

## MONTERREY 'CONSENSUS' SEALS DEVELOPING COUNTRY EXPECTATIONS

*'Consensus' is such a tricky word, especially in international processes where they are forged amidst governmental positions poles apart. More than one and a half months before the Conference on Financing for Development (18-22 March, Monterrey, Mexico), a 'consensus' document was achieved. An analysis of this 'consensus' is presented in the following article by Chandrakant Patel of SEATINI (South Eastern African Trade Information and Negotiations Institute based in Harare). He suggests it is a setback for developing countries' efforts to assert the primacy of the United Nations in promoting development co-operation and setting the development agenda. Equally damaging has been the setback to the cause of systemic reform and progress towards attainment of the Millennium goals, the author adds.*

Next week, a United Nations Conference on Financing for Development (FfD) takes place in Monterrey, Mexico. The Conference is expected to approve a declaration, predictably christened the Monterrey Consensus, that was finalised late January in New York by a Preparatory Committee. The organisers of the meeting anticipate participation by Heads of States, Ministers of Finance and of Foreign Affairs. In order to ensure such participation, the UN Secretary General had designated, as his Special Envoys, Mr. Michel Camdessus formerly of the IMF and Mr. Trevor Manuel, Minister of Finance of South Africa. But since the Monterrey Consensus has already been adopted in New York, many are now asking, what value their presence will add to the event? Not surprisingly, the initiative has been condemned by NGOs as "callous" and "a ringing endorsement of the market-friendly orthodoxy".

After four years of meetings involving Governments, the civil society, business, and international organisations, does the consensus document measure up to the expectations of developing countries, the demandeurs of the Conference? It may be recalled that the launch of the FfD process under the umbrella of the UN General Assembly was possible in large part as a fall-out of the financial and development crisis that engulfed East Asia beginning mid-1997. The spread of the crisis to other regions and to the

financial sector of developed countries (the near-collapse of one the largest US hedge funds-the Long Term Capital Management - in 1978 being a prominent case in point) helped convince the official financial establishment that a review of the global financial architecture was overdue. At the time, President Clinton went so far as to suggest that the crisis was "the greatest financial challenge facing the world in the last 50 years."

The agreement to initiate discussions in the United Nations in 1997/8 was seen in some quarters as the possible launch of a process leading at some point to a reform of the financial and monetary systems. In a report to the Preparatory meeting of the Conference the Secretary General of the United Nations had stated, "The opportunity for a detailed discussion in the United Nations is a historic one." Even if such optimism was misplaced, given the gridlock the G-7 exercises over the management of the global economy and its institutions, it was nevertheless believed that involvement of the General Assembly in the consideration of systemic issues and those of global governance was an important precedent. If it succeeded, it would acknowledge the United Nations as *primus inter pares* and the most democratic and transparent of the global institutions.

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Against this background, the Co-chairman of the PrepCom, Ambassador Shamshad Khan of Pakistan has lauded the outcome — the Monterrey Consensus — as being “...one of the rarest of PrepComs that could accomplish its task with consensus.” Setting aside the hyperbole characteristic of such occasions, an analysis of the content of this ‘consensus’ suggests a setback for developing countries’ efforts to assert the primacy of the United Nations in promoting development co-operation and setting the development agenda. Equally damaging has been the setback to the cause of systemic reform and progress towards attainment of the Millennium goals. The document prepared for the Conference contains 64 paragraphs over 14 pages of text and covers six substantive subjects: domestic resources, private flows, official flows, international trade, debt and systemic issues. A final section titled “Staying Engaged” deals with the follow-up process.

A close reading of the text suggests that a very large number of the 64 paragraphs are either hortatory, or homilies about good housekeeping or best endeavour promises. At the same time, however, the text taken as a whole unmistakably advocates a neo-liberal model of development long promoted by Washington-based bodies and now, it seems, by the United Nations as well. This, the New York-Washington consensus, represents a damaging surrender by the United Nations to the dictates of the current, dominant ideology.

During the negotiations, developing countries attempted — with varying degrees of success — to limit the damage by rejecting many of the more egregious positions advanced by developed countries. In the area of international trade, for example, the European Union attempted to inject language supportive of its position on the four

Singapore issues in the text, an effort that was thwarted by the Group of 77 and condemned as “reprehensible” by the African NGO caucus. However, with the support of the Conference Bureau, the developed countries have succeeded in promoting their agenda and in refusing to negotiate the many proposals put forward by the Group of 77 and the NGO Caucus.

If the so-called consensus outcome in New York was not of the order of the *coup de grace* delivered in Doha, at least in form, orientation and implications for development, it comes fairly close to the Doha outcome. Several factors made the task of engineering the outcome easier and to the liking of developed countries. In the first place, the negotiations were based on a framework pre-set by a report of the Secretary General of the United Nations last year (A/AC.257/12). In making a large number of recommendations on issues before the PrepCom, the Secretary General’s report delineated the PrepCom’s work and consequently prejudged the outcome. Instead of being driven by member states and especially the demandeurs of the Conference, the process and the product were both hijacked *ab initio* by a report whose content was largely designed by the staff of the Bretton Woods institutions and the WTO. Secondly, in asking the former President Zedillo of Mexico to head a panel of distinguished experts and prepare a report for the Conference, the Secretary General perhaps unintentionally succeeded in dividing the Group of 77: the Zedillo report went even beyond the much criticised report of the UN Secretary General in support of the neo-liberal model. The Zedillo report was soon followed at the end of the year by a draft negotiating text (A/AC.257/32 of 7 December) prepared by a Facilitator at the request of the Bureau and which now, with relatively minor changes,

has emerged as the Monterrey Consensus.

