LATEST CETIM PUBLICATION

Terre et liberté!

A la conquête de la souveraineté alimentaire

[Land and Liberty! In Pursuit of the Conquest of Food Sovereignty]
Paul Nicholson, with the contributions of Xavier Montagut and Javiera Rulli

Why is it that today more than a billion persons still suffer from hunger and malnutrition? Why do 80% of them live in rural areas? And why are two thirds of them women and 50% of them small-holder farmers? For a long time, the families of small-holders were incensed at this situation, which is not inevitable. They understood its origin: the orientation of the economic policies imposed upon the entire world, the development of industrial and production-oriented agriculture regardless of its environmental destruction that drove them from their lands, depriving them of their millennia-long role. Through uniting within La Via Campesina, small farmers organizations have propagated throughout the entire world the food sovereignty "action concept". However, food sovereignty goes well beyond the agricultural milieux of small farmers. It carries within itself, starting with basic agricultural and food questions, the foundation necessary to build another society, another way of working and of conceiving of life in society. Food sovereignty is part of a dynamic process, a process that is conquered and cannot be decreed. Like many other basic concepts, food sovereignty is commanding the attention of more and more people and organizations, but it risks also becoming denatured in both its definition and its scope.

The time is ripe for making known widely the character and political scope of food sovereignty and for giving to its supporters the opportunity to advance this idea among small farmers, social movements and trade unions, citizen and consumer movements, etc. Thus, the purpose of this book is to clarify the political and strategic scope of the food sovereignty "action concept". It is the basis of another social model of production, of transformation and of consumption, and it lays down the principles of social and ecological agriculture in the North as well as in the South.

This book is built on a key article consisting of an interview conducted by ***Paul Nicholson***, who played a major role within La Via Compesina. Through his clear and simple prose, the reader will grasp the magnitude of the concept of food sovereignty and what it implies: creating a transforming axis for the mainstream economic and social model.

An article by ***Xavier Montagut***, a specialist in international trade, clarifies the stakes and the scope of fair trade as seen from the angle of food sovereignty. Finally, we are publishing extracts of a study by ***Javiera Rulli***, a biologist, who explores the conditions of international cooperation that make it possible to contribute to the reinforcement of rural communities and to develop their autonomy in the face of "mainstream forces" (agribusiness, among others) and thus to take part in the conquest of food sovereignty.

Available only in French. Price: CHF 12,50 / 10,50 €, 192 pages, ISBN: 978-2-88053-088-4, PubliCetim n°36, June 2012. It can be ordered of CETIM.

Table of Contents

PLEASE TAKE NOTE

Next CETIM Symposium:

Do Bilateral Agreements Strengthen Bad Development?
Colombia, NAFTA, Europe...

Maison des associations - Geneva
1-4 November 2012

More information on CETIM website:
www.cetim.ch

Bulletin n° 43
August 2012

www.cetim.ch
cetim@bluewin.ch
CCP: 12-198850-1
CCP: (Euro) 91-13687-6,
PofichBe, Postfinance, Berne

6, rue Amat,
1202 Geneva/Switzerland
Tél.: +41(0)22 731 59 63
Fax: +41(0)22 731 91 52

CETIM

Europe - Third World Centre
Centre Europe - Tiers Monde
Centro Europa - Tercer Mundo

EDITORIAL

For some three decades, we have been witness to the increasing power of transnational corporations (TNCs). At present, world-wide, hundreds of TNCs control the major part of the production and marketing of goods and services. This position gives them a power without precedent in history. Moreover, the transformation of banking activities and the concentration of financial capital in the hands of several transnational entities threaten not only the real economy but also democracy.

How is it that we have come to such a state of affairs?`One can deplore not only the non-observance of democratic principles and human rights, but also the corruption of political leaders. However, one must not lose sight of the progressive implementation of a world-wide market economy, which has resulted in abandonment by governments of the economic field. We know very well that without economic sovereignty, political independence is relegated to the theoretical.

Today, we are faced with countries which, generally, are much weakened both politically and economically. The foreign debt of countries is used, now as in the past, to impose structural adjustment programs that include, without exception, the privatization of public services. Multilateral and bilateral trade agreements and investments favor TNCs. And the TNCs often ignore international legislation on work, the environment and human rights. National legislation is bypassed by the aforementioned agreements or are not applied to certain TNCs or are even modified to satisfy investors' conditions. TNCs recur to complex structures to evade their responsibilities regarding human rights violations, work-related legislation and the damage caused to the environment, in addition to evading taxes.

