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## **ILO fundamental principles and rights at work in Asia Pacific: Emerging standards for emerging markets?**

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"To rule a nation, use justice  
To win a battle - cunning,  
But remember: [not meddling] is the only true way.  
How do I know this ? I will explain :  
The more rules you have, the more unhappy people are;  
And the more weapons there are, the worse things happen.  
The more we want luxuries, the more we abandon simplicity -  
And the more laws you pass, the more we will break them.  
So the sage says : I do nothing, and the people come together;  
By leaving them alone I let them be on the path -  
By not using my power, they become rich in themselves.  
And if I want nothing, they will return to the essence of their being."

*(The Illustrated Tao Te Ching, translation by Man-Ho Kwok, Martin Palmer and Jay Ramsay, Element Books, Shaftesbury (Dorset), 1993, Chapter 57.)*

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## 1. Introduction

More than 150 years have passed since Robert Owen and Daniel Le Grand, two European manufacturers, started advocating international agreements on labour legislation to harness international competition, and 80 years since the International Labour Organisation (ILO) adopted its first international labour standards. Owing to a consultation-intensive adoption process, international labour Conventions and Recommendations can truly claim to be the only international labour standards recognised by the international community at large. Both instruments carry the authority of the International Labour Conference convening tripartite delegations from all member States. Since the ILO's earliest days, all Conventions are treaties with, at least upon ratification, equally binding force under international law. The number of ILO member States, the number of Conventions and Recommendations, the number of ratifications, all are steadily increasing. So, what's new?

New is the world, or at least the way it is perceived, since about a decade. Labour standards, and core labour standards<sup>1</sup> in particular, have caught the imagination of professionals and laymen alike, transgressing the traditional triangle formed by labour administrations, trade unions and employers' organisations. As the icebergs of the Cold War gave way to the more volatile chart peaks of market-driven economies, trade diplomats, consumer group lobbyists and human rights activists, to name only a few, have pushed the notion of international labour standards up international political agendas.<sup>2</sup> Asia Pacific has enjoyed the brunt of attention. When in the early nineties the higher spheres of international politics and commerce started buzzing with recriminations that Asian developing countries in particular were practising social dumping, governments of these countries were quick to brush aside such allegations as merely protectionist calls from certain corners of the developed world for a social clause to put a lid on cheaper imports.

Initially, the ILO stood by as a somewhat bemused spectator. In fact, the Organisation had been absorbed in its role of guardian of economic freedom and pluralist economic democracy against monolithic central economic planning, and had devoted its energy to the laborious task of articulating the values and policies that would bring development to workplaces throughout the national economies of the world - not only to those corners producing for export markets. The international community, wedded to the view that, henceforth, no economy should be denied the bountiful opportunities of the global economy any longer, gradually carved out a more prominent role for the Organisation in helping member States to govern the social effects of international economic integration.

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<sup>1</sup> "Core labour standards" is the more wieldy political term (used, for example, in the WTO Singapore Declaration - see *infra*) for "fundamental principles and rights at work", the language ultimately used in the ILO Declaration (see *infra*). "Fundamental ILO Conventions" is the terminology used in the Copenhagen Declaration (see *infra*) to describe the ILO instruments that enshrine those principles and rights at work in international law. The Copenhagen Declaration was the first instrument of that stature adopted outside the ILO to mark them among the other standards. "Fundamental" better conveys the constructive relationship these standards have with the rest of the body of international labour standards.

<sup>2</sup> Remarkably, international prominence has, so far, not resulted in a better mutual understanding of, for example, trade lawyers on the one hand, and labour and human rights lawyers on the other (Langille, 1997, p. 27). Nor, for that matter, have labour standards come to top national political agenda's in Asia Pacific, with the notable exception, as will be explained below, in the countries which have been affected most by the East Asian crisis.

The first part of this article will give a historical account of the ILO's multiple efforts to meet the international community's expectations of increased observance of core labour standards, culminating in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (hereafter the "Declaration"). Also other efforts to ensure that international labour standards better match present day needs will be referred to.

The second part will outline a conceptual rationale for the fundamental character of ILO's present core labour standards.

The third part will chart some developments in the ratification and application of fundamental ILO Conventions by 26 countries (or 27 economies)<sup>3</sup> in Asia Pacific.<sup>4</sup>

Finally, some observations will be devoted to two labour standards-related questions which are topical for Asia Pacific : the perceived tension between the quest for higher labour standards and the concern to preserve comparative advantage through low wages, and the role of these standards in redressing the East Asian financial and social crisis, including the need for the Bretton Woods institutions to pay more direct attention to the effect of their policies on the social fabric.

## 2. The road to the declaration

The International Labour Organisation may well have been the first to officially proclaim that "the failure of any nation to adopt human conditions of labour is an obstacle in the way of other nations which desire to improve the conditions of their own countries."<sup>5</sup> Since then, a linkage between global trade liberalisation and labour standards has been projected, pursued, and refuted on a regular basis. The experience of the European Union and the North American Free Trade Association (NAFTA) suggests that the concern to match economic growth and social development is a natural product of deepening economic integration, which affects all production factors, including workers. The question of how to bring labour standards into the economic liberalisation calculus is, therefore, bound to have many more aspects than the political paradigm of the governments of most developing countries suggests : a naked attempt to rob developing countries of their comparative advantage.<sup>6</sup>

Until the early nineties, ILO officials occasionally digressed on the trade-related aspects of labour standards, the gist of which I would summarise as follows. First, there is no need for extensive international harmonisation of labour standards, but labour standards do need to be improved.<sup>7</sup> This position is entirely consistent with the conceptual shift international labour Conventions and Recommendation gradually underwent after World War II : away from instruments, not seldom with a sectoral

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<sup>3</sup> Hong Kong is a Special Administrative Region (SAR) of (the People's Republic of) China. China has currently declared 46 international labour Conventions applicable to Hong Kong. The economic system has, of course, remained different from China's.

<sup>4</sup> The present author recently examined the ratification status of international labour Conventions in Asia Pacific in general (De Meyer, 1998, 47), and the present article builds on this basis.

<sup>5</sup> Preamble of the original text of the ILO Constitution established in 1919.

<sup>6</sup> See for a comprehensive overview of the aspects, Dunkley, 1996, p. 5 of 16 and for the different ways of looking at international labour standards Langille, 1997.

<sup>7</sup> See the reference to the Bertil Ohlin report in Dunkley, 1996, p. 2 of 16.

scope, the substance of which was largely meant to be transposed into the national legislation of a rather homogeneous group of member States, to framework instruments with constructive emphasis on internal processes, institutions, the intermeshing with policies outside the world of work (e.g. education, economy, even taxation), the role of policy elements other than law (e.g. training, budget allocation), and a limited number benchmarks, which, often with the help of "flexibility clauses", were susceptible to gradual achievement. Secondly, capitalising on lower labour costs as a comparative advantage is permissible, seeking competitiveness to the detriment of labour standards is not.<sup>8</sup> Thirdly, trade sanctions are not very well suited to the pursuit of social justice,<sup>9</sup> for a number of reasons : the inevitable confusion of political objectives of trade sanctions would do more harm than good, trade sanctions might be counterproductive to the improvement of labour standards, and, if not, they target workers in export industries whereas international labour standards apply undividedly to workers in economic sectors producing for foreign as well as for domestic markets ; finally, there is the practicality of selecting the standards to be enforced, assessing the application of standards, and enforcing the sanctions itself (*see further* ILO, GB.261/WP/SDL/1).

The quick universalisation of the market economy as the prevailing model of economic governance after the collapse of the centrally planned economies ignited the current wave of globalisation.<sup>10</sup> Its first consecration was the conclusion of the Uruguay Round of Trade Negotiations in 1993, which casted the net of trade liberalisation wider than ever before. France joined the United States in pressing for a labour standards clause in the Final Act, the umbrella treaty which established the World Trade Organisation (WTO). As external trade relations are within the jurisdiction of the European Union, France's position, initially mitigated most notably by the United Kingdom, gradually became a European Union agenda.<sup>11</sup>

The wider support for a "social clause"<sup>12</sup> and the realisation that trade benefits could well become the next fault line within the international community prompted the ILO to put the issue more firmly on its agenda. The Director General took the position that the ILO's "mandate requires that it be a party to this debate, and yet that it should not advocate either restrictions to trade or a compulsory equalisation of social costs" (ILOa, 1994, p. 58). He advocated the right of developed countries to assess "the social progress made possible in member States by the liberalisation of international markets and, more

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<sup>8</sup> See the quotes of, for example, Francis Blanchard (Director General of the International Labour Office from 1974 to 1989) in J.M. Servais, 1989, p. 428.

<sup>9</sup> See the Bertil Ohlin report referred to earlier, and a 1990 ILO Working Party concluding not to pursue the issue any further (Tripathi, 1996, p. 198).

<sup>10</sup> Globalisation is process which manifests itself through an intensification of international trade in goods and services, international capital flows (foreign direct investment and short-term flows), the role of multinational enterprises, the reorganisation of production networks on an international scale, all supported by an intensified use of information and communication technology. See, for the source of this slightly adapted definition ILO, GB.274/WP/SDL/2 (*Progress report on the country studies on the social impact of globalisation*), Geneva, March 1999.

<sup>11</sup> The European Parliament adopted a resolution in 1996, calling on "the Commission to ensure, as part of the activities that it carries out as the European Union's representative at the World Trade Organisation, that minimum humanitarian clauses are defined to determine the legality of trade transactions, particularly with regard to work imposed on children, prisoners or other disadvantaged sections of the population". Resolution on human rights throughout the world in 1995-1996 and the Union's human rights policy, 12 December 1996, *Official Journal* C20, 20 January 1997, 94, para. 68. One must be careful, however, not to take the position of the European Parliament, the member of which are directly elected, for the position of the EU's governments.

<sup>12</sup> A "social clause" makes the effect of trade agreements conditional upon the observance of labour standards or the adoption of social measures by the state from which the traded goods or services originate.

generally, by the opportunities afforded by the globalisation of the economy," (*idem*, p. 59) complemented by practical support from the Organisation, and in return for which they would renounce, possibly in a Convention, unilaterally imposed trade barriers. The subsequent International Labour Conference debate elicited sufficient controversy for the ILO Governing Body of the International Labour Office to promptly set up a Working Party, open to all its members, to "discuss all relevant aspects of the social dimensions of the liberalisation of international trade".<sup>13</sup> The discussion on punitive trade barriers was short-lived : no sooner than November 1994, the Working Party reached a consensus that "the Working Party should not pursue the question of trade sanctions and suspend any discussions on establishing a link between international trade and social standards through the use of a social clause and sanction machinery" (ILOc, GB.262/WP/SDL/RP, p. 60). In November 1995, the Working Party decided to devote itself to examining the social dimensions of the liberalisation of international trade (hence its unwieldy name) and other aspects of economic globalisation,<sup>14</sup> to initiating further ILO action on child labour (a track that would ultimately lead to the adoption of the Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190), 1999), and to further exploring means to strengthen the supervisory system (a meandering track that would lead to the adoption in 1998 of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up).

