

TRADE VERSUS PEACE: A CONTEXTUAL ANALYSIS OF CORE LABOUR STANDARDS IN THE GLOBAL TRADING COMMUNITY

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I. INTRODUCTION

GLOBALISATION IS AMONG the most hotly debated issues today. Concerns and issues are often raised about its impact on employment, working conditions, income, and social protection. Some blame globalisation for aggravating unemployment and poverty, while others perceive globalisation and free trade as a way of solving such problems, benefiting the world's poor and resulting in rapid economic growth, creating jobs, and improving core labour standards (CLS) in the global community. This lack of consensus makes it difficult to develop policies at national and international levels. The inadequate focus on the human side of globalisation creates a gap in understanding the forces of change and people's reaction to these changes. Such knowledge is indispensable if appropriate policy responses are to be developed.

This article explores crucial links among the free flow of goods, services, and development. It examines how globalisation enhances peace by encouraging investment and economic cooperation, thereby expanding employment opportunities, augmenting economic development, and ensuring economic stability in the global community. It also looks at how the right to work and favourable living standards are connected with the object and purpose of the global trading system. Moreover, it examines how dismantling trade barriers contributes to the acceleration of growth in global trade and raises core labour standards, and how adherence to core labour standards could contribute to economic efficiency, harmony, and welfare. The article highlights critical issues relating to the impact of trade restrictions on core labour standards, analyses the implementation of core labour standards in the midst of free trade, and examines the impact of linking trade with the improvement of labour standards. The role of the International Labour Organization (ILO) is examined, as well as the effectiveness of international trade mechanisms in the development of core labour standards. Furthermore, it is argued that globalisation and

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free trade, rather than boycotts and trade sanctions, can provide a better and more effective substitute for the development of workers' rights, thereby raising living standards in general.

This article seeks to demonstrate how the balance between free trade and human needs can be achieved for the optimal functioning of the world economy. Finally, recommendations are made to evolve a plan of action for the promotion and protection of core labour standards, the creation of welfare and harmony, and the enhancement of the global economic environment.

II. GLOBALISATION, LIBERALISATION, AND PEACE THROUGH TRADE

GLOBALISATION IS A PROCESS OF INCREASING the connectivity and interdependence of the world's markets and businesses. This process has increased dramatically over the last two decades as technological advances have made it easier for people to travel, communicate, and do business internationally. The main driving forces have been advances in telecommunications infrastructure, the rise of the Internet, telephone service, huge ocean-going vessels, and instant capital flows. Further, multinational corporations manufacture products in many countries and sell to consumers around the world. Money, technology, and raw materials are moving more swiftly across national borders. Additionally, cultures circulate more freely. As a result, laws, economies, and social movements are forming at the international level.¹ Since economies have become more connected to one another, opportunities have increased, but so has competition. Thus, as globalisation becomes a common feature of world economics, powerful pro-globalisation² and anti-globalisation groups have arisen.

¹ See online: Global Policy Forum
<<http://www.globalpolicy.org/globaliz/define/index.htm>> (last visited 18 January 05).

² The prominent pro-globalization organizations are the World Trade Organization and the World Economic Forum. The World Trade Organization is a pan-governmental entity (which currently has 144 members) that was set up to formulate a set of rules to govern global trade and capital flows, and to supervise the member countries to ensure that the rules are being followed. The World Economic Forum, a private foundation, does not have decision-making power but enjoys a great deal of importance since it has been effective as a powerful networking forum for many of the world's business, government, and not profit leaders. "More Globalization, Not Less: Integrating the world's economy will help end inequality and global poverty," online: Global Envision

Advocates of globalisation argue that it increases opportunities for almost everyone, and that increased competition is beneficial since it makes agents of production more efficient.³ The "increasing globalisation of the world economy during the second half of the twentieth century led to the most rapid worldwide reduction in poverty and rise in standards of living."⁴ Globalisation advocate, Professor Jagdish Bhagwati has stated that, "economic globalisation was perhaps the best way, if not the only one, to reduce poverty and promote egalitarianism in society."⁵ Empirical evidence suggested that globalisation had benefited most poor nations. Further, the reduction in child labour was an indicator of how pressures brought on by globalisation helped in removing deep-rooted social ills.⁶

Anti-globalisation groups argue that for billions of the world's people, business-driven globalisation means uprooting old ways of life and threatening livelihoods and cultures.⁷ Further, certain groups of people who are deprived in terms of resources cannot currently function with the augmented competitive pressure brought about by their economies being more connected to the rest of the world.⁸

The debate on globalisation revolves around the assertion that poor people do not benefit from it, but if we look at the past 180 years, remarkable progress has been made. For example, in 1820, 83 percent of the world's population earned less than one dollar per day. By 1992, that number was reduced to 23 percent. If we look at the latter part of the 20th century alone, the evidence that globalisation reduces poverty is overwhelming - more people have become better off at a faster pace in the past sixty years than ever before. According to the World Bank, trade enabled developing countries to grow at 4.3 percent per year during the

<http://www.globalenvision.org/index.php?fuseaction=library.view_details&itemtype=1&category=3&itemid=687> (last visited 15 January 05).

³ See online: ADVFN Financial Glossary <http://www.advfn.com/money-words_term_2182_globalization.html> (last visited 15 January 05).

⁴ *Supra* note 2.

⁵ "Globalisation best way to erase poverty, says Prof Bhagwati," The Hindu Business Line Internet Edition (14 December 2002) online: THE HINDU Group of Publications <<http://www.blonnet.com/2002/12/14/stories/2002121401700400.htm>> (last visited 21 September 2004).

⁶ *Ibid.*

⁷ *Supra* note 1.

