



## **Study Week on Macro-economic, Trade and Investment Policies**

**Arab NGO Network for Development- South Center- Third World Network**

**South Center, Geneva, Switzerland (November 28<sup>th</sup> -December 2<sup>nd</sup>, 2016)**

### **REPORT**

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The Arab NGO Network for Development, along with the South Center and the Third World Network, organized the 4<sup>th</sup> Study Week on macroeconomic policies, trade and investment at the South Center premises in Geneva, Switzerland between the 28<sup>th</sup> of November and the 2<sup>nd</sup> of December, 2016. This study week provided the opportunity for 13 researchers and activists from eight Arab countries to have enriching discussions and debates with experts and high-level specialists in the field on different topics including SDGs, international economy, investment treaties, debt, intellectual property, innovation and health, and inequalities at diverse levels. The aim of this study week was to shed the light on the compulsory need to revise trade and investment agreements that reduce the role of the state in the region and thus impose barriers on technology transfers and promote the corporate power and private interests over human rights. It was intended to enhance the participants' knowledge on the subject matter and make them reflect on their experience after having previously worked with related issues. Therefore, the purpose of this trip was to boost the civil society's advocacy on economic policies in the region by building capacities and raising awareness on the elected common priority-issues

#### **Day 1 (November, 28)**

##### **Session 1: Introduction and Setting the Framework of the Study Week**

Vicente Yu, the Deputy Executive Director and Coordinator of the Global Governance for Development Program at the South Center started the first session of the study week by welcoming the participants, briefing them on the South Center's mission, vision, mandate and latest activities, and setting the plan for the week. He presented the South Center as an intergovernmental organization that was established in 1995 after the non-aligned movements to bring the South altogether, produce knowledge through research for a better understanding of the developing countries' needs and facilitate negotiations between them on different issues by coordination their work, generating ideas and proposals and formulating the different points of view. The South Center deals with a multiplicity of issues such as trade, climate change, intellectual property, financing for development, international financial institutions, the UN and their reforms. It tries to compensate for the lack of sufficient literature for the developing countries and to respond to the need for studying policy related issues and matching positions between them and the bigger emerging economies.

The main criterion for a country to join is that it should be a member of the G77 or the non-aligned movement. The member countries themselves decide on whether economies like China, Singapore or UAE should be considered as developing or developed and they did so by classifying them within the former type. More so, the member countries are the only source of funding for the center. Yu said that the power dynamics consist of having a mutual need between the big developing and the small developing economies to cooperate the way the G20 does. The South Center produces, every six months, an impact statement as per the board's request and shares the report with the member states: a ritual they find very useful and satisfying as it helps them better understand the political and economic dynamics and better realize the impacts both quantitatively and qualitatively.

### **Session 2: The Global Economy (Dr. Yilmaz Akyuz, South Center Chief Economist)**

Dr. Akyuz spoke about the state of the world economy and its systemic implications on developing countries. He affirmed that the global economy has been in bad slopes since the economic crisis that began nine years ago starting from the US then moving to the EU and that has not yet been resolved. It has been getting worse, though, due to the structure of the financial systems and the way it is managed. Dr. Akyuz stressed on the fact that inequality is not just a social problem but also a macroeconomic problem that we unfortunately try to tackle by issuing

debt which becomes at some point unaffordable and un-payable by developing countries. The global economic growth rate fell from 5 to 3% as a result of the crisis; however, while some countries like the US have improved since then, others have not. For example, the unemployment rate declined in the US to reach 5% unlike the EU countries that showed no progress at this level. Statistics, in general, show significantly worse economic situations in the South with any improvement being mainly due to the increase of money supply with a low price of money (i.e. low interest rates) and the fact that China had come across a boost in the commodity exports, which definitely improved the fundamentals in the South.

Trade was a major component of this presentation and of the main ideas that evolved around it is the fact that the growth in the trade activity is unexpectedly greater than the growth in production although what is traded is usually what is produced. This could be explained by the massive trade liberalization and expansion that took place as many multilateral and bilateral agreements were signed and China was accessioned to the WTO. Moreover, there has been a rapid expansion of financial debt, equities and investment which was mainly behind this prosperity in trade since there is a high consumption rate in the investment activity, in general. The third factor is the value chains resulting from the over production of trade that induced a double (or even triple) counting in the exports: this is mostly related to the import substitution and the import content of the Chinese exports that generate fewer importations from other countries such as Indonesia and Korea, especially since many Chinese companies started to operate in the US and other advanced markets. On the other hand, a tariff jumping FDI that is similar to what happened in Latin America in the 50's and 70's has appeared with even other barrier jumping. These phenomena began to slow in the 90's, expressing the urge for more protectionism like some more trade restrictions to create job opportunities.

The external balances are also seen to be moving against the South despite the deficit that the economic crisis has engendered in the advanced economies and the surplus in the South at the moment. This inversion can be perceived by the drop from a surplus of over 12% in the MENA region to a deficit of 4.5%. In reaction to this, the UAE took serious austerity measures to augment its exportations and recover. Most current deficits result from the spending on private investments (an elaboration on private bailouts can be found in Dr. Akyuz' paper "The Staggering Rise of the South, South Center- March 2012"). Nonetheless, the commodity boom is

over as a stabilization occurred after the severe fall that started in 2010 since the GCC countries cut their spending and put importing countries at an advantage. Dr. Akyuz then spoke about the resident and non-resident capital flows in the developing countries focusing on the increase in the market risk and the fall in the reserves without any change at the level of the easy money policy. Furthermore, the presentation included a briefing about the fall in the wage share in the major economies and more importantly about the more recent political changes and the subsequent economic turmoil. This involved an analysis of Trump's Tax cut and other supply side policies and of the absence of economic forecasts in the Brexit affair. The conclusion drew a pessimistic picture of the global economy as the current policy space is more limited compared to what it was in 2009.

