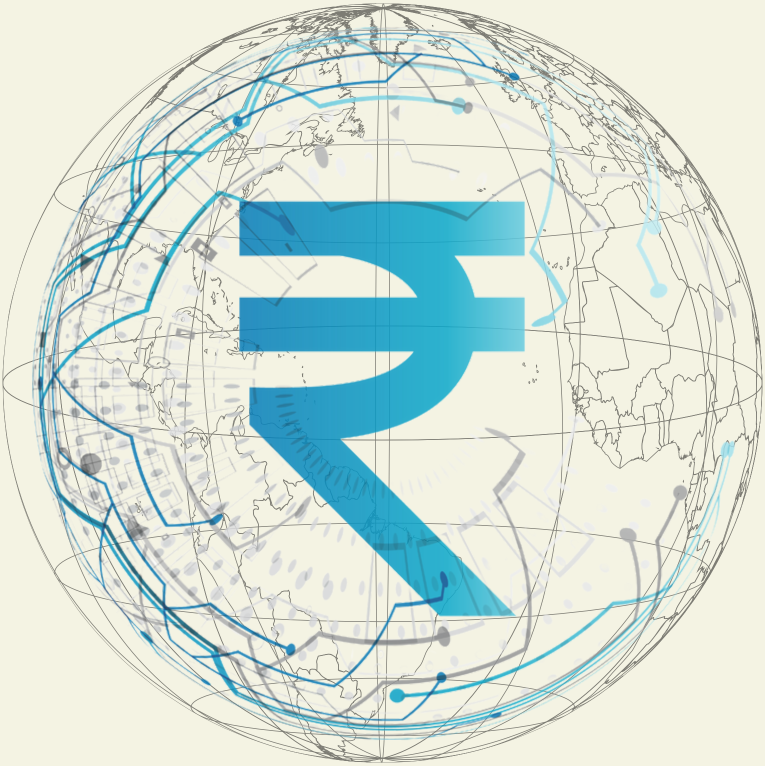
India & Global Finance:

An Annual Review (2023-24)



Centre for Financial Accountability

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Contributions and Contributors

Introduction: Reflections on the Issue

The first issue of India & Global Finance: An Annual Review for 2023-24 comes at a juncture where, on the one hand, India is flexing its muscle to be a global leader and on the other India is vying for foreign investments in all major sectors. The Presidency of G20 in 2023 probably was the NDA government's high point to announce its arrival as a global leader, or that's what the government believed - it did not leave any stone unturned to make it a grand political spectacle, holding over 200 G-20 related events around the country while curbing civil and political rights and carrying out forced evictions wherever the events happened.

The G20 Presidency came to India at a crucial moment in the history of the world economy – a slow recovery from the COVID-19 pandemic, a looming climate crisis, financial instability and debt distress in the third world nations, the Russia-Ukraine war and the ongoing genocide in Palestine - all of this amid declining multilateralism.

India's offer to mediate in the Russia-Ukraine war and the expectation from Palestine that "India will play the role of a mediator between Israel and Palestine" are used as signs of its global powers. It's a different matter that India's position on state-backed violence inflicted on Palestine has changed over a period of time, with it clearly taking a pro-Israel position.

According to the 2023 World Investment Report of United Nations Conference on Trade and Development (UNCTAD), India was the third largest recipient of foreign direct investment (FDI) in greenfield projects in the world in 2022. FDI flows into India rose 10 per cent from $44.7 billion in 2021 to $49.3 billion in 2022, it said. The report also noted that India was the second-largest recipient of international project financing in the world in 2022. Sovereign wealth funds, real estate investment trusts and private equity funds alone invested $146 bn between 2016 and 2020 in sectors like oil & gas, renewable energy projects, real estate and large infrastructure projects.

With all of these rapidly changing imprints of international finance in India and the global south and with an ever-increasing emphasis on the need for foreign direct investment for the development of the economy in India since 1991 and especially since the change of guard in 2014, very little attention has been paid to review these developments on an annual basis. The Annual Review is an attempt to bring this into focus and keep a yearly track of this dynamic area of study.

This Annual Review aims to bring together the research, analysis and findings on the broader issues of international finance, development and global political economy in ways that are equal amounts scholarly but also written with a popular flair for an intelligent layperson. We also hope that a yearly publication such as this is of good use to friends in civil society organisations and those rallying popular movements on these issues. The first issue has contributions by C.P. Chandrasekhar, Shalini Bhutani, Harjeet Singh, Dinesh Abrol, Biswajit Dhar, Suranjali Tandon, and Subhash Chandra Garg.

In his opening piece, C. P. Chandrasekhar asks whether the Bretton Woods twins can even be reformed. The neoliberal regime proves inadequate in addressing poverty and social deprivation. Highlighting challenges like poverty, climate change, and debt stress, Chandrasekhar says that the system of international governance and the international financial architecture that had been put in place after two devastating World Wars is unsuitable for ensuring social progress with stability. And that, since then, despite some credible calls for reform, efforts have been hindered by powerful nations preserving their influence. Writing in 2024, when we also celebrate the 50 year anniversary of the New International Economic Order, he concludes that as long as the structures of international governance reflect the balance of power in an international economic order, there is little hope of real reform.

Subhash Chandra Garg presents a response to the 30 recommendations made in the report titled Triple Agenda: A roadmap for better, bolder & bigger MDBs presented by an International Expert Group (IEG), set up by the G-20 Indian Presidency and co-convened under Larry Summers and N.K. Singh. He says that the diagnosis in the report, examined at a deeper level, is quite facile and that what's required is the understanding of the political economy of structural change.

Suranjali Tandon, giving a historical account of the conversation on international taxation, critically examines the role of the UN and OECD in shaping international tax rules. Tandon says that the world is witnessing a shift in power balances which is driven by the global south, demanding more transparency in negotiations. Her article is a classic review piece on how we got here and whether the ongoing balancing acts will create a new world order.

In his article, Dinesh Abrol explores the challenges of engagement with geopolitical shifts and the implications for the path formation for India's call for an 'Atmanirbhar Bharat'. He elaborates on why the realisation of goals of productive and dignified employment, technological and economic self-reliance, and sustained delivery of rights-based welfare is important for India at this juncture. Abrol advocates for a shift in India's approach, promoting collective self-reliance in cooperation with the Global South.

Harjeet Singh looks into the much discussed Loss and Damage Fund, which he says is emerging as a "third pillar" of climate action, signifying a breakthrough in addressing climate change impacts, particularly for the most vulnerable geographies. This fund, says Singh, has been established after three decades of struggle and negotiations and embodies a collective acknowledgment of the disproportionate impacts of climate change and the need for equitable action. However, there is a long way to go as this fund needs to be scalable, accessible, sustainable, and effective in delivering tangible outcomes that are commensurate with the needs of communities and countries.

With her article covering international trade and investment issues, Shalini Bhutani discusses the controversial issue of intellectual property rights (IPRs) in agriculture. Picking up a crucial sector like agriculture in the trade and investment treaties, Shalini explains why it is critical for countries to be able to retain domestic policy space to design their domestic law and policies on farmer innovation and its protection. In a changing legal and economic landscape towards 'WTO-plus' intellectual property rights, Shalini throws light on the future of seed diversity and seed systems that are premised not on property rights, but on shared biocultural heritage.

Bringing this first issue to a full circle, Biswajit Dhar elaborates with some verbose details on what ails the current international economic order while looking at the debates around reforming multilateral development banks. Dhar identifies three significant areas of reform: democratising the institutions, addressing external debt issues, and aligning funding priorities with the actual needs of developing countries.

Finally, I would like to extend our sincere gratitude to Sonal Raghuvanshi for recognising the existing gap and making the case for a publication that bridges the realms of academia and popular discourse on international finance and global political economy. She conceptualised this inaugural issue, and meticulously commissioned and co-edited these pieces. We would also like to thank Rosa Luxemburg Stiftung (South Asia office) for their financial support. We hope these articles will bring in the required focus on the topics discussed. As highlighted earlier, our endeavour is a modest one, aimed at addressing a void, and we welcome feedback on how to do it better.

Joe Athialy
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Can the Bretton Woods Twins be Reformed?

C. P. Chandrasekhar

C. P. Chandrasekhar was engaged in teaching and research at the Centre for Economic Studies and Planning, Jawaharlal Nehru University, New Delhi for more than 30 years and is now a Senior Research Fellow at the Political Economy Research Institute at the University of Massachusetts, Amherst. His areas of interest include the role of finance and industry in development and his experience with fiscal, financial and industrial policy reform in developing countries. He is a regular economic columnist for Frontline (titled Economic Perspectives), Business Line (Macroscan) and the Economic and Political Weekly (H. T. Parekh Finance Column).

With the Covid pandemic in retreat, 2023 was expected to be a year when armed with the lessons of more than two awful years, the international community would change track and begin dismantling the dominant neoliberal regime that has been shown to be unfit for purpose. The many challenges the world faced intensified during those years. The urgent need to address poverty and social deprivation had been driven home. Evidence that warming and climate change were racing ahead creating problems today and threatening a severe crisis tomorrow was accumulating. And so many developing countries were facing debt stress or defaulting on external debt payments that it had become clear that the finance needed to realise the SDGs and mitigate carbon emissions, invest in adaptation and compensate for loss and damage could not all be raised domestically. Finance had to flow from the rich countries that controlled the world's hard currency surpluses and were responsible for an overwhelmingly large share of cumulative carbon emissions to the less developed, if any progress had to be made.

That the world was confronted with a multifaceted crisis of this kind did indicate that the system of international governance and the international financial architecture that had been put in place after two devastating World Wars was unsuitable to ensure social progress with stability. The less developed countries that were locked into being on the loser's side of the unequal world order could not correct their balance of payments vulnerability through appropriate trade and foreign capital flows. Periodic crises in the periphery were the norm. There was a need, therefore, to return to the drawing board, to design a whole new system of global governance and construct a financial architecture that would mobilise the kind of resources needed for sustainable development.

There are many institutions involved here, but if we restrict ourselves to the finance area, the two that have been instrumental in driving economic change are the World Bank (together with a linked set of regional multilateral development banks that were largely created in its image) and the International Monetary Fund. Being

Being a product of negotiations that reflected the balance of power within the capitalist world at the end of World War II, these institutions were dominated by governments of the developed market economies with the United States as the clear hegemon. Though initially concerned with matters like financing post-war reconstruction and preventing beggar-thy-neighbour exchange rate policies, the two developed into instruments that designed and implemented the requirements of maintaining developed country hegemony in a world that had experienced and was experiencing waves of decolonisation. Justified initially by the requirements set by the Cold War, this structure has been reinforced in the years following the collapse of the Soviet Union.

In time, a well-designed division of labour between the two institutions emerged. The World Bank was mandated to support the development efforts of the developing countries, in ways that ensured that they adhered to market economy principles. This however did not help resolve the balance of payments stress periodically experienced by these countries that were at the subordinate pole of an unequal international economic order. The IMF's role was to intervene to relieve such stress but subject to the acceptance of rules it set on macroeconomic management, aimed ostensibly at restraining behaviour that led to balance of payments difficulties.

The fact that close to eight decades since these organisations took control of the international economic order, the world is mired in a deep and multifaceted crisis which has hit most severely the less developed countries, does point to the fact that the policies they advocated and imposed have failed. In fact, their actual roles were not aligned with realising their public mandates of ensuring development with macroeconomic stability. Evidence has accumulated that these organisations are increasingly geared to opening up the economies of developing countries to accommodate inflows of yield-seeking private capital and minimising the losses these investors may suffer when recipient countries face balance of payments stress. They were also periodically used to further the geopolitical objectives of the US and its allies, starkly reflected in the exceptional treatment of certain governments in the South.

Underlying the stance adopted by these 'financial' institutions was, of course, the control exercised by the dominant market economics, reflected in their voting structures and the mode of selection of their leadership. That the US and its allies were not willing to surrender that control was clear from their unwillingness to dilute that dominance, except for some concession to diversity in the choice of leadership. The result is that the distribution of voting strength in or influence over the functioning of these global institutions has little to do with the relative economic size or significance of different nations in the global economy.

Based on this structure, any challenge to the stance, functioning and role of these institutions was met with diverse manoeuvres. One is to capture any process of "reform" of these institutions. The other is to prevent any external challenge to the dominant role of these institutions in international governance.

Consider, for example, the trajectory that reform of the IMF and the World Bank have taken. As mentioned earlier, any effort to alter the relative influence in the governance of these institutions in keeping with changes in the relative economic position of individual nations in the world economy has been staunchly resisted. In the IMF for example, the US as of now holds 16.5 per cent of all votes, and the European majors (Germany, United Kingdom, France, Italy, Spain, Netherlands and Belgium) another 21.5 per cent. Though for a few decades now the share in global economic activity of these countries has fallen, their dominance in these institutions has been ensured.

