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UNCTAD advocates "global debt deal" for developing countries

A "global debt deal" is urgently needed to support developing economies that were already facing a sovereign debt crisis when the Covid-19 pandemic hit. In making this call, the United Nations Conference on Trade and Development (UNCTAD) has proposed that the deal should provide for temporary standstills on debt service payments and aim to restore long-term debt sustainability through debt relief and restructuring measures.

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South needs global debt deal to head off economic disaster

Already struggling with unsustainable debt burdens before the Covid-19 pandemic struck, developing economies are in dire need of a comprehensive framework for debt relief, says a UN development body.

by Kanaga Raja

GENEVA: A global debt deal for the developing world is needed to head off a looming debt disaster in developing countries suffering from the economic fallout of the Covid-19 pandemic, the United Nations Conference on Trade and Development (UNCTAD) said on 23 April.

In an update to its *Trade and Development Report*, UNCTAD said developing countries now face a wall of debt service repayments throughout the 2020s. In 2020 and 2021 alone, repayments on their public external debt are estimated at nearly $3.4 trillion – between $2 trillion and $2.3 trillion in high-income developing countries and between $666 billion and $1.06 trillion in middle- and low-income countries.

"The international community should urgently take more steps to relieve the mounting financial pressure that debt payments are exerting on developing countries as they get to grips with the economic shock of Covid-19," said UNCTAD Secretary-General Mukhisa Kituyi.

"Recent calls for international solidarity point in the right direction, but have so far delivered little tangible support to developing countries as they tackle the immediate impacts of the pandemic and its economic repercussions," said Richard Kozul-Wright, Director of the UNCTAD Division on Globalization and Development Strategies.

According to the UNCTAD report, the Covid-19 shock is posing unprecedented challenges to advanced-country governments. As most have come to recognize, the economic crisis entailed by the pandemic is unique in that it combines a deep supply shock – arising from wide-ranging and prolonged lockdowns of entire economies – with consequent demand shocks – arising from a collapse in corporate investment plans, retrenchment of household spending, rapidly increasing unemployment and patchy social welfare systems reduced to their bare bones after decades of rentier capitalism – as well as radical uncertainty and heightened fragility in financial markets.

As a consequence, policymakers have focused on the provision of massive stabilization packages, designed to flatten both the contagion curve of the pandemic as well as the curve of economic meltdown and financial panic, through a raft of cash transfers, credit lines and guarantees from governments to households and firms.

Doing so depends on the ability of governments to borrow from their central banks – or for central banks to revert to their original role as bankers to their governments – on the required scale, a concept often referred to as "fiscal space".

How to deal with this necessary accumulation of government debt in response to the crisis, and in particular, how to avoid the mistake of turning to austerity to make adjustments once the crisis has passed, is already beginning to tax the minds of policymakers in the advanced economies.

If the challenges are huge in advanced economies, they are enormously more daunting in developing economies, UNCTAD added.

While advanced-country governments struggle to revamp administrative and regulatory frameworks and to break ideological taboos, developing countries cannot easily flatten the contagion curve by closing down their largely informal economies without facing the prospect of more people dying from starvation than from the Covid-19 illness.

Moreover, even the most advanced high-income developing countries with relatively deep financial and banking systems do not have anywhere near the fiscal space that advanced economies can, in principle, unlock.

The vast majority of developing countries are heavily reliant on access to the "hard currencies" of advanced countries – earned primarily through commodity and service exports, such as food, oil and tourism, and received through remittances from their diasporas as well as from access to concessional and market-based borrowing – to pay for imports and to meet external debt obligations.

Their central banks cannot act as lenders of last resort to their governments at the required scale without risking catastrophic depreciations of their local against hard currencies, and therefore also steep increases in the value of their foreign-currency-denominated debt as well as unleashing potentially destructive inflationary pressures.

Developing-country debt crisis

This situation is all the more critical where developing countries already face high debt burdens, said UNCTAD. "The Covid-19 shock has put a glaring spotlight on the difficulties arising from high and rising developing country indebtedness since it is set to turn what was already a dire situation into serial sovereign defaults across the developing world. It has, therefore, turbo charged the need to move from discussion to action on debt matters in developing countries."

UNCTAD noted that Covid-19 has hit developing economies at a time when they had already been struggling with unsustainable debt burdens for many years. At end-2018, the total debt stocks of developing countries – external and domestic, private and public – stood at 191% (or almost double) their combined gross domestic product (GDP), the highest level on record.

A developing-country debt crisis already under way prior to the Covid-19 shock had many facets, but two are worth putting upfront in the context of ongoing debates about debt relief for the developing world in the aftermath of the Covid-19 shock, said UNCTAD. First, the unfolding debt crisis was not limited to the poorest of developing countries but affected developing economies of all income categories. Second, it has, by and large, not been caused by economic mismanagement at home, but by economic and financial mismanagement at the global level.

Over the past decade, developing countries have witnessed a rapid and often premature integration into heavily under-regulated international financial markets, including the so-called shadow-banking sectors, estimated to be in control of around half of the world's financial assets.

In this context, developing countries became highly vulnerable to massive but volatile flows of high-risk yet relatively cheap short-term private credit, on offer from financial speculators in search of higher yields on their investments than available to them in the near-zero-interest monetary policy environment of their advanced home countries.

This "push factor", and the volatility of private capital inflows in combination with wide open capital accounts, has affected developing countries whether or not they had so-called strong economic fundamentals, such as relatively low public debt, small budget deficits, low inflation rates and high reserve holdings.

An essential "pull factor" leading developing countries to borrow at high risk in international financial markets was their dwindling access to concessional multilateral finance and a shift of official development assistance (ODA) away from central budget support towards wider goals, such as climate change mitigation, migration management, good governance and post-conflict support, oftentimes determined by donor interests.

As a result, developing countries have seen a rapid build-up in private sector indebtedness, in particular since the global financial crisis of 2008-09, accounting for 139% of their combined GDP at end-2018.

This trend has been most pronounced in high-income developing countries with relatively deeper domestic financial and banking sectors but has also and substantively affected middle- and low-income developing economies.

It represents the largest contingent liability on public balance sheets in the event of a full-blown debt and financial crisis, not least in the shape of fledgling public-private partnerships, widely promoted throughout the developing world but which may now quickly unravel in the wake of "sudden stops" to their refinancing due to the Covid-19 crisis.

The fragility of developing-country debt positions prior to the Covid-19 crisis was further increased by concomitant changes to the ownership and currency denomination of their private and public debt. Thus, domestic bond markets were increasingly penetrated by non-resident investors and sovereign external debt held to a much larger extent than in previous episodes of developing-country debt distress by private rather than official creditors, in particular in high- and middle-income developing economies.

In the wake of these developments, much of the higher-risk borrowing by sovereigns has been accompanied by rising debt servicing costs with a negative impact on the fiscal space of many countries, compounded by a slowdown in growth relative to the period before the global financial crisis of 2008-09 as well as by commodity price slumps, said UNCTAD.

Predictably, developing countries will be facing a wall of debt service repayments throughout the 2020s, and in the context of deeply distressed economic circumstances. In 2020 and 2021 alone, these amount to between $2 and $2.3 trillion in high-income developing countries, and to between $700 billion and $1.1 trillion in middle- and low-income countries.

Inadequate initiatives

UNCTAD noted that on 13 April, the International Monetary Fund (IMF) cancelled debt repayments due to it by the 25 poorest developing economies for the next six months. This debt cancellation is estimated to amount to around $215 million.

Moreover, on 15 April, leaders of the G20 major economies announced their "Debt Service Suspension Initiative for Poorest Countries". This suspension of debt service payments (including principals and interest) from 1 May to the end of 2020 applies to 73 primarily low-income developing countries that either are eligible to borrow from the International Development Association (IDA) or are classified as least developed countries (LDCs) by the United Nations. For now, the initiative applies to all official bilateral creditors, with calls on private creditors to join on comparable terms, and on multilateral banks to consider joining should such a step be compatible with maintaining their current high credit ratings and low-cost lending capacities. Current estimates suggest that this initiative covers around $20 billion of public debt owed to official bilateral creditors in the eligible countries in 2020. An additional $8 billion of such debt payments might be included if all private creditors joined the initiative, and a further $12 billion if the same was the case for all multilateral creditors. However, this amounts to a relatively small part of the long-term public and publicly guaranteed external debt stocks these countries had accumulated at the end of 2018.