**Session 3: Economic Crisis, Social Impacts and Austerity Policies: Conditions in Developing Economies (Isabel Ortiz, Director of the Social Protection Department, International Labor Organization)**

The delegation got the opportunity to meet with Dr. Ortiz at the ILO headquarter in Geneva. Dr. Ortiz' presentation was about her paper that is entitled "The Decade of Adjustment: A Review of Austerity Trends 2010-2020" and that addresses a sample of 183 Countries. It reveals that, due to the global economic crisis, there was a huge cut of expenditures and an unequal income distribution leading to huge differences between the three social classes. The crisis' transmission channels were mainly employment, income, prices, assets and credits. The crisis had two different phases: the first phase (2008-2009) was in the form of a fiscal stimulus plan in 50 countries with a cost of 2.4 trillion dollars, ramped up public spending. As for the second phase (2010-20), it was a fiscal consolidation that is characterized by two major contractionary shocks; the 1<sup>st</sup> in 2010-11 and the 2<sup>nd</sup> taking off in 2016 and lasting at least until 2020. This ongoing adjustment is expected to impact 132 countries in terms of their GDP level, among other variables. The developing world will certainly be the most severely affected since 81 developing countries are projected to cut public spending while it is the case for only 45 developed countries.

Austerity policies, in particular, are expected to impact more than two-thirds of all countries during 2016-20, affecting more than six billion persons. In terms of these measures, a review of the IMF country reports indicates that governments are weighing various adjustment

measures such as the elimination or reduction of subsidies, wage bill cuts (mainly targeting the teachers with low wages and the civilians in the villages), safety net targeting (the focus is normally on the poor but the problem is what happens with other citizens that might destroy the social contract), pension reforms, labor market reforms, healthcare reforms, and revenue side measures that impact vulnerable people through introducing or broadening consumption taxes as well as privatizing state assets and services. The IMF board approved on the following indeed: crisis intervention policies and strategies for fiscal consolidation in the post- crisis world should be followed by a call for large-scale fiscal adjustments "when the recovery is securely underway" and for structural reforms in public finance to be initiated immediately "even in countries where the recovery is not yet securely underway". In addition, the IMF Blueprint for fiscal adjustment consists of an unwinding of the previously adopted fiscal stimulus packages; a reformation of universal pension and health entitlements to reduce the long-term financial obligations of the state and strengthen "safety nets" targeted to the poorest only; the introduction of other spending tools (e.g. eliminating subsidies); and the increase in tax revenues. Subsidies, in particular, are universal and therefore, if you replace them with the safety net targeting the poor, you only benefit the poor and exclude other social segments.

The OECD Economic Outlook (2010) also urged for fiscal consolidation and structural reforms. Nationally, knowing that social security is a state responsibility but not an individual responsibility, there is capacity to social protection in virtually all countries and this can happen through many options which are supported by the UN and IFIs policy statements:

- 1- Re-allocating public expenditures
- 2- Increasing tax revenues
- 3- Expanding social security coverage and contributory revenues
- 4- Lobbying for increased aid and transfers
- 5- Eliminating illicit financial flows
- 6- Using fiscal and foreign exchange reserves
- 7- Managing debt: borrowing or restructuring debt
- 8- Adopting more accommodative macroeconomic framework
- 9- National collective bargaining, which is much stronger

The IMF is typically focused on unfair taxation and unfair wealth distribution, which is having a negative impact on growth even in a more developed framework like Europe where poverty has attacked 123 million of the continent's population since 2008.

**Session 4: Promotion of a Democratic and Equitable International Order (Alfred De Zayas, Independent Expert)**

Dr. De Zayas emphasized the role of the state and legislation in ensuring the public interest. He explained how the corporations try to produce a risk analysis as they know that the state cannot regulate people's interest. He went over country cases such as the discussion of the reason to success in the "Phillip Morris (PM) versus Uruguay" case which was given great media attention and made it very difficult for investor-state dispute settlement (ISDS) to decide on a PM. How is a decision enforced if the state refuses to abide? Often, international corporations would not be able to implement it in the country itself, but may try instead to go in a third country and sequester property (this has been done against Argentina, Guinea-Bissau, etc.). Article 5 on the recognition of foreign arbitral award (New York Convention) gives courts the power to decide that an award is against public policy. De Zayas advises courts to look at what is behind the arbitral award and ask if it does not encroach on the sovereignty of the state on a prima facie basis. If it does, then it must be recognized to be against public policy. He recommends going to the ICJ for an advisory opinion on the legality of these awards. The Supremacy clause in the UN stipulates that where there is a conflict between any kind of agreement and the UN Charter; the Charter will prevail. On the other side, articles 1 and 2 of the Charter are at issue here as they do not allow the assumption that countries would give up sovereignty inadvertently (i.e. most of these agreements are inchoate). This is bad faith according to Article 27 of the Vienna Convention that invalidates these treaties. Article 53 is also applicable here, which makes of these treaties inherently illegal ones.

De Zayas prepared a list of legal questions about these agreements and presented it to the General Assembly. He pointed out that the decisions of arbitral awards actually have health and life/death impacts on some communities. Concerning the Trans-Pacific Partnerships (TPPSs), he mentioned that Japan and New Zealand have zealous advocates but their current situation is causing problems in some other countries. There exists a problem with the CETA (free trade treaty with Canada) as well because some US companies may use their branches in Canada.

However, in the overall context, a transnational corporation has no business getting into state matters whether they can raise taxes or not. Investment agreements may be valid, but only as long as they do not infringe or contradict human rights treaties. The principles of interpretation should include something to that effect – that human rights treaties will trump in the case of conflict. Otherwise, there should be a carving out in certain areas (e.g. patents and environment where it would not be possible for transnational corporations to meddle in), which in the case of the TPPs, was only concerning tobacco. By signing these international agreements, the state is basically confessing that their court system is inefficient, etc. and this should not be accepted. Currently, there are many revolving doors around a policy where you can be an arbitrator one day, counsel the next, on the board of a big corporation right after that, and so on... De Zayas said it is like racketeering.

