The other side of the coin: 
Globalization, risk and social justice

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Abstract

This essay considers the environmental risks brought about by globalization in the perspective of an increasing tension between the present distribution of value and resources and the claims of equality. Against this background it argues that the industrialized countries need a sustainable restructuring accompanied by globalized standards that take into account the social as well as the ecological conditions for mankind’s survival.

I. Towards worldwide equality?

Globalization takes place in many ways. The very character of capitalism engenders an expansion of trade and production, which often takes the form of conquest and colonization of less developed markets and countries. Paradoxically, this process of expansion — "economic globalization" — has often been accompanied not only by conflict and loss of traditional equilibriums, but also by new forms of social contact and coherence. Citizens of different parts of the globalized world — "old" as well as "new" — have encountered each other, and become aware of their respective life styles, working and living conditions, and needs. Such contact has frequently provided the foundations on which to build mutual recognition and solidarity, leading to the emergence of principles
and standards of social justice — what I shall call “social globalization”. Cross-national standards have been established in Europe, North America and Asia, within the framework of the United Nations and the International Labour Organization. That businessmen as well as workers of the developed economies feel solidarity with the people of countries where capitalism is expanding is neither self-evident nor necessarily “unselfish” — i.e. altruistic. Often the people (including workers) of the countries of the industrialized North participate in the exploitation of Third World countries without a thought for common universalized working and living standards. Often, however, they push for globalized economic and social standards in order to achieve equal supply conditions within worldwide competition, i.e. to prevent “throat-cutting competition” from less developed nations. Frequently, solidarity is both selfish and altruistic, and benefits both industrialized and developing countries. It seems to be this fortunate coincidence which — I take the ILO as the best example — contributes most to the emergence and generalization of globalized standards and principles of social justice.

If what I sketched here as the inter-relationship between economic and social globalization were the whole truth, one could sit back, trigger the process of globalization, and wait for the outcome of generalized equality in well-being, living standards and opportunities in the One World. However, there is another side of the coin. Globalized social justice is not a realistic vision, but rather an ideology, a kind of wishful thinking shared by people in the developed countries. It is realistic neither from an empirical point of view nor from a normative one. I shall leave aside the empirical merits of the vision and focus on the normative point of view. The other side of the coin of the globalizing economy is the globalization of environmental risks and the exhaustion of global natural resources. Both environmental risks and scarce resources challenge not only the ecological equilibrium of our world, but the survival of mankind [World Commission on Environment and Development, 1987]. This I shall call “risk globalization”.

The problem is that there is a severe conflict between economic and social globalization, on one side, and ecological globalization, on the other — a conflict which seems inevitably to render illusory the sketched vision of worldwide social justice. Linear worldwide development — that is, which simply reproduces the patterns of production and consumption of the industrialized countries on a worldwide scale — would promptly lead to the collapse of our world. Day after day, the world population is increasing by 250,000 inhabitants — the size of a middling European town. Given this population growth and increased expectation of life, the world population in the year 2010 will be around 7 billion and by 2025
around 8.5 billion [Kennedy, 1992, Ch. 2]. One needs only to imagine what would be the outcome if all these people were to use the same amount of energy per capita as in the United States, to demand the same per capita number of square metres for their homes as in Europe, to drive as many thousands of kilometres by car and fly as many thousands of miles, to urbanize as much land and to discharge as many toxic or harmful chemicals as go through our chimneys or into our rivers. Merely to imagine such a scenario is a nightmare.

I assume that nobody envisages such a linear globalization of western modes and standards of living. But how, then, can we uphold the aim of global justice? Temporarily, we in the North may tranquilize our bad consciences by arguing that an African tribesman will not feel a need for a big apartment or that it would be absurd for an Asian rice planter to fly as many miles as a western businessman. This is certainly valid for the time being, but it may not remain so even in the near future. Isn’t individualization advancing and rapidly changing life styles, needs and mobility everywhere in the world? Isn’t a huge growth of mega-cities to be observed, not so much in the First but rather in the Third World? Is there thus any continuity of tradition on which to found the belief that Third World populations will not demand, sooner or later, opportunities and standards equal to those which the North monopolizes at present? Even if we would circumvent these pragmatic empiricist perspectives, we could not circumvent the underlying question of social philosophy: how can we justify these well-established and clearly structured differences — privileges and disadvantages — in production and consumption standards between the areas of our world while insisting on the principle of universal equality?

We are thus in a dilemma. Either we take seriously the exhaustibility of natural resources and frankly admit that this excludes economic and social expansion comparable to that of the North on a worldwide basis — so disassociating ourselves from the vision of globalized, universal equality. Or we take seriously equality as a basic unalienable principle of social justice and accept a global development of production and consumption which we know is incompatible with mankind’s (and nature’s) survival interest and will inevitably lead to collective suicide. A dilemma similar to the one stated here has been identified within the industrialized nations for some time — the conflict between economic/social and environmental claims. Now this conflict has become a global one.

Policies concerning these respective claims have always been formulated by different and segregated social actors: economic claims by employers and their representatives, social claims by workers and their unions, ecological claims, if at all, by environmental protection or
consumers’ associations or by the State. What inspires my essay is the question: is there any synthesizing, coherent approach capable of coping with the conflict mentioned?

II. Sustainable development: Restricted to the less developed?

The efforts to globalize standards in a globalizing world have hitherto been limited to social standards — that is, standards concerning the working and living conditions of dependent workers and the unemployed. As soon as we turn to the environmental side, we find arguments there, too, for the necessity of worldwide action and standards, though with sparse results. The two discourses — one concerning social, the other environmental globalization — show similarities and differences.

In both cases an a priori “unfettered” process of globalization has been under way — in the one case globalization of capitalism, in the other, of pollution, destruction of nature and natural resources. This creates a need for countervailing power, for a “humanizing adjustment” towards the social recognition of workers as human beings and towards honouring the earth and nature as indispensable to mankind.

In both cases, the process that has produced the risks has, thanks to the hitherto undisputed freedom of the market, developed largely unchallenged. By contrast, the “humanizing adjustment” has required not only collective argument and dispute, public justification and evidence, and collective organization, but also time-consuming procedures of negotiation, agreement, legislation and so on in order to achieve any progress. Adjustment has therefore always lagged behind, a one-issue-only defensive patchwork, frequently coming too late to serve its intended purpose.

In the case of social standards, this is well-established, as the history of the ILO, from its origin in 1919, makes clear. However, the problem seems to be even greater in the case of environmental globalization which requires worldwide environmental instruments laying down standards and procedures. In fact, risk globalization affects people in a highly “diffuse” way, which makes it hard to identify the source of the risk and hence to determine the remedy against it. Those who are affected — be they millions or billions of people — feel affected as individuals. Their interests are not represented and are not capable of being represented in a highly aggregated way, comparable to the representative institutions of Capital and Labour.
The state is often reluctant to handle the problem of global risks in a rigorous way. Most global risks are cross-national which enables individual countries to duck responsibility. And the national economies involved are competing with each other which can discourage concerted action.

This is why collective structures and routines of negotiation and conflict, comparable to collective bargaining or social legislation at national level, are missing in the field of global risks. It is not accidental that a world environment summit (Stockholm) did not take place until 1972, that it took years to establish the Brundtland Commission and decades to mobilize the nations of the world to tackle environmental globalization (Rio, 1992).

I have stressed similarities and differences between the discourses on social and environmental globalization. I am convinced that in both areas, hitherto segregated, the advocates of "humanizing adjustment" will have the chance of political power and enforcement only if, and as soon as, they act in common. Not only are they working towards the same goal — the integrity and the dignity of human existence — they depend on each other. The discourse on social globalization will only make progress in so far as the one on environmental globalization does, and vice versa. I would argue against those who, discouraged by the lack of progress in setting and implementing global environmental standards, might say: "Let us concentrate all our forces on the social field, where we have at least a chance". Those who take that view, I would maintain, will not even be successful in the social field.

It is hard to summarize the present "state of the art" on the handling of global risks. However, one general principle, developed mainly in the Brundtland Report [World Commission on Environment and Development, 1987] and forming the essence of the Rio Declaration and the accompanying "Agenda 21" [Umweltpolitik, 1993] — would seem paramount: that of "sustainability" or "sustainable development". This means a commitment to a concept of development of our world in which instruments are chosen and decisions taken that can be upheld in the future and which do not operate to the detriment of those who did not participate in choosing the instruments or taking the decision. In other words, the principle involves a way of development which does not consist of the externalization of risks and their transfer to subsequent generations or to other countries or regions of the world.

I would argue that only by applying this principle of sustainability can we get to grips with and, in the long run, resolve the dilemma presented here, of reconciling environmental globalization with global justice. Sustainable development has hitherto been interpreted in too
restrictive a fashion. In the Brundtland Report, it was seen as a purely environmental rather than a social principle, requiring decision-makers to take account of the limits of environmental resources. Mankind should not consume resources at the cost of future generations or of other parts of the world. The question of who consumes these limited resources, how and according to which criteria rights to consume resources are distributed among mankind, remained outside the principle's scope. In addition, sustainability has mainly been applied as a concept to the undeveloped or less developed countries rather than to developed industrialized nations. The intention has been to prevent countries in the process of industrialization from reproducing the same unsustainable development patterns as those of the industrialized world.

Neither of these restrictions is justified. They both accept the existing uneven distribution of opportunities in the world and, even if unwillingly, tend to perpetuate it. From the point of view of global justice, the principle of sustainability must be endorsed as a social principle as well as an environmental one. It therefore implies substantial social restructuring to alter the worldwide distribution of wealth and opportunities. The principle of sustainable development then clearly will have its main field of application in industrialized countries, affecting their patterns of production and consumption, their methods of development, their policies towards developing countries, and so on. Let us follow this path for a moment.

### III. Sustainable North: What would that mean?

Removing the two restrictions on the scope of the principle of sustainability, thereby reconciling it with the requirements of global justice, opens up a new perspective. We no longer merely ask which and how much of our natural resources the world can afford to consume without endangering its survival. More concretely, we rather ask which and how much of our natural resources each human being in the world, each group, each nation, each continent can afford to consume without endangering mankind's survival and without jeopardizing the equal participation of other individuals, groups, nations and continents in global wealth. To put the question like this implies far-reaching consequences. The collective survival interest is thereby imbedded in a process of redistribution of wealth and resources according to principles of global social justice.
This new environmental as well as social approach has been proposed for the first time by Friends of the Earth/Netherlands. They have developed an action plan, "Sustainable Netherlands 2010", which consists of three steps [Buitenkamp et al., 1993].

First of all, the world's natural resources are determined and measured. For each resource and toxic substance, an "environmental space" is fixed in accordance with the principle of sustainability. The environmental space shows to what extent mankind may consume the resources without contradicting the imperatives of survival.

In the second step, the environmental space is distributed among the world's population, as it will be in the year 2010. Here enters the globalized social principle of equality according to which every man and woman is entitled to the same share of the environmental space available. This principle is applied on a purely arithmetical basis: the environmental space for each resource is divided by the total world population (say, 7 billion in 2010). This figure can then be multiplied by the number of inhabitants a country is expected to have in 2010 (say 16.5 million for the Netherlands). The result indicates the share of the natural resource the Netherlands' population is entitled to consume by 2010, according to the principle of global equality. It implies, for example, a 60 per cent reduction in carbon dioxide emissions, a 40 per cent reduction in use of mains water, an 80 per cent reduction in use of non-renewable resources such as aluminium and a 60 per cent reduction of timber consumption.

The third step is an action plan to adjust, within 15 years, the "actual" consumption by the Netherlands of the respective environmental space to the one which is "due" in 2010, according to the principle of global equality.

The solution offered to our dilemma by the action plan, "Sustainable Netherlands 2010", seems voluntarist and naive. The empirical assessment of "environmental space" is much harder than the action plan suggests. Moreover, equalizing global social justice by giving everyone an equal share of every environmental space is ahistoric and over-simplistic: it neglects cultural differences in modes of life, work and consumption which are not just a result of unequal distribution.

None the less, the action plan has certain merits. It unequivocally accepts the principle of global equality. And, from this point of departure, it makes strikingly clear the extent to which we in the North live beyond this principle (according to which, to take just one example, each of us can afford one transatlantic flight every 20 years). It demonstrates the extent to which citizens of the North externalize their environmental problems and how far they are indebted to others at whose expense they benefit.
I personally see the action plan as a radicalization and moral exaggeration of a principle to which we all theoretically adhere but about the implementation of which we are somewhat cynical. "Sustainable Netherlands" for me is less important as an exact mathematic calculation than as a challenge to take equally seriously both social and environmental globalization while restructuring and further developing the One World.

IV. How to master environmental restructuring

Leaving aside the simplifications, "Sustainable Netherlands" is an urgent plea for the North to tackle environmental development with a view to its global responsibilities. Obviously, the principle of sustainability implies changes in industrialized countries' patterns of production and consumption. The North must save energy and take up less space. It must change its economic and social system from one which is founded on growth and expansion (i.e. which increasingly internalizes natural resources and externalizes social costs) to one which tends towards an equilibrium between resources consumed and results achieved and between economic benefits and global social and environmental costs.

The main strategies for making this change are currently being discussed. Some experts favour what they call an "efficiency revolution". This means a restructuring of modes of production to achieve a dual goal. It should increase national product in a way that enables less developed countries to profit equally from the gain, without a big reduction in living standards in the developed areas. It should, at the same time, radically decrease the global social and environmental costs of production. Other experts favour the so-called "sufficiency revolution". They do not believe that the North can maintain its standard of living if it obeys the principles of sustainability and global justice. They see as inevitable a reduction in damaging production in the North and the sharing of production with the poor. Their discourse therefore focuses on a critique of the North's consumption patterns and "needs" and its orientation towards the "Have" rather than "Be" [Fromm, 1983].

I believe both revolutions will be necessary in the near future. We shall not be able to content ourselves with the vision of a more equitable sharing of steadily increasing amounts of resources and products. We will, at least partly, have to take into account the need to share in a zero-sum game a given amount of resources and products. The North will thus have to accustom itself to an unprecedented type of "progress": progress
back to less consumption and use of resources, and towards an ethic of sufficiency and sharing. I believe this, not only for reasons of sustainability and global justice, but also because the dominant consuming attitudes, forms of need production and status symbols in the North, more radically analysed, may lead to the conclusion that consuming less sometimes and under certain circumstances can imply a better life.

The debate over social standards, in the ILO and outside it, has hitherto been one of progress: of concessions to be negotiated within economies that are growing and of the extension and even globalization of standards alongside the expansion and globalization of economies. Risk globalization and the need for global environmental standards pose a serious challenge to this vision of constant growth of social standards. The agenda comprises neither further (quantitative) growth of social standards (higher wages, fewer working hours, better working conditions, etc.) nor a general cut in social standards as the deregulation school suggests (there is no evidence that deregulation can cope with environmental problems). What is on the agenda, however, is a new qualitative discourse concerning the standards that are necessary for all human beings and compatible with mankind's survival, and how a just distribution of them can be achieved. This discourse presupposes publicly debated and agreed principles of justice which are not limited to economic and social globalization, but are capable of integrating environmental globalization.

I am convinced that there will be no further progress towards social globalization if it is not accompanied by and integrated with environmental globalization. The converse also applied: we shall not be able to solve the global environmental problem without a new, qualitative approach towards global social standards.

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Part 5:

Universality and flexibility in international labour standards
Labour standards across countries with different levels of development

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I. Introduction

The theme of this paper is very significant for two reasons. The first is that the paper has been written as part of the programme for the celebration of the 75th anniversary of the International Labour Organization (ILO) and, coincidentally, the 50th anniversary of the Declaration of Philadelphia in which the objectives of the ILO are set out. The Declaration represents the cornerstone of the ILO’s standard-setting activities which, in turn, have been the essential instrument of the ILO for promoting social justice. Like A Christmas Carol, the Declaration is ageless. Its message, its spiritual and material appeal and its significance all grow with and have been confirmed and strengthened by time. It has transmitted to each succeeding generation an enduring message of faith and hope in the eventual emergence of a transformed world community out of the acceptance of the message which it carries.

The second reason relates to the title of this paper: “Labour standards across countries with different levels of development”, which is at the very root of the fundamental principles on which the ILO is based. These include the principle that “poverty anywhere constitutes a danger to prosperity everywhere” and the affirmation that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. Another requirement is that there should be effective national and international action “to promote the economic and social advancement of the less developed regions of the world”. Furthermore, article 19(3) of
the ILO Constitution, which dates from 1919, provides that, in framing any Convention and Recommendation of general application, due regard should be given to the problems confronting those countries in which “climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and [the Conference] shall suggest the modifications, if any, which it considers may be required to meet the case of such countries”.

These principles show that economic difficulties constitute a primary barrier to the implementation of ILO standards, that there was an awareness of this barrier by the founding fathers, and that much thought has gone into the search for practical solutions to the problems raised. Yet the barriers to implementation are greater today than they were about two decades ago. This is partly because the gap between developed and less developed countries has widened and partly because the less developed countries now play a much more active role in international life. If it is accepted that international labour standards are aimed at levelling social disparities, both inside a member State and between member States, the trend could constitute a serious threat to the pursuit of this aim.

II. Economic and social policy:
Complementary development objectives

At this stage, it is important to recall two relevant provisions of the ILO Constitution. One provides that it is one of the main objectives of the ILO to “promote the economic and social advancement of the less developed regions of the world”. The other affirms that the manner of the application of the principles set forth in the Declaration “must be determined with due regard to the stage of social and economic development reached by each people”.

The objectives set by ILO standards in the field of labour and social policy supplement those in other fields so that economic progress will be accompanied by social advance. This principle implies a broad view of the development process, i.e. an awareness that economic and social development are complementary and that glaring inequalities should be removed. Just as economic growth is the key to social progress, so the redistribution of income can promote not only political stability but economic growth itself.
The universal acceptance of the above principle was slow in coming — it arrived by "camel" post. In this connection, it will be helpful to refer to two famous statements. The first is that of John Kenneth Galbraith who had this to say about the purpose of economic development: "One of the generally amiable idiosyncrasies of man is his ability to expend a great deal of effort without much inquiry as to the end result". This could be translated to mean strong advice to nations always to look for the essence of development and not to see it as the faithful imitation of some developed nations. The second is that of President Franklin Roosevelt of the United States. In his address to the Conference of the International Labour Organization in New York in 1941, he said: "Economic policy can no longer be an end in itself; it is only a means of achieving social objectives". The doctrine became the heart of the Declaration of Philadelphia which says the principle "must constitute the central aim of national and international policy; [and that] all national and international policies and measures, 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".

For the ILO, the doctrine was not new, but it gained universal acceptance only in 1970, when the International Development Strategy for the Second United Nations Development Decade was unanimously adopted by the General Assembly. The Strategy put to rest, on the international plane, the opposition of "economic" and "social" objectives in relation to development. It is now possible to say, without much fear of contradiction, that to discuss and decide economic issues without regard to social objectives is to lose all sense of purpose, and to discuss and decide social objectives without regard to economic conditions and constraints is to lose all contact with reality.

The Strategy recognizes that the "ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all. If undue privileges, extremes of wealth and social injustices persist, then development fails in its essential purpose". The Strategy has brought out in bolder relief the ultimate purpose of development. It is that, in order to provide all with increased opportunities for a better life, it is essential, inter alia, to raise substantially the level of employment, create a more equitable distribution of income and wealth for promoting social justice and efficiency in production, achieve a greater degree of income security, and bring about the qualitative and structural changes in society that must go hand in hand with economic growth.
This shift in emphasis on the role of social purpose in economic development has further strengthened the hand of the ILO in its principal task of standard-setting. It confirms the ILO’s thesis that social progress is not a barrier to economic development or a luxury which only the more prosperous countries enjoying relative stability and mature political systems can afford. Rather, social progress is the whole purpose of economic development and a vital element in the development process itself, without which both economic growth and political stability are in jeopardy.

III. Flexibility in international standards

While ensuring as far as possible that the social purpose of development is not overlooked, the ILO must not lose sight of the economic constraints which limit what can be effectively achieved at any given time or within any given period. It must also accept the possibility that there may be conflicts of social objectives which present difficult dilemmas and raise important questions of political judgment.

It is in such circumstances that the situation of “countries with different levels of development” should be taken into account. For is it not in developing countries that balancing the short-term and long-term advantages of alternative courses of action presents the most agonizing dilemmas? Is it not in developing countries that these dilemmas have now been compounded by the current world recession and political, tribal, religious and ethnic crises in different parts of the world? These crises could also create agonizing dilemmas for the ILO. They are equally capable of undermining the planning and execution of its programmes of technical cooperation. One of the strengths of the ILO is its commitment to universality and its ability to maintain a generally acceptable balance between conflicting claims. Therefore, it needs to ensure that it is not diverted from the course established by its mandate by prevalent influential thought and regional interest.

The problems associated with international labour standards as well as the search for practical solutions under circumstances of wide international disparity of productivity, income and development are many and challenging. They include: flexibility (legal and economic); the concept of economic development; premature ratifications; cost of implementation; the choice between global and regional standards; lessons from Conventions applicable to non-metropolitan territories; technical assistance (type and timing); the role and effectiveness of ILO operational
activities; administrative difficulties (insufficient development of governmental administration) and their remedies; the need for greater clarity in drafting policy and procedural documents, and their dissemination and discussion; political difficulties (particularly bringing the legislature closer to ILO operations); tackling non-compliance and the remedies available; ratifications which raise unforeseen technical or basic difficulties; the difficulties encountered by federal States; and implementation through collective agreements.

In the light of the opinions expressed over the years in different fora, there appears to be a general consensus that ILO standard-setting should continue on a universal basis. Differences in national conditions and levels of development should be taken into account by the inclusion of appropriate flexibility devices — though basic human rights Conventions (some would add Conventions on safety, health and welfare) should be exempted. Flexibility devices include: the possibility of ratifying Conventions in parts; the acceptance of alternative parts containing more or less strict requirements; limitations on scope; "escalator" clauses permitting the gradual raising of the level of protection or the extension of the scope of protection; temporary exceptions; and flexibility in the methods of application. In addition, use is also made of promotional Conventions which define the objectives to be attained with relative precision but which leave a great deal of freedom to the ratifying States to decide the means of achieving those objectives.

The list of flexibility clauses is not closed and may never be closed as long as they are not prohibited. In the meantime, while representatives of member States in developing countries continue to complain of insufficient flexibility in standards, others have sounded a note of caution. They point out that only limited use has been made of flexibility clauses because they depend on the subject matter of the Convention. Other reasons include inadequate knowledge, information, advice and guidance to member States and Conference delegations. There is also a need to clarify the concept and purpose of flexibility which might otherwise endanger the principle of universality and lead to the "natural" limits of flexibility being exceeded. A good case can be made out for Conventions on occupational safety and health and also on the environment to be exempted from flexibility clauses so as to be of universal application. In addition, the use of flexibility clauses should not lead to the erosion of acquired rights and practices. On the other hand, it should be possible to make greater use of flexibility clauses after ratification. For instance, some Conventions of general application include the clause "subject to such modification as may be necessary to adapt the Convention to local conditions", which is contained in Article 35 of the ILO Constitution.
Other problems associated with wide international disparities in development can be broadly classified as legal, economic, administrative and political. The classification is not watertight and permits a good measure of overlapping. One such problem is premature ratification — a decision by some countries to accept standards for which there is little or no basis in their national laws and practice and which they are not in a position, economically, to implement. Although premature ratifications may lead, in the long run, to the adoption of implementing legislation, nevertheless they create difficulties. Premature ratifications have been variously described as “declarations of sympathy” with the principles embodied in a Convention, “window-dressing” ratifications, “platonic” ratifications and “bare” ratifications. They have an adverse effect not only on the good name of the countries concerned but also on the reputation of the whole system of ILO standards. No ratification at all may be better than a ratification which remains ineffective. The Committee of Experts on the Application of Conventions and Recommendations in its Report (1931) alluded to premature ratifications as follows: “An adhesion which is not followed by concrete application is an ineffectual gesture, the only result of which is to perpetuate an illusion”.

In his Report to the 1958 Session of the International Labour Conference, the ILO Director-General emphasized that “good labour administration is the heart of social policy”. In 1962, the Secretary-General of the United Nations in his report to the Economic and Social Council also referred to this aspect: “The existence of an efficient administration is the indispensable mainstay of any international action, whether undertaken pursuant to a Convention or Recommendation, through the giving of advice, or in any other way”. In these days of reported falling standards, particularly in many developing countries, administrative shortcomings can make enforcement of new labour laws a practical impossibility. It would not be hard to find countries where legislation in force is not published for a long time after enactment or, when published, is available in limited quantities, sometimes only to the administering authorities. It would be appropriate to take up the 1958 Conference Resolution Concerning Publication of Labour Laws and make it the topic of a seminar in, for example, the African region. Good administration constitutes an indispensable condition for ensuring observance of ratified Conventions.

Another important problem relates to the integrative approach to development. To tackle economic difficulties and social evils together involves many political, financial and other decisions. To enforce these decisions requires a level of structural stability which many developing countries cannot claim to have reached. As governments are confronted
with the necessity of planning ahead, of allocating resources, and of catering to opposing interests, the obstacles and possible solutions may come more sharply into focus.

On the political front, governments often claim that they cannot obtain parliamentary support for the law and practice of the State to be brought into line with the articles of the Convention which the government recommends for ratification.

The immediate and long-term solution to this problem should include, first, an effective programme by the executive designed to inform and educate the legislature about decisions of the International Labour Conference, including criticisms by the supervisory bodies of the application of ratified Conventions, and, second, the occasional inclusion of members of the legislature in Conference delegations.

**IV. Development-dependent ILO standards**

The earlier part of this paper referred to the ILO's broad concept of development. It is worth restating a few of the main points by way of an introduction to this part of the paper that will seek to identify ILO standards which are really development-dependent. The first is that social progress is not a barrier to economic development or a luxury which only the more prosperous countries enjoying relative stability and mature political systems can afford. Rather, social progress is the whole purpose of economic development and a vital element in the development process itself, without which both economic growth and political stability will be in jeopardy. The second is that the objectives of ILO standards relating to labour and social policy supplement those in other fields so that economic progress will be accompanied by advances in the social sphere. The third is that the shift in focus of the International Development Strategy for the Second United Nations Development Decade, enhancing the role of social purpose in economic development, further strengthens the ILO's hand in standard-setting. The fourth is the existence of a consensus that economic and social issues are complementary and have to be discussed and decided together.

Unfortunately, there still exists a tendency to give economic development precedence over social considerations. It is therefore the function of international labour standards, which have been the ILO's essential instrument for promoting social justice, to encourage balanced economic and social progress and contribute a note of economic realism.
to international actions for social development. A number of examples of ILO action in this field can be cited.

A good starting point is the use of forced labour for economic development. The relevant standard is the Forced Labour Convention, No. 29 (1930), which was directed at the suppression of all forms of forced labour practised in colonial territories. This was followed by the Abolition of Forced Labour Convention, No. 105 (1957), whose aim is the prohibition of forced or compulsory labour in any form, notably as a means of political coercion, as a method of mobilizing and using labour for economic development, as a means of labour discipline, as a punishment for having participated in strikes, and as a means of racial, social, national or religious discrimination. Faced with large-scale unemployment, some governments resorted to measures which contravened these Conventions. With the assistance of ILO supervisory bodies, solutions were found such as development of an employment policy.

The growth of various forms of national youth service organization is another case in point. Governments often argued that they constituted temporary or exceptional measures to achieve faster initial development. While showing understanding for this argument, the ILO nevertheless emphasized the risk of abuse of such schemes. It also warned of other adverse effects, including the danger that the schemes would gradually lose their transitory and exceptional character and also the fact, borne out by experience, that compulsory schemes can prove more costly and less efficient than voluntary schemes. The happy ending was the adoption in 1970 of Recommendation No. 136 concerning Special Youth Employment and Training Schemes for Development Purposes. The Recommendation applies to special schemes (which are defined) designed to enable young persons to take part in activities directed to the economic and social development of their country, and to acquire education, skills and experience facilitating their subsequent economic activity on a lasting basis and promoting their participation in society.

Another good example is the Social Policy (Basic Aims and Standards) Convention, No. 117 (1962), which developed from the Social Policy (Non-Metropolitan Territories) Convention, No. 82 (1947). The general principles laid down in the Convention are that all policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress; and that all policies of more general application shall be formulated with due regard to their effect upon the well-being of the population.

A further example is the Social Security (Minimum Standards) Convention, No. 102 (1952). The aim of the standard is to establish with the requisite flexibility, given the wide variety of conditions obtaining in
different countries, minimum standards for benefits in the main branches of social security. It covers all important risks and benefits of potentially universal application. Out of the nine main branches of social security, a State is obliged to accept three, at least, to ratify the instrument. The Convention also authorizes certain exceptions for States “whose economy and medical facilities are insufficiently developed”.

To complete these examples, mention must be made of continuing studies of multinational enterprises and social policy and the related document, the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, as well as a number of other studies being carried out on the social problems of economic and technological development.

At this point, it may be possible to attempt an answer to the question — which standards are really development-dependent? Since the ILO’s standard-setting activities stem from the very essence of its structure, objectives, principles and ambitions, one could argue that all ILO standards are in principle development-dependent. In practice, some are more development-dependent than others, according to the subject-matter of the instrument and the part of the world to which it is directed. In fact, the balanced development of the less developed regions of the world is mentioned in the ILO Constitution as one of the Organization’s main objectives.

Using the existing revised classification of international labour Conventions and Recommendations, the standards that are really development-dependent will be found in the following groups: basic human rights; employment policy; occupational safety, health and welfare; industrial relations; social security; seafarers; dockworkers; and social policy (miscellaneous). The Social Policy (Basic Aims and Standards) Convention, No. 117 (1962), for example, which is grouped under social policy (miscellaneous) states in article 2 that “the improving of standards of living shall be regarded as the principal objective in the planning of economic development”.

V. Universality versus regionalism

As a global and specialized agency of the United Nations, one of the problems faced by the ILO is how to formulate and maintain the correct and generally acceptable level of international labour standards. This raises the wider issue of the principle of universalism or universality of standards versus that of regionalism.
It is necessary to start by disposing of the concept of regionalism. The African Advisory Committee of the ILO, at its meeting in 1972 at which the possibility of standards being drawn up on a regional basis was raised, gave a devastating response to the proposal in the following well-known statement: "Any attempt to adopt Standards on a regional basis would be a backward step and would produce anomalies and tensions between different regions". It then concluded, "sub-standards for sub-humans have no place in the ILO".

