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Accelerating Access to Treatment to Achieve the SDGs

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Thank you very much Mandub.

Thank you, it's a pleasure to be together with people who have direct experiences in the treatment. It is not my case, I'm a diplomat, I just try to negotiate some situations which enable other things that which we do not guarantee those things in any case, so is always interesting to hear.

I see that the general title of our seminar or roundtable, it's called "Accelerating access to treatments to achieve SDGs" and I see that there are many good ideas that have been appearing lately including those that have been discussed in the high-level panel. I don't think I am breaking the confidentiality if I said that. For instance we have a big problem of financing. How do financing this idea of the linking, which of course has many implications, an important one: how to have public money either national or international to help financing new drugs, this is a very important aspect and I hope the discussion that will be... that is already on, but will continue on AMR in which clearly this up-front money is necessary and will also help in other areas like HIV, AIDS, TB, and Malaria. This is a very important thing, maybe some others have something to say on that.

There are another interesting ideas and I'm glad that Precious mentioned the question of formulation for children, because this one area in which, for instance, an organization like UNITAID, to which I feel linked more or less now, has been working. And I think it's not a big advance in the terms of science but it's an important advance in the terms of bringing proper treatment to those who need it. And of course there are other ideas which probably others will speak. I am sorry to make all these preface, but it just to know that I understand it's a broader subject it's not only what I am going to concentrate on. And there are all these questions about voluntary license, in which we have the medicine patent pool and which of course the UNITAID itself has been, I'm not representing the UNITAID here, but I know something about it, has been involved, and I think it's positive.

But as I have said before, when we had one of our meetings, I said, well, of course it's not the only reason, and there are other aspects also and I don't want to diminish the humanitarian preoccupation of all those involved, but I am pretty sure that the existence of compulsory license is a very strong stimulus for voluntary license, and I think that this is something that we have to have in mind.

And the compulsory license is not the only thing that... I like very much and if I write an article I will use your phrase, if you allow me to quote you: "The long road to access". Because the story of the Doha declaration is precisely the story of the long road to access.

Very briefly, in the 80's, early 90's, TRIPS agreement was imposed on the developing countries, they did not wish, but they could not stay out, because if they will stay out, they would stay out... and I am speaking of Brazil, India, Egypt and many others countries, if they would stay out, they would stay out of the World Trade Organization (WTO) and that's not possible, so they have to accept, very reluctantly.

I remember, because I participated in these negotiations long ago when I was for the first time ambassador in Geneva, and I remember going out of the room, which was a meeting presided by a very good Swedish diplomat, and I was with my colleague, I was ambassador and he was my counselor, he was very dishearten and said "oh, we lost everything", and I said, don't be so dishearten, we have some ambiguities here and maybe we can play on these ambiguities. And because the political situation change in a large measure due to the activists. That's the truth of it, it's not because he became clever as diplomats or governments change their attitudes on they own, but because the activists put what were the ambiguities in TRIPS ps became the flexibilities and, because the word flexibility as far as I remember, wasn't in appearing in TRIPS, but they became the flexibilities in Doha. There were ambiguities, then became flexibilities, but that was a big fight...I won't go in details, so much happened in the meantime, I have been Foreign Minister, came back to New York and then went to Geneva again, and I was in Geneva to where Doha declaration was discussed and was about to be adopted, and it was a big fight. I will spare you the details but in all, in every step, I mean how the document will be presented, with alternatives, without alternatives. I leave you that - someday I may write about that, but anyway...

So when we arrived in Doha, in the meantime, actually, the United States tried to open a case against Brazil, which it abandoned, maybe because they saw the ambiguities, but maybe also because the world public opinion have changed, because of the actions of the activists and organisations like "Médecins sans Frontières", and many others. So when we came to Doha, we negotiated.

(Sorry if I take a little more than the seven minutes)

It was a very important moment because the Doha round had to be launched, and the developed countries needed it because it happened just after 9/11 and they were keen for having good news and the launching of the Doha round was considered "good news", and it so happen, that the subject that was considered at that time, probably one of the most difficult, which was precisely these relations between TRIPS and health was the first to be discussed. And we came to a conclusion and the fact that we came to a conclusion, somehow made it easier for other subjects. Make it easier is a very euphemistic word, but anyway, make it possible for, it was a kind of gateway issue, as they use to call, and after all that we had the launching of the Doha round.

And what is exactly the Doha Declaration? It is very important to know what it is and what it is not, the Doha Declaration on TRIPS and Health.

