversely affect the conservation and use of the knowledge and of biodiversity.

In the traditional system in most countries, members of local communities have shared their knowledge on the use of biodiversity such as in farming, fishing, animal rearing, healing and the use of medical plants. Even in cases where there is private ownership of land, or the demarcation of rights by different communities to forest areas, indigenous people and local communities have generally shared their knowledge of the use of seeds, medicinal plants and techniques of production, harvesting and storage, and also shared the seeds and genetic materials. Improvements of seed varieties and other innovations have also been transmitted among the farmers and transferred to other communities. There was thus free access to the genetic materials, knowledge and innovations, although of course the actual materials such as seeds or plants may be traded.

This system of cooperative innovation and community sharing is facing a threat from the intellectual property rights and the TRIPS regime which now forces each WTO Member country to make choices as to the rights systems it would establish in relation to biological resources. These threats are magnified if other countries establish IPR regimes that facilitate the misappropriation of the knowledge rights of local communities of the country. The "modern" system of IPRs places emphasis on private rights of ownership of knowledge or resources which are biased (in criteria of eligibility and in the practical

process of obtaining a right) in favour of corporations or institutions that have the means and technique to obtain the rights, and at the expense of the local communities that find it difficult or impossible to meet the criteria or to participate in the process of obtaining the rights to which they should be entitled. This raises questions on the ethics of the globalisation of intellectual property regimes through TRIPS.

### 3. Views of Indigenous People

Organisations of indigenous peoples have been among the most active in voicing their concerns, especially on how the emerging IPR regime misappropriates their knowledge and resources and has the potential to distort their values system and way of life. They have been actively organising to put forward their own view on what would constitute ethical approach to this aspect of globalisation (i.e. the globalisation of IPR policy).

There have been attempts to deal with the thorny issue of indigenous people's rights over their knowledge and genetic materials by co-opting them into the patent regime, for example by having indigenous persons or communities to apply for patents for their innovations.

However, many indigenous people's organisations have rejected this as the modern patent regime does not fit into their worldview of sharing and their system of collective-based rather than individual-based innovation. There has been an ethical response, of wanting a general prohibition on all patenting of life forms, and the sharing of knowledge on the use of biodiversity.

In July 1999, a group of 114 indigenous people's organisations from many countries around the world, as well as another 68 indigenous peoples' support groups, issued a Joint Statement entitled, "No to patenting of Life! Indigenous peoples' statement on the TRIPS Agreement of the WTO." (Tebtebba Foundation, 1999). This statement laid out the indigenous people's position on intellectual property rights and the TRIPS Agreement and how these would affect their rights; it also made many proposals.

Some of the key points of this statement are as follows:

- *Nobody can own what exists in nature except nature herself. Humankind is part of Mother Nature, we have created nothing and so we can in no way claim to be owners of what does not belong to us.* Western legal property regimes have been imposed on us, contradicting our own cosmologies and values.
- We view with regret and anxiety how, Article 27.3b of the TRIPS Agreement will further denigrate and undermine our rights to our cultural and intellectual heritage, our plant, animal, and even human genetic resources and discriminate against our indigenous ways of thinking and behaving. This Article makes an artificial distinction between plants, animals, and micro-organisms and between "essentially biological" and "microbiological processes" for making plants and

animals. All these are life forms and life creating processes which are sacred and which should not become the subject of proprietary ownership.

- IPRs as defined in TRIPS are monopoly rights given to individual or legal persons (e.g.transnational corporations) who can prove that the inventions or innovations they made are novel, involve an innovative step and are capable of industrial application. The application of this form of property rights over living things as if they are mechanical or industrial inventions is inappropriate. Indigenous knowledge and cultural heritage are collectively and accretionally evolved through generations. Thus, no single person can claim invention or discovery of medicinal plants, seeds or other living things.
- The inherent conflict between these two knowledge systems and the manner in which they are protected and used will cause further disintegration of our communal values and practices. It can create divisions within indigenous communities over which individual has ownership over a particular knowledge or innovation. Furthermore, it goes against the very essence of indigenous spirituality which regards all creation as sacred.
- TRIPS will lead to the appropriation of our traditional medicinal plants and seeds and our indigenous knowledge on health, agriculture and biodiversity conservation. It will undermine food security, since the diversity and agricultural production on which our communities depend would be eroded and would be controlled by individual, private and foreign interests. In addition, the TRIPS Agreement will substantially weaken our access to and control over genetic and biological resources; plunder our resources and territories; and contribute to the deterioration of our quality of life.
- The implementation of the TRIPS Agreement in its present form will have devastating social and environmental consequences which will be irreversible. It is an imperative, therefore, that this Agreement be amended to prohibit the patenting of lifeforms and the piracy of indigenous peoples' knowledge and biogenetic resources.
- On Article 27.3 (b) of TRIPS, our proposals are as follows:
  - (a) This Article should be amended to categorically disallow the patenting of life forms. Thus, the revised Article 27.3b should clearly prohibit the patenting of plants and animals including all their parts, meaning, genes, gene sequences, cells, proteins, seeds, etc. It should also prohibit the patenting of natural processes involving the use of plants, animals and other living organisms and their parts and processes used in producing variations of plants, animals, and micro-organisms.
  - (b) The provision for the protection of plant varieties by either a patent, a sui generis system, or a combination of both should be amended and elaborated further: It should:



- Disallow the use of patents to protect plant varieties.
- Ensure that the *sui generis* system which may be created will protect the knowledge and innovations and practices in farming, agriculture, health and medical care, and conservation of biodiversity of indigenous peoples and farmers.
- Build upon the indigenous methods and customary laws protecting knowledge and heritage and biological resources.
- Ensure that the protection offered to the indigenous and traditional innovation, knowledge, and practices are consistent with the Convention of Biological Diversity (i.e. Articles 8j, 10c, 17.2, and 18.4) and the International Undertaking on Plant Genetic Resources.
- Allow for the right of indigenous peoples and farmers to continue their traditional practices of saving, sharing, and exchanging seeds; and harvesting, cultivating, and using medicinal plants;
- Prevent the appropriation, theft, and piracy of indigenous seeds, medicinal plants, and the knowledge around the use of these by researchers, academic institutions, and corporations, etc
- Integrate the principle and practice of prior informed consent, which means that the consent of indigenous peoples' as communities or as collectivities should be obtained before any research or collection of plants will be undertaken. The right of indigenous peoples to veto any bioprospecting activity should be guaranteed. Mechanisms to enforce prior informed consent should be installed.
- Prevent the destruction and conversion of indigenous peoples' lands which are rich in biodiversity through projects like mines, monocrop commercial plantations, dams, etc. and recognize the rights of indigenous peoples to these lands and territories.

This statement was endorsed by a large number of indigenous peoples' organisations and support groups around the world, and is thus one of the most representative presentations of the views of the indigenous peoples' communities on IPRs and TRIPS to date. It is important to note that the signatories are of the view not only that the IPR regime threatens the rights, way of life and knowledge of the indigenous people, but that they reject the application of an IPR system that confers private monopoly rights to the traditional system of indigenous peoples which is based on collective innovation and collective rights. The statement thus asserts that "no single person can claim invention or discovery of medicinal plants, seeds or other living things", that the inherent conflict between these two knowledge systems will cause further disintegration of communal values and practices (as it can create divisions within indigenous communities over which individual has ownership over a particular knowledge or innovation); and furthermore, it

goes against the very essence of indigenous spirituality which regards all creation as sacred.

The view that it is inappropriate to apply the patent or modern monopolistic IPR system to traditional knowledge was also presented in a statement on behalf of indigenous people at a Roundtable on Intellectual Property and Traditional Knowledge at the World Intellectual Property Rights Organization in November 1999. According to the statement: "We believe that the challenge for WIPO and governments, as well as other international multilateral organisations, is to maintain an open mind and be more daring in exploring ways and means to protect and promote indigenous and traditional knowledge outside of the dominant IPR regimes. WIPO should not insist in imposing that the IPR regime it is implementing, particularly patents, is what should be used to protect traditional knowledge. Other forms of protection should be explored and developed in partnership with indigenous peoples and other traditional knowledge holders. Any effort to negotiate a multilateral framework to protect indigenous and traditional knowledge should consider indigenous practices and customary laws used to protect and nurture indigenous knowledge in the local, national, and regional levels." (Tauli-Corpuz 1999).

This point is further articulated by Victoria Tauli-Corpuz of the Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education) in an article on the impacts of TRIPS on indigenous people (Tauli-Corpuz 1999a). According to her:

“Indigenous knowledge and cultural heritage are usually collectively evolved and owned. If indigenous peoples have to use western IPRs to protect their own knowledge and innovations, they will have to identify individual inventors. This will push unscrupulous indigenous individuals to claim ownership over potentially profitable indigenous knowledge which will cause the further disintegration of communal values and practices. It can also cause infighting between indigenous communities over who has ownership over a particular knowledge or innovation. The concept of exclusive ownership and alienability which is inherent in TRIPS will have to be internalized and imbibed by indigenous peoples even if it goes against their usual practice of making available such knowledge for the common good. The identity and survival of indigenous peoples as distinct peoples depends to a large extent on the age-old practice of common sharing of some resources, knowledge and skills which are not alienable.

