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# A micro-view of global governance: The Spring and annual meetings of the Bretton Woods Institutions

by Robert E. Kelly\*

Each year the Bretton Woods Institutions hold two rounds of major “civil society dialogues” with nongovernmental organizations. These are rapidly developing into the primary bi-annual communication point between the BWI, and the NGOs concerned with them. These meetings are meaningful instantiations of global governance (GG), and a useful lab for our theories of its practice. As an attendee at the most recent dialogues, three theoretical insights stand out – the retention of (Northern) territorial bias, the emergence of a rather exclusivist epistemic community of GG ‘experts,’ and the loose yet committed learning network of these experts so typical of vertical, nonhierarchical GG schemes. While the oft-observed democratic deficit of globalization is evident here, these efforts are nonetheless a major achievement in an era of resurgent American national power. And they are, in contrast to American unipolarity, significant more participatory.

Every year the Bretton Woods Institutions (BWI – the World Bank and International Monetary Fund) convene two large sets of meetings. The first are the Spring Meetings, which take place at the institutions’ Washington headquarters; the second are the Annual Meetings, which take place in the autumn and alternate between Washington and locations outside the United States. This fall’s Annual Meetings will be in Abu Dubai.

Such meetings are part of a larger, annual ‘circuit’ of international conferences which are the most visible manifestation of global governance. They bring together, if only briefly, the many actors we envision a part of global governance (GG) and provide us with a micro-view onto its processes and environment.

## Global governance

If global governance is the inclusion of many actors in the international public policy process,<sup>1</sup> then large international conferences are a major instantiation of that order. While it is often suggested that large international conferences raise everything yet do nothing, they do bring together

in one place the many actors involved. Robert O’Brien, Anne Marie Goetz, Jan Art Scholte and Marc Williams term this “complex multilateralism.”<sup>2</sup> Not only must states cooperate with each other, but they must cooperate with other kinds of actors. Cooperation for optimal outcomes extends away from states both horizontally (toward other states) and vertically (toward other actors).<sup>3</sup>

Nowhere is the broad pluralism of this global governance vision on better display than the international conference circuit including such gatherings as this year’s Spring Meetings of the BWI. In the context of the brief meetings themselves (only 2 days), a panoply of organizations descended on Washington for a week of meetings, conferences and protests. As a physical gathering of many of the actors which GG scholars claim to study, they are a useful laboratory for our theories and descriptions of global governance. More specifically, the particulars of the settings and processes of ‘real existing’ GG offer insights on our conceptual approaches. I offer three:

## Territoriality

It has been widely noted that the UN mega-conferences in the 1990s were a major locus of global governance, especially for NGOs. In fact, the Rio conference was arguably the break-out event for internationally-committed NGOs.<sup>4</sup> In the wake of that conference, the interest in NGOs in international relations theory quickly grew, terms like ‘global civil society’ arose and a journal explicitly devoted to Global Governance was founded.

Although such meetings will decline in scale in the future,<sup>5</sup> they did help create the notion of an ‘annual tour’ of big meetings on international issues. Almost like fans pursuing a favored rock band, NGOs, UN civil servants and state policy-makers move like a traveling circus from one event to another. These include the WTO ministerials, meetings of the Paris and London clubs, the G-7 events, Davos/Porto Allegre, the Development Assistance Committee, free-trade gatherings and of course the BWI gatherings.<sup>6</sup>

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1. This is probably the most common element to GG in the wide ranging literature. See, for example the opening chapter of the Commission on Global Governance’ report *Our Global Neighborhood* (New York: Oxford University Press, 1995).

2. Robert O’Brien, Anne Marie Goetz, Jan Art Scholte and Marc Williams, *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements* (New York: Cambridge University Press, 2000).

3. Scholte, *Globalization: A Critical Introduction* (New York: Palgrave, 2000), p. 133.

4. Louis Kriesberg, “Social Movements and Global Transformation,” in Jackie Smith, Charles Chatfield and Ron Pagnucco (eds.), *Transnational Social Movements and Global Politics: Solidarity Beyond the State* (Syracuse, NY: Syracuse University Press, 1997), p. 11; Ann Florini, “Transnational Civil Society,” in Michael Edwards and John Gaventa, (eds.), *Global Citizen Action* (Boulder, CO: Lynne Rienner 2001), p. 37.

5. Florini, “Transnational Civil Society,” p. 37.

6. For this calendar, see <http://www.ifwatchnet.org/calendar/index.shtml>.

7. Brown and Fox, "Transnational Civil Society Coalitions and the World Bank: Lessons from Project and Policy Influence Campaigns," in Edwards and Gaventa (eds.), *Global Citizen Action*, p. 55.

8. Edward Luck, "Rediscovering the State" *Global Governance* 8/1 (January-March 2002), pp.7-11

9. See, for example, Jan Art Scholte, "Civil Society and Democracy in Global Governance," *Global Governance* 8/3 (July-September 2000), pp. 281-304, Part I of Ian Shapiro and Casiano Hacker-Cordon (eds.), *Democracy's Edges* (New York: Cambridge University Press, 1999) or David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Oxford: Polity Press, 1995).

10. Personal correspondence.

11. This problem has been noted before of course. See, for example, Manuel Chiriboga, "Constructing a Southern Constituency for Global Advocacy: The Experience of Latin American NGOs and the World Bank," in Gaventa and Edwards (eds.), *Global Citizen Action*, pp. 73-86.

12. There was some participation by Southern NGO representatives by video link up at one meeting.

13. The list of participants and organizations bears this out. For a partial list, follow the URL for the meetings' minutes at <http://lnweb18.worldbank.org/essd/essd.nsf/All/12C66D4F6B5DF79285256BF4004E4293?OpenDocument>.

These meetings represent an important physical locus for GG. Hence my first major insight must be that territoriality still bounds the actual practice of GG.

This contradicts more hopeful prognostications that GG is something which may be pursued through the communications revolution. Jonathan Fox and David Borwn have noted that NGO coalition-building, e.g., needs face-to-face connection. As they put it, "the Internet is not enough."<sup>7</sup> Much of the actual business of global governance continues to be grounded in physical space, and these environments shape both the participants lists as well as the outcomes.

Territoriality also reinforces the Northern domination of the process of GG. Travel is expensive. Poor people have not much free time. When many of the Southern states want to host an event in the 'traveling circus,' they often cannot because they either lack the domestic security or physical infrastructure to host the meetings. Further, it is a clear function of the international distribution of state power that such meetings occur in the North much of the time. The traditional great powers are still the most powerful actor in GG.<sup>8</sup>

### *Epistemic community*

It is widely lamented that international politics is not very democratic.<sup>9</sup> Chadwick Alger has suggested that foreign policy is the least democratic area of policy in democratic states.<sup>10</sup> Yet GG is a difficult and 'complex' business. It requires significant formal education to follow the details of such topics as the Highly Indebted Poor Country Initiative. Furthermore, participation in the debate requires up-to-the-minute knowledge. Only the most dedicated and well-resourced can achieve this.

Not surprisingly, many of those with the time to follow, and the education to understand, the trends in GG are from the North. The Northern territorial bias of these meetings only reinforces these trends. The awkward result is Northerners, on both sides, speaking to each other, in Northern, social scientific language, in a financially Northern-dominated institution physically located in the North. Yet the subject of the

discussions is often the South and its poverty. The barriers to entry in this 'conversation' are quite high and tend to marginalize, if not screen out altogether, those untrained in, particularly, economics and political science, or in relevant technical fields (engineering, agriculture, medicine, etc.).<sup>11</sup>

Hence the traveling circus analogy implies another useful insight well-confirmed by this year's spring meetings - GG participants form an epistemic community. For example, so large has the 'development community' become that one Bretton Woods official referred to it as the "development industry." And so complex have become the development industry's many policies and alphabet soup of acronyms, that they now require 'harmonization,' which was itself a conference topic.

The evolution of a 'cottage industry' of GG, with a definable series of events, practitioners, language tropes, etc., only reinforces the Northern domination of its processes. And the elitism of the required knowledge implies the democratic deficit often lamented in GG theory. Even among NGO participants, as well as some Executive Directors and representatives of the southern states, a lack of formal economics training particularly is a stumbling block to substantive participation. A number of NGO representatives alleged that BWI officials deployed economistic language as a rhetorical strategy to frame participation as they saw fit, yet others tacitly informed me they intend to improve their theoretical background in economics. If specialized NGOs perceive such a 'training' problem, it seems extraordinary to suggest that GG can be seriously democratized, particularly to include the third world poor.

I attended every Spring Meeting civil society dialogue. Of the several dozen NGO representatives across the meetings, I saw only two African representatives present; there were no Asians or Latin Americans.<sup>12</sup> The NGO participants were dominated by white Northerners with university educations.<sup>13</sup> The representatives of the BWI - widely considered in the NGO community to be ambivalent on poverty and distant from developing world concerns - were at least as 'diverse' as the NGO representatives. Yet even this made little difference, as almost everyone at

these meetings who spoke, did so in the language of modern social science. All of us (including observers such as myself) were bound through a common language, training and spread of concerns.

### *Evolutionary learning network*

Around the many meetings on the 'conference circuit' have arisen various gatherings of civil society organizations. An NGO park or parallel gathering is common. Typically, the antiglobalization 'wing' of the NGO community organizes its own events, including a protest.<sup>14</sup> At the spring and annual meetings of the BWI, the institutions have recently (since 2001) taken to organizing "Civil Society Dialogues," which precede and succeed the actual meetings of the state and BWI officials.<sup>15</sup> Similar side gatherings include meetings among NGOs on strategy, academic conferences, meetings of NGOs with Executive Directors and other networking events.

This entire process is reminiscent of John Ruggie's "interorganizational network" (ION).<sup>16</sup> At these meetings the many attendees, both inside and outside, share information, forge personal relationships, follow up on previous information distribution and return monitoring reports and anecdotal narratives 'from the ground.' All participants are broadly coordinated by their shared concern for an issue. Each learns from each, presumably with the goal of improved performance in the future. Meetings are iterated, generating history and memory. This process is one of simple 'triangulation,' whereby diverse actors 'congeal' into an ION about an issue and share information. Marina Ottaway adds MNCs to this basic ION and refers to it as 'global corporatism.'<sup>17</sup>

These descriptors suggest my last insight – that GG is an evolutionary learning process with a network of committed participants.

A loose network of individuals and groups meet repeatedly over time, sharing lessons in order to improve performance;<sup>18</sup> from a history of consultation and discussion emerge solutions. This ION approximates global governance as the cooperative, interactive process the Commission on Global Governance envisioned<sup>19</sup>: a common

problem perceived by all participants, and to which all involved sensed that a cooperative rather than enforced outcome would be optimal. (In the case of the Spring Meetings, the shared issue is development.) The game is non-zero or positive sum. In such an environment, information-sharing is useful, serves everyone, and learning is the norm.

### **Conclusion: global governance under american hegemony**

These are of course casual observational insights. They warrant further examination. But certainly the annual series of international meetings (particularly in economics and development) merits our attention as useful trial-runs or micro-laboratories for our GG schema. They suggest, as physical instantiations of GG processes and people, that GG is real – a major claim in an era of resurgent American hard power.<sup>20</sup> For the ION described here (although badly skewed toward Northerners and social scientists) is a far cry from the conflictual bargaining or negotiating environment heavily leveraged by national power statistics depicted by much international relations theory. While there were distinct conflicts at the Spring Meetings both within the actual conference events and in the civil society dialogues, the very notion of a 'traveling circus' of conferences suggests a shared vision toward a positive sum outcome. There will be negotiations over who will carry costs, yet the larger project of development, for example, is not in dispute. As the Commission writes, much of global governance is an effort to better administer or manage planetary affairs.<sup>xxi</sup> Even unipoles and hegemonies see the value of good administration.

In a technocratic-managerial environment, information-sharing is required rather than shunned. On many 'low politics' issues such as development, environmental protection or famine relief, there is little debate over the goal yet much over the method. For example, the Millennium Development Goals (MDGs) and the Monterrey Consensus are the current (in a long history of) benchmarks for development; they enjoy the broad political support of G-7 and the OECD states. This overarching political

14. The Latin American Solidarity Coalition was the primary organizer this April: <http://www.lasolidarity.org>.

15. See, for example, the web page for this year's Spring Meetings' Civil Society Dialogues: <http://lnweb18.worldbank.org/essd/essd.nsf/All/74E52A3938BD241F85256CEE006C371D?OpenDocument>.

16. Ruggie, "global governance.net: The Global Compact as Learning Network," *Global Governance* 7/4 (October-December 2001), pp. 371-78.

17. Ottaway, "Corporatism Goes Global: International Organizations, Nongovernmental Organization Networks and Transnational Business," *Global Governance* 7/3 (July-September 2001), pp. 265-292.

18. The World Bank even entitles some of its publications "Lessons Learned." See, for example, <http://www.worldbank.org/participation/CDD5.htm> or

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/CDF/0,,contentMDK:20073233-menuPK:140847-pagePK:139301-piPK:139306-theSitePK:140576,00.html>.

19. See the Co-Chairmen's Foreword to *Our Global Neighborhood*.

20. John Bolton, "Should We Take Global Governance Seriously?" *Chicago Journal of International Law*, 1/2 (Fall 2000), pp. 205-222. <sup>xxi</sup> Commission, *Our Global Neighborhood*, p. xvi.

consensus does not exclude political maneuvering of course – all will prefer others to carry the costs – but ‘great power’ accord does reduce the possibility of GG-paralyzing stand-offs such as the Cold War. Rather the route to the MDGs is

hotly disputed, is subject of much the administrative and coordination work of the GG ‘traveling circus.’ The possibility for global governance improves the more post-politically and technocratically an issue may be framed.

# Collaboration among entities of the UN System and of Civil Society, notably NGOs

by Cyril Ritchie\*

**I**t is important to recall the variety of relationships which have developed over the years and the benefits - to both the UN and the NGOs - that the experience of earlier decades has made indisputable. From the UN point of view,

NGOs can provide expert knowledge and advice, both to the decision-making bodies of the UN and to the Secretariat which implements UN decisions;

NGOs can present the views of important constituencies whose voices may not be adequately represented by national delegations but whose views are important to informed decision-making;

NGOs can be major channels for dissemination of information to their members, thus helping to fill the knowledge gap left by the inadequate coverage given by the media to UN activities;

NGOs can build support for UN programmes by carrying out educational activities directed at the wider public (the promotion of various "days" proclaimed by UN agencies - e.g. World Food Day - is one example) or by raising funds (e.g. for UNICEF);

In some cases close cooperation with NGOs is indispensable to UN agencies in carrying out their missions; the UN High Commissioner for Refugees, for example, contracts and cooperates extensively with NGOs in the majority of refugee situations. And the UNDP has designated certain NGOs as executing agencies for projects which it funds.

And of course UN secretariats and NGOs are often confronted with a common problem, namely persuading governments to adopt a particular course of action, whether it be allowing food convoys to reach refugees or implementing CEDAW. NGOs are powerful allies of the UN in such matters, and vice versa.

Of course the NGO/UN relationships has not been a one-way street; non-governmental organizations serve their own purposes when they urge UN action or educate the public about UN activities. And the UN framework has also proved of value as a mechanism around which NGOs can build cooperation among themselves. These working and advocacy relationships do not have the media attraction of disaster relief or massive human rights violations, but

they contribute to alleviating at the root some of the situations that will receive media attention.

The current limit to NGO involvement in the intergovernmental process is customarily identified as prohibiting a direct NGO role in negotiations among the UN member governments to reach policy consensus. But in practice this limit is quite evidently eroding. This is true not only in an indirect sense - that is, through the growing practice of including NGO representatives on the national delegations of member states - but directly through the actual participation of NGO leaders in the corridor discussions and "non-meeting" meetings which characterize much of the UN negotiating process. There are cases where NGOs have been part of the actual text-drafting session: thus confirming that "competent NGO input enhances competent government input!"

Moreover, NGO participation in the initiating, drafting and negotiating of many UN Conventions, Covenants, and Treaties (on human rights, drugs, torture, endangered species, rights of the child, desertification, biological diversity, women, landmines, child soldiers, International Criminal Court) has been remarkably strong. Indeed NGOs' roles have been so vital in so many such instances that it is difficult to see how governments can sensibly cut themselves off from such critical intellectual and specialist input.<sup>1</sup>

## Some special relationships

The diversity of the relationships between INGOs and the UN can be illustrated by some noteworthy cases; they show not only that the relationship is ever changing, but that where the UN has recognized the competence and relevance of particular NGOs, or groupings of NGOs, it has always been possible to "invent" a relationship that advances the cause that both sides believe in and work for.

The following examples of these special relationships have neither necessarily created a precedent nor precluded emulation or adaptation:

UNESCO has stimulated, fostered and virtually given birth to a number of NGOs that are beneficiaries of substantial grant and contract arrangements to implement parts of UNESCO's programme.

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1. In this connection, a statement by the Mexican Ambassador to the UN in April 1995 is particularly relevant. H.E. Miguel Marin Bosch made his remarks in the context of the Non-Proliferation Treaty Conference, but they are clearly of wider import: "The UN will be a much better place the day the positions taken by all delegations on all issues resemble the best of the NGOs. We all know that the UN will only begin to reach its potential in the disarmament field when our role as government representatives and your efforts as NGOs are so intertwined that there is no way to distinguish between the position of one group and the position of the other."

UNESCO also provides relatively significant moral and financial support to the UNESCO NGO International Conference and Liaison Committee, and to individual NGOs on a contractor subsidy basis.

The governmental preparatory process leading to the World Summit on the Information Society (Geneva, 2003) has made it possible for an "official" Civil Society Bureau to be created, representing a plethora of stakeholders ("Civil society families") and facilitating and engaging in open dialogue with the governmental Bureau. Civil Society advocacy and professional bodies have been enabled to provide relevant input to the drafting of the texts of the major Summit documents. The emergence and functioning of the Civil Society Bureau has received significant support from the intergovernmental Summit Secretariat.

The UN High Commissioner for Refugees invested heavily in world-wide consultations with NGOs to create deeper cooperation through the Partnership-in-Action (PARinAC) process and has continued to do so in regard to Refugee Protection issues.

The World Bank for years funded the entire administrative budget of the NGO-World Bank Committee, many of whose actions were critical and confrontational to Bank programmes, and which sought to offer contrasting alternatives to WB approaches.

For the UN World Conference on Natural Disaster Reduction (1994), the UN Secretariat placed the responsibility for organizing a Main Committee Session in the hands of a joint IGO-NGO-business group.

The NGO Affairs Officer of the UNDP European Office was for a time chosen and seconded by an NGO.

To provoke governments to respond more rapidly and adequately to the situation in Rwanda in 1994, two NGOs directly funded part of the UN human rights monitoring mission.

The United Nations Electoral Assistance Fund has provided assistance to NGOs to cover national elections in Member States.

The World Meteorological Organization has an INGO partner for a joint collaborative program on tropical cyclone research, which includes exploiting an unmanned aircraft observing system.

The United Nations Volunteers entered into an equal partnership with an NGO consortium to implement and monitor the ECO-Volunteer programme.

The UN Committee on the Rights of the Child implements the Convention's intention to associate NGOs with its work by having sessions in which the principal substantive input is from the NGO community.

The UNICEF/NGO Coordinating Committee on activities for children in Central and Eastern Europe has IGOs and NGOs participating as equal founders and members.

Among its many grants for NGOs, UNDP provided sizeable funding for two NGO-managed interregional initiatives to help municipal governments and community groups mobilize local resources to combat urban environmental degradation.

Both UNICEF and the UN Centre for Human Settlements provide (and therefore finance) regular space in their publications where the relevant NGO consortium is free to give NGOs' own news and views.

The Committee for the Promotion and Advancement of Cooperatives (COPAC) groups on an equal footing the UN, FAO, ILO and 4 international NGOs (ICA, IFAP, IUFAAWA and WOCCU).

The DHA Inter-Agency Standing Committee and Inter-Agency Support Unit give unprecedented access to several particularly relevant and competent NGO Networks and had a full-time officer named to their staff by the appropriate NGO consortium (ICVA). NGOs participate within DHA-OCHA missions and were, for example, integrated within the UNREO mechanism in Rwanda.

An International Code of Conduct for Germplasm Collection and Transfer was proposed by an NGO in 1989 and adopted by the FAO Conference in 1993.

In the field of human rights, NGOs often participate in the Commission's deliberations on an almost equal basis with governments, frequently obliging governments to publicly defend their human rights record, not only on general principles and implementation but on individual cases.

The World Conference on Education for All (Jomtien, 1990) was an "equality of participa-



tion” event, i.e. governments, IGOs and NGOs all had the single status of participants without hierarchy.

The UN Conference on Human Settlements (HABITAT II, Istanbul, 1996) organized one of the Conference Committees as an “equality of participation” event where NGO groupings presented their programmes and proposals, including on text, and an open dialogue with governments took place.

The International Conference of New or Restored Democracies (Ulaan Baatar, 2003 – see UNGA Resolution 56/269) was preceded by an International Civil Society Forum, one of whose representatives was present throughout the meetings of the governmental Drafting Committee negotiating the final Conference Declaration and Plan of Action.

The UN Conference on Environment and Development (Rio, 1992) adopted the frame of Major Groups as partners of governments in advocating and implementing Agenda 21; the follow-up Commission on Sustainable Development based substantial sections of its work on the input of a variety of Stakeholders from across Civil Society. This increasing integration was reaffirmed by and after the World Summit on Sustainable Development (Johannesburg, 2002).

The Popular Coalition to eradicate hunger and poverty (founded in 1995 and since 2003 retitled the International Land Coalition) is governed by seven regional civil society/NGO networks and five intergovernmental agencies. It is fully anchored in the UN International Fund for Agricultural Development.

The Safe Motherhood Global Initiative, launched in 1987, exemplifies equality of participation among the six members: UNFPA, UNICEF, WHO, World Bank, International Planned Parenthood Federation, Population Council. The Chair and Secretariat of the Safe Motherhood Inter-Agency Group rotate among the six members.

UNAIDS, the Joint UN Programme on HIV/AIDS, is a consortium whose Programme Board is composed of governments, the UN bodies involved (ILO, UNICEF, UNDCP, UNDP, UNFPA, UNESCO, WHO, World Bank) and five representatives of NGOs includ-

ing Associations of people living with HIV/AIDS.

These examples indicate that when both sides see that the “product” will be enhanced by unimpeded collaboration, minds and doors open. NGOs have to determine - and to be assisted - to pass through these doors. In terms of both effectiveness and credibility, the UN and NGOs both benefit, and the result is better. Since the result is intrinsically the improvement of humanity’s living conditions, notably in developing countries, there could be no better reason for governments to authorize and encourage “their” UN to be more open and innovative in its structured and less-structured relations with NGOs. In these times of financial strain, the cost benefits could also be persuasive.

In considering the richness and variety of NGO-UN relationships as evidenced in the examples just cited, one factor that must not be overlooked is the very real commitment of NGO resources - time, money, energy - that is involved in maintaining these relationships. To keep meaningful links, still more a meaningful partnership, with the UN requires an investment from the NGO that many are unable - or, in some cases, unwilling - to make, given that the typical NGO (which, of course, does not exist!) is first and foremost concerned to respond to the needs of the constituency which it serves. This dilemma cannot be wished away in the real world of NGO action.

## Some future directions

Since many national NGOs now participate in regional NGO networks, it seems probable - and desirable - that there will be growing interaction with the UN at the regional level. Most international NGOs have regional affiliates, and the regional UN Economic and Social Commissions constitute natural focal points for cooperative action. Civic programmes and civic service originate and blossom at the local and national level: governments and UN agencies should channel greater resources to civil society organizations at these levels. UN agencies can be particularly supportive of civil society coordination and outreach initiatives. Governments should seek to support such initiatives financially, while avoiding any

temptation to direct them, recognising that they mobilize fresh thinking and responsible advocacy on issues of public concern. Governments have the abiding responsibility to create and expand an enabling environment (legislation, fiscality, access, fundamental freedoms) where Civil Society can flourish.

A second future development is certain to be the further expansion of NGO relationships beyond the issues under the jurisdiction of ECOSOC. Indeed there have been NGO interventions at times when the General Assembly has transformed itself into a Committee of the Whole.

A third new direction, but one which is as yet barely getting under way, is the evolution of the NGO presence at the UN into a permanent body representing the voices of civil society. This idea received important support in the report of the Commission on Global Governance, *Our Global Neighbourhood*, which proposes the establishment of a Forum of Civil Society, consisting of representatives of organizations accredited to the General Assembly. Organizations of civil society hold very divergent views on this proposal, but several groups are working intensively to create the platform from which such a Forum could be launched. (Echoes of ILO's unique tripartite structure may surface in this connection, though there are no governmental initiatives pending to emulate this model. Yet one cannot overlook the extent to which over 80 years of ILO experience and tradition have brought the art of government/employers/workers interaction to singular heights of confrontation, negotiation and compromise).

A fourth potential area for new relationships also emerged from *Our Global Neighbourhood*, namely the proposal for a UN Council for Petitions which could provide civil society organizations with an advocacy access of significant scope and potential. While civil society response to this idea has been surprisingly muted, some momentum is now picking up, and intergovernmental secretariats might lend an ear to NGO voices on this topic.

The voices of competent and relevant NGOs need to be heard – and listened to! - in regard to implementing the agreements, accords, resolutions and programmes adopted at the series of UN world conferences and summits. It is no longer sufficient - if it ever was - to assume that

governments will act upon the promises and commitments that they collectively make at such conferences and summits. NGOs nationally and internationally have a crucial role in helping and encouraging - and if need be, prodding and shaming - governments into taking the actions to which they have given endorsement in international fora. NGOs are now essentially important actors before, during, and increasingly after, governmental decision-making sessions.

## Recommendations

### *The following points are emphasized:*

In the preparations for, carrying out of, and follow up to significant UN Conferences, UN organs should take appropriate initiatives to facilitate the participation of competent and relevant national NGOs, notably from the South. UN organs should be actively engaged with the NGO Forums at such Conferences, including facilitating interactions between Forum and Conference participants. UN organs can be proactive in ensuring for future Conferences the integration of the best features of the Arusha/Jomtien-to-Istanbul continuum, with particular attention to promoting partnerships. Implementation of Conference decisions, programmes and plans of action is a particularly fruitful area for UN-NGO common cause.

On an ongoing basis, partnerships could be inspired by models such as COPAC, PARinAC, DHA.IASC and UNAIDS. UN organs should actively seek to admit relevant and competent NGOs to the sessions (including preparation and follow up) of secretariat working groups. Certain of these might become, or be strengthened as, joint working groups. UN organs should also organize on a regular basis hearings of and for NGOs, for both policy and operational questions. The competence of both national and international NGOs could be more systematically drawn upon in the elaboration of country strategies, and in the monitoring and evaluation of country programmes.

UN organs should discreetly but imaginatively seek ways to foster initiatives promoting cooperation among NGOs, including formal NGO conference mechanisms related to all

appropriate UN bodies. However UN organs and their representatives should not be seen as favouring or promoting specific interest groups or caucuses that assert wider authority than they in fact possess in the NGO community.

The UN and NGOs very frequently share common cause in regard to the adoption and implementation by governments of multilateral policies and instruments. UN organs should exercise their best efforts to ensure intellectual and specialist NGO input to these processes. Information to and education of widely diverse publics is essential in this respect, and UN organs should seek innovative and long-lasting partnerships with competent and relevant NGOs to this end. UN-NGO co-responsibility for publications, videos and other outputs should be positively examined.

All of the above should be particularly explored by Regional Commissions and regional offices of all UN organs.

A UN system-wide institutionalized framework should enable all officers and units responsible for NGO liaison to meet regularly, to exchange in depth, and to be able to follow up agreed decisions. The Committee, if it be that, should have a direct link to the Secretary General's Office. It should from the beginning adopt a procedure to make possible input to its deliberations from competent and responsible NGO groupings, in the first case from CONGO.

#### *A final point: ECOSOC Consultative Status*

Article 71 of the UN Charter provides that ECOSOC "may make suitable arrangements for

consultation with NGOs which are concerned with matters within its competence."

ECOSOC established such arrangements by Resolution 288B in 1950; replaced this with Resolution 1296 in 1968; and then replaced the latter by Resolution 1996/31 in 1996.

The ECOSOC Committee on NGOs (now composed of 19 governments) has been the body charged with screening admission to (or change of) Consultative Status. Over these many years there have been numerous occasions when the Committee has not acted in conformity with the strict terms of the relevant ECOSOC Resolution. Sometimes this has been the result of internal political considerations or horsetrading; sometimes of wilful (mis)interpretation of the wording of the Resolution; sometimes simple ignorance of precedent; sometimes unawareness of the rich variety of NGO structures, procedures, purposes and terminology. A number of NGOs have been admitted to Consultative Status which those who know the field recognize as "NGIs" – Non-Governmental Individuals.

The essential work of the ECOSOC Committee on NGOs in preparing recommendations for the full ECOSOC Session would be facilitated if two or three experienced NGO "assessors" ("facilitators"; "advisors", "mediators", "OmbudsNgos"... ) sat at the Committee table at all its meetings, providing insights on the dossiers being examined, and bringing historical and contextual depth to the discussions. CONGO's 55 years of experience of UN-Civil Society relations make it the obvious body to appoint such assessors.

# The crisis in global governance: challenges for the United Nations and global civil society

*[Editor's Note] This document is the Report of the Consultation with civil society convened by the United Nations Non-Governmental Liaison Service (NGLS), Geneva, 4-6 June 2003. The reports of the Working Groups and the list of participants have not been included \**

## Introduction

From 4-6 June 2003, the United Nations Non-Governmental Liaison Service (NGLS) held a consultation with civil society representatives on the theme: "The Crisis in Global Governance: Challenges for the United Nations and Global Civil Society". Nearly 60 NGO/CSO representatives from more than 20 countries attended the meeting, as well as a number of representatives from the UN system (see list of participants in Annex III). The meeting was structured to maximize inter-active discussions based on participants' wide range of experiences and perspectives on the state of global governance, and challenges they see ahead for the United Nations and global civil society. The consultation brought together a mix of NGOs/CSOs, many with UN consultative status but some without, ensuring a balance between organizations that have permanent representation at the UN and others that participate in the work of the UN only occasionally to pursue specific issues and objectives, or that are primarily working with grassroots social movements. NGLS organised the meeting in the context of the Secretary General's High Level Panel to review UN-Civil Society relations (see below) and as a counterpart to a consultation it organised in March 2003 among the NGO liaison officers/focal points of the UN and the international system.

The consultation was held against the backdrop of the new foreign policy of the current administration of the UN's most powerful Member State, in particular its doctrine of pre-emptive war as applied in the US-led military invasion of Iraq, albeit in the face of unprecedented mobilization of world public opinion against the war. The contours and challenges posed by the foreign policy of the world's only superpower inevitably took an important share of the three-day discussions, but was viewed by participants as part of a much wider set of challenges facing the United Nations and global civil society, including: the continued deterioration of social, environmental and economic condi-

tions in many countries around the world, exacerbated by what some described as the driving forces of "corporate-led neoliberal globalization"; the failure to deliver on the UN commitments made during the last decades, particularly by the advanced industrialized country governments in areas related to debt, trade and aid; the democratic deficit of global governance decision-making, especially in the domains of trade and finance; the increasing political influence of corporate interests, including through a marked concentration of private media ownership; and a combination of plutocratic and even neo-fascistic tendencies in the advanced democracies which contribute to an erosion of democracy at the national level, which in turn impacts on the prospects for strengthened democratic governance at the global level.

In view of this set of challenges, the meeting reviewed in some detail the prospects of the Millennium Development Goals (MDGs) framework becoming a meaningful tool for addressing world poverty, for holding governments and international institutions accountable for the commitments they have made in this regard, and for strengthening multilateralism at this particular historical juncture. The meeting was also an opportunity for a frank assessment of the state of play amongst NGO/civil society networks, coalitions and movements around the world.

That discussion was closely linked to another major component of the meeting's agenda: an update and interactive discussion on plans for the UN Secretary-General's recently established High Level Panel (HLP) to review UN relations with civil society. The Panel, chaired by former Brazilian President Fernando Henrique Cardoso, is due to complete its work and recommendations to the Secretary-General by April 2004. The HLP held its first meeting in New York on 2-3 June 2003, and the NGLS consultation benefited from the presence of the Director of the HLP secretariat and one of the Panel members, who flew overnight from New York to share the latest information with participants, and receive inputs from the meeting.

