Part 7:
Labour standards
and international trade
Labour standards and international trade

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I. Introduction

The question of the relationship between international trade and labour standards has been on the ILO's agenda ever since its inception. Indeed, the initial British proposal noted that "one of the principal objectives of international labour Conventions is to eliminate unfair competition based on oppressive working conditions... the appropriate penalty should be that, when a majority of two-thirds of the conference is convinced that the terms of the convention have been broken, the signatory states should place an embargo on goods produced in those conditions of unfair competition unless those conditions are remedied". While this restrictive procedure was withdrawn, undoubtedly for fear that the threat of such sanctions would jeopardize ratification of the Conventions, interest in a more voluntarist approach has nevertheless been manifested on several occasions.

The link between labour standards and international trade can be tackled from two points of view. The first takes as its starting point recognition of the dignity of labour which, as the Philadelphia declaration stated, cannot be considered as a commodity; action is taken in the name of social justice to prevent socially unacceptable conditions being created or sustained by trading relationships. It was undoubtedly considerations of this nature that led to the abolition of slavery or, closer to our time, to the rejection of forced labour as unacceptable and to its condemnation at the Nuremberg trials, or even to the denunciation of apartheid. The second aspect places greater emphasis on the economic perspective, which accords more value to commodities and productive efficiency; the question then becomes one of identifying when the
advantages arising out of factor endowment are being artificially enhanced by forms of labour force utilization that constitute "social dumping". In the first case, labour standards operate as a sort of ceiling and as a value to be promoted within a framework of universally recognized human rights. In the second case, they act as a sort of floor or minimum threshold that should be respected in order that the *ceteris paribus* principle can operate within a framework of equitable trade rules. While seeking to keep track of both dimensions, which are essential in a sphere that borders on both law and economics, we shall examine in turn the goals that might legitimately be set, the unavoidable constraints that have to be confronted and the practical procedures that might be devised in order to provide a normative content for trading relationships.

**II. Aims of a “social clause”**

In a very broad sense, the term “fair standards” can be said to cover all the provisions of the international labour code drawn up in the course of the ILO’s existence, and therefore all questions relating to work and employment [Mayer, 1985; 1991]. However, the notion of a “social clause” seems to be more restrictive, even though its scope remains somewhat vague. It seems to us possible to envisage minimal rules governing behaviour in three inter-related areas: permitted categories of

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1 The Declaration of Human Rights as such does not appear in the Constitution of the ILO, but a whole range of the Organization’s objectives derive from it, including the freedom of association, the elimination of discrimination, equality of opportunity, the right to work and to a minimum income, entitlement to social security, satisfactory working conditions and standards of living.

2 “If one wanted to establish some sort of general system of norms that could be used as ‘fair labour standards’, not only in respect of international trade but also for a more general evaluation of the rights and conditions of workers, this could be done with the use of fewer than 80-odd ILO Conventions that are still up to date. It would probably be sufficient to use one-tenth of these to establish a satisfactory system of workers’ protection” [Edgren, 1979]. For this author, such a regime would cover the following areas: the right to organize and to bargain collectively, discrimination in recruitment and promotion, child labour, forced labour, occupational health and safety and the labour inspectorate. For his part, G. van Liemt, after examination of eight separate proposals, retains four areas that were mentioned in all eight proposals and two that were mentioned six times, namely, freedom of association, the right to organize and to bargain collectively, a minimum age for the employment of children, freedom from discrimination in employment and occupation, freedom from forced labour and occupational health and safety; the second group of standards mentioned at least twice included labour inspection, a minimum wage, weekly rest, special protection for female workers and employment promotion [van Liemt, 1989].
labour, conditions of employment and the functioning of the labour market. Clearly, however, the necessary agreement will be increasingly difficult to obtain as progress is made from the first to the last.

As far as the unethical use of certain categories of labour is concerned, three cases can be envisaged. The first is forced labour, a widespread practice during the colonial era and the subject of Convention No. 29 of 1930, Convention No. 105 of 1957 and Convention No. 50 of 1936 on the recruitment of indigenous workers. The second is the use of prison labour, which was condemned in numerous countries (USA, 1980; Great Britain, 1897; Australia, 1901; Canada, 1907; New Zealand, 1908; South Africa, 1913; Spain, 1934) and on which both the ILO and the General Agreement on Tariffs and Trade (GATT) sought to achieve international agreement. During the Cold War period, however, much use was made of prison labour for production in the countries of the Eastern bloc. The third and final case is child labour, which continues to be a widespread practice involving between 55 million (ILO) and 145 million (UN) children.

The ILO has, of course, been concerned about child labour since its inception and the vast majority of countries have ratified at least one Convention on the subject. As a result of this and the existence of compulsory schooling, there is a minimum age (between 12 and 15, with the possibility of a lowering of the minimum age for some light work and a raising for dangerous work) below which no economic activity should generally be permitted. The question of the sort of work targeted in Convention No. 138 of 1973 (Minimum Age Convention) is one of the most difficult that governments have to resolve, since the International Labour Conference recognized that flexibility was required in deciding on the sphere of application. For this reason, articles 4 and 5 contain various sorts of dispensations in respect of certain categories of job or work (family businesses, domestic tasks — the latter not always clearly defined in cases where a large informal sector exists) or exclusions from the sphere of applications (agriculture and, in some countries, processing industries, shipping and companies below a certain size) [Swepston, 1982; Mendelievich, 1980; Rodgers & Standing, 1981a; Ki Zerbo, 1980].

The question cannot be dissociated from the economic and social significance of the phenomenon, for several reasons. First, the concept of childhood is undoubtedly linked to a concept of age but is also dependent on social structures. Second, child labour takes many forms (ranging from domestic work, through non-domestic, non-monetary work, whether occasional or regular, to marginal economic activities in the informal sector, bonded labour and wage labour) and is, moreover, part of a
socialization process. Third, account has to be taken of the effects of work on children's health, growth, education and personal development. The key problem posed here is the economic one of the extent to which children are exploited and the ethical one of marginal and criminal activities [Rodgers & Standing, 1981b].

As far as workers' conditions of employment are concerned, two essential aspects have to be considered: inadequate levels of pay engendering "social dumping" and discriminatory practices that constitute an infringement of workers' dignity (as apartheid in all its ways and means did) or of simple fairness [Vose, 1985]. Thus, economic and social considerations once again come into play. It has to be pointed out that wages are not covered by the international labour code, with the exception of the international shipping industry. It is a difficult task to establish the minimum level to be set or even the relationship that should exist between the wages of various categories of workers, and deducing from them the existence of anomalies to be censured is, except in particular cases (for example, workers producing goods for export in zones where the social security regime is less favourable than the one that applies to the rest of the workers in the country). It depends on the local conditions under which goods and services are produced and on the characteristics of the national labour market. Furthermore, the final price of a product depends on so many factors unconnected with social costs that it is difficult to assess the real impact of labour legislation on costs. In a report in which he coined the phrase "when prices beat all the competition, there is no competition any longer", the French senator Jean Arthuis took note of calculations made by the Department of External Economic Relations for various countries habitually cited as beneficiaries of relocations. But he also pointed out that "analysis of the cost of labour requires two prior precautions. The real cost of labour must include the subsidiary costs that bear on labour and micro-regional differences, since both can be significant" [French Senate, 1992-93]. He added that "differences in labour costs are not the only criterion in relocation".

If it is difficult to make meaningful, well-founded comparisons, attempts to specify what should be meant in international terms by "unfair wages" are even more problematic. If it is taken to mean any payment "lower than the standards accepted in the exporting country", whereas the hourly labour cost, including social security costs, for a skilled workers was 55 francs in France in 1993, it was 23 in Taiwan, 15 in Tunisia, 11 in Poland and the former Czechoslovakia, 10 in Morocco, 9 in China, 5.75 in Mauritius, 5.5 in Thailand, 4 in the Philippines, 2.6 in India, 2.5 in Rumania and 1.2 in Madagascar.
as was proposed in 1954 by the United States committee on foreign economic policy, those standards have to be defined and a judgement made on the acceptability or otherwise of deviations from them. It could be, for example, that the French contract for new entrants to the labour market often described as the "young person's minimum wage", would be directly affected. The difficulties are undoubtedly increased if unfair standards are understood to include "the persistence of working conditions lower than those justified by productivity in the industry in question and the economy in general", as the United States committee on foreign economic policy proposed.

However, in attempting to draw up a strategy in this area, it is possible to take as a starting point Convention No. 131 of 1970 on the fixing of a minimum wage and Convention No. 111 of 1958 on discrimination. This could be supplemented by the specific provisions of Convention No. 143 of 1975 on migrant workers, a question in which the General Assembly of the United Nations has also been interested since 1980. Convention No. 111, which with a total of 110 ratifications by 1992 is one of the instruments with the greatest degree of international recognition, cites a whole range of causes of discrimination to be eliminated. In giving countries that have ratified the instrument an opportunity to extend its provisions to other types of discrimination, it adopts a promotional approach that could provide the basis for a social clause.

Irrespective of questions of fair pay, international instruments on human rights also lay down just and favourable working conditions, covering in particular the questions of reasonable restrictions on working time and the guaranteeing of health and safety at work. The "right to interfere" that the notion of a social clause might seem to imply does not extend to the monitoring of all working conditions. But in health and safety matters the attention given to working conditions might partly overlap with that given to environmental considerations, which are playing an increasingly important role on the international scene.* This

* An OECD working group has been instructed to draw up "procedural guidelines on integrating trade and environment policies". "Principles for transparency and consultation" have also been formulated. These include investigation at as early a stage as possible of the conjunction of trade and environmental problems and the monitoring of measures taken in order to avoid potential conflicts, inter-governmental cooperation on transboundary and global pollution and, in the event of disagreement, the involvement of both environmental and trade experts in order to ensure that both points of view are simultaneously taken into account [OECD, 1993]. For its part, the GATT ensures that the implementation of global environmental measures does not give rise to discriminatory practices in enforcing the most-favoured-nation rule (the same rules should apply
is why the general standards on workers' health and safety adopted in 1981 (Occupational Safety and Health Convention, No. 155) and on health services at work adopted in 1985 (Occupational Health Services Convention, No. 164) may be of particular interest [Parmeggiani, 1982].

This leaves the third of the areas mentioned above, namely the functioning of the labour market. From the point of view of promoting human rights and establishing fair conditions for international competition, this should at the very least cover freedom of association, the subject of Convention No. 87 of 1948, the right to organize and to bargain collectively, the subject of Convention No. 98 of 1949, and also, to provide the necessary monitoring, Convention No. 81 of 1947 on labour inspection. This is the best-known sphere of the ILO's activities, on which there is very widespread agreement and for which the specific control mechanisms have in some cases been put in place. Thus, we shall do no more than mention it without further commentary, except to note in passing that, while progress has been made in this area, “hundreds of trade unionists throughout the world were murdered in 1990 and 1991, that several thousand were detained, and tens of thousands more sacked for their union work” [ILO, 1992a, p. 9]. It is also worth drawing attention to a matter more directly connected with international trade, namely that of free zones which certain governments, such as those of Bangladesh and Pakistan, exclude from the application of their labour codes, and where trade unions or strikes are not permitted. A similar situation is found in the “homelands” in South Africa, where a number of industries have been set up [Vose, 1985].

### III. Constraints in drawing up a social clause

In attempting to identify the problems involved in drawing up a social clause dealing with foreign trade, it is possible to classify the constraints likely to be encountered under three headings — economic, institutional and political. We shall examine them in turn.

From the economic point of view, there is undoubtedly a degree of ambiguity in the concept of a fair labour standard. It can be used for whatever the source of imports) and the national-treatment rule (the same regime for imports and domestic manufactures). It should be noted that about 150 Conventions and multilateral agreements on environmental protection have been concluded [Barde, 1993]. These practices could be borne in mind when the procedures that might be adopted for a social clause are discussed below.
Guy Caire

protectionist ends in order to prevent countries with low labour costs from gaining a competitive advantage — but it can also be used to ensure that workers in those countries are better paid. The way the standards are drawn up depends on the purpose ascribed to them.

The purpose might be purely protectionist, in which case the standards would be set at a level that would effectively bar imports from certain countries. If the main purpose was to assure workers in developing countries of a fair share of the fruits of industrial progress, standards would have to be more flexible and some discretionary judgement would be involved in deciding whether the legitimate demands of workers were being frustrated. If, on the other hand, the main purpose was to safeguard fair competition in the world market against abuses in the form of “sweated labour”, then the main focus of interest would be on the market distortions caused by the practice rather than on conformity or non-conformity with labour standards [Edgren, 1979].

From a purely protectionist point of view, exporters would have to prove that they had paid a certain minimum wage. If, on the other hand, the purpose was to ensure that workers received a fair deal, rules on fair competition that made explicit reference to working conditions would have to be adopted.

One of the arguments put forward by critics of present GATT procedures is that it is difficult effectively to combat unfair competition since the consensus rule means that any condemnation must be agreed to by the offending country. The critics include countries like the United States whose industrial base is undergoing radical structural change and is threatened, depending on the industry, by imports from Japan, the four newly-industrialized countries in South-East Asia or those in Latin America, such as Brazil. In fact, the meaning of the word “fairness” in international trade depends on the concept of reciprocity that is adopted; for their part, the Americans prefer to speak of a “level playing field” [Coughlin, 1991]. US trade legislation includes an escape clause that comes into play when the increase in imports is the cause of serious damage to an industry (section 201), the principle of compensating customs duties intended to eliminate the effects of export subsidies paid by foreign governments (section 701) and the anti-dumping clause (section 731), all of which are classic instruments that conform to the logic of the GATT. But the 1974 Trade Act includes section 301, reinforced by extended clause 301 of the Omnibus Trade and Competitiveness Act of 1988, which enables the US trade representative to take retaliatory measures against any “unfair” act. This is defined as any act that is deemed “unjustifiable” (one that violates international law), “discriminatory” or “unreasonable”. The last adjective refers in particular to the
refusal to grant workers certain internationally recognized rights (the right to form trade unions and to engage in collective bargaining, the prohibition of forced labour, a minimum employment age and the establishment of minimum working conditions and pay levels). However, it is questionable whether the problem of trade barriers can be tackled on a unilateral basis as far as the definition of unfair practices is concerned and resolved on a multilateral basis by threatening recriminations [Rainelli, 1993].

Moreover, "the case for a social clause is also open to two types of criticism. On the one hand, it can be asked why concern is limited to the trade sector where working conditions are frequently better than in the rest of the economy; or why the system does not consider the broader issue of human rights. On the other hand, it can be asked why the social clause should be linked only to trade: would action not be more effective if it was also linked to public capital flows (such as official lending and aid flows) and strategic relations such as defence treaties?" [van Liemt, 1989, p. 447]. Finally, in this economic debate on the sources of social dumping, attention might be drawn to its monetary origins, the result of exchange rates being undervalued because of government policies. Thus in his evidence to the French Parliament, the Nobel prizewinner, economist Maurice Alais, stated that "in most cases, it's a nonsense, and to tell the truth a profound error, to accuse less developed countries outside the European Community of 'social dumping' and 'unfair competition' and to seek to impose on them social protection systems comparable to those of developed countries such as France or Germany. It is not those countries that are responsible for the perverse effects of unrestricted free trade, but rather the current institutional framework of the international trading system. To speak of 'social dumping' or 'unfair competition' is an argument devoid of all foundation" [Uruguay Round, 1993].

Institutional constraints fall into two categories: some relate to international organizations that are concerned mainly with the mechanism to be put in place under the social clause label, while the others relate to the audiences to which those mechanisms are primarily supposed to be addressed. They can be examined in turn.

As we have already noted, the social clause issues lie on the boundary between economics and law. In consequence, two international organizations, the GATT and the ILO, are necessarily concerned with the problem of fair standards in matters of international trade. We will briefly survey the ways in which the question has been addressed by each of these organizations [Servais, 1989].

The problem of "social dumping" was examined as early as 1927 at the international economic conference called by the League of Nations.
The issue re-emerged in 1947 at the United Nations conference on trade and employment. Article 7 of the charter of the international trade organization — which never saw the light of day — took up the idea that "the existence of unfair working conditions, particularly in those areas of the economy producing goods and services for export, creates problems for international trade". As a consequence, "each member state [should take] all appropriate and practical measures to eliminate those conditions on its territory". The issue resurfaced in the 1950s in the early days of European integration. While article 68 of the treaty establishing the European Coal and Steel Community contained a social clause, the Ohlin report, drawn up by a group of experts appointed by the ILO, examined the relationship between working conditions and unfair competition. References to fair labour standards are also found, in the form of commitments, in a certain number of international agreements on raw materials (article 28 of the 1987 agreement on sugar, article 45 of the 1981 agreement on tin, article 64 of the 1986 agreement on cocoa and article 53 of the 1987 agreement on rubber).

The independent commission on the problems of international development, the so-called Brandt commission, recommended in 1980 that "fair labour standards should be internationally agreed in order to prevent unfair competition and to facilitate trade liberalization". In June 1986, during the negotiations leading up to the launch of the Uruguay round of trade talks, the American delegation asked the other parties "to consider possible ways of dealing with workers' rights issues in the GATT so as to ensure that expanded trade benefits all workers in all countries". Although this initiative was not adopted at Punta del Este, it was taken up again later, in June 1986, by the European Parliament; in a resolution on the trade negotiations, it adopted the idea that the GATT should institute a "social clause" [Charnovitz, 1987]. André Sainjeon, rapporteur for the European Parliament's committee on foreign economic relations, has proposed the introduction of a social clause that would take account of the need to abolish child labour and forced labour and to promote the freedom of association. According to him, these three objectives could be included in article 20, paragraph e of the GATT agreement which allows countries to ban the import of goods made by prisoners.

As far as the ILO is concerned, the Preamble to the 1919 Constitution affirmed 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". The world conference on employment convened by the ILO in June 1976 adopted a position of principle according to which "the competitiveness of new products
imported from developing countries should not be achieved to the
detriment of fair living conditions for their labour forces". At the time
of the debates on the second Lomé Convention, the ILO, at the request
of the Commission of the European Communities, put forward a
proposal that could be used as a basis for discussion.

Recognising that difficulties were likely to arise if the observance of entire
Conventions in all their detail was expected, this draft consisted of a series of
basic principles drawn from a variety of sources: ILO Conventions and Recom-
mandations, the Tripartite Declaration of Principles concerning Multinational
Enterprises and Social Policy, and the Covenant on Economic, Social and
Cultural Rights. These standards were chosen with due regard to their relevance
to the production of commodities involved in international trade. They covered
questions of non-discrimination, employment (including free choice of employ-
ment), working and living conditions, occupational health and safety, employ-
ment of children and young persons, maternity protection, social security,
industrial relations and labour inspection. The proposal subsequently put
forward by the Commission of the European Communities retained only four
of the suggested principles [ILO, 1988, p. 58].

If we turn now to the audiences being addressed, two characteristics
are, for the ILO and other international organizations that might be
involved, of particular significance in realizing any goals that might be
set.

The first has been mentioned on several occasions, namely the voluntary
nature of the acceptance to be bound by Conventions, which prevents them
from playing a full part in the regulation of international trade. The second
characteristic, although it does not yet seem to have attracted much attention,
is yet no less significant given the globalization of the economy. It concerns the
'state-centred' nature of ILO standards, in other words, the fact that the
obligations arising from Conventions apply directly only to States although the
role of non-governmental actors in the globalization of the economy is
increasing and can determine the success or failure of national social policies
[ILO, 1994, p. 56].