There is now a general consensus that ILO standards should continue to be drawn up on a universal basis and that differences in national conditions and levels of development should be taken into consideration by the inclusion of appropriate flexibility devices as provided by the ILO Constitution. But the problem is how to attain this laudable objective:

(a) the standards must be drawn up on a universal basis;

(b) they should be conceived so as to respond to the needs of all member States;

(c) they should be framed, as provided by the Constitution, with due regard to differences in the levels and conditions of development;

(d) the flexibility devices for incorporation into Conventions should be systematically and methodically examined;

(e) there should be effective participation, on an equal footing, of the greatest number of member States in the process of selecting and preparing the standards;

(f) the standards should be economically viable and capable of adaptation in an appropriate manner and time to perceived or changed working conditions;

(g) they should be a means of promoting balanced development, a source of inspiration to social policies, and an indicator of the direction in which social progress should move;

(h) they should present a picture not of a haphazard collection of ideas but of a document whose objectives were set globally by common agreement.

One of the factors mentioned above, namely wide participation of member States in preparing standards, involves other considerations, including:
(a) the financing by the ILO of Conference delegations from the least developed countries;

(b) assistance to member States at the stages of formulation and implementation of standards;

(c) the possibility of having fewer items on the conference agenda each year in order to facilitate wider participation;

(d) more information and guidance to member States on flexibility clauses to enable them to make more use of the clauses;

(e) slowing down the pace of standard-setting to increase the participation of member States;

(f) avoidance of minimalist Conventions which would not provide stimulus to social progress and would therefore adversely affect participation;

(g) greater attention to evaluating the economic implications of standards;

(h) more use of general discussion subjects because of their educational value and also because they help member States in establishing areas of interest and difficulties;

(i) since it is becoming increasingly difficult for member States to come to the ILO, the ILO should go to them with its field structure role suitably expanded to secure more direct contact, wider coverage and generally more effective results;

(j) with the growth of regional and sub-regional groupings, more effort should be made to facilitate the integration of all constituents in a region in the process of standard-setting;

(k) at the national level, governments should develop suitable machinery and procedures to regularly undertake effective tripartite consultation in matters connected with ILO standards.

While all these considerations will, no doubt, prove useful in improving the formulation and application of standards, the cost of implementing most of them will increase the already heavy burden of labour ministries and other labour administration agencies which, in developing countries, are poorly funded and staffed. If this happens, the existing standard-setting system may be thrown into disarray.

In spite of the obstacles, the case for universality of standards is strong:
(a) one of the articles of the Declaration of Philadelphia states that "the Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere..."

(b) member States only gradually reach the position where they are able to assume the full obligations of a Convention. The legitimate expression of member States in favour of the adoption of Conventions may represent a desirable objective for the world community or as a goal for the further development of their national social policy and legislation;

(c) standards are of value to many countries as a model on which to base their labour legislation after being suitably adapted to national circumstances;

(d) ratification gives labour laws a degree of stability that is not necessarily conferred by purely national legislation. This is because backsliding or repeal is much more difficult than if no international Convention existed;

(e) while regional standards can be useful to focus attention on significant problems of a regional nature, it is difficult to see how they can replace universal standards or coexist with them without overlapping and compounding the problems of disparity and, ipso facto, increasing the adverse social effects of international competition. This kind of approach will seriously erode the credibility of one of the arms of the Preamble to the Constitution of the ILO which states 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". To the extent that standards are capable of harmonizing social policy, they would help to reduce the opportunities for unfair competition, improve international trade and facilitate social integration;

(f) it is important to reckon with the saying panta rei — everything is in constant flux. Life itself involves a continuous adaptation to a changing environment.

VI. Conclusion

The development of a system of labour standards is the principal purpose behind the creation of the International Labour Organization. At the same time, the ILO's standard-setting activities stem from the very
essence of the Organization, its structure, its aims and its ambitions, namely, the promotion of social justice under conditions capable of checking the consequences of unfair competition between nations.

For the ILO, therefore, standard-setting remains the tested and trusted means of achieving its objectives of economic progress and social justice and of exerting a growing influence in the international community. It has prepared itself for this role and this responsibility: it always moves in the direction of covering the field; because of its unique tripartite structure, it is nourished on facts and stimulated by comment; it operates with confidence based on knowledge and the considerable experience which it has acquired over the years, enabling it, for example, to make a rigid Convention less rigid without emptying it of its social content. Oscar Wilde once observed that experience is the name which is usually given to mistakes, but experience is a great teacher.

One of the great achievements of the ILO in the field of standard-setting is to establish the inevitability of universality in spite of the wide international disparity in levels of development between member States. A new motto has been born or is being nurtured for the year 2000, viz:

Unity and universality in spite of disparity.
By-passing the rules: The dialectics of labour standards and informalization in less developed countries

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Abstract

Focusing on the characteristics of activities taking place outside the pale of state regulation, I address first some aspects of the relationship between labour standards, the informal economy and national development. The analysis indicates reasons why attempts to impose advanced labour legislation in labour-surplus economies often end up by having perverse effects. Second, I explore the relationship between labour standards and the economic strategies of less developed countries as they have shifted from import-substitution to export-oriented industrialization. The character and functions of the informal sector have shifted between both periods as countries have increasingly removed those labour protections that created a formal sector during the earlier import-substitution industrialization period. Third, I present some proposals for an alternative labour regime and compare it with the existing policy alternatives.

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1 I acknowledge the assistance of Patricia Landolt and Dag McLeod in the preparation of this chapter.
I. The debate over international labour standards

Too often debates over labour standards are posed in terms of irreconcilable trade-offs. Different experts on international development argue that improving the quality of jobs undermines their quantity; that the collective right to national development requires the suppression of individual rights; and that international labour standards subvert national political sovereignty [Lim, 1990; Deyo, 1987; 1989; Kochan & Nordlund, 1988]. The incompatibility of these positions is further aggravated by the relative emphasis that different authors place on economics versus politics. Opponents of labour standards tend to speak of the economic benefits of efficiently allocating resources, while ignoring the unique attributes of the "resource" labour. At the same time, proponents of labour standards often speak of the need for political bargaining and social contracts without taking into account the very real benefits that rapid growth may confer upon developing nations.

Despite the controversy surrounding international labour standards, the trend towards increasing international regulation of workers' rights is undeniable. Since the mid-1980s, the United States Congress has enacted four different laws that make access to the United States market contingent upon respect for "internationally recognized worker rights" (see Table 1). At the same time that the United States has unilaterally imposed labour standards upon countries with which it trades, it has also sought to introduce the issue of international labour rights into multilateral trade agreements. In the European Union, workers' rights were taken up in the Community Charter of the Fundamental Rights of Workers in 1989. Although the form of these provisions may vary widely, they are all guided by the same underlying premise: poor working conditions in one country will adversely affect the working conditions and competitiveness of others.

The notion that sub-standard labour conditions spill over from one country to the next is hardly new. This belief is clearly spelled out in the Preamble to the ILO Constitution of 1919 which states 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" [cited in Servais, 1989, p. 424]. And yet, until recently, the evolution of the international system has belied this seemingly commonsense idea. Historically, the sectoral isolation of labour in less developed countries, combined with extensive protection in developed markets, prevented the plight of Third World workers from exercising
any influence upon the improving labour standards in the industrialized world.

Table 1: Worker rights provisions in United States Trade Law

1. Generalized System of Preferences
   A 1984 amendment to the GSP made receipt of preferential trade status contingent upon whether or not the developing country has taken or is "taking steps to afford internationally recognized worker rights to workers in the country".

2. Caribbean Basin Initiative
   The original legislation of 1983 contained a minor reference to labour rights. A 1990 amendment raised worker protections to the same level as the GSP, placing them under the mandatory conditions with which recipient countries must comply.

3. Overseas Private Investment Corporation
   A 1985 Amendment to OPIC prohibited the financing or insuring of any country that is not "taking steps to adopt and to implement laws that extend internationally recognized worker rights".

4. Section 301 of the Trade Act of 1974
   Amended by the Omnibus Trade and Competitiveness Act of 1988 in which the definition of an "unreasonable" act, policy or practice was expanded to include "a persistent pattern of conduct" that violated basic worker rights.

Source: Lawyers Committee for Human Rights [1991].

Intense competition due to the increasing integration of the global economy has begun to change this situation. The phenomenal growth of the East Asian newly-industrialized countries (NICs) and the collapse of the import-substitution industrialization (ISi) model of development has transformed traditional patterns of trade. Less developed countries no longer export just raw materials while manufacturing exclusively for the domestic market behind high tariff barriers. Instead, a great many workers in the Third World now produce goods that compete directly with those formerly manufactured only in advanced economies. Data illustrating the increase in less developed country imports in the United States is presented in Table 2. In many leading-edge industries, Third World workers have productivity levels that are equal to or greater than that of their counterparts in the industrialized countries [Shaiken, 1990]. As firms in the developed world begin to compete with goods produced by low-paid and easily-replaced hands, they are frequently forced either to drive down wages or exit in search of a cheaper labour force elsewhere [Sassen-Koob, 1984; Walton, 1985; Fernandez-Kelly & Garcia, 1988]. In the present phase of the international division of labour, the denial of
workers' rights in the Third World may well adversely affect the working conditions and competitiveness of labour in the advanced societies.

Table 2: Increase in United States manufactured imports by country and region of origin, 1980-88

<table>
<thead>
<tr>
<th>Place of origin</th>
<th>Per cent increase 1980-88</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total world</td>
<td>170</td>
</tr>
<tr>
<td>Developed world</td>
<td>143</td>
</tr>
<tr>
<td>Japan</td>
<td>184</td>
</tr>
<tr>
<td>EEC</td>
<td>134</td>
</tr>
<tr>
<td>Developing world</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>296</td>
</tr>
<tr>
<td>Brazil</td>
<td>338</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>116</td>
</tr>
<tr>
<td>Korea</td>
<td>386</td>
</tr>
<tr>
<td>Singapore</td>
<td>342</td>
</tr>
<tr>
<td>Taiwan</td>
<td>262</td>
</tr>
<tr>
<td>China</td>
<td>915</td>
</tr>
<tr>
<td>Asian NICs</td>
<td>259</td>
</tr>
</tbody>
</table>

Source: Mead [1990, Table 3].

This new economic reality, in which the rapid internationalization of capital erodes the bargaining power not simply of workers but also of national governments, has elicited two opposing views. Neo-classical economists have argued that interfering with the free play of market forces through the imposition of labour standards undercuts the possibilities for Third World development since an abundant and unprotected labour supply is their only comparative advantage [Fields & Wan, 1986; Lim, 1990]. According to this perspective, in the long run the unhindered play of market forces will stabilize into a global economic regime in which nations trade freely and fairly based on their respective comparative advantages. The reply of neo-institutionalists has been that unrestricted global competition leads to a downward spiral of wages and working conditions. In this scenario, workers, employers and governments all lose; increased worker discontent leads to political instability both in the Third World and in advanced countries, while declining wages generate an international chain reaction of market contraction and under-consumption [Kochan & Nordlund, 1988; Castells & Portes, 1989].

Predictably, this debate pits employers against workers within countries. Less predictably, it has also placed developed countries in the
unaccustomed position of favouring regulation of the international economy while developing nations — long champions of greater trade controls — embrace the doctrine of *laissez-faire* and free market allocation. Yet, both proponents and opponents of international labour standards tend to assume that the diffusion of regulations from advanced nations to the Third World will have the effect of homogeneously upgrading and stabilizing working conditions. Indeed, many advocates sincerely believe that the implementation of legislation to facilitate trade union organizing, enforce a minimum wage and maintain protections in the workplace will predictably lead to constraining employers' practices everywhere in the same manner.

The empirical evidence tells a different story. It questions current assumptions about the consequences of enactment of "advanced" labour standards in less developed economies. Focusing on the characteristics of activities taking place outside the pale of state regulation in the Third World, I address first some aspects of the relationship between labour standards, the informal economy and national development. Second, I explore the relationship between international labour standards and the economic strategies of Third World countries. Finally, I present some proposals for an alternative international labour regime and discuss its viability.

**II. Labour standards in the Third World**

Many Third World nations already have labour legislations which, on paper at least, have little reason to envy those of the most advanced countries. Issues of job security, accident protection, unemployment insurance, old-age pensions, rights to unionization and grievance procedures are meticulously legislated in many Third World codes. In part, these standards reflect years of working-class mobilization and struggle. However, they are also the product of ideas, values and practices diffused from the industrialized world. This diffusion has led to a profound disjuncture in the condition of Third World workers. Imported labour standards have had significant consequences in economic and social reality, but they are generally not those that were originally intended.

The fundamental weakness in the application of protective legislation in Third World nations is the existence of a large mass of surplus labour. In this context, firms face the dilemma of observing regulations and thus being saddled with costly and inflexible labour arrangements, or trying to by-pass them. Competitive pressures generally lead firms to settle for
a combination of both types of practices [Benería, 1989; Bromley, 1978]. In labour-surplus economies, the introduction of extensive labour regulations leads inevitably to the rise of an informal sector. Although commonly characterized as a set of “survival” strategies by the very poor, the informal sector in Third World countries is far more complex and includes as well the strategies of modern firms to cope with State-imposed constraints.

A symbiotic relationship thus emerges between the employment needs of vast sectors of the population and the need of firms to meet competitive pressures by avoiding imported and frequently unrealistic rules. The specific relationship between informal and formal production processes is determined by the scope of State regulations, the requirements of modern firms and the characteristics of the labour force. In general, enterprises in less developed countries make use of unprotected labour through a complex set of arrangements which include direct hiring of informal subcontractors and suppliers, the use of intermediaries and the practice of hiring “temporaries” on a casual basis [Benería & Roldan, 1987; Birkbeck, 1979; Davies, 1979].

Although well-concealed from public view and, most certainly, from the record-keeping mechanisms of the State, informal labour practices by formal firms have represented a key factor increasing their flexibility and allowing them to overcome the constraints of detailed regulations [Portes & Walton, 1981]. The main outcome of this process is the segmentation of the working class into a relatively high-paid and protected minority and a mass of unprotected workers occupied in manifold informal arrangements. This situation appears to some as a sign of the continued existence of a dualistic economy segmented between those “in” and those “out” of the modern sector [Tokman, 1982; PREALC, 1981].

In reality, the underutilization of labour by the modern sector is, in many cases, more apparent than real. The recent empirical literature documents a number of instances in which the “problem” is not the absorptive capacity of modern industry but, rather, the ways in which it utilizes labour in order to by-pass existing State rules. A dense network of formal-informal productive relations is characteristic of Third World economies with extensive regulations and suggests, in turn, the futility of attempting to equalize labour market conditions in the advanced and less developed worlds on the basis of additional legislation.
III. The informal economy under import-substitution and export-oriented models of development

The consolidation of labour practices including the resistance of modern-sector firms to hire highly protected workers, and the existence of multiple alternative labour arrangements, helps explain the Latin American anomaly that the informal sector has persisted and even thrived during periods of rapid industrial growth. Both neo-classical and Marxist theorists have predicted the inevitable demise of “marginal” economic activities with sustained industrialization. However, evidence from the period of rapid industrial growth in Latin America from 1950 to 1980 indicates that the informal sector actually thrived in many instances in the context of dynamic industrial development. Table 3 summarizes the relevant empirical data for the seven largest Latin American countries during this period. The pattern is unmistakable. Latin American economies expanded by a weighted average of 5.5 per cent and the regional gross national product (GNP) quadrupled. Manufacturing was clearly the most important element of this phase of growth, registering an unweighted average annual increase of 6 per cent between 1950 and 1975.

Unlike turn-of-the-century industrialization in the United States, the growth of manufacturing in Latin America was accompanied by a sustained increase in the number of urban workers excluded from formal protected employment. Industrial self-employment alone, which is assumed to disappear as modern firms drive artisanal production out of existence, remained a stable proportion of the labour force. The self-employed continued to represent approximately one-fifth of manufacturing workers with their absolute number growing by 1.8 million. According to estimates by the ILO’s Regional Employment Programme for Latin America and the Caribbean (PREALC), informal employment declined only four percentage points, from 46 to 42 per cent of the economically active population (EAP) of the region during this 30-year period [PREALC, 1982]. Other figures, based on exclusion of workers from social security coverage, put the 1980 figure at more than 50 per cent of the Latin American EAP [Portes, 1985].

The informal economy that grew in tandem with import-substitution industrialization in Latin America was not homogeneous, but featured distinct types of activities. In terms of their functions, at least three types of informal “sectors” could be distinguished. First, there was an informality of “survival”, most visible and best publicized, whose sole function was the physical reproduction of those involved. Invented self-employment at the margins of the urban economy such as begging, shoe
Table 3: Latin America: Segmentation of the economically active population (EAP), 1950-80

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>GNP&lt;sup&gt;(a)&lt;/sup&gt;</th>
<th>Informal workers</th>
<th>Informal workers</th>
<th>Self-employed</th>
<th>Per cent of total EAP&lt;sup&gt;(b)&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>1950</td>
<td>12.9</td>
<td>21.1</td>
<td>22.8</td>
<td>7.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>31.3</td>
<td>23.0</td>
<td>25.7</td>
<td>16.7</td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>1950</td>
<td>10.0</td>
<td>27.3</td>
<td>48.3</td>
<td>28.6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>59.2</td>
<td>27.2</td>
<td>44.5</td>
<td>33.7</td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td>1950</td>
<td>3.4</td>
<td>35.1</td>
<td>31.0</td>
<td>22.4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>7.7</td>
<td>27.1</td>
<td>28.9</td>
<td>18.6</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>1950</td>
<td>2.5</td>
<td>39.0</td>
<td>48.3</td>
<td>23.4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>9.5</td>
<td>34.4</td>
<td>41.0</td>
<td>18.9</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>1950</td>
<td>10.0</td>
<td>37.4</td>
<td>56.9</td>
<td>37.4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>44.2</td>
<td>35.8</td>
<td>42.4</td>
<td>23.2</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>1950</td>
<td>2.2</td>
<td>46.9</td>
<td>56.3</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>8.3</td>
<td>40.5</td>
<td>55.8</td>
<td>40.2</td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>1950</td>
<td>2.4</td>
<td>32.1</td>
<td>38.9</td>
<td>28.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>8.3</td>
<td>20.8</td>
<td>31.5</td>
<td>31.8</td>
<td></td>
</tr>
<tr>
<td>Latin America</td>
<td>1950</td>
<td>51.8</td>
<td>30.8</td>
<td>46.5</td>
<td>27.3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>190.9</td>
<td>30.3</td>
<td>42.2</td>
<td>28.3</td>
<td></td>
</tr>
</tbody>
</table>

*Notes:*
<sup>(a)</sup> Gross national product in billions of 1970 dollars.
<sup>(b)</sup> The sum of unpaid family workers, domestic servants, and the self-employed minus professionals and technicians.
<sup>(c)</sup> When unavailable, 1970 figures have been substituted for those from 1980.

*Sources:* PREALC [1982], Wilkie & Perkal [1985].

Shining and casual street vending represent examples of these activities. Second, there was a vast sector of independent informal enterprises catering to the needs of the low-income urban population. These activities stretched all the way from the production and sale of foodstuffs to the repair and reconditioning of TV sets, other appliances and even automobiles [Roberts, 1976, 1989; Lanzetta de Pardo et al., 1989]. I have argued elsewhere that this sector played a central role in Latin American economies by lowering living costs for the urban working class and facilitating access to consumption of modern items that otherwise would be outside its reach [Portes & Walton, 1981]. Indirect benefits in terms of lower formal sector wages and greater political stability trickled up to the owners and managers of large formal firms.
Third, there was a sector of informal enterprises subordinate to formal firms through various subcontracting arrangements which helped supply the high-income market. For example, informal collectors of recyclable wastes such as paper, glass and plastics formed part of integrated supply chains which furnished a significant proportion of raw materials to industrial concerns producing goods for the middle class [Birkbeck, 1979; Fortuna & Prates, 1989]. The same was true of a vast underground network of homeworkers and shanty-town sweat-shops producing everything from clothing to auto parts in subcontracting chains controlled by the larger firms [Benería & Roldan, 1987; Roberts, 1989; Lomnitz, 1977, 1988]. Although best concealed from public view, this sector played a central role during the period of import-substitution industrialization. As seen above, these subcontracting chains benefited directly the large formal producers by increasing their labour flexibility and lowering their costs.

The rapid shift towards a different model of development during the 1980s led to significant transformations both in the character of the informal economy and in its functions. Under strong pressure from international finance agencies, Latin American countries vied with each other to lower tariff barriers, privatize state enterprises and encourage exports. Seeking new forms of insertion into the world market, governments worked to improve productivity and efficiency in the most internationally competitive industries while liberalizing tax and labour rules to attract foreign capital. The latter set of policies had immediate consequences for the character of the domestic informal economy.

Under export-oriented industrialization, all three forms of informality described above have persisted, but the third (subcontracted production) has experienced a significant change. Now homeworkers and informal sweat-shops under subcontracting arrangements produce not only for the domestic market but, increasingly, for export. Recent studies document a number of instances of this remarkable “internationalization” of the Latin American informal sector. In Guatemala, for example, Perez-Sainz [1993] has described how indigenous garment producers in the villages surrounding the capital city have been transformed into contractors for various California firms which advance them raw material and capital for the acquisition of sewing machines. In one shop after another in these Cakchiquel Mayan villages, women sew shirts and blouses for the California market receiving, in return, a very low piece rate without any social security protection.

Similarly, in his study of the Jamaican canned fruit export industry, Robotham [1992] traces a chain of casual subcontracting linking the larger firms with small informal packers and fruit collectors. The end result is
a product competitive because of lower price, not necessarily quality, in international markets. The drive towards increasing exports has led state enforcement agencies to turn a blind eye to systematic violations of existing labour codes by exporting firms [Walton, 1985; Fortuna & Prates, 1989]. This practice may be called “piecemeal” informalization in so far as it does not entail the blanket removal of workers’ protections from the existing labour code, but a pattern of selective omissions. In countries like Chile, however, these violations are frequent enough to account for the proliferation of informal enterprises and for their employment of a large share of the urban labour force. As a recent analyst noted:

There are plenty of “formal” companies, operating as legal entities and paying taxes, which still operate with “informal” labour relations. They employ workers without legal contract, a widely prevailing practice in small and medium firms. This is particularly easy to do in Chile because labour legislation imposed in 1979 (and minimally modified in 1991) permits it, and the State plays a weak role in the regulation of labour markets [Diaz, 1993, p. 13].

A still more important strategy adopted by Latin American governments is the creation of Special Production Zones (SPZs) to attract foreign firms interested in the production of certain goods for export to developed markets. What is “special” about these zones is the removal of taxation and labour controls applicable to the rest of the national economy. Thus, instead of seeking greater flexibility in the piecemeal violation of existing rules, foreign firms secure it wholesale under the SPZ regime. National States “informalize” themselves vis-à-vis their own laws in their quest for even more foreign investment. The end result of this process is not a larger informal sector as under the piecemeal violation strategy, but the breakdown of the formal-informal distinction. When the State ceases to protect workers and regulate key aspects of the labour contract, employment in all firms approaches the conditions previously labelled “informal” [Castells & Portes, 1989].

The Dominican Republic offers a good example of this situation. Through the active promotion of SPZs in the 1980s, the Dominican Republic managed to attract more than 400 assembly plants employing over 110,000 workers [Schoepfle & Perez-Lopez, 1989; Itzigsohn, 1993]. By the early 1990s, manufacturing for export comprised 43 per cent of total industrial employment, up from just 5 per cent in 1974. Yet, the massive increase in export industrial production and employment was not accompanied by any significant improvement in the condition of the labour force. Instead, wages declined steadily, forcing the entry of other family workers, primarily women, into the labour force.
As seen in Table 4, wages in the manufacturing sector declined by 50 per cent between 1977 and 1991. The same decline occurred in the export-oriented sector and in public employment. Meanwhile, self-employment increased by approximately 20 per cent. Indeed, social security protections in formal sector industries became so weak under the new model of development that many workers preferred to remain as self-employed artisans and informal shop owners rather than seek jobs in the burgeoning SPZ sector [Lozano, 1994; Itzigsohn, 1993].

Table 4: Evolution of the urban labour market in the Dominican Republic, 1977-1991

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour force participation (%)</td>
<td>33</td>
<td>33.3</td>
<td>34.5</td>
<td>35.3</td>
<td>35.0</td>
<td>39.1</td>
<td>40.0</td>
<td>41.9</td>
</tr>
<tr>
<td>Urban EAP (%)</td>
<td>56</td>
<td>58.8</td>
<td>59.2</td>
<td>60.7</td>
<td>63.8</td>
<td>64.6</td>
<td>65.0</td>
<td>64.2</td>
</tr>
<tr>
<td>Manufacturing wages</td>
<td>149</td>
<td>142</td>
<td>129.4</td>
<td>128.4</td>
<td>92.1</td>
<td>99.1</td>
<td>87.6</td>
<td>75.6</td>
</tr>
<tr>
<td>Export zone wages</td>
<td>161</td>
<td>155</td>
<td>123.2</td>
<td>159</td>
<td>74.0</td>
<td>80.8</td>
<td>88.5</td>
<td>84.8</td>
</tr>
<tr>
<td>Public sector wages</td>
<td>57</td>
<td>83.7</td>
<td>85.1</td>
<td>74</td>
<td>72.3</td>
<td>68.0</td>
<td>54.1</td>
<td>41.7</td>
</tr>
<tr>
<td>Self-employment (%)</td>
<td>20</td>
<td>16.2</td>
<td>18.5</td>
<td>17.6</td>
<td></td>
<td></td>
<td></td>
<td>25.2</td>
</tr>
<tr>
<td>Unremunerated family workers (%)</td>
<td>1.8</td>
<td>1.6</td>
<td>2.4</td>
<td>2.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open unemployment (%)</td>
<td>14</td>
<td>18.6</td>
<td>20.7</td>
<td>21.7</td>
<td>25.7</td>
<td>25.6</td>
<td>25.6</td>
<td>26.8</td>
</tr>
</tbody>
</table>

Notes: National figures as a percentage of the total population. Urban economically active population as a percentage of the national EAP. In constant Dominican pesos of 1977. In the capital city. To August 1991.

Source: Portes et al. [1994, Table 7] based on Dominican census figures.

Wholesale informalization under the new export regime approaches the unrestricted labour market conditions advocated by neo-classical economists and other defenders of laissez-faire trade. So far these policies have not led to a significant reduction in poverty as a consequence of increasing labour demand in any Latin American country [Diaz, 1993; Castells & Laserna, 1989]. Instead, benefits have trickled up to corporations and governments in terms of higher profits, greater management flexibility and a less deficit-ridden balance of payments. However, those who oppose these policies will be well advised to remember the experience of Latin American countries during the period of import-substitution industrialization. Pushing for the adoption of a panoply of
imported labour standards will not guarantee their observance. More likely, such measures will lead to the re-enactment of underground labour practices by employers, encourage governments to increase the practice of piecemeal informalization and segment domestic labour markets anew. Alternative policies must be sought that take effectively into account the specific conditions of less developed labour-surplus economies.

IV. An alternative international labour regime

For those who assume that the pattern of wholesale informalization under the new export model of development will decisively tip the balance against labour rights, the question is how to pursue measures sensitive to the underlying social realities. I begin this quest by noting that the dilemma between workers’ rights and firms’ need for flexibility is a false dichotomy. In reality, the two may co-exist through a flexible and realistic application of labour standards.

The first step is to tailor workers’ rights to conform more closely to the situation that prevails in less developed countries. Not all labour rights are equally important, nor do they all exert the same influence upon the labour market. Various items that are commonly included under labour standards can be broken down into four distinct categories (see Table 5). Basic rights are the least likely to create labour market rigidities and lead to the type of labour market segmentation typical of Third World economies with elaborate labour protections. Furthermore, these are the standards where an international consensus seems already to exist and which are therefore most amenable to international monitoring.

Agreement on civic rights is less broad, yet the standards listed under this category have come to be accepted as consensual by democratic nations. In addition, the extension of civic rights can encourage the political bargaining and social pacts that many observers believe are a necessary precondition for successful national development. The two middle categories — survival and security rights — depend upon local conditions and do not lend themselves readily to fixed international standards. These rights are best left to bargaining among workers, employers and governments, once basic and civic rights have been fully implemented.

With the exception of the provision on minimum standards for wages and occupational health and safety, the categories of basic and civil rights are identical to the ILO’s five fundamental workers’ rights listed in Table 6. Even the exceptional category (item 5 in Table 6) contains a clear element of flexibility signified by the word “acceptable”. Levels of
Table 5: Types of labour standards

<table>
<thead>
<tr>
<th>Type</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Basic rights</td>
<td>Rights against use of child labour</td>
</tr>
<tr>
<td></td>
<td>Right against involuntary servitude</td>
</tr>
<tr>
<td></td>
<td>Right against physical coercion</td>
</tr>
<tr>
<td>II. Survival rights</td>
<td>Right to a living wage</td>
</tr>
<tr>
<td></td>
<td>Right to accident compensation</td>
</tr>
<tr>
<td></td>
<td>Right to a limited work week</td>
</tr>
<tr>
<td>III. Security rights</td>
<td>Right against arbitrary dismissal</td>
</tr>
<tr>
<td></td>
<td>Right to retirement compensation</td>
</tr>
<tr>
<td></td>
<td>Right to survivors’ compensation</td>
</tr>
<tr>
<td>IV. Civic rights</td>
<td>Right to free association</td>
</tr>
<tr>
<td></td>
<td>Right to collective representation</td>
</tr>
<tr>
<td></td>
<td>Right to free expression of grievances</td>
</tr>
</tbody>
</table>

Source: Portes [1990, Table 10-2].

Table 6: ILO fundamental worker rights incorporated into United States trade law

1. The right to associate with other persons, ILO Convention No. 87, Freedom of Association and Protection of the Right to Organize Convention (1948).
2. The right to organize and bargain collectively, ILO Convention No. 98, Right to Organize and Collective Bargaining Convention (1949).
3. The right to avoid forced or compulsory labour, ILO Convention No. 105, Abolition of Forced Labour Convention (1957).

remuneration, work hours and occupational safety can obviously not be
the same everywhere. Tailoring them to local conditions again points to
the need for bargaining between employers, workers and governments,
supported by the observance of civic rights (item IV in Table 5 and Items
1 and 2 in Table 6).