## **Day 2 (November, 29)**

### **Session 1: Introduction to the EU Free Trade Agreements: Potential Challenges in the Arab Countries (Sanya Reid Smith, Senior Legal Advisor, Third World Network)**

Ms. Smith provided the attendees with an extensive informative session about the EU model of the FTAs. Her speech evolved around the following question: “How trade rules can block or facilitate development? And how do they impact sectors?” Joining the WTO became much more difficult after 1995 since it requires the approval of all member countries and imposes their conditions. Whereas these countries should make a lot of sacrifices and submit to the GATT limitations on tariffs and others, the countries that do not look for joining the WTO are free to set their export taxes as they see convenient. Would it then be useful for the Sudan, a least developed country that enjoys a no tariff and no export tax privilege in its trade activity with the EU, to join the WTO? Therefore, governments of non-exporting countries should make a cost-benefit analysis to decide on their preferences and check if it is really worth it to join the WTO or sign any agreement. Besides this, it is worth noting that export taxes are usually used when the state is rich with natural resources or is suffering from the Dutch disease. However the WTO and the EU promote the banning of export taxes; not to mention the impact on services of a free trade agreement. There are 5 modes that determine services in a free trade agreement. Smith defined them and gave clarifying examples.

Smith discussed the USFTA model (particularly for Jordan and Morocco) as well as the EFTA (agreement with European countries outside the EU) and the EUFTA (agreement with countries of the European Union), the DCFTAs (the Deep and Comprehensive Free Trade Areas) and other agreements of third generation. The second part of this talk was about the implications of Brexit. Smith believes that the effects on the existing partnerships are very dependent on the post-Brexit scenario, the country itself, its exports to the UK, etc. One of the major events that are anticipated to happen is the renegotiation for India and the US, for example. From a panoramic perspective, different scenarios are related to trade after Brexit:

- 1- The Custom Union (free trade area and common external tariff); a case in which the UK will lose since it will accept zero tariff imports without enjoying zero tariff exports.
- 2- Single Market: eliminating tariffs, quotas or taxes on trade. This also includes the free movement of goods, services, capital and people.
- 3- Free trade area: an area where there is no there no tariffs, quotas or taxes on goods and services for a country entering the other
- 4- Trading based on the WTO rules (i.e. adopting the tariffs set by the WTO)

For instance, for the Tunisia EUFTA, EU has proposed positive list for mode 1 (i.e. cross border supply; e.g. via internet) and negative list for mode 4 (only service suppliers-as individuals- go to open their business overseas but some conditions such as degree equivalences are not taken into account). Apart from this, some questions are raised about the latest innovations such as Uber and Airbnb concerning the category they should fall under (informal sector, foreign good, application, etc.). Other questions came across with this respect, including: What about the balance of payments of a country? What about creating jobs? Green field or brown field? What conditions should a service company satisfy to get a license or a franchise? How about the licencing fees? Is the labour law a license in requirement, a technical standard, or both? When state-owned businesses buy something, do they buy from locals? Smith then moved to clarifying how the EU and WTO rules are enforced by suing and stressed the fact that it is not possible to reverse a privatisation in case of full commitment on access to market.

The most problematic issue that remained is the recognition and definition of e-commerce that is still blurry even for the WTO leading to a confusion on whether such products

should be subject to tariffs or not. Technology also brings in the problem of storing clouds and privacy. Furthermore, the health and environmental exception were addressed and Smith argued that they are better in EUFTAs than in the WTO but rules are worse and that these exceptions are just better formulated in the EUFTAs but not actually implemented/offered (only 1 out of 44 are offered and they are subjective). Additionally, EUFTAs are beneficial for consumers and not for industrialization (applicable on Arab countries; the example was given for Tunisia) as they impose too much competition with a very strict competition law, which could harm our fragile economies and then reflect in our human development. Moreover, the EU and WTO are proposing to ban the export taxes only for non-agricultural products, which is unfair given that the agricultural sector's labor force is concentrated with low class workers. Smith ended with some recommendations in the context of our region.

***Sessions 2 and 3: Climate Change (Vicente Yu, the Deputy Executive Director and Coordinator of the Global Governance for Development Program at the South Center)***

Yu provided an extensive overview of the Paris Agreement, the priorities and challenges for developing countries in the way forward and the systemic issues to be addressed including technology and finance. He compared the pre and post Paris agreement which he believes is a related instrument to what already exists (the UNFCCC) with a specific way of implementation. The greatest mission was to reduce obligations under the agreement. UNFCCC has a common responsibility to develop and endorse the principles of equity (article 1; cooperation on migration programs, exchange of info, etc.); it is a fund of credit exchange for the CO2 emissions. Nevertheless, the responsibilities are differentiated with respective capabilities and this means that there is a serious need to enforce the application of certain articles namely those related to financing and technology transfers. Ultimately, the aim is to reach a level of sustainable development and food security... It provides climate funds to developing countries and asks them to report with more details than the developed countries on their actions and situation. However, the obligations are all territorial, meaning that in the countries where there is no rule that limits the CO2 emissions, the enterprises are not obliged to respect the desired standards.