The adoption of a Declaration weeks before the Conference was also due to pressure tactics employed by the Bureau of the Conference and the United States, in particular. It was conveyed to third world delegates in unmistakable terms that if the PrepCom did not adopt a clean consensus text in January, some of the Heads of States, notably the US President would not participate. Whether the threats had the desired effect or not will never be known with any certainty; the contrived nature of the text suggests, however, that key negotiators were indeed pressurised. African NGOs, on the other hand, have raised the question whether it is useful for their Heads of States to attend a Conference whose outcome has been pre-determined by the organisers from the very start of the process.

The following summarises the main elements of the consensus document:

- On **domestic resource mobilisation** (paragraphs 7-17), despite developing countries’ doubts about the role and value of an international conference on finance to promote domestic resource mobilisation, the Monterrey document makes detailed proposals on matters almost entirely concerned with national policies. The text covers by now the familiar set of prescriptions on governance (“..essential for sustainable development”), corruption (“a priority”), good housekeeping (“..will pursue appropriate policy and regulatory framework”), pursuit of “sound macroeconomic policies...” together with homilies on micro finance and micro credit, credit for small and medium-size enterprises, mortgage finance, development banks etc.

- The section on **mobilising private international resources** for development (paragraphs 18-22) makes the orthodox case for promoting FDI and refers to it as “a vital complement to national and international development efforts”. It places the onus of attracting such flows almost entirely on recipients by urging them to continue “efforts to achieve a transparent, stable and predictable investment climate.” To achieve such goals, the document promises more technical assistance and support for capacity building. Nowhere does the text acknowledge the possible negative consequences of FDI on employment, balance of payments, income distribution or the environment.

- In section three dealing with **international trade** (paragraphs 23-31) the heading titled “International trade as an engine for development” betrays the ideology of the paragraphs that follow. The case for trade liberalisation is advocated without acknowledging possible consequences of such a process on domestic industries and national development strategies. The text welcomes “the WTO’s decisions to place the needs and interests of developing countries at the heart of the WTO Work Programme...” Gratuitous references to WTO in the text are unlikely to assuage the concerns of many developing countries that increasingly view its decisions and processes as severely circumscribing their development options.

- In an environment of falling **ODA** and projected to continue to decline even further over the foreseeable future, the Consensus text (paragraphs 32-40) largely restates the non-binding and best endeavour commitments contained in texts such as the LDCs Brussels Conference. Much of the negotiating effort in this area was devoted to persuading developed countries to

make good on the commitments they had made at the highest level in the Millennium General Assembly to halve poverty and hunger by 2015. In support of this, the UN and the World Bank secretariats have conjured up a sum of \$50 billion per year to cover the additional resources required for achieving the 2015 Millennium goals. This target, which has been strongly advocated by the Secretary General, conveniently corresponds to half the ODA target of 0.7 per cent. The US’s refusal to accept this or any other target gives this section of the document a surreal character as it “...*underline the importance of undertaking to examine the means and time frames for achieving the targets and goals.*”

- Perhaps the most contentious issue before the PrepCom was that of **debt** and its treatment in the text drafted by the Facilitator. This was one area where many developing countries and NGOs believed that some progress was possible. In the event, the text fully endorses the discredited HIPC approach and calls for poorer developing countries instead to “take the policy measures necessary to become eligible for the Initiative”. As regards arrangements for debt reorganisation, opposition from the major developed countries and some middle-income developing countries meant that the text remains silent on new and innovative arrangements for debt reorganisation. Proposals put forward for sometime now by UNCTAD on debt standstill and related institutional/procedural innovations are widely supported by developing countries and NGOs but were not acknowledged in the consensus text. The intentions of the creditors to continue to exercise a tight leash over debtor countries is nowhere clearer than in the text which states that debt relief be pursued “vigorously and expeditiously including within the Paris and London Clubs and other relevant fora.”

- Regarding systemic issues (paragraphs 46-59) it became clear from the start of the FfD process that developed countries would not entertain a substantive consideration of systemic issues and issues of reform. Since the breakdown of the par value system in 1971 and the series of ad hoc adjustments to the IMF’s Articles designed to ex-post rationalise the collapse of the Bretton Woods system, no coherent effort has been attempted towards a reform of the system. For many developing countries, the main rationale for going through the FfD process was the prospect, however remote, of some progress towards systemic reform. The East Asia experiences and the havoc wrecked by unfettered capital flows, IMF policies and functioning of the exchange rate system/non-system on their development now appear to be a matter of history. The unravelling of the *IMPI* Argentina model at the very time the PrepCom was meeting failed to elicit any concern among developed countries. The policy of blaming victims for their problems now appears to have been sanctioned by the Monterrey Consensus. A related message of this section appears to be, if it isn’t broke don’t fix it. Notwithstanding the unsubstantiated claim in paragraph 47 that “Important international efforts are underway to reform the international financial architecture”, none of the issues of concern to developing countries including decision making, review of IMP quotas, provision of increased unconditional liquidity, reform of IMF’s facilities, SDR allocation and the IMP/World Bank conditionalities are meaningfully addressed. The result is a document that gives a United Nations imprimatur to the policies of the Bretton Woods institutions, encouraging them to continue to do more of the same.

