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Editorial

The promotion, respect and effective application of all human rights, in particular economic, social and cultural rights, are priority tasks at CETIM. It is true that in recent years, human rights have been more and more frequently attacked, emptied of meaning or simply challenged by states in the name of anti-terrorism and neoliberal globalization, as the article below shows.

The attempt by certain states to evade the obligatory nature of the right to food through negotiations on draft FAO voluntary guidelines - see the extract of the intervention cited in this bulletin - provides yet another illustration of this phenomenon.

The International Covenant on Economic, Social and Cultural rights, which came into force in 1976, remains without a voluntary protocol allowing complainants to take cases of violation of these rights to the Committee on Economic, Social and Cultural Rights. The first session of the working group of the Human Rights Commission charged with elaborating a voluntary protocol has unfortunately not advanced on this project. For more information on this issue, please consult the following dossier and our internet site.

At the end of May, CETIM launched two interventions in favour of social movements and UN Member States to denounce two draft resolutions proposed by the USA to the Security Council. Summaries are provided below.

60th Session of the Commission on Human Rights

The other face of the Commission on Human Rights [1]

The 60th session of the Commission on Human Rights (CHR) ended on the 23d of last April leaving in its wake a number of controversies.

For some people, not condemning human rights violations in various countries constitutes a failure for the CHR. For others, the politicizing of the CHR, which has turned it into a tribunal for countries of the South, should stop and yield to technical cooperation rather than confrontations. Whatever one thinks, clear and objective criteria must be established in order to prevent the CHR from falling into the trap of arbitrariness and might-makes-right when adopting resolutions on countries. For example, it would be appropriate to question the silence of the CHR regarding violations committed by the occupying powers in Iraq or by the United States against the prisoners of Guantánamo.

The real problem does not reside in the condemnation or not of any given country for serious violations of human rights but in the respect for and effective putting into practice of all human rights, without bias, by all countries, without exception.

For example, UN bodies have systematically condemned the Israeli government for a half-century, and the 60th session of the CHR devoted more than 10% of its resolutions to violations committed by this country, particularly in Palestine. However, the situation in this country continues to worsen by the day, without any effective enforcement of the recommendations emanating from the various UN bodies.

Is it really necessary to recall that in recent years we have witnessed an ever-greater erosion of ethical values and that human rights are being disregarded? During the most recent session of the CHR, for example, the Spanish delegation, contradicting the facts, violently attacked the Special Rapporteur on Torture for criticizing the Spanish government's torturing of ETA militants. Along the same lines, within the United States there has been a public debate (since September 11, 2001) about the legitimacy of torturing persons presumed to be terrorists, not to mention United States practices in Iraq, in flagrant violation of the Convention Against Torture to which the United States is party.

One could also cite the claims of the Indian delegation for whom the caste system is not a form of racism but merely a "cultural idiosyncrasy". Not many years ago, such declarations would have been unimaginable, even taking into account the routine double language of governments.

The media have a tendency to lump together, wrongly, the work of the CHR and the condemning of countries. However, the CHR agenda, with its twenty items, also deals with civil and political rights, economic, social and cultural rights, racism, the self-determination of peoples, the rights of women, the rights of the child, the right to development, etc.

In the area of economic, social and cultural rights, the resolutions adopted by the CHR these last years are among the most forward-looking, even if Western countries, Japan and some of the East European countries have opposed them or abstained from voting on them.

For example, the right to food is now contested only by the United States, on the grounds that the market regulates everything. Moreover, the U.S. likes to point out that it is the world's biggest food donor, ignoring that some one hundred thousand people die from hunger every day on a planet that produces enough to feed double the present population – whence the declaration by the Special Rapporteur on the Right to Food that "any person dying of hunger in our time is a person who has been murdered" [2]. In this regard, one must emphasize that besides his significant contributions to a practical application of the right to food (the justiciability of this right, among other things), the Special Rapporteur has also, this year, explored the concept of "food sovereignty", which seeks "to reclaim sovereignty over decision-making on agricultural and food security policy, challenges the imbalances and inequities in current global rules on agricultural trade, and draws a common position for peasant farmers in the developed and developing world." [3].

As for the responsibility of transnational corporations in the area of human rights, this is henceforth an agenda item of the

CHR, even if discussion of this item has been postponed to next year under pressure from organizations representing employers.

The question of the effects of structural adjustment policies and foreign debt on the enjoyment of all human rights has been the subject of a resolution [4] which denounces the privatization and limitation of public services, imposed on countries of the South in the guise of debt relief that turns out to be worthless in the end.