Yu elaborated on the concept of the CBDR, being the UNFCCC's instrument that is reflected by the Paris agreement where the means of implementation are not clear for the law and the ministries and thus the negotiations and differentiations are needed (the case of Morocco like in

most of the South). The positive and negative key features of the Paris Agreement were the centre of the speech. The positive effects are as follows:

- 1- Equity and CBDR remains embedded - Paris Agreement will be implemented “to reflect equity and the principle of CBDR and respective capabilities, in light of different national circumstances”
- 2- Sustainable development and poverty eradication, which developing countries had pushed, were referred to as contextual elements for key provisions in the Paris Agreement (e.g. mitigation, adaptation, global stocktake, etc.)
- 3- Nationally determined contributions (NDCs) are not only mitigation-centric but also cover adaptation, finance, technology, CB and transparency framework to achieve the purpose of the Paris Agreement. They are also a progression in light of Parties’ differentiated responsibilities and commitments under the UNFCCC
- 4- Developing countries are still allowed to undertake any type of enhanced mitigation actions but are expected over time to move towards economy-wide targets in light of the national circumstances. Developed countries, on the other hand, are expected to continue doing enhanced economy-wide targets
- 5- The global stocktake (review every 5 years) includes review of the adequacy and effectiveness of adaptation, including adaptation support
- 6- Loss and damage treated separately from adaptation, but not as a basis for liability or compensation
- 7- Technology framework established, linking existing UNFCCC technology and finance mechanisms to support collaborative approaches in R&D and facilitating access to technologies. It also includes assessment of transfer-ready technologies

As for the negative effects, they were presented as follows:

- 1- Developed countries (as well as developing countries) have no obligation to actually achieve specific emission reduction targets (like in Kyoto Protocol). The only obligation to take measures is the aim to achieve such targets and to report on actions being taken
- 2- Low level of INDC 2015 ambition for the period 2020-2025/2030 essentially means no increased ambition from developed countries (especially) between 2016-2030, as it is only in 2025 that new NDCs will be put forward to cover the period post-2030 (UNLESS

CMA decides after 2018 Facilitated Dialogue to call/urge PA Parties to revise and resubmit NDCs). This means inadequate mitigation relative to the 2C or 1.5C goals will take place over the next 15 years until 2030

- 3- Adaptation support is only hortatory, without any concrete mechanism for delivery, and subject only to review as part of global stocktake every 5 years
- 4- The loss and damage provision is weak, essentially eliminating itself as a basis for liability and compensation vis-à-vis developed countries
- 5- The finance provision essentially continues the current state of play in climate financing, with inadequate or non-existent flows and minimal accountability by developed countries
- 6- The technology provision still has to be negotiated to be made operational if it is to live up to its potential of facilitating climate technology, R&D, and transfer but avoided giving the mandate to tackle technology transfer barriers such as finance and IPRs, etc.

Yu said that the climate change crisis should be seen as a developmental issue more than as a technical one especially since there are 3 interlinked crises in the context of eradicating poverty and the post-2015 discourse: the poverty crisis, the climate change crisis and the global economic crisis. This urges us to defining a development agenda post-2015, revive the development state to promote strategic development policy, create an enabling environment for sustainable development and poverty eradication and contribute in systemic reforms at the international level for policy space and effective international cooperation on development and poverty eradication. International cooperation arrangements for the provision of the means of implementation (financing, technology, capacity building) can help in the achievement of the anticipated development goals. Yu showed many evidences using statistics, charts and maps visualizing the prevailing vulnerability and environmental damages on earth. He closed by wrapping up the key related considerations for developing countries which lie at the levels of: carbon space, fiscal space, technology space, sustainable development space and policy space.

### **Day 3 (November, 30)**

#### **Sessions 1 and 2: Multilateral Trade Relations: the WTO (*Aileen Kwa, Coordinator of the South Center Trade for Development Program*)**

Ms. Aileen started by shedding the lights on new issues such as e-commerce. She then gave a background on the GATT saying that it was established after the 2<sup>nd</sup> world war mainly for the purpose of tariff negotiations. She noted that the Uruguay round was the most important round after which the WTO was created and mentioned that agriculture was outside the GATT system until then: agriculture was included in theory but not practically since the US refused to apply the GATT rules on the agricultural sector in prevention from sensitive issues. After the world war, the EU wanted to boost the food sector and the US also wanted to expand its production. Therefore they reached the conclusion that whatever is subsidized more can be more exported and they acted accordingly with the agricultural sector. On the other side, agriculture is also a political issue and this is why they decided to control these aspects of it while the developing countries were eager to benefit from the comparative advantage they have at this level. Then, implementation issues motivated them to call for renegotiations. Aileen then informed the participants about the negotiations that the African and Asian groups (25 countries) had in 1999 in Seattle in order to refuse any labor standards in the rules of the WTO, which was followed by the Singapore issues and the Doha (2011) after the terrorist attacks of September, 11. The Singapore issues mainly included competition, public procurement, transparency, investment protection, TRIPS and trade facilitations, etc. Moreover, the fact that the consensus should be explicit was emphasized but this did not prevent many countries from being upset and deviate towards signing the Cotonou Agreement (2001) with the EU which in turn could come to an end and was not renewed, leading to a greater gap. This gap is what brought these negotiations to Doha and extended the agreement till 2005.

Of the other events that were addressed in Aileen's presentation:

- 1- The major fight that happened in Cancun in 2003 and the collapse of the Cancun afterwards
- 2- The Nama sectorial (non-agricultural market access), July 2008

- 3- The collapse of the Nama by the US in 2008 when emerging economies were fighting to bring a zero tariff on chemical electronic products and the developing countries refused, thus causing a collapse especially in the special safeguards mechanisms. The US, at the moment, imposed very difficult conditions to use
- 4- The last push by Pascal Lamy in 2011 as the US changed its discourse and the new negotiation approach
- 5- The conclusion of the trade facilitation agreement in Bali, 2013 incorporated by the “green man” (the US and India; all ministerial was about food; no meeting was held between them in a green room)
- 6- The Nairobi meeting in 2015 when developed countries considered the Doha round as finished while the developing countries were fighting (Nairobi ministerial declaration, articles 30 and 34). Particularly, China wanted the Doha round as it reaffirms that it was a developing country and thus makes it enjoy a special and differentiated treatment