In the meantime, other significant developments had taken place outside the ILO, the most prominent of which was the World Summit for Social Development in Copenhagen in March 1995. Only two months earlier, the Ministers of Labour of non-aligned and other developing countries had clearly reaffirmed their position in the Delhi Declaration expressing "deep concern at the serious post-Marrakesh attempts to establish linkage between international trade and enforcement of labour standards through the imposition of the social clause."<sup>15</sup> The concern was echoed in the Copenhagen Declaration,<sup>16</sup> but the Declaration will be recalled longer for the heads of State's forceful assertion of "workers' rights" :

"We commit ourselves to promoting the goal of full employment as a basic priority of [their] economic and social policies, and to enabling all men and women to attain secure and sustainable livelihoods through freely chosen productive employment and work. To this end, at the national level, we will : (a) Put the creation of employment, the reduction of unemployment and the promotion of appropriately and adequately remunerated employment at the centre of strategies and policies of Governments, with full respect for workers' rights and with the participation of employers, workers and their respective organisations, ... ; ... (i) Pursue the goal of ensuring quality jobs, and safeguard the basic rights and interests of workers to this end, freely promote respect for relevant International Labour Organisation conventions, including those on the prohibition of forced and child labour, the freedom of association, the right to organise and bargain collectively, and the principle of non-discrimination."<sup>17</sup>

<sup>13</sup> ILO, *Minutes of the 260th Session of the Governing Body*, June 1994, third setting.

<sup>14</sup> Under this heading the Working Party monitored work carried out by other organisations on the impact of foreign direct investment on employment and social policy, conducted a series of case studies on the impact of globalisation of trade liberalisation on the objectives of the ILO, and considered ILO's role in activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues.

<sup>15</sup> Fifth Conference of Ministers of Labour of the Non-Aligned and other Developing countries in New Delhi, meeting from 19 to 23 January 1995, see <http://www.nam-csrtc.or.id/csrtc1/documents/vol21.htm>, para. 166.

<sup>16</sup> The heads of State committed themselves, with a view to improving and strengthening the framework for international, regional and subregional cooperation for social development, to "refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations between States" (*Copenhagen Declaration on Social Development*, Commitment 10 (d)).

<sup>17</sup> *Copenhagen Declaration on Social Development*, commitment 3. Clearer is even para. 54 of the Programme of Action of the World Summit of Social Development : "Governments should enhance the quality of work and employment by ... (b) Safeguarding and promoting respect for basic workers' rights, including the prohibition of forced labour and child labour, freedom of association and the right to organise and bargain collectively, equal

Other than for the level of commitment, the Copenhagen Declaration was thus significant for three ideas : first, the link between basic workers' rights and the quality of employment, articulating the idea that the progressive deployment of human resources is a force the momentum of which can only be maintained if basic rights are firmly in place ; secondly, the inclusion of the prohibition of child labour among the basic workers' rights ; and thirdly, the notion that the absence of ratification of fundamental ILO Conventions does not exempt member States from observing the principles underlying them.

ILO had its work carved out. The Director General promptly launched a "universal ratification campaign." The campaign consists of a personal letter inviting Governments every year again to reconsider ratification of fundamental ILO Conventions not yet ratified.<sup>18</sup> The campaign has succeeded in garnering about 170 ratifications in 5 years time, adding about a sixth to the total, but universal ratification, in particular after the adoption of Conventions No. 182, is still almost 450 ratifications short. In Asia Pacific, the recent series of ratifications by Indonesia and Cambodia have pulled the ratification rate of fundamental ILO Conventions over the 50 percent mark. Tables 1 and 2 show that the Conventions promoting equality of treatment and opportunity at work, as well as the Convention advocating the effective abolition of child labour have garnered considerably more new ratifications in the same timespan than the Conventions in the other two categories, notably those guaranteeing freedom of association and abolition of forced labour.

Ratification aside, the question remained of ILO's effectiveness in circumstances where member States had not (yet) decided to ratify a fundamental ILO Convention. The ILO's supervisory system provides for dialogue regarding application only with member States that have ratified international labour Conventions. Only the complaint-based mechanism to promote the ILO Constitutional principles on freedom of association on a case-by-case basis functions in the absence of ratification. Early 1995, the Governing Body of the International Labour Office decided to explore the scope for extending this complaints procedure to deal more effectively with cases of discrimination, forced labour and child labour.<sup>19</sup> The proposal was discussed for about two years altogether, but failed to materialise, not in the least because of stiff resistance of governments of Asia Pacific, arguing essentially that judging the appropriate time for ratification and application of international labour standards was the privilege of the political wisdom of a sovereign member State for which the ILO's supervisory machinery, let alone potentially frivolous complaints, were no substitute.

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remuneration for men and women for work of equal value, and non-discrimination in employment, fully implementing the conventions of the International Labour Organisation (ILO) in the case of States parties to those conventions, and taking into account the principles embodied in those conventions in the case of those countries that are not States parties to thus achieve truly sustained economic growth and sustainable development; (c) Strongly considering ratification and full implementation of ILO conventions in these areas,..."

<sup>18</sup> "Fundamental ILO Conventions" is the common term to refer to the six "basic human rights" Conventions from the Classified Guide on International Labour Standards, plus two Conventions related to child labour : Forced Labour Convention (No. 29), 1930, Freedom of Association and Right to Organise Convention (No. 87), 1948, Right to Organise and Collective Bargaining Convention (No. 98), 1949, Equal Remuneration Convention (No. 100), 1951, Abolition of Forced Labour Convention (No. 105), 1957, Discrimination (Employment and Occupation) Convention (No. 111), 1958, Minimum Age Convention (No. 138), 1973, and Worst Forms of Child Labour Convention (No. 182), 1999.

<sup>19</sup> This procedure, centering around the ILO Governing Body Committee on Freedom of Association (CFA), was in fact a derivative of a more ambitious attempt to monitor freedom of association complaints in the early fifties. The original procedure still exists, but has hardly ever been used, mainly because it requires the consent of the government subject to the complaint. The CFA's procedure's popularity can be judged from the fact that it has examined over 2000 cases in less than 50 years, having an average of 70 to 80 cases before each of its three meetings per year.

In the meantime, the "social clause" debate outside the ILO was once again reaching a provisional conclusion. In December 1996, the WTO Ministers of Commerce declared their "commitment to the observance of internationally recognised core labour standards", while stressing that "the International Labour Organisation (ILO) is the competent body to set and deal with these standards."<sup>20</sup> The urgency for the ILO to take an initiative for global governance, and step up the promotion of fundamental rights at work was further illustrated by the debate on the Multilateral Agreement on Investment (MAI). The logic of economic integration had it that an investment liberalisation drive would follow the trade liberalisation drive generated by the Uruguay Round. Negotiations for a MAI started off in 1995 in the developed countries' Organisation on Economic Cooperation and Development (OECD), as the Uruguay Round had laid bare stiff opposition to the idea from the developing countries. The MAI's rationale underpins globalisation : allocation of production factors must be facilitated there where they generate the highest return, and the MAI intended to draw up a charter to protect investment allocation according to this philosophy. The charter would protect foreign investors rights against, for example, discrimination *viz* domestic investors (the "national treatment" principle) or foreign investors of different origin (the "most favoured nation" principle), expropriation without compensation, or requirements to align investment operations with domestic policy objectives, in particular redistribution of wealth in the host society ("performance requirements" such as domestic content). Among civil society groups in the countries concerned (France and Canada upfront), the MAI and its secretive negotiations raised the spectre of powerful transnational conglomerates sweeping away national regulations to protect the environment or the workers.<sup>21</sup> This led the OECD's Trade Union Advisory Committee to propose a number of elements which would balance investors' rights with workers' rights. One of these elements was a labour clause whereby "governments would undertake not to seek to attract foreign investment by lowering domestic labour standards or by violating internationally recognised core workers' rights".<sup>22</sup> Ultimately, after coordinated pressure of civil society groups and France's withdrawal, negotiations were suspended, although attempts have been reported to relocate the negotiations to the WTO.

In 1997, the ILO Director General devoted his second Conference report in four years to the topic (ILO, 1997), while the Employers' Group revived the idea of adopting a solemn Conference Declaration, which would clarify the ILO's Constitutional doctrine on fundamental rights at work, namely that the principles further elaborated in the fundamental ILO Conventions are spelt out in the ILO Constitution which all member States have subscribed to. After intensive preparatory consultations, and a substantial debate at the International Labour Conference in which governments from Asia Pacific as a group presented a list of 10 exclusions,<sup>23</sup> the Declaration was finally adopted on 18 June 1998 with an overwhelming majority, but also a number of significant abstentions.<sup>24</sup>

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<sup>20</sup> World Trade Organisation, *Singapore Ministerial Declaration*, doc. WT/MIN(96)/DEC, 18 December 1996, para. 4. Hereafter : the "WTO Singapore Declaration".

<sup>21</sup> For example, a regulatory obligation for state pension funds to invest in local undertakings, as part of a local economic expansion plan, could run afoul of the "national treatment" obligation. See, for more examples and an assessment in the American context, Weisbrot, 1997, p.4.

<sup>22</sup> See Trade Union Advisory Committee, *The Multilateral Agreement on Investment : Key Issues for Trade Unions*, TUAC Briefing Note for Affiliates - September 1997, at <http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/tuacmai.htm>, 4.

<sup>23</sup> 1. the Declaration should reaffirm that the ILO was the sole competent international organisation mandated to set and deal with labour standards; 2. the Declaration and any follow-up should be promotional and not complaints-based; 3. any follow-up to the Declaration should not target specific countries nor be used to criticise spe-

### 3. The ILO declaration on fundamental human rights at work and its follow-up

The Preamble projects the Declaration as the charter of social governance in times of globalisation. Economic growth (the overt motive for political support for globalisation) is "essential but not sufficient to ensure equity, social progress and the eradication of poverty." When it comes to the question how to keep social progress in pace with economic growth, "the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential."

In not more than five paragraphs, the Conference lays out the strategy for guaranteeing fundamental principles and rights at work. The Declaration does not proclaim anything which was not already implicit in the ILO Constitution, or which the Organisation was not already mandated to carry out ; it determines priorities within the ILO constitutional set-up in the light of the specific circumstances created by globalisation. The Declaration is a solemn instrument of high political significance, but does not create new legal obligations ;<sup>25</sup> consequently, it does not require ratification.

What is the gist of these five paragraphs ? (1) There must no longer be any doubt that not having ratified fundamental ILO Conventions does not mean ILO member States can, by action or inaction, ignore the underlying principles, because they adhered to them at the time when they accepted the ILO Constitution. (2) There are four such principles (coincidentally, elaborated in two Conventions each) : freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. (3) If these principles constitute political priorities for the member States, then assisting member States constitutes a priority for the Organisation. Assistance from the Organisation does not only mean transferring available knowledge and resources, it also requires an effort to convince other international organisations to share the same vision. (4) The promotion of fundamental rights will be propelled by the follow-up mechanism which consists of two parts<sup>26</sup> : an *annual review* by the ILO Governing Body of the situation in countries which have not ratified the fundamental Conventions, and a *global report* which at four-yearly intervals for each of the

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cific country situations; 4. technical assistance and advisory services should be key elements of the Declaration and any follow-up procedures; 5. the Declaration should include a special reference to employment creation, training, education and provision of information, and eradication of poverty; 6. no new supervisory mechanisms should be established, in order to avoid double scrutiny; 7. the Declaration and its follow-up should not justify the use of labour standards for protectionist purposes, nor to introduce unilateral or multilateral trade measures; 8. there should be a clear statement in the Declaration taking into account the economic, social and cultural circumstances of each country; 9. the Declaration and follow-up should be thoroughly discussed and adopted by consensus, in order to carry the necessary moral and political weight; and 10. the Declaration should focus on principles and not rights. See ILO, *Report of the Committee on the Declaration of Principles*, PROVISIONAL RECORD 20, 86th Session, Geneva, 1998, para. 21.

<sup>24</sup> The Declaration was adopted by the International Labour Conference at its Eighty-sixth Session, on 18 June 1998, by 273 votes in favour to 0 against, and 43 abstentions. The governments of Indonesia, Malaysia, Myanmar, Pakistan, Singapore, and Viet Nam abstained, together with a host of governments from the Arab world.