- The final section “**Staying Engaged**” (paragraphs 60-64) con-

tains recommendations concerning a follow-up to the FfD process. The intention of this section is to provide room for the United Nations to continue to play the role of *primus-inter-pares* in setting the development agenda. In presuming to keep the dialogue on track at the United Nations it is reluctantly, acknowledged by the New York based officials and delegations that a second-best solution may be preferable to one that closes the door for a role by the United Nations General Assembly. The tortuous arrangements proposed for follow-up, built *“upon the successful experience of the Conference and the process leading up to it.”* (paragraph 61) include the usual strictures on coherence, co-ordination and interactions between the General Assembly ECOSOC, WTO, World Bank, and the IMF. This

effort is now expected to be supported by new reports and reporting arrangements as well as the provision of “effective secretariat support”. By 2005, a new International Conference is “to review the implementation of the Monterrey Consensus”. Since there is no binding or a firm commitment in the entire document, the question arises: exactly what will a new International Conference do?

As regards arrangements at Monterrey, it has been decided that the meeting will have 12 roundtables over the five official working days of the Conference covering three themes: ‘Partnerships in Development’, ‘Coherence on Development’ and ‘FfD Looking Forward’. The roundtables, High-Level segments, Ministerial level segments and now Heads of States

level segments appear to follow the now familiar pattern of UN meetings particularly those of UNCTAD and ECOSOC. These encounters and roundtables have become an expensive and often embarrassing ritual promoted by their organisers as re-born North-South dialogue. The Monterrey roundtables are also expected to involve agency heads, prominent and not-so-prominent academics, business representatives, and NGOs.

Irrespective of the levels of participation and indeed of the value of the event, for the host-country organisers the event will be no more than a curtain raiser to the more important business of hosting the next WTO Ministerial meeting.

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## THE MAKING OF DEBT CRISES

*Despite the clamour for write-off of third world debt, which usurps a large chunk of resources that could finance development, the upcoming Monterrey Conference on Financing for Development appears to legitimise the present arrangements. A new South Centre report “The Third World Debt Crisis: A Continuity of Imperialism” by Taimoon Stewart looks at the historical evolution of the debt and argues that the North needs the South in the second and third phases of a ‘growth’ upswing. South markets will be needed to absorb inventories from the excess capacity built up in North markets, she says. Then re-capitalisation of current debts will start. It is critical for South to understand this systemic process and not get caught into another cycle of debt accumulation and debt crisis, the author warns. Following is a summary of findings of the report which originally is to appear under the title “Debt and Resurrection: Prognosis for the Periphery in the Twenty-first Century” (Greenwood Press).*

This analysis is drawn from historical precedents. Historical empirical research shows that there are cycles of expansion and contraction in the world-economy, linked to the emergence of a cluster of new technologies in developed countries. Of significance for the South is that as production increases, and exceeds market capacity in the home markets, these industrialised countries become dependent on receptive markets in developing countries. A tracking of financial flows reveals that loans to developing countries are directly linked to creating demand for goods

and services from the North, and serve the purpose of prolonging the productive life of the economic structure built around the prevailing techno-economic paradigm.

As technologies mature, export credits, aid and bilateral loans to developing countries pay for imports from the industrialised countries, but as the technologies become standardised and the number of producers increase rapidly, supply outstrips demand, and contraction occurs in core markets. Investment in the productive sector dwindles. Rather, money is de-

posited in the banking system. At this point, there are inventories in the North, and excessive liquidity in the financial system. To prevent recession in the North, massive amounts of loans are pressed upon the governments of developing countries, the monies going right back to the North in exchange for goods and services, and supposed “transfer” of near obsolete technologies linked to the production systems.

The South expects that finally they can “catch up” with the North. But the economies of the North

continue to grow only because of the demand for goods and services stimulated by private financial flows to developing countries. Once the markets of the South are exhausted, recession sets in, commodity prices fall dramatically, and the markets in the North upon which the South was dependent to sell the products of the newly acquired technologies disappear behind protective barriers. Contraction in demand leads to a fall in commodity prices. Unable to earn income to service the debt, South countries default and a debt crisis erupts. Long waves of expansion and contraction in the world-economy has occurred every fifty years or so since the industrial revolution in Great Britain, with a debt crisis erupting in the periphery at the beginning of each contraction phase. This pattern recurred four times since 1782, with debt crises erupting in 1825, 1873, 1932 and 1982.

Detailed empirical evidence is provided over the two hundred year period to validate this theory. The research provides evidence to show that in each phase of massive outflow of capital from the North to the South, Northern bankers indulged in high-pressured speculative lending to finance projects which imitated the core's earlier development experience and which naturally led to a demand for goods and services from the core. Employment in the North (of capital goods and labour) was thereby sustained. For instance, during the 1840s and 50s, the British economy revolved around generating goods and services needed for railway construction, but when there was exhaustion of potential for further railway building in Britain and Europe, the British turned their attention to exporting capital to finance railway construction in India, Turkey, Egypt, and Latin American countries. Of course, it was British construction industries, British iron and coal and even British navvies (lower-paid

workers) which built the railways. Though India had iron and coal, no backward linkages to the economy was allowed. All the goods and services were supplied from Britain, thus sustaining economic growth.

Further, the research also shows, empirically, that blatant extortion by Northern bankers through high commission fees and interest rates and other usurious charges occurred prior to each debt crisis. For instance, in 1822, Columbia received only £640,000 of a loan of £2m, as £1.36m was deducted in commission fees and interest for the first two years. Corruption was not limited to the North, though. Political leaders and others in the South joined in the feeding frenzy in each cycle, stealing money from the country's coffers, or receiving huge bribes from the creditors. All in all, the cost of implementing the self same projects was phenomenally higher than that paid in the North when they created the same infrastructure or industry, and for the South, this occurred at a time when markets were shrinking and on the brink of disappearing. A debt crisis was inevitable in the circumstances.