The reason to push for agriculture was the inability to alienate the developing countries and due to Brazil and India’s offensive agenda on agriculture. These countries had a more cooperative approach that requires some sacrifices from developed countries. Brazil’s position has then changed as it switched to playing the bridging board, off the record, and so did Argentina. Aileen compared the FTA and agriculture outside the WTO using examples from India, Morocco, Tunisia, Egypt and Uruguay focusing on major commodities (wheat, cotton, etc.). One of the catching points that were made is that many of our countries are net importers making of trade facilitation a facilitation of imports. As for the trade facilitation measures, they are related to customs and they can be summarized by the transparency umbrella and the must to make them public and consult interest parties on the regulations. She then spent the rest of her intervention explaining about e-commerce, the US proposal to prohibit digital custom duties.

### **Sessions 3: Health and Intellectual Property (Nirmalya Sayam, the South Center)**

Sayam spoke about intellectual property and development and started by defining the former as an invention of any tangible or non-tangible product (an idea, a medicine, a phone, music, etc.) and thus the rights to it as being the ability to reproduce the product with the owner’s consent. Economically, he argued that the question would be whether one is able to produce the same knowledge if the knowledge produced initially was not shared. This should take into

consideration the investment of time, money, energy, and technology this process takes. IP should be a tool to provide access to knowledge and thus a tool for development. Therefore, determining what will be protected by IP or not is a very sensitive thing. The example of the discovery of the light bulbs by Philips in the 1910s was given and it was surprising that Edison had the patent at the moment which prevented Philips from producing and selling without Edison's authorization. The different types of intellectual property rights that were mentioned are:

- Patents: for inventions
- Trademarks: these apply to the branding aspects (logo, brand name, etc.) and have many litigation issues (ISDS). e.g. Philip Morris cannot display the brand name of your cigarette and they lost the 2 disputes, in the TPP text, on the right to use the trademarks
- Industrial designs: it is becoming more and more important. They protect the look and quality of the products
- Trade Secrets: they protect things such as the coca cola formula, Nutella recipes, etc.
- Geographical Indications: which is the place to produce assuming this is a geographical product, like feta, champagne, etc....
- Copyrights and related rights
- Utility Model: apply to technology
- Plant variety production: such as the next variety of rice, etc....

The intellectual property rights are territorial being restricted to a country without the other but this has changed since the 19<sup>th</sup> century as global standards are adopted. The implementation of the IP rights is conditioned according to these standards after being imposed by bilateral and multilateral IP agreements. The national law differs upon the scope and content of the intellectual property rights. Broadly speaking, countries should have calibrated IP rules to their development needs, including:

- Health: access to affordable medicine (transnational period for PMA)
- Biotechnology use of genetic research tools
- Education access to scientific material
- Food and agriculture: food security/ preservation of biodiversity

Although it was possible to deny any sector in PMA countries, it is impossible today to do so but to make any particular sector more subtle (i.e. limiting inventions and discoveries); a matter that affects the level of creativity in a country. Besides this, IP is a tool or public policy in two senses:

- The recognition of public policy in a national context (TRIPS preamble)
- Article 7: TRIPS, “ The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and objectives”, liberty in the interpretation of this article

Syam elaborated on the most famous IP treaty, the Paris Convention of the 19<sup>th</sup> century, brought about a common set of rules to follow in the IP system despite the lower level of liberty. In this treaty, unlike the TRIPS, it is not possible to exclude the pharmaceutical sector specifically. He stressed the fundamental findings on TRIPS of the WTO commission that focused mainly on the enforcement of property rights and introduced the question of shipping and medicine while giving the example of India and the confiscation of medicine in Latin America. He also raised thought provoking questions: Does the first high level of IP protection necessarily lead to the best innovation? What is the optimal level of protection to maintain innovation?

Examples of creative common licenses were then discussed followed by a listing of the TRIPS flexibilities as in how the WTO members incorporate provisions of these TRIPS in national law:

- Striking balance tools for protection and access
- Pre and post grant flexibilities: compulsory license by government for medicine and the local company being the entity who pays the license to foreign companies while the local one should remain. Amendments were suggested in this regards.
- Available without any time limit, except for transition period
- Available for all WTO members, except for the transition periods of the PMA

Syam ended by mentioning plausible solutions evolving around the retain and expansion of the policy space in the IP regimes for implementing public health policies and counting the challenge that might be faced, focusing on food strategy and the maintenance of biodiversity within this framework.

## Day 4 (December 1<sup>st</sup>)

### **Sessions 1 and 2: Introduction to International Investment Treaties (*Kinda Mohamadieh, the South Center*)**

Kinda Mohamadieh is a researcher at the South Center. She provided the participants with an informative session on the treaties, which are one tool of investment policies: investment contract and investment code. These treaties have lately been a great issue in the global debate. Current discussions on the global level have been undertaken on how to reform after having experienced these treaties for 20 years but alternatives were tentatively found at the level of multilateral agreements. Since then, the OECD model was open to other countries with many mobilizations including the European countries. Therefore, there is currently a need to rethink the multilateral trade agreements that impact the South. The promoted narrative and related myths about investing in the SDGs and the need for resources reveal a huge gap harming the developing countries in terms of capital and public finance. The World Bank's empirical studies affirm on the importance of global investment and the human and natural resources that are the most important and show that the lack of investment treaties does not impact the attractiveness of the business environment. However, there is no empirical evidence between the investment treaties and FDI.