The resolution on globalization reaffirms the establishment of a new world order "through, inter alia, good governance within each country and at the international level, transparency and accountability in the financial, monetary and trading systems, including in the private sector and transnational corporations, and the commitment to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system to ensure that there is greater complementarity between the basic tenets of international trade law and international human rights law." [5].

Finally, the fight for the respect, the promotion and the effective implementing of human rights should be carried on daily, in order to preserve human dignity and especially in view of security policies masquerading as the fight against terrorism, *raison d'état*, and economic imperatives that are presented as unchallengeable. For this reason, the mobilization of citizens and social movements is more than ever urgent in order to remind political leaders of the obligations regarding human rights.

[1] Article published in *le Courrier* newspaper (Geneva), under the by-line of Malik Özden, 2 June 2004.
[2] Cf. E/CN.4/2004/10.
[3] Idem.
[4] Cf. E/CN.4/RES/2004/18.
[5] Cf. E/CN.4/RES/2004/24.

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File on the Optional Draft Protocol to the International Covenant on Economic, Social and Cultural Rights

By virtue of resolution 2003/18, the Commission on Human Rights (CHR) created a working group mandated to "…considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights". This group held its first session from 23 February to 5 March 2004 in Geneva. Given the vagueness of the working group's mandate, the debate quickly digressed to focus primarily on the legality of economic, social and cultural rights as well as on whether or not an optional protocol is even necessary. The Working Group thus avoided all substantive discussion of the protocol drafted by the Committee on Economic, Social and Cultural Rights in 1997. In its resolution adopted last19 April (cf.2004/29), the Commission on Human Rights decided to extend the life of the Working Group for two more years with an identical mandate.

The CETIM has been working for years in support of an optional protocol, which, if adopted, will make it possible to seize the Committee on Economic, Social and Cultural Rights for violations of these rights. The oral intervention of the CETIM regarding this matter, made during the first session of the Working Group, follows.

« The universality, indivisibility and interdependence of human rights have been reaffirmed repeatedly by the highest instances of the member states of the United Nations on various occasions, and the Declaration of Vienna leaves no ambiguity in this regard.

Adopted almost forty years ago, the International Covenant on Economic, Social and Cultural Rights is one of the pillars of international law in matters of human rights and is binding.

Today, we are surprised to learn that certain countries are putting forth arguments to oppose the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights that would make it possible to seize the Committee on Economic, Social and Cultural Rights in the case of a violation of these rights.

Justiciability of the Economic, social and cultural rights

Thus, according to some opponents of the protocol, economic, social and cultural rights, unlike civil and political rights, are not legal, justiciable rights. However, numerous countries have not only included economic, social and cultural rights in their national legislation, but have also set up courts to sanction violations off these rights.

On the regional level, human rights mechanisms are in the process of being harmonized. In fact, since the entry into force on 1 July 1998 of the Additional Protocol of the European Convention on Human Rights, it has been possible to lodge a complaint with the judges of Strasburg on matters relating to conditions of work and social protection. The Inter-American Court of Human Rights has had similar procedures since the entry into force of the "San Salvador Protocol" on 16 November 1999. The African Human Rights Commission has had authority to deal with these matters since its creation on 2 November 1987.

At the international level, we have no mechanism for sanctioning violations of economic, social and cultural rights, for the mandate of the International Criminal Court concerns essentially war crimes and genocide.

The pretext: lack of financial resources

For other opponents, a lack of financial resources is the main obstacle to the realization of economic, social and cultural rights. However, a lack of resources in no way prevents countries from taking legislative measures in order to create the preliminary conditions for the enjoyment of these rights and, in case of lack of resources, to ask for international cooperation, as provided for in the United Nations Charter.

Need one be reminded that the respect of human rights and the assurance of a life of dignity is a political question? For example, Cuba, the fifth poorest country of Latin America, with an annual per capita income of US$ 2,712, has managed to equip 99% of its urban households and 95% of its rural households with modern toilets. Most households are also supplied with gas and the others receive a monthly ration of coal or wood for cooking, according to UNICEF data[1].

And what is one to think of a world which today spends US$ 1,000 billion for weaponry, as opposed to US$ 50 billion for development aid? [2]

CETIM's proposals

How can a right be protected if there are no sanctions for violating that right? Moreover, the transnational character of violations of economic, social and cultural rights necessitate the immediate creation of a mechanism to prevent violations of these rights, and, when appropriate, to sanction such violations.