In each cycle, after the eruption of the debt crisis, draconian measures were taken by creditors in debtor countries to ensure debt repayment. In each case, the debtors were blamed for mismanagement and corruption, and "punished". Remarkably, the culpability of the North in precipitating the debt crisis, and the calculated benefits that accrued to the North as a result of the financial outflow to the South is conveniently ignored. The structural problems faced by debtor countries repeated themselves in each crisis, but there is little historical memory.

Creditors set up their Debt Administration Boards in debtor countries, re-shaped their economies to

produce export products so that foreign exchange could be earned, as was the case with Turkey, Egypt, and the Balkan countries. Or, they sat in the customs houses of Central and South American states and took the receipts. In Turkey, taxes were imposed by the Debt Administration Council on fishing, rearing of sheep and cattle, raw silk production, tobacco, salt, petrol, matches, among other things. In other words, the very basic livelihood of the poor was targeted with no mercy.

They grabbed up and passed on to their investors at basement prices, the very projects for which most of the debt was incurred in the first place, that is, the railways in Turkey, Dominican Republic, Costa Rica, El Salvador, and Mexico. In Turkey, they took over the railways, tramways, ports, gas, electrical and water works, all of which were debt incurring projects. So, not only did the North benefit by supplying the goods and services and building the infrastructure, thus prolonging growth in their economies, but they also got the final product at a far reduced price, free from debt.

Millions of acres of land was taken by creditors as part of debt payment. In Paraguay, for instance, 2.5 million acres of public land and forests were ceded to the Corporation of Foreign Bondholders which established the Anglo-Paraguay Land and Cattle Company, and took over the self same railroads and port facilities for which the debt was incurred. So, transport of their products was facilitated at low cost. Meanwhile, Paraguay lost 2.5 million acres of land, and was still left holding some debt. Costa Rica borrowed £3.4m to build a railway system. The contractor who built the railway negotiated a debt settlement in which he got 600,000 acres of public land, one third share of the railway stocks, the rest being sold at a basement price to a

foreign company, £2m in bonds. He formed the United Fruit Company, became America's largest banana producer, and used the railway to transport his crop. The railways were turned over to foreigners in Turkey and Egypt, and indeed, in most of the debtor countries. The current experience of Structural Adjustment Programmes and privatisation to pay debt has its precedent in the experience of debtor economies in the past.

The research shows that debt forgiveness did not occur in the past. Rather, outstanding debts were re-capitalised into new loans with the renewal of capital flows to the periphery during the upswing of the next technological cycle. For instance, in the 1860s, new loans to Latin America absorbed the outstanding loans from the 1820s into new issues. In Eastern Europe, loans accumulated from as far back as 1860s were converted into new issues and outstanding amounts from these were in turn absorbed into new issues in the 1920s. The Turkish debt from the 1860s was re-financed several times and as late as 1943, the debt was being redeemed on a long-term plan.

The re-capitalisation of the old loans into new loans occurred

during the second phase of the upswing when trade with the South markets became essential to continued growth in the North, and in the third phase when obsolete technologies, embedded in capital goods or infrastructure, needed to be diffused to the South to prolong its profit making life in the North by sustaining its production and employment.

However, there was differing treatments of debtors, dependent on their civilisation. Lessons from the past reveal that the Southern American States were able to pay their debt of the 1840s because Britain accepted trade in cotton as a means of payment. Yet, Turkey and Egypt was given no such support, rather, the most draconian measures were administered to them. Interestingly, the Latin Americans were able to default in the 1930s and thus reduce the value of their debts on the secondary market, because control by the creditors was limited given their distraction with the impending war in Europe. Moreover, they were able to trade with Europe, providing war supplies, and using the foreign exchange to buy back their much reduced debts on the secondary market. So, debtors have a greater chance of reducing their debt if the

creditors are less organised, or if they are given the room to resolve the debt problem through fair trade. Indeed, creditors should recall the pain of the 1920s when the US refused to lift tariffs and accept payment of war debts in goods and services. Instead, the US maintained a trade surplus, extracted debt repayment, with dire consequences for the world financial system.

In the current debt crisis, bailouts have been available only to debtors whose default could destabilise the financial system. However, the most important lesson, of immediate significance, is that the North needs the South in the second and third phases of a growth upswing. We are currently in the first phase, and within some three to four years, South markets will be needed to absorb inventories from the excess capacity built up in North markets. Then re-capitalisation strategies will surface. It is critical for South countries to understand this systemic process and not get caught into another cycle of debt accumulation and debt crisis. Moreover, they should negotiate the debt-trade trade-off in the next few years from a position of strength, not weakness, because the North needs their markets.

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## IS WORLD BANK STARTING TO UNDERSTAND GROWTH?

*The following analysis of a recent World Bank report has been written by Dani Rodrik, professor of political economy at the John F. Kennedy School of Government at Harvard University. Prof. Rodrik contributed this piece last month to the Straits Times, Malaysia.*

At first sight, the World Bank's newest report on globalisation contains few surprises. It repeats the mantra that the countries that went farther down the path of globalisation became the ones with the greatest success in economic growth and poverty reduction.

However, buried within the pages of the report is a startling

admission: Countries that integrated into the world economy most rapidly were not necessarily those that adopted the most pro-trade policies.