Initiatives such as these are welcome since they provide urgently needed fiscal "breathing space" to crisis-ridden developing countries, but they do not constitute debt relief of any kind, said UNCTAD. Quite the contrary, by linking eligibility to new or ongoing borrowing, even if on concessional terms, the initiative prioritizes concessional lending (and therefore new debt) over debt relief.

Moreover, suspending debt repayments only through the end of 2020 relies on the all but heroic assumption that the Covid-19 shock to developing economies will be swift and short, and "business as usual" will resume in 2021 to the extent that developing countries joining the scheme will be in a position to shoulder debt service repayments suspended in 2020 over the next three to four years, said UNCTAD.

"But given the wall of debt service repayments already facing many developing country governments in 2021 and beyond, in combination with the wider macroeconomic impacts of the Covid-19 crisis on export revenues, commodity prices, government revenues and reserve holdings, as well as new concessional borrowing incurred during the crisis, this is unlikely to be the case."

In the wake of the Covid-19 crisis, developing countries will require massive liquidity and financing support to deal with the immediate fallout from the pandemic and its economic repercussions, said UNCTAD. As both UNCTAD and the IMF have estimated, these liquidity and financing needs amount to at least $2.5 trillion.

Clearly, debt relief measures will cover only a part of these needs, with new allocations of Special Drawing Rights and a grant-based ODA Marshall Plan to support health and social expenditures providing faster avenues to deliver urgently needed cash injections.

Well-designed debt relief – through a combination of temporary standstills with sovereign debt re-profiling and restructuring – is essential in that it not only addresses immediate liquidity pressures but has the potential to resolve problems of structural insolvency and long-term debt sustainability, said UNCTAD.

As has been pointed out, the Covid-19 shock only puts the spotlight on what had already been a fast-evolving sovereign debt crisis across the developing world. "The devastation it is likely to cause unless decisive action is taken, should be more than sufficient motivation for the international community to finally move towards a coherent and comprehensive framework to deal with unsustainable sovereign debt."

Debt relief mechanisms for developing countries, emerging gradually with the advent of recurrent and widespread developing-country debt crises since the end of the 1970s, have been fragmented, ad hoc and insufficient to prevent sovereign debt crises or to resolve such crises sustainably once these occurred, said UNCTAD.

A new "global debt deal" for the South

According to the UNCTAD report, a new "global debt deal" for developing countries should incorporate the following three basic steps:

Step 1: Automatic temporary standstills: Longer and more comprehensive

The purpose of temporary standstills is to provide macroeconomic "breathing space" for crisis-stricken developing countries to free up resources, normally dedicated to servicing in particular external sovereign debt, for two interrelated uses: first, to facilitate an effective response to the Covid-19 shock through increased health and social expenditure in the immediate future, and, second, to allow for post-crisis economic recovery along sustainable growth, fiscal and trade balance trajectories.

An effective "global debt deal" for the developing world should therefore allow for automatic temporary standstills:

- on request by developing-country governments for forbearance, independently of their per capita income levels or other eligibility criteria or conditionalities, for an initial suspension period of one year from request, and with the possibility of further annual renewals based on recent debt sustainability assessments (see Step 2 below).
- on a comprehensive basis, including all external creditors – bilateral, private and multilateral – primarily to safeguard against resources freed up by the suspension of debt service repayments to some creditors being used to meet repayment schedules of uncooperative creditors.
- entailing an immediate and automatic stay on all creditor enforcement actions. Creditors should not be able to seize assets or initiate court proceedings against any sovereign debtor that fails to make debt service payments during the pandemic. In addition, authorities in those jurisdictions that govern most emerging-market sovereign bonds should cooperate by halting lawsuits against debtor countries already under way at the time of a temporary standstill arrangement coming into force.

Step 2: Debt relief and restructuring programmes: Restoring long-term debt sustainability

The "breathing space" gained under Step 1 should be used to reassess longer-term developing-country debt sustainability, on a case-by-case basis, based on the following key principles:

- The size and composition of debt relief or "haircuts", if required, as well as the new redemption schedules for debt repayment on restructured sovereign debt obligations following resumption of debt service repayments, should be compatible with restoring and maintaining sustainable and inclusive growth paths, as well as fiscal and trade balance trajectories.
- Long-term sovereign debt sustainability assessments, and consequent restructurings where required, should take account of contingent liabilities, such as those arising from widespread public guarantees of new financing instruments and public-private partnerships.
- Sovereign debt restructurings and revised debt payment redemption schedules should furthermore take account of investment requirements arising from the Sustainable Development Goals and the timely implementation of Agenda 2030.
- There must be a fair distribution of the burdens of required sovereign debt relief and restructurings between debtors and creditors, taking into consideration past histories of irresponsible lending by creditors as

well as irresponsible borrowing by debtors, as appropriate.

- Respect for national sovereignty and expertise as well as national development strategies.

Taking the successful outcome of the 1953 London Conference on German war debt, which cancelled around half of this debt under negotiation, as a benchmark of international solidarity, a target figure of around $1 trillion would appear reasonable in light of the debt burdens now crushing developing countries in the face of Covid-19, said UNCTAD.

Step 3: Establishment of an International Developing Country Debt Authority

"In our highly interconnected world, financial stability has the qualities of a global public good. As such it is vulnerable to problems arising from missing or asymmetric information, free-rider behaviour and contagion effects," said UNCTAD. All these are present when the sustainability of sovereign debt becomes a policy challenge, the more so when the source of debt distress lies largely outside the countries themselves.

Despite these problems having been visible in the inter-war period, the 1944 Bretton Woods agreement failed to establish an international framework for handling sovereign debt restructuring, with neither the IMF nor the World Bank tasked accordingly. This institutional vacuum has been filled by ad hoc approaches to dealing with sovereign debt problems with a strong bias against borrowers, particularly from the developing world.

Taking forward Steps 1 and 2 on the scale commanded by the impact of the Covid-19 crisis on developing-country debt sustainability, may thus well require putting into place an "International Developing Country Debt Authority" mandated to oversee the implementation of comprehensive temporary standstills as well as case-by-case longer-term debt sustainability assessments and consequent sovereign debt relief and restructuring agreements.

According to UNCTAD, this could follow the path of setting up an autonomous international organization by way of an international treaty between concerned states. Essential to any such international agreement would be the swift establishment of an advisory body of experts with entire independence of any creditor or debtor interests.

Such a proposal has, in the past, run into conflict with the interests of creditors, noted UNCTAD. But governments in some debtor countries also oppose reform measures that could have the effect of lowering the volume of capital inflows and/or raising their cost, even when such measures could be expected to reduce instability and the frequency of emerging-market crises. Many observers have also been quick to dismiss such proposals as not only politically unrealistic but also technically impossible.

In the wake of the Covid-19 crisis, both developing-country debtors as well as developed nations' creditors should make it a priority to safeguard and promote future mutual dealing for shared longer-term benefit on equal terms, said UNCTAD. (*SUNS9107*)

Covid-19 to wipe out 6.7% of working hours globally – ILO

Saying that "workers and businesses are facing catastrophe", the International Labour Organization foresees a fall of 6.7% in working hours – equivalent to 195 million full-time workers – in the second quarter of the year due to the coronavirus outbreak.

by Kanaga Raja

GENEVA: The Covid-19 pandemic is expected to result in a decline of 6.7% in working hours globally in the second quarter of 2020, equivalent to 195 million full-time workers, according to the International Labour Organization (ILO).

The ILO foresees large reductions in the Arab states (8.1%, or 5 million full-time workers), Europe (7.8%, or 12 million full-time workers) and Asia and the Pacific (7.2%, or 125 million full-time workers).

Huge losses are expected across different income groups but especially in upper-middle-income countries (7.0%, or 100 million full-time workers), far exceeding the effects of the 2008-09 financial crisis, the ILO said.

In its latest analysis (released on 7 April) of the impact of Covid-19 on the world of work, the ILO said the majority of job losses and declining working hours will occur in hardest-hit sectors.

According to ILO estimates, 1.25 billion workers, representing almost 38% of the global workforce, are employed in sectors that are now facing a severe decline in output and a high risk of workforce displacement. Key sectors include retail trade, accommodation and food services, and manufacturing.

