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TRANSNATIONAL CORPORATIONS MAJOR PLAYERS IN HUMAN RIGHTS VIOLATIONS

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INTRODUCTION

The crucial role played by transnational corporations (TNCs) on a planetary scale has been a point of focus for researchers and human rights militants for many years. In a recent publication, one of authors of this critical report summarized the matter thus: "To understand the system of dominant power in contemporary society, it is necessary to understand the role that TNCs play within it. TNCs are active in the production of goods and services – in practically all spheres of human activity – as well as in speculation in the financial markets. They engage also in illicit activities and in the gray area between legality and illegality. They play a role front and center in the making of decisions by the powerful and dominate the instruments that enable them to dictate human behavior, ideas, aspirations and habits. This multi-facetted activity is dominated by a fundamental objective: obtaining maximum profit in minimum time, and, to attain it, TNCs, especially those enjoying the greatest power, will use any means at their disposal, assured as they are of the complicity of a majority of national and international political élites and of the services of many of the intellectual élites as well as of civil society's most-in-view personalities. And, when circumstances require it, they can count on the support of great power armed force, visible and/or clandestine – army, special forces etc. It thus comes down to understanding and explaining how the enormous power of TNCs is in the process of emptying representative democracy of all content and how it constitutes a major factor in the political, economic, social, environmental and cultural crises currently affecting humankind. This prompts reflection on how

human beings "born free and equal in dignity and rights" can recover their decision-making power over their destiny within the framework of a democratic and participative society."[1]

These observations have since been corroborated by scientists. In a interdisciplinary study of some 43,000 TNCs (according to the criteria of the OCDE)[2], three researchers from the Swiss Federal Institute of Technology in Zurich concluded that 737 TNCs, through dense and complex networks woven across the world among all TNCs, control 80% of the value of all TNCs, while 147 of them (which the researchers call "a tightly-knit core of financial institutions" or "super-entity") control 40%.[3]

This report attempts to bring up to date the booklet entitled ***Transnational Corporations and Human Rights*** published by the CETIM in 2005.[4] Since the CETIM has produced many publications (books, booklets and reports) on diverse aspects of the problems posed – and the human rights violations committed – by TNCs, this report will concentrate mainly on: attempts, until now, to set binding international standards for TNCs; the armaments industry; TNCs dealing in mercenaries; the economic and financial crises, and the consequent impoverishment and the deterioration of the living conditions of large swathes of the world's population.

1 Alejandro Teitelbaum, *La armadura del capitalismo. El poder de las sociedades transnacionales en el mundovcontemporáneo,* Editions Icaria, collection Antryzyt. Barcelona, Spain, January 2010. Back cover.

2 The Special Representative of the United Nations Secretary-General, John Ruggie, estimated that the number of TNCs in the world is some 80,000. V. § 15of his final report A/HRC/17/31, 21 March 2011, to the 17th session of the Human Rights Council.

3 Stefanie Vitali, James B. Glattfelder, Stefano Battiston, *The Network of Global Corporate Control*, ETH Zurich, 19 September 2011, http://arxiv.org/pdf/1107.5728v2.pdf

4 http://www.cetim.ch/en/documents/bro2-stn-A4-an.pdf

I. FAILED ATTEPTS TO SET BINDING INTERNATIONAL STANDARDS FOR TRANSNATIONAL CORPORATIONS

A. Previous Efforts

In order to effectively oppose transnational corporations' activities resulting in human rights violations, there has long been under way an effort to establish a specific institutional and normative framework complementing already existing norms.

For this purpose, in 1974, the United Nations Economic and Social Council (ECOSOC) created the Commission on Transnational Corporations. Comprising 48 member states, it had as a primary mission – among others – the study of the activities of TNCs and the drafting of a code of conduct for them.[5] This code was discussed for ten years but never finalized owing to the opposition of the great powers and to transnational economic power.

In 1974, the ECOSOC also set up a Center on Transnational Corporations, an autonomous body within the United Nations secretariat, which functioned as a secretariat for the Commission. However, in the years 1993 to 1995, the two bodies were practically dismantled and their purposes fundamentally altered.

Thus, the United Nations Secretary-General decided to transform the Center on Transnational Corporations into a Division on Transnational Corporations and Investment under the aegis of the United Nations Conference on Trade and Development (UNCTAD).

For its part, in December 1994, the United Nations General Assembly decided to transform the Commission on Transnational Corporations into a trade and development commission of the UNCTAD and to rename it the Commission for International Investment and Transnational Corporations, taking into account the Commission's "change in orientation" ("change" in the sense that the objective of setting up a legal framework for social control over TNCs had been superseded by "the contribution of transnational corporations to growth and development").[6]

B. Reopening of the Discussion

In 1998, the subject of international norms for TNCs once again came up at the United Nations when the Sub-Commission on the Prevention of Discrimination and Protection of Minorities[7] adopted a resolution to study the activities and business practices of TNCs in relation to the enjoyment of economic, social and cultural rights and the right to development. In this resolution, it was emphasized that one of the obstacles to the right to development is the concentration of economic and political power in the hands of major transnational corporations.[8]

This sequence of events (from 1998 to 2005) is described in the above cited CETIM publication.

In July 2005, the United Nations Secretary-General Kofi Annan, appointed John Ruggie his special representative to study the question of transnational corporations.[9] At the time, John Ruggie was his chief adviser for the ***Global Compact***, a body we shall turn to a bit later.

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5 United Nations Economic and Social Council, Commission on Transnational Corporations, *Report of the first session*, E/5655, E/C.10/6, New York, 28 March1975, §§ 6 and 9.

6 General Assembly, *resolution A/RES/49/130*, 19 December 1994.

7 Later, it became the Sub-Commission for the Promotion and Protection of Human Rights. This body has been replaced by the Advisory Committee of the United Nations Human Rights Council.
V. in this regard, inter alia, the CETIM's Critical Report N° 1, "The Human Rights Council and Its Mechanisms", February 2008: http://www.cetim.ch/en/publications_cahiers.php#council

8 Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *resolution 1998/8*.

9 His official title was Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises.

One need only read Kofi Annan's 1998 report wherein he announces the creation of the Global Compact (Entrepreneurship and ***privatization*** for economic growth and sustainable development)[10], as well as the speeches of both John Ruggie and George Kell (executive director of the Global Compact), to understand the driving force of neo-liberal ideology in the service of transnational economic power dominating any work in this area. One finds there, indisputably, a mind-set thoroughly at odds with imposing binding norms on TNCs.

In 2006, John Ruggie submitted his first report to the Commission on Human Rights[11], but it was never taken up by the Commission, for the Commission was dissolved without having held its last session, contrary to what was planned. In this document, he tries to demonstrate that TNCs cannot be subject to international law and that it would be more appropriate for TNCs, the United Nations (through the Global Compact) and "civil society"[12] to concentrate their efforts on drafting declarations of good intentions in the form of *soft law*, codes of conduct etc. Their implementation would be monitored by these same corporations and by representatives of "civil society".[13]

In his 2007 report, the Special Representative of the Secretary-General contended that TNCs are not directly subject to international law and that thus the most appropriate course of action would be the drafting of non-binding legal norms and initiatives by governments, in consultation with corporations and civil society, drawing on various international instruments.[14] This position is counter to the current state of development of international law, for TNCs are responsible for human rights violations under both civil and criminal law just like physical persons. TNCs can be indicted as accomplices, as primary perpetrators, as co-perpetrators and as initiators of human rights violations. In this context, it is indispensable to consolidate the instruments and mechanisms necessary to establishing both responsibility and corresponding sanctions at the international level.[15]

In his 2008 report[16], without making any specific proposal (the author maintained that he was merely presenting a conceptual framework), John Ruggie made a surprising about-face regarding his previous reports, apparently influenced by the devastating affects of the financial crisis. He set forth three distinctive basic principles: the obligation of the state to protect human rights; the responsibility of business enterprises to protect them; and the necessity of improving access to measures or avenues of redress in the case of violations. He thus ended the confusion over the role of corporations as co-responsible with governments for having human rights respected – in a way, obliging governments and TNCs to acknowledge their equal responsibilities).

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10 V. A/52/428, emphasis added.

11 V. E/CN.4/2006/97.

12 We have deliberately added quotation marks for "civil society", for it is a term that is still compromised and can be manipulated according to time and place. Further, not long ago, TNCs were considered part of civil society, since, according the accepted usage, any body or entity outside the sphere of the state – even though the separation between the state and the various other stakeholders is never complete – could be considered part of civil society. Currently (and the tendency continues along these lines), the term is used to designate citizens groups and NGOs in so far as their structures are democratic, their activities transparent and they defend the general interest (bearing in mind that certain NGOs can be simple transmission belts for governments or TNCs or even be emanations of them). Thus, any private economic entity (including TNCs) pursuing private interests is excluded from this category.

13 We drafted a commentary on John Ruggie's first report (2006), a summary of which is available at http://alainet.org/docs/13433.html, as well as another on the second report (A/HRC/4/NGO/152, 30 March 2007), submitted to the 4th session of the Human Rights Council. A synthesis of the latter was published by the Transnational Institute in Spanish and in English: http://www.thirdworldtraveler.com/Unite_Nations/UN8TNCs_DeadlyAssoc.html

14 V. § 44 of report A/HCR/4/35, 19 February 2007, to the 4th session of the Human Rights Council,

15 V. the joint declaration of the CETIM, FSM, LIDLIP MRAP and WILPF, to the 4th session of the Human Rights Council: http://www.cetim.ch/fr/interventions/282/commentaires-sur-le-rapport-du-representant-special-du-secretaire-general-sur-les-droits-de-lhomme-et-les-societes-transnationales
A full account of our observations concerning the 2007 report can be found at: http://alainet.org/active/16462&lang=es

16 A/HRC/8/5, 7 April 2008, to the 8th session of the Human Rights Council.

In May 2008, John Ruggie submitted an additional report, ***Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuses***[17], which discusses the negative effect on human rights of corporations' activities, work-related or otherwise.

