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GLOBALIZATION AND LABOUR RELATIONS

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## 1. Globalization and its context

The diversity presented by globalization converts it into a complex, multi-faceted and dynamic event; yet, beyond its varied aspects and expressions, it may be reduced, in its innermost basic nature, to the expansion and deepening of capitalist economy and its theoretical postulates, such as free competition, market, free trade, export growth, etc. The expiration of the bipolar world, which had distinguished the largest part of the XX century, accelerated and intensified such expansion. Simultaneously, it exalted, specially in the economic arena, a single or hegemonic thought: neo-conservatism, neo-classicism or neo-liberalism, originated in the '1930s and '1940s, is now dusted and set up as a revealed truth, probably because it does no longer seem (so) necessary to mitigate the more unequal features of capitalism.

This globalizing process implies at least three dramas for workers and for all those concerned with social problems: a) a relative lack of interest in the domestic market; b) the limitations of state power to govern economic variables; and c) the dominance of ideologies that do not favour labour as a factor of production. Let us analyze briefly these "three dramas".

During the prevailing economic system previous to globalization --the "import substitution" scheme-- beyond the sincere and altruistic social concerns of governments and employers with respect to the living and working conditions of the population in general, and of workers in particular, both held a selfish interest to retain some of the population's purchasing power. Production was focused on those consumers; workers and the domestic population were the national industry's "market" which intended --with the aid of the government-- to replace imports. Trade union power and the dominant ideological and political conceptions reinforced this implicit pact, this incidental, relative and critical alliance between domestic capital (or capital established in the country), workers and State. Conversely, in the new system of globalized economy, international free trade and "substitution by imports", neither the capitalist entrepreneur, nor the government that applies neo-classical economic policies, has any longer the selfish interest to keep the purchasing power of its population. Each day its population is less important as *its* own market, which is increasingly replaced by markets outside its borders.

Concurrently, the globalization of the economy gradually withdraws the innermost means of power from the national government and from any other structure limited by national boundaries. In a globalized world, to be local is a handicap. The mobility of capital and communications have brought about such a degree of time-space compression, that it might be referred to as the end of geography, with quite more appropriateness and less frivolity than the presumed end of history. Nowadays, in the globalized world, either élites are movable and have instant communications or they are not élites. All this has given a huge advantage to capital over State and labour, since the almost instant mobility enjoyed today by capital is in contrast with the necessary localization of the national State and the cultural localization of labour as a factor of production. Due to human, family and economic reasons, labour is infinitely more sedentary and rooted than capital. Thus, globalization contributes to the fact that each day political power becomes less autonomous and that, on the whole, national counterbalances lose part of their efficiency; among them, labour Law and trade union action.

Indeed, this process is accompanied by a legitimating ideology aimed to favour capital over labour. The enterprise's competitiveness within the global market becomes the supreme goodness to which all others are subordinated. Individual interests are more valued than previously, while collective interests are likely to lose prestige. Solidarity is no longer in fashion, and selfishness tends to be regarded as an engine for progress. Business efficiency justifies the means. The welfare State, which had played the role of restraining communism and of promoting national consumption, is no longer considered necessary. Labour Law and trade union action may now be regarded as barriers to free enterprise development. Moreover, as new technologies continue replacing manpower, workers become less necessary and their weight on the economy and politics diminishes. At any rate, it is surprising that the entrepreneur is exalted, precisely at a moment when he fails to accomplish his social function: employment creation. It should be recalled that the term *employer*, which identifies the entrepreneurial party in working relations, means *somebody who provides employment, who employs another individual, that is, a provider of employment*.

## 2. Questioning the traditional labour relations system

Within the framework just outlined, the traditional labour relations system is experimenting diverse questionings and changes. It is not easy to distinguish those stemming directly from globalization, and those due to other more or less autonomous but coinciding causes.