"With TRIPS, indigenous peoples will now have to think of how their knowledge will be protected against so-called 'biopirates'. Sharing of knowledge becomes a dangerous proposition because it might be appropriated by those who have the capacity to use the system to claim exclusive ownership over such knowledge and commercialize it. Pharmaceutical and agri-business transnational corporations are now more aggressive in their bid to have access and control over indigenous knowledge and genetic resources which can bring them huge profits. Various bilateral agreements are forged between corporations with some national governments, some indigenous peoples' communities and organizations, and non-

governmental organizations. In many cases, indigenous peoples who entered into such agreements are now finding out that they got the raw deal. This is to be expected, however, because indigenous peoples are pushed to play in a game in which the rules are defined by the opponents.

"The remaining diverse worldviews, cultural and intellectual heritage, customary laws and bio-genetic resources which provide the basis for indigenous peoples to assert their rights to self-determination are further undermined by TRIPS. It limits the options available to indigenous peoples on how to ensure that the knowledge and resources evolved collectively by them will remain in their control and primarily for their use. It undermines the ethics and practice of sharing and collective ownership because what underpins TRIPS is privatization and commercialization of knowledge....The challenge, therefore, for indigenous peoples is to assert and develop further their own means of protecting their knowledge, practices and innovations so that they can continue using these for their own benefit and for others. They have to be careful not to fall into the trap of assimilating imposed western norms which are not consistent and which undermine their identities as distinct indigenous peoples."

At an expert meeting on systems and national experiences for protecting traditional knowledge, organised by UNCTAD in November 2000, several indigenous groups that participated issued a statement of principles and recommendations. Among the principles are that: "The current Intellectual Property Rights system is inappropriate for the recognition and protection of traditional knowledge systems because of the inherent conflicts between these two systems, including: indigenous peoples' rights are holistic and collective by nature; the IPR system is founded on private, economic rights whereas indigenous peoples' systems are values-based which include both rights to use and obligations to respect the natural world; IPRs are protected within legal systems of the world, traditional knowledge systems are largely unrecognised and unprotected within legal systems."

They recommended that priority must be given to strengthening existing customary laws and value systems of indigenous peoples in the protection of traditional knowledge; patenting on life forms should be banned because it attacks the values and livelihoods of indigenous and traditional peoples; and that an indigenous peoples working group on traditional knowledge be established (and to be hosted by the UN Working Group on Indigenous Peoples) to develop mechanisms for protecting and enhancing traditional knowledge systems. Reference to "indigenous peoples" in this statement is also deemed to include traditional peoples and local communities and their cultures. (UNCTAD 2000a). Many of these points have been reflected in the report of the meeting (UNCTAD 2000b).

The call by indigenous people and farmers' groups to ban the patenting of life has found an echo within the WTO. In July 1999, as part of the preparatory process for the WTO's Seattle Ministerial Conference, Kenya on behalf of the African Group of countries in the WTO, submitted a detailed paper to the General Council on the TRIPS Agreement (WTO

1999; document WT/GC/W/302). This paper has become a landmark document that lays out the position of a large number of developing countries on the confusing distinctions made in Article 27.3b of TRIPS, as well as concrete proposals for amending the Article.

According to the paper, there is a lack of clarity on the criteria/rationale used to decide what can and cannot be excluded from patentability in Article 27.3(b). By stipulating compulsory patenting of micro-organisms (which are natural living things) and microbiological processes (which are natural processes), the provisions of Article 27.3 contravene the basic tenets on which patent laws are based: that substances and processes that exist in nature are a discovery and not an invention and thus are not patentable. Moreover, by giving Members the option whether or not to exclude the patentability of plants and animals, Article 27.3(b) allows for life forms to be patented. The Africa Group then suggested that the on-going process of the review of Article 27.3b in the TRIPS Council "should clarify that plants and animals as well as microorganisms and all other living organisms and their parts cannot be patented, and that natural processes that produce plants, animals and other living organisms should also not be patentable."

The Africa Group position is one of several positions that have been debated within the WTO's TRIPS Council in the past several years. The resolution of the issue of patenting of life and of the misappropriation of traditional knowledge will be one of the key developments impacting on the ethics of globalisation in the years to come.

## **PART D.**

### **TRANSFER OF AUTHORITY FROM THE UN SYSTEM TO THE BRETTON WOODS/WTO SYSTEM: IMPLICATIONS FOR DEVELOPMENT POLICIES**

#### **1. Introduction**

For several decades after the Second World War, the United Nations and its agencies played an important and in some areas a pre-eminent global role in shaping opinion, policy frameworks and policies in the economic and social spheres.

In recent years, however, there has been a shift of authority in these areas from the UN system to other agencies, in particular the IMF, the World Bank and the WTO. The relative decline of the UN and the corresponding ascendancy of the Bretton Woods/WTO organisations has taken place at a time (the 1980s and 1990s) when free-market

principles and policies have taken hold worldwide whilst policies based on international partnership and social principles and solidarity have been on a descending trend.

Some influential quarters in the North have argued that the UN has little role to play in the economic and social fields; that its main development umbrella, the Economic and Social Council (ECOSOC), is merely an ineffective chamber for speeches and debate; and that some UN agencies should be drastically cut down or closed down. Instead, the world's economic and social policies should be left to the Bretton Woods institutions and the World Trade Organisation to determine and implement, as they more efficient, effective and reflective of the market principle which should be accepted by all as the key to running global and national affairs.

## **2. The Changing Social and Economic Model in North and South**

This attitude of discarding the UN in favour of market-oriented institutions is an international extension of an ultra-conservative position on national policies that has gained dominance in some powerful Northern countries, particularly in the wake of the Soviet empire's collapse and the ending of the Cold War. It follows a paradigm of extreme liberalisation, whose elements include a much reduced role for government in economic and social affairs, privatisation and deregulation, drastic cuts in income taxes and a dismantling of the welfare state. The state's redistributive role, of taxing the better off (and companies) to subsidise the poor (and consumers of basic services) is in retreat. These policies hark back to the laissez-faire model of the 19th century, where governments are supposed to only set up and implement rules, whilst leaving the players to get on with their own game. The state's role is to be a traffic policeman, implementing traffic rules, and not to interfere with who owns what vehicles and whether society's transport needs are met overall.

It requires reminding that the laissez-faire model, which suited commercial elite interests, faced severe challenges and revolt from the large segments of society that it pauperised. The social fallout of laissez-faire, in terms of poverty, lack of basic facilities, glaring inequities, and thus social and political instability, led to the step-by-step building up of social welfarism in Western societies, with the state taking responsibility for social services and security. Following the Great Depression experience, the state's economic role expanded further with Keynesian policies to combat unemployment. Redistributive fiscal policies were part of this scheme.

Starting in the 1980s, this social-welfare and social-security model then came under attack in some Northern countries, as the conservative elites are no longer willing to pay with income taxes to finance social programmes. The liberalisation model and process has taken hold around the world. This set of policies has been adopted by global agencies such as the IMF, World Bank and the WTO and transmitted through them to the developing countries. For example, the package of policies involving liberalisation, reduction in state expenditure, privatisation and deregulation was the centrepiece of the

structural adjustment programmes designed by the International Monetary Fund and the World Bank as a condition for external debt rescheduling or new loans.

Previously it was the norm for developing countries to use state intervention to strengthen the domestic economy and to provide social development. But the liberalisation model changed this. The combination of high external debt, the loss of much-needed resources to service these debts, and the adoption of structural adjustment policies have caused many developing countries to suffer declining incomes; cutbacks in health, education and social services; growing poverty, and high unemployment. Whilst a greater degree of liberalisation, carefully planned and phased, may be useful for countries with sufficient capacity for private-sector growth to take up the slack, and moreover to compete internationally, for many other countries it has resulted in an economic vacuum and increased marginalisation and despair for poor and ordinary people.

### **3. The UN's Traditional Developmental Role within a Partnership Framework**

In international affairs, the globalisation process has eroded the principle and practice of development aid and support that until recently had been accepted as part of the responsibility of the international community.

The need for the United Nations to intervene on behalf of weak and poor countries had been recognised from the UN's birth itself. It was accepted, at least in rhetoric, that the ex-colonies had to be helped to recover from the colonial experience, build strong domestic economies so that in time they could participate more equally in the international economy and global affairs.