\* Final version established on 30 July, 2003

The output of the consultation will also inform the work of the complementary exercise of reviewing relations with civil society undertaken by the UN's High Level Committee on Programmes (HLCP). The HLCP reports to the Secretary-General's Chief Executives Board, and includes representation of the Bretton Woods institutions.

Most of the discussions were held in Plenary sessions and designed to maximize interactive exchanges between participants. The afternoon of 5 June was dedicated to working groups on: (1) UN-civil society relations today: good and not so good practices: challenges for the HLP; (2) Strengthening multilateralism (which included further discussion on the role of the MDGs); and (3) Promoting ethical and equitable globalization: what role for the United Nations and civil society? (See full programme and reports of the working groups in Annexes I & II). An information exchange session was held in the morning of 6 June on preparations for the next World Social Forum, which for its 2004 session, will move from Porto Alegre in Brazil to Mumbai in India.

The meeting was concluded with a back-to-back consultation with representatives of the ILO's World Commission on the Social Dimension of Globalization on the afternoon of 6 June.

This report aims to draw out the main issues, concerns and recommendations expressed during the meeting. These do not represent necessarily consensus views among participants. The report is drafted according to Chatham House rules, namely that no particular observation is assigned to any particular individual or organization.

NGLS would like to take this opportunity to thank all those participants that acted as chairpersons, discussants and rapporteurs at the meeting. NGLS would also like to thank the UN Foundation and the UN Fund for International Partnerships for their financial support for the organization of the meeting.

The views expressed in this report of the consultation do not necessarily represent the views of the United Nations, the organizations of the UN system or NGLS.

*Hamish Jenkins (NGLS) – rapporteur to the consultation.*

## **Nature and dimensions of the crisis in global governance**

Global governance could be defined as a set of relationships between different national government entities, multilateral and plurilateral bodies at the global and regional levels, and more recently, civil society organizations and the private sector. The emergence of global civil society as a new factor in power relationships at the global level was seen as one of the most striking developments in global governance over the last ten to fifteen years.

When referring to the notion of a crisis in global governance, it was made clear from the outset that there had never been an effective system of global governance that has somehow broken down in recent years. As one participant argued, "The United Nations was created by the victors of World War II, for the victors of World War II." In contrast to references in the UN Charter to peoples' right to self-determination, he said, "most of the contracting powers went back to occupy their respective empires, which was a consistent theme for the first 30-40 years of the UN." He described how the history of the UN has been marked by a range of dualities, which tend to reflect a contrast between the UN's normative goals and the realities of power in the world.

## **The selective multilateralism of the world's only superpower**

In taking stock of current trends in the overall geo-political and economic context, the most immediate concern expressed by many participants was the foreign policy of the current US administration, as expressed most vividly in the "pre-emptive" US-led military invasion of Iraq. Such action, it was repeatedly emphasized by participants, was in breach of the UN Charter and could set dangerous precedents that may undermine the credibility of the UN and even the foundations of post-World War II international law, in particular the principle of collective security. One participant from the United States gave a detailed overview of some key strategic components of the new US foreign policy, which she described in terms of an explicit

doctrine of military expansion. She also expressed concern that post-9/11 domestic security legislation had curbed important civil liberties enjoyed by US citizens and was reminiscent of the McCarthy era. She said that activist organizations within the US peace movement had mobilized more people in street demonstrations than during the height of the Vietnam War. They are now seeking, she said, to mobilize the large numbers of US citizens that in recent years have not exercised their political rights to vote. She said that many such organizations are calling for support from civil society organizations around the world in this effort. This led to an animated discussion on the nature of US civil society organizations and how to build constructive bridges between them and the outside world.

It was also noted by a participant that the US-led war on terrorism is fuelling a backlash against legitimate civil society campaigns for social justice in some developing countries where some NGOs and social movements have been described as terrorist organizations and movements; and their civil and political rights have been restricted as a result of new anti-terrorist legislation.

Another participant from the US said that the pre-emptive war doctrine was only one facet of the unilateralist approach to broad areas of foreign policy displayed by the US government. He also noted that the US does not support the principle of common but differentiated responsibility (between countries of different levels of economic development), which was a cornerstone of the so-called North-South bargain at the 1992 Earth Summit. The current administration had also “unsigned” the US commitment to ratify the statutes of the International Criminal Court (ICC) and had pulled out of the Kyoto Protocol on Climate Change. It has also reversed the United States’ commitments to a number of non-proliferation disarmament treaties.

While recognizing the qualitative change of US foreign policy, some participants argued that there are continuities with a less overt unilateralist tradition in the past. Some saw this phenomenon as part of a systemic dynamic related to the highly internationalized nature of the US

economy, driven by an imperative to expand its access to markets and investment opportunities and secure domestic interests abroad. This was said to be manifest notably in the proliferation of bilateral treaties that the US is promoting with countries around the world.

However, in the course of the discussion, it was made clear that if such systemic dynamic exists, it is by no means a solely US phenomenon, but is linked to the wider forces driving current forms of economic globalization<sup>1</sup>.

## The dominant driving forces of economic globalization

At the meeting, some participants saw globalization (in the widest sense of the term) as a paradoxical process. It was described as a multifaceted phenomenon, some facets being potential forces for good—not only in terms of potential material benefits, but also with respect to societal objectives such as the “globalization” of peoples’ awareness of their universal human rights, or the use of Internet and modern transport, which has made possible the rise of solidarity movements across the world.

However, a large number of interventions by participants at the meeting suggested that the dominant driving forces of current forms of *economic* globalization and their interplay (science and technology, governments and their international economic institutions, the practices and political influence of transnational corporations) are highly problematic. With the rise of what some called “neoliberal policy hegemony” since the early 1980s, it was noted that the character of national governments and their international institutions (especially trade and financial institutions) had changed dramatically. There was a shared perception that governments have increasingly fallen captive to corporate interests and their economic and political agenda of liberalization, privatization, deregulation and the tightening of intellectual property laws.

From the perspective of some NGO representatives from developing countries present at the meeting, this agenda was primarily transmitted to the South through the debt-related policy conditionalities of international financial institutions (*de facto* controlled by the economically

1. Albeit one participant referred to the distinct expansionist characteristics of what had been termed by former US President Dwight D. Eisenhower in 1961 as the threats posed by his nation’s own “military-industrial complex”.

more powerful countries) and has translated into a marked weakening of State capacities to regulate the economy, engage in alternative development strategies and deliver on essential social services. Concomitantly, it was said that this process of “forced opening” of countries has facilitated the spread of transnational corporations’ operations in all aspects of society, whether in the economic, social or cultural fields. Several Southern participants described these dramatic changes as a process amounting to a form of re-colonization.

The prospects for meaningfully correcting policy mistakes of the neoliberal paradigm (now that they have been widely described as such by a number of leading mainstream economists and some UN bodies) were also seen to be unfavourable, as long as developing countries were held in what was described as “debt bondage” by their creditors; and in view of the fact that a number of such contested policy experiments (such as stabilisation and structural adjustment policies) are increasingly being developed into legally binding obligations under the World Trade Organization (WTO) or bilateral trade/investment treaties.

### **A crisis of legitimacy of governments and international institutions?**

In discussing issues concerning the legitimacy of governments and international institutions, one participant made the point of distinguishing issues of their legitimacy *per se* from issues related to the effectiveness of their actions and their ability to deliver. In this respect, the policies of financial liberalization promoted by rich country governments and international financial institutions throughout the world were viewed as failing on both counts, as many countries across the developing world and transition economies fell victim to financial speculation and ruin, with the devastating social and economic consequences that have been widely documented in UN reports and other sources. Moreover, the liberalization packages of structural adjustment programmes in developing countries have been contested not only in relation to the growth in inequalities associated

with their implementation, but also on their own terms, namely their failure to promote adequate levels of economic growth.

At the national level, it was said that this process (mirrored by mass protest movements around the world and in the most affected countries in particular) has revealed the extent to which political parties and elected representatives are less and less able or willing to represent and defend the views of the majority of their citizens, especially the poorest, and tend to cater first to the interests of their domestic elites and international finance. Such plutocratic tendencies were also said to be affecting the well-established liberal democracies of large industrial countries as well, notably through the perennial problem of private financing of political parties in election campaigns—compounded by the increasing concentration of corporate media ownership in a number of places.

At the international level, one participant made the point that the most powerful national democracies—those that also seek to project themselves as the greatest proponents of democracy around the world—are paradoxically the greatest opponents of “international democracy” (or the application of democratic principles to global governance). It was noted that the United Nations, despite its flaws, is the most democratic or legitimate international organization, with its system based on the formal equality of one-country-one-vote. Yet it was seen as being systematically “sidelined” on important issues related to economic justice by institutions that operate on the basis of what was called “one-dollar-one-vote” or “one-market-share-one-bargaining-advantage”. This lack of international democracy was seen by virtually all participants as one of the central elements of the current crisis in global governance.

### **Challenges to the UN’s credibility**

At the start of the meeting, it was noted that in public discourse there tends to be confusion or ambiguity when referring to the United Nations. Participants were encouraged to be clear in their interventions as to whether they were referring to:

The UN secretariats;

The UN's inter-governmental machinery and decision-making processes;

The UN as a global forum to raise and debate issues;

The UN's independent legal branches, such as the human rights and environmental treaty bodies, or the newly-established International Criminal Court.

In the area of peace and security, for example, when one participant suggested that "the UN had failed" to prevent the war in Iraq, there was an immediate response by others to the effect that it was not the UN but governments who had collectively failed. But besides the question as to whether more skillful diplomacy could have led to a peaceful outcome, the credibility of the UN in this instance was also posed in terms of whether it is being driven to legitimize an illegal invasion while lending its support to post-war reconstruction. It was also suggested that all the relevant organs of the UN should deploy the utmost efforts to prevent the doctrine of preemptive war from becoming an accepted precedent and entering into international law.

The question of double standards and when the UN intervenes or not to prevent or mitigate conflicts (such as its failure to act promptly in the case of Rwanda) was also posed in terms of a credibility issue for the UN; but one that concerned primarily governments' willingness or not to commit troops and other forms of support—as the UN Secretariat itself does not have permanent peace-keeping forces at its disposal to implement Security Council decisions.

In the area of social and economic affairs, a number of participants noted that there had been an apparent frontal attack by some of the more powerful nations to undermine the UN's ability and mandate to articulate alternatives to so-called neoliberal globalization. This issue may go back to the initial days of the ascendancy of neoliberal orthodoxy in the early 1980s, with the dismantling of efforts to create a New International Economic Order (NIEO) through the United Nations Conference on Trade and Development (UNCTAD), and the closing down of the Commission on Transnational Corporations (which was developing legally-binding codes of conduct for corporations). In more recent years, participants noted that much

of their advocacy work around UN inter-governmental processes—notably during the five-year reviews of the 1990s UN conferences and the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg—consisted mainly of what they called "damage mitigation". This has been well documented in areas such as women's reproductive rights, but also in the economic sphere. For example, some participants explained how NGOs participating in WSSD faced a considerable challenge in trying to prevent the adoption of draft text in the inter-governmental Plan of Implementation that would have committed governments to ensure that development and environment initiatives were consistent with WTO rights and obligations.

### **Dualities in the promotion of policy coherence**

One of the recurring themes during the consultation was the contradictory trends that are apparent in the pursuit of policy coherence across the multilateral system. When that question had entered the mainstream inter-governmental debates in recent years, considerable hopes had been placed on the opportunities that this might offer to initiate a process to ensure that the policies and rules adopted in international forums dealing with economic issues would be consistent with UN principles, notably economic, social and cultural human rights conventions and environmental treaties.

It was noted that at one level, the Bretton Woods institutions in recent years have taken the novel step of engaging more actively with the UN, such as through the annual dialogues with the UN Economic and Social Council (ECOSOC), the Financing for Development process, and in supporting some UN development objectives, especially the Millennium Development Goals (see also section III below). However, a number of participants expressed concern that, in practice, the real policy trend is in the reverse direction, with pressures being exerted on UN instruments to be consistent with WTO rules and the policies of the Bretton Woods institutions; or that the same policies continued to be pursued by the Bretton Woods



institutions in the name of UN goals, without a genuine re-examination in light of these policies' well-documented failures<sup>2</sup>.

Such criticisms were not limited to UN inter-governmental processes, as some participants suggested that the secretariats of some UN bodies were increasingly adopting orthodox economic approaches in their discourse and reports, notably on foreign investment and trade. The increasing emphasis on "public-private partnerships" and harnessing the corporate profit motive as a kind of new development paradigm was also a source of concern at the meeting (see also section V on the HLP below).

Nevertheless, participants noted that the UN still retained a capacity to provide alternative economic analysis and development strategies, notably through some of the reports produced by UNCTAD, the Food and Agriculture Organization (FAO), the UN Development Programme (UNDP), the International Labour Organization (ILO) and the Office of the High Commissioner for Human Rights (OHCHR). It was suggested that these positive examples were closely associated with the high ranking officials heading these organizations and programmes.

It was noted that the credibility of the UN is thus closely correlated to the independence and integrity of its secretariats and their ability to both carry out the tasks set out for them by inter-governmental decisions, and to defend the principles set out in the UN Charter and relevant derivative conventions. This was related to another important dimension of the crisis of global governance highlighted at the meeting: the critical funding situation of the UN.

## The funding crisis of the UN

One of the speakers said that a decisive element of genuine (or democratic) multilateralism is that the secretariat of a multilateral body should have a general budget that is commensurate with the responsibilities it has been entrusted to fulfill, and which is funded on the basis of Member States' respective capacities to pay. She noted that this principle has also been eroded over the years within the UN system along with the freezing of the general budget. There has

been an increasing tendency toward the "bilateralization" of UN agencies' funding, whereby agencies have to seek extra-budgetary resources from wealthier Member States to compensate for a shrinking general budget and increasing workloads. These Member States then have the discretion and leverage to pick and choose which activities should or should not be funded. As one participant argued, "it is shameful that heads of agencies have to go practically begging governments to provide the resources needed to fund the programmes that governments, through their intergovernmental decisions, have said are necessary." Despite widely spread notions that the UN is a sprawling and expensive bureaucracy, he noted that the UN's core budget is in fact less than that of the municipality of Stockholm.

Another participant said that there is currently not only an enormous discrepancy between investments in local/national governance per capita and investments in global governance institutions, but that the imbalance is equally staggering between the fairly strong international trade, finance and security institutions and what he described as the "almost inconsequential weak international social, developmental and environmental institutions of the UN."

The lack of adequate resources and enforcement capabilities of the UN's independent human rights and environmental treaty bodies was seen as another critical manifestation of this problem.

In the face of the complex set of challenges outlined above, participants explored a number of possible collective strategies for moving forward in the short and medium term. The following two sections will review: (a) discussions on the prospects of the Millennium Development Goals campaign(s) as a potential tool for accountability and for strengthening multilateralism; and (b) other strategies put forward by participants in light of critical assessments of the state of play amongst civil society organizations, movements and coalitions.

## The Millennium Development Goals Campaign

The Millennium Development Goals (MDGs) are derived from the commitments

2. Some participants saw potential openings in the Bretton Woods institutions' new Poverty Reduction Strategy Papers (PRSPs) framework, while others, on the basis of analyses of already completed PRSPs, saw little change in the core thrust of PRSPs' macro-economic and structural reform packages as compared with the earlier generation of highly contested Structural Adjustment Programmes (SAPs) of the 1980s and 1990s.

made in the Millennium Declaration adopted at the September 2000 Millennium Summit, the largest gathering of Heads of State and Government in history, and convened by the UN Secretary-General. The MDGs comprise a package of eight Goals, seven of which are linked to specific time-bound development targets to be achieved by 2015, such as halving the number of people suffering from hunger, or reducing under-five child mortality by two thirds. While the first seven goals are seen to be the primary responsibility of developing countries, achievement of the eighth Goal (to “develop a global partnership for development”) is seen to be primarily the responsibility of the advanced industrial countries.

Some participants noted that a significant aspect of the MDG process was that it started as a UN initiative but has since been endorsed by the Bretton Woods institutions and, to some extent the WTO. It was said that in theory, the entire multilateral system is “on board” to work together toward the achievement of these goals. The Secretary-General has appointed former Dutch development minister Evelyn Herfkens to facilitate national campaigns for the implementation of the MDGs. A key question posed at the meeting concerned the scope for meaningful engagement of civil society campaigns in this process. The views of participants were relatively contrasted on the matter.

At one end of the spectrum, a number of participants argued that the MDGs were a “reductionist” expression of the many goals and achievements of the 1990s conferences and are focused on addressing a limited set of symptoms of poverty, while evading fundamental causes of what some called a process of “impoverishment”. In other words, poverty was not a static condition, but the result of a dynamic process directly related to the policies and omissions of current forms of economic governance that in practice result in the growth of inequalities, both nationally and internationally.

A further criticism was that, unlike the outcome of other major UN conferences, the MDGs were the result of a process that did not involve direct NGO participation, which might have resulted in more ambitious goals, richer and sharper analyses of the issues, and would

have likely generated an “endogenous” civil society constituency from the outset to campaign for their implementation (as most of the UN world conferences and summits did).

Other participants acknowledged these limitations, but argued that in view of the current geopolitical and economic context, the MDGs are emerging as a valuable anchor to both revitalize multilateralism with a people-centered focus, and hold national governments and international institutions accountable in the years to come. The approach taken by those already engaging with the MDG campaigns process is not to campaign in favour of the MDGs *per se*, but to use these time-bound commitments in their on-going work as a tool to articulate how major structural, institutional and redistributive changes will be necessary to meet the MDG targets agreed by the international community. Their approach is also to insist that the numerical targets set out in the MDGs are only the minimum to which governments and the international community must be held to account, and that much higher targets may be set out democratically in various national contexts.

A key challenge identified at the meeting was that Goal 8 is the only one without specific deadlines and is expressed in much more vague and aspirational terms than the other seven Goals. Yet, the common understanding is that the MDGs are a package, not only between the seven interrelated sectoral goals, but most importantly, between the rich countries and the developing countries. Some speakers said that this provides the basis to hold rich country governments accountable to the fact that unless key facets of the current international economic system that are highly disempowering for developing countries are dramatically improved, the chances of meeting the seven other Goals will be, in many if not most cases, irremediably impaired.

Speakers suggested a number of avenues to “unpackage” Goal 8, notably in the areas of aid, debt, trade and finance, in a manner that would increase the political leverage of civil society and developing countries’ demands in these areas. Time-bound targets could be developed to specify Goal 8 as MDG campaigns begin to develop

in various national contexts and through international coalitions. In view of the repeated failures of the donor community to keep its promises on aid and debt relief, it was argued in this context that such targets would need have to have the status of contractual obligations to work.

A further strategy is to press for donor countries to start reporting on Goal 8 in the same way that developing countries are beginning to report on their commitments through the MDG reports initiated by UN country teams at the national level. Another suggestion was to devise developing country-level MDG reporting methods that would help to clarify Goal 8 by differentiating internal obstacles faced by countries in seeking to meet the Goals, from externally caused obstacles—such as the repeatedly-mentioned lack of policy space needed to pursue nationally-defined development strategies and the crippling burden of international debt.

At the meeting, it was mentioned that the World Federation of UN Associations (WFUNA) and the North-South Institute of Canada are undertaking worldwide annual surveys amongst NGOs and other civil society organizations to ascertain their knowledge of and level of engagement with the MDGs. The reports are also meant to reflect the diverse views within civil society on how to achieve the Goals.

### **Challenges and opportunities for civil society movements and coalitions**

Participants at the meeting also had the opportunity to discuss the strengths and limitations of civil society movements and coalitions at the present time, and what key strategies are needed to take the work of the social and economic justice movement forward. According to some participants there was increasing recognition at all levels that organized transnational civil society represents today the best hope for bringing about positive change in global governance, as the main countervailing power to the established interests that are seen to dominate national and international governance institutions.

One intervention argued that, in the weeks preceding the military invasion of Iraq, the

world witnessed for the first time in history, thanks to organised civil society and the Internet, the expression of “world public opinion” on a global issue which was unequivocally supportive of the role of the UN in solving disputes through peaceful means. It was also recognised that the World Social Forum had given tremendous impetus to the anti-war demonstrations around the globe which were unprecedented in scale and internationalism.

### **Working with social movements**

During the meeting, there was a sense that NGOs (as distinct from the wider social movements that have emerged in recent years) are at a critical juncture. A number of participants said that NGOs were in danger of falling captive of the UN and do not sufficiently question the value and output of their engagement in and around UN processes. It was argued that in view of the internal changes that were seen to be happening within the UN, as well as the rise of social movements as a growing political force in the world today, new collective strategies had to be developed. Several participants emphasised that NGO advocacy at the UN had resulted in many notable achievements in the 1990s, such as in the area of women’s rights and indigenous peoples’ rights. However, some said that current political dynamics called for more selective engagement in UN processes and more sophisticated “insider-outsider” approaches, notably by working more closely with national, regional and global social movements and supporting their engagement in global governance processes.

One participant referred to the danger of the UN becoming marginal to social movements as a source of and forum for alternative policy thinking. Another participant, on the contrary, referred to the creation at the UN of the Indigenous Peoples forum which was seen as an important step forward, not to say victory, for indigenous peoples’ movements.

Mention was also made of the positive experience of the engagement of farmer and peasant movements in the 2002 World Food Summit: five years later (WFS:fyf). Around the umbrella themes of the right to food and food sovereign-

ty, the international NGOs and the FAO secretariat played a facilitating role for this bottom-up self-organizing process, through which the social movements' collectively decided their own agendas as a basis for engaging with the summit.

### **Working internationally at the national level**

Closely linked to the above, the discussion also articulated a strong sense of a gap between the national and international dimensions of NGO/CSO work. It was noted that the UN is an inter-governmental body, so any meaningful change at the UN would need to be preceded by meaningful changes in the positions and policies of national governments. As one participant argued, "There may have been a time when CSOs could constitute a transnational advocacy network to influence the UN which would in turn influence policies at the national level where things were blocked in the first place." That approach does not appear to be valid anymore, he argued. "Not only has the UN been outflanked by the WTO and the Bretton Woods institutions," he said, "but the UN itself has been hollowed out from the inside." Today, he concluded, "we have to build movements at the national level while being able to connect these national activities internationally, working from the outside to avoid becoming too compromised, but with a clear understanding that the ultimate aim is to reconstruct the United Nations."

### **Building strategic transnational political partnerships**

During the meeting it was suggested that a key challenge is to generate a process whereby civil society organizations' leadership, power of mobilization and expertise can become focused around a limited number of key strategic objectives. It was noted that many lessons could be drawn from the experiences of the campaign to ban landmines and the campaign for the creation of the International Criminal Court. According to one participant, what these campaigns demonstrated was that "when global civil society works in a strategic political partnership

with a large number of like-minded governments, the combination was capable of equaling a superpower in international decision-making." What these processes also had in common was their use of UN principles and inter-governmental commitments to form a transnational political partnership outside formal UN inter-governmental negotiation processes, where a small number of powerful countries can hold back progress. Once the agreements were reached by a critical mass of countries through these more informal processes, they could be placed back under the authority of the UN for further ratification and enforcement.

One participant observed that such an approach appears to have also gained some currency in light of the deadlocks encountered during formal inter-governmental negotiations at the 2002 World Summit on Sustainable Development (WSSD), notably in areas such as sustainable energy and biodiversity. For example, at the closing Plenary of the Summit, more than three dozen States unveiled an initiative to promote renewable energy, declaring that they wanted to go beyond the more limited commitments of the WSSD Plan of Implementation.

### **Strengthening the UN's normative framework on globalization issues**

Another strategic question raised on several occasions was the lack of sufficient coordination between NGOs working primarily on UN environment and human rights-related processes, and those that have been working on trade and financial questions dealt with principally at the WTO and the Bretton Woods institutions. According to one participant, it is a political mistake to disengage from the economic, social, environmental and human rights work of the UN. "Do we want a WTO-centric or a UN-centric world?" he asked. "Should social and environmental issues be decided by trade and finance ministers in international institutions that are far less democratic than the UN?"

These questions were raised in light of the fact that a number of (primarily Northern-based) civil society organizations have sought to use the power of sanctions of the WTO's dispute settlement system, or the financial pressures of the

Bretton Woods institutions, to bring about compliance with international labour and environmental standards in developing countries. However, as several participants said, many NGOs working on international trade and finance policies have explicitly rejected this approach and seek to contain rather than expand the mandates of these institutions. In the longer term, they would prefer these to be accountable to the UN and called for greater collaboration and coordination with UN-focused NGOs.

A number of participants made concrete suggestions towards that goal, including more strategic use of reports and resolutions stemming from UN human rights bodies that challenge the compatibility of trade, investment and financial rules and policies with governments' human rights obligations. One participant suggested a long-term strategy aimed at reinstating Article 103 of the UN Charter, which states that: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". One step in that direction suggested at the meeting would be to seek official recognition of the primacy of international human rights law (such as the right to health) over international trade law (such as the TRIPs agreement on intellectual property rights at the WTO).

One participant said "The UN may not be perfectly democratic, but it has legitimacy" and suggested that the key reason why such a large number of people around the world took to the streets in protest against a military invasion of Iraq was a clear sense that such action was illegitimate. This popular sense of illegitimacy, he said, has not yet reached the same pivotal scale in relation to current trade and financial policies, despite the wave of mass demonstrations related to globalization in recent years. Therefore, he concluded, a key strategy is to better expose to the general public the ways in which a number of the trade and financial policies pursued by their governments are undermining fundamental human rights at home and/or abroad and are in contradiction with

their obligations under international human rights law, especially in relation to economic, social and cultural rights.

### *The rise of neo-conservative NGOs*

Another dimension of the challenges facing the UN and civil society today which emerged at the meeting is the rise of what could be called neo-conservative NGOs, which are actively seeking to undermine a number of UN principles and agreements. It was noted that their presence at UN events is growing and appears to mark a shift in their political strategy, namely to undermine multilateral processes and decisions from the inside. Recent examples referred to at the meeting, concerned UN events on population and children's issues.

One participant remarked that many of the neo-conservative NGOs based in the US are lobbyist think-tanks and institutes funded by transnational corporations and other private political interests. He went on to describe how one of the most influential neo-conservative institutes in Washington was launching a campaign which seeks to discredit the work of advocacy NGOs in areas such as corporate accountability.

### **Legitimacy of advocacy NGOs/CSOs**

The discussion of the emergence and influence of neo-conservative think-tanks and policy institutes, brought to the fore a broader set of questions, namely the reactions to the pressures that global civil society movements are beginning to exert on centers of power whether national or international, governmental or corporate. The recent pronouncements from various quarters questioning the accountability, legitimacy or representativity of NGOs/CSOs was seen by some participants as a predictable political response to successive waves of NGO/CSO campaigning in areas such as the democratization of the global economy and the promotion of corporate accountability.

The meeting was the opportunity for a frank exchange between participants on this sensitive issue. One view was that the question of the

legitimacy of advocacy NGOs should not be framed in terms of responding to the critiques of their detractors, but should be derived from their engagement with and service to grassroots social movements. It was said that in some countries such as India and South Africa, NGOs can be viewed negatively if their activities are not rooted in the work and popular demands of mass-based organizations. Others, while supporting the need for NGOs' greater engagement with social movements, pleaded for respect for diversity and complementarity, and that efforts aimed at promoting better cohesiveness between "outsider" popular mobilization and "insider" policy work should be done wherever possible in a constructive rather than divisive spirit.

One participant suggested that advocacy NGOs, whether large or small, derive their legitimacy from "our knowledge, our track record of working for the public interest, from our ability to mobilize people, from our effectiveness, from our vision and from our values." While the discussion suggested that a small NGO could articulate with authority a policy position that may reflect the concerns of large currents of public opinion, there was also an understanding that the same policy position would carry far more political weight if it were backed by the demands of a larger civil society coalition.

These questions were closely related to the meeting's discussions on plans for the work of the UN Secretary-General's High Level Panel to review UN relations with civil society, to which we now turn in Section V.

### **The Secretary-General's High Level Panel (HLP) on UN-civil society relations**

In his report on UN reform to the UN General Assembly in September 2002, the Secretary-General announced that he would establish a High Level Panel (HLP) to review the UN's relations with civil society. The HLP is chaired by former Brazilian President Fernando Henrique Cardoso and is composed of members with complementary backgrounds, including from civil society, governments, the private sector and academia. It will submit a report with recommendations to the Secretary-General in

April 2004. On that basis, the Secretary-General will make his own report and recommendations to be submitted at the General Assembly in September 2004. Some of these recommendations could fall under his own prerogatives, while others may have to be submitted for consideration by Member States.

### **Context and work method of the Panel**

It was said that the context of the Panel and the reasons it was created stems from the formidable rise in the importance of civil society in the UN, particularly in the last decade. This ascendancy has created perceptions of threats as well as opportunities, revealing both weaknesses and strengths—and are viewed differently by different stakeholders in the process:

Looking at the context amongst Member States, some of them see the growing presence of civil society in UN proceedings as eroding what is unique for them: a forum for governments to come together as equals. They sometimes see NGOs as bringing Northern cultural values by the backdoor and shifting power further from the weaker to the more powerful UN member states. It was suggested that the majority of Member States do recognize that civil society involvement in the UN has greatly helped to bring important issues onto the global political agenda and helped generate political will to make collective action possible among governments.

Civil society groups appear also divided as to value of their experience at the UN. The 1990s UN conferences provided greater opportunities for developing country NGOs to speak in international forums and begin dialogue with their national governments even when such opportunities did not exist back home. However, doubts are expressed for example as to the real impact of NGO participation on UN decision-making. Moreover, even when UN agreements have been influenced by NGO input, they have been poorly implemented at best.

On the side of the Secretariat, opinions are also divided. On the one hand, there is a sense of increased pressure to respond to increasing NGO demands for accreditation, information

and resources in the context of acute budgetary limits. On the other hand, there is some recognition that the widespread attention that civil society has given to the UN is critical for its very survival, particularly in the current geopolitical context. It was also noted by several participants that the Secretary-General is personally strongly committed to strengthening and enhancing the UN's engagement with civil society, not least to better channel the concerns of world public opinion into global debates and decision-making.

The terms of reference of the HLP include reviewing relations with the private sector, local authorities and parliamentarians. It was noted that initial discussions among Panel members suggest that it is not helpful to confuse civil society with the private sector. The secretariat of the Panel is developing a catalogue of terms of different non-State actors (civil society organizations, the private sector and its non-profit associations, etc.) and looking at the different ways in which different actors engage with the system.

The Panel's method of work during its first six months will focus on a widespread consultative process, with a strong emphasis on openness and transparency. This will include electronic and postal surveys, worldwide consultations with civil society using existing meetings as the forums, the organization of regional meetings where gaps are identified, focus group meetings (such as with mayors, or speakers of parliament), one-to-one interviews, and the commissioning of papers on particular issues such as the role of the private sector in the UN. From December 2003, the Panel will begin to identify what its broad recommendations will be, and the finalized report will be submitted to the Secretary-General in April 2004.

The following points are issues raised during the interactive session on the HLP.

### **The overall political context**

The presentations made on the outcome of the HLP's first meeting helped dispel concerns expressed by a number of participants that the primary motivation for the Panel appeared initially to be a containment exercise in response to complaints regarding excessive numbers of

NGOs participating in UN proceedings. It appeared that the members of the Panel and the Secretary-General were genuinely committed to strengthening UN-civil society relations while putting the "numbers problem" in perspective.

However, participants also expressed caution regarding the overall political climate in which this exercise is being undertaken. While the Panel will root its analysis within the wider geopolitical and economic context and attempt to make headway in the UN-civil society dimension of global governance in light of that context, the final decisions on a number of key issues will not be made by the Panel or the Secretary-General. Therefore, it was said, there may be considerable risks involved in opening the door to institutional questions that may give opportunities for some interests to reverse established participation rights of NGOs.