The axis of that traditional system was the working relation connecting the worker with the same employer for an indefinite period of time. In effect, the entrance to the classic working relation has (or had?) a vocation for continuity. Likewise, such entrance was aimed to perform a given task, clearly defined and in exchange of a predominantly fixed remuneration. This relation is regulated by the State and the trade union, with the purpose to protect the weaker party: the worker. Thus, the regulatory network of this traditional system of industrial relations is a unilaterally protecting labour Law; in Latin America, it is mainly heteronomous, that is, of state origin, and in other countries, primarily autonomous, with predominant collective agreements, but always with a state component, a collective component and a guardianship objective.

It should be added that this traditional labour relations system occurs in a society where work takes up a central place. Actually work is, in part and in the first instance, the livelihood of the worker and of his family; thus, the importance of salary, its stability and its suitability. But besides, in that society, work is the chief means of the individual's social identification and inclusion. This is so true that one of the first questions made regarding an unknown person, in addition to his name and eventually his approximate age, are "and what does he do?", "what's his activity?", or "what's his job?". Certainly, social identification. But it also means inclusion, since from salary and work depend all the social protection network, which converts the worker into a citizen in the political and social meaning of the term: a member of society and of the nation (retirement and pension plans, social health and accident insurance, etc.). Likewise, some enterprises and trade unions provide social services to their workers and affiliates.

Globalization ranks at the front place the concern for the enterprise's international competitiveness, and the enterprise challenges the cost of the traditional system. For that purpose, neo-liberal postulates on labour affairs are just the thing needed to serve the enterprise's interests.

- 1) non-intervention of the State in individual relations, so that each worker may negotiate his work's rate at freedom with the employer, without being subject to minimum limits; and
- 2) State intervention in collective relations in order to limit, restrain and, if politically possible, eliminate trade union action, collective bargaining and strike; these circumstances, according to the neo-liberal doctrine, are not regarded as fundamental rights nor as equity instruments, but rather as monopolic practices of workforce salesmen, hampering the free play between supply and demand for work.

This program of methodic destruction of the collective sphere focuses on the objective to bring about the complete individualization of labour relations. In its maximum expression, the neo-liberal project would establish, between worker and employer, an individual and deregulated relation, without trade unions, without collective bargaining, without the right to strike, without special legislation, without Labour Inspection and without a specialized system of Justice.

Why? What for? Theoretically, to lower the cost of labour and thus contribute to raise the company's competitiveness and increase entrepreneurial profits. This would bring about investments, which would in turn generate new jobs and, therefore, by “spurting” or “dripping”, the concentration of income would finally benefit everybody.

It is evident that should this program be fully implemented --which never happened, as it is usual with any theoretical project-- it would not only affect labour relations, but also it would make them disappear. Indeed, it would lead to the abolishment of the labour relations system and its replacement, in a free market, by multiple private relations of each working person with another who buys his work. Labour Law would be replaced by civil or business Law (as in the XIX century); likewise, instead of labour relations, there would be civil or business relations.

And though this project has not been completely implemented, as just remarked, it has subsisted along with other trends which reinforce its weakening effects upon the traditional labour relations system: in particular, technological innovation, replacing manpower and generating flexibility in work organization, all of which has set up an economic system that destroys employment and fragments existing employment.

### 3. The paradigm of post-modern labour relations

Along these lines, the neo-liberal model, spurred by globalization and combined with the effects of technological change, is outlining a kind of paradigm for post-modern labour relations.

As already stated, the pure theoretical model would be the dissolution of labour relations in individual, civil or business relationships. Since this has not taken place in

practice --in fact, there still exist trade unions, collective negotiations and strikes, labour Codes, public labour Administration and a labour system of Justice-- for the time being, the resulting pattern remains "halfway".

Some of the features of these post-modern labour relations would be as follows.

In the first instance, the "off-centering" of labour. Due to the priority consideration of capital over labour and the growing replacement of manpower by technology, it is ever possible to produce more and better with fewer workers. Today labour is less needed. The obvious and natural consequences are the increase of unemployment and social exclusion. Since current economy destroys jobs, but society keeps considering work as the foundation for social citizenship and inclusion.