A variety of approaches could be adopted to tackle this situation
resulting from globalization of the economy, which introduces new
actors in addition to the traditional nation states and inevitably has an
indirect influence on any normative action undertaken by the ILO. More
generally, it affects the operation of standard international law, which in
principle recognizes nation states and international organizations as the
only entities having rights and obligations. In view of the failure to
conclude the international agreements that had been hoped for in 1944,
the boards of multinational companies or industrial committees might
offer a suitable forum for the discussion of certain aspects of relocation. Extending the 1977 Tripartite Declaration of Principles on Multinational Enterprises and Social Policy might offer such enterprises an opportunity:

... of subscribing voluntarily to certain standards or codes of conduct for which verification procedures could be established. The fact of subscribing to an optional clause, which once accepted would be binding, could be recognized by the award of a “social label”; by adopting a variety of codes of conduct, some of which are very stringent, multinationals have already shown that they attach great importance to such forms of recognition, especially in the eyes of consumer organizations [ibid., pp. 65-66].

Specifying the nature of what we have termed political constraints leads us to reconsider exactly what a social clause is. “Through the social clauses, either the access of exporting countries to international markets is made conditional on compliance with certain basic ILO standards or — more concretely — a link is established between the lowering of barriers to trade and compliance with certain labour and social protection standards to the extent that the latter affect production costs” [ibid., p. 57]. In other words:

... a typical social clause in an international trade arrangement makes it possible to restrict or halt the importation or preferential importation of products originating in countries, industries or firms where labour conditions are inferior to certain minimum standards. Producers “that do not comply with the minimum standards must choose between a change in working conditions or run the risk of being confronted with increased trade barriers in their export markets [van Liemt, 1989, p. 476].

There are psychological dimensions to the question that cannot be ignored. The United States is undoubtedly the country that has, in the recent past, pushed hardest for the introduction of minimum labour standards in the sphere of international trade. At least four pieces of legislation have been introduced. First, the initiative on the Caribbean Basin became law in 1983. This states that, in granting additional preferential trading rights, the US President should take account of the extent to which workers enjoy reasonable working conditions and have the right to organize and enter into collective bargaining. Second, the Society for Private Investment Overseas, an organization that insures American companies investing in developing countries against war, expropriation and internal conflicts, adopted an amendment when its mandate came up for renewal in 1985. The amendment stated that the organization “cannot insure, re-insure or finance a project unless the country in which the project is to be carried out takes measures with a view to adopting and applying laws giving workers in those countries the
rights granted to them at the international level". Third, when the Generalized System of Preferences came up for renewal in 1984, Congress added a clause on workers' rights to the list of conditions for refusing to grant duty-exempt status to products from developing countries. The final example is the general law of 1988 on trade and competition.

Developing countries cannot fail to compare these measures, which are relatively constraining for them, with the fact that the United States has been among the most reluctant to ratify ILO Conventions. Thus:

... they feel that developed countries' concern about working conditions in their countries is due above all to their export success, and to the growing pressure for protectionism that has arisen from high unemployment in importing countries. They consider the social clause proposal to be disguised protectionism that could obstruct their industrial development and deprive them of one of their key comparative advantages: the ability to use low-cost labour productively. They object to what they consider to be interference in their domestic affairs and resent the fact that they appear to be asked for reciprocity in social obligations in return for trade concessions. Other arguments against a social clause have also been put forward: why is the question of labour standards brought up in isolation from the broader issues of imbalances in the world trade structure — including the issue of greater market access through accelerated restructuring of developed country economies, and that of raw material prices, many of which are at a low level and continue to fluctuate wildly? Finally, it is asked why some of the countries which believe that international trade should be linked with minimum labour standards are maintaining their economic and financial ties with such countries as South Africa where the fundamental freedoms of large parts of the population are by no means guaranteed. [van Liempt, 1989, p. 435]

Thus in order for the social clause not to appear as protectionism masquerading under the guise of human rights, serving merely as an extension of other discriminatory practices adopted by the industrialized countries such as so-called "voluntary" restrictions on exporting countries, the repressive element should be offset with incentives that might encourage its wider acceptance. For example, the OECD countries could propose in exchange a gradual easing of import quotas. And in the light of the heavy burden that structural adjustment plans can impose on developing countries,5 and the extent to which the ILO has been able to

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5 Structural adjustment plans are put in place in order to resolve balance-of-payments and inflation problems by restricting effective demand and encouraging the free working of market forces. One of the aims of these plans is to bring about a change in the composition of production in favour of goods and services that can be exported and to the detriment of those not likely to be traded in international markets. A study of 12
influence the practices of the IMF and the World Bank\textsuperscript{6} by persuading them to incorporate social considerations into their structural adjustment plans, the countries in question might be persuaded to commit themselves to accepting a certain number of social rights. In general terms, it would be necessary to offer them concrete support to help them deal with the possible consequences of introducing more protective social measures in conjunction with the development of their international trade.

There is, of course, the possibility of bilaterally-financed technical assistance, but this approach no longer seems commensurate with the magnitude and multilateral dimension of the problem. The only realistic way of dealing with the problem is to be bold enough to consider entirely new solutions. In this sense, we could perhaps consider some concerted action with the GATT, and see if international trade itself can provide a source of financing for these complementary adjustment measures [ILO, 1994, pp. 61-62].

countries affected by such plans shows that the flows of labour between industries and sectors generally go in the desired direction [Horton et al., 1991]. However, this same research, like many other studies, also shows that stabilization programmes lead to a fall in demand on a scale that varies in accordance with the severity of the measures adopted and the bottlenecks that characterize the various sectors. It is generally low-paid workers who bear the main burden of adjustment, suffering job losses, increased unemployment and cuts in real wages. This has led to the emergence of proposals intended to compensate for the restriction of demand by overall budgetary measures and the encouragement of market mechanisms, through the introduction of more selective measures and changing the methods of intervention used by the public authorities. In particular, it is proposed that a distinction should be made between essential goods and services and luxury or unnecessary goods and services and that account should be taken of the effects of demand policies on income distribution and the poorest sections of the population [van der Hoeven, 1987; Eshag, 1989].

\textsuperscript{6} “The efforts made by the ILO in the field of structural adjustment policies have done much to win acceptance of the principle that social objectives are of cardinal importance, and that they must be taken into account if economic restructuring is truly to lead to sustainable growth... The ILO is planning to intensify its positive collaboration with the International Monetary Fund and the World Bank, so that the policies suggested to the member States should, as from the design stage, take into account the concerns of the Organization, the government leaders responsible for social policy and the employers' and workers' organizations in the countries concerned. The purpose of the Organization's cooperation with the financial institutions will be to give greater prominence to the social content and to the considerations affecting employment protection and development for the most disadvantaged population groups. The Organization will further endeavour to influence the approach of the financial institutions and to accentuate the advantages of tripartite discussion in developing social cohesion and enlisting broad support for national development policies” [ILO, 1992b].
IV. Procedures

If the social clause and normative action are to be made as effective as possible, due attention has to be paid to three procedural questions concerning, respectively, the establishment of rules, the monitoring of their application and the various types of sanction which it may be necessary to impose.7

There are a number of ways in which the notion of a social clause might be given concrete form: bilateral agreements or agreements limited to a specific number of countries and involving ILO participation; trade agreements with a social clause between private companies in importing and exporting countries; or a code of conduct of the kind adopted by EC member States in respect of subsidiaries of EC-based multinational companies operating in South Africa, etc. None of these possibilities should be ignored. Nevertheless, if the issue is to be given the importance it deserves, the adoption of international instruments within the framework of UN institutions would appear desirable.

When it comes to drawing up a standard, whether within the framework of the GATT or of the ILO, different questions are raised: “First of all, it has to be decided whether the lawmaker should lay down precise rules applicable without exception to everybody, regardless of social disparities, the economic context or practical considerations. Should a standard only specify a goal or should it also spell out the ways of achieving it? Should strict penalties be prescribed or should the courts be allowed more latitude in judging each case on its merits?” [Servais, 1986]. This conflict between flexibility and rigour that is evident in the formulation process will also be found when it comes to the implementation and monitoring of standards by officials, courts or the international body charged with taking cognizance of them. Furthermore, the debate cannot be divorced from the context in which it takes place. It must be linked to the general concern with flexibility that characterizes current economic thinking and the demands for derogation or flexibility made by a number of developing countries — even though the Committee of Experts on the implementation of ILO Conventions and Recommenda-

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7 These questions have already been tackled by many authors including, among others, Carnoy et al. [1983]; Hansson [1983]; Daoudi & Dajani [1983]; Kohona [1985].
tions may subsequently discover that few countries granted this freedom actually make use of it.

As far as the GATT is concerned, labour standards could, like the restrictions on dumping and capital equipment subsidies contained in article 29, be included in a multilateral agreement concluded under its aegis. Thus the International Metalworkers' Federation (FIOM — Fédération internationale des Organisations de Travailleurs de la Métallurgie) has proposed that the general escape clause in article XIX should be supplemented by a social clause that would enable governments to introduce selective import restrictions against countries that do not enforce fair working conditions. The ILO can choose among a variety of instruments, including conventions, recommendations, resolutions, conclusions and declarations. The most restrictive formulations are not necessarily the most effective, not only because it is insufficient merely to establish norms but also because Conventions have to be ratified and applied, because the rate of ratification has for many years been stagnant (falling from 30 per cent between 1950 and 1955 to 15 per cent between 1965 and 1970), because the delay in translating international standards into law and national practices is becoming ever longer and, above all, because we have to come to terms with the growing heterogeneity of situations, needs and possibilities in the various member States. As a result, international Conventions, hitherto seen as by far the most appropriate instrument for normative action, "face a serious dilemma: either the provisions they contain are made more flexible so as to make them more accessible to the majority, in which case the Conventions would lose some of their character; or else they include a minimum number of strict obligations, and the Conventions run the risk of being ratified by disappointingly few countries" [ILO, 1994, p. 48].

Flexibility can be granted: through the inclusion in the agreements of phrases such as "if necessary", "in appropriate cases", "if needs be", "as far as possible", "in accordance with national practice and conditions"; through many clauses such as those offering an opportunity to ratify only certain parts of an instrument or to choose between several provisions laying down different requirements, the authorized exclusion of certain groups of workers from the application of an instrument, gradual implementation clauses etc. or even through the introduction of so-called equivalence clauses that allow derogations from a particular regulation provided that comparable protection exists overall.

And "more generally, the reasons for the existence of Conventions should not be lost sight of and flexibility should not be taken so far as to deprive them of their binding nature that is calculated to make States take action. A balance needs to be struck between different concerns. In some areas, however, there is no room for flexibility; as has often been said, 'international standards must be intransigent when they are a matter of fundamental rights' such as freedom of association, the abolition of forced labour or the elimination of discrimination" [Servais, 1986, pp. 198-199].
therefore, to explore less restrictive "soft laws", without abandoning all regulatory ambitions.

In order to prevent fair standards remaining simply a pious hope, attention has to be paid to supervisory procedures. While the ILO Constitution, in its original form, provided for the possible adoption of "economic sanctions" as a last resort in ensuring compliance with ratified Conventions, the current article 33 mentions only the possibility of taking "such measures as ... may seem appropriate in order to ensure enforcement" of the provisions in question. No such measures have been taken. Rather than having recourse to sanctions, the ILO, and indeed all specialized international organizations, have preferred to adopt a strategy based on conciliation and pragmatic defence of their regulations [Leben, 1979, p. 326]. From this point of view, various methods are conceivable:

... one of them would be to entrust the ILO with the role of supervising the standards and reporting on their observance to member governments, after which it would be up to each country unilaterally to revise the trade preferences or other concessions it had been granting to countries violating the standards. A more universal method would be for regional groups of countries to agree not to restrict imports from developing countries on condition that the labour standards (and corresponding restrictions on capital subsidies) were respected. A third alternative would be to introduce a social clause into the general escape clause of the GATT, which would enable importing countries to take unilateral action against countries that had clearly violated the labour standards [Edgren, 1979].

Institutional mechanisms can also be imagined: in the report by André Sainjeon referred to above, the author proposes the establishment of a consultative committee made up of the various social partners represented within the ILO; if basic regulations were infringed, this committee could turn to the International Court of Justice in The Hague.

Retaliatory measures taken by various countries have ranged from import bans, anti-dumping duties, countervailing duties, refusal of most-favoured-nation status, sanctions against firms, export restrictions and negotiated incentives to outright boycotts [Charnovitz, 1987].

The advantages of a flexible method are also stressed by a former Director-General of the ILO: "a procedure based on the intrinsic rights of any international organization to inquire into questions of concern to it, to establish facts and to publish such findings and recommendations as it considers appropriate, can be applied to all its members and, without placing legal obligations upon them, can have as much influence in practice as a procedure based on more formal obligations" [Jenks, 1967, p. 236].
It is possible to imagine a sort of division of labour among the various international organizations involved. Rather like the minimum standards that the Commission of the European Communities, at the request of the European trade unions, put forward for inclusion in the Lomé Convention concluded in February 1985, individual countries or groups of countries could, within the GATT framework, offer bilateral trading privileges (preferential treatment in areas such as customs duties and import quotas, or financial assistance) without discrimination to countries enforcing previously established fair labour standards. For its part, the ILO, as part of a strategy integrating economics and law, could respond to requests from member States or international organizations to determine the extent to which certain standards are complied with. In so doing, it could act on behalf of organizations or institutions supervising competitive conditions in world trade. Thus the annual report of the Committee of Experts on the Application of Conventions and Recommendations could be extended from its legal and administrative brief to one closer to that of the Declaration of Principles and action programme that in 1976 followed the world conference on employment, income distribution, social progress and the international division of labour.

As far as the specific actions to be undertaken by the ILO are concerned, it is possible, rather than falling back on procedures based on protests and complaints, to conceive of establishing a procedure similar to that put in place for trade union freedom, which has the advantage of flexibility, swiftness and relatively low operating costs. This could be done either by extending the mandate of the present committee or by setting up new, specialist tripartite committees. Moreover, at the request of the parties involved, the ILO could offer a voluntary mediation and arbitration procedure that would have the effect of suspending the other procedures for a year, say. A model might also be found in the practices adopted in the wake of the 1964 declaration on apartheid (updated in 1981) or the similar procedure adopted in 1978 for Arab workers in the territories occupied by Israel. Under these procedures, the Director-General presents an annual report on the evolution of the situation, thus exerting moral pressure that might lead to a remedy for shameful forms of injustice. This echoes an idea put forward at the International Labour

\[\text{12 Nevertheless, if this procedure were retained, it would be better to enlarge its scope since experience shows that a narrow concept in which only governments were allowed to lodge complaints would remain fairly limited in its application. In that case, however, it would perhaps be necessary to lay down rules for deciding the admissibility of each complaint and the priority to be given to the case [van Lijemt, 1989, p. 445].}\]
Conference in 1973 whereby “while it may be difficult to make fair labour standards specific conditions of trade agreements the impartial examination of controversies concerning fair labour standards may greatly facilitate trade negotiations”. Use could also be made of “procedures of conciliation rather than complaint designed to enable potentially conflicting parties to reach common ground as to what the facts are and seek agreement on remedial action to resolve or at least narrow their differences” [ILO, 1973, p. 39].

In general terms, it is through the combined effect of diplomacy (in the form of conciliation and mediation) and essentially moral incentives that the supervisory agencies seek to enforce international standards when they give rise to difficulties. Moreover, it is well known that the practical influence of international standards goes well beyond their formal value. In the case of the special procedure under which, for example, complaints about the violation of trade union rights can be investigated, the pressure exerted on the parties involved arises out of moral considerations and the weight of public opinion rather than the force of the law. Similarly, the procedure that authorizes the Governing Body of the ILO to invite countries that have not yet ratified certain Conventions to report on their legislation and practices in the areas concerned may make it possible, by bringing the debate out into the open, for desirable improvements to be made.

V. Conclusion

Two observations may serve as a brief conclusion to this outline. On the doctrinal level, it has to be noted that the devaluation of ethical considerations in international relations has been accompanied by the relative marginalization of normative theory and the triumph of positive theories characterized by a behaviourism that subordinates values to facts. However, things may be in the process of changing. On the one hand, if order, an intelligible and possibly desirable organizational principle, presupposes law, individual states nevertheless remain sovereign, since even the United Nations Charter is not universal because certain countries have not ratified it. Moreover, since international law is essentially a law based on consent, the arrangement of its constituent parts is necessarily variable. In national law, the judge is obliged to fill the legal vacuum on pain of denial of justice; nothing of the sort can be observed in international law. And yet, on the other hand, a concept of a duty to interfere on humanitarian grounds is emerging. Indeed, it was
accepted by the UN in Security Council resolution 688 of April 1991, which ordered immediate access for international humanitarian organizations to the Kurdish population of Iraq. Is it not possible to imagine, with the increasing globalization of the economy, that such a practice could be extended to areas in which not only threats to people's very existence but also those affecting their living and working conditions would be justification for a right to interfere? On the more empirical level that has been the main concern of this paper, we have sought to appropriate for our own ends the adage contained in a famous speech addressed to young people by Jean Jaurès, in which he declared that we should "achieve the ideal by observing reality". Unless they take account of the obstacles, legitimate ambitions alone will never lead to effective practical recommendations. That is why, in this sphere as in many others, it is necessary to take account of the fact that "government policies are likely to be a mixture of what is desirable from the economic point of view, what is opportune from the political point of view and what is feasible in practice" [OECD, 1967, p. 47].

**Bibliographical references**


I. Main characteristics of globalization and regionalization

Globalization is not new. But there has clearly been an acceleration during the 1980s with the simultaneous occurrence of various phenomena. These include: the rapid growth of offshore financial markets, with the concomitant circulation of vast amounts of money that can scarcely be regulated by public monetary authorities; the explosion of mergers and acquisitions, national and international, which are bound to affect global industrial restructuring and international competitiveness for years to come; the accelerated homogenization on a global scale of consumer preferences, product standards and production methods; and a visible trend for the fortunes of large corporations to be less dependent on the health of any one nation’s economy.

The post-war growth of multinational enterprises, whereby large corporations created or acquired foreign subsidiaries to compete in overseas markets, is being superseded by the growth of global, inter-firm networking agreements and alliances. Firms now tend to define themselves in the global marketplace more in terms of the strategic assets they control than in terms of particular products. As the service component of many manufacturing activities expands, the boundaries of specific industries are increasingly blurred.
The acceleration of technological change and deregulation further strengthens perceptions of globalization. In part, this is because of the importance of new information and communications technologies to the functioning of off-shore financial markets, the management of global corporate activity and the internationalization of production.

To varying degrees, all these factors have weakened the ability of the State to control the behaviour of other economic actors theoretically under its jurisdiction, and have pushed the boundaries of policy-making into the sphere of the global, rather than the national economy. The State as an economic entity arguably reached the peak of its power in the middle decades of the twentieth century. Integration of States into an international economic system not only increased their openness in a conventional sense, but also weakened their ability to impose their will on other economic actors, notably business firms with subsidiaries in a number of countries, employed persons with internationally marketable skills and investors with access to international capital markets. Even limited globalization has greatly increased mobility of goods, assets and individuals.

The internationalization of currency markets has made it more difficult for central banks to control the money supply. Integration of bond markets has made it more difficult for the State to determine rates of interest. Transfer pricing by transnational corporations has made it easier for enterprises to shift their property tax liabilities from countries where taxation is high to countries where it is low. Similarly, the ability of large firms to locate their fixed investments almost anywhere in the world has reduced the power of the State to regulate industry, be it through taxation, the imposition of minimum wage legislation, environmental controls, health and safety provision, or anything else.

Globalization therefore implies the need for global economic management. If, at the one extreme, globalization has weakened the ability of the State to manage its national economy, at the other extreme it has raised questions about how best to manage a truly global economy in the interest of all participants — rich countries and poor, big countries and small. It is evident that the existing international economic institutions were not designed to manage an integrated global economy. They were designed to serve a system of national states in which each State was assumed to be able to exercise sovereignty over domestic economic affairs. There is a danger that, as the process of globalization proceeds, the existing set of international institutions will become increasingly ineffective and obsolete. We may soon reach a situation where no government organization, be it national or international, is in effective control of global economic affairs, and where no-one can be held accountable for
events in the global sphere. If this view is correct, then the issue of international governance and the unavoidable restructuring of institutions this entails is indeed likely to be high on the agenda in coming years.