Think about this. For the first time, the World Bank acknowledges that trade liberalisation may not be an effective instrument, not only for stimulating growth, but even for

integration in world markets.

It is admitting that its repeated assertions about the benefits of globalisation do not carry direct implications for how trade policy should be conducted in developing countries.

Rapid integration into global markets is a consequence, not of

trade liberalisation or adherence to World Trade Organisation strictures per se, but of successful growth strategies with often highly idiosyncratic characteristics.

Consider China and India, the two growth miracles of the last 20 years, as well as the leading exemplars of what the World Bank calls 'globalisers'. In both, the main trade reforms took place about a decade after the onset of higher growth. Moreover, trade restrictions in China and India remain among the highest in the world.

In China's case, high growth started in the late 1970s, with the introduction of the household responsibility system in agriculture and of two-tier pricing. China's authorities did not embark on import liberalisation in earnest until much later, during the second half of the 1980s and the 1990s.

As for India, its trend growth rate increased substantially in the early 1980s, by about 3 per cent. Meanwhile, serious trade reform did not start until 1991-93.

Because both India and China increased trade substantially, they are considered globalisers by the World Bank's criterion. But as their experience reveals, deep trade liberalisation is hardly ever a factor in fostering higher growth and expanded trade early on.

Unfortunately, there is still a lot of subterfuge in the World Bank's report. You won't notice how much ground it has given up unless you dig deep in the report and look at the way the evidence is presented.

For example, a chart shows that the World Bank's sample of 'more globalised' countries had deeper tariff cuts than the 'less globalised' ones. The unstated implication is that tariff cuts were an important determinant of global integration and hence growth.

If there was direct evidence that these tariff cuts were correlated with growth, you can be certain that the World Bank would have presented those results.

In fact, the report denies the

question is even relevant. 'Whether there is a causal connection from opening up trade to faster growth is not the issue' it declares. So why did the World Bank invest so much intellectual capital on establishing the linkage between trade openness and growth?

These oddities are perhaps to be expected for an institution being forced to backtrack from a position that has become analytically and empirically untenable.

The bottom line is this. Countries that managed to grow rapidly and reduce poverty also tended to become increasingly integrated into the world economy.

What's at issue is the policy conclusion to be drawn from this empirical observation.

Previously, the World Bank wanted you to think that a significant liberalisation of the trade regime is a key element in unleashing all those good things. Now it is no longer so sure. Neither should we be.

## POST-DOHA DEBATE ON TRIPS AND PUBLIC HEALTH

*The three day meeting of the WTO's TRIPS Council (5-7 March) marked the beginning of a new phase of 'official' debate on the subject of TRIPS and public health. Trade Ministers at Doha demanded a report by the end of 2002 on how countries which lack manufacturing capability for essential drugs can make use of compulsory licenses to meet public health needs. While there appears to be a clear impetus to move forward, there is no agreement on how to proceed. The main controversy revolves around 'interpreting' art. 30 (exception to patent rights) and/or 'amending' art. 31 (f) of TRIPS which circumscribes production for primarily domestic purposes. The EU appears open to these ideas provided 'strict conditions' can prevent leakages of pharmaceutical products to non-intended markets. The United States also prefers such conditions and has also suggested a 'moratorium' on related disputes - an arrangement that leaves the 'delicate balance' in TRIPS intact. The following statement delivered by Kenya (on behalf of the Africa Group of 41 member countries and Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Malaysia, Sri Lanka and Thailand) highlights some of the principal concerns of the countries actually affected by the public health crisis.*

"Mr. Chairman,

On behalf of the African Group, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Malaysia, Sri Lanka and Thailand, my delegation is

pleased to make the following statement regarding the expeditious solution to the problem identified in paragraph 6 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health.

### I. Background

Mr. Chairman,

1. Paragraph 6 of the Ministerial Declaration on the TRIPS Agreement and Public Health adopted at

Doha in Qatar on the 14 November 2001, states as follows:

[6] We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

2. In light of Paragraph 4 of the Ministerial Declaration on TRIPs and Public Health, the instruction to find an expeditious solution by the end of 2002 is meant to ensure that the TRIPS Agreement supports WTO Members' right to protect public health and, in particular, to promote access to medicines for all. It is critical that in this process WTO Members do not take a narrow approach in designing a solution. Paragraph 6 should be read in light of the entire Declaration on TRIPs and Public Health. In this regard, effective use of compulsory licensing should be understood to mean a solution that facilitates strategies to supply the current pharmaceutical needs of Members without existing capacity while at the same time ensuring the development of domestic capacities in the pharmaceutical sector in the longer term.

3. In this statement the Group sets out considerations that may govern the TRIPS Council in finding such an expeditious solution to the problem recognized in paragraph 6 of the Ministerial Declaration. Within these broad parameters, the Group is committed to working with all WTO Members in finding a solution.

4. In the final analysis the solution must clearly support governments that adopt measures to address public policy concerns including public health concerns. The objectives and principles of the TRIPS Agreement will otherwise remain largely

ineffective if public policy concerns and protection of the interests of the public are not clearly and unequivocally recognized and protected by the Agreement, as established in the Ministerial Declaration on TRIPs and Public Health. The introduction of general exceptions, along the fairly standard lines of the other agreements in the WTO family, will help the promotion of this spirit and the legitimacy or acceptability of the TRIPS Agreement.

## II. Considerations for Formulating an Expeditious and Effective Solution

Mr. Chairman,

I would like now to turn to the consideration for formulating an expeditious and effective solution.