⁸ Anti-globalization organizations include environmental groups like Friends of the Earth and Greenpeace; international aid organizations like Oxfam; third world government organizations like the G77; business organizations and trade unions whose competitiveness is threatened by globalization like the U.S. textiles and European farm lobby, as well as the Australian and U.S. trade union movements, *ibid.*

1990s, twice the rate of the developed world.⁹ Despite this, progress in reducing poverty has been very uneven. East Asia has prospered since then; however, the Middle East, North Africa, and Sub-Saharan Africa have experienced increased poverty.¹⁰

Many people fear that the outsourcing of American jobs is leading to high unemployment in the United States (U.S.), but studies show that globalisation has a positive impact in the creation of new jobs. According to Robert Reich, one-quarter of Americans today work in jobs that were not even listed in the Census Bureau's occupation codes in 1967. Moreover, unemployment in the U.S. today remains remarkably low by historical standards. For example, unemployment in August 2004 was 5.4 percent, one of the lowest rates in the past twenty-five years.¹¹ Recent studies confirm that outsourcing actually results in a net gain of total U.S. jobs. For example, in the Information Technologies sector alone, outsourcing created more than 90,000 new jobs in the U.S. in 2003 and will produce an estimated 317,000 new jobs each year by 2008.¹²

Globalisation also has a positive impact on international trade. Increased global trade means faster economic growth, increased standards of living, and poverty reduction. Rather than seeking to restrict international trade, the real task is to reduce the barriers to trade in order to extend the benefits to developed and developing countries alike. Although wealthy nations speak of the importance of trade liberalisation, they maintain a system of agricultural subsidies and residual tariffs that cripple the ability of many developing countries to export their agricultural commodities.¹³ For example, wealthy countries subsidize their agricultural sectors to as much as nearly \$1 billion per day, forcing even the most efficient producers in developing countries out of the agricultural market. Millions of small farmers around the world are deprived of a living because of these subsidies. High tariffs on items like textiles and footwear also rob many countries of their ability to export and raise their standard of living. In particular, the U.S., Europe, and Japan need to eliminate these subsidies and tariffs. Economists estimate that with fairer global trade rules, African countries could earn six times what they receive in assistance from wealthy countries every year. If each developing countries' share of world trade increased by just one percent, the income growth created would lift 128 million people out of poverty.¹⁴ Hence, there

⁹ *Supra* note 2.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

is a vital need to make trade rules fairer so that developing countries can compete equally in the global economy and have the ability to generate more income.

III. CORE LABOUR STANDARDS IN THE MIDST OF FREE TRADE

THE DECEPTIVELY APPEALING VIEW that lower CLS (for example, low wages) in a country relative to its trading partners confer on it an unfair competitive advantage was formerly present in the charter of the International Trade Organisation (ITO), which was negotiated by participant countries at Havana in 1948.¹⁵ Charnovitz, in his historical review of labour standards in the world-trading regime, notes that Article 7 of the ITO stated:

The Members recognize that unfair labour conditions, particularly in the production for export, create difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.¹⁶

However, this article was among the provisions of the charter that never entered into force. The ITO did not come into being primarily because the U.S. did not ratify its charter.¹⁷ Nevertheless, the General Agreement on Tariffs and Trade (GATT), which had been negotiated earlier with the intent to operate under the ITO (consisting of tariff reductions and general clauses setting out rules and obligations), came to be applied through its protocol of provisional application.¹⁸ With the exception of allowing countries to prohibit trade in goods made with prison labour, the articles of GATT did not deal with CLS. Various administrations and states have proposed the inclusion of a labour standards article in the GATT. For example, during several rounds of multilateral trade negotiations (MTNs), the U.S. suggested, without success, to add workers' rights

¹⁵ Final Act and Related Documents, United Nations Conference on Trade and Employment, Havana, Cuba, November 21, 1947 - March 24, 1948. U.N. Doc. ICITO/1/4 (1948).

¹⁶ Steve Charnovitz, "Promoting Higher Labour Standards," (1987) 18, 3 *The Washington Quarterly* 167 at 170.

¹⁷ Patricia Stirling, "The Use of Trade Sanctions as an Enforcement Mechanism For Basic Human Rights: A proposal for Addition to the World Trade Organisation" (1996) 11:1 *Am. U.J. Int'l L. & Pol'y* at 35.

¹⁸ General Agreement on Tariffs and Trade opened for signature October 30, 1947, 61 Stat. A-3, 55 U.N.T.S. 187 ("GATT 1947").

to the Uruguay and WTO agendas.¹⁹ In 1994, the European Parliament further suggested that GATT Article XX(e) on prison labour be amended to include forced and child labour, as well as violations of the principles of freedom of association and collective bargaining.²⁰ Further, during several rounds of MTNs, political parties have made similar proposals in national parliaments of several European countries.²¹

The rise in unemployment in many Organisation for Economic Co-operation and Development (OECD) countries led most of the developed countries to look for an external explanation, including unfair trade practices.²² The industrialised countries argued that the rapid economic development of certain developing countries has come through the exploitation of labour, low wages (for example, to child labourers), and for want of strong internal markets, enabling those countries to run export surpluses.²³ If a country allows its workers to be employed under deplorable conditions, it can export its products at lower prices and thus acquire an unfair advantage over its competitors. Hence, the solution is the inclusion of social clauses to compel developing countries to guarantee minimum rights to their workers and pay them according to their productivity under international trade arrangements.²⁴ "A social clause would provide a mechanism for ensuring that members of the WTO implemented certain

¹⁹ T.N. Srinivasan, *Developing Countries and the Multilateral Trading System: From the GATT to the Uruguay Round and The Future* (London: Westview University Press, Oxford, 1998) at 72.

²⁰ Resolution of the European Parliament on the Introduction of a Social Clause in The Unilateral and Multilateral Trading System, Official Journal of the European Communities, No. C61, 28 February 1994, at 89-92. The Resolution further suggested that the ILO be associated with any surveillance of the respect of core labour rights undertaken by the WTO, and that an advisory committee composed by the ILO and concerned countries be able to lodge complaints against MNEs or countries violating the provisions incorporated in the social clause.

²¹ T.N. Srinivasan, "Trade and Human Rights" (1996) Centre Discussion Paper No. 765, Economic Growth Centre, Yale University at 32.

²² The issue of the association between trade and international labour standards arose when concern was expressed about the risk of "unfair" trade associated with competition from firms producing under socially unacceptable practices. OECD, *Trade, Employment and Labour Standard: A Study of Core Workers' Rights and International Trade*, (Paris: Organisation for Economic Cooperation and Development, 1996) at 21.

²³ International Metal Workers' Federation, *Trade and Worker's Rights - Time for a Link*, Geneva (1988) at 16-17.

