CENTRE EUROPE -TIERS MONDE
EUROPE-THIRD WORLD CENTER
6, rue Amat, 1202 Genève
Tel. : +41 (0)22 731 59 63
Fax. : +41 (0)22 731 91 52
CCP : 12 - 19850 - 1
cetim@bluewin.ch
www.cetim.ch

September 2003
Bulletin n°18

Research and Publication Centre for Europe Third World Relations

Editorial

The fifty-fifth session of the Sub-Commission for the Promotion and Protection of Human rights, was marked by a identity crisis of this institution. In fact, following the criticism of the Deputy High Commissioner for Human Rights – proposing studies that the experts could undertake – with regard to reinforcing human rights, the experts called into question their own future.

Need one recall that the reforms undertaken three years ago by the Commission on Human Rights reduced the margin of maneuver of the experts, who were no longer authorized to adopt resolutions on the situation in specific countries. The Sub-Commission also saw itself deprived of a week of work during its sessions and limited in the number of studies to be undertaken by its experts.

Of the various themes debated during this session, that of transnational corporations, a subject that the CETIM has long been working on, absorbed the most attention and resulted in the adoption of a draft of norms. We are presenting in this bulletin a summary of this question.

The question of the catastrophic effects of neo-liberal globalization and of the role of the Bretton Woods institutions and the WTO were discussed in the final report of two former member of the Sub-Commission, who reaffirmed and insisted on the obligation of these institutions to respect human rights. An article is devoted on this question in the bulletin.

Finally, You will find four extracts of interventions for the CETIM, presented during the Sub-Commission, dealing with the illegality of the United States embargo against Cuba, the right of return of Palestinians to the mandate territory, the legislative changes in Turkey and the activities of Nestlé in Colombia and its effect on human rights.

In closing, we remind you that the cycle of conferences on relations between Switzerland, South Africa and Israel will continue starting on 6 November. For more information, you can get in touch with the CETIM or consult our internet site at www.cetim.ch/activ/03ch-afrique.htm.

55th session of the Sub-Commission on Human Rights (July 28 – August 5 2003)

The experts of the Sub-Commission reaffirm: the international institutions such as the International Monetary Fund, the World Bank and the World Trade Organization must also respect human rights.

These past years the phenomenon of globalization has been discussed within the UN bodies dealing with human rights. Considering the necessity of analyzing the effects of globalization on the full enjoyment of human rights, the Commission on Human Rights entrusted the experts of the Sub-Commission on the Promotion and Protection of Human Rights (SCHR) with the drafting of a report on this subject[1].

In their final report, presented at the 55th session of the SCHR, the two experts declare: 'Our reiteration of the legal obligation of international organizations such as the WTO, the World Bank and the IMF is deemed necessary in order to emphasize the point that these institutions must, at a minimum, *recognize, respect, and protect* human rights."[2].

This is the reaction to the well-known rhetoric of these institutions claiming that "our statutes do not provide for taking into account human rights". For example, the representative of the IMF at the UN, Mr Grant B. Taplin, already stated at the SCHR two years ago that the IMF: "did not have a mandate to promote human rights and was not bound by various human rights declarations and conventions"[3].

Nevertheless, the Committee on Economic, Social and Cultural Rights (COESCR)[4] has several times reminded governments, both creditors and debtors, that they under obligation to respect the International Covenant on Economic, Social and Cultural Rights when signing any agreement with the Bretton Woods institutions or with the WTO.

For example, in its final observations to the Egyptian government, a debtor state, the Committee "strongly recommends that Egypt's obligations under the Covenant should be taken into account in all aspects of its negotiations with international financial institutions, like the International Monetary Fund, World Bank and the World Trade Organization, to ensure that economic, social and cultural rights, particularly of the most vulnerable groups, are not undermined"[5].

As far as Italy, a creditor state and member of the G7, is concerned: "the Committee encourages the Government of Italy, as a member of international organizations, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in article 2 (1) concerning international assistance and cooperation"[6].