However, John Ruggie failed to draw the obvious conclusions from his 2008 report: on 28 January 2009, the United Nations Office in Geneva published on its website a note by him claiming that he had obtained the voluntary services of 15 international law firms – a list of which he appended – specialized in advising major corporations so that they might study the business legislation of 40 countries and its effects on the promotion of a culture of human rights among their clients. It is unthinkable that such consultants would be able to produce impartial and dispassionate work that might conflict with the interests of their rich clients, sworn enemies of any national legislation liable to regulate or restrict their activities.

In his 2009 report, John Ruggie maintained the position imposed by the TNCs: no proposal of binding norms for corporations.

In his 2010 report[18], the ideology inspiring the work of the Special Representative is reflected in paragraph 121. Obviously wishing to appear pragmatic, he proposes to deal with "remediable injustices". However, he is careful not to specify who will decide, nor who has authority to determine, if an injustice can be subject to remedy or not.

In this report, the orientation of his legal approach can be summed up by the claim that, in his opinion, corporations have no duties or obligations, only responsibilities. Thus, the report of the Special Representative of the Secretary-General proposes no binding norms, congruent with what the International Chamber of Commerce and the International Organization of Employers demanded in a March 2008 document[19] published in opposition to the draft norms adopted by the Sub-Commission for the Promotion and Protection of Human Rights in 2003.[20]

C. John Ruggie's 2011 Final Report

Although since 2008, the frame of reference of the Special Representative of the Secretary-General corresponds to the principle of "protecting, respecting and repairing", in conformity with Human Rights Council resolution 8/7, he was always careful to avoid proposing binding rules for TNCs. John Ruggie's final report follows this line in that it includes a draft of guidelines regarding corporations and human rights that is tantamount to a voluntary code of conduct.[21]

The report's content dos not merit any comment – at least in the framework of this report – even if the Special Representative of the Secretary-General confuses certain aspects and evades important questions such as the responsibility of the country of domicile of a TNC regarding violations committed by the TNC in a third country.[22] On the other hand, he makes a point of emphasizing that his principles apply equally to TNCs and street vendors (sic)![23]

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17 A/HRC/8/5/Add.2.

18 A/HRC/14/27, 9 April 2010, to the 14th session of the Human Rights Council.

19 "Joint view of the IOE and ICC on the draft 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprise with Regard to Human Rights'".

20 V. http://www.cetim.ch/fr/documents/2003-12-Rev.2-fra.pdf

21 A/HRC/17/31, 21 March 2011, to the 17th session of the Human Rights Council.

22 In this regard, it is worth noting a campaign launched by NGOs in several European Union countries as well as a similar one launched in Switzerland, a country with many TNC headquarters. The purpose is to obtain legislative changes making it possible to take TNCs to court in the headquarters country for human rights violations in a third country. For further information: http://www.corporatejustice.ch/en/

23 V. his oral statement to the 17th session of the Human Rights council, on 31 May 2011 (V. the United Nations press release: http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/73E17391191EE00AC12578A100418469?OpenDocument&cntxt=F962A&cookielang=en
It is true that his mandate is entitled "Special Representative of the Secretary-General on the issue of human rights and

Thus, we shall analyze, in this chapter, only the notion of responsibility, a basic element that, in our opinion, must be clarified once and for all.

Before entering into this subject, it is important to note that, while John Ruggie claimed to have carried out a major and broad consultation involving diverse sectors of society, his real interlocutors were major corporations, business associations such as the International Chamber of Commerce and the International Organization of Employers, as well as the legal counsels of these same corporations. As for the other participants in the numerous meetings organized by the Special Representative of the Secretary-General, they were mere onlookers whose opinion was not at all taken into account.

To return to the 2011 final report of the Special Representative of the Secretary-General, in the introduction's second paragraph, referring to the draft ***Norms on the Responsibilities of Transnational Corporations and Other Business Enterprise with Regard to Human Rights*** adopted by the Sub-Commission for the Promotion and Protection of Human Rights in 2003, it is stated that this draft had as its purpose the imposition upon TNCs of the same sort of duties regarding human rights as those that governments have accepted when ratifying international treaties: promoting, assuring the realization of, respecting, assuring the respect and the protection of human rights.

John Ruggie repeats a criticism that he had already formulated in one of his previous reports on the draft norms (2006), a criticism that we had shared and pointed out in a timely manner to the working group that drafted the norms.

The Sub-Commission's draft norms, after stating that "even states have the primary responsibility to promote, respect, have respected and protect human rights...", add that "transnational corporations and other business enterprises also have the responsibility to promote and guarantee..."

We had pointed out the working group's error and we had proposed deleting the following phrase, "also have the responsibility to promote and guarantee...", replacing it by "must respect human rights and contribute to guaranteeing that they are respected, protected and promoted...".[24]

There is no doubt that, regarding the implementation of human rights in the framework of a government's jurisdiction, it has a responsibility that it may not delegate. Further, it must prevent the violation of these rights, by the state itself and/or by its own employees or by individual persons (physical or legal). If it does not respect this obligation, the matter comes under the purview of the international community.

The word responsibility comports two meanings, tangential but distinct, which can be expressed in English by two distinct words: ***responsible (responsibility)*** and ***accountable (accountability)***.The first meaning is "being in charge of". For example government employees are in charge of (responsible for) guaranteeing that the law is enforced. One can also say that corporate management is in charge of (responsible for) guaranteeing that human rights are respected within the framework of the the corporation. The other meaning signifies that each person (physical or moral, the latter through the management that is making the decisions) is answerable for his/her/its acts, for which he/she/it must be held accountable. For example, somebody who violated workers' rights must be held accountable before the appropriate public institutions (state administrations and courts). Thus, the damage done must be repaired (hence, there is liability).

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transnational corporations and other business enterprises". However, to conclude from such wording that "other enterprise" includes street vendors show the state of mind of the author of these principles, who, apparently, is always in search of ways to protect TNCs.

24 V. *Transnational coprorations and human rights: critics of the draft norms of the Working Group,* CETIM/AAJ, 2003: http://www.cetim.ch/en/interventions/206/transnational-coprorations-and-human-rights-critics-of-the-draft-norms-of-the-working-group

Sometimes, one extrapolates from the first meaning by attributing to corporations, especially major corporations, a general responsibility to "be in charge" of guaranteeing respect for human rights. Such a case implies the delegation to the corporate instance of the state's responsibility to guarantee that human rights in general are respected, a responsibility intrinsic to the state thus ***shared*** with corporations.

John Ruggie uses this extrapolation in discussing the draft norms to create confusion between obligations inherent in the state (which is in charge) to promote, respect and implement human rights and the obligation – and the direct responsibility (with its concomitant liability) deriving therefrom in cases of violations, – of corporations (like all individual persons, physical and legal) to respect the human rights recognized in the international norms (with its concomitant liability in case of non-respect). In Paragraph 60 of the 2006 report, he writes: "If the Norms merely restate established international legal principles then they cannot also directly bind business because, with the possible exception of certain war crimes and crimes against humanity, there are no generally accepted international legal principles that do so."[25]

Thus, human rights, according to the Special Representative of the Secretary-General, constitute a special category of rights that can be violated only by states and their employees, but not by private persons, with the exception of certain war crimes and crimes against humanity.[26]

According to this same report of 2006, the crimes committed by corporations can be human rights violations only when a state appears as a co-perpetrator by action or by omission. In other words, there is violation of human rights when, in one way or another, only the responsibility of the state is involved.

Thus, according to the Special Representative of the Secretary-General, an act committed by a state engaging the state's responsibility for a human rights violation could also engage the responsibility of a person committing such an act, but only for a crime or offense as defined by national law, not for a human rights violation

There is no doubt that transnational corporations, like all individual persons, are under obligation to observe the law, and, if they do not, they must be sanctioned to the full extent of the law, including on the international level, which is clear from even a cursory examination of the international instruments in force.

The recognition of the obligations of individual persons regarding human rights and their responsibility in case of violations of these rights is dealt with in Article 29 of the *Universal Declaration of Human Rights*[27], and it has been reinforced through the texts of numerous international conventions,

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25 Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,E/CN.4/2006/97, 22 February 2006.

26 Since the Nuremberg trails and especially since the adoption in 1998 of the Statute of the International Criminal Court, it is impossible to contend, generally and even with a minimum of seriousness, that individuals cannot violate human rights and be directly sanctioned for the violation. J. Ruggie must agree: "except possibly for certain war crimes and crimes against humanity". But he establishes a significant limit to this exception by reducing the forms of participation of corporations to mere complicity, excluding thus the other forms of participation such as instigation, perpetration and collaboration.

27 Which is binding and is not merely an ethical principle, contrary to what is claimed in the document of the employers' associations opposing the draft norms.

in part those regarding environmental protection[28] and in the jurisprudence. We discuss this subject more broadly in in our commentary on John Ruggie's 2006 report.[29]

With this approach, the Special Representative of the Secretary-General successfully fulfilled the demands of the transnational corporations: no binding international rules for TNCs, just as he said himself in Paragraphs 11 and 14 of the introduction of his final report. "The Guiding Principles addressing how Governments should help companies avoid getting drawn into the kinds of human rights abuses that all too often occur..." (11, emphasis added).