<sup>25</sup> Scholars argue, however, that a new source of declaratory international law emerging, complementing the traditional sources of international law, treaties and customary international law. It rests on world recognition of growing interdependence, requiring more decisive collective action, and, therefore, putting less emphasis on long term state practice as a decisive criterion of legitimacy. Such law would arise from a strongly endorsed declaration at a near universal diplomatic forum (such as, for example, the thematic UN Conferences of the nineties). See Elwell, 1997, p. 7 of 23.

<sup>26</sup> The follow-up mechanism is spelled out in an Annex to the Declaration.



four categories of rights will present an overview of progress marked up - both in countries having ratified the fundamental Conventions as well as in non-ratifying States. The discussion of the global report by the Conference must help the ILO Governing Body to determine priorities and plans of action for technical cooperation for a four-year period. (5) Labour standards must not be used for protectionist trade purposes, and the Declaration must not call into question the comparative advantage of any country.

This final provision obviously reflects the WTO Singapore Declaration. However, it raises the question as to whether the Declaration has declared the "social clause" dead (Haworth and Hughes, 1998, p. 1)? Despite the unequivocal language in paragraph 5, it appears such interpretation stretches the political realities somewhat. It is true that the diplomatic language of the developed countries has softened from an outright demand of trade sanctions for poor observance of "internationally recognised labour standards" to milder forms of linkage between trade and labour standards. The G-8 Summit in Cologne in 1999, for example, endorsed the G-8 Labour Minister's support for the Declaration. It considered that "respect for human rights and for core labour standards are amongst the indispensable prerequisites for social stability", but did not forget to "call on all nations to resist protectionist pressures," and to "seek a more effective way *within the WTO* for ... promoting sustainable development and social and economic welfare worldwide." (italics added)<sup>27</sup>

The Declaration is a vintage ILO instrument in that its voluntarist philosophy, urging voluntary action to the utmost with more, and more effective resources, fits entirely within the parameters of the ILO Constitution. At the same time, while historically being a counterforce to the "social clause", the Declaration is, for obvious reasons, not an everlasting guarantee against trade measures of any kind. The newly established regular reporting on the realisation of principles in areas where member States had not ratified either or both relevant Conventions enables the Organisation to present an objective picture of the efforts and constraints of member States. Certainly, such balanced picture may help member States to ward off unilateral action, if and when contemplated. None the less will the success in silencing proponents of the social clause largely depend on the success voluntary action produces. The preparatory report on the Declaration explicitly recognised this :

"It should be emphasised that all the member States, and especially those who want it clearly recognised that the ILO is the sole organisation which should deal with the question of fundamental rights, have an interest in the success of the project. Failure of the project to bear fruit will inevitably be perceived as a failure of the philosophy and methodology of voluntary action which the Organisation has stated to be the most effective and appropriate, even in the current economic climate, for achieving its objectives of progress and social justice." (ILOa, 1998, *in fine*)

The WTO's Ministerial Conference in Seattle in 1999 proved, if anything, that the idea of linking trade liberalisation to guarantees for social development is very much alive. The Conference had set itself the aim of launching a new round of negotiations leading to further trade liberalisation. Before the meeting, observers felt that the prospect for a new round depended on how strongly the US and EU push for negotiations on environment and labour standards. Countries of the South Asian Association for Regional Cooperation (SAARC), for example, continued to adhere to the position reached in Sin-

gapore in 1996.<sup>28</sup> The largest international trade union federation (ICFTU) called for the opening of discussions on the relationship between trade and internationally recognised core labour standards through a WTO working group or committee on trade (and investment) and core labour standards with the involvement of the ILO. The ICFTU renewed its call for the inclusion of a workers' rights clause in the WTO, based on seven fundamental ILO Conventions.<sup>29</sup> The international trade union movement amplified the call considering that the benefits of globalisation are not reaching the workers and their families.<sup>30</sup> The European Union and the United States, without going as far as calling for a fully fledged social clause, submitted proposals to establish an institutional linkage between trade and international labour standards. The European Union was more subdued : it called for a joint ILO/WTO Standing Working Forum on trade, globalisation and labour issues to examine the relationship between trade policy, trade liberalisation, development and core labour standards, stressing, however, that "it should explicitly exclude any issue related to trade sanctions."<sup>31</sup> The US proposal called for a Working Group to examine trade in relation to employment, social protection, core labour standards, forced or exploitative child labour, and derogation from national labour standards, each of them separately. No reference was made to trade actions, only to "positive trade policy incentives and core labour standards", but care was taken to underline consistency of the proposal with the Singapore Declaration. ILO, the international financial institutions, and UNCTAD would all collaborate with the WTO Working Group.<sup>32</sup> Similarly, the UN Subcommission on the Promotion and Protection of Human Rights called for "steps to ensure that human rights principles and obligations are fully integrated in future negotiations in the World Trade Organisation", cautioning at the same time that "sanctions and negative conditionalities which directly or indirectly affect trade are not appropriate ways of promoting the integration of human rights in international economic policy and practice."<sup>33</sup>

A cursory reading of ministerial statements at the WTO Meeting in Seattle reveals that the inscription of social development on the trade liberalisation agenda is still vigorously debated, albeit within the linguistic parameters of the Singapore Declaration : no references to trade sanctions, but plentiful digressions on the scope for expanding "existing collaboration" between the ILO and the WTO. Worthwhile noting were the statement of the Group of 77 and China<sup>34</sup> that they are "firmly opposed to any linkage between labour standards and trade" (ILO, GB.277/WP/SDL/2 (Add. 1), p. 8), and the factually

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<sup>27</sup> *G8 Communiqué Köln 1999*, 20 June 1999, paras. 22, 8 and 9 respectively.

<sup>28</sup> <http://www.nic.in/India-Image/PIB/fo1405991.html>.

<sup>29</sup> <http://www.icftu.org/english/pr/1999/eprol056-990316-ld.html>. Within the ICFTU, a "social clause" is reported to be opposed by Indian and Pakistani affiliates.

<sup>30</sup> Letter to the Financial Times signed 3 September 1999 on behalf of the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), the Trade Union Advisory Committee to the OECD, and the European Trade Union Confederation, <http://www.tuac.org/news/FT-LETTER.html>.

<sup>31</sup> WTO, *Communication from the EC Commissioner for Trade (Mr. Pascal Lamy)*, doc. no. WT/GC/W/383, 5 November 1999.

<sup>32</sup> WTO, *WTO's Forward Work Programme : Proposed Establishment of a Working Group on Trade and Labour - Communication from the United States*, doc. no. WT/GC/W/382, 1 November 1999.

<sup>33</sup> United Nations High Commissioner for Human Rights, *Trade liberalisation and its impact on human rights*, Resolution of the Sub-Commission on the Promotion and Protection of Human Rights (33rd meeting) no. 1999/30, 26 August 1999.

<sup>34</sup> The Group of 77 is the largest coalition of developing countries in the United Nations, promoting the collective economic interests of not less than 133 countries.

questionable (over)statements of some Ministers from Asia Pacific of their country's ILO ratification record.<sup>35</sup>

## 4. International labour standards for a global economy

To put the Declaration further into a contemporary perspective, I must outline the most salient initiatives to shape up the system of international labour standards in the last five years.

### 4.1 Intensified promotion of fundamental rights at work ("the core")

Both the *universal ratification campaign* and the *Declaration* are, for reasons set out elsewhere, instrumental to an increased centrality of eight fundamental ILO Conventions. The fundamental character of a number of ILO Conventions does not at all detract from the relevance of more technical Conventions, but more than ever the latter Conventions, rather than mushrooming for a good cause, must fulfil contemporary normative needs in terms of, for example, the challenges they address, the effectiveness of the social institutions they propose, or the widely-shared conviction they represent.

### 4.2 Policy regarding the revision of standards ("the past")

Since 1995, all international labour Conventions are going through a tripartite review on a case-by-case basis. The purpose is to update standards (i.e. establish their relevance in the light of present-day needs), to facilitate the ratification of Conventions, and to ensure consistency of the ILO's standard-setting system. If the ILO Governing Body concludes that a Convention is no longer up to date, the subject matter is included in the *portfolio* (see next paragraph) for possible revision. If revision is not appropriate (for example, a sectoral Convention on a topic which should no longer be dealt with on a sectoral basis), the Convention may be proposed for *abrogation or withdrawal*. Following a procedure similar to the one for adoption, Conventions and Recommendations that have become obsolete may be *abrogated or withdrawn* by the Conference. The Conference can withdraw Conventions that have never entered into force as well as Recommendations (to date, this has never happened). As soon as a 1997 amendment to the ILO Constitution has mustered sufficient ratifications (to date, only 50 ratifications out of the required 116 have been registered), the Conference will also be able to abrogate obsolete Conventions that have entered into force.

A special Working Party of the ILO Governing Body has, at present, examined the great majority of ILO's 182 Conventions, and a substantial number of its 190 Recommendations. At present, 68 Conventions are considered up to date, including the eight fundamental ILO Conventions, four further priority Conventions,<sup>36</sup> and the Conventions adopted since 1985 (ILO, GB.277/LILS/4, p. 3).

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<sup>35</sup> India claimed to have "ratified most ILO Conventions", Malaysia to have "subscribed to almost all the core Conventions", and Papua New Guinea to be a "signatory to the agreements on core labour standards" (ILO, GB.277/WP/SDL/2 (Add. 1), pages 11, 13 and 17 respectively).

<sup>36</sup> Labour Inspection Convention (No. 81), 1947 ; Employment Policy Convention (No. 122), 1964 ; Labour Inspection (Agriculture) Convention (No. 129), 1969 ; Tripartite Consultation (International Labour Standards) Convention (No. 144), 1976.

### 4.3 Portfolio of proposals for future standard-setting ("the future")

To guarantee that the topics which the ILO Governing Body selects for standard-setting optimally reflect the priority concerns of constituents in all member States and have sufficiently matured for standard-setting, the selection process has been made more transparent by developing a *portfolio* of proposals for future standard-setting. The portfolio contains an evolving set of around 40 topics. Every year, the ILO Governing Body determines, after intense consultation, the subject matters that are short-listed for standard-setting or general discussion by the Conference, those that will be subject to further research, preparatory meetings and consultations, those that may be taken up as a topic for general discussion, and those that should simply be removed from the portfolio.

## 5. Fundamental principles and rights at work: why are they fundamental?

In the Copenhagen Declaration, heads of State and Governments committed themselves to put the goal of full employment at the heart of economic policy. To this end, they undertook to ensure quality jobs, safeguard the basic rights and interests of workers, and freely promote respect for fundamental ILO Conventions.

The relationship between full employment and the respect for fundamental rights resides in the exigency to fully utilise available human resources in the interest of the material well-being and spiritual development of workers, their families and their societies. Such utilisation can only be achieved if people have the opportunity to carry out, or qualify for work which suits their aspirations, and if they are empowered to give form and expression to these aspirations.

A global consensus presently considers eight international labour Conventions to be fundamental ILO Conventions, elaborating the ILO Constitutional principles reaffirmed in the Declaration. In 1948, the Freedom of Association and Protection of the Right to Organise Convention (No. 87) established the right, freely exercised, of workers and employers, without distinction, to organise for furthering and defending their interests. One year later, the Right to Organise and Collective Bargaining Convention (No. 98) added protection from employers against acts of anti-union discrimination, protection against mutual interference from employers' and workers organisations', and promotion of voluntary collective bargaining to determine conditions of employment. The strong emphasis on independence in these instruments is certainly, but not exclusively, inspired by a concern for freedom as a human right. Independent social partners are indispensable to reach a viable social contract, to conduct a meaningful social dialogue to distribute wealth in tandem with its generation, and to create an institutional setting for social and economic development. Adjustments to technological change and the new global economy at the enterprise level, for example, will not be sustainable if their social consequences are not voluntarily negotiated by these partners.