In their report on globalization, the experts of the SCHR deplore US unilateralism on the international scene since the events of September 11, 2001: "the United States Government commenced upon (some would say "resumed") a systematic and deliberate path of unilateral (and self-serving) action"[7]. As a matter of fact, there is no lack of examples: the rejection of the Kyoto Protocol, withdrawal from the Comprehensive Nuclear-Test-Ban Treaty, opposition to the International Criminal Court, the obstruction of the manufacture of cheap generic drugs, the war against Iraq[8]…

Moreover, these two past years, based on their security policy and a climate of fear, the United States has pressured other states into opening their markets to American companies. Their western allies support them by increasingly pressuring other states into conducting new negotiations within the WTO in view of the summit of Cancún. The most alarming is perhaps the resurrection of the dead *Multilateral Agreement on Investment* (MAI)[9] as the authors of the report indicate[10].

It is unnecessary to recall today that the institutions of Bretton Woods and the WTO are the two key instruments of the neoliberal economic system. They impose a destructive policy on the whole world, generating inequalities and making the right to education, to health, to social security, to culture etc. impossible by subjecting these domains to an ever greater and more systematic commercialisation. For this reason, the promoters of these neoliberal policies act contrary to the UN Charter, to the right of peoples to self-determination, violating their economic, social and cultural rights.

Drawing taken from the Attac-website: http://bombi.net/attac/

In this perspective, the proposal made by the authors of the report on globalization consisting of elaborating obligations in the domain of human rights applicable to the principal actors of globalization seems worthy of note and should at all events include the following points:

1) reaffirm the legal obligations incumbent on international organisations such as the WTO, the World Bank and the IMF;
2) reaffirm the priority of human rights over any international commercial agreement;
3) reaffirm that the rules concerning the relations between states cannot be formulated in a way that affects fundamental principles of international law, including the norms relative to human rights;
4) reaffirm that the process of development has as its foundation the realization of sustainable human development.

In conclusion, the current economic system should not serve as pretext to liberate states from their responsibilities, for, as the experts of the SCHR affirmed in their previous report, "Globalization is not a natural event, an inevitable global progression of consolidated economic growth and development. Rather, the phenomenon of globalization is the product of human society. As such, it is motivated by specific ideologies, interests and institutions. In other words, globalization has no a priori or inevitable existence independent of the structures humankind has put in place"[11].

[1] Cf. Decision 2000/102 of the Commission on Human Rights
[2] Cf. The report entitled „Globalization and its impact on the full enjoyment of human rights" (E/CN.4/Sub.2/2003/14), submitted by M. J. Oloka-Onyango and Mrs Deepika Udagama, respectively former member and former alternate member of the Sub-Commission.
[3] Cf. HR/SC/01/11, dating from August 8 2001.
[4] UN organ in charge of the application of the International Covenant on Economic, Social and Cultural Rights. The member states have the obligation to present every five years a report to this Committee.
[5] Cf. Final Observations of the COESCR concerning Egypt, adopted on May 23 2000 (E/C.12/1/Add.44).
[6] Cf. Final Observations of the COESCR concerning Italy, adopted on May 23 2000 (E/C.12/1/Add. 43).
[7] Cf. Paragraph 10 of the report cited above.
[8] Idem, paragraphs 10, 11 and 20.
[9] As a reminder, this agreement (MAI), plotted within the OECD in the late 1990s, envisaged the liberalization and non-discrimination of foreign capital investments. An investor could invest where and when he wanted, could withdraw his investments or transfer the benefits to a country different from the one in which they had been realized.
[10] Cf. Paragraph 22 of the report cited above.
[11] Cf. Report on the „globalization and its impact on the full enjoyment of all human rights" (E/CN.4/Sub.2/2001/10).