In the second place, the segmentation of the workforce. Productive flexibility encourages decentralization of work organization, which is facilitated by the deregulation or flexibilization of labour Law. There is an increase in informality and outsourcing, and enterprises tend to organize themselves on the basis of two clearly separate groups of workers: a) a focal group of stable, protected workers, with good remuneration and qualifications, and b) an unstable, precarious, rotating, outsourcing or informal "periphery".

Thirdly, employment instability, not only --and very conspicuously-- in that precarious and rotating periphery, but also in the overall system, taking into account the flexibilization or deregulation of labour recruitment and dismissal, as well as a higher sensitivity of the enterprise to the shifts of international competition and external variables, such as 'hot' capital flows.

In the fourth place, the individualization of labour relations, in varied dimensions. On one hand, a greater individualization emerges as a result of labour Law's deregulation or flexibilization, which expands the scope of the employer's will for autonomy and even gets to tolerate the retreat, from labour legislation to private Law, of relations that formerly were regulated without discussion by the latter. On the other hand, individualization also occurs due to a certain step backwards of collective working relations, either yielding space to actual individual relations, or --in other cases- decentralizing typical collective relations, as it is likely to happen with collective bargaining, in the light of the employer's greater power within the present context. In short, decentralization of collective bargaining becomes part of a *continuum* that is aimed at the individualization of working relations. This does not imply disregarding the principle that it should be possible to negotiate collectively at all levels; nor to deny that decentralized collective bargaining may have advantages in dealing with specific *given issues* in each enterprise, which are not common to a given sector of activities. It just intends to draw attention to the fact that, notwithstanding, there is an *iter* that extends from centralized collective bargaining to decentralized collective negotiations, and from the latter to individual relations.

In the fifth place, and as a result of all the above, labour cost cutting. If there is less employment and more unemployed people, if employment tends to become precarious except for a relatively reduced group, if protective legislation is abated and those measures are not offset by the action of a weakened trade union, the consequence is a decrease in real salary, wealth concentration and a decline of salaries' share in

national income. This salary reduction is strengthened by the introduction of salary modalities more linked to performance, by the flexibilization of working hours depending on productive needs, and by the promotion of functional mobility. These are flexibilization instruments of the working relations, not imposed by globalization, but actually boosted or increased by it. No doubt, they are helpful in certain circumstances; yet their depreciating effect on employment may also be suspected, since they tend to be used by the employer to optimize labour.

This is approximately the labour relations model being designed. However, many doubts still remain. One of them is whether we are before a model of relative historical stability or just before a transition stage toward the dissolution of labour relations, a topic related, in addition, to the issue concerning "the end of labour". Another pressing question is whether this is a feasible and functional model or, otherwise, which could be the alternative model.

#### 4. An alternative labour relations model?

The present objective is not to predict the future. The speculation on an eventual alternative model of labour relations is justified in the light of what seems to be an insurmountable malfunction of the post-modern paradigm. Actually, the future projection of that model makes us doubt about its feasibility.

The first unanswered question is: which is the exclusion threshold admitted by society, without bringing about the outburst of a new social issue and the breach of the democratic system? Which is the short- and long-term stability of a model that excludes a higher number of people than those that it includes?

The second issue consists that labour deregulation has not proved to be efficient to create employment nor to stop growing unemployment but, in return, it did produce a rise in the precariousness of existing employment. Additional employment is not created --because the origin of unemployment does not lie on labour standards-- and the quality of the remaining employment is downgraded.

Neither it is evident that the abatement of labour costs ascertains, by itself, a greater competitiveness for the enterprise. Among other reasons, because the enterprise's competitiveness not only depends upon the competitiveness of labour, principally when labour costs usually account --specially in Latin America-- for a much lower share than total production costs and the sale price of products or services.

In addition, the precariousness and rotation of the workforce would be openly in contradiction with two axioms of modern personnel management. A competitive enterprise requires personnel who is *qualified and involved* with the objectives of the company. And it is not reasonable to pretend that an employer would invest in training a worker that he knows soon will be out of the enterprise, nor it is reasonable to pretend that the worker may feel involved with the objectives of a company, knowing that it will oust him shortly.