A related challenge identified at the meeting was how to document best practices throughout the system and ensure they are maintained and not weakened or prohibited by UN member states opposed to further opening to NGOs. For example, the process leading to the 1996 UN Conference on Human Settlements (Habitat II) in Istanbul had been widely regarded as one of the most participatory exercises in UN history, where NGOs were able to make direct contributions to the official outcome document, subject to their adoption by governments. The continuation of this participatory process was attempted in the five-year review of Habitat II in 2001, but eventually reversed at the insistence of a small number of Member States.

It was emphasized that the rights of NGOs in consultative relationship with the UN contained in ECOSOC Resolution 1996/31 should be seen as the floor, not the ceiling for what the Panel may propose.

It was noted in this regard that recently several non-governmental organizations have been granted consultative status, even though their political agendas could be seen as almost antithetical to fundamental UN principles and intergovernmentally agreed decisions. The question was posed as to whether better safeguards should be developed to ensure that NGOs that are actively seeking to undermine the work of the UN do not have access to consultative sta-

tus. This was nevertheless viewed as potentially raising new problems with regard to freedom of speech at the UN and the way such safeguards may be interpreted and used by some governments.

### **Process versus substance**

Another challenge for the HLP is how to link process and substance. One participant noted that there is considerable discussion on ways to strengthen the forms of participation, but little on how to maximize the substantive outcomes of that participation. This was expressed as one of the biggest frustrations of NGOs attending world conferences, particularly in their more recent five-year review phases and at the WSSD. For example, one participant argued, the multi-stakeholder dialogues in the WSSD process were not designed in such a way as to maximize their influence on the official negotiated outcomes, not least because they were happening parallel to the negotiations.

One intervention suggested that the question of linking process and substance could be posed in the following terms: What methodology of interaction with Member States could ensure greater accountability of governments on the substantive issues raised by civil society, and in light of their existing UN commitments and legal obligations under UN human rights, environmental and other treaties?

### **Tightening rules governing private sector participation**

A repeatedly mentioned theme at the consultation was the perception that private sector entities are increasingly being given “fast track” access to the UN. There are presently no clearly defined rules governing the participation of private sector firms at UN meetings, yet private sector entities are increasingly being accepted as a distinct category of participant, such as in the forthcoming World Summit on the Information Society (WSIS). One participant said this amounts to “triple dipping” where private sector firms participate as part of government delegations, through their not-for-profit associations and now increasingly as distinct business enti-

ties. This practice, it was said, stands in sharp contrast to the cumbersome procedures NGOs must go through to obtain consultative status and should be addressed by the Panel.

Similar concerns were expressed with regard to the promotion of public-private partnerships, which received unprecedented visibility at WSSD. One participant with extensive experience in monitoring public-private partnerships in the area of health warned against the dangers of treating this approach as a new development paradigm. She said proponents of this paradigm tend to present it as a new model based on relations of trust between partners (while evading the implications of unequal power relations) and assume so-called “win-win” outcomes that are of mutual benefit to all partners. It was noted that public-private partnerships have existed for a long time and in fact regroup a highly diverse and uneven set of activities and initiatives, ranging from corporate sponsorships, outsourcing, research collaboration, to voluntary codes. It was seen as imperative to undertake a thorough analysis and screen what is acceptable and what is not. Is it a “win-win” situation mainly for the partners (e.g. a UN programme and its corporate partner) or for the communities that the programme is supposed to serve? Are there only winners, or also losers? If so, who loses and who is accountable for the losses? It was further noted that a number of corporate-backed public-private immunization programmes are now giving unprecedented voting rights to business on their executive boards, while in one case that was cited, the relevant UN agency was deliberately excluded from board decisions.

Moreover, a participant observed that the proliferation of such initiatives may contribute to the further fragmentation of international public policy and development cooperation, while paradoxically the donor community has in recent years begun addressing the problem of the lack of coherence and coordination between their disparate bilateral aid programmes.

In calling on the Panel to examine the need for clear procedures and safeguards with respect to private sector engagement in the UN’s policy and programme work, participants said it was important that civil society organisations be consulted in the process.



## **Contrasted approaches to regionalize UN-civil society relationships**

Regionalization was seen as an important dimension of strengthening UN-civil society relations, particularly in the current new phase of implementation of UN conference commitments. A more effective engagement with civil society at the regional level may not only lessen the pressures on the numbers of NGOs wishing to participate in meetings at UN headquarters and other “high demand” venues such as the UN Commission on Human Rights in Geneva. It may also contribute to redressing the perennial deficit of southern NGO participation in UN processes.

However, at the meeting it was noted that different experiences to date suggest that it is important to avoid a “top-down” approach to regionalization where the UN chooses its regional partners (however expedient from a political and bureaucratic perspective), as such an approach may not be rooted in local dynamics and may lack both sustainability and legitimacy. Instead, it was proposed to build gradually on processes and networks that have formed endogenously at the sub-regional and regional levels. The latter approach also implies building relationships on the basis of civil society-determined priorities and then examining how they relate to the work and agendas of the UN.

## **NGO advocacy remains essential for implementation**

Several participants emphasized that moving to a post-conference “implementation” phase does not mean that the advocacy work of NGOs is over—whereby the new phase is essentially about the implementation of programmes and projects with operational or service NGOs along the partnerships model. While the latter have an important role to play, the political function of NGOs in advocating for changes in legislation and resource allocation at national and international levels remains indispensable for achieving the UN conference commitments and the MDGs. Several participants urged the Panel to reject current opinions that downplay the value

of the work of advocacy NGOs in favour of operational NGOs in the integrated follow-up to UN conferences. (Moreover, in practice, such distinctions often only apply to the different and complementary functions of the same organization).

## **The HLP’s work within a human rights framework**

It was noted that the work of the HLP and its follow-up could have an important impact at the national level, particularly in the context of new anti-terrorist legislation that is curtailing or even criminalizing NGO activities in a number of countries. In this respect, it was suggested that the HLP should approach its mandate within a human rights framework, as a contribution to strengthening civil and political rights to participation and access to information. One participant suggested that the UN leadership should undertake an international campaign to defend and strengthen the civil and political rights of civil society organizations in the repressive security context that is developing in a number of countries.

Freedom of movement of NGO delegates to UN meetings and rights of residence for foreign staff of international NGO coalition secretariats was seen as a growing problem. Many NGO representatives from developing countries in particular encounter perpetual difficulties in obtaining visas or residence permits while seeking to fulfill their legitimate and recognized roles as participants in global governance.

## **Investing in relationships with civil society**

UN secretariats’ services and support to NGOs were seen by some participants as among the most affected areas of the UN’s overall funding crisis. This was said to be manifest in the increasingly onerous charges for meeting rooms or for using the UN’s Official Document System (ODS), and in the relative weakness and understaffing of important offices that help and service NGOs. It was emphasized that a significant investment in resources, staff time and competencies would need to be undertaken at

all levels, including the global, regional and national levels, to genuinely strengthen the UN system's relations with civil society in the years to come.

### **Reconciling diversity and meaningful impact**

During the discussions on the scope and remit of the HLP, a number of participants emphasized the need for the HLP and the UN to differentiate between categories of civil society, particularly between social movements (that may involve hundreds of thousands of members) and NGOs. However, some participants cautioned that, should the UN develop formal institutional arrangements resulting from attempts at such categorization, no matter how well intentioned, this could turn out to be counter-productive. One participant described how, during the ongoing preparations for the WSIS, a secretariat-led initiative to categorize civil society had resulted in some 20 different civil society "families" that were intended to represent the interests of different civil society constituencies (of which "NGOs" was one distinct category even if non-governmental organizations were related in one form or another to most other families). This arrangement was ultimately limited to procedural matters, as it proved unworkable for the purposes of developing common positions on substance. Civil society organizations took the initiative to do what they usually do at UN meetings, which is to regroup themselves around thematic clusters, and where appropriate constituency positions, in a self-organizing process aimed at producing common substantive positions.

Although the HLP is developing a catalogue of terms of different non-State actors, which was seen as useful for contextual and analytical purposes, participants at the consultation were concerned that efforts at such categorization should not lead to recommendations that imply inflexible institutional arrangements in an effort to ensure representativity of different civil society constituencies. There appeared to be a broad understanding at the meeting that it was not for the UN to decide on how civil society is organized at inter-governmental meetings, but for

civil society to develop its independent, bottom-up self-organizing processes, with UN secretariats playing an essential facilitating and bridging role.

The broader political question this discussion raised was: how to handle the rich diversity of civil society views and perspectives while not drowning out their messages in what was referred to as a "cacophony" of discordant voices that end up canceling each other out in terms of their political impact on intergovernmental decision-making? One speaker summed up the nature of this challenge, which equally applies to the wider set of issues raised at the meeting, in the following terms: "Political posturing between groups has become a luxury in the present context. The new onus is on the need to broaden alliances and coalitions, and find new ways to work together if civil society is to face up to the immense challenges outlined at this meeting. We have reaffirmed repeatedly that diversity is a great strength, but if the component groups of that diversity who want to work together do not handle that diversity in a constructive way, it can also be a great weakness. We should certainly not try to all fall into the same straightjacket, but there is an evident need for civil society groups to better negotiate amongst each other. And even when we cannot agree, it is essential that we still maintain ways of working together in confronting the challenges of our times."

### **Conclusion<sup>3</sup>**

The consultation brought together a wide range of NGO and civil society perspectives and experiences on an immensely complex set of challenges facing the United Nations and global civil society. It could be said that, starting from the highly abstract theme of "the crisis in global governance," the meeting was successful in breaking down the agenda of further work in this broad domain into important component parts. A key message that emerged from the meeting was the critical need to bring into being a system of global governance that is genuinely empowering for peoples and communities around the world. At the same time a more strategic use of UN normative instruments com-

3. At the close of the meeting, several participants explained how they would take forward the insights generated by the consultation in their own work and expressed their appreciation to NGLS for convening and hosting the consultation and providing a well-managed forum in which participants could have a lively and frank exchange.

bined with the development of effective transnational political partnerships, backed by the weight of global public opinion, was also identified at the meeting as an essential way forward for global civil society.

The need for greater clarity on common values and how they should manifest themselves in practice was identified at the meeting as another considerable challenge for civil society organizations that are driven by aspirations for peace, development, social and economic justice, women's rights and environmental sustainability.

Global governance is a relatively new concept and practice and is likely to be a growing preoccupation as international decision-making processes seem to be carrying increasing weight over national democratic prerogatives, while at the same time the world is confronted with a growing number of global challenges that can only be resolved through multilateral means. As was said on several occasions by participants, the essential role of the UN and progressive global civil society in building bridges of mutual understanding and respect between peoples across nations, continents and cultures appeared more indispensable today than ever.

# Asian Civil Society Forum: UN/NGO partnerships for democratic governance building capacities and networks for human rights and sustainable development\*

## Background and objectives

The Asian Civil Society Forum took place from the 9th to the 13th of December 2002 in Bangkok, Thailand. It was organized by the Conference of NGOs in Consultative Status with the United Nations (CONGO) through its Working Group on Outreach to Asia and was hosted by Forum Asia, an NGO covering human rights issues in Asia. The theme of the Forum was: *UN/NGO Partnerships for Democratic Governance: Building Capacities and Networks for Human Rights and Sustainable Development*. Its objectives were:

To promote cooperation and solidarity among NGOs in Asia engaged in advocacy activities in the UN;

To raise the awareness of Asian NGOs about the Millennium Development Goals (MDGs) and to assess their contribution to their implementation;

To facilitate proactive dialogue and debate among NGOs on the issues concerning UN/NGO partnership for democratic governance at all levels;

To provide NGOs with practical and innovative training about advocacy in the UN;

To assess the impact and implementation of UN Conferences in Asia, such as the UN Millennium Summit 2000, World Conference against Racism (WCAR) 2001 and World Conference on Sustainable Development (WSSD) 2002;

To develop NGOs' strategies in ensuring that governments' pledges made at the UN conferences are fully implemented.

The Forum received financial support from the German Ministry of Foreign Affairs, the Dutch Ministry of Development Cooperation, the Open Society Institute of the Soros Foundation and some CONGO members. UNDP, the Ford Foundation China and Kyung Hee University supported some NGOs with whom they are used to collaborate.

Additionally, it has received the **technical and political support** of the Thai Government, the UN Economic and Social Commission for Asia and the Pacific (ESCAP) and several UN

Agencies including the Office of the High Commissioner for Human Rights.

## Participants

In its internal evaluation, CONGO considers the Forum to have been a great success. Gathering together a total of 572 participants from 33 countries has far exceeded everyone's optimistic expectations. Given the particular situation in Afghanistan and the urgent need to strengthen an emergent civil society, four Afghan NGO representatives attended the Forum. It is worth noting that most NGOs have come by their own means which is not only proof of their interest in the issues that were dealt with but also of the timeliness of the Forum. Participation was balanced in terms of geographical spread and gender, even though some countries came with a relatively larger "delegation" such as India, Korea, the Philippines and other places with a strong and vibrant civil society.

Another interesting point is that most of the NGOs represented were not accredited with the UN - hence not CONGO members. Also, many of them were participating in an international conference of this kind for the first time. Judging from the scope and nature of the organizations represented the target of reaching out to grassroots organizations that are active especially at the local and national levels, seems to have been achieved. However, this means that most of the participants have not done much advocacy work within the UN system. Therefore the Forum has, to a large extent, provided the much-needed opportunity for exposure to and learning about the workings of the UN in relation to the many global issues that find their expression at the local and most basic level in society. At the end of the Forum, a great number of participants expressed serious interest in developing international advocacy work in relation to the UN.

## Impact of ACSF 2002

An evaluation questionnaire has been sent to the participants of the Forum and an analysis of

\* Summary Report of the Conference of NGOs in Consultative Relationship with the United Nations (CONGO) on "Asian Civil Society Forum: UN/NGO Partnerships for Democratic Governance Building Capacities and Networks for Human Rights And Sustainable Development", prepared by Renate Bloem, President of CONGO and the WG on Asia Agazzi Isolda, Balan Clarissa, Jimenez Cecilia, Lee Anselmo.

the ones received reveal that most of the participants affirm that:

ACSF 2002 has contributed to achieving synergies and a better understanding between the two core issues of human rights and sustainable development;

ACSF 2002 has achieved its main objective, namely strengthening UN/NGO partnerships;

ACSF 2002 has been useful in understanding and improving mechanisms of democratic governance at the global level;

ACSF 2002 has been successful in building capacities and networks for human rights and sustainable development;

ACSF has had a good impact in contributing to achieve more democratic governance at the global level.

Furthermore, most of the participants, after participating at ACSF 2002, see the need to foster greater collaboration and engagement with the United Nations. With regard to CONGO, the participants affirmed the potential role of CONGO as facilitator of NGO participation in the UN and therefore as a means to strengthen their international advocacy work. At the same time, many of them believe that a follow-up of the ACSF at national, sub-regional and global levels would help greatly in striving to assume a greater role for international civil society within the UN structure, its mechanisms and processes.

## **The program and process of ACSF 2002**

The program was structured around plenary sessions, round tables and thematic workshops of working groups. Plenary sessions were intended to highlight the key issue of the day that were then discussed from a variety of perspectives during the round tables and explored even further during the thematic workshops. The recommendations coming out of all the sessions and, in particular, from the thematic workshops, were then streamlined into the final declaration that was drafted by a special committee and adopted at the plenary.

The **first day – (December 9th)** – was devoted to the key issues of **UN-NGO relations**. Training was provided by CONGO itself and its “traditional” UN partners: the DESA/NGO

Section, the DPI/NGO Section, the Non-Governmental Liaison Service (NGLS) as well as the World Federation of UN Associations (WFUNA).

The official Opening in the afternoon heard welcome speeches from the Thai government, CONGO and Forum Asia and, most notably, a message by Kofi Annan. Three key-note speakers addressed the main issue of the Forum, namely **UN/NGO Partnerships for Democratic Governance**, as viewed from the angle of human rights, sustainable development and the United Nations. The keynote addresses were intended to motivate discussion and affirm the integral link between human rights and sustainable development, which has been all too often dealt with separately and independent of each other.

The **second day- (December 10th)** was devoted to crosscutting issues as well as to a commemoration of the International Day of Human Rights. Discussions were organized with the UNDP and UNEP, the ILO and UNIFEM, UNICEF and UNHCR, UNESCO and APCIEU (the Asia Pacific Center for Education for International Understanding), as well as the new Asia-Pacific Regional Representative of the OHCHR.

In the afternoon, an Asia-specific commemoration of the Human Rights Day took place, with, notably, a message from Sergio Vieira de Mello, the UN High Commissioner for Human Rights.

Training sessions on human rights mechanisms and on racism and racial discrimination were well attended. Several round-tables on global governance and civil society, on the upcoming World Summit on the Information Society (WSIS), on the Millennium Development Goals (MDGs) and on the democratization and reform of the UN were also organized. Interactive Video Conferences with the WSIS Secretariat and with the Special Advisor to Kofi Annan on the MDG Campaign, made these sessions lively and very informative.

Regarding the World Summit on the Information Society (scheduled to take place in 2003 in Geneva and in 2005 in Tunis) the Forum also served as a venue for raising awareness about this important event. At the same

time, it helped to prepare the NGOs present for the Asian Regional Preparatory Meeting in Tokyo, Japan, in January 2003. It is worth noting that the report from the Forum's discussion on the WSIS has been taken into account by the WSIS Regional PrepCom held in Tokyo as a contribution to this meeting. The methodology applied to arrive at the final outcome document, also led participants in Tokyo to apply the same method. The WSIS report as well as the final declaration shows that the ACSF was not just an isolated event, but that it fed into, and will continue to be a resource for, subsequent regional or international events.

Another important objective of the Forum was to raise the awareness of NGOs about the Millennium Development Goals, the world wide accepted commitments, and to assess the role and contribution of NGOs in the implementation of these goals. Since the adoption by the General Assembly of the Millennium Declaration in September 2000 and the subsequent endorsement of the Millennium Development Goals, CONGO has always held that NGOs need to advocate for better cooperation with as well as be the watchdogs of the governments in ensuring the fulfillment of their duties and their active involvement in achieving MDG targets. From the evaluation, it appears that most NGOs had already heard about the MDGs, but they all think that NGOs could and should work more closely with the UN and the governments to fulfill them.

**The 3rd day - (December 11th)- was devoted to the issue of human rights** in Asia. Prominent human rights activists discussed the relevance of the Vienna Declaration and Plan of Action (adopted at the Vienna Conference on Human Rights in 1993) in an Asian context, the key human rights issues within the globalization process, women's human rights and gender equality. In the afternoon, roundtables and thematic workshops were organized on a range of very diverse topics<sup>1</sup>.

**The 4th day - (December 12th) - dealt with sustainable development** particular with the fol-

low-up to the WSSD that had taken place just 100 days before.

Keynote speeches were delivered on the Challenges of Democratic Governance to Sustainable Development in Asia and workshops and round-tables were organized on several issues<sup>2</sup>.

**On the last day- (December 13th) - the Forum adopted a Final Statement** that had been drafted by a Drafting Committee. The plenary proposed amendments that were then integrated into the draft. The final text was adopted by acclamation. This statement strongly expresses the commitment of the participants to keep alive the "spirit of Bangkok". Following are key points from the Final Statement:

A reaffirmation of the importance of the MDGs and of the contribution of civil society in achieving global democratic governance;

The need to include civil society in the reform of the UN and a reaffirmation of the valuable role of NGOs in holding governments and international institutions accountable to the commitments they have made at global UN conferences;

The need to strengthen international cooperation through active engagement by governments, the UN and civil society actors;

The need to give space to NGOs and civil society to enable them to play a greater role as well as the need to take the necessary steps towards the creation of a regional mechanism for human rights.

It is worth noting that the Final Statement has been widely circulated among NGOs and within the UN system. At the same time, a copy has been requested by the Regional Environmental Center for Central Asia (an NGO that was not present at the Forum). It has translated the Final Statement into Russian and has disseminated it to its own network of NGOs working on the issue of environment and sustainable development in Central and Eastern Europe and the Newly Independent States. This shows that the message of the ACSF has gone far beyond the region and finds resonance in NGOs in countries that had not participated in the Forum.

1. Such as human rights defenders, terrorism and human rights, women's rights and gender equality, freedom of religion and belief and language and human rights; rule of law and universal jurisdiction, promotion and protection of civil and political rights, right to self-determination, indigenous peoples and minorities, globalization and economic, social and cultural rights, national human rights institutions, the right to work etc.  
2. Notably on the follow-up to WSSD in Asia; cultural diversity, religions/spirituality and sustainability; integral approach to food and water; corporate governance and civil society; globalization and local grass-root organizations; youth for human rights and sustainable development; sustainable development governance; the earth charter; militarism; integral approach to health, etc

# Propositions d'amendements au projet des normes sur les responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme

Du groupe de travail sur les sociétés transnationales *élaborées par le Centre Europe - Tiers Monde (CETIM) et l'Association Américaine de Juristes (AAJ)*

## Introduction

Dans la dernière version (avril 2003) du Projet des normes sur les responsabilités des sociétés transnationales (STN) et autres entreprises commerciales en matière des droits de l'homme du Groupe de travail sur les sociétés transnationales on peut constater :

Que, en relation avec l'avant dernière version, excepté un ajout dans le préambule sur l'égalité des droits entre l'homme et la femme, une mention de bioéthique et du principe de précaution dans l'article 14, et le nouvel article 17, où il est dit, et c'est important, que les Etats doivent renforcer leur législation, presque aucune des propositions de l'AAJ et du CETIM, en ce qui concerne la structure, la forme et le fond du projet, n'a été prise en considération.

Beaucoup de questions essentielles demeurent de ce fait sans solution. Après quatre ans de débats, l'organisation d'un séminaire pluridisciplinaire<sup>1</sup>, la production de nombreux documents et la réunion organisée par l'Association Américaine de Juristes et le Centre Europe-Tiers Monde au Palais Wilson de Genève (Bureau du Haut Commissaire des Nations Unies pour les droits de l'homme) avec le Groupe de travail les 6 et 7 mars 2003<sup>2</sup>, ce résultat reste peu encourageant.

## **Le groupe de travail continue à ignorer plusieurs propositions et observations essentielles de l'AAJ et du CETIM pour que le projet fournisse une réponse sérieuse et cohérente aux problèmes posés par les STN**

1. Dans le projet, les STN ne sont pas les seules qui continuent à être citées. D'autres types d'entreprises le sont aussi, ce qui dilue et dénature l'objet du mandat de la Sous-Commission.

Le Projet du Groupe de travail devait s'occuper des STN et des dites « autres entreprises » dans la mesure où ces dernières sont, de fait ou de droit, des filiales des STN, même si elles ont l'apparence des sociétés nationales autonomes.

Les fournisseurs, les preneurs de licences et les sous-traitants doivent aussi entrer dans le cadre du Projet en fonction de leurs rapports avec une ou plusieurs STN, afin de faire partager à ces dernières la responsabilité pour les violations des droits de l'homme (en particulier du droit de travail) commises par les premiers dans le cadre du contrat qui les lie.

Les sociétés transnationales constituent un phénomène de la société contemporaine d'une énorme importance et ampleur ; elles posent des problèmes économiques, financiers, juridiques, sociaux et humains spécifiques.

Leur caractère transnational, leur versatilité économique et juridique, leur énorme puissance économique et financière et leur grande influence politique et sociale ne sont pas les moindres de ces problèmes. Lesdites caractéristiques constituent en plus des obstacles importants pour les tentatives d'exercer un contrôle social sur les STN.

Cette *spécificité et ces caractéristiques* des STN expliquent le fait que la résolution 1998/8 de la SCDH visait l'activité et les méthodes de travail des STN (et non pas de n'importe quel type d'entreprise) en relation avec la jouissance des droits économiques, sociaux et culturels et du droit au développement. Ladite résolution signalait qu'un des obstacles qui s'opposent à l'exercice de ces droits consiste en la concentration du pouvoir économique et politique dans les mains des grandes entreprises transnationales.

C'est sur ces fondements que la SCDH a créé le Groupe de travail et a défini son mandat.

Ce mandat doit être interprété à la lumière de la proposition formulée par la SCDH à la Commission des Droits de l'Homme en 1999, concernant ses principales tâches. Parmi celles-ci, les répercussions de la mondialisation, y com-

pris les méthodes de travail et les activités des STN, et leurs relations avec les droits de l'homme (voir document E/CN.4/Sub.2/1999/47, p.2, du 25 août 1999). Ce dernier document est en quelque sorte une approbation de l'orientation de la résolution 1998/8 de la SCDH.

2. Dans le projet ne figure toujours pas la responsabilité solidaire des STN pour les activités violatrices des droits de l'homme par leurs filiales, de fait ou de droit, et par leurs fournisseurs, sous-traitants et preneurs de licences.

Cette responsabilité des STN découle du principe de responsabilité collective ou responsabilité solidaire, même par omission, de tous ceux qui participent, d'une façon ou d'une autre (action collective), à la provocation d'un dommage, ce dernier faisant naître entre eux une obligation solidaire. Le fondement de cette responsabilité solidaire est que tout dommage doit donner un droit à réparation pour la victime et que celle-ci a le droit de demander la réparation conjointement à tous les responsables ou à celui ou ceux de son choix et si, ces derniers sont insolubles, de se retourner contre celui ou ceux qui sont solvables.

Le principe de responsabilité solidaire des sociétés transnationales est une question essentielle, tenant compte de la pratique habituelle des STN qui est d'externaliser les coûts et les risques, et les responsabilités respectives qui leur sont liées - qu'assument exclusivement ou presque exclusivement les fournisseurs, les sous-traitants, les preneurs de licences et les filiales - et de s'assurer en même temps pour elles-mêmes des gains extraordinaires<sup>3</sup>. L'omission de ce principe dans le Projet le vide presque de tout contenu parce qu'il assure l'impunité des sociétés transnationales.

3. La responsabilité civile et pénale des dirigeants des sociétés transnationales (gérants, membres du Directoire ou du Conseil d'Administration) ne figure toujours pas dans le Projet, alors qu'ils ont la faculté statutaire de prendre des décisions au nom de l'entreprise.

Au contraire, le Groupe de travail n'a pas accepté la proposition d'éliminer du Projet la responsabilité des cadres et des travailleurs, proposition fondée sur le fait que ces derniers ne prennent pas part aux décisions mais qu'ils les subissent. Il ne faut pas oublier que les cadres et

les travailleurs, comme toutes les personnes, sont personnellement responsables de leurs propres actes face à la justice ; mais ils ne sont pas responsables pour *les décisions* de l'entreprise. Et dans le projet, il s'agit de la responsabilité de l'entreprise et non pas de celle de personnes particulières, excepté celles qui expriment la volonté sociétariaire, comme les gérants ou les membres du Directoire ou du Conseil d'Administration.

4. Malgré le fait que la Sous-Commission et le Comité des droits économiques, sociaux et culturels se soient prononcés récemment sur ces questions dans un sens similaire<sup>4</sup>, le Groupe de travail a opté pour ignorer les propositions suivantes :

Les STN, leurs fournisseurs, sous-traitants, preneurs de licences et « autres entreprises » (leurs filiales de fait ou de droit) doivent reconnaître le principe de la primauté des droits de l'homme et de l'intérêt public sur l'intérêt économique particulier.

Les Etats devraient adopter des mesures législatives et d'autres ordres afin de donner la priorité à la notion de service public, particulièrement en matière de santé, d'alimentation (y compris l'eau potable), d'instruction et de logement, de prévenir et d'empêcher la formation d'oligopoles et de monopoles privés dans ces domaines. Les Etats devraient interdire les brevets sur toutes les formes de vie et établir un droit de préemption du domaine public sur les inventions et les découvertes fondamentales pour la santé.

L'ajout dans le paragraphe 10 de la dernière version du Projet de la phrase : « Les sociétés transnationales et autres entreprises ont l'obligation de reconnaître et de respecter ... l'intérêt public », n'est pas équivalent à la proposition de l'AAJ et du CETIM qui parle de « *primauté des droits de l'homme et de l'intérêt public...* ».

5. Le groupe de Travail a aussi ignoré les propositions suivantes, destinées à protéger les employés et les actionnaires des STN, leurs fournisseurs, sous-traitants, de même que les travailleurs de ces derniers :

Les Etats devraient établir et, selon le cas, renforcer les dispositions législatives ou réglementaires sur la responsabilité civile et pénale des dirigeants responsables des STN et des « autres



entreprises » (filiales de fait ou de droit) et celle des dirigeants responsables de leurs fournisseurs, sous-traitants et preneurs de licences en ce qui concerne les opérations financières et commerciales, y compris la gestion des fonds de pension, face à leurs actionnaires et employés titulaires d'actions et de participations dans les fonds de pension de l'entreprise et aussi légiférer ou renforcer la législation existante sur la transparence de ces sociétés (rapports et contrôles périodiques, etc.) à propos des mêmes questions.

Les STN doivent payer aux fournisseurs et sous-traitants des prix convenables pour leurs produits et services de façon à leur permettre de payer à leurs employés et travailleurs des salaires décents qui assurent aux intéressés ainsi qu'à leurs familles un standard adéquat de vie, de leur offrir de bonnes conditions de travail et, à leur tour, d'obtenir des marges raisonnables de bénéfices. La redevance demandée par les STN aux preneurs de licences doit rester dans des limites raisonnables afin de permettre à ceux-ci de payer à leurs employés et travailleurs des salaires décents qui assurent aux intéressés ainsi qu'à leurs familles, un niveau de vie adéquat et de leur assurer de bonnes conditions de travail et, à leur tour, d'obtenir des marges raisonnables de bénéfices.

6. Comme indiqué plus haut, le Groupe de travail a omis la proposition suivante :

Afin de garantir la liberté d'expression et le droit à une information objective et impartiale, les Etats devraient adopter des mesures législatives et autres afin d'interdire la formation de monopoles dans les moyens de communication et d'interdire la formation de sociétés, de coentreprises, etc., entre des entreprises de communication et autres secteurs d'activités industrielles, commerciales et financières.

### **Autres propositions de l'AAJ et du CETIM ignorées par le groupe de travail**

1. Le personnel de sécurité des STN, des fournisseurs, sous-traitants, preneurs de licences et « d'autres entreprises » ne peut pas agir hors de l'enceinte de l'entreprise pour laquelle il travaille. Cette proposition tend à empêcher que le personnel de sécurité devienne une milice privée

qui agit aussi dans les espaces publics.

2. Les STN, leurs fournisseurs, sous-traitants, preneurs de licences et « autres entreprises » ne peuvent pas utiliser à leur service les forces armées et/ou de sécurité de l'Etat, ni engager des milices privées.

3. Les STN doivent respecter toutes les normes internationales et nationales interdisant la discrimination *et appliquer la discrimination positive, quand celle-ci est prévue dans les normes et/ou réglementations...* Avec cet amendement, on a voulu éviter que le paragraphe du projet puisse être l'objet d'une interprétation qui permette de justifier l'établissement de différences entre les travailleurs fondées seulement sur la base de la productivité.

### **En conclusion**

Le Projet, dans sa dernière version, contient des améliorations sensibles par rapport au brouillon initial présenté par le Groupe de travail il y a quatre ans, que nous avons vertement critiqué, qui comportait de graves omissions et qui était caractérisé par une conception « molle » du droit le rendant non obligatoire pour les STN. Mais il reste, comme on l'a déjà signalé, plusieurs questions fondamentales sans solution.

Pour sortir de l'impasse, la Sous-Commission devrait adopter une Résolution indiquant au Groupe de travail :

1) Que son mandat consiste à s'occuper des STN et des autres entreprises dans la mesure où elles sont des filiales de fait ou de droit d'une STN et des fournisseurs, sous-traitants et preneurs de licences dans le cadre des contrats qui les lient à une société transnationale.

2) Qu'il doit incorporer au Projet les questions suivantes :

a) la responsabilité solidaire des STN avec leurs filiales, de fait ou de droit, et avec leurs sous-traitants, fournisseurs et preneurs de licences ;

b) la responsabilité civile et pénale des dirigeants des sociétés transnationales (gérants, membres du Directoire ou du Conseil d'administration) qui ont la faculté statutaire de prendre des décisions au nom de l'entreprise ;

c) le principe de la primauté des droits de l'homme et du service public ;

d) les mesures de protection des employés des STN titulaires de fonds de pension de l'entreprise et des actionnaires ;

e) l'obligation des STN de payer des prix raisonnables à leurs fournisseurs et sous-traitants ;

f) la promotion de mesures pour empêcher la formation de monopoles dans les moyens de communication ;

g) l'interdiction pour le personnel de sécurité d'agir en dehors de l'enceinte de l'entreprise ;

h) l'interdiction pour les entreprises d'engager les forces armées et/ou de sécurité de l'Etat et d'engager des milices privées ;

i) l'introduction explicite du principe de la discrimination positive et

3) Qu'il doit exclure du Projet la responsabilité des cadres et des travailleurs pour les activités de l'entreprise suite aux décisions prises par ses dirigeants.