In other words, the *Guiding Principles* ***are not, and do not aspire to be, blinding rules*** and must remain merely indications regarding the way governments should ***help*** (not control nor sanction) companies in order to avoid their being incited to commit the sorts of human rights abuses the occur too often. **In this paragraph, the *deliberate willingness* of companies to commit such violations is excluded. Rather, they appear as being incited to commit them by some external factor beyond their will, instead of being primary stakeholders whose basic motivation is to obtain maximum profit.**

Paragraph 14: "The Guiding Principles' normative contribution lies not in the creation of new international law obligations..." (emphasis added). It is obvious: the normative contribution of these principles ***does not consist in creating new obligations under international law***.

John Ruggie's *Guiding Principles* are thus mere reference points. They are devoid of any blinding character, both for governments and for business enterprises, in response to demands, expressed on several occasions, of transnational corporations.

The non-governmental organizations (NGOs) dealing with the question have unanimously criticized the lack of binding norms in John Ruggie's principles. Some NGOs have nonetheless considered that the draft was useful[30], while others requested that the Human Rights Council withdraw them.[31]

On 16 June 2011, the Human Rights Council, by consensus, approved John Ruggie's *Guiding Principles* and decided to set up a working group entrusted with, in particular, their promotion.[32] Only the representative of ***Ecuador*** stated any objection: the absence, regarding the *Principles*, of blinding

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[28] There are binding international instruments for private individuals relating primarily to environmental protection such as: Principle 21 of the 1972 *Stockholm Declaration* on the human environment reaffirmed by General Assembly resolutions 2995 (XXVII); 3129 (XXVIII); 3281 (XXIX – *Charter of Economic Rights and Duties of States*); the 1992 *Declaration of Rio on Environment and Development*, construed as *jus cogens*; the *United Nations Convention on the Law of the Sea* (Montego Bay, 1982), the *Convention on the Protection and Use of Transboundary Watercourses and International Lake*s (Helsinki, March 1992); the 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* and the 1991 *Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa;* the 1902 *Helsinki Convention*, on transboundary effects of industrial accidents; the 1993 Lugano *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment*; the 1998 *Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals and Pesticides in international trade*; etc. They establish the responsibility of the party causing the damage and, in general, the subsidiary responsibility of the state if it has not adopted the necessary preventive measures to avoid the damaging effects of such activities. In December 1999, the states parties to the 1989 *Basel Convention* approved a protocol on liability and compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes. Article 16 of the protocol states: "The Protocol shall not affect the rights and obligations of the Contracting Parties under the rules of international law with respect to State responsibility." (V. http://archive.basel.int/pub/protocol.html). In May 2001, the *Stockholm Convention on Persistent Organic Pollutants* (POPs) was adopted, entering into force in May 2004.

[29] V. note 14.

[30] V. http://www.icj.org/dwn/database/JointCSOStatement_GPs_13Jan.pdf

[31] V. http://www.fian.org/news/press-releases/CSOs-respond-to-ruggies-guiding-principles-regarding-human-rights-and-transnational-corporations/?searchterm=ruggie

[32] *Human Rights Council resolution 17/4*.

norms, which the Council resolution does not mention any more than their intended purpose; the fact that no complaint mechanism is provided for the victims of TNC activities; and that, in the end, the resolution is reduced in practice to simply promoting the diffusion of the *Principles*. His observations do not figure in the resolution, even though Ecuador specifically requested that they be incorporated into it.

Through this resolution, the Human Rights Council also decided to set up a Forum on Business and Human Rights which "will meet every year for two days"[33]. The Forum will be open to different organizations and persons such as certain United Nations bodies (the ECOSOC and human rights bodies) that admit, in consultative status, the participation of intergovernmental organizations, United Nations agencies and NGOs. The private sector and TNCs will be represented in it, in particular by two organizations already mentioned (the International Chamber of Commerce and the International Organization of Employers, v. note 20), not to mention of course many NGOs created by TNCs. But the great novelty of the Forum is the direct participation of the TNCs and "other enterprises". Leaving aside the Forum's mandate[34], this opening of a formal United Nations body to direct TNC participation poses many problems.

- TNCs are not democratic and transparent entities. In fact, they not only escape from any and all democratic control but recur to complex structures to escape in particular from tax measures and from their responsibilities when they are implicated (directly or indirectly) in human right violations.
- By definition,TNCs are entities that defend private interests (above all those of a handful of majority shareholders) as opposed to the general interest. They can go bankrupt, be bought out by other entities (or by governments), be transformed (completely change their orientation) or disappear (e.g. there are almost no more companies engaged in coal mining in Euorpe).
- TNCs are both judges and plaintiffs in the body set up to propose measures to be taken against them in order to prevent and/or sanction their human rights violations.
- The exchanges within the Forum will take place on an unequal footing, given that the civil society organizations and even many governments of countries in the South, having negligible financial means, will be confronting TNCs with an annual turnover of tens – even hundreds – of billions of U.S. dollars.
- The new working group is required to "reserve a place in its report for reflections on the deliberations of the Forum and for recommendations touching thematic questions to be treated in the future".[35] The group's mandate is already well established with the promotion of John Ruggie's *Guilding Principles*, as mentioned above. The only item of the mandate that could be of interest is the study that the group should undertake on the improvement of access to effective redress for victims of human rights violations committed by TNCs.[36] With the requirement to take into account the Forum's"deliberations", which will undoubtedly be dominated by private economic entities, the working group will have no margin of maneuver (nor the time, with two days of meetings per year) to take any initiatives[37] in favor of the victims of human rights violations committed by TNCs.

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33 Ibid., § 14.

34 It is limited to examining, in particular "the implementation of the Guiding Principles" and TNCs'"best practices", *Human Rights Council resolution 17/4*, §§ 6.a, 6 b.

35 Ibid., § 16.

36 Ibid., § 6.e).

37 To properly fulfill its mandate, however limited (v. note 37), the working group must have the necessary means (the European Union and Japan have already criticized the financial cost of the new mechanism), and its members must have the political will. With regard to this last, the choice of its members (five experts, according to the United Nations principle of geographic distribution) has been much criticized by civil society. For example, one of its members, the Colombian Alexandra Guáqueta, is a former employee of Occidental Petroleum and Cerrejón, both repeatedly denounced for human rights violations committed against indigenous peoples and Afro descendants in Colombia.

D. The Global Compact, a Trojan Horse within the United Nations

John Ruggie, chief adviser to Kofi Annan, was the main architect of the Global Compact, and his work as Special Representative of the Secretary-General for TNCs followed the ultra-liberal ideological orientations and practices of this body.

In 1978, the Swiss non-governmental organization Berne Declaration published a brochure, "The Infiltration of the U.N. System by Multinational Corporations", that documented the maneuvers used by the major TNCs (Brown Bovery, Nestlé, Sulzer, Ciby-Geigy, Hoffman-La Roche, Sandoz, Massey Ferguson etc.) to influence the decisions of various United Nations bodies. Since the creation of the Global Compact, "infiltration" has given way to a revolving door between the United Nations and the TNCs.

The idea of creating the Global Compact was announced in 1998 by Kofi Annan in a report already mentioned and intended for the General Assembly, "Entrepreneurship and privatization for economic growth and sustainable development"[38].

In this report, the Secretary-General stated that "deregulation – the process of simplifying the regulatory system and abolishing altogether unnecessary and unenforceable regulations – has now become a watchword for government reforms in all countries, developed and developing" (§ 50). As an advocate of the sale of government-owned companies, he advised "giving ownership and management to investors who have the experience and skills to upgrade the performance, even if that means, at times, selling the assets to foreign buyers" (§ 29).

This was a legitimation of a policy practiced on a the world-wide scale aiming to sell off profitable state-owned companies (sometimes through downright corrupt procedures) in order to privatize the profits and nationalize the losses.

In May 2000, the World Congress of the International Chamber of Commerce met in Budapest. In a recorded speech, Kofi Annan addressed the Congress affirming that the United Nations and the International Chamber of Commerce were "good and close associates". But the then president of the ICC, Adnan Kassar, set limits establishing what he himself called an important condition: there must no proposals that would give the Global Compact prescriptive rules, to wit binding norms. "We will resist any tendency in this direction", he declared.[39]

The Global Compact was officially launched on 25 July 2000 with the participation of 44 major TNCs as well as several others "representing civil society". Among the corporations participating in the launch were British Petorlem, Nike, Shell, Rio Tinto and Novartis, all of which have long histories of violations of human rights and work-related rights as well as environmental damage, such as Lyonnaise des eaux (Groupe Suez), whose activities in corrupting elected officials and civil servants in order to obtain a monopoly over drinking water are well known throughout the world.[40]

This alliance between the United Nations and the major TNCs has created a dangerous confusion between an international political institution that, according to its charter, represents "the peoples of the United Nations" and a group of entities representing the private interests of an international élite.

On 27 April 2006, at the New York Stock Exchange, the United Nations Secretary-General, Kofi Annan, invited the world of finance to sign on to the ***Principles for Responsible Investment***. This new proposal was developed by the Global Compact and the United Nations Environment Program-

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38 Cf. A/52/428.

39 www.iccbo.org/home/news_archives/2000/buda_global.asp, 18 May 2000.

40 V. also, inter alia, "Bréviaire de la corruption"in *Le Monde diplomatique*, July 1995, http://www.monde-diplomatique.fr/1995/07/DE_BRIE/1616

(UNEP) ***Financial Initiative*** in order to create a framework for integrating social and environmental aspects into investment. "Today it is increasingly clear that UN objectives – peace, security, development – go hand-in-hand with prosperity and growing markets. If societies fail, so will markets," the Secretary-General told Wall Street. "The *Principles* provide a framework for achieving better long-term investment returns, and more sustainable markets ." He also praised the Global Compact, calling it an agreement that "has become the world's largest corporate responsibility initiative".He went on, "In a sign that the step we are taking today is truly significant, the senior heads of some of the largest and most influential institutional investors in the world have joined us".[41]

Nonetheless, entire populations are still suffering from the effects of the crises triggered by finance capital's "responsible investments".