A social-welfare and redistributive model was adopted whereby aid provided by the rich countries (supposedly to reach an agreed target of 0.7 percent of their GNP) would help finance the South's development. A significant part of the funds was channelled through the UN agencies, such as the UNDP for general development and policy advice, UNCTAD for trade and development, the WHO for health, UNICEF for children, UNESCO for culture, UNEP for the environment, the ILO for employment and labour, FAO for agriculture, UNIDO for industry, and so on, and their programmes would be mainly on a grant basis. The UN General Assembly and ECOSOC would be the political forum where global social and economic issues would be discussed, and decisions taken. Away from the formal UN system, though part of the UN family, the World Bank was to finance development projects with concessionary loans whilst the IMF would maintain the fixed exchange rate system by providing short-term finance to countries with balance of payments difficulties.

To some extent this was what happened, but not to a satisfactory degree. Except for a few countries, Northern aid did not reach the targeted amount. Whilst the various UN agencies took on their respective roles, these were compensatory in nature and did not entail altering the basic global structures. The powerful countries were not prepared for

any fundamental change to prevailing international economic relations or structures which they dominated and wanted to continue dominating.

For a brief moment in the 1970s, in the wake of OPEC's successful attempt to raise oil prices, the developing countries collaborated to advocate for "a new international economic order", with proposals to reform the terms of international trade, investment and technology transfer. Despite the passing of UN declarations on the NIEO, these plans were eventually rejected by the North. It was clear that measures (practical, legal or structural) to alter the fundamental economic equation (whether practically would not be allowed.

Instead of basic reform to the global economic and social systems, the Northern countries agreed to non-binding aid and compensatory mechanisms and institutions, including the UN agencies. These would give expression to the attitude of giving their weaker brethren a helping hand in the understanding that this would be for the good of everyone, both the givers and the recipients. The UN assemblies, conferences and conventions could continue to be a forum for developing countries to air their grievances and needs, whilst UN agencies would give grants for various aspects of development. Aid can only have a compensatory function, and an unsatisfactory one, because annually hundreds of billions of dollars of resources are flowing from South to North on account of terms-of-trade losses, debt servicing, repatriation of profits, royalties and technical payments, capital flight and brain drain. Moreover a large part of aid, which at US\$50 billion a year is already only a tenth of South-to-North resource flows, is in the form of repayable loans or military and non-development expenses, so that the development benefits are less than they would appear.

Nevertheless, that part of aid which sustained the UN' s economic and social activities and agencies has till now played a generally useful role in helping build the South's development capacity. Besides its attempts on improving commodity prices, UNCTAD has helped developing countries with technical assistance and policy advice to strengthen their trade, financial and development performance. The UNDP is tasked with building up the domestic development capacity and institutions of Southern countries, recently evolving a framework for implementing "sustainable human development." The WHO, working under its Alma Atta Declaration, had striven to meet the goal of "health for all by the year 2000" through a comprehensive approach that included primary health care, provision of basic facilities such as water and sanitation and combating various diseases. Using children's rights and issues as an entry and rallying point, UNICEF has also sought to promote access for the poor to social facilities, and took a leading role in exposing the ill effects of structural adjustment and advocating the need for a social dimension to it. UNEP has promoted environmental awareness and helped develop environmental policy and enforcement capability in Southern countries, as well as important international environmental agreements.

Meanwhile the UN has also provided a valuable forum for the airing of major global problems through its world conferences (such as on the environment in 1992, human rights in 1993, population in 1994, social development and women in 1995, the five-year

reviews of UNCED in 1997 and the Social Summit in 2000, financing for development and the summit on sustainable development in 2002). The conferences and the follow-up activities (such as through the Commission for Sustainable Development and the Climate Change and Biodiversity Conventions after UNCED) have generated new trends in policy thinking and in programme directions.

#### **4. The Decline of Aid and Partnership, and of the United Nation's Influence**

It is true that aid, including the aid which funded the programmes of UN agencies, has often had damaging environmental and social effects. For example, the FAO had been promoting some forestry programmes that contributed to tropical deforestation, and helped introduce chemical-based agriculture (which today is widely recognised as "unsustainable") to many developing countries.

Aid needs urgent reform, and its quality should be improved tremendously. But this is not the same as saying that aid should be cut down or eliminated. Instead, the volume of aid should be increased towards the targeted 0.7% of Northern GNP, whilst simultaneously a serious exercise can be initiated to reform aid principles and upgrade the quality of aid.

It is also true that in a more ideal situation, aid should not and need not be on the global agenda, if other aspects of the international economic equation (trade, finance, technology, investment) were more balanced. But given the present imbalance and inequalities, which the North is unwilling to correct, aid has become a symbol of Northern commitment to help offset a little of the inequities by providing a kind of "safety net", however inadequate, for the South.

However, in recent years there has been a significant decline in aid flows to developing countries, despite the passing of declarations (for example, at the UNCED Rio Summit of 1992) that developed countries would strive to increase their ODA towards the 0.7 per cent of GDP target. The rise of political and economic conservatism in some major Northern countries which is in favour of reducing or discarding aid and North-South cooperation combined with the end of the Cold War: the West no longer sees the need to woo the South with aid and dialogue as there is no longer a Soviet camp for the weaker nations to run to. Preoccupied with reducing their budget deficits whilst maintaining the stand not to raise taxes, many Northern governments are geared towards slashing the overseas aid budget, including funds for the UN.

The attitude change towards aid and international economic cooperation has affected the UN adversely. Non-payment of financial contributions has resulted in continuous problems for the UN Secretariat. Donor funds to several UN agencies have been significantly cut, and these agencies are having to retrench staff and reduce their programmes. These moves are already affecting the size and effectiveness of the UN's economic and social activities, with detrimental repercussions on the South.



## **5. Basic Differences Between The UN And The Bretton Woods-WTO Approaches**

The downgrading of the UN's social and economic functions have been done in the name of efficiency, the need to cut down bureaucracy, duplication and waste. However, in the same economic and social fields, the roles and activities of the Bretton Woods institutions and the GATT/WTO have been tremendously boosted. What is happening, in fact, is a shift in resources and authority away from the UN and its agencies and a simultaneous transfer of these to the World Bank, IMF and the WTO.

As discussed earlier, the original function of the IMF was provision of guidance and loans to trade-deficit countries (including in the North) to defend their currency levels within a system of basically fixed exchange rates. When the fixed exchange system collapsed in 1972, the IMF's role was left in question. It found a new function in the 1980s as provider of loans to indebted developing countries requiring debt rescheduling, and more importantly as policy formulator and monitor of stabilisation and structural adjustment policies which recipient countries had to accept. The World Bank's original role was the provision of development project loans; in the 1980s it too took on the additional function of giving loans conditioned upon structural adjustment programmes to indebted countries. Both institutions acquired great leverage because it is on their advice that commercial banks decide on rescheduling and new loans for developing countries with debt difficulties. In recent years, the World Bank's policy advice and lending have extended to new areas including the environment and health: even as the UN agencies dealing with these sectors face severe financial and manpower constraints, the World Bank has significantly expanded its resources and functions in these areas.

The WTO, which came into force in 1995, is the embodiment of the vastly expanded role given to GATT through the Uruguay Round agreement. GATT had only been a provisional agreement, whilst the WTO is a fully-established institution. Whilst GATT had dealt only with rules relating to international trade in goods, the Uruguay Round has empowered the WTO to also set and enforce rules on services, investment measures and intellectual property rights. These rules have given transnational companies greater rights and access to developing countries' markets. At the same time the countries' attempts at technological development will be curbed by the protection given to the companies through tighter laws on intellectual property rights. Attempts are now being made by Northern countries to further widen the WTO's scope to include such issues as the a multilateral investment agreement, and international rules for competition policy and transparency in government procurement, as well as the relation between trade and environment.

The exercise of depleting the UN and its agencies whilst upgrading Bretton Woods-WTO is not a mere replacement of one set of bureaucracies by another to carry out similar functions. There are very basic differences between the two sets of agencies in philosophical underpinnings, governance, management, approach, policy framework and programmes. The UN's governance is on a one-country-one-vote democratic basis, its operations and decision-making process (excepting in the Security Council) are relatively

transparent, and the developing countries form the majority of the membership and are able to have a significant influence. The programmes of UN agencies are meant to be (or at least have a greater chance to be) "country-driven", in terms of being tailored to meet the needs of individual countries. Most projects are conducted on a grant basis or have a high subsidy content, and rely heavily on public-sector implementation.

In the UN approach, there is implicit and explicit understanding that states have the prime responsibility to ensure that the poor majority in their countries have access to basic facilities, irrespective of their ability to pay. The role of the UN is to reaffirm the rights of people to fulfil their basic needs. To help in the realisation of these rights, it is recognised that redistributive policies and mechanisms are required. The UN agencies operate as part of the redistributive mechanisms at international level, and are meant to augment the states' redistributive mechanisms at national level.