²⁴ J.M. Servais, "The Social Clause in Trade Agreements: Wishful Thinking or an Instrument of Social Progress?" (1989) 128:4 *International Labour Review* 423 at 447.

minimum workers' rights," and "[i]ts enforcement mechanism would include trade penalties."²⁵

Two major arguments are advanced for the inclusion of a social clause - one economic and one moral. The economic argument suggests that low wages and labour standards in developing countries threaten the living standards of workers in developed countries. The moral argument asserts that low wages and labour standards violate the human rights of workers in developing countries. Hence, developed countries claim an association between free trade and labour rights and recommend using that association to eliminate child labour and control labour conditions. The developing countries deny this link and consider internal structural rigidities in labour and product markets to be the main factor behind unemployment.²⁶

Further, the fear that developing countries are swamping industrialised country markets with their cheap labour is a fallacy. Developing countries import more from the industrialised countries than they export to them. For example, in 1995, Korea's exports to industrialised nations constituted 12.3 percent of its gross domestic product (GDP), while its imports from industrialised nations were 13.9 percent of its GDP. In brief, relative to industrialised nations, Korea ran a trade deficit of 1.6 percent. In the same year, Indonesia also ran a deficit, 2.2 percent; Malaysia ran a deficit of 11.8 percent; and Brazil had a deficit of 1.4 percent with a trade surplus of 1 percent.²⁷ This means that if the exports from these countries were cut off, in all probability their imports from industrialised nations would shrink as well. This would make the net effect on the industrialised nations negative instead of positive, although, of course, some specific sectors could gain.

Moreover, the OECD empirical findings confirm that CLS do not play a significant role in shaping trade performance.²⁸ The OECD "could not detect any effects of CLS on U.S. import prices on textiles and apparel across trading partners. Nor was there any indication that export prices for hand-made carpets were lower in countries with extensive use of child

²⁵ H. Ward, "Common but differentiated debates: environment, labour and the WTO" (1996) 45 I.C.L.Q. 592 at 593.

²⁶ Hoe Lim, "Trade and Human Rights What's at Issue?" (2001) 35(2) J. World Trade 275 at 278.

²⁷ Kaushik Basu, "International labor standards and child labor," online: FindArticles.com <http://www.findarticles.com/cf_dls/m1093/5_42/56057299/p1/article.html> (last visited 15 March 2004).

²⁸ OECD, *Trade, Employment and Labour Standard*, *supra* note 22.

labor."²⁹ Therefore, the differences in CLS had little evident effect on patterns of specialisation, competitiveness, or exports.

A number of empirical studies on the various aspects of competitiveness in world markets, the flow of foreign direct investment (FDI), and CLS have been carried out. For example, Rodrik econometrically related basic measures of labour standards across countries, such as the ratification of ILO conventions covering CLS and an indicator of enforcement problems in child labour standards, to international trade flows. He was not able to determine any relationship in the data, nor could he find any indication to suggest a positive statistical relationship between low CLS and inward flows of FDI from the United States across the countries. Indeed, there was some evidence that FDI is lower than expected in countries with limited CLS.³⁰ Further, it is common in developing countries for labour standards to be lower in less export-oriented sectors and non-traded goods than in export-oriented industries, including textiles and carpets. Within manufacturing, workers in firms with high export-to-output ratios tended to receive greater wages and benefits than those in less export-oriented firms. In addition, no association has been discovered between the U.S., FDI, and poor CLS in developing countries. In fact, in the United States, FDI is not concentrated in nations or sectors with weak CLS. Moreover, countries with weaker labour rights did not have higher import-penetration rates into U.S. states than did countries with stronger labour rights.³¹ Thus, there are no indications that export success in developing countries results from cost advantages stemming from inadequate CLS.

Generally, analysts find that the impact of trade on employment and wage relativities has been significant in specific sectors. They also find that the measurable negative impact arising through increased import penetration is highest in sectors that employ relatively large numbers of low-skilled workers. Almost all studies find that the impact of trade on employment is small relative to changes in employment overall. Moreover, under most circumstances, the absence or inadequate enforcement of CLS is inefficient and costly in the short and long run, rather than pro-

²⁹ Martin & Maskus, 1999, "Core Labor Standards and Competitiveness: Implications for Global Trade Policy," online: Trade Observatory <<http://www.tradeobservatory.org/library.cfm?RefID=25051>> (last visited 11 May 2005).

³⁰ Dani Rodrik, "Labor Standards in International Trade: Do They Matter and What Do We Do About Them?" in Robert Lawrence, Dani Rodrik, & John Whalley, *Emerging Agenda for Global Trade: High Stakes for Developing Countries* (Washington, D.C.: Overseas Development Council, 1996) at 50-59.

³¹ Mita Aggarwal, "International Trade, Labor Standards, and Labor Market Conditions: An Evaluation of the Linkages," U.S. International Trade Commission, Working Paper 95-06-C (1995).

viding an export advantage. Therefore, any fear on the part of developing countries that better core standards would negatively affect either their economic performance or competitive position in world markets has no economic rationale, and the case for linking trade with the observance of CLS is far from persuasive. Accordingly, developing countries view social clauses as a protectionist device. They consider social clauses a threat to their economic welfare, which could obstruct their industrial development and deprive them of one of their key comparative advantages: the ability to use low-cost labour productively. Further, developing countries regard them as interference in their domestic affairs.³²

The linkage between trade and labour standards has been rightly criticised by the Malaysian Prime Minister, Dr. Mahathir Mohammad, who said that linking trade and labour standards would undermine the comparative advantage of developing countries, retard economic development, and delay the provision of the very right that core labour standards seek to protect.³³ Since the protection and improvement of workers' rights is the main target that CLS seek to protect, they can be improved only through strategies that have positive effects on workers' rights and not by the imposition of trade barriers or sanctions (which adversely affect the condition of workers).

It is arguable that the use of trade sanctions to enforce particular labour standards of advanced nations in poor countries is unpersuasive. First, in no sense can one attribute universality to those standards. As each country determines its own rules and regulations, (including its labour-market regulations according to its specific institutional and historical set-up, its level of economic development, etc.) only the principles are internationally recognised, not the setting of standards, which is necessarily country-specific.³⁴ Second, if humanitarian concerns for the welfare of workers in poor countries are the impetus behind the desire to enforce higher CLS, superior and more efficient instruments than trade sanctions are available to enforce CLS. In any case, as Rodrik points out in a related context, the reason why advanced nations do not "condone a substantially lower set of working conditions for migrant workers (tem-

³² Gijsbert Van Liemt, "Minimum Labour Standards and International law: Would a Social Clause Work?" (1989) 128:4 *International Labour Review* 433 at 435-44. Trade sanctions will have a greater impact on those countries that rely heavily on exports. The countries that have an import substitution would feel the effect to a lesser degree.

³³ S. Hughes & R. Wilkinson, "International Labour Standards and World Trade: No Role for the World Trade Organisation?" (1998) 3:3 *New Political Economy* 375 at 376.