In summary, we need to adapt and strengthen existing global institutions to allow them to cope better with the unforeseen events that will surely accompany the accelerated evolution of the international economy we are now experiencing. This will, furthermore, be essential to ensure a truly global economy which will include as active and constructive actors those countries presently drifting away from the world economic mainstream. And, finally, it will be necessary to ensure that regional economics blocs are consistent with global markets and the global economy rather than the contrary.

Indeed, not only globalization but also regionalization is the order of the day. Steps towards greater regional integration need not always be defensive in nature, or a response to a poorly functioning global economy. The formation or reinforcement of regional groups may occur as an intermediate step towards globalization, to strengthen the economies of member countries so that they can chisel out a greater part of the global market. The important point is that the type of regional grouping likely to be prominent in the decade or so ahead will depend to a great extent on whether globalization continues. Globalization and regionalization can go hand in hand or be antagonistic, depending on the prevailing circumstances.

The adoption of a defensive posture by the industrialized countries, a retreat into protectionism and regional blocs, would clearly have serious consequences for many Third World countries, particularly small countries with open economies. There is the real possibility that the weakest of the developing countries would thereby become further marginalized, thus aiming yet another blow at the slow-track countries already in difficulty. This could induce many developing countries to seek bilateral trading agreements among themselves — as was common in the 1930s and 1940s — or try to establish, or strengthen, their own trading blocs.

Things are made more complicated because on the international scene today we begin to observe policies that judiciously combine export promotion and protectionist measures. They would seem to be moving in a direction where the clear-cut distinction between free trade on the one hand and protectionism on the other becomes increasingly blurred. What we are now seeing is a paradoxical trend. National investments in more and more developing countries, and in particular in the bigger developing countries, are focusing on the mastery of sophisticated technologies — including the so-called "new technologies". At the same time,
international investments are attracted to those countries for labour cost reasons, in order to reallocate industrial activities with a view to conquering global markets. This apparently contradictory trend may turn into open conflict.

The debate here is whether the new technological revolution will benefit only the old industrialized nations by turning back the evolution that has been taking place in the international division of labour over the past 20 years, or whether developing countries will also be beneficiaries by cornering important shares of the global market. The East Asian experience has shown that it can be done. The question remains whether other countries, and in particular the poorest countries, can imitate this excellent example.

II. A minimum package of international labour standards

Globalization stimulates even further the urge for competitiveness. Competition no longer has the original meaning of "cum petere", i.e. searching together. On the contrary, it has come to mean all-out war between countries and firms. The pressure on wages, social benefits and labour standards in general is becoming more serious. One of the ways to circumnavigate this negative challenge is to identify and introduce in all countries a minimum package of labour standards.

The debate on the desirability of including labour standards in international agreements has been under way for a considerable time and will be intensified by the globalization of the world economy. The debate focuses mainly on whether the attempt to compel the introduction of labour standards in developing countries represents a form of hidden protectionism designed to benefit the industrial countries. Instead of adopting open protectionism, the rich countries may be accused of disguising their protectionist intentions by pressing for the premature introduction of labour standards in poor countries.

The arguments in favour of inclusion are the following:

(a) Social progress should keep pace with economic progress. One way of achieving this is to ensure that employees have the right of association and can engage in collective bargaining with employers. The insertion of relevant labour standards into international agreements would assist in bringing this about.
Industrial countries are collaborating in the exploitation of workers in developing countries if they fail to press for the adoption of universal minimum labour standards: this is known as the "solidarity argument". In many cases, developing countries will hesitate to improve working conditions at home on a voluntary basis since they fear competition from other countries not wishing to make similar improvements. The inclusion of labour standards in international Conventions would naturally help to bring working conditions into line with internationally recognized norms in as many countries as possible.

A related argument concerns the readiness of workers in industrial countries to cooperate in essential restructuring processes at the national level. The insertion of labour standards into international agreements would provide a guarantee that trade will not take place on the basis of unfair competition at the expense of workers in either developing or industrialized countries.

Optimists believe that, by including labour standards in international agreements, a halt will be called to the growth in protectionism. An increasing number of protectionist measures taken by the rich countries in particular are the result of difficult economic circumstances, notably the persistent high levels of unemployment. In addition, production capacity in low-income countries is expanding rapidly, particularly in the textile, clothing, footwear and electronics sectors. This expansion has so far been seen as a threat to industrial economies: rapidly growing imports of products from low-income countries are ascribed, among other things, to the neglect of working conditions in those countries which allow labour costs to be held down. The destruction of competition in this way would be countered by the inclusion of labour standards in international agreements, thus eliminating one of the arguments for the introduction of protectionist measures.

The arguments against inclusion are equally compelling and run as follows:

There are those who fear that the real motive for linking minimum labour standards with international agreements is the protection of domestic industries in industrial countries. The inclusion of labour standards in international agreements would in fact mean that the economic problems of the industrial countries were transferred to the developing countries. Rich countries and their trade unions, in pressing for the introduction of labour standards, are simply seeking
to spare from an essential process of restructuring domestic industries which are unable to withstand competition from developing countries. This puts a brake on economic development as much in the industrial countries as in the developing ones.

(b) The premature inclusion of labour standards would destroy one of the comparative advantages of developing countries, namely a favourable relationship between productivity and wage levels. In addition, developing countries would have imposed upon them standards which, given their level of development, cannot all be considered attainable.

(c) The solidarity argument used by the proponents of inclusion is said by its opponents not to be properly thought out. At best, the labour standards imposed would affect only those working in the modern sectors in developing countries and would be of no benefit to other groups within the population. Moreover, labour costs would be artificially raised, leading towards an increasing emphasis on capital-intensive investments. The insertion of labour standards into international agreements would aggravate the dualism of developing economies, reduce the rate of growth of employment and make no contribution to improving the conditions of the poorest groups — who could indeed be disadvantaged by the reduced growth in exports and employment.

(d) Finally, there is a danger that the desire to impose labour standards may slide into interference in a country’s internal affairs. Developing countries in particular may find their freedom of manoeuvre curtailed as regards both national and international policy. The ILO has developed a better procedure than this for improving working conditions within countries, namely that of direct contacts: this makes allowance for certain sensitivities and is likely for that very reason to be more effective.

It is obvious that the debate remains inconclusive. Of greater importance, however, is the realization that supporters and opponents are not pursuing opposing objectives: both are against protectionism and in favour of improved working conditions in the countries concerned. From this the logical question follows whether a compromise could not perhaps be found via the idea of minimum standards. This would comprise a package of provisions and requirements so essential that in principle all countries can subscribe to them and which can be selected and implemented in such a way as to meet the objections of opponents.
As mentioned earlier, the growing globalization of the world economy makes it even more important that the international community agrees on a minimum package of international labour standards, and ensures its application in all sectors of the economy and in all countries. Indeed, an essential feature of true minimum standards is that no exception is admissible and that great care be taken over their identification. The standards must clearly be set and implemented in such a way as to exclude any adverse effects on employment and economic growth in the countries concerned.

It is perfectly possible to compile a minimum package of international labour standards by applying a mixture of social and legal criteria. The main purpose of such a package is the satisfaction of the basic need for freely chosen work in humane conditions. What must be taken into account is how far this package affects the competitive position of both the industrial and the developing countries. This leads to the economic criterion.

The economic criterion is often linked with international trade and the conditions for fair competition between countries. The debate on the desirability of introducing a “social clause” into Article XIX of the General Agreement on Tariffs and Trade (GATT) has dragged on for many years. American trade unions — and particularly the AFL-CIO — have pressed strongly for the introduction of labour standards throughout the world, most especially in countries which already, or may in the future, engage in trade with the United States. The AFL-CIO has always laid great stress on the point that the failure to introduce such standards has led, and will continue to lead, to unfair competition. The central issue, therefore, is the identification of a very narrow pathway between exploitation of workers on the one hand and, on the other, erosion of comparative advantages of developing countries and hence their competitive position on world markets. The great comparative advantage of many developing countries is the availability of human capital and its relatively low price. It is logical and proper, given the need to promote employment and economic growth, that they should seek to take advantage of this state of affairs on the global market. At the same time, however, it is of vital importance for such countries, and for all their working population, that minimum labour standards should be identified and observed.

On balance, we do not feel that a minimum standards package would raise too many difficulties: in most cases the application of the standards would have no adverse effect on the international economic position of developing countries or, more generally, their potential for growth.
III. Summary and conclusions

The ILO owes its foundation in no small part to the desire that countries should undertake simultaneously to improve working conditions, thus avoiding the erosion of their international competitiveness. One of ILO’s main tools for the improvement of working conditions has been the formulation of international labour standards. A country which has ratified a Convention is required to observe its provisions and thus report on the measures taken to this end. The ILO checks that the countries do indeed act in accordance with the Conventions they have ratified, and various procedures exist for channelling complaints against governments regarding their observance of Convention provisions.

Arguments for the inclusion of minimum labour standards in international trade policy agreements, particularly in the light of emerging global markets, include:

(a) the desirability of social progress in a country keeping pace with economic development, in which connection the introduction of labour standards — notably regarding freedom of association and the right to engage in collective bargaining — can provide a useful impetus;

(b) the fact that countries might hesitate voluntarily and unilaterally to improve working conditions for fear of adversely affecting their competitive positions; and

(c) the fact that this step makes it more difficult for countries to adopt protectionist measures on the excuse that their competitors profit from poor working conditions.

The main arguments against inclusion are:

(a) the absence of any economic justification;

(b) the fact that premature introduction of labour standards erodes a major comparative advantage enjoyed by developing countries, namely a favourable relationship between productivity and wage levels;

(c) the danger that labour standards will not only fail to benefit the poorest groups in developing countries, but may even worsen their position; and

(d) the risk of interference in a country’s internal affairs.
Historically, improvements in working conditions have been the result both of economic and technological progress and of the development of trade unionism. Working conditions and social provisions may nevertheless show considerable differences in two countries at the same level of economic development. The introduction and enforcement of minimum international labour standards in the small-scale agrarian sector, where female and child labour is common and much work is carried out in a family context, is in practice extremely difficult. This is also true of the traditional non-agrarian sectors: working conditions are generally poor, but the nature of the sector makes the introduction and enforcement of labour standards very difficult.

In the modern industrial sector, however, it is relatively easy to check whether labour standards are being observed. Given the desirability of improving working conditions without eroding countries' competitiveness, the following questions must be answered:

(a) Have working conditions in the export sector improved or deteriorated in the recent past?

(b) Are working conditions in export sectors better than in those producing for the domestic market?

(c) Have poor working conditions in the export sector of certain countries helped them achieve more rapid growth in exports and hence in national income?

The answers to all these questions are highly controversial.

By minimum international labour standards, we mean standards whose violation or non-application implies a serious risk that the basic need for freely chosen work in humane conditions cannot be satisfied. They ought therefore to be applied in all countries in all economic sectors. By using a mixture of social, legal and economic criteria, it is possible to put together a minimum package of international labour standards which contributes to the creation of a climate in which there is scope for meeting the basic need for freely chosen work in humane conditions. The standards in question are laid down in the following ILO Conventions: No. 29, Forced Labour Convention (1930); No. 87, Freedom of Association and Protection of the Right to Organize Convention (1948); No. 98, Right to Organize and Collective Bargaining Convention (1949); No. 100, Equal Remuneration Convention (1951); No. 105, Abolition of Forced Labour Convention (1957); No. 111, Discrimination (Employment and Occupation) Convention (1958); No. 122, Employment Policy Convention (1964) and No. 138, Minimum Age Convention (1973).
The minimum standards identified are all embodied in international Conventions. One must now ask whether their effectiveness can be enhanced by including a provision concerning their observance in international agreements involving both industrial and developing countries. If this is to be justifiable and effective the following three conditions must be met:

(a) the agreement itself must contribute to achieving the conditions needed to facilitate observance of the minimum international labour standards;

(b) the agreement must provide for a satisfactory procedure for the settlement of disputes by an independent body;

(c) the enforcement of minimum international labour standards must be based on reciprocity.

In this connection, there are a number of reasons for regarding the Lomé Convention as particularly suitable to be used as a guinea-pig for the inclusion of the minimum labour standards provision: the Convention provides for an adequate appeals procedure and itself creates conditions for fostering the observance of minimum standards. The European Union is party to the Convention, which offsets the fact that not all EU member States have ratified all the labour Conventions in the minimum package. The number of ratifications by the ACP countries presents an encouraging picture. But obviously, and with the emergence of globalization and global markets in mind, the inclusion of such a minimum package in GATT, after the successful conclusion of the Uruguay Round, will be the first priority.
Labour standards in the globalized economy and the free trade/fair trade debate

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Abstract

The specific debate over labour standards in the globalized economy is part of the more general debate over "free" versus "fair" trade. This debate within trade theory seems intractable, involving arguments about democracy and sovereignty and, most crucially, the normative status of international regulatory competition. Resolution of this difficult set of issues is nevertheless a precondition for progress on the specific agenda of labour standards in the globalized economy. The disagreements within trade theory can be made explicit and, it is argued, the outline of their resolution can be constructed using resources already inherent in liberal trade theory and the existing world trading system.

I. Introduction

The subject matter of this volume of essays is a broad one: "International labour standards in the globalized economy: Issues, challenges and perspectives". This essay expands the topic further by suggesting that the debate on labour standards in the new world economic circumstances is usefully viewed as part of a more general debate on regulatory competition as engaged by theorists of international
International labour standards and economic interdependence

trade and their critics. In other words, our topic is a specific instance of the broader argument over “fair” as opposed to “free” trade.

Establishing this connection is illuminating, but also debilitating. It is illuminating because the fair trade/free trade debate has progressed to the point where the fundamental issues and disagreements are becoming apparent. This more general discussion comprehends not only labour standards but also such matters as environmental regulation and competition policy, so enabling common features as well as differences to be crystallized in a useful way. In my view trade theory articulates, most explicitly, the arguments which must be confronted in order to resolve the specific question of labour standards.

At the same time, the connection to the free trade/fair trade problem is debilitating because the more general discussion often generates more heat than light. Labour lawyers and trade economists seem to bring to bear such opposing conceptual paradigms that they never really join debate. There is a systematic lack of communication and their theories appear, to borrow Flaubert’s phase, as “two identical impertinences” [Flaubert, 1929, p. 367 cited in Hirschman, 1991, p. 168]. Participants in these debates occupy what has been aptly described as “two solitudes”.

The point of this essay is to show how the free trade/fair trade argument goes to the heart of the debate on labour standards in the new global economy; and then to suggest a way of understanding and thus dissolving the conceptual barriers between free and fair traders. However, if this effort is successful it merely clears the ground and removes an obstacle, albeit a large one, to the concrete and difficult task of forging institutions, processes and substantive labour standards appropriate to the new globalized economy.

In what follows I outline briefly the free trade/fair trade debate, suggest that free traders cannot dodge fair trade arguments and locate what I believe to be the important dimensions of disagreement characterizing the debate. I then make explicit the conceptual divide between the two camps.

II. The free trade/fair trade debate

Arguments about “fair trade”, “harmonization”, “level playing fields”, and “races to the bottom” have come to dominate the agenda of leading trade theorists. For example, Bhagwati has characterized the demand for fair trade as a “Pandora’s box” which has “grown out of
hand" and which constitutes the "true crisis" facing trade theory [Bhagwati, 1994, pp. 548, 582]. The basic and familiar argument of fair traders against trade liberalization is that domestic labour (and environmental) policies are thereby exposed to "unfair competition" from countries where standards, or their enforcement, are lower. Jurisdictions compete for mobile capital by lowering regulatory standards. To avoid this outcome, fair traders oppose free trade regimes and insist that they must contain provisions for equalizing regulatory standards to ensure a "level playing field" and thus avoid a "race to the bottom".  

For free trade theorists these arguments are nonsensical. Regulatory diversity is one dimension of comparative advantage and to argue against diversity is to argue against the rationale for trade itself. Moreover, regulatory competition is prima facie a "good thing". If competition among sellers of widgets is socially desirable, why not among producers of labour regulation? These economic arguments are bolstered by political ones relating to democracy and/or sovereignty. If residents of other jurisdictions choose different sets of regulatory policies, on what basis can we interfere with their choice? In addition, it is argued that projecting labour (or environmental) policy into international trade negotiations undermines domestic sovereignty concerning those issues.  

These arguments are the raw material for the conceptual gridlock which characterizes the free trade/fair trade debate. (I here ignore other non-conceptual problems generating this gridlock including the pervasive argument that all claims for "fair trade" constitute protectionism masquerading under a different name.) In what follows I argue that free trade theory itself cannot avoid the fair trade challenge and maintain a laissez-faire attitude to issues such as labour standards. I then examine the arguments concerning democracy and sovereignty and finally approach the core issue — are we to understand our problem in terms of the virtues of competition, or in terms of the dangers of a "race to the bottom"?

III. Fair trade is free trade's destiny

Free trade theory contains within itself the notion of fair trade. This can be seen in the following way. The informing idea of liberal trade theory lies in Adam Smith's insight that:

What is prudence in the conduct of every private family can scarcely be folly in that of a great kingdom. If a foreign country can supply us with a
commodity cheaper than we can make, better buy it of them with some part of
the produce of our industry [Smith, 1776, p. 424].

Smith was appealing to a model in which domestic producers of
goods for potential export faced tariff barriers. The outstanding accom-
plishment of liberal trade theory and the world trading system has been
the reduction of tariffs among the key trading nations to “almost
negligible levels” [Bhagwati, 1994, p. 5]. The high cost of protectionism,
including the cost of each job “saved” in domestic industry, has been
recognized to a large extent. But the result of trade liberalization is not
only gains from trade but also specific domestic “losers”, including those
whose jobs are lost in industries unable to compete with cheaper foreign
producers. This requires appropriate “adjustment policies”. The best
advice to those caught in this domestic policy dilemma has been to
pursue the gains from trade, but to use some of those gains to compen-
sate the losers [Trebilcock et al., 1990]. Within the classical model of
domestic producers with goods for potential export, the policy debate is
constructed and legitimized by domestic (democratic) political processes
in which all constituencies — capital, labour and consumers — are
involved.

This world has been revolutionized by two key developments —
increased mobility of capital and increased regulatory competition.
Increased mobility of capital and other factors of production, combined
with the relative immobility of labour and the absolute immobility of
jurisdictions, has reshaped the simple model upon which liberal trade
theory is based. At the same time, governmental regulatory policy, which
hitherto played “no role” in classical theory [Bhagwati, 1994, p. 584] has
come to the forefront. Within trade theory itself these developments have
created intellectual disarray concerning the central notion of “subsidies”.

That free trade theory is now enmeshed in fair trade theory can be
demonstrated briefly. The signal achievement of the free traders has been
the reduction of tariffs and the resulting gains from trade. But from a
global perspective there is no conceptually relevant distinction between
a tariff upon a foreign good and a direct subsidy to domestic producers
of the same good. They achieve the same result for the same motive. And
further, there is no relevant distinction between what may be referred to
as “positive” and “negative” subsidies. That is, government subsidies to
pay for required pollution equipment or day-care facilities for the
children of workers cannot be distinguished from a “subsidy” in the form
of not imposing the regulatory requirement in the first place. Government
inaction (non-regulation) is as much a subsidy in the eyes of foreign
producers saddled with costly regulatory requirements as direct funding
to meet the requirement if imposed. Thus, there is a profound question inherent in liberal trade theory itself — what is the “natural”, “neutral” or non-subsidizing level of regulation? Trade theory is obliged by its own logic to respond to this question even though it cannot supply an answer. This simple point provides the key, as we shall see, to resolving the most basic element of our intellectual gridlock — arguments setting the virtues of regulatory competition against warnings of a race to the bottom.