Thus, it seems it is the moment to start thinking that a feasible labour relations model should be based on the promotion of continuity and not on the rotation and precariousness of the payroll.

Continuity or stability would allow --and should be necessarily accompanied by-- initial and ongoing vocational training. Ongoing training, based on initial training, can adapt and develop permanently the worker's competencies and translate them to his own benefit, allowing him to maintain his job even if its contents may change. It also benefits the enterprise and national economy in its entirety with that irreplaceable trade-off of highly qualified personnel.

The worker's permanence and qualification will indeed allow his involvement with the objectives of the enterprise and, furthermore, will permit and favour his multi-functionality. At the same time, this will allow the permanence and non-replacement of the worker vis-à-vis technological or organizational changes.

This also implies admitting a given degree of internal flexibility --the counterpart of stability, permanence or continuity-- which may permit the employer to benefit from the worker's multi-functionality and keep him on the payroll.

This internal flexibility could include too the flexibility of the working day, which may allow the employer to adapt the work's pace to production needs, but also as a counterpart of the inexorable reduction of working time, in view of the necessity to move on to a certain measure of distribution of the work available. In that aspect, it becomes a measure of social inclusion or, at least, of curbing or alleviating exclusion (notwithstanding the verification that the reduction of total working time is a mechanical consequence from replacing manpower by technology).

A model with such purpose might not operate without trade unions and collective bargaining. In the first place --and this would be sufficient-- because they are core human rights. But, in addition, because they are important instruments to help adapt labour rights and relations to the needs of the enterprise and the worker. The neo-liberal and post-modern model overlooked the role that trade unions and collective bargaining play in governing the labour relations system. It should be necessary to recover this role.

Yet up to this stage, this scheme has operated within the national framework: and even if globalization is not the only root of the present state of affairs in the working world, it is actually one of the main concurring elements. The internationalization of the economy, the extra-nationalization of the main sources of power, the globalization or regionalization of production are generating two processes which should be highlighted: a) the emergence of an international labour relations system; and b) the call for "international re-regulation" (or a new international regulation) of working relations.

## 5. International labour relations

It has already been asserted that the globalization of production, trade and finances

tends to locate the focal points of the decision-making processes beyond the territorial scope of the nation-State and that it is accompanied by space-time compression, to such a degree that those who make decisions and exert influence should have mobility and the possibility of instant communications (supra, paragraph 1).

At the same time, one of the answers to the globalizing process has been, in certain places, economic regionalization, that is, setting up regional economic integration blocs aimed to expand the internal market and to build a larger unit, enabling members to compete better in international trading with the rest of the world.

Both processes --globalization and regional integration-- are conducive to require the re-scaling of the labour relations system. In effect, the national labour relations system --like the national State-- seems increasingly powerless to have a bearing on a domain that is beyond its physical boundaries.

Globalization and regionalization imply the internationalization (either at global or regional level) of the labour relations context. And the internationalization of its context requires the internationalization of stakeholders and of their relationships. In other words, globalization and regionalization require and/or bring about the internationalization of trade union structures and actions, in particular, collective bargaining and strike.

In other words: globalization and regional integration set up a new scene, which is no longer (only) national; this scene is now overlapped by another multinational setting (either regional or universal). And in this new larger and different scene, old national partners, designed for the previous model, can no longer perform. It is necessary to restructure those partners or to create new partners suited for the dimension of the new setting and relationships --no longer exclusively national-- which will inevitably emerge in the new context.

Re-scaling the context and the setting requires re-scaling the partners and the bargaining and conflict relations between them.

The internationalization of the partners' structures did not take place distinctly within the frame of globalization, though international structures exist from the past, both representing labour (as is the case of the ICFTU, CMT and WFTU international confederations) and employers (OIE). But it has occurred more conspicuously in two regional economic integration blocs: the European Union and Mercosur.

In the European Union, since long ago the ETUC (European Trade Union Confederation) and its employers' counterpart, UNICE (Union of Industrial and Employers' Confederations of Europe) are in operation.