On 29 January 2009, at the World Economic Forum, Ban Ki-moon, continuing in the same vein as his predecessor, declared: "Self-interest is, of course, the essence of entrepreneurial responsibility and the key to a better world."[42] The current United Nations Secretary-General is following in the footsteps of the ultra-liberal economist Milton Friedman, who declared: "The social responsibility of businesses is to increase its profits."

Over and over again, we have affirmed that ***the Global Compact is a simple instrument of the major TNCs***. In a way, the United Nations Joint Inspection Unit confirmed this position in its report on the role and functioning of the Global Compact, published in 2010. The summary of the report specifies that its purpose was to "examine the role and the degree of success of the Global Compact and the risks associated with the use of the United Nations brand by companies that may benefit from their association with the Organization without having to prove their conformity with United Nations core values and principles." It goes on to note that the Global Compact's governance structure is "'unique' for an intergovernmental organization such as the United Nations, in that its main strategic direction is provided by a Board with no Member State representation."[43] It continues by saying that it has contributed "to legitimizing the Organization's engagement with the private sector over the years. Yet, the lack of a clear and articulated mandate has resulted in blurred focus and impact; the absence of adequate entry criteria and an effective monitoring system to measure actual implementation of the principles by participants has drawn some criticism and reputational risk for the Organization, and the Office's special set up has countered existing rules and procedures. Ten years after its creation, despite the intense activity carried out by the Office and the increasing resources received, results are mixed and risks unmitigated."[44]
During the 1980s, the TNCs triumphed when the code of conduct project concerning them, drafted by the Commission and the Center on Transnational Corporations, was buried (v. Chapter I.A). In 2005, they brought off another victory when the Commission on Human Rights laid to rest for good the Sub-Commission's draft norms. In 2011, they once again won a round with John Ruggie's final report, which killed the attempt to resuscitate the draft implementation standards for TNCs first launched by the former Sub-Commission in 1998.

41 http://www.un.org/sg/statements/?nid=2006

42 Quoted by Pedro Ramiro, "Las multinacionales y la responsabilidad social corporativa: de la ética a la rentabilidad", Hernández Zubizarreta, in Juan y Pedro Ramiro (eds.), *El negocio de la responsabilidad. Crítica de la Responsabilidad Social Corporativa de las empresas transnacionales,* Barcelona: Edition Icaria, Colection Antrazyt, June 2009.

43 Papa Louis Fall and Mohamed Mounir Zahran, *United Nations corporate partnerships: The role and functioning of the Global Compac*t, Geneva: Joint Inspection Unit, 2010, JIU/REP/2010/9, http://www.unjiu.org/en/reports.htm

44 Ibid.

II. TNCs, THE ARMAMENTS INDUSTRY AND THE WAR

The wide scale human rights violations caused by armed conflicts are regularly denounced, On the other hand, the link between the armaments industry and political power is rarely mentioned and analyzed. Yet, here, too, we are faced with powerful TNCs that influence government policies. Thus, in this chapter, we shall attempt some clarification of this situation with several examples.

A. A Lucrative Large-Scale Private Industry

If one considers that the existence of the armaments industry is inevitable given the current stage of human civilization (while admitting that wars are compatible with civilization), it should be a "public service" and, as such, should not have earning profits as its purpose. However, the armaments industry is currently almost 100% private (in the Western countries in any case, which account for more than 90% of arms exports throughout the world), and, as such, it is an integral part of capitalist economic logic: produce profit for owners and shareholders. To accomplish this, armaments industries must compete with each other and always try to conquer new markets with products that are ever more advanced than previous ones, in other words ever more destructive and murderous.

Moreover, the armaments industry constitutes a substantial part of industry in general and, in this way, an important source of employment. Thus, those who depend directly or indirectly on the armaments industry for their subsistence are particularly interested in seeing it develop and prosper. This is a paradox in that the means of subsistence of those who work in this sector consists in contributing to the making of objects that can, from one day to the next, end their days and those of their families and neighbors as well as destroy their housing. This contradicts common sense, but it is a description of factual reality. The armaments industry (by its very nature murderous and destructive) occupies a predominant position in the economic tissue of the planet and is the source of gigantic profits for its owners and shareholders, as well as a source of employment.

The armaments industry belongs to major TNCs that, like the other major industrial, commercial and financial TNCs, maintain close ties to national governments, especially those of the great powers, and to the major intergovernmental organizations. According the 2010 annual report of the Stockholm International Peace Research Institute (SIPRI), in 2009, military expenditures throughout the world were US$ 1,531 billion, 6% more than in 2008 and 49% more than in 2000. Military expenditure in 2009 represented 2.7% of the world's GDP for that year. Further, according to the report, the ten biggest corporations producing armaments in 2008 were:

Company	**Arms sales (in millions of US$)**	**Profits (in millions of US$)**
BAE Systems (United Kingdom)	32 420	3 250
Lockheed Martin (U.S.A.)	29 880	3 217
Boeing (U.S.A.)	29 200	2 672
Northrop Grumman (U.S.A.)	26 090	1 262
General Dynamics (U.S.A.)	22 780	2 459
Raytheon (U.S.A.)	21 030	1 672
EADS (trans-European)	17 900	2 302
Finmeccanica (Italy)	13 240	996
L-3 Communication (U.S.A.)	12 160	949
Thales (France)	10 760	952

The profit figures cover all activities of the companies, non-military sales included.

The SIPRI announced that, in 2009, arms sales of the 100 biggest industries in the sector throughout the world, reached US$ 401 billion (€ 296 billion, at the then current exchange rate), in other words 8% more than in 2008. This figure does not include China, for, as the Institute notes, although it is known that various Chinese armaments manufacturers are sufficiently big to figure among the 100 biggest of the world, there are no sufficiently accurate figures

Also, according to the SIPRI,, arms sales increased in constant value by 59% between 2002 and 2009. The arms race covers all continents, whether there be conflicts or not, and is promoted to maintain and increase industry profitability as well as for geo-strategic reasons. For example, Colombia, the United States' policeman in South America, is one of the main "customers" of the United States (just as are, for the same reasons, Israel and South Korea). In 2009, Colombia invested 3.7% of its GDP in armaments, fueling an arms race in South America. According to the SIPRI, in 2009, Colombia spent more than US$ 10 billion for this budget item, thus ranking second in South America behind Brazil, which spent US$ 27 billion during the same year. The SIPRI reports that 78 of the 100 biggest arms manufacturers are either United States companies (45) or European. These 78 companies produce 91.7% of the arms sold in the world – to which must be added that the United States is the world's foremost user of arms.

Whereas austerity measures for social policies are the order of the day throughout the world, the armaments industry knows no downturn.

Among the world's five biggest arms exporters (United States, Russia, Germany, France, United Kingdom), ***four are permanent members of the Security Council, to wit the body entrusted with "primary responsibility for the maintenance of international peace and security" according to Article 24 of the Charter of the United Nations***. The main customer countries of these five, in order of their suppliers (bearing in mind that these five countries are also their own best customers), are: for the ***United States***, South Korea and Israel; For ***Russia***, China, India and Algeria; for ***Germany***, Turkey, Greece and South Africa; for ***France***, the United Arab Emirates, Singapore and Greece; for the ***United Kingdom***, the United States, India and Saudi Arabia. It is worth noting that Greece is one of Germany's and France's three main customer countries for armaments. According to the SIPRI, ***Greece***'s spending on arms in terms of GDP have regularly increased since 2003 (+2.6%) up to 2009 (+3.2%). Other sources indicate that Greece's arms expenditures relative to its GDP currently surpass 4%. This explains in part the Greece financial crisis and Greece's debt to Germany and France, which, with the United States, are the mains arms suppliers.[45]

The competition among the major arms manufacturers is fierce, and, to conquer the markets, corruption (of both sellers and buyers) is the norm.[46] Arms sales are, by their nature, in contradiction with the respect of human rights. Worse, however, there is no binding international regulation to prevent the sale of arms to repressive regimes. The only real rules in force within the sector is the maximization of profit and geo-strategic considerations. United Nations arms embargoes remain dead letters. This is the case of France in Libya, supplying arms by air to the "rebels", today in power in Tripoli. An example of the total contempt for the respect for human rights regarding arms sales is the air war carried out by NATO against Libya under the pretense of protecting the population against Muammar Gaddafi's "reign of terror". Among the main participants in this "humanitarian war" figure, besides the United States, with their remote controlled "drones", the United Kingdom, France and Italy. In 2009 alone, these three countries sold arms to the "reign of terror" worth, respectively, € 25 million, € 30 million and € 111 million. For the same year, one finds on the list of arms sellers to Libya, Malta

[45] V. Chapter IV.B.3.

[46] In this vein, the French journalists Jean Guisnel has just published *Armes de corruption massive, secrets et combines des marchands de canon*, Paris: La Découverte Publishers, 2011.

(which has no armaments industry and is, thus, merely a country of transit), for €80 million. For its part, France tried to sell Libya the *Rafale* plane, made by Dessault. In bombing Libya in 2011, the French *Rafale* (which has been active in Afghanistan since 2007) was in competition in battle with the *Eurofighter Typhoon* made by *BAE*, *EADS* and *Finmeccanica*, used by the British and Italian air forces.

B. NATO's "Marketing" of Armaments

With the disappearance of the Soviet bloc, many thought that, at the same time, the North Atlantic Treaty Organization (NATO)would be dissolved, but it was rather the opposite that happened: the countries of eastern Europe were incorporated into NATO, and the organization extended it scope of action, which went from being theoretically defensive to being clearly offensive, with operations extending well beyond the territory of its member states. NATO's enlargement created the opportunity of a huge new market for arms manufacturers, since new member states have to adapt the the organization's military "standards" and modernize their armaments, buying them from the United States and several western European countries.