Finalement, la Sous-Commission devrait favoriser l'établissement d'un mécanisme de suivi qui pourrait être un Groupe de travail de la Commission des droits de l'homme sur les STN avec des attributions semblables à celles du Groupe de travail sur les détentions arbitraires ou à celles du Groupe de travail sur les disparitions forcées ou involontaires, ou bien proposer la nomination d'un Rapporteur spécial.

La Sous-Commission devrait suggérer aussi aux Comités des Pactes Internationaux des Droits Civiles Politiques et des Droits Economiques, Sociaux et Culturels qu'ils examinent les activités des sociétés transnationales, aussi bien dans le pays siège que dans les pays où ont lieu leurs activités.

Propositions d'amendements au projet des normes sur les responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme

Elaborées par l'AAJ et le CETIM sous le titre de :

Directives et recommandations pour l'application aux sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences, des normes en vigueur concernant les droits de l'homme

## Légende :

*Colonne 1* : projet du Groupe de travail tel que publié fin 2002.

*Colonne 2* : nouveau projet du Groupe de travail tel que publié en avril 2003. Les principales modifications entre l'une et l'autre version, autres que rédactionnelles, sont soulignées dans cette colonne. Elles correspondent, pour la plupart, aux amendements proposés par l'AAJ et le CETIM et acceptés par le Groupe de travail dans la dernière version du projet.

*Colonne 3* : propositions d'amendements AAJ /CETIM avec commentaires.

Les crochets indiquent les phrases du projet que nous proposons de supprimer.

Les parties en gras constituent nos propositions de rajouts et de modifications que nous persistons à proposer bien que refusées jusqu'à maintenant par le Groupe de travail.

Les parties en italique indiquent nos commentaires.

L'ordre des paragraphes a été modifié, tout en conservant leurs numéros, dans les colonnes 1 et 2 afin de garder la logique des propositions d'amendements en colonne 3.

*N.B. Nous avons travaillé avec la version française de l'« Advanced non edited version » du document intitulé « Projet des normes sur les responsabilités en matière de droits de l'homme des sociétés transnationales et autres entreprises », diffusée par le Groupe de travail sur les méthodes de travail et les activités des sociétés transnationales en avril 2003.*

## 1. Amendements concernant les définitions

Commentaires :

Cette partie, pour des raisons méthodologiques et suivant la forme habituelle des instruments internationaux similaires, est placée en introduction au projet de Directives et de recommandations. Nous avons délibérément choisi de mettre les « définitions » en dehors des Directives et recommandations afin d'éviter que l'énorme capacité de métamorphose des STN, qui leur permet d'échapper à toute définition exhaustive, leur permet également d'échapper aux directives et aux normes déjà en vigueur. Les auteurs de la Déclaration tripartite de l'OIT sont allés plus loin encore, puisqu'ils ne donnent pas de définition des sociétés transnationales. Plutôt que de définitions il s'agit de descriptions de l'objet des Directives et recommandations. C'est pour cela que nous appelons cette partie du Projet :

I. Définitions	Annexe aux normes Définitions	Objet de ces Directives et recommandations
<p>19. Le terme «société transnationale» désigne une entité économique opérant dans plus d'un pays ou un ensemble d'entités économiques opérant dans plus d'un pays _ quel que soit leur cadre juridique, leur pays d'origine ou leur pays d'établissement, que l'action soit prise individuellement ou collectivement.</p>	<p>20. Le terme «société transnationale» réfère à une entité économique ou un ensemble d'entités économiques opérant dans deux ou plusieurs pays, quel que soit son cadre juridique, son pays d'origine ou son pays d'établissement, que l'action soit prise individuellement ou collectivement.</p>	<p>[20] 1. Le terme «société transnationale» se réfère à une entité économique ou un ensemble d'entités économiques opérant dans deux ou plusieurs pays, quel que soit [son] le cadre juridique, [son] le pays d'origine ou [son] le pays d'établissement, que l'action soit prise individuellement ou collectivement. Les sociétés transnationales sont des personnes juridiques de droit privé avec une implantation territoriale multiple mais avec un centre unique pour les décisions stratégiques.</p> <p>Elles peuvent fonctionner avec une société mère et des filiales, constituer des groupes au sein d'un même secteur d'activité, des conglomerats ou coalitions ayant des activités diverses, s'unifier par le biais de fusions ou d'absorptions ou encore constituer des ensembles financiers (holdings). Ces derniers possèdent seulement un capital financier en actions avec lequel ils contrôlent des entreprises ou groupes d'entreprises. Dans tous les cas (société mère/filiales, groupes, conglomerats, coalitions et holdings), les décisions les plus importantes sont centralisées. Ces sociétés peuvent élire domicile dans un ou plusieurs pays : dans celui du siège réel de l'entité mère, dans celui du siège des principales</p>

activités et/ou dans le pays où la société a été enregistrée.

Les sociétés transnationales sont actives dans la production, les services, les finances, les moyens de communication, la recherche fondamentale et appliquée, la culture, les loisirs, etc. Elles agissent dans ces domaines simultanément, successivement ou en alternance.

Elles peuvent segmenter leur activité entre divers territoires, avec filières de fait ou de droit et/ou avec des fournisseurs, des sous-traitants et des preneurs de licences. Dans ces cas, la société transnationale peut se réserver le « know how » et le « marketing ».

20. Le terme «entreprise» désigne toute entité industrielle ou commerciale, quelles que soient la nature, internationale ou nationale, de ses activités, la forme juridique \_ de société de capitaux, société de personnes ou autre \_ sous laquelle elle a été créée et la nature, privée ou publique, de la propriété de son capital. Ces normes sur les responsabilités sont présumées applicables en pratique si l'entreprise entretient des relations d'affaires avec une entreprise transnationale, que l'impact de ses activités n'est pas entièrement local ou que ses activités impliquent des violations du droit à la sécurité comme indiqué dans les paragraphes 3 et 4.

21. Le terme «autre entreprise commerciale » désigne toute entité industrielle ou commerciale, entreprise de service financier, quelle que soit la nature, internationale ou nationale, de ses activités, incluant une société transnationale ; la forme juridique - de société de capitaux, société de personnes ou autre - sous laquelle elle a été créée et la nature, privée ou publique, de la propriété de son capital. Ces Normes doivent être présumées appliquées comme pratique d'affaires, si l'entreprise commerciale n'a aucune relation avec une société transnationale, l'impact de ses activités n'est pas entièrement local, ou les activités impliquent les violations des droits pour la sécurité tel qu'indiqué aux paragraphes 3 et 4

[21] 2. le terme «autre entreprise [commerciale] » désigne toute entité industrielle ou commerciale, entreprise de service financier, quelle que soit la nature, internationale ou nationale, de ses activités, incluant une société transnationale ; la forme juridique - de société de capitaux, société de personnes ou autre - sous laquelle elle a été créée et la nature, privée ou publique, de la propriété de son capital [..], qui entretient des relations d'affaire en position de subordination ou de dépendance, de fait ou de droit, avec une société transnationale, même si elle a l'apparence d'une société nationale ou internationale autonome.

[Ces Normes doivent être présumées appliquées comme pratique d'affaires, si l'entreprise commerciale n'a aucune relation avec une société transnationale, l'impact de ses activités n'est pas entièrement local, ou les activités impliquent les violations des droits pour la sécurité tel qu'indiqué aux paragraphes 3 et 4.] La STN est solidairement responsable pour l'application des normes juridiques en vigueur et de ces Directives et Recommandations avec les « autres entreprises » définies ci-dessus.

#### **Commentaires :**

Le trait essentiel des « autres entreprises » comprises dans ces Directives et recommandations, qu'elles soient nationales ou internationales, c'est leur rapport de subordination avec une société transnationale.

22. Les termes «entrepreneur», «sous-traitant», «fournisseur» et «titulaire de licence» désignent toute personne physique ou morale qui passe un accord avec la société transnationale ou l'entreprise industrielle ou commerciale pour mener à bien une ou plusieurs de ses activités.

3. Les termes «sous-traitant» et « fournisseur » désignent les entreprises qui peuvent être dépendantes de fait d'une STN dans le sens qu'elles reçoivent la plupart ou toutes leurs commandes de cette dernière, soit d'un produit fini, d'une partie d'un produit, d'un service, etc., ou le rapport contractuel peut être occasionnel. Le terme « preneur de licences » désigne l'entreprise qui exploite un brevet, une marque ou une licence propriété d'une STN contre le paiement à cette dernière d'une redevance (royalty). La STN est solidairement responsable pour l'application des normes juridiques en vigueur et de ces Directives et Recommandations avec les « sous-traitants », « fournisseurs » et « preneurs de licences », tels qu'ils ont été définis ci-dessus, dans le cadre de leur lien contractuel.

#### Commentaires :

Dans l'avant dernière version du Groupe de Travail figurait l'article suivant : 22. Les termes «entrepreneur», «sous-traitant», «fournisseur» et «titulaire de licences» désignent toute personne physique ou morale qui passe un accord avec la société transnationale ou l'entreprise industrielle ou commerciale pour mener à bien une ou plusieurs de ses activités.

Il a été supprimé dans la dernière version, malgré l'importance fondamentale des rapports entre les STN et leurs fournisseurs, sous-traitants, et preneurs de licences dans un projet de cette nature. Et la nécessité d'établir la responsabilité solidaire des STN avec ceux-ci.

21. Le terme «partie intéressée» recouvre les actionnaires, les autres propriétaires, les travailleurs et leurs représentants, ainsi que tout autre individu ou groupe sur lequel les activités de la société ont une incidence. Le terme «partie intéressée» doit être interprété dans un sens fonctionnel à la lumière des objectifs des présentes responsabilités et il englobe les parties indirectement intéressées lorsqu'elles sont ou seront substantiellement lésées dans leurs intérêts par les activités de l'entreprise. Outre les parties direc-

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[22] 4. Le terme «partie intéressée » recouvre les actionnaires, les autres propriétaires, les travailleurs et leurs représentants, ainsi que tout autre individu ou groupe sur lequel les activités de la société ont une incidence. Le terme «partie intéressée » doit être interprété dans un sens fonctionnel à la lumière des objectifs [des présentes Normes] des présentes Directives et Recommandations et il englobe les parties indirectement intéressées lorsqu'elles sont ou seront substantiellement lésées dans leurs intérêts par les activités de l'entreprise. Outre les parties directement touchées par les activités des entreprises, le terme peut recouvrir des parties qui s'en trouvent indirectement touchées telles que

tement touchées par les activités des entreprises, le terme peut recouvrir des parties qui s'en trouvent indirectement touchées telles que les associations de consommateurs, la clientèle, les gouvernements, les communautés du voisinage, les communautés et peuples autochtones, les ONG, les établissements publics et privés de crédit, les fournisseurs, les organisations professionnelles et autres.

tement touchées par les activités des entreprises, le terme peut recouvrir des parties qui s'en trouvent indirectement touchées telles que les associations de consommateurs, la clientèle, les gouvernements, les communautés du voisinage, les ONG, les établissements publics et privés de crédit, les fournisseurs, les organisations professionnelles et autres.

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23. Les expressions «droits de l'homme internationalement reconnus» et «droits de l'homme internationaux» recouvrent les droits économiques, sociaux et culturels et les droits civils et politiques tels qu'énoncés par la Charte internationale des droits de l'homme et les autres traités relatifs aux droits de l'homme, ainsi que le droit au développement et les droits reconnus par le droit international humanitaire, le droit international des réfugiés, le droit international du travail et les autres instruments pertinents adoptés au sein du système des Nations Unies.

23. Les expressions «droit international des droits de l'homme» et «droits de l'homme reconnus» recouvrent les droits civils, culturels, économiques, politiques et sociaux tels qu'énoncés par la Charte internationale des droits de l'homme et les autres traités relatifs aux droits de l'homme, ainsi que le droit au développement et les droits reconnus par le droit international humanitaire, le droit international des réfugiés, le droit international du travail et les autres instruments pertinents adoptés au sein du système des Nations Unies.

[23] 5. Les expressions «droits de l'homme» et «droits international en matière de droits de l'homme» recouvrent les droits civils, culturels, économiques, politiques et sociaux tels qu'énoncés par la Charte internationale des droits de l'homme et les autres traités relatifs aux droits de l'homme, ainsi que le droit au développement et les droits reconnus par le droit international humanitaire, le droit international des réfugiés, le droit international du travail, les droits des migrants, les droits des peuples indigènes, les normes (déclarations, traités, etc.) destinées à la protection et préservation de l'environnement et les autres instruments pertinents adoptés au sein du système des Nations Unies.

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## 2) Amendements concernant le texte (Titre)

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La responsabilité en matière de droits de l'homme des sociétés transnationales et autres entreprises

Normes sur les responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme

[Normes sur les responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme] directives et recommandations pour l'application aux sociétés transnationales, «autres entreprises» et leurs fournisseurs, sous-traitants et preneurs de licences, des normes en vigueur concernant les droits de l'homme

### Commentaires :

Nous avons changé le titre du projet, car nous considérons que le terme «projet des normes...» est inadéquat. Il ne s'agit pas de proposer des normes, étant donné qu'elles existent déjà, mais

plutôt de proposer des formes d'application des normes existantes. Nous préférons « Directives... » et ajoutons « Recommandations... » parce que nous proposons, hormis les amendements, la création d'autres normes spécifiques, ainsi que des mécanismes de suivi et de contrôle. Nous avons ajouté dans le titre « et leurs fournisseurs, sous-traitants et preneurs de licences des normes en vigueur concernant les droits de l'homme », parce que ces types d'entreprises ont un rapport particulier avec les sociétés transnationales (STN) et nous avons renforcé l'idée qu'il s'agit, pour l'essentiel, d'appliquer les normes en vigueur.

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**Préambule**

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Gardant à l'esprit les principes et obligations de la Charte des Nations Unies, en particulier le Préambule et les articles 1er, 2 et 55, notamment de promouvoir le respect universel et l'observation des droits de l'homme et des libertés fondamentales,

Gardant à l'esprit les principes et obligations de la Charte des Nations Unies, en particulier le Préambule et les articles 1, 2, 55 et 56, inter alia, de promouvoir le respect universel et l'observation des droits de l'homme et des libertés fondamentales,

[Gardant à l'esprit] Se fondant sur les principes et obligations de la Charte des Nations Unies, en particulier le Préambule et les articles 1, 2, 55 et 56, inter alia, de promouvoir le respect universel et l'observation des droits de l'homme et des libertés fondamentales,

Rappelant que la Déclaration universelle des droits de l'homme proclame un idéal commun à atteindre par tous les peuples et toutes les nations afin que les gouvernements, les autres organes de la société et les individus s'efforcent, par l'enseignement et l'éducation, de développer le respect de ces droits et libertés et d'en assurer, par des mesures progressives, la reconnaissance et l'application universelle et effective,

Rappelant que la Déclaration universelle des droits de l'homme proclame un idéal commun à atteindre par tous les peuples et toutes les nations afin que les gouvernements, les autres organes de la société et les individus s'efforcent, par l'enseignement et l'éducation, de développer le respect de ces droits et libertés et d'en assurer, par des mesures progressives, la reconnaissance et l'application universelle et effective, incluant l'égalité des droits des femmes et des hommes et la promotion du progrès social et à instaurer de meilleures conditions de vie dans une liberté plus grande,

Rappelant que la Déclaration universelle des droits de l'homme proclame un idéal commun à atteindre par tous les peuples et toutes les nations afin que les gouvernements, les autres organes de la société et les individus protègent et respectent les droits de l'homme dans le cadre d'un régime de droit et s'efforcent, par l'enseignement et l'éducation, de développer le respect de ces droits et libertés et d'en assurer, par des mesures progressives, la reconnaissance et l'application universelle et effective, incluant l'égalité des droits des femmes et des hommes et la promotion du progrès social et à instaurer de meilleures conditions de vie dans une liberté plus grande,

Reconnaissant que même si les gouvernements ont la responsabilité première de promouvoir et protéger les droits de l'homme, les sociétés

Reconnaissant que même si les Etats ont la responsabilité première de promouvoir, d'assurer la réalisation, de respecter, de faire respecter

Reconnaissant que même si les Etats et les gouvernements ont la responsabilité première de promouvoir, d'assurer la réalisation, de respecter, de faire respecter et de protéger les droits de l'hom-

transnationales et autres entreprises, en tant qu'organes de la société, sont, elles aussi, responsables pour promouvoir et assurer les droits de l'homme énoncés dans la Déclaration universelle des droits de l'homme,

et protéger les droits de l'homme, les sociétés transnationales et autres entreprises commerciales, en tant qu'organes de la société, sont, elles aussi, responsables pour promouvoir et assurer les droits de l'homme énoncés dans la Déclaration universelle des droits de l'homme,

me, les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences, ainsi que leurs dirigeants responsables, [en tant qu'organes de la société], doivent [sont, elles aussi, responsables pour promouvoir et assurer] respecter et contribuer à faire respecter, protéger et promouvoir les droits de l'homme énoncés dans la Déclaration universelle des droits de l'homme[,] et dans d'autres instruments internationaux,

Réalisant que les sociétés transnationales et autres entreprises, leurs cadres et les travailleurs qu'elles emploient sont en outre tenus de respecter les principes et normes généralement reconnus dans de nombreuses conventions des Nations Unies et autres instruments internationaux tels que la Convention pour la prévention et la répression du crime de génocide, la Convention internationale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Convention contre l'esclavage et la Convention additionnelle sur l'abolition de l'esclavage, la traite des esclaves, et les institutions et pratiques équivalant à l'esclavage, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, le Pacte international relatif aux droits économiques, sociaux et culturels, le Pacte international relatif aux droits civils et politiques, la Convention relative aux droits de l'enfant, les quatre Conventions de Genève et leurs deux Protocoles additionnels relatifs à la protection des victimes des conflits armés, la Déclaration sur le droit et la responsabilité des individus, des groupes et des organes de la société de promouvoir et de protéger les droits de l'homme

Réalisant que les sociétés transnationales et autres entreprises commerciales, leurs cadres et les travailleurs qu'elles emploient sont en outre tenus de respecter les responsabilités et les normes généralement reconnues dans les conventions des Nations Unies et autres instruments internationaux tels que la Convention pour la prévention et la répression du crime de génocide, la Convention internationale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Convention contre l'esclavage et la Convention additionnelle sur l'abolition de l'esclavage, la traite des esclaves, et les institutions et pratiques équivalant à l'esclavage, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, le Pacte international relatif aux droits économiques, sociaux et culturels, le Pacte international relatif aux droits civils et politiques, la Convention relative aux droits de l'enfant, les quatre Conventions de Genève et leurs deux Protocoles additionnels relatifs à la protection des victimes des conflits armés, la Déclaration sur le droit et la responsabilité des individus, des groupes et des organes de la société de promouvoir et de protéger les droits de l'homme

[Réalisant] Considérant que les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences, ainsi que leurs dirigeants responsables [leurs cadres et les travailleurs qu'elles emploient] sont en outre tenus de respecter les responsabilités et les normes généralement reconnues dans les pactes et les conventions des Nations Unies et autres instruments internationaux relatifs aux droits de l'homme, notamment les droits économiques, sociaux et culturels, les droits civils et politiques, le droit au développement, les droits de la femme, les droits de l'enfant, les droits des peuples indigènes, le droit du travail, le droit humanitaire, le droit à un environnement sain, etc.

#### **Commentaires :**

Nous avons supprimé la responsabilité des cadres et des travailleurs, parce qu'ils ne prennent pas les décisions mais les subissent plutôt.

Nous avons ajouté la responsabilité des dirigeants responsables. Nous appelons dirigeants responsables ceux à qui les statuts de la société octroient le pouvoir de prendre les décisions (Gérants, membres du Conseil d'administration ou du Directoire) . Ils représentent la volonté sociétariaire. Evidemment les cadres et travailleurs sont personnellement responsables de leurs propres actes, mais ils ne sont pas responsables de la politique de l'entreprise. Et dans ce projet il s'agit de la responsabilité de l'entreprise et non de celle des personnes particulières, sauf de ceux qui expriment la volonté sociétariaire (double imputation).

Nous avons supprimé l'énumération des instruments internationaux en vigueur pour éviter les risques d'omission.



et les libertés fondamentales universellement reconnus, le Statut de Rome de la Cour pénale internationale, la Convention contre la criminalité

transnationale organisée, la Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, la Convention sur la responsabilité civile des dommages résultant d'activités dangereuses pour l'environnement, la Déclaration de Rio sur l'environnement et le développement, Code international de commercialisation des substituts du lait maternel et Critères éthiques applicables à la promotion des médicaments de l'OMS, la Convention de l'UNESCO concernant la lutte contre la discrimination dans le domaine de l'enseignement, les conventions et recommandations de l'OIT, la Convention et le Protocole relatifs au statut des réfugiés, la Charte africaine des droits de l'homme et des peuples, la Convention interaméricaine des droits de l'homme, la Convention européenne des droits de l'homme, la Charte des droits fondamentaux de l'Union européenne, la Convention de l'OCDE sur la lutte contre la corruption d'agents publics étrangers dans le cadre de transactions commerciales internationales,

et les libertés fondamentales universellement reconnus, le Statut de Rome de la Cour pénale internationale, la Convention

contre la criminalité transnationale organisée, la Convention sur la Diversité Biologique, la Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, la Convention sur la responsabilité civile des dommages résultant d'activités dangereuses pour l'environnement, la Déclaration de Rio sur l'environnement et le développement, le Sommet mondial pour le développement durable plan de mise en oeuvre, le Code international de commercialisation des substituts du lait maternel de l'Assemblée Mondiale de la Santé (AMS) ; les Critères éthiques applicables à la promotion des médicaments de l'OMS, la convention de l'UNESCO concernant la lutte contre la discrimination dans le domaine de l'enseignement, les Conventions et recommandations de l'Organisation Internationale du Travail, la Convention et Protocole relatif au statut des réfugiés, la Charte africaine des droits de l'homme et des peuples, la Convention interaméricaine des droits de l'homme, la Convention européenne des droits de l'homme, la Charte des droits fondamentaux de l'Union européenne, la Convention de l'OCDE sur la lutte contre la corruption d'agents publics étrangers dans le cadre de transactions commerciales internationales, et autres instruments,

Mais si l'on garde cette énumération, il faudrait ajouter les instruments suivants, pour leur importance en rapport avec l'objet du projet :

Les Conventions, Recommandations et Déclarations de l'Organisation Internationale du Travail, la Résolution 1803 du 14/2/62 de l'Assemblée générale à propos de la Souveraineté permanente sur les ressources naturelles, la proclamation de Téhéran de 1968, la Déclaration concernant l'instauration d'un nouvel ordre économique international (AG 3201-S-VI), le programme d'action pour l'instauration d'un nouvel ordre économique international (AG 3202 S-VI) ; la Déclaration sur le progrès et le développement dans le domaine social (AG 2542-XXIV) ; la Déclaration des principes de la coopération culturelle internationale ; la Charte des droits et des devoirs économiques des États (AG 3281-XXIX) ; la déclaration sur le développement et la coopération économique internationale (AG 3362-S-VII) ; la Déclaration de principes tripartite sur les entreprises multinationales et la politique sociale, approuvée par le Conseil d'administration du Bureau international du Travail en 1977 ; la Déclaration sur le droit au développement (AG 41/128) ; le Protocole additionnel à la Convention américaine relative aux droits de l'homme traitant des droits économiques, sociaux et culturels (Protocole de San Salvador) ; la Charte sociale européenne ; la Déclaration et le programme d'action de Vienne ; la Déclaration de Rio sur l'environnement et le développement, 1992 ; la Déclaration de la Conférence Internationale sur les population et le développement, le Caire ; la Déclaration de Copenhague sur le développement social ; le Principe 21 de la Déclaration de Stockholm sur l'environnement humain de 1972, réaffirmé par les résolutions de l'Assemblée générale 2995 (XXVII), 3129 (XXVIII), 3281 (XXIX) (Charte des droits et devoirs économiques des États) ; la Convention des Nations Unies sur le droit de la mer (Montego Bay, 1982) ; la Convention de Helsinki sur la protection et l'utilisation des cours d'eau transfrontières et des lacs internationaux (mars 1992) ; les Conventions de Bâle de 1989 et de Bamako de 1991 sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination ; la Convention sur les effets transfrontières des accidents industriels ; la

Convention de Lugano sur la responsabilité civile des dommages résultant d'activités dangereuses pour l'environnement (1993) ; la Convention de Rotterdam sur les pesticides et autres produits chimiques dangereux (1998) ; le Protocole de décembre 1999 de la Convention de Bâle de 1989 sur la responsabilité et l'indemnisation des dommages résultants des mouvements transfrontières de déchets dangereux et de leur élimination ; la Convention de Stockholm sur les polluants organiques persistants (mai 2001) ; la Convention pénale européenne sur la corruption (1999) ; la Convention pour la protection des droits de l'homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine ; la Convention sur les droits de l'homme et la bio médecine (1997) et le protocole additionnel de 1998.

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Tenant compte des normes du travail énoncées dans la Déclaration de principes tripartite de l'Organisation internationale du Travail sur les entreprises multinationales et la politique sociale,

Tenant compte des standards du travail énoncés dans la Déclaration de principes tripartite de l'Organisation internationale du Travail sur les entreprises multinationales et la politique sociale, et la Déclaration sur les Principes et Droits Fondamentaux au Travail de l'OIT

Tenant compte des standards du travail énoncés dans la Déclaration de principes tripartite de l'Organisation internationale du Travail sur les entreprises multinationales et la politique sociale, et la Déclaration sur les Principes et Droits Fondamentaux au Travail de l'OIT,

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Ayant à l'esprit également les Principes directeurs des entreprises multinationales de l'Organisation de coopération et de développement économiques (OCDE) et de son Comité de l'investissement international et des entreprises multinationales ; du Pacte mondial proposé par l'ONU, qui appelle les dirigeants du monde des affaires à «adopter et appliquer» neuf principes de base concernant les droits de l'homme, y compris les droits des travailleurs et l'environnement ; et de la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail,

Ayant à l'esprit également les Principes directeurs à l'intention des entreprises multinationales de l'Organisation de coopération et de développement économique (OCDE) et de son comité de l'investissement international et des entreprises multinationales,

Ayant par ailleurs à l'esprit l'initiative de Compact Global des Nations Unies qui défie les leaders d'affaires à « accepter et appliquer » les neuf principes de base avec respect des droits de l'homme, des droits des travailleurs et de l'environnement,

Ayant à l'esprit également les Principes directeurs à l'intention des entreprises multinationales de l'Organisation de coopération et de développement économique (OCDE) et de son comité de l'investissement international et des entreprises multinationales[.].

[Ayant par ailleurs à l'esprit l'initiative de Compact Global des Nations Unies qui défie les leaders d'affaires à « accepter et appliquer » les neuf principes de base avec respect des droits de l'homme, des droits des travailleurs et de l'environnement,]

**Commentaires :**

Nous avons supprimé la mention du « Global Compact » parce que c'est une mauvaise initiative politique du Secrétaire général, sans valeur juridique, pour ouvrir grandes les portes de l'ONU aux sociétés transnationales les plus puissantes.

Consciente des efforts faits par la Sous-Commission de l'OIT sur les entreprises multinationales ; de l'interprétation des normes dans le cadre de la Sous-Commission du Conseil d'Administration de l'OIT sur les entreprises multinationales, de la Commission d'experts, de la Commission de l'application des normes et de la Déclaration des experts-conseillers de l'OIT ; et du fait que le Comité de la liberté syndicale de l'OIT a nommé les entreprises impliquées dans le non-respect de la part de gouvernements des Conventions nos 87 et 98 de l'OIT, et désireuse de compléter et soutenir leurs efforts pour encourager les sociétés transnationales et autres entreprises à protéger les droits de l'homme,

Consciente des efforts faits par le Comité sur l'investissement international et les entreprises multinationales de l'O.I.T ; de l'interprétation des normes dans le cadre de la Sous-commission sur les entreprises multinationales de la Commission des questions juridiques et des normes internationales du travail du Conseil de l'O.I.T ainsi que du Comité d'experts, de la Commission de l'application des normes et de la Déclaration des experts-conseillers de l'O.I.T. ; et du fait que le Comité de la liberté syndicale de l'O.I.T. a nommé les entreprises commerciales impliquées dans le non-respect de la part des Etats des Conventions nos 87 (sur la liberté syndicale et la protection du droit syndical) et 98 (sur le droit d'organisation et de négociation collective) de l'O.I.T., et désireuse de compléter et soutenir leurs efforts pour encourager les sociétés transnationales et autres entreprises commerciales à protéger les droits de l'homme,

Consciente des efforts faits par le Comité sur l'investissement international et les entreprises multinationales de l'O.I.T ; de l'interprétation des normes dans le cadre de la Sous-commission sur les entreprises multinationales de la Commission des questions juridiques et des normes internationales du travail du Conseil de l'O.I.T ainsi que du Comité d'experts, de la Commission de l'application des normes et de la Déclaration des experts-conseillers de l'O.I.T. ; et du fait que le Comité de la liberté syndicale de l'O.I.T. a nommé les entreprises commerciales impliquées dans le non-respect de la part des Etats des Conventions nos 87 (sur la liberté syndicale et la protection du droit syndical) et 98 (sur le droit d'organisation et de négociation collective) de l'O.I.T., et désireuse de compléter et soutenir leurs efforts pour encourager les sociétés transnationales [et], les « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences à respecter et à protéger les droits de l'homme,

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[Consciente aussi du Commentaire sur les Normes sur les Responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme et le considérant d'utiles interprétation et élaboration des portées des les Normes,]

[Consciente aussi du Commentaire sur les Normes sur les Responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme et le considérant d'utiles interprétation et élaboration des portées des les Normes,]

**Commentaires :**

Nous proposons d'éliminer ce paragraphe parce que le Projet est un Projet de directives et non pas un Projet de normes.

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Prenant note des tendances d'évolution mondiales qui ont accru l'influence des sociétés transnationales et autres entreprises \_ en particulier les sociétés transnationales \_ sur l'économie de la plupart des pays comme dans les relations économiques internationales, ainsi que

Prenant note des tendances d'évolution mondiales qui ont accru l'influence des sociétés transnationales et autres entreprises commerciales - en particulier les sociétés transnationales - sur l'économie de la plupart des pays comme dans les relations économiques internationales,

Prenant note des tendances d'évolution mondiales qui ont accru l'influence des sociétés transnationales [et autres entreprises commerciales - en particulier les sociétés transnationales -] sur l'économie, les services, les finances, les moyens de communication, la recherche fondamentale et appliquée, la culture, les loisirs, etc., de [la plupart des] tous les pays comme [dans les

du nombre croissant d'autres entreprises qui opèrent à travers les frontières nationales suivant diverses modalités débouchant sur des activités économiques, qui échappent aux compétences effectives de tout système national,

ainsi que du nombre croissant d'autres entreprises commerciales qui opèrent à travers les frontières nationales suivant divers modalités débouchant sur des activités économiques, qui échappent aux capacités réelles de tout système national,

relations économiques internationales] à l'échelle internationale, [ainsi que du nombre croissant d'autres entreprises commerciales qui opèrent] celles-ci opérant à travers les frontières nationales suivant diverses modalités [débouchant sur des activités économiques], qui échappent aux compétences effectives et aux capacités réelles de contrôle de tout système national, ainsi que du nombre croissant d'« autres entreprises » qui entretiennent des relations d'affaire en position de subordination ou de dépendance, de fait ou de droit, avec une STN, même si elles ont l'apparence d'entreprises autonomes.