The UN framework also recognises the need for developing countries to overcome the adverse effects of colonialism on their economic, social and cultural structures, and to build up their national capacity for implementing appropriate development strategies. It further recognises the imbalanced nature of the international system, and the need for South-South collaboration and North-South partnership to redress this through structural reforms, aid, financial, trade and technology access concessions. These themes run through many of the discussions at UN assemblies, conferences and meetings. They also form an important part of the rationale and goals of many UN agencies. In recent years this framework has come under challenge from some developed countries, which have sought to question the role of the state (and of the UN) in fostering economic and social development. These countries are putting forward the view that adherence to free-market policies is the best or even the only way for countries to develop. Nevertheless, a majority of UN members still fight to uphold the development principle and for a more significant role of the UN to assist developing countries in their development process. By and large the Secretariats of the UN and its agencies are also sympathetic to the principles of equity, redistribution and development.

There are many contrasts between the UN system and the Bretton Woods-WTO systems. The governance of the Bretton Woods institutions follows the one-dollar-one-vote principle. As such, the control over decision-making is held by the Northern countries that own a majority of the equity, with developing countries having a minor role. These institutions are also Secretariat-driven in policy, and have been widely criticised for designing their stabilisation-structural adjustment plans in Washington without adequate consultation with or participation of the loan recipient countries. Being commercial-oriented organisations, their policies and projects are designed so that the loans are repaid with an adequate yield. Even if they would like to be more development-oriented, the IMF and World Bank will always face the in-built constraints of being first and foremost commercial institutions with the highest priority given to getting adequate returns on their investments.

The structural adjustment policies, as discussed earlier, are biased towards liberalisation, deregulation and privatisation and a drastic reduction in public-sector functions. The

main concern of the financial institutions is to attain "financial balance" in government budget and the balance of payments account; that the methods used to achieve this may have serious adverse effects on social development or growth is of more minor significance to the institutions. Social and even development objectives have therefore often been subjugated to financial imperatives. The redistributive role of government is depleted, whilst reliance on market forces is greatly enhanced. The social fallout is recognised as inevitable side effects; instead of being prevented through a balanced designing of adjustment programmes, a "safety net" approach (of compensatory measures) is adopted.

In the GATT-WTO system, governance is based theoretically on a one-country-one-vote system. In reality, votes are not taken and decisions are supposedly on a consensus basis. Traditionally, in the GATT, key decisions were made by the major trading countries which often reached agreement among themselves, consulted with some other big trading countries, and then obliged the majority of parties to sign on, under the rubric of "building and reaching consensus." Small and middle-sized countries found they had little real influence. In the present WTO system, developing countries have been demanding for greater rights of effective participation and they have also become more active by putting forward proposals and taking part in the discussions and negotiations. Nevertheless, at crucial events such as the Ministerial Conferences, the procedures (including exclusive "Green Room" meetings of a few countries) are weighted heavily against the majority of developing countries. Many of the rules of the WTO are asymmetrical rules and weighted against the developing countries which find they are hard pressed to open up their markets to imports of agricultural and manufactured goods, as well as to services. They are now concerned that the resultant competition from transnational companies (which moreover are now afforded greater technology monopoly through intellectual property rights laws) could erode the market of local enterprises and threaten their viability.

These recent developments in GATT-WTO will accelerate the opening up of developing countries to "market forces". When liberalisation is also coupled with rapid globalisation, this will mean an increasing share of domestic economic activities going to transnational companies, and being dependent on the flows of external trade and capital markets. Perhaps those developing countries that have a strong enough domestically-owned or managed economic capacity and sufficient policy experience in dealing with the vagaries of the world market can take advantage and even thrive in this highly competitive globalisation process. But the vast majority of developing countries are not ready to open up their local enterprises to competition with the giant corporations. They will require more time, experience, a strengthening of domestic capacity and the negotiating strength to bargain for these. They are likely to find that the WTO is not a friendly venue for realising these goals, for its priority is to push forward the frontiers of free movement of trade and capital, to extend the freedom and space of transnational corporations, and to reduce the right of governments to restrict this corporate freedom.

## **6. Reasserting The Role Of The UN**

The shift of location in decision-making in international economic and social affairs from the UN to the Bretton Woods-WTO institutions has led to the downgrading of development as an operational principle and strategic goal, and its replacement by the free reign of the "market". And with deregulation and liberalisation taking place both nationally and internationally, adherence to the "free market" means that transnational corporations will exercise overwhelming control of the market in most or all sectors, with minimum interference from governments.

This carries the serious implication that development goals such as growth, poverty eradication, social equity, access to basic facilities and employment, will be seriously compromised. The realisation of these goals requires a significant degree of state intervention in the economy, as the market by itself cannot for instance bring the economy into full employment equilibrium. Moreover, due to its bias towards catering to the elite and middle classes (who have the purchasing power), the market cannot take care of the social needs of the poorer sections of society, which in many countries form the majority.

If the UN's resources and influence wane further, its approach entailing domestic capacity-building, redistributive policies and social-development programmes will even more be replaced by the harsh principles of the market forces, in which individuals matter in correspondence with what capital or skills they can offer to the market and how much purchasing power they can bring to it. Development as the central operating principle will be replaced by laissez-faire, or maximum rights to corporations and the "market." The goal of development will be displaced by the means of the market. Large sections of the population that are unemployed, unskilled and poor will likely find they have few rights and little space in their market-dominated society and that increasingly the welfare programmes, subsidised health and education services and other "safety nets" will be reduced or disappear. Thus, even the compensatory measures that already offset the adverse social effects of the market to only an inadequate degree may wither away.

At the least the United Nations and its agencies should be given the opportunity and resources to maintain their identity, have their approach and development focus reaffirmed, and strengthen their programmes and activities. In particular, those Northern countries that have downgraded their commitment to the UN should reverse this attitude and instead affirm its indispensable and valuable role in advocating the social and developmental dimension in the process of rapid global change. The world, and especially the developing countries, require that this dimension be kept alive and indeed strengthened greatly, otherwise there is a danger that a monolithic laissez-faire approach, shared by the World Bank, the IMF and the WTO, will rule in monopolistic fashion.

Only a great strengthening of the UN will allow it to play its compensatory role more significantly and effectively. But of course a complementary "safety net" function is the minimum that should be set for the UN. To progress towards redressing the basic inequities in the international system, the UN must be able to make the leap: from merely

offsetting the social fallout of unequal structures and liberalisation, to fighting against the basic causes of poverty, inequities, social tensions and unsustainable development.

Moreover, it is vital that the UN continues to adopt development, an equitable world order and the realisation of human and development rights as its central economic and social goals. There is a danger that some UN agencies (and the Secretariat itself) may be influenced by conservative political forces to join in the laissez-faire approach or merely be content to play a second-fiddle role of taking care of the adverse social effects of laissez-faire policies promoted by other agencies.

If it does join in with the "market ideology" in order not to be left out, the UN would no longer be able to provide an alternative position, and there would be only a monolithic or monopolistic approach to globalisation; and that, as discussed earlier, would leave a large part of humanity without protection. The UN should therefore be to keep true to its mission of development and justice for the world's people, and to always advocate for policies and programmes that promote this mission, otherwise it would lose its credibility and its reason for existence.

## **PART E.**

### **OWNERSHIP, CONDITIONALITY AND ACCOUNTABILITY IN RELATION TO IMF POLICIES: SOME CRITICAL ISSUES IN THE DEBATE**

#### **1. Introduction**

In recent years, especially after the Asian financial crisis of 1997-98, there has been an intense questioning of the appropriateness of the policies of the International Monetary Fund, including in academic, policy and media circles as well as among public interest groups. In particular, there has been a public debate over the effectiveness of the policies attached as conditionality to IMF loans provided to countries facing financial crises, as well as the process by which such policies are made and adopted.

The discussion has also been taking place at the IMF secretariat itself. The IMF management would like recipient countries to "own" the policy conditionalities much more than they have done. According to one trend of thinking, only countries that are convinced of the policy package and demonstrate willingness to implement them faithfully should be eligible for loans. The degree of willingness to accept and implement is taken as the extent of "ownership."

At a seminar organised jointly by the IMF and the German government in June 2001, the Director of the IMF's Policy Development and Review Department, Jack Boorman, stated: "IMF financing will be forthcoming only if the authorities commit to agreed policy adjustments or institutional reforms and keep those policies and reforms on track, or indeed adjust them if circumstances warrant: this is conditionality... So where does ownership fit into this scheme? Broadly speaking, ownership means that the policies adopted are those seen by the country itself as needed in the circumstances that prevail and to which the authorities are fully committed. There is no question that reforms have the best chance of succeeding where they have strong and widespread support in the country." Boorman also cites countries where they was a strong commitment to follow through with an ambitious reform programme, and cases where the authorities only grudgingly agreed to reforms as the price of receiving financing from international financial institutions. (Boorman 2001).

The definition of ownership appears to be tied to the belief a country has in policies and reforms agreed to (or rather established by the agencies). The degree of ownership is thus seen to be the extent to which the authorities of a recipient country are committed to implement the agreed policies.