In other words, the wishes of Percy Marnevik, former president of the Swiss-Swedish industrial group Asea Brown Boverai (AAB), pronounced a dozen years ago, have today become reality throughout the world: "I would define globalization by the freedom for my group to invest where it wants, for as long as it wants, to produce what it wants, supplying itself where it wants, and submitting to the least constraints possible regarding labor law and employee benefits."[1]

[1] See *Mondialisation excluante, nouvelles solidarités : soumettre ou démettre l'OMC*, CETIM/GRESEA/L'HARMATTAN, 2001.

TRANSNATIONAL CORPORATIONS: WHAT REGULATIONS?

Transnational corporations (TNCs) continue to reinforce their hold on the natural resources of the planet, dictating their agendas to the weakest countries and exploiting their peoples. Directly or indirectly, they bear an enormous responsibility for the deterioration of the environment and for the systematic increase of human rights violations. Able to be both everywhere and nowhere, they escape from practically all democratic and judicial control[1].

Definition and characteristics of TNCs[2]

Transnational corporations are legal persons in private law with multiple territorial implantations but with a single center for strategic decision making.

They can operate through a parent corporation with subsidiaries; can set up groups within a single economic sector, conglomerates, or alliances having diverse activities; can consolidate through mergers or acquisitions or can create financial holding companies. They can segment their activities across various territories, acting through de facto or de jure subsidiaries and/or suppliers, subcontractors or licensees.

Transnational corporations are active in production, services, finance, communications, basic and applied research, culture, leisure, and also in the military area. They operate in these areas simultaneously, successively or alternately.

Applicable Jurisdictions

TNC's can establish domicile in one or several countries: in the country of the actual headquarters of the parent company, in the country where its principal activities are located and/or in the country where the company is chartered. To evade their responsibility for violations of human rights and labor and environmental protection legislation, as well as to evade taxes, they recur to highly complex structures (see inset page 3).

Transnational corporations are, in theory, subject to the law of a country, to the jurisdiction of its courts, but this elementary function of sovereignty is often abandoned by the governments themselves when dealing with TNCs. In fact, there is currently an international instance for settling disputes between governments and TNCs, which is extremely favorable to the latter: The International Center for Settlement of Investment Disputes (ICSID). Created by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, it has its headquarters within the World Bamk, and the president of the World Bank is also chair of the ICSID board of directors. Little known by public opinion, the ICSID "arbitrates" between TNCs and governments. In fact, this means that the governments can no longer bring their disputes with TNCs before their own courts. As its name indicates, the Convention of the ICSID is an international treaty, ratified to date by 148 countries[3]. In instances of free-trade bilateral agreements[4], it is even worse, for only non-observance by governments can be reported – by transnationals! – while the governments may not file complaints against TNCs.

In principle, for the ICSID's arbitration tribunals, created ad hoc, there is no other law but the bilateral treaty claimed to be violated and the ICSID's regulations. No other judgements, by arbitration tribunals or others, are taken into account, not national laws and constitutions, not the Universal Declaration of Human Rights nor the international covenants on human rights. The 1965 Washington Convention that created the ICSID and its regulations does not mention human rights at all. Neither do bilateral trade treaties (except for some few cases and in a very limited and ambiguous way). Therefore, if the rules of ICSID and bilateral trade treaties have been accepted, there is no way to invoke human rights before an arbitration tribunal constituted on the basis of such instruments. The ICSID's arbitration tribunals have repeatedly refused any appeal to human rights made by sued states but have accepted investors' arguments in favor of the "human right to property".[5]

Clearly, the tribunals constituted under the auspices of the ICSID lack independence, as two of their three arbitrators represent in fact the company's interests: the one named by the company and the president of the tribunal who, in case of non-agreement between parties – almost always the case – is

CETIM ADVISES YOU THE FOLLOWING READINGS

Responsabilité de protéger et guerres "humanitaires": le cas de la Libye

[Responsibility to protect and "humanitarian" wars: The case of Libya]
Edited by Daniel Lagot and Nils Andersson, with André Bellon, Rony Brauman, Robert Charvin, Géraud de La Pradelle, Jean-Marie Fardeau, Michel Fournier, Anne-Cécile Robert, Tzvetan Todorov

The United Nations Charter affirms the principle of non-interference in the domestic affairs of a state, including by the United Nations itself. However, several of its resolutions in recent history, in particular during the first decade of the twenty-first century, have put forth the idea that an intervention, armed if necessary, can be carried out in the case of a humanitarian crisis or of serious human rights violations in a county. All the same, numerous questions, which arose again with the war in Libya, remain regarding the law, the way it is enforced and its content.