Within Mercosur, workers were the first who perceived the need to create a regional structure. Simultaneously, with the negotiation and adoption of the Asuncion Treaty (Mercosur's founding agreement signed on 26 March 1991), trade unions from Argentina, Brazil, Paraguay and Uruguay seized a preexisting institution: the Trade Union Federations Coordinator of the Southern Cone, which had been established in 1986 to support the Latin American democratization process, still pending, at that time, in Bolivia and Chile.

At the beginning of the 1990s, this Southern Cone's Trade Union Federations Coordinator had accomplished its duty and it was then revitalized so as to operate as the labour structure of and within Mercosur. To this end, Mercosur's Trade Union Commission was created within its framework and from 1991 to date it has displayed a permanent, intense and relatively successful participation in all matters relative to building Mercosur's social space. It is likely that the Southern Cone's Trade Union Federations Coordinator --acting through Mercosur's Trade Union Commission-- might have been the chief engine for the recognition of the existence of a social dimension in Mercosur, at first, and for the gradual setting up of Mercosur's social space, later.

In this sense, Mercosur's employers reacted more belatedly. Mercosur's Industrial Council was not instituted until 1994; Mercosur's Council of Chambers of Commerce was created in 1995; and in 1997, at a session of Mercosur's Economic and Social Consulting Body, an entrepreneurial representative announced the establishment of Mercosur's Agriculture Confederation. But, in general, the presence and action of these institutions, as such, have been much lower than that of the unions Coordinator; employers' participation has been permanent, but the above mentioned regional structures did not have institutional intervention.

International social dialogue, including multinational collective bargaining, have also had a certain degree of recognition and practical commitment in these two regional integration blocs, despite their scarce or non-existent implementation at an actually universal level.

In the European Union, ETUC and UNICE have undertaken an important process of European international social dialogue, despite comings and goings and different appraisals on the part of various observers. At any rate, it has produced, on one hand, the establishment of regional social dialogue, and on the other, a number of agreements, joint standpoints or common judgments on a wide range of labour issues. From the formal point of view, European juridical order recognizes at present European collective agreements as a source of regional Law and, furthermore, it opens a special space for the exercise of European collective autonomy, in the process of adopting Directives. In a parallel fashion, several cases of collective agreements of European multinational enterprises cover the different sites that these companies control in the region.

Meanwhile, in Mercosur, the recent Socio-Labour Declaration recognizes, among collective rights, the right of “*national and regional*” social dialogue, which Party States agree to promote. Likewise, even more recently, the first regional or multinational collective agreement ever known in Latin America was formalized. It is a collective contract agreed on 16 April 1999 between the Volkswagen company of Argentina and Brazil, on one part, and CUT metallurgic trade unions of Brazil and the mechanics trade union of Argentina, on the other.

Conceived as a collective agreement "within Mercosur", this agreement is expressly based, as set forth in one of its “preambular paragraphs”, on “the need to extend agreements concerning relations between capital and labour to the scope of Mercosur”. In that framework, it provides for information exchange; holding a joint annual meeting between enterprises, trade unions and plants' internal commissions; the commitment to avoid conflicts by means of permanent dialogue and the settlement of differences through negotiation, as far as possible; the recognition, on the part of enterprises, of the

representative nature of the contracting trade unions and internal commissions, as speakers to examine labour matters; as well as of the right of workers to organize themselves in trade unions and to set up plants' internal commissions mentioned above. Finally, this agreement contains provisions of interest regarding vocational training. It provides for the “standardization” of training programs, the cooperation of trade unions and internal commissions in the elaboration of programs, and the automatic recognition of courses held at any of the company's sites within Mercosur.

Workers' participation in the enterprise spread importantly in Europe, in contrast with its non-existent development in Mercosur, with the exception of the pioneer provisions contained in Volkswagen's collective contract just mentioned.

The practice undertaken in Europe to set up multinational mechanisms for information and consultation had its formal embodiment, and hopefully a new boost, through the adoption of Directive 94/45/CE by the European Council, on 22 September 1994. It establishes an information and consultation procedure with workers in community-wide enterprises or groups of enterprises.