Extracts from the CETIM Interventions

The Effects of the US Embargo against Cuba and the Reasons of the Urgent need to lift it

«The US embargo against Cuba is condemned by an ever larger and by now overwhelming majority of states members of the United Nations General Assembly. However, it continues to be imposed by the US government's isolated but stubborn will, in spite of the United Nations repeated injunctions, notably its resolution 56/9 of the 7th of November 2001. The purpose of this expose is to denounce this embargo in the strongest terms for the violation of law it represents, and for its total lack of legitimacy. These measures of arbitrary constraint are tantamount to a US undeclared act of war against Cuba; their devastating economic and social effects deny the people to exercise their basic human rights, and are unbearable for them. […].

Imposed since 1962, the US embargo has been reinforced in October 1992 by the *Cuban Democracy Act* (or "*Torricelli law*"), which aimed to restrain the development of the Cuban economy's new driving forces the by hitting the inflow of funds and goods by i) the strict limitations of the transfers of foreign currencies by the families in exile, ii) the six-months ban to enter US harbours of all ships that had anchored in a Cuban port, iii) sanctions against firms doing commerce with the island even though under the jurisdiction of a third state. The embargo was systematized by the *Cuban Liberty and Democracy Solidarity Act* ("*Helms Burton Law*") of March 1996, aimed to harden the "international" sanctions against Cuba. Its Title I generalizes the ban to import Cuban goods, demanding, for example, that exporters give proof that no Cuban sugar has been integrated in their products, as was already the case with nickel. It conditions the authorization of currency transfers to the creation on the island of a private sector including employment of salaried staff. Still more enterprising, Title II fixes the modalities of a transition to a "*post-Castro*" power, as well as the nature of the relationship to have with the United States. Title III grants the US tribunals the right to judge demands for damage and interest made by a civil and moral person of US nationality that considers having been injured by the loss of property in Cuba due to nationalization, and claims compensation from the users or beneficiaries of this property. […]

The normative content of this embargo - specially the *extraterritoriality* of its rules, which intend to impose on the international community unilateral sanctions by the United States, or the denial of the right of nationalization, through the concept of "*traffic*" - is a violation of the spirit and letter of the United Nations Charter and of the Organization of American States, and of the very fundamentals of international law. This excessive extension of the territorial jurisdiction of the United States is contrary to the principle of national sovereignty and to that of non-intervention in the internal choices of a foreign states - as recognized in the jurisprudence of the International Court of Justice. It is opposed to the Cuban people's rights to auto-determination and to development. It also contradicts strongly the freedom of trade, navigation, and movement of capital, all that the United States paradoxically claims everywhere else in the world. This embargo is moreover illegitimate and immoral because it attacks the social benefits realized by Cuba since years and imperils their successes - recognized by many international independent observers (in particular those of the WHO, UNESCO, UNICEF and many NGO). They are its public systems of education, research, health or culture, in plain exercise of human rights. […]

The harmful social effects of the embargo

The US government's announcements intimating that it would be favourable to the relaxation of the restrictions concerning foodstuffs and medicines went unheeded and cannot hide that Cuba has been the victim of a *de facto* embargo in these domains. The reduction of the availability of these types of goods exacerbates the privation of the population and constantly threatens its dietary security, its nutritional stability and its health. A humanitarian tragedy - which seems to be the implicit objective of the embargo - has been avoided only thanks to the will of the Cuban state to maintain at all costs the pillars of its social model, which guarantees to everyone, among others, a staple food for a modest price and a free consumption in the crèches, schools, hospitals, and homes for the elderly. […]

For all these reasons, this unacceptable embargo has to cease immediately. »

[1] About the historical context see: Herrera, R. (dir.) (2003), *Cuba révolutionnaire*, L'Harmattan, FTM, Paris.

Human Rights Violations Committed by Transnational Corporations in Colombia: the Case of *Nestlé*

« Colombia has been suffering for decades from a serious social, political and armed conflict. It is undeniable that numerous transnational corporations are, in one way or another, involved in this conflict by virtue of their collaboration with state and private security forces and even with paramilitary forces. Thus, not only do they become complicit in human rights violations, but, worse, they support corruption, undermine government based on the rule of law, and fail to observe existing laws, both national and international. Within the framework of the present paper, we shall endeavor to examine the case of *Nestlé* in this country.