The articles of the IMF provide for periodic review of aggregate quota levels and quota shares, with the former determining the capability and heft of the IMF, and the latter determining the relative influence of different nations. It takes little to establish, for example, that the relative economic importance of China in the world has increased immensely. But instead of adjusting quotas to reflect that shift, the stress has been on limiting the influence of countries like China over these global institutions. Thus, in 2019, the US blocked the 15th review. In response to subsequent demands from a large number of low- and middle-income countries and the groupings in which they have combined, the dominant nations promised to revisit shares in the 16th review that was conducted and concluded recently. What has emerged has been hugely disappointing. The decision influenced by the dominant powers was to increase quotas of all countries by an equal 50 per cent, leaving control with the US and Europe. Moreover, the proposal provides for a reduction in other sources of funding for the IMF, limiting its relative role in meeting the financing needs of balance of payments stressed countries.

In the case of the World Bank as well. any effort to leverage resources from countries that have increased in economic size in recent decades, especially the BRICS countries, is being resisted. However, sensing that the Bank is losing out in competition with institutions such as Brazil's BNDES, the China Development Bank, and the Asian Infrastructure Investment Bank, efforts are on to enhance financing through increased borrowing. The emphasis appears to be on taking forward the recommendations of the expert panel tasked by the G20 to review the Capital Adequacy Frameworks of the Multilateral Development Banks. The exercise intends to maximise the MDBs' financing capacity for any given level of shareholding. To that end, the panel called for risk tolerance measures that are less stringent than and independent of assessments from risk rating agencies; giving credit to callable capital in capital adequacy assessments; enhancing reliance on financial innovation; and improving disclosure of MDB data and analysis to give more power to shareholders. The World Bank Group's Roadmap to evolve its mission, operations and resources notes that: "For the WBG to continue to play a central role in development and climate finance, it will need a concerted effort by both shareholders and Management to step up WBG Financing Capacity. This may include further optimizing the balance sheet, increasing the IBRD equity through various options, and increasing mechanisms for concessional funds for WBG activities to address GPGs." There is, however, resistance to changing the MDB's architecture through revisiting voting shares to increase contributions from willing partners and repurposing the institution.

The new focus seems to be on increasing the role of private finance. The Roadmap argues that "given the scale of the financing needs, official multilateral financing must catalyze other financial flows". In the Bank's perception: "The WBG's role can be amplified through efforts in areas such as private capital facilitation, (both private capital mobilization (PCM), through co-financing and de-risking, and private capital enabling (PCE), through reforms and public investments), domestic resource mobilization (DRM) and improving the efficiency of public spending." Incentivizing and de-risking private investment seem to be central objectives of the evolution roadmap. However, while these options are being considered the Bank is unwilling to consider relaxation of the current emphasis on sustaining its preferred creditor treatment and AAA rating. So as part of its evolution, the Bank will only "explore all options that increase the capacity of the WBG whilst maintaining the AAA rating of the WBG entities."

While there is an unwillingness to significantly enhance the kitty of each of the Bretton Woods twins, efforts to widen the influence of these institutions continue. The IMF, for example, which contributes little to the total sum of capital flowing to the low- and middle-income countries (LMICs) still serves as the principal agency monitoring and assessing macroeconomic policy and performance, dictates the design of macroeconomic policy adopted by these countries, and is the principal intermediary in negotiations between government, global banks and international financial investors when countries face external debt stress or are forced to default. As a result, the fact that many of these countries are experiencing balance of payments crises after years of adherence to IMF-style policies is ignored, and more measures to keep these economies open and adjust by opting for austerity enforced. All efforts to restructure debt, whether from bilateral or private creditors are sought to be done under IMF auspices, based on its debt sustainability analysis that recommends the terms and on its programme that specifies the austerity policies that the debt-stressed nation should adopt.

In earlier IMF programmes, the focus when providing emergency finance to debt-stressed countries was trade and financial liberalisation. The "adjustment" involved diluting or dismantling restrictions on foreign trade and investment that many of these countries had imposed as a way of ensuring domestic policy space. This liberalisation was justified because it would not only increase capital inflows, but also create conditions for export expansion, and help ensure balance of payments sustainability. The consequence was the prising opening of goods, services and financial markets in the less developed countries for international capital.

By the 2010s, however, economic borders in almost all less-developed countries had been thrown wide open. It was this, especially the liberalisation of explicit and implicit rules governing the inflow of foreign finance, that had allowed for the accumulation of large volumes of public debt by less-developed country governments that either desperately needed the foreign finance to cover current account deficits or were putting available foreign capital to questionable uses. On the other side, in creditor countries, liberalisation had allowed yield-seeking investors and governments cementing strategic alliances, to access abundant cheap capital to provide credit to the less developed countries at high interest rates, without due diligence.

In the new circumstances, the investor-side problem was not to prise open new markets, but to ensure that debt-stressed governments would have the capacity to repay much, if not all, of the debt provided. That was interpreted as being equivalent to the debtor government having enough domestic resources to repay past debt without incurring new debt for that purpose or to meet committed or desired expenditures. This partly shifted the focus from just external debt which was the immediate problem, to aggregate debt, which had to be reduced to generate resources to service foreign debt.

In a recent development, the IMF has 'reformed' and extended the conditions it imposes in return for the emergency balance of payments support to less developed countries with stressed external accounts. The change is the decision to require restructuring of both internal and external public debt, and not just the latter, as a condition for IMF support. The evidence of that shift first came from Ghana, the West African nation that moved from external debt stress to default in December 2022. The process has subsequently been repeated in Sri Lanka which defaulted on payment against its foreign debt for the first time in April 2022.

The fact that those domestic resources had to be converted into the 'hard' currencies in which external currency debt had been incurred, was underplayed. So besides getting bilateral creditors to agree to restructure outstanding debt owed to them to improve the debt-carrying capacity of the stressed debtor, the IMF required evidence that the debtor government was adopting policies that reduced its borrowing needs and released adequate resources to repay past and future debt. So even to persuade the IMF to agree to a loan arrangement, debt-stressed governments have to show intent to comply by eliminating fuel subsidies, slashing agricultural subsidies, privatising and reducing "inefficient" public investments and increasing tax revenues, normally by raising (regressive) indirect taxes.

In the case of the World Bank, the effort is to subsume all new international funding windows, to increase its influence and ability to force the adoption of business-friendly, neoliberal policies. A classic instance is the hard-won decision to institute a Loss and Damage fund. The developed nations, not wanting to see this emerge as a means of forcing them to accept their liability for climate change and contribute large sums to compensate for the damage that wreaks, pushed for its integration into the World Bank. The less developed and vulnerable nations resisted, realising that this would deprive them of voice and could even be used against them. Given power dynamics all that could be achieved was for the World Bank to temporarily host the facility which will have an independent Secretariat. But it could be a small step from moving from being a host to being a manager.

The lessons are clear. So long as the structures of international governance reflect the balance of power in an international economic order, there is little hope of real reform. Changed global circumstances have only intensified the struggle of the dominant nations with -waning powers to retain control. That control is being, as in the past, to serve the interests of global capital, especially global finance. There is little from experience that suggests that the ongoing "reform" of the architecture would increase the stakes of emerging powers like China or enhance the benefits derived by poorer and more vulnerable countries.

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The Loss and Damage Fund: A Breakthrough but a Long Road Yet to Climate Justice

Harjeet Singh

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Introduction

climate change represents an existential challenge, with its most severe impacts felt by the world's most vulnerable communities. At the heart of efforts to address these impacts is the concept of 'Loss and Damage,' which has emerged as a "third pillar" of climate action, alongside reducing emissions and adjusting to the adverse effects of climate change on human societies and the natural environment. It cannot be avoided because of inadequate mitigation action, insufficient adaptation, and/or conditions going beyond adaptation (Singh, H., 2022).

The establishment of the Loss and Damage Fund is a significant development aiming to provide support to communities in developing countries facing devastating floods, violent storms, raging wildfires and rising seas.

After prolonged negotiations, a historic agreement was made at the COP27 climate conference, held in Sharm El-Sheikh, Egypt in 2022, to establish the Fund. The outcome is a vital step forward in acknowledging and addressing the disproportionate impact of climate change on vulnerable nations. Subsequently, at COP28, a detailed decision regarding the operationalization of the Fund was reached on its interim host, governance structure and funding mechanism.

These developments represent a shift in international climate negotiations, reflecting an increasing recognition of the need for equitable and just climate action. The next steps in making the Fund operational are critical and include setting up its governance structure; establishing transparent mechanisms; adopting and developing appropriate policies; ensuring sustainable funding; and finalising criteria for resource allocation to support those most affected by climate impacts.

A 30-year-long fight, and then a breakthrough

The struggle for recognition and action on Loss and Damage in the realm of international climate policy has been a long and arduous journey, spanning over three decades. The concept of loss and damage first appeared in global climate change negotiations in 1991, when Vanuatu proposed an international insurance pool to compensate small island developing states for the impacts of sea-level rise. This proposal was ultimately rejected, but the word 'insurance' was incorporated into Article 4.8 of the Convention. For the first decade of its existence, negotiations under the Convention centred on mitigation but there was a shift to include adaptation in the mid-2000s, when the Fourth Assessment Report of the Intergovernmental Panel on Climate Change made it clear that mitigation efforts were insufficient to avoid all impacts of climate change. In 2007, loss and damage re-emerged at COP13 in Bali with the 'Bali Action Plan', which highlighted the need for enhanced action on adaptation, including "disaster risk reduction strategies and means to address loss and damage". The following year the Alliance of Small Island States proposed the Multi-Window Mechanism to Address Loss and Damage from Climate Change Impacts, which included risk management, rehabilitation / compensatory and insurance components (Huq, S., Roberts, E. & Fenton, A. (2013)).

The issue of addressing climate impacts was met with resistance, particularly from developed countries, which were concerned about the legal and financial implications of such a mechanism. The early years of the Loss and Damage discourse were thus characterised by a lack of consensus and significant pushback, leading to slow progress in formalising the concept within international climate agreements.

Despite these challenges, the concept gradually gained traction, evolving through various stages of negotiation and recognition. These developments signified incremental but critical steps towards integrating Loss and Damage into formal climate change discourse and policy.

For the first time in UNFCCC decisions, a work programme on Loss and Damage was established in Cancun in 2010 at COP16, which led to the creation of the Warsaw International Mechanism for Loss and Damage in 2013. In 2019, during COP25 in Madrid, a significant stride was made with the establishment of the Santiago Network for Loss and Damage. This network was initiated to provide technical assistance to vulnerable developing countries, addressing loss and damage associated with the adverse effects of climate change.

At COP26, due to pressure from civil society and small, vulnerable nations, the G77 nations — a coalition of developing countries — united in their call for the establishment of a Loss and Damage Finance Facility. This collective demand understood the urgency for dedicated financial resources to support countries grappling with the harsh realities of climate change. The G77 nations emphasized the need for a more structured and reliable financial mechanism, extending beyond the scope of the Santiago Network, to address the increasing economic and non-economic losses incurred due to climate change. This united front highlighted the growing consensus among developing countries on the necessity for concrete financial commitments from the global community to address the escalating climate crisis.

The momentum from COP26, driven by the united front of the G77 nations and the relentless advocacy of civil society, laid the groundwork for a pivotal moment at COP27 in Sharm El-Sheikh in 2022. After intense negotiations, marked by the persistent advocacy of vulnerable countries and civil society groups, a historic decision was reached to establish the Loss and Damage Fund. This decision represented a landmark achievement in climate negotiations, acknowledging the need for financial resources to address the impacts of climate change in developing countries, especially those least responsible for but most affected by climate change.

This historic decision at COP27 set the stage for detailed negotiations at COP28 regarding the operationalization and further negotiations on the implementation of the Fund, scale of finance, funding sources, and disbursement mechanisms.

The journey of the Loss and Damage concept is emblematic of the broader challenges faced in international climate negotiations – rich countries shirking their responsibilities and ignoring the concerns of developing nations demanding equitable action and support. This 30-year fight underscores the persistence and commitment of vulnerable nations and civil society in pushing for recognition, support, and justice in the face of increasing climate challenges.

Operationalisation of the Fund

The operationalization of the Loss and Damage Fund set into motion at COP28, marked a critical phase in translating the landmark decision of COP27 into actionable steps around the governance and management of the fund.

Central to these discussions were the five meetings and two workshops held in the lead-up to COP28 organised by the Transitional Committee, which was set up at COP27. These meetings brought together various stakeholders, including representatives from developing and developed nations, UN agencies, multilateral institutions and civil society organizations, to deliberate on the key aspects of the Fund's operationalization. The developing countries focused on establishing a governance framework that would ensure equitable representation, transparency, and efficiency in the Fund's operations. The Transitional Committee's efforts culminated in a set of recommendations and decisions presented at COP28, outlining the structural and operational framework of the Fund. The discussions also touched upon the need for innovative financing mechanisms to supplement traditional funding sources, ensuring that the Fund could effectively meet the growing and diverse needs of countries suffering from Loss and Damage.

However, these decisions notably failed to address the scale of finance needed to match the rising needs of developing countries, which are already running into hundreds of billions of dollars annually, essential for full recovery from climate impacts.

One of the most contentious issues discussed intensively in the last two meetings was the potential role of the World Bank as the host organization for the Fund. Many developing countries were concerned about the World Bank's traditional approach to funding in the form of loans, controlling stakes of rich countries as its major shareholders, and its implications for the independence and accessibility of the Fund for all developing countries and communities.