In 1989, the lawyer John Hadley became Assistant Secretary of Defense for International Security Policy under the United States Secretary of Defense Dick Cheney and became liaison officer between the Defense Department and National Security Advisor Brant Scowcroft. In this capacity, he was primarily responsible for Pentagon policy toward NATO and Western Europe. In 1993, he returned to the private sector, where he worked as advisor the the *Scowcroft Group*, a firm dealing in strategic accessories founded by Brent Scowcroft, and, as attorney for *Lockheed Martin*, at the time the world's leading military contractor. As deputy to Bruce P. Jackson, vice-president of *Lockheed Martin*, he helped to create, in 1996, the *United States Committee to Expand NATO*, a private organization set up to bring pressure in favor of the integration of the eastern European countries into NATO and to promote among their leaders the purchase of military materiel from *Lockheed Martin*.

From this, ***the close ties between the armaments industry and the decisions of a handful of great powers, countries which, moreover, control the Security Council, are obvious***. However, armaments cannot accumulate indefinitely, and they must be periodically renewed, replaced by more highly developed ones or, when necessary, simply replacing those used in conflicts, which at the same time are tested in real battle conditions. Thus, wars are very important to sustain the vitality of the armaments industry. This is obvious. Nonetheless, what is particularly perverse is that those who conduct international policy and make the decisions regarding war and peace in their capacity of nation states or members of international organizations (especially NATO and the Security Council) are intimately connected to the armaments industry.

C. The Paralysis of the Conference on Disarmament

The Conference on Disarmament, set up in 1979, was the source of several international instruments in the area of disarmament[47], but for over 12 years, it has been virtually paralyzed. At the end of April 2011, it ended its session without having reached, during all its years of existence, any agreement on substantive questions.

In 2006, the United Nations General Assembly adopted Resolution 61/89 untitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms", by 153 votes in favor, 24 abstentions and the single United States vote against. In 2009, the United States changed its position and supported the negotiation of the treaty, although it insisted at the same that it be adopted by consensus, backed by the countries involved in the

[47] In the 1986 *Declaration on the Right to Development*, disarmament was listed as one of the means to realize its goals. V. in this respect, inter alia, the CETIM booklet *The Right To Development*, 2007: http://www.cetim.ch/en/publications_ddevelep.php also *Quel développement? Quelle coopération internationale?*, CETIM, 2007.

international arms trade. The initiative does not claim to prohibit trade in arms, nor their manufacture, but it does support the establishment of certain criteria, with a view to drafting a binding international instrument that would diminish the risk that conventional arms be used to inflict serious violations of human rights and international humanitarian law or be used to perpetrate crimes against humanity, genocide, terrorist attacks, actions carried out by organized and transnational crime groups, be transferred in violation of United Nations embargoes, be the object of operations whose final user is not sufficiently known, be intended for activities that could turn out to be contrary to the regional security, or the economic and social development of countries.

In 2008, the General Assembly decided to set up a treaty preparatory committee, which has already held two sessions, in July 2010 and March 2011 without making any progress. At the end of 2011, the Conference on Disarmament and preparatory committee were still at an impasse. On 2 December 2011, the General Assembly adopted three resolutions. The first was *Report of the Conference on Disarmamen*t, in which the General Assembly expressed its concern regarding the more than ten years during which the Conference on Disarmament had not been able to begin substantive work, notably negotiations, nor to agree on a program of work, and requested the Conference's member states to help facilitate a prompt beginning of substantive work. In the second, *Report of the Commission on Disarmament*, the General Assembly requested the Commission to pursue its work in conformity with the 1982 mandate and to do everything possible to formulate concrete recommendations, to meet in April 2012 and to present an in-depth report to the 67th session of the General Assembly. In the third, *Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations*, the General Assembly noted with concern that the Conference on Disarmament had not succeeded in adopting and carrying out a program of work during its 2011 session and exhorted it to adopt and carry out a program or work that would allow it to take up again its substantive work at the beginning of the 2012 session.[48] However, none of these resolutions proposes any specific mechanisms to achieve their goals.

In the light of what has so far been experienced in attempting to draft binding norms for TNCs, given the hostility of the great powers to adopting a convention on military contractors and private security firms (v. next chapter), the difficulties in reaching agreements on the ways to move beyond the Kyoto Protocol on the reduction of green house gas emissions and the paralysis of the Conference on Disarmament, it is legitimate to ask – considering the powerful interests at stake – what the real possibility would be of adopting in the short- and even mid-term a treaty on arms sales and, should the possibility be realized, if it will be a "soft" treaty or, worse yet, a mere expression of pious wishes.

[48] General Assembly Resolutions 66/59, 66/60 and 66/66, 2 December 2011.

III. TNCs AND MERCENARIES

In the wake of the foregoing chapter, it is logical to examine the role of mercenary TNCs in human rights violations. In fact, for some twenty years, we have been seeing a proliferation of entities called private military and security companies (PMSCs). They are TNCs functioning along the same lines as any other private enterprise. Beyond their direct participation in armed conflicts, these companies are active in the area of security guards as well as in that of the training of government armed forces, logistics, the protection of persons and strategic sites, demining, military infrastructure construction, intelligence, military consultations and advice. Considering that this subject has been the object of a recent CETIM publication[49], in this chapter we shall focus on difficulties encountered in devising binding international regulations to control the activities of these entities and their links to public powers.

A. An Exponential Phenomenon

Governments are more and more recurring to private military and security companies (PMSCs). The move from conscripted armies to professional armies (especially in the West) and the exploitation (not to mention the pillage) or primary resources by TNCs have certainly favored the emergence of these entities. But these are not the only reasons for their presence on the international scene. For example, the United States distinguished itself in the use of such companies in its wars in Afghanistan and in Iraq in order to delegate responsibilities in case violations of international humanitarian law and to reduce the losses of regular troops, thus preventing these wars from becoming ever more unpopular.

In the case of Libya, NATO, to keep up the appearance of observance of Security Council Resolution 1973 forbidding land intervention, is reported to have used British mercenaries financed by Emir of Qatar.[50]

Deborah Avant has compiled a list of mercenary companies, their primary corporate headquarters and the activities that they carry out.[51] Among the companies, one might mention in particular Dyncorp International. The "dean" of mercenaries, it was founded in 1947 and has intervened in Nicaragua, in collaboration with the United States government in transporting arms to the "Contras", and also in Bosnia, in Haiti, in Colombia, in Iraq and in Afghanistan.[52]

Certain governments seem not to measure the full extent of the damage to the functioning of a democratic system and to the enjoyment of human rights stemming from the existence – not to mention the activities – of such companies, for they support voluntary codes of conduct (self-policing) for these entities whereas, failing a prohibition on their activities, there should be at least binding rules.

In this regard, ***Montreux Document*** *on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*[53], adopted 17 September 2008 par 17 countries[54], constitutes a singular process, since, as its authors indicate, "this document is not a legally binding instrument" (§ 3 of the Preface), whereas the signatory states are supposed to produce their own binding legal norms and enforce them.

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[49] CETIM Critical Report Nº 8, *Mercenaries, Mercenarism and Human Rights,* November 2010. Some passages of this chapter have been drawn directly from this report: http://www.cetim.ch/en/publications_cahiers.php#mercenaries

[50] V. *The Guardian*, 31 May 2011.

[51] V. *The Market for Force. The Consequences of Privatizing Security*, New York: Cambridge University Press, 2005.

[52] V. http://www.rebelion.org/docs/56101.pdf. A detailed analysis of this company's activities can be found in the complaint against Dyncorp by the lawyers association José Alvear Restrepo before the Colombia Chapter of the Peoples' Permanent Tribunal, February 2007: http://www.sinaltrainal.org/index.php?option=com_content&task=view&id=176&Itemid=57

[53] http://www.eda.admin.ch/psc

[54] Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the United States of America.

Launched by Switzerland and the International Committee of the Red Cross (ICRC), the *Document of Montreux* claims to be a response to "an increase in the use of PMSCs" and to "the demand for a clarification of pertinent legal obligations according to international humanitarian law and human rights law".[55] According to the interpretation of those who initiated it, there are two essential points to be raised in this document: first, "contracting States retain their obligations under international law, even if they contract PMSCs to perform certain activities" (I.A.1); second, "contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority".(I:A.2).[56]

The main criticism of this document by the United Nations expert Working Group[57] can be summarized thus: "the *Montreux Document* has nevertheless failed to address the regulatory gap in the responsibility of States with respect to the conduct of private military and security companies and their employees."[58] The Working Group expressed a further serious reservation regarding the *Document*: "The commercial logic of the private military and security industry appears to be the impetus behind the Swiss Initiative document."[59]

In spite of the code of conduct adopted, the human rights violations of which the TNCs have been guilty (summary or arbitrary extra-judicial executions, disappearances, torture, arbitrary detention, forced displacement, human trafficking, confiscation and destruction of property etc.) have long since been proven. Moreover, the use of mercenaries violates "the right of peoples to self-determination".[60] PMSCs have also been guilty of pillaging natural resources: "Owing to exemptions granted, national laws no longer apply within the concessions obtained in mining regions, which have become lawless areas."[61] However, generally, the PMSCs and their employees enjoy impunity in the context of their activities. For the Human Rights Council's Working Group, "regardless of the level of ethics in their performance, efficiency and professionalism, the Working Group considers that their activities are carried out without legitimacy".[62] The only binding legal instrument at the international level at present is the ***International Convention against the Recruitment, Use, Financing and Training of Mercenaries***, adopted by the United Nations General Assembly on 4 December 1989 (Resolution 44/34). It entered into force on 20 October 2001. However, it suffers from two shortcomings: 1. it does not provide for a mechanism to monitor compliance; 2. its having been ratified to date by only 31 countries[63] (no major power, least of all the United States, nor any other country using mercenaries has ratified it), limits severely its field of application.