Suppression of forced labour is the aim of the Forced Labour Convention (No. 29) of 1930 and the Abolition of Forced Labour Convention (No. 105) of 1957. Besides the humiliating submission to compulsion, forced labour is the crudest example of disregard for a human being's potential skills and endowments, and even in these cases where those skills are the immediate cause of compulsion (e.g.

compulsory service by persons with a highly specialised and often expensive training) the absence of free will practically guarantees low productive utilisation for lack of inner motivation. Convention No. 105 adds a dimension to Convention No. 29 by offering a degree of protection against trespassing "on the inner convictions and ideas of persons to the extent of forcing them to change their opinions, convictions and even mental attitudes to the satisfaction of the State".<sup>37</sup> The opportunity for social actors to peacefully express opposition to policies affecting them is a crucial element of their independence, and as such adds to the value of their contribution in shaping the enabling framework for social and economic development referred to earlier.

Observance of the principle of equal treatment in employment and occupation prevents that a worker's satisfaction of giving the fullest measure of skill and attainments is thwarted by requirements (such as sex, religion, race) which are not inherent to his or her job, nor relevant to his or her endowment. Its fundamental character can also be illustrated in relation to, for example, vocational training standards. Training standards aim to secure "employability" for the worker, to improve functioning of external labour markets and to increase productivity - all objectives intermediate to the goal of full employment. Discrimination in access to training, however, perpetuates under-utilisation of the workforce potential, diminishing the capacity for growth and curtailing higher standards of living in the longer term. The principle is elaborated in the Discrimination (Employment and Occupation) Convention (No. 111) of 1958. Of a more limited scope is the Equal Remuneration Convention (No. 100) of 1951, the aim of which is equal remuneration for men and women for work of equal value. Besides articulating a human right and insisting that women workers' resources are objectively evaluated and remunerated, the standard contributes to a more even distribution of income. Particularly in economies with many female headed households (due to, for example, migration) enforcement reduces the incidence of poverty through a more equitable allocation of income.

Working children expand a workforce which is often already competing for scarce jobs, adding little or no skills to boost productivity, exerting downward pressure on adult wages,<sup>38</sup> and thus fueling the vicious circle of poverty. Child labour represents premature consumption of human resources, whereas education represents investment in more productive future employment. The effective abolition of child labour in all economic sectors is, therefore, a long-term investment in any nation's growth potential. The Minimum Age Convention (No. 138) of 1973 promotes this abolition and incorporates the link between child labour and education by stipulating that the general minimum age for admission to employment must not be less than the age of completion of compulsory schooling, and in any case not less than 15 years (14 years for developing countries). The ILO estimates that 250 million children between 5 and 14 years of age are at work around the world. Challenged by the enormity and the long-term character of the undertaking to remove all children from work, the question of priority action cropped up. In response, the International Labour Conference identified four categories of the worst forms of child labour, and prescribed immediate and time-bound measures to remove all persons under 18 years of age from them as a matter of priority.<sup>39</sup>

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<sup>37</sup> United Nations and the ILO, *Report of the Ad Hoc Committee on Forced Labour*, Supplement No. 13 in the Official Records of the 16th Session of the Economic and Social Council, Geneva, 1953, 125.

<sup>38</sup> See for an economic analysis of the interaction between the incidence of child labour and wage levels : Kaushik, 1998.

<sup>39</sup> Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190), 1999.

## 6. The ratification and application of fundamental rights conventions in Asia Pacific: status and progress since 1995

This section examines the extent to which ILO member States in Asia Pacific are committed to fundamental rights at work through ratification and application of fundamental ILO Conventions.<sup>40</sup> Table 1 provides an overall picture of the ratification and application status : the total number of international labour Conventions ratified, the fundamental ILO Conventions ratified, the Conventions for which the ILO Committee of Experts on the Application of Conventions and Recommendations has decided to publish its observations in the course of the last five sessions, the Conventions for which the Committee of Experts has noted progress in law or practice in the course of these sessions, the cases of application of Conventions by individual countries which the Conference decided to discuss in the course of its last five sessions (mentioning in bold the cases in which the relevant Committee considered the discussion sufficiently unsatisfactory to highlight them in a special paragraph of its report), and the number of complaints per country the ILO Governing Body Committee on Freedom of Association has been dealing with in its reports since November 1994.

**Table 1: Ratification and application status of fundamental ILO Conventions**

ILO member State	Total rat's	Fundamental ILO Conventions	CEACR observations (1995-99)	Cases of Progress (1995-99)	CCAS discussion (1995-99)	CFA (11/1994 - 3/00)
Afghanistan	15	C100, 105, 111	C100, 105, 111, 141, 142			
Australia	57	C29, 87, 98, 105, 100, 111	C29, 42, 87, 98, 100, 106, 111, 122, 144	C87, 111	C29	3
Bangladesh	32	C29, 87, 98, 105, 100, 111	C11, 29, 59, 87, 89, 98, 105, 107, 111		C29, 87, 98	2
Cambodia	10	C29, 87, 98, 100, 105, 111	C29			1
China	20	C100, 138	C26		C26	4
Fiji	19	C29, 98, 105	C98, 105	C105	C98	1
Hong Kong, China	46	C29, 87, 98, 105	C8			1
India	38	C29, 100, 111	C1, 5, 26, 29, 81, 88, 89, 90, 100, 107, 111, 115, 141, 144	C111	C29, 107	8
Indonesia	15	C29, 87, 98, 100, 105, 111, 138, 182	C. 29, 98, 106, 144			2
Isl. Rep. of Iran	11	C29, 100, 105, 111	C. 29, 111		C. 111	
Japan	42	C29, 87, 98, 100	C29, 87, 98, 100, 147, 156, 159		C87, 100	2
Kiribati						
Republic of Korea	9	C100, 111, 138	C81			3
Lao PDR	4	C29	C4			
Malaysia	13 (25)	C29, 98, (105), 100, 138	C11, 12, 17, 19, 81, 97, 98		C19, 97, 98	1
Mongolia	12	C87, 98, 100, 111				
Myanmar	21	C29, 87	C17, 26, 29, 52, 87		C29, 87	1
Nepal	7	C98, 100, 111, 138	C100, 111		C100	
New Zealand	56	C29, 100, 105, 111	C11, 17, 26, 32, 42, 44, 81, 88, 99, 100, 105, 111, 122, 142, 145	C42, 105	C17, 81, 100	2

<sup>40</sup> It is too early to devote an assessment to Convention No. 182. It may suffice to report that by 1 January 2000, 6 countries had already ratified C. 182, and that the United States has publicly announced its decision to do so. This is significant from two perspectives : (1) It is only the second fundamental ILO Convention (after Convention No. 105) to be ratified by the United States ; (2) the United States is, together with Somalia the only country in the world not to have ratified the encompassing UN Convention on the Rights of the Child.

ILO member State	Total rat's	Fundamental ILO Conventions	CEACR observations (1995-99)	Cases of Progress (1995-99)	CCAS discussion (1995-99)	CFA (11/1994 - 3/00)
Pakistan	32	C29, 87, 98, 105, 111	C22, 29, 32, 59, 81, 87, 96, 98, 105, 111, 144, 159		C29, 87, 111	4
Papua Guinea	New 19	C29, 98, 105	C8, 98, 122			
Philippines	29	C87, 98, 100, 105, 111, 138	C17, 87, 88, 89, 94, 95, 98, 105, 111, 141	C17, 95, 105, 111		3
Singapore	21	C29, 98, (105)	C. 5, 29, 88, 98	C5	C98	
Solomon Islands	14	C29	C8			
Sri Lanka	37	C29, 87, 98, 100, 111	C11, 29, 81, 96, 98, 100, 103, 115, 131, 135, 160		C81	
Thailand	12	C29, 100, 105	C29, 105, 127		C29	1
Vietnam	14	C100, 111				
TOTAL	592	C29, 87, 98, 105, 100, 111, 138, 182				

Table 2 contains the country-by-country record of ratification of these Conventions. Ratifications registered since 1 January 1995 are marked separately.

**Table 2: Fundamental ILO Conventions – Units and percentages of ratification**

	C29	C87	C98	C100	C105	C111	C138	C182
<b>ASIA PACIFIC</b>								
Since 1.1.1995	-	3	2	6	2	5	8	1
Total (27)	19	11	15	18	15	15	8	1
%	70	41	56	67	56	56	30	4
<b>WORLD</b>								
Since 1.1.1995	16	15	20	20	32	21	42	13
Total (175)	153	128	146	146	146	142	89	13
%	87	73	83	83	83	81	51	7
<b>SUBREGIONS</b>								
Advanced economies(Australia, Japan, New Zealand)								
Since 1.1.1995	-	-	-	-	-	-	-	-
Total (3)	3	2	2	3	2	2	-	-
"Tiger" economies (Hong Kong (China), Indonesia, Republic of Korea, Malaysia, Philippines, Singapore, Thailand)								
Since 1.1.1995	-	1	-	3	1	2	5	1
Total (7)	5	3	5	5	6*	3	5	1
Transition economies (Cambodia, China, Lao PDR, Mongolia, Myanmar, Vietnam)								
Since 1.1.1995	-	1	1	2	1	2	2	-
Total (6)	3	3	2	4	1	3	2	-
Island economies (Fiji, Kiribati, Papua New Guinea, Solomon Islands)								
Since 1.1.1995	-	-	-	-	-	-	-	-
Total (4)	3	-	2	-	2	-	-	-
South Asian economies (Afghanistan, Bangladesh, India, Islamic Republic of Iran, Nepal, Pakistan, Sri Lanka)								
Since 1.1.1995	-	1	1	1	-	1	1	-
Total (7)	5	3	4	6	4	7	1	-

Table 3 groups the resulting total figures for 5 groups of economies<sup>41</sup> and compares them with global figures for Asia Pacific and the world. Perspective to the analysis of ratification figures is added by pointing out some of the shortcomings that have surfaced in giving effect to these commitments.

<sup>41</sup> The classification originates from ILO, Bangkok, 1999, which examined the trends, issues and problems relating to employment and labour markets in Asia Pacific. Meaningful discussion required the identification of reasonably homogeneous subregions in terms of employment patterns (for example, regular wage employment ver-

**Table 3: Asia Pacific : ratification status of fundamental ILO Conventions**

Countries	Number of core Convention ratified	Conventions concerning Fundamental Human Rights at Work							
		C29	C105	C87	C98	C100	C111	C138	C182
Advanced economies									
Australia	6	x	x	x	x	x	x		
Japan	4	x		x	x	x			
New Zealand	4	x	x			x	x		
'Tiger' economies									
Hong Kong, China	5*	x	x	x	x			⊗	
Indonesia	8	x	⊗	⊗	x	x	⊗	⊗	⊗
Korea, Republic of	3					⊗	⊗	⊗	
Malaysia	5	x	~		x	⊗		⊗	
Philippines	6		x	x	x	x	x	⊗	
Singapore	3	x	~		x				
Thailand	3	x	x			⊗			
Transition economies									
Cambodia	7	x	⊗	⊗	⊗	⊗	⊗	⊗	
China	2					x		⊗	
Lao PDR	1	x							
Mongolia	4			x	x	x	x		
Myanmar	2	x		x					
Vietnam	2					⊗	⊗		
South Asian economies									
Afghanistan	3		x			x	x		
Bangladesh	6	x	x	x	x	⊗	x		
India	3	x				x	x		
Iran, Islamic Rep. of	4	x	x			x	x		
Nepal	4				⊗	x	x	⊗	
Pakistan	5	x	x	x	x		x		
Sri Lanka	5	x		⊗	x	x	⊗		
Island economies									
Fiji - 3		x	x		x				
Kiribati - 0									
Papua New Guinea - 3		x	x		x				
Solomon Islands - 1		x							

**Notes:**

x Has ratified this Convention before 1.1.1995

⊗ Has ratified this Convention since 1.1.1995

~ Has denounced this Convention

\* Hong Kong is a Special Administrative Region (SAR) of China, and the Conventions marked are notified by China as applicable to Hong Kong

**6.1 Ratification and Application status**

A number of conclusions that can be drawn from Table 1 have been set out in more detail in another article of the present author, and are still standing. For present purposes, I limit myself to a few observations. (1) Ratification does not guarantee flawless application. For the great majority of fundamental ILO Conventions ratified more than a few years ago, the Committee of Experts has published observations, indicating more substantial shortcomings in law or practice.<sup>42</sup> Mongolia, and the application of Convention No. 29 in a number of countries are the exception. (2) The number of cases that the ILO constituents have wished to bring to the attention of the international public by selecting them for discussion at the International Labour Conference (and the number of Asian Pacific member States involved) is significantly higher than the number of cases in which the Committee of Experts has noted

sus self-employment or casual wage employment), the presence of unemployment benefits (depending on which deviation from the full employment standards will be expressed in unemployment or in underemployment), the share of agriculture in total employment, etc. The classification is maintained here to check for convergence or divergence of standards-related positions within economically homogeneous groups of countries.