The implications on the balance of payments were then addressed. For instance, Egypt, Morocco, Tunisia and Algeria are some of the Arab countries that, until 2010, have had bilateral agreements with the world but this did not impact positively their balance of payments. In 2013, the Arab economic and social summit was an opportunity for many Arab countries to try changing these treaties but what happened is that the Arab countries had proposed the very problematic protections (fair and equitable treatments) apart from the global tendencies. Ms. Mohamadieh recalled the fact that countries like Egypt refused to work with the Arab league despite the importance of this in facilitating the cooperation with the OECD, for example. The following part of Ms. Mohamadieh's speech was about the selected problematic provisions in the investment treaties which she summarized as follows:

- 1- **Broad scope and definition of protected investor and investments** → extends to cover “every kind of asset” or “any kind of asset”, extending this protection to intangibles

(mortgages, intellectual property rights, shares, stocks and similar forms of participation in companies, expectations of future gains and profits).

- 2- **National treatment** → parties to the treaty shall accord investments by investors from the other party treatment that is no less favourable than that accorded to investments by its own nationals.
- 3- **Most favored Nations** → used by investors to claim equally favourable treatment as the host country offers under other BITs to investors of any other country.
- 4- **Fair and equitable treatment** → most frequent claim in ISDS, nearly 75 percent of ISDS cases under US IIAs have found FET violations because a “catch all” clause interpreted to cover loss of future expected profits.
- 5- **Indirect expropriation** → under the expansive approach to interpreting “indirect expropriation”, any regulatory measure- such as ones dealing with production processes, or technological addition, or ban on harmful material- could be judged as indirect expropriation. Such an approach could have the effect of causing a regulatory chill at the national level.
- 6- **Repatriation of profits or free transfer of capital** → freely transferable without unreasonable delay on a non-discriminatory basis, at the prevailing market exchange rate on the date of the transfer and to be fully convertible to the currency in which the investment is made or in any convertible currency
- 7- **Survival clause** → extends the protections granted and consent to international arbitration under the treaty after it is terminated (some cases for 20 years)

This intervention covered different other notions, namely:

- 1- The pre-establishment rights: the extension of national treatments and MFN to the “establishment and acquisition” of investment. Each Party allows investors of other parties to establish an investment in their territory on terms no less favorable than those that apply to domestic investors (national treatment) or investors from third countries (most-favored-nation treatment)
- 2- The prohibition of performance requirement: a much wider net of prohibitions on major policy tools compared to TRIMS (such as entering joint ventures with local companies, employing certain percentage of local workers, transfer of technology, or contribution to research and development....)

- 3- China's vision on investment, being a major capita importer and exporter, whose enterprises suffered expropriation and other political risks. The new position leads China to consider different aspects in the negotiations. International investment practices should provide protection to investors and manage public interest at the same time for state. China also considers this balance.
- 4- Free trade area in 2013: Shangai pilot free trade zone. September 2016: different reforms adopted to regulate the FDI regime (announcement of 2016, number 22; negative list).
- 5- The US-China discussions, the FCN (previous types of rules), the terminations of BITs by Argentina, Indonesia and India, adding the exceptions on provisions or the right to regulate provisions, the TPPs, etc. are all topics that were developed during the session.

Different rules and structures are needed to bring a case: not only the provision of the treaty but also using some contracts and national law. There are several cases that we do not know about since they pass through ad hoc tribunals, three arbitrators, etc. More so, a great share was given to discuss the enforcement measures and some multidimensional problems such as:

- 1- Conflict of interest of arbitrator
- 2- Consistency of ISDS jurisprudence
- 3- Expansive interpretation
- 4- Chilling effect on the regulatory process
- 5- Serving specific narrow interest
- 6- The big strain on public money (awards)
- 7- Expansion of damages demanded by investors bringing claims
- 8- Determining who has the right to sue

### **Session 3: Meeting with the UNCTAD- Globalization and Development Strategies Division:**

***(Mr. Alfredo Calcagno- Head, Macroeconomic and Development Policies Branch;  
Mr. Piergiuseppe Fortunato- Economic Affairs Officer, Economic Cooperation  
and Integration among Developing Countries; Mr. Mutasim Elagraa- Economic  
Affairs Officer, Assistance to Palestinian People Unit/ Macroeconomic and  
Development Policies Branch)***

This session was meant to give an overview of the TDR 2016 and outcomes of the UNCTAD XIV. It started by going over the recent history and what it involves as massive social discontent and crisis, alleviation of poverty, more and better jobs, etc. This showed that the main features of these policies which have failed and led to the Arab spring explosions and implosions comprise countries seeking aid or debt relief/rescheduling and having to implement macroeconomic stabilization and SAPs; policy conditionality by donors, IMF and WB; trade liberalization and greater openness to capital flows; privatization of state owned assets; etc. Then the session switched to discussing the current trends in the regional economies, knowing that 2016 was one of the toughest years for the MENA due to the serious policy challenges that it witnessed. According to the key issues, countries can be divided into three categories:

- 1- Oil exporters (GCC countries and Algeria) having as key problems: the low oil prices and the lack of diversification (Classical case of Dutch disease).
- 2- Oil importers (Egypt, Jordan, Lebanon, Morocco, and Tunisia) having as key issues: Multiple economic and political shocks.
- 3- Countries in war/ conflict (Syria, Yemen, Iraq, Libya, Palestine, Sudan) having as a key problem war & devastation of infrastructure.

The speaker then explained the case of the GCC, oil importing, and the conflict and war countries with some specific examples before jumping to the policy responses to the crises that are as follows:

- More of the same policy.
- Same policy prescription to all: oil exporters, oil importers and war torn countries.
- One size fits all.
- Eliminating subsidies.
- Reducing public-sector jobs and the wage bill.

- Privatizing State Owned Enterprises (ARAMCO).
- Increasing direct and indirect taxes (VAT in Egypt and GCC), etc.