Thus, the expert Working Group affirmed the necessity of adopting a new international legal instrument that would contain ***binding norms*** regarding regulation, supervision and control of PMSCs activities. In 2010, it submitted to the Human Rights Council a draft convention on PMSCs. This draft

55 V. http://www.icrc.org/fre/resources/documents/publication/p0996.htm

56 Ibid.

57 Formal title: the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

58 *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, A/HRC/10/14, 21 January 2009, § 44.

59 Ibid., § 46.

60 V. *First annual report of the Special Rapporteur on Mercenaries* to the 44th session of the Commission on Human Rights. E/CN.4/1988/14, 20 January 1988.

61 Philippe Leymarie, "The Business of War – Africa: The Frighteners", *Le Monde diplomatique*, November 2004 [translated from the original French article by the translator].

62 *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, A/HRC/4/42, 7 February 2007, § 38.

63 Angola, Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Congo, Costa Rica, Cyprus, Croatia, Cuba, Democratic Republic of Congo, Georgia, Germany, Guinea, Honduras, Italy, Libya, Liberia, Maldives, Mali, Morocco, Mauritania, Moldava, Montenegro, New Zealand, Nigeria, Peru, Poland, Qatar, Saudi Arabia, Syria, Romania, Senegal, Serbia, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay, Uzbekistan. V. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, A/HRC/10/14, 21 January 2009.

must be examined in the course of a two-year period by an open membership intergovernmental working group set up by the Council in 2010. Consequently, the task is not easy, for certain countries, especially Western ones, voted against the setting up of the intergovernmental working group: Belgium, France, Hungry, Japan, Moldava, Poland, South Korea, Spain, Slovakia, Ukraine, United Kingdom, United States.

Thus, it is hardly surprising that the great powers and their satellite governments are firmly opposed to establishing binding norms for industrial, commercial and financial transnational corporations as well as to any regulation of PMCS activities.

B. A Case Study

One example illustrating the common interest and complicity linking PMSCs, major industrial, commercial and financial TNCs and the governments of the great powers is the case of ***Blackwater*** – now known as *Xe Services*. *Blackwater* is the most powerful PMSC at present, benefiting from contracts worth hundreds of millions of United States dollars with the United States government and with the CIA. *Blackwater* has at its disposal what are some of the biggest private stocks of heavy arms, a fleet of planes, *Blackhawk* helicopters and ships, armored vehicles and firing ranges, and its United States bases train some 30,000 police and military personnel.[64]

In May 2011, *Blackwater* hired ***John Ashcroft***, former Attorney General of the United States (2001 -2005). Ashcroft describes himself as "an independent director" of *Blackwater* in charge of supervising responsibility and promoting ethics and professionalism within the firm. Yet, Ashcroft is neither more nor less than the impetus behind the United States' unconstitutional and repressive *U.S.A. Patriot Act*, passed after the September 11 attacks. As attorney general, he defended the use of torture on prisoners to obtain information. Further, Ashcroft filed an AMICVS CVRIAE brief with the federal court of appeals of the Ninth District in a case against Unocal (a United States petroleum concern accused of using slave labor to construct a pipeline in Myanmar), requesting the court to disallow invocation of the 1789 Alien Tort Claims Act (ATCA)[65] on which the case against Unocal was based. Ashcroft argued in his AMICVS CVRIAE brief that the ATCA could not be invoked for civil cases (contradicting the law's wording specifically limiting its application to civil cases) and that the "law of nations" to which it refers does not include international humanitarian law (a contradiction of the unanimous contemporary interpretation of the term) nor any treaty ratified by the United States since 1789 (also in direct contradiction to the wording of the law).He further claimed that contemporary usage of the ATCA could have "serious consequences for our current war against terrorism" arising from cases "against our allies in this war", which would run counter to major interests of United States foreign policy.

Ashcroft should be held responsible for practices violating the rights of citizens under the above mentioned legislation, yet on 31 May 2011, the Supreme Court overturned a lower court ruling, declaring unanimously that he could not be held responsible for excesses committed by the police and the judicial system acting under anti-terrorist laws when he was attorney general. The federal government of Barack Obama had intervened in favor of Ashcroft's impunity.[66]

64 V. *Le Nouvel Observateu*r, 6-12 May 2010.

65 The ATCA (28 USC § 1350) is a 1789 law passed by the United States Congress which has had the practical effect of enabling foreigners to sue in United States courts for wrongs (torts) suffered outside the territory of the United States. Thus, in one of the most succinct pieces of legislation on the books anywhere, it states: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." The"law of nations" is now construed to cover what is currently called public international law. In practice the statute has become noteworthy for allowing United States courts to hear human rights cases brought by foreign citizens for abuses committed outside the United States.

66 For more current and more detailed information on the subject of mercenaries, v. José L. Gómez des Prado, chairman-rapporteur of the Working Group on the Use of Mercenaries, "A United Nations Instrument to Regulate and Monitor Private Military and Security Companies" in *Notre Dame Journal of International, Comparative, and Human Rights Law*, Vol. 1, N° 1, 2011.

IV. TRANSNATIONAL FINANCIAL CAPITAL, CRISES AND THE DETERIORATION OF LIVING CONDITIONS

A. The Hegemony of Financial Capital

The current hegemony of transnational financial capital in banks, investment funds, insurance companies, pension funds etc. is the result of a profound mutation of the world's economy set in motion in the 1970s, a time marking the end of the welfare state when production and mass consumerism were stimulated by the upward tendency of earnings and by the generalization of social security and other social advantages (in the West, in particular).

This tendency has long since been reversed. Rather, most banking institutions (transnational ones in particular) have progressively distanced themselves from their long-standing activities (such as savings and credit at rates in conformity with the needs of the real economy), moving into purely speculative activities. In one of its recent reports[67], the UNCTAD explains this transformation of banking activities and the concomitant concentration of financial capital in the hands of a small number of transnational entities, which now threatens the real economy:

> "Over some 150 years of banking history, an implicit accord had emerged that in times of crises, governments, or central banks serving as "lender of last resort", would provide the necessary support to prevent the collapse of individual financial institutions and of the overall system. In return these institutions were subject to government regulation and supervision. There had always been a risk that events in the real economy, such as failure of a large debtor or a generalized recession, could generate difficulties in the financial sector. This became particularly evident during the Great Depression of the 1930s, as a consequence of which lender-of-last-resort functions were institutionalized, together with deposit insurance aimed at preventing bank runs.
>
> However, with the trend towards deregulation of the financial system over the past three decades, the situation has been reversed: today, ***the financial sector has increasingly become a source of instability for the real sector***. At the same time, official support for this sector has become more frequent and involves ever larger injections of public money. ***Financial markets were deregulated, despite frequent failures of those markets***.
>
> ***The deregulation of financial markets has also allowed an increased concentration of banking activities in a small number of very big institutions, as well as a shift in bank funding, from a reliance on deposits to a greater reliance on capital markets, and from lending to trading. Moreover, it has paved the way for the development of a largely unregulated "shadow financial system", particularly in developed economies***. (...)"

This transformation of banking activities is manifest in roughly the follow manner. In addition to traditional financial products (shares, obligations), many others have been created, among them derivatives, which are paper whose value depends – or "derives" – from a subjacent asset and which are introduced into the financial markets for speculative purposes. The subjacent assets can be property (primary resources and food: petroleum, copper, corn, soybeans etc.), a financial asset (a currency) or a basket of financial assets including debt (see below). The system has reached such a level of absurdity and danger that it manufactures even "credit capital"![68]

The result is that the prices of natural resources and essential foodstuffs no longer depend on supply and demand but on the listing of speculative paper, and the price of food can increase (and does increase) in a volatile way, to the detriment of the population but to the benefit of the speculators. For example, when large-scale production of bio-fuels[69] is announced, speculators "anticipate" a rise in

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[67] *Trade and Development Report 2011*, Geneva: UNCTAD, "Overview", pp. IX-X.

[68] V. Bruno Bertez's editorial, *Agefi*, 24 November 2011.

[69] The negative impact of the production of bio-fuels on small holder farmers and food production, land and access to water was studied by United Nations Special Rapporteur on the Right to Food. V. A/62/289, 22 August 2007, report

the price of agricultural products needed to produce it (customarily intended for food) and thus, a simultaneous rise in the market valuation of the paper (derivative) representing those products, a rise which then affects the real price which the consumer must pay for food.

With this "international economic speculation", as Michel Drouin[70] has dubbed it, the accumulation of huge concentrations of capital in the hands of a small number of people intensifies, to the detriment, above all, of workers, retirees, small depositors and small-scale producers.