The final tally of annual job losses in 2020 will depend critically on the evolution of the pandemic and the measures taken to mitigate its impact, said the ILO.

"Workers and businesses are facing catastrophe, in both developed and developing economies," said ILO Director-General Guy Ryder. "We have to move fast, decisively, and together. The right, urgent measures could make the difference between survival and collapse."

Massive economic disruption

According to the ILO study, the Covid-19 pandemic has intensified and expanded in terms of its global reach, with huge impacts on public health and unprecedented shocks to economies and labour markets. "It is the worst global crisis since the Second World War," said the ILO.

It noted that since its preliminary assessment of 18 March, global Covid-19 infections have risen more than six-fold and stood at 1,030,628 on 3 April.

An additional 47,600 people have lost their lives, bringing the total number of deceased to 54,137.

Lockdowns and related business disruptions, travel restrictions, school closures and other containment measures have had sudden and drastic impacts on workers and enterprises.

The ILO said its estimates show that workplace closures have increased so rapidly in recent weeks that 81% of the global workforce live in countries with mandatory or recommended closures.

Employment in countries with mandatory or recommended workplace closures represents 87% of the workforce of upper-middle-income countries and 70% of the workforce in high-income countries.

"81% of the global workforce live in countries with mandatory or recommended closures."

Through the massive economic disruption, the Covid-19 crisis is affecting the world's workforce of 3.3 billion. "Sharp and unforeseen reductions in economic activity are causing a dramatic decline in employment, both in terms of numbers of jobs and aggregate hours of work," said the ILO.

The employment impacts of Covid-19 are deep, far-reaching and unprecedented, it said. In the current crisis, employment has been impacted directly as a result of lockdowns and other measures and on a greater magnitude than initially predicted at the start of the pandemic.

As of 1 April, estimates indicate that working hours will decline in the current quarter (Q2) by around 6.7%, equivalent to 195 million full-time workers (assuming a 48-hour working week). This implies that many of these workers will face a loss of income and deeper poverty, even if substitute activities can be found (e.g., returning to agriculture in rural areas).

The largest decline is expected in upper-middle-income countries, but the impact is comparable across all income groups, said the ILO.

The eventual increase in global unemployment over 2020 will depend substantially on how quickly the economy will recover in the second half of the year and how effectively policy measures will boost labour demand.

As it stands, there is a high risk that the increase in the global unemployed at the end of 2020 will be significantly higher than the initial projection (25 million, made in March), said the ILO.

Sectoral impacts

However, the shock to the labour market is far from uniform, with specific sectors bearing the brunt of the collapse in economic activity. According to the ILO, a number of key economic sectors can be identified as suffering from a drastic fall in output, including accommodation and food services, manufacturing, wholesale and retail trade, and real estate and business activities. These sectors employ 1.25 billion workers around the world, representing almost 38% of the global workforce.

Of the economic sectors most affected, the wholesale and retail trade segment represents the largest share of workers, typically low paid and unprotected. This group of 482 million workers includes, among others, checkout clerks, stockers, shopkeepers and workers in related jobs. Workers in this sector who are engaged in activities deemed essential (e.g., food distribution) may continue to work, but they face greater occupational health risks. Workers in non-essential businesses face widespread closures and sharp reductions in employment and hours.

The accommodation and food services sector is also severely affected, accounting for 144 million workers. This sector is suffering from almost full closure in some countries and a steep decline in demand in cases where operations can continue. More than half of these workers are women.

The manufacturing sector, which employs 463 million workers, has been hit hard in some segments, as workers are told to stay at home, factories close and global supply chains grind to a halt.

The transport, storage and communication industry accounts for 204 million jobs around the world, including airline pilots and crew members, drivers, postal and other delivery workers, as well as people who work in warehouses that support transport and global supply chains. While some of these workers are negatively affected (e.g., those in the airline industry), others continue to meet the increased demand for online retail.

Although the economic impact has not yet been felt in agriculture, the largest sector in most of the developing countries, risks of food insecurity are emerging due to containment measures, including border closures, said the ILO. Over time, workers in this sector may be increasingly impacted, particularly if the virus spreads further into rural areas.

Covid-19 is already affecting tens of millions of informal workers. In India, Nigeria and Brazil, the number of workers in the informal economy affected by the lockdown and other containment measures is substantial. In India, with a share of almost 90% of people working in the informal economy, about 400 million workers in the informal economy are at risk of falling deeper into poverty during the crisis.

According to the ILO, large-scale and integrated policy measures are necessary to make strong and sustained impacts, focusing on four pillars: stimulating the economy and employment; supporting enterprises, jobs and incomes; protecting workers in the workplace; and relying on social dialogue for solutions.

"This is the greatest test for international cooperation in more than 75 years," said ILO Director-General Ryder. "If one country fails, then we all fail. We must find solutions that help all segments of our global society, particularly those that are most vulnerable or least able to help themselves."

"The choices we make today will directly affect the way this crisis unfolds and so the lives of billions of people," he said.

"With the right measures we can limit its impact and the scars it leaves. We must aim to build back better so that our new systems are safer, fairer and more sustainable than those that allowed this crisis to happen," he added. (*SUNS9098*)

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Public spending must target inequalities, not bail out big business

Governments' responses to the coronavirus crisis must prioritize public health and human rights instead of entrenching inequalities and putting lives at risk, stresses a UN rights expert.

by Kanaga Raja

GENEVA: States need to invest massively in decreasing inequalities and poverty arising out of the Covid-19 pandemic, and not just bail out large corporations, banks and investors with no human rights or social conditions attached.

Such public investments should also aim at reaching small and mid-sized enterprises, creating long-term sustainable employment, and prioritize the realization of human rights, in particular economic, social and cultural rights, and the Sustainable Development Goals while taking into account the environment to avoid future climate change disasters.

This is the recommendation of Juan Pablo Bohoslavsky, the UN Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, in a 15 April letter to governments and international financial institutions.

Some governments seem to promote an approach consisting of "saving the economy" at any cost, including by putting the health and lives of the majority of their populations at stake, said the UN rights expert. By the same token, this economy-centred approach is often accompanied by a similar lack of enthusiasm to reduce inequalities, ensure the realization of economic and social rights of all, or to reduce deaths or health problems from pollution and climate change. Therefore, "saving the economy" also means prioritizing the benefit of a certain elite, he said.

States have to save lives and economies so there are jobs for people at the end and basic goods and services can be delivered during the crisis – but this must be done wisely and responsibly with health impacts as the primary consideration.

In this regard, Bohoslavsky recommended a number of measures covering a wide range of economic, financial, monetary, fiscal, tax, trade and social policies to contribute to achieving these goals.

Rights-rooted response

While the coronavirus is a threat to the rights to life and health, the human rights impact of the crisis goes well beyond medical and public health concerns.

The health crisis itself and the governmental measures implemented to face it are leading the world into an economic recession, he said. While it is now clear that prevention and mitigating measures to contain the pandemic as soon as possible must be taken urgently, globally and in a coordinated manner by states, similar consideration should be given to addressing projected adverse human rights impacts of a drastic economic downturn. "This is why the response must be framed and rooted in human rights law," the independent expert underlined.

An economic crisis is rapidly coming on the horizon, with immediate economic impacts that have already been felt through job losses.

"We are now experiencing a 'coronavirus shock', a phenomenon at risk of greatly affecting the global economy, societies and human rights. While the scale of the crisis cannot be precisely estimated yet, there seems to be a consensus as to expect more drastic repercussions than that of the 2008 financial crisis," he said.

More specifically, the UN Department of Economic and Social Affairs anticipates, at best, a deceleration from the 2.5% growth previously forecast for 2020. In a more pessimistic case, it forecasts a -0.9% global economic contraction. In terms of lost income, global economic costs linked with the pandemic are currently estimated at $1.1 trillion in 2020 in the most benign scenario, and almost $3 trillion in the worst-case scenario.

There is no doubt about the large-scale impact of the 2008-09 global economic crisis on human rights of people around the world, said the rights expert. Equally, from a human rights perspective, potential impacts of the upcoming recession include challenges to access adequate housing, healthcare – including mental health – education, water and sanitation, social protection and work.