As a result, the World Bank, in its role as the interim host of the Loss and Damage Fund, has been presented with a set of stringent conditions by developing countries to ensure the Fund's efficacy and autonomy remain responsive to the needs of the most vulnerable and are operated under the principles of climate justice and equity. These conditions mandate that the World Bank's operations must align with the Fund's governing instrument, granting the Fund's Board complete autonomy in selecting its Executive Director at a level of seniority determined by the Board, in according with the Bank's Human Resource policies. The Fund is also empowered to establish its own eligibility criteria, guided by the Conference of Parties (COP) and Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

Critical to these conditions is the provision for direct access to the Fund by all developing countries, through a range of entities and mechanisms, including small community grants, adhering to established policies, safeguards, and fiduciary standards. The conditions further advocate for a diverse range of implementing entities beyond major international financial and UN agencies. Importantly, they stipulate that parties to the Convention and the Paris Agreement, not members of the World Bank, should have unhindered access to the Fund, without requiring the World Bank Board's approvals for individual funding decisions. In instances of policy divergence, the Fund's governing instrument takes precedence over World Bank policies.

Another critical aspect of these discussions was the initial capitalization of the Fund. There was a significant gap between the amounts pledged by donor countries, which were to the tune of USD 800 million at COP28, and the estimated needs of vulnerable nations facing severe climate impacts. This is a drop in the ocean compared to the USD 580 billion in climate-related damages vulnerable countries may face by 2030 (WRI 2023).

This gap highlighted the ongoing challenge of securing sufficient and sustainable funding for the Fund, a challenge compounded by the economic strains faced by many countries due to the COVID-19 pandemic and other global issues such as rising cost of food, energy and increasing climate disasters.

A Paradigm Shift

The Loss and Damage Fund, in the climate finance landscape, holds profound implications for vulnerable communities and countries, as well as for the broader paradigm of climate justice and equity.

It embodies the acknowledgement that those who have contributed least to the problem of climate change suffer its gravest consequences. The Fund's focus on providing support to vulnerable developing countries aligns with the 'polluter pays' principle, aiming to rectify, to some extent, the imbalances in historical emissions and current vulnerabilities.

The impact and implications of the Loss and Damage Fund extend beyond the immediate financial support it provides. They resonate with the broader quest for an equitable and just global climate regime, one that recognises and addresses the varied needs and responsibilities of nations in the face of a changing climate.

The Fund adds a critical dimension to the global climate change framework, which has traditionally focused on mitigation and adaptation. It fills a gap by addressing the consequences that are beyond the capacity of countries to adapt to. This tripartite approach of mitigation, adaptation, and addressing Loss and Damage is essential for a comprehensive response to climate change.

For communities and countries on the frontline of climate impacts, the Fund represents a ray of light. It promises financial support and resources to address the losses and damages they face due to climate-induced disasters and slow-onset events like sea-level rise, extreme weather events, and desertification. This support is crucial not only for immediate relief but also for long-term recovery and resilience building. By providing a dedicated funding mechanism for Loss and Damage, the Fund acknowledges the disproportionate impact of climate change on these communities and offers a tangible means of support.

The operationalisation of the Loss and Damage Fund is set to have a substantial impact on future climate negotiations. It sets a precedent for how the international community addresses complex climate issues that require equitable actions and responsibilities. The Fund's progress and effectiveness will likely influence future discussions on climate finance, global cooperation, and the balance between mitigation, adaptation, and Loss and Damage as all three aspects of climate action now become important in the face of the unfolding climate crisis.

The Fund also serves as a test case for the practical application of climate justice principles. Its success or failure could either bolster or undermine confidence in the international community's ability to address climate change equitably and effectively. Moreover, it may inspire the development of similar mechanisms or approaches to deal with other global environmental challenges.

The future success of the Loss and Damage Fund depends significantly on its financial sustainability. Recognizing the enormous scale of financial resources required, the Fund is exploring innovative financing mechanisms. These must include shifting subsidies from fossil fuels, imposing levies on fossil fuel extraction, and exploring new financial transaction taxes. Such measures can supplement traditional funding sources, ensuring that the fund can adequately support the escalating needs of vulnerable nations. Embracing these innovative strategies is crucial for the fund to fulfil its commitment to providing effective support in the face of growing climate challenges.

Another area for the Fund is also to support addressing non-economic losses, such as loss of culture, identity, and biodiversity, which are harder to quantify but equally significant. In addition to financial innovation, strategies for equitable and efficient allocation of funds will be critical. This includes developing transparent criteria for fund disbursement, ensuring that funds reach the most vulnerable populations, and establishing mechanisms for monitoring and evaluation.

It represents a significant step towards a more equitable and will be measured by its impact on the ground and its ability to inspire further action and cooperation in the fight against climate change.

What Next

The Loss and Damage Fund, at a crucial juncture, is poised to strengthen its governance mechanism and operational framework under the new board's guidance in 2024. This board, entrusted with shaping the Fund's direction, will start with a well-structured schedule for the year, including crucial board meetings. Essential to this year's agenda is the formulation and implementation of the Rules of Procedure and a conflict of ethics policy, essential for transparent and accountable governance.

Key to the Fund's success is fostering inclusive representation, particularly from affected developing communities and harnessing diverse perspectives, particularly insights from communities and civil society. Prompt finalisation of accreditation processes is necessary for active observer participation in upcoming sessions. Additionally, defining the Fund's host country arrangements and appointing an Executive Director are critical steps that will significantly influence the Fund's operational and strategic trajectory.

Engagements with the World Bank regarding hosting conditions are crucial and must encompass operational modalities and financial structures that align with the Fund's goals, principles and the conditions agreed in the COP28 decision. The board's responsibilities also extend to establishing comprehensive policies for grants and other financial resources, underpinning a robust accountability framework. Equally important is the development of effective resource mobilization strategies and setting clear parameters for resource allocation.

The board will also explore potential triggers and themes relevant to the Fund's response mechanisms and confirm its official name. Developing a framework for complementarity and coherence, inclusive of coordination and cooperation mechanisms, is essential to ensure that the Fund's efforts are harmoniously integrated with the broader climate action landscape.

In undertaking these tasks, the board must remain agile, adapting to evolving climate scenarios while upholding transparency and accountability. The effectiveness of the Fund, and its capability to deliver meaningful support to those most impacted by climate change, will largely depend on the decisions and actions taken in these formative stages.

Conclusion

The journey towards the recognition and operationalization of the Loss and Damage Fund encapsulates a long, challenging struggle for climate justice. This Fund, emerging from decades of persistent advocacy by vulnerable nations and civil society, marks a significant milestone in international climate negotiations. It embodies a collective acknowledgement of the disproportionate impacts of climate change and the need for equitable action.

As we reflect on this journey, the ongoing need for the Fund to be fit for purpose is paramount. It must be scalable, accessible, sustainable, and effective in delivering real, tangible outcomes that are commensurate with the needs of communities and countries and align with the principles of climate justice. The Fund's success will not only be measured in financial terms but also in its ability to provide a framework for solidarity, cooperation, and equitable responsibility.

The Loss and Damage Fund's evolution will influence future climate policies and the international community's commitment to protecting human rights in the face of climate change. The Fund stands not just as a financial mechanism but as a symbol of hope and a testament to what can be achieved through perseverance, collaboration, and a shared vision for a more just, equitable and resilient world.

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Geopolitical Shifts and Atmanirbhar Bharat

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Introduction

The challenges of engagement with geopolitical shifts and the implications for the path formation for Atmanirbhar Bharat call for a wider public debate on the policy options. The realization of goals of productive and dignified employment, technological and economic self-reliance, and sustained delivery of rights-based welfare must receive priority. Liberalization, privatization, and globalization cannot deliver these goals. There is a palpable shift of power to transnational businesses. Their influence on policymaking has grown manifold. The sale of public assets to Tatas, Ambani, Adani, and Vedanta is a clear indicator. Policymakers want to incentivize the insertion of domestic enterprises and institutions into the global value chains. This path has led the government to join the Indo-Pacific Economic Framework for Prosperity (IPEF) and the Quad set up by the United States and allies to strategically counter China's economic and military rise.

But this path will also push India deep into the entrapment of the new Cold War. The choice of path seeks to bring the domestic economy under the control of the very powers that drained huge amounts of resources out of India during the colonial period. India should not sleepwalk into the game set up by the erstwhile colonial powers. The people should get to know the details of 1) what the Global North is up to, 2) how the countries of the Global South are responding, 3) what should India do with the BRICS, WTO, and FTAs, 4) should India continue to latch on to the path of integration of the national economy into global value chains (GVCs) and 5) what kind of options are available to India.

Call for change

We need to recall how the Washington Consensus agenda was sold to the people through the rhetoric of shared prosperity. The Indian elites bought the dream and championed liberalization, privatization, and globalization. The world economic growth is projected to slow down from 3% in 2022 to 2.4% in 2023 with few signs of a rebound next year. The prospect of meeting the SDGs by 2030 is fading. India is not among the countries to buck the trend of a slowdown in growth. Understandably so, key messages from the UNCTAD Trade and Development Report 2023 to the policymakers are 1) "avoid the policy mistakes of the past", 2) "embrace an agenda of inclusive structural change", 3) undertake stronger oversight of markets and 4) "safeguard the world economy from future systemic crises" (UNCTAD, 2023).

Faultlines of MC13 negotiations

The Global North is trying to change the rules of the game to retain its hegemonic hold over world trade. The demands for fair trade and systemic change stand rejected. At the macro, multilateral level, the most important point of reference on trade is the WTO agreements. The MC13 is scheduled to be held in Abu Dhabi from 26-29 February 2024. In the WTO's 12th Ministerial Conference (MC12) Outcome Document, members committed "to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024". But the path to achieving this commitment stands reduced to an "informal" reform process initiated by the United States, the very country that brought the dispute settlement system to the point of collapse.

In a similar vein, the proponents of the controversial plurilateral negotiations, or Joint Statement Initiatives (JSI) launched following the MC11, aim to bypass the WTO's formal multilateral processes. Negotiations on domestic regulation under the General Agreement on Trade in Services (GATS), despite having no mandate and overlapping or being inconsistent with existing mandates and procedures, are being pushed through bilateral and regional trade agreements. China favours the WTO member states to clear the way for the adoption of the Investment Facilitation for Development Agreement (IFDA) as a plurilateral agreement at MC13 which India correctly considers as an illegal move.

Attempts to link the expansion of cross-border trade and investment with the agenda of Sustainable Development Goals (SDG) by the EU seek to take away the policy space and flexibilities available rather than open more policy space and provide for compensating policies concerning the trade of tropical products and agricultural commodities. In the WTO, sustainable development is for policy space and provide for compensating policies with regard to the trade of tropical products and agricultural commodities. In the WTO, the sustainable development agenda has been brought in as a non-tariff barrier and not for the expansion of policy space for the building of sustainable economies. It is the system of international trade and markets that drives biodiversity loss, deforestation, climate vulnerability, and inequality. Solutions to problems of sustainability require the system to become fair and equitable. Despite the aggravation of emergent interlinked crises concerning poverty, inequality, racism, and the environmental and climate crises, the role of trade in international partnerships is only receiving priority.

Currently, in the WTO agreements, the member states are prohibited from seeking transnational capital compensation for the losses of exhaustible resources and investments in technology and knowledge. The way the separation of sustainable development from trade in international economic law has been justified legitimizes the over-exploitation of the Global South not only for their natural resources but also for human and other resources. More than 40% of research, development, and engineering (RDE) manpower work from Bangalore, Hyderabad, Gurugram, and Noida for the US multinationals, when less than 10% of the annual development expenditure of more than 30, 000 crores has no RDE manpower to support. The Global North continues to be the key beneficiary of technology payments.

The idea of sustainable development needs to be interpreted as a sustainable economy at the national level. Industrialization is indispensable but poses far-reaching implications for resource use and the protection of the environment. Industrial symbiosis-based integration of primary, secondary, and tertiary industries within the local economies offers a viable strategy for the management of not only resource consumption but also environmental distress mitigation. This strategy calls for discovering the potential for synergistic partnerships among the small and medium-scale industrial entities and the collectives of farmers, artisans, and landless labourers and moving away from the path of neoliberal globalization. The bargaining power of peasants, artisans, and landless workers can be enhanced. The path of reconstruction of local economies as a system in itself in the multi-level national economies of China and India can set the agenda for systemic change for the benefit of the countries of the Global South.

Not Trade but Tech War

Recent trade-related systemic changes have been undertaken in the name of national security by the US and EU. The implementation of industrial policy-related agendas is back with a bang. The agenda of strategic autonomy for the Global North in the knowledge production domain indicates that what we are witnessing is not just trade but a tech war. The US and EU want to restore the domination of the "Western power controlled global value chains (GVCs) / global production networks (GPNs)" over world trade."Intellectual monopolies dependent innovation patterns (IMDI)" of "green, digital and knowledge economy" are imposing the structures of "dependent capitalist growth", "extra-economic means of accumulation or primitive accumulation" and "corporate feudalism" on the Global South.