In our opinion, the protocol drafted by the Committee on Economic, Social and Cultural Rights constitutes a solid basis for the work of the Working Group, but it requires amendment. The draft should take into account:

1) the transnational character of economic, social and cultural rights and the jurisprudence of the conventional bodies;
2) violations committed by transnational corporations as well as by international business and financial institutions, given their dominance in the world's economy;
3) complaints against states;
4) individual complaints against states brought by plaintiffs who are not citizens of those states or who are not under those states' jurisdiction.

The International Covenant on Political and Civil Rights has had a complaint mechanism for almost thirty years, whereas the Covenant on Economic, Social and Cultural Rights is still waiting for such a mechanism.

One cannot forever hide behind the first paragraph of Article 2 of the Covenant which calls for the progressive assurance of the full exercise of these rights. It is urgent that measures be taken, for the violations of economic, social and cultural rights have reached alarming levels, and we must no longer tolerate impunity for these violations."

[1] Cf. Bulletin d'information de *MediCuba* N° 12, février 2004.
[2] Cf. *Le Figaro* du 18 février 2004.

Extracts of a CETIM's intervention during the last Human Rights Commission

Le droit à l'alimentation ne peut être subordonné aux accords de l'OMC

« The Europe-Third World Centre (CETIM) is deeply concerned about the draft "Set of voluntary guidelines to support the progressive realization of the right to adequate food". Developed by an intergovernmental working group in the framework of the FAO, it should be adopted next September. This draft document ignores the compulsory nature of the right to food, despite the fact that it is recognized as such in several international law instruments.

Indeed, the right to food gained acceptance through the International Covenant on Economic, Social and Cultural Rights, and is compulsory for States. (...) The Special Rapporteur of the Commission on Human Rights made an important contribution, which consists in the examination of the justiciability of this right and of the implementation mechanisms at the regional, national and international level. Furthermore, the legal Office of the FAO itself held an investigation, on the basis of 69 national reports handed back between 1993 and 2003, which showed that it is possible or probably possible in 54 countries to invoke the right to food in order to bring a case to court.

In this regard, the draft "Voluntary guidelines" for the realization of the right to food represents a regression. Are certain States attempting to evade their responsibilities in this area?

Beyond this regressive aspect, the philosophy underlying this draft document is highly worrying in the sense that, in its directive N° 8 for example, it foresees the subordination of the right to food to agreements negotiated at the WTO.

Do we need reminding that the primacy of human rights over international trade has been affirmed several times in declarations by the Commission on Human Rights, the Sub-Commission and the Treaty bodies?

It is time to put an end to the inconsistencies of the international system. One cannot fight against hunger and poverty with UN agencies, while subjecting human rights to the imperatives of international commercial and financial institutions that worsen hunger and poverty. The principle of food sovereignty, that alone allows peoples to start a consistent policy considering all the social and ecological parameters of a country, has to be promoted. (…)"

[1] Cf. E/CN.4/2002/58 (10th of January 2002).
[2] Cf. IGWG RTFG 2/INF 1 (Roma, 27-29 October 2003).
[3] "They should base their food safety standards on international standards where these exist, except as otherwise provided for in the WTO Sanitary and Phytosanitary Agreement…" (cf. Paragraph 8.3 of the document IGWG RTFG 2/2, Roma, 27-29 October 2003).

All the interventions presented in this bulletin, as well as others regarding the Free Trade Area of the Americas (FTAA), the "good governance" or on Iraq, are available on our website.

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Interventions at the UN Security Council

The two briefings summarized below were prepared in collaboration with the American Association of Jurists (AAJ). The first: "No to immunity of USA citizens" follows a request to renew resolution 1487 (voted in 2003) by the USA to the Security Council, last May. The second briefing "No to the draft UK/USA resolution on Irak!" denounces the neo-colonialism and the control of USA and UK over Iraq, proposing that this issue be addressed by the UN General Assembly and not by the Security Council. The set of documents relating to these two interventions (press releases, letters addressed to NGOs and states, position papers) are available on our website.

No to Impunity to US Citizens!

Action launched the 28th of May 2004 - Geneva

The Europe-Third World Center (CETIM) and the American Association of Jurists (AAJ) are strongly preoccupied by the US initiative asking the Security Council to renew resolution 1487, voted in 2003, that orders the International Criminal Court to refrain from undertaking investigations or judgements against nationals from States which have not ratified the Rome Statute.

Through this act, the United States of America's approach aims to perpetuate impunity of their nationals in case of war crimes, crimes against humanity, genocides or other committed violations of human rights. This appears to be nothing less than a flagrant violation of article 16 of the Rome Statute and of article 18 of the Vienna Convention (see juridical arguments below).