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Notant que les sociétés transnationales et autres entreprises ont la capacité d'accroître le bien-être économique, le développement, le progrès technologique et la richesse, en même temps qu'elles ont la capacité d'avoir des effets nuisibles en matière de droits de l'homme sur la vie de diverses personnes par leurs pratiques en matière d'emploi, leurs politiques environnementales, leurs relations avec leurs fournisseurs et avec les consommateurs, leurs interactions avec les gouvernements et d'autres activités,

Notant que les sociétés transnationales et autres entreprises commerciales ont la capacité d'accroître le bien-être économique, le développement, le progrès technologique et la richesse, en même temps elles ont la capacité d'avoir des effets nuisibles en matière de droits de l'homme sur les vies des individus jusque dans les pratiques au centre de leurs affaires, incluant les pratiques en matière d'emploi, leurs politiques environnementales, leurs relations avec leurs fournisseurs et avec les consommateurs, leurs interactions avec les gouvernements et d'autres activités,

Notant que les sociétés transnationales et « autres entreprises » [commerciales] ont la capacité d'accroître le bien-être économique, le développement, le progrès technologique et la richesse, en même temps elles ont la capacité d'avoir des effets nuisibles en matière de droits de l'homme sur les vies des individus jusque dans les pratiques au centre de leurs affaires, incluant les pratiques en matière d'emploi, leurs politiques environnementales, leurs relations avec leurs fournisseurs, sous-traitants et preneurs de licences ainsi qu' [et] avec les consommateurs, leurs interactions avec les gouvernements et d'autres activités,

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Notant aussi que les nouveaux intérêts et questions relatives aux droits de l'homme surgissent sans cesse et auxquels les sociétés transnationales et autres entreprises sont souvent liées, à tel point qu'une mise en place de normes et une mise en œuvre plus poussées sont nécessaires maintenant et dans l'avenir,

Notant aussi que les nouveaux problèmes et préoccupations relatives aux droits de l'homme surgissent sans cesse et auxquels les sociétés transnationales et autres entreprises commerciales sont souvent liées, à tel point qu'une mise en place de normes et une mise en œuvre plus poussée sont nécessaires maintenant et dans l'avenir,

Notant aussi que les nouveaux problèmes et préoccupations relatives aux droits de l'homme surgissent sans cesse et auxquels les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences sont souvent lié[e]s, à tel point qu'il s'avère nécessaire et urgent d'appliquer sans exception à ces entreprises les normes citées ci-dessus et d'autres normes afférentes, et qu'une mise en place de nouvelles normes spécifiques et la [une] mise en œuvre plus poussée de mécanismes de contrôle, d'application et de suivi sont nécessaires maintenant et dans l'avenir,

Reconnaissant l'universalité, l'indivisibilité, l'interdépendance et les liens réciproques qui caractérisent les droits de l'homme, y compris le droit au développement, en vertu duquel chaque personne et tous les peuples ont le droit de prendre part et de contribuer à un développement économique, social, culturel et politique permettant le plein exercice de tous les droits de l'homme et libertés fondamentales, ainsi que d'en bénéficier,

Reconnaissant l'universalité, l'indivisibilité, l'interdépendance et les liens réciproques qui caractérisent les droits de l'homme, et notamment le droit au développement, en vertu duquel chaque personne et tous les peuples ont le droit de prendre part et de contribuer à un développement économique, social, culturel et politique permettant le plein exercice de tous les droits de l'homme et libertés fondamentales, ainsi que d'en bénéficier,

Reconnaissant l'universalité, l'indivisibilité, l'interdépendance et les liens réciproques qui caractérisent les droits de l'homme, et notamment le droit au développement, en vertu duquel chaque personne et tous les peuples ont le droit de prendre part et de contribuer à un développement économique, social, culturel et politique permettant le plein exercice de tous les droits de l'homme et libertés fondamentales, ainsi que d'en bénéficier,

Réaffirmant que les sociétés transnationales et autres entreprises, leurs cadres et les personnes qu'elles emploient ont des obligations et des responsabilités dans le domaine des droits de l'homme et que ces principes en matière de droits de l'homme contribueront à la création et au développement du droit international comme ceux de leurs responsabilités et obligations,

Réaffirmant que les sociétés transnationales et autres entreprises commerciales, leurs cadres et les personnes qu'elles emploient ont, inter alia, des obligations et des responsabilités dans le domaine des droits de l'homme et que ces normes en matière de droits de l'homme contribueront au développement du droit international comme ceux de leurs responsabilités et obligations,

Réaffirmant que les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences, ainsi que leurs [cadres et les personnes qu'elles emploient] dirigeants responsables ont, inter alia, des obligations et des responsabilités dans le domaine des droits de l'homme [et que ces normes en matière de droits de l'homme contribueront au développement du droit international comme ceux de leurs responsabilités et obligations],

Proclame solennellement ces normes en matière de responsabilité en matière de droits de l'homme des sociétés transnationales et autres entreprises, en demandant instamment qu'aucun effort ne soit ménagé pour les faire généralement connaître et respecter.

Proclame solennellement les présentes Normes sur les Responsabilités des sociétés transnationales et autres entreprises commerciales en matière de droits de l'homme, en demandant instamment qu'aucun effort ne soit ménagé pour les faire généralement connaître et respecter:

[Proclame solennellement] Adopte [les présentes Normes sur les Responsabilités] ces Directives et Recommandations applicables [des] aux sociétés transnationales [et], autres entreprises commerciales et leurs fournisseurs, sous-traitants et preneurs de licences [en matière de droits de l'homme,] en demandant instamment qu'aucun effort ne soit ménagé pour les faire généralement connaître, appliquer et respecter :

#### A. Obligations générales

#### A. Obligations générales

#### A. Obligations générales

1. Les États ont la responsabilité première de respecter, faire respecter et promouvoir les droits de l'homme reconnus tant en droit international qu'en droit interne, et donc de garantir que les sociétés transnationales et autres entreprises respectent ces droits. Dans leurs

1. Les Etats ont la responsabilité première de promouvoir, d'assurer la réalisation, de respecter, de faire respecter et protéger les droits de l'homme reconnus tant en droit international qu'en droit interne, et de prévenir les atteintes à ces droits, en assurant aussi que les sociétés

1. Les Etats ont la responsabilité première de promouvoir, d'assurer la réalisation, de respecter, de faire respecter [et protéger] par les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences les droits de l'homme reconnus tant en droit international qu'en droit interne, de les protéger et de prévenir les atteintes à ces droits

domaines d'activité et leurs sphères d'influence propres, les sociétés transnationales et autres entreprises sont cependant elles aussi tenues de respecter, faire respecter et promouvoir les droits de l'homme reconnus tant en droit international qu'en droit interne, et de prévenir les atteintes à ces droits.

transnationales et autres entreprises commerciales respectent ces droits. Dans leurs domaines d'activité et leurs sphères d'influence respectives, les sociétés transnationales et autres entreprises commerciales ont cependant elles aussi l'obligation de promouvoir, d'assurer la réalisation, de respecter, de faire respecter et protéger les droits de l'homme reconnus tant en droit international qu'en droit interne.

en assurant aussi que les sociétés transnationales et autres entreprises commerciales respectent ces droits. Dans leurs domaines d'activité et leurs sphères d'influence respectives, les sociétés transnationales [et], autres entreprises commerciales et leurs fournisseurs, sous-traitants et preneurs de licences ont cependant [elles] eux aussi l'obligation de promouvoir, d'assurer la réalisation, de respecter, de faire respecter et de protéger les droits de l'homme reconnus tant en droit international qu'en droit interne et de prévenir l'atteinte à ces droits.

Les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences doivent reconnaître le principe de la primauté des droits de l'homme et de l'intérêt public sur l'intérêt économique particulier.

Les sociétés transnationales devront s'abstenir de tout acte de collaboration [économique, financière ou de services] avec d'autres entités, institutions ou personnes qui persistent dans la violation des droits de l'homme.

#### **Commentaires :**

Le dernier paragraphe figurait dans la version précédente du projet. Nous avons supprimé « économique, financière ou de services », parce qu'il ne doit y avoir aucune sorte de collaboration.

La primauté des droits de l'homme et de l'intérêt public est en rapport avec le principe de la fonction sociale de la propriété, largement reconnu dans les législations et la jurisprudence nationales et dans les normes internationales. Voir aussi le commentaire à l'article 19.

Dans sa Résolution 2000/7 du 17/08/2000, la Sous-Commission des droits de l'homme, entre autres :

« 1. Affirme que le droit à la protection des intérêts moraux et matériels résultant de toute production scientifique, littéraire ou artistique dont une personne est l'auteur est, conformément au paragraphe 2 de l'article 27 de la Déclaration universelle des droits de l'homme et à l'alinéa c) du paragraphe 1 de l'article 15 du Pacte international relatif aux droits économiques, sociaux et culturels, un droit de l'homme, dans les limites dictées par l'intérêt général ;

2. Déclare, toutefois, qu'étant donné que l'application de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au com-

merce (ADPIC) ne rend pas compte comme il convient de la nature fondamentale et de l'indivisibilité de tous les droits de l'homme, notamment le droit de chacun de jouir des bienfaits des progrès scientifiques et de leurs applications, le droit à la santé, le droit à la nourriture et le droit à l'autodétermination, il y a des conflits apparents entre le régime relatif aux droits de propriété intellectuelle contenu dans l'Accord, d'une part, et le droit international relatif aux droits de l'homme, de l'autre

3. Rappelle à tous les gouvernements la primauté des obligations relatives aux droits de l'homme sur les politiques et les accords économiques ; »...

Voir le commentaire à l'article 10.

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## B. Droit à l'égalité des chances et au traitement non discriminatoire

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2. Les sociétés transnationales et autres entreprises doivent assurer l'égalité des chances et de traitement dans le but d'éliminer toute discrimination fondée sur la race, la couleur, le sexe, la religion, les opinions politiques, la nationalité, l'origine sociale, la condition sociale, la qualité d'autochtone, le handicap, l'âge (excepté pour les enfants qui peuvent bénéficier d'une protection plus grande) ou autre qualité de la personne n'ayant aucun rapport avec son aptitude à exercer son emploi.

2. Les sociétés transnationales et autres entreprises commerciales ont l'obligation d'assurer l'égalité des chances et de traitement telle que garantie par les instruments internationaux, la législation nationale que par le droit international des droits de l'homme pertinents, dans le but d'éliminer toute discrimination fondée sur la race, la couleur, le sexe, la langue, la religion, les opinions politiques, la nationalité, l'origine nationale ou sociale, la condition sociale, la qualité d'autochtone, le handicap, l'âge (excepté pour les enfants qui peuvent bénéficier d'une protection plus grande) ou autre qualité de la personne n'ayant aucun rapport avec les qualifications exigées pour un emploi et de se conformer aux mesures spéciales adoptées afin de supprimer les discriminations passées contre certains groupes.

2. Les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences ont l'obligation d'assurer l'égalité des chances et de traitement telle que garantie par les instruments internationaux, la législation nationale [que] et par le droit international des droits de l'homme pertinents, dans le but d'éliminer toute discrimination fondée sur la race, la couleur, le sexe, la langue, la religion, les opinions politiques, la nationalité, l'origine nationale ou sociale, la condition sociale, la qualité d'autochtone, le handicap, l'âge [(excepté pour les enfants qui peuvent bénéficier d'une protection plus grande) ou autre qualité de la personne n'ayant aucun rapport avec les qualifications exigées pour un emploi] ou toute autre distinction, exclusion ou préférence ayant pour effet de détruire ou d'altérer l'égalité des chances ou de traitement en matière d'emploi ou de profession. Elles doivent en outre [et de] se conformer aux mesures spéciales adoptées afin de supprimer les discriminations passées contre certains groupes et appliquer la discrimination positive, quand elle est prévue dans les normes et/ou réglementations.

### Commentaires :

On a ajouté la discrimination positive et on a supprimé la phrase sur les enfants.

En ce qui concerne la phrase « n'ayant aucun rapport » on l'a supprimée parce qu' elle permettrait une interprétation utilitariste des droits économiques et sociaux pour justifier les différences entre travailleurs sur la seule base de leur productivité.

On a ajouté l'avant dernière phrase, prise de l'article 1.1 de la Convention N° 111 de l'OIT concernant la discrimination.

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**C. Droit à la sécurité de la personne**

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**C. Droit à la sécurité de la personne**

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**C. Droits [à la sécurité de la personne] de l'homme et droit humanitaire**

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Les sociétés transnationales doivent respecter les normes internationales et nationales en matière de droits de l'homme et de droit humanitaire.

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3. Les sociétés transnationales et autres entreprises ne doivent pas participer à ou ne doivent pas tirer profit des crimes de guerre, des crimes contre l'humanité, du génocide, de la torture, des disparitions forcées, du travail forcé ou obligatoire, des prises d'otages, des autres violations du droit international humanitaire et des autres crimes internationaux contre la personne tels que définis par le droit international.

3. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de ne pas participer à ou de ne pas tirer profit des crimes de guerre, des crimes contre l'humanité, du génocide, de la torture, des disparitions forcées, du travail forcé ou obligatoire, des prises d'otages, des exécutions extrajudiciaires, sommaires ou arbitraires des autres violations du droit international humanitaire et des autres crimes internationaux contre les personnes tels que définis par le droit international, en particulier par le droit international des droits de l'homme et le droit international humanitaire.

3. [Les sociétés transnationales et autres entreprises commerciales ont l'obligation de ne pas participer à ou de ne pas tirer profit] Il est strictement interdit aux sociétés transnationales, « autres entreprises » et à leurs fournisseurs, sous-traitants et preneurs de licences de participer et/ou tirer profit des crimes de guerre, des crimes contre l'humanité, [du] de génocide, de la torture, des disparitions forcées, du travail forcé ou obligatoire, des prises d'otages, des exécutions extrajudiciaires, sommaires ou arbitraires des autres violations du droit international humanitaire et des autres crimes internationaux [contre les personnes tels que définis par le droit international, en particulier par le droit international des droits de l'homme et le droit international humanitaire]. La violation de cette interdiction entraînera des sanctions, contre les entreprises et leurs dirigeants responsables, proportionnées à la gravité des crimes concernés.

4. Les dispositifs prévus pour assurer la sécurité des sociétés transnationales et autres entreprises doivent être conformes tant aux normes internationales relatives aux droits de l'homme qu'aux lois et normes professionnelles du pays ou des pays où elles exercent leurs activités.

4. Les dispositifs prévus pour assurer la sécurité des sociétés transnationales et autres entreprises commerciales ont l'obligation d'être conformes tant aux normes internationales relatives aux droits de l'homme qu'aux normes professionnelles du pays ou des pays où elles exercent leurs activités.

4. Les dispositifs prévus pour assurer la sécurité des sociétés transnationales, « autres entreprises » [commerciales] et de leurs fournisseurs, sous-traitants et preneurs de licences ont l'obligation d'être conformes tant aux normes internationales relatives aux droits de l'homme qu'aux normes [professionnelles] du pays ou des pays où elles exercent leurs activités. Le personnel de sécurité des STN, [et] « autres entreprises



» et leurs fournisseurs, sous-traitants et preneurs de licences ne peut pas agir hors de l'enceinte de l'entreprise pour laquelle il travaille.

**Commentaires :**

Nous avons supprimé « à la sécurité de la personne » du titre parce que les articles 3 et 4 ne parlent pas de la sécurité de la personne, mais du droit international humanitaire et de la sécurité des entreprises. D'ailleurs, la notion de sécurité en matière des droits de l'homme est plus large et comprend par exemple la sécurité alimentaire. Le paragraphe final ajouté vise à empêcher que le personnel de sécurité agisse hors du domaine privé et devienne de fait une milice privée agissant dans le domaine public.

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**D. Droits des travailleurs**

**D. Droits des travailleurs**

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Les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences doivent respecter et appliquer les conventions, recommandations et déclarations de l'OIT en vigueur.

Les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences :

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5. Les sociétés transnationales et autres entreprises ne doivent pas avoir recours au travail forcé ou obligatoire tel qu'il est interdit par les instruments internationaux et la législation nationale pertinents ainsi que par les normes internationales relatives aux droits de l'homme.

5. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de ne pas recourir au travail forcé ou obligatoire tel qu'il est interdit aussi bien par les instruments internationaux, par la législation nationale pertinente que par le droit international des droits de l'homme et par le droit international humanitaire.

5. [Les sociétés transnationales et autres entreprises commerciales ont l'obligation de ne pas] ne doivent pas recourir au travail forcé ou obligatoire et/ou à quelque forme d'esclavagisme ou pratique analogue tel qu'il est interdit aussi bien par les instruments internationaux, par la législation nationale pertinente que par le droit international des droits de l'homme et par le droit international humanitaire.

**Commentaires :**

... « Quelconque forme d'esclavagisme ou pratique analogue »... Par exemple le travail dans les prisons et d'autres formes de travail forcé ou équivalent qui ne sont pas expressément prévus dans les normes en vigueur.

6. Les sociétés transnationales et autres entreprises doivent respecter les droits qui protègent les enfants de l'exploitation économique telle qu'interdite par les instruments internationaux et la législation nationale pertinents ainsi que par les normes internationales relatives aux droits de l'homme.

6. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de respecter les droits qui protègent les enfants de l'exploitation économique telle qu'interdite par les instruments internationaux, par la législation nationale pertinente ainsi que par le droit international des droits de l'homme et par le droit international humanitaire.

6. [Les sociétés transnationales et autres entreprises commerciales ont l'obligation de] doivent respecter les droits qui protègent les enfants de l'exploitation économique telle qu'interdite par les instruments internationaux, par la législation nationale pertinente ainsi que par le droit international des droits de l'homme et par le droit international humanitaire.

7. Les sociétés transnationales et autres entreprises doivent assurer à leur personnel un cadre de travail sûr et sain tel que garanti par les instruments internationaux et la législation nationale pertinents ainsi que par les normes internationales relatives aux droits de l'homme.

7. Les sociétés transnationales et autres entreprises commerciales ont l'obligation d'assurer à leur personnel un cadre de travail sûr et sain tel que garanti aussi bien par les instruments internationaux, la pertinente législation nationale que par le droit international des droits de l'homme et par le droit international humanitaire.

7. [Les sociétés transnationales et autres entreprises commerciales] ont l'obligation d'assurer à leur personnel un cadre de travail sûr et sain tel que garanti aussi bien par les instruments internationaux, la pertinente législation nationale que par le droit international des droits de l'homme et par le droit international humanitaire.

8. Les sociétés transnationales et autres entreprises doivent rétribuer les travailleurs qu'elles emploient par une rémunération qui assure aux intéressés ainsi qu'à leur famille un standard adéquat de vie. Cette rémunération est déterminée compte dûment tenu de leurs besoins et de ce qui constitue des conditions adéquates de vie, dans l'optique d'une amélioration progressive.

8. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de verser aux travailleurs une rémunération qui assure aux intéressés ainsi qu'à leurs familles un standard adéquat de vie. Cette rémunération est déterminée compte dûment tenu de leurs besoins et de ce qui constitue des conditions adéquates de vie, dans l'optique d'une amélioration progressive.

8. [Les sociétés transnationales et autres entreprises commerciales] ont l'obligation de verser aux travailleurs une rémunération qui assure aux intéressés ainsi qu'à leurs familles un standard adéquat de vie. Cette rémunération est déterminée compte [dûment] tenu de leurs besoins et de ce qui constitue des conditions adéquates de vie, dans l'optique d'une amélioration progressive.

9. Les sociétés transnationales et autres entreprises doivent assurer la liberté d'association et la reconnaissance effective du droit à la négociation collective en protégeant le droit de former les organisations de leur choix et, dans le respect des règles de l'organisation concernée, de s'y affilier sans distinction ni autorisation préalable ou ingérence, pour la protection de leurs intérêts professionnels et à d'autres fins de négociation collective tels que

9. Les sociétés transnationales et autres entreprises commerciales ont l'obligation d'assurer la liberté d'association et la reconnaissance effective du droit à la négociation collective en protégeant le droit de former les organisations de leur choix et, dans le respect des règles de l'organisation concernée, de s'y affilier sans distinction ni autorisation préalable ou ingérence, pour la protection de leurs intérêts professionnels et à d'autres fins de négociation

9. [Les sociétés transnationales et autres entreprises commerciales] ont l'obligation d'assurer la liberté d'association et la reconnaissance effective du droit à la négociation collective en protégeant le droit de former les organisations de leur choix et, dans le respect des règles de l'organisation concernée, de s'y affilier sans distinction ni autorisation préalable ou ingérence, pour la protection de leurs intérêts professionnels et à d'autres fins de négociation collective tels que garantis par la législation nationale et par les Conventions de l'OIT [pertinentes] 87 sur la liberté syndicale et 98 sur la négociation collective.

garantis dans les conventions de l'OIT pertinentes.

collective tels que garantis par la législation nationale et par les Conventions de l'OIT pertinentes.

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**E. Respect de la souveraineté nationale et des droits de l'homme**

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10. Les sociétés transnationales et autres entreprises doivent reconnaître et respecter les normes applicables du droit international, la législation et les pratiques administratives nationales, l'état de droit, les objectifs de développement, les politiques sociale, économique et culturelle y compris la transparence, la responsabilité et l'interdiction de la corruption.

10. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de reconnaître et respecter les normes applicables du droit international, les droits nationaux, les règlements, les pratiques administratives, la règle de droit, l'intérêt public, les objectifs de développement, les politiques sociale, économique et culturelle, y compris la transparence, responsabilité et la prohibition de la corruption ; et l'autorité de l'Etat dans les pays où elles exercent leurs activités.

Les STN, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences doivent respecter l'article 1er commun aux deux Pactes Internationaux des droits de l'homme et les autres normes afférentes à ceux-ci. Elles doivent :

10. [Les sociétés transnationales et autres entreprises commerciales ont l'obligation de] reconnaître et respecter les normes applicables du droit international, les droits nationaux, les règlements, les pratiques administratives, la règle de droit, l'intérêt public, les objectifs de développement, les politiques sociale, économique et culturelle, y compris la transparence, responsabilité et la prohibition de la corruption ; et l'autorité de l'Etat dans les pays où elles exercent leurs activités.

**Commentaires :**

L'ajout des mots « intérêt public » n'est pas équivalent à notre proposition...« primauté des droits de l'homme et de l'intérêt public ». Voir notre commentaire à l'article 1 (Obligations générales).

11. Les sociétés transnationales et autres entreprises doivent s'abstenir d'offrir, de promettre, de donner, d'accepter, d'excuser, de bénéficier sciemment de ou d'exiger toute gratification illicite ou autre avantage indu et elles ne sont ni sollicitées de fournir ni censées fournir aucune gratification illicite ou autre avantage indu à quelque gouvernement, fonctionnaire ou candidat à une fonction élective que ce soit ou tout autre individu ou organisation. Les sociétés transnationales et autres

11. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de s'abstenir d'offrir, de promettre, de donner, d'accepter, d'excuser, de bénéficier sciemment de ou d'exiger tout paiement illicite ou autre avantage indu. Elles ne doivent pas non plus ni être sollicitées ni être censées fournir aucun paiement illicite ou autre avantage indu à quelque gouvernement, fonctionnaire, candidat à une fonction élective ou tout membre des forces armées ou des forces de sécu-

11. [Les sociétés transnationales et autres entreprises commerciales ont l'obligation de] s'abstenir d'offrir, de promettre, de donner, d'accepter, d'excuser, de bénéficier sciemment [de] ou d'exiger tout paiement illicite ou autre avantage indu. Elles ne doivent pas non plus ni être sollicitées ni être censées fournir aucun paiement [illicite] ou autre avantage [indu] à quelque gouvernement, fonctionnaire, candidat à une fonction élective ou tout membre des forces armées ou des forces de sécurités que ce soit ou à tout autre individu ou organisation. Les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs,

entreprises doivent s'abstenir de mener toute activité supportant, sollicitant ou encourageant les États, ou toute autre entité, à enfreindre le respect des droits de l'homme. Les sociétés transnationales et autres entreprises doivent également essayer de garantir que les biens et services qu'elles offrent et produisent ne seront pas utilisés pour enfreindre le respect des droits de l'homme.

rités que ce soit ou a tout autre individu ou organisation. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de s'abstenir de toute activité qui soutient, sollicite ou encourage les États ou toutes autres entités à commettre des abus des droits de l'homme. Elles ont, plus loin, l'obligation de chercher à assurer que les articles et services qu'elles fournissent ne seront pas utilisés pour commettre des abus de droits de l'homme.

sous-traitants et preneurs de licences [ont l'obligation de] s'abstenir de toute activité qui soutient, sollicite ou encourage les États ou toutes autres entités à commettre des abus des droits de l'homme. Les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences ne peuvent pas utiliser à leur service les forces armées et/ou de sécurité de l'État, ni engager des milices privées. Elles/Ils ont, plus loin, l'obligation de chercher à assurer que les articles et services qu'elles fournissent ne seront pas utilisés pour commettre des abus des droits de l'homme.

12. Les sociétés transnationales et autres entreprises doivent respecter les droits civils, culturels, économiques, politiques et sociaux et contribuer à leur réalisation, en particulier le droit au développement, à une alimentation adéquate et à l'eau potable, au meilleur état de santé physique et mentale que toute personne soit capable d'atteindre, à un logement approprié, à l'éducation, la liberté de pensée, de conscience et de religion ; la liberté d'opinion et d'expression et s'abstenir d'actions qui gêneraient la réalisation de ces droits et libertés.

12. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de respecter les droits civils, culturels, économiques et sociaux et contribuer à leur réalisation, en particulier les droits au développement, à la santé, à une eau potable et une alimentation adéquate, à un niveau élevé de santé physique et mentale possible, à un logement approprié, à la vie privée, à l'éducation, la liberté de penser, de conscience et de religion ; la liberté d'opinion et d'expression et s'abstenir d'actions qui gêneraient ou empêcheraient la réalisation de ces droits

12. [Les sociétés transnationales et autres entreprises commerciales] ont l'obligation de respecter les droits civils, culturels, économiques et sociaux et contribuer à leur réalisation, en particulier les droits au développement, à la santé, à une eau potable et une alimentation adéquate, à un niveau élevé de santé physique et mentale possible, à un logement approprié, à la vie privée, à l'éducation, la liberté de penser, de conscience et de religion ; la liberté d'opinion et d'expression et s'abstenir d'actions qui gêneraient ou empêcheraient la réalisation de ces droits .

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#### **F. Obligations visant la protection du consommateur**

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13. Les sociétés transnationales et autres entreprises doivent suivre des pratiques loyales en matière d'opérations commerciales, de commercialisation et de publicité et prennent toutes les dispositions raisonnables pour assurer la sécurité et la qualité des produits et services qu'elles fournissent. Elles ne doivent pas non plus produire, commercialiser ni faire de la publicité pour des produits dangereux ou potentiellement dangereux dans l'utilisation par les consommateurs.

13. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de suivre des pratiques loyales en matière d'opérations commerciales, de commercialisation et de publicité et prendre toutes dispositions nécessaires pour assurer la sécurité et la qualité des produits et services qu'elles fournissent, y compris le respect du principe de précaution. Elles ont l'obligation de ne pas ou de ne plus produire, distribuer, commercialiser ni faire de la publicité pour des pro-

13. Les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences [ont l'obligation de suivre] doivent observer des pratiques loyales en matière d'opérations commerciales, de commercialisation et de publicité et prendre toutes dispositions nécessaires pour assurer la sécurité et la qualité des produits et services qu'elles fournissent, [y compris le respect du] respecter et appliquer le principe de précaution et les autres normes internationales et nationales visant le même but. Elles/ils ont l'obligation de ne pas ou de ne plus produire, distribuer, commercialiser ni faire de la publici-

duits dangereux ou potentiellement dangereux dans l'utilisation par les consommateurs.

té pour des produits dangereux ou potentiellement dangereux dans l'utilisation par les consommateurs.

**Commentaires :**

Le Groupe de Travail a incorporé, à notre demande, le principe de précaution dans la dernière version.

Le principe de précaution (ou de prudence) est un principe spécifique, différent et au delà de la protection du consommateur, une règle de décision politique en l'absence de certitudes scientifiquement établies sur les phénomènes sous-tendant un risque et ses conséquences. Selon ce principe, des actions de prévention sont légitimes lorsqu'il paraît justifié de limiter, encadrer ou empêcher certaines actions potentiellement dangereuses, sans attendre que leur danger éventuel soit scientifiquement établi de façon certaine.

La législation communautaire européenne et la Convention sur la biodiversité invoquent, toutes deux, le principe de précaution : en l'absence de preuves scientifiques formelles mais en présence d'un faisceau de présomptions, une autorité politique peut et doit réglementer l'usage et le commerce de produits pouvant présenter un risque. Par ailleurs, le seul risque à prendre en compte n'est pas seulement sanitaire ; il peut être social, économique ou culturel. Le principe de précaution a été adopté à l'Agenda XXI de la Déclaration de Río sur l'Environnement et le Développement (1992). En mai 2001, la Convention sur les contaminants organiques persistants dans laquelle figure le principe de précaution a été approuvé par 127 Etats.

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**G. Obligations visant la protection de l'environnement**

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**G. Obligations visant la protection de l'environnement**

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**G. Obligations visant la protection de l'environnement et de la santé**

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14. Dans les pays où elles opèrent, les sociétés transnationales et autres entreprises doivent mener leurs activités conformément aux lois, aux réglementations, aux pratiques administratives et aux politiques nationales en matière de préservation de l'environnement et en conformité avec les accords, principes, normes et objectifs internationaux relatifs, respectivement, à

14. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de mener leurs activités conformément aux lois, aux réglementations, aux pratiques administratives et aux politiques nationales en matière de préservation de l'environnement des pays où elles opèrent et en conformité avec les accords, principes, objectifs, responsabilités et standards internatio-

14. Les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences ont l'obligation de mener leurs activités conformément aux lois, aux réglementations, aux pratiques administratives et aux politiques nationales en matière de préservation de l'environnement des pays où elles opèrent et en conformité avec les accords, principes, objectifs, responsabilités et standards internationaux relatifs, respectivement, à l'environnement et aux droits de l'homme ; à la santé publique

l'environnement et aux droits de l'homme ; à la santé publique et à la sécurité ; en règle générale, elles doivent conduire leurs activités de manière à contribuer à la réalisation de l'objectif plus global d'un développement durable.

naux relatifs, respectivement, à l'environnement et aux droits de l'homme ; à la santé publique et à la sécurité ainsi qu'à la bioéthique et qu'au principe de précaution ; en général, elles ont l'obligation de conduire leurs activités de manière à contribuer à la réalisation de l'objectif plus global d'un développement durable.

et à la sécurité ainsi qu'à la bioéthique et qu'au principe de précaution . Les sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences doivent respecter strictement les normes nationales, régionales et internationales en matière de bioéthique ; en général, elles/ils ont l'obligation de conduire leurs activités de manière à contribuer à la réalisation de l'objectif plus global d'un développement durable.

**Commentaires :**

Par exemple : la Convention pour la protection des droits de l'homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine, la Convention sur les droits de l'homme et la biomédecine (Convention d'Oviedo, 1997) et son Protocole additionnel (Paris, 1998).

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**Commentaires :**

Les paragraphes H, I, et J ont été ajoutés. Le paragraphe H a été renommé paragraphe K.

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**H. Obligations des STN et « autres entreprises » vis-à-vis de leurs fournisseurs et sous-traitants et preneurs de licences**

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15. Les STN doivent payer aux fournisseurs et sous-traitants des prix raisonnables pour leurs produits et services de façon à leur permettre de payer des salaires décents à leurs employés et travailleurs qui assurent aux intéressés ainsi qu'à leur famille un standard approprié de vie, leur offrir de bonnes conditions de travail et, à leur tour, d'obtenir des marges adéquates de bénéfices. La redevance demandée par les STN aux preneurs de licences doit rester dans des limites raisonnables afin de leur permettre de payer des salaires décents à leurs employés et travailleurs qui assurent aux intéressés ainsi qu'à leur famille un standard adéquat de vie, de leur donner des bonnes conditions de travail et, à leur tour, d'obtenir des marges raisonnables de bénéfices.

**Commentaires :**

Cet article a pour finalité de mettre des limites à ce qu'on appelle « l'externalisation des coûts » par les sociétés transnationales, en assurant une distribution plus équitable des profits entre les

STN et leurs fournisseurs, et sous-traitants et preneurs de licences et en créant les conditions matérielles afin que ces derniers puissent améliorer les conditions de travail de leur personnel.