The impact of crises on inequality and human rights depends, to a great extent, on the existing social protection system in place, as well as the level of public spending, which serves as a stabilizer during recessions, including the way this public spending is financed, said the rights expert.

"The aftermath of the coming crisis is expected to be particularly devastating from a human rights perspective if special measures are not urgently adopted to compensate for past shortcomings and protect the population, while paying particular attention to the most marginalized and in vulnerable situations."

"Economy first" approach

According to Bohoslavsky, a particular concern has been the outrageous overlooking of warnings to prepare for pandemics and the lack of effective public response from a number of governments to protect the public health through proven effective measures such as social distancing and quarantines to flatten the curve of the pandemic. When life and health of populations are at stake, business as usual must not go on; there is a need to ensure that normal operations do not erode health policies to control the spread of the disease and the associated risk of a collapse of public health systems, he said.

Whether lives are protected or some more economic wealth is produced in a given year is a choice that has to be taken from a human rights perspective. "The economy as such cannot stand in first position, especially since it did allow for the majority of people to have no personal safety net. Life, and human rights, must be in the centre of concern."

Some governments seem to promote an approach consisting of "saving the economy" at any cost, including by putting the health and lives of the majority of their populations at stake. By the same token, this economy-centred approach is often accompanied by a similar lack of enthusiasm to reduce inequalities, ensure the realization of economic and social rights of all, or to reduce deaths or health problems from pollution and climate change. In this sense, it is necessary to distinguish between big corporations' claims to maintain their profits, and the needs of impoverished workers who try to earn their daily livelihood.

While it is important to minimize social and economic impacts of the economic recession by providing employment and thus ensuring the survival of the business sector as a whole, alternatives do exist. For example, they could include targeted, temporary and compulsory payment holidays from taxes, rent and mortgages, other debts owed or other types of relief.

The "economy first" approach should not mean leaving people on their own to cope with the pandemic, said the independent expert. "Besides, millions of people dying does not sound like a great contribution to the economy from a purely consequentialist viewpoint."

In turn, implementing robust public health policies that save lives and prevent health systems from collapsing should be complemented by policies to enable the economic system to produce and deliver goods and services to fulfil basic human rights while minimizing the long-term negative economic effects of the pandemic.

"Not putting public health at the centre of the governmental action plans does not save the economy, it only leads to the worst of both worlds," said the rights expert.

What can be done now

According to Bohoslavsky, an immediate emergency human rights and humanitarian response should be urgently deployed in areas and groups at heightened risk of the pandemic.

In particular, humanitarian efforts must urgently provide relief to all individuals including those living in informal settlements and in situations of homelessness, informal workers including domestic workers, landless farmers, indigenous communities, poor neighbourhoods, internally displaced persons, refugees, migrants, persons with disabilities, older persons, children, women who are victims of violence and persons under detention and in state custody.

A welcome development is the $2 billion coordinated global humanitarian response plan to fight Covid-19 launched by the UN Secretary-General on 25 March. "Yet, this $2 billion plan is negligible given that a number of developing countries do not even have resources to obtain testing kits and other medical supplies," said the rights expert.

An effective Covid-19 testing policy should be a priority and tests should be made available for the population free of charge, in particular for health workers and also the most vulnerable and marginalized, he added. Acknowledging that the availability of test kits is linked to production, trade, distribution, economic resources and other concerns, a comprehensive approach should be envisaged by all states to provide effective solutions, including when it comes to international cooperation.

Such initiatives or any other initiatives to soften the economic fallout of the crisis, such as cash transfers and subsidies, must be designed to urgently reach those in need (whether "banked" or "un-banked") and benefit all those financially struggling, without any discrimination, including those who are self-employed, informal workers and unpaid care workers, who are largely women.

This should be coupled with continued efforts to fight the pandemic from a human-rights-based approach, mitigating the consequences of any potential lockdowns and restrictions that were put in place to combat the pandemic resulting in adverse human rights impacts, which in turn are leading to economic and work disruption as well as a surge in domestic violence, said the rights expert.

As already adopted by many states, measures including unconditional cash transfers to maintain an adequate standard of living, avoiding entrenchment of inequalities and preventing people from being pushed into poverty, must be adopted immediately.

While states have the duty to protect human rights, including from abuses from third parties, businesses must respect human rights in their operations, by seeking to prevent or mitigate human rights impact and by "doing no harm". In this regard, businesses should abide by the Guiding Principle on Business and Human Rights and World Health Organization (WHO) guidance for preventing the spread of Covid-19 at the workplace.

Since adequate housing is the entry point to the exercise of numerous human rights, such as education, work and health, and key to the effective implementation of prevention efforts, a moratorium on evictions should be enacted.

It is of utmost importance to ensure that emergency economic policies adopted to keep the economy functioning are consistent with massive testing, physical distancing, isolation, health measures and caring for the isolated.

"Not putting public health at the centre of the governmental action plans does not save the economy, it only leads to the worst of both worlds."

On another level, individual property rights (real, personal and intellectual) need to be aligned with other human rights. As such, property rights are not absolute and, if duly justified, states should be able to take the necessary economic and legal measures to more effectively face the current health crisis. In particular, no private economic entitlement and monopoly should trump the rights to health and life of all, said Bohoslavsky.

In view of the life-threatening situation, including for medical staff, states should also envisage instructing or taking control of some businesses that are able to produce masks and necessary gears to do so if this leads to a more effective protection of public health. Owners should be compensated according to the respective constitutional standards.

"Along this vein, it is in times of such a global health crisis that there should be complete waiver of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) stipulations with respect to medicines and other related technologies."

The proposal made by Costa Rica to WHO to create a pool to collect patent rights, regulatory test data and other information that could be shared for developing drugs, vaccines and diagnostics, is therefore in line with international human rights standards, said the rights expert.

These efforts need to be complemented by both a short- and long-term investment in public health and epidemiology research as well as cash injection in the public development of vaccines and drugs.

The independent expert also said that private debt servicing should be suspended for individuals who would otherwise be unable to cope with the public health crisis and be without income. During this period, these loans should not bear interest. In this regard, a suspension of mortgage payment should be introduced, as is already the case in a number of European countries and Argentina.

In the same vein, those in need should benefit from individual and certain corporate tax cuts or delays.

It is also crucial to suspend for at least six months debt payments and servicing to the financial sector by low-income families and poor households to avoid a situation where emergency cash transfers from states end up entering financial circuits rather than fuelling the real economy and helping the families.

A moratorium on sovereign debt repayment for debt-distressed developing countries, countries with a majority of poor population (to avoid future debt distress) and countries heavily suffering from the economic fallout of the pandemic should be immediately implemented, said the rights expert.

International financial institutions (IFIs) and other creditors should urgently mobilize their financial resources to help countries combating the pandemic, and ensure that the release of any loans or grants does not depend on the implementation of any type of conditionalities, such as austerity measures, privatization and structural adjustment, which risk negatively impacting human rights. If anything, debt cancellation could be tied to a substantive increase in domestic spending on social protection with emphasis, for instance, on health, education and nutrition.

When it comes to the financial sector, the lack of or weak regulation has been fuelling the anticipated crisis, allowing high speculation. According to some studies, capital outflows from the emerging market economies have exceeded $70 billion since the beginning of the coronavirus outbreak. In order to prevent capital flight, capital controls should be applied, as called for by a global group of academics.

The independent expert also said that states need to reconsider their fiscal policies to finance social policies, and ensure that monetary policy is consistent with both of them. Financing fiscal deficits can be legitimate if it ensures access to basic human rights for the population.

It is unacceptable in human rights terms that a few people, in particular the richest "1%", benefit from crises through speculation and other means. In this connection, immediate measures should be taken to combat such financial manoeuvres, including when it comes to Covid-19-related products and basic commodity prices.

"It is of unfortunate concern that, despite the broad agreement on the need to strengthen the fiscal space of States, the World Bank continues to promote structural reforms during the Covid-19 outbreak, which, if done as in the past, will negatively impact human rights worldwide."

According to Bohoslavsky, the current health and economic crisis shows two things. First, some aspects of the economic, social and cultural rights of immediate effect do not require resources. For instance, treatment of Covid-19 patients cannot be denied based on gender, age, race, origins, class, caste, religion or belief, and other grounds under the prohibition of discrimination.