Nestlé: a Swiss Company in Colombia[1]

Since the end of the nineteenth century, *Nestlé* products have been imported into Colombia. La *Compaña Colombiana de Alimentos Lácteos* (*CICOLAC S.A.*) was founded in 1944 by the *American company Borden, Inc.*, and by *Nestlé*. Shortly afterwards, the latter set up the *Industria Nacional de Productos Alimenticios* (*INPA S.A.*) and built it first factory in Bugalagrande. In the 1985, the name of the *INPA S.A.* was changed to *Nestlé de Colombia SA*. Today, *Nestlé* has three factories in Colombia (*CICOLAC* in Valledupar, Cesar; *Comestibles La Rosa S.A.*, Dos Quebradas in Risaralda; and *Nestlé de Colombia S.A.*, Bugalagrande in Valle del Cauca). [...]

Nestlé Puts Economic and Social Development in Danger

Nestlé plays a major role in Colombia's dairy market. Social organizations, milk producers and politicians have denounced the fact that, in spite of sufficient domestic production, huge quantities of powdered milk of a lesser quality have been imported over the years. In 2001, 25,125 tons of powdered milk were imported. *Nestlé's* share of this various according to the source of the statistics, from 8,539 tons[2] to 15,000 tons[3]. According to it s own claims, in 2002 *Nestlé* bought 177 million liters of fresh milk in Colombia - more than ever before. According to information furnished by the National Trade Union of Dairy Industry Workers (SINALTRAINAL), the share of Colombian milk used in production has dropped from 70% to 50%, and the *CICOLAC* company, which in 1997 had bought another million liters of milk per day in the "Atlántico" region, is currently buying only 400,000 liters. Moreover, *Nestlé* has lowered the prices it pays for milk on several occasions. [...]

Nestlé has organized a triangular market based in Colombia by taking advantage of the Vallejo Plan[4]. *Nestlé* avails itself of preferential treatment by importing cheap powdered milk, claiming to transform it into export products. Often, this powdered milk is only repackaged in small packets or treated with a bit of fresh milk in order to be exported to Venezuela while benefiting from export subsidies. Thus, *Nestlé* pushes export support policies to an absurd extreme, creating almost no value added for Colombia and interfering with the Venezuelan dairy market. [...]

Nestlé violates labor laws and trade union rights in its affiliate _CICOLAC S.A._

The labor contract at the *CICOLAC* company was to expire in February 2002, hence on 28 February 2002 SINALTRAINAL submitted to the company management a list of negotiating points. At the outset of the negotiations, *Nestlé* tried to force the signing of a completely new contract that would have eliminated substantial rights. When the negotiation deadline provided for by law had expired, the trade union planned a strike. It was canceled because of several murder threats made to union leaders. According to witnesses from the trade union, the origin of the threats were made because *Nestlé* had reduced the price of milk for cattle raisers and threatened to close the factory and blamed this on the SINALTRAINAL union. Believing *Nestlé*, the cattle raisers and paramilitary leaders made the threats against the union leaders at Valledupar[5]. Even now, *Nestlé* has refused to acknowledge publicly the work o f the unions and to disassociate itself from any threat and use of force against their members. In October 2002 and March 2003, SINALTRAINAL tried, with the support of various Swiss trade unions and social movements, to make contact with the central management of *Nestlé* with a view to solving the problems in Colombia. *Nestlé* has twice refused such discussions on various pretexts. […]

Conclusion

Contrary to statements made by the company according to which it has been trying to be a model in the area of human rights, emphasizing social development in the regions where it is present, this paper shows that *Nestlé* violates Colombian legislation and flouts existing international standards by polluting the environment, by using expired or contaminated products which endanger public health, and by subjecting the rights of workers and the rights of trade unions to inordinate pressure. […] »