**IV. The arguments of democracy and sovereignty**

The mobility of capital undermines in a fairly straightforward way the traditional arguments of democracy and sovereignty invoked by liberal trade theorists. The legitimacy of the policy choice faced by states contemplating the liberal theory of trade was underwritten by an appeal to democracy. The policy issues were whether to undertake trade liberalization and, if so, whether to compensate the losers with part of the gains. These issues were decided by domestic policy processes. In so far as government regulatory policy was perceived as a relevant factor endowment that, too, was resolved ideally by democratic means within the state and the political contest between domestic capital, labour and consumers. But now capital has not just the political strategy of “voice”, it has the option of “exit” [Hirschman, 1970]. Capital has slipped the moorings of the nation state, but labour has not. In these circumstances, theory predicts and practice bears out the simple idea that the mobile factor will play off the immobile factors against one another. Thus, international regulatory competition is to be expected. But the result of this new regulatory competition, for example in labour policy, is the creation of what may be referred to as a “democratic deficit”. By acquiring the option of exit, capital is liberated to participate in and establish an international market-place in regulatory policy. But this is a shift away from a world in which regulatory policy is determined within domestic political processes, entailing a loss of democratic control. Much of the antipathy to proposals for trade liberalization, such as the North American Free Trade Agreement, reflects popular unease over this loss of control.

The new situation also highlights the processes of choice in other jurisdictions. If the new market-place in regulatory competition is to be justified then, as with all market choices, our choices are only legitimately constrained by free and informed choices elsewhere [Friedman, 1962, p. 12]. Hence the renewed interest in North America, for example,
in the status of democracy and democratic institutions in Mexico. If choices elsewhere are not free and informed, then the impact of the market-place in regulation is to export their democratic deficits to our own shores.

The argument of sovereignty is also clouded by the new global circumstances. The old advice not to cede sovereignty over issues such as domestic labour policy regulation to international processes is now best re-evaluated if not ignored. The reality is that sovereignty over these issues has already been ceded and policy is being established to an increasing extent internationally. The issue is not whether but how policy will be determined internationally — through the market or through political negotiations. The problem is no longer avoiding a potential loss of sovereignty, but whether to take an opportunity to reclaim some measure of it.

V. Races to the bottom

and the virtues of regulatory competition

I have suggested thus far that liberal trade theory is, in its own terms, forced to address the issue of subsidies and thus the appropriate level of regulatory activity (regarding labour standards, for example). Coherence requires that free trade theorists address these matters in the same way as they have dealt with the problem of tariffs. In reality, the world trading regime is not characterized by an international market in unilaterally established tariff policies but by a political and legal process of multilateral negotiations, agreements and enforcement. I have also suggested that this process is necessary to take up the democratic slack created by the shift from domestic political processes to an increasingly significant international market-place of regulatory competition. None the less, there will remain a conceptual gulf between free traders and fair traders. Eventually, the stalemate will evolve into a debate about whether to characterize our new circumstances as a “race to the bottom” or simply as one of (beneficial) regulatory competition. Progress will be made if we can identify precisely why this debate is so intractable. I shall argue that both the “race to the bottom” and “beneficial competition” characterizations are, in their own terms, accurate. The problem is to choose which of these competing modes of understanding to deploy.

The argument for regulatory competition is more familiar and is summed up in the question — “if competition in supply of widgets is socially desirable, why not in the production of labour regulation?” In
the context of the market-place for capital investment the question can
be more pointedly put as “if international regulation mandating a super-
competitive price for widgets is so socially undesirable, why is inter-
national regulation mandating a super-competitive price for location
rights socially desirable?” [Revesz, 1993, p. 1234]. Law here is regarded as
a product for which mobile capital shops. The virtues of market ordering
are said to be as apparent here as in any other product market.

The race to the bottom is perhaps somewhat less familiar and is best
conceived in terms of a “prisoner’s dilemma”. The “prisoner’s dilemma”
is a very useful and familiar way of capturing an important and widely
acknowledged idea — that rationally motivated, self-interested behaviour,
i.e. the standard behaviour of players in the market-place, can lead to
socially sub-optimal results and that these results can be avoided through
cooperation rather than competition. A very useful rendition of the
“story” of the prisoner’s dilemma is presented by Amartya Sen as
follows:

The story goes something like this. Two prisoners are known to be guilty
of a very serious crime, but there is not enough evidence to convict them. There
is, however, sufficient evidence to convict them of a minor crime. The District
Attorney — it is an American story — separates the two and tells each that they
will be given the option to confess if they wish to. If both of them do confess,
they will be convicted of the major crime on each other’s evidence, but in view
of the good behaviour shown in squealing, the district Attorney will ask for a
penalty of 10 years each rather than the full penalty of 20 years. If neither
confesses, each will be convicted only of the minor crime and get two years. If
one confesses and the other does not, then the one who does confess will go free
and the other will go to prison for 20 years ... What should the prisoners do?
... Each prisoner sees that it is definitely in his interest to confess no matter
what the other does. If the other confesses, then by confessing himself this
prisoner reduces his own sentence from 20 years to 10. If the other does not
confess, then by confessing he himself goes free rather than getting a two-year
sentence. So each prisoner feels that no matter what the other does it is always
better for him to confess. So both of them do confess guided by rational self-
interest, and each goes to prison for 10 years. If, however, neither had confessed,
both would have been in prison for only two years each. Rational choice would
seem to cost each person eight additional years in prison. [Sen, 1986, p. 69].

Prisoners’ dilemmas involve a strategic decision in circumstances
where the reward to each depends upon the reward to all and the choice
of each depends on the choice of all [Elster, 1986, pp. 8-9]. Essentially,
the two players must decide whether to cooperate or defect. We can also
see international competition in regulatory policy in terms of a prisoner’s
dilemma. Assume that we have two jurisdictions with identical labour
standards policies. These jurisdictions also seek to attract capital investment in the name of job creation and other benefits. Capital will shop for the jurisdiction which has the lower regulatory price. The two jurisdictions would be better off if they agreed to cooperate and not reduce labour standards from their current levels. But each jurisdiction sees that, at least potentially, it is in its interest to reduce its labour standards no matter what the other jurisdiction does. Thus, as with the prisoners and acting perfectly rationally, both jurisdictions reduce their labour standards with no net impact on investment. The outcome of this version of the prisoner’s dilemma is particularly striking — that even in circumstances of equal starting labour standards, jurisdictions will rationally engage in a race to lower standards.

When liberal trade theorists discuss the prisoner’s dilemma/race to the bottom analysis, they tend to miss the conceptual point. The point is not that it is irrational for one state to “choose” to lower labour standards to attract (or retain) investment. This may be the case and indeed this is assumed in the analysis. The point is that the choice is a strategic one — where the outcome depends on the choice of others. But the others will see the same problem the same way and in the absence of an avenue for cooperation and agreement all will “defect.”

In the end, however, notions of beneficial competition or the prisoner’s dilemma/race to the bottom are two ways of looking at the same phenomenon. The same rationally self-interested behaviour in a competitive situation can be seen as either beneficial competition or a prisoner’s dilemma. What then really differentiates the two modes of analysis? The core disagreement is whether it is possible rationally to perceive what is socially optimal in any other way than that defined by the market. The reason the prisoner’s dilemma is compelling is that we “know” that it is better to be in prison for two years rather than ten. Thus, the prisoners have “given away” years of their freedom. If they had cooperated they would have achieved an optimal result. But from the beneficial competition perspective this is not what has occurred. While it is true that the prisoners themselves could have been better off, this would also be true of producers of widgets who conspired to fix their price. Since we do not wish producers of widgets to conspire to fix their price, we should not be moved by an analysis which invites such activity.

The conceptual disagreement which separates free and fair traders is, then, really a substantial disagreement about possible modes of defining the socially optimal. On the one view there is only one standard for defining the socially optimal — the mechanism of the market. On the other view, there are other standards of the just, fair and reasonable. Indeed, the most common way of perceiving labour law is as a series of
constraints on the operation of the labour market established through political processes. How, then, do we resolve this fundamental dilemma? The first part of an answer must be that the question of the appropriate scope of the market, as opposed to political instruments of choice, cannot be answered by invoking the market mechanism.

A second part of the answer, in my view, is that the world trading system has already decided on a prisoner’s dilemma/race to the bottom analysis and thus the need for political resolution of these issues. The world trading system was constructed as a solution to a multi-party prisoner’s dilemma concerning tariff policy. As Stein writes:

The attempt to create an international trade regime after World War II was, for example, a reaction to the results of the beggar-thy-neighbour policies of the depression years. All nations would be wealthier in a world that allows goods to move unfettered across national borders. But any single nation, or group of nations, could improve its position by cheating — erecting trade barriers and restricting imports. The state’s position remains improved only so long as other nations do not respond in kind. Such response is, however, the natural course for those other nations. When all nations pursue their dominant strategies and erect trade barriers, however, they can engender the collapse of international trade and depress all national incomes. This is what happened in the 1930s and what nations wanted to avoid after World War II [Stein, 1991, pp. 35-36].

As we have seen, there is no relevant conceptual distinction between tariffs and subsidies in trade theory. The subsidy issue comprehends the problem of the relative level of government regulation including labour standards. The claim for multilateral negotiated agreements on labour standards should be seen as a natural and inevitable corollary of free trade policy. If this point is grasped, the debate between free trade and fair trade theorists will indeed dissolve and the debate about “labour standards in the global economy” will proceed on its merits.

Bibliographical references


Flaubert, G. 1929. Correspondence, Volume 5, Paris, Conard.

The ILO in the cross-fire: 
Would it survive the social clause?

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I. Introduction

As the ILO celebrates its 75th anniversary, it may well be asked if the Organization will survive with the tripartite structure it has had since birth. The ILO is coming under strong criticism from several quarters and it is also being confronted by demands which, if they were satisfied, would undermine its very existence. The employers’ side and many governments are demanding far-reaching reform of the ILO, and particularly of what has been its core activity, the setting of standards. Meanwhile, the international trade union movement has renewed and strengthened its old demand that ILO Conventions should be made binding, by means of social clauses in GATT and other trade agreements. All that is needed is for the employers’ or workers’ organizations represented in the ILO — or a sizeable proportion of either party — no longer to consider participation worthwhile for the ILO’s tripartite structure to collapse like a house of cards.

It is debatable how serious this would be. The current participation of employers and workers in the ILO, with delegates having full voting rights, has advantages but also drawbacks. There are alternative means by which an inter-governmental organization can collect views and information from the labour market parties in each country. In any case, the ILO’s record in the field of international labour standards does not convince us that the current structure has been solely beneficial. Standards have grown according to the principle of adding layer to layer without the ILO adapting its activities adequately to the far-reaching
economic and social changes in the world. However, there are some valid reasons and extenuating circumstances.

II. Cold war distortions

The flaws relate to a large extent to the Cold War. For nearly half a century the ILO was in the firing zone between the superpower blocs. The ILO's area of interest made it an ideal forum for political and ideological conflicts between communism and capitalism. The delegates from communist countries — whether they represented governments, workers or “employers” — acted as a monolithic Moscow-controlled bloc. This bloc operated independently, or in alliance with others, to satisfy aims which usually had little or no substantive relevance to the ILO. An example was the bloc's annually recurring denunciations of Israel, jointly with the Arab countries. On numerous occasions, this caused long disruptions of all activity within the ILO's general assembly — the International Labour Conference — and its committees.

I will never forget the 1982 Resolutions Committee, for instance. The main objective of the Committee is to prepare resolutions to enable the general assembly to make statements concerning the future activities of the ILO. During a few weeks of intensive negotiations, the 1982 Committee, with its 200 or more delegates, was unable to deal with any of the 20 or so resolutions that had been tabled. It did not even succeed in composing a short formal report on the number of meetings that had been held, etc. This was due to delaying tactics by the alliance against Israel which had been narrowly defeated in the vote on the order in which the proposals should be discussed. Total chaos broke out during the last three days, all that was discussed being hundreds of points of order. The result was that the ILO's general assembly in 1982 was unable to state what it intended to deal with in the following years.

The politicization of the ILO during the Cold War challenged one of the basic principles of the ILO and the UN — the principle of universality. The USA, Poland and Vietnam each resigned for a couple of years, and the threat of a total breakdown of the Organization was constantly on the horizon. Consideration for the principle of universality meant that the ILO, and in particular its Director-General and the Office, were forced to observe strict “neutrality” between communism and capitalism, between a planned economy and a market economy. During this period, it was taboo to express a positive opinion of private enterprise and the market economy in any of the ILO's instruments or
resolutions. When the Cold War began to thaw, however, the occasional use of euphemisms such as "small and medium-sized companies" was allowed. These fundamental constraints on the ILO's freedom of action resulted in serious distortions and inevitably affected the 100 or so Conventions that were produced during this period, negotiated as they were on the basis of inadequate and distorted representations of facts.

In its relations with the socialist countries during the Cold War, the ILO was also forced consistently to ignore the fact that independent employers and trade unions can only exist in market economies based on pluralist, and consequently, private ownership. The absence of any type of independent organization or independent critics within the communist bloc meant that the ILO neither dared nor could question the composition of the delegations nor could it, as a rule, question how the ILO Conventions were applied in the communist States. In other words, the communist bloc could without blushing participate in formulating and ratifying ILO Conventions with no intention of implementing the Conventions themselves or worry about scrutiny from the ILO. During the Cold War, the ILO's supervisory body came to be used principally as a weapon against democracies and the least repressive undemocratic States.

The ILO workers' group was able, during this period of almost half a century, to rely completely on the votes of the communist bloc. The bloc also contributed actively by making far-reaching proposals for detailed and rigid provisions in support of the union side. The communist countries were keen for the rules to cause problems for companies and governments in market economies. As a rule, the workers' group within the ILO found it difficult to decline these generous offers. This is one of the reasons why the ILO Conventions which originate from the Cold War era are the way they are.

Another contributory factor was that many democratic governments also felt compelled to compete for the favour of the workers' group. Delegates from both developed and developing countries supported the inclusion of provisions which made it impossible for their own countries later to ratify the Conventions. In the atmosphere which prevailed, government delegations often regarded the task of drawing up new ILO instruments as an opportunity for political manifestations without worrying too much about later ratification. A comparison between votes and ratifications of individual countries would reveal enormous discrepancies.

The Cold War and concern for the ILO's universality also put heavy pressure on both governments and labour market organizations not to rock the boat. The global balance of power was the main focus. For many decades there was never a question of making far-reaching structural
reforms of the ILO and its activities. It is only now that these matters can be raised seriously. Indeed, the facts stated above give sufficient grounds to expect an almost infinite need to change and renew the ILO's activities. This impression is corroborated by closer scrutiny of the ILO's instruments. I will limit myself to commenting on the Conventions.

III. Are ILO standards generally agreed?

Today, the ILO has 174 Conventions which have come into force and 181 Recommendations. They are commonly referred to as "the international labour standards — ILS". The underlying assumption that they are generally agreed internationally must, however, be refuted. First, it should be noted that, although each of these instruments was once passed by at least a majority vote of the International Labour Conference, this result was often achieved against the opposition of a large minority, such as the entire employers' group (excluding the communists) and a high proportion of governments. Second, and more important, the percentage of ILO member countries which have ratified the ILO Conventions is in most cases very low. On average, the 174 Conventions have been ratified by only one-sixth of the member States. Only 11 (7 per cent) have been ratified by more than half the membership.

A few of the largest and most important nations stand out for their low ratification rate. The USA has ratified 11 Conventions and China 17. A few small countries, including several exotic oceanic island nations are, on the other hand, over-represented among the ratifying countries. The composition of ratifying countries is, moreover, often anything but impressive. Let me exemplify this with a Convention which I was involved in negotiating in 1974 and 1975. The "Migrant Workers' Convention" (classified by the ILO as category 1) was adopted by a majority vote. Two decades later it has still only been ratified by 10 per cent (16) of the ILO member countries. Very few of them have immigration of the type covered by the Convention. I doubt that it has any relevance in, for example, Benin, Burkina Faso, or San Marino.

Moreover, if we consider the age of the Conventions, any suggestion of "internationally agreed" would appear to be sheer nonsense. There are 64 Conventions dating from 1919 to 1939 still in force. On average, these Conventions, denunciations included, have been ratified by 39 countries, i.e. 25 per cent. Of course, it is not surprising that most of these pre-war Conventions are antiquated and contain provisions that have no validity or application today. Seventeen are no longer open for ratification. But
13 are currently classified by the ILO as “category 1: Instruments, ratification and application of which should be promoted on a priority basis”. Among the 62 Conventions which date from 1945 to 1969, the average ratification is the same — 40 countries, i.e. 25 per cent.

Less than one-quarter of all the ILO Conventions in force were adopted during the last 25 years. Their ratification level is much lower. The 41 Conventions dating from 1970 to 1990 — all classified as “category 1” — have on average been ratified by only 20 countries, i.e. 10 per cent. The ratification level has fallen even further among OECD countries — countries which undeniably take ratification and implementation of ILO Conventions more seriously than the average ILO member country. Two-thirds of the OECD countries have ratified only one or two of the 18 ILO Conventions that were passed between 1979 and 1989.

Looking at the total numbers, it is true that some of the older Conventions are past ratification by now. I would guess, however, that this is more than offset by the fact that ILO procedures make denunciation (de-ratification) very cumbersome. Denunciation is only allowed every ten years counted from the date on which the Convention came into force. Therefore, in practice, a denunciation requires both a high degree of attention by a government, and a genuine interest based on serious problems that the Convention has caused the member country. A country will hardly denounce a Convention simply because it is no longer applicable (if it ever was) or because it might cause problems if it were invoked. I doubt that the present governments in Albania or Myanmar are even aware of the ratifications made by former governments in the early 1920s.

The difficulty of denouncing antiquated Conventions has, however, posed problems for a number of ILO member countries, including Sweden. It has denounced only a few, where the consequences of continued ratification have been considered to be extremely serious from a practical point of view or as a matter of principle. For instance, Sweden denounced the Convention prohibiting all underground work by women in mines (No. 45) when it became a serious obstacle to its policy of equality between men and women. Still, this ILO Convention from 1935 remains one of the most ratified with denunciations only from some countries with large mining industries. The need to denounce is, on the other hand, not likely to be felt as urgently by countries like Singapore and Solomon Islands which have no underground mines. This Convention, of doubtful principle, is still classified as category 1 by the ILO, implying that it should be promoted worldwide on a priority basis.

For two decades, Sweden has had serious problems with the Employment Service Convention (No. 88) of 1948. This, again, is among the
most ratified ILO Conventions. It is based on the assumption that employment services should be a public monopoly. Its detailed prescriptions have been interpreted by the ILO as a prohibition against hiring out labour and other services provided by employment agencies. The Convention compelled Sweden to retain for many years its monopoly legislation which tended markedly to reduce efficiency and was detrimental to innumerable companies and to Sweden's economy. Employment agency services are becoming more and more indispensable in an economy which is open to global competition and in which information technology has made flexibility vital to the success of any company. In accordance with the ILO provisions Sweden was, in this case, obliged not only to wait three years for the denouncement period, which was 1992, but to wait an additional year before it was entitled to let a new law come into effect. The new law provides for full freedom for private employment services. It is quite clear that this also benefits employees. Unfortunately, it is impossible to calculate how much this anti-progressive ILO Convention has cost Sweden.

A few other countries also took the chance to denounce the same Convention in 1992. However, the list of ratifications tells us at a glance that quite a few of the highly industrialized countries where private employment services are available in abundance have not bothered to denounce the Convention, despite clear infringement of its provisions. For once, however, time seems to have caught up with this Convention. A new one based on the reverse principles is now being discussed within the ILO.