The monopoly power of Big Tech, Big Oil, and Big Pharma is growing on the back of appropriation of knowledge of the society. This policy path will lead us to accept the path of promotion of usurpation of land, natural resources, knowledge, and public sector enterprises. The long-term dynamics of Big Business-based capitalism, characterized by financialization, inequality, and stagnation, is quite clear; states that helped big business to grow in an unbridled manner are under pressure. They are trying to prevent the industrial stagnation from intensifying. These giants need the States to invest in R&D to sustain their lead. Knowledge is cumulative. The perpetuation of leads requires obtaining privileged access to new intangibles. The structures of IMDIs and GVCs have led the Global South to embrace the pathways of technologically dependent economic growth. The US and EU are not seeking a partnership embedded in fair trade and equity through WTO, IPEF and free trade agreements (FTAs).

Intensification of intellectual monopolies

In the United States, the CHIPS and Science Act was signed into law on the 9th of August 2022. The EU Chips Act and the IPCEI (Important Projects of Common European Interest) on Microelectronics, which gives billions ("Mobilize more than €43 billion of public and private investments," according to the European Commission) in financial support to establish facilities to produce sophisticated chips (so-called "fabs") and develop semiconductor research in the EU, signal the emergence of a new industrial policy direction on the part of the EU. The EU Chips Act, proposed in April by the European Commission, intends to increase Europe's share of the world's chip production capacity from its current level (roughly 10%) to 20%. The US Chips Act and the EU Chips Act contain a lot of similarities.

Both the Acts exhibit features that fly against their own traditional liberal policy stance of championing an open and rules-based multilateral system. These acts exhibit their reliance on subsidies, export control, and investment screening. This signifies a departure from the rhetoric of "free trade" that they utilized to get the Global South to open their markets. New markets creating industrial policies come along with the development of weaponization of GVCs and the imposition of a set of new agendas of green economy and sustainable development in the WTO, mega-regional trade negotiations taking place through the Indo-Pacific Economic Cooperation Framework (IPEF) and in free trade agreements (FTAs).

The Challenge of China's rise

The US and EU have responded to the challenge of Chinese competition with trade and investment regulation, competition policy, and industrial policy. The neoliberal mode of global integration has been combined with China's plus-one strategy. The progress demonstrated by China in new technologies, from 5G to artificial intelligence, from self-driving cars to quantum computing, has led the US to target Huawei to create a hurdle. Wiping out of twenty thousand (20,000) patents of Huawei (a Chinese electronics firm) by the government of the United States on the grounds of violation of national security is inconsistent with the global norms that the US and EU have been advocating on intellectual property since the 1980s. The US has blacklisted numerous Chinese entities to prevent the export of sensitive technologies. The economic and technological rise of China is arguably the most important change in international politics since the end of the Cold War. It may well prove to be the defining geopolitical event of the 21st century.

Technology absorption aiding policies of the Chinese State has contributed powerfully to this rise, helping transform China, in the span of a single generation, from an impoverished technological backwater into an economic superpower. China is a world leader in advanced sectors like high-speed rail and artificial intelligence. Policy tools that could condition foreign firms' access to the Chinese market on their willingness to partner and share technology and expertise with local businesses, supported by policies for indigenous or independent innovation in parallel, have been the key to the success of China in technology competition. China chose selectively high-tech sectors to move beyond "blind duplication" and developed the genuine ability to "introduce, digest, absorb, and re-innovate".

China undertook public investment to obtain strategic leadership in manufacturing. China came up with One Belt One Road (OBOR) and Digital Silk Road (DSR) initiatives. Their response to the challenge faced by the US and EU included the MLP for independent or indigenous innovation. The Chinese model allows a market of size that rivals Google, Apple, Facebook, and Amazon (GAFA). Baidu, Alibaba, and Tencent (BAT), equivalent to GAFA, are helping China to exploit multi-faceted datasets on individual consumers and users of data for systematic use.

China is building now its digital Silk Road to strengthen the place of domestic firms in the home market as well as the regions coming under the One Belt One Road.

Lessons for the future of industrial development

To be a player in the era of IMDIs and GVCs/ GPNs, east Asia which includes Japan, South Korea, Taiwan, and China embraced the pathways of 1) a deliberate (planned) transformation of cognitive and productive structures that required the nation-state to keep up with public investment in scientific, technological and educational institutions, 2) a balanced change in the share of agriculture, manufacturing, and services (capacities), 3) pro-domestic manufacturing vision, 4) development of innovative enterprise, discouraged low road to export competitiveness, 5) augmentation of social capabilities, 6) development of user capabilities on the demand side to promote systemic and structural competitiveness and 7) building of developmental / entrepreneurial state apparatus.

Their governments were able to create opportunities and withdraw incentives promptly. These countries could incorporate into industry the pro-manufacturing vision, symbiotic development of agriculture, manufacturing and services, technological transformation, and efforts for social progress. There was a major contribution from the deliberate, planned evolution of capabilities required for the development of the knowledge and technology-intensive frontline sectors. The state of evolution of capabilities (new and emerging sectors) can be treated as a benchmark/criterion of success. Capabilities include not only education / human capital but also the capabilities associated with problem-solving knowledge embodied in organizations and systems (Li, W.; Zhang, L.; Lee, I.; Gkartzios, M. 2023).

However, it is necessary to issue an important reminder that ninety-five (95) per cent of revenue earned from technology payments still goes to the US. China is yet not ahead in earning revenue from the tech and platform economy. China is paying to US. India is also paying. The difference is that China has come close to the position of challenging the US. In the era of intellectual monopoly-dependent innovation, China can leverage manufacturing. China is leveraging state-owned enterprises (SOEs). China was able to pursue the strategy of indigenous or independent innovation. Access to and mastery over leading technologies is arguably the single most important determinant of the strengths exhibited by China.

The country's position in both the global division of labour and the international balance of power has improved disruptively. Undoubtedly this disruption has come with its consequences for the status of democracy in China. The contribution to greenhouse gas (GHG) emissions is still of greater magnitude from China than India. Because liberals portray the party states and China as authoritarian and illiberal it needs to be stated that authoritarianism is also an outcome of neoliberal capitalism. The Indian people are experiencing this impact. However, China is today in a better position to tip the balance and promote the path of development of rural eco-industries. The ability to undertake the promotion of the rural collective economy and the innovation of the collective economy organization mode is still pursuable in China (J. Peng, et al. 2023).

India's options

India abandoned the post-independence period project of transformative science, technology, and innovation (STI) for national development; the post-reform Indian governments chose to give up on the essential role of state planning. India has been experiencing an atrophying of its initial socialistic aspirations. The Indian elites gave up on the underlying strengths of economic and techno-nationalism. The progressive nationalism that provided the social motivation and raison d'être to the governments till the nineties to pursue pluralism and diversity in STI systems, stands abandoned. The progressive nationalism has been replaced by a conservative cultural authoritarian nationalism leading the country to embrace mythology as science and Baba Ramdev as a scientist. India needs exports but not export-led growth. Indian economic nationalism cannot be FDI based "Make in India" journey.

Collective self-reliance for Global South

The strategy of collective self-reliance can alone be the basis of the path formation for the fostering of cooperation in trade, investment as well as technology with the countries of the Global South. China is a competitor but it should not be treated as a rival. Collective self-reliance necessarily means cooperation among countries and not acute competition among them. India is technologically dependent on active pharmaceutical ingredients from China to serve the regulated market of the US and EU which makes India vulnerable. India should be technologically self-reliant in export-oriented segments and areas of manufacturing required for the establishment of critical infrastructure. India cannot pursue renewable energy development by importing solar cells and wind turbines from China.

India needs to exploit the power of and opportunities offered by new and emerging generic technologies at home in the combined might of agroecology and agricultural digitalization, socio-ecologically coupled integration of primary, secondary, and tertiary industries, technological convergence for an inter-linked development of products, co-products, and byproducts fostering the use of biomass-based industrialization more conducive for renewable energy and ecological environment-friendly agricultural and industrial development. Ecological agriculture can provide the necessary markets for the formation of the path to rural industrialization. Digitalization, GIS, space technology, and biomass-based industrialization can provide the necessary markets for the application of electronics.

India does not need to transfer crores to Micron, which is a microelectronics firm from the United States to foster low lends low-value-added segments based semiconductor industry in India. Micron, Apple, and Foxconn have been given no formal target for value addition or technology transfer. "Invest India" has been marketing the PLI scheme in the case of electronics manufacturing to be a success story of the government. On that note, the claim is that India's electronics exports have increased from US $ 9 billion to US 4 15 billion between 2014 and 2019. But the unsaid part is that imports have also grown. India's electronic imports stood at US $ 51 billion in 2019. There was an overall trade deficit of US $ 36 billion, out of which China accounted for US 4 19 billion. PLI concessions and incentives in the automotive manufacturing value chain received the highest total budgetary allocation of INR 25,938 crore. However, drive transmission, steering units, engines, etc. account for 62% of total imports because of technologies and parts that are either not made in India or for which we haven't matched the global scale, prices, or quality. In 2019-20, India imported 450 million units of lithium batteries valued at INR 6,600 Crores. It is strange that India has not learned from her own dismal experience of liberalization, privatization, and neo-liberal globalization.

There is no strategy for independent or indigenous innovation. India can use public procurement to promote agroecology-led digitalization to promote applications of electronics to deal with the challenges of climate change and environmental degradation and her own answer to BAT and GAFA. The path of integration of primary, secondary, and tertiary industries at the rural economy level needs the promotion of innovation in the rural collective economy. It can be catalyzed through the guarantee of minimum support prices the public procurement of pulses and oilseeds and the promotion of sectoral reservations for rural industries. Incentives and concessions can be turned around to create favourable conditions for cooperatives and mutualism in production.

The agenda of basic needs of the urban and rural poor shall be the guideposts for the pathways for self-reliant development. Expressways do not meet the daily needs of the poor. India needs livable, sustainable, and productive cities capable of providing gainful employment to the poor and not the agenda of smart cities that serve only a tiny minority. The public purpose of artificial intelligence (AI) can be rethought to secure a life of dignity and decent work. Standard employment and sustainable livelihood for the self-employed cannot be secured through the policy of giving more power to the hands of oligarchs and incentivizing export-led growth.

XV BRICS Summit signals an assertion of Global South

New alliances have emerged and reshuffled power dynamics and created the conditions for a more assertive stance towards global economic affairs. XV BRICS Summit held at Johannesburg supported the commitment to inclusive multilateralism, including the purposes and principles enshrined in the UN Charter. Support for a comprehensive reform of the UN, including its Security Council, making it more democratic, representative, effective, and efficient, and to increase the representation of developing countries in the Council's memberships, an adjustment in quota shares at the IMF should result in increases in the quota shares of emerging markets and developing economies (EMDCs), need to make progress towards the achievement of a fair and market-oriented agricultural trading system, need to promote sustainable agriculture and food systems and implement resilient agricultural practices, support for a Permanent Solution on Public Stockholding (PSH) for food security purposes and special safeguard mechanism (SSM) for developing countries.

XV BRICS Summit supported predictable, orderly, timely and coordinated implementation of the G20 Common Framework for Debt Treatment, the participation of official bilateral creditors, private creditors and Multilateral Development Banks in line with the principle of joint action and fair play, the intensification of BRICS Partnership on New Industrial Revolution (PartNIR) with the aim to create new opportunities for accelerating industrial development, Intra-BRICS cooperation in human resource development on new technologies through, the BRICS Centre for Industrial Competences (BCIC), BRICS Part NIR Innovation Centre, BRICS Startup Forum and collaboration with other relevant BRICS mechanisms for the interlinking of cross-border payment systems, encouraging the use of local currencies in international trade and financial transactions between BRICS as well as their trading partners and the strengthening of correspondent banking networks between the BRICS countries and enabling settlements in the local currencies.

Concluding remarks

International economic integration is at a crossroads. The WTO is experiencing the most significant crisis since its creation. This is in large part due to the renewed emphasis on the part of the US and EU seeking predictability in supply chain management and design. Neo-liberal globalization and outsourcing have brought to the fore challenges relating to the distribution of gains from trade and increased economic activity. While current Southern initiatives are beginning to move rapidly, yet they differ from the earlier formations like the G77 or the NAM. Thus, the common vision is missing. The political driver is still in the making. India can help this process by embracing the policy of collective self-reliance and nonalignment. India must retain its future policy options intact. The path of selectively delinking from the globally integrated economy is the way forward. Atmanirbhar Bharat cannot be trade-driven.

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Reforming Multilateral Financial Institutions: The challenges

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Reforms of the multilateral development banks, the Bretton Woods twins in particular, remained high on the global agenda in 2023, making a continuity of the debates spanning over several decades on how these financial institutions can be made more relevant for delivering global public goods. In recent years, these debates have taken place in a more structured manner in and across several country groupings involving, the G20, the G7, and the BRICS groupings in particular. Several fundamental issues relating to management and financing priorities have been discussed, all of which could have reshaped the future functioning of these institutions.

The Issues

Developing countries face a multiplicity of challenges, not the least from their imperatives of meeting the Sustainable Development Goals (SDGs), especially the growing pressures to conform to the targets set in the Paris Climate Agreement. The financing needs of these countries are substantial: one estimate has shown that emerging markets and developing countries other than China will have to spend around $1 trillion per year by 2025 (4.1% of GDP compared with 2.2% in 2019) and around $2.4 trillion per year by 2030 (6.5% of GDP). In the past, official sources, namely, the Paris Club donors and multilateral financial institutions (MFIs), such as the World Bank, have met a sizeable share of the financing needs of developing countries, often at concessional terms. However, during the past four decades, there has been a growing shift towards the private sector, a tendency that has caused recurrent problems of indebtedness, in particular, for low-income countries (LICs) due to the high cost of borrowing. Thus, given the considerably high levels of debt overhang of LICs, their capacities to borrow to meet the development challenges have worn thin. The borrowers should, therefore, be provided the necessary additional resources at concessional terms from the MFIs. Besides, the outstanding debt due to the MFIs needs to be dealt with in a manner that does not impose an unacceptable level of burden of adjustment on the borrowers.