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### **I. Obligations des STN et « autres entreprises » face à leurs actionnaires et face à leurs employés titulaires d'actions et de participations aux fonds de retraite de l'entreprise**

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16. Les Etats devraient établir et, le cas échéant, renforcer les dispositions législatives ou réglementaires sur la responsabilité civile et pénale des dirigeants responsables des STN, des « autres entreprises » et celle des dirigeants responsables de leurs fournisseurs, sous-traitants et preneurs de licences, la transparence de ces sociétés et entreprises en ce qui concerne les opérations financières et commerciales y compris la gestion des fonds de pension vis à vis de leurs actionnaires et employés titulaires d'actions et de participations aux fonds de retraite de l'entreprise (rapports et contrôles périodiques, etc.).

#### **Commentaires :**

Cet article vise à empêcher que, en raison d'une gestion irresponsable et parfois délictueuse de l'entreprise, le personnel se retrouve sans emploi et qu'il apprenne, assez souvent en même temps la disparition de son fonds de pension investit dans la même entreprise. L'article vise encore à empêcher aussi que les petits actionnaires apprennent un jour que leur épargne investie en actions s'est volatilisée.

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### **J. Engagements des Etats**

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17. Les Etats devraient adhérer aux normes régionales et internationales auxquelles ils n'ont pas encore adhéré et qui sont en rapport avec les activités des STN dans différents domaines et s'engager à les faire respecter par les STN, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences y compris les sociétés de fait.

18. Les Etats qui ne l'ont pas encore fait devraient incorporer à leur législation la respon-

sabilité pénale spécifique des personnes morales, avec un système de sanctions et des mesures de sécurité adéquates y compris la responsabilité pénale des dirigeants responsables qui ont pris les décisions incriminées.

**Commentaires :**

De nombreuses législations nationales et la Convention pénale européenne sur la corruption (1999) établissent la responsabilité pénale des personnes morales y compris la responsabilité pénale des personnes physiques qui ont la représentation des personnes morales et ont pris des décisions qui peuvent être l'objet de sanctions pénales. (Principe de la double imputation). Voir le premier commentaire au Préambule.

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19. Les Etats devraient adopter des mesures législatives et autres afin de donner priorité à la notion d'intérêt public, particulièrement en matière de santé, d'alimentation (y compris l'eau potable), d'éducation et de logement, en prévenant et empêchant la formation d'oligopoles et de monopoles privés dans ces domaines. Les Etats devraient interdire les brevets sur toutes les formes de vie et établir un droit de préemption du domaine public sur les inventions et découvertes fondamentales pour la santé.

**Commentaires :**

« (...) Contrairement aux droits de l'homme, les droits de propriété intellectuelle sont généralement provisoires, et ils peuvent être révoqués, concédés sous licence ou attribués à quelqu'un d'autre. Si les droits de propriété intellectuelle peuvent être cédés, avoir une durée et une portée limitées ou être négociés, modifiés, voire perdus, les droits de l'homme sont intemporels et sont l'expression des prérogatives fondamentales appartenant à la personne. (...) » (Cf. paragraphe 6 de la Déclaration du Comité des droits économiques, sociaux et culturels sur les « Droits de l'homme et propriété intellectuelle », E/C.12/2001/15, adoptée le 14 décembre 2001). Cet article tend à éviter les abus qui se commettent avec les brevets sur les formes de vie qui sont généralement contraires aux législations nationales et internationales en vigueur en matière de brevetabilité. Voir aussi les commentaires à l'article 1er.



20. Afin de garantir la liberté d'expression et le droit à une information objective et impartiale, les Etats devraient adopter des mesures législatives et autres afin d'interdire la formation de monopoles dans les moyens de communication et d'interdire la formation de sociétés, de « joints ventures », etc., entre entreprises de communication et d'autres secteurs d'activités industrielles, commerciales ou financières.

**Commentaires :**

Voir art. 13, para. 3 de la Convention Américaine des droits de l'homme.

L'existence de conglomérats formés par l'industrie de la communication et d'autres industries est dangereuse pour le droit à une information objective et impartiale, particulièrement avec l'industrie d'armements et celles qui lui sont liées.

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**H. Dispositions générales  
visant la mise en œuvre**

**H. Dispositions générales  
visant la mise en œuvre**

**K [H.] Dispositions générales visant  
la mise en œuvre**

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16. Les sociétés transnationales et autres entreprises doivent faire l'objet de contrôles périodiques par des mécanismes nationaux et internationaux, gouvernementaux et/ou non gouvernementaux concernant l'application des présentes responsabilités.

16. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de faire objet de contrôles périodiques et de vérification par les mécanismes des Nations Unies et par d'autres mécanismes internationaux et nationaux déjà existants ou à créer en ce qui concerne l'application des présentes Normes.

[16] 21. Les sociétés transnationales [et], « autres entreprises » [commerciales], leurs fournisseurs, sous-traitants et preneurs de licences ont l'obligation de faire objet de contrôles périodiques et de vérification par les mécanismes des Nations Unies et par d'autres mécanismes internationaux et nationaux gouvernementaux déjà existants ou à créer en ce qui concerne l'application des présentes [Normes] Directives et Recommandations.

**Commentaires :**

On a voulu signaler la primauté des contrôles exercés par des mécanismes nationaux gouvernementaux et des mécanismes internationaux du système des Nations Unies sur des contrôles privés, traités séparément dans l'article suivant.

Ce contrôle doit être transparent, indépendant et prendre en compte l'apport de parties, y compris les plaintes déposées pour violations de ces responsabilités. De plus, les sociétés transnationales et autres entreprises doivent conduire des évaluations périodiques concernant l'impact de leurs propres activités sur les droits de l'homme au regard de ces responsabilités

Ce contrôle doit être transparent, indépendant et doit prendre en compte l'apport de parties directement intéressées (y compris les organisations non gouvernementales), résultant des plaintes de violations de ces Normes. De plus, les sociétés transnationales et autres entreprises commerciales ont l'obligation de faire des évaluations périodiques concernant l'impact de leurs propres activités sur les droits de l'homme au regard de ces Normes.

[16 bis] 22. D'autres contrôles exercés par des ONG ou d'autres organismes ou institutions privés sans but lucratif et d'intérêt public [Ce contrôle doit] doivent être transparents, indépendants, non rémunérés, ni directement ni indirectement, par la STN contrôlée, et prendre en compte l'apport de parties directement intéressées (y compris les organisations non gouvernementales), résultant des plaintes de violations de ces [Normes] Directives et Recommandations et le résultat de ces contrôles doit être rendu public. De plus, les sociétés transnationales [et], « autres entreprises » [commerciales] et leurs fournisseurs, sous-traitants et preneurs de licences [ont l'obligation de faire] doivent conduire et rendre publiques des évaluations périodiques concernant l'impact de leurs propres activités sur les droits de l'homme et d'autres obligations au regard [de ces Normes] de ces Directives et Recommandations. Cette fonction de contrôle, si elle est réalisée par des entités à but lucratif autres que les entreprises concernées, doit être totalement indépendante des fonctions d'audit, de conseil et/ou d'évaluation des performances économiques ou financières de la STN.

#### Commentaires :

Ces para. 21 et 22 correspondent au texte amendé du projet antérieur.

On a voulu assurer la véritable indépendance des contrôles privés et éviter, dans la mesure du possible, la collusion entre les deux parties et/ou la complaisance du « contrôleur » envers le contrôlé. La publicité des contrôles est une condition « sine qua non » de son efficacité.

La dernière phrase de l'article a été inspirée par la Corporate Auditing Accountability Act, approuvé aux Etats Unis le 25 juillet 2002.

15. Afin de mettre en oeuvre ces responsabilités, chaque société transnationale ou autre entreprise doit adopter, diffuser et mettre en oeuvre des règles internes d'opération en conformité avec ces responsabilités. De plus, elles doivent prendre d'autres mesures pour permettre la mise en oeuvre complète de ces responsabilités et afin de

15. Comme étape initiale vers la mise en application des Normes, chaque société transnationale ou autre entreprise commerciale a l'obligation d'adopter, diffuser et mettre en place des règles internes d'opération en conformité avec ces Normes. De plus, elles ont l'obligation de rapporter périodiquement et de prendre d'autres mesures pour

[15] 23. Comme étape initiale vers la mise en application des [Normes] Directives et Recommandations, chaque société transnationale [ou], « autres entreprises » [commerciale] et chaque fournisseur, sous-traitant et preneur de licences a l'obligation d'adopter, diffuser dans les langues de leurs employés et travailleurs et mettre en place des règles internes d'opération en conformité avec ces [Normes] Directives et Recommandations, de les appliquer et de les res-

garantir une application rapide des protections énoncées dans les présentes responsabilités. Chaque société transnationale ou autre entreprise doit en outre appliquer et incorporer ces responsabilités dans ses contrats ou autres arrangements et relations avec des partenaires, sous-traitants, fournisseurs et gérants afin d'en garantir la mise en œuvre et le respect.

permettre la mise en œuvre complète de ces Normes et afin de garantir une application rapide des protections énoncées dans les présentes Normes. Chaque société transnationale ou autre entreprise commerciale a l'obligation d'appliquer et incorporer ces normes dans ses contrats ou autres arrangements avec tout contractant, sous-contractant, fournisseur, titulaire de licence, distributeur ou toute personne physique ou morale qui conclut quelque accord que ce soit avec les sociétés transnationales ou une entreprise commerciale dans le but d'assurer leur mise en œuvre et leur respect.

pecter ainsi que toute autre norme en vigueur relatives aux droits de l'homme. De plus, elles ont l'obligation de rapporter périodiquement et de prendre d'autres mesures pour permettre la mise en œuvre complète de ces [Normes] Directives et Recommandations [et] afin [de garantir une] d'assurer l'application rapide des garanties et protections énoncées dans les présentes [Normes] Directives et Recommandations et de celles qui en découlent. Chaque société transnationale ou « autres entreprises » [commerciale] a l'obligation d'appliquer et incorporer ces [normes] Directives et Recommandations dans ses contrats ou autres arrangements avec tout contractant, sous-contractant, fournisseur, [titulaire] preneur de licences, distributeur ou toute personne physique ou morale qui conclut quelque accord que ce soit avec les sociétés transnationales ou une entreprise commerciale dans le but d'assurer leur mise en œuvre et leur respect.

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17. Les Etats ont l'obligation d'établir et de renforcer les cadres légal et administratif nécessaires afin d'assurer que les Normes et plus généralement le droit national et le droit international pertinents sont appliqués par les sociétés transnationales et autres entreprises commerciales.

[17] 24. Les Etats ont l'obligation d'établir et de renforcer le[s] cadre[s] légal et administratif nécessaires afin d'assurer que les [Normes] Directives et Recommandations et plus généralement le droit national et le droit international pertinents sont appliqués par les sociétés transnationales et autres entreprises commerciales.

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17. Les sociétés transnationales et autres entreprises doivent fournir une réparation rapide, efficace et adéquate aux personnes, entités et communautés qui ont été affectées défavorablement du fait des échecs à se conformer à ces normes sur les responsabilités, notamment par la réparation, la restitution, la compensation ou la réhabilitation pour tout dommage subi ou toute propriété prise. Dans la détermination des dommages subis ou de toute autre question y relative, ces normes sur les responsabilités seront appliquées par les tribunaux nationaux.

18. Les sociétés transnationales et autres entreprises commerciales ont l'obligation de fournir une réparation rapide, efficace et adéquate aux personnes, entités et communautés qui ont été affectées défavorablement du fait des échecs à se conformer à ces Normes par, entre autre, la restitution, le remplacement ou la compensation pour tout dommage subi ou toute propriété prise. En rapport avec la détermination de dommage et dans tous autres respects, les présentes Normes doivent être appliquées par les cours de justice nationales et/ou les tribunaux internationaux le cas échéant

[18] 25. Les sociétés transnationales [et], « autres entreprises », [commerciale] leurs fournisseurs, sous-traitants et preneurs de licences [ont l'obligation de] doivent fournir une réparation rapide, efficace et adéquate aux personnes, entités et communautés qui ont été affectées défavorablement du fait [des échecs à se conformer à] de la violation de ces [Normes] Directives et Recommandations et des droits qui en découlent par, entre autre, la réparation, la restitution, le remplacement ou la compensation ou la réhabilitation pour tout dommage subi ou toute propriété prise. En rapport avec la détermination de dommage et dans tous autres respects, les présentes [Normes] Directives et Recommandations [normes sur les responsabilités] doivent être appliquées par les cours de justice nationales et/ou les tribunaux internationaux le cas

échéant. Les sociétés transnationales sont solidairement responsables avec les « autres entreprises ». Pour rendre effective cette responsabilité il faut, si nécessaire, lever le voile de l'apparence juridique de l'autonomie et découvrir la réalité du lien économique entre la STN et « l'autre entreprise ».

Les sociétés transnationales sont solidairement responsables avec les fournisseurs, sous-traitants et preneurs de licences pour les actes de ces dernières en rapport avec le contrat qui les lie aux STN.

#### **Commentaires :**

Les STN s'emploient non seulement à externaliser leurs coûts, mais aussi à externaliser leurs responsabilités. C'est à dire qu'elles essayent de couper la chaîne des responsabilités entre elles et leurs filiales de droit ou de fait, ainsi qu'avec leurs fournisseurs, sous-traitants et preneurs de licences. Elles participent aux profits, mais ne prennent pas les responsabilités qui en découlent. Voir aussi le point I. 2 de l'Introduction.

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18. Rien dans les présentes responsabilités ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les obligations des États en matière de droits de l'homme en droit national et en droit international. Rien dans les présentes responsabilités ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les normes plus protectrices des droits de l'homme.

19. Rien dans les présentes Normes ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les obligations des États en matière de droits de l'homme en droit national et en droit international. Rien dans les présentes Normes ne peut être interprétés comme diminuant, restreignant ou affectant d'une manière défavorable les normes plus protectrices des droits de l'homme. Rien dans les présentes Normes ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les autres obligations ou responsabilités des sociétés transnationales et autres entreprises commerciales dans les autres domaines que les droits de l'homme.

[19] 26. Rien dans les présentes [Normes] Directives et Recommandations pour l'application aux sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences des normes en vigueur concernant les droits de l'homme ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les obligations et facultés des États [en matière de droits de l'homme en droit national et en droit international] et, en général, leur rôle de garant de l'État de droit dans le cadre du droit international en vigueur. Rien dans les présentes [Normes] Directives et Recommandations pour l'application aux sociétés transnationales, « autres entreprises » et leurs fournisseurs, sous-traitants et preneurs de licences des normes en vigueur concernant les droits de l'homme ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les normes plus protectrices des droits de l'homme. Rien dans les présentes [Normes] Directives et Recommandations ne peut être interprété comme diminuant, restreignant ou affectant d'une manière défavorable les autres obligations ou responsabilités des sociétés transnationales et autres entreprises commerciales dans les autres domaines que les droits de l'homme.

# International organisations and foreign cultural policy

## A comparative analysis of the British Council, the Alliance Française and the Goethe-Institute

by Kerstin Martens\* and Sanen Marshall\*\*

The aim of this paper is to provide a framework for the analysis of cultural components of national foreign policy. The conveyance of culture has been neglected in foreign policy studies as being an issue with little importance for international relations. In recent years, however, politicians, academics and diplomats alike have pointed out the significance of understanding cultural diversity as a means of mediation and as a means of establishing mutual respect between nations. The focus of this study is therefore to examine the extent to which the analysis of foreign cultural policy can contribute to understanding international relations. For the empirical part, three states and their foreign cultural policies will be examined by focusing on their main organisations for cultural relations. Through comparative study, the performances of the British Council, the Alliance Française and the Goethe-Institute will be analysed.

### Introduction<sup>1</sup>

To what extent and in what ways can the analysis of the conveyance of culture by international organisations contribute to understanding international relations? The significance of culture has long been neglected in foreign policy studies as being an issue with little importance for global affairs. As part of the 'constructivist turn' in the study of international relations after the end of the Cold War, however, the study of norms, ideas and identities has gained in significance. Whereas most such studies focus on subjects such as human rights, the importance of norms in security studies or the impact of transnational actors in conveying such ideas, comparative work on cultural aspects of foreign policy is lacking. The focus of this study is to examine the extent to which an analysis of foreign cultural policy can contribute to understanding international relations. The aim of this paper is therefore to provide a general framework for the analysis of cultural components of national foreign policies and it presents some explorative conceptual ideas.

For the empirical part of this paper, a sample of states and their foreign cultural policies will be examined by focusing on their main international organisations for cultural relations. Through comparative study, the performances of the British Council, the Alliance Française and the Goethe-Institute will be analysed. Although these organisations have often been identified as the main organisations that con-

duct the foreign cultural policy of the respective states, comparative analysis of their functioning, however, is lacking. By comparing different countries and focusing on these organisations, in this paper, we seek to contribute a deeper understanding of the options and challenges of cultural matters as part of foreign policy. In the first section, some ideas as used in this study will be discussed. In this context, a review of current works on culture and international relations will be provided and some conceptual issues will be explored. Following on from that, in the second part, some preliminary ideas about how to approach the issue empirically will be presented. The analysis is based on a variety of sources, such as academic studies, Internet material and interviews.

### The perception of culture as reflected in international relations literature

Although scholars, politicians and intellectuals alike have recently emphasised the significance of culture as part of the foreign policy of a country, profound academic study is missing. The importance of culture played a role in studies of the 1940s and 1950s (Lapid 1996: 5), however, it subsequently lost popularity. Most often, foreign cultural policy has been referred to as a means for dialogue between nations, but a deeper analysis of the performance of the existing cultural institutions has rarely been provided. In particular, studies of cultural conveyance

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1. An earlier version of this paper was presented at the *International Studies Association Meeting* in Budapest, June 2003.

with reference to its importance for international relations are missing. Rather, cultural matters, even when influencing the relations between nations or states, have been assigned to and analysed within the particular disciplines of anthropology, sociology, social psychology, or linguistics (Hudson 1997: 2).

Tellingly, in many languages, the study of cultural aspects as part of foreign policy is conceptually not even clearly defined. In English for example, there is no distinct or separate notion for it. Most often, scholars refer to it as 'cultural relations' or 'cultural diplomacy', or they simply use a descriptive combination of words, i.e. 'culture and international relations' and the like.<sup>2</sup> In German, expressions vary as regards adjectives and nouns, given the flexibility the language allows. Most often, however, the term 'auswärtige Kulturpolitik' is used. Also, sometimes the term 'kulturelle Aussenpolitik' can be found.<sup>3</sup> In French, similarly, the variations of the term are 'rayonne culturel', 'diplomatie culturelle' and other expressions (Znined-Brand 1999: 17).

The term 'foreign cultural policy' is thus a semantic field that contains various complexities when trying to define it. For example, over time, the content of the term has changed, depending on the intentions of its users. Moreover, as already noted, in various languages, the notion of foreign cultural policy can only loosely be translated, producing minor or even major differences that emphasise divergent aspects. In addition, when considered singly 'foreign', 'cultural' and 'policy', it has also been argued that these notions are to some extent incompatible, even oxymoronic. For example, Emge (1967: 15) emphasises in his definition the function of foreign cultural policy as being a vehicle of the foreign policy of a country. He adopts the view that foreign cultural policy in the main is only another tool of a country's diplomatic repertoire enabling it to reach its goals. Abelein, instead, emphasises the cultural elements of the term. To him, foreign cultural policy is in essence the respect for cultural values and traditions, the image of how a country views itself and how it presents itself abroad (in Znined-Brand 1999: 18).

Despite these conceptual variations, foreign cultural policy has usually been interpreted as

forming part of the foreign affairs of a country. For example, the former chancellor of Germany, Willy Brandt, called foreign cultural policy the third individual pillar — next to economic policy and peace initiatives — of foreign policy. To US Senator Fulbright, after whom one of the largest American educational exchange programmes is named, "foreign policy cannot be based on military posture and diplomatic activities alone in today's world. The shape of the world a generation from now will be influenced far more by how well we communicate the values of our society to others than by our military or diplomatic superiority" (in Mitchell 1986: 2).

When foreign cultural policy has been the theme of academic study, most works are focused on single case studies. The few studies that take a comparative approach, however, are usually limited to two countries. Most often, the British, German or French cultural institutions abroad were the subject matter of such writings. When two countries and their foreign cultural policies were the topic of discussion, the comparisons were usually in the field of bilateral relations, that is, the foreign cultural policy of state A in state B is examined and vice-versa.<sup>4</sup> Therefore, although academic literature delivers many insights about the foreign cultural policies of the countries involved, what is lacking, however, is a dynamic and comprehensive comparison of single cases in order to derive valuable conclusions.<sup>5</sup>

As a subject of juridical studies, foreign cultural policy has always played a role in academia and has also recently gained in attention. For example, Trommler (1984) examines the so-called mediator organisations of Germany's foreign cultural policy. Similarly, Schulz (2000) examines the juridical status of the German Goethe-Institute, the foundations of international law with respect to foreign cultural policy and the status of the Goethe-Institute in international law. As these studies are juridical works they place emphasis on juridical aspects of foreign cultural policy, such as legal foundations, contracts and agreements between nations with respect to the conveyance of culture, the bases in national constitutions, the rights and duties of mediator organisations, and the like. Thus, they deliver interesting insights into the

2. Mitchell distinguishes between the two notions of 'cultural relations' and 'cultural diplomacy'. He argues that the term 'cultural relations' is somewhat neutral, whereas 'cultural diplomacy' is narrower in scope because it implies that cultural conveyance is essential business of government (Mitchell 1986: 2-3).

3. In fact, when in the 1970s, the German government authorized a report on cultural policy, it was suggested to use the term 'cultural foreign policy' in the future as opposed to 'foreign cultural policy'. However, the government rejected this proposition on the grounds that it might lead to speculations that a change of objectives and distributions of tasks accompanies this change in name.

4. To name a few examples of studies on foreign cultural policy: Seifer (2000) compares German foreign cultural policy in Britain and the USA; Lippert (1996) compares Germany's foreign cultural policy in Russia and Russian foreign cultural policy in Germany in a historical perspective.

5. An exception is Peisert (1978) who — although the emphasis is particularly on describing Germany's foreign cultural policy — refers also sometimes to France, Britain, the USA and Italy and their respective foreign cultural policy in order to show the differences to the Germany case.

legal side of cultural matters and their conveyance, but they do not go beyond describing juridical aspects.

When looking at the literature on foreign policy or on cultural studies, it is striking that both approaches have not treated the issues in any significant way. Rather, they have developed independently of each other. That is to say, there are many works on foreign policy, but rarely would they include sections on culture and its significance for international affairs. On the other hand, there are numerous works on culture but such studies treat its significance for foreign policy as negligible. Moreover, the study of 'political culture' has increasingly become a topic of social research, but again it emphasises a different perspective. It focuses on the differences and similarities of the political cultures of single countries, and the analysis of issues, such as the attitude and perception of politics by the population. Again, although some studies also compare different countries and their respective political cultures, foreign cultural policy is not an aspect treated in these studies.<sup>6</sup>

In recent years, however, the issue of culture has gained in importance in the study of international relations. In fact, over the course of the last decade in particular, the intertwining of culture, foreign policy and international relations has been examined with growing intensity by various scholars. However, in these studies, the issue of culture in relation to international affairs has been interpreted in a variety of ways. Hudson's edition (1997) on *Culture and Foreign Policy*, for example, presents single case studies of countries in which individual states and their conveyance of culture with respect to their foreign policies are examined. These include amongst others, studies on the US, China, the Netherlands, and Belarus. Nevertheless, the basis of selection of cases, and what they stand for is unclear. Moreover, a comparative analysis is lacking as only single studies and their respective foreign cultural policies are presented.

In contrast, Chay's edition (1990) on *Culture and International Relations*, instead, treats the issues of culture from the perspective of themes and issues. The contributions to this edition thus deal with different aspects of culture and their significance for international relations.

Here one finds concepts such as diplomatic history, literacy perspective or music and communication. However, the single contributions do not focus on single countries or a specific set of countries in each chapter; they focus rather on broad 'cultural regions'. For example, the book includes chapters on Asian culture and international relations, or the Latin American tradition on international relations and so on. Similarly, Jacquin-Berdal, Oros and Verweij's (1998) work on *Culture and World Politics* is issue-based. In their book, they treat subjects such as conflict resolution from a cultural perspective, focus on cultural aspects of peacekeeping, and link culture to power and international negotiations. Lapid and Kratochwil's *Return of Culture and Identity in IR Theory* (1996) instead explores specific concepts and their meaning for culture and international relations. In their book, notions of identity, citizenship, nationalism and gender are examined with respect to their significance for cultural relations. This study deals with mainly theoretical aspects and explores theories of international relations with reference to such notions, but has no ambition to deliver empirical evidence.<sup>7</sup>

In sum, although the significance of foreign cultural relations has been acknowledged, deeper analysis is lacking. In particular, comparative studies are missing. As a result, more analytic works are needed which comprehensively grasp the issues at stake.

## IR perspectives on foreign cultural relations

International relations theory provides varied perspectives on how foreign cultural relations can be perceived. Neorealist, liberalist and constructivist approaches differ in their perceptions of the international system, the actors involved and their intentions. As a result, they also differ in their view of foreign cultural policy accordingly.

From a neorealist perspective (Waltz 1979; Mearsheimer 2001), sovereign states are the main actors in international politics. States act as rational, self-interested actors whose activities are dependent on prospects and obligations in the international system. The anarchic structure

6. See, for example, Mathews (2000). An interesting overview in this respect is the report by Jetschke and Liese (1998) who name various reasons why culture and international relations has rarely been treated together, such as the limitation of methodological approaches to measure culture with interpretative methods, or the perception of culture as being too unique as to integrate it into international relations.

7. In contrast to these studies, Mitchell's (1986) study provides some analysis of foreign cultural policies in a comparative perspective. The author provides an overview on various aspects related to culture and international relations, drawing on his own experience of working for the British Council for three and a half decades. However, a theoretical approach is lacking and as a result, a systematic analysis is missing. Moreover, examples are used only in order to show similarities or differences with the British case.

of the international system leads states to pursue attaining the greatest possible power for themselves. Security is their main goal, which includes amongst military security, the search for independence and autonomy. From such a perspective, foreign cultural policy enables a state to gain or maintain influence in its international environment. The goal of the state conducting foreign cultural policy is to influence other states to submit to its interests and values. This leads not only to better economic relations, it may also help a state to find allies during international negotiation processes (e.g. German investments in Goethe-Institutes in former Communist countries and furthers pro-German behaviour during EU-enlargement processes) (Rittberger 2002).

Liberalist approaches (Moravcsik 1997), similarly, postulates that the foreign policies of states are dominated by the respective interests of society. Similar to the neorealist approach, liberal theories assume rational, self-interested actors, seeking to maximise their own interests. Unlike the neorealist approach, however, not states but individuals or groups of individuals are seen as the main actors. From this approach, a distinction between actors in the political administrative system and private actors, such as companies, economic interest groups, societal actors and the like, is drawn. As a result, foreign cultural policy from this perspective is dependent on both those kinds of actors in the political administrative system and in the private sector, which guide their respective networks and dominate the material or immaterial preferences. For example, if the ministries that are in charge of foreign cultural policy are influential they might seek to further a policy of language classes, whereas the finance ministry might seek to go against any further costs for language courses abroad. Similarly, private actors may support language training as they are interested in training people abroad so that markets open up and trade flows increase (Rittberger 2002).

Constructivist approaches (Wendt 1999) go a step further. They postulate that foreign policy and the behaviour of a state is to a large extent dependent on the collective identity of a society that is shaped by recognised social norms, including shared values and expectations. Such

aspects, however, are dependent on two factors: the communality, such as the quantities of actors of a social system who share those norms; and their specificity, such as how a particular norm guides or regulates behaviour. Thus, from a constructivist viewpoint, foreign cultural policy reflects the norms and values of a society and guides a country's behaviour in conducting its foreign cultural policy. Moreover, international values of a global or regional range are emphasised. Hence, international law, common law and policies of international organisations as well as final documents of international conferences may shape the foreign cultural policy of a particular country.

As the guiding questions for our analysis, we seek to examine the following:

What conceptualisation for the conveyance of culture as part of foreign policy is adopted in the cases selected? Are there different 'cultures' for foreign cultural policies?

What are foreign cultural policies dependent on? Who are the main actors? And how can different approaches be explained?

For the empirical part of this work, our intention is to examine the foreign cultural policies of Britain, France and Germany. All three countries have a long tradition of conducting foreign cultural policy and have established organisations in order to maintain a cultural presence abroad. However, each of these countries retains specific characteristics which influence its conveyance of foreign cultural relations. They stand for different styles and for different institutional organisational structure of foreign cultural policy.

First, cultural differences have an impact on the style of conducting foreign cultural policy. In his famous article on intellectual styles, Galtung (1981) argues that countries can be identified and associated with different approaches, which he termed 'intellectual styles'. Among others, he distinguishes between the Gallic style, the Teutonic style and the Anglo-Saxon style.<sup>8</sup> This approach is useful as it emphasises the role of culture and language as a conveyor of intellectual styles. The Gallic style is associated with the 'Roman' countries, of which France presents the dominant figure. The Gallic influence, however, stretches far beyond the *communauté française* and covers the whole

8. In his study, Galtung uses these terms to emphasise that the attributes associated to these styles encompass a whole region (in which the same cultural heritage is shared), rather than a single country, however, they present 'ideal-types' (von Beyme 1988: 11) and are best evaluated by their most representative examples, which are France, Germany and Britain (as used in Galtung's study).



range of Latin countries. Moreover — although rather incidentally — it also includes Romania to a large extent (Galtung 1981: 820). The Gallic style can be characterised by its stylish-rhetoric approach and elite thinking (which is shaped by traditional views and reflected in the design of institutions). The Teutonic style is dominated by German influence, however, it encompasses also parts of Eastern Europe due to the German cultural impact on these states during the 19<sup>th</sup> century (Galtung 1981: 820). Moreover, after World War II Eastern European thinking was long influenced by Marxist writings. The Teutonic style is associated with a deductive theoretical approach, a way of thinking in hierarchies and a straight-forward presentation. The Anglo-Saxon style, instead, is associated with Britain and the US. In contrast to the Teutonic style it is often connected with a more pragmatic approach, which concentrates less on theoretical implications.

Second, institutional aspects influence the conduct of foreign cultural relations. France is an example of a state in which foreign cultural policy is under governmental control. The government, though a ministry or an official agency, exercises direct control over it. Thus, in the French case, foreign cultural policy is determined and conducted by the state and its government. Its emphasis is on the advancement and maintenance of French culture, in particular, the French language. That is to say, French foreign cultural policy is made by the state, it conceptualises it and determines its implementation; its main objectives are the spread of French language and culture. As a consequence, in the French case, foreign cultural policy is primarily organised through centralist institutions, despite the existence of various private initiatives and organisations. The Direction Général des relations culturelles, scientifiques et techniques (DGRCST) and the cultural departments of the French foreign ministry conceptualise and organise virtually all French cultural activities abroad. Due to hierarchical structures in the French system, French cultural institutions are directly dependent on the cultural departments of embassies in their respective countries, which are in turn dependent on the French foreign ministry.

9. In the French case, the situation is a little more complicated. France maintains two major institutions which conduct its foreign cultural policy abroad. One the one hand, there is the Alliance Française, on the other, the Institut Français. The Alliance is the older and more established institution, and will be examined in this study.

Britain, on the contrary, is a case in which the government provides the financial resources for conducting foreign cultural policy through a ministry. However, the implementation of foreign cultural policy is delegated to independent agencies, such as the British Council. The British Council receives up to 40% of its annual funding from the Foreign and Commonwealth Office. Germany provides an example of a mixed system. On the one hand, the state retains overall control over the foreign policy; on the other, it contracts non-official agencies to operate independently within their competencies. The Ministry for Foreign Affairs maintains a large and important Cultural Relations Department (Kulturabteilung) that is in charge of all formal arrangements such as cultural conventions and relations with intergovernmental organisations, and independent agencies, of which the Goethe-Institute is the largest. Although the foreign ministry is in charge of regulating the foreign cultural policy of Germany, it is not in charge of implementing it. Mainly, it passes the task on to mediator organisations to conduct its foreign policy and supplies them with financial resources. The foreign ministry therefore plays the role of a distributor and administrator.