[1] In 2002, *Nestlé* increased its volume of business by 13% and its net profit by 19%. Its overall profit amounted to 7.56 billion Swiss francs. Not satisfied with these results, *Nestlé* set up a program of cost reduction efficiency increases (in order to reduce its costs by 5.5 billion Swiss francs by the year 2006).
[2] Company information.
[3] Figure taken from a local newspaper.
[4] Law-Decree No.444 of 1967, bearing the name of the Colombian trade minister of that time, which provided for the importing of capital, of natural resources and of unfinished products designed to be assembled in Colombia then exported.
[5] SINALTRAINAL, *Historia de un conflicto social*, Bogotá, octubre de 2002, p. 27. "Sindicato de *Cicolac* denuncia amenazas", en: Vanguardia Liberal, 11 de mayo de 2002, p. 5A.

The Right of Return for the Palestinians Refugees: Right, Justice and Reconciliation

«The right of return of the Palestinian refugees is the thorniest subject concerning the Israeli-Palestinian conflict. 85% of the inhabitants in the historic Palestine have been expelled from 531 of their cities and villages, which means more than two thirds of the Palestinian population. Thus, nearly four million refugees are currently registered at the UNRWA (United Nations Relief and Works Agency). This Palestinian population is split up between the camps of the West Bank of Jordan, Gaza, Jordan, Lebanon as well as Syria and is composed of the displaced, who lived in Palestine from the 1st of June 1946 to the 15th of May 1948 as well as their descendants, who lost their place of residence and their livelihood because of the 1948 conflict. There is nearly 1 more million refugees who have not been listed, such as the residents of the Palestine under mandate between 1948 and 1967, residents from outside the zone of intervention of the UNRWA (Egypt, Iraq), the refugees of 1967 or wealthy Palestinians, exiled in 1948 and not registered by the UNRWA.

For Palestinians, this is about an inalienable right with a deep symbolic impact. There will be no lasting peace without a fair and equitable settlement of the question concerning Palestinian refugees. This settlement would mean the acceptation by Israel of the expulsion and dispossession of the Palestinian people in 1948 and 1967, but these are subjects that remain in the unconscious of the community and also of the Israeli official historiography as taboos - the expulsion is still denied. This fair and equitable settlement needs the recognition of Israel's direct responsibility in the immense harm and the infinite damage suffered by the Palestinians.

The right of return breaks down two of the myths that founded the State of Israel: the slogan of a Palestine as "a land without people for the people without a land», as well as the parallel myth (and contradictory in a sense) of the voluntary departure of, only, 500 000 Palestinians, under the bordering Arab governments' orders, which promised them a quick return after the victory. […]

An analysis of the historic archives carried out by Palestinian researchers and historians (Walid Khalidi, Nur Masalha, Elias Sanbar), as well as "new historians" (Ben Morris, Tom Segev) and "post-Zionist" Israeli historians (Ilan Pappé) demonstrates a completely different reality. They gave proof of the planed expulsion of 750 000 Palestinians in 1948. On the one hand, BBC's radio archives do not reveal any trace of an Arab or Palestinian call exhorting to exodus[1]. […]

The meticulous analysis of the report by the intelligence services of the Haganah on 30 June 1948 shows that 73% of the departures, with 400 000 Palestinians constrained to exile before the arrival of the Arab armies in June 1948[2]. […]

The right of return: an internationally recognised right

The right of return, included in the right of peoples to self-determination, implies the freedom of everyone to come back to his/her country, the right to enjoy the liberty to go and come. This right falls within the scope of rights proclaimed by the International Charter of Human Rights (article 13 of the Universal Declaration of Human Rights of 10 December 1948) as well as the Covenant on Civil and Political Rights of 16 December 1967 (article 12). Israel did not adhere to it until 1991 but the established norm constitutes customary law and applies to countries for any situation prior to their conventional engagement[3]. […]