However, if the MFIs have to respond to the needs of the developing countries, they will have to be transformed in three significant ways. The first is that the management of these institutions must reflect the rapidly altered global economic reality since the turn of the millennium, namely, the increasing role that developing countries are playing on the world stage. For the past two decades, the demand has been made for a shift in the voting shares in favour of developing countries, initially by the G20 countries and now, more regularly by the BRICS since the formation of the grouping in 2009.

Secondly, a larger share of developing countries in the management of these institutions has become necessary since they have ignored the needs of the developing countries, which in turn has two dimensions. One, the financing priorities of these institutions are not in conformity with the requirements of developing countries, and two, the problem of external debt overhang of the LICs, in particular, has remained unaddressed.

Finally, the MFIs must be strengthened so that the growing needs of developing countries for concessionary finance can be met. This issue has assumed additional significance given the questions being raised about the capital adequacy norms being followed by the MFIs, and whether they can garner the required resources to be able to enhance the level of concessional finance to the requisite level.

This paper reflects on the aforementioned dimensions of the functioning of the MFIs and the changes that must be introduced to alter the status quo ante. At the outset, the paper will discuss the issues relating to democratising the MFIs, taking the case of reallocation of the vote share of the IMF, which has been high on the agenda of the BRICS. The second section of the paper will deal with the unresolved issue of mounting external debt of the LICs, which the IMF had held centre-stage. The third section will discuss the hiatus between the financing priorities of the MFIs and the financing needs of the developing countries. The final section discusses the questions centring on the ability of the MFIs to provide concessional finance, which is of importance not only for LICs but also for middle-income countries. For instance, India has considerable stakes in the way this issue is dealt with, given that it has historically been one of the largest recipients of loans from the World Bank.

Making the Bretton Woods Twin More Democratic

The governance structure of the Bretton Woods institutions (BWIs) was first questioned in the meeting of the G20 Finance Ministers and Central Bank Governors. The meeting issued a "Statement on Reforming the Bretton Woods Institutions", which emphasised that the governance structure of the BWIs - both quotas and representation - should reflect [the] changes in economic weight" of countries since these institutions were established, and underscored the "critical importance of achieving concrete progress on quota reform".

Ever since its formation, the BRIC/BRICS has emphasised that the governance structure of the Bretton Woods institutions must be reformed. In the second Summit in 2010, the leaders of the BRICS resolved to "achieve an ambitious conclusion to the ongoing and long overdue reforms of the Bretton Woods institutions". They observed that "the IMF and the World Bank urgently need to address their legitimacy deficits" and that their governance structures require "substantial shifts in voting power in favour of emerging market economies and developing countries to bring their participation in decision making in line with their relative weight in the world economy". This demand was made in the backdrop of the discussions in the IMF to realign the quotas held by the members. In 2008, the Board of Governors requested the Executive Board to "recommend further realignments of members' quota shares to ensure that they continue to "reflect members' relative positions in the world economy". The quota reform, which was finally implemented in 2016, did not favour all countries in the grouping: while the quotas of China, Brazil, and India quota increased by 71%, 66%, and 44% respectively, quotas of Russia and South Africa decreased by 1% and 25% respectively. But more significantly, the US' share increased by about 2% to 17.4%, giving it the supermajority to veto any proposals for "effective" quota reforms.

In early November, while approving the latest quota review, the IMF Executive Board took a step towards improving the salience of the quotas by recommending a 50% quota increase allocated to members in proportion to their current quotas. However, the decision on adjustment/realignment of the shares quota to better reflect members' relative positions in the world economy was postponed to 2025.

With advanced countries refusing to relinquish control of the decision-making processes of BWIs, developing countries have faced at least three sets of disadvantages. The first is that there has been little progress in resolving the problem of external debt in developing countries, of LICs in particular. The evidence in this regard is the most recent initiative to address the debt overhang of LICs' debt, which had increased after the Covid-induced economic crisis. Secondly, the funding priorities of these institutions have reflected the agenda of the advanced countries and have not been in keeping with the immediate needs of the developing countries. And finally, given the plethora of challenges that the developing countries are faced with, including the realisation of sustainable development goals and finding a way out of the debt crisis, multilateral development banks, including the BWIs, must provide larger volumes of concessional finance. The question is, would they be in a position to do so?

The following sections deal with these three issues.

External Debt of the Most Vulnerable Countries Remains Unsustainable

In the wake of the Pandemic, G20 countries, at the urgings of the IMF and the World Bank, made a significant decision to lend their support to the Debt Service Suspension Initiative (DSSI) to address the significant increase in debt vulnerabilities and deteriorating outlook in low-income countries. Under the DSSI, bilateral official creditors would temporarily suspend debt service payments due from the identified countries, with a caveat that the requests had to be made by the debtors. Potential beneficiaries under DSSI were 73 low-income countries eligible for support under the IMF's Poverty Reduction and Growth Facility (PRGF), which supports the world's poorest countries. Private creditors were also invited to participate in the initiative on comparable terms.

The DSSI was a temporary initiative intended to last until the end of 2020. But before the initiative ran out, the G20 Finance Ministers and Central Bank Governors agreed to put in place the "Common Framework for Debt Treatments beyond the DSSI", which was also endorsed by the Paris Club of donors. Under the "Common Framework", all official bilateral creditors were expected to implement this initiative fully and in a transparent manner, which had become even more imperative as the pandemic had not only seriously worsened the debt overhang of the low-income countries, but also several middle-income countries were caught in the debt trap. Private sector creditors were expected to provide debt treatments on terms as least as favourable. However, multilateral development

banks (MDBs) were kept outside of the DSSI, but were asked by the G20 to "further explore options for the suspension of debt service while maintaining their advantageous credit rating and low cost of funding". This recommendation followed a joint study by the MDBs, led by the World Bank (2020), which argued that the MDBs "were already providing significant net positive financing flows over a long period and that joining the DSSI would put their preferred creditor status at risk".

Between 2018 and 2021, total debt service payments of low-income countries increased from USD$10.6 billion to USD$18 billion, or an increase of 71%. As a result, the ratio of total debt service payments to exports of goods, services, and primary income increased from 11.5% to nearly 17%, while the ratio of debt service payments to gross national income nearly doubled. Although the middle-income countries as a whole experienced a modest increase in total debt service payments, several countries in this grouping has suffered deterioration in financial conditions, especially after the monetary tightening in the North.

The "Common Framework" is plagued with several flaws. First, the initiative is intended to "temporarily" suspend the debt service payments that the 73 PRGF-eligible low-income countries owed to only the bilateral official creditors, which was a relatively smaller component of their external outstanding debt stock. At the end of 2019, bilateral official creditors accounted for 25% of the external debt stock of developing countries, which had declined to 21% at the end of 2021. No country, except Zambia, had publicly applied for similar treatment from private-sector creditors. Zambia has asked for a rescheduling of $200 million worth of bond payments, but this request was refused. In this context, it must be mentioned that the debt that low-income countries owed to private-sector creditors had increased from just below $14 billion in 2010 to over $83 billion a decade later.

A second major flaw in the "Common Framework" is that the beneficiaries identified as the low-income countries, which ignored the significant problems with external debt that several middle-income countries, especially Sri Lanka and Pakistan, are struggling with. But even for these countries, the mandate of the G20 initiative, namely rescheduling debt service payments due to bilateral official agencies, would do little to lessen the debt burden. For instance, in the case of Pakistan, bilateral official donors accounted for 30.5% of the total outstanding external debt, while for Sri Lanka, the corresponding figure is much lower at 20.3%. Although the Finance Ministers and Central Bank Governors have recognized the importance of addressing debt vulnerabilities faced by the middle-income countries, no concrete measures have been taken thus far.

Since the "Common Framework" was launched, only four countries, namely, Chad, Ethiopia, Zambia, and Ghana, have requested for restructuring of their debts. Chad was the first country to seek restructuring of its debt in January 2021, but a deal with its major creditors, including the largest private sector creditor, could be concluded only in December 2022.

Zambia had reached an agreement with official creditors for reducing its debt burden only recently, while Ethiopia's creditor committee has been struggling for over two years to find an acceptable solution. Ghana's creditor committee was established only recently.

Suspension of debt service payments on claims owed to all official bilateral creditors under the 'Common Framework" implies that lenders would be fully repaid and would receive interest on the deferred sums. Therefore, strictly speaking, it does not constitute debt relief. The then World Bank President David Malpass concurred with this view when he argued in the context of the first agreement reached under the 'Common Framework' that the "agreement reached by the creditors provides no immediate debt reduction. As a result, the debt service burden of Chad remains heavy and is crowding out priority expenditures on food, health, education, and climate".

For the past four decades, developing country debt management strategies orchestrated by the Bretton Woods Institutions have not provided any real relief to the debtors, keeping them under the ever-increasing burden of external debt coupled with the costs of adjustment. The creditors have never taken any responsibility by sharing the burden of adjustment, even after the first major episode of the developing country debt crisis in the 1980s when creditor profligacy was in part responsible for the crisis. However, the burden of adjustment had to be borne by the debtors, who had to comply with the IMF diktat by carrying out structural adjustment programs. This situation is unlikely to change given the control exercised by the creditor community on the functioning of the BWIs.

Funding Priorities of BWIs Inconsistent with the Needs of Developing Countries

The hiatus between the funding priorities of the BWIs and the needs of the developing countries has increasingly become evident in recent years. There has been increased emphasis on increased availability of climate finance, with the push coming from several global processes, including from the Independent High-Level Expert Group on Climate Finance, which submitted its report in 2022.

Although the Expert Group speaks of "scaling up investment for climate and development", its focus is entirely on climate finance as it recommends that there should be a sustained investment push for the transformation of the energy system, responding to the growing vulnerability of developing countries to climate change and investing in sustainable agriculture.

In the run-up to the 2023 Annual Fund-Bank meeting in Marrakesh, the President of Kenya, William Ruto, co-authored an opinion piece in the New York Times whose title summed up the quandary for the developing countries, "If You Want Our Countries to Address Climate Change, First Pause Our Debts". He argued that the West often pleaded with the African countries to invest in ambitious resilience projects needed to survive in a warming world and added that Africa would be unable to fix the climate issue unless the debt issue was fixed.

Support for President Ruto's views was provided by the results obtained from the 43 surveys of client countries that the World Bank had conducted in 2020 and 2021. Representatives from government, aid agencies, media, academia, the private sector, and civil society were asked about their top three development priorities from a list of 28 options, and the World Bank's role in meeting those priorities. Addressing climate change ranked in the top two priorities in only one country and across the 43 nations surveyed, less than 6% of respondents identified climate change as one of their country's top development priorities.

Thus, if the priorities of the developing countries have to be met, together with the increased emphasis on climate financing from the advanced countries, the BWIs need to be substantially more resource-endowed than they find themselves at present. This is an issue that has been discussed for several years, but the deliberations in 2023 do not instil the necessary confidence that the BWIs can be enabled to provide more concessionary finance to developing countries.

Strengthening the Lending Capacities of the BWIs and other Multilateral Development Banks

Improving the lending capacities of the BWIs and other multilateral development banks (MDBs for meeting the core development concerns of developing countries, including the implementation of the Sustainable Development Goals (SDGs) has figured prominently on the agenda of the G20 members' deliberations for several years. This process was formally initiated through the Multilateral Development Banks' action plan to optimize balance sheets in 2016, which directed the banks to "work through their Boards to optimize balance sheets, to increase lending without substantially increasing risks or damaging credit ratings".

An Independent Review of MDBs' Capital Adequacy Frameworks was initiated in 2021 to assess the ability of the banks to meet their financial obligations. The review was conducted under the aegis of the G20 International Financial Architecture Working Group and was in keeping with the directives of the G20 Finance Ministers and Central Bank Governors to "explore potential new measures to maximize MDBs' development impact, according to their mandates and while protecting their credit ratings".

In their 1st Meeting held under the Indian Presidency, the Finance Ministers and Central Bank Governors asked the MDBs to undertake comprehensive efforts to evolve their vision, incentive structures, operational approaches, and financial capacities so that they are better equipped to maximize their impact in addressing a wide range of global challenges while being consistent with their mandate and commitment to accelerate progress towards Sustainable Development Goals". The task to develop an agenda, based on which the MDBs can carry financing the recipients was entrusted to an International Expert Group (IEG) - the Group was co-convened by Larry Summers and. NK Singh.

IEG was, therefore, tasked with the responsibility of spelling out the details of a plan, which the MDBs could follow while discharging their functions. In the first instance, the IEG has spelt out a triple agenda "to harness the potential of the MDBs". The three elements of this agenda are: (i) adopting a triple mandate of eliminating extreme poverty, boosting shared prosperity, and contributing to global public goods; (ii) tripling sustainable lending levels by 2030; and (iii) creating a third funding mechanism which would permit flexible and innovative arrangements for purposefully engaging with investors willing to support elements of the MDB agenda.