Of the various privately and publicly administered cultural institutions abroad, only the major internationally operating institutions have been selected for deeper study. In the case of Britain, it is the British Council that carries out British foreign policy. For Germany, the Goethe-Institute has always been considered the major institution. In the French case, the Alliance Française will be examined.<sup>9</sup>

All in all, the selected cases and their representative institutions provide for a comparative study of foreign cultural relations. In the analysis to follow, the three examples will be explored in greater depth. The main idea and goal of this study is to 'map' the foreign cultural policies of the selected countries by examining the following issues: origins of foreign cultural relations and their organisations, aims and objectives of their central mediatory organisations, establishment of institutes/branch offices abroad, funds for the institutions, both from government and private sources, range of activities of the institutes/branch offices.

## The British Council

The cultural component of British foreign policy is largely under the purview of the British Council (BC). The British Council is the only institution that conducts such a diverse range of activities on such a massive scale. It describes itself as the “UK’s international organisation for educational and cultural relations” (BC, ‘Working for the Council’).

It was founded as a voluntary association in 1934 with the name of the ‘British Committee for Relations with other Countries’, but the term of ‘Committee’ was soon changed to ‘Council.’ In 1936, the whole title was shortened to the ‘British Council’ and it has stayed that way ever since (BC, ‘History’). In 1940, the BC became formally incorporated by a Royal Charter and was granted a supplemental charter in 1993 (BC, ‘History’). According to the Royal Charter, the official responsibility of the British Council lies in “promoting a wider knowledge of the United Kingdom and the English language abroad and developing closer cultural relations between the United Kingdom and other countries” (Royal Charter of the British Council, 1936). In its own words, the BC “facilitates contacts between people and organisations which create understanding and mutual respect and a demand for closer engagement with the UK and its people. Through the unique combination of strengths it brings to cultural relations, the British Council contributes in a distinctive but integral way to the United Kingdom’s international relations, supporting and complementing its diplomatic, commercial and development efforts” (BC, ‘Our Rationale and Values’).<sup>10</sup>

While British embassies across the world deal with the day to day promotion of the policies of Britain’s government-of-the-day, the Council’s work in the area of culture, education and exchanges complements but remains reasonably detached from the political work of the embassies. The British Council works closely with the Foreign and Commonwealth Office, but operates at an arm’s length from the government-of-the-day. By doing so, it ensures regular contact with the Foreign Ministry but it is able to continue its work despite changes of govern-

ment or policy (BC, ‘Who we are’). As recently noted by the Director of the British Council of Malaysia (traditionally one of the most important countries for the Council outside of Europe), Tom Craig-Cameron, the Council is ‘apolitical’ and not necessarily affected by the politics of the British government-of-the-day (Interview with Dr. Tom Craig-Cameron). At the same time, the BC has the potential to bring about great political benefits to Britain if the host country wherein the BC operates forms close links with Britain’s educational and cultural systems. Thus, for the purpose of cultural diplomacy, and to avoid being overtly linked to cultural propaganda (or, even worse, political propaganda), the British Council works closely with the Foreign and Commonwealth Office but seldom directly with the British government-of-the-day. Such concerns permeate the British Council to this day. When interviewed recently, the Director of the British Council Malaysia firmly rejected the notion that the British Council works with a fixed set of ‘British values’ which it is obliged to promote. Cameron preferred rather to define the British’s Council’s work as creating ‘spaces’ from people of different nationalities to engage their British counterparts in a particular field (Interview with Dr. Tom Craig-Cameron).

Three activities, English language teaching, running British libraries and promotion of British education, are the key to the British Council’s strategy to complement Britain’s political diplomacy world-wide (BC, ‘Who we are’). In 2001-2002, the British Council conducted its educational and cultural activities in more than 200 cities across 109 countries. The BC received 6.6 million visitors at its offices world-wide. It drew crowds amounting to 7 million people world-wide with its arts and cultural events. The BC also lent out 6.7 million books and videos from its library and information centres and engaged 1,800 teachers to work in 129 overseas English teaching centres. In the space of these two years, these teachers taught over 1.1 million class-hours world-wide. The BC also conducted 840,000 professional and academic examinations and facilitated educational exchange projects involving more than 16,000 young people (BC, ‘Statistics’).

10. Consider also Hillhorst and Spaven’s (2002) perception of the BC as “to promote accurate and up-to-date perceptions of the UK that will increase the chances of constructive interaction, and to clear away the undergrowth of inaccurate stereotypes that act as barriers to it.”

The British Council is an independent organisation under the auspices of the Foreign Ministry and is incorporated by Royal Charter. In the UK, it is also registered as a charity (thus, a not-for-profit organization) and operates as an executive non-departmental public body. That is to say, it is a national public body that operates independently of government, but for which the Foreign Ministry is ultimately responsible (BC, 'Status'). Moreover, the Patron of the BC is Queen Elizabeth II, and the Prince of Wales is the Vice-Patron (BC, 'Governance'). As far as strategic decisions are concerned, the BC receives its directives from a board of trustees. The board appoints its own members with the exception of two who are nominated by the Secretary of State for Foreign and Commonwealth Affairs. All members serve for a term of five years, and that may be renewed (BC, 'Governance'). The executive direction of the BC is carried out by a Director General who is supported by the Deputy Director General, an Assistant Director General and a Senior Management Strategy Team (BC, 'Governance'). The Foreign and Commonwealth Office provides the British Council with an annual grant. For the year 2003/04, 154 million Pounds Sterling is the projected operating grant. Another 164 million Pounds Sterling should come from revenues that are earnings from selling its services, such as language courses and examinations and project management. Moreover it receives income from other UK governmental departments and agencies, from international bodies and also increasingly from the private sector (BC, 'Funding').

The British Council has numerous offices across the globe, many of them housing libraries and teaching centres. In Europe, over the course of the last seven decades, the British Council established its presence in 41 countries. The vast majority of these were established in the 1940s after the Second World War. Significantly, in this Cold War environment of brooding hostility, the British Council had to close its offices in five European communist countries between 1947 and 1950. During the 1960s, the British Council re-established its offices in four of those five countries. The end of the Cold War resulted in the setting up of Council offices in nine

European countries, all of which were either former communist or ex-Soviet republics. Thus, despite numerous closures and re-closures of offices caused by the Second World War and the Cold War, the Council has continued to maintain a strong presence in Europe, which currently amounts to representation in 36 countries. Among the highest priority countries are Spain and Portugal, which together hosts 23 English language teaching centres.

In the Arab World, the British Council established a presence in 19 countries at some point or another over the last seven decades. Countries like Egypt were among the first anywhere in the world to host a BC office (1938). The reason being that even though Britain had been militarily dominant in Egypt's history, French culture had won over most of the Egyptian elite. The BC was intended to draw Egypt closer into the British sphere of influence (Donaldson 1984: 3, 21-22). During the Suez crisis, the closure of the BC in Egypt was carried out by sequestering BC properties and deporting British nationals working at BC. But the Nasser government of Egypt felt that the teaching of English and the promotion of British arts and culture were not a problem as long as these activities were carried out by Egyptians (Morsi Saad El Din 2003). By 1961, British nationals were allowed to return to work in Egypt by the same government that had expelled them. In the same manner, although relations between the BC and their host countries have been very rocky in the Arab world, with almost half of the BC's main offices having been closed at some time or another, the British Council today still maintains an official presence in 18 of the 19 countries where it had once set up office.

In Asia, the British Council had set up 23 offices over the last six decades. Of these, 22 offices are still in operation. Moreover, in spite of the British Council's large presence in Asia, only four of these BC offices have ever had to close during the last sixty years. As was the case in Europe, almost all of these closures in Asia are linked directly or indirectly to communist activities in the region. It is thus obvious that however 'apolitical' or detached from British government propaganda the BC desires to be today, it has traditionally been identified as being overtly

or covertly counter-communist in its general orientation. The BC's presence in the Americas as a whole has traditionally been weak - a trend that continues till today. With the exception of Brazil — which has 6 British Council offices - all other countries in the Americas have only one or two BC offices. The British Council in Sub-Saharan Africa had opened more than 26 offices in the course of its last six decades in operating from that region. Of these, only 19 are still operating. Sub-Saharan Africa is an extremely volatile environment. British Council offices in war torn countries like the Democratic Republic of Congo (DRC - formerly known as Zaire) have closed their offices three times. As such, the BC has since abandoned the DRC and several other Sub-Saharan African countries for good.

### Goethe Institute

Foreign cultural relations by Germany are conducted by the *Goethe-Institute Inter Nationes* (GI). Although there are a variety of organisations and bilateral institutions that are active in the field of foreign cultural policy, the Goethe Institute is by far the largest and most recognised of them.

The GI was founded in 1951 as the successor to the German Academy. Its first task was to support German teachers abroad. In 1953, it began to organise and to conduct German classes in main community villages, in order to promote a positive picture of Germany. Over the next two years, it took over from the German Academy the foreign lectureships, further developed its support for German teachers abroad, and added the organisation and management of cultural events to its spectrum of activities. Since by the early sixties, all active cultural institutes abroad were taken over by the Goethe-Institute, it marked the beginning of a comprehensive foreign cultural policy for Germany. In 1976, the Goethe-Institute and the Foreign Office signed a contract ('Rahmenvertrag') in which the autonomy of the Goethe-Institute was declared. In January 2001, the Goethe-Institute joined forces with *Inter Nationes*, an organisation which was initially founded on the initiative of the foreign affairs department of the German press office in order to distribute information

material about Germany. Currently, there are 141 institutes worldwide in 77 countries. The Goethe-Institute counts 3,100 staff members (GI, 'GI-Über uns').

Most GI institutes can be found in Europe. All in all, there are currently 49 institutes that promote the German language and culture in this region. Most of them, seven altogether, are based in Italy, and another six can be found in France. The majority of the Italian GI was established in the late 1950s, and the French GI followed in the early 1960s. On the whole, most other institutes in Western Europe were established in the 1960s with only a few later establishments (Gothenburg 1970, Bordeaux 1971, Glasgow 1973 and Luxemburg 1975). With the end of the Cold War, many new institutes were established in Eastern Europe. In a first 'wave' until 1993, institutes in neighbouring countries were established. The institute in Budapest was one of the first to be opened in 1988, followed by one in Sophia in 1989, and others in Moscow, Warsaw, Krakow and Prague in 1990, Bratislava in 1991, and Kiev, Riga, St. Petersburg and Minsk in 1993. In the second 'wave' since the late 1990s, the GI concentrated on the ex-Soviet republics and the institutes in Tashkent, Vilnius (both in 1998), Tallinn (1999) and Sarajevo (2000) were established (Goethe Institute Inter Nationes 2003).

Moreover, the Goethe-Institute took on the task of establishing 'German reading rooms' in host country libraries in Eastern Europe and in states of the former Soviet Union. Between 1992 and 2002, 55 reading rooms were established in these countries. The GI provides a minimum of German books, journals, newspapers and other information material, whereas the host library takes over the administration and logistics (GI, 'Goethe-Institut – Deutsche Lesesäle'). In this region, the number of visitors to institutions of the GI is also by far the highest. More than 200,000 people visited the institutions in 2001, twice as many as in any other region where the GI is active (Goethe Institute Inter Nationes 2003: 160).

Of the 21 Goethe-Institutes in Asia, more than one third are based in India, Pakistan and Sri Lanka. Almost all of these institutes were established in 1960 or 1961, the Mumbai insti-

tute being the exception as it was established in the late 1960s. In most of the other countries only one institute – if at all – can be found. Only Japan and China (due to Hong Kong) have two institutes. The number of institutes in Africa is low with only 12 institutes for the whole continent. Again, the majority of these were established in the early 1960s; only two followed in the 1970s (only the institute in Johannesburg was founded in 1995). During the 1960s most of the institutes in South America were established. In North America, instead, the majority of GI's were founded in the 1970s and 1980s; the institute in Washington, even, was established only in 1990.

Moreover, the GI increasingly interacts with other nations and joins forces with their institutes. E.g. in Luxembourg a tri-national institute was established, run together by Luxembourg, France and Germany (GI, Press release No. 18). Similarly, a new institute in Windhoek is bi-national, too, hosting Germany's GI, Britain's BC and other German-Namibian organisations, such as the Namibian-German Foundation. It is a model case in that the diverse organisations even share personnel and technical equipment and conduct joint initiatives (GI, Press release No. 15). Also, with the Instituto Cervantes of Spain, the GI signed a contract of increased co-operation in March 2003 (GI, Press release No. 9). On the whole, the establishment of institutes seems to go through phases and varies by regions. Western Europe was the first region in which GIs were established, followed by Asia and Africa. Over the 60ties, South America became the target and North America followed in the 1970s. During the 1980s, few institutes were founded and only in the early 1990s did more institutes come to be established in Eastern Europe.

The Goethe-Institute describes its goals and objectives as furthering the knowledge of the German language abroad. It takes care of international cultural co-operation and is in charge of the promotion of a comprehensive picture of Germany by providing and distributing information about German cultural, civic and political life. The GI conducts cultural programmes, offers German classes and supports teachers, universities and other institutions in

their efforts to promote the German language and culture. Moreover, there are 15 institutes in Germany in which German is taught. The budget is 242 Million Euro, of which the Foreign Office gives 300 Million two thirds. The rest comes from self-funding (GI, 'GI-Über uns').

The Goethe-Institute is very popular in Germany. In a recent survey, 82% of the persons interviewed knew – at least by name – the Goethe-Institute. Of these, 83% knew correctly that the Goethe-Institute conducts Germany's foreign cultural policy abroad. And 60% of those who knew the institute, believed that the invested money is efficiently used and the same amount of people see the Institute as being important for Germany's relations abroad. Only 4 % were of a different opinion. More importantly, another survey has shown that people in the UK and in France who know the Goethe-Institute have also a better impression of Germany in general (GI, Press release No. 5).

The juridical basis of the GI reflects the German associational law. It combines an honorary board with a group of people, knowledgeable in in cultural politics of Germany. According to German associational law, the GI is a 'eingetragener Verein' (registered association) and consists of different types of members. There are regular ('ordentliche') members, special ('außerordentliche') members and membership due to the position in government and society (para. 3, 1). Under the first category is located the Federal Republic of Germany itself and 'personalities of different parts of the cultural, scientific and social life of Germany' (para. 3, 3). One member of each party in the parliament and two representatives of German *länder* government also form part of the GI's board as 'special members'. The assembly consults and brings forward conceptual ideas of the work of the GI, however, decisions are made by the presidential committee, which guides and decides die main line of work (para. 7, 1). It consists of the Secretary General and one representative of the foreign office and three employees of the GI.

## Alliance Française

In comparison to the Goethe-Institute and the British Council, the Alliance Française (AF) is

the oldest of the three major organisations involved in conveying foreign cultural policy. As the 'Association nationale pour la propagation de la langue française dans les colonies et a l'étranger' it was established in 1883 by the French ambassador Paul Cambon (AF, 'Histoire'). Its name also indicates its main purpose which has remained unchanged right to the present day. Its major objective: the Alliance Française was founded as an organisation to further the French language.

In 1884, the first Alliance Française de Paris was established with supporting members such as Louis Pasteur, Jules Verne and Armand Collin; that same year, the first institute abroad was founded in Barcelona. Following on from that, institutes were established in Africa, with the first institute being located in Senegal. In addition, an AF was founded in Mexico (AF, 'Histoire'). Early on, the government of France recognised the very specific potential of the AF institutes. Only two years later after the initial establishments, the AF was recognised as having an 'utilité publique' and more *Alliances* were founded (AF, 'Histoire'). In 1889, the first AF was established in Asia, in India, and a year later, Australia hosted its first AF, too. Around the turn of the century, the first institutes were established in Canada (Montreal) and a 'Federation of Alliance Françaises' in the United States was founded. Moreover, various Institut Français were founded to promote partnerships between French and foreign universities (Znined-Brand 1999: 29).

In 2000, the AF was present in 138 countries with 1,135 associations throughout the world (AF, 'Histoire'). The majority of the AF institutes can be found in Europe where 233 institutes are based. Another 216 are based in Latin America and in Africa, there are another 131 AF institutes. In Asia and Australia together, 101 AFs can be found. In the US and Canada alone 68 AF institutes are spread across the North American continent (AF, 'Histoire'). In addition, in Paris, there are 11 AFs in which French language classes take place (AF, 'Enseigner'). In comparison to the Goethe-Institute and the British Council, the AF's emphasis is more on language teaching than on general cultural education promotion. Language teaching has

always been its main objective and since its genesis, the AF has focused its attention on activity. As mentioned in its 'vocation': "L'Alliance française tient son succès de la fidélité sans cesse renouvelée d'un public étranger toujours passionné par la langue française." (AF, 'Missions'). It sees itself not as imposing its language teaching on others, but seeks to capitalise on the general potential and interest in the French language. "Elles prennent toujours leurs sources à l'étranger et sont l'expression de la volonté locale de francophiles qui désirent partager leur amour de la langues et de la culture françaises avec leurs concitoyens" (AF, 'Vocation'). By doing so it seeks to open up a forum for dialogue with the other cultures of the world (AF, 'Vocation').

Its juridical status is private, but it has a public purpose. Moreover, the AF is directly linked to the Foreign Ministry, which is – in its own words – its principal partner (AF, 'Les partenaires officiels'). Moreover, the Ministry for Education can nominate a number of personnel and it also bestows official recognition on the language diplomas given out by the AF and certifies them (AF, 'Les partenariats'). Since 1981, the AF is also an official partner of the Foreign Ministry in the conduct of its international cultural activities. A convention between the AF and the Ministry regulates the activities of the Alliance and defines the conditions of annual subventions. Moreover, since 1995, this convention forms part of a contract of objectives, in which it is stated that the AFs represent an integral part of the cultural representation of France (AF, 'Les partenariats').

## Conclusion

It is apparent that there are different traditions or intellectual styles of foreign cultural policies – as represented here by the three countries in question. It is notable that the major organisations responsible for the conduct for foreign cultural policy of these three states exhibit differences, significantly in terms of to what degree they are controlled by their governments, and the range of cultural activities carried out that they carry out. The British Council emerges as a case for an independent organisation responsible for the promotion of

cultural relations - in terms of both its organisational structure and its financing. The range of cultural activities carried is also more diverse. Whereas the Goethe-Institute presents a case for an international cultural organisation with closer links with its government - in terms of which cultural image of Germany to promote - and is significantly directly dependent on the German government for a large portion of its finances. It is also significant to note that its range of activities is not so diverse - combining a mixture of language classes and organisation and manage-

ment of cultural events with the intention of promoting a comprehensive picture of Germany. Alliance Française is the case for an international cultural organisation relatively closely controlled by government in terms of its general operations and conditionalities for funding. It is significant to note that in this case - based on Alliance formal aims and objectives - its range of cultural activities is narrower than the other two organisations, AF being primarily concerned with the teaching of the French language abroad.

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# Appel du Forum permanent de la société civile aux innovateurs de la Convention européenne

*“Notre Constitution est appelée démocratie parce que le pouvoir est entre les mains non d’une minorité mais du peuple tout entier”*

Thucydide II, 3

**L**e Forum permanent de la société civile<sup>1</sup> - créé en 1995 à l’initiative du Mouvement européen international afin de mobiliser la vie associative européenne pour la mise en place d’une démocratie représentative, participative et paritaire au sein de l’Union - a examiné le travail accompli par le Praesidium de la Convention dans la perspective d’une Constitution européenne pour le XXI<sup>ème</sup> siècle.

Le Forum salue les progrès réalisés par la Convention européenne en matière de valeurs, d’objectifs et de droits fondamentaux, progrès qui devraient permettre de créer en Europe un espace de paix, de solidarité, de liberté, de justice et de respect des diversités en donnant en même temps à l’Union les moyens de promouvoir ces valeurs dans le monde.

Ces progrès s’accompagnent d’avancées en matière de pouvoirs législatifs du Parlement européen et de l’extension du vote à la majorité dans le Conseil, ce qui renforce l’efficacité et le caractère démocratique du système institutionnel.

Le Forum estime que ces progrès ont été en partie consolidés par le Praesidium dans le texte révisé de la Constitution européenne (CONV 724/03) et s’attend à ce que la Convention européenne confirme ces progrès dans le projet qui sera remis au Conseil européen de Thessalonique.

Le Forum alerte le Praesidium et les Conventionnels sur le fait que la nouvelle Constitution ne pourra être acceptée par les citoyennes et citoyens de l’Union que si elle permettra aux pays qui l’accepteront de franchir une étape irréversible vers la création d’un ensemble politique nouveau, capable en tout état de cause :

- de bâtir un espace intégré où la protection des *droits fondamentaux* soit garantie à toute personne humaine ;

- d’éradiquer la *pauvreté* qui frappe un nombre croissant de ses habitants et de promouvoir l’*inclusion sociale*,

- d’assurer le *développement durable* et la *cohésion économique et sociale*,

- de garantir la *sécurité interne et externe*

- de définir et garantir *la place de l’Union dans le monde* ;

- d’assurer la *cohérence des actions extérieures* de l’Union avec ses valeurs, objectifs et politiques. A cet effet, l’Union doit être fondée sur une *démocratie représentative, participative et paritaire* permettant aux citoyennes et aux citoyens de désigner par leur vote un gouvernement européen. Ce gouvernement devra disposer de pouvoirs réels dans la poursuite des objectifs fixés en commun - tant sur le plan intérieur que sur celui des relations internationales - garantir la participation de la vie associative européenne et être responsable devant le Parlement européen.

Dans cet esprit, *le FORUM fait appel aux innovateurs* qui constituent la majorité des Conventionnels en leur demandant de soutenir avec détermination l’intégration dans la Constitution des éléments suivants que nous estimons prioritaires :

1. **A l’article I-1** : la source de la *souveraineté*, qui appartient aux peuples, doit être affirmée dans l’article 1 comme il avait été proposé par le Praesidium de la Convention sur la Charte et comme il est établi dans nos constitutions nationales ;

2. **A l’article I-3** : les objectifs de l’Union doivent comprendre *le rejet de la guerre* comme instrument pour la résolution des différends internationaux ; un *développement durable* et équilibré, à la fois économique, social et écologique ; *la lutte contre la pauvreté* tant en Europe que dans le reste du monde, *l’union économique et monétaire* comportant la monnaie unique ; *l’accès universel aux services d’intérêt général* ; *la reconnaissance d’activités socialement utiles*, le soutien à la vie familiale ; le soutien de l’Union aux citoyennes et citoyens résidant hors de celle-ci ; *la lutte contre les diverses formes de criminalité internationale* ;

3. la *Charte* doit être insérée intégralement et sans modifications dans la **Partie II** de la Constitution. **A l’article I-7**, il faut prévoir une clause évolutive ; il faut adapter les dispositions

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de la **Partie III** en fonction des droits inscrits dans la Charte et l'Union doit déclarer son adhésion à la Charte sociale de Turin révisée ; à l'**article I-8**, *la citoyenneté européenne* doit être élargie aux ressortissants des pays tiers résidant légalement sur le territoire de l'Union ;

4. A l'**article I-17**, *la clause de flexibilité* pour les compétences partagées et les mesures d'appui doit permettre au Conseil et au Parlement européen de co-décider à la majorité qualifiée la mise en œuvre d'une action de l'Union au-delà de la Constitution ;

5. A l'**article I-26**, *le Président de la Commission* doit être élu au suffrage universel et direct à partir de 2009 ; **aux articles I-20, I-22 et I-23** *le vote à la double majorité* (Etats et peuples) au Conseil - y compris en matière de politique étrangère, de politique fiscale et sociale et de ressources propres - et **aux articles I-33 et I-52 à I-55** *la codécision législative et budgétaire* doivent être généralisés ; à l'**article I-32**, il faut ajouter une nouvelle catégorie: *la loi organique*, couvrant des mesures de rang intermédiaire entre la Constitution et la loi, soumise à des majorités spéciales au Conseil et au Parlement.

6. A l'**article I-43**, *la clause de coopération renforcée* doit permettre à certains Etats membres d'avancer dans la réalisation de politiques et actions communes sans qu'ils ne puissent en être

empêchés par les Etats membres qui ne seraient pas prêts à avancer ;

7. **Aux articles I-44 à I-50** il faut garantir l'établissement *d'une véritable démocratie participative et paritaire* par un ensemble de droits individuels et collectifs ainsi que par la reconnaissance *de l'égalité effective des hommes et des femmes* ;

8. A l'**article I-59** il faut prévoir qu'un Etat membre ne pourra se retirer de l'Union que pendant une période transitoire de dix ans à compter de la date d'entrée en vigueur de la Constitution. Après dix ans, *le droit de retrait* volontaire doit être éteint.

9. A l'**article IV-6**, *chaque révision constitutionnelle* doit être décidée par un Congrès des Peuples d'Europe - constitué à l'instar de la Convention - à la majorité qualifiée de ses composantes nationales et européenne ;

10. A l'**article IV-7**, *un référendum* (ou consultation populaire) *européen* doit être prévu pour l'entrée en vigueur de la Constitution dans les Etats où la majorité du peuple aura exprimé son accord et il faut prévoir un système de relations privilégiées entre l'Union et les Etats qui n'auront pas accepté la Constitution ;

Sur la base de ces orientations, *le Forum Permanent de la Société Civile* présentera des amendements précis au texte révisé du Praesidium.

Bruxelles, le 28 mai 2003

*Building on Quicksand: The Global Compact, democratic governance and Nestlé*, by Dr. Judith Richter; published by CETIM, IBFAN-GIFA and Déclaration de Berne, Geneva, 2003.

More than 4 years have passed since the UN Secretary General first announced the Global Compact, a high level interaction between the United Nations and the business community. From the start, various NGOs have been raising questions about its alleged benefits and its risks, about its underlying rationale and concrete approach. This publication, commissioned by Centre Europe Tiers Monde (CETIM), Geneva Infant Feeding Association (GIFA-IBFAN) and Déclaration de Berne does not aim to summarize all of these concerns. It rather suggests focusing on two main lines of questioning. These two lines emerge from the debates between the Global Compact proponents and its critics:

(1) What is the value of the Global Compact in terms of changing corporate practices? More specifically, is it an arrangement that helps shift corporate practices towards the better - or is it rather an arrangement that

helps corporations continue to do their business as usual and moreover confers on them additional protection from legally-binding regulation and public pressure?

(2) What is the relationship between the Global Compact and global democratic governance? In other words: Does the Global Compact enhance - or undermine - efforts to promote democratic decision-making in a globalising world?

Both these questions are addressed at a theoretical level as well as by a case study focusing on the gaps between words and deeds, illustrated with the case of one of the latest prominent participants of the Global Compact – the food and beverage transnational Nestlé.

Part One provides an overview of the key concerns and demands relating to the Compact that NGOs have raised. Many NGOs, particularly those focused on corporate accountability, social and environmental justice, and human rights, have asked specific questions of the Global Compact Office and high UN officials. It goes on to summarise the answers given by high-level UN Officials to these questions. A common

response to critics has been that they misunderstand and even misrepresent the Global Compact. Proponents stress that the Compact is not a regulatory instrument nor a code of conduct, but a value-based platform designed to promote institutional learning. They describe the Global Compact initiative as complementary to regulatory and co-regulatory efforts - which states and NGOs may still wish to pursue. The officials appeal to critics not to undermine this novel partnership initiative. This section outlines why critics continue to evaluate the Global Compact as a co-regulatory initiative and raise questions as to whether the Global Compact undermines – rather than complements – more effective efforts to hold corporations accountable.

Part Two describes the presentation of Nestlé as a new high-level Global Compact affiliate and the presence of its Corporate Executive Officer as a keynote speaker at a major Global Compact Symposium. It summarises questions arising from this event and subsequent questions posed by NGOs to high-level UN officials about the actual mechanisms used by the Global Compact to scrutinize Global Compact partner companies. Answers to questions about the potential for restructuring the arrangement indicate that the initiative continues to rely essentially on the 'goodwill' and 'enlightened self-interest' of Nestlé and the other 1,000 or so Global Compact affiliate corporations to abide by Compact principles.

Part Three focuses on the relationship between Nestlé and the Global Compact. The extent to which the Global Compact can change corporate practices by relying on corporate goodwill is analysed by examining Nestlé's words and deeds. To gain further insights into the relationship between the Global Compact and democracy, a spotlight is cast on the relationship between Nestlé and the UN both before and after the company became a Global Compact 'participant'.<sup>6</sup> Attention is drawn to how the Global Compact lends itself to promoting industry views, such as that business

leaders are more trustworthy than their critics or that there is no need for any regulation stricter than that suggested by the Global Compact.

Dr. Judith Richter is author of *Holding Corporations Accountable: Corporate Conduct, International Codes and Citizen Action*, Zed Books, London and New York, 2001 and *OWe the Peoples? or OWe the corporations?, Critical*

*reflections on UN-business partnerships*, IBFAN-GIFA, January 2003 (see book review in *Transnational Associations*, 1-2/2003).

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*La construction d'un mouvement social*, par Marta Harnecker. Traduit de l'espagnol par Pierre Céré (édition originale : *Sin tierra : construyendo movimiento social*, Siglo XXI de España Editores, avril 2002). Postface : Interview de João Pedro Stedile, dirigeant du MST. Centre Europe - Tiers Monde (CETIM), Genève, septembre 2003. ISBN : 2-88053-031-8 256 pages.

**L**e mouvement des travailleurs sans terre (Movimento dos Trabalhadores rurais sem Terra) s'est fait jour au Brésil en 1984 comme réponse à la quête séculaire de terres par les paysans qui n'en possèdent aucune. Tout en suivant une voie non violente, ce mouvement est devenu en quelques années un instrument de transformation révolutionnaire de la société brésilienne.

Dans cet immense pays, où certaines grandes exploitations agricoles dépassent le million d'hectares, les *latifundistes* ont déclenché une véritable guerre contre les petits paysans ; principaux ennemis du MST, ils ne reculent devant aucun moyen, même les plus criminels, pour les écraser, sous le regard pour le moins complice des autorités.

Les sans-terre ont résisté aux persécutions, aux expulsions, aux assassinats, à l'agressivité de la police, à la prison et à la torture, à la mise à sac et à l'incendie de leurs locaux, aux procès montés de toute pièce, où se mêlaient accusations fantaisistes et « preuves » préfabriquées.

Face à ce climat de haine et de terreur, les sans-terre font confiance à la force de la solidarité humaine et conservent une foi inébranlable en la capacité de leur mouvement à remporter la victoire. Malgré leur faible niveau de formation, ces

paysans se tournent spontanément vers le socialisme pour bâtir une alternative à l'ordre social et économique qui les opprime. Fruit d'un intense travail de terrain, ce livre nous livre avec une grande rigueur les enseignements d'un mouvement social qui marque déjà très profondément l'histoire plus que millénaire de la lutte des paysans pour la terre : le MST. Par contre, on connaît généralement moins leur histoire et le détail de leurs principes et méthodes de travail et d'organisation. Même si ces derniers ne sont pas exactement transposables dans un autre pays, ils intéresseront ceux qui oeuvrent au renforcement des mouvements populaires et à leur fonctionnement démocratique.

L'auteure est journaliste, sociologue militante très connue en Amérique latine. Chilienne réfugiée à Cuba depuis le coup d'Etat de Pinochet elle est l'auteure de nombreux ouvrages dont quelques uns ont été traduits en français. Marta Harnecker a produit ce livre après un intense travail de terrain. Elle a arpenté les « champs de la bataille », visitant les *acampamentos* (campements), les *assentamentos* (communautés agricoles) et les *agrovilas* (agro-villages), pataugeant dans la boue et avalant la poussière.

*Ecumenism of the Laity: Continuity and Change in the Mission View of the World's Alliance of YMCAs, 1855-1955*, by Martti Muukkonen, University of Joensuu, Finland, 2003.

This study aims to interpret how the mission view of the World's Alliance of YMCAs changed from aggressive evangelism to social responsibility for human beings. The study looks at this change through changes in the interpretation of the YMCA Paris Basis from 1855 to 1955.