International conflict arose in various circumstances, both in Europe and in North America, in the latter case, involving workers and enterprises from Canada and the USA. In Mercosur, only some regional drives took place which, for the time being, could be labeled as experimental (one-hour stoppage of Mercosur's electric power workers on 12 November 1996; a joint demonstration on 17 December 1996 on the occasion of a Presidential meeting of Mercosur countries in Fortaleza, Brazil; and a joint celebration on 1<sup>st</sup> May 1999 in the Uruguayan city of Rivera, located in the Brazilian border).

Finally, with respect to institutional participation in globalization and regionalization processes, it should be underlined that, at world level, the International Labour Organization has provided, throughout this century, the best and largest experience from its own tripartite structure. It even represents the only example of global, universal or worldwide participation.

At regional level, the Economic and Social Committee of the European Union and the Committee of the Regions are the bodies designed to make possible such participation. In Mercosur, the Economic and Social Consulting Forum is the only permanent body, envisaged in the founding treaties, designed to facilitate the organized representation and participation of stakeholders. However, Working Subgroup No. 10, a three-party operating commission competent on labour affairs, has been of great importance too. Significant initiatives have arisen within its framework, such as the proposal calling on the four Mercosur member countries to ratify a common set of international labour conventions; the draft Multilateral Convention on Social Security of Mercosur, already approved by regional bodies and pending to be ratified by national parliaments; and the adoption of Mercosur's Socio-Labour Declaration.

It should be recorded that, as far as institutional participation is concerned, the Andean Pact has also given rise to different bodies and resorts: the Economic and Social Advisory Council (contemplated in the Cartagena Agreement, its founding treaty), the entrepreneurial Consulting Council (created by Decision 175 of 1983) and the labour Consulting Council (created by Decision 176 of the same year).

## 6. “International re-regulation”

If globalization is generating a certain emptiness in national labour relations systems and, in particular, of its regulatory network; if national legislations are becoming less efficient to regulate events which take place or originate at another level; if these events --together with other coincident factors-- tend to breed undesirable or malfunctioning situations of exclusion and precariousness; and if, in addition, there is a trend toward the emergence or development of supranational labour relations, the proposal made by some authors to advance toward an "international re-regulation" (or new international regulation) of labour relations seems evidently valid.

International labour conventions, the main Pacts and Declarations on human rights, social Charters, social clauses and some unilateral substitute instruments of the latter are some of the forms adopted, available or proposed, at the moment, for such "international re-regulation", designed to place the standards network at the same level of development of those events that it should rule. An international labour relations system should develop an international network of standards.

6.1. The international labour conventions issued by the ILO are the first and most developed efforts to generate a universal regulatory network. Furthermore, so far, they are the only instruments that have reached global or worldwide proportions. They aim to establish minimum standards for working conditions and labour relations, on the basis of four foundations: social justice, the proof that peace is impossible without equity, the principle that labour cannot be treated as a commodity, and concern for "social dumping". With regard to this last aspect, greatly up-to-date due to globalization, it should be recalled that the Preamble of the ILO Constitution stipulates, as far back as 1919, that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

When much later, already in the 1990s, globalization poses again the problem of linking international trade expansion and the observance of certain minimum labour standards, the ILO launches a campaign for the universal ratification of a limited number of conventions considered "fundamental", relative to trade union freedom and collective bargaining (87 and 98), non discrimination (100 and 111), forced labour (29 and 105), and child labour (138, to which, in 1999, was added the new 182 convention).

Simultaneously, in 1998, the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at work. According to it, any country, by the sole fact of being an ILO member, commits itself to comply with the principles contained in those conventions, even though it may not have ratified them.

As observed, from a certain viewpoint, the aim is a qualitative jump, striving to universalize or "globalize" the principles contained in a given number of conventions, setting their effectiveness free from the national ratification procedure. From another perspective, rather pessimist, it has been affirmed that the ILO has adopted a minimalist option, responding to the demands of deregulation and flexibilization, and limiting its efforts to the compliance of a reduced set of conventions, which would tacitly imply unconcern for the rest of them. Is this the beginning of a universalization process of the

regulatory network, even notwithstanding any national ratification or covert deregulation? Only the passing of time shall be able to give an accurate answer.