³⁴ OECD, *Trade, Employment and Labour Standard*, *supra* note 22 at 85.

porary or otherwise) have less to do with humanitarian concerns for foreigners than with ensuring labour standards for domestic workers do not erode."³⁵ Therefore, one is led to deduce that the conventional protectionist pauper-labour type argument, rather than lofty humanitarianism, is behind the demand for using trade policy instruments to enforce particular CLS in poor countries.

Currently, most developed countries are pushing for the inclusion of the Social Clause with great vigour, which comes at a time when imports from developing countries are penetrating their markets at an increasing level.³⁶ Furthermore, there is a curious irregularity in the contents of the proposed clause: it focuses on those labour standards that are presumed to be "low" in developing countries and not on those equally plausible ones that are absent in many, but not all, developed countries.³⁷ Hence, the selective nature of the contents of the proposed Social Clause only covers the inclusion of labour rights, which are less protected in developing countries, as for example child labour, which is proposed to be included in the Social Clause. Thus, enforcement against domestic sweatshops, which is notoriously minuscule and lax in the United States despite the abundance of sweatshops in its textiles apparel industry, is not in the Social Clause, nor are the rights of migrant labour, which are subject to quasi-slavery conditions in parts of U.S. agriculture. In addition, the Social Clause does not look towards other unpleasant social facts in developed countries. For example, the United States has almost as little as 12 percent of its labour force in unions today.³⁸ Further, no developed country advocate of the Social Clause has proposed that developed countries ought to take a far greater commitment to labour rights than the developing countries that are at a much lower stage of development.³⁹ It is arguable that many developing countries do not enforce their own laws, such as those relating to compulsory schooling or labour standards. Similarly, many developed countries do not enforce their own laws on drug use as effectively as their resources would allow. Should the resources devoted to law enforcement, given resource and information constraints and the difficult choices

³⁵ Dani Rodrik, *supra* note 30 at 43.

³⁶ J. Bhagwati, "Liberalisation and 'Fair Trade' Demands: Addressing the Environmental and Labour Standards Issues" (1995) 18 (6) *The World Economy* 745.

³⁷ *Ibid.*

³⁸ Third World Intellectuals and NGOs' Statement Against Linkage (TWIN-SAL), online: <http://www.columbia.edu/~jb38/TWIN_SAL.pdf> (last visited 01 June 2005).

³⁹ *Ibid.*

governments face to allocate these resources among alternative targets, become a matter for international negotiations? The timing of the demand for and the contents of the proposed clause, as well as the concern only with the enforcement of a particular set of laws (especially those relating to labour standards), all point to one end: that protectionist interests have captured the demand for labour standards.

IV. THE RELATIONSHIP BETWEEN INTERNATIONAL TRADE AND LABOUR STANDARDS

“THE RELATIONSHIP BETWEEN international trade and labour standards has often been mentioned as one of the most controversial agendas in the World Trade Organization (WTO) system.”⁴⁰ Since the end of the Uruguay Round, the link between international trade and labour standards has come to the forefront of the policy agenda and revealed differences of opinion. It has been argued that no formal linkage exists between the multilateral trade regime and international supervisory bodies dealing with labour standards and human rights. At the first Ministerial Meeting in Singapore in 1996, a somewhat ambiguous compromise was reached. The WTO recognised core labour standards⁴¹ whilst rejecting protectionism, and it pointed to the ILO as being the most appropriate body to deal with labour standards.⁴² Despite the WTO distancing itself from the labour issue, developed countries continued to push for the incorporation of labour standards into the WTO agenda.

At the Doha Ministerial Meeting in November 2001, trade union representatives wanted the WTO to commit itself to close cooperation with the ILO. This proposal was widely condemned by a number of African and Asian Non-Governmental Organizations (NGOs) who argued that the introduction of core labour standards into the WTO agenda would “once again sabotage the success of the ministerial, as it happened at Seattle.”⁴³

⁴⁰ Jai Sheen Mah, “ASEAN, Labour Standards and International Trade” (1998) 14:3 ASEAN Economic Bulletin 292 at 292.

⁴¹ It was the first time that an international trade body has endorsed core labour standards and committed its members to their observance. S. Hughes & R. Wilkinson, “International Labour Standards and World Trade: No Role for the World Trade Organisation?” (1998) 3:3 New Political Economy 375 at 375.

⁴² Linkage between trade and core labour standards was debated at the Singapore Ministerial Conference of the WTO, with strongest support from the United States, France and other developed countries and firm opposition from (United Kingdom) India and other developing countries. Dec. 13, 1996, para. 4, Doc. WT/MIN (96)/DEC, 36 *ILM* 218 (1996).

⁴³ Statement released by African and Asian NGO's 2001, Press Release, “Afro-Asian NGO Coalition Condemns the Reintroduction of Labor Standards on the Ministerial Agenda” (12 November 2001), online: Trade Observatory <<http://www.tradeobservatory.org/library.cfm?RefID=25245>> (last visited 11 May 2005).

Their argument was that poverty is the main problem in their countries, and that imposing such labour standards would have serious repercussions for the millions of families in Africa and Asia who depend on the income of their children. Accordingly, for developing countries, the issue is not a matter of choosing the best work conditions, but of survival and livelihood. For instance, in Nepal, India, or Pakistan where 40-50 percent of people live below the poverty line, the main problem is finding a job.⁴⁴ If CLS became enforceable under WTO rules, any sanctions imposed against countries with lower labour standards would perpetuate poverty. Hence, better working conditions and improved CLS - including the elimination of the worst forms of child labour - arise through economic growth and free trade, and not through the imposition of trade sanctions.⁴⁵ Eventually, the Doha Ministerial Declaration re-affirmed the declaration made in Singapore - the ILO is the appropriate body to deal with labour standards.⁴⁶ Consequently, labour standards are not subject to WTO rules and disciplines.

Since the Singapore Ministerial Conference, the ILO has taken significant steps in addressing the issue of workers' rights. In June 1998, the General Conference of the ILO adopted the Declaration on Fundamental Principles and Rights at Work.⁴⁷ The Declaration focused the discussion on core labour standards. The ILO declared that CLS reflect basic human rights that should be observed in all countries, irrespective of the level of economic development and socio-cultural traditions. These CLS can stimulate economic development and support free trade.⁴⁸ The CLS include eight ILO conventions that constitute a comprehensive set of international labour standards.⁴⁹ These standards are the minimum standards and

⁴⁴ *Ibid.*

⁴⁵ WTO, "Trade and Labour Standards: Subject of Intense Debate," online: World Trade Organization <http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm> (last visited 10 March 2004).