The IEG argued that additional annual spending of around USD$3 trillion is required by 2030, of which USD$1.8 trillion should be additional investments for climate action mostly in sustainable infrastructure, and USD$1.2 trillion for additional spending to realise other significant SDGs. These figures would imply a 4-fold increase in adaptation, resilience, and mitigation compared to 2019, and a 75% increase in spending on health and education.

The international development finance system must be designed to support this spending by providing additional official external financing of USD 500 billion every year until 2030. Of this additionality, one-third would be in the form of concessional funds and non-debt-creating financing, while two-thirds would be for non-concessional official lending.

Additional funding would also help mobilise private capital of up to USD 1 trillion. MDBs must provide an incremental USD$60 billion of additional annual official financing, of which $200 billion in non-concessional lending, and help mobilise and catalyse most of the associated private finance.

In its first set of recommendations, the IEG argued that the sustainable lending levels of the MDB system should be tripled by 2030, targeting USD$300 billion per year "in own-account non-concessional finance and $90 billion per year in concessional finance". This could be achieved, according to the IEG, if the G20 members could restore their contributions to IDA, and then increase them sharply to achieve a tripling in the size of IDA by 2030.

In one of its major recommendations, the IEG asked the MDBs to change their approach by working systematically with the private sector in sovereign and non-sovereign activities. This recommendation does not augur well for the prospects of concessionary lending from the MDBs, given that the donor countries' pledge for the latest three-year cycle of International Development Association funding (IDA20), the soft-lending arm of the World Bank, was well below expectations. This also brings into serious question the ability of the MDBs to provide debt relief to the countries that are the worst affected by the debt overhang, which, in turn, limits the ability of the debt-distressed countries to invest in development.

The crisis that the IDA20 faces is not unexpected since the US remains unwilling to contribute towards increasing the capacity of the MDBs to lend more. US Treasury Secretary, Janet Yellen's remarks at the 3rd Meeting of the G20 Finance Ministers and Central Bank Governors gave a clear indication when she said that the G20 must only explore capital increases after the [MDB] reforms … have progressed further".

By Way of Conclusions

Given the multiplicity of development challenges that the developing countries are faced with, multilateral financial institutions, especially the Bretton Woods Institutions (BWIs) need to play an increasingly significant role by providing these countries with concessionary finance. However, this is unlikely to happen unless the functioning of these institutions can be radically altered, which can happen if developing countries are given a greater role in managing them. Only then can they become responsive to the critical financing needs of the developing countries.

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Future of International Tax

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Developing countries are demanding an equal right within the international tax architecture to tax as well as to set standards. A recent vote at the UN is an expression of discontent with the status quo. The article charts the historical role of the UN and OECD in shaping international tax rules, as the circumstances have a bearing on the nature of dominant rules. The base erosion and profit shifting (BEPS) program has had its successes but these have rested heavily on the availability of options to address BEPS concerns. Pillars One and Two are termed as historic but they do not quite match up to the aspirations of the developing countries. The UN seeks to shift the global tax order but it must draw from learnings from history, BEPS program and pillars one and two.

A short history of international tax

References to the history of international tax policy date back a hundred years to the League of nations report that set the standards for determining the allocation of taxing rights (Bruins et al., 1923; Coates, 1925, p. 403-27; League of Nations, 1927; League of Nations, 1928). Four economists - Prof. Bruins, Prof. Einaudi, Prof. Seligman and Sir Josiah Stamp examined the economic consequences of double taxation. The work on double taxation is at the core of the rules of international tax as the treaties define the right to tax for contracting states.

This work, as will be discussed in the subsequent paragraphs, was developed over a century by the UN and the OECD. Some argue that the existence of these laws can be traced back to the period before the 1920s (Sadowsky, 2021). For example, the writings of Wilbour Papyrus illustrate the application of taxes to foreigners (Gardiner, 1941, p. 19-73). Yet, the memory of international tax experts is confined to the work of the League as it remained comprehensive and well documented. Experiences from history provide an understanding of the context of the current state of the law and the root cause for the observed inequities in design. The following paragraphs trace the institutional history of international taxation as we now know it.

The work by the League led to the creation of bilateral tax conventions in 1927. The London (1943) and Mexico (1946) model conventions were not consistent and comparable in coverage so the Fiscal Committee at the League invited the UN to review the models. The League of Nations dissolved in 1946, as it proved incapable of preventing the Second World War. It is also argued that it was unable to separate the organisation's policies from the realpolitik of its permanent executive membership so was sometimes labelled as the "League of Victors" ("The League is Dead", 2021). The United Nations then took over the work at the end of the Second World War. Two models emerged during the course of the work - The Mexico model, claimed to have been developed in the absence of many developing countries, allowed source countries to retain a higher right to tax than the London model. The UN tax convention is considered the successor to the Mexico Model and the OECD one to the London model (Lennard, 2008, p. 23). The UN moved forward with the creation of the Ad Hoc Group of Experts on Tax Treaties in 1968, which developed the Model Double Tax Convention and adopted the draft model in 1979, later published in 1980.

The world changed dramatically since the publishing of the model convention, and in the 1990s the model was updated by the group renamed as Ad Hoc Experts on international cooperation in tax matters (Lennard, 2008, p.24). The group had a wider mandate than before. The UN's prominence however was limited, and the OECD managed to gain dominance in this space. From 1956 till the 1960s, OECD's Committee on Fiscal Affairs (CFA), made up of government officials and tax experts, integrated and consolidated the prior versions of the Multilateral Convention. Despite the work the UN continued to pursue, the OECD became the standard setter, with the UN with fewer resources having not been able to maintain its leading position (Rixen, 2011, p. 197-227). As mentioned, the two organisations developed their model conventions that varied to some degree in specific aspects such as the definition of PE, attribution of business profits and capital gains.

Although the adoption of the conventions is dependent on the negotiations, both are founded based on treaties while there are countries such as the US that follow their model. Then, post the global financial crisis, it was acknowledged that there was a need for a re-examination of the international tax regime. The Base Erosion and Profit Shifting Agenda was designed to address the tax loopholes by the OECD at the request of the G20. The OECD proceeded on its journey of 15 action points following the London Summit of 2009 (OECD, n.d.). During the more than 15 years after the crisis, the OECD emerged as an anchor for international tax policy as it expanded the scope of its work and engaged with tax administrations to broaden its appeal.

Now, nearly 15 years since G20 governments decided they had enough of evasion and avoidance, the world has changed significantly. Companies in the digital sphere now have more complex operations that do not require them to set up a physical presence to operate in a jurisdiction. Take, for example, digital advertising hosted by Google or platform services such as Uber and Amazon that could without other regulatory requirements operate entirely outside the market for tax purposes. Naturally, the choice for locating main revenue-generating assets such as intangibles in offshore or low-tax jurisdictions led to the 'race to the bottom' in global tax rates. This in part may have to do with the capital account liberalisation that was advocated for in the 1990s. Lower tax rates were used to remain competitive and managed to feed back into the tax systems of developed countries. For example, the Tax Cuts and Jobs Act of 2017 is a classic response to an open economy trying to retain capital that would be exported to other jurisdictions. In the context of these changes, the agenda to reform tax systems to resolve the challenges from digitalisation -Pillar One and Pillar Two proposals are meant to repair the international tax system. The OECD, in some ways, built its legitimacy through iterative reconsideration. This is seen in the advancements made by countries such as India in the inclusion of changes to the drafts. That is, market jurisdictions are suggested to have a greater right to tax under the Pillar One proposal. Yet, the proposals are excessively technical and present an administrative ordeal At the end of the BEPS 1.0, which was meant to address the tax challenges from digitalisation under Action Point 1, OECD's relevance in the international tax system was enviable. With the 15 action points it set out a reform agenda to make sure companies do not avoid taxes by shopping for tax systems and treaty relationships.

The elaborate reforms on different kinds of reforms, as will be discussed in the subsequent section, were pursued over the course of the five years. With its annual expense budget of EUR 981 million in 2021 and technical experts involved. Yet it was conscious of the reach of its work as developing countries attained relevance in the global economy. Therefore, developing countries were involved through the Inclusive Framework (OECD, 2021). The Inclusive Framework on BEPS is a group of 143 members that provides a platform for countries to express their views on standards. The relative influence of developing countries on the final design of standards is yet another issue.

The buy-in for OECD's proposed reform of the taxation of digital companies or OECD's role was also achieved through the demonstration of costs associated with independent or unilateral actions. Cooperation is demonstrated to yield first-best outcomes (Devereux, 1990, p. 439-56) and the OECD garnered cooperation through its economic analysis and was able to demonstrate a case for cooperation. At the beginning of the BEPS program, i.e. in 2009, the cost of BEPS was estimated at USD 100-240 billion in corporate tax revenue (OECD, n.d.). It is estimated that from the introduction of Pillars One and Two which deal with the reallocation of taxing rights, and Pillar 2, revenue gains of USD 12-25 billion per year between 2017-21 and USD 220 billion respectively, were generated ("Economic Impact Assessment", 2023). Interestingly, the revenue gains have not changed dramatically, either because the BEPS program has already delivered most of the changes or because there are limits to what the OECD's reform can do for the international community. These gains, though highly uncertain, represent less than 2% of global revenues in 2021. In the past few weeks, the dominance of the OECD as the forum for international tax negotiations has been challenged through the resolution to promote inclusive and effective tax cooperation at the UN, which was passed at the 78th session ("Second Committee Approves Nine Draft Resolution", 2023). As there is talk of shifts in the post-war dominance of developed countries, there are interesting lessons to draw from history and towards understanding what it is that countries perceive as an inclusive reform.

What did we learn from the Base Erosion and Profit Shifting Program?

The BEPS program was quite expansive to cover all kinds of arrangements that work contrary to the spirit of international tax law. The problem of double taxation that worried the committee of experts at the start of the 20th century had transformed into one of non-taxation or low taxation. It is not as if the OECD had not visited the problem before but instead had over time limited the focus to harmful tax practices, which involved a careful listing of regimes that qualify as predatory ("Action 5, Harmful Tax Practices", n.d.).

In May 1996, a Ministerial Communique directed the OECD to "develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequence of national tax bases, and report back in 1998". This request was subsequently endorsed by G7 countries and the following paragraph was included in the Communique issued by Heads of State at their 1996 Lyon Summit:

> *"Finally globalisation is creating new challenges in the field of tax policy. Tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases. We strongly urge the OECD to vigorously pursue its work in this field aimed at establishing a multilateral approach under which countries could operate individually and collectively to limit the extent of these practices…." ("Harmful Tax Competition", 1998, (2)).*

This in many ways resonates with the intent expressed for introducing the anti-avoidance directive in the EU or the CFC legislation in the US. However, there was little consensus on what kind of competition was to be addressed immediately. Initially, the scope of the project was seemingly broad. Over time, subtle distinctions were drawn between acceptable and harmful tax competition, which included tax havens and preferential tax regimes ("Harmful Tax Competition", 1998, (4)).

The misuse of treaties became prevalent as these were outdated in terms of the economic context under which these terms were agreed. Many were signed at a time when developing countries accepted a lower rate of tax on foreign incomes sourced in their jurisdictions to ensure the inflow of foreign investments. Through the years, there have been examples of treaties that have been misused for capital gains exemptions (India-Mauritius) and which have come to be large sources of financial flows for developing countries only for the reason that they carry such advantages. The removal of exploitation of preferential terms by third parties would require a lengthy renegotiation of treaties and at the same time legal processes of the country in question would have to be resorted to block a scheme using such advantages unfairly. That is, an anti-avoidance rule would have to be in place and would have to be triggered. The shifting in the norms internationally and the inability of courts to 'look through' transactions making it necessary to implement anti-avoidance measures began to gather pace. As GAARs were introduced in many jurisdictions post-BEPS (IMF, 2016).

The BEPS program made significant contributions by devising instruments and approaches such as:

- The minimum standards - avoidance of harmful tax practices (Action 5)
- Prevention of tax treaty abuse (Action 6);
- Improving dispute resolution (Action 14)
- These all helped address BEPS concerns. The Multilateral Instrument (MLI) was a way to address treaty abuse through the adoption of the instrument which would essentially change the preamble of treaties to include the following language:

> *"intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions"*

Articles 6, 7 and 14 of the MLI were mandatory for countries and covered the minimum standards (Actions 6 and 14). However, countries were given the option to adopt a preferred measure for the prevention of treaty abuse. The MLI was a good case in point that countries have a preference concerning measures to curb tax avoidance and that the preferences of developed and developing countries are not aligned. Especially on matters such as the use of arbitration to resolve tax disputes. The ability to opt in and out of the Articles of the MLI was useful in enhancing its credibility.

The shifts in the international tax system are not visible on account of the lack of transparency in data. Country-by-country reporting (CbCR) under action point 13 was another minimum standard. Countries introduced CbCR reporting within their national legislation. The anonymized data for 7600 multinational enterprises provides an opportunity to evaluate the progress on curbing BEPS. Despite such initiatives, the effective tax rates have continued to decline over time from 21.7% in 2017 to 20.2% in 2022, although the statutory tax rates remained stable between 2021 and 2023. Tax incentives for research and development (R&D) are increasingly used to promote business R&D with 33 out of the 38 OECD jurisdictions offering tax relief on R&D expenditures in 2021, compared to 19 in 2000 ("Corporate Tax Statistics", 2023, p. 42). Therefore, even though there have been initiatives to ensure companies do not minimise taxes, the statistics reveal that there are still ways to lower the effective tax rates, even though these may not be acts of aggressive or harmful avoidance per se.