This, however, raises the question whether there can be genuine ownership by the lending countries unless they themselves participate in the making of the policies; and generally until the present, there has not been adequate participation. Still, the policies would be more acceptable if they work. But generally they have not worked. Instead of recovery, growth and getting out of debt, many recipient countries have experienced stagnation or worse, and many are still trapped in debt. Thus, more "country ownership" of IMF programmes does not simply mean improving the methods of getting countries to really accept and internalise IMF policies which, it is assumed, are good though tough. It is not a communications or public relations task. Ownership can or should be increased only if there is genuine participation by the government and people of recipient countries; and only if the content of conditionality (ie the policies) are appropriate and bring about good outcomes.

Thus, the key issues are the processes of decision-making in the IMF (and the extent to which they are participatory) and the appropriateness or otherwise of the IMF policies. Unless these issues are resolved, there will not be *genuine* ownership.

Due to the recent record of developing countries, a major change of thinking on development policy is under way. In the past there was a bias or blind faith in predominantly relying on the state for development. Then, there was a swing to the other extreme of having total reliance and blind faith in the private sector and on globalisation (rapid opening up to international finance and trade). Now the pendulum is swinging back.

The emerging view is that openness can have good or bad effects, depending on the specific condition and stage of development a country is in, for example, whether the local firms and banks are prepared for external competition, whether there are regulations

or knowledge on managing and utilising foreign loans so that they can be repaid, whether there is reciprocal benefits from opening up, whether there are opportunities for increasing exports or if the capacity to produce and market for export has been built up, and the balance of payments effects of opening up given the conditions the country finds itself in.

The new thinking stresses that if conditions are right there can be many benefits from opening up, there are also great risks and costs to be borne if the conditions are not right. For many countries, the conditions are not or may not be right, at least not yet. If they nevertheless open up, they may suffer the risks and the costs.

Thus, the balance, degree, timing, sequence of liberalisation must be tailored to each country. Though this principle is increasingly being pronounced, it has not yet been translated into policy by international agencies like the IMF and WTO, nor into national policy of most developing countries. Many countries are unable to do so, even if they want to, due to conditionality or binding rules.

## **2. Changing Roles of the IMF**

The *raison d'être* of the IMF at its creation and in the era of the Brettons Wood system is to ensure global financial stability. This arose from the recognition that left to itself the financial institutions, markets and players can become too powerful, with the potential of destabilising the financial system itself as well as undermining the real economy. The IMF's implicit mission included taming and regulating global and national finance so that finance would serve the real sector objectives of growth of output, income and employment.

The original Post Second World War framework supported this function. It included a system predominated by fixed exchange rates, limited crossborder financial flows, and the normality of national capital controls. Policy was influenced by an understanding of the need for caution on the potential for instability, volatility and harm to the real economy that can be caused by unregulated finance and by speculative activity. .

This regulatory system and the period of relative financial stability ended with the 1972 Smithsonian Agreement. Floating replaced fixed exchange rates, financial deregulation and liberalisation took off in the OECD countries, new financial instruments developed, there has been a massive explosion in crossborder short term capital flows and in speculative financial activity. There has also been the spread of capital liberalisation to developing countries, to which advice from developed countries and from the IMF contributed. These developments underlie the frequent occurrence of financial crises. The failure of the IMF to prevent such crises is widely recognised as one of its major flaws.

The organisation should return to its original mission of establishing financial stability through crisis prevention, including through a better understanding and regulation of capital flows and capital markets, and a more stable global system of exchange rates.

There are several gaps in knowledge and policy that need to be filled. Among the important ones is the need to understand capital markets and the role and methods of players like highly leveraged institutions, including hedge funds, which are now operating in a non-transparent and unaccountable manner. Yet these institutions but have major impact on global and national finance and real economy.

There is need to understand the behaviour and potential and real effects of various kinds of capital flows to developing countries -- including credit (to the public and private sectors), portfolio investment, foreign direct investment (and its various forms, such as mergers and acquisitions, greenfield investment, and FDI that produces for the domestic or the foreign market). There is need to look at inflows and outflows arising from each, including the potential for volatility of each and the effects, especially on reserves and the balance-of-payments. What are implications for policy and what guidelines should be given? For example, when should (or should not) a government or company borrow in foreign currency? Regulations and guidelines are needed because the market lacks a mechanism that can ensure appropriate outcomes. One guideline that is most relevant could be that local companies should be allowed to borrow in foreign currency only if (and to the extent) the loan is utilised for projects that earn foreign exchange to repay the debt. This was a regulation that the Malaysian Central Bank had maintained, and it had helped Malaysia avoid falling into the kind of debt trap that Thailand, Indonesia and South Korea had got into, when the private sector borrowed heavily in foreign currency denominated loans.

The potential for devastating effects of short-term capital flows should be recognised and acted on, to prevent developing countries from the dangers of falling into debt traps. The IMF must recognise this and have an action plan (or at least be part of a coordinated action plan) that includes the following elements: (i) regulate global capital flows, through international regulations or through currency transaction taxes; (ii) surveillance and disciplines on countries that are major sources of credit so that the authorities in these countries monitor and regulate the behaviour and flows emanating from their capital markets and institutional sources of funds; (iii) provide warnings for developing countries of the potential hazards of accepting different types of capital inflows and provide guidelines on the judicious and careful use of the various kinds of funds ; (iv) educate members and the public of how capital markets work and establish surveillance and accountability mechanisms to guide and regulate the workings of the markets; (v) appreciate and advise countries on the functions and selective uses of capital controls at national level, and helping them establish the capacity to introduce or maintain such controls; (vi) identify and curb the use and abuse of financial instruments and methods that manipulate prices, currencies and markets, and prevent the development of new manipulative or destabilising instruments and methods; (vii) stabilise exchange rates at international and national levels, which could include mechanisms to stabilise the three major currencies, and measures that can provide more stability and more accurate pricing



of currencies of developing countries; (viii) provide sufficient liquidity and credit to developing countries to finance development.

The prevention of crises through a more stable global financial order is more beneficial and cost effective than allowing the continuation of a fundamentally unstable and crisis-prone system which would then throw up the need of frequent bail-outs

### **3. Issues in Ownership and Conditionality**

#### ***(a) Flawed Process in IMF conditionality***

In relation to the IMF's loan conditionality and the ownership question, there are a number of issues. First are the "process" issues. Although letters of intent are signed by the recipient country's government, it is well known that in most cases the conditions are in the main established by the Fund and recipient countries do not have significant leeway or space to successfully negotiate to remove or to really reshape most conditions.

As stated by Chaturon Chaisang, Minister in the Prime Minister's Office in Thailand, at a seminar co-organised by the IMF in June 2001: "As past experiences have shown, the IMF basically owns all the programmes. Governments normally came to the IMF knocking and begging, so the options were limited. The IMF normally designs the programmes, imposes it on the sovereign governments, and monitors all the progress. However the disadvantage of this design and mode of implementation is that ownership is not explicit. The IMF pretends just to be an advisor, while it is in fact the owner of the programmes. Responsibility and accountability all belong to the national governments, with the IMF sitting as a spectator with a close watch. I am of the opinion that this should not be the case. The IMF should own up, which would help clear any doubt or uncertainty. Together with ownership, the IMF should clear up or at least consider the following points of contention, namely accountability, competency, sponsorship, preconditions, political feasibility, implementation, and macroeconomic objectives." (Chaisang 2001).

Since participation is so limited, and since in many cases the recipient does not really agree with many of the conditions, it is difficult or impossible to have genuine national ownership. And even in the cases where the national authorities genuinely agree, various groups in the country may not, and may oppose the policies.

#### ***(b) Content and Quality of IMF Policies: Indicators and Types of Problems***

Second are the issues relating to the content and quality of the policies themselves. There are acute problems regarding this, thus leading to a crisis of credibility and legitimacy of the policies as well as of the process of conditionality.

There are many indicators of policy failure. Countries that became indebted in the more traditional mode (through trade and current account deficits and through repayment problems in public sector loans) underwent conditionality policies in the 1980s and 1990s. Many of them have not experienced economic growth nor social development nor a successful exit from debt crisis. UNDP's Human Development Report data show that only 15 countries experienced relatively good per capita growth in the two decades up to the mid-1990s. Most of these countries had not been in a debt crisis and thus did not follow structural adjustment type policies. On the other hand, 89 developing countries in the mid-1990s were worse off in per capita income than ten years previously, and 70 of these countries had an income per capita level in the mid-1990s lower than in the 1960s and 1970s. The decline in most of these countries was far deeper and longer than that experienced in the 1930s Great Depression. And then some of the 15 countries that had had the best performance also fell into crisis in 1997-8, with the crisis caused by developments in their capital account. These countries also fell into deep recession and it is widely believed that the IMF policies for this type of crisis were inappropriate. Indeed it is believed that the IMF policy prescription for both kinds of countries and crises were not counter-recessionary but excessively contractionary, thus failing to generate growth that could have helped lead the countries to recovery, but instead suppressing the potential for growth.