To their credit, lawmakers in the United States have used the ILO’s
fundamental workers’ rights as the criteria for trade preferences granted
to less developed countries. However, the international application of
these standards remains flawed in a number of ways. Determinations over
labour conditions in less developed nations are highly politicized and
often unconnected to the actual level of workers’ protection in a given
country. More importantly, the unit that is judged to be in violation or
compliance with particular labour standards remains the national State
when, frequently, violations take place at the level of the firm.

Raising worker rights to the level of the World Trade Organization
(the designated successor of the GATT) could be an important step
towards addressing these problems. Under a social dumping clause,
judgement over working conditions would be settled by WTO dispute
mechanisms, reducing some of the arbitrariness of these decisions. A key
step forward would be the application of labour standards to companies
rather than countries, which would reduce the incentive for Third World
governments to attract foreign investment through the piecemeal non-
observance of basic labour rights. Removing these rights from competi-
tion between nations by applying them universally across industries
could also tone down the current volume of the debate between less
developed and industrialized nations. The primary focus of international
regulations should be on those labour standards for which a moral global
consensus already exists and on sanctions targeted on the direct violators,
in particular companies whose assets and operations in the First World
could be put in jeopardy by their unscrupulous Third World practices.

In addition to these measures, there is a second set of policies which
can strengthen the position of labour in Third World countries and hence
serve as a bulwark against the “downward spiral” anticipated by critics
of the current model of development. Ironically, these policies involve a
most capitalistic goal, namely the promotion of independent small enter-
pises. Spearheaded by the writings of Piore and Sabel [1984], the concept
of flexible specialization has gained considerable attention in the literature
on industrial development. These authors have drawn on the experience
of Emilia-Romagna in central Italy and other “industrial districts” to
highlight the potential for growth of small, technologically advanced
firms linked through flexible networks [Capecchi, 1989].
The development of high-tech small enterprises has three positive consequences for the strengthening of labour standards. First, it can alleviate the downward pressure on wages and work conditions as the viability of small firms ceases to depend upon the vulnerability of labour; second, workers in new firms benefit from apprenticeship opportunities and training; third, the development of communities of small producers gives workers in larger formal industries the chance to shift into this sector, strengthening their hand vis-à-vis managerial power. The development of a dynamic small-scale sector can thus represent an efficient means to promote labour standards by giving workers the opportunity to make independent use of their energies and ingenuity.

At first glance, this argument would seem to reinforce the position of laissez-faire advocates, such as Peruvian economist Hernando de Soto [1989], concerning the advantages of removing State intervention from the economy in order to “free” popular entrepreneurial energies. In fact, the proposal runs exactly in the opposite direction because the emergence of a dynamic small-scale sector depends on direct state support. The growth of a small business sector out of the informal sector is by no means automatic for the obvious reason that, except in rare circumstances, entrepreneurs lack the capital, technological know-how, and organizational resources to implement anything beyond sweat-shop or homework production [Capecchi, 1989].

The experience of central Italy and all other industrial districts in the literature indicate that it is not the absence of State intervention, but its sustained presence that has been necessary to lead experiments of “flexible specialization” to success. State assistance need not come from central governments, but can be more effectively provided by local agencies. It involves, at a minimum, training assistance, flexible access to credit, transportation facilities and support of cooperative efforts [Benton, 1989; Brusco, 1982].

Combined with the judicious implementation of a package of internationally monitored labour rights, an innovative set of policies in support of dynamic small enterprise can go a long way toward strengthening the rights of workers, avoid the segmentation of the labour market and transform today’s informal economies of survival in the Third World into vehicles for sustained development.
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International labour standards and developing countries

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I. Introduction

Labour standards aim at ensuring social justice for workers, in terms of basic human rights, humane conditions of work, a measure of employment and social security, and fair and special treatment with respect to age, sex and any natural, physical or social handicap. In so far as they constitute the minimum conditions of working and living in a civilized society, these standards can only be absolute and universally applicable. They could be set by the international community for adoption and application by different countries, or they could be determined by the individual countries, keeping the basic, universally acceptable principles in view. In today’s world, with a continuous and rapid flow of ideas, commodities and resources, including human resources, among countries, the case for universal acceptance of basic standards has become more pressing and urgent.

At the same time, labour standards have come under pressure and criticism in recent years, particularly from the industrialized countries in the wake of the difficult economic situation and high rates of unemployment faced by many of them. The argument used to attack labour standards is in the nature of a direct challenge to the concept of traditional social guarantees in the form of protection of wages, hours of

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1 The views expressed in this article are personal and do not necessarily reflect the position of the Government of India.
work, social security and security of employment. They are seen to produce distortions in the labour market leading to negative effects on the productivity of enterprises and the economic performance of a country. The logical conclusion of this line of argument would be not merely that labour standards should be more flexible but that there should be no labour standards at all. In this context, the call by some industrialized countries for the inclusion of a “social clause” which, inter alia, would incorporate compliance with international labour standards into trade relations, sounds rather opportunistic and contradictory.

In comparison, the demand for greater flexibility in labour standards, frequently voiced by the developing countries in international labour conferences and other fora, does not seem to challenge the very concept of social guarantees: it only asks for the setting up and application of standards in a flexible manner so that compliance is within their capacity. It does not violate the spirit of the Declaration of Philadelphia regarding full applicability of its principles to all people everywhere, but emphasizes “due regard to the stage of social and economic development reached by each people” in framing them, as stated in the Declaration.

II. The need for flexibility in labour standards

An element of flexibility is required to be built into the instruments — Conventions and Recommendations — adopted by the International Labour Conference — to give them a “variable content” to suit varying conditions in different countries. At the same time, the Conference is not required to set “regional” standards, a subject which has been a matter of some debate. If the instruments have to be framed with due regard to the “stage of social and economic development”, there does appear to be a case for different standards for different “regions” or groups of countries classified on the basis of levels of development. It must be recognized, however, that the capacity of a country to comply with particular standards cannot be assessed on the basis of a single indicator. The ILO Constitution itself (Article 19(3)) recognizes “climatic conditions, the imperfect development of industrial organization, or other special circumstances [that] make the industrial conditions substantially different” as the factors to be taken into account in the case of individual countries when framing Conventions and Recommendations of general application. It would nevertheless be extremely difficult to distinguish country groupings by applying “relevant” multiple criteria that could be universally acceptable.
Furthermore, the very principle of minimum universal standards considered essential in a civilized world of work would get substantially diluted, if not destroyed, once the norms are fixed on the basis of prevailing conditions. It may, therefore, not be practical or even desirable to set "regional" standards. But it is desirable to provide enough flexibility in the application of universally-set standards to suit the conditions and capability of individual countries and, at the same time, provide a mechanism for their progressive, full and universal application.

In emphasizing the need for variability and flexibility in the application of labour standards, the developing countries have generally advanced the following arguments. First, a large number of standard-setting instruments, particularly Conventions, were adopted without their participation, at a time when most of them were not yet independent; these instruments are too rigid and do not take sufficient account of their special problems. Second, financial constraints prevent them from effective participation in the process of framing instruments even now. Neither problem is insurmountable. They can be taken care of by looking afresh at the old Conventions and revising or amending them, and by facilitating greater participation of developing countries in the processes of instrument-framing through technical cooperation. The broader issue that the economic and social conditions of a country may constrain full application of the standards needs to be examined in realistic terms, however. Flexibility in the text and manner of application of Conventions should be provided wherever considered necessary.

The case for varying the content, and the extent and manner of application, of a particular labour standard by countries' levels of development rests primarily on the costs of application — direct and indirect as well as private and public. Application of standards relating to wages, conditions of work and social security, for example, would result in a rise in production costs in private enterprises and higher public costs in administering the related legal provisions. An increase in labour costs due to application of the standard could have an adverse effect on employment, investment and production, involving an indirect social cost. Various standards could be reviewed and new ones set, bearing in mind such costs in relation to the economic capacity of different countries.

Many ILO Conventions already provide some flexibility and permit partial coverage or implementation of parts of a Convention in fulfilment of the obligation arising out of its ratification. The Social Security (Minimum Standards) Convention (No. 102), for example, can be ratified by complying with the obligation in respect of three out of 10 branches of social security specified in the Convention. A State may also avail itself of a temporary exception with regard to the persons covered or
benefits provided. The Minimum Age Convention (No. 138), does not specify a mandatory minimum age, which can be as low as 12 years in certain circumstances. Its coverage can also be limited by excluding certain categories of employment and work (for example, employment in the family business or home-based work) where its application involves special and substantial problems.

A number of countries have made use of the partial implementation provisions of the Social Security Convention. In fact, only 38 countries have ratified the Convention; practically all of them have implemented only parts of the package of minimum social security benefits provided under the Convention; and only one-half are developing countries. The Minimum Age Convention, in spite of the flexibility allowed, has been ratified by only 46 countries.

Cost cannot, however, be the sole criterion for application of standards and its importance should vary depending on the nature and objective of the standard. There are certain inhuman social practices, which may help to maximize private profit and which would involve substantial public cost to eliminate. Yet their continuance cannot be accepted in a civilized society. Use of forced labour, suppression of the rights of expression and organization, unduly long hours of work endangering workers' health, employment in hazardous occupations and activities without adequate safeguards, employment of children in occupations and activities which cause permanent damage to their physical and mental health, and discrimination on the basis of certain natural and social characteristics are among the malpractices which any civilized society would like and should endeavour to eliminate. International labour standards with regard to these subjects cannot be made highly variable and flexible if some minimum norms of civilized work are to be guaranteed. In exceptional circumstances, where the economic and social structure makes it extremely difficult to implement such standards with immediate effect, a reasonable phasing and time limit could be stipulated.

III. Enforcement and the informal sector

Quite often, difficulties in application of certain labour standards, particularly in developing countries, arise not so much from the direct costs of compliance but in ensuring effective enforcement due to the nature of production organizations. For example, standards are often set with factory-type production organizations in mind and with the assump-
tion that most workers are regular wage and salary earners. Application of standards is also easier in these conditions. But such standards are unsuitable for, as well as difficult to implement in, unorganized forms of production which take place largely on an apparently self-employed basis. Economic structures of developing countries are characterized by the predominance of this type of production.

In practice, pressure from organized unions of workers and easier application of protective legislation have to a large extent ensured reasonable standards in the organized segments of the workforce in developing countries, particularly with regard to conditions of work, employment and social security. This is the case even where countries have not formally ratified relevant ILO Conventions on these subjects. However, workers in the unorganized segments, constituting the overwhelming majority in most developing countries, are in greater need of the guarantees stipulated in these standards. They are generally untouched either by the Conventions or by legislative and other mechanisms of protection evolved by countries under the influence of these Conventions.

The question of standard-setting for the “informal sector” has consequently acquired special significance in recent years. The conventional assumption of development theorists, which is also implicit in most ILO Conventions, is that the informal sector is a transient phenomenon. Economies will gradually be transformed into integrated entities consisting predominantly of formal and relatively large-scale organizations employing workers mostly as regular wage and salary earners. However, this has not turned out to be valid in the experience of developing countries. Most workers continue to work as self-employed and irregular wage-earners, and their proportion is in fact increasing rather than declining. In this context, it is quite understandable if a degree of frustration and apathy towards international labour standards has developed among developing countries. The situation in this regard is rather paradoxical: the standards are relevant and suitable mainly for the formal sector, where compliance is easier and is mostly already in practice; they are not relevant and suitable and are more difficult to apply in the informal sector where they are most needed.

This does not mean that the exercise of standard-setting has lost its utility. It only points to the need for evolving minimum standards that are easier to implement for employment in the informal sector. National governments and international fora like the International Labour Conference have, by and large, failed in this direction. The dilemma is a real one: standards as they exist in various Conventions are generally not suitable and are difficult to apply in the informal sector, but if standards
are set very much lower for this sector, they may not serve the desired purpose. Nevertheless, it is important that crucial areas of concern are identified and implementable norms and appropriate mechanisms are evolved to provide minimum guarantees to workers in the informal sector. Protection against risk to health and life, and a minimal measure of social security through the creation of public or collective funds, may be the areas of priority action. Such measures need not necessarily be on the basis of legislation. Alternative self-governing and cooperative mechanisms could be used and non-governmental organizations and trade unions could be involved in administering the benefits.

For the purpose of evolving and applying suitable standards for the informal sector, it is not necessary for the ILO first to set standards through Conventions and to ask countries to ratify and implement them. The ILO's efforts should be supplemented by the countries themselves in devising ways to ensure minimum guarantees in crucial areas of risk faced by informal sector workers. In fact, given the wide variety in conditions in the informal sector and in the degree of legislative and other protection provided to workers in different countries, action should preferably be initiated at the individual country level. The ILO may provide expertise and exchange of information, as well as other assistance wherever necessary, to facilitate such action. To begin with, ILO advice could be given in the form of guidelines and recommendations and these, along with the experiences of different countries, could subsequently form the basis of Conventions.

The above approach to formulating labour standards for the informal sector may be better appreciated if it is recognized that the ratification of ILO Conventions is not the only mechanism to guarantee minimum labour standards. The number of ratifications by a country is not necessarily a true reflection of the state of labour conditions. Ratifications are also not necessarily a function of a country's level of development, though labour standards are generally better observed in developed countries than in developing ones. If the United States has ratified only 11 ILO Conventions and India has ratified 36, that by no means indicates that labour conditions are worse in the United States than in India. Also, a Convention may not be ratified for some technical reason, yet the relevant standards may have been met through national legislation and practices. For example, India's non-ratification of the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98) does not mean that such rights do not exist in law and practice in India. Conventions are often not formally ratified, even though their basic provisions are implemented, for the reason that the
ILO supervisory machinery (consisting of the Committee of Experts on the Application of Conventions and Recommendations) sometimes adopts too legalistic an approach.

Formal ratification is important in so far as it puts an obligation on a country to comply fully with the standards stipulated in the Convention. However, the formulation of such standards should be not only a truly and effectively participatory process, but also an evolutionary one based on the study of the situation and experiences, particularly in the developing countries. At the same time, it is necessary to give due recognition to the genuine efforts of individual countries to provide the guarantees aimed at in the Conventions without formally ratifying them. Experiences of such efforts could be fruitfully used in setting and revising the standards as well as in laying down mechanisms for compliance.

**IV. Concluding remarks**

The prevailing international economic situation, with an emphasis on enthrone ment of markets as engines of growth, poses a danger to the pursuit of social guarantees through instruments such as international labour standards. The proposition that labour standards distort labour markets, resulting in inefficiency, needs to be carefully examined. Empirical evidence does not necessarily support this proposition and, even if it is partially valid, economic gains must be weighed against social costs. At the same time, international differences in productivity levels and incomes warrant a certain degree of flexibility in the application of standards across countries with different levels of development. In this context, the fact that developing countries have not been able to achieve the same extent and level of labour standards as the industrialized countries must not be used as a weapon for denying them the benefits of trade and perpetuating international disparities. More important, however, is the need for flexibility in relation to the structure of employment in different countries. Here, evolving minimum standards for application in the informal sector, where most workers in developing countries are employed, should form a priority item in the standard-setting agenda at the international and national levels.
Macro-sweating policies and labour standards

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I. Introduction

Not long ago the issue of labour standards in economic development was fairly straightforward: employers and right-of-centre social scientists, especially mainstream economists, tended to be against them; labour and its left-of-centre allies tended to be for them.1 As the twentieth century drew to a close the labour standards issue became more murky. Conservative views stayed the same, but a geographical division developed between the South and “neo-institutionalist” or “internationalist” labour advocates in the North (mainly the United States). Low wages (in relation to productivity) and minimalist labour standards in late-industrializing countries were regarded in the North as significant factors behind the deterioration of Northern labour standards and real wage

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1 The United States Department of Labor portrayed the polarization as follows: “Beyond a minimum list of labor standards, the neo-classical view suggests that government should leave the setting of labor standards to the ‘free’ labor market. According to this perspective, raising labor standards prematurely introduces economic distortions that retard income and job creation. The neo-institutional view, by contrast, sees labor standards as tools that may influence the social process of development in positive or negative ways, depending on how policy-makers apply them” [Herzenberg & Perez-Lopez, 1990, p. 4]. The positive potential of labour standards lies in their ability to raise productivity by improving the motivation and physical capacity of workers, and to raise aggregate demand by increasing labour incomes.
growth. Therefore, a more militant posture towards late-industrializing labour standards began to be espoused.

Writing during the debate on NAFTA (North American Free Trade Agreement) for the Economic Policy Institute (EPI), the most vocal left-leaning think-tank on the standards issue, Richard Rothstein, exhorted: “Mexico should increase its minimum wage, child labor, and hours-of-work standards to US levels. This harmonization should take place gradually, over a ten-year period” [Rothstein, 1993a, p. 3; 1993b]. Labour standards themselves came to be interpreted more broadly, to include wage increases commensurate with productivity increases [DeMartino & Cullenberg, 1995]. The teeth in the debate took the form of linking the South’s access to Northern markets to improving its labour standards. In 1994 France and the United States agreed to include international labour standards on the agenda of GATT negotiations.

International labour solidarity was not seen by Northern advocates as being compromised by tougher Southern labour standards. To the contrary, tougher Southern standards were regarded as favourable to labour in both the North and South. Northern workers were supposed to benefit from standards that increased the price of late-industrializing countries’ exports and that reduced their attractiveness as low-cost production sites for Northern investors. Meanwhile, Southern workers were supposed to benefit from higher wages and better working conditions, leading to increases in aggregate demand and employment. If, the argument ran, Third World workers did not receive the fruits of their labour, the result would be global stagnation. According to an EPI publication by Walter Russell Mead: “Continued economic growth in a liberal trading order requires increased consumption and higher real wages among the newly productive workers of the developing world” [Mead, 1990, p. 39].

Are these arguments for tougher Southern labour standards persuasive, or are they a thin veil for protectionism? Should neo-institutionalists in the South accept them, or be placed in the awkward position of resisting higher labour standards? These are the questions analysed briefly in this essay. Tying real wage increases to productivity gains is taken as the exemplary labour standard, but the arguments presented would be the same in principle for raising environmental or other non-wage standards to Northern levels.
II. Wage-led versus profit-led Southern manufacturing growth

Assuming that productivity in the South is rising rapidly due to technology transfer (see the discussion in Hikino & Amsden [1994]), what is the likely effect on the South's growth rate of manufacturing output of tying real wage increases to productivity increases? The answer depends on whether the late-industrializing economy is "wage-led" or "profit-led", as distinguished by Lance Taylor [1988].

The overwhelming number of developing countries are small (measured by population or gross domestic product) and therefore tend to be "open" to international trade, meaning a large share of their output is accounted for by exports (although only a handful of late-industrializing countries have succeeded in exporting significant amounts of manufactures to Northern markets). Real wage growth might increase domestic demand, but in a small open economy the rise in domestic demand could not be expected to offset the fall in demand from the price-sensitive rest-of-the-world. The dynamic international competitiveness of these countries is "profit-led" — so insisting that their gains in productivity be offset by rising real wages could be expected to stunt their growth. Converting productivity gains into corresponding real wage gains in their export sectors would hurt their profitability. This would almost certainly reduce their investment rates and hence long-term growth unless firms found ways to protect their profit margins and circumvent new labour standards by means of production "speed-ups", for instance (this paper ignores the non-trivial issue of whether tougher labour standards can be monitored).

While productivity has certainly been rising fast in successful late-industrializing countries, such growth has tended to be faster in some sectors than in others [see World Bank, 1993]. Therefore, if real wages in small, open economies were tied to the fastest-growing productivity sectors, and impulses from these sectors led to aggregate wage increases in excess of aggregate productivity increases, the result would probably be inflation and corrective exchange-rate devaluations. This would present a recurrent cycle of threats to Northern workers from low-cost Southern goods cheapened by repeated exchange-rate devaluations.

Summing up, the Northern argument that higher labour standards in small, open Southern economies lead to higher Southern growth rates appears to be false and, therefore, self-serving. In 1977 the United States Congress, supported by organized labour, decided to equalize minimum wages in the US and Puerto Rico [Dietz, 1986]. Although this equaliza-
tion (which came into force on 1 January 1981) was not the only cause behind Puerto Rico's rising unemployment and economic stagnation, it is likely to have influenced it. Singapore also experimented briefly with a high-wage policy in the 1980s in an attempt to shift output towards more capital- and technology-intensive industries, but abandoned it in the face of dwindling international competitiveness.2

In theory, the Northern argument for tying real wage gains to productivity gains makes more sense in the case of large, "wage-led" Southern economies, which may export selectively but whose centre of gravity remains a large domestic market (as in China or India). If productivity goes up and real wages are forced to rise accordingly, aggregate demand may increase, leading to more investment and ultimately higher income.

In practice, insisting that China raise wages in tandem with productivity growth would probably make only a minor dent in its attractiveness as a locale for foreign investment, or in its international price-competitiveness. Total factor productivity in China's state-owned enterprises has, in fact, been rising at about 2.5-3.0 per cent per annum, and real wages have increased by as much (uncharacteristically), if not more [see Jefferson & Rawski, 1994]. But this has in no way reduced the "threat" of Chinese exports in American markets, because wages are so low to begin with by comparison with American levels.

On the other hand, a borderline wage-led/profit-led economy like Mexico, which is large by developing country standards (population = 90 million) but which is also fairly "open" (exports, mostly to the US, equalled 15-20 per cent as a share of GDP in the early 1990s), would probably collapse if forced to adopt the Economic Policy Institute's formula of American minimum wage, child labour and hours-of-work standards within a ten-year time horizon. The depth of depression would most likely equal or exceed that of East Germany after the fall of the Berlin Wall, when it adopted West German wage and exchange rates. The costs to American taxpayers of stabilizing the Mexican economy would probably match or exceed the costs to West Germans of unification, making American workers worse off than before.

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2 Virtually all the fast-growing East Asian economies have experienced rapid growth of real wages as well as rapid growth of productivity, although total factor productivity measurement has triggered a debate [see World Bank, 1993; Kwon, 1994; Young, 1994]. Real wage increases, however, have tended to lag behind productivity increases except possibly in China's public sector (for labour productivity details in South Korea, see Amsden [1989, Table 4.10]).
Thus, the Northern argument that higher labour standards induce more robust growth even in large “wage-led” Southern economies appears to be either irrelevant or insidious.

III. The North’s fate

The next question to consider is how Northern labour incomes are likely to fare if the South continues to infuse Northern technology and raise its productivity in the absence of more militant labour standards (including wages commensurate with productivity increases). The assessment presented thus far of how militant labour standards would impact on the South’s growth prospects dovetails with the mainstream argument. However, the mainstream also regards Southern growth as largely beneficial (or irrelevant) for the North, whereas we would argue that for Southern growth to impact positively on the North, “extra-market” macro-economic policies are required that are “labour-friendly” rather than “labour-sweating”.

The mainstream argument, as articulated by Paul Krugman [1994], for instance, is that: “Economic growth in low-wage nations is in principle as likely to raise as to lower per capita income in high-wage countries; the actual effects have been negligible... Contrary to popular opinion, the economic development of the Third World does not threaten the First World”. In this felicitous view not only would militant labour standards hurt the South but their absence would also not injure the North.

Krugman argues that, if higher productivity in the South reduces the price of goods consumed by Northerners, then Northerners’ income rises. If, on the other hand, productivity in the South rises in tandem with rising wages (as Krugman erroneously assumes), then simply world income rises. The hitch Krugman acknowledges is an income redistribution in the North from unskilled to skilled workers due to specialization in the North of skilled labour-intensive production and relocation in the South of unskilled labour-intensive production; he interprets the factor-price equalization theorem in the North in terms of two types of

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3 If Charles Tilly [1995] can be taken as representative of “popular opinion”, then Krugman rightly characterizes such opinion as maintaining that First World workers (if not all Northerners) are threatened by Third World growth (or at least “globalization”), and that the absence of militant labour standards hurts the North.

4 See footnote 2.
labour rather than in terms of labour and capital. But Krugman dismisses the importance of even intra-labour income redistribution because “in 1990 advanced industrial nations spent only 1.2 per cent of their combined GDPs on imports of manufactured goods from newly industrializing economies”. Although foreign investment in newly industrializing countries has been rising rapidly, Krugman makes a rough calculation that capital export reduced the growth of the North’s capital stock by only an infinitesimal 0.2 per cent.

Krugman concludes by equating Northern demands for tougher labour standards with protectionism, and leaving the fate of the North to free trade. But while free trade alone may allow a handful of late-industrializing countries to continue exporting manufactures to the North, it will not necessarily help poorer developing countries to grow or Northern workers to prosper. Moreover, the negative impact on Northern workers of an absence in the South of protective labour standards is cumulative. If unit labour costs in mid-technology sectors continue to fall faster in the South than in the North, then more Southern industries will out-compete Northern industries and more foreign capital will flow Southward, in search of both cheaper labour and expanding markets. In fact, the share of US imports from only Asian late-industrializing countries, including China, increased from 8.5 per cent in 1970 to 16.6 per cent in 1991, or about 1.7 per cent of United States GDP [UNCTAD, 1993].

Rising per capita income and real wages are highly desirable in the South, but so are they desirable in the North, and in the majority of Southern countries. Yet real wages stagnated in the North since 1973 and they plummeted in most developing countries in the 1980s. The only exception was rapid growth in output and real wages in East Asia; but this region singlehandedly could not act as a global engine of growth.

The reasons behind the North’s stagnation since 1973 have little, if anything, to do with the “East Asian miracle”. Although the end of a Golden Age of economic prosperity (1945-1973) remains something of a mystery, Northern macro-economic policies made a large contribution to economic decline. If most of the world’s workers, whether in the North or the South, are to prosper from increasing “globalization”, then labour-friendly macro-economic policies have to be adopted. Instead, “macro-sweating” policies have predominated.
IV. Setting macro-economic standards

According to the factor-price equalization theorem, the North should experience falling real wages and rising real interest rates as it specializes in more capital- and technology-intensive production. Real wages have certainly stagnated in the North since the end of the Golden Age and, while interest rates are strongly influenced by politics, the tendency for them is to rise as capital migrates Southward. Under these conditions, if expanding output, rising real wages and full employment are to be achieved in the North, then it is essential to have high levels of investment which, in turn, require expansionary macro-economic policies. Yet, since 1973, such policies have been contractionary as an article of faith. As Maddison [1994, p. 35] observed:

[What] reinforced the sharpness of the slowdown [after 1973] was the basic change in the "establishment view" of economic policy objectives. The new consensus emerged as a response to events, but it also helped mould them. The shock of inflation, the new wave of payments problems, and speculative possibilities brought a profound switch away from Keynesian type attitudes toward demand management and full employment. Most countries gave over-riding priority to combating inflation and safeguarding the balance of payments. Unemployment was allowed to rise to prewar levels. Even when oil prices collapsed and the momentum of world inflation was broken in the early 1980s, the new orthodoxy continued to stress the dangers of expansionary policy in spite of widespread unemployment and strong payments positions.

The new orthodoxy had a devastating effect on global labour standards — in the North and throughout most of the South. Between 1978 and 1989 real manufacturing wages increased in only six out of 20 developed countries and fell in 26 out of 33 non-Asian developing countries. The wage share in manufacturing value-added increased or remained constant in only four out of 21 developed countries and 20 out of 40 non-Asian developing countries [Amsden & van der Hoeven, 1994]. Real wages in the South fell due to a debt crisis, triggered in the early 1980s by the North’s unilateral declaration of war against inflation. Real wages in the North stagnated in conjunction with high real interest rates, low investment and the fraying of the welfare state. The new orthodoxy “looked to a self-starting recovery rather than one induced by policy” [Maddison, 1994, p. 35]. From the viewpoint of real wages and other labour standards, however, no self-starting global recovery was in sight as the twentieth century ended.
V. A broader ILO mission

The ILO has argued for many years that labour standards which involve the basic health and safety of workers, their freedom to form trade unions, and equal pay for equal work, should not be compromised by considerations of national competitiveness. It is not these rights but rather “protectionist” labour standards for fast-growing late-industrializing countries that have become controversial. Such standards are more discretionary, involving the linkage of real wage increases to productivity increases and the pegging of Southern production and environmental practices to Northern levels.

Demands by the North for protectionist labour standards in the South should be rejected as self-serving. They threaten to derail growth in small, open “profit-led” Southern economies and are either ineffective or harmful in large “wage-led” Southern economies.

This, however, does not mean that the fate of Northern workers should be left to whatever living standards free trade and “globalization” dish out to them. A new definition of labour standards needs to be adopted by the ILO that includes a commitment on the part of Northern governments to coordinate expansionary macro-economic policies with the goal of increasing investment and hence employment. Simultaneously a new innovative set of labour standards needs to be coordinated in order to contain inflationary pressures in collective bargaining. Unless the issue of expansionary macro-economic policies and inflation-containing wage negotiating policies are put high on the ILO’s agenda of labour standards broadly construed, the North’s threats to make access to its markets contingent on higher Southern production costs will not abate.

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Workers’ rights in the global village: Observations of an American trade unionist

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I. Introduction

At the ILO’s founding meeting in Washington at the Pan American Union Building, there were no delegates from outside the United States who arrived by aeroplane. International air services did not exist. In 1993, more than 42 million people flew on more than 354,000 international flights on United States carriers alone. This spring, the weekend travel section of the Washington Post was advertising intercontinental flights for less than $400.

In 1919, none of the foreign delegates could telephone their home countries for instructions or advice. There was no such service. If they were in Washington nine years later, they could have telephoned the ILO headquarters in Geneva for $75 (which would be nearly ten times as much in current dollars), but they would have needed advance reservations: the entire capacity of the transatlantic telephone link was just one call at a time. In 1988, American Telephone & Telegraph alone handled more than one billion overseas calls. None required advance reservation of telephone lines.

In 1919, no-one thought to keep track of the net amount of funds that American corporations invested in their foreign affiliates. Ten years later, when the first statistics on direct investment were collected, the total came to $7.5 billion. They are considerably larger today: the latest
figure, for 1992, was $486.7 billion which is, in constant dollars, a sixfold increase.

All of these examples (and many of those that follow) are from my own country, but it would not be difficult to find examples elsewhere that are equally or more dramatic. Taken together, they represent what may well be the biggest single change in the world affecting the ILO since its creation, namely the vast increase in global interdependence — exchanges, transportation, communication, and more. A German historian could observe, 16 years before the ILO was founded, that the world "is, more than ever before, one great unit in which everything interacts and affects everything else, but in which also everything collides and clashes".¹ If it was true then, it is a hundred times truer now.