Paragraph 6 of the Declaration on TRIPs and Public Health seeks to address an important concern of developing and least developed countries with the TRIPS Agreement, namely, situations where due to the restrictions on production, import and export of patented products by the TRIPS Agreement, countries with insufficient or no pharmaceutical manufacturing capacity will be unable to use compulsory licensing to secure an efficient, affordable and reliable source of medicines to address public health needs.

1. Discussions on Paragraph 6 of the Ministerial Declaration on TRIPs and Public Health should be made against the backdrop of the primary objectives and principles set out in the TRIPS Agreement, in particular the objective of transfer of technology as a necessary way to encourage, whenever economically feasible, the development of local manufacturing capacities in the pharmaceutical sector.

2. In this sense, any expeditious solution to address the problem acknowledged in Paragraph 6 should not detract the TRIPs Council from the need to consider measures that support the acquisition of all necessary technology and the building of a sound technological base including in respect of medical technology; this is the proven sustainable way to address the public health and public policy concerns of developing countries and least developed countries.

3. A number of solutions can be envisaged to address the problem acknowledged in paragraph 6 of the Ministerial Declaration on TRIPs and Public Health.

4. As preliminary remarks, we stress that the problem recognized in Paragraph 6 is not limited to a certain category of countries, but rather to any WTO Member in difficulty of access to pharmaceutical products, as well as of availing itself of the flexibilities in the TRIPs Agreement. Naturally, developing countries and least developed countries are expected to be the main beneficiaries of the solution, in light of their difficulties in access to medicines and pharmaceutical products.

5. Without prejudice to our right to raise other options in further discussions, we would like to focus basically on expeditious solutions based on Articles 31 and 30 of the TRIPs Agreement.

6. Article 31(f) of the TRIPs Agreement contains an in-built flexibility that allows Members to grant compulsory licenses for the supply, to some extent, of foreign markets. Article 31(f), however, limits Members to authorize compulsory licenses "predominantly" for the supply of the domestic market.

Such limitation may prevent the possibility of Members using compulsory licenses to supply pharma-

ceutical products to countries in need, given that there may be no domestic demand for those products. In this sense, an amendment to Article 31 in order to eliminate paragraph "f" would provide for an expeditious solution for countries in need of pharmaceutical products.

7. Article 30 is another important provision in the TRIPs Agreement, as it provides for limited exceptions to the patent rights. The TRIPs Council should explore the possibility of developing an authoritative interpretation that would recognize the right of Members to allow the production without the consent of the patent holder to address public health needs in another country. In this context, the production, sale and export of the product would be considered as limited exceptions authorized under Article 30 of the TRIPs Agreement.

8. Concerning the possibility of

establishing safeguards, we are wary of the possibility of imposing too burdensome conditions that would render any solution unfeasible. We would therefore urge the Council to base discussions on the concrete solutions, rather than moving away from it.

9. The Group is of the view that these considerations may provide the TRIPs Council with guidelines in carrying out its mandate under the Ministerial Declaration on the TRIPs Agreement and Public Health.

10. The General Council should as soon as possible adopt a Decision reflecting these considerations, and the Decision should be integral to and read together with the Ministerial Declaration on the TRIPs Agreement and Public Health and with paragraphs 17 and 19 of the Ministerial Declaration, adopted at Doha in Qatar on 14 November

2001.

11. The General Council should formally present a copy of the Decision to the World Health Organization, UNAIDS, the Food and Agriculture Organization, and the World Intellectual Property Organization for information and noting. Whenever the Decision may be reviewed in accordance with Article 71.1, these organizations mentioned should have observer status and participate in the review.

12. Mr. Chairman, in conclusion and following your advice on the submission of proposals, we are in the process of elaborating a paper with possible solutions for the problems acknowledged in paragraph 6, which we expect to circulate at the next session of the TRIPs Council.

Thank you Mr. Chairman."

## OPERATIONALISING DOHA DECLARATION ON TRIPs AND PUBLIC HEALTH

*The Doha Declaration on TRIPs and Public Health was a hard-won compromise. But to be put into practice or 'implemented', a number of hurdles have yet to be crossed. While the NGOs are holding a conference on implementing the Doha Declaration on Public Health on 28<sup>th</sup> March, the WIPO is holding another conference (25-27 March) to 'probe the dynamics of the international patent system.' At the end of the first substantive discussion on the subject in the TRIPs Council, South Bulletin talked to the outgoing chairperson of the TRIPs Council, Ambassador Boniface Chidyausiku of Zimbabwe, for an understanding of the state of play. He also highlights related areas - like Technical Assistance and action at the national level - which can help operationalise the Doha Declaration. Ambassador Eduardo Pérez Motta of Mexico is the new chairperson of the TRIPs Council. Following are excerpts of the interview on 11 March with Amb. Chidyausiku.*

**Someshwar Singh**

**SB:** Where do we stand with respect to implementing the Doha Declaration on TRIPs and Public Health?

**Amb. Chidyausiku:** We had a separate Declaration on this subject, where it was recognised that the TRIPs Agreement should not prevent member states from meeting their public health needs. It was

also recognised that countries which do not have the ability to manufacture drugs may have problems issuing a compulsory license. So the Ministers directed that the TRIPs Council look into it to find an expeditious resolution and report by end of 2002.