This book, the result of a conference organized by the Association pour le droit international humanitaire (Intgernational Association for International Humanitarian Law – ADIF), presents the analyses of lawyers, representatives of humanitarian organizations and specialists in international relations. While there is a consensus in condemning human rights violations, a majority expresses substantial mistrust of "humanitarian" wars, with differing points of view presented however by the representatives of Amnesty International and Human Rights Watch. The authors hope thus to contribute to collective reflection on these problems.

Available only in French. Price: 16,50 €, 155 pages,
ISBN: 978-2-296-56022-2, Ed. L'Harmattan, 2012.
It can be ordered of L'Harmattan website.

Le "printemps arabe": un premier bilan

[The "Arab spring": A Preliminary Assessment]
Joint publication. Edit by Bichara Khader

Revolts or revolutions, the peoples uprisings that appeared in the Arab world in 2011 have overthrown and continue to defy the authoritarian regimes and their delegitimized autocrats. Movements of social, political and identity affirmation, borne aloft on the demands of freedom and equality, recognition and redistribution, they have swept aside the fiction of the "Arab exception" and opened wide the perspective of what is possible in the Maghreb and the Middle Near East. But for what transitions, toward what horizons? Destabilization of the region, tensing of the actors, democratization of structures, recovery of aspirations, radicalization of option, explosion of conflicts, emancipation of peoples...? Beyond the characteristics all contemporary Arab societies have in common, the scenarios vary from one country to another. Morocco, Algeria, Tunisia, Libya, Egypt, Syria, Jordan, Yemen, Bahrain, Saudi Arabia... they are all concerned, directly or indirectly, by the episodes that are more or less repressive, more or less bloody. What initial broad assessments can be made of these uprisings? What promises do they contain, and what risks are there for their results? Laying out of the genesis of the "Arab spring", of its local, national and international socio-political actors,, of its cultural, demographic and economic factors, as well as the roles played by Europe and the United States, all helps to interpret a reality particularly complex and, further, to evaluate the liberating potential of the dynamics of social change and self-determination.

Available only in French. Price: CHF 20 / 13 €, 180 pages,
ISBN: 978-2-84950-346-1, Ed. CETRI/Syllepse, June 2012.
It can be ordered of CETIM.

WHO ARE WE?

Through its publications and its work with the UN, the CETIM denounces the maldevelopment in general, ecological as much as economic and social, and promotes an exchange of critical views from both Southern and Northern societies. The CETIM is focuses in particular on respect for, implementation and promotion of economic, social and cultural rights, as well as issues related to the right to development.

man rights and the fight against corruption. It is significant that, in a text that is, in any event, voluntary, the drafters took care to mention that "companies should respect" – and not must respect – human rights.

As for the Administrative Council of the International Labor Organization (ILO), in 1977, it adopted Tripartite Principles concerning Multinational Enterprises and Social Policy. This declaration is not binding either. It limits itself to recommending to governments, to employers' and workers' organizations and to TNCs voluntary observance of principles dealing with employment, training, working and living conditions as well as professional relations. Although the delaration was amended several time (in 1995, 2000 and 2006), it is a not binding for TNCs.

In 2000, the United Nations Secretary General Kofi Annan, launched the Global Compact, a partnership between the United Nations and the TNCs, supposedly in service to development. The "partnership" between the United Nations and the business world aspired to encourage TNCs, on a voluntary basis, to commit themselves to observing ten principles based on respect for human rights and work and environmental standards as well as to fighting corruption.

The CETIM, along with other organizations, denounced this fool's bargain from the outset. As we have said many times over – and as it has turned out in practice – this partnership has offered to the TNCs that have signed on to it – often accused of violating human rights – the means to refurbish their image before public opinion and to acquire new markets.

Our analysis was confirmed several years later by two UN instances. In its study of the Global Compact in 2005, the United Nations Research Institute for Social Development (UNRISD) emphasized that this partnership gives TNCs "the means of pursuing their particular political interests within the United Nations". It called upon the United Nations to "reinforce the procedures designed to control the respect of ILO and of international human rights standards, to support complaint procedures…"[9]

In another report published in 2010, the United Nations Joint Inspection Unit (JIU) worried about "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." This body, moreover, pointed out that the Global Compact was "functioning within a 'special regime', but lacking a proper regulatory governmental and institutional framework".[10]

Faced with the alarming increase in serious and systematic human rights violations committed by TNCs and with a goal of imposing binding norms on these companies, the CETIM and American Association of Jurists (AAJ) have led a campaign within the United Nations human rights bodies. Further, our two organizations contributed to the 1998 setting up of working group on TNCs within the former United Nations Sub-Commission for the Promotion and the Protection of Human Rights[11].