II. Workers' rights in the global village

It is no surprise that the metaphor of the global village now has an honoured place in business literature and newspaper columns. Much of the discussion of it is rhapsodic, so it may be reasonable to extend the metaphor a bit. In our global village, there is no mayor, the disparities between rich and poor are colossal, the street lights on the poor side of town have not worked for years, the air is often bad, the water is often undrinkable, charities are pathetically inadequate and the police have virtually no power. If households equal nation-states, there is not much effective remedy in our village for child abuse or violence within families, there are some nasty disputes over the boundaries between houses, and neighbours are shooting at neighbours for no good reason.

In more literal terms, there is a paradox in all this that presents an enormous challenge to the ILO: economically, the world has indeed become highly integrated and interdependent but, politically, the international system is still an anarchic framework of nation-states, all of them more sovereign than not, none of them completely secure. The scope of economic life, dominated by forces in the private sector, has become mainly global; the scope of political life, in which plain citizens can engage and have an effect, remains mainly national.

¹ Erich Marcks, quoted in Hamilton [1990, p. 5]. Hamilton recounts a fascinating story of an executive of an American foundation who made his way to an obscure Colombian mountain village, and found the residents tuning in their radios every morning to hear the commodity prices from London. A leader of the local agricultural cooperative explained that they needed the information; after all, world prices would affect the prices for their crops.
Consider just one result of this in the ILO’s realm of concern. As investment capital has become more mobile and transportation and communications infrastructure has improved, it is now far easier than it was even a few years ago for industrial production to shift to those parts of the world where the workforce is poorly paid and easily exploited.\(^2\)

An example of this is Nike, a US-based corporation that generated about $1.7 billion in revenues and sold 40 million pairs of athletic shoes in 1989. Significantly, Nike owned no factories: all of its production was contracted to facilities in low-wage nations such as Taiwan, South Korea, Indonesia, Malaysia and China. And Nike is hardly alone, even within its industry. A 1990 study by two Dartmouth College geographers could report that “no athletic footwear firm now wholly owns any integrated production facilities” [Donaghue & Barff, 1991].

Merely to denounce Nike or other multinational corporations for relying as much as they can on low-wage, exploitable labour is inadequate and misses the point. In an international economy driven by market dynamics, a firm that does not seek out the cheapest available workforce for its own purposes may be at a competitive disadvantage vis-à-vis other firms that do. Thus, as nearly everyone from Adam Smith to Marx could recognize, such multinationals are pursuing their own narrow economic interests and responding to incentives.

One suspects that the most effective device for changing the behaviour of corporations (or humans, for that matter) is not passionate moral lecturing, but rather the restructuring of those incentives. And in the global village, any restructuring for the goals we seek would be international in its effect and would have workers’ rights as one of its components.

III. Counter-arguments and responses

It may be useful for those of us who support the international protection of workers’ rights to review the arguments against our

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\(^2\) Americans have seen this phenomenon on a smaller scale within their own country. There has been a shift of manufacturing from the Rust Belt areas of the North-east and Mid-west to the Sun Belt states in the South and West. In *Manufacturing on the move* (Washington, DC, Brookings Institution, 1993), Robert Crandall shows that, today, the single most important explanation for the growth of Sun Belt manufacturing is labour market conditions, specifically, wage rates and the degree of unionization. Put less euphemistically, capital is moving where workers are cheaper and have fewer rights.
position and the responses we can plausibly make. Permit me to suggest some possibilities.

Argument: Every step towards a stronger international workers' rights regime can compromise national sovereignty.

Response: Maybe so, but that sort of thing is nothing new and is nothing to worry about. It is true that international workers' rights and the sovereignty of nation-states are counterposed in some ways. It is also true that, before this century, there were very few occasions when those rights could find their way past the realm of Utopian philosophy and the most marginalized politics. Since then, times have changed. Three political developments in the twentieth century — each of them well-established and irrevocable — have eroded some of the old prerogatives of the nation-state.

The first is the spread of Wilsonian (and Leninist) principle that governments and their subjects can be independent actors in international politics. This has large consequences. Among other things, it opens up vital political space for working people in one country to defend the rights of their sisters and brothers in another, regardless of how sympathetic or unsympathetic their own governments may be. We can return to this point later.

The second development is genocide and the violation of human rights on a scale never before seen in human history. In the aftermath, there is an erratic consensus that nation-states cannot be considered black boxes, completely opaque to outsiders. Some fundamental human rights have been internationalized, at least nominally. That, in turn, has a fortifying effect on workers' rights.

The third development has been the growth of international economic regimes under which nation-states trade morsels of their sovereignty for more enticing rewards. Some of the most notable examples since the Second World War have been the General Agreement on Tariffs and Trade (now to emerge in a more powerful incarnation as the World Trade Organization), the Bretton Woods framework, and the European Union. But, of course, there are a multitude of lesser inter-

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1 One noted historian argues that after a certain point, "the Wilsonian and Leninist diplomacy were equally determined to emphasize the distinction between the people and their rulers. However, whereas Wilson pressed his distinction in the hope of building a republican or possibly a social democratic fire ..., Lenin incited the Western proletariats to '... enthrone revolutionary regimes' [Mayer, 1971, p. 264]. The legacy of Wilson is especially germane here, since it led directly to the Fourteen Points and eventually to his strong support for creation of the ILO itself."
national agreements that affect everything from air-traffic control systems to currency stabilization to methods of catching tuna. Drawing the line at workers' rights seems a little disingenuous.

*Argument:* Workers' rights are an economic burden that developed countries may be able to afford, but their price is too great for developing countries.

*Response:* As a wise old governor of New York named Al Smith used to say: "Let's look at the record". In those nations with long periods of great economic growth since the Second World War, have there been extensive workers' rights and powerful trade unions? The answer is yes in West Germany and Japan, no in China and somewhat in Turkey and Mexico. Spain's economic miracle began in the latter years of Francisco Franco's fascist regime, and it continued briefly under conservative democracies and then the democratic socialist regime of Felipe Gonzalez.

So the answer to the original question is apparently yes, no, and maybe — but in fact it is more likely that all answers are irrelevant. Much of the considerable literature on development suggests that the most important reasons why nations succeed economically include climate, resource endowment, geographic location, size, the availability of capital and sheer luck. Also, as Lawrence Harrison convincingly argues, culture may play a big part. He suggests that economic development depends on four cultural values: (i) the degree of identification with others in a society, or the "radius of trust", as Harrison calls it; (ii) the rigour of the ethical system; (iii) the way that authority is exercised within a society (Harrison suggests that some but not all kinds of authoritarianism can suppress economic growth); and (iv) attitudes to work, innovation, saving and profit [Harrison, 1992, pp. 1, 10-13].

Again, the point is that workers' rights and strong trade union movements do not guarantee that an economy will either prosper or fail. While those factors can have a real effect, it is likely that the pace and contours of economic development will be determined overwhelmingly by other factors. The issue of workers' rights in developing countries, then, can be framed as choices that are as much social and moral as economic, for example:

(a) whether wealth is distributed evenly or concentrated in the hands of a relatively small elite;

(b) whether those on the middle and bottom rungs of the economic ladder have the benefits of freedom of association and expression, or live frightened and vulnerable; and
whether working people have the institutions that give them dignity, recourse, a voice.

Trade unionists from both developed and developing nations are already quite familiar with these issues. It is no secret what our positions are.

**Argument:** The internationalization of workers' rights is a kind of cultural imperialism. It is rich and powerful nations imposing their cultural standards on nations that are poor and weak. It does not recognize that what can be appropriate in one culture can be irrelevant or dangerous in another.

**Response:** One must resist the temptation to dismiss this argument on *ad hominem* grounds. We usually hear it from the elites of nations where worker exploitation is most flagrant, or from their allies in multinational corporations. John Stuart Mill once observed that "practical Toryism simply means being in, and availing yourself of, your comfortable position inside the vehicle without minding the poor devils who are freezing outside" [quoted in Himmelfarb, 1968, p. 121]. It is ordinarily the ones inside the vehicle who condemn international workers' rights as cultural imperialism.

However unsavoury their interests may be, their argument has some validity. Cultures are different. And there is always a real risk in nationalistic universalism when, as Hans Morgenthau put it, "the moral code of one nation flings the challenge of its universal claim with Messianic fervour into the face of another" [Morgenthau, 1948, p. 246]. The citizens of currently and formerly great powers know how seductive that can be, and how it can lead to debacle.

It is obviously prudent to consider how workers' conditions around the world are similar, and how they are not. For example, a minimum wage should be a right of workers everywhere. But should a minimum wage in Indonesia be the same as in Sweden, or Kuwait? If not, is there a formula we can use to calculate an internationally acceptable minimum in each case? And would this standard always apply? If, say, a government claims that in an effort to achieve full employment in peacetime, it intends to keep minimum wages low or to control wage increases, at what point are workers' rights violated so as to justify international concern?

Drawing the full perimeter of universality is difficult, maybe impossible. Not all of the most distant boundaries can be clear and fixed. Nevertheless, there are most certainly workers' rights that are fundamental and universally applicable — rights such as freedom of association, organizing and bargaining collectively, and prohibitions of child labour and of forced labour. One of the great contributions of the
ILO over the last 75 years has been delineating and publicizing those rights.

**IV. Protecting international workers’ rights**

Once we establish the economic, legal and moral viability of international workers’ rights, as I believe we easily can, we must consider a far more complex question, namely, how do we get from here to there? What kind of infrastructure can most effectively protect the rights of workers?

The best, most realistic, answer is a network of institutions, public and private, national and international. Fortunately, such a network already exists; even more fortunately, it is growing larger and more sophisticated. At its centre is the ILO. The ILO’s role and achievements — establishing a code of international labour standards, giving technical assistance to encourage growth of employment, sponsoring invaluable research, and much more — are absolutely unique. It is difficult to imagine any other organization that could fill all the needs that the ILO does.

It can set standards, it can investigate, it can publicize, it can use its moral authority to help working people, and it does those things superbly. But it cannot enforce the observance of workers’ rights. In the end, that responsibility still belongs primarily to the nation-state — but not completely. There have been two promising developments in the last several years that nudge (and in some instances shove) national authority in good directions.

First, there is a much stronger linkage than ever before between workers’ rights and international trade and finance. More and more, the idea that respect for workers’ rights should be a precondition of trade and credit relationships is gaining acceptance.

In the United States, the most successful linkage has been in the Generalized System of Preferences (GSP) programme, which gives duty-free treatment to eligible imports from developing countries. When it was renewed in 1984, the US programme required beneficiary countries to

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4 By citing only American examples, I certainly do not mean to imply that all good initiatives for international workers’ rights emanate from Washington — far from it. For instance, the United States would do well to emulate some of the initiatives that have already come out of the European Union and the MERCOSUR trade framework in South America.
uphold the right of association, the right to organize and bargain collectively, a prohibition on forced labour, a minimum age for employed children, and acceptable conditions relating to minimum wages, work hours and safety and health. (It is not terribly hard to detect the ILO's positive influence on those standards.)

In subsequent years, workers' rights requirements were included in reauthorization of the Overseas Private Investment Corporation and for US participation in the World Bank's Multilateral Investment Guarantee Agency. The 1988 Omnibus Trade Act established that a link between worker rights and trade would be a US goal in the Uruguay Round, and the same legislation also declared that denial of worker rights could be considered an unfair trade practice, which is actionable under previous American laws [US Department of Labor, 1991, pp. 7-12]. Under the Clinton administration, the US Government is pressing for an examination and, ultimately, the negotiation of workers' rights in the new World Trade Organization.

There have been some interesting initiatives to expand the linkage to international lending institutions in which the United States participates. The House of Representatives' Subcommittee on International Development, Finance, Trade, and Monetary Policy, under the leadership of Congressman Barney Frank, is holding hearings in 1994 on labour and environmental standards in those institutions.

AFL-CIO President Lane Kirkland was invited to testify on the first day of hearings. He told the subcommittee, "We believe that it is time for this Congress to instruct the Executive Branch to use its voice and its vote on the boards of the international financial institutions to ensure that these institutions serve and do not undermine the purposes for which democratic governments are brought forth... Specifically, we should push to ensure government accountability and workers' rights criteria are effected in the decisions on the division of loans and grants and their subsequent assessment" [Kirkland, 1994, p. 34].

The second development, which is just as encouraging, is the new appreciation of a moral aspect to international workers' rights and their connection to human rights generally. Those of us in the American trade union movement have certainly noticed the change. Our movement has always defined itself as internationalist, and it has thus taken a strong interest in the conditions of working people elsewhere. As early as 1933, soon after Hitler came to power, American unions organized a boycott of German goods because they believed that there should be a relationship between workers' rights and trade. For some years now, our youth organization, Frontlash, has successfully campaigned for a "boycott" — a boycott of toys made with Chinese slave labour.
Those actions are typical. In the past, however, the American trade union movement was often a solitary voice. Now, the resources and visibility of non-governmental human rights groups, which at one time were concentrated on the admirable goals of defending political dissenters and ethnic minorities, are also being used in defence of workers’ rights. Such groups as Amnesty International, Human Rights Watch and the International Labor Rights Education and Research Fund — to mention only three with a substantial presence in the United States — are making a splendid contribution to that cause.

In the last three years, important new ground has been broken. One of the most remarkable developments during the campaign against the North American Free Trade Agreement was the formation of a coalition of trade unionists, human rights activists, civil rights supporters, religious leaders and environmentalists — all of them opposing NAFTA partly because of the systematic violation of workers’ rights in Mexico.

This was unprecedented. Never before had those disparate elements, which really do have considerable common ground, come together in a working alliance; never before had international workers’ rights been such a salient part of a major political debate in our country; and never before had they been framed so effectively as a moral and human-rights issue. Even though NAFTA did pass, this achievement of the anti-NAFTA campaign will resonate for some time to come.

All of the individuals and institutions that are promoting international workers’ rights are doing valuable work — and all have their own natural limitations. Governmental institutions must operate within national political constraints. Non-governmental organizations have no authority to implement change. Multilateral organizations cannot exceed the consensus of their members. Fortunately, none of them needs to act alone. Each can be part of a flexible network within the global village.

American trade unionists are proud to be in it. As economic integration grows, which it will, we will certainly do all we can to help this network expand and prosper.

We are delighted to be part of a network that is based on the noble idea of workers’ rights; and “ideas”, as Lord Acton wrote, “have a radiation and development, an ancestry and posterity of their own, in which men play the part of godfathers and godmothers more than that of legitimate parents”. All of us know very well that it is the men and

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1 The American diplomat George Kennan has written of “the great difficulty which is always involved” in situations of this sort. “This is something that requires centralization of authority, complete privacy of decision, and a highly disciplined mode of procedure. These are not the marks of coalition diplomacy.” [Kennan, 1961, p. 134]
women of the ILO who are the godparents of workers' rights. On the 75th anniversary of the ILO, we salute them and we echo the message of Nelson Mandela: "We thank you that you did not tire in your struggle".

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Part 6:
Labour standards
in particular regions and countries
Contemporary challenges to labour standards resulting from globalization: The case of Korea

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I. Introduction

The Republic of Korea (South Korea) is often referred to as a model among newly-industrializing economies (NIEs) that has succeeded in transforming its agricultural economy into an industrial power. Gross national product (GNP) has increased almost 500 times during the past three decades; per capita income, which stood at a mere US$87 in 1962, increased to US$7,466 in 1993; exports of goods increased from US$54.8 million to US$82,444 million during the same period. The industry-mix of the economy and employment composition also changed. Primary industry as a proportion of GNP decreased from 40 per cent in 1962 to 15 per cent in 1993, while the share of secondary and tertiary industries increased from 17 to 40 per cent and from 41 to 45 per cent, respectively. The proportion of workers employed in primary industry, which accounted for 62 per cent of all employed persons in 1962, decreased to 13 per cent, while the proportion in secondary and tertiary industries increased from 8 to 28 per cent and from 30 to 59 per cent, respectively, over the same period.

In an unparalleled rate of urban growth, the population living in administratively defined shi (cities of 50,000 or more) increased from 6.9
million, constituting 28 per cent of the total population in 1962, to 33 million in 1993. Hence, those who live in urban areas today account for almost 80 per cent of the population. Thus, Korea has indeed changed from a rural society to an industrial economy. While its success is attributable to numerous factors, government policies, and labour policy in particular, have often been cited as a crucial component that enhanced and facilitated this success.

II. Labour policy and its practice

The basic framework of labour relations and employment standards in Korea is codified in four pieces of labour law: Labour Union Law, Labour Dispute Adjustment Law, Labour Relations Commission Law and Labour Standards Law. These laws were first enacted in 1953 towards the end of the Korean War (1950-53), and each has been amended several times, coinciding with changes of government or the political climate. The most recent amendments came in December 1987 when the military government was ousted by popular vote. The substance of the laws, however, has remained untouched.

Their underlying philosophy is to promote cooperation between employers and employees so as to enhance economic development. This is clearly illustrated by the preamble to the Labour Union Law:

The purpose of this law is to guarantee to workers, according to the National Constitution, the autonomous rights of freedom of association, collective bargaining and collective action aimed at maintaining and improving their working conditions, thereby making possible their contribution to the enhancement of the economic and social status of workers and to the development of the national economy.

In order to promote a dialogue between labour and management, an additional piece of labour law, the Labour Management Cooperation Law, was enacted in 1980. Regardless of unionization among their employees, all business establishments with 50 or more regularly employed workers are required to form a Labour Management Council.

The basic characteristic of the overall legislative framework may be described as "pluralist": the labour relations system relies heavily on a decentralized approach that emphasizes the rights of workers and management to negotiate, resolve conflicting interests and pursue areas of common interest with minimal government involvement. Under this framework, the role of government is limited to two areas: establishment
of the procedural rules for collective bargaining and labour management interaction; and mediating in disputes over interests as well as over rights.

This free interplay of competing interests is expected to produce substantive outcomes which promote and balance the goals of democracy and economic efficiency. The framework rests on three basic principles: (a) the right of workers to form a union of their own choosing; (b) the right of workers to bargain collectively and negotiate over wages, hours, and other terms and conditions of employment; and (c) the right of workers to engage in collective action. In return for accepting the procedures established for union elections and recognition, management secures the right to make decisions affecting the firm's long-term values, competitive strategies and other organizational policies, without the need to consult with or involve workers or their representatives.

At the workplace, this collective bargaining system is supported by union contracts that are legally enforceable through dispute arbitration services provided by statutory machinery (the Labour Relations Commissions). However, since its introduction in 1953, this dispute settlement mechanism has barely been used. The reasons are numerous but the main one may be the fact that, at the time of enactment, there were not enough industries, or industries sufficiently developed, to require such a mechanism. While the labour laws of western industrialized countries were enacted largely as a response to economic forces, such as increased conflicts between employees and employers and the need to resolve these conflicts, the labour law in Korea was introduced mainly to meet a political need following division of the country and establishment of a socialist state in the North and a market economy in the South. Economic realities, in other words, neither forced the enactment of, nor served as the basis for, labour legislation.

One of the most important features of Korea's remarkable economic progress is perhaps the strong role played by government policy, particularly in its ability to discipline and influence large businesses that dominate the Korean economy. The government played an equally preeminent role in Korea's labour relations system.

Prior to the change of government in 1987, the single criterion that dominated government policy was economic growth which may be summed up in the slogan "develop first, share later". Policy was focused primarily on efforts to control labour costs. The government's emphasis on economic expansion meant that the legislative framework was more often ignored than enforced. Until 1987 therefore, business (and big businesses in particular), was effectively able to operate in a union-free environment.
As the government began to respond to popular demand and undertake its role as specified in the law, the legal framework itself began to reveal deficiencies. As the economy became increasingly exposed to international competition, it became more difficult to enforce the framework. Business increasingly felt the need for greater flexibility in job structures, and the range of strategic choices widened regarding the location of production or service facilities, where to invest and whether or not to accept union representation in the new establishments.

The employers' attempt to restructure their way out of high-cost locations or market positions, and the separation of management's strategic actions from labour's rights embedded in the legal framework, made it difficult to operate the system and resulted in significant hardships for workers and their unions.

Since 1987, labour relations have been characterized by a great deal of conflict over basic union rights — a principle guaranteed by the framework — and attempts by companies to eliminate unions where they existed and prevent new unions being formed. This may be the reason why the union expansion which followed political reform in 1987 began to reverse from 1990.

Here and there, new management-worker relationships began to form in Korea. Some companies, while discouraging unionization of their employees, attempted to engage in greater consultation with their workers over the company's long-term strategy. Positive labour relations programmes began to be implemented in the leading business conglomerates — for instance greater direct employee involvement and participation at the workplace, with more flexible, team-based approaches that give greater emphasis to training, employment security and flexibility in wage setting.

Thus, the legal framework of labour relations is increasingly under challenge by new programmes introduced by management. At the same time, the framework is under siege in a world dominated by global markets, strong international competitors and changing technologies. The need to develop a system of human resource management that can help firms gain competitive advantage from their human resources has posed a direct challenge to and engendered a certain scepticism about the framework.

It is a point of general consensus in discussion of labour relations in Korea today that the system of industrial relations codified in legislation, while perhaps appropriate to the 1950s, is neither relevant nor enforceable in the 1990s. There is a mismatch between the existing legal framework and "new realities" which require adjustment to rapid technological change, new forms of work organization, changed workforce
demographics and career patterns, and altered employee expectations of work.

In the face of this mismatch, many argue that the framework of collective worker representation must inevitably be restructured into a new system which will guarantee full functioning of labour markets, facilitate advanced personnel management techniques and adequately perform the task of representing worker interests.

It is therefore of interest to examine recent experience of operating the law and its effects since 1987, the relationship between the system of collective representation and economic efficiency, and their place in the on-going political reform to which the country is now deeply committed.

III. Business efficiency

With the advance of new technologies, Korean management has begun to face information, coordination and motivation problems in devising competitive strategies. Information about company performance held by various employees and their strategic behaviour in using that information has become crucial. In order for a firm to maintain or improve its competitive edge, the need to motivate optimal performance becomes vital. At the same time as skilled workers have become relatively scarce, the value of firm-specific human capital is also rising. Korean managers are also beginning to recognize that information exists at various levels of organization. In many situations it is inefficient for management to make all key decisions. Just as the sudden debacle of socialist regimes proved that the centre cannot efficiently run a centrally-planned economy, neither can the centre efficiently run a large, modern enterprise. A firm in which managers are authorized to make decisions at different levels illustrates this point: it shows that hierarchies work best when there is uncertainty at the workplace. Experience has demonstrated that the efficiency of a firm improves where employees are authorized to make decisions related to performance of their job. The reason is very simple. They can respond better than centralized management which lacks information about shocks or unusual circumstances in specific jobs.

The potential for divergent interest groups within a business establishment, which can lead hierarchies to use information for their own benefit at the expense of the firm, also shows that there are payoffs for sharing information, and that there are incentives in a structure which links management to workers outside the standard hierarchy. Giving
employees substantial decision-making authority (strategic participation), and a share of the resultant productivity, has improved productivity.

The success of firms which rely heavily on worker loyalty and tenure has been accompanied by wider economic advantages. The routes by which employee representation can improve enterprise efficiency are manifold: an increased information flow from management to labour, which can lead to concessions by workers in difficult economic times, thus saving troubled enterprises; increased information flows from workers to management outside the hierarchical chain, providing a forum for both sides to devise new solutions to problems; and motivating workers to make longer-term commitments to the firm, thus reducing the high rate of labour turnover. The labour turnover rate in Korea is approximately five times higher than that in Japan. Investment in firm-specific skills has also enhanced the advantages of job rotation and consultation and reduced the turnover rate.

A collective voice in the workplace has generally proved to be beneficial to the enterprise because it discourages strikes due to unmet grievances (the major goal of existing labour legislation). It also lessens the costs of turnover by reducing redundancies or giving workers the compensation package they desire. It helps to alter the way management and labour operate, creating a more cooperative and informed decision-making process.

Effective worker representation also alters the distribution of output within a firm. After 1987, after unions regained their vitality, the nominal wage in Korea more than doubled within five years. In principle, this has no direct effect on a firm's efficiency. If worker representation schemes only blur management's right to make decisions and fail to enhance higher productivity, they will breed managerial resistance to the system. Nevertheless, the schemes invariably redistribute profits towards workers, and for that reason the management resists unionism. The danger that effective systems of worker representation reduce the firms' share of the pie proportionately more than they increase the size of the pie explains why management rarely voluntarily cedes much power to worker representatives.

Collective worker representation has, it is true, been accompanied by some costs. Apart from the direct administrative expense of supporting organizations of representation and the processes of negotiation, the cost of lost production time has been substantial. During 1987, for example, a total of 3,749 strikes occurred, 2,552 of them in the month of August alone. There was also the cost of training worker representatives to assume greater responsibilities. While there is no precise benefit-cost data analysis of Labour Management Councils, management in general,
and especially after it became difficult for them to deny collective representation of workers, came to favour the council system on the grounds that it has a higher positive net effect than a union provides.

IV. Market efficiency

Worker representation schemes forced management to provide information to employees about the situation of the enterprise which would otherwise have been kept secret. This change in management practice helped to improve the efficiency of the labour market even when it did little for the firm. It helped by eliminating the deleterious effect of information imbalance on some market outcomes. For example, if a manager perceives that a plant must be closed and decides to do so but withholds information, so that workers fail to plan for this event in advance, worker suffer more from dislocation losses. While the effect on the firm's profitability due to the loss of its information monopoly is not clear, advance notice of plant closure helps workers substantially.

A second area in which worker representation has improved competitiveness relates to the workers' contribution to the enterprise. This is especially true of job training. Firms that cannot fully bear the costs of general training for workers have provided only narrow firm-specific training. However, even firm-specific training has helped not only the firm but the economy at large. The immediate benefit redounds to workers and society, not to the firms. But the extension of such training to an entire market led to a situation in which no firms need suffer, for they were able to replace workers they had trained by workers trained in other enterprises.

V. Role of government

Regulations of market functions exist in all societies. Regulations may be introduced to remedy market imperfections or sometimes for reasons of income redistribution. In Korea, the government inspectorate, known as Labour Inspectors, are formally assigned to enforce regulations. They are often joined by lawyers pursuing statutory rights through civil actions. However, in many areas of public concern, including the labour market, neither means has been adequate. Amongst other reasons for this failure, it is due to the fact that sites to be regulated are too numerous (120,000 work sites with only 500 inspectors) for any plausibly-sized
government inspectorate to monitor. Likewise, activities within work sites are too heterogenous for a government inspector to decide the best means of achieving the desired outcomes. Private litigation, on the other hand, is not only costly but also too complicated to settle disputes over standards of behaviour. Private litigation, therefore, has proved to be the least feasible and least preferred means for workers to remedy the infringement of their rights. Consequently, the results were often regulatory failures — downgraded employment conditions, cumbersome reporting requirements on matters of uncertain relevance, inflexibility in adjusting standards to varying or changed circumstances, and weak enforcement.

The failure of the enforcement system on worker safety and health standards clearly illustrates this point. Safe working conditions for workers in Korea, as in all other countries, are considered a company priority. The Workmen’s Injury Compensation Act of 1963 commits the government to “assure safe and healthy working conditions for working men and women”. But law enforcement, which relies chiefly on labour inspectors, falls far short of these expectations. Since the enactment of the law, more than 50,000 workers have been killed on the job; two million workers have been disabled and another 50,000 have died from occupational diseases. In 1993, approximately 90,000 workers sustained workplace injuries, of which 56,000 were “serious”, 29,000 workers became either handicapped or suffered permanent disablement, and 2,210 died. While the incidence of workers killed or disabled has fallen since 1990, there has been little improvement in the manufacturing sector. In any case, along with nearly incalculable suffering, this carnage carries costs in the form of survivor benefits, insurance for hospitalization and other treatment, and days lost in production. When combined, these costs are estimated at some US$5.4 billion in 1993 alone, amounting to a loss of 1.65 per cent of GNP. While many factors contribute to poor occupational health and safety records, the poor regulatory mechanism is chiefly to blame. Reliance on government inspectors to enforce health and safety standards is inimical to a system in which the enforcement is partially carried out by the committee legally mandated to look after workers’ health and safety within a plant.

The committee thus merely supplements direct government regulatory efforts. These committees operate with delegated legal powers; they monitor, and in some measure enforce, compliance with regulations, while enjoying broad discretion in bargaining with management over the most appropriate local means to achieve regulatory goals. By taking responsibility for monitoring and ensuring compliance with health and safety measures, the committees can tap the knowledge of members in
finding ways in particular settings of satisfying publicly determined standards. Where this system operates, market efficiency also improves markedly.

One of the rationales for adopting the current legal framework of collective bargaining is that it enables labour and management to make the relevant trade-offs on working conditions. As unionism gained momentum after 1987 and government workplace regulation concomitantly increased, the use of workplace committees has resulted in less reliance on the heavy-handed interference of government. The experience since 1987 seems to indicate that public goals for workplace behaviour may be best met by giving intended beneficiaries some collective power to supplement government enforcement efforts and to bargain with management about how these goals are achieved.

**VI. Political reform and labour relations**

After more than 30 years of military rule, Korean society is now deeply committed to the principle of democracy and to democratic reform. The principle of democracy is, of course, rooted in respect for the moral equality of individuals, each of whom should have the same opportunity to influence the actions of government. Commitment to the ideal implies that inequalities in public life due to irrelevant differences among citizens should be eliminated, and equal treatment under law and equal access to public goods should be extended to all. If a society is committed to the cause of democracy, therefore, the principle of democracy should be extended to all segments of society including the workplace.

The case for workplace democracy can be made on both instrumental and non-instrumental grounds. The instrumental argument is that workplace democracy strengthens democracy in the broader society. Democracy requires some equality in the distribution of material resources, and this is unlikely without some measure of worker representation inside companies. Also, democracy requires citizens capable and confident in their exercise of deliberative political judgment, and these citizen attributes are unlikely to arise in a society which shows no respect for such attributes at work. To take an extreme case, there is no logical consistency in individuals being slaves in the economic sphere but exercising voting rights in the political arena.

The non-instrumental argument may be illustrated by extension of democratic principles beyond formal politics. One way of expressing the
idea of democracy is that those involved in a socially cooperative activity and bound by its rules ought to have the right to determine those rules. This principle has applicability not only to the State but to all other rule-governed cooperative activities, including work.