As a tool for this study, a new organisation onion model was developed, based on social movement, third sector and world-view studies. Starting from Hannan and Freeman's and Berger and Luckmann's theories, the organisation's most stable element is its core, where its identity, mission and ideology are located. The shell level consists of the organisation's constituency, leadership, structure and social objects. The organisational environment can be viewed as (cultural, economic, political and religious) opportunity structures.

Various young men's religious organisations emerged in the first half of the 19th century in different countries. In 1844, the London YMCA was founded and it became a model for other YMCAs. However, German Jünglingsvereine formed another stream in the YMCA family that in many respects differed from the British model.

In 1855, YMCA leaders of eight countries met in Paris, formed the World's Alliance of YMCAs, and accepted the Paris Basis as a basis of the movement.

The YMCA spread to all continents, developed organisational models and created new activities such as youth work, physical education, military canteens, etc. Facing new challenges, the YMCA had to modify its mission to fit the needs of various niches.

This study aims to interpret how the different elements in the context, shell and core influenced the change in the mission view of the World's Alliance of YMCAs 1855-1955.

The key factor identified in this change was in the change of the frame on the Kingdom of God, which changed from transcendent City of God to immanent God's Creation.

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*Nonprofit organizations: A Conceptual Approach to Nonprofit Accounting Information (Las entidades no lucrativas: su información contable desde el enfoque del marco conceptual)*, by Juana Fuentes Perdomo, Universidad de Las Palmas de Gran Canaria (Spain), 2003.

### Summary

Nonprofit organizations perform a lot of activities, in several areas, like arts and culture, sport, religion, education and research, health, civil rights, social work, environment or development cooperation. Nonprofit organizations meet several social needs and they carry out particular purposes, not attended by other sectors. Also, these organizations play a relevant economic and social role, and form a significant component of every society, particularly in developed economies. All these reasons justify their relevance as a subject for research.

Undoubtedly, the lack of a profit purpose is the most characteristic attribute that determine accounting information provided by nonprofit organizations. This essential aspect has been not subject of great consideration by scholars in Accounting, who traditionally have been concerned, mainly, with business enterprises. In order to contribute to fill this research gap, this doctoral dissertation deals with financial accounting and reporting by nonprofit organizations, through a conceptual approach. The main research aim is to determine whether there is any coherence between logic derivations provided by conceptual framework methodology and accounting regulations to nonprofit organi-

zation. The author chooses the conceptual approach as the most appropriate because this approach is based on informative objectives and users needs, which are very different from the business world. This main research objective is complemented with a proposal of accounting principles designed specifically for nonprofit organizations.

The thesis raises what conclusions should be reached according to logic methodology of accounting conceptual framework applied to nonprofit organizations. This conceptual basis is contrasted with harmonization processes about accounting information of cited organizations, particularly by analyzing accounting principles specific to nonprofit organizations.

The thesis is organized in three chapters. The first chapter begins with a brief analysis of particularities of nonprofit organizations, in order to characterize the research object and to emphasize their social role and economic impact. Then, it studies general theory of conceptual framework, its purpose and components. Therefore, it is necessary to develop different phases of the logic-deductive itinerary characteristic of conceptual framework. That is, to establish the economic, legal and social environment in which nonprofit organizations performance takes place, to determine which are the objectives of financial information for nonprofit entities, to establish who are the users of financial information and which are their informative needs, and to formulate the qualitative characteristics that make accounting information useful to users.

In the second chapter the logic-deductive process characteristic of conceptual framework is completed by establishing the basic hypothesis of accounting model for nonprofit organizations, and the more operative components, like elements of financial statements, and recognition and measurement criteria, with a particular attention to different capital and capital maintenance concepts in nonprofit sector.

So, applying the conceptual framework methodology, it raises a general model, a guide to make accounting rules for nonprofit organizations, designed specifically to them. This normative approach about how should be accounting rules is contrasted with a positive approach about

how are the standards that many harmonization setters have issued for nonprofit organizations. The aim is to determine the coherence between the logic-deductive reasoning made in the thesis and the pragmatic promulgation of accounting standards for nonprofit organizations.

The analysis of international and national (Spanish) harmonization processes results into incongruities of these regulations with conceptual framework, because accounting harmonization for nonprofit organizations has been based on business model. This implies that a framework designed to investors and earnings measurement has been translated to organizations that lack of investors or profit purpose. In sum, harmonization processes had not taken into account the particularities of nonprofit organizations.

So, the logic itinerary of conceptual framework contrasts with accounting harmonization processes developed into pragmatic way for nonprofit organizations. There is no coherence between them, because it has been applied the business model to nonprofit organizations.

In view of the detected inconsistencies, chapter three addresses, in a normative approach, the formulation of accounting principles for nonprofit organizations. So, from the logic itinerary based on users needs and information objectives, it concludes to a set of fundamental principles or general rules that help to reach proposed objectives. To this aim, accounting principles are studied with special attention to their concept and historic evolution, from general acceptance to their overlapping into conceptual framework projects.

Then, the thesis analyzes the different accounting principles, their concept and justification in business enterprises and governmental entities, in order to raise their adequacy or not to nonprofit organizations. In this way, a set of accounting principles to nonprofit organizations is proposed, in order to give a right answer to special features of activities that justify the *raison d'être* of these organizations and, as a result of that, the accounting principles do not point towards earnings, but towards accountability and stewardship.

The final section sums up the main research conclusions. The thesis offers a contribution to

an area, the nonprofit environment, which has received little attention by accounting and financial information researchers. It brings answers to incongruities and fills the gaps of spe-

cific accounting regulation to nonprofit organizations, with a set of proposals based on the peculiarities of such organizations.

## Condemning violence, Security Council calls for protection of UN workers

*UN Security Council in session, 26 August –*

One week after the terrorist attack against United Nations headquarters in Baghdad, the Security Council today strongly condemned all forms of violence against relief workers and urged countries to ensure that crimes against such personnel did not go unpunished.

The Council unanimously adopting a new resolution reaffirming the obligation of all parties involved in armed conflict to comply fully with the rules and principles of international law “related to the protection of humanitarian personnel and United Nations and its associated personnel, in particular, international humanitarian law, human rights law and refugee law.”

The move comes exactly one week after the deadly terrorist bombing of the Canal Hotel in Baghdad, which served as the UN headquarters in Iraq. Killed in the blast were Sergio Vieira de Mello, Secretary-General Kofi Annan’s top envoy for Iraq, and at least 22 others.

Immediately before the vote, the Secretary-General said: “I can think of no issue about which I feel more strongly...than the safety of those brave men and women who serve...in zones of conflict and danger.” Calling for consensus on the resolution, Mr. Annan said a unanimous vote would “send an unambiguous message to all those who mistakenly believe that, in today’s turbulent world, they can advance their cause by targeting the servants of humanity.”

Today’s text urged “all concerned, as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full and unimpeded access by humanitarian personnel to all people in need of assistance, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets.”

The Council also expressed its determination to take appropriate steps to ensure the safety and

security of humanitarian and UN personnel, including by requesting the Secretary-General to seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of United Nations and its Associated Personnel.

Among those terms were those regarding the prevention of attacks against members of UN operations, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders, in future, as well as, if necessary, in existing status-of-forces, status-of-missions and host country agreements.

Another step would include issuing the declaration of exceptional risk, under that Convention, in certain situations, and inviting the Secretary-General to advise the Council where circumstances would support such a declaration.

*Press Release  
For the full text of the Resolution,  
<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/478/02/PDF/N0347802.pdf?OpenElement>*

## La Sous-commission des droits de l’homme des Nations unies approuve des normes sur la responsabilité des sociétés transnationales

La Sous-commission de la promotion et de la protection des droits de l’homme des Nations unies (Haut-commissariat aux

droits de l’homme) a approuvé, le treize août, les normes sur la responsabilité en matière de droits de l’homme des sociétés transnatio-

nales et autres entreprises élaborées par son Groupe de travail chargé d’examiner les méthodes de travail et les activités de ces



sociétés. Elle s'est prononcée en tout sur 19 résolutions et décisions portant sur l'administration de la justice, les droits économiques, sociaux et culturels, les violations des droits de l'homme dans tous les pays, et la prévention de la discrimination.

Par une résolution (E/CN.4/Sub.2/2003/L.8) adoptée telle qu'amendée à l'unanimité, la Sous-commission approuve les normes sur la responsabilité en matière de droits de l'homme des sociétés transnationales et autres entreprises présentées par le Groupe de travail chargé d'examiner les méthodes de travail et les activités de ces sociétés (E/CN.4/Sub.2/2003/12/Rev.1). Elle décide de transmettre à la Commission des droits de l'homme, pour examen et adoption, les normes sur la responsabilité en matière de droits de l'homme des

sociétés transnationales et autres entreprises. Elle recommande que le Groupe de travail poursuive ses délibérations et qu'il s'efforce encore, en particulier, de rechercher les mécanismes qui permettraient de mettre éventuellement en œuvre ces normes, grâce par exemple à la poursuite des travaux de M. El-Hadji Guissé sur les conséquences des activités des sociétés transnationales pour les droits économiques, sociaux et culturels, dans le cadre des activités futures du Groupe de travail. Elle demande au Secrétaire général de fournir les services nécessaires au groupe de travail pour qu'il puisse mener ses tâches à bien.

La résolution comporte un ensemble de recommandations spécifiques adressées à divers secteurs d'activité économique. Les normes dont il est question ren-

forcent les initiatives prises par ailleurs, notamment dans le cadre du Parce global (Global Compact), des conventions de l'OIT (Organisation internationale du travail) et d'autres codes de conduite relatives aux droits de l'homme.

La Sous-commission est le principal organe subsidiaire de la Commission des droits de l'homme des Nations unies. Elle se compose de 26 membres experts qui siègent à titre individuel et non en tant que représentants des Etats.

Sources : *Communiqué Release, Sous-commission de la promotion et de la protection des droits de l'homme, Haut-Commissariat aux droits de l'homme, 55ème session, 13 août 2003 et ELDIS, ELDIS.*  
<http://www.eldis.org/static/DOC13036.htm>

## Les humanitaires, cibles politiques en Irak

Les organisations non gouvernementales (ONG) humanitaires sont terrifiées par la situation dans laquelle se trouve la population irakienne. Abattue par des années de blocus et par les bombardements américains, la population irakienne n'a toujours pas accès aux services de base essentiels pour vivre : eau potable, électricité, soins.

Le peuple irakien est maintenant confronté à un autre problème de taille. Il s'agit de l'insécurité. Pour l'exemple, les civils, irakiens ou expatriés, travaillant avec des organisations internationales telles que les ONG ou les Nations unies, deviennent la cible des groupes armés terroristes. La mort

de deux confrères, il y a quelques semaines, et les récents attentats contre la Croix-Rouge rappellent avec douleur que les humanitaires aussi payent le prix de leur présence et que notre intervention en Irak peut être remise en question à chaque instant.

Les opérateurs humanitaires sont aujourd'hui très clairement perçus par les groupes armés terroristes comme des alliés des forces belligérantes. Est-ce que les humanitaires ne sont pas en train de payer le prix de leurs récents engagements politiques et de leur volonté d'influencer les décideurs internationaux ?

Il est vrai que l'Afghanistan et l'Irak montrent à quel point les

humanitaires sont devenus des acteurs politiques. On remarque dans ces deux situations que la plupart des ONG humanitaires, quelle que soit leur nationalité, d'ailleurs, européenne ou américaine, ne se limitent plus à tenter de sauver des vies. Elles veulent se donner un rôle politique. Elles tentent d'influencer les politiques nationales et internationales. Pour ce faire, les ONG deviennent de plus en plus grosses et internationales. Aujourd'hui, la plupart des principales ONG se sont constituées en fédérations : Care, MSF, MDM. Handicap International possède aujourd'hui six bureaux en Europe, un au Canada, sans compter des programmes dans 50 pays du Sud et

de l'Europe de l'Est. La création de ces bureaux dans le Nord va de pair avec une volonté d'agir au niveau international et de porter leur voix auprès des instances politiques.

Juste avant le déclenchement de la guerre en Irak, un certain malaise s'était installé dans les ONG. Un double discours était bien souvent diffusé : d'un côté, manifester contre la guerre et faire pression sur les gouvernements pour laisser le temps à la diplomatie de trouver une solution ; et, de l'autre, commencer à se préparer pour l'assistance aux victimes de guerre. Mais se préparer, c'est déjà renoncer à une solution politique. Et ne pas se préparer, c'est devenir une association de défense des droits humains. Des clivages se sont installés.

Mais, aujourd'hui, participer à la résolution de la guerre ou à la construction de la paix constitue pour beaucoup d'organisations un objectif en soi. Seuls varient les moyens mis en œuvre pour y parvenir. Certaines ONG se limitent à une assistance dans le domaine de la santé, argumentant que la construction de la paix passe par le bien-être de la population.

D'autres travaillent à renforcer la société civile à travers des projets économiques ou associatifs.

Pourtant, certaines organisations non gouvernementales se sont bien efforcées de se distinguer des forces militaires belligérantes américaines et britanniques. Les actions n'ont pas manqué : des ONG comme Handicap International, Action contre la faim ou Oxfam ont clamé haut et fort à travers l'Europe leur désaccord profond sur l'intervention militaire menée par l'administration Bush. Handicap International s'est aussi refusé à accepter tout argent provenant des fonds publics américains et britanniques. En Irak, Handicap International a refusé toute signature d'accord avec les militaires américains tant que les Nations unies n'étaient pas impliquées. Cette bataille jusqu'au-boutiste vers la préservation d'une indépendance et la clarification et la distinction des rôles et valeurs entre humanitaires et militaires n'a malheureusement pas évité qu'aujourd'hui le personnel humanitaire soit pris pour cible par les groupes terroristes. [...]

Les humanitaires se retrouvent face à des groupes terroristes incontrôlables qui, par principe, vivent dans une sphère sans traités et principes internationaux. On pourrait également brandir les valeurs humanitaires d'impartialité, de neutralité et d'universalité. Ce serait bien naïf.

Que faut-il faire ? Continuer à risquer la vie des employés humanitaires ? Renoncer à travailler dans des environnements "terroristiques" ? Faut-il adapter les lois actuelles ou en créer de nouvelles spécifiquement pour ces interventions ? Parlemer avec ces groupes terroristes pour un respect de ces règles et la protection des civils ?

Une nouvelle carte du monde se dessine où certaines régions du globe vont devenir inaccessibles et trop dangereuses, même pour les humanitaires.

**Karl Blanchet**

directeur d'Handicap International  
du Royaume-Uni  
*Extrait de l'article de Karl Blanchet  
paru dans l'édition du Monde du 2  
novembre 2003*

## World Summit on the Information Society

Civil Society announces today that if governments continue to exclude its principles, it will not lend legitimacy to the final official WSIS documents.

Civil society is already shaping information societies to achieve social, cultural, educational, political, and economic benefits for all. Communication rights are part of human rights. Human rights must be the framework for information societies. Without this, the WSIS

vision of "an information society" is meaningless.

In the WSIS process, we have seen that, thus far, our main principles are not reflected in the results. Even though the process has been frustrating and inconsistent, with civil society included and excluded at the whim of governments, our experience has been one of closer engagement than has been the case at other United Nations conferences. We hope

that this is an experience that can be built on to ensure much closer involvement of civil society in the design and development of information societies.

While the spirit of the documents is market focused, civil society and some governments, especially from the south, will continue to support the rights of citizenship and promote the concept of cooperation instead of competition. Even if the out-

comes of the WSIS do not reflect, at the end of the process, our principles, visions and perspectives, we will continue to be key actors in the definition of the nature and direction of information societies, one whose focus would be people's rights. We will insist that the proposal of the WSIS includes our priorities such as development and justice for the south, human rights, gender equi-

ty, community media, education, public goods, free software and open access to scientific and technological information, privacy, democratic and transparent internet governance, cultural and linguistic diversity, excluded minorities, indigenous people, etc.

We now have a stronger position, because as the days have progressed meaningful communication has emerged. But much

remains to be done. For our part, civil society, we are now in the process of drafting a framework document that will lay down our vision of inclusive, participatory, sustainable, equitable and just information societies.

From: *document of the Heinrich-Böll-Foundation, Civil Society Press Release, 26 September 2003*

## Reinforcing the World Tourism Organization

The recently finished 70th session of the WTO Executive Council decided that the Secretary-General, Mr. Francesco Frangialli, should try to use "this historic opportunity to reinforce the World Tourism Organization." This refers to inviting sovereign, non-member states to become members of the Organization, whose role will soon be substantially increased with its conversion into a specialized agency of the United Nations.

The Council Members adopted with satisfaction the agreement between the two organizations prepared by the Committees on Negotiations of ECOSOC and the WTO, chaired by Peru and Jordan, respectively. The UN counterpart, Economic and Social Council (ECOSOC), will meet in July in Geneva to - as expected - also approve the agreement between the United Nations Organization and WTO, which will reaffirm the WTO's leadership role in the world tourism. The document will finally have to be adopted by the two highest governing organs - general assemblies - which have their sessions scheduled in the fall of 2003. This will

conclude a process that began in 1969, through a resolution of the UN General Assembly calling for the constitution of an inter-governmental organization, in charge of tourism, within the UN system, followed in 1977 by an agreement through which WTO became a UN related agency.

The Executive Council, which met in Madrid on 3 and 4 June, expressed a great interest in expanding the membership of the Organization with the non-members and with the sovereign states, that have for various reasons have abandoned WTO in the past. Countries such as the USA, United Kingdom and Australia are not among 140 members of WTO. Membership increased by several new full members in the last six years, since Mr. Frangialli took post of the Secretary-General.

"International tourism, which has been shaken and transformed by the successive shocks of the economic downturn, September 11, terrorism, war and the SARS epidemic, feels a need for cooperation more than ever," said Mr. Frangialli. "In a troubled situation in which many other unforeseen events could still occur, it is

important that actors demonstrate a capacity for rapid response and a maximal ability to adapt. As for observers, they should avoid making overly definitive predictions or hastily prepared assessments."

More than a hundred delegates attended the 70th session of the Executive Council, which confirmed the great importance of the meeting. Besides the important decisions taken on the implementation of the programme of work in the period 2002-2003, the programme of work and budget of the Organization for 2004-2005, linguistic diversity in the WTO and various administrative issues, the greatest attention was given to the situation of Asian tourism in relation to the SARS epidemic.

The Council expressed sympathies with China and received with satisfaction the information of the Chinese delegation, stating that the "situation has been rigorously put under control, which led to the fact that no new SARS cases or death tolls have been recorded in last days". Pleading that WTO's highest governing body should stick to the plan of meeting in Beijing, Chairman of the Chinese National Tourism

Administration Mr. He Gwangwei assured that “the government of the Peoples’ Republic of China and its people guarantees safety and security to all delegates”.

The Executive Council decided not to take immediately a decision on the venue of this year’s WTO General Assembly, which is scheduled to take place between 17 and 24 October in the Chinese capital. The Council gave a mandate to the Secretary-General, that he, together with the Chairman of the Council (Russia), the WTO host country (Spain) in consultation with China, takes a final decision three months

prior to the scheduled meeting. “If the World Health Organization and governments lift the travel advisories for Beijing and mainland China by mid-July, the General Assembly will be held as scheduled,” said Mr. Frangjalli.

During the session, members had an opportunity to meet, for the first time, with the members of the WTO Education Council and attended the award giving ceremony of the first Ulysses prize for the achievements in the academic sphere to Dr. Donald Hawkins from George Washington University, Washington D.C.

The 71st session of the Executive Council will be held a day before the 15th General Assembly in fall 2003.

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## Capital Social

La Iniciativa Interamericana de Capital Social, Ética y Desarrollo tuvo la oportunidad de participar en dos conferencias magistrales. La primera conferencia “II Seminario Internacional de Evaluación, Sistematización y Diseminación de Proyectos Sociales,” fue organizada por la Fundación Abrinq, organización cuyo objetivo es promover la defensa de los derechos del niño. El evento fue realizado en la Cámara Americana en Brasil el 29 de sep-

tiembre de 2003 y fue inaugurado por el Coordinador de la Iniciativa Interamericana de Capital Social, Ética y Desarrollo, Bernardo Kliksberg. Adicionalmente Kliksberg dictó una conferencia la semana pasada a 350 empresarios paraguayos miembros de la Asociación de Empresarios Cristianos. El tema de la conferencia fue sobre la necesidad de promover una cultura de responsabilidad social empresarial y como esta

tiene un rol importante en la lucha contra la pobreza. El evento fue atendido por varios Ministros y Viceministros del Paraguay y contó con la participación del nuncio apostólico del Paraguay, Monseñor Antonio Lucibello.

*Información adicional:*

*http://www.fundabring.org.br/index.*

*php?pg=seminario#*

*<http://www.fundabring.org.br/index.*

*php?pg=seminario#>*

## U.S. conservatives take aim at NGOs

While non-governmental organizations (NGOs) such as Amnesty International, Greenpeace, and Oxfam have made significant contributions to human rights, the environment, and development, they are using their growing prominence and power to pursue a “liberal” agenda at the international level that threatens U.S. sovereignty and

free-market capitalism.

That was the message delivered by a series of speakers at an all-day conference, “Nongovernmental Organizations: The Growing Power of an Unelected Few,” Wednesday sponsored by the American Enterprise (news - web sites) Institute (AEI), a Washington think tank that has been particularly influential with

the Bush administration.

“NGOs have created their own rules and regulations and demanded that governments and corporations abide by those rules,” according to AEI and the conference co-sponsor, the rightist Institute of Public Affairs of Australia. “Politicians and corporate leaders are often forced to respond to the NGO media

machine, and the resources of taxpayers and shareholders are used in support of ends they did not sanction.” “The extraordinary growth of advocacy NGOs in liberal democracies has the potential to undermine the sovereignty of constitutional democracies, as well as the effectiveness of credible NGOs,” they warned.

To shed more light on NGOs, AEI announced the launch of a new website, [NGOWatch.org](http://NGOWatch.org) ([www.ngowatch.org](http://www.ngowatch.org), see below), that will provide information about their operations, funding sources and political agendas. Brian Hook of the Federalist Society for Law and Public Policy Studies, which is co-sponsoring the site, said it will cover those NGOs “with the most influence in international affairs.”

NGOs, which have proliferated at the local level since the 1980s—particularly in developing countries—have become major players at the United Nations (news – web sites) and other multilateral agencies, such as the World Bank (news - web sites), which had traditionally dealt only with governments. Several thousand NGOs now enjoy “consultative status” at the UN, which entitles them to participate in some debates, while their image as representatives of “global civil society” has endowed them with a moral and political legitimacy, which they have used as leverage in dealing with the other major global actors, governments and corporations.

But, unlike corporations and governments, they are largely unregulated, and their internal processes often lack transparency and accountability, according to their critics and even to many NGOs themselves. Indeed, a UN

commission on civil society chaired by former Brazilian (news - web sites) President Henrique Cardoso is expected to recommend the adoption of guidelines or other mechanisms to ensure that NGOs recognized by the UN are transparent and accountable.

To the groups who gathered at AEI Wednesday, however, international NGOs raise concerns that go far beyond transparency and accountability. To them, the international NGOs are pursuing a leftist or “liberal” agenda that favors “global governance” and other notions that are also promoted by the United Nations and other multilateral agencies.

“This is inherently a project that is tilted to the left,” according to Cornell University government professor Jeremy Rabkin, who argued that NGOs are using the multilateral system to try to regulate corporations and governments.

“NGOs want to be players. They want to be regulators,” agreed IPA’s Gary Johns. He cited NGO lobbying for the adoption of codes of conduct for multinational corporations. “Before long, you have a degree of regulation that no one thought was possible.”

In fact, according to George Washington University political science professor Jarol Manheim, international NGOs are pursuing “a new and pervasive form of conflict” against corporations which he calls “Biz-war,” the title of his forthcoming book. NGOs, for example, work with sympathetic institutional investors, such as union and church-based pension funds, to sponsor shareholder resolutions demanding that corporations adopt more environment- or human-rights- friendly policies.

Such efforts, he said, should be seen as “part of a larger, anti-corporate campaign.”

This was echoed by John Entine, an AEI adjunct fellow, who called the “social investing” movement, as it is called, a “wolf in sheep’s clothing.” “Anti-free market NGOs under the guise of corporate reform are extending their reach into the boardrooms of corporations,” he said. “In many cases, naive corporate reformers, within corporations and in government, are welcoming them.”

Moreover, the strategy is working. “Big shareholders are getting embarrassed to be associated with some companies,” said Manheim, who noted that companies are increasingly using NGOs as consultants or even hiring former NGO officials to protect themselves against negative publicity or consumer boycotts.

On the global political front, international NGOs, which led the fight for the global ban on anti-personnel mines, the Kyoto Protocol (news - web sites) to curb greenhouse-gas emissions, and the treaty establishing the International Criminal Court (ICC), are pursuing a “liberal internationalist” vision that is very much at odds with that of the Bush administration, according to American University law professor Kenneth Anderson.

These efforts are intended in part to further a world order based on “global governance” and the rule of international law, rather than one based on the sovereignty of democratic nation states. The leaders of international NGOs are part of a culture that “wants to constrain the United States” and whose ideas about

world order “are not congenial to the ideas of this administration,” according to Anderson.

Several speakers praised the work of NGOs in providing services and humanitarian aid to needy people in developing countries but stressed that, at the international policy level, much of what they did actually hurt the intended beneficiaries. Roger Bate, director of Africa Fighting Malaria, cited NGOs’ opposition

to the use of DDT to fight malaria and to the delivery of genetically-modified maize in southern Africa as examples of policies which amounted to “eco-imperialism” and showed a “callous disregard for human life.”

“NGOs definitely provide benefits in the short run, but in the long run, their influence is almost always malign,” he said.

Mike Nahan, IPA’s executive director, charged that internation-

al NGOs supported secession movements in East Timor (news - web sites) and Aceh, Indonesia; put Papua New Guinea “on the road to bankruptcy” by forcing out the mining industry; and is “destroying civil society in many of these countries.”

Jim Lobe, *OneWorld U.S.*  
OneWorld.net  
WASHINGTON, D.C., June 12  
(*OneWorld*)

## World campaign to reform global institutions launched

World Campaign to Reform Global Institutions Launched The Campaign for the in-depth Reform of the System of International Institutions has been launched and promoted by a number of actors in world civil society. The campaign’s objective is to stir up “a process leading to the reform of the system

of international institutions with the participation of all world actors and moving towards a system of global democratic governance”.

This campaign Manifesto, along with the endorsements received for it, will be submitted to the United Nations General Assembly with a call for the organization of a World

Conference on Reform of the System of International Institutions.

*UN Connections*  
*World Federation of United Nations Associations Newsletter*  
*Issue No. 27 July 2003*  
*www.wfuna.org*

## Fellowships in philanthropy

The Center for the Study of Philanthropy is pleased to announce two Unique fellowship opportunities: a new Senior International Fellows Program for fall 2003 and the spring 2004 International Fellows Program. The first is a pilot program for senior Third-Sector practitioners from outside the United States. The second program is for younger scholar/practitioners working in the NGO sector internationally. Please

see attached details about the application process for both programs. If you have any difficulty accessing the attached .html files, we will be happy to send the information in an alternate format. Program information is available on the Center’s website at [www.philanthropy.org](http://www.philanthropy.org), under the heading International Philanthropy. Printed brochures are also available.

*Amal A. Muhammad*  
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## Regional United Nations Information Centre (RUNIC)

In line with Secretary-General Kofi Annan's decision to proceed with the reform of the UN, he has decided to implement the regionalization plan for Western Europe.

Hence the nine United Nations Information Centres situated in Western Europe, Athens, Bonn, Brussels, Copenhagen, Lisbon, London, Madrid, Paris and Rome, will close by the end of 2003 and a hub will be established in Brussels with a view to serve the populations of EU. The decision came about at a meeting organized by the WFUNA - Geneva Office at which Shashi Tharoor, Under-Secretary-General for Communications and Public Information, met with representatives of the UNAs of Belgium, Finland, Greece, Italy, Luxembourg, Norway, Spain, United Kingdom. The UNAs of Dominican Republic and Russian Federation observed the meeting.

In order to facilitate an orderly shutdown, UNIC Copenhagen's outreach activities and services to the Nordic Countries will cease as of 31 October 2003. As soon as we have more details about and contact information for our new regional UN Information Centre - RUNIC - in Brussels, we will announce it on this site.

*From: WFUNA news. see also:  
<http://unjobs.org/vacancies/current/1067165402.07>*

## World policies

In the globalization age, transnational facts, international

law and multilateral institutions have more and more a strong influence on politics, economy and history of each country. The principal political issues can't now be understood without a clear vision about the world reality.

"World policies" is a data, strategies and news' center about the large issues of global agenda. Fight against corruption, business ethics promotion, preventive procedures against money laundry, combat against drugs and terrorism, human rights' defense - including fair labor- free trade support and environment preservation are some of the matters which this site contains.

The exclusive World Policies' navigation bar and its index which are specially prepared for each document let you, from only one location and without losing the general view, the quick finding of your search's objectives, deepening your study, analysis and comparative vision among the site's matters. Moreover, you may, at the same time, to consult the principal international institutions' pages.

The data of this site and the relationships between them were personally chosen and made by Carlos A. Manfroni. A technical team gives the network support for the quick pass from a document to other document and a synoptical vision about the world panorama.

*Contact: [info@worldpolicies.com](mailto:info@worldpolicies.com)  
<http://www.worldpolicies.com>*

## NGOWATCH

NGOWATCH.ORG is a collaborative project of AEI and the

Federalist Society. Recent years have seen an unprecedented growth in the power and influence of nongovernmental organizations (NGOs). While it is true that many NGOs remain true to grassroots authenticity conjured up in images of protest and sacrifice, it is also true that nongovernmental organizations are now serious business. NGO officials and their activities are widely cited in the media and relied upon in congressional testimony; corporations regularly consult with NGOs prior to major investments. Many groups have strayed beyond their original mandates and assumed quasi-governmental roles. Increasingly, nongovernmental organizations are not just accredited observers at international organizations, they are full-fledged decision-makers.

Throughout much of the world, non-governmental organizations are unregulated, spared any requirement to account for expenditures, to disclose activities or sources of funding or even to declare their officers. That is not the case in the United States, where the tax code affords the public some transparency about its NGOs. But where is the rest of the story? Do NGOs influence international organizations like the World Trade Organization? What is their agenda? Who runs these groups? Who funds them? And to whom are they accountable?

In an effort to bring clarity and accountability to the burgeoning world of NGOs, AEI and the Federalist Society have launched NGOWATCH.ORG. This site will, without prejudice, compile factual data about nongovernmental organizations. It will include analysis of relevant issues, treaties,

and international organizations where NGOs are active. There will be crossreferenced information about corporations and NGOs, mission statements and news about causes and campaigns. There will be links to NGOs and to articles and authors of interest.

NGOWATCH.ORG is a work in progress. AEI and the Federalist Society will continue upgrading and improving this site. Suggestions are appreciated. Nongovernmental organizations are a time-honored tradition, in the United States and throughout the world. With greater transparency for NGOs, there will be greater accountability, and with that, we hope, greater responsibility and effectiveness for the many who are engaged in great work.

*Source: American Enterprise Institute for Public Policy Research and the Federalist Society for Law and Public Policy Studies*

## **New project launched at UNRISD**

UNRISD launches a new research project on UN World Summits and Civil Society Engagement with the objective of critically assessing the impact of the various UN summits on civil society activism at global, national and local levels. How are CSOs striving to influence international and national policies, and with what results? How are they trying to implement new approaches and policies ensuing from the summits? Have these summits helped to increase improved resourcefulness and capacity for action of participating CSOs, or have they instead given rise to CSO co-option and use for channelling dominant thoughts and approaches? What are the civil society actors that have especially taken advantage of an opportunity cre-

ated by the UN summits and why? And what are the vital lessons to the UN, as well as donor agencies and others supporting the work of civil society? These are some of the critical questions that the project intends to investigate and analyse. Three sets of broad activities are envisaged under the project:

1. Studies on national and local CSO dynamics in countries holding UN summits and Preparatory meetings;

2. Study on the impact of UN summits on global civil society activism and

3. Study on the experiences of preparatory and follow-up processes of UN summits.

The project is planned for two years and is being partially funded by the Ford Foundation

*Source: UNRISD, 27 May 2003*

*Krishna Ghimire*



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