In order to gain a real recognition, which would mean its legitimacy at a regional level, Israel should recognise its direct responsibility in the massive expulsion of the Palestinian people. The symbolic impact would be significant. The duty of memory, which is fairly asked for by Israeli representatives to the European countries, is a universal duty for all. The demographic, economic and security argument is part of the myth about a continuous threat to the survival of Israel. But the key for a real security is a deep reconciliation, with the recognition by Israel of the serious injustices infringed on Palestinians since 1948. […] »

[1] Vidal, D., "D'une Intifada à l'autre: Israël face à son histoire", *in* Mardam-Bey & Sanbar, eds., *Le droit au retour, le problème des réfugiés palestiniens,* Sindbad, Actes Sud, Arles, 2002. pp. 119-144.
[2] Idem.
[3] Chemillier-Gendreau, M., "Le retour des Palestiniens en exil et le droit international", *in* Mardam-Bey & Sanbar, eds., 2002, pp. 285-317.

Published with the kind permission of Zapiro.

Turkey : New Laws without Effect on Human Rights

«Last year, the Turkish government undertook legislative changes that were to contribute to the country's democratic reform that its citizens have so long awaited and that is required by the European Union member countries in order for Turkey to join the EU. However, these changes fall far short of expectations and have not been implemented.

Indeed, as many observers have noted, most of these changes, such as the authorisation of the broadcasting of audio-visual programmes in the Kurdish language, remain unimplemented owing to the rigidity of the ministerial circulars that are supposed to define the framework of their implementation.

Torture continues to be "largely used on persons placed in police custody", as noted by the Committee Against Torture[1].

For example, on the 14th of June 2003, Miss Gülbahar Gündüz, leader of the women's branch of the Istanbul section of the People's Democratic Party (DEHAP, pro-Kurdish), was kidnapped in broad daylight by the police, who then tortured and raped her[2].

According to the Turkish Human Rights Association (IDH), in 2002, 1,362 persons filed complaints for having been tortured while in custody[3].

Although the state of exception has been officially lifted in Kurdish Turkey since the 30th of November 2002, the police continue to practice summary and extra-judicial executions (which have been increasing these last months), torture and the repression of human rights defenders and of Kurdish militants. […]

The IDH continues to be the target of the Turkish authorities in its repression of human rights defenders. On the 6th of May 2003, the police raided the headquarters of the IDH in Ankara, confiscating all its archives and some of the association's computer equipment. According to the IDH, the police remained evasive on the reasons of this raid[4].

On the 13th of March 2003, the Turkish constitutional court proscribed the People's Democracy Party (HADEP-pro-Kurdish), claiming it had "*helped and encouraged a terrorist organisation*". By the same decision, 46 leaders of the HADEP were forbidden to participate in any political activity for five years. The successor of the HADEP, the People's Democratic Party (DEHAP) is already threatened by the same fate. […]

The four ex-parliamentarians of the Democracy Party (DEP), Leyla Zana, Hatip Dicle, Ohran Dogan and Selim Sadak, sentenced to fifteen years' imprisonment in 1994 for having publicly voiced the demands of the Kurdish people, continue to rot in jail. Although many hearings for the review of their trail have taken place at the Ankara security tribunal since the 28th of March 2003, as required by the European Court of Human Rights, we are witnessing, once again, the same parody of justice as 10 years ago, namely the non-observance of the right to legal defence.

As for the four million displaced Kurdish farmers, following the army's destruction of some 3,500 villages and hamlets, they live in extremely precarious conditions and are still waiting to be allowed to go back to their villages[5]. Despite the recommendation by Mr Francis Deng, the Secretary General's special representative for internally displaced people, of the abolition of the village guardian system, the Turkish authorities, among other things, make the farmers' enrolment in this system a condition for their return. […]

In this context, the CETIM is deeply concerned by the new "law of repentance", recently adopted by the parliament. This draft norm, far from contributing to reconciliation with the Kurdish people, seems to seek to maintain the negation of the Kurdish reality, the division, the misunderstanding and the confrontation between the Kurdish and Turkish peoples.