<sup>42</sup> Less substantial shortcomings, and shortcomings identified in the early stages of application are typically incorporated in unpublished *direct requests* to the government concerned.



progress in the application of Conventions. In both categories, fundamental ILO Conventions outnumber the other Conventions. (3) In the past five years, the Committee on Freedom of Association has examined complaints against 60 percent of the Asian Pacific member States. The distribution between member States is uneven, but this fact must be explained, at least in some cases, by the presence, rather than the absence of active independent workers' organisations. (4) Ratification of fundamental ILO Conventions in Asia Pacific is consistently and significantly below world average (see Table 2). If the Conventions related to child labour are left out of consideration, only Convention No. 29 and Convention No. 100 have been ratified by more than 60 percent of the countries, whereas worldwide, only Convention No. 87 has been ratified by less than 80 percent of ILO member States. Positive, however, is that Asian Pacific member States have been as responsive to the universal ratification campaign as countries worldwide : in both categories, roughly one ratification per member State has been registered.

## 6.2 Freedom of association, the right to organise and the right to bargain collectively

In terms of ratifying Conventions Nos. 87 and 98, the commitment of Asian-Pacific countries towards respect for freedom of association, the right to organise and the right to bargain collectively remains far more hesitant than in the rest of world. Table 2 shows that Convention No. 87 is ratified by a paltry 41 percent of the countries in Asia Pacific, compared to 73 percent worldwide. On the other hand, even countries that have undertaken extensive structural adjustment and structural reform have not lost faith in the relevance of strong and independent workers' organisations. Indonesia and Sri Lanka, for example, ratified C. 87 after the Copenhagen Declaration and Nepal did the same with Convention No. 98.

In the group of the advanced economies, Conventions No. 87 and 98 remain conspicuously unratified by New Zealand, although the recent change in government could alter this situation. Decentralised wage policies in Australia and New Zealand in recent years had been giving an edge to individual over collective wage bargaining, triggering trade union claims that the more vulnerable groups of workers were disproportionately affected.

The regional modest-commitment trend is pronounced in the transition economies, with the exception of Mongolia and, very recently, Cambodia. Before Cambodia became the second country in the region to ratify all fundamental ILO Conventions, Myanmar was the only other country in the transition group to have ratified a freedom of association Convention, but continued failure to apply Convention No. 87 has been exposed at the International Labour Conference on an annual basis since 1993. The role of enterprise-level social dialogue in industrial restructuring has been emphasised earlier. Irrespective of the level of development, the value of this cooperation and the sustainability of its results rest to a large extent on the independence of workers' organisations and their freedom to hold, express and receive opinions and information. China, for example, prevents the establishment of trade union organisations that are independent of the public authorities and of the ruling party.<sup>43</sup> The Labour Law adopted in 1995 gives legal form to collective contracts governing terms of employment, but at the

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<sup>43</sup> ILO, *310th Report of the Committee on Freedom of Association*, GB.270/7, June 1998, para. 343 - 346.

same time subjects them to previous administrative authorisation while prohibiting the negotiation of wage increases beyond the level of increase in the cost of living. A freely negotiated trade-off in response to restructuring needs which encompasses pay and conditions, and employment and investment thus becomes heavily compromised. On the other hand, China's ratification in 1997 of the International Covenant on Economic, Social and Cultural Rights, which in some respects (for example, the right to strike) is more explicit than Convention No. 87, should augur well for independent trade union activity.

The newly industrialising economies' ratification record in this fundamental rights' area is mixed. Conventions No. 87 and 98 apply to Hong Kong (China) and are ratified by Indonesia and the Philippines, but the Republic of Korea and Thailand have ratified neither. Complaints to the ILO's Committee on Freedom of Association from organisations representing workers in five out of seven industrialised economies convey a reluctance to grant workers' organisations the required measure of independence and freedom to organise their activities. Whether it is a bias in favour of workers' organisation at a certain level of the economy (Indonesia, Republic of Korea, Malaysia), restrictions of the right to strike at least potentially backed up by intervention of security forces (Indonesia, Republic of Korea), mandatory government approval to join international trade union federations (Hong Kong (China)) or denying public sector workers the right to organise (in varying degrees, all economies except the Philippines), workers are denied the organisational strength needed to properly defend and further their interests and hence cannot develop a capacity to promote wage, benefit and price policies that are in harmony with the objectives of full employment, economic growth, and improved standards of living. Strongly state-managed education, training and welfare policies underlying export-oriented industrialisation may have led to more job opportunities and real wage increase (at least in the Republic of Korea, Singapore, and to a lesser extent Malaysia), but have not given strong employers' and workers' organisations the room to urge more comprehensive social and economic policies (e.g. the establishment of unemployment insurance, a less portfolio-oriented investment policy) which might well have influenced the effects of the East Asian crisis. This can be clearly observed from the overall ratification record of these countries which is sparsely furnished. It is argued elsewhere in this article that the economies which have been hit the hardest by the financial crisis have awaited its full unfolding before fully taking into account the employers' and workers' experience and views and enlisting their support for such policies. Indonesia's progress in particular has been striking. Less than three years ago, the labour movement was practically restricted to a single federation incorporated into the political establishment, and a fledgling federation carefully kept outside the boundaries of the law. The East Asian crisis unleashed simmering *reformasi* forces, the international agencies promptly reacted in word (the IMF to support ratification of Convention No. 87) and in deed (the ILO to help set up the implementing framework), and Indonesia made history as the first country in Asia Pacific to ratify all fundamental ILO Conventions. The restrictions to the right to organise referred to earlier in this paragraph are, in fact, disappearing today in Indonesia.

None of the island economies has ratified Convention No. 87. Fiji and Papua New Guinea both ratified Convention No. 98 long before 1995, but structural adjustment programmes continue to hamper full application. Trimming public sector wage bills and suppressing inflationary pressures are the invariable ingredients of economic stabilisation or structural adjustment programmes currently governing the

island economies. This climate has not been conducive to the promotion of collective bargaining. In Papua New Guinea, national legislation gives authorities discretionary power to cancel arbitration awards or declare wage agreements void when they are contrary to government policy or national interest. In Fiji, agreements or arrangements which do not respect the limitations imposed under the Counter-Inflation (Remuneration) Act are illegal and deemed to be an offence. These constraints are not new, nor are they the exclusive predicament of island economies, but experience in other countries has identified alternatives to pursue economic stabilisation which are less harmful to labour relations (ILO General Survey, 1983, 102-103 and 1994, 115).

In South Asia, any optimism induced by Nepal and Sri Lanka's ratifications does not justify complacency. First, Conventions Nos. 87 and 98 remain both unratified by Afghanistan, India and the Islamic Republic of Iran. Secondly, the subregion experiences serious constraints in applying Conventions Nos. 87 and 98, with very little progress on record in recent years. The outright exclusion of export processing zones from industrial relations legislation in both Pakistan and Bangladesh testify to an emerging export-led industrialisation policy seeking a competitive edge in low quality products produced by cheap, unorganised labour rather than in high productive efficiency propelled by a participating and motivated workforce. It is questionable if even the quantitative employment gains from such industrialisation policy will be sustained, given that the high standards for speed, cost and quality in the global economy require high-quality human resources and stable labour relations. Admittedly, more indirect frustration of the right to organise and to bargain collectively also occurs in export processing or free trade zones (EPZ or FTZ) in a number of other countries across the region, either because restrictions on union activity are promoted or tolerated (China, Malaysia (specially electronics firms), Philippines), because the zones are given public utility status (India), or simply because their physical insulation hinders organising activity in practice (Sri Lanka). Governments in Pakistan and Bangladesh argue that the ban is necessary for the country to remain attractive to foreign investment, particularly in the light of a tendency of the established trade unions to pursue political rather than purely workers' interests. It is not commonly denied that the prominent role trade unions have played in gaining independence from colonial rule has earned them a far more established position in the political life of the subcontinent than is the case in the rest of Asia Pacific. The correct reaction against perceived excesses can, however, not consist in replacing an independent social dialogue with public rule.

It seems fair to conclude that the discomfort with Convention No. 87 and the rights elaborated in it, is caused by the potential power challenge that workers' organisations in particular present for governments of States which have acquired sovereignty relatively recently. Fears for the direction in which this alternative sources of political power might be pulling, however, differ greatly from subregion to subregion: away from socialist orthodoxy (transition economies), towards socialist orthodoxy ("tiger" economies), or away from market-reform orthodoxy (South Asia). It proves that freedom of association as the cornerstone of conducting social dialogue regardless of transient political orthodoxies is not yet a well-entrenched concept in Asia Pacific.

Since the end of 1994, the forced labour Conventions received two more ratifications in Asia Pacific. Convention No. 29 remains the most widely ratified fundamental ILO Convention in the region as well

as worldwide. Convention No. 105's record in the region remains more modest, however. Moreover, the campaign for universal ratification launched by the Director-General in 1995 did not result in new ratifications of this Convention other than two ratifications of C. 105 registered as part of the universal ratification drive of Indonesia and Cambodia. In contrast, new ratifications of C. 105 outnumbered those of all other fundamental ILO Conventions in the rest of the world, except for C. 138 which started from a much lower base.

Except for Cambodia, none of the six transition economies, however, has ratified Convention No. 105 which makes it difficult to monitor the extent to which forced labour is imposed for political reasons or to restrain independent trade union activity. A tip of the veil was lifted fairly recently, when the ILO's Committee on Freedom of Association considered that China's "system of education through labour" with regard to persons who have already been released constitutes a form of forced labour and administrative detention of people who have not been convicted by the courts and who, in some cases, are not even liable to sanctions imposed by the judicial authorities. This form of detention and forced labour constitutes without any doubt a violation of basic ILO standards which guarantee compliance with human rights and, when applied to people who have engaged in trade union activities, a blatant violation of the principles of freedom of association."<sup>44</sup> In the context of Convention No. 29, an ILO Commission of Inquiry recently investigated a complaint against forced labour (ILOb, 1998). In Myanmar, the authorities and the military were found to make pervasive use of forced labour imposed on the civilian population for, among other purposes, portering, construction, and logging projects. Forced labour is reportedly widely performed by women, children and elderly persons. The Commission established that the work is almost never remunerated nor compensated, but often goes hand in hand with the exaction of money, food and other supplies.

