International Conference

Transnational Corporations: beneficiaries and driving forces of globalisation – Corporate Capture or Capturing the Corporate?

Berlin, 24-25 April 2017

The roughly 80,000 transnational corporations (TNCs) operating throughout the world are *the* global players *par excellence*. They are responsible for approximately 80% of global trade flows. Their economic and financial strategies have massive economic, social, environmental and political effects at the local and national levels. The relationship between multinational enterprises and national and local actors has been characterised by a significant asymmetry to date. TNCs' interests have been secured along a broad front, for instance, in the guise of applicable investment protection rules. This situation stands in stark contrast to protection of human rights and labour standards affected by TNC activities. This is particularly the case in countries with weak state structures or poor governance. To live up to this responsibility, multinational enterprises have to identify and disclose the consequences and risks of their activities as well as business relations along the entire value-added chain, ensure that there are mechanisms for negatively affected persons to lodge complaints, secure free interest representation of employees and accept the right of trade unions to organise workforces. But in contrast to the issue of investment protection, when it comes to human rights TNCs generally call for self-regulation and as few contractual obligations as possible. As practice shows, voluntariness only works to a very limited degree, however. And the contribution to the common weal also usually proves to be modest. This goes for the industrialised countries as well as developing and emerging economies. The financial crisis of 2008 at the latest underscored that national regulatory tools and instruments are unable to guide and steer global financial flows. A lack of transparency and woefully inadequate regulation allow not only for a legal reduction of the tax burden, but for tax avoidance and tax evasion on a massive scale as well.

As a consequence, not only is economic growth constrained and economic inequality exacerbated. Governments also forfeit the possibility to shape political and social development. The results are dramatic, as results of surveys and elections in the industrialised countries show. The population is disenchanted over the cosy ties between policy-making and business spheres and the preferential treatment afforded multinational enterprises. Some are calling it a refeudalisation of politics, in which sealed-off economic elites and lobbyists are able to exert direct influence on government policy. The excesses of capitalism are now threatening the very foundations of democracy itself.

Political and regulatory solutions aimed at protecting employees and human rights, ensuring just taxation and combating tax evasion along with balanced protection for investment are urgently needed. There have been promising initiatives at regional and international levels over the last few years. We want to discuss the range and impact of these initiatives, explore perspectives of the North and the South in terms of commonalities and differences and analyse ways and means to implement and deepen the reform agenda in spite of adverse global trends and tendencies.

24 April 2017, 18.00-20.00

Public panel discussion:
„Does capitalism bring down democracy? – Democratic control and due diligence for Transnational Corporations“

Panelists:

- Donald Deya, Pan African Lawyers Union (PALU) (tbc)
- Michael Sommer, Dep. Chairman of Friedrich-Ebert-Stiftung (FES)
- Renate Hornung-Draus, Confederation of German Employers' Associations (BDA) (tbc)
- Susana Ruiz Rodríguez, Oxfam
- Thorsten Schäfer-Gümbel, Dep. Chairman of the Social Democratic Party of Germany (SPD)

Facilitator: Conny Czymoch

25 April 2017, 09.00-17.45

International conference:
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09.00-09.15 **Opening of the conference and welcome remarks:**
Svenja Blanke, Head of Department "Latin America and the Caribbean", Friedrich-Ebert-Stiftung Berlin

09.15-10.45 **Session 1: Business and Human Rights: between voluntary commitments, national action plans and the initiative for a binding UN Treaty**
Extreme working hours, inadequate pay, gender based violence and restrictions on trade union rights as well as violence against trade unionists describe the daily working conditions within the global supply chains. The UN Guiding Principles of Business and Human Rights (UNGP), adopted in 2011, outline responsibilities of both states and corporations, especially underlining the importance of an effective access to remedy for adverse human rights impacts. 12 countries have so far implemented National Action Plans on Business and Human Rights (NAP), with the US, Switzerland, Germany and Italy being the most recent states to present their NAPs. It is noteworthy to point out that Germany's NAP provides for a mandatory due diligence mechanism if voluntary means do not work. Parallel to the UNGP process, a group of states – with South Africa and Ecuador taking the lead - pushes for a binding UN treaty on business and human rights. After being approved by the UN Human Rights Council in 2015, this proposal is currently under negotiation in a multilateral working group.
How can the different initiatives be assessed? What are best practices and lessons learnt from the different NAPs that are already implemented? Which process is favored by the South and who stands to gain?