⁴⁶ "ILO Launches Commission on Social Dimension of Globalisation" *Bridges Weekly Trade News Digest* (27 February 2002), online: Bridges Weekly Trade News Digest <<http://www.ictsd.org/weekly/02-03-05/inbrief.htm>> (last visited 5 March 2003).

⁴⁷ ILO, Declaration on Fundamental Principles and Rights at work, 1998 (Available in ILO Legal Database ILOLEX) online: International Labour Organization <<http://www.ilo.org/public/english/support/lib/dblist.htm>> (last visited 30 September 2003).

⁴⁸ OECD, *Trade, Employment and Labour Standard: A Study of Core Workers' Rights and International Trade*, (Paris: Organisation for Economic Cooperation and Development, 1996) at 21, 25.

⁴⁹ For example, ILO, No. 29 Forced Labour Convention (1930); ILO, No. 87: Freedom of Association and Protection of Rights to Organise Convention (1948), Convention

the hope for the defeat of social injustice.⁵⁰ Further, governments of ILO members agreed to respect and promote these core conventions:

As a follow-up, the ILO will issue annual reports in which ILO officials will obtain information from governments which have not ratified all of the conventions on any changes that may have taken place in national laws or regulations and which may impact these fundamental labour rights.⁵¹

As mentioned above, CLS are not subject to WTO rules and disciplines, since the WTO itself admitted to the ILO's competence in this area. Nevertheless, some WTO members in Europe and North America believe that the WTO must undertake the issue if public confidence in the WTO and the global trading system is to be strengthened.⁵² Their argument is that bringing the matter to the WTO will provide incentives for its members to improve conditions for workers around the world. However, most developing countries perceive such incorporation as a form of protectionism that will only slow their progress towards better living standards.⁵³ Moreover, the developed countries are not worried about the state of workers in the developing countries, but are interested in restricting trade through economic sanctions.

In fact, setting and establishing a set of fair rules for regulating international trade is easy compared to developing an international protocol on uniform labour standards. Optimal labour market characteristics depend critically on each country's level of income, and it is difficult to reach an agreement that does not threaten the interests of the poorest countries. The complexity in establishing and enforcing a widely acceptable set of CLS within the WTO makes it problematic. Bhagwati views the notion of universal labour standards as ignoring the culture-specific element. In

No. 98 Right to Organize and Collective Bargaining Convention (1949); ILO, No.100: Equal Remuneration Convention (1951), ILO No.105: Abolition of Forced Labour Convention (1957); ILO, No. 111 Discrimination (Employment and Occupation) Convention (1958); ILO, No. 138 Minimum Age Convention, (1973); ILO, No. 182 Worst Forms of Child Labour Convention, (1999). Available in ILO Legal Database (ILOLEX), online: International Labour Organization <<http://www.ilo.org/ilolex/english/convdisp1.htm>>.

⁵⁰ P. Waer, "Social Clauses in International Trade: the Debate in the European Union" (1996) 30:4 J. World Trade 25 at 36.

⁵¹ WTO, *supra* note 45.

⁵² *Ibid.*

⁵³ Daniel T. Griswold, "Protectionism With a Green Face and a Union Bug," online: Center for Trade Policy Studies <<http://www.freetrade.org/pubs/articles/dg-tle.html>> (last visited 18 May 2003).

reality, the diversity of labour practice and standards is widespread in practice and it reflects not necessarily wickedness, but rather the diversity of cultural values.⁵⁴

Respect for these core labour standards has been proposed by key WTO Members, such as the U.S. and the E.U., as an indispensable condition for access to their markets. Their argument is that the competitive advantage driving low labour standards is illegitimate when labour standards are violated to undercut the cost of production.⁵⁵ In that case, the importing countries would impose conditions on exporting countries to fulfill certain minimum standards concerning their labour situation. If the situation of the exporting countries is sub-standard, the importing countries may apply sanctions to restrict market access. In this context, advocacy for social clauses has arisen.

Advocates for social clauses believe that the issue of CLS is a matter for consideration by the WTO, while opponents believe that it is a matter for the ILO. The opponents argue that the imposition of trade sanctions will make the situation worse. Least developed countries (LDCs) will suffer the most because the penalty from the WTO will be punitive, whereas the ILO will try to assist the country to achieve acceptable CLS. Consequently, they accept the importance of CLS, but reject the WTO as the right forum. The question thus arises: what would be the best forum for the implementation of labour rights?

The first option is to leave the issue with the ILO as a tripartite body with representations from workers, governments, and employers. However, the core problem for the ILO is maintaining its power in the face of the social clause dispute. Hence, the greatest drawback of the ILO is its lack of enforcement capacity. There is no doubt that the ILO conventions contain integral reciprocity (as the ILO can act against members who do not comply with its conventions once ratified), but the ILO lacks an enforcement mechanism.

The other option is the incorporation of labour rights into the WTO. The WTO's overall objective is economic development and it has an enforcement mechanism. Further, the reciprocity clause in the GATT 1947 treaty was further strengthened by the single undertaking clause of GATT 1994. However, it is also true that the WTO can only entertain disputes that arise out of the agreements already signed by its Members, and to date, there is no agreement on the social clause. Both the advocates and opponents are advocating extreme stands. A simple WTO route for a social clause will not produce the desired results for the promotion

⁵⁴ J. Bhagwati, "The Environment, Labour Standards and Trade Policy" in *Writings on International Economics* (Delhi: Oxford University Press, 1997) at 498.

⁵⁵ J. Bhagwati, *Free Trade, 'Fairness' and the New Protectionism* (London: Institute of Economic Affairs, 1995) at 26-27.

of labour rights, and a simple ILO route for a social clause is unworkable. The optimal approach would be to give the ILO the ability to enforce its conventions. For that to happen, a dialogue is required to address the issues in a balanced manner to find solutions through consensus, rather than create barriers.