6.2. The main Human Rights Pacts and Declarations, in particular those issued by the UN, also have a universal vocation. This is the case of the Universal Declaration of Human Rights of 1948, the International Pact of Civil and Political Rights of 1966, and the International Pact of Economic, Social and Cultural Rights of the same year.

With respect to those pacts subject to State ratification, its actual juridical effectiveness at national level depends, for some people, from the standpoint that may be sustained regarding the existence of unity or duality between international juridical order and domestic juridical orders, as well as from the hierarchical position that international order may have on each of the latter. It can also be asserted, however, and it seems this is a growing trend --in accordance, precisely, with globalization-- that, as part of “*jus cogens*”, human rights recognized as such by the international community in those ample Declarations and Pacts integrate the international public order and, therefore, benefit from *imperium* beyond any national act of ratification, validation or reception. The same applies to American Declarations and Charters, though limited to the hemispheric scope.

6.3. Supranational labour standards (though restricted to a regional space) are in force in the European Union. This is the only truly supranational entity to which member States have transferred their sovereignty, including the labour sphere (even though the Complementary Labour Agreement of the Free Trade Treaty between Canada, Mexico and USA foresees an Arbitration Tribunal which may even authorize the application of fines and the suspension of tariff preferences upon the infringing State, as an indication of a strong link between international trade and workers' rights). This is specially so since the Justice Tribunal decided the direct application of Directives (originally addressed only to States with a view to harmonize national legislations), whenever their provisions are clear, precise and self-executable, and ever since the Amsterdam Treaty incorporated the Charters (the Social European Charter of 1961 and the Community Charter of Fundamental Rights of workers of 1989) to the founding Treaties.

6.4. Social Charters, despite the variety they usually display, may be defined tentatively and generically as solemn declarations in which States proclaim certain rights and/or recognize particular labour or social common goals or objectives. They aim to build up a social space in a group of countries, on the basis of a minimum common stand of social rights, in general within a set of nations which consider to have a common profile (as is the case of the Inter-American Charter of Social Guarantees of 1948) and specially in those which make up a regional economic integration bloc (such as the European Social Charter of 1961, the Community Charter of Fundamental Rights of workers of 1989, and Mercosur's Socio-Labour Declaration of 1998).

Their main objective is social: to guarantee the recognition of particular principles and rights considered important in the signatory countries.

This objective may be limited to member countries or extend to their relationship with third countries. Thus: 1) inside the bloc, the Social Charter proposes to grant those basic rights which members commit themselves to respect in equal

manner; and 2) outside the bloc, the Charter *may* make partners' trade with third countries dependent (not necessarily) upon the observance of social conditions respected inside the bloc (which would not be incompatible with WTO standards).

But as far as Social Charters are concerned, what is essential is their internal goal and not the external objective. Thus, for example, the European Social Charter of 1961 and the Community Charter of Fundamental Rights of workers of 1989 do not contain any reference to foreign or domestic trade. Likewise, Mercosur's Socio-Labour Declaration of 1998 recognizes a set of rights common to the bloc's countries, independently from intra-regional trade, and makes no reference to any requirement of compliance by third countries that conduct trade with Mercosur. On its part, some of the principles included in Annex I of the FTA's Complementary Labour Agreement of Canada, Mexico and USA may affect exchanges between those countries, but they are not applicable to their trade with the rest of the world.

In addition, non-observance penalties of a Social Charter --if any-- may be commercial or not. They may be political, moral or even not exist; and should economic penalties be set up, these may be connected or not with international trade (only if these penalties are economic and if they are connected with international trade, the Social Charter may operate as a social clause).

Actually, the content of a Social Charter may be entirely declarative or programmatic and lack penalties. Whenever its provisions are binding, they may (ought to) be accompanied by penalties. These shall depend on whether those clauses are directed to governments or recognize citizens' subjective rights. At any rate, those penalties may consist of observations or recommendations, fines, cancellation or suppression of tariff preferences, or declarative or constitutive judgments, in case there is a tribunal or an international or supranational court.