IMF conditionality policies have come under severe criticism for at least three reasons:

- (i) that there has been "over-reach" in that the conditions widened in range through time to include "structural policies" not needed for managing the crisis;
- (ii) that the policies in the core economic and financial areas of IMF competence have also been inappropriate as they were contractionary and did not generate growth; and
- (iii) that the policies were designed in ways insensitive to social impacts, and the burden of adjustment fell heavily on the poor and at the expense of social and public services.

These three categories of problems are briefly discussed below.

### ***(c) Scope of conditionality too broad***

The scope of IMF policy conditions has been increasing through the years and has become far too broad. Many of the conditions were not relevant or critical to the causes or the management of the crisis the countries found themselves in. Some of these conditions were put into the conditionality package under the influence or pressure of major IMF shareholders for their own interest or agenda, rather than in the interests of the debtor country. On many areas where conditions are set, neither the IMF nor the World Bank has the expertise to give proper advice, and thus the potential to commit a blunder is high and the negative effects can also be high. This includes the area of political conditionality and issues relating to "governance". During the Indonesia crisis,

the IMF advice to the government to close 16 banks, without first assuring the public that their deposits in the banking system were safe, led to large deposit withdrawals and capital flight from the country. This is now recognised as a blunder.

Even in a major economic area of structural conditionality, i.e. that of trade policy and reform, the potential of mistakes can be high. The IMF and World Bank are well known for advising developing countries under their charge to undergo rapid trade liberalisation. The appropriateness of the advice to undergo "big-bang" or rapid liberalisation is now contentious. In many countries, import liberalisation has led to domestic firms and industries having to close down as they were unable to compete with cheaper imports, and de-industrialisation has been the result. There is now strong emerging evidence that trade liberalisation can successfully work only under certain conditions. Factors for success or otherwise include the ability of the country's enterprises and farms to withstand import competition, its production and distribution capacity to export, as well as the state of commodity prices and the degree of market access for its products. In the absence of positive factors, import liberalisation may cause the country into deeper problems. The implications for conditionality are significant. Evidence is emerging that wrongly sequenced and improperly implemented trade liberalisation is adding to developing countries' trade deficits. On average the trade deficit of developing countries (excluding China) worsened by an average of 3 percentage points of GNP between the 1970s to the 1990s. The IMF should thus review its trade liberalisation conditionality to take account of the need to enable countries to tailor their trade policy to their particular conditions and their development needs.

***(d) In areas of its core competence, there are also serious problems with IMF policies***

The problems with conditionality do not lie only in "new areas" outside the traditional areas of the IMF's concern. The criticism is now widespread that even in the areas of the IMF's core competence (macroeconomic, financial, monetary and fiscal policies), there are major problems of appropriateness of policy and conditionality. Policy objectives and assumptions and policy instruments on how to obtain them are under question, given the poor record of outcome. This questioning of the appropriateness and outcomes of policy had already been going on for several years (especially in relation to policies and results in Africa), but the doubts and criticisms grew much more intense as a result of the IMF handling of the Asia crisis.

The IMF policies tend to be biased towards restrictive monetary policies (including high interest rates) and fiscal contraction, both of which tend to induce or increase recessionary pressures in the overall economy. The contraction in money supply and high interest rates decrease the inducement for investment as well as consumption (thus reducing effective demand). The high interest rates also increase the debt-servicing burden of local enterprises and cause a deterioration in the banking system in relation to non-performing loans. The Fund has also maintained the strong condition for financial liberalisation and openness in the capital account. Thus, the country is subjected to free

inflows and outflows of funds, involving foreigners and locals. The country's exchange rate is in most cases open to the influence of these capital flows, to the level of interest rate, and to speculative activity. Often, there are large fluctuations in the exchange rate. Given the fixed assumption that the capital account must remain open, there is thus the need to maintain the confidence of the short-term foreign investor and potential speculators. A policy of high interest rate and lower government expenditure is advised (imposed) in an effort to maintain foreign investor confidence. But since this policy causes financial difficulties to local firms and banks, and increase recessionary pressures, the level of confidence in the currency may also not be maintained. The narrow perspective on which the restrictive policies are based neglects the need to build the domestic basis and conditions for recovery and for future development, including the survival and recovery of local firms and financial institutions, the encouragement of sufficient aggregate effective demand, the retention of the confidence of local savers, consumers and investors.

Most IMF policies imposed on countries that face financial problems and economic slowdown are opposite to the policies adopted by (and encouraged for) developed countries, such as the US, which normally reduce interest rates to as low a level as needed and which boost government expenditures, so as to increase effective demand, counter recessionary pressures and spark a recovery. Thus there have been criticisms by mainstream and renowned Western economists (including Paul Krugman and Joseph Stiglitz) that criticise the IMF for imposing policies on developing countries that are opposite to what the US does when facing a similar situation.

An important policy option, i.e. the use of capital and exchange rate controls (even if done selectively, in a limited way, and over a limited time period), is not considered a legitimate instrument in the IMF range of policies and is in fact prohibited in some letters of intent. This has been the position until now, although recent statements have been made by the IMF secretariat that indicate it is more willing to look at capital controls as a possible option.

By using capital and exchange rate controls, the country is better able to de-link interest rates from exchange rates and capital outflows, and is thus in a better position to reduce the interest rate without the unintended effects of capital outflow and a weakening currency. It would thus be in a much better situation to take recovery-oriented monetary and fiscal policies, including of the type that the US adopts when facing recessionary conditions.

The Malaysian experience is instructive in this regard. During the Asian crisis, Malaysia did not seek IMF crisis loan assistance. However it initially undertook IMF-style policies for about a year, raising interest rates, introducing restrictive monetary policies and sharply reduced government expenditure, whilst also maintaining an open capital account and a floating exchange rate system. The economy spun into deep recession, local corporations were faced serious difficulties servicing their loans due to the jump in interest rates, the banks' non-performing loans rose correspondingly, there was a credit squeeze, and the currency and stock market plummeted.

In September 1998, a new policy package was introduced, which included fixing the currency's exchange rate to the US dollar, deinternationalising the local currency (preventing its speculative trade abroad), selective capital controls affecting the capital account in some ways, though the current account remained open; the sharp reduction of interest rates, and expansionary monetary and fiscal policies, as well as restructuring bad corporate and banking loans. The domestic pro-recovery policies regarding interest rates, monetary and fiscal policies could be carried out without the potential negative effect on the exchange rate and on capital flight because of the prior introduction of the selective capital controls and the fixed exchange rate mechanism. The policy package seems to have worked well for Malaysia, as the economy recovered and the financial position of banks and many local corporations improved in 1999 and 2000.

The Malaysian experience may or may not be suitable for other countries facing a similar crisis, as an appropriate policy package would have to be one that is tailored to the specific features of the country and the specific problems it faces. The point being made here is that policies that would be considered "unorthodox" by the IMF (and would in all probability not have been considered an option by the IMF if suggested by a client country) can work. In other words, there are alternatives to the IMF policy package and these alternatives can be effective, and even more effective than the IMF's policies.

Since the type of policies that are linked to IMF conditionality have been increasingly criticised for not working, including because they are contractionary and recessionary in nature and effect, it is no wonder that there is a lack of credibility and confidence in the substance of IMF conditionality, even in its core areas of competence.

There is thus a need for IMF to review its macroeconomic package, re-look the policy objectives and assumptions, compare the trade-offs in policy objectives with the number and effects of policy instruments, and widen the range of policy options and instruments. This review should be made in respect of government budget and expenditure, money supply, interest rate, exchange rate, and the degree of capital account openness and regulation, in the periods prior to crisis (to prevent one) and during crisis (to manage it).

***(e) IMF policies badly designed from the social development perspective***

The IMF has also been heavily criticised, especially by civil society, for the inappropriate design of their policies from the viewpoint of social impact, including reducing access of the public to basic services, and increasing the incidence of poverty. The adverse social impacts are caused by several policies and mechanisms. The contractionary monetary and fiscal policies induce recessionary pressures, corporate closures, lower or negative growth rates, retrenchments and higher unemployment. Cutbacks in government expenditure lead to reduced spending on education, health and other services. The switch in financing and provision of services from a grant basis to user-pay basis impacts negatively on the poorer sections of society. The removal or reduction of government subsidies jacks up the cost of living including the cost of transport, food, and fuel. These

and other policies have contributed to higher poverty, unemployment, income loss and reduced access to essential goods and services. It is not a coincidence that countries undergoing IMF conditionality have been affected by demonstrations and riots (popularly called "IMF Riots"). The social impact of IMF policies is another major cause of the crisis of credibility in IMF conditionality.