GDP growth and international trade are affected primarily by insufficient global demand. Catching up has become more difficult for developing countries and trade and capital account liberalization have not spurred investment and structural change. Development currently requires structural change in which employment is reallocated to the activities with highest productivity and strongest production and income linkages. This, in turn, requires a strong investment. Nevertheless, countries with rich commodity endowments need active policies for prompting industrialization through the development of forward and backward linkages and the capture of a fair share of primary rents by the state for financing infrastructure and economic diversification. Long-term finance availability is therefore a necessary but not sufficient condition to expand investment and the most important source is self-financing, but the profit-investment nexus has weakened. As for trade specialization in exports that are intensive in technology and skilled labour, they have been keen to successful Asian catching-up experiences. However, export-led growth is today more difficult and outward oriented (enclaves are of little help). Industrial policy in turn is an essential tool for all countries. It does not consist only in supporting a number of key sectors, but also in the construction of linkages and capabilities to build a production base fit for purpose in a rapidly changing world, in which adaptability and policy space are essential.

The magnitude of the challenge that is implicit in the SDGs continues to be huge, along the three pillars of sustainable development. To eradicate extreme poverty in LDCs by 2030, these countries need a growth rate greater than what China had during its boom years (the level of extreme poverty in China in 1994 was 46%, which is about the same as the current level in the world's least developed countries). Achieving the SDGs, though, requires resource mobilization on an unprecedented scale while keeping in mind that the challenge is huge, but one of the lessons learned in the last 25 years is that things can change given the right policy mix. In conclusion it was worth mentioning that despite the progress achieved, there is much work to be done but there are key challenges for the next 15 years such as how to sustain growth and better translate growth and technological change into sufficient poverty reduction and better jobs (ensuring inclusive growth).

## Day 5 (December 2<sup>nd</sup>)

### **Session 1: Business and Human Rights: Transnational Corporations and Human Rights** *(Kinda Mohamadieh, the South Center)*

This section compiles the major components of Ms. Mohamadieh's presentation. She mentioned that the UNGPs do not clarify the extra-territorial obligations of the states and that very weak remedies exist at this level. 2014 witnessed the Resolution in the Human Rights Council to create a legally binding instrument on corporations. On another note, the mandate itself does not usually end until the treaty is adopted. She then raised questions regarding the relationship between the human rights law and the obligations under other instruments, such as investment treaties, saying that human rights law should be binding but has no enforcement mechanisms while investment treaties are enforceable through dispute settlements. She said that most developed countries either tried blocking the resolution or refrained from it but now have a greater participation. There is an argument that corporations are regulated domestically and cannot be regulated internationally but this same arguments accepts that there are many international treaties giving specific rights to investors and companies and that there already are international obligations on corporations (corruption, tax, terrorism, etc.). After providing a background on the international corporate actors among which the world top 200 corporations that account for 28% of the global economic activity, the top 500 that account for 70% of world trade, and the top 1000 that account for more than 80% of global industrial output.

The second part of the discussion provided the attendees with a sample of corporate violation cases from the MENA region, namely the Sudan, Niger, Egypt, Palestine and the Arabian Gulf. These cases designed an input to deducing the practical barriers and limitations that include the economic constraints, the issues with the access to information, the lack of cooperation among jurisdiction and the enforcement of judgment. As for the legal barriers, they embrace the presumption against the extraterritoriality of the law, the doctrine of corporate separate personality, the statutes of limitations and choice of applicable law. Speaking about the state obligations, it is keen to admit the importance of focusing on clarifying the extraterritorial obligations including the obligation on states to adopt national measures and ensure that national legislation and remedy mechanisms cover the conducts of corporations (criminal, civil, and

administrative areas). It is also important to recognize the importance of the international cooperation among states in facilitating the handling of corporate violations of human rights (enforcement and investigation) and the obligation on states to adopt national action plans or strategies and due diligence requirements for corporations (incorporated domestically ). Ms. Mohamadieh spent the rest of her speech discussing:

- State obligations towards the conduct of non-state actors (sample of authoritative opinions)
- The states' extraterritorial obligations in regard to the conduct of corporations abroad
- Extraterritorial jurisdiction (prescriptive or legislative; adjudicative or judicial) and its enforcement
- Domestic measures with extraterritorial implications and direct extra-territorial jurisdiction
- The conclusions of the OHCHR project on accountability and remedy
- The debate regarding direct and indirect obligations of corporations under an international instrument
- Coverage of the Instrument (a "pro-victims of corporate human rights abuse – not anti-corporations" instrument was highlighted)

### **Session 2: Meeting with delegates from the mission of Ecuador to Geneva**

This session's goal was to discuss the process towards a legally binding instrument on TNCs and other business enterprises with respect to human rights and it focused on the binding legal instrument:

- The scope is one of the biggest problems – why only transnational corporations?
  - No intention to cover up local enterprises
  - The difference should be based on the problems, and many of the problems associated to corporate accountability are related to the transnational character of corporations
- Relationship with UNGPs
  - Both are complementary (i.e. not meant to water down UNGPs)

- It is not a North-South divide – companies from the Global South are also sometimes transnational. However, the portion of companies in the Global North that are affected is much higher
- Qatar financed the Business & Human Rights Regional Forum but did not appear in the opening or closing of the forum
- Only 9 countries created a National Action Plan based on the UNGPs
- Can non-victims sue? Not determined yet, but there is a strong argument to expand as much as possible. It still too premature to say how the treaty will be shaped on that but the need to have expansive standing is understood.
- It was not Ecuador that suggested the footnote to the HRC Resolution
  - The concern was that countries already have some sort of regulations against corporations in general – the vacuum is only when it comes to transnational corporations
- The footnote issue is highly politicized – there are very strong statements in favor of keeping the footnote as is, but the footnote is also used to attack the credibility of the system as a whole

***Session 3: Wrap up Presentation (Vicente Yu, Deputy Executive Director and Coordinator of the Global Governance for Development Program at the South Center)***