My final example concerns one of the largest and most important legislative decisions in Sweden over the past decade. According to a statement from the International Labour Office, it involves a violation of the Employment Injury Benefits Convention (No. 121) of 1964. One of hundreds of detailed provisions in this Convention allows ratifying countries to withhold benefits for up to three qualifying days — provided these qualifying days existed at the time of ratification. When Sweden ratified the Convention it imposed no qualifying days, although no benefit was paid for the day on which the person was injured. Until recently, the benefit level was nearly 100 per cent of earnings from the first day of absence, regardless of whether the absence was due to injury at work or other type of sick leave.

A serious economic crisis and an immense budget deficit have now compelled Sweden to lower its benefit level and to introduce a qualifying day — though Sweden remains among the leading countries with benefits far above the ILO Convention's norms. It would require a totally unreasonable amount of work for the social welfare offices, and insur-
mountable costs, to go through the 10 million or so cases of illness reported each year in order to pay compensation for the first day of illness to the 5 per cent whose absence was caused by injury at work. The Swedish Government seems wisely to be disregarding the ILO's objections. Unfortunately, the ILO does not allow this Convention to be denounced until 1997.

The six Conventions which the ILO has declared to be "basic worker rights" Conventions, those concerning freedom of association (No. 87), collective bargaining (No. 98), forced labour (Nos. 29 and 105), child labour (No. 138) and discrimination (No. 111) deserve to be commented on separately. These Conventions have been ratified by a large majority (around two-thirds) of the ILO member countries. They are, indeed, the most fundamental Conventions and contain very important principles which are fully supported by all three parties.

However, these basic conventions also incorporate more debatable aspects. It is unfortunate that the USA — the world's largest democracy and its most advanced economy — has only been able to ratify one of them. The main reason is that the US industrial relations system differs totally from the European patterns that served as a model for the Conventions. The US system is based to a greater extent on the rights of the individual. It is also up to a majority of all employees in a company to decide via a secret ballot whether a particular union should be given the right to bargain on their behalf. If supported by a majority, the union is automatically given a bargaining monopoly and vast influence. Although we in Europe favour the type of industrial relations on which Conventions 87 and 98 are based, there is no reason to reject the American model as such. It should be possible to formulate ILO standards in this field in such a way that they retain the basic principles — freedom of association, etc. — without excluding industrial relations systems of the type in use in the USA.

IV. The need to replace present ILO standards

For seven decades, the ILO has produced a steady flow of almost 400 instruments — Conventions and Recommendations. Many of those which originated in the 1920s and 1930s are naturally obsolete by now. Most of the remaining Conventions were passed during the Cold War, under distorting conditions. Many were also passed against considerable opposition to the entire Convention or parts of it. Most of the Conventions have been ratified only by a small proportion of the ILO's member States. A
merely a handful, mainly the basic worker rights Conventions, have achieved more than 50 per cent ratification. There are indeed few, if any, ILO Conventions that deserve to be regarded as "internationally agreed labour standards".

As indicated, even a socially advanced country such as Sweden has run into problems with a number of the Conventions it has ratified. It has already denounced some, and others will probably follow. As my examples indicate, some ILO Conventions have, sadly, become obstacles to economic and social development, and particularly to new initiatives and measures that are urgently needed to generate employment and economic growth, as well as to reform the social security system. Some Conventions clearly have no social value whatsoever. With regard to others, it may be argued that a denunciation could mean throwing the baby out with the bath water. The ILO maintains a myriad of rigid, detailed regulations at the cost of widespread refusal to ratify and an increasing number of denunciations.

The question is whether it is possible to patch up and repair this vast, unmanageable and intricate patchwork quilt of Conventions. The most suitable step would be to replace it with a smaller number of new instruments which incorporate basic principles and general provisions formulated with the object, eventually, of serving as guidelines for the upward harmonization of social and labour conditions in all parts of the world. They should be flexible enough to apply in countries at different stages of development and with widely varying conditions. I see no alternative if the ILO is to be able, within a reasonable time, to present instruments which really deserve to be called "internationally agreed labour standards".

A revision of the ILO's standards is also needed for the Organization's other main activity, its rapidly expanding technical assistance to developing countries and countries in transition. The ILO has always maintained that standards and technical assistance complement each other: that ILO standards should be "the guiding principles" of all the ILO's technical assistance activities, including training, seminars, policy advice, etc. and their ratification and implementation should be systematically promoted through these activities. Moreover, in his 1994 report, the Director-General states that the ILO, in future, should "focus" its technical cooperation on "policy advice". It is also established ILO policy that ILO standards should be integrated with the technical assistance programmes of all other UN agencies, as well as with activities of international, regional or national bodies — and, in particular, those of the International Monetary Fund, the World Bank and national governments.
Given this objective, there is a distinct risk that the ILO's own technical assistance (as well as that of other UN agencies) in many cases may involve promoting and giving policy advice in favour of the ratification and implementation of Conventions that contain outdated standards, or even standards that impede economic and social development. The three Swedish cases described above illustrate how the current ILO classification of Conventions as category 1 (top priority) may be used to induce developing and other countries to adopt such standards. The former communist countries are particularly keen to obtain technical assistance in order to achieve a rapid transition to a market economy. In the absence of previous experience, they could be relatively easily persuaded to ratify existing international labour standards as a self-evident part of this transition process. The high proportion of ratifications among countries that have received technical assistance from the ILO in the last few years is hardly a coincidence. Thus, a radical revision of the ILO's standards is necessary also in order to avoid serious mistakes in technical assistance.

V. ILO standards and the "social clause"

Whilst employers are demanding a radical reform of the ILO and its labour standards, international and national trade union organizations have initiated a coordinated campaign to compel countries to accept ILO standards through international regulations for trade, market access and investment. To understand the magnitude of the threat to which the ILO is exposed, it is important to examine the interests and motives behind this trade union campaign.

First, however, it must be emphasized that the idea of making the application of international labour standards a condition for trade or favourable trade treatment dates back beyond the formation of the ILO. The demand was put forward when the ILO was established in 1919, and when its activities were resumed after the Second World War. It was also put forward in negotiations under the General Agreement on Tariffs and Trade (GATT) and in other contexts relating to international trade, but has always been rejected on the grounds of its protectionist purposes and consequences. None the less, individual States have often stated that the low wages and poor labour standards of other countries constitute a reason to put up trade barriers. A case in point occurred in 1930 when the US Congress used the Smoot-Hawley Act to raise tariffs dramatically to "save" American jobs, in response to trade union demands that tariffs
should be adjusted to wage costs in other countries. This marked the start of the trade war during the Great Depression.

With only a brief intermission just after the Second World War, the American union movement has been strongly protectionist and has used labour standards and labour costs as arguments in favour of restricting imports as well as American investments abroad. The AFL/CIO were, in 1993, the main active party in the extensive protectionist campaign against NAFTA, the North American Free Trade Agreement. Their argument was unequivocal: low labour costs and labour standards in Mexico would lead to the USA being flooded with imported goods, with structural changes, plant closures and mass unemployment as the inevitable consequences. The AFL/CIO considered NAFTA's supplementary social agreement, which permits certain sanctions as a last resort if the member countries do not comply with their own labour legislation, to be ineffectual. Later, the AFL/CIO was a relentless opponent of the new GATT agreement.

The controversy over NAFTA and GATT has contributed lately to a dramatic surge in activity on the part of international trade unions. A further contributing factor has been the fall of the Berlin wall and the fear among trade unions that cheap imports from eastern and central Europe will lead to structural changes in western Europe. European trade unions have more or less openly worked to maintain or raise tariffs and other barriers to imports from eastern Europe. I have personally heard trade union leaders demand "Aid — not trade", rather than "Trade — not aid". The insistence on forcing "international labour standards" on eastern and central Europe is one feature of this campaign.

An even more important factor influencing the partly reinforced and partly renewed protectionist attitudes is the "globalization" of business. This is associated with advances in information technology and the rapid economic growth of the newly-industrializing countries (NICs) and a number of developing countries which are emerging from underdevelopment. However, the trade unions relate the globalization of business and increased investments abroad to the economic crisis and high unemployment rates which hit western Europe in particular during the 1980s. The structural changes are attributed to higher imports from NICs, even though these imports are more than offset by higher exports to these same countries.

The invention of the slogan "social dumping" has probably had a profound psychological influence. It has spread like wildfire and is now used by trade union organizations in every conceivable and inconceivable context: NAFTA, GATT, trade with developing countries and former socialist countries, the European Union's "internal market", and so on.
However, “social dumping” has also appeared in more official contexts, the Director-General’s report to the International Labour Conference in 1994 being one instance.

The unfortunate aspect of the term “social dumping” is the impression that it is related to the “dumping” that, in free trade agreements such as GATT, has always been regarded as sufficient grounds for restricting imports. Dumping is when export prices are below the cost of production in the exporting country. It is a fundamental principle of free trade to enable countries at an earlier stage of economic development to compete by means of lower labour costs — their only comparative advantage and the only possibility they have of participating in global trade and of developing. Reference to “social dumping”, on the other hand, has the opposite purpose — namely to prevent countries from competing by virtue of their lower labour and production costs. It gives the new protectionists a false legitimacy by obscuring the differences between free trade and its opposite. The trade union organizations present their demands for restrictions on imports based on low labour costs and inadequate social standards as though such restrictions were a necessary measure to prevent protectionism!

There are some differences in nuance between the AFL/CIO with its undisguised desire to prevent trade in goods produced in countries with lower labour costs, and the European trade union movement’s more cautious warnings against free trade and free capital movements. The often somewhat imprecise nature of the demands made by international trade union organizations serves to conceal underlying differences in the level of ambition. However, the obscurity also appears to be part of the strategy to have as a first step a small number of basic standards adopted as a condition for trade. Once the social clause principle has been adopted it is assumed to be easier to gain acceptance for other standards. This explains the often displayed discrepancy between general statements on the alleged dangers of liberalization and globalization, and the reference to a few “basic” Conventions which could not reasonably remedy the alleged dangers.

Demands for a social clause are found in many documents from international unions like ICFTU, ETUC and TUAC as well as in a document submitted in 1993 to the ILO by its workers’ group. Most documents concentrate on ILO standards and the ILO’s role in relation to the GATT and the World Trade Organization (WTO). However, the unions have also made proposals to other international organizations which expand the scope of the social clause beyond trade and ILO Conventions. In April 1994, for example, TUAC presented its written and verbal comments to the OECD with regard to OECD plans further
to deregulate capital movements and direct foreign investment. Foreign direct investment was described as a threat to employment and welfare. As protection against structural changes and "social dumping" TUAC demanded binding international regulations on investments, with a social clause based on both ILO Conventions and the OECD and ILO codes of conduct for multinational companies.

The trade unions are not entirely alone in their demands for a social clause. They have some degree of support from a few governments, including that of the USA. It is due to pressure from the USA that the question of a social clause has been discussed in connection with the conclusion of the GATT negotiations and the establishment of the new World Trade Organization. At the same time, the fight over NAFTA demonstrates that, for the present American government at least, it is a question of balancing the advantages of free trade with the need for domestic support from the protectionist American trade union movement.

However, it is more surprising that the ILO's Director-General, Michel Hansenne, has also positioned himself in the forefront of those who want a social clause in *Defending values, promoting change*, the 1994 Report of the Director-General to the International Labour Conference. The fact that the ILO's highest official has pleaded formally and with great involvement for a social clause is remarkable as well as misleading. The ILO's decision-making body, the International Labour Conference, and the ILO's Governing Body have never stated that they were in favour of a social clause and are unlikely to do so in the future.

The Director-General's arguments in favour of a social clause coincide with those of the trade unions and need not be recapitulated. However, Mr. Hansenne's ideas on how cooperation with the World Trade Organization should be organized are worth noting. Contrary to the trade union organizations, the Director-General is eager to promote the idea that ILO cooperation with the WTO would not detract from the ILO's basic principle of voluntariness. ILO standards, including social security, should be included in a new comprehensive international Convention establishing the link between ILO standards and access to world markets. Each country would determine individually if it wished to ratify the Convention. In this way, voluntariness would be maintained. The tacit premise, however, is that all the nations of the world would in practice be forced to ratify the new Convention. The alternative would be economic and social crisis for those which chose to remain outside.

During the 1994 general assembly, the Director-General expressed himself more specifically in an article "How to apply the social clause" (*Le Monde*, 21 June 1994). If there is agreement on the content of the
clause the technical solution is very simple. It would suffice to make membership of the WTO conditional on the adoption of, for example, the Conventions on freedom of association (No. 87) and on collective bargaining (No. 98). However, this apparently simple solution is unrealistic. For example, as already mentioned, the USA has not ratified Conventions No. 87 and No. 98 on freedom to negotiate and indeed has ratified only one of the four other "basic trade union rights" Conventions usually considered to be the "core" of a future clause. It is unlikely that the USA would agree to the radical changes of its industrial relations system that would be necessary for ratification. Should the USA and other countries which had not ratified the Conventions be excluded from the WTO and exposed to trade sanctions from the rest of the world?

VI. The consequences for the ILO of a social clause (or its threat)

The most weighty argument against the social clause relates to its protectionist purpose and the serious consequences it would have for global trade and investment. However, when analysing the future of the ILO, it is important to note that any social clause in which it is an active or passive participant would have extremely serious consequences for its present activities as well as for the ILO as an organization. It would suffice that the WTO or the European Union decided to base a social clause and its application on ILO Conventions and ILO investigations. This in itself would turn the ILO into a weapon against many developing countries and countries in transition to a market economy.

One effect of a social clause would be to undermine the ILO's fundamental principle of universality, i.e. the principle that the ILO shall embrace all the UN member States. It is not at all certain that universality can be maintained if the ILO becomes instrumental in regulating which countries are admitted to, or excluded from, the global market. The developing countries, in particular, could paralyze the activities of the ILO in the event of their leaving, or threatening to leave, the Organization. However, it is more probable that the developing countries would remain members in order to use their vote to the full to prevent the ILO's standard-setting and, especially, its application of standards from being used against them. It would be possible for them both to influence and obstruct the Organization's work.

Already at the 1994 International Labour Conference, even though the likelihood of a social clause still seems close to zero, developing
countries in particular were more cautious, suspicious and critical than ever towards anything related to international labour standards. The mere possibility that standards could be applied as conditions for trade was clearly looked upon by them as a deadly threat to their economies and living standards. The developing countries' opportunities to influence existing labour standards via the ILO should not perhaps be overestimated. I have already touched on how difficult it is to revise these standards. However, they could affect — and even paralyze — the process of generating new standards. This could also make it more difficult to replace the plethora of detailed and obsolete ILO Conventions with a limited number of more general and flexible standards of the type employers are demanding.

The most effective way, however, for countries in the risk-zone to prevent sanctions based on a social clause would be to influence in various ways the ILO's machinery for application of standards. Overall, the application of standards has been a valuable part of the ILO's operation. In individual cases — judged separately — the ILO's scrutiny has as a rule been objective and disinterested, and has often led to changes in legislation and practice in member countries. These changes have generally been beneficial and have contributed towards harmonizing the legislation of different countries.

At the same time, the application of standards has also been characterized by a lack of proportion in dealing with different member countries. During the Cold War, the worst offenders — the communist countries — were spared the ILO's criticism. This can partly be blamed on insufficient evidence and "proof". However, it is equally due to the fact that the ILO, for political (universality) reasons could not take the risk of expelling a large number of nations. In another example, the ILO for decades devoted a great deal of its operations — special committees, plenary sessions, resolutions, etc. — to Israel's treatment of "Arab workers in the territories occupied by Israel". On the other hand, the ILO has not shown any comparable interest in the much more numerous "Arab workers" in Arab States, even though they were probably treated much worse from the point of view of "international labour standards".

It was also a political stand when the ILO embarked on an extensive detailed criticism of countries which it was safe to criticize, such as the socially advanced democracies in Scandinavia. Sometimes, peripheral and dubious cases have been given an unreasonable amount of attention. One example of this is the ILO's repeated and much publicized reproof of the United Kingdom for alleged breaches — strongly repudiated by the UK Government — of trade union rights at a small government information-gathering headquarters (GCHQ) considered as specially sensitive for UK
national security. This was the result of the British unions and the ILO workers' group exploiting the ILO machinery to rebuke the conservative British government for political and ideological reasons.

In a political organization such as the ILO, political considerations and political alliances can never be entirely avoided. The ILO's fundamental principle of voluntariness and the absence of sanctions have, however, meant that the politicization has not entirely got the upper hand. A social clause, in combination with sanctions (which would have serious economic and social effects on the countries affected if they were utilized), would radically change the situation. For countries which consider the clause — in its current or possible future form — to be a threat, it would become a life interest to enter into political alliances which could prevent condemnation and consequent sanctions. A further "politicization" of this kind would replace objectivity, disinterestedness and equal treatment of all countries with arbitrariness and distortions. This would also influence the treatment of individual cases entirely unrelated to the social clause. For the same reason, it is even likely that a social clause would eventually entail a complete breakdown of the ILO's machinery for the application of standards. Thereby, the ILO would not even be able to fulfil the role of doorman to international trade and investment that the spokesmen for the clause envisage.

Inevitably, a social clause would affect the fundamental character and constitution of the ILO. An essential feature of the ILO, in all its 75 years of existence, has been its voluntariness. The ILO issues advice and recommendations which it is at the discretion of the member countries to follow or disobey. This applies also to ILO Conventions even though they are legally binding when ratified. No-one risks sanctions. Consequently, the ILO's international labour standards do not basically function as international legislation.

This voluntariness has made it possible for the ILO to disregard otherwise normal criteria for democratic decision-making. For instance, the fact that the San Marino and the USA have exactly the same number of votes, although one has 19 thousand and the other 240 million citizens, has never been considered a problem. If the ILO is transformed by the social clause into an organization with binding international legislation, this ought naturally to generate demands for a radical redistribution of the member States' voting power and influence. We can draw a comparison here with the UN. The UN's General Assembly cannot adopt binding decisions which carry sanctions. To the limited extent that such decisions can be adopted by the UN, its power of attorney is given to the UN Security Council, where each of the super-powers has a veto.
Even more obviously, a social clause would pull the rug from under the ILO’s unique tripartite decision-making structure: every member country is represented by government, employer and worker delegates who all have the same right to vote and are free to use their vote independently of each other. As long as the ILO is restricted to determining and monitoring recommended options to its members on labour market and social issues, this decision-making process is fully justifiable. The participation of employer and worker delegations gives access to a wide range of relevant knowledge from every corner of the world. Their participation in the formulation and application of standards also increases the probability that these will be accepted by the parties nationally. Therefore, no-one has had cause to complain that, for instance, San Marino’s employer delegate, who represents only a handful of shopkeepers and other small companies, has the same voting power as an Indian government delegate representing 846 million citizens. Nor has anyone objected that the workers’ and employers’ delegates from many countries, including the USA, represent a very small minority of workers and employers in those countries.

If, however, thanks to the social clause, the ILO is transformed into an organization with the purpose of handling international legislation and its enforcement via trade sanctions, the tripartite decision-making structure would appear to be — and should be — the first casualty. Direct interest representation of organizations in national legislative bodies is incompatible with the fundamental principles of democracy. Ever since the days of fascism there has not been one single country with a parliament entirely or partially based on interest representation. Moreover, I find it hard to imagine that employers in Sweden and many other countries would be prepared to participate in a tripartite ILO which, in practice, had the authority to legislate and enforce laws. The ILO would have to find other ways to obtain information on the opinions of national and international organizations and workers.