Thus, the CETIM exhorts the Turkish government to proclaim an unconditional general amnesty for all political prisoners. Such an action will contribute immeasurably to the democratisation of Turkey and to a dialogue with the Kurdish people. »

[1] Cf. CAT/C/CR/30/5.
[2] Cf. Release of the *Association for Human Rights of Turkey* (IDH).
[3] Cf. Annual Report of the IDH.
[4] Cf. Release of the IDH of the 7th of May 2003.
[5] Cf. E/CN.4/2003/86/Add.2. Kurdish militia of 60'000 men paid by the Turkish government to fight the Kurdish guerrilla.

CETIM's Work on Transnational Corporations

Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights

Summary

The CETIM and the Association of American Jurists (AAJ) have been monitoring attentively, from within the United Nations, the effect of the activities of transnational corporations (TNCs) on human rights. Drawing on the results of this monitoring, both groups have contributed actively to the Working Group set up in 1998 by the Sub-Commission[1] to deal with this subject.

In conformity with its mandate, the Working Group produced "Draft Norms on Responsibilities of transnational Corporations and Other Business Enterprises with regard to Human Rights". As these Draft Norms did not assure any effective control over TNC activities affecting human rights, the AAJ and the CETIM organized at the Palais Wilson in Geneva, on 6th and 7th March 2003, a working seminar in order to propose, with the participation of the members of the Working Group, amendments to the draft. Apart from the representatives of our respective organizations, Ms Laurence André, researcher at the Catholic University of Louvain, and Professor Eric David of the Free University of Brussells also participated.

At the end of April, informal meetings produced a new version of the draft[2] that was officially submitted to the Working Group of the Sub-Commission when it met at the Palais des Nations in Geneva on 29th and 31st July 2003.

As most of our concerns had not been taken into account by the Working Group, we expressed our position on the Draft Norms by proposing amendments in a brochure[3] and by submitting a written declaration[4], both presented at the 55th session of the Sub-Commission.

Debate at the Sub-Commission

During the debates that took place on the Draft Norms during the meeting of the Working Group, the International Chamber of Employers of the International Labor Organization expressed the opinion that the text as drafted was too general to be applied to TNCs and that it did not take into account the specific characteristics of TNCs. With regard to these specific characteristics, it was suggested that the Sub-Commission draft a voluntary code of conduct.

The question of the enforceability of the Draft Norms was then discussed again. According Mr Miguel Alphonso Martínez, a member of the Working Group, as the document was a UN document, the UN has no means to force TNCs to comply with it. Mr El-Hadji Guissé, chair of the Working Group, clarified this by pointing out that the sole constraint possible was a moral constraint.

Mr David Weissbrodt, another member of the Working Group, cited a large number of already existing voluntary codes of conduct that are not implemented. Citing in particular the *Global Compact*, he declared that out of 75,000 TNCs, only 1,000 had joined it. In his opinion, this alone justified adopting an enforceable code of conduct.

Whatever the legal interpretation that might be given it, the document adopted claimed to be enforceable, and not a voluntary code of conduct.

Several NGOs, including the CETIM and the AAJ, also requested the creation of an effective enforcement mechanism for the draft.

As for the International Confederation of Free Trade Unions, it reckoned that the Draft Norms accorded too much

importance to self-policing by the transnational corporations. It pointed out that mechanisms existed within the framework of the ILO, which constitute jurisprudence in this matter, and pleaded for a concerted effort in the enforcement of the Norms.

It is worth noting that most of the NGOs participating in the 55th session of the Sub-Commission supported adopting the Draft Norms.

Published with the kind permission of Langer.

The Documents Adopted by the Sub-Commission

The Working Group adopted two document (the Draft Norms cited above and a commentary on it), which were accepted by the Sub-Commission through the adoption of a draft resolution.