In 2003, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights[12], drafted by the working group was adopted by the former Sub-Commission.

The product of consensus, these norms are obviously deficient[13]. In spite of these deficiencies, these norms constitute a coherent unit, clarifying the responsibilities of TNCs. They correspond to the requirements of a legal framework aiming for an effective control of the activities of TNCs.

Under pressure from the employers milieus, these norms remained a dead letter. In fact, from the outset, employers milieus, through the International Organization of Employers, (IOE) and the International Chamber of Commerce (ICC), opposed the drafting of these norms. Throughout the entire process, these two organizations insisted that the Sub-Commission draft a voluntary code of conduct, firmly opposing any binding rules. Their wishes were fulfilled by John Ruggie's Guiding Principles.

John Ruggie's Guiding Principles

In 2005, the United Nations Commission on Human Rights (the predecessor of the Human Rights Council) decided to name a Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises. John Ruggie, the "father" of the Global Compact, was appointed to this post. His mandate was very limited compared to other special procedures of the same nature. As mandate holder, he did not complain; on the contrary, he even opposed the possibility of receiving communications (complaints) from NGOs regarding human rights violations committed by TNCs.

In 2008, in his second report, John Ruggie acknowledged that the means and measures set up by the governments to subject TNCs to human rights norms and principles remained insufficient, imperfect and limited. He established his frame of reference using three fundamental principles of international human rights law in force: 1. the obligations of governments to protect when a third party, including TNCs, threaten human rights; 2. the responsibility of corporations to respect human rights; 3. the necessity of an effective access to redress or measures of reparation.

However, he did not draw the logical conclusions: in other words the necessity of establishing a binding legal mechanism at the international level as a framework for the activities of TNCs. Moreover, throughout his entire mandate, his position in substance was opposed to a legally binding mechanism – in other words to an effective outside control – of the activities of TNCs. He has consistently favored voluntary initiatives such as the Global Compact and the OCDE Guidelines.

At the end of his mandate, in June 2011, he presented to the Human Rights Council his principles entitled Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

This title is deceptive. The principles in question are voluntary. Their author himself acknowledged it moreover during their presentation: "The Guiding Principles' normative contribution lies not in the creation of new international law obligations". The application of these principles is left to the good will of the corporations. Following the OCDE Guidelines, John Ruggie's Guiding Principles maintain that "business enterprises should [and not must] respect human rights" (Principle 11). They also should [and not must] "comply with all applicable laws and respect internationally recognized human rights, wherever they operate" (Principle 23). Thus, the Guiding Principles are not, and do not aspire to be, binding obligations.

The philosophy inspiring this document is strange. The Guiding Principles are merely indications regarding the way governments must help (and not control or sanction) business enterprises in order to avoid their being implicated in human rights violations. The author also ignores possible deliberate willingness on the part of enterprises to commit human rights violations, even though they are always driven by the search for maximum and immediate profit.

A last example to illustrate John Ruggie's mindset: he declared last year to the Human Rights Council that his mandate (and, consequently, his Guiding Principles) concerned not only TNCs but also small and medium enterprises and even street vendors – as if street vendors were responsible for serious human rights violations, environmental pollution that is sometimes irreversible and non-respect of labor legislation.

THIS BULLETIN IS ALSO AVAILABLE IN FRENCH AND IN SPANISH

In June 2011, the Human Rights Council, while approving the Ruggie Guiding Principles, set up a new working group on human rights and transnational corporations and other business enterprises and a Forum on Business and Human Rights.[14]

The mandate of the working group on human rights and transnational corporations and other business enterprises consists in substance of promoting the Ruggie Guiding Principles and of identifying TNC best practices. It is thus not possible to present cases of human rights violations committed by TNCs to the working group. The first report was presented to the 20th session of the Human Rights Council in June 2012. It indicated that the working group will be of no help to victims of violations committed by TNCs. The working group itself acknowledged this, claiming that the questions is very complex and that the working group does not have the resources to investigate allegations of human rights violations by corporations.[15]

The Forum on Business and Human Rights is under the direction of the working group. Its mandate is also limited to the promotion of the Ruggie Guiding Principles and to identifying TNC best practices.