Convention No. 29 has been widely ratified by the newly industrialising economies, but the same cannot be stated for Convention No. 105. Two types of constraints in abolishing forced labour continue to surface. In Southeast Asian newly industrialising economies, imprisonment involving an obligation to work persists as a lawful sanction for participation in strikes which do not interrupt essential services, for not complying with the results of industrial disputes settlement, or simply for expressing political views opposed to the established political, social or economic system. Sanctions of this kind tend to further cloud the atmosphere of dialogue necessary to design and keep under review an active and coordinated employment policy in consultation with the social partners, and are consistently held to be incompatible with Convention No. 105. The perceived security hazard in repealing such sanctions in a multiethnic context were already laid bare prior to 1995, when Malaysia and Singapore denounced this Convention. Secondly, in the more populous Southeast Asian economies in particular, the miracle has not done away with substandard jobs carried out by children in the agricultural and urban informal sector, in some cases under forced or hazardous conditions. In Thailand, for example, roaring growth figures have done little to curb inequality in the distribution of the benefits in favour of workers in the urban informal sector, and the population in rural areas. Pockets of poverty thus remained, providing a breeding ground for the exploitation of children in forced child labour, child prostitution and child pornography.

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<sup>44</sup> ILO, *310th Report of the Committee on Freedom of Association*, GB.270/7, June 1998, para. 358.

### 6.3 Discrimination in employment and occupation

Ratifications since the beginning of 1995 by Bangladesh, Cambodia, the Republic of Korea, Malaysia, Thailand and Viet Nam have made the Equal Remuneration Convention (No. 100) the second most widely ratified fundamental rights Convention in the region.

In the newly industrialising economies, the challenge posed by C. 100 is to avoid the shortcomings in the application of the Convention commonly found in or outside Asia Pacific. The promotion of equal remuneration for men and women is often not rule-based, i.e. supported by mechanisms enshrined in legislation or collective agreements (e.g. Sri Lanka), or limited in scope to equal, identical or similar work instead of work of equal value (e.g. Cambodia, China, Mongolia, New Zealand, Singapore and Viet Nam), and an objective appraisal of work is not yet a widely applied concept. The recent progress in Convention No. 111's ratification record (only one ratification, by the Philippines) may be explained by the adoption of a growing number of active anti-discrimination policies. Hong Kong (China), for example, passed a series of acts over the last three years outlawing employment discrimination on the basis of sex, disability, and family status, the Republic of Korea's prohibited discrimination on a number of grounds in employment-related legislation already back in 1994, and Malaysia adopted legislation to expand labour force participation of married women through increasing flexibility of working time. Sexual harassment at work is often a specific form of job discrimination on the basis of sex. No doubt under the influence of the Fourth World Conference for Women (Beijing, 1995), it has given to rise to easily the largest number of normative anti-discrimination initiatives throughout the region.

Discrimination in employment and occupation has many faces in the South Asian subregion, despite ratification of the Discrimination (Employment and Occupation) Convention (No. 111) by all countries in the group - in itself a stark contrast with the other groups of economies. Export processing zones raise questions also with respect to the application of Convention No. 111. Zones in Bangladesh, for example, follow a pattern of predominantly young women which are disproportionately confined to lower-skill jobs, are more frequently than their male colleagues working on casual contracts and are paid at lower rates than men, even when they are performing similar functions (ILOc, 1998, p. 32). A broadly similar pattern surfaces in similar zones across Asia-Pacific, in South Asian (e.g. Pakistan, Sri Lanka), newly industrialising (Malaysia, Philippines) as well as island economies (e.g. Fiji). Labour productivity is particularly affected when the distribution of women in the workforce does not reflect their educational level which is not seldom higher than the requirements of the job.

### 6.4 Abolition of child labour

The Minimum Age Convention (No. 138) gathered not less than eight ratifications in a period of two years since 1997. In Asia Pacific, no ratification had materialised before the Copenhagen Summit in 1995, although the Convention predates the Summit by more than 20 years. Populous countries such as China and Indonesia have joined the ranks of countries determined to gradually eliminate child labour. As in the rest of the world, the ratification rate of this more recently adopted Convention is catching up with the other fundamental ILO Conventions.

The effective abolition of child labour in the advanced economies is not subject to serious doubt, yet it is reflected in the ratification by Japan and Australia of a number of earlier Conventions related to minimum age with a sectoral scope, rather than in the ratification record of the Minimum Age Convention (No. 138). Reportedly, technical reasons account for this, such as the absence of federal legislation stipulating a minimum age in Australia.

In the transition economies, Cambodia and China have only recently filled the void on the ratification record. The paucity of ratifications is not mitigated by ratifications of other Conventions relating to minimum age. There are strong indications that children as a vulnerable group have not sufficiently been shielded against the increased risks of exploitation brought on by the economic shocks resulting from transition. Since the beginning of 1995, various UN human rights monitoring bodies have reported, for example, slave-like practices, child prostitution and trafficking in Cambodia, economic exploitation of children in the informal sector and increasing child prostitution and trafficking in Lao PDR, a high rate of school drop-outs and increase in child labour in Mongolia, and systematic recruitment of children into forced labour as well as discrimination against children belonging to ethnic and religious minority groups in Myanmar.

In South Asia, only Nepal has ratified the Minimum Age Convention (No. 138). Four other countries in the group committed earlier to set and enforce a minimum age for admission to industrial employment, although even in this sector alone full application in each of those countries of the standards accepted remains doubtful at best.<sup>45</sup> Poverty is the most frequently cited cause of difficulty in eradicating child labour in the agricultural and informal sector, and thus in ratifying Convention No. 138. Compounding poverty is in all likelihood a relatively poor educational infrastructure (with the notable exception of Sri Lanka, where also less child labour is reported), and the resulting poor return on investment in education.

## 7. Standards-related questions topical to Asia Pacific

### 7.1 The question of comparative advantage

The Declaration states in its operative part that "the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up."<sup>46</sup> The history of this paragraph leaves no doubt that the comparative advantage referred to includes little else than low social costs, and low wages in particular.<sup>47</sup> The literature, on the other hand, leaves little doubt that low wages *per se* do *not* constitute a comparative advantage (Lindbaek, 1997 ; Lee, 1997, p. 173).

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<sup>45</sup> Bangladesh and Pakistan have ratified the Minimum Age (Industry) (Revised) Convention (No. 59) of 1937, and India and Sri Lanka the Minimum Age (Industry) Convention.

<sup>46</sup> para. 5.

<sup>47</sup> See, for example, the statement by the Government of Pakistan, *Report of the Committee on the Declaration of Principles*, PROVISIONAL RECORD NO. 20, International Labour Conference, 86th Session, Geneva, 1998, para. 59; World Trade Organization, *Singapore Ministerial Declaration*, Doc. no. WT/MIN (96)/DEC, 18 December 1996, para. 4 ; see Tim De Meyer, *supra*, footnote 110 for some more history.

Trade emerges when one producer or provider has a comparative advantage over another one, i.e., simplifying somewhat, for a variety of reasons can produce better and longer-lasting goods or services faster than another one at the same cost, or the same goods or services at a lower cost. In a market economy, labour is only one production factor.<sup>48</sup> Low wages, do, therefore, not mean low production cost : the availability of capital, quality of transport infrastructure, availability of energy supply, or indeed risk inherent in political instability all influence the ratio of cost over product value, or, in other words, influence productivity. Labour productivity as a separate ratio of labour cost (including wages as well as non-wage benefits) over labour product (e.g. skills or know-how) is only part of that equation. Low wages are thus likely to only marginally influence trade and investment decisions.<sup>49</sup> In fact, the consequence of the above is that even countries with lower labour productivity and correspondingly lower wages do not even have a guaranteed comparative advantage in the production of labour-intensive goods, as any initial advantage may be wiped out by higher other production costs, or simply by a higher concentration of competitors. It has also been demonstrated that even where low-cost production was an initial incentive, success could only be sustained by shifting from low- to high-productivity activities.

Secondly, labour is a production factor, but not a commodity : it plays a pivotal role in achieving the quintessentially human twin aspirations of "material well-being and spiritual development".<sup>50</sup> For reasons of respect for human dignity, political stability, and, indeed, economic productivity, these aspirations must not be suppressed merely to maintain a low-wage level. Amartya Sen has convincingly warned against reducing the economic valuing debate to material well-being, in itself often further reduced to a measurable income level. He has argued that the capability to lead lives that people have reason to value does not only exist in a certain income level, but directly takes the form of substantive freedoms (Sen, 1999, p. 109). He has argued that the "intensity of economic needs *adds to* - rather than subtracts from the urgency of political freedoms". This is because political freedoms are instrumental for people in attracting political attention, and constructive in accurately conceptualising the needs, "including the understanding of "economic needs" in a social context" (Sen, 1999, p. 148). Applying this finding to markets, he argues that the market mechanism must not only be assessed on the incomes or utilities it ultimately generates, but in the first place on the freedom to make a transaction in itself. Thus, the labour market mechanism as a model of economic governance must be assessed on the freedom workers have to achieve the best possible outcome in their quest for both material well-being and spiritual development.

It flows from there that, labour not being a commodity, the choice to seek a comparative advantage in perpetuously low (and in all likelihood decreasing) wages, or in higher productivity of a special kind in step with higher real wages, is ultimately a democratic one. It is a choice with significant political and

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<sup>48</sup> This is a factual rather than a normative statement : societies have functioned on the basis of entirely different paradigms in the past, and may decide to do so again in the future.

<sup>49</sup> A study referred to in Lee, 1997, p. 186 appears to underscore this : in spite of the significant correlation found between lower labour standards and lower costs (even after discounting productivity), suggesting a comparative advantage for labour-intensive goods, the countries with poor labour standards received less foreign investment than normally predicted.

<sup>50</sup> See Parts I and II of the ILO's Declaration concerning the aims and purposes of the International Labour Organisation (1944), incorporated into the ILO's Constitution (1919) and commonly referred to as the "Declaration of Philadelphia".

budgetary ramifications, but not one which governments are justified to preempt. Moreover, it is not a one-off choice. As human beings develop and their aspirations change, their economy will need to relocate its comparative advantage in improved infrastructure, higher productivity, diversification of produce, rationalisation of industrial structure etc. Timing and pace should be the result of a democratic process to ensure that any decision in this regard is as informed as possible, and to secure the broad support necessary to make the new course sustainable.

Do developing countries try and keep their labour costs artificially low by suppressing labour standards? According to the OECD (1996, p. 38), the question is undecided : although empirical studies do no deliver systematic evidence of suppression, it may be that this is only because systematic suppression is simply difficult to sustain over a long period of time. The consistent reference by developing countries to low wages as a comparative advantage which should not be put into question, and, by implication, is almost bound to be put into question, albeit then internally, if the fundamental rights at work are properly realised, is at best ominous.

## 7.2 Lessons from the East Asian crisis

The recent East Asian financial and social crisis (henceforth, the East Asian crisis) has taught some useful lessons on the consequences of flawed observance of international labour standards, and fundamental rights at work in particular.

In the first half of 1997, a limited number of Thai companies defaulted on their debts, exposing a wider pattern of long-term investments financed by short-term foreign capital that was attracted by a local currency pegged to the US dollar. Capital controls had been lifted, and when the central bank decided to float the currency, a massive outward stampede of foreign portfolio investors drained the Thai economy, and from there, due to a herd effect, other South East Asian economies. The International Monetary Fund (IMF) was called in for loans to stem the financial hemorrhage, and for advice on monetary policy.<sup>51</sup> A combination of towering corporate debt/equity ratio's, high interest rates and rapid currency depreciation caused systemic bankruptcy in the corporate sector : in 1998, the World Bank (1998, p. 62) estimated that roughly 20, 40 and 60 percent of the firms in, respectively, Thailand, the Republic of Korea and Indonesia suffered losses greater than equity. No bankruptcy laws existed, however, to instill financial discipline by ensuring that shareholders take losses first, followed by creditors, and only then by workers.