V. SOCIAL CLAUSE, INTERNATIONAL TRADE, AND LABOUR STANDARDS

THE ISSUE LINKING TRADE AND LABOUR standards is long standing. In 1979, The International Confederation of Free Trade Unions (ICFTU) advocated that "a social clause should include provisions making it possible to prohibit trade in products produced under conditions and methods which endanger workers' lives."⁵⁶ In 1906, an international treaty was adopted to prohibit the trade and manufacture of matches made from white phosphorous due to the danger posed to workers in the industry.⁵⁷ Although the link between trade and labour rights is not a new concept, what is new is the call to institutionalise this notion within the GATT/WTO framework. Within this framework, a social clause based upon this link would have possible sanctions against those countries that fail to respect labour rights. According to Bhagwati, the linkage implies "that a country's access to external markets is to be made conditional in some fashion on the acceptability of that country's internal 'labour standards.'"⁵⁸

A typical social clause of this kind makes it possible to restrict, halt, or provide for the preferential importation of products originating in countries, industries, or firms where labour conditions do not meet certain minimum standards. Hence, the mandatory dimension of this idea can be broken down into two propositions. First, all countries engaged in international trade should have a legal obligation, which is not based upon ratification of particular conventions, to observe certain workers' rights. Second, this obligation should be enforceable through trade sanctions.⁵⁹ However, trade sanctions are by nature blunt weapons. For example, economic trade sanctions could be imposed on a country like Pakistan because of poor working conditions or child labour problems in its agricultural sector, but the workers most immediately affected would be those

⁵⁶ G. Hansson, *Social Clauses and International Trade: An Economic Analysis of Labour Standards in Trade Policy* (London: Croom Helm, 1983) at 27.

⁵⁷ International Metal Workers' Federation, *supra* note 23 at 40.

⁵⁸ Viti Muntarhorn, "Child Rights and Social Clauses: Child Labour Elimination as a Social Cause?" (1998) 6 *The International Journal of Children's Rights* 255 at 270.

⁵⁹ *Ibid.* at 271.

in export-oriented trade where organised labour might be stronger.

There are three major claims for the incorporation of labour standards into the world trading system. "First, there are the altruistic concerns for the rights of the workers in the poor countries"⁶⁰ who face appalling working conditions in those countries. Second, the "trading system itself might be eroded if it does not ensure that the workers' rights in the developing countries are protected,"⁶¹ and this in turn results in social dumping. Third, workers' low wages in developing countries enable the country to export its products at lower prices and thus acquire an unfair advantage over competitors.⁶² The theoretical argument is that free trade with countries of lower standards will force down one's higher standards, which stems from the fear that capital and jobs will move to those countries with lower standards. This triggers a "race to the bottom" - as the companies in developed countries find it cheaper and profitable to set up companies in developing countries where rent, wages, and running costs are very low compared to their own countries - where countries with higher standards face pressure to relax their regulations. Therefore, the developed countries argue that market access to the North should be conditioned upon raising labour standards in the South, to prevent social dumping and the "race to the bottom" in wages and benefits.

According to this argument, the solution lies in coordinating the setting of standards among countries engaged in freer trade and investment. "This may in turn require harmonisation among countries to the higher standards or there might be improvement in welfare from simply setting minimum floors to the standards."⁶³ In fact, there is no empirical evidence to substantiate this point.⁶⁴ Further, Maskus in 1997 developed theoretical models of ten different cases covering child labour exploitation, discrimination, and weak union rights, in which a foreign tariff might be deployed against the problem. "In eight cases, the tariff would reduce the wage of the labour group harmed by the weak labour standard."⁶⁵ This shows that trade barriers discourage economic development and further worsen the conditions of labourers already harmed by weak labour standards. Hence, the argument of social dumping could be dismissed. In fact, the opposite is true. Trade encourages economic development and enhances labour standards. Further, free trade promotes economic

⁶⁰ Martin & Maskus, *supra* note 29.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ J. Bhagwati, *supra* note 54 at 491.

⁶⁵ Martin & Maskus, *supra* note 29.

growth. Therefore, the aim is not to stop globalisation, but to structure it so that as many nations as possible can share the gains it provides, while avoiding its harmful effects through international co-operation.

The third claim is that weak CLS and "inadequate enforcement of standards are viewed by some observers in the high-income economies as means for generating artificially low wages and augmenting the natural comparative advantage low-wage countries have in labor-intensive goods."⁶⁶ This additional wage margin is seen as a threat to employment and the incomes of workers in developed countries, and underlies the concerns about the "race to the bottom." This concern is expressed particularly towards labour practices in export processing zones (EPZ). In some countries, the right to free association and collective bargaining are denied in these zones, giving firms operating in them an evident advantage based on lower wages. "Similarly, those firms able to exploit child labour, to force labourers to work against their will, or to discriminate against particular groups of workers are seen as gaining a competitive advantage."⁶⁷ Accordingly, the social clauses are vital for the preservation of workers' rights in developing countries as much as in developed countries.

The argument that weak CLS generate artificially low wages and augment competitive advantage is fundamentally invalid. Rather than providing competitive advantages, weak CLS actually reduce efficiency and raise costs. Furthermore, any competitive advantage acquired is widely viewed to be short-run in nature, since violations of implicit human rights are typically seen as imposing long-run efficiency costs. Exploited workers may be expected to invest sub-optimally in human capital, to be poorly motivated on the job, and to perform below their maximum potential levels of effort.⁶⁸ Most of the analysis in a recent OECD study supports the conclusion that raising CLS would increase competitiveness and efficiency in the long run.⁶⁹ "Indeed, improving CLS is likely to increase economic efficiency in both the short run and the long run."⁷⁰ In this sense, arguments for a multilateral trade agreement that would link trade sanctions to weak provision of labour rights, to the extent that those arguments are based on competitiveness claims, should be viewed as hidden calls for trade protection by industrial countries. These countries seek to

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ World Bank, "World Development Report 1995: Workers in an Integrating World" Washington, DC, The World Bank.

⁶⁹ Organisation for Economic Cooperation and Development, "*Trade, Employment, and Labour Standards: A Study of Core Workers' Rights and International Trade*" (Paris: OECD., 1996).

⁷⁰ Martin & Maskus, *supra* note 29.

protect their industries from competition from poor developing countries, and any moral arguments that are put forward are only used to justify restrictions on such trade.⁷¹

In fact, both developing and developed countries are neglecting the proper protection of core labour standards. Developing countries are dangling labour legislation (e.g. enforcement of child labour laws) to attract investment, but even the developed countries have stepped back from the protection of workers' rights. Workers' organisations around the world hope that by entering into corporate efforts to increase productivity, they can protect their members' jobs against global competition. The question arises: Is this the right way of protecting and strengthening labour rights? Certainly not. If labour rights are to be strengthened and protected in a global epoch, we need to find a different strategy - one that would seek to regulate markets in ways that would protect workers' rights rather than further destroying them - instead of letting global market pressures dictate labour strategies.