If the arguments for workplace democracy are accepted, it would be inconsistent to deny it in practice. Two objections might be distinguished. The first is that people can more easily avoid autocratic bosses than they can autocratic governments. In a market economy, it is assumed that workers are free to quit their jobs and find a different employer or set up their own business. But it is easy to exaggerate the power of exit. Quitting unsatisfactory conditions is an attractive, even an exhilarating prospect so long as one can find a job paying comparable compensation elsewhere. In reality, substantial unemployment, large wage differences across firms and sectors, and many firm-specific, non-portable social benefits, make exit non-viable for many workers. It is especially true for workers in Korea whose compensation is generally linked to length of service. The market solution, therefore, is regarded by workers as a disaster rather than an opportunity. It is the least useful option for workers in need of protection from autocratic management. It is also the least desirable option for management because it hampers skill accumulation and deprivates workers of a sense of commitment to the firm.

A second objection is directed to the different functions of government and firms. One may argue that firms are designed to produce economic value, not to govern social life. This implies different criteria of performance. While governments, at least in part, are judged by representativeness, firms are judged by the "market test" of profitability. This objection might be answered in two ways. First, the distinction between firms and governments is overdrawn. Governments are routinely judged by their success in producing economic value. If the economic achievements of the government were sufficient to obviate the need for collective representation, the labour relations framework reflected in the law might not be relevant. Experience, however, has proved the contrary. Individual voices have failed to promote discussion among employees about shared preferences, leaving management with conflicting signals from disagreeing workers. The wielding of unequal power by management and labour defines employment relations and makes individual voices an uncertain channel of communication. Many employees were induced to keep silent, leading to an industrial peace built and maintained on hidden conflicts. The unpleasant reality was that for a large percentage of the workforce there was hardly any voice. There has seldom been a voice without collective representation.
On the other hand, while better individual employment contracts and detailed government regulations may solve some problems, they, too, are insufficient. One of the advantages of government regulation is that it provides protection to all workers, including the unorganized. But an employment relationship can hardly be specified to meet all types of contingencies and regulate them in advance. Even the most laborious attempts to do so will leave room for disputes over contract interpretation. And the very attempt to specify contracts in detail is a way to undermine managerial flexibility. Neither government regulation nor the individual contract, therefore, can be a substitute for rules drawn up by the parties involved and a collective voice. Nor can they be used as a pretext for better monitoring and enforcement of regulations or for developing more appropriate strategies.

VII. Conclusion

As a global economy emerges, all the rules of the economic game have changed or been increasingly challenged. Labour relations are not an exception. There is an increasing tendency to deny the framework of labour relations based on collective representation, as a model enabling modern industrial relations and human resource management systems to contribute to the economic and social advancement of a society and its citizens. It is increasingly claimed that there is a mismatch between existing collective representation and new realities. The mismatch is larger in a newly-industrializing economy that depends solely on its economic competitiveness; as Korea’s economy is increasingly exposed to international competition, it needs to adjust to rapid technological changes and the new economic environment.

Experience, on the other hand, has proved that a well-designed system of worker representation can produce benefits not only to workers but also to the firm and to the markets in which they operate. Though the system based on workers’ collective representation is accompanied by some economic burdens and losses, it positively supplements efforts of government to regulate labour market outcomes.

The system, moreover, is consonant with basic democratic norms and the democratic reform to which Korean society is now deeply committed. If one believes in the principle of democracy, therefore, it will be difficult to deny the value of collective representation. The principle of democracy mandates recognition of workplace associations as an important complement to social self-government along with private
markets and public hierarchies. Though it may be costly, it has to be accepted as part of democratic life. Under plausible conditions, moreover, collective worker representation has proved that it can provide a positive contribution and improve the competitive edge of both companies and society. Experience has also shown that there are no viable alternatives. The system of collective representation, however, needs to develop in such a way as to provide information and consultation rights, guarantees of their permanence, and power to enforce formal rights. The result will be to secure not only a fair share of the fruit of their labours but also to motivate workers to commit themselves to the cause of the company, and to provide them with a stake in the system that will serve as a positive economic force.
Regulation of the labour market
in the globalized economy: The case of working time reduction in Japan

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I. Introduction

The accelerated globalization of the economy and intensifying industrial competition poses great challenges to conventional labour standards in many industrialized societies. A common and fundamental policy issue is the extent to which and in what manner the long-established regulation of the labour market needs to be modified to accommodate structural changes in industrial environments. The issue is complex because it remains necessary to protect workers' basic interests in the deteriorating labour market, although a significant degree of deregulation appears essential to enhance its functioning in the globalized economy. This paper seeks to describe the issue of regulation versus deregulation of the labour market in contemporary Japan, focusing on its most significant development, the recent policy-led reduction in working time.

Working time is an aspect of industrial relations susceptible to international influence, as testified by the history of the formation of ILO standards and their dissemination. The free movement of commodities across borders has increased this influence by making working time one of the basic elements of fair competition in the international marketplace. Working time is, on the other hand, a key aspect of industrial relations which reflects the fundamental structure and characteristics of
the domestic economy. Working-time standards thus reflect an interesting interaction between international and domestic forces.

In discussing the relationship between regulation and deregulation of working time in Japan, this paper will briefly sketch these dynamic interplays in the post-war development of Japanese working-time standards, identifying the globalization of the economy as a central force in recent developments. Through such a historical approach, this paper proposes a new combination of regulation and deregulation to cope with pressures from increasing economic globalization.

II. The ILO’s influence on working-time standards after the Second World War

Like many industrialized countries, Japan has protective labour statutes which set out basic working-time standards with criminal sanctions and inspection mechanisms. The basic legislation is the Labour Standards Law, enacted in 1946 during the occupation by Allied Forces after the Second World War, which established the daily and weekly limits on working time as 8 and 48 hours, respectively. It also required employers to give workers at least one rest day per week and 6-20 days of annual leave in accordance with length of service.

When this law was drafted, Japan was in economic ruin and disorder. However, the scholars and bureaucrats who undertook the drafting were determined to create legislation that would lay the foundation for modern democratic industrial relations. Therefore, the basic ILO working-time standards were used as a model, even though many of those standards were difficult to implement in the light of the industrial conditions of that time. The principles of the 8-hour daily and 48-hour weekly limits on working time, weekly rest and annual holidays with pay in Conventions No. 1, Hours of Work (Industry) (1919), No. 14, Weekly Rest (Industry) (1921), No. 30, Hours of Work (Commerce and Offices) (1930) and No. 52, Holidays with Pay (1936), were made the pillars of the new working-time legislation.

Nevertheless, the drafters considered the industrial realities of that time and incorporated domestic features into the legislation. For example, recognizing the need for economic recovery, the regulations created ample flexibility for overtime work. In addition to the temporary deviation from the daily and weekly limits permitted in Article 3 of Convention No. 1, Article 36 of the Law further enabled employers to use overtime working in accordance with a written agreement with a
majority union or other representative of a majority of employees. The agreement had to be submitted to the Inspection Office. Otherwise, the Law did not impose any statutory restrictions on the length of and the reasons for overtime work.

The legislation also made the daily and weekly maxima more flexible than the ILO standards by allowing employers to average scheduled (regular) working hours over a period not exceeding four weeks. The employer was required to specify the working hours for each day and week in the work rules, and the average regular working hours could not exceed the weekly maximum of 48 hours. This averaging system could be installed unilaterally by the employer without statutory restriction on the length of daily and weekly work schedules.

As for annual paid holidays, the system in Convention No. 52 of increasing holiday entitlements with length of service was found to be highly compatible with the long-term employment system which was already considered a model at that time. Thus, the Law provided that employees were entitled to at least six days of holiday with pay after one year of continuous service, with the number of leave days increasing by one day with each year of service up to 20 days annually. However, the Law made the annual holiday system special to Japan by requiring an attendance rate of 80 per cent or more during the previous year of service to be entitled to holidays, and also by not restricting the division of holidays into parts.

Another facet of working-time standards in the Labour Standards Law, which did not necessarily contravene ILO standards but represented a major domestic feature of working-time regulation, was the existence of inferior standards for a wide range of industries. For example, the Law set 9-hour daily and 54-hour weekly maxima for small-scale mercantile and service undertakings.

III. The domestic development of working-time practices

After the framework of working-time law was established as an element of the liberal and democratic legal system of the reborn nation, Japan's economy was rebuilt and subsequently entered a long period of sustained economic growth from the mid-1950s. The expansion of the national economy continued rapidly until the first oil crisis in 1973. It then underwent large-scale adjustments to overcome global economic fluctuations including, later, the 1978 oil crisis and the rise of the yen in
the late 1980s triggered by the 1985 Plaza Accord. Through such adjustments, Japanese industry was rationalized and strengthened its position in the global product market. These sustained periods of economic growth and adjustments were marked by working-time changes of an almost exclusively domestic character. Hence, the standards and practices of working time in Japan became clearly distinctive from those in Europe and the United States.

The most striking feature was the gap in annual working hours between Japanese and Western workers created by Japan's delay in reducing working time. According to Labour Ministry statistics, average working hours reached a peak of 2,426 hours in 1960, the middle year of the first decade of sustained economic growth, and then declined steadily to 2,077 hours in 1973. Such data demonstrate that regular working time decreased (and weekly rest-days increased) significantly as a consequence of high economic growth and improved productivity. From the mid-1970s, however, the reduction in regular working hours slackened. Instead, overtime working hours gradually increased, and overall working time crept up to about 2,100 hours per worker. This level of annual working hours lasted for a decade during which industries allocated the gains of limited economic growth mostly to rationalization investments and wage increases.

In continental Europe, on the other hand, the five-day work week became widespread soon after economic recovery following the Second World War, and holiday entitlements increased throughout industry. Statutory vacation standards were raised in many countries, and the ILO adopted a new Convention, No. 132, Holidays with Pay Convention (Revised) (1970). Even during the economic difficulties that followed the oil crises, working time was further reduced in line with demands for work-sharing by labour movements. The result was that, as of 1985, Japanese production workers worked 244 hours (30 days) longer than American workers and 509 hours (63 days) longer than workers in West Germany. Average regular working hours of production workers in Japan were 181 hours (22 days) longer than in the United States, and 357 hours (44 days) longer than in West Germany.

These differences can be ascribed to three features of working time in Japan:

(a) First, there was the delay in the spread of the five-day work-week, in particular, in medium-sized and small businesses. According to the Labour Ministry's statistics, in 1986, the five-day work-week applied to only 26 per cent of all workers: the proportion was 50 per cent in firms with 1,000 or more employees, 16 per cent in those with
100-999 employees, and 3 per cent in those with 30-99 employees. As a result, there were large discrepancies in regular working hours between larger and smaller enterprises ranging from 1,890 hours in enterprises with 1,000 workers or more to 1,986 hours in enterprises with 30-99 workers, as of 1984.

(b) Second, there was a large amount of overtime working, regardless of enterprise size though larger firms typically recorded more overtime. In 1984, the annual number of overtime hours worked was 223 hours for enterprises with 1,000 workers or more, 169 hours for enterprises with 100-999 workers and 144 hours for enterprises with 30-99 workers. When these overtime hours are added to regular working hours, there was little difference in the number of actual working hours by enterprise size; firms of all sizes recorded averages of around 2,100 hours. Actual annual working hours in 1984 were 2,113 for enterprises with 1,000 workers or more, 2,101 hours for enterprises with 100-999 employees and 2,130 hours for enterprises with 30-99 employees.

(c) Third, Japanese workers utilized on average only half the annual paid holidays guaranteed by the Labour Standards Law, regardless of the size of company they worked for. This had a significant impact on annual overall working hours. In addition, there was no major revision of statutory working-time standards despite the development of labour standards in the ILO and European countries. Legal standards lagged behind those of Western nations, although they initially had a reformative character.

Most of the domestic features of working-time standards and practices described above can be understood in the light of the structure of Japanese industry which is divided into a small number of large-scale enterprises and a large number of smaller firms.

In bigger firms, labour relations are based on a long-term employment system in which firms recruit new graduates as potential employees and develop their careers with systematic job rotation and training until the age of retirement, typically 60. Top executives as well as senior managers are internally recruited, and the members of an enterprise have a strong sense of community with common interests. Labour unions are organized within each enterprise on the basis of this internal labour market, and wages and other working conditions are negotiated between an enterprise union and the company. Industrial relations are thus individual to the company.
Meanwhile, smaller firms often exist as the affiliates of or subcontractors to larger firms. Though they attempt to maintain a long-term employment system, wages and fringe benefits are markedly inferior to those in larger firms. Labour markets involving smaller firms are more externalized with a significant degree of worker mobility across enterprises. Moreover, there is less unionization; fragmentation of industrial relations is even greater in this vast sector.

Amidst this decentralized and multi-layered industrial relations structure, working-time standards among larger and smaller firms naturally diverge. Yet, even in the case of larger firms, employees are very much concerned with the viability of their firms, on which they depend throughout their entire career. Firms also demand total devotion from their employees in exchange for assuring them financial security for life. Thus, employees were willing to respond cooperatively to management's requests for production expansion through longer working hours. They also did not complain about sacrificing their vacation entitlements by not using up statutory annual leave.

Needless to say, enterprise unions were concerned about their fragmented power; they formed industrial federations and national confederations to overcome their organizational weakness. The “Shunto” (Spring Wage Offensive) system, through which enterprise-based wage negotiations within and across industries were coordinated, is one way in which these industrial and national labour groupings have been able to increase their organizational strength. Unions have thus been successful in spreading wage increases established in the leading firms in key industries to other firms and industries. Until recently, however, unions gave priority to wage increases and enterprise growth, without attaching importance to working-time reduction. Employers' requests for overtime work which generated production and remuneration increases were typically not resisted. In this sense, labour and management fully took advantage of lax overtime regulation.

The features of Japanese industrial relations were nurtured during the period of economic growth which lasted until the first oil crisis, but they firmly took root during the ensuing period of economic adjustment in the late 1970s and most of the 1980s. During this time, industries underwent large-scale rationalization and downsizing of the labour force. The reduction in regular working time faltered, overtime became more firmly institutionalized and taking annual leave became more difficult. Though the product market began its globalization in those years, Japan's far-eastern location long obscured the working-time gap between it and the Western nations.
IV. International pressures from globalization: The movement towards reduction in working time since 1987

As its industries increased product exports during the economic adjustment period, Japan was strongly criticized by the United States and Europe for its economic aggression. These criticisms included the long working hours in Japan which were considered an element of "unfair competition". The Japanese Government responded to the mounting trade friction by adopting a policy of restructuring designed to turn the economy from one primarily geared to exports to one geared primarily to domestic demand. One aspect of this plan, which was announced immediately before the Tokyo Summit in 1985, was the drastic reduction of working hours from an average annual figure of 2,100 hours to a goal of 1,800 hours.

To promote the change, the Labour Standards Law was revised twice, in 1987 and 1993. The 1987 revision established a phased programme to reduce weekly maximum working hours from 48 to 40 hours. The first stage involved a reduction to 46 hours, followed by 44 hours from fiscal 1992 by a revision of the enforcement ordinance. The Law was again revised in 1993, setting a 40-hour maximum from fiscal 1994 with a three-year deferral for smaller undertakings in designated industries.

In addition to lowering the limits on working time, the Government has also been trying to create an environment more conducive to shorter working hours, with the cooperation of labour and management in the relevant industries. These measures include the introduction of a five-day week for banks and other financial institutions from 1990 and in government offices from 1992, and the call for reconsideration of business practices that act as impediments to reductions in working time. Accordingly, the "Law for the Promotion of Reduction in Working Hours" was enacted in 1991 to help enterprises reduce working hours and increase weekly rest days with subsidy programmes and other measures.

Supporting the pursuit of shorter working time was the widespread perception that, despite Japanese industry's strong position in the global market and the achievement of great national wealth, Japanese workers were not enjoying the quality of working life they deserved. Lengthy working time was recognized to be an area of Japanese industrial relations which required structural reforms to enhance worker welfare. Reduction of working time was thus not only promoted by unions in the spring offensives but gained basic support even from employer organizations. Furthermore, severe labour shortages during the economic boom
toward the end of the 1980s stimulated the efforts of firms to reduce working hours since sought-after young workers manifested clear preference for companies with shorter working hours and more vacations. The recession that followed the collapse of the "bubble economy" also led to a reduction in overtime work and reconsideration of lengthy working-time practices.

As a result, annual working hours have been reduced by more than 40 hours a year since 1988. In 1993, average working hours were 1,913 annually, bringing within reach the goal of 1,800 hours within five years. The Labour Ministry's monthly labour survey covering undertakings with 30 employees or more shows that, of 1,913 hours, 1,780 were regular working hours while 133 were overtime hours. By comparison, in 1982, Japanese workers put in 2,052 hours annually — 1,866 regular hours and 186 hours of overtime.

The five-day work week is also spreading steadily. As of December 1992, 68.1 per cent of firms with 1,000 employees or more operated a five-day working week. This proportion was 26.8 per cent for firms with 100-999 employees and 14.9 per cent for firms with 30-99 employees. Most firms which have not yet instituted a five-day working week have introduced five, six or seven rest days over four weeks.

Even the statutory standards of overtime premiums and annual leave have been raised closer to international norms. The 1993 revision of the Labour Standards Law provided for overtime and rest-day premium rates to be increased by government ordinance from the present 25 per cent to 50 per cent in stages after discussion in the tripartite Central Labour Standards Council. As a first step, the rest-day work premium was increased to 35 per cent from fiscal 1994. Regarding annual leave, the 1987 revision of the Law increased the minimum holiday entitlement from six to ten days and provided for annual leave planning in labour-management agreements. The 1993 amendment further reduced the requirement of continuous service from one year to six months.

V. Deregulation for flexible work scheduling

Reforms of working time standards moderated their excessively domestic features in favour of greater international compatibility. Yet such reforms were also accompanied by measures for increasing flexibility in work scheduling, a common trend observed in industrialized countries.

The 1988 and 1993 revisions of the Labour Standards Law established several flexible working-time schemes to adapt working hours to
the remarkable changes in industrial structure, and methods and types of work, during the Japanese economy's dynamic development. The new flexibility measures are also perceived as an effective means for implementing a drastic reduction in work hours, while maintaining the productivity required to compete in world markets. Such measures include a variety of working-time averaging schemes and a flex-time system. The Labour Standards Law now sets out four types of averaging scheme, over a period of one month or less, three months or less, one year or less and one week. For the first three types, the employer must fix daily and weekly work schedules in either work rules instituted by employers or in an agreement with a majority union or a majority employee representative in the undertaking. There are also daily and weekly limits on working hours for the second and third averaging schemes (9 and 54 hours and 8 and 48 hours, respectively). For the fourth type, which is allowed only for small undertakings in certain service industries, the employer can vary daily working hours up to 10 hours within the weekly 44-hour limit. The averaging schemes have been conventionally used for irregular or lengthy shift-work in certain industries, but recently they have been more typically used as a means of reducing annual working hours while accommodating work schedules to business fluctuations over a certain period. For instance, several department stores combined the busiest months of July and December with the subsequent slack months and rescheduled working hours and weekly rest days using the three-month averaging scheme. In so doing, they increased rest days within each three-month period and reduced annual working hours significantly.

The flex-time system is even more widespread, particularly among white-collar workers in larger firms. Under flex-time arrangements, employees can adjust their working time by starting and finishing at a time they wish, on condition that they put in a certain number of working hours over a given period (usually one month). According to a Labour Ministry survey in 1991, 30.8 per cent of firms employing 1,000 workers or more have adopted such systems.

As in many other industrialized countries, the phenomenon of flexible work scheduling is part of a more general trend of greater flexibility and diversity in employment types and work styles. The remarkable increase in part-time, fixed-term and other atypical employment is another major feature of the trend towards broader flexibility in the labour market. It is an outcome of combined factors from both supply and demand sides: employers' efforts to strengthen competitiveness in the changing environment as well as workers' more diversified values and behaviour.
In contrast to trends on the European continent, the trend towards flexibility in Japan has been proceeding in the context of a structurally tight labour market. In other words, there has been almost no objective of work-sharing to combat unemployment. Another characteristic is that, for working time as well as employment, Japan's post-war labour legislation originally allowed much more flexibility than in Europe. It has thus been less necessary to relax traditional labour law.

The recent restructuring of business organizations for economic revitalization has prompted management's demand for the deregulation of working time of managerial and professional employees. Faced with a big increase in senior white-collar employees in recent years as well as the prospect of intensifying international competition, many larger firms are drastically modifying their egalitarian wage and promotion systems based on length of service. Firms still intend to maintain the long-term employment relationship but intend clearly to differentiate wages and promotions among middle-ranking core employees in accordance with their responsibilities and achievements. Annual goal-setting and evaluation of attainment is a typical technique adopted in such competitive personnel systems. Emphasis on employee initiative and autonomy can also serve as an additional incentive. Employers are thus claiming that some form of "white-collar exemption" should be introduced in working-time regulation in Japan. This will become one of the most crucial issues in protective labour law in the coming decade.

VI. Conclusion

Working-time standards in Japan after the Second World War were initially internationally oriented with the aim of instituting elements of modern and democratic industrial relations. As the Japanese economy underwent significant development and adjustment, specifically domestic features evolved which mirrored the structure and characteristics of Japanese industrial relations. The most notable such feature was lengthy annual working hours which surfaced on the international scene when Japan became a leading actor in globalized competition. In response to international criticism, the Government undertook the reduction of working time through a liberal-corporatism type of collaboration with labour and management. Legal standards on working time were dramatically improved, creating a new type of regulation for social reform. But this had to be combined with increased flexibility of labour standards for more efficient company operation and diversified work-styles. Further-
more, growing demand for deregulation to revitalize industries in the midst of intensifying global competition has provoked a difficult but unavoidable issue. An emerging pattern of the ongoing reform of social legislation is not simple deregulation but a complex combination of regulation and deregulation to enhance worker welfare and strengthen competitiveness.¹

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¹ Along with intensifying global competition, another significant force that is putting pressure on social legislation and labour market reform is the unprecedentedly rapid ageing of society.
Down under against the tide: Mainstreaming equity and creating an open Australian economy

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I. The background to the 1983 Accord

Australia’s “experiment” with a prices and incomes policy began in March 1983 on the election to office of a federal Labor Government. At four subsequent federal elections Labor was re-elected. With an electoral term of three years, the Statement of Accord by the Australian Labor Party (ALP, or Labor) and the Australian Council of Trade Unions (ACTU) — “the Accord” — is, in 1994, 11 going on 13 years old.

The ACTU was established in 1927. Australia’s first unions were formed in the first half of the nineteenth century and the union movement grew to be the world’s strongest by the late 1880s. However, English common law told against the movement during long and bitter industrial disputes in the early 1890s in the pastoral and maritime industries and, with the unions defeated, membership collapsed.

Labor is a political party formed in 1892 in response to those losses. The popular labour movement resolved to supplement industrial struggle with political struggle through the ballot box, and the ALP was born as its political wing, to complement its industrial wing, the union movement. That decade, 100 years ago, also saw the start of formal processes.

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1 For helpful comments on an earlier draft of this article, I thank Geoff Harcourt, Duncan Campbell, Werner Sengenberger, Jim Wright and colleagues at the ACTU. All errors are my own.
which culminated (in 1901) in the birth of the Australian nation by the federation of the continent’s six separate colonies.

Labor has held government federally on several occasions since Federation but prior to 1983 its terms in office were brief and tumultuous. The Australian labour movement was a broad church. The unions represented all points on the political compass, from avid Moscow-line communist to virulent Vatican-line anti-communist, and the factions of the ALP spanned all points in between.

Before 1983, the most recent period of Labor in office had been the Whitlam government in 1972-75. This was preceded by more than two decades of conservative coalition governments which held office unbroken for virtually the entire post-war boom period. The three brief Whitlam years, which were characterized by mistrust, division and strife between the two wings of the labour movement, coincided with the first OPEC oil price shock and the emergence worldwide of stagflation which confounded the so-called “Keynesian orthodoxy” and punctured the world-wide boom. The seven years which followed Whitlam were governed federally by a conservative coalition. They were years of “fight inflation first” policy but, by the turn of 1983, the conservative government had failed, with unemployment over 10 per cent and inflation at 11.5 per cent.

II. Economic and social policy post-1983

The origins of today’s Accord can be traced to that period in the late 1970s. A shared view emerged amongst significant players in political Labor and industrial labour that a prices and incomes policy might work and should be attempted. The operation of such formal and informal policy approaches in western Europe and Scandinavian countries was investigated. What was being contemplated was not the imposition of short-term statutory price and wage controls (as had been tried without success in the 1960s and 1970s in the USA, Britain and elsewhere), but

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2 The Curtin/Chifley governments of 1940-49 may be cited as an exception. Though not brief, the period in office had its tumults (for example, the Labor Government sent in troops to break a major national dockside strike) and originating as a war-time administration was certainly a special case.

3 And even to the early 1970s when a group of academic economists including Eric Russell, Geoff Harcourt, Phillip Bentley and Barry Hughes developed the “Adelaide Plan”, a prices and income approach to macro-economic management, which was discussed at high levels in the labour movement.
the efficacy of longer-term consensual approaches to economic and social policy at large.

As it happens, at this time the "rational expectations revolution in macro-economics" was rolling through the English-speaking industrialized world. Originating in certain quarters of the United States economics intelligentsia, this resurgence to full political favour of a dogmatic free-marketism culminated in the domination of the 1980s world stage by Britain's Margaret Thatcher and United States President Ronald Reagan. Australia's avowed Accord ran directly counter to that philosophical trend. But the blend of policies actually pursued in the name of the Accord across the policy spectrum reveals a complex combination of reliance on, and regulation of, market forces.

Policy with respect to financial and goods markets has been deregulatory and, with few exceptions, fully in accord with the direction of change which "rational expectations" theory would suggest:

(a) The Australian dollar was floated in late 1983, to "let the speculators speculate against themselves" [Hughes, 1993]. Today, the central monetary authority (the Reserve Bank) intervenes in the foreign exchange market only to "smooth and test" currency movements, without targeting any particular exchange rate or rates.

(b) The domestic banking industry was opened up to foreign competition. Sixteen new foreign banking licences were issued, offered and accepted in the mid-1980s to shake up the big four established domestic banks which were, for all practical purposes, the wholesale and retail Australian market.

(c) Regulatory controls on foreign exchange transactions were removed over the course of 1983 and 1984.

(d) Regulations (other than minimum prudential requirements) governing domestic banking were rescinded by 1989.

(e) In goods markets, import quotas have been abolished and tariffs have been cut steadily and continue to fall. In 1983, nominal rate of tariff averaged 13 per cent for manufacturing as a whole, with nominal duties of 60 per cent for motor vehicles, 81 per cent for clothing and 102 per cent for footwear. The resultant effective rates of assistance were estimated to average 22 per cent across manufacturing as a whole, to exceed 250 per cent for footwear and motor vehicles and to be 222 per cent for clothing [IAC, 1989]. By mid-1996, the general tariff rate will have fallen to 5 per cent; by 1 July
2000, tariffs on automobiles will have been cut to 15 per cent and on textiles, clothing and footwear to 10.25 per cent.

(f) Australia's negotiating position in the Uruguay Round of GATT trade talks, and its pivotal role within the Cairns group in that process, was decidedly deregulatory and anti-interventionist.

Social policy since 1983 reflects a blend of reliance on market forces and moderation of their extremes, particularly at the lower end of income distributions. The cuts to and atrophy of welfare programmes and provision in Reagan's America and Thatcher's Britain was not emulated in Labor's Australia.

(a) The social security system has been overhauled to target poverty alleviation. Substantial cash payments are now provided to low-income families with children, whether the parent(s) are working for wages or receiving pensions or benefits. Old-age pensions have been increased to their highest-ever level in real terms. Whilst social security expenditure as a proportion of total Commonwealth budget outlays rose over the 1980s, public spending fell steadily as a proportion of GDP. This was a period of fiscal rectitude and (in the late 1980s) substantial budget surpluses. Transfer payment arrangements were targeted and tightened, with income and assets tests introduced to reduce the eligibility of higher income groups for pensions and benefits. The clear goal has been to truncate income distribution at the lower end, subject to the constraints of responsible fiscal policy, to over-ride the adverse distributional implications of unfettered market forces.4

(b) Although there was sustained effort directed toward poverty alleviation, the "high flyers" amongst income earners did not have their wings clipped. The top marginal rate of income tax was cut from 60 per cent to 47 per cent and full dividend imputation introduced, contributing to the fastest income growth over the past decade being recorded by the top decile of income earners. (Their gains would

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4 The distribution of property is also a relevant consideration when the social security target is poverty alleviation; this is reflected in the imposition of both income tests and assets tests to determine eligibility for social security benefits. Further, Australia has one of the world's highest rates of private home ownership (around 70 per cent); so much so that a clear indicator for incidence of poverty (especially but not only amongst the elderly) is living in private rental accommodation. The reforms to the social security system under the Accord provide extra subsidies wherever beneficiaries are living in private rental quarters. However, there is no wealth tax nor inheritance tax in Australia.
have been even greater had the tax base not been repaired and broadened during the 1980s through the introduction of capital gains and fringe benefit taxes and closure of important tax loopholes.)

(c) Medicare, the universal health care system introduced in 1984, provides patients with freedom of choice with respect to private general practitioner services, and coexists with private health insurance funds which support a private hospital system in addition to the public hospitals. Health expenditure consumes around 8 per cent of Australian GDP compared with over 12 per cent in the USA; whilst "queues" exist for treatment of certain chronic disorders, no acute patients are turned away for lack of health insurance. A Report on Medicare recommending improvements to it has recently been completed by a Working Party comprised of representatives of the ACTU and the federal ALP parliamentary caucus. There is no doubt that Australia has one of the world's finest health care systems.

(d) The education and training system has been subject to continuous reform across all sectors from schools to technical and vocational training to higher education:

- both public and private sector providers deliver education services at pre-school, primary, secondary, tertiary and vocational levels;

- the high school retention rate (the proportion of students completing year 12) rose from one in three in 1983 to two in three in 1992, and is projected to reach or exceed 80 per cent by the year 2000;

- participation in higher education amongst persons aged 15 to 69 years has increased from 6.5 per cent to 9.4 per cent between 1983 and 1992; the number of persons in the same cohort with post-school qualifications rose from 34 per cent to 41.8 per cent over the same period [DEET, 1993];

- the Australian Vocational Certificate Training System is at present undergoing pilot-testing for general introduction. It is designed to transform the school-to-work transition and to establish the "life-long learning" paradigm in Australian workplaces, wherein work and learning continue throughout working life. This replaces the "front-end learning" model, wherein learning (schooling and skill formation) preceded working life, which in turn preceded retirement.
"Superannuation" is Australian for "pension fund". Though a universal, publicly-funded old-age pension was introduced in Australia in 1909, it provides a flat-rate payment with very low replacement rates. Currently, at 25 per cent of average male earnings, the pension is at its highest-ever level in real and relative terms. Nevertheless, alone it allows only very modest living standards in retirement.