The Control of Agribusiness within the Food Chain

Speculation in foodstuffs is one of the causes of famine and malnutrition in the world. It contributed to triggering the 2009 world food crisis and riots in several dozen countries. [71] In 2009 also, for the first time in history, the number of starving and malnourished persons surpassed one billion while the Millennium Development Goal that the U.N. member states had set themselves was "the reduction by half of extreme poverty and hunger" by 2015.[72]

At the same time, the Director General of the United Nations Food and Agricultural Organization (FAO), Jacques Diouf, during the presentation of his organization's annual report in Rome[73] declared that the world financial and economic crises during the past year and the rise of the price of food had plunged some 5million persons into poverty and hunger. He added that it was especially those with the lowest incomes in the poor countries that had suffered the most, for their purchasing power had dropped drastically in one year. These persons used almost 60% of their income for food. The report of the FAO emphasized that the growing number of of persons suffering from hunger is not due to a decrease of harvests or yields but to the international crisis, which has diminished incomes and increased unemployment among the poorest. The FAO noted that, after the progress registered during the 1980s and 1990s, hunger had increased slowly but constantly during the last decade. The number of persons suffering from hunger increased from 1995 to 1997 and from 2004 to 2006 in all regions, with the exception of Latin America and the Caribbean. However, even in these two regions, the advances had turned into into regression because of the high price of food and the current crisis. Most persons who suffered from hunger lived in developing countries: in Asia and in the Pacific, there were 642 million; in sub-Saharan Africa there were some 265 million; 53 million in Latin America and the Caribbean; 42 million in the Middle East and North Africa; 15 million in developed countries. What is most shocking is that the majority of persons suffering from hunger and malnutrition (80%) live in rural zones, and they are food producers (50% of them family farmers, 20% rural families without land, 10% pastoral nomad families, small fishers or persons dependent on the forest for their subsistence).[74]

The monopolistic effect of agribusiness transnational corporations on the right to food (supply policies; setting of prices and wages followed by buyers, processors and distributors; the responsibility of the TNCs regarding human rights etc.) was studied by the United Nations Special Rapporteur on the Right to Food.[75]

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submitted to the 62d session of the General Assembly: http://www.ohchr.org/EN/Issues/Food/Pages/Annual.aspx

70 Michel Drouin, *Le système financier international*, Paris: Armand Colin, Publishers, January 2001.

71 V. inter alia CETIM's Critical Report N° 3, "The Global Food Crisis and the Right to Food: http://www.cetim.ch/en/publications_cahiers.php#crisis

72 http://www.un.org/millenniumgoals/poverty.shtml

73 *The State of Food and Agriculture 2009*, Rome: FAO: http://www.fao.org/docrep/012/i0680e/i0680e00.htm

74 UN Millenium Project, Task Force on Hunger*, Halving Hunger : It Can Be Done*, cited by Christophe Golay in *Droit à l'alimentation et accès à la justice*, Bruylant Publishers, 2011, pp. 3-4.

75 A/58/330 28, August 2003, submitted to the 58th session of the United Nations General Assembly; also A/HRC/13/33, 22 December 2009, submitted to the 13th session of the Human Rights Council.

For its part, GRAIN published a report in April 2009, "Corporations are still making a killing from hunger", highlighting the enormous profits of agribusiness during the crisis.[76] The report makes several points among which are the following:

> "Cargill, the world's largest grain trader, reported an increase in profits of nearly 70 per cent over 2007 – a 157 per cent rise in profits since 2006. … Wilmar International, one of the largest palm oil producers and traders in the world, saw its profits jump from US$ 288 million in 2006, to US$ 829 million in 2007, to US$ 1,789 million in 2008 – a greater than 6-fold increase in two years. … The suppliers of agricultural inputs may be the biggest winners from this crisis. With their quasi-monopoly control over seeds, pesticides, fertilizers and machinery, they were able to maximize the squeeze on farmers. The profits for these companies in 2008 were nothing short of obscene, especially for the fertilizer industry. Mosaic, partly owned by Cargill, saw its pre-tax profits shoot up 430 per cent in 2008. … Nestlé's profits for 2008 were up an impressive 59 per cent, and Unilever's surged ahead by 38 per cent. … Some reports are also emerging about the income of farmers in 2008, and these figures speak volumes about who currently holds power in the food system. The reports show large increases in prices at the farm gate and increases in overall farm revenue, but any potential income gains for farmers were gobbled up by higher prices for inputs and other costs of production."[77]

B. Financial Crises

As has just been noted, financial crises are inherent in the current economic system. It is thus obvious that, if there is no change, they will continue to occur with the risk of destroying the real economy, as the United Nations Conference on Trade and Development warns, proposing a "re-regulation" of markets in order to avoid such a risk:

> "To protect the real sector of the economy from the negative spillover effects that are endogenously generated in the financial market itself, a considerable degree of re-regulation is needed, which would re-establish a proper balance between government protection of the financial sector and government regulation of financial institutions."[78]

1. Measures in Name Only

Although the facts and causes are clear, the "measures" announced by the political leaders of the most powerful countries of the world are far from being what is required and constitute rather a continuation of the same failed course of action. On 2 April 2009, the Group of 20 (G20) met in London with the announced purpose of devising solutions to end the crisis, but, in reality, they produced only double talk, distracting world public opinion with a demagogic show about "moralizing capitalism" while agreeing on various measures designed to preserve the system, including, in particular, the hegemony of parasitic financial capital. The "moralization of capitalism" consists, in practice, of designating for public condemnation several well known black sheep, such as Bernie Madoff[79] and a

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[76] GRAIN, "Corporations are still making a killing from hunger": http://www.grain.org/article/entries/716-corporations-are-still-making-a-killing-from-hunger.

[77] Ibid.; v. also www.grain.org/seedling

[78] V. note 68.

[79] At the end of 2008, the Bernard Madoff "scandal" became public, named after the financial world's "black sheep", who was behind a fifty-billion-dollar fraud carried out through his investment fund, Bernard Madoff Investment Securities. Madoff was a highly respected figure in financial circles, to such an extent that he was chairman of the NASDAQ (National Association of Securities Dealers Automated Quotation), the biggest electronic trading market in the United States When the scandal broke, Madoff already for many years had been involved in a financial "pyramid" operation consisting of paying high dividends to investors with the money from subsequent investors. Madoff's financial pyramid, built upon a model invented in the United States by an Italian named Ponzi almost 80 years previous and with which financiers were thoroughly familiar, could not have been unknown to the *Securities and Exchange Commission,* (SEC), which, moreover, had been informed of major irregularities within Madoff's investment fund.
The SEC's complicity, at the least by omission, was obvious, and to such a degree that several of Madoff's victims filed suits against the SEC. It is interesting to note that the function of the official court costs assessor for major corporations that have committed enormous frauds and that of the authority supervising the transparency of financial operations for the SEC are the interchangeable. Harvey Pitt, appointed by Bush to head the SEC, had been the lawyer of many Wall

handful of managers of major TNCs who collect excessive bonuses (in reality, just a drop in the bucket of the income from big capital) and holding them responsible for all the scourges and abuses of the system – and relaunching the great farce of controlling the tax havens.

The most concrete result of the G20 meeting of April 2009 was the attribution of $ 20 billion to the IMF, intended to clean up local financial problems lest they spread throughout the world. All this is merely pure window dressing, superficial change that leaves everything as it was before. Thus, the role of the IMF and the World Bank, as instruments of the great powers and of transnational economic power, has been kept and reinforced.

Regarding the control of tax havens, the famous tax haven "black list" (today noteworthy for its various shades of grey), was drawn up by the OCDE over ten years ago and has never been used. The reason is quite simple: the majority of the most important tax havens (many not even on the list) are either on the territory of the great powers or on territory controlled by them: the City of London, Jersey, the Isle of Man, Delaware, Monaco, Macao, Hong Kong, the Cayman Islands etc. And those using these tax havens are the major TNCs, the major banks as well as their clients, and financial groups, which are not affected and remain untouchable. Further, the "black list" is like a revolving door: one enters the same way one leaves: Ultimately, the G20 adjourned without settling the matter of sanctions for tax havens, which was set aside sine die.

According to Professor Michael R. Krätke[80], it is estimated that some 30% of the assets of richest people in the world are managed in offshore financial centers. More than a fifth (23%) of all the world's bank deposits are hidden in tax havens, at least $ 3,000 billion on a cautious basis of reckoning. Nearly 50% of the world's transboundary financial transactions move through them. R. Krätke, concurring with the Tax Justice Network's prudent analysis, claims that the capital hidden in tax havens means lost tax revenues amounting to from $250 to $300 billion every year. This is a substantial part of the money needed to relaunch the economy, increase the purchasing power of the poorest and, in general, improve the situation of some 2.7 billion persons throughout the world living on less than two dollars a day.[81]

Further schemes, making it possible for transnational finance capital to extract, like a parasite, the fruit of others' labor, to wit without being involved in the productive process, are to be found in privatization policies of social security (take-overs by pension fund managers), the substitution of a part of the earnings or other remuneration of the personnel of major corporations of which they are creditors through shareholding or stock options of the same company etc. These are so many ways to steal or defraud, as the economists Labarde and Maris point out.[82]

Street firms, among others the auditors Arthur Andersen, an accomplice to the fraud committed by Enron.
And, if the Madoff pyrmid had international repercussions of such broad scope, it was because he was able to count on the collaboration (complicity) of major banks and financial groups of various countries that acted as a transmission belt: they received investors' money and reinvested it in the Madoff fund without informing their clients.
Today, some of these investors are suing these very banks and financial groups. All these frauds, fraudulent operations, financial scandals, capital flight etc. took place under the open and indulgent eyes (i.e. with the complicity) of governments that do not avail themselves of the control mechanisms at their disposal, resulting in a phenomenal loss of income for huge swathes of the population and the concentration of this income in the great centers of transnational financial and economic power.

80 Michael R. Krätke, *Paraísos fiscales,* published by Sin Permiso, 2 March 2008: http://www.sinpermiso.info/textos/index.php?id=1716

81 Statement by the United Nations High Commissioner for Human Rights, December 2011: http://www.ohchr.org/EN/NewsEvents/Pages/PeopleAtTheCentre.aspx

82 Philippe Labarde and Bernard Maris, *La bourse ou la vie: la grand manipulation des petits actionnaires*, Paris: Albin Michel Publishers, May 2000. V. also Michel Husson, "Les fausses promesses de l'épargne salariale", *Le Monde Diplomatique*, February 2000, and Whitney Tilson, *Stock options' perverse incentives,* 3 April 2002: www.fool.com/news/foth/2002/foth020403.htm

In summary, transnational finance capital functions like a pump, sucking up the wealth produced by work, on a planetary scale, wealth that thus is concentrated in few hands and in certain regions of the planet.