VI. HUMAN RIGHTS COVENANTS, THE GATT/WTO SYSTEM, AND CORE LABOUR STANDARDS

THE MULTILATERAL TRADING SYSTEM and U.N. human rights covenants can be said to have several features in common. Both are part of the post-Second World War movement to maintain international peace, security, and prosperity. The two world wars in the first half of the twentieth century had shown that "friendly relations among nations" is best maintained through international cooperation, the promotion of the rule of international law, and the creation of international mechanisms and organisations for social, economic, and political stability.

In this context, respect for human rights, better standards of living, full employment, and social and economic progress were seen as contributing factors to keeping the peace. This is clearly expressed in the U.N. Charter:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations... the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

⁷¹ T.N. Srinivasan, *Developing Countries and the Multilateral Trading System: From the GATT to the Uruguay Round and The Future* (London: Oxford University Press, 1998) at 73; Bhagwati, *supra* note 54 at 501.

(b) solutions of international economic, social, health and related problems...

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁷²

The above-mentioned objectives also find expression in the preamble of the Universal Declaration of Human Rights, which, with reference to the U.N. Charter, calls for the promotion, *inter-alia*, of "...better standards of life in larger freedom." Some of these aspirations are also reflected in the first preamble of the Marrakesh Agreement Establishing the World Trade Organization:

Recognising that their [Contracting Parties/Members] relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.⁷³

There is no mistaking that the U.N. Charter gives prominence to the objectives of "higher standards of living" and of finding solutions to international economic problems. While the preamble of GATT/WTO does not make explicit reference to peace or to human rights, it is nevertheless clear that the promotion of peace through enhancing trade and economic welfare was in mind. In this regard, it should be recalled that the

⁷² *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7, Chapter IX, Art. 55.

⁷³ Marrakesh Agreement Establishing the World Trade Organization, World Trade Organization, online: Juris International <<http://www.jurisint.org/pub/06/en/doc/02.htm>>. See also: (i) part IV (Trade and Development) of GATT (added in 1965): "recalling that the basic objective of this agreement include the raising of standards of living and the progressive development of the economies of all contracting parties"; and (ii) the preamble to the General Agreement on Trade and Services (GATS) and the Agreement on Trade - Related Aspects of Intellectual Property Rights (TRIPS), focusing on economic growth of the economies of all trading partners and the development of the developing countries.

disastrous protectionism of the 1930s and its contribution to the world war that followed were still fresh in the minds of the founders of the international system.⁷⁴ Beggar-thy-neighbour policies, which included competitive devaluations and the imposition of high, discriminatory, and protectionist trade barriers, had brought international trade to a virtual halt.⁷⁵ Protectionism, contrary to expectations, had simply contributed to raising unemployment and poverty.⁷⁶ "In this context, the contribution of the multilateral trading system to human rights is derived from its role in helping to solve the centuries old and still present international political economy problem of nationalistic mercantilism which is by definition protectionist."⁷⁷ The "basis of mercantilism is the wrong perception that trade surpluses achieved through the imposition of trade barriers are optimal from a national welfare point of view."⁷⁸

The very purpose of an international organisation on trade relations is to reduce the risk of such actions mentioned above, and thereby increases the stability and equity of international trading relations. The multilateral trading system, which began as no more than a temporary agreement (GATT) by providing a negotiating forum to reduce trade barriers, has played an important role in this regard.⁷⁹ "The principles of non-discrimination, most-favoured nation and national treatment, and the imposition of an international rule of law through effective dispute settlement are central to promoting peace and predictability in international trade relations, enhancing economic growth, and welfare, and greater equality in trade negotiations."⁸⁰ These principles share much in common with human rights concerns on individual freedom, non-discrimination, equal opportunities, and the respect for the rule of law.⁸¹ Equally, economic

⁷⁴ The US Smoot-Hawley Tariff Act of 1930 introduced the highest tariffs in U.S. history, which, in turn, triggered retaliatory trade and payments restrictions by other countries, leading to a worldwide economic crisis.

⁷⁵ Bernard M. Hoekman & Michel M. Kosteci, *The Political Economy of the World Trading System: From GATT to the WTO*, (Oxford: Oxford University Press, 1995) at 12-20.

⁷⁶ The economic and social costs of protectionism are well-discussed by Jagdish N. Bhagwati in his book, *Protectionism*, (Cambridge: MIT Press, 1988).

⁷⁷ Hoe Lim, *supra* note 26 at 277.

⁷⁸ *Ibid.*

⁷⁹ The original intention had been to create the International Trade Organisation (ITO), however, refusal by the U.S. Congress to ratify the Havana Charter of 1948 establishing the ITO meant that only the GATT was established. The GATT was only transformed into a fully-fledged international organisation in 1995, with the establishment of the World Trade Organization.

⁸⁰ Hoe Lim, *supra* note 26 at 277.

⁸¹ Ernst-Ulrich Petersmann, "The WTO Constitution and Human Rights" (2000) J. Int'l Econ. L. at 19-25.

human rights, such as the right to work and favourable living standards, are implicitly connected with the object and purpose of the multilateral trading system. In short, as stated in the report by the U.N. Secretary-General to the fifty-fifth session of the General Assembly:

The goals and principles of the WTO Agreements and those of human rights law do therefore share much in common. Goals of economic growth, increasing living standards, full employment and the optimal use of world's resources are conducive to the promotion of human rights, in particular the right to development. Parallels can also be drawn between the principals of fair competition and non-discrimination under trade law and equality and non-discrimination under human rights law. Furthermore, the special and differential treatment offered to developing countries under WTO rules reflects notions of affirmative actions under human rights law.⁸²

Furthermore, it accords developing countries the assistance they need to defend their rights as effectively as developed countries. Special and differential treatment refers to the exceptions, flexibility, and extra support that developing countries need to get the most out of the WTO.

While there are similarities between WTO agreements and the human rights covenants both in terms of general approach and on some substantive rights, there are also important differences to recognise. First, while the multilateral trading system seeks to create a welfare-enhancing economic environment, which can be said to be conducive to the promotion of human rights, it was never established to set or enforce CLS, including the elimination of the worst forms of child labour and other human rights. Its mandate was narrowly defined in terms of creating "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations."⁸³

The strategy taken by the GATT/WTO involves three core elements:

- (i) bargaining through negotiations thus allowing difficult deals to be made;

⁸² *Globalization and its Impact on the Full Enjoyment of all Human Rights: Preliminary Report of the Secretary-General*, UN GAOR, 55th Sess., UN Doc. A/55/342 (2000) 4.