In 1986-87, the union movement succeeded in an industrial campaign to require employers to pay 3 per cent of a worker’s earnings to a superannuation account in the worker’s name, vested and preserved until retirement and portable with any change of employer. In 1991, the federal Labor government legislated to implement a phased increase in this entitlement, reaching a 9 per cent employer contribution by 2001 and flagging an intention to require a further 3 per cent to be paid by workers themselves.

This arrangement will not only alleviate the impact on the public accounts which would otherwise arise inexorably by 2020 from the demographic bulge of Australia’s retiring baby-boomers. It is also expected to raise the level of national savings, thus contributing to an amelioration of the nation’s chronic current account deficit on the balance of payments. It should be noted that these superannuation payments do not funnel into a single, central, public sector fund; they flow to trust funds whose trustees most often are comprised of employer and union nominees who, in turn, contract fund management out to competing private sector specialists. Thus, workers’ compulsory savings for retirement add directly to the flow of funds available to finance private sector investment in Australia, and lower interest rates below what they might otherwise be.

III. Wages policy under the Accord

If "economic rationalism" or "market fundamentalism" means virtually exclusive reliance by governments on market solutions (because of a belief that government attempts at regulatory or other interventions will be rendered nugatory by the compensating adjustments of rational, private individuals maximizing their own self-interest), then the rejection

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5 The current account deficit will be a persistent concern if demand and expected demand are sufficient to keep investment and output growth at sustained high levels, as hoped.
of this view under the Accord is no more starkly illustrated than with respect to labour market policy.

First, prior to 1983, the future growth of wages in Australia was a major uncertainty facing every business. Shut out of the economic process, unions simply bargained for wages as best they could, each in the interests of their own members. Wages growth was volatile and procyclical, accelerating in the booms and slowing in the busts. There was no connection between wages policy and other policy instruments.6

Since 1983, wages policy has been framed with regard to the goals of economic policy generally, and the growth of wages has been moderate and predictable. This matters greatly for business, especially for those investors contemplating major new investments. Moderate and predictable wage outcomes for more than 11 years have seen Australia top the OECD league tables for jobs growth (notwithstanding the recent recession). There is also evidence that employment growth under the Accord has been concentrated in relatively well-paying jobs, not amongst hamburger flippers and shoe shiners and the like, as has been argued to be the case in the USA over the 1980s [Bluestone & Harrison, 1990; US Department of Commerce, 1992; ACTU, 1989].

This restraint in wage claims by ordinary working people has contributed in large measure to Australia's lowest rate of inflation in 30 years. And it has been achieved — uniquely in Australia — in such a way that the living standards of the weakest and lowest-paid wage-earners had a greater degree of protection against inflation during the 1980s than did middle-income earners.7

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6 When full indexation of wages to movements in the cost of living was first introduced in 1975, the then Arbitration Commission highlighted the linkages between wages policy and the other instruments of economic policy, and stressed the need for harmonization and consistency between them. But almost immediately, the Conservative coalition regained federal office at the elections of December 1975, reversing federal government support for the indexation package and ending any prospect of the policy harmony being achieved.

7 In the private sector, the Industrial Relations Commission determines legally binding minimum award rates of pay. In practice, most employers pay more than the bare minimum to their employees. These over-award payments vary greatly from employer to employer, region to region, industry to industry, by sex and ethnic background and more. Labour market forces are alive and well in Australia — there is no "mandated wage uniformity", but rather a relevant structure of legal wage minima.

Prior to Award Restructuring (see below), the ad hoc growth of award coverage over the course of the century had resulted also in differences in minimum award rates for identical job classifications. This was a fundamental flaw in a system which purported to dispense wage justice — how, for instance, can different legal minima for the same occupation in the same region be fair? These differences fostered claims based on fair wage comparisons for award wage increases, engendering a chronic instability to the
In 1983, an explicit goal of wage restraint under the Accord was to raise the share of profits in national income from its then historical lows, thereby to promote investment and jobs growth. This was achieved by 1985-86, and in the late 1980s the profit share reached all-time record highs. In 1994, as Australia comes out of an extended recession, the profit share is close to those record levels reached at the height of the late-1980s boom. (Indeed, unless new investment soon and substantially improves, the case in support of continuing wage restraint will have to be re-examined.) Associated with this unparalleled wage restraint throughout the Accord has been a sustained decline in days lost to industrial disputes. On average, over the past 11 years, the time lost due to industrial disputes was 60 per cent lower than in the preceding decade. Most recent official figures show Australia's incidence of industrial dispute (working days lost per thousand employees) is at its lowest since records commenced 35 years ago.

Second, Award Restructuring since 1988 has totally reshaped the framework of Award regulation which governs attitudes to work and training and the way in which work is done in Australian workplaces. The Award system evolved largely by accident over 80 years in Australia but, by the mid-1980s, it had become out of tune with modern approaches to work organization and competitive efficiency. Thus, companies are more flexible, productive and competitive when strategic focus is placed on team performance rather than individual output, when skills and competency are emphasized and when authority and responsibility are devolved to workers through flat management structures. That quality earns a premium on prices is a truth from the modern world.

Award Restructuring builds these principles into the institutional framework which sets the rules in Australian workplaces. Through historical coincidence, Australia's system of award regulation in the labour market evolved contemporaneously in the first half of the twentieth century with Taylorism and the rise of the production line. By the mid-

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wages system.

Award Restructuring sought to remedy the problem through minimum rate adjustments (MRAs), special increases in certain award rates of pay which are absorbed against existing over-award payments. This benefited low-paid workers receiving the bare minimum only (amongst whom women and minorities are prevalent) whilst restoring coherence and stability to the structure of minimum award rates of pay. By this means, it was possible to raise the legal floor of the relative wage structure, without raising the entire economy-wide array of actual wages paid.

Beyond MRAs, the position of weaker and lower paid groups of workers received relatively greater protection against inflation through flat dollar (rather than percentage) increases in wages under the Accord during the second half of the 1980s.
1980s, Australia had an award system which embodied the “best-practice” management theories of the 1930s. These inherited award structures embodied Taylorist management principles — which encouraged demarcation, discouraged skill formation and hindered responsiveness and flexibility — but they are now either gone or well on the way out.

In each industry the restructured awards (which continue to set minimum standards in employment) contain only a few, broadly-defined job classifications, linked by skill levels so as to provide a career path along which workers may progress throughout working life by acquiring additional skills and competence. Further, by defining jobs broadly and building in cooperative workplace arrangements, change and flexibility in work organization is facilitated. For example, changes such as total quality management can more readily be introduced, and inventory management can be based on the principles of “just-in-time” rather than “just-in-case”.

It is one thing to re-write every award in the country (and there are around 5,500 of them), but it is another to ensure that the scope thus made available for changing the way work is organized and performed in each workplace across the country is in fact utilized. Award restructuring facilitates change. It enables and assists the change process to occur and grow, but responsibility for actually changing things at any place of work is ultimately a matter for the workers and management there. Subject to the broad principles and minimum standards set by restructured awards, the precise details of changes to take place in any workplace are best addressed by the people directly involved. Governments and unions and the Industrial Relations Commissions can help and exhort and advise and assist, but the people who constitute enterprises (or companies) must actually do it.

From 1983 to mid-1990, the rules governing operation of the centralized wages system proscribed unions from engaging in direct negotiations at company level concerning wages\(^4\) (though issues like work organization and work practices were not off-limits). To gain the benefits of the centralized wages system, unions had willingly given the “no extra

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\(^4\) This is not strictly true; in March 1987 a “two-tier” wages system was instituted. A precursor to Award Restructuring, this arrangement provided two “first tier” general wage increases (A$10 per week in March 1987 and A$6 per week in February 1988) with a “second tier” wage increase of up to 4 per cent available enterprise by enterprise in return for negotiated and/or arbitrated cost offsets. This resulted in a round of “productivity bargaining” British-style, which quickly became a bean-counting exercise. Widely loathed by workers, who were being asked to trade off meal breaks and smokes and wash-up time and the like, this episode was spent by mid-1988 with no chance of its renewal in the foreseeable future.
claims" commitment required of them, but by late 1990 inflation had fallen to very low levels and the system based on these commitments had run its course. It was time to implement award restructuring.

The fact is that, whilst people will agree in the abstract on the need for change, they are generally more resistant to it when it concerns them directly. For all the rhetoric, reason and power of logic that can be brought to bear, we are more likely to achieve the change required if there is some incentive or reward or sharing of the gains on the bargaining table. Since mid-1990, there has been that scope. The recent Accords have reaffirmed the objective of enterprise bargaining, and the *Industrial Relations Act 1988* has been rewritten to promote it with the enactment of the *Industrial Relations Reform Act*.

The union movement supports this trend away from centralized wage adjustments. This is only partly because inflation is low and the consequent erosion of the purchasing power of (especially low-paid) workers' wages is much slower and because workers stand to gain from Award Restructuring. It is also because enterprise bargaining requires the presence at workplaces of union officials, which is regarded as an essential element of the renewal of the movement itself into the next century.

Agreements exist in the public and private sector, in large and small companies. They exist in industries as diverse as stevedoring, vehicle manufacturing, oil, chemicals, heavy engineering, metals fabrication, steel, mining, meat, telecommunications, postal services, warehousing, retail, and transport, to list just some. Presently, more than one million of Australia's 6.5 million wage and salary earners are covered by a formal agreement; and the Government's objective is to have around 80 per cent of employees working under a workplace agreement by the end of 1996 [Keating, 1994, p. 29]. These agreements embrace details of changes in work arrangements and work performance as well as rates of pay. Overwhelmingly, agreements are conducted by "single bargaining units" (SBUs) representing workers at each place of work which (in view of traditional multi-union coverage in most workplaces) is a major efficiency gain in its own right.

The scope of the Accord is reflected again in the most recent agreements [ACTU, 1993; 1994] which (i) recommit the parties to promotion of direct bargaining; (ii) cement agreement to two A$8.00 per week

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9 The Accord commits the union movement to pursue wage outcomes consistent with maintaining Australian inflation in line with our trading partners, and to put job creation ahead of all other claims. Inherent in this dual commitment is the ACTU belief that the Australian union movement is sufficiently well "networked" to be able to deliver on both parts of it.
“safety net adjustments” to award rates of pay to provide the floor to the wages system in enterprises/sectors where agreement is not reached; and (iii) commits the Government in principle to the introduction of paid maternity leave in the next federal budget (May 1995).

IV. Efficiency and fairness: The Australian way

One direct consequence of enterprise bargaining pursuant to an efficiency agenda in Australia will be not only greater efficiency in production and improved competitiveness in goods and services markets, but also “a thousand micro-economic price adjustments” in the structure of actual wage relativities (though not of award minima). The direction of causation involved is the opposite of that assumed by orthodox economic theory. This posits flexibility in wage relativities leading to greater allocative efficiency in labour markets (as scarce labour supplies are bid to where they will be most profitably employed) and thus to greater efficiency and competitiveness in the macro-economy. It is the latter vision which underpins calls for the abolition of minimum wage laws, such as those which resulted in the freezing of the US statutory minimum wage under Presidents Reagan and Bush, from 1 January 1981 to 1 April 1990, and in the abolition of minimum wage laws altogether in Thatcher’s Britain in 1985.

Amongst labour economists and across countries, evidence of this allocative role of wage relativities has long been searched for, but with staggeringly little success. This has generated a burgeoning theoretical literature (search theory, bargaining theory, human capital theory, implicit contract theory, Reddaway’s “job opportunities” theory, segmented markets, efficiency wages, ...) in a remarkable process of secondary elaboration on the orthodox simple market model. The change process being described here draws not at all on the orthodox theoretical conception. The Accord directly targets wages growth at the level of the macro-economic aggregates, and efficiency at workplace level, whilst maintaining the integrity and relevance of legal minimum rates of pay.

This continuing labour market revolution in Australia has taken place against a backdrop of incessant social change. The participation rate for women has risen steadily in Australia as in other countries, while that for men has declined a little. The incidence of part-time work has grown rapidly. Private sector employment has risen faster than in any other country but public sector employment has been flat or has declined.
More teenagers are staying longer at school; fewer work full-time but many more work part-time.

These developments are common to other industrialized countries, but are more pronounced in Australia because of our high rates of population growth. In no way can these developments in Australian labour market demographics be attributed to the award system or the industrial tribunals; award provisions apply to part-time work and employment of young people and women, and the same changes are happening in countries without similar social institutions.

Conservative commentators and policy analysts in Australia point to the continuation of the country’s exotic award system as evidence that Labor under the Accord has failed the test of labour market reform. Although deregulation of financial and goods markets is acknowledged, a fundamental and irresistible tension is seen to exist because the labour market has not been deregulated in the sense of abolition of the award system which sets the regulatory parameters in Australian labour markets. The United States labour market is raised as an icon in this regard. The Thatcher anti-union laws and their failure to generate a sustainable jobs boom are ignored, though it is at least arguable that Thatcher’s labour market policy approach was highly regulatory in terms of new and onerous legal requirements placed on unions to complement the “deregulatory” abolition of minimum wage laws. The observable facts are that different markets work in different ways and the differences between labour and financial markets (for example) are evidently more important in understanding their respective functionings than their similarities. Policy premised on the contrary view will be misguided and unhelpful.

In this respect, the labour market reforms pursued in Australia over the past decade have been fully consonant with those enduring truths embodied in the ILO’s Declaration of Philadelphia, in particular that “labour is not a commodity” and that “poverty anywhere constitutes a danger to prosperity everywhere”.

The Reagan and Thatcher approaches to policy were predicated on market solutions in the pursuit of freedom and efficiency as propounded in the libertarian economics of Friedman, von Hayek and the like. On this view, markets — not governments (read regulation) — are societies’ best guarantors of individual freedom, and markets are the shortest and surest route to efficiency and growth and prosperity. Down under, and in large measure against the tide of economic opinion in the 1980s, Australian Labor governments in Accord with the union movement have pursued efficiency and fairness. The Accord embraces market forces and market solutions in the quest for a dynamic, competitive economic base for Australia in the twenty-first century. But it is not a religious belief
held in spite of the evidence and in denial of the consequences. Where markets work sluggishly or generate social outcomes unacceptable in the land of the "fair go", there has been effort to rectify the situation.

As to individual freedom, as any visitor to this country soon recognizes, Australia is amongst the most tolerant and free societies on earth. The proposition that Australia is embarked on some "road to serfdom" is simply laughable. In this context, a ditty from the Great Depression comes to mind:

Australia's a free land, free without a doubt —
If you haven't got your dinner, you're free to go without!

If it be a mark of free societies that there are beggars on the streets and homeless people in the parks, then a fair and caring society will be happy to fail that test and seek to bring all its citizens and their children along for the ride through history. A fair society's path to prosperity will not intentionally be paved with the poverty of its unfortunate constituents.

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Labour standards, global markets and labour laws in Europe

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United Kingdom

I. Introduction

No labour standards are more important in a democratic society than the right to freedom of association and the right to strike located within it. These are essential means for workers and their organizations to promote and defend their economic and social interests [ILO, 1985, para. 363]. The ILO has supported these values not only by legalistic methods, but also by a "strong emphasis on technical cooperation and education" [Valticos, 1969, p. 201], methods which "in relation to freedom of association and industrial relations, have an importance altogether disproportionate to their immediate impact on the body of law and precedent" [Jenks, 1967]. Personal intercessions by the Director-General and by officials have aimed to put an end to infringements of freedom of association [Pouyat, 1982, p. 301].

The Director-General of the ILO pointed out in 1994 that social justice can be undermined in many ways, but the means of restoring it are just as diverse [ILO, 1994]. Despite doubts about the compatibility of "economic development" and trade union freedoms (laid bare by Caire [1977]), the standards of what are now Conventions No. 87, No. 98 and No. 154, on freedom of association and the rights to organize and bargain collectively, and of Convention No. 135 and Recommendation No. 143, on workers' representatives, remain points of reference perceived both as "fundamental human rights" and as operational values "in the interest of workers, employers and the State" [ILO/SIDA, 1974, p. 10]. How are
these standards faring in the global market? Could they be better protected at European level?

The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy (1977, and Annex 1987) and the OECD Guidelines on Employment and Industrial Relations (1976, revised 1984) lent further support, the first endorsing the applicability of labour standards to multinational enterprises which was “decisive” [G. Lyon-Can, 1991, p. 163]. Of course, enjoyment of basic freedoms “can easily be prevented through national laws” — witness the ban in many jurisdictions on sympathy or secondary industrial action [Muchinski, 1994, Ch. 13], widespread even in the liberal 1970s [Davies, 1993, p. 214] though rarely, if ever, justifiable within ILO principles [Ben Israel, 1987, pp. 93-98].¹ The right to strike that lies within the heart of freedom of association may, according to ILO interpretation, legitimately be restricted by national laws without infringing fundamental standards, for example by procedures such as secret ballots, or by special rules applying to a narrow sector of “essential services”. The recent Italian Law 146 of 1990 goes wider in its mixture of executive ordinances, guided collective bargaining and special Commission in seeking a new “balancing of interests in defence of personal, constitutional rights”, as against the exercise of the constitutional right to strike, to resolve the “fragmented relations of the tertiary society” [Treu, 1993, p. 350].

A right to strike is a necessary part of the “three-dimensional concept” encompassing rights (or liberties) to organize, to bargain and to strike. It is no accident that the ILO freedom to associate imports a “right to organize”; it is a concept of greater teleological content than mere freedom of assembly [Wedderburn, 1991a, Ch. 6]. Collective bargaining is sometimes described as an attempt to “place the employer-employee relationship on an equal basis” [Ben-Israel, 1987, p. 27] or, as the German Constitutional Court put it, on an “almost fair level of negotiations on wage and work conditions” (26 June 1991, cited in Zachert [1993, p. 21]). The Webbs, too, spoke of bargaining “between equally expert negotiators” [Webb & Webb, 1914, p. 842]. That ambitious formulation — equality is more difficult to measure than inequality — serves to cast doubt across any given implementation of the standards. Of course, the object of diminishing the inequality in bargaining power is elementary. High authority has it that the “main object of labour law has

¹ Yet see the ban in s. 224 TULRCA 1992 (Britain), and s. 63, 64 Employment Contracts Act 1991 (New Zealand); but contrast the relaxation in Industrial Relations Reform Act, 1993, Part 6, especially s. 43 (Australia). On the draconian ban in the State of Victoria, see Pittard [1993, p. 173].
always been and, I venture to say always will be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship" [Kahn-Freund, 1972, p. 8].

II. Collective bargaining and worker representation

That task of achieving "almost-fairness" in bargaining strength with a domestic employer is always difficult to achieve in reality. With a multinational employer it is much more daunting, even if the two necessary factors are present — secure autonomous organizational strength, and national laws with effective remedies to enforce fundamental labour rights. In a majority of European jurisdictions some fundamental standards receive constitutional protection. But even if national rhetoric applauds such provisions, in reality there are often gaps or lapses. Except for Italy, Luxembourg and France, all of the member States of the European Community were the subject of criticism by the ILO Committee on Freedom of Association or by the Committee of Experts on the Application of Conventions and Recommendations for significant breaches of basic Conventions in the decade following 1981 [Creighton, 1992].

Among them, the case of the United Kingdom is notorious and extreme. In report after report from 1988 the Experts have shown how the new United Kingdom prohibition on trade union membership for certain public servants, extension of laws which permitted — and permit — the dismissal of workers who take part in strikes, bans on many forms of industrial action altogether, and provisions making unlawful the operation of autonomous union rules against members, contravened principles of freedom of association [ILO, 1989, 1991; Ewing, 1989]. To this we must now add the new legal duty on trade unions to identify to the employer each of the workers it is calling out on strike [TULRCA, 1992, s. 20]. No doubt other countries fail to observe standards; but the divergence in observance among member States of the European Union is somewhat alarming. That alarm is compounded when the United Kingdom trumpets the message that the road to economic recovery is deregulation of workers’ employment rights, calling on other States to follow its lead.

Of course, diversity of labour relations systems among these countries, with its roots in the history of their different labour movements and associated social relations [Wedderburn, 1991a, Chs. 3, 10; Maire, 1985, pp. 54-55], makes the idea of immediate harmonization
of labour laws a millennialist, even futile, venture [see Weiss, 1991]. “Heterogenous traditions and present tendencies” seem to rule out even convergence of practices [Treu, 1990, p. 351]. But the ILO has long disposed of methods of inserting floors of labour standards into diverse systems, allowing jurisdictions to implement them by varied mechanisms, by collective agreements even if not binding *erga omnes*. This is a method accepted too by the Council of Europe in regard to its Social Charter 1961 [Adinolfi, 1988]. In comparable systems one finds a twofold meaning of freedom of association — an individual freedom and a collective freedom, “the collective dimension being implicit in its destination” [Sciarrà, 1990, p. 664]. However, in the Council of Europe instruments, attention has concentrated on the individual aspects in the Convention on Human Rights 1950 (art. 11), as against the collective side of the coin, the Social Charter 1961 (arts. 5 and 6).

The apparent acceptance of this weak European Community status quo on freedom of association by the executive Commission in the 1980s and 1990s is, therefore, highly surprising and so far not satisfactorily explained. Without free, autonomous and strong trade unions, the social dialogue becomes a monologue. Despite a reference to the “inspiration” of ILO Conventions in the Community Charter of Fundamental Social Rights (1989, Preamble 10th recital), the Charter’s standards relating to these freedoms, instead of incorporating ILO standards throughout as had first been intended, were very narrowly drawn. The Commission’s Action Programme for the social dimension of the single market said merely that the right to freedom of association and collective bargaining already “exists in all the member States of the Community”. Responsibility for implementation of such rights, including the right to strike, rested “with the member States in accordance with their national traditions and policies”. The Commission limited its own role to a non-binding “Communication” on collective bargaining [Commission of the European Communities, 1989, pp. 29, 30], still unpublished five years later (the Commission lists it as “not yet scheduled” [Commission of the European Communities, 1993b, Annex III, p. 96]).

Instead, a somewhat alarming agenda appeared in the Draft of 1993 when the Commission asked whether, in an open, competitive world economy, “the basic principles of free collective bargaining, state action to protect workers and statutory or voluntary workers’ representatives in workplaces are still recognized as the pillars of the European social contract?” [Commission of the European Communities, 1993a, p. 32]. Such questions were much softened in the final version [Commission of the European Communities, 1993b]. But explicit adherence to ILO standards was still noticeably lacking in the latest plans — indeed, many
interesting and revealing questions were cast out of the Paper in those three weeks. The debate between those who see high social standards as no “optional extra” but as an “integral part of the competitive economic model”, and those who think they “have become unaffordable”, is not entirely concluded [Commission of the European Communities, 1993b, pp. 14-16]. The Community response is also not clear to the concern that investment capital will be attracted “towards countries where the regulations and controls over employment relationships appear more favourable, even more indulgent, compared with one’s own protective regime” [Santoni, 1992, p. 713].

The Green Paper [Commission of the European Communities, 1993b, p. 41] recognizes that transnational enterprises “could adopt a ‘cost cutting’ strategy” reducing employment standards. But, it says, they may not do so if member States “adapt labour law and practices in such a way as to constitute a positive incentive to them to adopt new processes, while preserving “fundamental objectives of preserving workers’ rights”. The relationship to expectations on maintenance of ILO standards is uncertain. Similarly, in discussing the problem of “social clauses” the Community “will continue to play a constructive role” through “existing international institutions such as the ILO”. Exploitation of workers should not be an “instrument of competition” (some countries have child labour and forced labour [ibid p. 69]); the references in the earlier draft to countries which “forbid freedom of association and the right to strike” [Commission of the European Communities, 1993a, p. 84] seem to be omitted from the final version. There have, of course, been culprits even among member States offending against standards on freedom of association.

In an adumbration of the confusions over GATT, which may help to explain the ambiguous stance of the European Union at Marrakesh, the “difficult” controversy over “social clauses” is recounted — protecting workers from exploitation on the one hand and, on the other, concern about disguised “self-interested tendency towards protectionism” [Commission of the European Communities, 1993b, p. 69]. This problem will grow as “globalization of economic production gains momentum”. But, unhappily, there is nothing here to suggest that the Community will take or propose original steps to solve this contradiction without substantial sacrifice of international standards. Indeed, some anxiety may be permitted at the comment that protection of safety standards or of working hours belong to a “different debate”. We may contrast the original proposals of the ILO’s Director-General on this dilemma of the globalized economy, for new, flexible machinery based upon freedom of association, basic social protection and effective “reciprocity” from
developed countries, alongside practical help such as assistance for school facilities, to diminish recourse to child labour [ILO, 1994, pp. 54-66].

In the days when the social dimension was being explained to European labour movements, the impression was that the Community was pursuing parallel aims. Today, a degree of non-intervention on international labour standards contrasts with the energy devoted to the integration of the economic market as the dominant theme of the "Europe project" [Lo Faro, 1992, p. 32]. The "social dimension" in general has lost the place accorded in principle to it by earlier summit Councils. Since Maastricht, proposals for a European Fundamental Rights Act (as in the stimulating draft by Däubler [1991]) have been firmly marginalized. The failure to construct a floor of fundamental labour rights at Community level — which is not at all incompatible with commonsense "subsidiarity" — became manifest as the "social dialogue" debate developed.

In the same period, the Commission sought a dominant role for itself in representation of member States and the Community in the ILO itself on many other matters where competence is shared. 2 Since national delegations are tripartite, the necessary consultations plainly require action by member States which the Commission can hardly effect. Nor has it been wholly clear what the Commission's principles are for recognizing trade unions or employers' associations as "representative" parties to Community "social dialogue". The European Court has also left this hot potato aside. 3 Directives necessarily refer to the great diversity of national law or practice. Belatedly, the Commission initiated some slender studies on this matter [Commission of the European Communities, 1993d, Annexes I, II, III to Annex 3]. Apart from UNICE and CEEP, already recognized, several employers' organizations claimed European representativeness, for example for small businesses or "commerce"; and CEEP, already recognized in the public sector, has no affiliates in the United Kingdom. No doubt "the social partners concerned will be those who agree to negotiate with each other" [Commission of the European Communities, 1993d, para 31].

In 1993, the Commission set out its three-point general principle: bodies should be "cross industry" or cross-category at European level;

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2 See Opinion 2/91, ILO Convention No. 170, Safety in the Use of Chemicals at Work, 19 March 1993, ECJ, paras. 10, 34. The Commission later proposed to maintain its central role in regard to most ILO matters; see Commission, 1994 (sections 4 and 5, which would considerably limit the representative and voting capacities of member States in the ILO).

3 See, for example, Opinion 2/91, 19 March 1933, ECJ, paras. 29-32.
have adequate structures to participate in consultation; and comprise organizations that are an integral and recognized part of member State social partner structures, with the capacity to negotiate agreements and as far as possible represent all member States [Commission of the European Communities, 1993d, para. 24]. The opportunity to require satisfaction of ILO standards was not taken. Conventions Nos. 87 and 98 were once more sidelined. Nor do the Commission’s test require a democratic structure to represent the members of the employer’s association or trade union.

Representativeness is a complex issue, as the ILO knows full well [Morgenstern, 1986], but these tests do not seem adequate. They are top-down dialogue. An association might satisfy the criteria when it did not properly represent its members or their policies. These may be costly mistakes. Already an organization of “independent” trade unions has complained of exclusive rights given to the ETUC [European Industrial Relations Review, 1993, No. 236, p. 3] — but, as it had no members in three States, it was judged to be of “little significance” [Commission of the European Communities, 1993d, Annex I, p. 17]. Arguments about representativeness may grow if multinationals decide to resist trade unions oriented towards bargaining which aim to bring them to the Euro-bargaining table. Allegations may even be made that the Commission is favouring client groups. Again, what about unions denied full freedom in their domestic law (some public employees’ unions, for example)? Europe can surely learn here from ILO experience, developed by its Credentials Committee since the first dispute over workers’ representatives from the Netherlands in 1922. In jurisdictions with a legal concept of “representative unions”, definitions vary substantially (as in France, Belgium, Spain and Italy — where a new amendment is imminent). Elsewhere, solutions emerge in industrial practice (as in Germany or Denmark) but these do not always supplant the deficiencies of multiunionism, as in the United Kingdom. The problem will take on a new urgency if the European Court of Justice rejects the argument that duties of consultation under Directive 75/129 extend only to unions which an employer chooses to recognize.

Perhaps friction between the ILO and the Community was inevitable, for they approach common social problems in different ways (see in the context of regulation, or protection, of women’s night work [Marchand, 1993]). The ILO, a United Nations agency, is an organization which has as a principal objective “the improvement of working conditions”, whilst also paying attention to the conditions of competition. The “EEC and its social action programme”, plus its concern with external competence, inherit “a logic centred upon the necessities of economic
integration" [Maupain, 1990, p. 52]. The European Court of Justice may have lent support to this analysis in holding that the carrying on by a State of an economic activity giving privileges to its workers, when others would do the work for less, can contravene the competition rules of the Treaty.4 The ruling is interpreted by some authorities as justifying “social dumping” by switching work to a cheaper labour market irrespective of labour standards [A. Lyon-Caen & G. Lyon-Caen, 1993, p. 265]. This form of competition is something which neither the Community, the ILO Tripartite Declaration nor the OECD Guidelines may be able to prevent [Muchlinski, 1994]. Are these signs that competition law could weaken the protective elements of labour law?