Second, this crisis has demonstrated that money can be found when there is a sense of danger and need. Governments and the international community are pledging to inject trillions of dollars; in fact, the G20 major economies have promised to inject $5 trillion into the global economy and "do whatever it takes to overcome the pandemic."

"This way of thinking is reactive rather than proactive. If even a fraction of that amount had been used proactively for the realization of human rights, to build a robust public health sector instead of subjecting it to marketization, privatization and cuts, to combat inequalities and poverty and the related underlying systemic issues, we would currently not be in such a dire situation," Bohoslavsky said.

States now need to invest massively in decreasing inequalities and poverty, and not just bailing out large corporations, banks and investors with no human rights nor social conditions attached. "We know well that they will not immediately nor spontaneously share these resources with those in most need."

"... it is in times of such a global health crisis that there should be complete waiver of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) stipulations with respect to medicines and other related technologies."

Public investments should also aim at reaching small and mid-size enterprises, creating long-term sustainable employment, and prioritize the realization of human rights, in particular economic, social and cultural rights, and the Sustainable Development Goals while taking into account the environment to avoid future climate change disasters.

One important aspect that is missing in the policy debates, said Bohoslavsky, is the ultimate source of the funds to be injected into the economy. For sure, in the short term, the state will have to run a wide deficit as higher expenditure will not be offset by higher revenues (rather the opposite). But at a second stage, it will be necessary to reduce this deficit and face new payments on the public debt front. Given the exceptional situation, states could set a one-off wealth tax, but they can also undertake more ambitious reform.

Indeed, this is the right time to seriously engage in structural reforms for redistributive justice including progressive taxation reforms, where millionaires and billionaires and large corporate conglomerates are requested to contribute to the society in a proportional measure to their fortunes, said the independent expert. (*SUNS9103*)

Third World ECONOMICS No. 697, 16 - 30 April 2020

Attempts at "virtual" talks, decisions amid Covid-19 rejected

Many developing countries have come out against suggestions that the WTO, which is unable to hold physical meetings amid the Covid-19 lockdown, convene virtual sessions to take substantive decisions.

by D. Ravi Kanth

GENEVA: Many developing and least developed countries have sharply rejected attempts at the World Trade Organization to take decisions through virtual negotiations or written-answer procedures in the face of the worsening Covid-19 global pandemic.

At a virtual informal heads-of-delegation (HoD) meeting on 17 April, around 30 developing countries, including India, Barbados, South Africa, Jamaica on behalf of the Africa, Caribbean and Pacific (ACP) Group, Ecuador, Venezuela and the African Group, shot down WTO Director-General (DG) Roberto Azevedo's proposal for taking decisions by using "virtual platforms" or written-response procedures.

The abovementioned developing countries, individually or in groups, said they are not prepared to use virtual platforms for taking decisions at this juncture.

In an email sent to WTO members on 9 April, Azevedo had sought their responses to two questions:

A. Is your delegation comfortable with the conduct of informal meetings and exchange of views (i.e., without formal decision-making) through virtual meetings?

B. What are your views on where decisions are required and whether we are open to the use of virtual platforms to take decisions, or alternatively to written procedures for the adoption of decisions? (The precise modalities for such procedures would need to be agreed through further discussion with Members.)

The developing and least developed countries said they are comfortable with the conduct of informal meetings and exchange of views that would not involve taking any formal decisions, said several trade envoys who asked not to be quoted.

In contrast, the so-called "friends of the system" such as Canada, Australia, Singapore and Switzerland among others, and the European Union said they are open to work for exchanging information through virtual platforms and also for taking decisions, including negotiating outcomes for finalizing disciplines on fisheries subsidies.

Members' views

In their introductory remarks at the 17 April virtual informal HoD meeting, the DG and the chairperson of the WTO General Council, Ambassador David Walker from New Zealand, said while they remained concerned about the escalating Covid-19 pandemic, it was important to start work at the WTO. The DG said the HoD meeting was not going to take any decisions. The General Council chair underscored the need to convene a special Council meeting as and when conditions permit.

During their interventions at the meeting, the trade envoys of Canada, Mexico, Saudi Arabia and the European Union – the first four to take the floor – lent support to the DG, saying that they are comfortable with both information-sharing and taking decisions through virtual platforms.

Canada even suggested that the virtual platform route can be adopted for pursuing work in the plurilateral Joint Statement Initiative groups on electronic commerce, investment facilitation, disciplines for micro, small and medium enterprises, and trade and gender.

The four countries also emphasized the need for continuing with the fisheries subsidies negotiations in order to finalize a decision by the end of the year at a special General Council meeting to discuss the time and venue for the WTO's 12th Ministerial Conference next year. (The Ministerial Conference, which had been scheduled to be held in Nur-Sultan, Kazakhstan, this June, has been postponed in view of the Covid-19 pandemic.)

The US, which spoke after these four countries, delivered a nuanced statement saying that it is comfortable with the convening of informal meetings and virtual meetings which are feasible and appropriate, said trade envoys non-attributively.

US Ambassador to the WTO Dennis Shea said it "would be premature to look for horizontal process at this point of time [as] that can create unnecessary problems at this juncture".

As for taking decisions, Shea said the US doesn't have a clear view on how to conduct work by remote engagement, including the decision-making process.

Singapore supported commencing work right away, saying that the WTO has a major role to play in fighting Covid-19. It said it has joined with New Zealand to pursue an initiative to address trade restrictions on food and other items.

Singapore said it is comfortable with both the options – exchanging information through virtual platforms and taking decisions where they are needed – mentioning in this respect the UN General Assembly practice of the "72-hour silence" rule, adopted in March in the midst of the Covid-19 outbreak.

(The 72-hour rule authorizes "the President of the General Assembly, where, in his view, a plenary meeting of the General Assembly is not practicable due to the coronavirus pandemic, to circulate, after consultation with the General Committee, draft decisions of the General Assembly to all Member States under a silence procedure of at least 72 hours. Subsequently, if the silence is not broken, the decision shall be considered adopted, and the General Assembly shall take note of the decision at its first plenary meeting held after the cessation of the precautionary measures as soon as the circumstances allow, and that this decision on the procedure for taking of decisions of the General Assembly shall be in effect until the end of May unless extended through this procedure.")

Not feasible

During its intervention after Singapore's, India ruled out taking decisions through virtual platforms.

Indian Ambassador to the WTO J.S. Deepak said that "India can agree to the conduct of informal meetings and exchange of views without formal decision-making, through virtual means, so that we remain engaged on important issues".

"However," he said emphatically, "let us be very clear that informal virtual meetings cannot translate into discussions on substantive negotiating issues that have implications on Members' policy [space]."

Deepak said India is open to considering regular WTO committees seeking online written submissions, but only on non-negotiating agenda items, provided the timelines for submitting written responses are "pragmatic and flexible."

In a categorical rejection of the proposal in the DG's second question, Deepak said "we do not think that it is feasible to conduct negotiations or adopt decisions on substantive negotiating issues through virtual meetings or written procedures", citing four reasons.

First, the lockdowns and social distancing norms imposed across most capitals make it very challenging to coordinate with and receive substantive inputs from all relevant stakeholders.

Second, capitals are preoccupied with battling the current crisis and WTO negotiations are low on their priority, further constraining delegations' ability to negotiate at the WTO.

Third, the economic hardship, threat to food and livelihood security and other negative repercussions of the pandemic may lead several WTO members to reassess their negotiating positions across different areas of the WTO's work. Therefore, to carry on with negotiations in a business-as-usual format does not make sense.

Fourth, in a consensus-based organization such as the WTO, it is of fundamental importance that negotiations are transparent and inclusive. Not all members are equally equipped for this because of the digital divide and resource constraints.

For these reasons, said India, it would strongly "recommend that negotiations are postponed till the situation improves. The timelines for all negotiations, including for disciplines on fisheries subsidies, must also be readjusted in tandem with the revised timelines for MC12 [the 12th Ministerial Conference]".

Speaking after India, Ecuador, which is severely affected by the pandemic, said it is important to ensure security and privacy and recognize the difficulties in its capital where extreme lockdown conditions are being pursued.

China said the developing and least developed countries must receive technical assistance to address their core problems.

Chinese Ambassador to the WTO Zhang Xiangchen said decision-making at this stage is more sensitive and complex, stressing that it should be dealt with more cautiously.