#### **4. Conclusion**

The major problem with the IMF's conditionality is that the policies associated with it are seen to be inappropriate and harmful. This view is not confined to critical academics or NGOs but is now adopted by renowned mainstream scholars, by parliamentarians of many countries (including the US), and also by policy makers of the countries taking IMF loans and undergoing IMF conditionality. The growth of the criticism is caused mainly by the poor record of the policies adopted, and not so much by the lack of implementation of the policies. Therefore, the most urgent task is not so much to "sell" the old conditionality better to the client governments or to the public, but to review the content of conditionality itself and to come up with a better and more appropriate framework and approach.

In examining the relation between ownership and conditionality, there can be the following scenarios. First, the conditionality policies are inappropriate and the country owns them fully and implements effectively. Secondly, the policies are inappropriate and the country is reluctant to own them and implementation is not so good. Thirdly, the policies are appropriate but the country does not own them and does not implement well. Fourthly, the policies are good, the country owns them and implements fully.

In the first case there is ownership but adverse results. In the second case there is no ownership or reluctant ownership and the results are perhaps not as adverse as in the first case. In the third case the problem is not the policies but how to get them accepted. The fourth case is the ideal.

It should be recognised that there is also a major difference between "acceptance" and "genuine ownership." In most official discussions, the "ownership" problem refers to how to get the recipient country to accept and internalise the policies (which are as usual made by the IMF and not the country) so that there is a better implementation rate. In the context of such discussions, a more accurate term would be "acceptance". Genuine ownership implies that the recipient country is allowed rights to participate in policy formulation itself, so that the conditionality package is truly "owned" by the country. The feeling of ownership comes with the right and practice of participation in policy making.

The appropriateness of conditionality policies in terms of being in the interests of the debtor countries is the key issue to be resolved. "Acceptance" of externally imposed conditionality by the debtor countries is secondary and dependent on it. Moreover, the

right to participate in policy making, and thus genuine ownership, is a critical element in ensuring appropriate conditionality and its implementation.

The role of the Secretariat is important in whether the process, the policy formulation and the outcome is successful. For that to happen, the Secretariat must be seen to be impartial, working for the interests of the recipient country, possessed with adequate knowledge of the international situation, of the domestic situation and conditions, and the ability to help the country come up with appropriate policies. If the Fund is to be perceived to be playing this role, much has to be done to earn the credibility and confidence.

The role of the major shareholder countries is even more important. The public perception is that they would like to make use of the Fund for their interests, often at the expense of recipient countries and their people. The perception is that the major shareholders (who are also the home countries of the major creditor and investor institutions) make use of their position to skew the policy conditions in a manner that is biased in favour of creditors and investors. Is there a conflict of interest in their making use of the vulnerable state that debtor countries find themselves in, as leverage for imposing policies that are in their own narrow interests, even if these are against the interests of the debtor countries?

Finally, it is difficult or even impossible to ensure that the interests of debtor countries will be adequately reflected in conditionality and Fund decisions when the voting rights in the Fund are so skewed towards the creditor countries. Thus, the issue of the relationship between ownership and conditionality has to face up to the issue of the ownership of the IMF itself.

Since decision-making rights are imbalanced, it is not surprising that the developed countries are perceived to be controlling the Fund's policies, and in a manner that reflects their own interests rather than the interests of the whole membership. This situation is likely to continue until there is a fairer balance in the decision-making system. There is a dire need for the modernisation and democratisation of the governance system, including a revision of the quota and voting system. This can be accompanied by genuine reform of IMF policies and priorities. The issue of "ownership and conditionality" can then be better resolved in that context.

## **REFERENCES**

ActionAid, 1999. "Crops and Robbers: biopiracy and the patenting of staple food crops." London: ActionAid.

Boorman, Jack, 2001. "Ownership and Conditionality: Overview -- What are the Issues?" Paper presented at the International Policy Dialogue on Ownership and Conditionality, Berlin June 2001.

Chaisang, Chaturon, 2001. "Ownership and Conditionality: Issue Note on Domestic Political Economy." Paper presented at the International Policy Dialogue on Ownership and Conditionality, Berlin June 2001.

Chandrasekhar, C.M., 2002. "Introductory remarks on internal transparency and effective participation of Members." Statement made on behalf of India at the WTO General Council meeting, 13-14 May 2002.

Chee Yoke Ling, 2000. "The Cartagena/Vienna Setting: Towards more transparent and democratic global negotiations"

Das, Bhagirath Lal, 2000. Full participation at efficiency in negotiations (SUNS no. 4582, 12 Jan 2000).



- GRAIN, 2000. "Of patents and pirates." Barcelona: GRAIN Briefing Paper, July 2000.
- Ho, Mae-Wan and Terje Traavik, 1999. "No scientific basis for patenting under TRIPS Article 27.3(b)". Published in *Third World Resurgence*, June 1999.
- India, Government, 2000a. "Proposals on intellectual property rights issues." Paper submitted to WTO, 12 July 2000. (IP/C/W/195).
- Kamal, Youssef Hussain, 2001. Chairman's Statement at the closing plenary session of the WTO Fourth Ministerial Conference in Doha, 14 November 2001.
- Kenya, Government, 1999. "The TRIPS Agreement." Communication from Kenya on behalf of the Africa Group. Paper submitted to WTO, 6 August 1999. (WT/GC/W/302).
- Kenya Government, 2000. Paper submitted to WTO TRIPS Council, Sept. 2000.
- Nijar, G.S. 1999. "Sui generis law for plant varieties: preserving the knowledge and creativity of traditional breeders."
- Khor, Martin, 2000. 'DSU process becoming an outrage on law and justice, says critic.' *Third World Economics*, No. 242, 1-15 October.
- Khor, Martin, 2000. Biodiversity, intellectual property and sustainable development.
- Maran, Murasoli, 2001. 'WTO: A New Beginning After Doha?'. (Speech at the India Economic Summit 2001, New Delhi).
- Nijar, G.S., 1999. "Legal and practical perspectives on sui generis options." Published in *Third World Resurgence*, June 1999).
- Raghavan, Chakravarthi, 2001. 'Doha public health declaration may help South'. *Third World Economics*, No. 268, 1-15 November.
- Raghavan, Chakravarthi, 2001a. 'A "development" agenda out of Doha?'. *Third World Economics*, No. 268, 1-15 November.
- Raghavan, Chakravarthi, 2000. The World Trade Organisation and its Dispute Settlement System: Tilting the Balance Against the South. Third World Network.
- South Centre, 2001. WTO decision-making and developing countries. TRADE Working Papers No. 11.
- Tauli-Corpuz, Victoria, 1999. Indigenous Peoples' Caucus Statement, presented at the Roundtable on IP and Traditional Knowledge, WIPO, Geneva, 2 Nov., 1999.
- Tauli-Corpuz, Victoria, 1999a. "TRIPS and its potential impacts on indigenous peoples." Manila: Tebtebba Foundation.

Tebtebba Foundation, 1999. "No to patenting of Life! Indigenous peoples' statement on the TRIPS Agreement of the WTO."

Tewolde E.G., 1999a. "Patenting life is owning life." Published in *Third World Resurgence*, June 1999.

Third World Network, 2001. "The multilateral trading system: a development perspective." (Report commissioned by UNDP).

Third World Network, 1999. Statement on Transparency, Participation and Legitimacy of the WTO, March 1999.

The Guardian, 2000. "The Ethics of Genetics." Special Report on Patenting of Life. London: The Guardian, 15 Nov. 2000. ([www.guardianunlimited.co.uk/genes/](http://www.guardianunlimited.co.uk/genes/)).

UNCTAD 2000, "Systems and national experiences for protecting traditional knowledge, innovations and practices." Background note by UNCTAD Secretariat, 22 August 2000 (TD/B/COM.1/EM.13/2) for expert meeting on traditional knowledge, Oct. 2000.

UNCTAD 2000a. "Recommendations to UNCTAD from indigenous groups in attendance." Paper submitted to UNCTAD expert meeting on traditional knowledge, Oct. 2000.

Wood, Angela (2001). "Comments on the IMF staff's review of conditionality." Paper presented at the International Policy Dialogue on Ownership and Conditionality, Berlin June 2001.

WTO, 2001. Preparation for the Fourth Session of the Ministerial Conference: Draft Ministerial Declaration, Revision. (27 October 2001).

WTO, 2001a. Ministerial Declaration (adopted on 14 November 2001).

WTO, 2001b. Declaration on the TRIPS Agreement and Public Health (adopted on 14 November 2001).

WTO, 2001c. Implementation-Related Issues and Concerns (Decision of 14 November 2001).

WTO, 2002. 'Preparatory process in Geneva and negotiating procedure at the Ministerial Conferences'. Communication from Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe. (Document WT/GC/W/471 of 24 April 2002).

## **ANNEX**

### **DETAILED ACCOUNT OF THE METHODOLOGY USED IN THE BIOSAFETY PROTOCOL NEGOTIATIONS**

**This Annex is a supplement to Part B of this paper. It contains a more detailed account of the procedures and methods adopted in the final stages of the negotiations for the Cartagena Biosafety Protocol, which was established under the Convention on Biological Diversity (CBD). This account is based on a paper "The Cartagena/Vienna Setting: Towards more transparent and democratic global negotiations" by Chee Yoke Ling (2000).**

The Cartagena Biosafety Protocol offers a creative and positive approach to global negotiations. A combination of transparent and innovative processes with an active but impartial chair created the necessary atmosphere for one of the most contentious negotiations in international law.