While supporting the request from the governments of Canada, Ireland, Jordan, Liechtenstein and Switzerland for a public debate on this question at the Security Council, the CETIM and the AAJ call on the Security Council members to vote against the new US resolution draft during its examination.

Juridical Arguments

Demonstrating unshakable cynicism, in spite of proof of repeated and systematic violations of the Geneva Conventions and the avowed responsibility of its highest civil and military authorities for these violations, the government of the United States is in the process of preparing the renewal, by the Security Council, of the immunity enjoyed by its citizens from the jurisdiction of the International Criminal Court. (…)
Under pressure from the United States, the Security Council and the member states of the Security Council that voted for these resolutions violated several basic principles of law and of the very Statute of the Court:

1. by establishing a privilege of immunity, by anticipation, and in favor of an indeterminate and indeterminable number of persons, it violated **the principle of the equality of all persons** before the law;
2. by interpreting Article 16 of the Statute in such a way as to allow the International Criminal Court to refrain from investigating or prosecuting for one year, in a general way and for successively renewable periods, the Security Council totally eliminated the **autonomy** – already limited – of the Court and thus violated the principle of the independence of the judiciary;
3. the Security Council did not **interpret** Article 16 but **violated** it; having done this, it violated the Treaty of Rome itself, and the same thing can be said for member states of the Security Council that are parties to the Treaty;
4. the Security Council and, in particular, the member states of the Security Council that voted for resolutions 1422 and 1487 and that are parties to the Treaty of Rome also violated the **Vienna Convention on the Law of Treaties**, Article 18 of which states clearly that a state that has signed a treaty is obliged to refrain from acts which would defeat the object and purpose of the treaty.

Finally, on the 23rd of June, the USA withdrew their draft resolution in the face of opposition from a majority of the members of the Security Council.

No to the US Draft Resolution on Iraq!

Action launched the 1st of June 2004 - Geneva

The US-British resolution draft regarding Iraq -on the occasion of the "transfer of sovereignty" by the occupation forces to the provisional Iraqi government- presented to the Security Council, is being negotiated by its member States. For the Center Europe-Third World (CETIM) and the American Association of Jurists (AAJ), the procedure before this authority is inappropriate, given the direct implication of two States -which are moreover permanent members at the Security Council and holding a veto right- in the occupation of Iraq.

Furthermore, one can consider the authors' very last proposal, dealing with the organization of elections and the approbation of a new Constitution for the occupied Iraq, tantamount to the proclamation of a juridical act under intimidation or violence, which is a cause of nullity of the act. This proposal constitutes without doubt a flagrant violation of the right to self-determination of peoples.

According to us, it is up to the General Assembly of the UN to be referred, and not to the Security Council, because in reality this proposal is to perpetuate the existing neocolonial status and the military occupation, endorsed by resolution 1483 and 1511 of the Security Council. Thus it renews the legitimity of the aggression (see legal arguments on our website).

It should be noted that the Security Council finally adopted on the 8 June 2004 the draft resolution in question without substantial modification (cf Resolution 1546).

To read...

Travail forcé, façon helvétique ?
Recherche sur le travail forcé et la traite des personnes en Suisse

Philippe Sauvin – preface by Marie-Claire Caloz-Tschopp

Thanks to this book, a shadowy, invisible - though very real - world in our societies, appears in full light: prostitutes, maids in the service of diplomats from the international organizations, young women and women working in the framework of the so-called extended family of traditional immigration, street musicians etc. Thanks to this research, all these people start to "exist" albeit in a fragile existence, in a social life. We understand better the mechanisms which confine them in shadow, without protection of the law, in cynical exploitation and racism.

Published by CETIM, 2004, 62 pages, Frs 6/ 4E.

Mondialisation des résistances.
L'état des luttes 2004

Collectif - foreword by Samir Amin and François Houtart

This book takes the reader on a world tour of resistance to the current model of globalization. Region by region, it reaches deep into the militant dynamics which oppose neoliberal policies. This summary allows us to grasp the complexity and the potential of convergence and to better grasp the strategic debates criss-crossing the "movement of movements" in particular in the context of social forums and the anti-war movement. Actors in social movements and militant researchers from five continents came together to offer to the public a global tool, a didactic interpretive framework, indispensable to fully comprehend the phenomenon of globalization in its diverse manifestations.

Joint publication of CETRI, FMA and Syllepse, 2004, 311 pages, Frs 30 / 20€.

These books can be ordered at the CETIM or on our website.