Inputs:

- Donald Deya, Pan African Lawyers Union (PALU), Tanzania (tbc)
- Michael Windfuhr, German Institute for Human Rights (tbc)
- Virginia Sandjojo, SOMO, Netherlands (tbc)
- Iván González, Trade Union Confederation of the Americas (TUCA), Brazil

Chair: Frederike Boll, Friedrich-Ebert-Stiftung Berlin

10.45-11.15 Break

11.15-13.00 **Session 2: Investment Protection and the International Investment Agreements (IIA) Regime: investor rights vs. democratic control?**

Investment protection clauses in trade agreements – commonly known as investor-state-dispute-settlement (ISDS) – have triggered a heated debate recently as to what extent this protection system could undermine governments' right to regulate. As foreign investors, TNCs have increasingly been making use of ISDS in the last decade, challenging governments' reforms in various fields such as health and environmental standards or consumer protection. UNCTAD counted around 760 cases worldwide so far, with 2015 and 2016 seeing a record-high of new cases initiated (74 and 62 respectively). During negotiations of the CETA trade agreement between Canada and the EU, public outrage led the European Commission to review its investment provisions and to eventually propose the so-called Investment Court System (ICS) in 2015, which is to replace the ISDS by a multilateral court system. Likewise, UNCTAD has been working for a couple of years on proposals for a reform of the international investment regime and launched its "Investment Policy Framework for Sustainable Development" also in 2015. Do these two proposals by the EU and UNCTAD lead the way for a new, fairer and more transparent system for dispute settlement in the international investment field?

Inputs:

- Andre von Walter, DG Trade, European Commission (tbc)
- Elisabeth Tuerk, International Investment Agreements Section, UNCTAD (tbc)
- Jocelio Drummond, Public Services International (PSI), Brazil
- Alvin Mosioma, Tax Justice Network Africa, Kenya

Chair: Alexander Geiger, Friedrich-Ebert-Stiftung Berlin

13.00-14.00 Lunch

14.00-15.30 **Session 3: Key Elements of a Reform of International Corporate Taxation**

The extent of legal tax avoidance and tax evasion by transnational corporations is immense and deprives national tax systems of significant financial resources. A reform of international corporate taxation is urgently needed, as today's regulations are outdated. Different measures are currently being discussed. One important initiative is the BEPS project that is being pursued by OECD and G20. It aims to prevent harmful tax competition and the aggressive tax avoidance of transnational corporations. However, in the global south BEPS is only seen as a first step, which is important but by far not sufficient. Another proposal was presented by the Independent Commission for the Reform of International Corporate Taxation (ICRICT). Without doubt, the implementation of this proposal requires intensive international cooperation and high willingness among global actors. Most certainly, the current political situation in some industrialized countries may make it difficult to implement the urgently needed reform steps. We want do discuss the scope as well as the deficits of the most relevant reform proposals and outline concrete steps towards their implementation.

Inputs:

- Jan Löprick, World Bank
- Markus Meinzer, Tax Justice Network
- Crystal Simeoni, FEMNET, Kenya

Chair: Claudia Detsch, Friedrich-Ebert-Stiftung Buenos Aires/Nueva Sociedad

15.30-16.00 Break

16.00-17.30 **Session 4: Initiatives for the Fight Against Illicit Financial Flows**

Little is known about IFFs, neither in terms of the volume of global financial movements nor the negative consequences of it for states – mainly from the Global South. For instance, in the case of Africa there is only a rough conservative estimate of USD 50 Billion the continent is said to lose due to illicit financial flows annually. Beyond the damage to economic development, IFFs have tremendous impact on good governance by fostering corruption, organized crime and mismanagement of tax revenues. As a result, many developing nations remain impoverished with high rates of unemployment, challenged by instability and dependent on aid from foreign, developed nations. The Global North stand to gain the most out of the existing order, as TNCs and other actors involved in IFFs are predominantly based in North America and Europe. Hence, it is paramount that developed states, together with emerging actors like China, Brazil, India etc. are pushing for reform to curb IFFs. So far, IFFs leaving developing countries still end up in banks of developed countries like Luxemburg, the UK, as well as in tax havens like the British Virgin Islands, Singapore, or Switzerland.

Inputs:

- Johannes Wolff, German Federal Ministry of Finance
- Gamal Ibrahim, United Nations Economic Commission for Africa (UNECA) (tbc)

Chair: Mary Kidane, Friedrich-Ebert-Stiftung Addis Ababa

17.30-17.45 **Wrap-up and closure of the conference:**

Claudia Detsch, Project Coordinator “Transnational Corporations”, Friedrich-Ebert-Stiftung Buenos Aires/Nueva Sociedad