In Cartagena in January 2000, it was clear by the time the Ad Hoc Working Group was dissolved after two and a half years' work, that the polarised positions of the countries could not be resolved through the conventional UN style. Countries which were frustrating the process could evade openly putting their positions and rationale (if there were any apart from trade protection) and hide behind statements devoid of content. Those in favour of a comprehensive biosafety agreement had to keep defending and

explaining their stand. There were many occasions where these delegates almost appeared to be on trial.

The balance of representation was also skewed. The more than 100 countries in the Like-minded Group (LMG) had only one spokesperson, having agreed to speak as one voice. On the other hand, 6 countries in the Miami Group had one full representation (predominantly voicing the interests of a non-Party, the US). The European Union on many issues were aligned with the Miami Group, and their combined force could easily defeat the LMG proposals.

It was at this point that the chair of the Extraordinary Meeting of the Conference of the Parties which had taken over the negotiations, Minister Juan Mayr Maldonado of Colombia, stepped away from UN tradition.

The first step taken was to reconfigure the number of spokespersons, and this was a turning point towards a more equitable representation of views and positions in the closed door smaller 'contact group' that was set up to try to resolve the controversy over the general scope of the Protocol and the scope of the application of the Advance Informed Agreement procedure.

The LMG was given 4 representatives to speak. The Miami Group had 2 representatives and EU, Central American/Caribbean countries, Central and Eastern Europe (including Russia) had one spokesperson each. (In subsequent meetings, Central American and the Caribbean countries merged with the LMG to speak as one voice). The Compromise Group initiated by Norway and Switzerland to ensure they could participate in the negotiations had one representative.

Each spokesperson was allowed to bring 2 advisers, chosen by each Group from amongst themselves. This was very significant because normally, Northern delegations would have a large team overwhelming the under-represented South. Often, the US delegation itself would exceed an entire region's total number of delegates.

However, it was agreed at the end of Cartagena that an open process was crucial. All contact group meetings which followed in Vienna and Montreal were open to all governments.

Between Cartagena and Montreal, over one year, a confidence building exercise took place which also helped to crystallise the core issues that could break the impasse on the Protocol.

On 1 July 1999, taking advantage of the presence of a large number of countries at a meeting to prepare for the 5<sup>th</sup> meeting of the Conference of the Parties to the Biodiversity Convention scheduled for May 2000, Minister Maldonado held an informal consultation to confirm that there was indeed political will to conclude an agreement. Where key negotiators were not present, their views were sought, too.

It was agreed that an informal consultation on the core and related issues, left pending from Cartagena, would take place in Vienna in September 1999.

In his summary of the 1 July consultation, the minister stated that he “consider(ed) transparency as being critical to the preparations of the (Vienna) meeting”. He thus promised to keep all governments informed about his consultations by forwarding to all national focal points, through the Secretariat, “all correspondence and minutes”. He also highlighted the important role of the Bureau and Secretariat in achieving transparency of the process.

In Vienna, in September 1999, each negotiating group met on its own for 2 days. This was especially important for the LMG which had no opportunity to meet between negotiation sessions. In contrast, the EU and Miami Groups met frequently as groups and bilaterally outside the global meetings. The third day was spent on interactions amongst the groups “to test the waters, gauge the mood and identify critical issues” as Minister Maldonado put it.

The last 2 days, chaired by the minister, identified common conceptual ground and possible solutions, without venturing into precise wordings of the controversial provisions.

The second innovative development was introduced in Vienna. Instead of sitting in their country seats by alphabetical order in the usual fashion, delegates sat as their respective Groups. The advisers sat behind the chief spokespersons, and in the case of the LMG, delegates from each region sat behind their regional advisers. This arrangement enabled easy consultations amongst delegations.

In addition, each negotiating group now had one chief and one alternate spokesperson. The LMG, given its size, was asked to elect a chief spokesperson, and 2 others from each of the 3 regions (Asia, Africa and Latin America/Caribbean) as regional spokespersons to assist the chief person. The Brazilian delegate was also the alternate spokesperson for the LMG. Any of the regional advisers could join the discussions when asked by the chief spokesperson.

The order of speaking in plenary then followed a pattern. Minister Maldonado used coloured balls, with each chief spokesperson picking one from a bag at the start of each plenary session. Each session had a different colour sequence.

This approach eased the flow of discussion. By going round each Group to elicit views in this way, and by the Chair actively asking questions to clarify positions, the atmosphere was significantly transformed. Delegates and observers alike felt that the result was exchanges that were more frank and less couched in obtuse diplomacy.

This method of conducting a plenary became known as the “Cartagena/Vienna setting”.

The physical setting of a roundtable in Montreal with delegates actually seeing each other as they spoke was a basic but important additional feature in group dynamics. It also made consultations among the members of each group more convenient during negotiations.

Good humour was a component, too, when coloured teddy bears were used instead of balls which proved to be elusive in Montreal!

The clearer grouping of countries and interests that evolved in the Biosafety Protocol process provided a much more transparent picture of country positions. The replacement of the Group of 77 and China with the LMG (the former minus Argentina, Chile and Uruguay which joined the Miami Group) in Cartagena was another turning point. Developing countries went from near paralysis to active unity as a negotiating group.

The time provided regularly, or when requested, for internal group consultations in the midst of negotiations was particularly valuable for developing countries to discuss ongoing developments amongst themselves, make assessments and maintain their joint stands.

It was interesting that while the Compromise Group operated on a principle of bridging polarised positions, the countries did not make consensus amongst themselves a rule. So, on issues where there was no agreement, the lowest common denominator would not be presented. This was useful, as individual countries were then free to express their views informally with other like-minded delegates. For example, Norway supported the inclusion of contained use in the general scope of the Protocol in Montreal even though they had 2 years earlier given up this crucial area “in the spirit of compromise”, while Mexico was strong on the need for an international liability regime, even though there were other Group members that did not share the same views. By the last meeting in Montreal, Mexico, Japan, South Korea and Singapore had joined the Group. The move by Singapore, which LMG countries had found to be more aligned to the Miami Group position, was good for the continued solidarity of the LMG.

In Montreal, plenary sessions were conducted in the Cartagena/Vienna setting where rounds of views on key issues were heard. Where contact groups were set up to further explore an issue and negotiate text, these were open to all government delegations. Regular reports to the plenary were made, again in the Cartagena/Vienna setting.

In Vienna and Montreal, the Chairman informally met with the spokespersons and representatives of each negotiating group. In Vienna, he also met separately with NGOs and industry. It was in response to the NGO request for access that a decision was made to have instantaneous audio reception in a “spill-over” room next to the government consultation room. NGOs and international organisation representatives, as well as government delegates (if there was lack of space in the other room) were thus able to follow the discussions.

In Montreal, all observers, including the media, were able to sit in the plenary sessions.

As negotiations intensified, and plenaries had to be postponed, notices were prominently displayed and ample time given for delegations to re-convene.

There were remaining frustrations caused by the lack of interpretation facilities in the contact groups, and non-English speaking delegates had to work with English draft text. This is a serious shortcoming in all global negotiations, and really needs to be overcome since more and more legally binding agreements are being made which have a huge impact on countries and peoples.

Also, the large group of developing countries in the LMG during the Montreal session had to meet in the plenary hall without even micro-phone support, sometimes needing to shout at each other to be heard. While many recognised the problem of insufficient Secretariat funds, such a lack of fundamental facilities was very unfortunate. More worrying it reflects the power of money over democratic processes. The bulk of the meetings for this protocol were from voluntary funds, with the Secretariat scrambling for support from one meeting to the next. The lack of core funding for the participation of developing countries and economies in transition, and to a large extent the inadequate Secretariat support, were due to a few rich countries not wanting a protocol in the first place.

However, there was enough commitment to a biosafety protocol which made the final conclusion possible.

While the humour and personal dynamism of Minister Maldonado was a major factor, delegates found the actual approach and process very useful.

Unlike other negotiations, especially in the trade arena such as the World Trade Organisation, there was far less confusion and mistrust amongst delegations, especially those from developing countries. In many respects the process made it possible for the narrow trade interests of the major Miami Group countries to be publicly exposed and even isolated.

At the final plenary, a number of delegates suggested that the Cartagena/Vienna setting would be a good precedent for other global negotiations.

While the powerful interests of a few countries still won the day in many ways, the Cartagena Biosafety Protocol did see a fairer series of negotiations. The procedures were predictable and allowed for more open, transparent and democratic meetings.

(This paper was revised in November 2002 based on the paper which was first written in March 2002 for the UNDP Human Development 2002.)