III. Freedom of association and trade union rights

The ILO attaches central importance to freedom of association not merely of itself but as an active principle infusing many other fields: “It is a determining factor in the application of standards” [Pouyat, 1982, p. 287]. Proposals that “international trade agreements should include a social clause laying down minimum or fair labour standards” are of central relevance to ILO ambitions of “social justice, the abolition of poverty and equality” [Servais, 1989, pp. 423, 432]; the Director-General’s sensitive Report in 1994 reflects the determination to pursue such international methods in a realistic manner [ILO, 1994, Part 3]. The plans for a “social dimension” to the single market of the Community (often becalmed in debates about the proper Treaty base [Wedderburn, 1990, p. 51]) carried distant echoes of proposals for such strategies. But in 1993 the Commission appeared to report (in addition to the uncertain remarks mentioned above) that the issue of “a labour clause in public contracts” had been “dealt with” in its modest proposals to protect transfrontier “posted” workers, a small segment of the wider issue [Commission of the European Communities, 1993b, Annex II, p. 96]. So, too, its White Paper on growth, competitiveness and employment, whilst supporting multilateral cooperation policies to “increase social standards”, in the quest for international competitiveness appears to reject social clauses as an object of trade policy [Commission of the European Communities, 1993c, pp. 112-

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4 Merci Convenzionali Porto di Genova v. Sidururgica Gabbrilella SpA (179/90) 10 December 1991, especially on art. 90 of the Treaty: see G. Lyon-Caen [1992] Dr. Ouvr. 313 (the monopoly for workers who were nationals was of course contrary to article 48 of the Treaty).
113]. Even the ambitious new machinery for “social dialogue” in the Maastricht Social Chapter (Protocol and Agreement of the Eleven) needed, according to experienced observers, the addition of “a systematic elaboration of fundamental social principles... derived from the ESC (the Council of Europe Social Charter 1961), the Community Charter (1989) as well as the Conventions and Recommendations of the ILO” in order to ensure that the social dialogue is “not simply to be an alibi for inaction” [Hepple, 1993, pp. 35-36]. Others have judged it may have become a “fairy tale” after a history of “weaknesses and incoherence” [Szyszczak, 1994, p. 326].

The Commission’s Green Paper of 1993, by asking “What sort of a society do Europeans want?”, provided a golden opportunity to reinforce basic standards. But it was taken in rhetorical rather than concrete terms. There is little in the Green Paper [Commission of the European Communities, 1993b] or in its White Paper [Commission of the European Communities, 1993c, especially Chs. 6 and 9] about freedom of association, though such standards must be central to strategies based on “social dialogue”. Manifestly, the social dialogue can be a “democratization” [Commission of the European Communities, 1993b, p. 61] only if the organizations concerned are “representative” and “speak for their members”. The fact is that blemishes remain in this area and freedom of association in the Community has not been strengthened recently by European labour law (see the annual reports on national situations: National Reports [1991, 1992, 1993]). Significant positive steps have been taken, it is true, at State level (such as the Italian Workers’ Statute 1970, the French Lois Aurox, 1982 and laws in States emerging from authoritarian regimes, in Spain in 1980 and 1985, Portugal in 1975-79 and, more slowly, Greece in 1990). In the United Kingdom, many steps backwards from ILO standards were taken in 1980-93 and other States have been in default [Creighton, 1992]. As such, this has excited little interest in the Community.

As the crisis in the world economy developed, and unemployment with it, the influence and membership of trade unions was weakened and suffered further from the globalization of trade and production. This has put the fate of the social dialogue more often in the hands of the employers. There have been few countervailing initiatives at Community level to ensure that representatives of workers could bring to the table a voice effective for such a transnational dialogue. One recent exception has been the support for consultative groups in transnational enterprises and the funds made available under a budget heading initiated (at the instigation of the European Parliament) to finance cross-frontier meetings of workers’ representatives in multinationals [European Industrial Relations
Review, 1993, p. 15]. These workers' groups may acquire ambitions wider than exchange of information [Roberts, 1993, p. 181]. But, more generally, it seems to be assumed that the 'social dialogue' will find parties ready, willing and able — and suitably representative — to take part in these industrial conversations. When the eligibility of organizations for the dialogue is further discussed, it would be useful if ILO standards had by then been adopted to afford the Commission some expert guidelines for distributing the invitations.

The labour law position in the United Kingdom is atypical, but nevertheless instructive. Traditionally, and contrary to the policies of the last decade, the UK sought observance of many ILO standards through practice rather than positive law. It found as early as 1921 that it was unable to ratify by legislation the very first Convention on the 48-hour week — which, ironically, it had supported strongly on the foundation of the ILO — because of the pressures of the by-then dominant "voluntarism" of collective bargaining; as workers were afraid that legal control over working time would threaten their overtime pay [Alcock, 1971, pp. 50-58]. History bequeathed few positive rights to those workers or their unions — no right to organize, to bargain or to strike, but only "immunities" protecting those organizing union activity against some liabilities available to the "masters". This left the courts free to discover unprotected liabilities in the deeper complexities of the common law [Wedderburn, 1986, Ch. 8]. Carried over into the modern law, also, was a form of individual "freedom of contract" which still incorporated many of the master's rights that had their origins in the criminal law [Wedderburn, 1993].

To become even a slender countervailing force to aggregations of international capital, which benefit from transnational global markets, product differentiation, corporate personality and limited liability, a union needs the support of national and international organization and favourable local legal systems. Even so, its perspectives may remain overwhelmingly national while multinational "corporate networks may act as surrogates for markets", promoting efficiency between and within multinational enterprises [Dunning, 1993, p. 615]. United Kingdom unions customarily relied before 1980 on their organizational strength to claim the liberties which the law does not directly grant; for them, therefore, a weakness engendered by economic recession is of particular importance. As for ILO Conventions, even after ratification, these do not form part of applicable domestic law in the United Kingdom until incorporated by specific legislation.

It was, of course, quite another matter to become a member State of the European Community, since Community law is binding once
promulgated by a legitimate source — Commission, Council or Court. Some in the United Kingdom therefore thought that accession to the EC would lead readily towards the adoption of a new positive law to enforce minimum standards and spoke grandiosely of a “European law”. It has to be added that some had in mind not positive rights for unions but the “negative” right of workers not to be members of a trade union; the litigation in 1981 under the Council of Europe’s Convention of Human Rights contrasted with a continuing lack of protection for collective organization for United Kingdom workers in their trade unions [von Prondzynski, 1989, Chs. 7, 10]. The traditional ideology whereby trade unions preferred the law not to “intervene” in UK industrial relations then interacted with three different interventions: the defeat of a Conservative government’s “corporatist” plans for a regulated structure in 1971-74, the cautious Labour government’s “social contract” policies in the later 1970s and the sharp intervention of a “free market” ideology from a very different Conservative government in the 1980s. This meant that union claims to positive rights were scarcely heard before the multinational enterprise entered into its inheritance in the global economy [Wedderburn, 1991a, Ch. 4].

The United Kingdom legal system today places no obligation upon employers to bargain with a union. That feature is not by itself so distinctive, since no overall duty to bargain exists in many others laws (Germany, Italy or Ireland). However, practice makes for pressure in some countries and particular laws may require bargaining in some situations (as in Italy). The changes in labour law generally between 1980 and 1993 represented a “step by step” reversal in seven major statutes of traditional policy [Davies & Freedland, 1993], which did not end with the era of Lady Thatcher. They were marked by consistent policies of: first, deregulation of employment protection laws to relieve “burdens on business”; second, decollectivization of labour market institutions (such as the few exceptional institutions on “fair wages”); and third, restrictive regulation of trade unions to reduce their impact upon the economic market, with restrictions enforced against the funds of unions themselves so as to avoid the risk of creating “martyrs” among members or officials. This programme included an unusually influential ideological compass — the philosophy of Hayek [Wedderburn, 1991a, Ch. 8]. No doubt the economic crisis might have turned the mind of any United Kingdom government towards “deregulation”. But it was this specific philosophy and its teachings about “spontaneous order”, the discipline of the “free” market and the trade union threat to its proper functioning, which fuelled the drive against trade unions and sustained the belief that it was right.
The laws of 1980-90 (consolidated in TULRCA [1992]) turned the legal balance strongly in favour of the employer who now enjoyed the bargaining edge. Powers to dismiss striking workers were expanded in 1990, despite the ILO Experts' condemnation of even the less severe, previous law; and after 1988 all forms of union security arrangement became unenforceable [Wedderburn, 1991a, pp. 215-216]. The law of 1993 gives permission to employers to discriminate in respect of employment conditions against employees who are members of a union [TURER Act, 1993, s. 13; Auerbach 1993] and further regulates internal union affairs, limiting severely the grounds on which unions may accept or exclude members [ibid, s.14]. This has caused the TUC to rewrite its inter-union "disputes procedures" and in many eyes threatens "the ability of mainstream unions to function as a movement coordinating their activities rather than as separate competing units" [Simpson, 1993, p. 199].

The trend is towards "deregognition" by employers of established unions. Though often partial [Claydon, 1989] and in part a function of the closure of larger establishments [Beaumont & Harris, 1991], it is now identified as a general trend [Millward, 1994]. For the first time, there is a growing refusal to recognize unions for bargaining [Millward et al., 1992]. That tendency in turn is connected to the transnationalization of the enterprises. Six out of ten large companies in the United Kingdom are multinational, of which some two-thirds are based in the UK [Sisson et al., 1992]. Such companies, wherever control is based, are less likely than a solely UK company to bargain on all sites with a union and are more likely to be found decentralizing bargaining structures and "narrowing the scope of the negotiating agenda" [Marginson et al., 1993b, pp. 67-68]. Indeed, employers in Europe have been found to be increasingly "attracted to the non-union option" [Sussex, 1989, p. 82]. It appears that the pattern may be following the deunionization curve which has blighted employment rights in the United States [Craver, 1993].

Thus, traditional United Kingdom labour law was atypical in its origins and shape, with few positive rights and little regulatory legislation other than legislation on health and safety at work. In that exceptional area, because of developments in the Factory Acts of the nineteenth century, it has experienced, if anything, more regulation than most other European systems [Wedderburn, 1991a, pp. 354-364]. This has been largely accepted in the new legislation of 1980-93. But that legislation disestablished many of the collective "immunities", the protections that provided the only conditions of legality for unions. It imposed new controls over internal union affairs far beyond anything needed for individual members' interests. It also repealed the exceptional collective labour market institution, leaving only the tripartite Health and Safety
Commission and the conciliation service, ACAS (shorn of its function to improve collective bargaining). It was a policy devoted to confronting social problems predominantly by reference to the competitive market. Its rhetoric, well suited to the common law preference for "freedom of contract", proclaimed that there was no alternative to these policies. However, Irish legislation of 1991 on part-time workers demonstrates that a jurisdiction administering this type of common law can move in the opposite direction if it wishes to increase protection for vulnerable workers [Wilkinson, 1992].

At root, the new United Kingdom policy does not believe in "consensus" politics, recalling that Hayek held the activities of "what are now euphemistically called 'social partners' (Sozialpartner)” to be "essentially anti-social activities" [Hayek, 1979, Vol. III, p. 143]. In the jurisdictions of most member States, such sentiments have not been dominant, though there is no guarantee they will not become more influential (can we guarantee we shall not encounter some Forza Europa before 2002?)

Policy in continental member States has tended to set out from the premise that employment protection must not be obliterated by the market [Veneziani, 1993, pp. 304-310]. Efforts to make the labour market more "flexible" have been approached with a view to achieving reform without destroying consensus and tripartism. The need in the 1980s was to mould the collective institutions to meet new demands of the market "to build a labour law which both participates in the values of our industrial relations culture and also is able to marry together objectives of social purpose and objectives of efficiency (gli obiettivi di socialità e gli obiettivi di efficienza)” [Giugni, 1982].

Such a policy involves modification of employment protection rights won in the previous decades by way of a garantismo flessibile, opening fixed labour standards to derogation but by collective agreements, not individual arrangements where the employer is bound to dominate (as with "solidarity contracts" [Giugni, 1991, pp. 159-160]). Such changes, it is said, must be made to avoid the day coming when "people will ask whether it is really necessary to take refuge in Mummy-State (mammismo di Stato) rather than clutch at what Adam Smith called the invisible hand of the market” [Ghezzi & Romagnoli, 1992, p. 18, p. 60].

In general, in most of the continental systems "everywhere we look, we are witnessing the search for new types of regulatory formulation aimed at ensuring the necessary economic flexibility and social cohesion” [Chouraqui, 1993, p. 144].

Protective legislation has been amended in many countries and "atypical" or non-standard forms of employment admitted, notably fixed-term, casual or part-time (Meulders & Plasman [1993, p. 49] in the EEC
and, in France, Michon & Ramaux [1993, p. 93]. Modifications and proposals for amendment of laws on working time, atypical working relationships, dismissals, unemployment or related payments are regularly reported now from France, Spain, Italy, Germany, Luxembourg, Belgium and even Denmark. But in these jurisdictions, except Denmark, the system of legal regulation of employment is such that when amendments are made deregulation leads to a reregulation. The law of 1985 introducing flexibility on temporary employment in Germany — a legal system offering a "positively regulated and comprehensive paradigm of employment" [Mückenberger & Deakin, 1989, p. 163] — made it natural that new conditions should be enacted. Contrast "deregulation" in the English and common law sense, usually a sweeping away of legislation to leave matters to the "free contract" of the employer and employee [Wedderburn, 1991a, pp. 361-362].

Such peculiarities of labour law, and its interaction with the common law, may illuminate some of the United Kingdom reactions to parts of the Community’s legal programme. For example, the ease with which any UK government can live with the extensive Community regulation on health and safety at work is due to the historical circumstance — an outcome of struggles against exploitation of workers, especially children and women, in the nineteenth century — that regulation of health and safety came to be regarded as a proper subject for legislation. It continued to be so regarded even after the settlement in the United Kingdom that other working conditions belonged primarily to collective bargaining. The introduction into the Treaty of Rome of article 118A by the Single European Act led therefore to no juridical shock in the UK. Similarly, but for different reasons, the United Kingdom has from the outset accepted, though occasionally tardily, the need to amend the law for progressively equal treatment of men and women in employment — that fortunate bequest in article 119 originating in 1957 from the demands of France and the influence of the ILO [Kahn-Freund, 1960, pp. 326-330]. Equality of the sexes (though unhappily not of the races) is now a "fundamental right" in the Community [Docksey, 1991].

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IV. European labour standards

Outside those areas of safety and sex equality, and the principle of free movement for workers, the purpose of Community intervention in labour relations becomes more uncertain, especially in the era of the multinationals. In fact, the rest of the promised land of "European social law" has scarcely been mapped, let alone occupied. The speeches which converted many sceptics to the social dimension, proclaiming "the establishment of a platform of guaranteed social rights ... such as every worker's right to be covered by a collective agreement" [Delors, 1988, p. 570] have given way now to less concrete exhortations for consensus [Flynn, 1993]. Some parts of the edifice by which workers were to be protected are missing altogether — for example, the machinery for participation in the employer's decision-making process, via optional models, in the draft Fifth Directive on Harmonization of Company Law and the draft Statute (Directive and Regulation) on the Societas Europaea (the European Company, which would be optional for transnational capital). These company law plans began life in the 1960s and 1970s and were thought to be important to "facilitate the restructuring of European industry after 1992" [Hall, 1990, p. 35]. A few years back in 1988, they were "on the table of the Council" ("I hope for a quick decision", said Mr. Delors [1988, p. 570]); yet they still moulder on the shelf with no promise of progress.

The resistance of the United Kingdom is one, but only one, reason for such delays. Multinational employers have contributed and other governments have been tardy or even obstructive from time to time — understandably if they felt their social institutions to be threatened, as when the German Government fears dilution of its domestic pattern of "codetermination". The programme to protect the conditions of "atypical" workers, proposals born a decade ago to give them, for example, conditions pro rata with standard employees, has fared little better, even at a time when their exploitation is increasing. One Directive (91/383) on safety at work for temporaries has been adopted; the others are still "under discussion" [Commission of the European Communities, 1993b, 95, Annex III]. Proposals for parental leave met a similar fate. The Treaty base on safety at work did allow a Directive on pregnant women and new mothers to make some progress (92/85), even though it also dealt with a wide range of rights; so, too, a Directive protecting young persons at work, though United Kingdom voices characteristically doubted if "paid leave" could possibly be "a question of the health or safety of workers" [House of Lords Select Committee, 1993, p. 11].
Free movement of workers, like equality at work for men and women, is manifestly a fundamental right in Community labour law [A. Lyon-Caen, 1991, p. 55]. It has given rise to a large body of law, not least complex social security regulations interacting with the highly diverse national laws [Balandi, 1993]. But, in the context of a multinational economy, free movement, important though it may be to particular workers, finds its rationale in competition. It does little to provide a countervailing bargaining power. "The logical correlative of a freedom of trans-national movement for 'capital' would be a legal right of trans-national, collective industrial action for 'labour'" [Wedderburn, 1972, p. 19]. That remains a compelling reason entitling workers in the Community to Community support for their collective freedoms at ILO level.

Two other Directives have long been seen as the centrepiece of European labour law. They require from employers, inter alia, consultation with employees' representatives about collective dismissals (75/129, amended 92/56) and in a transfer of the undertaking (77/187). Such a transfer passes employment contracts to the new employer — unless the employees object, in which case national law is permitted to deprive them of both job and remedy [TURER Act 1993, s. 33(4)]. Neither of these Directives is unequivocally a measure for the protection of workers. Whereas some Directives fall entirely into that protective category — for example, those protecting employees' interests in the employer's insolvency (80/987) or requiring written particulars of employment (91/533) — the Directives of 1975 and 1977 are arguably based less upon worker protection than upon market integration and competition. Analysis has found in them a "subservience to the process of market integration" which dominates social policy [Davies, 1993, p. 346; see also Wedderburn, 1991b]. Of the 1975 Directive, Mancini (now a judge of the European Court of Justice) wrote significantly: "A market intended to enjoy genuine freedom of competition will not function if, in the regions to which it extends, employment is subject to excessively disparate rules" [Mancini, 1985, p. 2]. And again: "If a country can authorize redundancies on less stringent conditions than other countries its industry will be given an incalculable advantage" [ibid. p. 12].

A similar rationale can be found for Directive 77/187 [see Davies, 1989]. Harmonizing labour laws is thereby made a function of competition principles and European labour standards come primarily to be, not protective of workers, but contingent upon the operation of the market.

Two further instruments — The Working Time Directive (93/104) and the proposed Directive on information and consultation of employees through European-level works councils in Community-scale
undertakings — illustrate the need to read the small print of Directives in determining their nature. Whether they can be adopted by a "qualified majority vote" is less important than whether they afford effective protection. Because control over working hours was vigorously opposed by the United Kingdom and was weakened at the instance of other States, the text of Directive 93/104 includes many derogations and opt-outs. Most of these involve derogation by collective agreement in accordance with the practice of many continental labour law systems. But one also finds the right of a member State, subject to safety considerations, to allow an employer and employee by individual agreement to displace the limit of 48 working hours in a week (art. 18(1)(b) — to be reviewed within seven years). Uncertainties abound — for example, whether a worker's individual consent can be given or revoked through a collective agreement [see Bercusson, 1994]. It may be argued that such provision is needed because legal intervention must be "flexible" in the interests of competitiveness. But it is a defeat for a collective, consensus approach.

The proposed Directive for European works councils would require large multinational employers with employees in various member States to inform and consult employees' representatives. It would demand consultation, not negotiation; negotiation appears primarily in plans for the social partners at European level. A similar scheme in a wider form appeared in the "Vredeling" proposals of 1980, ultimately defeated after vigorous campaigns by opponents including United States corporations [Docksey, 1986]. More modest proposals are here advanced by the Commission, limited to the transnational plane of Euro-undertakings or groups [Hall, 1990; 1992a], primarily in undertakings employing 1,000 employees within the Community and at least 100 in each of two or more member States. More complex, similar provisions bring in groups of companies. Ironically, these proposals would apply particularly to United Kingdom multinational companies; out of 880 undertakings falling within the primary definition some 330 are UK [Sisson et al., 1992; Marginson et al., 1993a].

The multinationals have fought hard over this text. For instance, once the proposal included a wide range of subjects for obligatory consultation, including "any management proposal likely to have serious consequences for the interests of the employees" (Annex, art. 3). But in later drafts this list of minimum requirements does not apply if management and the workers' "special negotiating body" (SNB) reach an agreement on the form or content of the works council (art. 6(1)). By not imposing minima where there is "agreement", the text about the negotiation is severely weakened. SNB members are to be appointed or elected
by workers "in accordance with national legislation or practice", kaleidoscopic in their character where they exist (none exist nationally in the United Kingdom). The scope of the proposal must not be misunderstood. The Directive has always made clear that a "final decision shall be exclusively the responsibility of... management" (Annex, art. 3). Most so-called "prototype" councils set up already by some multinationals offer information, less often consultation [Marginson et al., 1993a]. Beyond that, UK employers are opposed to "bolstering the tradition of collectivism" [Hall, 1992b, p. 561] and multinationals generally are "implacably opposed" to the "development of European-level collective bargaining" [Gold & Hall, 1992, p. 65].

The Eleven may adopt this Directive under the Protocol and Agreement on social policy (the Social Chapter), given an initiative by the Commission. If so, UK multinationals would not wholly escape because it would apply to their undertakings sited in the eleven States where it was binding. Some believe this might lead them also to observe the same works council requirements by voluntary arrangements also in the United Kingdom [Marginson et al., 1993a]. But whilst they gain on information and consultation, trade unions may see the range of issues for collective bargaining continue to shrink.

Some commentators believe that European labour law has made a new beginning in the Social Chapter Agreement and Working Time Directive. In the former, the Eleven are given competence to adopt Directives by adapted qualified majority on some employment matters, including consultation rights and "working conditions", and on others by unanimous vote on proposals by the Commission (art. 2(1)(2)(3)). But it is notable that the Agreement specifically excludes from this machinery "the right of association, the right to strike or to impose lock-outs" (art. 2(6)). Here again, freedom of association is denied the protection of Community machinery, albeit in the form of the Eleven's adapted Directive under article 2 of the Agreement — even if all Eleven agree. The reasons for this are not obvious. It is the mysterious and unexplained policy which has for a decade excluded this most basic labour standard from formal Community entrenchment. Room is also made for collective agreements at Community level, for example in sectoral bargains, to be applied throughout the different States (art. 4(2)). Contrary to general belief, this idea is not wholly new [see Durand, 1959; also Günter, 1972] but its revival offers another revealing analysis. Surprisingly, States are not required to be guarantors of enforcement if collective bargaining fails to reach everyone affected (see the Declaration attached to art. 4(2)); the opposite is the case for implementation of standards created by Directives, as there the State is required to be ready to effect implementation
by law (art. 2(4)). This is a matter, as we shall see, of some importance given the diversity of the systems of labour relations law in the various States.

It is crucial, therefore, that the Commission has indicated it will play a decisive role in the outcome of this new style and level of bargaining, once agreement has been reached at Community level.

The question of whether an agreement between social partners representing certain occupational categories or sectors constitutes a sufficient base for the Commission to suspend its legislative action will have to be examined on a case-by-case basis with particular regard to the nature and scope of the proposal and the potential impact of any agreement between the social partners concerned on the issue which the proposals seek to address [Commission of the European Communities, 1993d, para. 30].

Clearly, the Commission remains in the driving seat. The question is not whether the Commission will promote legislation when the social partners wish it, but whether it will stay its hand and “suspend” legislative action on their agreement. It has been suggested that in such “bargaining in the shadow of the law” we see the base of a new Community labour law [Bercusson, 1992]. Supra-national law-making and collective bargaining will interact with national labour laws to make “a common labour law of Europe” [Bercusson, 1993].

This is a noble vision, much to be desired. But there are unaddressed problems, not least the juridical effects of such agreements when the Commission stays its hand. It is not merely that the legal effects between the collective parties will vary from system to system in Europe — from the (normally) unenforceable United Kingdom to the legally dominant German collective agreement. It is not even that bargaining itself has always depended upon the willingness or compulsion of employers (German labour law realistically describes a trade union as a body having sufficient “social force” to compel negotiation and does not, as many believe, impose a legal duty to bargain). The normative effects of collective agreements diverge even more sharply. None of the systems is “better” than the others; each touches sensitive nerves in its own society. United Kingdom agreements are incorporated into the enforceable individual employment contract only if the latter so stipulates, expressly or by implication, and the individual employment contract can exclude all or part of the benefit of the collective agreement. This is also the case in Ireland [Kerr & Whyte, 1985, p. 159].

At the other end of the spectrum, in France collective agreements apply by law to relevant employers and workers. Even an express disclaimer by a worker cannot displace the minimum benefit of legal norms
in a relevant collective agreement; they bind the employer with “immediate, imperative and automatic” effect [G. Lyon-Caen & Pélissier, 1992, pp. 750-752] and variation is permitted only if more favourable to the worker. Spanish law, too, applies collective terms “by legal normative effect, not by contract” [Sala Franco, 1990, p. 201]. German normative provisions provide benefits to employees who are members of the negotiating union [Weiss, 1987, p. 126], though the courts limit disadvantages arising from interaction of collective agreements, works accords and individual contracts by a subtle ranking of individual and collective rights [Däubler, 1989, p. 526]. The Commission’s revised draft for the “Posted Workers” Directive proposed to treat as binding collective agreements that are “generally applicable” in the area or industry in question for workers “posted” across frontiers [Bercusson, 1993, p. 258]. Significantly, that is something less than implementation erga omnes and is not dissimilar to the relaxed approach of the Council of Europe and the ILO.

Diversity goes further. For example, in France, Germany, the Netherlands and Spain, collective agreements may be “extended” to new employers by a minister’s order. At present this is not possible in Italy, Denmark, or the United Kingdom [Wedderburn & Sciarrà, 1988]. And agreements whereby unions can bargain for benefits to union members only are lawful in some States (Belgium, the Netherlands, Spain), in others unlawful (Germany, France, Portugal, probably Italy and since 1988 — effectively — the United Kingdom). Among the divergent jurisdictions clearly some adjustment is needed in any attempt to transpose European-level collective agreements to national level. Otherwise this would result in a crazy-paving of conflicting rights and benefits at individual level, with no equivalence in benefits for workers in a given sector in the various countries [Wedderburn, 1992].

This degree of national normative chaos would presumably be a factor influencing the Commission on whether to propose legislation to implement a Euro-level framework agreement [Commission of the European Communities, 1993d]. Legislation by way of Decision or Directive might — though with difficulty — call the national systems into equivalence of implementation, and in that event the classic prediction that the legislative method would triumph over collective bargaining [Webb & Webb, 1914], which long seemed erroneous, might at this level come true after all. Even so, the risk remains that the effects of Euro-level agreements would themselves become increasingly divergent at national level.

Because of such difficulties, a strategy is often preferred of “coordinated bargaining” within the different systems, rather than supranational agreements [Weiss, 1991, p. 59]. Indeed, the early proposals
for "framework agreements" [Delors, 1985] began as little more than recommended standards for coordinated action (compare Durand [1959]). Now the Commission's affirmation that it will decide on a "case-by-case" basis whether a Euro-level agreement under the Social Chapter Agreement is to be implemented by legislation, or by national collective bargaining, adds another dimension [Commission of the European Communities, 1993d, paras. 30, 31]. Despite the industrious accumulation of paper in the Byzantine corridors of the Commission and the tired offices of member States, unions and employers, European labour law has not yet found effective transnational machinery for collective agreements. It may yet do so; obstruction such as that of the United Kingdom Government will not prevent progress provided strategy builds from the bottom, not the top. That is why ILO Conventions Nos. 87 and 98 are precedents to which Brussels could better attend.

V. Conclusion

The anchor of Community policy must be the rights to organize in free association, to strike and to negotiate collectively. Without these, there can be no bargaining or "dialogue" [Wedderburn, 1991a] and policy on European labour law, however well intentioned, will shrivel at the touch of multinational employers. Working people require more than the bounty of information and consultation, useful though those may be. ILO principles need to be enforced as transnational "fundamental rights" to guarantee a voice in negotiation for those workers' free representatives. Equally, labour law policy needs the spontaneous strength which springs only from men and women in autonomous association; active support at an informed workplace is a necessary condition for policies that inevitably face hard choices. The same standards should be accepted by the Court, the Commission and the Council (the Court has hinted, in regard to Community employees, that this course is one which it could adopt).6

European industry has much to gain from a workforce that holds these rights in common. Labour movements that say they need no more guarantees than those they already enjoy in domestic laws or constitu-

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tions should be asked, before they spurn protection all might share in common, to pause and consider the history of movements which mistakenly thought their trade union rights were impregnable. No "social dialogue" will prosper that builds — as has too often been the case — bureaucratically from the top down. That is one reason for the crisis of "representativeness". Nor can European labour law rest on sure foundations until these rights are central to Community-level dialogue (not set aside as in the Action Programme or excluded, as by the Social Chapter Agreement).

Once it was optimistically thought the signs pointed "unmistakably" to a European labour law in which the control of jobs is increasingly removed from the power of management to the power of organized labour" [Hepple, 1977, p. 500]. Now commentators find it is "open to question" whether the Social Charter and Action Programme constitute "an overall external reference point for socially active labour law", and without a "coherent body of principles" the Community is "unable to evolve a framework of collective labour law" [Davies & Freedland, 1993, pp. 662-663]. Coherence can be built only on the rock of the ILO Conventions. The sacrifices required from workers in the "restructuring" of enterprises and "flexibilization" of the labour market entitle them anew to these rights, as yet inadequately represented legally at European level in vague dicta about "fundamental rights". Even a mere Recommendation on freedom of association and collective bargaining would be a contribution. Without active promotion of these standards, there is a hole in the heart of the "social dimension". They should become a European floor to the richly diverse national traditions, entrenched transnationally for the protection of working people.

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TULRCA — Trade Union and Labour Relations (Consolidation) Act 1992 (Britain).

TURER — Trade Union Reform and Employment Rights Act 1993 (Britain).