The social impact of the economic contraction has been enormous. The number of unemployed (or underemployed) workers multiplied, with women and older workers taking the hardest blows, real wages declined, and some of the progress achieved in alleviating poverty over the years became undone : in Indonesia, for example, the incidence of poverty brought down from over 80 percent in 20 years time, shot up again from 11 to 16 to 20 percent in only two years time (Asian Development

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<sup>51</sup> Interestingly, only the countries that were the worst affected by the crisis called on the IMF for special assistance (Indonesia, Republic of Korea, and Thailand). Malaysia imposed capital control measures to stop the capital flight, and the Philippines absorbed the shock with the combined use of a preexisting IMF standby facility,



Bank, 1999, p. 96). Communal violence in Indonesia bears witness to the resulting erosion of the social fabric in Indonesia. Perhaps worst of all, past experience learns that output growth and macroeconomic balances recover in one year on average, while real wage growth takes four years, employment growth five years, and income distribution equally five years (UNDP, 1999, p. 40).

It is not difficult to see why the economic downturn has inflicted social agony : real wages of workers may, at least to some extent, have been riding the wave of economic growth, but, as a result of a poorly developed financial system, they were directed to short-term financial instruments (i.e. bank deposits), rather than social security institutions (e.g. unemployment, health or old age insurance) that would have enabled them to ward off shocks, on the one hand, and potentially serve as a domestic savings basis for investment,<sup>52</sup> on the other hand.<sup>53</sup> In search of an explanation, one cannot but point to the more fundamental absence of sufficiently strong, representative and independent workers' organisations to whom the task of pressing for social security institutions would have fallen. Deliberate repression of the workers' right to organise and to bargain collectively has been documented for each of the three worst crisis-affected countries,<sup>54</sup> although one should be careful to highlight both political (anti-communism) and economic (to stimulate export-led growth) motives.

The measures taken by the Republic of Korea in the wake of the crisis speak volumes for what should have been accomplished earlier, and might have been without such repression (ILOc, 1999) : (1) providing a legal basis for dismissals for economic reasons, to allow for lay-offs in close consultation with employers' and workers' organisations, after alternative options (for example, work-sharing efforts with government support) have been explored, and without discrimination against women and older workers in particular<sup>55</sup> ; (2) setting up a Wage Claim Guarantee Fund to ensure payment of severance pay, and to establish State guarantee for the enterprise-based pensions system ; (3) setting up a tripartite consultation machinery to facilitate the adoption of economic and social measures to cope with the financial crisis ; (4) extension of the unemployment benefits scheme ; (5) last but not least, several measures have relaxed restrictions on freedom of association : the Trade Union and Labour Relations Adjustment Act, 1997, allowed trade union pluralism at industrial and national levels, but the legislation allowing the same at enterprise level will only come into force in the year 2002 ; in 1998, public officials were granted the right to establish occupational associations (the first step towards establishing

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fast-disbursing assistance from the Asian Development Bank and the World Bank, global bond issues and syndicated loans from commercial banks (Asian Development Bank, 1999, p. 110).

<sup>52</sup> Recommendation No. 122 encourages countries "to expand savings : (i) through the curtailment of non-essential consumption, with due regard to the need for maintaining adequate incentives ; (ii) through savings schemes, including contributory social security schemes and small savings schemes" (Annex, Para. 8 (c))

<sup>53</sup> A glance at the ratification record of the three countries confirms this : out of the ILO's 17 social security Conventions, Indonesia and Thailand have ratified the Equality of Treatment (Accident Compensation) Convention (No. 19), 1925. Convention No. 19 does not lay out the parameters of the social security branch concerned, but only guarantees equal treatment between domestic and foreign workers. The Republic of Korea has not ratified any social security Convention.

<sup>54</sup> Young-bum Park, 1994, p. 149 ; Yong-il You, 1994, 177 ; Sungsidh Piriyarangsarn and Kanchada Poonpanich, 1994, 211. In the area of supervision of standards, the ILO has been following developments in Thailand and the Republic of Korea - both have not ratified C. 87 nor C. 98 to date - via a complaint each lodged with the ILO Governing Body Committee on Freedom of Association, and in Indonesia via the supervision of the application of the Right to Organise and Collective Bargaining Convention (No. 98), 1949. See for a summary ILO, *Freedom of association remains elusive in much of East and South-East Asia*, Press Release No. ILO/98/41, 24 November 1998.

<sup>55</sup> Interestingly, the Republic of Korea ratified the Discrimination (Employment and Occupation) Convention (No. 111), 1958 on 4 December 1998.

real trade unions) ; in 1999, the Korean Confederation of Trade Unions was formally registered (a departure from the single representation system through the Federation of Korean Trade Unions), and in the same year two teachers' unions were legalised.

Governments in developing countries occasionally argue that the right to organise is a necessary counterweight only in countries or sectors where workers are exploited.<sup>56</sup> It has been admitted that the Korean development model rested on a high degree of labour extraction, and decentralised but rather authoritarian wage-setting to keep wages within the bounds of competitiveness (at times, for example in the early 80's, even below productivity). Yet wages were not kept artificially low, and a high emphasis on educational attainment has mitigated pressures towards labour market inequality. The fact that greater freedom of association is granted now, is a clear example of the role it has to play not only in curbing exploitation, but also in ensuring greater democratic participation as a legitimate human aspiration in itself, as well as greater identification with measures necessary to sustain both economic and social development (Young-bum Park, 1994).

The fact as well as the nature of the IMF's intervention has given further impetus to a remarkable controversy between economists, and to political initiatives for "strengthening the international financial architecture." The IMF advised a sharp short-term rise in interest rates to restore investor confidence, and fiscal tightening to reduce domestic demand (and thus relieve current account pressure) on the one hand, and the creation of a budget surplus needed to rescue insolvent banks, on the other hand. It added a number of structural reform conditionalities such as improved corporate and financial governance, competition policy, and even labour market reform. The IMF's prescriptions were inspired by the objective of what is often called neoclassical development theory: achieving economic efficiency by continuously improving resource allocation through market forces unfettered by "distortions" such as government interventions, trade barriers, or, indeed, social institutions. The other half of the "Washington consensus", the World Bank, identified a major factor contributing to the region's social progress as follows :

"East Asian labour markets are fairly flexible, with fewer institutional or policy-driven rigidities than European or Latin American markets - minimum wage policies are limited, wage-setting practices are flexible, and wages and productivity growth are closely linked. As a result, fewer sharp contrasts existed between formal, privileged workers and rural, informal workers." (World Bank, 1998, p. 76).

Other economic schools, such as the institutionalists, have warned that, while the low predictive value of the conventions, values, norms, laws, and organisations that surround economic processes may deny them a place in economic models assuming efficient exchange between rational individuals, their importance for these processes is too big to dismiss them as mere rigidities or distortions (Gerry Rodgers, 1994, p. 2). Applying the theory to Asia, the Republic of Korea provides a prime example of how government intervention has uplifted the economy from a low-skills, low-productivity base (the "low road") to an exporter of relatively technologically advanced products with rapidly rising real wages as a

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<sup>56</sup> It is, for example, the argument of the Indian government to deny government servants some of the rights guaranteed by the Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948, and the Right to Organise and Collective Bargaining Convention (No. 98), 1949, a situation which, according to the Government, prevents India from ratifying both Conventions.

result (the "high road"). In Thailand, the establishment of industrial relations institutions is increasingly considered indispensable to lift the level of commitment of a low-wage, non-stable workforce so that a similar path can be followed (Piriyarangsarn and Poonpanich, 1994, p. 250).<sup>57</sup>

The IMF prescriptions were criticised, mainly because with a view to a quick return to economic growth, they heavily favoured investor confidence over immediate social considerations: (1) High interest rates forced companies into bankruptcy, and, consequently, banks into insolvency, thus exacerbating the effects of the crisis. (2) Immediate fiscal tightening worsened the economic contraction. (3) Large-scale restructuring in the corporate and financial sector went beyond the IMF's mandate, and intruded on the sovereignty of countries.

The controversy is fascinating enough in itself (see Asian Development Bank, 1999, p. 29 - 35), but more significant for our subject are the arguments laid out by the World Bank's Chief Economist,<sup>58</sup> Joseph Stiglitz, leading him to the conclusion that "today, the World Bank supports the Labor Standards of the ILO, including the rights to organise and collectively bargain." (Stiglitz, 2000, *in fine*). This is a marked departure from the conventional wisdom according to which the IMF was seen as supporting for fundamental labour standards, while the World Bank was more suspicious of "freedom of association and the right to bargain collectively, which in its view involved broader economic and political implications" (See ILO, GB.276/ESP/5, 1999, Appendix, para. 2). The World Bank had been known to suspect that labour relations institutions distort economic equilibria in favour of privileged workers ("featherbedding"), and to the detriment of those forced out of work as a result of above-market wages or costs (see, however, World Bank, 1995, p. 79 - 86). At the same time, these institutions were held responsible for negative economic effects such as inflationary wage settlements, lower output and employment growth, effectively explaining unemployment mainly as a result of rigid wages. It is worthwhile reproducing a number of Stiglitz's arguments in a nutshell.

(1) Development is change in the form of a growing mental expanse. Societies transform as they develop, reflecting change in the unique form they choose to embrace. As transformation thus comes from within, democratic processes, including political and democratic democracy are indispensable to dissipate resistance to change, and indeed to increase efficiency, necessitating participation and involvement both within the workplace and at higher political levels. The objective is wider than achieving market equilibrium through efficient resource allocation. It is at this point that government intervention has a role to play.

(2) Labour is not a production factor like any other one. Redistribution is a form of dynamic resource allocation, providing an incentive to innovate, become more productive and thus become more efficient; collective bargaining, by reducing the cost of information (of what is needed and can be afforded) may well be a far less costly method of redistribution than welfare systems. Langille (1997, p. 39) has correctly pointed out that the economic argument concerning freedom of association is particularly

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<sup>57</sup> Interestingly, in Thailand, a State Enterprises Labour Relations Act allowing the formation of trade unions and granting them the right to bargain collectively was adopted on 17 February 2000. The Act overturned a 1991 Act which had been subject to a complaint with the ILO since 1991.

<sup>58</sup> Former Chief Economist, now that is. His resignation has been linked to his strident criticism of the IMF.

complex, as it involves not only weighing increased productivity against decreased profitability at a micro level, but also distributional gains at a macro level.

(3) Some (labour) markets should fail as the direct result of an institution, and the failure should be preserved, irrespective of an existing supply and demand able to find an equilibrium. The prohibition of slavery, which can be economically translated into a prohibition to sell all future labour at once, is an example of such an institution.

(4) Labour is a stakeholder in corporate governance because (a) the sharing of information leads to less conflict, and (b) it reduces management rents.

(5) The East Asian crisis was handled without involvement of workers, with the result that the costs to workers in the form of lay-offs were not adequately weighed against the benefits to creditors or equity holders in the form of economic reorganisation (including bankruptcy), which was stalled to protect creditor rights.