Moreover, this Forum will be open to the direct participation of TNCs "and other enterprises". This opening to direct TNC participation in a formal United Nations body poses many problems.

First, 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 rights violations.

Second, 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).

Third, TNCs will be participating in the work of the body set up to propose measures to be taken against them in order to prevent and/or sanction their human rights violations.

Fourth, 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.

Finally, the 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".

The group's mandate is already well established with the promotion of John Ruggie's Guilding Principles, as mentioned above.

What can be done?

The balance of power is certainly unfavorable, but it is urgent to demand now that TNC activities be be subjected to a legal framework (and not a voluntary one) at the international level if there is to be an end to the impunity that they enjoy and the prevention of future violations. This is not only a matter of respect for human rights but also of defense of democratic principles.

However, this process risks taking considerable time, and we cannot remain immobile faced with the current alarming situation. There are human rights protection mechanisms, and governments are bound, by virtue of current international law in force, to protect their citizens against violations committed by third parties, including by TNCs. Within this context, invoking the right of peoples to self-determination is particularly pertinent, for this right concerns not only peoples under domination and the formal creation of states. It is a matter of the right of peoples to decide their own future, a right every citizen can claim. In this regard, the first common article of the international human rights covenants is instructive: "In no case may a people be deprived of its own means of subsistence."[16] Further, by invoking civil, political, economic, social and cultural rights (right to participate, to make decisions, to demonstrate, of association, to food, to adequate housing, to health, to education...)[17], there is the possibility of acting on three levels, as the case may be:

- filing law suits with national courts against certain violations committed by TNCs if the legislation and the conditions allow;
- recurring to regional instances (e.g. the Inter-American Commission on Human rights and the Inter-American Court of Human Rights Court, the European Court of Human Rights, the European Committee on Social Rights, the African Commission on Human Rights) when one can establish that the government in question has not fulfilled its obligation to protect its citizens from the abuses of a given TNC;
- using the existing United Nations human rights mechanisms in the case of inaction by a given government faced with the actions of TNCs;
- using the ILO mechanisms such as the Trade Union Freedom Committee and the Committee of Experts on the Application of Conventions and Recommendations.

Although the legal processes are costly and require a considerable investment, they are worth the trouble, for favorable decisions constitute jurisprudence and are so many additional safeguards against other human rights violations, as well as being a major part of the fight against impunity.

---

[1] See CETIM publication *Transnational Corporations and Human Rights:* http://www.cetim.ch/en/publications_stn-bro2.php
[2] Ibid.
[3] 10 other countries have signed but not ratified. It should be noted that Bolivia, in 2007, and Ecuador, in 2009, withdrew from the ICSID following mobilizations by their people against privatization of natural resources and changes of government in these countries. See CETIM critical report "International, Regional, Sub-regional and Bilateral Free Trade Agreements": http://www.cetim.ch/en/publications_cahiers.php
[4] For further information see the aforementioned CETIM critical report.
[5] For instance, among many others, *Tecmed v, Mexico, Azurix v. Argentina and CMS Gas Transmission v. Argentina.* See Luke Eric Peterson, "Exploring the relationship between human rights and investment treaties" in *Human Rights and Bilateral Investment Treaties*, Rights and Democracy, 2009, Chapter 2. www.dd-rd.ca/site/_PDF/publications/globalization/HIRA-volume3-ENG.pdf.
[6] See the aforementioned CETIM booklet on TNCs.
[7] See *Swiss Trading SA : la Suisse, le négoce et la malédiction des matières premières*, Berne Declaration, Lausanne, 2011, p. 173.
[8] Ibid, pp. 237-243.
[9] See *Responsibilité sociale et encadrement juridique des sociétés transnationales: Synthèse 1*, Geneva, United Nations Research Institute for Social Development (UNRISD), 2005.
[10] See *United Nations Corporate Partnerships: The role and functioning of the Global Compact*, Joint Inspection Unit (JIU), UN symbol: JIU/REP/2010/9, 2010.
[11] See resolution "The relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations", E/CN.4/Sub.2/RES/1998/8.
[12] Document E/CN.4/Sub.2/2003/12/Rev.2, adopted 13 August 2003 by Sub-Commission resolution E/CN.4/Sub.2/RES/2003/16.
[13] For example, they state that TNCs, like governments, have the obligation to promote, respect, enforce respect for and protect human rights. Obviously, it is erroneous to put TNCs on the same footing with governments. We (the CETIM and the AAJ) pointed out this error to the Sub-Commission's experts, but it was not corrected in the final version. Worse, the former Special Representative of the Secretary General, J. Ruggie, used this error to discredit the norms in his first report. For further information, see in particular the two aforementioned CETIM publications on TNCs.
[14] See Resolution A/HRC/RES/17/4 of the Human Rights Council, adopted with no vote, 16 June 2011.
[15] See the annual report of the working group, A/HRC/20/29, § 89, 10 April 2012, to the 20th session of the Human Rights Council (June-July 2012).
[16] For further information on this right, see the CETIM booklet *The Right of Peoples to Self-Determination*: http://www.cetim.ch/en/publications_autodetermination.php
[17] See regarding this the CETIM series of booklets and critical reports, which deal, inter alia, with governments' human rights obligations, protection mechanisms with examples of jurisprudence: http://www.cetim.ch/en/publications_brochures.php and http://www.cetim.ch/en/publications_cahiers.php