What it is, first, it is not limited to HIV, AIDS, Tuberculosis and Malaria, it's for health in general, but of course AIDS, TB and Malaria had a prominent aspect of what happened, but it's for all medicines, because this is a mistake that sometimes is made.

What it does, actually, it preserves the members, it is supposed to be mainly for developing countries, but not necessarily for them alone, that needed to have compulsory licenses in order to have generic products, to do that without the fear of trade retaliation, because that was the big thing.

The TRIPS agreement have represented two things:

First, stricter standards than those until then valid in the general intellectual property world.

And second, the possibility of cross-retaliation: the fact that for instance if Brazil would "violate" a patent it could be penalized in orange juice, or in steel or in anything like that, so that was really the aim of it.

Well the Doha Declaration somehow, reestablished our right of putting health first, that's why I have a slight, (if you allow me), a slight difference with the title that was given to me: "Balancing the right to health and trade". It is not a question of balancing, the right to health has precedence to the trade rules, and that was established, and actually, recently I don't go on very detailed quotations, if you go to the document "The Advanced Version of Human Rights", council panel on the subject, it is clearly says, "health is a basic human right" and then therefore it says "IPR - Intellectual Property Rights - must not be allowed to take precedence over public health" and specific mentions of course made about HIV and AIDS. "Human right to health should take precedence over profit". This is are very important concept which we have to have in mind. Well, we had this, this was the big conquest, but then we have the challenges in applying the TRIPS flexibilities and I think we have two kinds of, generally speaking, two kinds of challenges.

One is technical, in many countries they don't have the appropriate legislation, even internal legislation, that allows them to work that way, some of them don't have the market, I mean a very small country can't do it for its market, it has to be in broader sense, so these are, they are also political but to some extent also technical, and this could be overcome with more technical assistance by UNCTAD, UNDP, or whatever; and also with a lot of South-South Cooperation, in which their experiences can be exchanged. Not only the drugs, not only the technology as such, maybe in some cases also the technology, we have benefited from the Indian technology for instance, but also to some extent their experiences. So this is one thing that we can work on, and it's very important. In the market also, we can work, I mean, with the regional markets, like MERCOSUR, SABEC, ASEAN, I don't know, whatever we want it, not to have it restricted to very small country.

But you have the political problem. And the political problem is: the TRIPS and Health Declaration only preserves or, supposedly preserves you, from trade retaliations, they don't prevent a country from threatening or actually curtaining aid or financial support to other countries, so many countries say "well I don't do that, that because even if they cannot retaliate me or my orange juice, I will lose

my next IMF loan” and this is something very serious, how you deal with that? People say the WTO, the WTO cannot deal with that. The only place I think you can deal with that is the Human Right Council and have a review this TRIPS, not the TRIPS, but having the review of the right to health in relation to trade and economic matters as part of this Universal Periodic Review that takes place in Human Right Council. And I think this is a kind of problem.

The other problem that is appearing now, and I think is a big threat, I will try to finish here with this comment on this part. Is the so called: “TRIPS Plus Agreements”. There are already hundreds of, hundreds I will not say, but dozens of “TRIPS Plus Agreements”, including bilateral agreements between huge, between great economic powers and some developing countries, because of course, for them, the prize of opening the market of the United States, or European Union or whatever is so big and sometimes the capacity to produce medicine is so small, that they accept it, but of course they accept it at a price, because later on they will have their difficulties if they have to do TRIPS, including because that has to be said, because they speak a lot of the Doha Declaration, but it is very important to remind that in 2003, there was an amendment to the TRIPS Agreement which was accepted already by the WTO council which allows also the Imports and Exports, allows (sorry to say) compulsory licenses for Exports and Imports not only local production, so, how you deal with that, that it is something in which you have to go to a broader and maybe a more political forum and I think of the HRC as the appropriate place. So now this new agreements, this mega agreements like the TPP, this is a new danger.

[I'm finalizing, I'm really finishing]

The TPP is not only a danger for those who are members. [One minute, one minute is a lot]. It is not a danger for those who are in the agreement, but it's a danger for everyone else, because the tendency is, we know that, those who deal with trade, that when you have a broad agreement like TPP or the “TTIP” which the one with the European Union, they tend to set standards and these standards will be brought then to other regions, so if I want to negotiate in that since the, WTO multilateral negotiations are now stalled, the tendency is to develop a kind of hub and spoke way in which will bring the same standards for instance for Latin America, for Africa, and for others countries which did not negotiate the TPP but the standard is there already. So I think this is something that would deserve a lot of concerns from the point of view of the human rights, even I think maybe some consultation at the legal level would not be to see what is the precedences, it's the human rights or the trade rule? In my opinion it's the human right.

Thank you!