At all events, Social Charters may also pose the question regarding the effectiveness of Declarations and Pacts on human rights: do they comprise "mankind's juridical heritage", as expressed in one of the Preambular paragraphs of Mercosur's Socio-Labour Declaration and, therefore, may be considered part of "jus cogens", or are they simply ethical declarations of principles or good intentions?

6.5. Social clauses --unlike Social Charters, Declarations and Pacts on human rights and international labour standards-- only have sense within international trade or in connection with it. The term itself of "clause" (and not of "charter" or "standard" or "convention") indicates that, essentially, in its original and purely conceptual form, the social clause is a clause within a treaty, convention or trade agreement, in which parties commit to respect and eventually enforce certain social rights. In case of infringement of those social rights, they agree to drop preferences mutually recognized or those granted to third parties, or even resort to simple termination due to the lack of observance of the entire agreement.

Therefore, the objective of the social clause is to make tariff preferences or other trade advantages offered to partners (effective inside the agreement) or to third countries (effective outside the agreement) dependent upon the observance of rights established in such clause.

Indeed, there are connective or linking elements between the Social Charter and the social clause.

A Social Charter may operate as a social clause if its non-compliance produces penalties relevant to international trade. Not otherwise; in which case they will continue to be different.

On its part, the social clause may refer to a Social Charter: a trade agreement may contain a (social) clause which establishes penalties or its termination in case the social rights contained in a Social Charter or in an international labour convention or in any another autonomous instrument are not respected. Furthermore, every social clause needs to identify the right or rights whose infringement produces the termination of the trade agreement or suspends agreed trading benefits or permits the application of fines. Those rights can be defined in the same clause or in an attached listing or refer to an independent instrument (which may be a Social Charter or a Declaration or an international labour convention, etc.).

On its part, the social clause may also refer (not to rights defined by itself, nor to rights contained in another instrument, but) to monitoring the agreed commitments in the entirety or in part of the national legislations. This may be a different mechanism from a Social Charter and from a social clause, but it may also be regarded as a *modality* of any of them.

The possibility of making international trade dependent upon the observance of labour rights through social clauses has given rise to an intense debate. This is not the moment to enter into such a discussion, which would require a specific essay devoted exclusively to this issue. It is just sufficient to point out here the inevitability of the social clause or of alternative mechanisms. If the effective implementation and observance of international labour conventions, Declarations, Pacts and Social Charters are not achieved, certain countries will feel prone to impose social clauses in their trade agreements or to apply unilateral measures with the purpose or pretext of promoting the compliance of those instruments and avoid “social dumping”, something that is already beginning to happen.

6.6. Among the unilateral substitute systems of social clauses, there are national, regional and private-voluntary schemes.

The Generalized System of tariff Preferences of the United States of North America illustrates the first kind of system. Among the terms imposed unilaterally by the US government to make effective tariff advantages recognized to underdeveloped countries, it is required that the country in question may adopt or has adopted provisions to grant their workers the rights recognized to them at international level.

The “labour clause” envisaged in E. C. Rule No. 1154/98 of 25 May 1998, of the European Union, is an example of the second type of system: a substitute measure of the social clause, imposed unilaterally no longer by a State, but by a regional bloc. It establishes 10% to 35% tariff cuts in favour of industrial products from developing countries having legislation and practices that apply the principles contained in international labour conventions Nos. 87, 98 and 138, on labour freedom, collective bargaining and minimum age for employment admission.

Conduct codes, “labels”, stamps or distinctive marks of good labour practices and initiatives of “socially responsible investments” are all private, voluntary and unilateral initiatives of enterprises or groups of enterprises which tend to promote and disseminate the compliance of certain minimum labour standards. However, their unilaterality and willful nature limit their effectiveness and affect their credibility, almost as much as the doubts concerning their own objective: respect for social rights or just publicity and image campaigns?

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