Two pillars and no more for tax architecture

Pillars one and two emerged from the work on tax challenges arising from digitalisation under action point 1 ("Tax Challenges Arising from Digitalisation", 2018). The mandate of action point 1 was to, put simply, make sure that companies do not avoid paying any tax under the pretext that it has no physical presence in the jurisdiction. Simpler approaches such as levying a withholding tax, digital permanent establishment and equalisation levy were put on the table but it seemed no consensus emerged. It is rather curious why consensus was necessary when it had not been reached for many other articles, such as ones that covered fees for technical services which are incorporated in various forms in treaties. This debate opened the floodgates to research work that largely found itself worrying about where and how value is created. The rather sanitised approach of delineating value created by each process led to no conclusion barring how one perceives value could drastically shift the allocation of profits between markets and headquarters.

In the interim, the OECD also popularised the belief that coordinated outcomes are the first best but was seeking some degree of harmonisation when coordination does not necessarily equate to harmonisation. It did so through institutional exceptions of an Inclusive Framework that would allow countries to participate on an 'equal footing' ("OECD/ G20 Inclusive Framework", n.d.). Countries contributed significant time and costs, owing to the need to travel to Paris to negotiate, to find the middle ground.

The key actor in the negotiations was the US and the worry that it may in fact not finally implement the solution encouraged many countries to take unilateral action, i.e. implement digital services taxes. In the process, a complex proposal is still a work in progress. Pillar one seeks to reallocate 25% of the profits in excess of 10% of the business to markets on the basis of criteria for determining taxable presence or nexus in the markets. That is, companies do not operate without paying taxes, simply because key profit-making operations such as hosting services or use of intellectual property are not executed through low-tax jurisdictions to markets such as India. This would require harmonisation of the tax base, accounting and the creation of a supranational body for the resolution of disputes arising from the allocation of profits. All of these matter for developing countries' sovereignty. The African Tax Administration Forum (ATAF) has raised many such concerns. For example, in ATAF's view, "Amount A will only lead to a very limited reallocation of profits to African countries and will not redress the current imbalance in the allocation of taxing rights between residence and source countries, which is to the detriment of source countries where most African countries fall." They also expressed concerns about the mandatory dispute resolution ("What Does this Mean for Africa", 2023).

The minimum tax provides countries in which headquarters are based the right to tax profits in any jurisdiction that are taxed below an effective rate of 15%. While countries think the rate prescribed as the floor is too low, the imposition of such tax can lead to disputes under bilateral investment treaties and impinge upon the sovereign right to tax, albeit the substance-based carve-outs (Tandon, 2022, p. 923-35). That is, incentives can be extended to the extent some employees or tangible assets are located in the country, defined as a percentage of the costs and carrying value respectively. The revenue gains are also estimated to be limited from pillar one as compared to domestic measures and concentrated in the proverbial North for pillar two (Rao & Tandon, 2022; Tandon, 2022, p. 923-35). In fact, it would be much simpler for countries to adopt a digital services tax and convert these into taxes that are creditable.

Revolution and Reform

The world is often described rather simplistically as a group of developing and developed countries. But in fact, the truth is far more complicated. The set of solutions that have been devised is not quite agreeable to all, as the deadline for the signing of the multilateral convention is pushed forward. The history of international tax law shows that there are dual if not multiple standards that co-exist. The one that finds favour among the majority is more widely accepted as the standard. Then there is the equal significance of domestic legal practices. The UN convention, though similar to OECD's in many ways, has coexisted, but it is the need for countries to agree on a single standard that emerges as a thorny issue. There is a tussle between the OECD and UN and it is not as if the latter is a perfect solution, but there is however a need to accord the state the space to determine its sovereign right to tax.

As the distinction between developing and developed countries becomes fuzzy, demands will be placed on the international community to accept new standards. However, as mentioned before, not all developing countries are similar and would seek the same outcomes from the process or have similar agendas. We cannot overlook the learnings from OECD's approach under BEPS that even developed countries, whose interests it represents, support solutions when there are options accounting for differences in preferences and that a least common denominator may be necessary to achieve consensus. The recent vote at the UN where Nigeria's proposal was taken up and was voted against by developed countries including the UK, US and EU reflects there is a preference for OECD as the caretaker of standards among a small group of countries while developing countries seek adequate representation, which may not be the case for the Inclusive Framework (Mansour, 2023). An important takeaway from the vote is that the world demands more transparency in negotiations, but whether these are fully attainable is another question altogether. There is also the need for standards that account for the contribution of market jurisdictions better as has been expressed for the allocation rule under Pillar One. It is quite evident that an exercise in perfection is a compromise and a DST may be much easier to negotiate over than the OECD's solution which will in time complicate domestic tax laws of countries that will be fractured by the thresholds /criteria for application. This decision at a time when India backed the inclusion of the African Union in the G20 and there has been an overall demand for reform of international financial architecture ("G20 New Delhi Leaders' Declaration", 2023). This marks the shift of power balances among countries as more developing countries can secure representation. Whether these new balances will create a new world order remains to be seen.

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Multilateral Development Banks at Crossroads: Does the Summers-Singh Report Provide the Right Direction?

Subhash Chandra Garg

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The International Expert Group (IEG), set up by the G-20 Indian Presidency and co-convened under Larry Summers-N.K. Singh (Summers-Singh), presented their final Report on 9 October 2023, titled "Triple Agenda- a Roadmap for Better, Bolder & Bigger MDBs". The Report made 30 recommendations for dealing with, what they dramatically term, the "world on fire, literally and figuratively". In their view, the present "is a uniquely challenging moment" as the "global economy is fracturing, growth is decelerating, and trust is eroding".

Summers-Singh believes that the "world on fire requires the multilateral development banks (MDBs) to be at centre stage in creating an effective response and bringing diverse actors to support a shared agenda of transformative development". They believe that the "MDBs have a distinctive comparative advantage in playing a catalytic role in fostering government and private sector investments" and "they are long-term partners who" "have a long history of working with countries and bringing all stakeholders together in a cooperative framework".

Summers-Singh's diagnosis, examined at a deeper level, is quite facile. Is the world on fire only now? Are the MDBs, created during the 1940s to meet different kinds of challenges, fit for meeting growth & development challenges the world faces today?

World Today Has A Different Set of Challenges

The world today is by no means more dangerous, poor and hopeless than it was in 1945 when the first MDB - the International Bank for Reconstruction & Development (IBRD) - was created for the reconstruction of millions of homes and infrastructure destroyed during World War II. Suffering and infrastructural damage in Ukraine and Gaza which the ongoing conflicts are causing are painful but in no way comparable to the gigantic losses of World War II inferno.

In the 1950s and 1960s, as long-colonised countries in Asia and Africa came out of the clutches of their exploiting occupiers, the world faced another big, though different, development challenge. In response, the IBRD transformed into the World Bank with the establishment of the International Development Association (IDA). The World Bank and other newly established MDBs in Asia and Africa - ADB & AfDB - took on the challenge of eradicating extreme poverty in more than 80% of the world - the low-income countries (LICs) - with their vast population being poor to the bone with average life expectancy only in the 30s and 40s.

The MDB model, with capital contributions from industrialised high-income countries (HICs) and loans raised at the cheapest AAA ratings via private finance, proved quite successful. By the early 21st century, the developing and borrowing countries, having gained enough experience in the game of development financing, could set up borrowers-led MDBs - New Development Bank (NDB) and Asian Infrastructure Investment Bank (AIIB).

The development and poverty elimination challenge today is far less intense with only 26 out of 189 World Bank member countries (less than 15%) classified as LICs. Less than 10% of all people are living in extreme poverty now and average life expectancy has risen above 73. In addition, agriculture, industrial development, and transportation development - principal investment challenges of the 20th century - are no longer the worry of MDBs as they have been achieved substantially and replaced by private capital.

One big new challenge, however, has emerged in the last three decades - the challenge of climate change and pollution which is seriously impacting the survival of the planet and the quality of life of all living beings. Excessive and imprudent use of fossil fuels, an inability to manage waste and pollutants and inappropriate agriculture, transportation, construction and consumption have brought the world to a stage where it is gasping for clean air to breathe and clean water to sustain life. To some extent, the development of physical and digital infrastructure and improvement in the human development index, most prominently in Africa, also remains an unfinished agenda.

Summers-Singh Recommendations for Better and Bolder MDBs Offer No Real Light

Summers-Singh do talk about an alternative path for unlocking key investments in emerging markets and developing economies (EMDEs) and to radically reduce the risks and seize the opportunity for sustainable, resilient, and inclusive growth for all. They have made 30 recommendations grouped in five headings, which curiously have a 'should' inserted prominently in each of the 'policy recommendations' which make them sound more like 'exhortations or advice' in place of real policy prescriptions.

The first three groups, 13 recommendations which target the idea of 'better MDBs', are quite inane. These recommendations are procedural in nature and don't even suggest any real change in existing policies and institutional arrangements. Sample some of the recommendations in the first group - MDBs should convert their operating models to co-create multi-year programs for transformative change; MDBs should focus their client support on the highest priority SDG and GPG sectors or themes; and so on.

They also offer considerable advice for country envelops - external financing gaps should be estimated for each EMDE within an envelope averaging 3% of GDP in 2030; MDBs should triple the pipeline of bankable projects; MDBs should channel at least 50% of incremental lending activity through country and regional platforms; and so on. None of these 'recommendations' is a new idea or solution to the MDBs' current existential problems.

Summers-Singh offers more painful advisories for dealing with operational matters. The MDBs should streamline and simplify their business processes to at least halve the processing time from concept note to first disbursement; MDBs should harmonize and aim to mutually recognize their safeguards, reporting requirements etc.; MDBs should accelerate the use of "country systems" aiming to channel operations through them in at least 50% of country clients by 2030; and so on. It is a hard task to locate any advice/suggestion which has not been offered by numerous internal and external groups in the last 10 years.

There is nothing new in the next 8 recommendations in the 'bolder MDBs' group either. The notion of 'bolder MDBs' for Summers-Singh is to persuade MDBs to work with the private sector and use guarantee instruments. They want the MDBs to increase total private resource mobilization from $60 billion currently to $240 billion by 2030. They believe that MDBs can do it through higher mobilization by their private lending arms like IFC and using 'catalytic agencies' like the Climate Investment Funds (CIFs). They want MDBs to make greater use of guarantees, amongst others, by creating appropriate incentive structures, setting performance targets for staff and management, standardizing guarantee contracts and bringing IBRD/IDA and MIGA guarantees under one management. They piously hope the guarantees will account for 25% of MDBs' portfolio by the 2030s. They also advise the MDBs to reinforce the "cascade principle", put forth in 2016 first, to segregate financing between the private sector and MDBs. None of these ideas has really worked on a scale so far. The 'bolder' stuff is only 'old wine in old bottles'.

Tripling Lending to Become Bigger Will Remain A Damp Squib

The last capital increase in the World Bank & IFC in 2018 was meant to make it a bigger bank. Summers-Singh wants to press the capital pedal in their next 8 recommendations to create "bigger MDBs". To make MDBs bigger, they recommend that the MDBs should triple their non-concessional lending to $300 billion and concessional funding to $90 billion per year by 2030. They want MDBs to expand concessional finance for middle-income countries (MICs), including concessional grants for non-IDA-eligible MICs to at least $15 billion, to accelerate investments in global public goods (GPGs) and to manage large natural disasters. They also advise MDBs to pilot their mainstream portfolio guarantee and hybrid capital structures to boost lending capacity by an additional $40 billion per year.

There are two major issues here. If the MDBs were to provide concessional finance, including grants, for investment in GPGs, who would pay for MDBs' loss of income from such financing? If concessional resources are to be provided by IDA, will IDA resources for poor countries not shrink? The other issue relates to the recipients. If their borrowing is to serve the cause of GPGs and not benefit them fully and directly, why would any MIC borrow for such investments?

To raise the lending levels to $300 billion a year, the MDBs would need more capital. Summers-Singh offers no new ideas for raising capital. They stop at advising the MDBs to aggressively pursue efforts at balance sheet optimization and enhancing the efficiency of the use of existing capital to generate an incremental lending headroom of at least $40 billion per year. The capital negotiations have been the hardest ones, which have become harder due to the open conflict between the two largest shareholders - the US and China. They have conveniently left it to the individual MDB to take an appropriate call in this regard.

Summers-Singh talked about a new funding mechanism - Global Challenges Funding Mechanism (GCFM) - in Volume I of their Report and promised to unveil it in Volume II. From the toned-down version which appears in Volume II, it seems they could not generate any enthusiasm for GCFM. In their recommendations, Summers-Singh wants the willing MDB(s) to establish GCFM to target institutional investors and other private investors who seek a vehicle to earn a financial return while also supporting SDGs, GPGs and other social impact areas to leverage financing through such a mechanism by at least $20 billion per year by 2030. There are no details or clarity about GCFM. What kind of financial return will the institutional and private investors be allowed to accrue? If closer to-market return is offered to such investors/lenders, what is the point of establishing this additional facility? If MDBs offer near-zero return, there is unlikely to be any interest. Should the facility offer returns in between? The MDBs can debate this issue forever like they did for the insurance mechanism for funding global health disasters.