He said the two questions raised by the DG have their pros and cons, pointing out that there should be consensus on both the options. He added that members must not allow the pandemic to override their work at the WTO.

Barbados said that countries are in uncharted waters following the Covid-19 pandemic, calling for creative solutions based on a transparent, inclusive and non-discriminatory framework. It said it would support virtual meetings for information sharing where formal decisions are not needed. However, it is hesitant to support processes for taking formal decisions that would change its national policies or regulatory framework.

South Africa, which spoke after Barbados, said the immediate priority for its government is to contain the spread of the virus and save lives and livelihoods and thereby enable economic recovery. Its Ambassador Xolelwa Mlumbi-Peter said that as regards WTO work, different countries and regions are still experiencing varying problems and grim difficulties in the face of Covid-19, so "our work must take cognizance of this reality".

On the DG's first question of information sharing through virtual platforms, Mlumbi-Peter said that South Africa would be flexible although such information sharing is fraught with difficulties and full of constraints.

She called for infrastructural support to developing countries which are currently grappling with Covid-19.

Regarding decision-making, she said "decisions [at the WTO] must be held in abeyance until all members are able to participate". Negotiating mandates are based on consultations, political and policy guidance with capitals, which are nearly impossible at this juncture, she maintained.

South Africa, she said, is committed to

a rules-based multilateral trading system and will work with all members to find innovative methods to continue work at the WTO.

Sri Lanka said it can agree with information sharing through virtual processes provided they do not involve any decisions or lead to negotiations or decision-making on substantive issues. However, it cannot agree to taking decisions through virtual or written-answer procedures. It said WTO-related issues are not the priority now. It added that it wants restrictions on medical supplies to be lifted.

Venezuela called for worldwide effort of solidarity to combat the pandemic, criticizing restrictions placed by some countries on medical supplies. It urged cooperation and international support for the initiatives taken by the World Health Organization, and said there is no room for conducting negotiations at this juncture at the WTO.

On behalf of the ACP Group, Jamaica delivered a strong statement saying the Group acknowledges that these circumstances require creativity to sustain the operations at the WTO. However, it must be done on the basis of a carefully balanced framework by preserving the principles of transparency and inclusivity.

The ACP Group, said Jamaica, is flexible on using virtual platforms or written procedures in a controlled way on substantially routine outcomes. But it urged caution over using these processes for negotiation meetings or meetings to adopt decisions that involve policy space. It also underlined the need for clarity on the status of written comments during the informal process.

The African Group said that its members are facing grave difficulties, adding that "lockdowns and states of emergency across the continent have adversely affected effective communication with our capitals." Its members are concerned about Covid-19 trade-restrictive measures and their impact on Africa, particularly on affordable access to foodstuffs, medicines and equipment critical to addressing Covid-19.

The African Group said it is flexible regarding the holding of informal meetings and exchange of views without formal decision-making through virtual processes. However, it does not support negotiations through virtual meetings, as this method of communication has proven not to be the most practicable even within its own regional consultations. It reiterated the importance of consultations with capitals and the limitations currently posed by the Covid-19 situation. While written procedures may be practical, from experience they have proved to be very time-consuming and do not allow fluid exchanges among delegations.

Therefore, as regards the DG's second question on taking decisions, the African Group said that it is "unable to support the use of virtual platforms or written procedures to reach any substantive decisions during this extraordinary time."

"Any such decisions should be deferred to a period when sufficient normalcy has returned and our capitals are able to provide the necessary technical and political oversight," the Group said.

In his concluding remarks, the DG admitted that there is no consensus among members on taking decisions through virtual platforms. He said members seem flexible with the first option of information sharing without taking decisions through such platforms. (*SUNS9104*)

CSOs call for halt to trade negotiations during Covid-19 crisis

Civil society organizations from around the world have proposed that trade talks be stopped in the midst of the Covid-19 pandemic, with priority given instead to removing intellectual property and other barriers that may impede measures to stem the outbreak.

by Kanaga Raja

GENEVA: Over 250 civil society organizations (CSOs) have called for a halt to all trade and investment treaty negotiations during the Covid-19 outbreak and called instead for refocusing on access to medical supplies and saving lives.

In an open letter dated 17 April to trade ministries as well as the WTO, the CSOs said they were shocked that "some trade negotiations are still continuing in the WTO, as well as bilaterally and regionally, using virtual technologies."

The first and only priority for trade negotiators at this time, they said, should be to remove all obstacles, including intellectual property rules, in existing agreements that hinder timely and affordable access to medical supplies, such as lifesaving medicines, devices, diagnostics and vaccines, and the ability of governments to take whatever steps are necessary to address this crisis.

Among the international and regional CSOs that signed on to the open letter were ActionAid International; Arab NGO Network for Development (ANND); DAWN (Development Alternatives with Women for a New Era); Focus on the Global South; Friends of the Earth International; Global Policy Forum; Greenpeace; Institute for Agriculture & Trade Policy (IATP); the International Trade Union Confederation (ITUC); Medecins Sans Frontieres Access Campaign; Oxfam International; Public Services International (PSI); Social Watch; and Third World Network. A host of national organizations also signed on.

In their letter, the CSOs noted that the World Health Organization (WHO) has called for governments to take a whole-of-government, whole-of-society approach to address the pandemic and refocus their attention on suppressing and controlling Covid-19.

"Many governments at the national and sub-national level are already doing so. Governments are working around the clock to deal with the health aspects including life-threatening shortages of medical supplies, including medicines, and healthcare workers and preparing for a global economic shock that is more severe than the 2008 global financial crisis," said the CSOs.

Government officials are being diverted to working on the pandemic, and several trade negotiators and key decision makers have already fallen sick with the coronavirus. Countries do not have enough staff and other resources to deal with just the health aspects of the pandemic. These pressures are especially intense for developing countries. Governments everywhere are facing shortages of essential test kits and other medical supplies, such as personal protective equipment including masks, ventilators, vaccines and medicines, said the CSOs.

".. we are shocked that some trade negotiations are still continuing in the WTO, as well as bilaterally and regionally, using virtual technologies."

Vaccines and potential medicines to treat Covid-19 are under clinical trial and development and it is not clear whether intellectual property will be a barrier to their supply, access and affordability due to currently applicable obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and free trade agreements, the CSOs added.

"Given this clear and urgent priority, we are shocked that some trade negotiations are still continuing in the WTO, as well as bilaterally and regionally, using virtual technologies."

It is not feasible for many developing and least developed countries to participate, given the digital divide and the need to focus all governmental resources on this public health emergency, they said.

Nor should countries be diverting their resources into negotiating rules for a world that will be unimaginably different once the pandemic subsides.

"The first and only priority for trade negotiators at this time should be to remove all obstacles, including intellectual property rules, in existing agreements that hinder timely and affordable access to medical supplies, such as lifesaving medicines, devices, diagnostics and vaccines, and the ability of governments to take whatever steps are necessary to address this crisis."

Unilateral sanctions that prevent countries from obtaining essential medical supplies must end, added the CSOs.

They called on WTO members to ensure that all countries have the flexibilities to set aside trade rules that constrain their ability to resolve the pandemic crisis, without fear of repercussions, and to cease other negotiations and activities that divert their energy and resources from that goal.

"We further call on you to recognize that the Covid-19 pandemic necessitates a fundamental rethink of the types of rules that are negotiated in trade agreements, including those that can encourage monopolies and reduce affordable access to all forms of medical supplies, and put at risk the lives of people in every country of the world," they said. (*SUNS9103*)

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Trade policy choices during and after pandemic

Ranja Sengupta urges a rethink of moves to further free up trade while the Covid-19 outbreak is raging.

The Covid-19 pandemic caused by the novel coronavirus has now unleashed its destructive force across the world and countries are reeling.

There are impacts in terms of continuously increasing infections and deaths, coupled with testing, containment and treatment constraints. There are also massive economic impacts of this pandemic and any efforts to address it (such as lockdowns).

The damage is felt across both developed and developing countries, partially due to lack of capacity as well as lack of timely and appropriate decision-making. The full extent has yet to unfold.

Trade remains a critical part of this scenario since the movement of goods and people across national borders has contributed much to the spread of Covid-19. But trade also matters for the policy choices to deal with the crisis.