Draft Norms

The Draft Norms adopted[5] acknowledge the responsibility of TNCs corporations for their activities causing violations of human rights and stipulate general conditions for the respect of human rights by TNCs, and in particular regarding the following specific rights: right to equality of opportunity and to non-discriminatory treatment; right to personal security; right of workers; observance of national sovereignty and of human rights; obligations concerning the rights of the consumer; obligations concerning the protection of the environment:

The Draft Norms do not mention essential points proposed by the CETIM and the AAJ. Thus one would deem preferable, in particular:

- the withdrawal of the mention of “other enterprises”, for the CETIM and the AAJ had requested that the Draft Norms be limited solely to TNCs and not concern “other enterprises” except in so far as these latter are subsidiaries, de jure or de facto, of a TNC or its suppliers, subcontractors and licensees;
- an insistence on the joint and several responsibility of STNs with their suppliers, subcontractors and licensees;
- the designation of civil and criminal responsibility for executives of TNCs;
- the exclusion of the responsibility of employees[6] for the activities of TNCs, whereas the responsibility of the executives is placed on the same level as that of the employees;
- the imposition of strict limits on the intervention of security personnel employed by TNCs;
- the introduction of the principle of affirmative action.

Further, although the Draft Norms speak of an implementation mechanism, its practical application is not specified.

Commentary on the Draft of Norms

Although the Commentary[7] on the Draft Norms was adopted at the same time as the Draft itself, its legal value has not been clarified.

This Commentary presents certain advantages, but also disadvantages. It is true that it clarifies additionally the sense of the Draft Norms with regard to certain points.

The disadvantages of the Commentary is that it accords too great a role to the TNCs in the implementation of the Draft Norms. In fact, there is a significant gap that plays in favor of a voluntary implementation by the TNCs, whereas there does not yet exist an independent mechanism for monitoring and enforcing compliance. This explains why virtually all NOGs insisted on the setting up of an effective monitoring mechanism.

Resolution on Transnational Corporations

According to this resolution adopted unanimously[8], the Sub-Commission:

- submits the Draft Norms to the Commission on Human Rights for consideration and adoption;
- recommends to the Commission on Human Rights to envisage the creation of a working group of unlimited composition to examine the Draft Norms, after having received observations from states, from UN bodies, from specialized institutions and from NGOs;
- recommends that the Working Group of the Sub-Commission pursue its deliberations in conformity with its mandate and, in particular, seek mechanisms which could allow a putting into practice of the norms.

At the outset, Mr Weissbrodt wanted a voluntary code of conduct for TNCs. After the mobilization of the CETIM and the AAJ, supported by numerous other NGOs and social movements, the Working Group was forced to change it position. In fact, all NGOs, without exception, currently support the enforceability of the Draft Norms adopted.

However, there remains much to be done, and the essential has not been accomplished. We must pursue our efforts so that all our concerns will be taken into account during the work of the Commission on Human Rights and so that an effective mechanism of control of TNCs will be created.

[1] Cf. This Working Group was set up following the adoption of the resolution E/CN.4/Sub.2/RES/1998/8.
[2] Cf. E/CN.4/Sub.2/2003/12.
[3] Brochure entitled «Amendment Proposals for the Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights», by the CETIM and the AAJ, published by the CETIM, Geneva, July 2003 (available in French, Spanish and English).
[4] Cf. E/CN.4/Sub2/2003/NGO/37 (available in French, Spanish and English).
[5] Cf. E/CN.4/Sub.2/2003/12/Rev.1.
[6] Cf. paragraph 14 of the preamble of the «draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (E/CN.4/Sub.2/2003 /12/Rev.1).
[7] Cf. E/CN.4/Sub.2/2003/38/Rev.1.
[8] Cf. Draft resolution entitled « The Responsibility for Human Rights of Transnational Corporations and Other Enterprises” (E/CN.4 /Sub.2/2003/L.8).

GET YOUR FRIENDS TO JOIN CETIM