What is the Solution?

The right solution depends on the right identification of the problem to be solved.

There are three basic development challenges today - solving the climate change and pollution problem by achieving net negative carbon and pollutant emissions, building physical, digital and environmental infrastructure in the developing world, especially in Africa, and investing in human development for the world of tomorrow.

The climate and pollution challenge, to a significant extent, is a problem of commons - a global and local public good. The world needs massive investment in science, technology and public infrastructure enterprises to take care of it. The world needs to collectively infuse common resources to invest in these GPGs while the national and local governments also raise their game in making these investments. Like what the world did to establish institutions under the umbrella of the Consultative Group on International Agricultural Research (CGIAR), the world needs to set up 100% grant-funded climate and pollution science and technology development financing institutions to invest in basic science, development of foundational technologies and buying out all production at cost-plus during the development stage. Let the industrialised rich countries, which are responsible for more than three-fourths of carbon in the environment, take the lead and establish this global organisation, with research and development stations spread all over the world to find global and local solutions. It will make a whole lot of sense to transfer all the equity invested in the IBRD and some other non-concessional MDBs like ADB to this global climate and pollution facility.

The IDA provides the right platform for investment in infrastructure and human resource development. It is high time AfDB is converted into an essentially grant-providing institution and merged into IDA to focus on infrastructure and human development in the LICs with large-scale investment in Africa. The borrowers-led MDBs - AIIB & NDB (also IADB by converting it into a borrowers-led MDB) - provide non-concessional finance for infrastructure and other commercially viable investments. The world requires such fundamentally restructured MDBs to solve the developmental challenges of today, not the empty advisories offered by Summers-Singh.

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Agricultural Intellectual Property Rights in Trade Rules and Investment Treaties

Shalini Bhutani

Shalini is an independent legal researcher and policy analyst based in Delhi and has done extensive work on the impacts of Free Trade Agreements, tracking how trade rules interface with agriculture and biodiversity in the Asian region. She is well known for the Forum Against Free Trade Agreements, which is a network of India's civil society organizations, trade unions and peoples' movements that work together to highlight people's concerns on Free Trade Agreements (FTAs)

The scope of investment in investment treaties and trade rules has been expanding, as have been intellectual property rights (IPRs). Even in the model bilateral investment treaty (BIT) developed by India (DEA, 2015), 'investment' is defined not only as an enterprise in brick and mortar but also its assets, which include shares, stocks and intellectual property (IP). Now, more than before, both investment and IPRs are spoken of in the same sentence in knowledge-driven areas such as agriculture.

IPRs in the agriculture sector have been controversial from the time they were first multilateralised through the trade rules of the World Trade Organisation (WTO). IP in agrifood systems can take the form of patents, plant breeder rights (PBRs)/plant variety protection (PVP), geographical indications (GIs) or trademarks (TMs). This article limits itself to issues around PBRs/PVP regarding the specific national law in India – the Protection of Plant Varieties and Farmers' Rights Act (PPV&FRA), 2001. The nature and extent of rights granted to an IPR holder depend on the domestic legislation. Given the importance of knowledge-sharing and sharing of planting material in farmer-managed seed systems, it is critical for countries to be able to retain domestic policy space to design their domestic law and policies on farmer innovation and its protection. Trade rules and investment treaties should not prescribe that.

Global Trade Rules

The WTO came into being in 1995 after 123 negotiating countries signed it into force. This is the global forum where international trade rules are made. The WTO today has 168 member countries (WTO, 2024), and most of them are developing countries. India also became an original member of the WTO from its entry into force on 1 January 1995.

The legal texts of WTO comprise about 60 documents. Apart from the umbrella agreement establishing the WTO as a body, there are documents on three broad areas of trade-in goods, services and IP. The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was the first attempt to make IPRs the norm across the globe in all fields of technology. In other words, WTO prescribed that all innovation ought to be protected by IPRs. The standard imposed was that of IPRs as they are applied in the developed world, particularly in the USA and the European Union (EU). However, this normativity was questioned and intensely debated even in the Uruguay Round of trade talks that led to the finalization of TRIPS.

The idea of IPRs on plants continues to be challenged by peasant communities at the centre of agriculture in developing countries. The global south seeks to assert the flexibility available to developing countries and LDCs within the WTO framework, which gives them some space to design their domestic IPR laws and policies as per their developmental needs as well as their socio-cultural and political realities. For that reason, even today, the majority of developing countries do not grant patents on planting material in their domestic legislation.

Utilising the WTO flexibilities, India's PPV&FRA recognises farmers as breeders and also recognises their freedom to save, share and reuse seeds, something that is not possible if and when plants and seeds are patented. These seed freedoms are also not possible with a stricter form of PBRs that are prescribed by another European-born international convention called UPOV. The International Union for the Protection of New Varieties of Plants (UPOV) favours corporate breeders giving little to no space for farmers' seed freedoms.

Smallholder farmers, who are the original producers of seeds known to diverse agricultures, do not regard seeds as private property. Propertising seeds, genetic traits, and planting materials through IPRs such as patents or PBRs/PVP is seen by many as problematic. It is also argued by some that such IPRs are deeply disrespectful of the shared knowledge of women as seed keepers and stewards of agrobiodiversity. It also ignores that the very basis of farmer-managed seed systems is the continued sharing of seeds and their related knowledge. Given that there is no consensus on the issue of IPRs and their relevance in the seed sector amongst countries in the WTO, the implementation and enforcement of IPRs have not progressed in WTO to the extent that developed countries wanted. This explains the moves to push for 'WTO-plus' IPRs at other venues of rulemaking at a bilateral level on trade and investment.

The important fact to recall here is that while the WTO has a full-fledged agreement on IPRs – TRIPS – it does not have an agreement on investment. There was an attempt by OECD countries to negotiate a proposed Multilateral Agreement on Investment (MAI) in the late 1990s. The attempt had failed. Another attempt emerged in 2023 at the WTO, with select countries asking for an agreement on Investment Facilitation for Development (IFD). Negotiations on a future IFD agreement began in December 2017 with the support of 70 member countries, and the text negotiations were concluded in July 2023.

India has taken a good position in strongly objecting to this move. The Joint Statement Initiative (JSI) route is an 'illegal process' taken to propose investment negotiations in violation of the WTO framework and fundamental rule of consensus-based decision-making for starting a negotiation (WTO, 2023).

Demands for IPRs regularly appear in new and emerging trade rules and investment treaties outside the WTO framework. The demands come from large multinational corporations (MNCs) that seek to collect rent for their proprietary seed technologies through an IPR system. The formal seed industry located in an agro-industrial model argues that IPRs are important both for innovation and investment in the sector. This did not change in 2023.

What is the international peasant movement – La Via Campesina (LVC) – saying on international developments around seeds? Its key benchmark is the possibility of seed sovereignty for peasant communities with seed diversity in their farms and fields. The international document they turn to is the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). It is the fifth anniversary of the adoption of the UNDROP by the UN General Assembly on 17 December 2018. At its fourth anniversary, LVC reiterated the need for governments to take urgent steps towards its widespread adoption and implementation (LVC, 2022). Calling out FTAs, they articulate the alternative in building a framework for International Trade based on Food Sovereignty (LVC, 2023).

Bilateral Talks

In 2023, apart from the WTO, there have been several notable negotiations on trade rules and investment treaties wherein the issue of IPRs surfaced. But while it has been a hectic time with several such bilateral talks, no new agreements were signed by India last year (Jagota, 2023).

In January 2023, the commencement of the India-Australia Economic Cooperation and Trade Agreement (ECTA) with effect from 29 December 2022, was marked (PIB, 2023a).

Over 85 per cent of Australian goods exports to India are now tariff-free. Entry into force in 2023 means Australian exporters benefitted from two tariff cuts in quick succession. The first cut took place on 29 December 2022 and the second on 1 January 2023.

This initial ECTA does not have a chapter on IP (Full text on the DAFT website). However, both governments wish to negotiate a Comprehensive Economic Cooperation Agreement (CECA) as a next step. The CECA will have a chapter on IP. The Department for Promotion of Industry and Internal Trade (DPIIT) of the Ministry for Commerce and Industry (MoCI) has already sought input from domestic players on IPR issues in that context (PTI, 2022).
It can be expected that Australia would seek IP protection for its agricultural goods and wines. Currently, under India's GI Act (legislated in 1999 in compliance with the WTO TRIPS) only some wines, meats and cheeses from the EU, UK and USA, such as Champagne from France and Napa Valley wine from California have been granted GIs. Australian wine producers are looking to expand their markets in India, more so after China imposed punitive tariffs on Australian wines. So, there will be more competition from Australian wine producers for Indian wineries and grape growers. Many products such as milk and other dairy products, wheat, sugar, apples and walnuts have so far been kept in India's Exclusion List to protect "sensitive sectors" in agriculture.

The 13th Ministerial-level meeting of India – United States Trade Policy Forum (TPF) was held in Washington, DC, on January 11, 2023 (PIB, 2023b). The Ministers welcomed continued engagement on intellectual property (IP) and reiterated that the protection and enforcement of IP contributes to the promotion of innovation as well as bilateral trade and investment in IP-intensive industries.

In June 2022, the European Union (EU) relaunched negotiations with India for bilateral agreements on trade and investment. The negotiations resumed after a gap of nine years (PIB, 2023). Unlike the bilateral trade and investment agreement (BTIA) proposed earlier, what is on the table is a Free Trade Agreement (FTA), and separate negotiations for an Investment Protection Agreement (IPA) and an Agreement on Geographical Indications (GIs).

As reported by the European Commission on the official site of the EU (2022-2023), from July to October 2023, 6 rounds of talks were held. A High-Level Dialogue on Trade and Investment was also held in New Delhi in August 2023. But up until the 6th Round of talks in October 2023 in Brussels, in two areas – services and investment, as well as IP, there was no agreement.

In the proposal made by the EU in 2022 (EU 2022), with respect to plant varieties, the EU specifically asks for compliance with the old European standard of PVP, which is the UPOV Convention. This made-in-Europe UPOV is administered through an intergovernmental organisation with headquarters in Geneva (Switzerland). As of the end of 2023, there are only 78 member countries of UPOV (UPOV, 2023); notably, India is not a part of it. India has consistently held that its domestic law on PVP – the PPVFRA, is WTO-TRIPS compliant.

The EU demand on IPRs in agriculture is also echoed by the EFTA in its talks for a Trade and Economic Partnership (TEPA) with India (Magazine, 2023). This is not surprising. The European Free Trade Association (EFTA) is a regional trade organization and the free trade area of four European states: Iceland, Liechtenstein, Norway and Switzerland. Many major seed MNCs (such as Syngenta) are based in Switzerland. For them, UPOV-like PVP for planting material is a must-have in FTAs. During a visit to New Delhi in December 2023 with the hope that the TEPA would be finalised before the Indian general elections in 2024, the visiting trade ministers of Norway and Switzerland both remarked that IPRs remained a matter to be resolved (Haidar, 2023).

Ever since 'Brexit', the United Kingdom (UK) has been keen to have a trade agreement with India. While the enthusiasm is matched by the Indian side, market access for its agricultural products remains an area of concern for India. The UK thus far has not made aggressive demands on IPR with respect to agriculture. This is also explained by the fact that it is not so much an exporter of seeds or planting materials to India, as much as an importer of Indian seeds to the UK.

The year 2023 is marked most by India's Presidency of the G20. The 18th G20 Summit held on 9-10 September 2023 resulted in a New Delhi Leaders Declaration, which among other things seeks to '(f)facilitate investments including Foreign Direct Investments (FDIs) towards sustainable business models.

Apart from the inter-country trade and investment talks, it is also important to note the developments within India in 2023 in the seed sector. The Government of India has established Bharatiya Beej Sahakari Samiti Ltd (BBSSL) to increase the production and distribution of seeds in the country. The BBSSL also aspires to tap into the growing global seed market (HBL, 2023). Currently, India's share in the global seed market is less than 1 per cent.

Conclusion

India is keen to engage in a new generation of bilateral trade and investment agreements with the developed world. It is also aspiring to increase its seed exports globally. Given that India is such an important country in the global seed scape, the positions it takes on IPR on seed and planting materials will also be exported along with its genetic materials moving across borders. Retaining space for its farmers, and their innovations on new plant varieties and seeds emanating from them will remain increasingly relevant from the perspective of nutritional security and climate resilience.

Equally important is the fact that trade rules and investment treaties need to support sustainable development and human rights through the inculcation of gender sensitivity. This requires recognising and respecting women's seed knowledge. It requires looking at new ways to support grassroots innovation other than through IPRs, which allow for the free exchange of seed and planting materials and encourage the seed knowledge of local communities.

The changing legal and economic landscapes towards 'WTO-plus' IPRs in trade rules and investment treaties need to be reviewed for their implications for the future of seed diversity and seed systems that are premised not on property rights, but on shared biocultural heritage.

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