(6) It may be feared, albeit only for the sake of productivity, that one of the more adverse consequences of the East Asian crisis may be the abandonment of the "high road" to development (i.e. seeking workers' motivation in identification with the firms' interest through participation, high human capital investment and longstanding contracts, rather than through arm's length-incentives such as efficiency wages and low job security), as firms are now encouraged to break longstanding implicit contracts with workers to allow for the quick adjustments needed in the nimble world of modern globalisation. A note of caution may be in order here. Stiglitz's underlying assumption is that countries in East Asia have consistently chosen a high-road industrial relations system. The assumption appears to be heavily inspired by the Japanese model, but is historically questionable in most other countries of East Asia (with the exception of Singapore, and possibly to an extent, Malaysia). Most experts will readily recognise, on the other hand, that the "high-road" is indispensable to remain competitive in a global economy where most of the value is added through specialisation, i.e. the creation and exploitation of niche markets (Venkata Ratnam, 1999, 14).

Even in the face of new signs of growth, the impact of the lessons of the crisis on the Bretton Woods institutions is reflected in the pursuit of more poverty reduction-oriented growth (ILOd, 1999). The IMF's decision to replace its Enhanced Structural Adjustment Facility (ESAF) with a Poverty Reduction and Growth Facility (PRGF) entails, for example, initial assessments and continuous monitoring of the social impact of macroeconomic policies, balancing them with poverty programmes, and participation of civil society stakeholders in policy formulation and implementation. At the same time, the World Bank has embarked upon a process of distilling best social practices to complement financial and economic structures, leaving the development of main social principles to UN agencies. The ILO has gained observer status with the IMF's and World Bank's Interim and Development Committees. Although under the influence of the international public opinion the willingness of the Bretton Woods to cooperate with the ILO has increased, preparedness to carry forward core labour standards in a way consistent with the ILO Declaration at the operational level is still in an exploratory stage, and the results may only be seen after further analysis has been completed (ILOd, 1999).

## 8. Conclusion

The question in the title conveyed a curiosity (evil minds will say a slight scepticism) as to whether the increased global prominence of those international labour standards termed fundamental has encouraged Asian Pacific countries to consider them as supplying valuable institutions for economies which are all in varying stages (and with varying degrees of enthusiasm) of becoming embedded in the global market. Providing a definite answer within the confines of this article would be both too ambitious (because of the multitude of influencing factors involved) and too early (because it may at least take five more years before the merits of the Declaration's promotional approach can be assessed). None the less, some cautious conclusions may be presented: (1) The Declaration has not buried the question of linkage between labour standards and trade or investment, but is steering the political momentum away from a focus on trade sanctions. (2) The last five years have seen mixed progress in the ratification of ILO Conventions in Asia Pacific: marked progress in the ratification of fundamental ILO Conventions in the areas of child labour and equality of opportunity and treatment of work ; more moderate progress, if at all, in the areas of forced labour and freedom of association. (3) The most salient developments towards the realisation of fundamental principles at work have been noted in the area of freedom of association, and precisely in those countries that were hit the hardest by the East Asian crisis. (4) A consensus around the fundamental principles and rights at work as enunciated in the Declaration as the social floor of the global economy appears to be building, but its practical, yet crucial influence on the policies of the international financial institutions must still be awaited.

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## REFERENCES

- Amartya Sen, *Development as Freedom*, Oxford University Press, New Delhi, 1999.
- Asian Development Bank, *Asian Development Outlook 1999*, Oxford University Press, Hong Kong, 1999.
- Basu Kaushik, *Child Labor : Cause, Consequence, and Cure, with Remarks on International Labor Standards*, World Bank Policy Research Working Paper No. 2027, Washington DC, 1998.
- Brian A. Langille, *Eight Ways to Think about International Labour Standards*, JOURNAL OF WORLD TRADE, August 1997, Vol. 31, No. 4, 27
- Christine Elwell, *Implementing International Social Policy*, CANADIAN FOREIGN POLICY JOURNAL, Summer 1997, reproduced as *World Social Policy Conferences as Rule-Making and a Decentralized Canadian Federation*, at <http://qsilver.queensu.ca/law/naalc97/cfp.htm>
- C.S. Venkata Ratnam, Michael Sebastian and D.P.A. Naidu, *Trade Unions and Structural Adjustment - A Guide for Trade Union Participation*, ILO, New Delhi, 1999
- Dani Rodrik, *How Far Will International Economic Integration Go ?*, THE JOURNAL OF ECONOMIC PERSPECTIVES, Vol. 14, No. 1, Winter 2000, 177
- Eddy Lee, *Globalization and labour standards : A review of issues*, INTERNATIONAL LABOUR REVIEW, Vol. 136, No. 2, 1997, 173
- Eddy Lee, *The Asian Financial Crisis - The Challenge for Social Policy*, Geneva, International Labour Office, 1998.
- *Emerging Economies : How Long will the Low-Wage Advantage Last ?* Background paper for a speech by Jannik Lindbaek, International Finance Corporation Executive Vice President, APPI Meeting, Helsinki, 3 October 1997, at <http://www.ifc.org/economics/speeches/jlspeech/jlspeech.htm>
- Gerald P. O'Driscoll, Jr., *IMF Policies in Asia : A critical assessment*, THE HERITAGE FOUNDATION - BACKGROUND, 30 March 1999, at <http://www.heritage.org/library/background/bg1265.html>
- Gerry Rodgers, *Institutional economics, development economics and labour economics*, in : *Workers, Institutions and Economic Growth in Asia*, edited by Gerry Rodgers, ILO (International Institute of Labour Studies, Geneva, 1994, 2
- Graham Dunkley, *Belaboured playing fields, labour standards, globalization and new world orders*, paper for the First Annual Australian Conference on International Trade, Education and Research, Melbourne University 5 - 6 December 1996, at <http://www.arts.monarch.edu.au/ausapec/citer23.htm>
- ILOa, *Follow-up on the Recommendations of the Working Party on Policy regarding the Revision of Standards*, Governing Body Document No. GB.277/LILS/WP/PRS/1/1, 277th Session, Geneva, March 2000
- ILOb, *Report of the Working Party on Policy regarding the Revision of Standards*, GB.277/LILS/4, 277th Session, Geneva, March 2000

- ILOa, *ILO relations with Bretton Woods institutions*, GB.276/ESP/5, Geneva, November 1999, Appendix, para. 2.
- ILOb, *Towards full employment - Prospects and Problems in Asia and the Pacific*, Technical Report for Discussion at the Asian Regional Consultation on the Follow-Up to the World Summit for Social Development (13-15 January 1999), Bangkok, 1999
- ILOc, *Progress report on the country studies on the social impact of globalization*, GB.274/WP/SDL/2, Geneva, March 1999, and the executive summary of the Republic of Korea country study annexed
- ILOd, *ILO relations with Bretton Woods institutions*, GB.276/ESP/5, Geneva, November 1999.
- ILOa, *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and appropriate follow-up mechanism*, Report VII to the 86th Session of the International Labour Conference, Geneva, June 1998
- ILOb, *Forced labour in Myanmar (Burma)*, Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 2 July 1998
- ILOc, *Labour and social issues relating to export processing zones*, Report for discussion at the Tripartite Meeting of Export Processing Zones-Operating Countries, Geneva, 1998, 32
- ILO, *The ILO, standard setting and globalization*, Report of the Director General to the 81st Session of the International Labour Conference, International Labour Office, Geneva, 1997
- ILO, *World Employment 1996/97 - National Policies in a Global Context*, Geneva, 1996
- ILO, Governing Body Document No. GB.262/WP/SDL/RP, 262nd Session, Geneva, March 1995
- ILOa, *Defending values, promoting change - Social justice in a global economy : an ILO agenda*, Report of the Director General to the 81st Session of the International Labour Conference, Geneva, 1994, 58.
- ILOb, *Freedom of association and collective bargaining*, General Survey by the Committee of Experts, Report III (Part 4b) to the 81st Session of the International Labour Conference, Geneva, 1994
- ILOc, *Report of the Working Party on the Social Dimensions of the Liberalization of International Trade*, Governing Body Document No. GB.261/WP/SLD/1, 261st Session, Geneva, November 1994
- ILO, *Freedom of association and collective bargaining*, General Survey by the Committee of Experts, Report III (Part 4b) to the 69th Session of the International Labour Conference, Geneva, 1983
- *A History of GATT and the Structure of the WTO*, INTERNATIONAL CONTRACT ADVISER, Vol. II, No. 1, Winter 1996, at <http://www.ljx.com/practice/internat/history.html>
- Joseph Stiglitz, *Democratic Development as the Fruits of Labor*, Keynote Address to the Industrial Relations Research Association, Boston, January 2000, at <http://www.worldbank.org/knowledge/chiefecon/articles/boston.htm>
- K. M. Tripathi, *Social Dimensions of Liberalized Trade*, in ECONOMIC TRANSITION WITH A HUMAN FACE, C.P. Thakur, C.S. Venkata Ratnam, Pravin Sinha (ed.), Global Business Press, New Delhi, 1996, 198)
- *Labour Rights, Human Rights*, Special issue of the INTERNATIONAL LABOUR REVIEW, 1998, Vol. 137, No. 2
- Mark Weisbrot, *The Impact of the MAI on Employment, Growth and Income Distribution*, Preamble Center, November 1997, at <http://www.globalpolicy.org/soecon/bwi-wto/maiinc.htm>
- Nigel Haworth and Stephen Hughes, *Death of a Social Clause ?*, Paper to the International Conference on Labour Standards and Human Rights, University of California (Center for Labour Research and Education), Berkeley, January 1998, at <http://socrates.berkeley.edu/~iir/clre/programs/death.html>
- OECD, *Trade, Employment and Labour Standards : A Study of Core Workers' Rights and International Trade*, Paris, 1996
- Ranjan Ray, *How Child Labor and Child Schooling Interact with Adult Labor*, WORLD BANK POLICY RESEARCH WORKING PAPERS, No. 2179, September 1999.
- Someshwar Singh, *Challenges for developing countries in new WTO Round*, SOUTH-NORTH DEVELOPMENT MONITOR, 24 June 1999, at <http://www.twinside.org.sg/souths/twn/title/challeng-cn.htm>
- Stanley Fisher, *The IMF and the Asian Crisis*, ASIA-EUROPE DIALOGUE (HEINRICH BÖLL STIFTUNG), 20 March 1998, at <http://www.ased.org/resources/global/articles/fisher.htm>
- Tim De Meyer, *The Ratification of International Labour Standards in the Asian-Pacific Region : Up to the Standard ?*, HOSEI KENKYU (KYUSHU UNIVERSITY JOURNAL OF LAW AND POLITICS), No. 3, January 1998
- Trade Union Advisory Committee, *The Multilateral Agreement on Investment : Key Issues for Trade Unions*, TUAC Briefing Note for Affiliates - September 1997, at <http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/tuacmai.htm>
- UNDP, *Human Development Report 1999*, New York, Oxford University Press, 1999
- Werner Sengenberger, *Labour standards : An institutional framework for restructuring and development*, Chapter I of CREATING OPPORTUNITIES - THE ROLE OF LABOUR STANDARDS IN INDUSTRIAL RESTRUCTURING, edited by Werner Sengenberger and Duncan Campbell, International Institute for Labour Studies, Geneva, 1994
- World Bank, *Workers in an Integrating World (World Development Report 1995)*, Oxford University Press, New York, 1995.
- World Bank, *East Asia : the Road to Recovery*, Washington D.C., 1998.
- Young-bum Park, *State regulation, the labour market and economic development : the Republic of Korea*, in WORKERS, INSTITUTIONS AND ECONOMIC GROWTH IN ASIA, edited by Gerry Rodgers, International Institute for Labour Studies, Geneva, 1994 ; Yong-il You, *Labour institutions and economic development in South Korea*, ibidem ; Sungsidh Piriyarangsarn and Kanchada Poonpanich, *Labour institutions in an export-oriented country : A case study of Thailand*, ibidem.