After having **free exchange sessions between the participants** themselves permitting them to share their experiences, express their opinions as they see importance, share interesting facts and open new opportunities for future cooperation, the study week was closed by Mr. Vicente’s presentation that concluded the message from the sessions all over the five days and opened new perspectives around the global development agenda, the SDGs and the implications of the systemic challenges covered during the week. Mr. Vicente offered a big picture overview highlighting the major crises that are threatening humanity. He started by the Global economic uncertainty, informed the audience about the multilateral institutions searching for relevance and new mandates, discussed the possible retreat from neoliberal economic globalization to protectionist nationalism and stressed the shifting global balance of power. Mr. Vicente combined in his speech both approaches: the automation and digital economy in the North and

the agricultural and industrial economy in the South in a thought provoking manner. He then addressed rarely discussed topics such as the climate change impacts and response measures, the antibiotic resistance and the rise of artificial intelligence. Mr. Vicente ended by speaking about the political and societal anomie in the North and the South as well as the international cooperation before thanking the attendees and leaving the space for thorough evaluations of the study week as a whole.

## EVALUATION RESULTS

The evaluation papers that were filled in by the participants showed an overall satisfaction, a very good result proving that the study week was a successful learning experience as intended. The evaluations also provided substantive feedback that helps improving future rounds and optimizes the outcome of this study week.

The evaluation tables reveal three flagrant reactions:

- The participants wish they could get the reading material corresponding to every session ahead of time to be able to read them and come prepared.
- Some of the expected references were not distributed during the sessions.
- The time allotted for some sessions was not sufficient enough (the most frequent comment).

Furthermore, the participants' comments included the following:

- 1- The presenters were very knowledgeable, engaged and well prepared. The study week taught us a lot and was of a tremendous added value. It encouraged us to plan related future research work and stimulated our interest in collaborating on related issues.
- 2- The case studies were very useful.
- 3- It would have been better if there was more field visits to meet with experts- especially at the UN offices- instead of staying at the same location (mentioned frequently)
- 4- It would have been better if we could meet with organizations that are directly involved with advocacy and lobbying. A session could have been added on the social movements.
- 5- Some sessions could have been more interactive and engaging.
- 6- It is recommended to add sessions on fiscal space, fiscal justice, labor issues and even monetary policies.

- 7- It would have been a good idea to have some representatives from corporations in order to get explore a different perspective.
- 8- A review of the respective projects and/or future plans in the light of the topics explored would have been extremely useful.
- 9- It would have been good to allocate a room for small group discussions or individual meetings between us on issues of choice.
- 10- A greater expansion of the participants' regional umbrella is recommended.
- 11- Suggestions for future steps include:
  - a. Watchdogging the human rights violations of TNCs in the MENA region
  - b. Creating a Bilateral Investment Treaties Network
  - c. Establishing a researchers' network
  - d. Collaborate with the South Center and ANND on issues like the development paradigm (relate the issues to the Agenda 2030), urban economics, trade and special economic zone, etc.
  - e. Future collaborations should engage the League of Arab States, the UN, academic researchers, CSOs, etc.

### **OUTCOME OF THE STUDY WEEK**

The outcome of this study week can be derived from the evaluation discussion and papers. Overall, the participants expressed their gratitude for this beneficial, very informative and eye-opening opportunity and their excitement to take the necessary future actions and contribute in related research and perhaps field projects that could increase knowledge and awareness about the studied issues in the region and open the door for evidence-based advocacy, demands, and, ultimately, change. The participants' suggestions for future endeavors can be summarized as follows:

- 1- Joining this study week's delegation to the previous delegations, introducing them to each other, and creating a hub/ online platform to promote and facilitate their communication and the sharing of information among them
- 2- Dissecting the information that was delivered during the study week/s and initiating studies on each of the retrieved subtopics before joining the output in an inclusive

report. The participants admitted this step needs a strong coordination that allows the working group to agree on an almost consistent methodology and on the used indicators. Besides the coordination meetings, there will be a need to go to the field and do in-depth interviews and focus group discussions to solidify the produced information and employed mechanisms.

- 3- Monitoring and watchdogging the corporations around the world and the evolution of the trade and investment agreements as well as the related events such as the dispute settlements, law adjustments, etc.

Creating a unit for this purpose would ensure its efficiency.

- 4- The aim of such actions is to present the results of our activities objectively to the policy makers as a way to influence their decisions. This could be done through campaigns, lobbying and advocacy events, nationally, with the help of the different stakeholders: CSOs, think tanks and research entities, etc.

Internationally, position papers should be submitted to the League of Arab States, the European Union and any other influential organization in this framework.

- 5- The previous step necessitates an extensive mapping of the stakeholders' needs
- 6- To spread knowledge, this study week and similar events should happen in the region more frequently as a way to spread the information and try to reach and engage a larger scope of qualified people who can contribute in our objective. Another process would be producing bi-annual or annual bulletins on the bilateral agreements and other proceedings where convenient.
- 7- In countries like the Sudan and Egypt, networking and creating periodic informative reports would be of a greater value than just dealing with the trade policies.

The participants insisted on the fact that collaborating with the South Center and with the Arab NGO Network for Development is the way to achieving the desired changes as mentioned above since both organizations can provide the necessary means and the follow up mechanisms. As a next step, the Arab NGO Network for Development will construct the declared communication and knowledge sharing platform and will proceed with launching a project that aims at tackling the subjects in question. The project will have a dominant research arm with the objective to answer the inspired and proposed research questions, mainly:

- The investment policies (especially the bilateral investment treaties) and their impacts on the Arab region: an economic approach and a legal approach
- A compilation of the trade agreements (especially bilateral) in the region which could also include the laws, the dispute settlements and other events. This is meant to form a first-of-a-kind and net informative reference on this matter in the region and could be extended into a deeper analysis of the complied elements.