⁸³ The third paragraph of the preamble of the Marrakesh Agreement Establishing the World Trade Organization.

- (ii) restricting the focus of the negotiation to substantial reduction of tariffs and other barriers to trade; and
- (iii) establishment of enforceable legal disciplines which members find mutually beneficial to observe.⁸⁴

The narrowly defined mandate of the GATT/WTO, with its focus on the reduction of trade barriers, supported this strategy and was in line with the overall design of the U.N. system and its family of specialised agencies. The international organisations must keep their areas of competence tightly focused because the danger of expanding mandates and issues can result in a significant deterioration in operational efficiency and impact. Hence, it is important that the prime trade issues and any implementation problems that need to be discussed be made clear. Otherwise, the trading system would be contaminated with extraneous issues and the mainstream trade issues would be given the short shift. Therefore, the issues that fall within the human rights area should be undertaken according to the provisions of human rights covenants, in their complete economic, political, and social context.

Secondly, in the WTO, states retain full control of the decision-making and finance of the organisation. The function of the WTO Secretariat, which is often mistaken for the WTO itself, is to facilitate the work of the member governments with whom it does not make trade policy or decisions. In contrast to other international organisations, such as the International Monetary Fund (IMF) or World Bank, the WTO Secretariat does not have any executive powers. A forum exists in which member countries negotiate their common policies and commitments concerning each other, based on a mutually agreed set of principles. Ultimately, the WTO only has as much authority as the member countries wish to confer.⁸⁵ States and the organizations in which they are members of are not two mutually exclusive entities. Thus, it is important to be clear when it is argued that international organizations have obligations resulting from human rights covenants, and states that jointly own international organizations have human rights obligations.⁸⁶ If this argument is accepted, then states that

⁸⁴ Hoe Lim, *supra* note 26 at 279.

⁸⁵ Peter Malanczuk, Akehurst's, *Modern Introduction to International Law*, 7th ed. (London: Routledge, 1997) at 92-96 discusses the nature of international organisations. The classic description of an international organisation is very well exemplified by the WTO, whose secretariat is relatively small and has no decision-making powers. The decision-making, agenda setting, and direction for the work that the secretariat embarks upon are very strictly the prerogative of the members. Hoe Lim, *supra* note 26 at 279.

⁸⁶ Rosalyn Higgins, *Problems and Process: International Law and How to Use It* (New York: Oxford University Press, 1994) at 98.

are parties to human rights covenants have obligations to ensure that the policies they formulate and the agreements they enter into within other international fora are in line with their human rights obligations.

Thirdly, human rights covenants are primarily about rights and obligations between individuals and states. Human rights are rights of individuals in society and every human being has legitimate, valid, and justified claims upon his or her society to various goods and benefits. Those particular claims against states are listed in international instruments, which are deemed essential for individual well-being, dignity, and fulfillment, and reflect a common sense of justice, fairness, and decency.⁸⁷ WTO agreements, on the other hand, are summarized as multilaterally negotiated contracts specifying the legal ground-rules for international trade relations. They represent international legal commitments taken by a state with reference to another state. Thus, "in WTO agreements, generally the rights and obligations are both enjoyed and observed by States. For instance, the WTO principle of non-discrimination applies *vis-a-vis* foreign countries which are members of the WTO but not as a right held by *vis-a-vis* their own governments."⁸⁸ While there are similarities in approach, especially in terms of removing restraints on freedoms, there are very important conceptual legal dissimilarities that exist between WTO agreements and human rights covenants.

VII. CONCLUSION

TRADE-LINKED GRADATION OF LABOUR standards would therefore exclude a large part of the workforce not engaged in export production. Trade-restrictive consequences will adversely affect the interests of workers and would result in restrictions on employment opportunities in developing countries. Further, the use of international trade sanctions is unlikely to improve workers' rights where they are weak. Tariffs imposed by foreign countries concerned about insufficient CLS are indirect policies that do not address the underlying distortions and may not achieve the goal for which they are imposed.⁸⁹ An additional consequence is that because weak CLS cannot be associated with stronger competitiveness and export performance, foreign tariffs levied against exports from

⁸⁷ Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990) at 3.

⁸⁸ Hoe Lim, *supra* note 26 at 279.

⁸⁹ Keith E. Maskus, "Should Core Labor Standards Be Imposed through International Trade Policy?" World Bank, Policy Research Working Paper No. 1817 (1997), online: The World Bank <<http://www.worldbank.org/research/trade/wp1817.html>> (2 June 2003) at 66.

countries with this problem should not be expected to protect wages or employment in high-wage nations in the short run. However, to the extent these trade restrictions reduce exports and growth in the target nations, they would delay the endogenous implementation of stronger labour standards. In this sense, arguments for deploying current trade barriers against the exports of countries with poor CLS might well be efforts to discourage efficient future competition. The acceptance of proposals for trade sanctions would pose considerable difficulties for the trading system. This would "open the WTO to trade sanctions imposed against any foreign production process that failed to satisfy majority preferences in the sanctioning nation. Countries [could] constrain or prohibit numerous processes for environmental, health, aesthetic, and other reasons."⁹⁰

Those who want to use trade sanctions under the WTO to enforce CLS are taking the wrong route. Inevitably, it leads to punishing countries for their poverty. For this reason, all development agencies should meet with the ILO to examine ways to propel the implementation of CLS throughout the world. Although the ILO already has elaborated on the procedures for monitoring and enforcing labour standards, they need to be streamlined and better supported.⁹¹ The ILO is now under new leadership and there is hope of achieving greater progress with an increased vigour.

The WTO's aim must reflect the principle of mutual gain. It cannot be allowed to be the institution that becomes a prisoner of every developed country lobby or group seeking to advance its agenda at the expense of developing countries by simply claiming, without any underlying and coherent rationale, the issue is "trade-related." Fostering the trust of poorer countries in the WTO and other international organizations is required. Further, the global institutions must work for and with the poorest nations of the world. The duty of the international community generally, and developed countries particularly, is to show that globalisation and free and fair trade is the best pathway out of poverty and effectively raises core labour standards.

⁹⁰ Martin & Maskus, *supra* note 29.

⁹¹ Kimberly Ann Elliott, "Fin(d)ing Our Way on Trade and Labor Standards?" Institute for International Economics, April 2001, Policy Brief 01-5, online: Institute for International Economics <<http://www.iie.com/publications/pb/pb01-5.htm#7>> (20 May 2003).