appointed by the chairman of the ICSID's board of directors, who is no other than the president of the World Bank.

Another allied weighty legal mechanism is the Disputes Settlement Board of the World Trade Organization (WTO). Although this instance is composed of WTO member states and its mandate officially consists of ruling on trade disputes between the parties (member states), its decisions are based on WTO agreements that favor above all TNCs and in no way take into account human rights.

Complex Structures

To avoid their responsibilities, TNCs recur to complex structures in order to choose those countries whose legislation is favorable to their criminal activities as well as to evade taxes. Here are three examples.

1. The oil tanker Prestige, which in November 2002 floundered off the coasts of Portugal, Spain and France, while carrying 77,000 tons of oil, was registered in the Bahamas, managed from Greece (Coulouthros) and was carrying the oil of a Swiss company run primarily by Englishmen and whose current owners are Russian (Crown Resources of the Alfa Group)[6].

2. The charter company of the boat Probo Koala, which discharged toxic waste into open landfills in Abidjan on 20 August 2006, was Swiss (Trifigura), its corporate management was in the Netherlands, the cargo belonged to a British affiliate, the freighter itself belonged to a Greek company, and it was under Panamanian registry.[7]

3. The corporate headquarters of Glencore is in Zug (Switzerland). It owns a financial affiliate headquartered in Bermuda and an "investment vehicle" headquartered in the Virgin Islands. Through this affiliate, Glencore is the majority shareholder in the Mopani copper mine in Zambia. Owing to Zambian legislation that is particularly favorable to investors and fraudulent accounting, the Glencore affiliate The Mopani Copper Mine has paid no taxes on its profits to the Zambian government for years, in spite of the high price of copper on the world's markets. (It went from US$2,000 per ton at the end of 2003 to over US$10,000 per ton in February 2011.)[8]

Limits of Voluntary Guidelines

TNCs are fond of voluntary guidelines, in other words, documents that in the end have no effect on their abusive practices. These voluntary codes of conduct continue even now in opposition to binding legal norms. Yet, these voluntary guidelines:

- cannot replace authoritative standards established by national governments and intergovernmental organizations;
- as private initiatives, fall outside the normative activity of governments and international organizations;
- are woefully inadequate;
- have erratic implementation, for they depend entirely upon the good will of the corporation(s) in question;
- involve no independent compliance monitoring mechanisms;
- almost always contain requirements that are below already existing international standards.

In short, voluntary guidelines offer no concrete solution for preventing, and, when necessary, sanctioning human rights violations committed by TNCs.

Efforts at the international level to establish a framework for TNC activities

The idea of a legal framework for TNCs at the international level has been discussed since the 1970s. The following questions are often heard:

- should there be a voluntary or a binding code of conduct for TNCs?
- should national business enterprises also be included?
- how should responsibilities be divided between host countries and countries of origin in the control of TNC activities?

In 1974, the United Nations Economic and Social Council (ECOSOC) set up within itself the Commission on Transnational Corporations and the Center on Transnational Corporations with the mandate to draft a code of conduct for transnational corporations. Although the Commission on Transnational Corporations produced a compromise on "the majority of provisions" of its code of conduct (which was to be – in theory, at least – binding), the code ended up in the bottom of a drawer. Moreover, in 1993 and 1994, these two bodies were dismantled.

At the same time, the Organization of Economic Cooperation and Development (OECD) and the International Labor Organization (ILO) also looked into this question.

In 1976, the OECD adopted the Guidelines for Multinational Enterprises as non-binding recommendations. They were amended in 2000 to include hu-