In the 5-7 March meeting of the Council, two papers were submit-

ted - one by the EC and its member states, another by the US. We also had statement by the Africa group and developing countries. There is an agreement that this issue has to be addressed but the question really is: how do we do that? The proposal by the EC contains two options. One, we have to look at the interpretation of the TRIPs Agreement with regard to Art. 30 -

in terms of an exception to facilitate a solution for governments which do not have the manufacturing ability. The other one is to look at article 31 (f), where if you issue a Compulsory Licence (CL), a substantial amount must be for the domestic market. So either we ignore that or amend the TRIPS Agreement - art. 31(f) - so that governments can issue a compulsory licence and receive those drugs without impinging on the provisions of the TRIPS Agreement.

So the proposal of the EC is to have an effective interpretation of the TRIPS Agreement using art. 30 and/or go for an amendment to the article 31 (f).

The US came out with a position paper that talked about going into effective interpretation of the issuance of CL (art. 30) and suggested a moratorium for those countries that are in need from being taken to the Dispute Settlement Body. This is argued as being faster and less cumbersome.

Then, the developing countries and the Africa Group came up with a statement, where they say it does not really matter how we are going to bell the cat. The main purpose is to help those states which do not have the manufacturing capacity to meet their public health concerns - whether we issue it under article 30 or 31 (f) or through issue of a CL - or a combination of the three, is not really material. What we want is to be able to take concrete action on what our Ministers tasked us to do before the end of 2002.

The offer from the US on 'moratoriums' are usually time-bound and could be a short-term solution to a problem. Whereas what people are looking for is the long term and durable solution. Also, the offer from the US and EC and its members states have certain pre-conditions. For them to be able to meet

these amendments and interpretations, there must be an understanding that mechanisms would be put into place whereby there would be no re-exporting the drugs manufactured under such arrangements to developed country markets. So some kind of guarantee is one of their main concerns.

The Africa group and developing countries are saying they do not want a situation where we come up with a solution to this problem but that solution is so cumbersome - with pre-conditions and conditions - that it might make it even more difficult to implement it than the current provisions in the TRIPS Agreement. So they want something that is workable, that does not have to impinge on their flexibility and ability to make use of what is available under the TRIPS Agreement. Thus, it is an area that people need to look into. The EC says it is a 'conceptual' paper they have submitted and are willing to discuss and come up with further elaboration or dialogue on these issues so as to put into concrete results what the Ministers have directed us to do.

**SB:** Did you discuss any other paragraph from the Doha Declaration?

**Amb. Chidyausiku:** With respect to paragraph 7 of the Declaration, which seeks to extend the transitional period to enforce patent protection for pharmaceutical products for the LDCs, the Secretariat is to come up with a draft decision on how we could effect the extension of article 66.2. Originally, the LDCs were given transition period of 1995-2006 for providing patent protection. To extend that period from 2006 to 2016, a decision by the Council is needed to operationalise the Declaration. So we have asked the Secretariat for help. But we were unable to finalise that because the LDCs asked for a clarification of the para 7 of the

Ministerial Declaration in terms of what it means in reality. For instance, countries which have not yet made any commitments with respect to Exclusive Marketing Rights (EMRs) and mail-box provisions, would they continue to be free from such restrictions after 2006? There is need for further consultations on this as it is not explicitly spelt out in the Doha Ministerial Declaration.

**SB:** What about LDCs that are already obliged to enforce patent protection through bilateral and regional agreements?

**Amb. Chidyausiku:** Yes, despite these long transitional periods, there are other constraints at play - at the bilateral and regional levels - which negate the flexibility that governments are supposed to have. For instance, ARIPO (African Regional Intellectual Property Organisation) in southern Africa and the Bangui Agreement for Francophone Africa have obliged many LDCs to offer product patent protection. The main area of concern is about countries that have not yet granted product patent protection - they would want to be clear that if they are getting an extension, does this extension cover EMRs and mail-box provisions? It is now left to my successor to find an amicable solution to this.

**SB:** How many LDCs are actually bound already by such bilateral or regional patent enforcement mechanisms?

**Amb. Chidyausiku:** Only three - Bangladesh, Angola and Madagascar - have not given the patent protection. The rest have all done through either bilateral or regional agreements.

Also, there is the question of countries that had not opted for EMRs and mail-box provisions - they should not be forced into it now.

**SB:** This impending deadline of 2005 when remaining developing countries must extend patent protection to pharmaceuticals, what effect will that have?

**Amb. Chidyausiku:** That is another problem area. Countries like Egypt, India, and Brazil, are obliged by 2005 to give product patent protection as well, in addition to process. So the problem is for those LDCs which depended on India and Brazil for raw materials for their drugs - they can no longer count on continued supplies from those channels. So what good does an extension period just for the LDCs do for the LDCs if they cannot get the raw materials which they could count on before? Unless, of course, the LDCs can take over that role of producing the generics by reverse engineering - but how many of them are in a position to do that?

**SB:** Is there some way the WTO process on this issue can be speeded up?

**Amb. Chidyausiku:** An interesting point that came up in the discussion is that since the Doha Ministerial meeting, we are looking at technical assistance being given to developing countries. How much of that is being directed to operationalising the Doha Declaration on TRIPS Agreement and Public Health. Because all along, the traditional assistance given to developing countries is to see how you can change your legislation to meet the requirements of the TRIPS Agreement. But now the question is: can the WIPO along with WTO, assist countries to amend or prepare or adjust their legislation to take cognisance of what the Ministers decided in Doha on TRIPS and Public Health. This is a crucial issue. When you negotiate any agreement with a view to clarification, this will only lead to opportunities being available to you. But unless you seize those

opportunities, you cannot develop. And this goes back to the 'Development Agenda' that came out of Doha.