Tripartism and the ILO’s decision-making structure cannot be regarded separately. A social clause would bring into focus the ILO’s basic composition and every aspect of its constitution. Strange to say, neither the ILO’s Director-General nor the trade union organizations seem to have considered such consequences. Parallel to the proposals for a social clause, they advocate a massive extension of tripartite structures, both at international and national level. Some have suggested that the social clause should also include a commitment by member countries to introduce tripartite national systems for consultations as well as “negotiations” and “decisions”. However, they have not gone so far in corporatism as to propose interest representation in national legislating bodies.
The advocacy of a social clause by the trade union organizations and the Director-General has generated expectations among some and apprehension among others. To protect the ILO’s activities from permanent damage, it is vital that the social clause be removed from the agenda of the ILO’s decision-making body without further delay. As a consequence of the Director-General’s report, the International Labour Conference focused on the issue of a social clause in 1994 for the first time. The great majority of governments commenting on this issue, and particularly those from Third World countries, had strong objections, as did employers. I have no doubt about the outcome had there been a vote for or against. However, the Conference discussions on the annual report are followed by decisions only if such decisions are proposed in a draft resolution by one of the committees of the Conference.

The 1994 International Labour Conference unanimously adopted a resolution concerning “the 75th Anniversary of the ILO and its future orientation”. It was preceded by a fierce battle in the Resolutions Committee — I was myself a member — between the workers’ group and the governments of the developing countries. The former tried to insert at least some words that could be used in favour of a social clause. China, India, Pakistan, Malaysia, etc. were just as anxious that the Conference should decide that the ILO should “resist” a social clause of any kind. The outcome was a compromise, proposed by the OECD countries and supported by the employers’ group, to the effect that the Governing Body of the ILO was to draw its own conclusions on the basis of the general discussion. The employers’ group, however, made it clear that it was opposed to any link between standards and trade and, consequently, to a social clause. I am fairly convinced that the ILO’s Governing Body will remove the social clause from the ILO’s agenda.

VII. Will the ILO survive?

The ILO is the oldest existing UN organization. In the course of its 75 years, the ILO has survived many difficult ordeals. As opposed to several other UN bodies, the ILO has its own clearly-defined fields of activity. The ILO is also comparatively dynamic and has an extensive range of activities. When I ask whether the ILO can survive, I refer to the present ILO, with its universal character and its tripartite structure. I assume that there will always be some form of international organization at UN level for labour market and social issues.
I have demonstrated here that the ILO today is more than ever in the cross-fire between incompatible demands from different constituents. The trade union organizations are adamant in defence of existing international labour standards and want further standards in old and new areas. Considering the ILO’s standards to be a form of “toothless” international legislation, they wish to use a social clause to transform those standards, or a good portion of them, into international regulations that would, in practice, be binding for every country and company throughout the world. They wish to see the ILO as both legislator and judge, with the WTO, the OECD and other international organizations as law enforcers. They want to focus the ILO’s technical aid on the task of assisting recipient countries to ratify and apply standards. Nor do they hide their intention that the social clause, and the ILO’s standards as a whole, should constitute a protection against “globalization” of trade, industry, services, investment and financing. They seek to counteract the “effects” of competition and market forces. Basically, they dislike liberalization, deregulation and sometimes even privatization.

Employers and many governments, including those of many developing countries, are also demanding changes in the ILO but to the opposite effect. They are critical of the multiplicity of international labour standards, many of which consist of rigid, detailed and often obsolete rules which can serve as obstacles to economic and social progress. Instead, they want a limited number of standards which outline certain fundamental principles and which are sufficiently flexible to apply to different types of situations and companies and to countries at widely differing stages of development. They want the ILO’s activities to be less focused on standards, and more on measures which can help member countries to achieve the optimum conditions for growth and productive employment. They want the ILO to give priority to technical assistance but, for the reasons mentioned, with the emphasis more on the practical side — occupational training, management training, measures to facilitate entrepreneurial pursuits, and so on.

One possible scenario is that the diametrically opposed demands among the ILO constituents will cancel each other out — that there will be no social clause but that those in favour of a clause will obstruct the possibility of performing a radical reform of the kind that employers are calling for. If so, the ILO would continue in the same rut. Such a development, or lack of development, would not lead to a sustainable compromise. Many would regard it as the final proof that the ILO, with its tripartite structure, had outlived its usefulness and should be supplanted by a new organization of the same type as the other UN bodies. This perspective bids us to reform while there is still time.
International labour standards, the global economy and trade

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I. Introduction

The idea of linking international labour standards and trade on a multilateral basis is not new. It has been under discussion since the Industrial Revolution. Indeed, concerns that differing labour conditions could create a competitive advantage for one country’s goods and services over those of another was one of the principal reasons leading to the formation of the International Labour Organization (ILO) in 1919. Since then, there has been substantial economic and social progress throughout the world, in part due to the development of ILO standards on fundamental human rights and hundreds of technical Conventions, Recommendations and guidelines.

Unlike when the ILO was formed, today’s world is increasingly interconnected. Falling trade barriers, instant communications, relatively fast and inexpensive transportation and rapidly changing technologies are shaping the world economy. In the globalized world economy, the same technologies to produce goods and services are readily available to everyone in both developed and developing countries.

The global economy has meant that developed and developing countries — workers and employers — compete head-to-head in the world market-place as never before. That competition has resulted in substantial, and in some cases, dramatic economic growth in many
developing countries. At the same time, structural adjustment is occurring in many developed nations that previously dominated their own domestic markets as well as some markets in the world economy. Competition from developing countries is even leading to structural adjustment in newly industrialized countries.

II. The new “rules of the game”

A new economic era is emerging with “rules of the game” that differ substantially from those when the ILO was established 75 years ago. Under these new rules, what role should ILO standards play in the global trading economy?

Rule 1: Change is constant

The new global market-place itself may be only transitory. Just as the world market-place designed in 1944 at Bretton Woods — characterized by the free flow of goods and services across national borders — was transformed almost before it was achieved so, too, the global market-place as it exists today may be short-lived.

New economic and competitive powers are continuing to emerge throughout the developing world. The Pacific Rim countries are outpacing the mature industrial economies in rates of growth, educational performance and national savings. World demographics are shifting, redefining market-places and the allocation of public goods. Competitive pressures for regional trading blocs — the European Union, the Pacific Rim, the North American Free Trade Agreement — continue. At the same time, a new World Trade Organization governing trade and investment will be formed following the successful conclusion of the Uruguay round of multilateral trade negotiations.

Rule 2: The pace of change is more rapid than at any time in history

The pace of change in the 1990s and into the twenty-first century is being driven by the pace of scientific and technological discovery. Unprecedented rates of scientific “breakthroughs” are propelling new technologies and information flows. Technology is redefining comparative advantage between nations and where it lies. The competitiveness of a product or service, and the jobs that go with it, no longer depend solely on cost, quality and innovativeness. Customization, serviceability and
speed of product development and delivery are the new keys to competitiveness and job creation, prompted by the rapid diffusion of technology and information.

If the first rule of the new economic era is that change is constant, the second must be that change will be more rapid than at any time in history. In the past, we have thought of periods of change in terms of years. In the future, it may not be much of an exaggeration to think in such terms as the “blink of an eye.”

**Rule 3: Economic nationalities are increasingly blurred**

Companies, industries, products, technologies and jobs no longer depend upon the strengths and weaknesses of any one nation’s economy or economic base. Those companies and countries that succeeded in the global market-place of the 1980s learned this lesson well. They identified and utilized the strengths of many nations to offset weaknesses at home. The Japanese and Pacific Rim “economic miracles” channelled their research and development money into process development and commercial technologies based upon basic scientific research conducted in the United States and Europe. Worldwide strategic alliances between companies emerged to share the risks of new product development and to expand marketing power in highly competitive markets.

**Rule 4: Workplace roles are blurring**

In an era of high-technology, high-performance workplaces, distinctions between blue- and white-collar workers are increasingly meaningless, as are management-worker and employer-employee distinctions. Decision-making and problem identification and solving are increasingly diffused throughout organizations of production as a result of modern human resources practices and improved information technology. Thus, whether manufacturing or service-based, “value-added” employees are those who make a contribution to the organization and its objectives.

Employment security no longer resides exclusively in management’s hands. Workers in the executive suite of the 1990s are as likely to be laid off as workers engaged in production. Meanwhile, a wide range of employee participation structures aided by modern communication and information technology offer the potential in many organizations for redistributing responsibility for, and benefits and burdens of, competitiveness to the front-line worker.
Rule 5: Employment security requires lifetime learning, and cannot be assured by international labour standards

Increasingly, technology, changing customer preferences and the global market-place require a more highly educated workforce whose skills can adapt to rapidly changing markets. In my own country, the skills of new entrants to the American workforce often do not meet the requirements of available jobs. Today, there are too many people entering the labour force without the knowledge and skills necessary to meet the demands of the high-performance, high-technology workplaces upon which depend America's future competitiveness and ability to create jobs. At the same time, skills shortages exist in both manufacturing and services sectors.

This is a problem not just for the United States but for all countries. No longer can it be assumed that, once an individual has finished school and served an initial learning period on the job, he or she has the knowledge and skills needed for a lifetime of work. Instead, work on the eve of the twenty-first century requires constant learning, adaptation and acquisition of new skills to keep pace with emerging new technologies, new methods of operation and new forms of workplace organization that place more responsibility on individuals at all levels.

Job security in the post-Second World War era typically meant employment for life in one company or one industry, often performing the same mass production job. Some upward mobility was possible, often tied to seniority as well as performance. In this era, unions bargained to ensure that their members shared in the success of the company through wage increases, ever-increasing benefits packages and job security.

Employment security and job creation for the remainder of this century and the next will depend on very different factors. No government, company or union realistically can guarantee employment for life, increasing wages or upward mobility. In competitive world markets, there cannot be employment security unless there is customer security. Unfortunately, there is no guarantee of customer security in competitive markets. Consumers around the world are "global shoppers" who buy goods and services based on quality and price without regard to their country of origin. This is a phenomenon beyond regulation.

The closest that workers and employers can come to achieving customer security is to satisfy fully customer needs over the long term. Those needs and preferences are constantly changing, and a business (and its employees) providing goods and services to meet those needs must be able to anticipate change and restructure itself accordingly. A vibrant business organization dedicated to continuous improvement, total quality
and customer satisfaction, one that is designed for highly flexible environments and capable of rapid change, is a business that will be able to survive and prosper in today's global economy and provide long-term employment opportunities.

Within this competitive environment, a worker's economic security increasingly depends on his or her own ability to adapt to changing demands of jobs and the job market. Workers faring best in this environment will be those who possess the skills, training, mobility and flexibility to move laterally, as well as vertically, within organizations and in the external labour market when necessary.

Thus, under the new economic "rules of the game," the relevance and importance of international labour standards in an international trading regime are being redefined. Competitiveness on the eve of the twenty-first century is not a macro-economic contest between nations. It is a struggle fought daily by employers and employees in every nation in large and small companies, union and non-union, high-tech and low-tech, in service industries and in manufacturing. Providing an international and domestic employment policy environment that balances the need for business to have sufficient flexibility to compete in global markets, and for workers to have certain essential social protections and to acquire necessary education and training, is one of the challenges facing the ILO on its 75th anniversary.

III. The relevance of international labour standards in a global economy

By the end of June 1994, the ILO will have adopted 175 Conventions addressing almost all workplace issues — an impressive output which does not count 182 supplementary Recommendations and other guidelines. However, the overall average rate of ratification of Conventions has been low — about 21 per cent. The rate of ratification of recently adopted Conventions over the past three decades, particularly those concerned with health and safety, has been even poorer — between 10 to 15 per cent. But, significantly, ratification of the basic human rights Conventions has been much higher, exceeding 60 per cent of the ILO's membership.

A former ILO official, Efren Córdova, estimated that in 1990 there were over 2,100 labour standards to be found in the 162 ILO Conventions then in force, and another 2,500 standards contained in related Recommendations. Further details adding to the complexity of ILO
standards are provided by observations of the ILO’s prestigious Committee of Experts, which considers its conclusions concerning the meaning and scope of ILO conventions to be “valid and generally recognized” unless taken to the International Court of Justice. While much is made of the flexibility clauses found in ILO Conventions, these clauses bear primarily on the methods of implementation and the level of economic development, not flexibility in the standard itself based on changing economic and competitive circumstances.

Many developing countries simply do not have the economic or political ability to implement ILO standards. In view of globalized world markets and trade, many industrialized nations now see that they need flexibility for the development of their labour markets and to lower deficits and unemployment. Under these circumstances, one cannot help but ask whether every ILO Convention and Recommendation is essential in a global economy.

Conventions and Recommendations are not ends in and of themselves. Indeed, the real effect of Conventions is contingent on their being ratified and implemented. With the possible exception of the human rights Conventions, there is no international consensus that ILO standards should be used to “level the playing field” between nations. And, even with respect to the human rights standards, the broad consensus is on basic principles relating to freedom of association, forced labour, discrimination et seq., and not on details and fine distinctions.

Because ILO Conventions are not widely ratified, ratification of ILO standards may have the result of putting the workers and employers of the ratifying country at a competitive disadvantage. This is an ironic result given that one of the founding purposes of the ILO was to eliminate unfair competition based on poor working conditions.

The economic and political circumstances of today’s world are vastly different from the those that led to the formation of the ILO following the First World War. Rapid change and international competition in one form or another are here to stay. Is it not time for the ILO to rethink the purpose of international labour standards? Is it not time to examine whether particular standards are relevant or appropriate in today’s global economy? Is it not time to “deregulate” ILO standards, leaving in place those standards that are essential to protection of worker rights? Is it not time to reassess whether more new standards are needed? Is it not time for the ILO’s supervisory machinery to reassess the interpretation and application of Conventions in the light of new economic and social conditions? Is it not time for the ILO to place its primary emphasis on technical cooperation, education and training that assists member States,
workers and employers develop the necessary infrastructure and tools to compete and succeed in the global economy?

**IV. International labour standards and trade**

The growing importance of international trade and the global market-place has led to calls to link international labour standards with trade through the use of sanctions in the form of withdrawal of trade benefits. This idea is not new, having been raised since the early 1800s. Opposition to the idea has been widespread in the ILO and the GATT, especially by developing countries and by most employers. The social clause is widely perceived as having a protectionist motivation or, at least, being subject to protectionist abuse.

In the United States, we have had our own experience with protectionist trade legislation beginning with the 1922 and 1930 Tariffs, the latter being the infamous Smoot-Hawley Act. In addition to a protectionist tariff and the prohibition of imports produced by forced labour, Smoot-Hawley enshrined the principle of cost equalization. This principle empowered the President to adjust tariffs in order to equalize the differences in the costs of production between a domestic article and a similar foreign article. Although this provision applied to all production inputs, not just labour, the legislation was intended to deal with the problem of low-wage foreign production at a time when labour costs accounted for a high proportion of production costs. In the face of dimmed memories, we should remind ourselves that Smoot-Hawley had a shattering effect on the world economy by shrinking international trade and causing industrial stagnation and unemployment up to the Second World War.

The disastrous consequences of Smoot-Hawley on the United States and world economy must be kept in mind when addressing the appropriateness of a social clause for trade in today’s global economy. A requirement that trading partners should meet ILO technical standards, such as those relating to minimum wages, safety and health or regulatory conditions of employment, would effectively implement the principle of cost equalization. While dampening economic growth in a substantially more interconnected world than in the 1930s, the domestic benefit of such a regime is questionable. A 1994 study by the US-based Institute for International Economics shows that US protectionist strategies have saved very few jobs; those that were saved have cost consumers many times the average annual wage and benefits involved.
The social clause raises three additional problems. The first is which standards should be included? With the exception of the basic human rights Conventions, the low ratification rate of most technical Conventions rules them out because there is clearly no international consensus that they be implemented.

ILO human rights standards stand on a somewhat different footing because of their higher rate of ratification and the fact that they are not economic in their orientation. That is, the ability to achieve the goals of the freedom of association and forced labour Conventions, for example, is not contingent on the level of economic development of the country concerned. In their present form, however, their use is problematic because compliance involves more than complying with the central purposes of the Conventions, and includes numerous details that would make them difficult to apply in a trade regime.

Closely related is the question of determining the level of trade sanctions that would be appropriate as a result of a nation's failure to adhere to an international labour standard. It is virtually impossible to measure the competitive advantage resulting from non-respect of labour standards. An objective measure would be necessary to calculate any proposed sanction. The United States' experience with countervailing duties and anti-dumping actions demonstrates that the ability to quantify the economic impact of unfair trade practices is a critical guard against spiralling trade sanctions.

Finally, what criteria and what forum will be used to determine when trade sanctions should be invoked for violation of labour standards? In the case of a multilateral social clause, countries would have to agree on and accept as binding the precise legal definition of each standard. In order to be workable in a trade regime, a few clear and simple but essential principles or goals would have to be endorsed on a multilateral basis. Who should decide whether there has been sufficient violation of a labour standard to trigger sanctions is a more difficult problem, but the ILO's tripartite Committee on Freedom of Association provides a model for impartiality, consensus decision-making and a basis for the application of central principles.

In the final analysis, however, the idea of a social clause is incompatible with the ILO's basic foundation. Ratification of ILO Conventions is voluntary, and the success of the ILO's supervisory machinery rests on directing "sunshine" to the lack of compliance. The weight of international opinion, rather than trade sanctions, is used to encourage compliance with ratified Conventions. The ILO's supervisory machinery is a singular achievement that demonstrates the power of
international moral suasion. The case for an alternative mechanism in a trade regime has not been made.

V. Conclusion

In today's intensely competitive world, structural adjustment is a constant necessity for every organization in order to respond to changing customer needs and preferences. Organizations that become complacent and satisfied with their achievements lose market share and relevance. So, too, the ILO must adjust and adapt to changing world circumstances if it is to maintain its credibility and usefulness on international employment policy issues. The globalized world economy is a very different economic framework from that existing when the ILO was formed in 1919.

Now that the East-West struggle no longer diverts the attention of the ILO, the organization has an opportunity to redirect its focus and to assume world leadership in helping member States create healthy economies without relying on low labour standards, especially those involving human rights. ILO technical cooperation programmes should take on a higher priority than in the past. Through the ILO, employers and workers must be educated and trained with the necessary skills to work and succeed in a high-technology work environment so they can play a central role in the political and economic life of their nations.
The social foundations of international trade

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I. Introduction

The Declaration of Philadelphia, adopted on 10 May 1944, was the first stone laid in the post-war construction of a framework for international cooperation and development. It was followed in quick succession by the Bretton Woods Conference, the establishment of the United Nations and, in 1948, by the General Agreement on Tariffs and Trade (GATT). The architects of this “new world order” were well aware of the inter-relationship between the institutions they were establishing. They saw sound money, free trade, trade union rights and social security as shared commitments which would bind nations together in peaceful cooperation and prevent a resurgence of militaristic nationalism.

This vision of a world governed on the basis of democracy and respect for human rights, with economies functioning according to the principles of the market but tempered by an active social policy and an influential trade union movement, remains intact despite the many changes of the last 50 years, including the resurgence of neo-liberal concepts of minimum state intervention in the 1980s. However, for the bulk of the world’s population, it is a vision that has only begun to come within reach in the last five years. A handful of States, mostly members of the Organisation for Economic Co-operation and Development (OECD), have followed the model with a degree of consistency throughout most of the post-1944 era. They now dominate the world economy, accounting for 55 per cent of total output and 75 per cent of world trade (IMF World Economic Outlook, October 1993). Their per capita incomes average US$19,000 per year, or 24 times the average of the
International labour standards and economic interdependence

four-fifths of the rest of the world (UNDP Human Development Report, 1994).

As the ILO looks to the future, it is worth reflecting on the extent to which the principles of the Philadelphia declaration remain relevant to the task of eliminating the mass poverty and joblessness which continues to threaten the peace of the planet. The cumulative effect of trade and financial liberalization, coupled with the collapse of the state-planned, single-party alternative of the old Soviet bloc, has created a global market but has thrown into sharp relief the social inequalities and political discrimination which the post-war generation wished to eliminate. Economic interdependence has accelerated at a pace outstripping the capacity of international organizations to achieve an integration and coordination of government policies even within the group of industrialized countries. If the delegates of the Philadelphia, Bretton Woods, San Francisco or Havana Conferences of 1944, 1945 and 1947 were able to join us now looking to the future, they would perhaps be alarmed to see the compartmentalization of the functions of the main international organizations.