The responses

The solutions mooted by key institutions and countries in terms of trade policy choices require careful analysis.

There seems to be an opportunistic, even desperate, attempt by some countries to sign more trade agreements as if an agreement on paper will magically solve all real-life problems.

The WTO secretariat and some developed-country WTO members have also been trying to continue negotiations in several areas, including fisheries subsidies and agriculture, through emails, virtual meetings and online technologies.

Some plurilateral negotiations such as those on e-commerce, investment facilitation and domestic regulation in services are also apparently sought to be moved forward.

The rationale for continuing these negotiations when all our countries are being ravaged by the virus, is unclear.

Given the urgent domestic situation in most countries and the digital divide that the poorer countries face, continuing with these negotiations runs several risks.

Firstly, this process is non-inclusive and opaque, and secondly, it is biased in favour of those who lead and can participate effectively through virtual means. The outcomes may be defective and often biased against developing countries and least developed countries (LDCs).

Already, the policy prescriptions being advanced by the Organization for Economic Cooperation and Development (OECD) and certain rich countries are worrying.

In a policy brief titled "Covid-19 and International Trade: Issues and Actions", released on 10 April, the OECD suggests a higher use of trade facilitation through the WTO's Trade Facilitation Agreement (TFA), and of e-commerce to solve the crisis.

However, these are sensitive issues for developing countries and LDCs. For example, higher use of e-commerce should not necessitate higher engagement in e-commerce negotiations that are riddled with many regulatory and financial problems for developing countries.

The OECD brief also proposes a global agreement for removal of all tariffs, coupled with either a complete ban or conditions on export restrictions, on medical and other essential products.

Declaration by New Zealand and Singapore

These ideas are reflected in the Declaration on Trade in Essential Goods for Combating the Covid-19 Pandemic, launched on 15 April by New Zealand and Singapore. This was circulated to all WTO members on 16 April as a communique and as an invitation for others to join.

The Declaration pins down a commitment to "eliminate all customs duties and all other duties and charges of any kind" and not to "apply export prohibitions or restrictions" on a number of products listed under an Annex I that includes so-called essential processed food items and medical products.

An additional Annex II covers an extensive list of food products. The participating countries are expected to "endeavour" not to apply export restrictions on these. They are also to enter into arrangements with one or more of the other participants for tariff removal on Annex II products.

The participants will also "intensify consultations with a view to removing non-tariff barriers" and to "expedite and facilitate the flow and transit of all products listed in Annex I and Annex II" through the WTO TFA.

The attempt to eliminate export restrictions is expected and will be echoed in many trade circles. However, it is clear that many countries will attempt to restrict export of essential products to ensure domestic supply in a crisis, even if it means denying these products to other countries.

There is no easy solution to this complex problem.

Countries imposing export restrictions must try to increase production at the earliest possible, so that the restrictions can be eased. In the very short run, with lockdowns galore, this may not always be possible.

However, even in a situation of export restrictions, there should be continued supply to the poorest countries, which do not have the capacity to produce these essential items.

As seen in the case of India's hydroxychloroquine export ban, the most powerful countries do not hesitate to flex their muscles, including by issuing retaliation threats. The scramble for N95 masks also showed how the highest bidders can corner limited global supplies of crucial medical products.

Interestingly, both the New Zealand/Singapore Declaration and the OECD brief (which does advocate conditions on export restrictions if these have to be imposed) do not explicitly mention preferential treatment for poorer countries.

Is tariff removal the way to go?

A WTO report on "Trade in Medical Goods in the Context of Tackling Covid 19", released on 3 April, highlights high tariffs related to, for example, soap (average tariff 17%, high 65%), protective supplies (average tariff 11.5%, high 27%) and masks (high tariff rate at 55%).

The New Zealand/Singapore

Declaration and the OECD proposal suggest total removal of tariffs on medical, and, if possible, food products, to help solve the crisis.

According to this free-trade mantra, import duties distort demand, which in turn prevents the most efficient producer from supplying at the lowest price to the consumer.

However, while using import duties, countries need to balance two needs: protecting domestic production and livelihoods, and meeting domestic demand.

During the current crisis, there is already excess demand, and any country that needs to import these (maybe cheaper) products to fight the pandemic will autonomously remove or reduce duties to encourage imports. They will thus be free to increase duties later, if they so need.

So the world will automatically see a reduction in these tariffs on a need basis. Therefore, it is not clear why countries need to be forced to eliminate duties through this Declaration.

The purpose seems to be a forced liberalization of trade in these products in the longer run and undermining the objective of protecting domestic production and supply, as well as livelihoods.

The Declaration appears to be open-ended and does not specify a particular period for which this "agreement" should be in place, although it suggests a review (and not a termination) by mid-2021.

While this may be understandable given the uncertainty over the duration of this pandemic and its after-effects, it implies that countries will liberalize these sectors, including all kinds of agricultural products, for an unknown period of time.

Tariff cuts will generally impact more on developing countries, whose tariff levels on average are much higher than those of developed countries, especially on agricultural products, which are extremely sensitive.

So are developing countries being asked to now cut this protection for their farmers and producers, and expose them to foreign competition forever?

Moreover, countries that have domestic production, perhaps infant industries, both in medical products as well as in food, will want to maintain import duties in order to develop these further.

In the aftermath of Covid-19, many countries will also urgently need to restart and strengthen domestic production capacities to ensure some extent of self-sufficiency in such essential goods.

Even rich countries like the United States and Germany, which already have well-developed medical industries, have hinted as such. But with tariff cuts, developing countries and LDCs cannot pursue self-sufficiency.

Many small and medium-sized enterprises and small-scale farmers in developing countries and LDCs are already reeling from the impacts of the human, health and economic crisis posed by Covid-19. Any tariff removal commitment means their governments cannot protect them from foreign competition, even to maintain domestic supply.

Furthermore, production in the domestic industries in these countries may get reduced. This can create more global shortages and further increase concentration in global markets.

The WTO's 3 April report itself shows that Germany, the United States and Switzerland supply 35% of medical products, while China, Germany and the United States export 40% of personal protective products.

It is clear that in the absence of self-reliance, rich countries will still have the ability (even if it is more difficult) to buy the needed goods in a crisis. But poorer countries will definitely lack this.

The attempt to liberalize such sectors in the name of the pandemic by espousing the "free market" as the ultimate solution, is to repeat the mistakes of the past.

History, and recent history even more so, has clearly shown there is no "free market" nor "free trade". Those with economic power will dictate, and developing countries and LDCs need to develop at least partial self-reliance in key products.

They need to retain and not give away their policy flexibility in order to survive; to abstain from making further commitments in trade deals may be the best option until the world arrives at its new normal. (*SUNS9105*)

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Pandemic profiteers
How foreign investors could make billions from crisis measures

The very actions taken by governments to combat the coronavirus crisis could trigger a wave of big-money lawsuits by foreign investors that would further drain beleaguered public budgets.

by Cecilia Olivet, Lucia Bárcena, Bettina Mueller, Luciana Ghiotto and Sara Murawski

Faced with an economic crisis that could lead to starvation or riots, a finance minister was forced to default on their country's debt, massively devalue the currency and freeze water and electricity tariffs. The actions led to 42 transnational corporations initiating lawsuits for lost profits.

This sounds like a story unfolding right now, but it is actually an account of Argentina in the midst of its 2002 financial crisis. And in the wake of Covid-19, it could certainly repeat itself in country after country as they take exceptional measures to grapple with an unprecedented economic shockwave.

The scale of the economic impact of Covid-19 is only starting to become apparent. The United Nations Conference on Trade and Development (UNCTAD) has warned of a "looming financial tsunami" that could cut global investment by 40% and has urged a $2.5 trillion crisis package for developing countries. Worldwide, governments have been forced to take financial and economic measures that were impossible to conceive just a couple of months ago. Not only have they been forced to disburse limited public funding to strengthen health systems, to protect the poor and vulnerable, to support workers and small businesses, and to scale up unemployment benefits and social protection, they have also had to take emergency measures such as suspending payments to private companies or taking over private corporations to manufacture essential health equipment.

The government actions will put unprecedented pressure on already strained public budgets, particularly those of Global South countries. However, less well known is that they could also prompt a wave of lawsuits by multinational corporations and investment lawyers over the emergency measures taken right now to protect citizens. These claims could be made under a mechanism known as investor-state dispute settlement (ISDS), found in the fine print of almost every investment agreement worldwide.