2. Debt Blackmail

The repayment of foreign debt (real or supposed), for many countries (which are not necessarily "peripheral", contrary to what was the case not long ago), contributes also, and in no small way, to swelling the accumulation of transnational financial capital.[83]

As recently pointed out by ***Eva Joly***, who until 2002 was an instructing magistrate in France in charge of investigating "major affairs": ***it would be more useful to directly control the finances of the major corporations, the financial groups and banks using them than to seek to control the tax havens***. Eva Joly gave up her position because of political pressure that aimed to cripple her ability to act. She wrote: "... ***I thought that we were dealing with surface criminality, marginal, accidental – a sort of individual moral failing. I am sure today that financial crime is encrusted in the economy and that it casts a shadow over our future***."[84]

The G20 promised the help of the international financial institutions in ***restructuring*** the debt, not in ***canceling*** it[85] ignoring catastrophic climate change and the agricultural policies under way in spite of the disastrous fall out from the world food crisis, a crisis again looming on the horizon after what is merely a brief respite. At the same time, speculative transnational capital announced unprecedented spectacular profits. The financial crises are not the curable illnesses of capitalism due to financial managers' irresponsibility (although risky operations of traders and their bosses contribute to their aggravation): they are a structural part of capitalism in its current phase, a globalized capitalism with high concentration in the areas of production and finance and benefiting from ruling classes totally devoted to its service. In reality, the political leaders and the economic leaders are interchangeable and are sometimes the same persons, especially in the United States. They move from the management of major corporations to government service and vice-versa.[86] The function of political leaders seems, for the most part, to be limited to attempting to calming public opinion and to putting all the state's resources (in other words, resources created by human labor) at the service of financial capital and the preservation of the system.

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[83] It should be emphasized in this regard that loans to countries and/or the purchase of public debt constitute sound and lucrative investments for finance capital (often with high rates of interest). If foreign debt was a tool of colonization for the countries of the South (and later a tool of recolonization), it has now become an instrument of blackmail in the hands of finance capital for bringing to heel governments of countries of the North, as the situation of countries of the European Union has demonstrated. To understand the mechanism of debt, v. *Let's launch an enquiry into the debt! A manual on how to organise audits on Third World debts,* Joint publication CETIM and CADTM, | 2006.

[84] Eva Joly, *Notre affaire à tous*, Paris:. Les Arènes Publishers, June 2000, p. 183. Emphasis added. In July 2003, Eva Joly published another book: *Est-ce dans ce monde-là que nous voulons vivre?,* Les Arènes Publishers, in which she tells of the persecutions and threats she suffered when she was investigating the ELF affair. V. also Christian de Brie, "Dans l'archipel planétaire de la criminalité financière*"*, *Le Monde Diplomatique*, April 2000. In February 2002, Eva Joly announced her retirement from the judiciary. Her announcement was preceded, several days earlier, by a similar announcement by the judge Eric Halphen and by the announcement of a transfer of the judge Laurence Vichnievsky to another position, at his request. A year earlier, the judge Anne-José Fulgeras had given up her career in the judiciary. All of them had dealt with matters of corruption and major buy outs and had denounced the tremendous pressure, from political and economic milieux, that they had been subjected to.

[85] Research carried out until now has indicated that a major part of this debt is illegitimate ("odious"), v. note 84.

[86] The situation is not any different in Europe. For example, Luis de Guindos, the new economy minister of Spain, is a former employee of Lehman Brothers (bankrupted in 2008). Mario Draghi, the European Central Bank's new president, was Goldman Sachs International vice-president for Europe before his appointment The new prime minister of Italy, Mario Monti, was an international advisor at Goldman Sachs. This TNC of global finance was the banking advisor of the Greek government while speculating on the country's debt. It thus bears a direct responsibility for the aggravation of Greece's financial crisis. V. inter alia the article by Jérôme Duval, 1 December 2011: http://www.cadtm.org/Coup-d-Etat-contre-la-democratie

As John Galbraith wrote in reference to the 1929 crash, "Then like today, government intervention to aid these institutions [banks and other financial institutions] was acceptable. Unlike aid to the poor through social spending, nobody saw it as a financial burden."[87] People lose their homes and their jobs, must content themselves with less to satisfy their basic needs and still suffer from privation. And, when the crisis is over, or more accurately, when there is a temporary reprieve for the economy and finance, before the next crisis, it is like a hurricane has hit: one can see only the economic ravages, countless businesses that have been closed or bought out and victims by the tens or hundreds of millions. All those who remained, without work because of closings, mergers or restructurings of companies, without shelter because they could not pay the interest to the banks that gave them credit (during the first six months of 2009, one and a half million inhabitants of the United States lost their homes for this reason), without access to essential public services and with little or nothing to eat.

3. The Financial Crisis in the European Union

This is what is happening with the financial crises in several European countries (Ireland, Portugal, Spain, Greece): the "troika" of the IMF, the European Central Bank and the European Union is intervening to favor the interests of transnational financial capital, to the detriment of the national interest and the living conditions of the people of these countries. For example, in Greece, faced with the enormous accumulated debt (from mismanagement, payment of high levels of interest on its debt, the purchase of armaments from its major creditors, Germany, France and the United States,[88] etc.), the "troika" has imposed conditions consisting of privatizing Greece's national assets to raise € 50 billion intended to pay back its creditors, freeze or, in the majority of cases, lower earnings and pensions and, in general, drastically reduce social expenditures.

The only winner is transnational capital. When investors buy Greek debt (or that of any other country), if the risk is considered substantial, they can be insured against the risk of losing their money through credit default swaps, derivatives (with which investors can further speculate on a rise on the credit default swap market that functions automatically). They are not obliged to accept a writing off of their credits nor an postponement of the maturity date. And, if the banks cannot finally recover their credit, the government (the tax payers) will save them.

On 29 April 2010, Eric Woerth, at the time a French government minister, explained this with total cynicism on the national French radio France-Inter: "By helping Greece, we are helping ourselves. The six billion [euros lent to Greece by France] did not come out of government coffers. We borrowed them at around 1.4 or 1.5% and lent them to Greece at around 5%. Thus, we are realizing a profit on it. It is good for the country, it is good for Greece, it is especially good for the euro zone. ***We must reassure the markets. It's always like that, the markets must be reassured***. … There must be reassurance, we must throw out a public safety net."[89]

When the markets (dominated by the TNCs) "appear nervous", they must be "reassured", guaranteed the greatest possible return, and, if necessary, by means of a "public safety net", (to save the banks and the financial institutions with public money). But, when it is the people who go out into the street to protest, the response is very often repression in various forms and the criminalization of citizens who defend their basic rights.

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87 John K. Galbraith, *Voyage dans le temps économique,* Paris: Editions du Seuil, Octobre 1995, Chap. 8, "La grande dépression", p. 100 [translated from the French edition].

88 Greece is fifth in the world for deliveries of conventional weapons for the period from 2005 to 2009. It bought 31% of these armaments from Germany, 24% from the United States and 24% from France. V. Chapter II.A.

89 Emphasis added.

CONCLUSION

The (direct or indirect) involvement of TNCs in human rights violations needs no further proof. As already mentioned, several hundred TNCs – including the TNCs of global financial capital – manage, for the most part, the orientation of production and economic and social policies that threaten not only the real economy but also the democratic functioning of societies, preventing the enjoyment of human rights by the overwhelming majority of humanity and, further, harming the environment.

Of course, it is not always a matter of assassinations, forced disappearances, torture etc. Nonetheless, the impact of the activities of these oligopolies – which are present in almost all sectors – is manifest for example in the imposition of large-scale privatizations, the repayment of foreign debt – very often illegitimate – by drawing on public resources, by making available fertile lands and small-holder farmers for raising crops that will be used to make bio-fuels, by the sale or leasing of huge tracts of land to major international monopolies, triggering wide-scale displacement of populations, by elevating market speculation to the level of an economic system, including speculation on foodstuffs, all activities that deprive more than a quarter of the world's population of its means of subsistence.

TNCs recur to complex structures to avoid their responsibilities for human right violations. They barricade themselves behind secrecy to refuse disclosure of any information about their activities, even (especially!) when they are accused of human rights violations. Yet peoples and citizens demand more democracy and greater transparency, not only in the conduct of public affairs but in the economy. Although TNCs may be, generally speaking, private entities, peoples and citizens want to know, for example, if the activities of such and such a company affect the environment, if such or such production was carried out with respect for basic rights etc. They will no longer tolerate that these entities escape from judicial and democratic control.

In spite of this, all attempts to obtain binding rules at the international level in order to control the activities of TNCs have failed until now. That there is collusion between public powers and TNCs is not extraneous to this situation – nor is the weakness of many governments. However, governments should be aware that, in the end, they are responsible for violations committed on their territory, including by a third party. If one refers to the three levels of government obligations (respect, protect and implement), the obligation to protect demands that governments take effective measures when faced with human rights violations committed by third parties, including TNCs.

It is thus urgent to create binding rules for TNCs, for it is a question of the sovereignty of states and the right of people to decide their future. With the issuing by the Sub-Commission on the Promotion and Protection of Human Rights of draft *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprise with Regard to Human Rights* – which, in our opinion require amendment – a threshold was crossed. But this process was then subjected to a brutal interruption. It can be resumed only with the mobilization of the peoples and citizens.

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