II. Markets and social responsibility

The driving force of market economies is the limited liability company. Typically privately-owned, it is a legal construct which enables investors to risk part of their wealth knowing that if the enterprise fails their personal liability is not absolute; if it succeeds their personal rewards will be considerable. It has proved to be a powerful dynamic unit for the organization of the production and distribution of goods and services. The primary objective of limited liability companies is to show a profit to their shareholders. However, the more successful they are in pursuit of this objective, the more extensive is the wider social impact of their behaviour.

The contract of employment between such companies and their workforce is inherently unequal. In the absence of a counterbalancing association of employees, companies have the power to treat workers as they see fit without the responsibility to take their views and interests into account. The security the limited liability company provides to investors is not matched for its workers, whose investment of labour is dependent on a contract of employment heavily weighted on the employer's side. The right to organize a trade union for the collective representation of workers' interests is therefore the legal counterpart of the limited liability company. Coupled with statutory duties covering the
minimum provisions of contracts of employment, collective bargaining is the main method by which the wider social responsibilities of all limited liability companies are defined in practical form.

If markets are to operate for the benefit of the many rather than the few, justice at the workplace is essential. Other measures are also necessary, for example, to enforce commercial contracts between companies, to protect the consumer, to prevent damage to the environment and to ensure that financial markets operate with due prudence. However, perhaps the keystones of a system of laws which enable private enterprise to operate in a socially responsible manner are the rights of workers to freedom of association and to organize and bargain collectively. They create a balancing mechanism between the twin imperatives of economic flexibility and social security, thus creating a framework for dynamic development and political stability.

The architects of the post-1945 international institutions were acutely aware of the need for balance in economic and social policies as a reinforcement to democracy. They had lived through the consequences of the breakdown of the earlier attempt in 1919 to establish an international framework for cooperation and security. Strong, free and democratic trade unions were an essential element of their vision because they introduced the concept of accountability for the exercise of power into daily life at the workplace. The consensus view was that where free trade unions were able to organize, a bulwark would be secured for democracy and the rule of law.

III. The challenge of globalization

The cluster of jubilees in the 1990s creates an opportunity to re-examine some of the basic building blocks of the international system. Are the concerns of the post-war period still relevant to those engaged in further developing the system of international cooperation? Both in the industrialized countries, the developing world and the countries characterized as in transition from state planning to the market, there are many voices that argue that the social agenda is purely a matter for national determination and that the international framework should be limited to the liberalization of trade and financial flows. Others, however, increasingly highlight the social impact of globalization and the tensions it provokes both within and between nations; they are calling for joint action.
The debate came to a head in April 1994 in the weeks immediately prior to the Marrakesh GATT Ministerial Meeting and the signing of the new Multilateral Trade Agreement. The issue of the linkage between internationally-recognized workers' rights and trade was, however, not resolved and has been referred to the Preparatory Committee for the World Trade Organization for further discussion. The international trade union movement was instrumental in pushing the question of a "social clause" to the top of the agenda but, regrettably, much of the ensuing argument created more heat than light. If progress is to be made, it is time the international community recalled the qualities and clarity, rationality and vision that characterized the post-war era.

Market theory suggests that, under conditions of free competition, factor prices — in other words the costs of land, labour and capital — will tend to equalize. This would imply that trade liberalization, through the emergence of new low-cost suppliers, will force down prices on world markets. For labour, this could lead to a deterioration of the wages and conditions of work offered by existing suppliers or an increase in productivity at a faster rate than output, both of which would reduce labour costs per unit of output.

Theory would also suggest that, as output and productivity rise in low-cost suppliers, factor prices including wages and other labour costs should tend to rise as currently underemployed resources are brought into production.

To a certain extent, both trends are visible, at least in some countries. But the gap between conditions of work remains uncomfortably large and constitutes an underlying source of tension in trade relations. In addition, there is growing evidence in both industrialized and developing countries of increasing social inequality between a well-educated and skilled section of the population and a large but marginalized mass of less-advantaged who survive precariously in outright unemployment or casual, temporary, informal and poorly paid employment. Although it is extremely difficult to disentangle the effect of changing patterns of trade, technological advances and differences in macro-economic conditions on the one hand, and labour market policies on the other, it is widely accepted that the adjustment process could become severely distorted if basic minimum standards concerning the treatment of workers are widely divergent.

Viewed from the perspective of sustaining the growth of global demand and enlarging consumer markets in developing countries, it is essential that trade liberalization does not induce or add to a deflationary pressure on wages and conditions worldwide. With unemployment in the industrialized countries averaging over 10 per cent, and over 1 billion
people in the developing world surviving (and all too often dying) in absolute poverty, it is vital to find ways of harnessing the powerful forces of trade liberalization to the benefit of the many rather than the few.

The notion that trade liberalization is not an end in itself was accepted in the Preamble to the General Agreement on Tariffs and Trade (GATT) which states that the participating countries are entering into the accord:

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods ... 

The issue before the new World Trade Organization, established in the Final Act of the Uruguay round, is whether these noble objectives can be achieved without new accompanying measures to promote the progressive realization of minimum labour standards in all countries. From 1919, when the International Labour Organization was founded, the international community has recognized 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" (Preamble to the Constitution of the ILO). With the growing interdependence of nations consequent on the expansion of world trade and investment, the linkages between trade and minimum labour standards are increasingly apparent. What is giving rise to controversy is how such linkages can be defined so as to create a process of labour market adjustment in countries of widely differing levels of development that supports a progressive opening and expansion of world markets to the benefit of all.

IV. The social and political rationale of a social clause

Negotiating the Final Act of the Uruguay Round took over seven years and at many points seemed on the verge of breakdown, provoking grave concerns that failure would lead to a return to the protectionism of the 1930s. There are still a number of hurdles to clear, including the ratification of the texts of the agreement by national legislatures and their full integration into national law and practice. In many countries, of both the industrialized and developing world, political leaders are under
pressure from various groups that perceive their jobs to be threatened by foreign competition. Political support for trade liberalization is fragile, with electors being invited to, in effect, back a vague but general promise that increased competition will improve the general welfare while a large number of specific groups of workers face worsened conditions of employment or redundancy. The often impenetrable texts of the international trade lawyers are not easy to sell to voters whose sense of insecurity has been exacerbated by real fears of unemployment, wage cuts and weakened provisions of social protection.

In many countries, both industrialized, developing and the former communist States, rising unemployment, poverty and social disintegration are creating fertile ground for extremist nationalist, religious, ethnic and anti-democratic forces. Such groups feed on a pervasive sense that forces beyond their control are undermining jobs, their communities or culture. All too often, frustration can be channelled by unscrupulous politicians into a hatred of strangers or foreigners and into violence. Crime, drug abuse and other anti-social forms of behaviour are further symptoms of a general malaise, the roots of which lie in slow growth or recession, social injustice and the weakness of democratic channels for the resolution of grievances.

Trade policy, of course, cannot solve these problems. But, if it is to have a positive impact and not exacerbate such social and political tensions, it must be constructed in such a way as to demonstrate clearly that democratic political leaders are aware that enhanced economic flexibility must go hand in hand with new methods of guaranteeing social security, in the broadest sense of the term. International economic cooperation, including through trade agreements, should be based on a firm commitment to basic human rights, of which freedom of association, freedom from forced labour and freedom from discrimination in employment are critically important to the development of democracy and social justice.

It has been said that in the twenty-first century, the nation State will be too big to solve some problems and too small to solve the others. International cooperation through multilateral agencies like the World Trade Organization and the International Labour Organization is of increasing importance. But it will face many difficulties unless a strong basis for political understanding between nations through shared common values can be created. Guarantees that trade advantages will not be gained at the expense of extreme exploitation is one of the most important ways of buttressing an open and fair system for international trade.
V. The social clause and development

It would clearly be unrealistic to expect low-cost exporters from countries with a GDP per capita well below those of the industrial countries to pay comparable wages, not least because productivity per capita is often well below that of the established producers. However, it is realistic to expect that, as productivity rises and exports rise in the low-cost countries, wages would not be artificially kept down through restrictions on basic labour rights. The precise path which wages and other conditions of work take in the development process cannot be determined internationally through, for example, some sort of international minimum wage. What can and should be a condition of participation in the global market is that workers have the right to bargain collectively through a trade union of their own choosing to determine their conditions of work.

Collective bargaining is the best available means of reconciling aspirations for social progress with productive potential. It is an extremely flexible process which can take account of widely differing conditions between and within countries.

An effective social clause that would assist developing countries in their struggle against poverty should therefore focus on a selected group of minimum labour standards which constitute the basic elements of the internationally agreed principles for the humane treatment of labour. Rather than attempt to universalize specific targets for wages and conditions of work, the minimum standards should be those that establish the core elements for a dynamic and flexible process of social advancement.

Low-cost countries would retain their competitive advantage but a floor of minimum standards would help to ensure that competition imparted a positive impetus to social conditions rather than encouraging gross exploitation. The primary beneficiaries would, in fact, be developing countries wishing to ensure balanced social development and most vulnerable to cut-throat competition on the basis of labour exploitation. Industrial countries would still face a major task of adjustment. However, they would be better able to manage the process since developing-country consumer markets would be set on a sustained growth path and the gap in labour costs of production would tend to narrow over the long term.

Such a vision is, of course, a logical extension of the principles of the Declaration of Philadelphia. It will remain anathema to the more extreme proponents of free-market capitalism. However, the economic establish-
ment in many industrial countries is increasingly aware that the magic of the market cannot solve many of the critical problems of managing change and promoting growth. Many employers are alarmed that the constant pressure to cut labour costs, while difficult to resist in decisions at the company level, is producing social problems that damage companies. Competition produces both positive effects, notably a pressure to innovate and improve products, but also negative consequences, not least for human resource investment, workforce morale and labour-management cooperation. Collective bargaining, rather than representing an obstacle to the market, can in fact be a support. It enables social security to be pursued by economically flexible means. However, the full benefits of such social partnership can only be gained if it is a general pattern. Free riders destabilize the balance and ultimately bring into question the concept of an open world trading system.

A social clause is not an anti-market germ that would infect and destroy the multilateral trading system. On the contrary, it is a logical adjunct to a process which has created an undeniable economic and social interdependence between all nations.

VI. **Translating theory into practice**

The ICFTU has spent many years refining its conception of a social clause through extensive debate with its affiliates in all parts of the world. With member organizations in 124 countries, the ICFTU is able to present a consensus on exactly how a social clause could be made to work effectively for the differing interests of workers in all the member countries of the new World Trade Organization.

The ICFTU therefore proposes that a clause along the lines of the following should be included in the GATT and similar international agreements:

The contracting parties agree to take steps to ensure the observance of the minimum labour standards specified by an advisory committee to be established by the GATT and the ILO, and including those on freedom of association and the right to collective bargaining, the minimum age for employment, discrimination, equal remuneration and forced labour.

These points of reference are ILO standards. As such, they were originally adopted by a full-scale international conference following careful tripartite negotiation in two years of committee work. The standards the ICFTU proposes to specify are also amongst the most
widely ratified of the ILO. In other words, they are not industrial-
country standards but principles that governments of all countries,
regardless of their stage of development, should legitimately be expected
to observe.

The ILO is the competent body to examine the implementation of
labour standards. It has established reporting and investigatory procedures
which already yield a great deal of information on the observance of
basic labour standards. We would therefore expect the GATT and the
ILO to review systematically, and on the basis of specific complaints, the
extent to which GATT contracting parties are meeting their obligations
under the social clause and to make recommendations.

When a country was found to be falling short of its obligations, a
joint GATT/ILO Advisory Body should recommend measures to be
undertaken by the government within a specified period of time to
improve performance. One element of this effort would probably be
better enforcement of laws and regulations through a strengthened labour
inspectorate. The ILO would also offer technical assistance, perhaps
funded by a new international social fund, to help countries in the
process of raising standards. At the end of the period, say two years, a
further report would be prepared on the effect given to the earlier
recommendations. The second report would state that the country was
now fulfilling its obligations, or that progress was being made and further
time was needed to deal with the problem, or that the government had
failed to make adequate efforts to implement the GATT/ILO recom-
mendations. Only in the latter case would the problem be referred to the
WTO for consideration of appropriate trade measures.

The procedures for operating a social clause are important. They will
determine the effectiveness and acceptability of the clause. Unfortunately,
there has been little discussion at official level of such practical details.
But, as is evident from the above outline, they do not present the
enormous, but usually unspecified, problems that opponents of the social
clause seem to see. The failure to look at the mechanisms for applying a
social clause has also led to over-concern about an uncontrollable wave
of unjustified import controls. It should be clear that a social clause
should promote the observance of the basic minimum labour standards
which determine wages and other conditions of work. The trade sanction
would operate as the ultimate penalty for non-cooperation.

The social clause would be implemented through the same trans-
parent procedures as govern all of international trade through the GATT.
There would be ample opportunity for scrutiny of any claim that
workers' rights were not being respected. A social clause would cover,
first and foremost, the basic rights to freedom of association and to
bargain collectively. Collective bargaining enables a positive relationship between productivity and wages to be established. The social clause would then cover other basic standards, including child labour, discrimination and forced labour. Change could not be expected overnight in every area. But a government would at the very least have to demonstrate its recognition of the problem and indicate what actions it is taking to bring about an improvement in the situation.

VII. Conclusions

The addition of a social clause to the multilateral system of trade rules is an essential element in reinforcing the still fragile consensus favouring further liberalization. Furthermore, it is a mechanism that would yield substantial advantages to the citizens of all nations, both developed and developing. Concern about jobs and working conditions is usually the root cause of calls for trade protection. By addressing these issues directly, the World Trade Organization could do a great deal to strengthen political support for the conclusions of the Uruguay round.

Critics of the social clause have raised legitimate concerns. But a thorough analysis of its rationale and operating mechanisms demonstrate that such concerns can be met, and a workable procedure introduced into the corpus of trade law to the mutual advantage of both low- and high-social cost producers.

The social clause will not miraculously end all the tensions involved in trade between countries at different levels of development. However, it would create a forum wherein such problems could be articulated and resolved in a fair and balanced way. By concentrating on the process of social development through reference to widely-accepted standards, it would give a positive impetus to the often arbitrary and unpredictable effects of trade expansion on society.

Realizing the full benefits of a social clause would require action in other areas, notably the alleviation of developing country debt and the coordination of macro-economic policies for growth. It would fit in well with the trend towards concentrating development assistance on measures to alleviate poverty in the context of good governance and social partnership. Trade would be seen as contributing to and reinforcing efforts to promote democracy and development.

A multilateral approach to the linking of workers' rights to trade is preferable in principle to the growing tendency to introduce unilateral measures. So far, such measures have also focused on ILO standards as
the point of reference and are producing some positive results that could be relatively easily subsumed in a new multilateral system. The new World Trade Organization should therefore give high priority to setting in motion a negotiating process on the social clause. The ILO should play a major role in seeking to ensure that its procedures for promoting the observance of labour standards are used by the international community in seeking to reinforce the authority of the rule-driven framework for international trade for which the WTO will be responsible.

The ILO and the WTO share a common heritage which must not only be remembered but further enlarged. In this respect, it is interesting to remember that the GATT secretariat is headquartered in a building that was the original home of the ILO. The motto on its foundation stone is *Si vas pacem cole justitiam* (If you seek peace, cultivate justice). Translating that vision into practical international commitments is a challenge worthy of the inheritors of the Declaration of Philadelphia. As Wilfred Jenks, a distinguished Director-General of the ILO said 25 years ago "the Declaration of Philadelphia has not dated... because it was before its time". Perhaps its time has now really arrived.
Part 8:
Epilogue
I. Introduction

The essays in this volume reflect a breadth of perspective which would be difficult to summarize. Reflections on the theme of international labour standards is, of course, a constant for these authors, but when filtered through the disciplines of law, economics, and history, through the variety of national perspectives, or through the pragmatic views of different economic actors, the result is a volume of considerable diversity. The paragraphs that follow, therefore, make no effort at synopsis; they are, rather, an epilogue, building around and upon a few central issues that emerge from a reading of this volume in its entirety.

II. The universality of standards: An unending debate

Consideration of the "universality" of international labour standards is a theme common to many essays in this volume, although the concept itself seems to have no easy definition. At the most practical level, universality refers to whether a given international labour standard is accessible to all countries and may be immediately applied. For example, there is broad concurrence in the universality of basic human rights standards as an inviolable principle: for many other standards, however,
essayists invoke a distinction in the corpus of labour standards in which some could be described as "development-dependent" (Portes), or "means-related" (Alston), a distinction as fundamental to Herbert Feis in his 1927 article for the International Labour Review, as it is for modern authors. Readers will disagree at the margins of this debate, as Freeman observes when he explicitly questions the substance of occupational safety standards as development-dependent. Donahue also evokes the grey area at the boundary of different categories of standards: "Drawing the full perimeter of universality is difficult, maybe impossible. Not all of the most distant boundaries can be clear and fixed". But that there are some, "non-means-related" standards is noted by all: "There are most certainly workers' rights that are fundamental and universally applicable".

The distinction between categories of standards is most prominent in discussions comparing the developing vis-à-vis the developed world. One of the main arguments here assumes that economic progress precedes social progress; that some standards can indeed be looked at as means-related, and that the production of the "means" precedes the "acquisition" or implementation of standards. By extension, the implementation of some standards can be viewed as premature. Both Funes de Rioja and Portes, writing from the perspective of Latin America, argue that if standards are implemented prior to the obtention of means, the results can be damaging. Hepple refers to the principle in a more subtle way: "the effectiveness of international labour standards depends upon working with rather than against market forces". Others, however, reject the assumption that standards are development-dependent, and argue instead that economic and social progress can be jointly pursued, and, in consequence, that the entire corpus of international labour standards can at all times and in all places be aspired to. The inherent flexibility of international labour standards (e.g. the principle — not the substance of minimum wages) is sometimes evoked, as is the more philosophical point, embedded, Okogwu recalls, in the ILO Constitution, that economic progress and social progress go hand in hand — in tandem, rather than in sequence. If this were not so, this argument advances, the principle of universality might be the first casualty, i.e. an array of international labour standards, some of which are "universal" and some of which are "less so", or whose universality is subjected to means-testing. The essays appear to evoke two problems deriving from this.

The spatial dimension of universality: The path of globalization (through its present phase of regionalization) leads some to conclude that now more than ever before countries may be inclined to acknowledge the need to share certain standards. This, Wedderburn reminds us, is a funda-
mental premise behind the construction of the European Union. It is a principle, some observe, that recalls the Preamble to the ILO’s Constitution when it warns that the failure of some countries to adopt adequate labour standards is an obstacle to other countries that desire them. For several authors in this volume, the extension of the market across borders is not necessarily wholly positive. Sunmonu, for example, argues that: “to the people of the Third World, globalization is the cornering of world trade, economic resources and technology” by the industrialized North. Economic liberalization, in his view, can only result in an accentuated power imbalance between those who have and those who have not. Even if, as argued from the neo-liberal perspective, labour standards constitute “distortions”, one might well wonder, as Alston does, “whether there is [nevertheless] a residual need for such distortions”. While the expansion of the market is a promising mechanism, it is “not an end in itself”. As Pursey states: “With unemployment in the industrialized countries averaging over 10 per cent, and over 1 billion people in the developing world surviving (and all too often dying) in absolute poverty, it is vital to find ways of harnessing the powerful forces of trade liberalization to the benefit of the many rather than the few”. For authors writing in this vein, globalization calls forth the need to ensure that standards are universal — not to consider them only subsequently relevant, once (if ever) globalization completes the process of economic interdependence.