ISDS grants corporations special rights to sue states over laws, regulations and government measures that potentially affect their business – even if these actions were taken in the face of the biggest emergency health crisis the world has ever faced. Perversely, these potential lawsuits and the financial compensation they seek will only add to the already immense financial burden on many states.

The global web of investment agreements could undermine actions to fight Covid-19

ISDS claims are enabled by a complex web of international trade and investment agreements that contain investment protection clauses. ISDS claims have been successfully brought against states over measures aiming to protect the environment and public health, extend affordable access to energy and clean water, and promote better working conditions. This privileged access to a parallel private judicial system is exclusive for foreign investors and only works one way – states cannot sue investors for disrespecting national or local regulations at these arbitration tribunals.

UNCTAD confirmed recently that there are already more than 1,000 ISDS claims known worldwide. Claims by investors suing states have skyrocketed in the last decade, and so has the amount of money involved.

And this exponential curve in claims could grow even further in the wake of Covid-19. Law360, a specialized lawyers' magazine, said on 8 April: "For arbitration and litigation funders, the past few weeks may mark the beginning of a boom."

While claims by corporations against states may seem extraordinary and politically risky, it would not be without precedent. In fact, transnational corporations, backed by investment lawyers and third-party funders, have a history of using international investment agreements to scavenge for profits by suing countries in crisis.

Argentina's experience is relevant here. Despite a crisis that shrunk the economy by 28% and pushed half the population below the poverty line, foreign investors were not put off initiating lawsuits against the embattled government. Forty-two corporations launched lawsuits, claiming a total of $16 billion.

Indeed, investment lawyers are already readying their corporate clients for the opportunities. On 26 March, international arbitration law firm Aceris Law told its clients: "While the future remains uncertain, the response to the Covid-19 pandemic is likely to violate various protections provided in bilateral investment treaties (BITs) and may bring rise to claims in the future by foreign investors." Several other elite law firms released warnings to investors.[1]

The Peruvian government has already been warned that the suspension of the collection of toll fees for the country's road network – a measure the government took in the context of the Covid crisis – could result in several ISDS claims.

The lawsuits could seek to get compensation for actions of governments like Spain, which on 14 March passed a decree that allows the government to "intervene and temporarily occupy industries, factories, workshops, farms or premises of any nature, including privately owned health centres as well as those that develop their activities in the pharmaceutical sector". Other countries have enacted similar provisions. The Italian government is now entitled to requisition private medical equipment to serve a public function.

Foreign investors could allege that Italy and Spain are breaching the *direct expropriation* standard of investment treaties by allowing the requisitioning of private corporate property and equipment. The mandatory lockdown of all commercial activities and the seizure of private production lines could be interpreted by investors as *indirect expropriation*.

Governments will certainly argue that measures taken to protect public health in the midst of the current crisis are part of their legitimate goals as states. International law allows states to defend their actions with an argument of necessity or extreme circumstances (*force majeure*). However, academics have warned "the plea of *force majeure* is a very strict one, and states have rarely been successful when invoking it as a matter of international law". This line of defence has not proved sufficient in the past to stop lawsuits or successful and expensive claims by investors. In 11[2] out of the 14 cases where Argentina used the state of necessity as a defence, arbitration tribunals rejected the argument.

Foreign investors could take millions of dollars from public budgets

There are currently 343 ISDS claims pending worldwide, and the majority of those (213 cases) are against Latin American, Asian and African countries. Some countries in the Global South have billions outstanding in pending ISDS claims. Mexico has 12 pending cases, making up a total of $5.4 billion in claims. India has 13 pending cases amounting to $8 billion in claims.

But, this is not just a problem for developing countries. Spain, one of the countries worst affected by Covid-19, is also the second most sued country worldwide. Currently, the Spanish government is legally battling with eight investors that are trying to accelerate the collection of 739 million euros due to them as a result of favourable arbitration rulings.[3]

By the end of 2018, states worldwide had been ordered or agreed to pay investors in disclosed ISDS cases a staggering $88 billion.[4] Millions of dollars of taxpayers' money have been diverted away from funding for public health, access to food and employment creation.

The costs of ISDS claims have contributed to the already heavy foreign debt burden of the Global South. The $88 billion awarded to foreign investors and investment lawyers as a result of ISDS awards until 2018 is almost the same amount as what the International Monetary Fund (IMF) has made available to low-income and emerging economies to tackle the most adverse effects of the coronavirus crisis. It is also 18 times the budget of the World Health Organization (WHO) for 2020.

Coronavirus wake-up call: five measures governments should take immediately

The fact that we are marking the 1,000th ISDS claim in the middle of a profound social and economic crisis should be a wake-up call. Just as the pandemic is revealing profound health inequities and the dangers of agroindustrial food systems, it is also showing the dangers of trade and investment systems that put corporate profits above health and life.

There is no place for trade and investment agreements that allow investors to profit from suing countries in crisis or seeking to cash in on scarce public resources which will be needed to recover from the Covid-19 recession. Treaties that can potentially curtail governments' sovereignty and drain limited public budgets at a time of crisis are not fit for purpose.

Governments should take urgent action to make sure that transnational corporations and investment lawyers do not become beneficiaries of this pandemic at the expense of people's well-being and health. Governments should:

1. Suspend all trade and investment treaty negotiations.
2. Take all necessary steps to terminate (unilaterally or multilaterally) existing treaties.
3. Institute a comprehensive review (cost-benefit analysis) of their current and planned investment agreements.
4. Withdraw consent to ISDS, to limit immediate exposure to investor lawsuits.
5. Default on the payment of outstanding debts as a result of ISDS awards or, at least, discuss ISDS debt relief and/or debt restructuring with creditors.

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Notes

1. Some of the statements put up by law firms specializing in arbitration include:

- "Investment arbitrations often follow economic, financial, or other crisis", Debevoise & Plimpton, 8 April, https://www.debevoise.com/-/media/files/capabilities/arbitration/covid19-impact-on-contracts-and-dispute-resolution.pdf
- "Recommendations to states: states should seek to ensure that their contemplated measures are consistent with international law in advance to avoid having to deal with a flurry of arbitrations", Shearman & Stearling, 14 March, https://www.shearman.com/perspectives/2020/04/covid-19-international-investment-protection
- "Many foreign investors are facing wide-ranging governmental interference in multiple aspects of their business (including, in many jurisdictions, restrictions on the use and movement of their employees, the use of their property and the enforcement of their contractual rights). Some investors have questioned whether the extent of the measures imposed is justified, or whether the measures are proportionate to the serious economic damage which they can inflict." Herbert Smith Freehills, 9 April, https://www.herbertsmithfreehills.com/latest-thinking/covid-19-pressure-points-a-balance-of-obligations-the-response-to-the-pandemic-and
- "The health crisis caused by Covid-19 could turn into a chance to revolutionize arbitration and boost and

strengthen its virtues as opposed to domestic court litigation." Garrigues Law firm, 24 March, https://www.garrigues.com/en_GB/new/will-covid-19-revolutionise-arbitration

2. El Paso Energy Int. Co. (ICSID ARB/03/15); LG&E Energy Corp. (ICSID ARB/02/1); Enron (ICSID ARB/01/3); Suez/Aguas de Barcelona/Vivendi (ICSID ARB/03/19); Suez/Aguas de Barcelona/Interagua (ICSID ARB/03/17); Anglian Water Group (AWG) (UNCITRAL); Continental (ICSID ARB/03/09); CMS Gas (ICSID ARB/01/08); Impregilo (ICSID ARB/07/17); TOTAL S.A. (ICSID ARB/04/01); Sempra Energy (ICSID ARB/02/16)

3. Following favourable awards to the investors in the cases Eiser, Novenergia, Masdar, Infrastructure Services Luxembourg (formerly Antin), RREEF, NextEraEnergy, 9REN Holding and Infrared Capital Partners, the companies have started enforcement proceedings in the US and Australia so they can collect against Spain's assets as soon as annulment proceedings are finished.

4. Calculation based on the UNCTAD database for cases up to December 2018. Out of the 310 disclosed cases which had been decided in favour of the investor or settled, information on damages was provided for 213 cases (69%).