International labour standards in Central and Eastern Europe

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I. Introduction

The mission of international labour standards is to promote balanced economic growth and social progress, to orient governments, workers and employers in shaping employment relationships, and to regulate labour issues of international character. The Declaration of Philadelphia (1944), which was subsequently incorporated in the ILO Constitution, laid down the basic principles for those standards. They include: “labour is not a commodity”; “freedom of expression and of association are essential to sustained progress”; “poverty anywhere constitutes a danger to prosperity everywhere”; and “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. In addition, international labour standards are seen as a means of preventing international competition at the expense of labour and of promoting fair competition (at least as far as labour costs are concerned). There is also a belief that they may contribute to “social justice” and “social peace” [Valticos & Samson, 1993]. The major source of such standards are the Conventions and Recommendations of the ILO, which has adopted 174 Conventions and 181 Recommendations since 1919. Two among them — the Freedom of Association and Protection of the Right to Organize Convention, No. 87, and the Right to Organize and Collective Bargaining Convention, No. 98 — have been and still are of outstanding importance for the Central and Eastern European region.
In Central and Eastern Europe transformation or transition\(^1\) — the concepts themselves are debated — appeared initially to be a relatively simple process; experts as well as politicians of the developed democracies and market economies offered ready-made recipes of how to build up the institutions of political pluralism and a “free” market economy. It was realized only later that transformation had social preconditions and consequences and that workers’ and employers’ organizations are as essential elements of the tissue of the new social and political systems as, let us say, the political parties themselves. It was also emphasized that macro-economic stabilization and transformation were unlikely to proceed smoothly and effectively unless the policies enjoy support, or at least tolerance, on the part of society, including workers and employers. The ILO has made a considerable contribution to the thinking process in which the social dimensions of economic transformation have become visible and (more or less) part of recent political approaches.\(^2\)

### II. The transformation of industrial relations

In Central and Eastern Europe the transformation of industrial relations, regarding actors and institutions, has experienced a period of “erosion” and “fragmentation” followed by a period of “reconstruction” and “consolidation”.

To proceed with “reconstruction” and “consolidation” firm political and social foundations are needed. Short-term political and organizational interests cannot serve as a basis. Long-term philosophies and values, based on historical traditions and conventions, may constitute solid pillars on which progress can be based if they are shared by the main participants in industrial relations. A major difficulty the region is faced with lies, however, in the division of societies regarding the evaluation of their roots and past; there are sharp debates over which traditions could or

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\(^1\) The debates about “transition” and “transformation” are far from being abstract: they are related to practical dilemmas concerning the process of change. “Transition” suggests a direct switchover to the model(s) existing in Western Europe. In “transformation” local conditions (such as the legacy of the past, culture, values, traditions, etc.) have an important role, which is why the “final product” of the process cannot be exactly foreseen. This author prefers the concept of “transformation” to transition.

should be accepted or rejected. Such divisions are present even in those countries where positive changes in industrial relations and labour legislation began prior to the political events of 1989-90 (Hungary and Poland) and where market economy-type industrial relations have long pre-war traditions (former Czechoslovakia, Hungary, Poland). As both governments and social partners are uncertain as to their own roots, values and traditions, international examples — those of the Western European market economies — and international standards tend to have far greater importance. In this respect, international labour standards have the obvious advantage that they are unambiguous (national practices, even in Western Europe, are highly differentiated), progressive (crystallizing the universally progressive elements of national approaches) and flexible (they can be adapted to widely differing national political, social and economic conditions). That is why international labour standards, in the present uncertainty, may function as important contributors to change in Central and Eastern Europe.

The Central and Eastern European region — the former “socialist countries”, or “centrally planned economy countries” (CPECs) as they were called by the ILO — faced the challenge of international labour standards as early as the 1950s and 1960s. Their relationship with the ILO was and remained uneasy and controversial for decades. The trade unions, as is widely known, were closely dependent on the ruling Communist parties. They assumed a “transmission belt” function, handing down central political policy to the workers and making efforts to mobilize them in the service of centrally-set political targets, at the same time as performing certain social political functions. They had a highly centralized organization, governed by the principle of “democratic centralism”, and were dominated by one national trade union council. Free collective bargaining was strictly limited by the system of economic guidance (keeping wage determination within the authority of the plan and state agencies) as well as by labour legislation. When the “socialist” countries ratified a set of ILO Conventions in the 1950s and 1960s (including Conventions Nos. 87 and 98 referred to above) these countries and their governments automatically locked themselves into the supervisory machinery of the ILO.

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1 Workers’ participation, for example, has had deep historical roots in most of the region, but it has been rejected — at least for the moment — in labour legislation even in such countries as former Czechoslovakia and Bulgaria.

4 For example, Conventions No. 87 and 98 were ratified by Hungary in 1957.
The Organization's legal experts continued to raise (well-founded) doubts for decades over the extent to which legislation provided for freedom of association and free bargaining. The governments concerned continued to argue that the unified (monolithic) trade union organization was to meet the demand of workers, and that the relationship between the unions and the party was political rather than legal, though both pursued identical interests. It was also said that the implementation of international labour standards involved different means in the socialist and capitalist systems [Simpson, 1991].

Debates about violations of international labour standards reached their climax when political crises in the region touched heavily upon labour. Political reprisals after the Prague Spring in Czechoslovakia (1968) repeatedly raised the issue of discrimination in employment. In Poland the question of freedom of association was bitterly debated when the Jaruzelski regime, after the introduction of the martial law (1981), forced underground Solidarity, the first important genuinely independent trade union of the region. The relevant ILO committee gave Poland's 1982 Trade Union Act close scrutiny and found certain clauses in it — permitting only one trade union at an enterprise and imposing strict limitations on the right to strike — contradictory to international labour standards [ibid.].

The ILO (and the international labour standards adopted by it) have been faced for the past 75 years in differing countries of the world with a double challenge: on the one hand, to be universal and require an advance upon existing practices and, on the other hand, to take into consideration the wide variety of political, social and economic conditions in member countries. The organization, as far as we can judge in the Central and Eastern European context, started out from the wise philosophy that living contacts and permanent dialogue constituted the most solid guarantees for the adoption and implementation of international standards in the given regional (national) settings. It is an open question to what extent such contacts, often including fierce debates, contributed to the positive developments in industrial relations and labour legislation after (and in some countries prior to) the political changes in 1989-90. At present there exists no convincing and unambiguous answer; it is difficult to go beyond mere speculation. Still we have the (we hope not unfounded) feeling that the dialogue in the 1970s and 1980s had a helpful impact.

In Hungary, positive changes began as early as the end of the 1960s, triggered by the Economic Reform of 1968. A 20-year gradual liberalization of industrial relations followed: there was a shift in the trade unions' role towards becoming genuine representatives of workers, legal obstacles
to collective bargaining were gradually removed, etc. In 1983, the ILO sent a mission to Hungary. Its report revealed some doubts but made a positive evaluation of the progress achieved [ILO, 1984]. The mission’s report was well received by the then Hungarian Government (and Communist Party leadership), thus presumably opening up new opportunities for reform. The International Organization of Employers (IOE), a major constituent of the ILO, seemed to have adopted a similar philosophy at a later stage in 1991 when it accepted as members two employers’ organizations from Hungary and Poland, even though they probably failed to meet fully all the requirements. However, they embodied a strong promise of further progress in this direction, especially with assistance from the IOE. A relationship between the ICFTU and two Hungarian trade union confederations — a new one, the League, and an old (reformed) one, MSZOSZ — has recently been established on the basis of similar approaches.

III. Progress towards international labour standards

Political and economic change in Central and Eastern Europe in 1989-90 has profoundly reshaped the actors and institutions of industrial relations as well as labour legislation [Héthy, 1993]. It is difficult, however, to provide a reliable overall evaluation of the current situation, as comparative analyses of new labour legislation and new emerging practices are missing. A certain period of time is also needed to be in the position to identify and describe lasting patterns. What we see at present seems to be a general progress, or at least a genuine intention to achieve it, in the implementation of international labour standards.

(a) Trade unions (as well as employers’ associations) have become independent, autonomous organizations relying on their membership, or at least they are on the way to being so. Their dependence on the Communist Parties (and the State) has ceased. Trade unions’ rights are protected by law: such legislation, in general, follows Western European examples.

(b) In all countries, regulations have been adopted to promote “free” collective bargaining. At the same time, obstacles to the process continue to exist in the economic guidance system; the State has maintained its control over wages in several countries as part of
policies to achieve macro-economic stabilization and lower inflation.\(^5\)

c) The right to strike has been regulated all over the region. However, workers often face a number of legal obstacles that discourage recourse to lawful industrial action, as a result of which unlawful industrial action has reached imposing proportions in several countries [OECD, 1993].

d) To deal with high and rapidly growing unemployment most national governments lay great emphasis on active employment policy. (It is another question what results can be expected from such measures and how they can be financed in the context of dramatic falls in GDP and industrial output.) [Standing, 1993, p. 16]

e) Several countries have introduced obligatory (guaranteed) minimum wages to be paid to all workers (employees). It should be noted, however, that guaranteed minimum wages have lagged behind the minimum costs of living all over the region [Vaughan-Whitehead, 1993].

What the OECD has said about new laws on bargaining and strikes in Czechoslovakia, Hungary and Poland seems to be true for the entire region and all its labour legislation. "All the three Central and Eastern European countries have already enacted laws to constrain collective bargaining conduct and have done so in advance of the subject matter of collective bargaining itself being fully defined and established. Consequently, it is difficult empirically to assess their workability or acceptability..." [OECD, 1993, p. 10].

In the past, a strong wall was erected between Central and Eastern Europe and the implementation of certain basic international labour standards by the totalitarian political system. The system dominated both industrial relations and labour legislation, which is why most of these standards could be implemented at best only formally. Its collapse, in principle, removed that wall. In practice, however, not all those factors which were obstacles to progress have been eliminated and new ones have since appeared.

\(^5\) In Hungary, wage determination by the State was gradually liberalized (deregulated) in 1989-91. It was suspended in 1992 and — on the basis of a tripartite agreement — totally eliminated in 1993. In other countries (e.g. Bulgaria, Poland) it has been maintained.
(a) In the transition period between the “old” and “new”, certain political (social) forces which disappeared or became marginalized in Western Europe in the past have gained at least transitory importance. National and foreign predatory “capital”, pursuing short-term profit maximization, often has little respect for the basic rights of workers and their representative organizations. At the same time, it enjoys political support on the part of the new governments which are keen on privatization and attracting foreign money. The situation in mushrooming small private undertakings is a particular source of concern [Csákó, 1992].

(b) The new governments, political parties and parliaments (because of the lack of traditions in the recent past) had no clear industrial relations philosophies of where and how to proceed. That is why new regulations have often followed up abstract ideas without roots in reality or have been over-eclectic with their foundations in short-run political compromises.

(c) Change has involved sharp political struggles. In this context, some trade unions shed past political dependencies while others acquired new ones by being directly involved in the new governments, political parties and parliaments (such as Poland’s Solidarity or Bulgaria’s Podkrepa). In other cases, governments were confronted by trade unions seen as political rivals, and interfered (or tried to interfere) with the internal affairs of labour organizations in the name of such slogans as “political change” and “pluralistic democracy”.

(d) In some countries, new strong actors (multinational companies) appeared on the scene with industrial relations and human resource development philosophies of their own. While their example often proved to be beneficial, their integration into local (national) conditions remains an unresolved dilemma. A survey of their possible and probable impact is currently on the agenda, e.g. in Hungary — an exercise which is based once again on international labour standards, even if they are much less formal than the ILO Conventions.⁶

Economic transformation, coupled with economic crisis and macro-economic stabilization sets tight limits for the countries of the region in their efforts to eliminate such legacies of the past as depressed wage levels, precarious work and working conditions, and the general degradation of the work environment.

To implement (certain) international labour standards requires economic (financial) preconditions beyond political and social will, not only in Central and Eastern Europe but all over the world including even the industrialized market economies. (To support our argument it is enough to refer to the lasting debate about "downward" or "upward" harmonization in the European Community/Union in recent years.)

Central and Eastern Europe's present economic situation, despite some encouraging signs, is very difficult. It simply cannot be described by concepts used in the western part of the continent. When "recession" is referred to in Western Europe a stagnation or slight (1-2 per cent) decline of GDP is meant. In the former socialist countries after 1989-90, there has been a huge drop in GDP; even in Hungary, which has managed relatively well, the decline in GDP has amounted to 20-25 per cent. At the same time, these countries have suffered annual two or three-digit inflation rates, real wages have continued to fall and social benefits have been eroded. In such an economic context, governments' and employers' manoeuvring space has steadily shrunk. Although lip service has repeatedly been paid to a proper "social safety net" all over the region, at present there is little hope of achieving an improvement in social protection. Workers and trade unions have to take into account that pressure for higher wages or social benefits, however justified, may have adverse effects by raising labour costs and budgetary deficits and increasing unemployment. Today, there seems to exist a very narrow path to find compromises between labour's demands and economic constraints, the improvement of wages and working conditions and tight financial limits that would come close to the spirit of international labour standards holding out the prospect of a "fair distribution of goods" and "social peace".

International labour standards have been given emphasis by other developments, too. Political reprisals and growing ethnic tensions in some countries after the political change have raised the issue of discrimination in employment and labour problems of a multinational nature such as growing labour migration within Central and Eastern Europe and from the region to Western Europe. This has underlined the importance of the rights of migrant workers.
IV. The emergence of tripartism

A most interesting (and probably most important) development of transformation is the appearance of national-level institutionalized tripartism — negotiations and agreements — in several countries of the region (Hungary, 1988, Bulgaria and Czechoslovakia, 1990, etc.). Such "social dialogue" among governments, workers' and employers' organizations is far from being a general or widespread phenomenon in the Western European market economies. Experts argue that it has lost importance even in those countries where it was previously strong. However, it proved to be beneficial in these countries, especially in periods of crisis, in the prevention of conflicts and maintenance of social cooperation. It is probably due to its particularism that the development of such tripartism is not supported by international labour standards; there exists only one ILO Convention (No. 144) which prescribes tripartite consultations but to serve the specific target of the promotion of international labour standards. At the same time, the ILO's well-known tripartite organizational structure and practice may themselves have served as an example for the initiatives of tripartism in the region. In fact, the ILO was present during the process of the establishment of tripartite institutions in most countries (in Hungary in 1988-89 and more recently in Poland in those exercises which eventually led to the State Enterprise Pact of 1992).7

National-level institutionalized tripartism has become an active contributor to the transformation in Central and Eastern Europe [Héthy, forthcoming]. It has played a role in the reconstruction of industrial relations and labour legislation, in public policy formulation (primarily in the fields of employment, income, wage and social policies). It has also been instrumental in the prevention and settlement of nationwide labour (social) conflicts. (The most spectacular example of this was offered by the tripartite settlement of Hungary's taxi and truck drivers' blockade in autumn 1990.) Those political conditions and considerations which have promoted and maintained institutionalized tripartism in the region are numerous:

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7 In Hungary ILO experts took an active part in the preparation of the deregulation (liberalization) of wage determination and of tripartite practices (1988-89); further developments in the country were supported by an ILO technical cooperation project (1991-93); in Poland tripartite exercises on issues of labour dispute settlement in the state sector — supported by the ILO — led to the State Enterprise Pact in 1992.
(a) Tripartism involves a promise to ease those labour (social) tensions and conflicts which inevitably accompany macro-economic stabilization and transformation.

(b) It gives a certain legitimacy and public support to participants (governments, unions, employers) all of whom face deficits in one field or the other.

(c) It is based on, and represents a continuity of, past strong cooperative (or corporatist) traditions in industrial relations in the previous period of "socialism".

(d) It meets openly declared or tacit expectations by international organizations, which are assuming growing importance in the region, such as (apart from the ILO) the World Bank, the European Community/Union, etc.

National-level tripartism, at the same time, is fragile and politically vulnerable. The uncertainties in its existence and functioning can be attributed to the fact that the social partners — unions and employers' organizations — are not yet properly consolidated. The relationship of governments and unions is often burdened by divergences in their political interests and ideological values; economic decline and constraints open up very limited space for social dialogue and agreements; regulations serving as the legal foundation of tripartism are often insufficient and weak. That is why tripartism in some countries has had extreme fluctuations in its career (Bulgaria is the best example) [Thirkell & Teseneva, 1992]. Still tripartism is a means to promote international labour standards.

For the ILO it will take years (if not decades) to assess recent developments in industrial relations and labour legislation in Central and Eastern Europe from the standpoint of the implementation of international labour standards. We can nevertheless risk the statement, even if based only on a superficial knowledge of the emerging new situation, that the region has come (is coming) closer to the norms laid down by the ILO in the fields — apart from the freedom of association and bargaining — of employment, wage determination, working conditions, etc. We are aware of insufficiencies in new government policies and labour legislation in the region; still we are confident that such weaknesses can be eased or remedied in the future. If the ILO has been successful, at least to some extent, in having a positive impact over the past 40 years, even when its efforts faced fundamental difficulties, it has much better chances now. The countries of the region seem to be determined to meet the requirements set by international labour standards, not
only "formally" but with sincere efforts on their part to promote their actual implementation.

Central and Eastern Europe, in the context of profound political and economic changes, is committed to the idea of constitutionalism: law has a growing importance in the whole life of these societies including the "world of work" — the relationship of governments, workers and employers. However, legislation, as well as industrial relations, is dependent on the solid foundation of the new (emerging) political and economic systems. As political, economic and social transformation is unlikely to be completed overnight or in a couple of years, but will rather last for decades, one cannot speak now about consolidated and firm new political and economic systems. One can only report about orientations, developments and trends rather than clear and stable conditions and situations. International labour standards constitute one of those factors which have their own part in reshaping the societies of this moving world.

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The ILO and current trends in the principles of labour law in Argentina

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I. Introduction and background

The ILO has worked tirelessly since its foundation to promote social justice in the world, the raison d'être of its existence. The guiding principles for international standards on social matters are set forth in the Constitution of 1919 and the Declaration of Philadelphia. These state that: labour is not a commodity; freedom of expression and of association are essential to sustained progress; poverty anywhere constitutes a danger to prosperity everywhere; the war against want must be carried out by continuous and concerted national and international effort with the participation of workers, employers and governments, and with a view to the promotion of the common welfare; lasting peace can be established only if it is based on social justice; and all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity.

As the Director-General of the ILO, Michel Hansenne, stated in his Report to the 81st Session of the International Labour Conference in 1994, “the 75th anniversary of the Organization will be an opportunity for the international community to reaffirm its belief in social justice as one of its fundamental values, and its determination to further this cause...” [ILO, 1994, p. 6]. He emphasized that the objective of the
Organization was to ensure the dignity of workers and that, to this end, it would continue to oppose ideologies which are a negation of freedom and to combat inhuman conditions of work.

The world is going through a profound crisis which is not only social and economic in nature but which fundamentally affects ethical values. The market economy and the advance of liberalism are, as the Report indicates, ideologies or modes which are leading to a legal void. They are inevitably taking us back to the "law of the jungle", to the situation which existed in the early years of the Industrial Revolution and produced the nefarious social consequences which led to the very foundation of the ILO.

Argentina has not been immune from the evolution of the global economy or the social problems which have arisen. These have taken on special characteristics in the country due to lack of industrial development and the political events which, from 1976, have had a serious impact on production structures and the redistribution of income. Argentina is only now beginning to recover from the stagnation into which it was plunged at that time. Labour demand fell, unemployment rose and there was a considerable increase in social and economic inequality. The policies now being imposed are designed to deregulate markets, reduce the role of State activity in the economic and social spheres, and give free rein to the law of supply and demand in monopolistic and oligopolistic markets. A further aspect which compounded the employment situation was the privatization of almost all State enterprises, an adjustment which led to the massive lay-off of labour.

This deregulation, which was beneficial to large capital, was accompanied by active State intervention to prevent collective agreements from granting higher wages without corresponding increases in productivity. Several standards were issued to reduce labour costs and, particularly since the administration of President Carlos Menem, without any effective steps by the trade unions to halt declining living and working conditions. The National Employment Act introduced precarious contracts in an attempt to create new sources of jobs, copying models from other countries but without success. Other standards, which have been criticized by the ILO, were introduced to restrict the right to strike in essential services. And in an attempt to create a capital market, a new insurance system was established to allow workers' contributions to be assigned to private investment funds for the creation of obligatory and unavailable savings.

In this context of increasing poverty, unemployment and marginalization, employers' powers have increased to an excessive degree, giving a marked authoritarian character to the employment relationship. As a
result, the principles of labour law have faced a crisis with declining protection afforded to workers and the disregard, in fact or in law, of the guiding principles defended by the ILO since its establishment and enshrined in its many Conventions and Recommendations. This situation raises the question of the function of these basic principles and the need to reaffirm them fully in Argentina within the context of international standards. We also need to recall the words of Michel Hansenne that the goal of the ILO is to ensure the dignity of workers.

II. The principles of labour law

The principles of labour law are those guidelines or postulates which inspire the meaning of labour law standards and regulate the employment relationship in accordance with criteria which are different from those which may apply in other branches of law. These principles represent the basic concepts of the legal organization of labour resulting from standards in which a specific meaning is given to each constituent provision, as Alfredo Montoya Melgar has said, and which are essential to their correct application [Montoya Melgar, 1986, p. 220].

Although the principles can be extracted from these specific standards, I believe that they have evolved over time and illustrate a trend in labour law towards the reconciliation of capital and labour, without detriment to human dignity and its full achievement. This does not mean that these principles are immutable, since they must be adapted to the purposes required, with account being taken of the social situation.

Article 14bis of the National Constitution clearly states the principle of protection, the fundamental idea governing the legal organization of labour in Argentina. It also establishes that work in its different forms shall enjoy the protection of the law. This basic idea, which respects the worth of man and gives consideration to the value of work, is a source of inspiration for the law on contracts of employment, from section 4 onwards, which stipulates that “the main objective of a contract of employment shall be the productive and creative activity of man in itself. Only thereafter shall it be taken into account that there is a relationship of exchange of an economic nature between the parties and which shall be regulated by this Act”. In the same way, as regards trade union law, Act No. 23551 stipulates that “trade union action shall contribute to removing obstacles to the full self-realization of the worker” (section 3, fine). This implies a harmonious relationship between individual and
collective interests with a view to implementing the protection principle established by the National Constitution.

III. The weakening of protection

In Argentina, as in most nations, particularly those of the so-called Third World, there has been a weakening in recent years of the protective structures governing labour law in favour of the market economy. The pretext has been the need to reduce labour costs to make production more competitive within a globalized market, with the declared intention of mitigating unemployment. The arguments that a contract of employment should be determined by market forces or that labour costs should be reduced as the only means of ensuring international competitiveness or securing investment must be set against the three historical objectives of labour law: stable employment, an adequate wage, and dignified and equitable conditions of work. Attempts have been made to bring standards into line with an iniquitous social reality, by displacing man from the centre of social policy. Hence, the State has moved away from defending workers to defending itself from the workers, from protecting employees towards protecting employers and guaranteeing their investments, and by placing such guarantees over and above the protection that should be given to basic human rights. The dismantling of these rights seems to be a sign of the times in both legislation and case law, although the contrary is often claimed to be the case.

It should not be forgotten that labour law is fundamentally a guarantee of the stability of the employment relationship established and affirmed in response to the social situation and that its equalizing function has allowed interests to be reconciled over time. As Luis Enrique de la Villa has said, anticipating the remarks by Michel Hansenne mentioned earlier, and in terms which might have been endorsed by John Kenneth Galbraith, "a set of totally reversible standards would lose the trust or rather the respect of the workers and lead to the emergence of non-peaceful demands, thus reproducing a historical process with which we are all familiar" [de la Villa, 1982]. As the Harvard economics professor has said, "the present desolate situation of the socially assisted sub-class has been considered the most serious social problem of the age and it is also the greatest threat to peace and social harmony in the long term" (the culture of satisfaction). It was precisely to avoid such consequences that the ILO was established 75 years ago.
Some conditions of work cannot be left to the law of supply and demand or to determination at the less important level of the enterprise, particularly in circumstances such as those of today in which trade unions have lost some of their bargaining power. It is unacceptable that the vital interests of the workers should be determined by individual bargaining. Some members of the employers' sector want a return to individual bargaining — which would mean going back more than 100 years in history. It would result in the demise of labour law, and bring in its wake abuse and exploitation.

There is no denying the impact of unemployment on society or the effects of new technologies or the need to compete in increasingly wider markets. But none of these can justify making workers the scapegoats, enabling employers to earn higher profits without assuming any risks or by increasing cost competitiveness through lower wages and downgrading conditions of work. Employment, it must be repeated, will not increase simply because we reduce the level of protection. This has never happened anywhere in the world. On the contrary, the objective in countries such as Argentina should be to emphasize higher-quality production through the introduction of new technologies and the training of workers in more advanced occupational skills.

It is clear that technological change influences the volume and quality of employment. As Bayer has noted, employment in industry is declining in the industrialized countries and the growth in services is not enough to offset the departure of these workers from the labour market. It is logical that technological change will have a negative effect on employment levels and so will the introduction of new work systems. Thus, in the case of restructuring due to technological change which may result in the lay-off of workers, recourse must be had to remedies which are lacking at present. The right of trade unions to be informed must be fully established; this does not concern only the necessary information for bargaining but includes knowing the extent to which the enterprise or sector plans to introduce changes resulting in a reduction of the workforce.

Two aspects must be negotiated with the trade union — the retraining of workers who may lose their jobs and protection against redundancy. These provisions must be included in the economic package of measures accompanying the introduction of new technologies, which require much bigger investments. Automation and the new technologies should not cause prejudice (the principle of indemnity) and their implementation should improve working conditions. Employment problems which might arise from the introduction of new technology must be solved in principle at enterprise level by the employer, with oppor-
tunities being given for placement in other workplaces, retraining and the prompt allocation of a new job.

When indirect horizontal effects arise from unemployment in other industries where closures are due to the lack of competitive capacity, in addition to the provisions on redundancies established by labour legislation, social security must help provide an effective remedy. Redundant workers should be given priority in re-recruitment if the enterprise resumes its full-time activities.

IV. Fundamental rights

In times of crisis, it is important to reaffirm the principle that certain rights may not be waived and to follow the civil law guidelines established by the Civil Code, whereby a defect of will may be invoked if one of the parties takes advantage of the weakness of the other. Section 12 of the Act on contracts of employment stipulates that "any agreement between the parties which suppresses or diminishes the rights established by this Act, occupational statutes or collective agreements shall be null and void, at the time of its conclusion, during its implementation or the exercise of the rights...". The sense of this section is clear and means that employers may not reduce wages established by collective agreement or fixed by law.

The principle that certain rights may not be waived also means that there can be no arbitrary wage reductions on the pretext of the high cost of labour and the need to achieve greater productivity. It is obviously unjust to place on workers' shoulders risks which should be assumed by the enterprise. A key legal obstacle to the power of the management excludes from the *jus variandi* any alteration of the substance of the employment contract (section 66). It has always been understood that wages are excluded from alteration by the employer. Where a wage cut has been imposed, this cannot be legitimized by the consent of the individual worker who is forced to choose between accepting the reduced wage or being dismissed. In such cases, the balance of contractual benefits has been unilaterally broken by the employer.

It can thus be seen that the system governing the employment relationship in Argentina, which has been accused of rigidity, is in fact extremely flexible. It is true that workers may oppose a wage reduction and that any claim for the payment of the difference due to such reduction would be successful. But, as has occurred in other cases, this would be at the cost of their jobs. Hence, stability in this context should
be given special protection, since such dismissals would be an abuse of law and would be anti-social.

In periods of economic crisis, increased protection needs to be given to workers against unfair practices by the employer. The economy should resolve economic problems and it is not legitimate for employers to try to increase their profit margins by reducing the contractual rights of workers. If the employer’s situation is critical, attention could be given to other variables such as financial costs or the costs of services and inputs; account should always be taken of the workers’ situation and the intangibility of their wage, with special protection needed against arbitrary dismissal.

The establishment of protective legislation in periods of economic crisis is no chimera. However, the dominance of the employer over the worker is not only an act of injustice but, in Argentina, a violation of the Constitution, which guarantees that work in its various forms shall enjoy the protection of the law. It is unacceptable to consider constitutions as neutral, since this would be tantamount to saying that article 14bis was a text which, instead of promoting social justice and State intervention in the establishment of a just social order, negates any idea of change and progressive social transformation. Our Constitution makes a specific ideological commitment to the transformation of the structures in place in the nineteenth century. It affirms a more just social order which takes into account the situation of the most deprived sectors of society, whose interests must be addressed by State action.

The tendency of current legislation is towards a reduction of the basic rights of workers, contrary to the protection principle. Thus, as regards working time, the National Constitution establishes reduced working hours as a basic right under the protection principle. This right can be read only in the context of the ILO Hours of Work (Industry) Convention, No. 1 (1919) and national legislation encompassing its provisions: thus it seems inadmissible and constitutionally invalid to permit working days of up to 12 hours. Furthermore, this is clearly contrary to the objective of creating new jobs and improving the quality of production in the interests of greater competitiveness. These are not measures to create jobs but to reduce costs. Far from providing a solution to unemployment, such proposals will actually increase it by providing employers with additional gains at the expense of working conditions and in violation of the Constitution.

In other matters of particular concern to workers and which are directly related to their living conditions — such as rest periods and holidays — it is planned to let the parties themselves decide at different levels (including that of the enterprise) the possible transfer of rest
periods to the following month or the amount of annual leave which they actually take, provided that it is not less than 14 days in any given year. These are matters which are among the first and most valuable achievements of the workers' movement. The possibility of their actual enjoyment (which is at stake here) cannot be left for settlement between the parties, since this would be contrary to the structure of minimum rights established by law and protected by article 14bis of the National Constitution.

I believe that there must be respect for the spirit of international labour Conventions. We must return to our National Constitution and reaffirm the principle set forth in article 14bis, giving each of its precepts its true meaning of protection and extending the protection principle to the critical situations faced by workers. Contrary to what has been said many times, it is not a question of bringing labour law progressively into line with the realities imposed by the de facto functioning of labour relations in the context of recession and unemployment. This would be tantamount to legitimizing the abuse of law and giving a legislative stamp to injustice. That conditions of work are often unworthy of workers must not lead the State into downing tools and doing nothing, on the pretext that it lacks the means to exercise its supervisory power. And the argument that investment is necessary to growth cannot be used to exempt investors from their responsibilities, to waive such responsibilities in recruiting or subcontracting, to authorize excessive hours of work or the elimination or splitting of weekly rest, or to reduce severance pay.

The National Constitution and international labour Conventions have established a social programme, with clear guidelines for the protection of the workers, which should take precedence over any employers' claims. The social clauses of the Constitution and international labour Conventions are dynamic and modulate the other rights recognized by Argentina's Magna Carta.

V. Conclusion

Ownership rights are not absolute. They must be harmonized with those other rights which are sanctioned by the Constitution or international Conventions ratified by Argentina and which enshrine human rights that by their nature take precedence. It should also be noted that labour law is based on the fact that the employer undertakes a risk investment with a view to obtaining a profit; the worker has no part in this risk and dignified and equitable conditions of work must be
guaranteed at all times to ensure his or her full development. The solutions to the serious social and economic problems besetting the world, and Argentina in particular, at this dawn of a new century will to a large extent depend on the affirmation of the protection principle and the respect of policies established in this sphere by the ILO.

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