The assistance that is being given to the members of the WTO - whether it be under competition policy, TRIPS Agreement, investment or environment, what is their focus? Is it to make the members of the WTO use these agreements for development purposes or is it to negotiate and commit yourself more to these agreements whereby critical supply-side constraints are not addressed, whereby operationalisation of the TRIPS Agreement and Public Health is not taken into account? As developing countries, we need to be clear in our minds what is it that we want, what is it that we can do to operationalise what was agreed to on the issue of TRIPS and Public Health.

**SB:** Did you actually discuss this in the TRIPS Council?

**Amb. Chidyausiku:** We touched on it in the TRIPS Council. The WTO and WIPO need to address this issue of fundamental importance to the developing countries. When you look at the current focus on drugs, the kind of workshops that are being put in place, they are not addressing the development angle of various WTO agreements. They are focusing on how one negotiates and commits oneself in agreements.

**SB:** Will developing countries be putting out any specific plan or paper on this?

**Amb. Chidyausiku:** We are in the process. The Africa Group and the developing countries do plan a position paper which should be ready in good time for the June meeting. It is important that developing countries work out and see how we can operationalise this Declaration so that it can facilitate

access to medicines. If it is not operationalised, one ends up with just another piece of paper.

**SB:** When you talk of technical assistance, is that from the WTO budget line?

**Amb. Chidyausiku:** It should be. One should also look at other sources like WIPO, which has the resources. As I said, instead of just focusing on people applying the TRIPS Agreement, there should also be focus on people benefiting from this Agreement, how to operationalise such provisions contained in the Doha Declaration. There should be seminars and workshops and technical assistance on how to help developing countries operationalise para 6 of the Doha Declaration on TRIPS and Public Health - what are the options open to developing countries for using the CL - the do's and don'ts. That is the kind of technical assistance that we want. Not just technical assistance to say that to be compliant with the TRIPS Agreement, you need to do this, that and the other. Those kind of seminars we have been having for a long time. What we lack is, first, with the TRIPS Agreement, we need to be exposed, given the tools - to say here is the TRIPS Agreement - what is the balance between private and public rights? How can a country make use of what is in the TRIPS Agreement the benefit of its citizens. That is the kind of focus of technical assistance one would want to see.

**SB:** How appropriate is this distinction between LDCs and other developing countries?

**Amb. Chidyausiku:** The LDCs are in a special category. As far as TRIPS Agreement and Public Health is concerned, it is not an issue of LDCs versus other developing countries. It is an issue that faces developing countries per se. The way people are dying of AIDS

makes no distinction between an LDC or a developing country. The effect is the same and we should look at it from that holistic approach.

**SB:** While the WTO process moves on, the reality on the ground is troubling with so many millions of people dying from diseases. Do you see a meeting of these apparently different strands?

**Amb. Chidyausiku:** The fact is that we got this agreement in Doha on public health. It is now incumbent upon national governments to look at what Ministers agreed to, and look at the legislation and see where they can adjust and avail themselves of the flexibilities that

are inherent in the TRIPS Agreement. There are situations where national governments are not even aware of what their rights are under the TRIPS Agreement and they have gone into TRIPS-plus legislation. What one would want to see is the sensitisation of national governments, where governments have to be made to understand that the provisions in this agreement give you the following possibilities. But it is up to governments to look into their legislation and see if there are loopholes - EMRS or whatever the problems are - and address them. That is one focus of the struggle.

We have done a good job of having got this in the WTO. But now it is incumbent upon our governments to take advantage of what we did and what our Ministers agreed in Doha and operationalise it at the national level. This is where the crux of the matter is. At the present moment, we can debate and pontify in the TRIPS Council but until our national governments take these things up and look at it in the light of the legislation on their statutes - this will just remain a piece of paper. But also, we need the momentum to continue with regard to public opinion. We need that partnership with the northern and southern NGOs, who have become the 'conscience' of the world.

### GAMANI COREA MEETS GOVERNMENTS

Geneva, 4 March (SDN) — On his first visit to Geneva as the new Chairman of the Board of South Centre, Gamani Corea had a useful exchange of ideas with representatives of the member countries on how to make the Centre more effective.

In his meeting with Geneva-based Ambassadors, Mr. Corea was accompanied by one of the new Board members - Chief Emeka Anyaoku of Nigeria, a former Secretary-General of the Commonwealth Secretariat, and Prof. Widjojo Nitisastro of Indonesia, a former Minister, Member of the South Commission and Member of the South Centre Board and a pivotal supporter of the South Centre.

The Ambassadors welcomed the leadership of Mr. Corea and gave spirited support to his three-point approach which dealt with financing of the Centre, core staff needs and priority work areas.

### GLOBAL FUND NAMES PANEL

Geneva, March 11 (SDN) — The Global Fund to Fight AIDS, Tuberculosis and Malaria, a new initiative to combat the epidemics that kill six million people each year, announced the appointment of an international panel of experts that will review all grant proposals and make recommendations to the Board for funding.

The 17-member Technical Review Panel includes experts in disease control and prevention, clinical

care, health education, and international development. All members of the panel have worked in the developing world, where the HIV/AIDS, TB, and malaria epidemics have the greatest impact.

The Technical Review Panel will meet in Geneva from 25 March to 5 April to review the first round of funding proposals. The Board will make final funding decisions, and will announce the first grant awards at the conclusion of its next meeting, scheduled for 22-24 April in New York.

"This panel of experts will help the Global Fund to identify projects that will have clear and demonstrable impact in the fight against AIDS, TB, and malaria," said Dr. Chrispus Kiyonga, the Fund's Board Chair.



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