The employers in the volume largely draw the opposite conclusion (that now more than ever before sharing standards is a constraint). The argument is twofold. First, it is argued that standards impede rapid adjustment to change, which is all the more required in “globalized world markets and trade”. As will be noted below, this undergirds their perception of the obsolescence of standards. Second is the very pragmatic point that standards are not “shared” to begin with. The bulk of ILO Conventions, argue both Myrdal and Potter, are not “universal”, because not widely ratified: “ratification of ILO standards”, writes Potter, “may have the result of putting the workers and employers of the ratifying country at a competitive disadvantage. This is an ironic result given that one of the founding purposes of the ILO was to eliminate unfair competition based on poor working conditions”. The point would seem to be that most standards are hindrances in today’s competitive economy, not merely for the inherent reason (to be developed below) that they impede change, but because they were never universal to begin with. But if the arguments for and against the universality of standards merely hinged on their observance, the whole debate would be a rather mechanistic one of how to ensure better compliance. This issue figures in the debate in these essays, but is only part of the debate.
The temporal dimension of universality: Compliance is not the only matter, since there are other grounds on which the concept of universality is debated in these essays. Many, for example, appear to equate universality with timelessness or agelessness. This distills the point that the concept of "obsolescence" is logically inconsistent (i.e., simply does not apply) to the world of universal standards. The notion of timelessness begs a number of other questions, too. One can be thought of as a problem in the history of ideas: when, in time, do ideas originate and how is belief in them influenced by the course of events? At the most philosophical level is French's discussion of why ideas matter in history and his observations on the "unfulfilled promise" of the Declaration of Philadelphia. Some essays reflect on whether the concept of democracy itself is one of those timeless principles only now coming into its own. Young-Ki Park, for example, argues in analytical terms that market economies are only sustained through democratic control, and that the latter is only possible through standards. He writes from the national perspective of a country in which this linkage has come to the fore in recent times. But the fact remains, and is implicitly addressed by a number of essays, that the promulgation of any international labour standard is anchored in time. On the one hand, the promulgation of basic human rights standards themselves and the timeless principles that they embody are rooted in specific historical moments. This suggests that the world community, that reflected in the composition of the ILO, has at these special moments in history been able to articulate its belief in certain fundamental rights. It would seem no accident that the boldest statement of timeless principles underpinning labour and human rights coincided with the conclusion of two of this century's major wars. On the other hand, the historical origin of some standards suggests that the perception of their need arose in specific historical circumstances, the matter of working time 75 years ago, for example, or that of part-time work in 1994, or, indeed, some future problem on the horizon for which an international standard may be called for. The relationship of particular standards to their past and present is a major theme of the volume.

III. The obsolescence versus the constancy of standards

No essay in this volume finds itself in the position of advocating the repeal of timeless principles. But some in this volume do question the continued relevance of at least some standards. For the most part, the grounds of this position have to do with how the world economy has
changed. The issue, however, may be even more fundamental. First, one might well ask whether the “laws” of economics are more important than other laws by which human society is constituted. As can be expected, a number of voices clearly reject this implicit hierarchy. The trade unionists, among others in this volume, defend the social law that standards represent for its independent significance; analogous to the matter of the “timelessness” of standards, these writers question the appropriateness of applying economic scrutiny to social rules; that is, as well as being timeless, standards are “priceless” and their value should not be cheapened by looking at them in the merely economic terms of cost.

Some essays nevertheless argue that, in a world of substantial and unprecedented change, some labour standards have outlived whatever their original usefulness might have been. Some of the change may be social in origin. For example, standards originally designed to protect women at work may indeed obsolesce in the light of changing social conceptions of male/female equality. This then becomes an argument for revision of older standards, and, indeed, the ILO has a long history of revising and updating its standards as circumstances evolve. Much of the change, however, is economic in origin, and it is here where analyses of “globalization” are invoked by many authors. Two major tendencies are reflected in the discussion.

First is those who, in essence, say that economic interdependence compels flexibility at the “micro” level, whether of people or of firms, and that standards are a source of macro-rigidity in adjusting to this imperative. This is a theme well developed by the employer contributions. The theme extends to one of “freedom from the bottom up” — both as good in itself — and because the nation-state can no longer do its job in an interdependent economy. Thus — viewing the matter from the perspective of national rather than international labour standards — Funes de Rioja describes what he sees as the “false protection” of the State in endeavouring to construct protective rules that can only be artificial and constraining in an environment over which the State no longer has any control. In this view, primacy is accorded individual freedom and initiative and many standards are viewed as being exogenous, unworkable constraints, whence their obsolescence. Arguing from the opposite perspective at this same national level, however, Madrid critiques a vision of economic reform that subordinates and sacrifices social protection.

The second major tendency is evoked by those who dwell more on the risks of globalization; rising inequality within and between nations, loss of autonomy of the State, “a race to the bottom” (Langille), etc. For these authors, an implicit distinction is drawn between the “obsolescence”
of standards and their "erosion". The former appears as dubious in these essays, but the latter, the weakening of established standards, cannot be doubted. The key message is that the erosion of standards and of the State's autonomy are not arguments in support of the view that standards have become outdated. They are arguments instead for their reconstruction. At the national level, Belchamber's discussion of Australia can be read as an example of how economic imperatives may require an updating and renovation of labour standards. At the international level, the risk of standards' erosion is, of course, the major argument underlying the proponents of a social clause in world trade agreements, as noted below.

Other essays focus on the rising significance rather than obsolescence of labour standards. Hepple, for one, describes how existing standards on equality, rather than obsolescent, may only just now be gaining in significance, acquiring a value that economic change has, if anything, magnified. Sugeno shows how the ILO's very first Convention on working time, never the object of much attention in Japan, has now acquired greater importance there, in order to render politically sustainable the fact of economic interdependence. Marshall argues that international competition requires high performance which can only be built on high labour standards. Rather than viewing labour standards as outdated, exogenous constraints, his argument views them as endogenous components of economic performance of rising value in an era of globalization. While Marshall thus argues the intrinsic value of standards in economic competition, others argue more theoretically that it is in any case impossible to conceive of "institutions" apart from "markets". Figueroa, among others, sides with the latter view: "Some people argue as if interventions in labour markets were purely exogenously determined... Clearly, a more balanced approach would recognize endogenous and exogenous components of labour standards".

IV. How the compliance with standards can be strengthened

According to several contributors to this volume, new vitality of international labour standards could be derived from their better enforcement through integration in a broader, multilateral policy framework. Usually, the analytical departure for this recommendation is the widely perceived threat for existing standards. They are deemed at risk of being eroded by intensified, international competition centred on
wages and other labour cost components. The spectre of a downward-directed spiral of labour conditions should be countered by making ILO norms more universal so that they cover the increased number of competitors.

The cause of international labour standards could be strengthened by a “social clause” in international trade agreements. This would be the primary mechanism for linking the liberalization of trade and the spread and enforcement of fundamental standards. It would be aimed at eradicating the most flagrant violations of working and living standards in all countries and sectors. Following earlier proposals, Caire would like to see the social clause not being limited to the trade sector, but cover capital flows as well.

The call for the social clause originates in the prevailing weak international control and enforcement of labour standards. Both the mechanisms available to the General Agreement on Tariffs and Trade (GATT) and the ILO are seen as either unsatisfactory, or insufficiently used. Social clauses could be a means to raise progressively the working and living standards of workers in developing countries along with rising productivity, while simultaneously protecting labour standards in the industrialized countries, through appropriate measures of trade adjustment. Emmerij sees prospects for a compromise between the supporters and opponents of labour standards in international agreements because both proclaim to be against protectionism and in favour of improved working conditions in the countries concerned.

For Langille, it is unavoidable to negotiate about labour standards in a multi-lateral framework of GATT (World Trade Organization — WTO). The seemingly intractable debate about “free trade” and “fair trade” will not lead us farther. From a global perspective there is no conceptually relevant distinction between a tariff upon a foreign good and direct subsidy to domestic producers of the same good. They achieve the same result for the same motive. The claim for multilateral agreement should, as Langille concludes, be seen as a natural and inevitable corollary of free trade policy.

Which standards are to be included in international trade agreements? Several contributors select a “minimum package” of ILO standards which constitute basic human rights, and are widely ratified by the member states of the ILO. For example, Pursey, speaking for the International Confederation of Free Trade Unions (ICFTU), lists the ILO Conventions on freedom of association; the right to organize and bargain collectively; the minimum age for employment; the prohibition of forced labour; non-discrimination, and equal remuneration. Emmerij adds the
ILO Convention on employment policy; Cairo would wish to also include minimum wages and standards of health and safety in the package.

Virtually all advocates of the social clause in this volume, including the trade unionists, stress the point that no uniformity of substantive standards entailing a levelling of labour costs across countries is intended as this would harm the competitive advantage of developing countries. Nevertheless, what several contributors would like to see established in every country is a minimum floor to wages and other terms of employment that would prevent exploitation and provide a positive impetus to constructive competition. In other words, the objective is to work towards "universality" of ILO standards, not "uniformity".

In the view of the trade unions, and other protagonists of the social clause, adequate procedures for operating social clauses should observe principles such as transparency and multilateralism which would make them a defence against protectionism, and should alleviate the justified fears on the part of developing countries. The unions propose procedures for a joint ILO-GATT (WTO) Advisory Committee to deal with complaints, and a differentiated system of investigation and remedies that leaves trade sanctions as a last resort for penalizing non-cooperation.

The union proposals on the social clause are opposed by the employers' representatives. For them, the clause serves as a protectionist device, and has serious consequences for trade and foreign investment. Potter and Myrdal are concerned that in pursuing the social clause jointly with GATT, the ILO would depart from its principle of voluntarism and political persuasion. Myrdal speaks of a threat for many developing countries and countries in transition to a market economy, and foresees these countries either leaving the ILO, or obstructing its process of setting and applying labour standards. Even worse, the social clause would entail further "politicization" of the ILO, and pose threats to its tripartite decision-making structure.

V. The ILO in a system of international governance

Beyond the trade issue and the pros and cons of a "social clause", many of the essays address in broad terms the theme of the ILO's role in a system of international governance. Two principal arguments, which in a sense summarize the foregoing paragraphs, may be detected in the essays. The first might be called the "less is more" school of thought, a somewhat cautionary, and occasionally critical view of the ILO which
emphasizes the risks inherent in the “overproduction” of labour standards, and is mindful of the limitations of voluntarism. The second argument belongs to a more evolutionary school of thought, and contemplates the need — i.e. the desirability, if not the inevitability — of an architecture of international governance built upon the declining sovereignty of nation states. These are indeed contrasting visions of the ILO’s future. Their analytical basis is a shared one, however, for both prescriptions are argued from the fact of rising economic interdependence; that is, the rapidity and pervasiveness of economic change can be used at one and the same time as an argument for a more restricted role of the ILO and for a more expansive one.

"Less is more": A return to the basics

For some authors, the sheer volume of instruments in the International Labour Code is argued to be counter-productive. They have grown too many and too detailed, Myrdal says, and many, as observed above, have lost their usefulness. The “numerous details” of compliance with some standards is an argument against their being ratified to begin with, Potter comments, and Myrdal adds a further argument against ratification in the lengthy and difficult procedure required for deratification (“denunciation”). Proof that the production of standards has faced diminishing returns is found in the long-term decline in the rate of ratification of new standards. Indeed, Myrdal observes, only “a mere handful” of standards, those relating to basic human rights, have achieved ratification of over 50 per cent of member states. In short, he argues, there are “few, if any” standards “that deserve to be regarded as ‘internationally agreed labour standards’”.

There would seem on the face of things to be a logical problem in the argument that the volume of international labour standards is too great, given that their promulgation is not by executive fiat, but by decision of the “world community” represented in the ILO — a tripartite community at that. For Myrdal, however, explanations of this anomaly are not wanting. Political gamesmanship during the Cold War distorted the “production process” of labour standards, he argues, as the Communist Bloc in alliance with Western trade unions passed standards designed to hobble Capitalist economies. In what may be one of history’s ironies, however, Héthy argues that ILO standards ratified by the former Communist countries played a not inconsiderable role in the political liberalization of Central Europe. Myrdal argues further that a simple majority of the International Labour Conference is all that is required for adoption of a standard, and often that is all that many have received.
Finally, he notes that the over-production of standards might simply arise
from political shrewdness, since voting in favour of a standard which it
has no subsequent intention to ratify is a costless way for a democratic
government to shore up its political capital with labour constituencies.

This, in short, is the strength and weakness of the ILO’s voluntar-
ism. Since international labour standards are not international law (the
force of the latter, as Caire observes, being in any case by consent), the
true strength of the ILO as an agent of international governance resides
in its not inconsiderable “power of international moral suasion” (Potter).
Ironically, the absence of any direct, democratic procedure in the
promulgation of labour standards can be argued to have facilitated their
production. Were international labour standards somehow to acquire
more directly the status of international law, the very decision-making
structure of the ILO would, in Myrdal’s view, be unacceptable in
democratic terms. The present equal voting rights among countries of
vastly different population size and economic influence would become
unacceptable. Moreover, the “representativeness” of national delegations,
reflecting as they currently do only the voices of a few interest groups —
employers, trade unions, and governments — would be too narrow a
constituent base for truly democratic decision-making. Whatever may be
its shortcomings, tripartism “works” in the ILO because of the Organiza-
tion’s voluntarism. The whole would be at risk were the nation-state not
the final arbiter of the labour standards it chooses to adopt.

For the employer voices in this volume, therefore, the message is
clear and consistent: a return to the basics, building upon the most
“internationally agreed” of the ILO’s standards, its basic human right
instruments; and a preservation of the voluntary (rather than com-
pulsory) nature of the international agency’s decisions. As to the
Organization’s role in international governance, the thrust can be
described as a “bottom-up” approach through technical cooperation,
rather than a “top-down” approach through regulation (or “pre-
regulation”, in light of the foregoing qualifications on the ILO’s
independent capacity in the realm of international law). Technical
cooperation directed toward assisting labour and management in the
development of their market activities would aid countries in attaining
their social and economic goals. The aim would be to avoid, as Funes de
Rioja describes in relation to his own country, the premature ratification
of standards whose significance would thus be “false” rather than “real”.
The counter-argument: Strengthening and broadening international social policy

Arguments of "means-relatedness" or "obsolescence" aside, an interesting similarity arises in these essays between the employers' point of view and those who would argue for a more mandatory application of labour standards. That common starting point is the need perceived by many for the ILO to defend its core standards on basic human rights. For most writers, let it be said, this by no means implies scrapping the other instruments in the International Labour Code. Indeed, Papola, among others, would add to the corpus, arguing that minimum standards applying to the informal sector, "where most of the world works", should be evolved. But for those, in particular, who endorse the need for a stronger role of the ILO in a system of international governance, the endorsement refers most pointedly to the promotion of basic human rights and their diffusion. Thus, as noted above, those authors who link the "how" and the "what" of governance through their advocacy of a "social clause" tend to exclude any, or at least most, of the "means-related" standards upon which a developing country's comparative advantage could reside.

"It has been said that in the twenty-first century, the nation State will be too big to solve some problems and too small to solve the others", writes Pursey. To the extent that one believes that the world economy is characterized by rising interdependence, a necessary corollary, in the opinion of Donahue, among others, is the de facto erosion of national sovereignty. Or, as Langille argues, "the mobility of capital undermines in a fairly straightforward way the traditional arguments of democracy and sovereignty". The fact of globalization, in Emmerij's view, has "weakened the ability of the State to control the behaviour of other economic actors theoretically under its jurisdiction and [has] pushed the boundaries of policy-making into the sphere of the global". If economic fortunes and failures increasingly rely on markets that, themselves, respect no boundaries, social and labour standards must themselves be contingent in this process.

Alston observes that giving prominence to economic liberalization at national levels has in practice often meant the erosion of status of labour ministries, and the implicit transfer of the authority for labour and social policy to finance ministries. This, of course, is neither a desirable nor an inevitable path. Reduced sovereignty may mean reduced autonomy, but it does not imply the reduced importance of the State or of labour policies. Recalling Marshall's argument, once again, economic interdependence should enhance the importance of national labour
policies, since the high performance economy required of rising international competition is one where labour standards are strong, endogenous components of efficiency.

The world described by some of these authors therefore seems to be one in which the matter of national sovereignty is increasingly an "academic" matter. "The reality is that sovereignty over [domestic labour policy] has already been ceded", writes Langille. The real issue is "not whether but how policy will be determined internationally — through the market or through political negotiations". It follows that the issue of international governance is, as Emmerij suggests, "high on the agenda". In fact, it may already have been tabled for discussion. Caire, for example, believes that the concept of a "duty to interfere" on humanitarian grounds may be gaining ascendency within the United Nations community where, hitherto, a strict construction of the principle of national sovereignty would have prevented international action. He asks: "is it not possible to imagine, with the increasing globalization of the economy, that [the duty to interfere] could be extended to areas in which not only threats to people's very existence but also those affecting their living and working conditions would be justification for a right to interfere?"

The implications of economic interdependence lead several authors to the need to frame the role of the ILO in new terms. Since labour policy is becoming just one facet of broader social policy concerns, Alston argues that the ILO must broaden its appeal to various "secondary constituencies", the other actors aside from trade unions, employers, and labour ministries which shape social policy. Since its core concern involves the defence of basic human rights, the ILO should evolve much closer working relations with other of the UN system's agencies that share this concern, in particular the UN Committee on Economic, Social and Cultural Rights.

VI. International governance through widening the concept and policy framework for standards

Whilst the debate on the social clause is focused on the "globalization" of existing fundamental labour standards, according to some essayists, international social policy would have to be tied more firmly to other policy realms. Standards could not flourish under conditions of widespread economic slump and indebtedness. Labour standards would have to be complementary with, and closely tied to,
Duncan Campbell & Werner Sengenberger

393

Global demand management policy. Amsden, for example, views it as essential that Northern governments coordinate expansionary macroeconomic policies with the goal of stimulating investment and employment, in order to prevent negative repercussions of increased trade and investment on the industrialized countries. A new definition of labour standards would need to be adopted for this purpose, as it would be for containing inflationary pressures in collective bargaining. She argues provocatively that wages should be allowed to lag behind productivity growth in small, newly-industrializing countries building their economies through export markets. But, on the other hand, she goes farthest in advocating an integration of international labour standards within the broad framework of international economic policy. In the United States, Donahue describes a more recent call by the trade unions to link worker rights to international financial institutions through the United States government's voting influence on criteria for loans and grants administered through the Bretton Woods organizations.

Others call for linking social standards and environmental standards. For Mückenberger, it is inconceivable that the Western living standards and life styles can be diffused throughout the globe without provoking fatal ecological risks, and engendering unbearable political tensions about the question of who consumes how much of the world's finite resources. Therefore, ecological conditions would have to join social objectives to make development sustainable. Fewer natural resources will have to be consumed, through more efficiency in resource utilization, and self-sufficiency on the part of the materially privileged part of the world population.

Freeman, finally, suggests looking at labour standards as a consumer good, and creating a link with consumer policy — in essence, pursuing international governance objectives through the product market. He holds that the consumer wants standards just as he wants other aspects of product quality. Hence, he is willing to pay a premium on the price of traded goods if he is convinced — by appropriate information, such as product labelling — that this extra cost stems from having decent labour standards in the country of origin of the product. If as a result of informed consumer choice the sales of the product decline, this will induce the producer to change the incriminating working practices.

Coordinating social and economic policy and action at the international level is, of course, by no means a new demand. The idea was a centrepiece of the Declaration of Philadelphia. Perhaps it is appropriate in this anniversary year of the ILO that such far-reaching suggestions for a strengthened system of international governance in which the ILO would play a major role echo the Declaration's ambition. This was a
postwar vision of international governance not since reclaimed — an "unfulfilled social contract", in French's words, which emerged in the history of ideas only to fall victim to the Cold War. In contemporary terms, Okogwu finds the Declaration's language unusually clear and prescient: achieving social objectives “must constitute the central aim of national and international policy” and, “in particular, those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective".