

**INTERNATIONAL LABOUR STANDARDS:
IMPLICATIONS FOR TRADE, RIGHTS AND NON-TRADE
RELATED POLICIES**

*Dissertation submitted to the Jawaharlal Nehru University in partial fulfilment of the
requirement for the award of the Degree of*

MASTER OF PHILOSOPHY

AMRITA ISAAC



**Centre for International Politics, Organization and Disarmament,
School of International Studies
Jawaharlal Nehru University
New Delhi-110067
INDIA
2001**



CENTRE FOR INTERNATIONAL POLITICS, ORGANIZATION & DISARMAMENT
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067

Gram : JAYENU
Phone : 6107676, 6167557
Extn.: 2349
Fax : 91-11-6165886

July 2001.

CERTIFICATE

This is to certify that the dissertation entitled "International Labour Standards: Implications for Trade, Rights and Non-Trade Related Policies" submitted by **AMRITA ISAAC** in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** is her original work and has not been submitted for the award of any other university.

The dissertation may be placed before the Examiners for evaluation.

VARUN SAHNI

Chairperson

Chairperson
Centre for International Politics,
Organization and Disarmament
School of International Studies,
Jawaharlal Nehru University
New Delhi - 110 067

A.K. SENGUPTA

Supervisor.

Contents.	Page
Acknowledement	iii
List of Abbreviations	iv
Chapter I. Introduction	
Introduction	1
1.1 Literature review	11
1.2 Objective of the study	19
1.3 Period of the study	19
1.4 Structure of the study	20
1.5 Methodology	22
1.6 Source	22
Chapter II The Issue in Perspective	
Introduction	23
2.1 Retrospect	23
2.2 Concept of international labour standards	31
2.3 Factors influencing the renewal of the demand for improved labour standards.	34
2.4 The labour standard debate	37
2.5 Assessment.	42
Chapter III. Case for International Labour Standards	
Introduction	45
3.1 Arguments supporting the case for raising international labour standards	46
3.2 Validity of 'competitive concerns' arguments	49
3.3 Validity of 'international spillover' arguments	51
3.4 Validity of 'human rights' arguments	52

3.5 ILO's rationale for international labour standards.	61
3.6 Assessment.	63
Chapter IV Proclamation to Legal Reality: Policy and Practice	
Introduction	66
4.1 Feasibility of "social clause"	67
4.2 If not the "social clause" then what?	71
4.3 Converting human rights proclamations into a legal reality: A theoretical approach.	78
4.4 ILO versus WTO: institutional setting for international labour standards.	82
4.5 Assessment	89
Chapter V. Implication for Trade and Rights.	
Introduction	92
5.1 Impact on Trade	93
5.2 Implications for Rights.	101
5.3 Assessment.	106
Chapter VI. Conclusion	
Introduction	110
6.1 Summary	110
6.2 Concluding remarks.	120
Bibliography.	122

Acknowledgements

I would like to express my gratitude to all my teachers at J.N.U. especially Prof. Arjun Sengupta without whose suggestions, supervision and guidance this study would not have been duly completed.

I would also like to extend my thanks to the Chairperson Prof. Varun Sahni for his help.

I would like to also gratefully acknowledge the help given by the staff of JNU Central Library, Exim Bank Library, Teen Murti Library, Institute of Economic Growth Library, American Resource Centre Library, Indian Institute of Foreign Trade Library and ILO Library in locating and reserving research related material. I also gratefully acknowledge the technological phenomenon of the Internet, which is a mine of information and was the source of much of this study.

I would like to thank my family and friends for their support, enthusiastic questions and their curious interest. Many thanks to all my friends at JNU, especially the 'IO' class of 1999-2001 for their warm friendship which made my stay at J.N.U. pleasurable. Special thanks to Papa, Mummy, Dadi and Tutu my sister, for their love and encouragement at every stage. A special 'thank you' to my husband Sugato, for his patience, encouragement and help.

Abbreviations

ECOSOC	Economic and Social Council
EU	European Union
FIFA	Federation Internationale de Football Association
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
ICJ	International Court of Justice
ILO	International Labour Organization
INGO	International Non-Governmental Organization
ITO	International Trade Organization
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
SRI	Socially Responsible Investment
TBT	Technical barriers to Trade
TPRM	Trade Policy Review Mechanism
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UR	Uruguay Round
WB	World Bank
WTO	World Trade Organization

Chapter I

Introduction

Introduction

Without sickness there is no notion of health. Therefore the first step towards understanding the issue of international labour standards is to identify the nature, content and scope of the exploitation faced by workers because of the suppression of their rights. A Human Rights Watch publication has identified a number of different types of violations of the rights of workers such as forced labour, discrimination against women workers, exploitative child labour and government sponsored suppression of workers' rights.¹

Forced or involuntary labour is recognized as the most obvious violation of a worker's rights. Forced labour involves the use of violence and deception to coerce the workers to toil without remuneration and in dangerous work environments. An example of forced labour is the case of Chinese prisoners and detainees who are forced to work in labour prison camps. This is a part of the governments "re-education through labour" scheme. In the case of Brazil forced labour occurs in the private sector where thousands of landless workers are forced to work on *fazenda* or large ranch estates.²

¹ Human Rights Watch, 'Chapter IV: Work', *Indivisible Human Rights* (New York: Human Rights Watch, 1992) pp.52-66.

² *Ibidem*, pp.53-55.

Another forms of violations of worker rights is the discriminatory practise of giving women workers less remuneration as compared to the male workers for the same work. Discrimination in employment opportunity may also stem from exclusion or preference based on political affiliations, religion, ethnicity etc.

Abuse of child labour is also recognized as a violation of the child-worker's rights. An example of child labour is the case of child weavers in India. The *Far Eastern Economic Review* July 1992 reported the case of little boys being bought or stolen and forced to work more than 15 hours per day to weave carpets.³

Many governments that see labour organizations as threats adopt a number of tactics that curtail the rights of the workers to form labour organizations. Some government actions that tantamount to violation of rights are preventing the formation of unions by allowing only one single union (China); making the procedure for forming unions difficult (Indonesia); registration clause that allows governments to veto "potential trouble makers" (Mexico). Governments also often issue threats and harass trade unionists. Often union leaders just "disappear."⁴

³ Ibid.,p.54

⁴ Ibid.,p. 61.

Suppression of worker's rights is made easier in the absence of a free press; no opposition parties-in short democratic accountability can serve as a social and economic safeguard. Suppression of rights adversely affects the physical and economic well being of the workers. This is because violation of rights often prevents the labourer from securing a decent wage and from working in safe conditions.⁵

Labour standards can be divided into two categories-domestic and international. In many cases domestic labour standards do not refer to standards that are set by a single government. Rather domestic labour standards refer to standards that compare working conditions of the exporting country to domestic working conditions in the importing country. For instance, if country X banned the import of goods produced in a country Y on ground that it practiced forced labour then its norms/codes on forced labour would be a domestic standard. Thus domestic labour standards are a country's local standards applied "extraterritorially". Such a perception of domestic labour standards ignores the issue of domestic labour standards in production not related to international trade. In contrast, the concept of international labour standards incorporates all sectors of the economy in all countries. International labour standards refer to comparisons of foreign work conditions to a universal benchmark applicable to all countries and are a reflection of a worldwide norm for the treatment of labour.⁶

⁵ Ibid., p.65.

⁶ Steve Charnovitz, 'The Influence of International Labour Standards on the World Trading System: A Historical Overview', *International Labour Review*, September-October 1987 at <http://www.geocities.com/charnovitz/ILO.htm>

In the initial years, the subject of international labour standards was problematized by the lack of consensus on what it embodies. However, today it generally refers to the “core” ILO Conventions of freedom of association and the right to collective bargaining (Nos: 87 & 98); elimination of forced labour (Nos: 29 & 105); equality and the absence of all forms of discrimination (Nos: 111 & 100) and minimum age for child labour (Nos: 138 & 182). A brief description of each Convention is presented below.

In 1930 the first Convention (No.29) prohibiting forced labour was adopted.⁷ This requires the suppression of forced labour in all its forms. It defines forced labour as “all work or service, which the said person has not offered himself voluntarily”.⁸ This was the first major step towards the protection of worker’s rights particularly in the colonial territories. After the Second World War in 1951 an ILO-UN joint Committee and later an ILO Special Committee conducted further enquires into the area of forced labour.⁹ The outcome of this exercise was a new Convention to combat particular forms of forced labour that had been identified during the course of the enquires conducted. Referred to as the Abolition of Forced Labour Convention, 1957 (No. 105) it prohibits the use of any form of forced or compulsory labour as a means of “political coercion or education, or punishment for the expression of political or ideological views, workforce mobilization for purposes of

⁷ Nicolas Valticos, ‘International labour standards and human rights: Approaching the year 2000’, *International Labour Review*, Volume 137 1998, Number 2 (Geneva: International Labour Office, 1997) p.138.

⁸ ILO, ‘International Labour Standard on Forced Labour’, [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

⁹ Valticos, n.7, p.138

economic development, labour discipline, punishment for participation in strikes, or racial, social, national or religious discrimination.”¹⁰

The adoption of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) was the second milestone in the field of workers’ protection. Adopted in the aftermath of the Second World War initially various sources blocked the adoption of any ILO instrument on the freedom of association.¹¹ The Convention establishes the rights of all workers and employers to form and join organizations of their choice. It also presents a chain of guarantees “for the free functioning of organizations without interference by the public authorities”.¹² The Right to Organize and Collective Bargaining Convention, 1949 (No.98) was a follow up effort to strengthen workers’ rights to protect their interests in an effective manner. It provides protection against “anti-union discrimination” and protects workers’ and employers’ organization from interference from each other. Moreover, it lays down measures to promote and encourage collective bargaining. The concept of freedom of association is regarded as “so fundamental” that ILO member states agreed in 1950 that even non-ratifying states should be subject to a special system of supervision for the violation of this right.¹³ In addition to the ILO supervisory arrangement, which is applicable to all ratified Conventions,¹⁴ a special system of supervision exists for the rights to freedom of association and right to collective bargaining. In 1950 the Governing Body created a special Fact-Finding

¹⁰ ILO, n.8

¹¹ Valticos, n.6, p.138

¹² ILO, ‘Fundamental International Labour Standards on Freedom of Association’, [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

¹³ Ibid.

¹⁴ A detailed discussion of existing ILO supervisory mechanism is presented in Chapter IV of this study.

and Conciliation Commission on Freedom of Association. In the following year the Governing Body created a special committee from its own members to examine and filter cases submitted to the Fact-Finding and Conciliation Commission on Freedom of Association. This special body was the Committee on Freedom of Association. As the older body can examine cases only if the government against which the complaint is made agrees to the examination the Committee on Freedom of Association has emerged as the primary ILO body within the ILO supervisory mechanism.¹⁵

In recognition of the need for international action against the infringement at the national level of the basic right to equality the ILO adopted the Discrimination (Employment and Occupation) Convention, 1958 (No.111) and the Equal Remuneration Convention, 1951 (No.100). The Convention (No. 111) defines discrimination as any “distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin” which adversely effects employment opportunity or “treatment in employment”. The States that ratify this must pursue a national policy aimed at eliminating all forms of discrimination in the workplace.¹⁶ Convention No.100 aims for equal pay for men and women for equal work. The Convention applies to basic wages or salaries and to any additional emoluments whatsoever, payable directly or indirectly, in cash or in kind, by the

¹⁵ Lee Swepston, ‘Human rights law and freedom of association: Development through ILO supervision’ *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998) p. 175.

¹⁶ ILO, ‘Summary Description of ILO Equality Conventions, No. 100 & 111’ [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

¹⁷ Ibid.

employer to the worker and arising out of his or her employment. It is to be applied through of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. The Committee of Experts on the Application of Conventions and Recommendations has recognized that the achievement of equality of opportunity and treatment in employment is a “continuing endeavour”.¹⁷

Attempts by the ILO to protect the interest of the child labourer involves the Minimum Age Convention, 1973 (No. 138) which hold that states undertake to pursue a national policy designed to ensure effective abolition of child labour. It sets a number of minimum ages depending on the type of work. For instance, although it states that the “minimum age should not be less than the age for completing compulsory schooling and in no event less than age 15” it also adds that “higher minimum age should be set for hazardous work” and for light work the minimum age can be as low as 12-13 years. Further, it states that in countries where the economic and educational facilities are inadequate there the minimum age can be “set initially” at 14 years.¹⁸ In recent times the need to further strengthen attempts to protect the child worker has culminated in the Worst Forms of Child Labour Convention, 1999 (No.182). This Convention applies to all under age 18. It calls for “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”. It requires the ratifying States to adopt a number of proactive steps to address this issue.¹⁹ The ILO Convention- Worst Forms of Child Labour Convention, 1999 (No. 182) has defined the worst forms of child labour as:

“all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour; forced or compulsory recruitment of children for use in armed conflict; use of a child for prostitution, production of pornography or pornographic performances; use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children”²⁰

Presented below in brief are some issues that are noteworthy in the debate about international labour standards. These have been discussed at length in the preceding chapters. What began as a weak plea for better work conditions for the exploited labouring class has grown into a strong demand for international labour standards. The demand for better labour standards are grounded in many different arguments some economic others political. The current demand for international labour standards is part of the “fair trade” demand emanating from the rich countries especially developed countries’ governments and trade unions. They argue that if labour standards are lower and morally unacceptable then the resulting trade is morally wrong and “unfair”. Thus, they seek to make the issue of labour standards a prerequisite for market access by incorporating a ‘Social Clause’ into the World Trade Organisation, WTO. The developing countries respond that diversity of labour values and standards are not an unfair advantage, but rather a reflection of diverse labour culture and economic conditions. They view attempts at incorporating the ‘Social

¹⁸ ILO, ‘Effective Abolition of Child Labour: Conventions Nos.138 & 182.’ [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

¹⁹ Ibid.

²⁰ ILO, ‘International Labour Standards’, <http://www.ilo.org>.

Clause' as a protectionist measure by the developed countries, which is rooted in their fear of cheaper goods from the newly industrialized and industrializing world.

The demand for incorporating the Social Clause into the WTO agreement as a means to tackle the problem of raising international labour standards is based on the premise that trade and labour are linked and can thus be utilised successfully to improve the plight of the workers all over the world. However, the very link that is often presumed is still a fiercely debated topic. Some empirical studies have been undertaken but they have not been able to determine the link beyond doubt.

The demand for better labour standards is buttressed by the human rights arguments that labour standards are a reflection of labour rights and hence akin to universalised human rights. This line of reasoning is rejected by LDCs who argue that even if these standards are to be accorded the status of rights, they cannot be applicable to everyone on the ground that they are human rights simply because rights are culture specific.

An important part of the labour standards debate concerns the policy response to the call for better global labour standards. One can identify two schools of thought. The first school argues that trade restrictions should be employed to improve labour standards. They contend that even if trade based responses disrupt international trade patterns and cause hardships they must be undertaken. The second school affirm its faith in non-trade based policies to advance the cause of lifting labour standards globally. This community

advocates no single 'approach' to raise labour standards worldwide. Rather its single 'theme' of preferring non-trade linked measures unites them. The varied response is illustrated by the sheer number of alternatives proposed by scholars such as T.N. Srinivasan who supports "income transfers"²¹, Jagdish Bhagwati supports "moral suasion"²², Steve Charnovitz argues in favour of a regenerated ILO²³, which should be supported by the WTO. Others like Kaushik Basu examine possibility of education in eliminating child labour.²⁴

The industrialised nations have identified the WTO which is the regulatory body of the multilateral trading system put into place by the Uruguay round of the GATT resolution rather than the ILO whose mandate probably makes it the legitimate body to be concerned with labour issues as the most effective instrument for implementing and supervising internationally agreed upon labour standards.

Despite the growing concern for labour welfare in the age of unbridled globalization the issues surrounding international labour standards remain unresolved.

²¹ See T.N Srinivasan, *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998).

²² See V. N Balasubramanyam, (ed.), *Jagdish Bhagwati: Writings on International Economics* (Delhi: Oxford University Press, 1997).

²³ See Steve Charnovitz, 'Promoting Higher Labour Standards', *The Washington Quarterly* Volume 18, Number 3 (USA: The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 1995) pp. 167-190.

1.1. Literature Review.

A brief survey of literature is attempted.

Books.

V. N. Balasubramanyam (ed.) in *Jagdish Bhagwati: Writings on International Economics*²⁵ has presented 27 essays on international economics. There are two articles on labour standard. The first essay deals with the issue of incorporation of environmental and labour standards as pre requisites for free trade at the WTO. This essay is in response to the plea by Sir Leon Brittan of the EU to incorporate such pre requisites through mechanisms such as a social clause. Bhagwati argues that the social clause is a “bad idea” and thus provides new ways to look at the problem of “fair trade”. In the second essay, he focuses on the effects of trade on real wage. He provides a critical review of the Stopler-Samuelson theorem as it is used to justify the fears of the OECD that trade with the poorer countries will “immiserize” their unskilled workers.

J. John and Anuradha M. Chenoy (ed.) book *Labour Environment and Globalisation*²⁶ is a collection of essays. They view the demand for the inclusion of the social clause from the point of view of third world labour. There is a common theme repeated in all but one essay- that the link between trade and labour is not legitimate. It is a protectionist move by

²⁴ See Kaushik Basu, , ‘Child Labour: Causes, Consequences and Cure with Remarks on International Labour Standards’, *Journal of Economic Literature* September 1999 Volume xxxvii No.3 (Nashville: American Economic Review, 1999).

²⁵ V. N. Balasubramanyam (ed.), *Jagdish Bhagwati: Writings on International Economics* (Delhi: Oxford University Press, 1997).

²⁶ J. John and Anuradha M. Chenoy (ed.), *Labour Environment and Globalisation* (New Delhi: New Age International (P) Ltd., 1996).

the west to erode the jobs of the third world worker. Most writers see in it an opportunity to bargain with the national government on labour rights. The only dissenting voice in this book is of Thomas Matthew of the Delhi General Mazdoor Front who argues that the “social clause would not erode the competitive edge; it would impair the exploitative edge”. Trade union leaders of India, environmentalists, child labour activists, eminent scholars and writers have contributed the essays.

The next book is T.N. Srinivasan’s *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* ²⁷. Although the main objective of this study is to analyse the transactions between the developing world and the multilateral trading system, it also focuses on possible future linkages between trade and labour. He argues that it would be best to leave the issue of labour standards within the purview of the ILO that is specialized to deal with labour issues. He regards the social clause as a “thinly veiled protectionist device”. Moreover, he argues that lower labour standards in a country does not constitute a departure from free trade equilibrium and that a competitive race to the bottom, in which all the countries would end up with the lowest standard is not the inevitable end. He does not reject the concern of the citizenry of the rich countries but argues that there are more effective ways to alleviate the suffering of the third world labourer such as income transfers or lifting immigration restrictions. In addition he show that implementation of labour standards will not lead to better labour conditions due to a variety of reasons.

²⁷ T.N. Srinivasan, *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998).

Roger Plant in *Labour Standards and Structural Adjustments*²⁸ has focused on the link between structural adjustment policies and the core ILO standards. He argues that structural adjustment policies should be “consistent with the provision of core human rights”. He focuses on the relevance of international labour standards for the development process.

Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 1: Economic Analysis by Jagdish N. Bhagwati and Robert E. Hudec (ed.),²⁹ is a collection of essays on various issues related to trade. The essay of relevance to us is a theoretical analysis of international labour standards and trade by Drusilla K. Brown, Alan K. Deardoff and Robert M. Stern. In this essay they focus on the “welfare and other effects of standards” and “whether it is in a country’s interest to adopt common standards internationally”. It provides a historical background and focuses on several models to examine the effect of international labour standards on trade. It concludes that the effect of harmonization on low and high-income countries vary due to a variety of reason. In the final analysis, it concludes that the case for international labour standards is “weak” and that it was highly likely that harmonized standards could have a negative impact on those it seeks to protect.

²⁸ Roger Plant in *Labour Standards and Structural Adjustments* (Geneva: International Labour Office, 1994)

²⁹ Jagdish N. Bhagwati and Robert E. Hudec (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 1: Economic Analysis*, (Cambridge: M.I.T. Press, 1996).

The second volume titled *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*,³⁰ approaches the issue of labour standards from a legal standpoint providing factual data as well as examining the policy implications. Virginia A. Leary in her essay 'Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws).'She focuses on historical background, terminology, linkage between trade and labour and then focuses on the forum in which the demand for the linkage between trade and labour has been raised. She concludes that a multi lateral approach is better than "aggressive unilateralism". Further, despite the different stands between the two camps enough common ground exists between them for negotiation and compromise. The second essay by Brian Alexander Langille titled 'General Reflections on the Relationship of Trade and Labour (Or: Fair Trade is Free Trade's Destiny)' explores the relationship between trade and labour. He argues that there is need for conventional trade theory to come to terms with labour.

Articles

In the article 'Promoting Higher Labour Standards'³¹ Steve Charnovitz demonstrates that higher labour standards can be promoted in a non-protectionist way. The article provides a historical background of the issue and discusses the role of the ILO in this field. Charnovitz argues that the national labour standards are linked to trade but this does not

³⁰ Jagdish N. Bhagwati and Robert E. Hudec (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*, (Cambridge: M.I.T. Press, 1996)

³¹ Steve Charnovitz, 'Promoting Higher Labour Standards', *The Washington Quarterly* Volume 18, Number 3 (USA: The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 1995) pp. 167-190

“legitimise” the use of trade sanctions. In keeping with his stand of advocating non-protectionist measures, he favours a “reinvigorated” ILO, supported by the WTO to promote labour standards. To this end, he proposes certain reforms to be incorporated into the ILO. Charnovitz also identifies reasons why the topic of raising global labour standards can no longer be evaded.

Eddy Lee in ‘Globalisation and Labour Standards: A review of issues’³² focuses on the impact of globalization on labour standards and on the relationship between trade liberalization and labour standards. It provides a brief background to the current debate and then provides an extensive survey of their economic analyses on this issue. In the course of his article, Lee examines the case for labour standards, the possible alternatives and possible common ground between the two camps. He argues that although differences exist there is a growing commitment to core ILO standards and support to it within the ILO itself. He regards this consensus as significant as this implies a movement of the debate away from the question of “whether” labour standards should be observed to “how” to observe. Nevertheless, this question of “how” raises the difficulty of finding an “acceptable means”. Although this provides an obstacle in the observance of labour standards, he holds that the range of options is broad enough for “mutually beneficial cooperative action”.

³² Eddy Lee in ‘Globalisation and Labour Standards: A review of issues’, *International Labour Review*, Volume 136, No. 2 Summer 1997 (Geneva: International Labour Office, 1997) pp. 173-189

Jai S. Mah's 'Core Labour Standards and Export Performance in Developing Countries'³³ investigates the relationship between trade and labour standards by examining whether observance to core labour standards in a country affects its export performance. In the course of this article, Mah describes core labour standards in the ILO and the multilateral trading system. Mah argues that empirical evidence shows that core labour standards and export performance in non-OECD nations are not complements but supplements. The results reveal first, that ratification of the convention on the freedom of association adversely affects performance of developing countries; second, there is evidence that ratification of the Convention on the right to organize and bargain collectively deteriorates export performance and third, ratification of ILO Conventions on forced labour does not affect the export performance of developing countries. The first two findings of Mah are inconsistent with a previous OECD (1996) study that revealed that there is no evidence that low standards countries enjoy a better export performance than countries with higher labour standards. However, the third conclusion is consistent with the OECD studies findings.

'Labour Standards and Structural Adjustment' by L.K. Deshpande³⁴ focuses on the challenges that structural adjustments pose and the role of labour standards in structural adjustment programmes. It deals with definition of labour standards, examines the case for labour standards while also focussing on the Indian experience of "reconciling" labour

³³ Jai S. Mah's 'Core Labour Standards and Export Performance in Developing Countries', *The World Economy*, Volume 20, No.6 September 1997. (Oxford: Blackwell Publishers Ltd., 1997) pp.773-785

³⁴ L.K. Deshpande, 'Labour Standards and Structural Adjustment', *The Indian Journal of Labour Economics*, Vol.42, No.1, 1999. (New Delhi: Indian Society of Labour Economics, 1999) pp. 59-69

standards and the liberalization of the Indian economy. In the final analysis, the author concludes that labour standards have failed in India to achieve the aims of harmonizing growth and equity.

Robert Castle, DP Chaudhuri, Chris Nyland and Trang Nguyen in the article 'Labour Clauses, The World Trade Organization and Child Labour in India',³⁵ focuses on the demand for labour clause with special reference to child labour, the elimination of which has been a persistent aspiration of the ILO. This article provides readers with a background to the demand for a labour clause. It also dwells on the difficulties that the ILO is facing today in the field of standard setting and the emergence for alternatives to the ILO instruments. Thereafter it presents the history of child labour in India and promotes the policies adopted by the Indian government to tackle this problem as a solution to labour-trade issue.

Jay Mazur in 'Labour's New Internationalism'³⁶, *Foreign Affairs* holds that the "dark side of globalization" necessitates the incorporation of labour rights and social standards into trade agreements and protocols of international financial organisation. It holds that trade unions are at the forefront to face the challenge posed by globalization. It focuses on successful strikes in USA to demonstrate the trend in dealing with the management. Mazur

³⁵ Robert Castle, DP Chaudhuri, Chris Nyland and Trang Nguyen 'Labour Clauses, The World Trade Organization and Child Labour in India' *The Indian Journal of Labour Economics*, Vol.40, No.1, 1997 (New Delhi: Indian Society of Labour Economics, 1997) pp.51-65

³⁶ Jay Mazur in 'Labour's New Internationalism' *Foreign Affairs* Volume 79, Number: 1, Jan/Feb 2000 (New York: Council on Foreign Relations Inc., 2000) pp.79-93

also presents a case for “a seat at the table” for “representatives” of organised labour. He concludes that the labour movement is committed to a “new internationalism”.

Nicolas Valticos in ‘International labour standards and human rights: Approaching the year 2000’³⁷ examines the relationship between international labour standards and human rights. It investigates the issue of international labour standards as human rights. It focuses on the individual and collective labour standards, economic social and cultural rights, civil and political rights and labour standards. It also examines the universal nature of international labour rights. Finally Valticos scrutinizes the issue of monitoring compliance with internally recognised labour rights and concludes that it is difficult to assess the precise impact of international labour standards due to a host of problems.

Eddy Lee’s ‘Globalization and employment: Is anxiety justified?’³⁸ *International Labour Review*, examines the “apprehension over the implications of globalisation for employment and income inequality”. This article focuses on four sources of the tension about the effects of globalisation. The four sources identified by Lee are the fear that cheap import from the NIC will create job loss among the unskilled workers of the industrialised nations; a similar fear in the developing nations that globalization will result in job loss; globalization will lead to a race to the bottom and it will entail a loss of national policy autonomy. Lee

³⁷ Nicolas Valticos, ‘International labour standards and human rights: Approaching the year 2000’, *International Labour Review*, Volume 137 1998, Number 2 (Geneva: International Labour Office, 1997) pp135-145

³⁸ Eddy Lee ‘Globalization and employment: Is anxiety justified?’ *International Labour Review*, Volume 135 1998, Number 5 (Geneva: International Labour Office, 1997) pp 485-497

concludes that despite increasing globalization national; policy autonomy is intact. Further, he identifies a “basic paradox” in this period of globalization. The paradox is that although the need of the hour is a government that helps cushion the social dislocation that accompanies the process of globalization, governments the world over reflect the growing trend of reduced capacity and will to act.

1.2 Objective of the study

The objective of this study are: - first is to investigate whether a case for raising global labour standards exists; second, to examine the efficacy of trade and non-trade based proposed policy responses; thirdly, to analyse the implications of improved labour standards on trade and rights. Most existing literature focus on the possible future linkage between labour standards and international trade policies however this work seeks to approach the issue of raising international labour standards from three levels. It thus first identifies the underlying foundation on which the case for promoting better labour standards globally is erected. At the second level, this work seeks to identify ways and means, which may be adopted by concerned parties to raise labour standards to operationalize the “core” ILO standards. Finally, it attempts to understand what could be the implications of the ‘edifice’ of raised labour standards on trade and rights

1.3 Period of the study

The process of economic integration that began in the mid 1960s and gained momentum from the 1970s focused attention on labour policies and conditions of work force in other

countries. The demand for raising labour standards internationally was raised during the 1970s at the ILO by Wilfred Jenks the then Director General of the ILO and World Employment Conference, 1976 where it was recognised that the competitiveness of imports from developing countries should not be achieved to the detriment of fair labour standards.³⁹ By 1980, there emerged a growing consensus among the developed countries that internationally recognised fair labour standards need enforcement to prevent unfair competition. Given that the demand for raising international labour standards emanated from the growing pace of the process of globalisation this study is positioned in the context of globalisation. Therefore, the time period of this research commences from the initial years of growing economic integration to the present day.

1.4 Structure of the study

The second chapter is an introduction to the subject. It provides a brief historical overview of the link between labour and trade. Then it examines the intricacies of the definitional aspects of the term 'international labour standards'. It focuses on the factors that have resulted in the resurrection of the demand for raising international labour standards. It examines the context in which the demands are being raised and finally focuses on the international debate surrounding the issue of promoting international labour standards.

The third chapter probes into the issue of whether a case for international labour standards exists. It identifies the three dominant arguments given to support the case for raising

³⁹ N Vaidyanathan, *ILO Standards: Social Justice and Development of Labour*.(New Delhi: Deep and Deep Publications,1992)p. 235

international labour standards. Then it examines the validity of each set of arguments put forward by those who support the demand for improving international labour standards.

Once a case for internationally recognised labour standards is established, the next step deals with the problem of operationalizing it. The following chapter examines the ways and means to give effect to the ILO's "core" standards. It examines the feasibility of the demand for incorporating the "social clause" into the WTO Agreement in order to raise global labour standards. It then examines non-trade based policies alternatives. Next, it presents a theoretical framework offered by Karel Vasak to convert human rights proclamations into a legal reality. It then examines the possibility of operationalizing the developments of positive international human rights law through the institutional framework of the ILO.

The fifth chapter investigates the implications of raising international labour standards on trade and human rights. The first part of the chapter deals with the implications of raised standards on trade. In this context, the study focuses on economic theories well as empirical data and available studies that throw light on this issue. The second part of the chapter probes the implications for human rights.

The final chapter is a conclusion. It summarizes the findings of this work.

DISS
341.763
Is12 In



TH9292



1.5 Methodology.

The study adopts the qualitative approach. Lack of systematic empirical data makes quantitative analysis difficult. Quantitative assessments will be employed wherever possible to provide a more rigorous analysis. Some economic models related to international trade have been used for a better understanding. The analysis concentrates on providing a theoretical understanding of the issues at hand. The study also attempts an interpretive analysis. The level of analysis is at the global level as institutionalised in the WTO and ILO.

1.6 Source.

The research draws on secondary literature analysis that is supplemented by document analysis. Secondary literature on relevant theoretical and empirical questions, studies by commentators, views of trade unionists, labour rights activists, etc. are utilized. Documents of different nature and source have been analysed. Reports, Declarations and governing body documents of the ILO; reports of the UNDP; official statements and studies of regional organisations; national policy statements and WTO Annual Reports and Declarations are some of the document considered.

Chapter II

The Issue in Perspective.

Introduction.

This chapter is a preliminary examination of the issue of international labour standards. Current attempts at linking trade and labour are not a new phenomenon and in fact attempts at linking the two have been made much earlier in history. The first section of this chapter thus begins by tracing the historical development of the link between labour standards and international trade. The debate regarding labour standards is confused by the lack of a clear, precise and unanimously accepted definition of the term, thus the next section examines the intricacies of the definitional aspects of the term 'international labour standards'. It then turns its attention to the factors that have resulted in the resurrection of the demand for raising international labour standards. It examines the context in which the demands are being raised and attempts to decipher the secret behind its timing and finally focuses on the international debate surrounding the issue of promoting international labour standards. It presents both the popular political debate as well as the economic debate which in fact is the foundation on which the former rests. This chapter then concludes with a brief assessment.

2.1 Retrospect

One does not need to repeat that the issue of workers' rights and international trade is not new- what one needs to investigate is how old is it? What and when were the first attempts

at linking labour standards to international trade? And thereafter how has this link developed?

Addressing ourselves to the question raised, we discover that the issue can be traced to the Industrial Revolution when concerned scholars made the first attempts such as Robert Owens to encourage domestic labour legislation to prevent abuse and exploitation of labour.¹ As early as 1833 a British MP, Charles Frederick Hindley mooted the idea of an international treaty on labour. However the main focus at this nascent stage was on work conditions, safety and child labour. Between 1838 and 1855 attempts were also made by an Alsatian manufacturer, Daniel Legrand who appealed to governments to establish “an international factory of law”²

In the next stage from the late 19th century a number of international conferences on labour were held in Europe-the focus was on occupational safety and health which was referred to as “hygiene in the workplace”³ then and few governments (Switzerland and USA) adopted labour legislations. The 1890 US Trade Act that banned imports made by prisoners is recognized as the first “trade-based legislations on a labour standard issue”.⁴ In 1897, 14 countries met at Zurich at an International Congress on Labour Protection to try and put up a labour office. In 1900, Statutes of the International Association for Labour Legislations

¹ Graham Dunkley, ‘Belaboured Playing Fields, Labour Standards, Globalisation and New World Orders’, <http://www.arts.monash.edu.au/ausapec/citer23.htm> (1996) pp. 2-3.

² Virginia A. Leary, ‘Workers’ Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws), in Jagdish Bhagwati and Robert Hudec, (ed.), *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol. 2 Legal Analysis*. (Cambridge, Massachusetts: The MIT Press, 1996) p. 184.

³ *Ibid.*, p.184

⁴ Dunkley, n. 1, p.3.

were adopted in Paris and an International Labour Office was established in 1901 in Basel. Its efforts centred on prohibition of the use of white phosphorous and night work for women. Efforts culminated in the adoption of a Convention in 1905 that banned the manufacture and importation of matches made with white phosphorous and in 1913 the Berne Conventions regulated working hours for minors and women.⁵ The First World War brought a sudden stop to efforts in this direction

Attempts at improving labour conditions resumed with vigour by means of the birth of the International Labour Organization, ILO, in 1919. The ILO was established for three purposes as mentioned in the preamble to the ILO Constitution. The first was to establish universal and lasting peace, which it was believed, could be established only on the foundation of social justice. Second, was to improve the existing conditions of labour. Third reason was the fear that “failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve conditions in their own countries”.⁶ The result has been 176 Conventions and Recommendations dealing with work conditions, occupational safety, social security, wages and rights of workers, which have been adopted by many countries. Thus a system of international labour standards has been born. Table 2.1 reveals the number of countries ratifying core ILO Conventions.

⁵ Leary, n. 2, pp.184-185.

⁶ ILO, *International Labour Standards: A workers' education manual* (Switzerland:ILO, 1982) p.27.

Table2.1

Ratification of core ILO Conventions (as of 4 April 2000).

Principle	Convention	Number of countries ratifying
Freedom of association and protection of the right to organize and collective bargaining	Convention 87(1948)	128
	Convention 98(1949)	146
Minimum working age	Convention 138(1973)	88
Prohibition of forced labour	Convention 29(1930)	152
	Convention 105(1957)	144
Rights to equal remuneration and prohibition of discrimination in employment and occupation	Convention 100(1951)	145
	Convention 111(1958)	142

Source: ILO 2000⁷

In a way the ILO can be regarded as a pioneer in recognising the links between international trade arrangements and labour standards. This is seen in its recognition (in the Preamble) of the fact that labour conditions in one country do have an impact on the efforts of other countries to raise their labour conditions. The question was also discussed in the ILO during the 1970s. In 1973, Wilfred Jenks the then Director General of the ILO acknowledged the link between international trade mechanism and labour standards when he said that “while it maybe difficult to make fair labour standards the specific conditions of trade agreements, the impartial examination of controversies concerning fair labour standards may greatly facilitate trade negotiations”. At the World Employment Conference, 1976, it was held that “the competitiveness of new imports from developing countries should not be achieved to the detriment of fair labour standards”. In 1980 the Brandt Commission suggested that “fair labour standards should be internationally agreed in order to prevent unfair competition...”⁸ Further in 1994 the ILO established the Working Group

⁷ UNDP, *Human Development Report 2000* (New Delhi: Oxford University Press, 2000) p.40.

⁸ N Vaidyanathan, *ILO Standards: Social Justice and Development of Labour*.(New Delhi: Deep and Deep Publications,1992)p. 235

on Social Dimensions of the Liberalisation of International Trade.⁹ The ILO Declaration on Fundamental Principles and Right to Work 1998 is considered “historic” by Nicolas Valticos as it not only reaffirms the pioneering role of the ILO in the field of raising labour standards but also adds a new dimension – in that it seeks “to give effect to the ILO Core standards in all spheres relating directly to human rights”.¹⁰

The Havana Charter 1948, for the establishment of the International Trade Organization, ITO, stated that “unfair labour conditions, particularly in the production for export create difficulties in international trade and that each member shall take whatever action maybe appropriate and feasible to eliminate such conditions within its territory”(Article 7).¹¹ However nothing came of it as the ITO never came into being. But the idea was resurrected in the GATT 1947, in so far as members were allowed to ban import of products made by prisoners. Although the idea that members may take appropriate steps to curb unfair trade conditions in other countries was not formally incorporated (despite US attempts in 1953 to include it into the GATT provisions), labour standard provisions became a part of several international agreements and foreign policy measures For example: US adopted the 1969 Overseas Private Investment Co-operation, 1974 Generalized System of Preferences for Third World Countries and the 1983 Caribbean Basin Initiative, all these focused on labour and trade.¹² A clearer picture of the kind of trade based responses to the growing interest in

⁹ Jai S Mah, ‘Core Labour Standards and Export Performance in Developing Countries’ *The World Economy*, Vol. 20, No.6 September 1997(Oxford: Blackwell Publishers Ltd.:1997) p.773.

¹⁰ Nicolas Valticos, ‘International labour standards and human rights: Approaching the year 2000’, *International Labour Review*, Volume 137 No.2 (Geneva: ILO, 1998) p. 136.

¹¹ Vaidyanathan, n.8, p.235.

¹² Dunkley, n. 1, p. 2.

labour standards as an issue of international concern can be gained from a look at how labour standards have evolved in US trade policy legislations. This has been illustrated in Table 2.2. It is to be noted that the US case has been given as a case in point, merely to demonstrate the growing interest in labour standards and their incorporation into a country's trade-based legislations. Since then the idea has developed and today the issue is high on the international communities agenda. It has resurrected itself in the form of the demand for the inclusion of the social clause as a prerequisite for free and fair trade.

Table 2.2

Evolution of Labour Standards in U.S. Trade Policy Legislation

Year	Act	Labour Standard Provisions
1890	McKinley Act	Prohibited imports made by convict labour
1930	Tariff Act	Prohibited imports made by convict labour, or indentured labour under penal sanction
1933	National Industrial Recovery Act (judged unconstitutional by U.S. Supreme Court in 1935)	Import permitted only if produced according to US domestic fair labour standards, including the right to organize and bargain collectively, limits on maximum hours of work, and minimum wages.
1974	Trade Act	Directed the President to seek the adoption of fair labour standards in the Tokyo Round of GATT negotiations.
1983	Caribbean Basin Economic Recovery Act (CBERA)	Criteria for eligibility as a beneficiary extended to include the degree to which workers are afforded reasonable workplace conditions and enjoyed the right to organise and bargain collectively.
1984	Generalised System of Preferences (GSP) Renewal Act	Criteria for eligibility as a beneficiary country extended to include whether or not the country has taken steps to afford its workers internationally recognised worker rights defined as including freedom of

		association, the right to organise and bargain collectively, freedom from forced labour, minimum age for the employment of children, and acceptable conditions of work with respect to wages, hours of work, and occupational safety and health.
1985	Overseas Private Investment Corporation Amendments Acts	The Corporation is to insure, reinsure, guarantee, or finance a project in a country only if the country is taking steps to adopt and implement internationally recognised worker rights as defined for GSP purposes.
1986	Anti-Apartheid Act	Made it incumbent on U.S. firms employing more than 25 persons in South Africa to follow a code of conduct that includes fair labour standards.
1987	U.S. Participation in Multilateral Investment and Guarantee Agency of World Bank	Made U. S. participation conditional on countries affording internationally recognised worker rights to their workers.
1988	Trade Act (Omnibus Trade and Competitiveness Act)	Made the systematic denial of internationally recognised workers rights (as defined above) by foreign governments as unfair trade practice and liable U.S. countermeasures where such denials cause a burden or restrictions on U.S. commerce.

Source: Jagdish Bhagwati and Robert Hudec, (ed.) *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol. 2 Legal Analysis*. (Cambridge, Massachusetts: The MIT Press, 1996) p. 236

Although WTO provisions are not geared to promoting labour standards attempts have been made by some developed countries to establish a link between labour standards and trade in the WTO provisions. In 1986 and 1994 the United States made unsuccessful attempts for its inclusion into the WTO agenda.¹³ Unlike the link between trade and

¹³ Mah, n.9, p. 776

environment that is firmly established in the Committee on Trade and the Environment there is no corresponding body linking trade and labour standards within the WTO framework. In 1995 Peter Sutherland, the first WTO Director said, "On the face of it, it is an item for consideration. I cannot take a position because it is a debate about a debate that has not yet happened".¹⁴ At the 1998 World Trade Organisation, WTO, Ministerial Conference, although the WTO renewed its "commitment to the observance of internationally recognized core labour standards" it acknowledged the competence of the ILO in the field.¹⁵ At the Seattle Round attempts were made to include it on the agenda but stiff opposition from the Third World kept it from being discussed- but there is no doubt that it can no longer be swept under the carpet.

Today labour standards have been linked to trade in regional trade agreements. Thus NAFTA has a side agreement on labour called the North American Agreement on Labour Cooperation. The focus is on execution of a country's own labour laws rather than enforcing any international labour standards.¹⁶ This Agreement does not permit the imposition of trade sanctions for violation of "core" labour rights but permits the same for the violation of child labour, minimum employment and health and safety standards. The EU has the European Social Charter of the Maastricht Agreement. Unilateral measures have also been embraced such as the US Section 301 and Super 301 by the United States¹⁷.

¹⁴ J. John, and Anuradha M Chenoy., *Labour, Environment and Globalisation* (New Delhi: New Age International P. Ltd., 1996). P.178.

¹⁵ WTO, *WTO Annual Report 1999* (France: WTO, 1999) p. 97.

¹⁶ Leary., n. 2 , pp.206-207.

¹⁷ MSc Public Sector Management-The World Economy,
<http://econserv2.bess.tcd.ie/amthews/IMI/Powerpoint/Lectures5/sld005.htm>.

2.2 Concept of international labour standards.

Focusing on terminology one sees that different terms have been used such as 'internationally recognized workers' rights', 'minimum international labour standards'. However the term 'international labour standards' has been the most popular choice. References to labour rights are to be found in various international documents such as the Universal Declaration of Human Rights, the International Covenant on Civil Political Rights and the International Covenant on Economic Social and Cultural Rights. Labour rights are considered to include the right "i) to work, ii) to favourable conditions of work iii) to protection against unemployment, iv) to equal pay for equal work, v) to form trade unions, vi) to rest and leisure... and vii) prohibition of forced labour."¹⁸

Steve Charnovitz contrasts labour standards with labour conditions. Labour standards, he opines refers to "legal regulations imposed by governments for the employment of child labour, the formation of trade unions etc", while labour conditions refers to "market outcomes such as wage levels".¹⁹

The Netherlands National Advisory Council for Development Cooperation defined "minimum" standards as those standards that "all countries ought to introduce and observe

¹⁸ Leary, n.2, p. 215.

¹⁹ Steve Charnovitz, 'Promoting Higher Labour Standards' *Washington Quarterly* Vol. 18, No. 3 Summer 1995 (USA: The Centre for Strategic and International Studies and the MIT, 1995) p.187 fn.

under all circumstances” but adds that these are standards in a “relative sense, which develop more or less in line with economic growth.” It recognised ILO Conventions on freedom of association, forced labour, discrimination in employment, equal remuneration, an employment policy and minimum age for employment as the “minimum package of international labour standards that might be incorporated in international agreements”. According to the Council these standards were selected because they fulfilled three criteria- “(1). a social criterion, (2). a political and legal criterion and (3). an economic criterion”. Application of the social criterion met that only those that were related to “human rights” and “basic human needs” could be recognised as legitimate labour standards; the second involved international acceptability of the standard and the final criterion sought to see whether the standards would impose any economic hardships or stunt growth.²⁰

As already discussed in Chapter I today international labour standards refer to the “core” labour standards which are widely regarded as the “core” ILO Conventions related to-

- i) freedom of association and the right to collective bargaining (NO. 87 & 88);
- ii) elimination of forced labour (No. 29 & 105);
- iii) equality and the absence of all forms of discrimination (No. 111 & 100) and,
- iv) abolition of child labour (No. 138 & 182).²¹

²⁰ Leary, n. 2, pp. 217-218.

²¹ ILO, ‘International Labour Standards’, <http://www.ilo.org>. and D.P Chaudhuri, ‘Basic Human Rights, Core Labour Standards and Relative Educational Deprivation of Youth in India’, *The Indian Journal of Labour Economics* Vol. 42, No. 1, 1999(New Delhi: Indian Society of Labour Economics, 1999) p. 60.

One could raise the question at this juncture that of the numerous Conventions adopted by the ILO, which cover a wide range of workers' related issue why did it choose only these four Conventions as the "Core" standards? The answer according to an OECD study is that these have been "chosen" because they form an integral part of human rights and should be upheld "like other human rights, in all countries, whatever their degree of economic development". Raymond Torres of the OECD continues this line of argument by saying that other standards are left out not because they are not considered as human rights but rather they are "endogenous" in so far as they are dependent on the stage of economic development within a country.²²

Werner Sengenberger (1994) has identified 3 different categories of labour standards: -

- i) standards of protection,
- ii) standards of participation,
- iii) standards of promotion.²³

The first category encompasses ILO Conventions and Recommendations regarding occupational health, safety, work timing, protection against job loss, employment and income and protection from forced labour. The second type involves standards that provide the "rights and means" for the workers to participate in the process of management. This category of labour standards include ILO Convention No. 87 which incorporates

²² Raymond Torres, 'Labour Standards and Trade', *The OECD Observer*. No. 202 Oct-Nov 1996.

²³ L. K. Deshpande, 'Labour Standards and Structural Adjustments', *The Indian Journal of Labour Economics*, Vol. 42, No.1, 1999 (New Delhi: Indian Society of Labour Economics, 1999) p. 60.

“i) freedom of association and protection of the right to organize, ii) protection of organized workers from employer interference, iii) protection of workers and employers’ organization against acts of interference by each other and iv) promotion of voluntary collective bargaining”.²⁴ The third type refers to standards of promotion. According to Sengenberger this category of labour standards promotes labour productivity and employment. He identifies the following internationally recognized standards of promotion among others:-

- i) “improvement of qualification of labour through education, vocational training, and on –the-job training (ILO Convention No. 142)”,
- ii) “the active promotion of full, productive and freely chosen employment (ILO Convention No. 122)” and
- iii) “active policies of vocational rehabilitation (ILO Convention No. 159)”.²⁵

Although Sengenberger identifies three types of labour standards he stresses that they cannot be considered as watertight compartment, rather they are “complementary” to each other.²⁶

2.3 Factors influencing the renewal of the demand for improved labour standards.

There has been considerable curiosity regarding the timing of the demand for raising labour standards. T.N. Srinivasan expresses his “surprise” regarding the timing – that is, it was

²⁴Ibid., p. 60.

²⁵ Ibid., pp 60-61.

²⁶ Ibid., p. 61.

raised “after the painful and lengthy negotiations of the UR had been completed, almost holding the negotiated agreement hostage”.²⁷

Eddy Lee in his article ‘Globalisation and Labour Standards: A review of issues’ in the *International Labour Review* analyses the reason for what he calls a “renewed interest in the question of international labour standards”.²⁸

Before analysing the factors, which have given an impetus to the demand for raised labour standards, one needs to provide a background picture. Since the late 1970s there has been a rise in neoliberal policies in the social and economic arena that emphasized a restricted role for the state. This translated into a view that labour market regulations and a welfare state were the cause of unemployment. In addition to this ideological shift, Lee identifies two other developments that raised doubts over labour standards. First was that in the age of globalisation it was seen as undermining international competitiveness as it raised labour costs. As a result of globalisation greater capital mobility was achieved which was believed to strengthen the employers vis-à-vis the government and workers. This implied that the strength for the demand for labour standards that comes from the labouring sections was lacking. The second development was what has been termed as “weakening of the

²⁷ T.N Srinivasan, *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998). p.72

²⁸Eddy Lee, ‘Globalisation and Labour Standards: A review of issues’, *International Labour Review* Vol.136, No. 2, Summer 1997 (Geneva: International Labour Office, 1997) p. 175.

prudential motive”. Thus the fall of the communism signalled the end of the fear that poor labour conditions would lead to social unrest and a “defection from the free world”.²⁹

Given this background Lee identifies two developments- “increasing public awareness of exploitative labour practices and political repercussions of popular anxieties over job loss in the industrialized countries” as the factor resulting in a renewed interest in labour standards.³⁰ He argues that increased public awareness as a result of a communication revolution, a new wave of democratisation, increased activity in the civil society due to mushrooming of socially oriented NGOs has renewed public interest in exploitative labour conditions. The second is the “process of globalisation” which has created fear in the industrialized countries that low priced imports from low wage countries are causing unemployment and “social dislocation” in the industrialized countries. Further there is a growing relocation of industry from the high to low wage developing countries. This fear has surfaced in the demand for protection.³¹

Another scholar, Kym Anderson opines that “income growth and expanding knowledge” have renewed interest in labour standards. Anderson argues that richer societies are better placed to demand improved work conditions for themselves and information of labour conditions abroad. In addition Anderson identifies three economic developments that have increased interest in labour standards. The first is the growing export-oriented

²⁹ Ibid.,175

³⁰ Ibid., pp.174-175.

³¹ Ibid., pp.175-176.

industrialization of developing countries. These industrializing economies produce labour intensive products that lower costs and hence affect both price of product and employment in high-income countries. Second, the “internationalisation of the world economy” has resulted in a scenario where improved labour standards in one country affects international competitiveness of all plus the newly integrated world economy permits industries to relocate from high to lower standard countries. Third, Anderson views the growing prominence of labour issues at the global level as a fall out of their successful penetration into the regional agendas of Europe and America (For example: Protocol on Social Policy of the Treaty of Maastricht 1992 as well as the NAFTA’s North American Agreement on Labour Cooperation).³²

2.4 The labour standard debate.

The debate about labour standards as emerged at two levels- the political and the economic. At the political level the debate is whether or not a ‘social clause’ should be incorporated into trade agreements in order to promote labour standards globally. The proponents argue that violation of “core” international labour standards should be legitimate grounds for imposing trade sanctions on violators. As Lee has stated so clearly and plainly: -“The rationale for including a social clause in trade agreements rests on the need to eliminate unfair trade competition deriving from labour exploitation and the notion that trade sanctions are the most effective means of achieving this.”³³

³²Kym Anderson ‘Environmental and Labour Standards: What Role for the WTO?’ in Anne O Krueger, (Ed.), *The WTO as an International Organization* (New Delhi: Oxford University Press, 2000) pp. 234-235.

³³ Lee, n. 28, p. 177.

The opponents reject the demand for the inclusion of a social clause into trade agreements, viewing it as a reflection of protectionist elements, which in turn reflects the fear that industrialized nations feel with regard to cheap imports of newly industrialized and industrializing economies. They view social clause as a “disguised instrument of protectionism” and higher labour standards as detrimental to the comparative advantage of developing countries.³⁴

Following Eddy Lee’s analysis we can identify three levels of economic debate. The economic debate has been dealt with in some detail, as it is the foundation on which the political debate has developed, for it provides both the proponents and opponents of the social clause with their ‘arsenal’ to argue their respective stands.

The first refers to whether “harmonization” of labour standards is necessary to ensure fair trade and a “level playing field”. This argument holds that lower labour standards in countries gives a competitive edge to these countries. Thus harmonization of standards is needed for a level playing field.³⁵

An argument against this view is that “free trade is fundamentally a unilateral one”. Supporters of this view hold that a country benefits from free trade irrespective of the

³⁴ Ibid., p. 177.

³⁵ Ibid., p. 179.

policies of another country. Thus they hold that “harmonization” is “mercantilist” in character.³⁶

There however exists a case for harmonization-

- i) The “fairness argument” which holds that economic activities should be “fair” and “legitimate” and
- ii) The “political economy argument” which holds that the pressure to harmonize standards is a result of the demand of powerful producer lobbies. The producers typically bear the cost of maintaining high labour standards when policy harmonization does not exist, however with policy harmonization (which would increase world prices) the cost of maintaining higher standards could be passed on to consumers.³⁷

The second economic debate analyses whether a “race to the bottom” is inevitable with regard to labour standards. This category of analysis holds that absence of harmonisation will lead to lower labour standards as countries cut production costs to gain a competitive advantage to outdo foreign competition, to increase exports and attract foreign investments.³⁸

³⁶ Ibid., pp. 179-180.

³⁷ Ibid., p. 180.

³⁸ Ibid., p. 181.

The case for harmonization according to Lee is an “international public policy issue”. This argument favours international labour standards because it perceives them to be a “public good” which seeks to eliminate bad work conditions and exploitative practices. It thus advocates international action to abolish “public bads” and put an end to the race to the bottom. But Freeman, who says that there is no conclusive evidence to support the claim that higher labour standards means higher labour cost, has challenged this view. In fact there is evidence that costs of many are ultimately passed on to the workers in the form of lower wages. Thus in such a case total labour costs and international competitiveness are not affected by higher non-wage benefits. Moreover it is possible to adjust any increase in labour costs arising from higher standards through a depreciation of the exchange rate. This passes the costs of higher labour standards to consumers through higher prices. Further higher taxes also allow the redistribution of the burden of higher labour costs.³⁹

The third debate focused on whether there should be a link between trade and labour. The demand for a social clause is based on the fundamental premise that trade and labour are linked.⁴⁰ It must be borne in mind that although many authors refer to this debate as the ‘trade-and-labour-debate’ what it actually refers to is the link between international trade policy/mechanism and labour policy/standards.

However some arguments have been suggested against this link. First, the national sovereignty argument which holds that international labour standards would constitute a

³⁹ Ibid., p. 181.

⁴⁰ Ibid., pp. 179 & 183.

violation of the same as it imposes a common set of standards based on the argument that standards are equal to rights. Bhagwati rejects this line of reasoning, arguing that the two are not equal as standards are culture specific while human rights are universal. He holds that labour practices and standards are a “reflection of cultural values, economic conditions, and analytical beliefs and theories concerning the economic (and therefore moral) consequences of specific labour standards”.⁴¹ Further Drusilla K. Brown, Alan V. Deardoff and Robert M. Stern⁴² argue that as each country arrives at its own equilibrium point given its own level of development, resources etc- any attempt at harmonization is likely to lead to a sub optimal outcome which challenges the idea that international labour standards can be universalised.⁴³

The second set of arguments against linking trade to labour standards is that better alternatives exist. This camp argues that side effects such as increased child labour can be avoided through higher economic growth (the idea is that higher economic growth achieved through free market policies will result in raised labour standards which will continue to improve with improving economic conditions); and voluntary means such as social boycotts and product labelling. Krueger who said:- “Just because policy interventions may have negative side effects is not in itself a reason to conclude that

⁴¹ See V. N Balasubramanyam, (Ed.), *Jagdish Bhagwati: Writings on International Economics* (Delhi: Oxford University Press, 1997). P.498

⁴² See Drusilla K. Brown, Alan V. Deardoff and Robert M. Stern, ‘International Labour Standards and Trade: A Theoretical Analysis’ in Jagdish Bhagwati and Robert Hudec (ed.), *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol. 2 Legal Analysis*. (Cambridge, Massachusetts: The MIT Press, 1996) p. 227-280)

⁴³ Lee, n.28, pp. 183-184.

interventions are undesirable” sums up the counter argument.⁴⁴ Arguments against voluntary actions are that it is full of problems such as the danger that labelling may be guided by protectionist forces or that the impact maybe selective in that only those issues with emotional appeal (such as child labour) may be focussed on while ignoring equally important issues (such as promoting the freedom of association).⁴⁵ An argument against the beneficial impact of growth is that undemocratic countries’ growth will do little to improve labour rights or labour standards.⁴⁶

2.5 Assessment.

This section attempts a brief summing up of the preceding sections. The issue of international labour standards that today is so hotly debate is not a new ‘dish’ on the international ‘table’ although its form and content have been modified over the years. Thus while the first few instances of international concern on this issue merely focused on workplace conditions and prohibition of forced labour today their attention is on social justice and equality- rights of workers to organise and bargain collectively, equal pay and prohibition of discrimination. Regarding the definition one sees confusion as different scholars, government agencies and international organisations put forth their own definition, which more often than not is not identical. While most definition overlap with regard to the three main ILO Conventions of- freedom of association and the right to organise and bargain collectively; prohibition of forced labour; and equal pay and

⁴⁴ Ibid., p. 185.

⁴⁵ Ibid., p.187.

⁴⁶ Ibid., p. 185.

prohibition of discrimination- Conventions on minimum working age and abolition of child labour are often than not left out in one or the other definitions. On the subject of factors that influenced the timing of the demand we see that despite different terminology used by scholars the crux of the issue is the process of globalisation, which has affected not merely the trade and economic sector but also metamorphosed the communication sector, which in turn has revolutionized the way information, opinion travels. This has had a strong impact on international opinion on the labour issue. Concerning the labour debate, what emerges is a complex picture. The political debate revolves around the demand for the inclusion of the 'social clause' into the WTO Agreement as the tool to improve global labour standards. This argument is based on the premise that trade and labour are linked (although this very premise can be questioned). This aspect of the labour standard debate is most controversial and generally generates a great deal of heat. The economic debate, which has three facets is as important as the political debate but has created less of a stir despite the fact that it provides the foundation for the political debate. Its arguments of harmonization, race to the bottom and linkages between trade and labour have been challenged. The result has been a debate of lively argument and counter arguments.

From the above discussed debate only one fact emerges- that there is no consensus. But despite the lack of consensus certain trends emerge. First that there are essentially two broad but opposite responses to the demand for raising international labour standards- one for it and the other against it. Second, even those who belong to one camp do not belong to it for the same reason. Third, there is little empirical data available to substantiate the

claims of either camp. Fourth, there are also two broad responses to the demand for a social clause to be incorporated into the WTO Agreement as a means to raise international labour standards.

Chapter III

Case for International Labour Standards

Introduction

The most rudimentary question that problematizes the issue of global labour standards is whether in fact a case exists for improving international labour standards. The first section of this chapter identifies the three dominant arguments given to support the case for raising international labour standards. The following sections examine the validity of each set of arguments put forward by those who support the demand for improving international labour standards. The next section presents ILO's rationale for international labour standards. Finally it sums up the findings of this chapter with a brief assessment.

Given that the issue of international labor standards is a major bone of contention that divides the developing countries from the developed countries one can examine the case for international labour standards in the light of the debate between these two camps.

Developing countries argue that labour standards are a reflection of diverse cultures, resource endowments and their level of economic development. They thus view the differences in labour standards as a "legitimate source of comparative advantage".¹The attempts by the developed countries at establishing global labour standards under the auspices of multilateral trade bodies are regarded as a reflection of their protectionist aspiration. This they claim is a fallout of the fear felt by workers, governments and trade

¹ Kym Anderson 'Environmental and Labour Standards: What Role for the WTO?' in, Anne O Krueger (Ed.), *The WTO as an International Organization* (New Delhi: Oxford University Press, 2000) p. 250.

unions of the northern countries. This fear they claim has been generated by the direct competition their goods face as a result of cheaper imports from the newly industrializing countries of Asia and other parts of the world. On their part the developing nations oppose the idea of international labour standards, as they fear that improved labour standards would translate into a loss of their comparative advantage, which is rooted in their abundance of labour. Another factor for the apparent trepidation and uneasiness of the developing world is that the imposition of global standards is perceived to be a threat to their national sovereignty.

3.1 Arguments supporting the case for raising international labour standards.

The demand for upgrading international labour standards is an outcome of three underlying concerns-

1. "Competitive concerns"
2. "International spillover" concerns² and
3. Human Rights concerns.

Although these arguments are stated and examined individually it is important to bear in mind that none of them is independent of the other. Infact, the first two arguments are so closely linked that it would be easy to club them together. However this would be deceptive and confusing. Moreover, an interesting manner of viewing these arguments separately would be to locate each argument at a different level of analysis. A human rights concern corresponds to a reverse third level analysis. This implies that it examines

² Ibidem., p. 232.

how the individual worker views the case for improving labour standards. Competitive concerns correspond to a reverse second level of analysis, where nations view labour standards. Finally 'International spill over concerns' are at the first level of analysis where the global perspective is examined.

Kym Anderson explains that competitive concerns are a result of the increasing "international economic integration". The process of globalization has resulted in a situation where a domestic policy of one country has an impact on another's economic performance. Thus their concern is that differing labour costs will create not only an unfair advantage for those with lower labour standards but will also make it difficult for the high standard countries to maintain their standards as they are apprehensive regarding the possibility of a "race to the bottom". This implies a lowering of labour standards by governments to attract investments.³ Moreover trade unions fear that the absence of global labour standards at this juncture of globalization will set off a process of delocation as companies relocate to lower standard countries in order to compete with low priced imports of those low standard nations. The crux of this concern is that lower standards in any nation of the world jeopardizes the labour standard elsewhere as it becomes difficult for nations to maintain their labour standards for the reasons stated above.

Thus according to this line of reasoning labour standards must be protected and raised to a minimum level in all parts of the world in order to safeguard the levels of labour standards achieved until that time.

The second line of argument that buttresses the demand for raising international labour standards is the concern associated with the fear of "international spillover". According to Kym Anderson despite the absence of any physical labour spillover, concerned actors in high standard countries are affected "emotionally". This is manifested in their humanitarian concern. For example people may "grieve" if another country's actions adversely affect the well-being or survival of workers.⁴ Moreover they are affected so far as they perceive a threat to their livelihood from the poor labour conditions existing in other parts of the world. Levy (1996) corroborates Anderson's views. He reviewed some opinion polls and concluded that that low skilled workers are anxious and insecure about the economy⁵. Moreover lower standards in interaction with other factors such as political instability; genocide, war etc may lead to a physical spillover in the form of illegal migration and mass exodus of communities.

Thus according to this argument international labour standards are needed to prevent any international spillover-be it tangible or intangible.

The final argument for improving labour standards is the human rights concern. According to this line of reasoning labour standards are akin to universalized human rights. Consequently they argue that as labour standards are equal to human rights and hence more than mere competing societal goals the realization of these are of paramount

³ Ibid., p. 232.

⁴ Ibid., p. 233

⁵ Dani Rodrik, *Has Globalization Gone too Far?* (Washington DC: Institute for International Economic, 1997) pp. 11

concern of everyone. It is generally believed that if a societal goal is elevated to the status of a human right then it achieves "a degree of immunity from challenge and generally endows it with an aura of timelessness, absoluteness and universal validity."⁶ Thus it is believed that by virtue of being human rights labour rights and all institutions must uphold standards over any other competing societal goal.

While it is difficult to dismiss the paramountcy of human rights over societal goals, the claim that labour standards are human rights needs examination. And so far as they fulfill the criteria of human rights the case for international labour standards is strengthened.

The following sections examine the soundness of the arguments made for improving international labour standards in an increasingly integrated world. An attempt has been made to present both sides of the arguments and to establish the accuracy of the arguments.

3.2 Validity of 'competitive concerns' arguments

According to this line of reasoning labour standards must be protected and raised to a minimum level in all parts of the world in order to safeguard the levels of labour standards achieved until that time. The fear is that a race to the bottom will occur in response to the delocation of firms from the higher standard countries to the lower standard countries.

⁶ Philip Alston, 'Making Space for New Human Rights: The Case of the Right to Development' *Harvard Human Rights Yearbook* Volume 1. 1988.

This line of argument is supported by mostly anecdotal evidence of case where firms based in higher standard countries have relocated to lower standard countries in search of lowering labour cost. This argument is difficult to sustain due to lack of systematic evidence. Dani Rodrik in *Has Globalization Gone too Far?* dismisses anecdotal evidence on the grounds that they do not reveal whether the “chief responsibility for trade and investment flows lie with underlying economic and structural determinants...or differences in social arrangements”.⁷

Despite the lack of quantitative evidence, theoretical studies undertaken support the competitive concerns expressed by the higher standards countries. A study by Alesina and Perotti (1995) examined this question in the context of the countries of the Organization for Economic Cooperation and Development (OECD). Alesina and Perotti’s empirical evidence confirmed that more generous social welfare systems “will be associated with lower competitiveness”. Lower competitiveness has been defined as the “inverse of unit labour costs relative to other countries.” Lower competitiveness is a result of pension or unemployment that is financed, in part, by payroll taxes. Workers often shift the burden of increased costs on to employers, which in turn results in a loss in “competitiveness”.⁸

Another study by Rodrik corroborates the findings of Alesina and Perotti (1995). The study found that lower standards were associated with lower costs. In addition it revealed

⁷ Rodrik, n.5, pp. 44-45.

⁸ Ibid., p. 45.

that imposition of higher standards had a significant economic affect. For instance, lower standards resulted in a greater comparative advantage in labour-intensive goods⁹

From the above discussion it appears that the “competitiveness” of lower standard countries adversely affect the maintenance of standards in developed countries. A strong case for raising international labour standards emerges

3. 3 Validity of 'international spillover' arguments

Despite the lack of any apparent physical spillover by labour per se, this line of defense favours the upliftment of labour standards globally on the grounds that the existing variations in labour standards are emotionally distressing to the insecurity of workers of higher income countries. Their anxiety is rooted in the fear that trade with lower standard countries will threaten their livelihood.

While it maybe true that wages of low skilled workers have been declining in real terms since the second half of the 1970s in USA and Western Europe there is no substantive evidence that this can be solely attributed to trade with the newly industrializing countries. Rodrik attributes the growing unemployment in Europe and USA to the inability of those countries and regions to generate a steady growth of “good jobs”. Many trade economists have also suggested that while trade with lower standard countries may have contributed to unemployment in developed countries more often than not this

⁹ Ibid., p. 45.-46

impact has been “too small”. Rather they attribute these trends to “skill-biased technological change”.¹⁰

Paul Krugman in *Technology, Trade and Factor Prices* (1995) states “international trade has had only a limited impact on wages”. He goes on to argue that despite the growth in international trade it remains quite small. For instance imports of manufactured goods from developing countries is still 2 percent of the combined GDP of OECD nations. This small percent cannot explain the very large change, approximately 30 percent, rise in wage associated with college education in USA since the 1970s.¹¹

All these studies by different scholar suggests that while international trade may have an adverse impact on wage of low skilled workers in the developed countries this cannot be conclusively linked to international trade. This finding seriously weakens this set of defense arguments for raising international labour standards

3.4 Validity of 'human rights' arguments

This section verifies the validity of the human rights defense arguments by examining whether the "core" ILO standards fulfill the different criteria of human rights. It should be borne in mind that although the language of rights has permeated all areas of human activity there is no single 'definition' available. A variety of views have been presented about the source and nature of human rights-whether they are universal or culture specific

¹⁰ Ibid., p 12.

¹¹ Ibid., p 14.

or whether they are to be enjoyed as individuals or groups. The most widely accepted definition of human rights is found in the Universal Declaration of Human rights (1948).

Although numerous criteria have been identified the most widely recognized ones have been utilized for our purpose. It must be clarified that there exists varied framework or sets of criterion. L.J. Macfarlane has identified one such set of criterion. L.J. Macfarlane in *The Theory and Practice of Human Rights* has listed the following requirements of a right to be classified as a human right as distinguished from a moral right:

1. Universality
2. Individuality
3. Paramountcy
4. Practicability
5. Enforceability¹²

Universality according to Maurice Cranston implies that it is the right "of all people at all times and in all situations".¹³ L.J. Macfarlane holds that "the universal character of human rights is to be determined by whether all men require it if they are to live as full human beings, not by whether its realization and enjoyment is compatible with the continued existence of particular forms of society, whether past or present." However everyone does not accept this criterion. Scholars such as Raymond Plant argue that only the right to life is the solitary human right that is truly universal in character. All other claimants to human rights are meaningful and applicable to specific groups and

¹²L.J Macfarlane, *The Theory and Practice of Human Rights* (London: Maurice Temple Smith, 1985) p.3.

¹³Maurice Cranston, *What are Human Rights?* (London: The Bodley Head, 1973) p.21.

situations. But it can be argued that these rights are to be viewed as entitlements that individuals may "wish or chose to exercise".¹⁴

Individuality implies that human rights are rights of individuals. It implies that they support the needs and purposes of individuals. However, this raises the question whether rights that are held collectively can be dismissed from the list of human rights, as they do not fulfill the individuality requirement. Macfarlane holds that collective human rights do exist. He supports this claim by reasoning that "some needs and purposes can only be met by individuals acting in concert".¹⁵

Human rights must fulfill the criteria of paramountcy. This criterion is difficult to define. Maurice Cranston views it as "something to which no one can be deprived without a grave affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are supremely sacred."¹⁶ Professor Dworkin holds that paramount universal human rights are those "minimum strong moral rights of which no man or woman may be deprived by Government or society whether by arbitrary fiat or by law".¹⁷ Nevertheless doubt prevails regarding the applicability of the concept of paramountcy to economic and social rights. For instance, Cranston excluded economic and social rights on the grounds that they were of a different degree of moral urgency. However he acknowledged as human rights all those rights that

¹⁴ Macfarlane, n.12 p.5.

¹⁵ Ibid., p 6

¹⁶ Cranston, n.13 pp.67-69

¹⁷ Macfarlane, n.12, p 8.

"relieve great distress".¹⁸ And it can be argued that economic and social rights relieve great distress for not only the poorer sections of the world but also for some sections of the developed world.

Practicability implies that the right must not attempt to provide the "impossible". It demands that human rights promote that which is "physically possible". This involves adequate resources required for the protection or realization of human rights.¹⁹ Inadequacy of resources –financial physical, and institutional have been regarded as obstacles to realization of rights.²⁰

Enforceability implies that human rights must be implementable. Thus for a claim to be called a human right, ways and means must exist for them to become legal reality. Macfarlane holds that given the near impossibility of international enforceability human rights enforcement is "a matter of domestic politics rather than of international law".²¹

The last two requirements can be viewed as the justiciability element of human rights. The positivist school holds that if claims are not enforceable they are not human rights- at best they are social aspirations. However, the counter argument is that this merely reflects the confusion existing between human rights and legal rights. As Jack Donnelly states "Human Rights claims are essentially extra legal; their principal aim is to challenge or

¹⁸ Cranston, n.13, pp.67-68

¹⁹ Macfarlane, n.12, pp 9-11.

²⁰ Arjun Sengupta, 'Realizing the Right to Development', *Development and Change* Volume 31 (2000) (Oxford: Blackwell Publishers, 2000) p. 559

²¹ Macfarlane, n.12, pp 11-13

change existing institutions, practices or norms, especially legal institutions".²² This is not to deny the importance of legal provisions in the process of realizing human rights. Moreover some scholars opine " there is nothing in principle to prevent rights being an internationally recognized human right even if it is not individually justified".²³

Another approach to classifying human rights is the procedural approach. According to this approach people may enjoy certain rights so long as certain rules and procedures have been adhered to. Robert Nozick (1973,1974) argued people could enjoy rights so long as these rights have been acquired by following "just procedures".²⁴ Thus according to the procedural approach a claimant to the status of human rights becomes human rights so far as the just procedure has been adopted

Yet another view exists regarding the source and nature of human rights. According to some scholars human rights are those rights that are "given by people to themselves." This school of thought holds that human rights are not granted by any authority, nor are they derived from overriding natural or divine principle. A community of people catapults them to the status of human rights as a consequence of their recognition of the claimants as human rights. It stems from their own conception of human dignity, in which these rights are supposed to be inherent. In addition, once they are accepted

²²Jack Donnelly, *Universal Human Rights in Theory and Practice* (USA: Cornell University Press, 1989) p. 14.

²³ Sengupta, n.20 p. 558

²⁴ Siddiqur Rahman Osmani, 'Human Rights to Food, Health and Education', UNDP, *Journal of Human Development*, Volume 1, No.2, 2000 (USA: Carfax Publishing, 2000) pp.273-274.

through a process of consensus building, they become "binding on those who are party to the process of acceptance".²⁵

We are now equipped to address ourselves to the question –‘Do the core ILO international labour standards fulfill the criterion of human rights?’ The following segment attempts to provide an answer.

First let us examine whether the core ILO standards fulfill the five requirements of universality, individuality, paramountcy, practicability and enforceability²⁶. The core ILO standards under the microscope are

- i) Freedom of association and the right to collective bargaining (NO. 87 & 88);
- ii) Elimination of forced labour (No. 29 & 105);
- iii) Equality and the absence of all forms of discrimination (No. 111 & 100) and,
- iv) Abolition of child labour (No. 138).²⁷

Some scholars like Raymond Plant dismiss the above-mentioned core labour standards as non human rights on the grounds that they are group and situation specific and consequently not universal in character. That is, they are applicable only to those who are workers and only in circumstances when they don the mantle of workers. However this line of reasoning is easily dismissed. These rights are needed for human dignity and for living a life as a "full" human being. For instance forced labour, child labour exploitation

²⁵ Sengupta, n.20, p. 557.

²⁶ Macfarlane, n.12, p.3.

²⁷ D.P, Chaudhuri, ‘Basic Human Rights, Core Labour Standards and Relative Educational Deprivation of Youth in India’, *The Indian Journal of Labour Economics* Vol. 42, No. 1, 1999 (New Delhi: Indian Society of Labour Economics, 1999) p. 60.

and discrimination in the workplace are obvious violations of human dignity and seriously compromise the ability of the abused worker to live his life as "full" human beings. Suppression of these rights directly affects the ability of workers to obtain a living wage and compromises their physical and economic survival. The suppression of the freedom of association and the right to collective bargaining although on the surface does not appear to be a significant violation, it is in fact one of the gravest and often life-threatening conditions. Further, the universal nature of the core ILO standards is strengthened when we view rights as entitlements that individuals may wish or chose to exercise.

Many non-western countries that view human rights as culturally specific concepts challenge the criterion of universality. They dismiss many inalienable rights of the Western world as western constructs rooted in Western tradition. However, today the universal character of human rights has been upheld in numerous international bodies and human rights instruments.

Elimination of forced labour (No. 29 & 105); equality and the absence of all forms of discrimination (No. 111 & 100); and the abolition of child labour (No. 138) fulfill the criterion of individuality. These rights are addressed to the needs of individuals. However, freedom of association and the right to collective bargaining (NO. 87 & 88) at a first glance appears to fail the test of individuality. This is because these rights are apparently held collectively. The defense counter arguments one can put forward are at two levels. First we can argue that although the freedom of association and the right to

collective bargaining (NO. 87 & 88) are held collectively they fulfill the individuality criterion of human rights in so far as they support the needs and purposes of individuals. In line with Macfarlane's reasoning it could be argued that individuality is not a comprehensive criterion of human rights. This is because it ignores those needs of individual humans that can be achieved only when individuals act in concert. This admits to the existence of a collective character of human rights that has been ignored by the single-minded focus on individuality.

Reservations are expressed regarding the legitimacy of the claim of economic and social rights to the criteria of paramountcy. This is traced to the fact that these ILO standards fall within the purview of economic and social rights that according to some scholars are secondary to civil and political rights in so far as the degree of "moral urgency" they inspire. But it can be argued that these economic and social rights are equal to civil and political rights. The definitive characteristics of paramountcy are that violation of it would tantamount to "a grave affront to justice" while realization would result in relieving great distress. It can be argued that the deprivation of these ILO "core" labour standards would be an aberration of justice. They could be regarded as breach of justice as they seriously impair the economic and physical well being of the right holders. And secondly it can be argued that economic and social rights relieve great distress for not only the poorer sections of the world but also for some sections of the developed world.

Practicability implies that the core ILO standards must be such that they are "realizable" And enforceability implies that ways and means exist to make them into a legal reality. It

appears that these two requirements identified by Macfarlane are interlocked and difficult to separate. For instance, if it does not fulfill the criteria of practicability then the next step of enforceability will be impossible. These two can be viewed as justiciability requirement. Opponents of the human rights claim deem that the “core” ILO standards do not fulfill the requirement of practicability or enforceability. Their arguments are rooted in the classic debate of the primacy of civil and political rights over economic and social rights. Maurice Cranston for instance states that “Political Rights can be readily secured by legislation, the economic and social rights can rarely if ever, be secured by legislation alone”.²⁸ Nevertheless, today a host of scholars and international human rights instruments uphold the interdependence and indivisibility of all rights rejecting the dichotomy between the two-generation of rights. Thus, it can be argued that freedom of association and the right to collective bargaining (NO. 87 & 88); elimination of forced labour (No. 29 & 105); equality and the absence of all forms of discrimination (No. 111 & 100) and, abolition of child labour (No. 138) clearly are not abstract standards that promise the “physically impossible” claims such as the right to full employment (given the current scenario- although at a future date with adequate resources and planning this too may be possible). This is because all ILO standards can be operationalized and enforced. For instance these realization of ILO standards require proactive legislation by governments, strict implementation and vigilant monitoring machinery.

These criteria can also be examined at another level. As stated earlier it may be noted that some scholars have questioned the validity of the justiciability criteria. Amartya Sen states that fulfillment of rights is different from the issue of existence. The *Human*

²⁸Donnelly, n.22, p.32.

Development Report 2000 states that “non-fulfillment” of rights should not lead to the “denial” of their existence.²⁹

Applying a second set of criterion we can surmise that the “core” ILO standards are legitimate claimants of the human rights status. According to this set of criterion human rights are rooted in a community's own conception of human worth and dignity, community recognition and acceptance. Applying this criterion ILO “core” standards qualify for the label of human rights. In this situation, the ILO can be identified as the community. The ILO with members and representatives from individual governments, worker organizations and the international community is the legitimate representative of the workers, which is the target group of these international labour standards. The “core” ILO standards are Recommendations and Conventions adopted by the ILO. Thus they are a product of the ILO’s consensus building process, recognition and acceptance by the member parties.

3.5 ILO’s rationale for international labour standards.

Interestingly the ILO has identified a case for international labour standards based on the perceived positive effect of standards on human life. The ILO holds that international labour standards are needed as they

1. contribute to “lasting peace”;

²⁹ UNDP, *Human Development Report 2000* (New Delhi: Oxford University Press, 2000) p. 26.

2. create “humane conditions for labour” and
3. contribute to development³⁰

The ILO holds that all conflict around the world can be traced to the “people's powerlessness to voice their opinion in association, poverty, racial or political discrimination, unemployment, economic insecurity and inequitable distribution of wealth”. It is believed that a system of international labour standards will eliminate or reduce these social injustices and lead to peace. This is reflected in the Preamble of the ILO's Constitution begins the words “...universal and lasting peace can be established only if it is based on social justice...”³¹

The ILO Director General's 1997 Report on *“The ILO, Standards Setting and Globalization”*: observed that the effects of international competition that have been identified as an obstacle to improved conditions of labour “are a target of, and reason for, international labour standards” The Preamble of the ILO's Constitution in 1919 identified that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries” It is perceived that adopting labour standards will lead to humane conditions of labour everywhere.³²

³⁰ ILO, ‘International Labour Standards: Why are international labour standards needed?’ [http://www.ilo.org/public/english/standards/norms/why are/index.htm](http://www.ilo.org/public/english/standards/norms/why%20are/index.htm)

³¹ Ibid

³² Ibid.

The ILO further believes that international labour standards contribute to development. This is because international labour standards helps in developing the national human resource, improves the possibility of attracting foreign direct investment and the chances of economic growth. "Retention of cheap labour practices maintains the nation in a cycle of poverty which relies on low costs and low productivity for maintaining income." The World Bank's World Development Report 1995, *Workers in an Integrating World* corroborates this view. It identified the usefulness of appropriately designed standards. For instance it suggests that trade union activities can be "conducive to higher efficiency and productivity". At the plant level, unions provide workers with a collective voice. This balances the power relationship between workers and management. It curtails arbitrary, exploitative, or retaliatory employer behaviour. Moreover by establishing grievance and arbitration procedures, unions promote stability in the work force. This activity when combined with an overall improvement in industrial relations boosts workers' productivity."³³

3. 6 Assessment

We can conclude that a case for international labour standards exists- though not for the reasons most popularly held. It is seen that while most arguments in favour of internationally agreed upon labour standards can be sustained the second argument of "international spillover" cannot.

³³ Ibid.

The competitive concerns expressed by the higher standards countries are supported by, theoretical studies. The above discussion reveals that the “competitiveness” of lower standard countries adversely affects the maintenance of standards in developed countries. However there still exists little quantitative evidence to support the claim.

Various studies by different scholar suggests that while international trade may have an adverse impact on wage of low skilled workers in the developed countries this cannot be conclusively linked to international trade. According to Paul Krugman, this is because the volume of trade is too small to have any significant impact. Others hold the skill-biased technological change as a probable factor that has negatively affected the wage of low skilled workers. This finding seriously weakens the “international spillover” defense arguments for raising international labour standards

The strongest case for raising international labour standards is embedded in the human rights arguments. It is seen that all four “core” ILO labour standards fulfill the five requirements of human rights. That is they fulfill the criterion of universality, paramountcy, individuality, practicability and enforceability- although to varying degrees. The second set of criterion to identify human rights however is the strongest defense that labour standards are akin to universalized human rights and hence should be upheld at all levels of society and be pursued in all human activity. According to this line of reasoning human rights are rooted in a community's own conception of human worth and dignity, community recognition and acceptance. The “core” ILO standards easily fulfill this yardstick of rights.

The ILO case for improving international labour standards are based on the rationale that adopting them will lead to peace, human development and create humane conditions of labour.

Chapter IV

Proclamation to Legal Reality: Policy and Practice

Introduction

Mahaim, a Belgian Professor who played an important role in the early activities of the ILO between 1919 and 1930 and served as Chairman of the Governing Body once had a dream. Now referred to as “Mahaim’s dream”. He dreamt that the ILO had adopted Conventions on every conceivable subject and in his state of wakefulness he wondered what remained to be done. He observed, “it is not sufficient merely to adopt Conventions, we have to ensure that they are properly applied”. Thus he recognized that the need of the hour was also to “give effect to the Conventions adopted”.¹

Recognizing that proclamations are not enough this chapter is devoted to examining policy options and practical ways and means to give effect to the globally recognized labour standards as epitomized by the “core” ILO standards. The first section examines the feasibility of the demand for incorporating the “social clause” into the WTO Agreement in order to raise global labour standards. It then examines non-trade based policies alternatives recommended by a variety of sources. Next it presents a theoretical framework offered by Karel Vasak to convert human rights proclamations into a legal reality within state borders. It then examines the possibility of operationalizing the developments of positive international human rights law through the institutional

¹ Nicolas Valticos, ‘International labour standards and human rights: Approaching the year 2000’ *International Labour Review*, Volume 137 (1998), No. 2 (Geneva: ILO, 1998). P. 142.

framework of the ILO. There is a brief assessment at the end to surmise the findings of this chapter.

4.1 Feasibility of “social clause”

Concerned parties of the Northern states have proposed the tool of the “social clause” to raise international labour standards. The social clause is based on the premise that trade arrangements and labour standards are linked. It attempts to regulate the behaviour of states that do not comply with the “core” ILO standards. It seeks to prevent market access of the rouge states to the rich markets of the developed world.

To examine the “feasibility” of the “social clause” to achieve its target-to raise global labour standards”-let us examine the defining characteristic of such a clause. The defining characteristic is that it conforms to the definition of a sanction. Stephen P. Marks has defined sanctions in international law and politics as “measures of coercion to induce a recalcitrant party to conform to a norm of international behaviour or the will of the ‘sending’ authority.” Although four types of non-military sanctions are in usage, trade embargoes or economic sanctions is our focus of interest.²

The rationale behind economic sanctions are firstly that economic sanctions are effective in achieving their goals, which is to coerce a recalcitrant party to give in without the use of armed coercive measures. At the second level economic sanctions is the preferred tool,

² Stephen P Marks, ‘Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives’ *American Journal of Public Health* October 1999, Volume 89, No. 10 (USA: 1999) p.1509.

as it is believed that the political gains will outweigh the human pain. Let us see how far these arguments hold true.

Several studies have questioned the effectiveness of economic sanctions. R. A. Pape (1997) in a classic study of economic sanctions challenged the claim that economic sanctions have a 34% success rate. This was corroborated in a study by T.C. Morgan and V.L. Schwebach (1997) that found that sanctions have an “infrequent and modest impact”. The study concluded “in most cases, a state imposing sanctions on its opponents can expect an outcome that is just about the same as would be obtained without sanctions”.³

According to many scholars and studies the second argument in favour of economic sanctions that the gains justify the human pain is equally difficult to sustain. Stephen P. Mark rejects the claim that economic sanctions target a “higher purpose that justifies the regrettable but unavoidable civilian suffering” .In the same vein J.A. Jordan (1999) commented that the justification of human suffering was “ill-founded in practice” and that the “greater good” is rarely achieved. Moreover Jordan argued that the suffering was morally unsustainable in terms of its costs.⁴

At a different plane it can be argued that economic sanctions are human rights violators. Many exponents in the field uphold this view. The most striking example of human rights violations as a result of the imposition of economic sanctions is the case of Iraq.

³ Ibid., p. 1510.

⁴ Ibid., p.1510

Numerous studies have clearly identified a link between the Gulf War, trade sanctions and the health of the civilian population. In 1996, a research team from the Centre for Economic and Social Rights conducted a study to ascertain whether UN sanctions violated human rights in Iraq. It concluded “sanctions are not always a humane alternative to war”.⁵ Although these violations are clearly unintentional- that is, sanctions were not imposed for the purpose of afflicting hardship on the civilian population- there is evidence that sanctions may and often do lead to human rights violations.

The Committee on Economic, Social and Cultural Rights ECOSOC stated in its report ‘The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights’ (1997) that although the impact of sanction varies from one case to another “they always have a dramatic impact on rights”. It elaborated and identified the disruption of food supply, medicines, sanitation, quality of food and accessibility to safe drinking water, health and education systems as the area that tend to be significantly affected. However, it could be argued that in recognition of the human rights violations perpetuated as a consequence of economic sanctions- today there are an increasing number of “humanitarian exemptions” being incorporated as part of economic sanctions. These are designed to permit the flow of essential goods and services.⁶ But due to the paucity of studies it is unclear as to how far these humanitarian exemptions will stem the spate of sanctions induced violation of human rights.

⁵Ibid., p.1510

⁶ ECOSOC, ‘The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights’ November-December 1997 in Malini Mehra, (Ed.), *Human Rights and Economic Globalization: Directions for the WTO.*(Sweden: Global Publication Foundation, 1999) pp. 164-165.

Thus it would not be an exaggeration to conclude that economic sanctions are likely to result in human rights violations. Following this line of reasoning it is easy to conclude that the proposed “social clause” (in its present form) is likely to lead to human rights violations. Even the UN Sub-Commission on Promotion and Protection of Human Rights stated in 1999 “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.”⁷ The feasibility of the “social clause” is seriously undermined if it is admitted that economic sanctions lead to rights violations. It is clear that considerable doubt exists regarding the effectiveness of economic sanctions. However, there are scholars such as Alan Kruger, who do not see any wrong even if the proposed “social clause” was to result in the gross violations of the “core” ILO labour standards. Alan Kruger’s views have been discussed in earlier chapters.

It is important to understand the limitations of trade sanctions in relation to social objectives. If the objective is, for example, to force governments to eliminate child labour, allow workers to unionize and bargain collectively and other basic rights, trade sanctions are a blunt instrument and can have the effect of depriving workers of income. Such sanctions are also limited to the traded sector (exported products) and would not necessarily lead to any overall change in the implementation of domestic labour law for workers in domestic industries. In terms of child labour, a ban on the import of goods made by child labour is unlikely to prevent child labour in the informal labour sector where most of the abuses occur. Overall, a very small percentage of export goods is made

⁷ Peter Prove, ‘Human Rights at the World Trade Organization?...’ in Malini Mehra (Ed), *Human Rights and Economic Globalization: Directions for the WTO.*(Sweden: Global Publication Foundation, 1999),

by child labour. Trade sanctions can also isolate countries from the trading system, depriving them of income and reducing opportunities for and creating resistance on the part of targeted countries (workers as well as governments) to political change. ⁸

4.2 If not the “social clause” then what?

Given that the “social clause” may lead to human rights violations it would be prudent to examine other proposed alternatives.

One school of thought has identified higher economic growth as a means to raise international labour standards. The rationale is that higher economic growth achieved through free market policies will result in raised labour standards, which will continue to improve with improving economic conditions

However the so-called “trickle down effect” alternative is questionable. Studies by the UNCTAD, Trade and Development Report 1997 and UNDP, Human Development Report 1997 suggest that economic growth and globalization have infact created greater inter and intra country inequality The UNCTAD, Trade and Development Report 1997 show that despite growth the income gap between the North and the South has deepened. The UNDP, Human Development Report 1997 similarly reveals that despite a global reduction in poverty the human development index declined for more than 30 nations. Further it identified growing inequality both among the rich and poor countries and the

p.33

⁸ Department of Foreign Affairs and International Trade Canada, 'Trade, Environment and Labour Standards', Discussion Paper Feb 2001, <http://www.dfait-maeci.gc.ca/tna-nac/social-e.asp>.

rich and poor within a country⁹. An argument against the beneficial impact of growth is that undemocratic countries' growth will do little to improve labour rights or labour standards.¹⁰ As a case in point is the deplorable labour rights and conditions in People's Republic of China. Despite registering impressive growth rates it continues to score poorly on its labour rights front. These findings seriously undermine the feasibility of the "trickle down" effect alternative.

An ILO study titled *Private Initiatives and Labour Standards: A Global Look*¹¹ has focused on some proposed private sector initiatives such as "social labeling" and investor initiatives. These are "voluntary responses to market incentives (including the demands of business partners) rather than to public law or regulation." It is generally held that, these programmes will stimulate social concern among industry and consumers and provide a "market-based financial (rather than regulatory) incentive to improve labour conditions".

Let us first focus on the definition and content of social labelling. The term "social labeling" implies means of "communicating information through a physical label about the social conditions surrounding the production of a product or rendering of a service" Social labels may be affixed to products or displayed on shelving and shop windows. They are assigned to enterprises, usually producers or manufacturers They may consist of

⁹ Miloon Kothari, 'Globalization, Social Action and Human Rights', Malini Mehra, (Ed.), *Human Rights and Economic Globalization: Directions for the WTO* (Sweden: Global Publications Foundation, 1999) p.38.

¹⁰ Ibid., p. 185.

¹¹ ILO, *Private Initiatives and Labour Standards: A Global Look* at <http://www.unglobalcompact.org/gc/unweb.nsf/content/ilostuy.htm>

a trade name used by certified companies, as for example, Responsible Care. On the other hand, an enterprise which has a good reputation established on the basis of a well-known code of conduct may find that its company name acquires, over time, the status of a brand name label (e.g. Gap) This is corroborated by Alan Christie of Levi-Strauss who said, "Our best social label is our brand label," while reporting to the EU-US Symposium on Labour Standards in Brussels in February 1998. Other forms involve retailers or private label manufacturers licensing the use of their logos or trade names to contractors that meet preset standards. Here, the logo or trade name operates as a tool for reporting "code compliance to buyers and vendors, general public and consumers. Recent licensing examples include procurement policies of US-based Duke University and Notre Dame University, FIFA soccer balls used in the World Cup and athletic equipment for the Sydney Olympics.¹²

Social labels are aimed at consumers and/or potential business partners. Labels enterprise may be developed and administered by single enterprises (independent labels), NGOs, workers' organizations (union labels), industry and trade unions or other enterprise associations, or hybrid partnerships of one or more of those sectors. According to the study social labelling programmes run by NGOs or hybrid partnerships tend to be dominated by organizations in developed countries. These usually involve coalitions in developing countries, such as Abrinq in Brazil and Kaleen in India.¹³

¹² Ibid.

¹³ Ibid.

Proponents of social labelling believe that, labelling programmes may improve working conditions and raise funds for educational and rehabilitation programmes for former child workers. They may also build consensus among industry groups, NGOs, international organizations and governments about labour practices to be addressed. Responses may take the form of more conscientious compliance or enforcement of labour laws or enterprise adoption of codes of conduct to forestall use of the label. The effectiveness of social labeling to raise international labour standards has however been questioned in light of the poor performance of eco-labelling.¹⁴

One of the principal criticisms of this proposed alternative to the social clause is that social labels influence labour practices in a selective manner. They tend to target consumers in developed countries and producers in developing countries. They target export markets and "niche" products, affluent consumers and striking circumstances. Further, labels apply only to highly specific sectors such as hand-knotted rugs, soccer balls or cut flowers; more general labels cover various products in the clothing industry or selected agricultural products. In addition they tend to focus on emotional issues such as child labour and level of wages. Thus they selectively ignore issues related to, such as health and safety and freedom from discrimination that are equally important and deserving of attention.¹⁵

The ILO study has also identified some other possible adverse effects. These include financial difficulty among participating enterprises and consequent job loss. Higher

¹⁴ Ibid.

¹⁵ Ibid.

prices of labelled products may result in lower penetration of the market. Some child labour labelling programmes have been criticized for driving child workers into less formal sectors where the elimination of exploitation is even more difficult. Labelling programmes have also been criticized as they tend to lack transparency and methods for independent verification. Critics also claims that labels. promote external intervention in national standard setting, and discriminate against producers in developing countries who face additional costs and other constraints. In addition, the practice of labelling tends to create confusion among consumers due to contradictory criteria used, lack of clarity of meaning among various labels.¹⁶

The ILO study also examines another voluntary private initiative-“investor initiatives”. These recognized as part of the "socially responsible investment (SRI)" movement that has grown recently in importance in certain developed countries. SRI implies “investment-related decisions that seek social change while maintaining economic returns”. There are two types of SRI- the screening of investment funds and shareholder initiatives. The former involves “the inclusion (investment) or exclusion (divestment) of publicly traded corporate securities from investment portfolios based on the social performance of the company in areas including labour relations” The latter involves the “exercise of rights based on an established share ownership as a means of influencing company behaviour”. This is exercised formally through submitting and voting shareholder resolutions and asking questions at companies' annual meetings. Informal action involves attempts to reach agreements with management through dialogue and negotiation. Shareholder initiatives involves shareholders requesting management to take

¹⁶ Ibid

some voluntary initiative involving labour practices within the enterprise, asking the enterprise to develop a code of conduct, adopting a third party code such as the Sullivan Principles, and even amend the articles of incorporation to include international labour standards. Shareholders have also asked the enterprise to increase activity under a code of conduct, or to monitor and report on contractors' compliance with the enterprise's code of conduct and have even accepted an active role in the monitoring process.¹⁷

The study however criticizes these two forms of private voluntary initiative on numerous grounds. Let us first focus on the criticisms of screening investment funds. Firstly, the desired targets of social change vary considerably and appear to be based on highly subjective judgments. Labour criteria used in screening appear to be unspecific and there is no standardization. Further, in most cases, screened funds do not own enough shares in single companies to hit them hard by damaging their share prices but they may make a difference combined with campaigns and other social strategies. The study highlights the case of South Africa. In this case, the impact of divestment from apartheid South Africa in the 1980s was “enhanced” by the fact that the initiative used widely recognized labour principles (Sullivan Principles) and occurred in the context of a coherent, highly publicized campaign. Similarly, shareholder initiatives exhibit similar limitations- the lack of standardization or specification of criteria. Furthermore, most such initiatives do not involve the participation of the workers who could be affected by the initiative.¹⁸

¹⁷ Ibid

¹⁸ Ibid.

Other alternative have been presented by T.N.Srinivasan in his book *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future*. He rejects the social clause as a “indirect means” and argues that it is “not conceivable” that a low labour standard country will respond to the threat of trade sanctions by raising their standards. Rather it is highly likely that they “forgo the gains from trade” rather raise their standards. He suggest a number of non-trade linked measures -what he calls “direct means” to raise international labour standards. These direct measures involve the citizens of developed nations to urge their governments to adopt various pro labour standard policies rather than depend on the response of developing countries. Thus, the onus for successfully upgrading labour standards is on the developed world rather than on the developing world. These direct means include “income transfers” and lifting restriction of immigration of workers.¹⁹

He argues that a more direct response to raising international labour standards would be for the citizens of developed nations to urge their governments to lift restrictions on the immigration of workers from low standard countries to higher standard countries. Srinivasan states that if poor workers choose to migrate then they too would enjoy the higher labour standards of the host nation. This movement of labour he argues is infact a basic human right if we accept John Rawls’ (1993) views. Rawls views the freedom of movement and the freedom of choice of occupation as “primary goods” equal to other

¹⁹ T.N Srinivasan,. *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998). p.74.

basic rights. He also suggests that the rich citizens of the developed world make income transfers to the workers in the poor countries.²⁰

4.3 Converting human rights proclamations into a legal reality: A theoretical approach.

Given that noble and loud proclamations are not enough this section attempts to identify ways and means to convert them into a reality. This section presents the theoretical framework developed by Karel Vasak to convert mere proclamations into a legal reality. It then applies them to the case of international labour standards.

Vasak has identified three factors that convert proclamations into legal reality.

- an organized state must exist in the form of a *de jure* state;
- a specific legal framework must exist within the state, which may nevertheless vary according to circumstances;
- right holders must possess specific legal guarantees and recourse must be provided.²¹

Let us examine each requirement in detail.

According to Vasak the first requirement incorporates two requirements,

- the state must be free and people must enjoy the entitlement to self determination
- system of rule of law.

²⁰ Ibid.,p.74

²¹ Philip Alston, (Ed.), Revised English Edition Karel Vasak General Editor, *The International Dimension of Human Rights* (Paris: UNESCO, 1982) p.4.

The first implies that the people must be free to decide their fate. Second implies that there must be a system of law established by a political authority.²²

Second requirement for converting rights into legal reality is the existence of specific legal framework. Vasak clarifies that legal system may vary according to circumstances. He clarifies this statement with the example of the difference in legal provisions of developing and developed countries with regard to the freedom of press. Nevertheless he holds that this “relative” nature of human rights in legal reality should not jeopardize the right itself.²³

The final requirement involves “effective guarantees” for the right holders. This according to Vasak is essential because even if rights were “proclaimed by a free state and protected by legal provisions established by legislature” it would amount to naught if not “guaranteed”. Guarantees involve providing those entitled to the rights of the means of obtaining redress for violation. Vasak identifies two forms of guarantees- organized and unorganized guarantees. Organized guarantees exist within the state in the form of measures that either annul the offending law or a financial compensation. Unorganized guarantees exist in the form to rise against the state in case the first form of guarantees fail. Vasak however expresses reservations regarding the viability of such recourse in the present day.²⁴

²² Ibid., p.4-6

²³ Ibid., pp. 6-8.

²⁴ Ibid., pp. 8.-9.

Thus it is clear that Vasak's framework operates at three levels. First, rights must be proclaimed by a free state where people enjoy self-determination and the rule of law prevails. At the second level it must be incorporated into the legal system established by the political authority. At the final stage there must be system of recourse for those whose rights have been violated.

Applying Vasak's theoretical framework to the labour standard issue we will be able to uncover whether in fact the factors for converting proclamations into legal reality exists at the international level.

The first requirement of the existence of a *de jure* state has to be extended to imply the existence of an international community of states, given that we are addressing the issue of raising labour standards globally. This requirement has two specific sub-requirements, which are fulfilled. We see that the international community satisfies the first sub-requirements in so far as the state constituting the international system are "free" as they are entitled to self determination. Second sub-requirement is fulfilled because a system of rule of law exists. This is borne out by the numerous international laws covering a wide range of subjects from space to sea.

The second factor that relates to existence of a specific legal system is difficult to ascertain. Although there is no doubt that a enormous number of various international treaties, documents, declarations, conventions and norms exist that guide the conduct of states in their dealings these rarely have the strength of enforcement. With special

reference to labour standards we can clearly conclude that there exists no specific legal framework. The ILO that possesses the mandate of formulating and promoting labour standards has no enforcing powers. Not only are the various Conventions only applicable to those countries that have ratified it; even those that have ratified it cannot be forced to fulfill the contents of the Convention.

The final requirement is absent at the organized/formal level. In the eventuality of a rights –violation there are no effective guarantees in international law bestowed on workers. However the unorganized guarantees exist in the form of the right to rise against the state in case the first form of guarantees fails. Thus workers do have the right to rise against the international community of states if they cannot obtain a redress through any organized channel. In tandem with this line of thought one can argue that the various anti-capitalist strikes and riots witnessed in the recent months are an expression of the workers who believe that their right to work has been threatened or violated.

Clearly, applying Vasak's framework reveals that at the current global scenario is not conducive to convert the various proclamations and conventions on international labour standards into legal reality. The need of the hour is to develop a specific legal system and to give workers the means to access redressal in the wake of a violation.

4.4 ILO versus WTO: Institutional setting for International Labour Standards.

Regarding the 'keeper' of international labour standards, the international community is sitting on the fence. The nation states, civil society groups and many NGOs are divided in their choice between the WTO and the ILO.

At present ILO efforts at raising international labour standards involve the following activities: -

- The ILO provides technical assistance related to international labour standards through its Multidisciplinary Advisory Teams located around the world.
- The International Labour Standards and Human Rights Department responds to requests of assistance. It helps in understanding the system of reporting on ratified conventions and providing ideas for solving problems in applying international labour standards that have been identified by the ILO's Committee of Experts.
- The technical departments of the ILO provide support related to international labour standards. For example, experts provide technical advice on the improvement of systems of labour statistics, methods of labour administration and labour inspection, arrangements for employment services, systems for pensions, unemployment benefits, all in ways which are consistent with international labour standards.²⁵

²⁵ ILO, 'International Labour Standards: How are labour standards used?' [http://www.ilo.org/public/english/standards/norms/how are/index.htm](http://www.ilo.org/public/english/standards/norms/how%20are/index.htm)

A brief overview of the current ILO supervisory mechanisms is presented here to facilitate a better understanding. The Committee of Experts on the Application of Conventions and Recommendations handles all ratified Conventions. Governments submit reports at regular interval to the Committee. Cases that require more attention are referred to the Conference Committee on the Application of Standards in the annual session of the International Labour Conference. Here Governments are invited to discuss the problem in the public forum.²⁶

Although the ILO may not possess any coercive power to control the behaviour of states, as its Constitution does not permit any “punishment” for violation of international labour standards it has a “powerful weapon”. This weapon comes in the garb of international public pressure.²⁷

According to one camp the ILO is best suited to handle the issues of international labour standards. This they argue is due to the “mandate” of the ILO. Further, ILO action designed to promote labour rights is at three levels:

- Definition of rights through conventions and recommendations;
- Measures to secure the rights through international monitoring and supervision
- Assisting nations through technical cooperation and supervision.²⁸

²⁶ Lee Swepton, ‘Human rights law and freedom of association: Development through ILO supervision’ *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).p.174-175.

²⁷ Geraldo von Potobsky, ‘Freedom of association: The impact of Convention NO. 87 and ILO action’, *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998). p.221

²⁸, Drusilla K Brown, Alan V Deardoff, and Robert M Stern, ‘International Labour Standards and Trade; A Theoretical Analysis’ in Jagdish Bhagwati, and Robert Hudec, (ed.), *Fair Trade and Harmonization:*

The WTO Singapore Ministerial Declaration (1996) affirmed this stand. It declared that the “ILO is the competent body to set and deal with these standards”. It is widely held that the WTO “does not do” human rights.²⁹ It is a multilateral organization aimed at supervising the world trading system. In other words the mandate of the WTO is limited to trade.

This line of reasoning is questionable. Firstly, despite its “mandate” of trade only, the WTO is involved with the environment. So the argument of ‘trade only’ is apparently hollow. More importantly, the Preamble to the WTO Agreement clearly gives the WTO the “mandate” to get involved with issue of human rights. The Preamble speaks in the language of rights when it implores signatories to conduct “their relations in the field of trade and economic endeavour” in tandem with “a view to raising standards of living” and “ensuring full employment.” It also recognizes that there is a need for “positive efforts” that will help the developing world to secure a share in the expansion of international trade.³⁰

On examining the argument that if the WTO is involved in environmental standards then why not labour standards, it is revealed that on principle there are no grounds for the WTO to stay away from the area of labour standards. However a more detailed investigation reveals that this comparison between labour standards and environmental standards is inappropriate for a number of reasons. Firstly, the scientific basis for many of

Prerequisites for Free Trade? Vol. 1 Economic Analysis. (Cambridge, Massachusetts: The MIT Press, 1996) p 231

²⁹ Prove, n.7, p.24.

³⁰ Ibid., p.23.

the environmental concern for many of the problems are becoming more solid³¹ while labour standards concern are still based on subjective perceptions. Second, while no international specialized agency exists for environment, despite the mandates of the United Nations Environmental Programme and the Commission on Sustainable Development, the ILO, with its clear mandate and universal membership already functions for purpose of global labour welfare. Further, it can be argued that labour unions have no direct voice in the WTO as they do within the ILO which is a tripartite body composed of representatives of workers' and employers' organization and governments.³² All these reasons make the WTO unsuitable to handle issues of labour standard

If it is correct that the WTO possesses the mandate then what prevents it from donning the mantle of protector and promoter of labour rights. The answer is simple. The proposed tool of social clause is unacceptable. An earlier section of this chapter demonstrated the inappropriateness and ineffectiveness of economic sanctions to raise labour standards. It can be suggested that an alternative tool of carrots rather than sticks could produce the desired effect.

The supporters of WTO reject the choice of ILO on the grounds that it has no teeth. Many counter this line of reasoning. For instance, Jagdish Bhagwati regards this argument as

³¹ Kym Anderson, 'Environmental and Labour Standards: What role for the WTO?' in Anne O Krueger. (Ed.), *The WTO as an International Organization* (New Delhi: Oxford University Press, 2000) p.233

³² Virginia A. Leary, 'Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws), in Jagdish N Bhagwati. and Robert E Hudec, (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*, (Cambridge: M.I.T. Press, 1996). pp 190 and 201

“foolish”³³. He regards this view as foolish because he believes that economic sanctions alone do not constitute an effective enforcement machinery. In an Open Letter from "Third World Intellectuals and NGOs Against Linkage" in September 1999. Jagdish Bhagwati, held that: "... we can open the ILO's mouth and give it a new set of teeth. ... Do not underestimate the value of information and exposure as long as it is impartial between nations".³⁴ Nevertheless it is undeniable that the ILO has no coercive means of retaliation against a recalcitrant nation³⁵

This brief discussion reveals two things. First, both the ILO and the WTO possess the mandate to address labour standards. The ILO's mandate is broad covering all aspects of labour. The WTO's mandate is limited to those standards affected by trade. This is clear from their respective Preambles. Second, neither of the two international bodies possesses all the cards to handle the issue of international labour standards.

Who then shall be entrusted with the responsibility of 'policing' the implementation of internationally recognized workers' rights? The answer is – a reinvigorated ILO in conjunction with the WTO. The ILO shall shoulder the primary responsibility with some assistance from the WTO.

³³Jagdish Bhagwati, 'Letters to the Editor', *Foreign Affairs* Volume 79 No. 3 May-June 2000 (USA: Council on Foreign Relations, 2000) p.182.

³⁴ Steve Charnovitz, 'The International Labour Organization in its Second Century,' *Max Planck Yearbook of United Nations Law* (Kluwer Law International, 2000).at <http://www.geocities.com/charnovitz/planck.htm>

³⁵ Steve Charnovitz, 'Promoting Higher Labour Standards', *The Washington Quarterly* Volume 18, Number 3 (USA: The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 1995) p. 181.

A number of writers corroborate this stand. For instance, Steve Charnovitz suggests a joint action by the WTO and the ILO given the similarity of their “mission”: - “raising standards of living by improving the utilization of resources”. Admitting that the ILO is an “underutilized mechanism of global governance” he proposes cooperation between the WTO and the ILO. Charnovitz recommends that the WTO should undertake the “surveillance” and not the “enforcement” activity. Cooperating with the ILO, the WTO should utilize its Trade Policy Review Mechanism and investigate the status of workers’ right within a country. However the WTO can take a more proactive role in raising the international labour standards in the special export processing zones. He specifically suggests the creation of a working party to probe into this area. In conclusion however he gives the bulk of the responsibility to a “newly invigorated” the ILO, supported by the WTO.³⁶

Charnovitz suggests that improving enforcement of the ILO does not require troops or economic sanctions and that public opinion can be a powerful source of enforcement. The ILO already has a very highly developed enforcement system providing for investigation and recommendation by an independent Commission of Inquiry, possible recourse to the ICJ, and possible action by the ILO Governing Body and Conference. Francis Maupain pointed out that current ILO rules provides "a remarkable diversity and richness of institutional possibilities" for promoting compliance, some of which have "not been fully explored". One institutional channel for strengthening the ILO is placing greater emphasis on enforcement of ILO conventions through national courts. But this approach

³⁶ Ibid., pp. 182 and 187.

is not viable for countries that do not have an independent judiciary. This strategy would require writing ILO conventions with clear rights for individuals. In many countries, this requires a treaty for implementing legislation to give individuals a right of action against their own government. Another suggestion for promoting better implementation would be for the ILO to offer governments technical cooperation and advisory services to promote the ratification and implementation of fundamental Conventions. The success of this approach depends on providing more funds to the ILO for providing technical assistance.³⁷

The 1998 ILO Declaration on Fundamental Principles and Rights at Work, which was adopted by the International Labour Conference at its Eighty-sixth Session, suggests that to further the cause of social justice the ILO should “draw upon its standard setting, technical cooperation and research resources”; “give special attention to the people with special needs”.³⁸

In his report to the 1994 Annual Labour Conference Michel Hansenne, Director –General of the ILO proposed the creation of a special procedure similar to the ILO procedure on Freedom of Association (The special procedure on freedom of association has been discussed in Chapter I). This special procedure would involve the setting up of a Committee, which would consider whether states were taking adequate measures to examine the probability of ratifying ILO standards and applying them to the extent

³⁷ Steve Charnovitz, n.34.

³⁸ ILO, *ILO Declaration on Fundamental Principles and Rights at Work* Adopted by the Conference at its Eighty-sixth Session, Geneva, 18 June 1998. (Geneva: ILO, 1998)

possible. He also stressed the importance of technical assistance to be provided by the ILO. After the Marrakesh meeting with the establishment of the WTO he added that another means of ensuring that all the WTO nations respect the rights of workers was to make the acceptance of all ILO Conventions on the freedom of association and the right to collective bargaining a precondition for their membership to the WTO.³⁹

4.5 Assessment

The first section of this chapter revealed that the proposed social clause is not the panacea it appears to be. This is because of three reasons. At the first level it is an ineffective tool. This is because studies reveal that economic sanction have a low success rate and their impact is modest. Two separate studies by R. A. Pape (1997) and T.C. Morgan V.L. Schwebach (1997) uphold this stand. At the second level they cause human suffering as a byproduct. Stephen P. Mark and .A. Jordan (1999) suggest that the human suffering cannot be justified by the “greater good”. Finally the social clause so far as it is an economic sanction is more likely than not to perpetuate human rights violations. Committee on Economic, Social and Cultural Rights ECOSOC among others has corroborated this standpoint.

Rejecting the social clause we examined other alternatives such as higher economic growth, private voluntary initiatives including social labelling, investor initiatives, income transfers and the option of citizens of developed nations urging their governments

³⁹ Virginia A. Leary, ‘Workers’ Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws), in Jagdish N Bhagwati, and Robert E Hudec, (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*, (Cambridge: M.I.T. Press, 1996). pp 190-191.

to lift restrictions on the immigration of workers from low standard countries to higher standard countries.

The alternative of higher economic growth is difficult to subscribe to given that the so-called trickle down effect has rarely if ever occurred till date and in case of non democratic regimes mere growth is unlikely to result in improved labour rights. Although private sector initiative of product labelling, screening funds and shareholder initiatives have had limited success they suffer from many shortcomings. These have been identified as lack of standardization in the labour criteria used and choice of targets of social change appear to be based on highly subjective judgments among others.

Following the ILO study we can conclude that social labelling programmes may prove more effective and more equitable when combined with other programmes to form a comprehensive, transparent and reliable social policy. In addition, international trade rules, and in particular the Code of Good Practice of the Technical Barriers to Trade (TBT) Agreement of the World Trade Organization, offer guidelines on how voluntary standards can be developed and implemented in ways that prevent unjustifiable non-tariff barriers.⁴⁰

The next section attempted to see whether proclamations can be converted into legal realities Applying Vasak's theoretical framework to the labour standard issue it is seen that the current global set up does not offer a conducive environ for converting

⁴⁰ ILO, n.11.

proclamations into legal reality exists at the international level. Although it fulfills the first requirement that rights must be proclaimed by a free state where people enjoy self-determination and the rule of law prevails; the other two are not satisfied. The need of the hour is to develop a specific legal system and to give workers the means to access redressal in the wake of a violation.

Finally, this chapter revealed the similarity of the mandate of the ILO and the WTO-“raising standards of living by improving the utilization of resources”. This stresses the need for joint action in the battle to raise international labour standards. A reformed ILO supported by the WTO conducting surveillance through the Trade Policy Review Mechanism has been proposed. This work holds that the responsibility for raising internationally recognized workers’ rights is the legitimate purview of the ILO. However, the issue of raising international labour standards is a Herculean task and it demands that all sections of the international community partake of the responsibility. Thus the responsibility can be shared. The ILO can take complete responsibility of definition of rights through conventions and recommendations. And a reinvigorated ILO with assistance from the WTO could secure the labour standards through technical cooperation, assistance, international monitoring and supervision

Chapter V

Implication for Trade and Rights.

Introduction.

Nicolas Valticos warns that “unbridled globalization” nurtures real threat for the global work force.¹ It is widely held that the system of international labour standards will eliminate or reduce the “social injustices” that plague the global labour force. It is believed that it will empower the labour force to fight poverty, discrimination, unemployment, economic insecurity and inequitable distribution of wealth. According to the ILO “the cornerstone of the system of international labour standards is hope for the defeat of social injustice”.² However, there are grave misgivings regarding the perceived negative impact of labour standards on trade performance.

The chapter is divided into three sections. The first examines the effect of international labour standards on trade. This section presents available theoretical analysis and empirical studies that can shed light on the subject. The second section focuses on the implications of raised international labour standards on human rights. This section is theoretical due to the lack of empirical data. The third section is a brief assessment of the preceding sections.

¹ Nicolas Valticos, ‘International labour standards and human rights: Approaching the year 2000’, *International Labour Review*, Volume 137 1998, Number 2 (Geneva: International Labour Office, 1998) p-145

5.1 Impact on trade

The links between trade and labour standards in the process of globalization continue to be intensely debated. Most arguments revolve around perceived negative impacts of raised labour standards on international competitiveness of developing countries with lower standards. The degree and nature of the impact of international labour standards on trade is disputed. Varied perspectives on the subject exist.

OECD (1996) findings revealed that trade performance and ratification of core labour standards have no link. An OECD joint report by the Employment, Labour and Social Affairs Committee and the Trade Committee, focused attention on the "core" ILO labour standards of freedom of association and right to collective bargaining. It focused on more than seventy countries, including all the OECD countries and those non-member countries most active in international trade. It collected existing information and analyzed the status of freedom of association and the right to collective bargaining for the nations studied.³

It concluded that it was impossible to prove the existence of any empirical link between labour standards and global trade performance. The argument that non-observance of the core ILO standards to unfair trade advantages also could not be proved empirically. The report states: "... the output effects of greater freedom-of-association and collective

² ILO, 'A Contribution to Lasting Peace', [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

³ Raymond Torres, 'Labour Standards and Trade', *The OECD Observer*. No. 202 Oct-Nov 1996. p.10

bargaining rights are likely to be negligible compared with other factors such as shift in technology, raw-material prices and terms of trade. More generally, the actual economic effects of core labour standards are likely to be small.”⁴

This empirical study also revealed that there was no “global correlation” between growth of real wages and the degree of respect for the conventions on freedom of association and the right to collective bargaining. During the 1980s, for instance, real wages grew faster in those countries which had the least rather than the most respect for these conventions. Conversely, the report could not empirically show that countries with weak standards have export results that are generally better than those countries that have higher labour standards in their countries.⁵

The analysis suggests that there is no evidence that low-standards countries enjoy a better global export performance than high-standards countries. Therefore, developed countries should not regard low core standards as an important competitive factor in the aggregate in their trade with low-standards countries. It also implies that concerns expressed by certain developing countries that enforcement of core standards would negatively affect their economic performance or their international competitiveness are unfounded.⁶

⁴ OECD, *Report to the Council at Ministerial Level on Trade, Employment and Labour Standards*, COM/DEELSA/TD (96) 9/FINAL, Paris, 1996 at <http://www.oecd.org>

⁵ Torres, n.3, p.11.

⁶ OECD, Letter, Vol.5/6, July 1996, <http://www.carleton.ca/~imackcnz/oecd.htm>

Another perspective is presented by Drusilla K. Brown, Alan V. Deardoff and Robert Stern in their essay titled 'International Labour Standards and Trade: A Theoretical Analysis'.⁷ Their study is a theoretical analysis of the impact of exogenously imposed labour standards on production, trade and terms of trade. Terms of trade is defined as the price of a country's export divided by the price of a country's imports.⁸ They investigate how the imposition of a labour standard affects resources that would otherwise be used for production of tradable goods. The core assumption in this study is that labour standards are exogenously imposed.⁹

This theoretical analysis reveals the following. The terms of trade will improve for an economy that specializes in the production of a single tradable good that it exports for a good it does not produce. The potential imposition of labour standards takes the form of a non-tradable good, which withdraws resources from production of tradable goods. This results in a fall in production. Consequently leading to a fall in exports. Thereby resulting in a decline in the volume of trade. Nevertheless the terms of trade improve because the world price of the exported good rises relative to the imported good. This implies that imposition of a labour standard will benefit the country imposing the standards and adversely affect its trading partner.¹⁰

⁷ Drusilla K. Brown, Alan V. Deardoff, and Robert Stern, 'International Labour Standards and Trade: A Theoretical Analysis' Jagdish N Bhagwati, and Robert E. Hudec, (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 1: Economic Analysis*, (Cambridge: M.I.T. Press, 1996).

⁸ Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* (USA: Harper Collins Publishers Inc., 1991) p.93

⁹ Brown, Dearoff, Stern, n.7, p.245

¹⁰ Ibid, pp. 244-247

They further clarify that the terms of trade will be influenced by the “factor requirements” of labour standards. Factor requirements have been defined in this study as the resources needed to administer and enforce the desired labour standard. Brown, Deardoff and Stern examine the extent to which imposing labour standards can divert factors from other purposes. In addition, they identify which factors they divert for their imposition. They have dealt with six labour standards: -freedom of association and the right to organize; freedom from forced labour; minimum age for employment; minimum wage; hours of work and occupational safety and health.¹¹ The first four are relevant for our consideration as they correspond to the “core” labour standards of the ILO.

They hold that the freedom of association and the right to organize does not divert resources away from trade as it merely requires a “small amount of labour” to set up a labour union.

Freedom from forced labour it is claimed will merely affect the labour supply of the country. This is because some of the forced workers may choose not to work or at least not work as much, even when they are paid higher wages.

Drusilla K. Brown, Alan V. Deardoff and Robert Stern also regard minimum age for employment as a “purely labour-using standards”. This they argue is because a standard that prevents children from working only removes them from the labour force and does not divert trade related factor.

¹¹ Ibid., p.253.

The same line of reasoning is applied to the case of minimum wage. This too is regarded as labour-using standards in so far as the imposition of a minimum wage will alter the “price” of labour and drive out some workers resulting in a reduced labour force. Similar is the case of hours of work.

Brown, Deardoff and Stern however perceive occupational safety and health as standards that may require investment in capital or land. Investment in safe machines, better facilities etc would divert capital from trade related activities.¹²

In sum, they hold that most labour standards barring occupational safety and health are labour using as they merely reduce the supply of labour. This labour scarcity raises the world prices of labour intensive goods, which improves the terms of trade of those countries that export labour intensive goods and worsens the terms of trade for other.¹³ According to this theoretical analysis imposition of labour standards has a positive impact on the terms of trade for labour intensive economies.

They further add that the “only parameter that matters is the factor proportions employed in implementing the standards relative to the world’s factor endowment.” This implies that if the standard has a higher capital labour ratio than the world’s endowment of capital relative to labour then the price of capital-intensive goods will rise on the world

¹² Ibid., pp.253-254

¹³ Ibid. p 254.

market. Moreover, capital abundant countries will gain irrespective of the fact whether or not they were the source of the standards.¹⁴

With regard to the effect of labour standards on high and low income countries they hold that the imposition of some minimum standards such as restrictions on hours of work, child labour, prison labour the terms of trade of low-income countries will improve at the expense of high income countries. This is because such labour standards tend to remove labour from the work force. This leads to a “contraction in the supply of labour intensive production on the world market”. However if labour standards are imposed in a capital-intensive sector of a low-income country then it will tend to expand its export of labour intensive goods and incur worsening terms of trade that is to the advantage of the high-income countries.¹⁵

Examining their proposition we see that there is more to the issue. Let us examine each labour standard separately. While it is true that promoting freedom of association and the right to organize does not require direct diversion of resources and usually requires time and energy on part of union leaders and mobilizers; what is of greater significance is the consequence of imposing this standard. In other words, the vital point to be noted is how does the bargaining power of the workers (reflected in their demands for bettering their terms of work) affect the investment initiatives of the management. It follows reason that an empowered people will demand better conditions for themselves and this is likely to

¹⁴ Ibid., p.268.

¹⁵ Ibid., p.271.

divert resources away from trade related investment. This in turn adversely affects the volume of trade but improves the terms of trade.

It is believed that freedom from forced labour; minimum age for employment; minimum wage and hours of work are all labour using standards that require no direct investment. This contention is highly questionable. Freedom from forced labour and minimum age for employment would involve investment in the well being of the abused and exploited workers. The government and other responsible civil society actors would need resources to invest in the rehabilitation of these workers. In addition, exit of this cheap child labour and free forced labour will necessitate the entry of a higher costing labour force that will automatically divert resources due to their higher wages. Labour costs would increase with the imposition of a minimum wage. This raised labour cost are likely to result in improving terms of trade for those countries with labour intensive economies while decreasing the volume of trade.

A study by Jai S. Mah, examining the effect of ratification of the core labour standards in a country on its export performance reveals very different picture. The core assumption in this study is that the price competitiveness of a country determines its export performance. Therefore adhering to labour standards can raise the labour cost in production thereby deteriorating the price competitiveness of the country. Another assumption is that factor costs determine the export of more or less homogeneous commodities that are traded on international commodity markets at a common price. Mah has identified real interest rate to reflect the competitiveness arising from capital costs.

Real interest rate is defined as the lending rate minus the rate of consumer price increase.¹⁶ While this study examines the effect of ratification and not imposition of core labour standards on trade performance it is nonetheless of some significance as ratification is but the step before enforcement.

He has focused on the exports of rich developing countries, which are similar to the average OECD countries in terms of per capita GDP, and least developed countries. His findings reveal that ratification of the ILO Convention on freedom of association and non-discrimination adversely affect the trade performance of the developing countries examined in the study. Mah comments that ratification of the convention on discrimination sharply affects the export performance of developing countries. Second, the ratification of the convention on the right to organize and collective bargaining and export performance has a weak link. Finally, ratification of forced labour ILO standards has no impact on the trade performance of developing countries.¹⁷

Thus it appears that not all labour standards affect trade in a similar fashion. Freedom of association and non-discrimination influence the trade performance of developing countries to a greater extent than the right to collective bargaining. And forced labour ILO standards have no link with trade.

¹⁶ Jai S Mah, 'Core Labour Standards and Export Performance in Developing Countries', *The World Economy*, Volume 20, No.6 September 1997. (Oxford: Blackwell Publishers Ltd., 1997), p.779

¹⁷ *Ibid.*, p.780.

The impact of raised labour standards also appear to vary according to the country under consideration. The imposition of labour standards does not have a uniform impact worldwide. Poorer countries, which are labour intensive, seem to experience worse terms of trade when they ratify the ILO conventions on the freedom of association and the freedom from discrimination. Ratification increases labour costs diminishing the price competitiveness of their exports. Richer countries, with over US \$2100per capita GDP, are less influenced. Mah traces this to their specialization in technology intensive production, which relies on quality rather than price competitiveness.¹⁸ It is clear that the ratification of ILO conventions affect countries depending on their level of development.

5.2 Implications for Rights.

Presented below is an analytical investigation into the implications of international labour standards for rights of the work force. The “Holistic Approach to Human Rights” and the “Right to Development Approach to Human Rights” provide the framework for the analysis. A brief introduction of the two approaches has been presented below.

The “Holistic Approach to Human Rights” affirms that all human rights are interdependent and interrelated. This implies that exercising one right can affect another right. For instance the *Human Development Report 2000* gives examples of cases where the exercise of civil and political rights has resulted in promoting economic and social rights. According to the holistic approach all human rights and “not just the right that appears most relevant to the task”, are to be considered while formulating policy to uplift rights. Stephen P. Marks illustrates with an example of urban planning where it is

¹⁸ Ibid., pp781-783.

inadequate for the planner to consider the allocation of resources to affordable housing. He must also inquire what the plan will do for the residents' enjoyment of other rights such as the right to food, health, education, information, work and effective remedies¹⁹

Independent Expert (UN) on the Right to Development, Arjun Sengupta, in his report to the UN presented the "Right to Development Approach to Human Rights" symbolically. He views the right to development as a "vector". This vector is symbolically represented as

$$R_D = (g, R_1, R_2, \dots, R_n)$$

This implies that the right to development consists of an "undefined relationship between growth in gross domestic product (g) and the realization of "n" number of human rights". In simpler terms, the right to development is realized only as a result of the interplay between GDP and the realization of other rights. Extended to other rights this is represented as

$$R_i = f(g, R_j), j \neq i$$

This implies that any individual right is a function of growth and all other rights. R_i represents an individual right where 'i' is one of the human rights. Thus according to this

¹⁹ Stephen P Marks, 'The Human Rights Framework for Development: Five Approaches', Francois- Xavier Bagnoud Center for Health and Human Rights at Harvard School Public Health. Boston, 2000. p.4.

approach the realization of any right is dependent on the interaction of growth and other rights.²⁰

It appears that the two approaches to human rights are similar in their core. Both are based on the premise that rights are interrelated and interdependent. However, the Right to Development approach to human rights goes further in so far as it holds that if rights are to be implemented it is contingent on 'g' – that is, growth. Employing the two human rights approaches, we shall now scrutinize the possible repercussion of international labour standards on human rights.

According to the "holistic" approach to human rights the welfare of workers will not be realized merely through the worldwide imposition of labour standards. This approach views human rights as interdependent and interrelated implying that rights cannot be enjoyed in isolation. Thus merely imposing the "core" labour standards of

- i) freedom of association and the right to collective bargaining (NO. 87 & 88);
- ii) elimination of forced labour (No. 29 & 105);
- iii) equality and the absence of all forms of discrimination (No. 111 & 100) and,
- iv) abolition of child labour (No. 138)²¹ is unlikely to result in the enjoyment of rights.

²⁰ Ibid., pp 8-9.

²¹ D.P Chaudhuri, 'Basic Human Rights, Core Labour Standards and Relative Educational Deprivation of Youth in India', *The Indian Journal of Labour Economics* Vol. 42, No. 1, 1999 (New Delhi: Indian Society of Labour Economics, 1999) p. 60.

Thus, rights will be realized when other equally important rights are also enjoyed simultaneously. For instance, the freedom of association and the right to collective bargaining which is popularly regarded as the most "fundamental" of the "core" ILO labour standards will have a negligible impact unless the 'right to freedom of thought, conscience, and religion', 'right to education' and 'freedom of opinion and expression' are also enjoyed. This implies that an adequate education and being able to imagine, think and reason freely will be vital to the enjoyment of the right to the freedom of association and the right to collective bargaining.

The right to development approach to human rights would view the mere imposition of international labour standards as inadequate for the advancement of rights. According to the formula

$$R_i = f(g, R_j), j \neq i$$

the realization of any individual right is a function of growth and all other right. Thus mere adoption and implementation of the "core" international labour standards will not result in the elimination or reduction of the social injustices that inflict the global workforce.

A classic case in point is the issue of child labour. Supporters of international labour standards would have us believe that imposition of the ILO Minimum Age Convention, 1973 (No.138) and Worst Forms of Child Labour Convention, 1999 (No.182) will solve the problem of child labour. The right to development approach would however reject it

as an inadequate response of the problem. In all probability merely abolishing child labour will threaten the survival of the child. It will deprive him of the means to a livelihood. Instead the right to development approach recommends a multi-pronged approach. This approach would focus on a number of other rights, which although not apparently relevant are vital for the 'successful' abolition of child labour. For instance the right to education, health and food also need to be targeted for the successful elimination of the exploitative practice of child labour. In almost all cases child labour is symptomatic of a poverty-ridden society. Child labour in these cases is the only option available for survival. Thus any attempt of eliminate child labour must also address the right to life and all its concomitant rights which target the basic needs of food, health, education etc. In addition the right to development approach would highlight the importance of growth in the realization of any right.

Beyond the parameters of the human rights approaches, social commentators like Nicolas Valticos suggest that it is difficult to assess the precise implication of the impact of international labour standards given that the areas involved are not restricted to merely legal instruments but also involve actual practice. He further adds that despite this shortcoming progress on the human rights front has been made.²² This is particularly evident with regard to Convention No.87 that has been vital in the fight for social justice. Ratification has resulted in removal of restrictions on labour union activities, release of prisoners unjustly incarcerated and even annulment of death sentences.²³

²² Valticos, n.1, pp.144-145

²³ Harold Dunning, 'The origins of Convention No.87 on freedom of association and the right to organize', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).p.167

In addition, a brief survey of the cases of progress in the past reveals that ILO Conventions do have a positive impact on the enjoyment of rights. In the 1970s progress was made in the area of trade union activities such as reversal of anti trade union rules, anti trade union discrimination, curtailment of workers' right to organize. In the 1980s progress was achieved with regard to the right to strike among other things. Finally the 1990s saw the largest number of cases involving abolition of trade union monopoly, right to strike freedom of association, and the right o collective bargaining.²⁴

5.3 Assessment

It is apparent that no consensus exists regarding the links between international competitiveness and trade performance of countries. A survey of existing studies on links between trade and international labour standards reveals three broad perspectives. First, raised labour standards will have no impact on trade. This stand is epitomized by the OECD 1996 study which held that there is no evidence that low-standards countries enjoy a better global export performance than high-standards countries and therefore, developed countries should not regard low core standards as an important competitive factor in the aggregate in their trade with low-standards countries. Second, they will improve the terms of trade for the country with better labour standards. Such a view is upheld by the theoretical analysis offered by Drusilla K. Brown, Alan V. Deardoff and Robert Stern. Their analysis examines the factor requirements of the proposed labour standards. They suggest that given the "labour saving" nature of international labour

²⁴ Geraldo von Potobsky, 'Freedom of association: The impact of Convention NO. 87 and ILO action', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).p.207

standards, terms of trade will improve for the country adopting it because the price of its exports increase relative to the price of its imports. However, the volume of trade decreases as less is exchanged. Lastly, some studies hold that imposition of international labour standards will negatively affect trade performance of the developing world. The empirical study by Jai S. Mah uncovered the negative impact of ratification on the export performance of developing and least developed countries.

Another important aspect of this link between trade and labour standards has been brought to light. That all labour standards do not have identical impacts on trade. Ratification of some labour standards effect trade more than others. Studies reveal that ratification of the ILO Convention related to freedom of association has the most palpable effect on the international competitiveness of the labour intensive nations. The theoretical analysis by Brown Stern and Deardoff reveals that the factor requirement of the imposed labour standard will be crucial in determining the impact of labour standards on trade. For instance, a labour using standard will have a positive impact on the terms of trade for labour abundant economies while adversely affecting capital abundant countries.

However, a better understanding is needed of how international competitiveness and trade performance is linked with compliance with internationally recognized core labour standards

Within the parameter of the two human rights approaches discussed earlier we can surmise that mere imposition of the international labour standards will not be successful in reducing or eliminating social injustice. A multi level approach is need for achieving desired results. Although a particular labour standard may appear to be most relevant to the target other rights are of equal significance. This is because of the interrelated and interdependent nature of human rights. In particular, the right to development approach to human rights rejects a single level approach to raising a desired right as it view the realization of any individual right as a function of growth and a set of other human rights. Hence from the right to development approach to human rights perspective, imposition of international labor standards at best can have a limited impact on desired rights unless coupled with the realization of other rights and growth..

Another aspect to be noted is that imposition of international labour standards may adversely affect the enjoyment of other rights. As already discussed the imposition of ILO Minimum Age Convention, 1973 (No. 138) may negatively affect the other rights of the child. Kaushik Basu suggests that often in the poorer regions of the world the alternative to child labour is “acute hunger and starvation”.²⁵ Sarah Bachman (1995) observed that attempts at barring children from working in the manufacturing sector in Bangladesh pushed some into prostitution.²⁶ Another study by Patrinos and

²⁵ Kaushik Basu, ‘Child Labour: Causes, Consequences and Cure with Remarks on International Labour Standards’, *Journal of Economic Literature* September 1999 Volume xxxvii No.3 (Nashville: American Economic Review, 1999). pp.1115

²⁶ *Ibid.*, p. 1093

Psacharopoulos (1997) infact revealed “working actually makes it possible for the children to go to school”.²⁷

In isolation, international labour standards are likely to have a limited impact on raising human rights. Nonetheless, past experience reveal the positive affect of international labour standards on human rights. For instance a number of countries that ratified the core ILO Conventions have successfully incorporated them into state legislation. But the precise implications are difficult to gauge.

²⁷ Ibid., p.1092-1093

Chapter VI

Conclusion

Introduction

The purpose of this work was to identify the issues involved in raising international labour standards. In this endeavor this research has examined three levels of the issue. First, it has sought to establish the case for imposing international labour standards. Second, it has examined proposed policy options. Third, it investigates possible impact of the imposition of international labour standards on human rights and international trade.

This chapter has two sub sections. The first summarizes the findings of the preceding chapters. The second makes some concluding remarks.

6.1 Summary

In the second chapter the study exposes the myth regarding the “newness” of the demand for international labour standards. The post industrialization history of labour welfare is replete with instances of demand for better work condition. Nonetheless one can make concessions for this misunderstanding given the metamorphisms of the older international labour standards into their modern manifestation. In the initial years the focus was on workplace conditions and prohibition of forced labour. Today their attention is on social justice and equality, rights of workers to organize and bargain collectively, equal pay and prohibition of discrimination.^{1&2} The watershed in the history of the making of modern

¹ Graham Dunkley, 'Belaboured Playing Fields, Labour Standards, Globalisation and New World Orders', <http://www.arts.monash.edu.au/ausapec/citer23.htm> (1996) pp. 2-3.

international labour standards has been the birth of the ILO in 1919. The form and content of present-day international labour standards is the handwork of the ILO. The post World War period has seen numerous international conferences under the aegis of the ILO.

Until a few years ago, no consensus existed vis-à-vis definitional aspects of labour standards. Social commentators, academicians, civil society organizations, government agencies and international organizations floated numerous definitions. With time and international dialogue a synchronization of views has resulted in a near unanimous endorsement of four “core” ILO labour standards. These are

- i) freedom of association and the right to collective bargaining (Convention No. 87 & 88);
- ii) elimination of forced labour (Convention No. 29 & 105);
- iii) equality and the absence of all forms of discrimination (Convention No. 111 & 100) and,
- iv) abolition of child labour (Convention No. 138).³

In 1999, the ILO adopted Worst Forms of Child Labour Convention (Convention No.182). This too is now widely accepted as part of the body of “core” labour standards. This Convention applies to all under age 18. It calls for “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”.⁴

² Virginia A. Leary, ‘Workers’ Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws)’, in Jagdish Bhagwati, and Robert Hudec, (ed.), *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol. 2 Legal Analysis*. (Cambridge, Massachusetts: The MIT Press, 1996) p. 184.

³ ILO, ‘International Labour Standards’, <http://www.ilo.org>

⁴ ILO, ‘Effective Abolition of Child Labour: Conventions Nos.138 & 182.’ [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

A survey of social annotations reveals that timing of the demand for raising international labour standards is the outcome of unbridled globalization.^{5, 6&7} This has affected the trade and economic sector and metamorphosed the communication sector, which in turn has revolutionized the way information and opinion travels. This has had a significant affect on the formation of international public opinion on the labour issue.

The study also depicted the two facets of 'international labour standards debate' - political and economic. The political debate revolves around the demand for the inclusion of the 'social clause' into the WTO Agreement as the tool to improve global labour standards. This rationale for including a social clause in trade agreements rests on the perceived need to eliminate unfair trade competition deriving from exploitative labour practices and the perception that trade sanctions are the most efficient instrument of achieving this.⁸ Opponents view the social clause as a "disguised instrument of protectionism" and higher labour standards as detrimental to their comparative advantage.⁹

The economic debate embraces three arguments. Its arguments of "harmonization", "race to the bottom" and "linkages between trade and labour" are the pillars of the economic debate supporting the demand for the global imposition of international labour standards.¹⁰

⁵ See Kym Anderson 'Environmental and Labour Standards: What Role for the WTO?' in Anne O. Krueger (Ed.), *The WTO as an International Organization* (New Delhi: Oxford University Press, 2000) pp. 234-235.

⁶ Eddy Lee, 'Globalisation and Labour Standards: A review of issues', *International Labour Review* Vol.136, No. 2, Summer 1997 (Geneva: International Labour Office, 1997) p. 175

⁷ T.N Srinivasan, *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998). p.72

⁸ Lee, n. 6, p. 177.

⁹ Ibid., p. 177.

¹⁰ Ibid., pp. 179 & 183.

Many scholars and free trade supporters have challenged these economic arguments.¹¹

^{12&13}The result has been an animated debate.

However, it is difficult to accept or reject the plethora of arguments floated by the opposing camps. In part, this is because of the lack of foolproof evidence in the form of statistical and empirical data. It is clear that the issue of imposing international labour standards is a controversial theme. It become apparent that barring the growing global acceptance of the “core” ILO labour standards there are no other area where the two camps see eye to eye.

To establish whether a case of upgrading international labour standards exists the third chapter examined the validity of the concerns underlying the demand. A survey discovers that three basic concerns have been identified by a number of scholars. Although the terminology varies the basic concerns are rooted in the perceived impact of unbridled globalization on labour welfare. The three underlying concerns are: -

- "Competitive concerns"
- "International spillover" concerns¹⁴ and
- Human Rights concerns.

¹¹ See Drusilla K. Brown, Alan V Deardoff, and Robert Stern, 'International Labour Standards and Trade: A Theoretical Analysis' Jagdish N. Bhagwati and Robert E. Hudec (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 1: Economic Analysis*, (Cambridge: M.I.T. Press, 1996).

¹² Jagdish N. Bhagwati and Robert E. Hudec (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*, (Cambridge: M.I.T. Press, 1996).

¹³ T.N. Srinivasan, *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998).

¹⁴ Kym Anderson, n.5, p. 232.

A cursory glance at these concerns leads us to believe that a strong case exist for raising internationally agreed upon labour standards. The competitive concerns expressed by the higher standards countries are supported by, theoretical studies. The studies reveal that the “competitiveness” of lower standard countries adversely affects the maintenance of standards in developed countries.¹⁵ A careful scrutiny reveals crack in the arguments as there exists little quantitative evidence to support the claim however theoretical analysis supports their claims. The “international spillover” arguments for raising international labour standards is seriously weakened by arguments of scholars like Paul Krugman, who reason that the volume of trade is too small to have any significant impact. Others hold the skill-biased technological change as a probable factor that has negatively affected the wage of low skilled workers.¹⁶

The strongest case for raising international labour standards emerges in the garb of the human rights arguments. All the “core” ILO labour standards fulfill the five requirements (as identified by L. J. Macfarlane) of human rights. That is they fulfill the criterion of universality, paramountcy, individuality, practicability and enforceability¹⁷. It should be borne in mind that not all the ILO standards fulfil each requirement to an identical degree. Some like equality of pay and non-discrimination plainly fulfil the criterion of individuality while the right to freedom of association and collective bargaining carry shade of collectivity. The second set of criterion to identify human rights however is the

¹⁵ See Dani Rodrik, *Has Globalization Gone too Far?* (Washington DC: Institute for International Economic, 1997)

¹⁶ Ibid.

¹⁷ See L.J Macfarlane, *The Theory and Practice of Human Rights* (London: Maurice Temple Smith, 1985) for more on the five requirements.

strongest defense that labour standards are akin to universalized human rights and hence should be upheld at all levels of society and be pursued in all human activity. According to this line of reasoning human rights are rooted in a community's own conception of human worth and dignity, community recognition and acceptance.¹⁸ The “core” ILO standards easily fulfil this benchmark of rights.

Thus this study affirms the belief that labour standards are akin to human rights. This strengthens the *raison d'être* for improving the condition of workers.

Given that there is a case for raising international labour standards and recognizing that proclamations are not enough this work then examines the policy options and practical ways and means to give effect to the globally recognized labour standards. The study reveals that the proposed social clause is not the magic potion it appears to be. This is because of three reasons. At the first level it is an ineffective tool. Studies reveal that economic sanctions have a low success rate and their impact is modest. Two separate studies by R. A. Pape (1997) and T.C. Morgan V.L. Schwebach (1997) uphold this stand. At the second level they cause human suffering as a byproduct. Stephen P. Mark and .A. Jordan (1999) suggest that the human suffering cannot be justified by the “greater good”.¹⁹ Finally the social clause so far as it is an economic sanction is more likely than not to perpetuate human rights violations. Committee on Economic, Social and Cultural Rights

¹⁸ See Arjun Sengupta, 'Realizing the Right to Development', *Development and Change*, Volume 31 (2000) (Oxford: Blackwell Publishers, 2000) for a discussion.

¹⁹ See Stephen P Marks, 'Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives' *American Journal of Public Health* October 1999, Volume 89, No. 10 (USA: 1999) p.1509. for more discussion.

ECOSOC among others has corroborated this standpoint. The study thus rejects the social clause as a policy option.

It examines other alternatives such as higher economic growth, private voluntary initiatives including social labelling, investor initiatives, income transfers and the option of citizens of developed nations urging their governments to lift restrictions on the immigration of workers from low standard countries to higher standard countries.^{20 &21}

However the study found that the alternative of higher economic growth is also difficult to subscribe to given that the so-called trickle down effect has rarely if ever occurred till date and in case of non democratic regimes mere growth is unlikely to result in improved labour rights. Although private sector initiative of product labelling, screening funds and shareholder initiatives have had limited success they suffer from many shortcomings. These have been identified as lack of standardization in the labour criteria used and choice of targets of social change appear to be based on highly subjective judgments among others.

Following the ILO study we can conclude that social labelling programmes may prove more effective and more equitable when combined with other programmes to form a comprehensive, transparent and reliable social policy.

²⁰ See T.N. Srinivasan, n.7.

²¹ ILO, *Private Initiatives and Labour Standards: A Global Look* at <http://www.unglobalcompact.org/gc/unweb.nsf/content/ilostuy.htm>

The study applies Karel Vasak's theoretical framework to decipher whether international labour standards can be translated into legal realities. Applying Vasak's theoretical framework to the labour standard issue it is seen that the existing global structure does not offer a conducive environment for converting proclamations into legal reality. Although it fulfills the first requirement that rights must be proclaimed by a free state where people enjoy self-determination and the rule of law prevails; the other two- a specific legal framework must exist within the state and that right holders must possess specific legal guarantees and recourse must be provided- are not satisfied.²²

Following this theoretical framework it appears that to convert proclamations into legal reality the international community must develop a specific legal system and give workers all over the world the means to access redressal in the wake of a violation.

This research also exposed the similarity of the mandate of the ILO and the WTO- "raising standards of living by improving the utilization of resources".²³ This stresses the need for joint action in the battle to raise international labour standards. A reformed ILO supported by the WTO conducting surveillance through the Trade Policy Review Mechanism has been proposed.²⁴

²² Philip Alston, (Ed.), Revised English Edition Karel Vasak General Editor *The International Dimension of Human Rights* (Paris: UNESCO, 1982) p.4.

²³ Peter Prove, 'Human Rights at the World Trade Organization?...' in Malini Mehra, (Ed) *Human Rights and Economic Globalization: Directions for the WTO*. (Sweden: Global Publication Foundation, 1999)

²⁴ Steve Charnovitz, 'Promoting Higher Labour Standards', *The Washington Quarterly* Volume 18, Number 3 (USA: The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 1995)

The fifth chapter examined the impact of proposed labour standards on trade and on human rights. Research reveals that no consensus exists regarding the links between international competitiveness and trade performance of countries. Three broad standpoints are detected. First, raised labour standards will have no impact on trade. This stand is epitomized by the OECD 1996 study²⁵. Second, they will improve the terms of trade for the country with better labour standards. Such a view is upheld by the theoretical analysis offered by Drusilla K. Brown, Alan V. Deardoff and Robert Stern.²⁶ Lastly, some studies hold that imposition of international labour standards will negatively affect trade performance of the developing world. The empirical study by Jai S. Mah uncovered the negative impact of ratification on the export performance of developing and least developed countries.²⁷

Nevertheless, in a way long term non-observance of core labour standards are likely to affect the economic efficiency and hence export performance of a country. For instance, the exploitative practices of child labour, forced labour, discrimination in the work place are likely to perpetuate economically inefficient systems in an economy. These exploitative labour practices are likely to hinder the development of human capital and thus in the long term affects economic development.²⁸

This research also uncovered that all labour standards do not have identical impacts on trade. Ratification of some labour standards affect trade more than others For instance, the

²⁵ OECD, Letter, Vol.5/6, July 1996, <http://www.carleton.ca/~imackcnz/oced.htm>

²⁶ Drusilla K. Brown, Alan V Deardoff, and Robert Stern, n.11.

²⁷ See Jai S Mah, 'Core Labour Standards and Export Performance in Developing Countries', *The World Economy*, Volume 20, No.6 September 1997. (Oxford: Blackwell Publishers Ltd., 1997) for complete study

²⁸ Raymond Torres, 'Labour Standards and Trade', *The OECD Observer*. No. 202 Oct-Nov 1996. p.11.

ratification of the ILO Convention related to freedom of association has the most palpable affect on the international competitiveness of the labour intensive nations and standards on forced labour have no affect. In addition, it is clear that the affect of ratification of ILO conventions varies from country to country depending on their level of development. Developing and the least developed countries are more affected than developed nations.²⁹

Observing the issue of impact of labour standards on rights from the vantage point of the “Holistic Approach to Human Rights” and the “Right to Development Approach to Human Rights” it is revealed that mere imposition of the international labour standards will not be successful in reducing or eliminating social injustice. Given the interrelated and interdependent nature of human rights, a single level approach to raising a desired right is unlikely to succeed. Although a particular labour standard may appear to be most relevant to the target other rights are of equal. A multi level approach is need for achieving desired results.

Nonetheless, past experience reveals a positive affect of international labour standards on human rights. For instance a number of countries that ratified the core ILO Conventions have successfully incorporated them into state legislation. But the precise implications are difficult to gauge.

²⁹ Ibid. , Pp781-783.

6.2 Concluding Remarks.

A case for imposing international labour standards exists. The case is borne out of the human rights argument. Unquestionably labour standards are akin to human rights. The justification-that it is a human rights- puts a moral imperative on the international community to find ways and means to promote labour standards.

The social clause is of little use for this purpose and all indicators point towards more hardship for labour and disruption of free trade if adopted. Alternatives such as private initiatives appear to be a mixed bag. Experiences of private initiatives in raising environmental standards reveal many pitfalls. Yet they avoid the shortcoming of the social clause. Non-trade based initiatives may prove more effective and more equitable than the social clause. Especially when programmes are combined with other programmes to form a comprehensive, transparent and reliable social policy. Thus a multi level approach is needed. Where one initiative suffers from a shortcoming, it should be coupled with another to complement it.

Further, this work rejects the idea that the responsibility for raising internationally recognized workers' rights has to be an issue of 'either-or'. The responsibility can be shared. The ILO can take complete responsibility for defining labour rights through conventions and recommendations. The ILO and the WTO through international monitoring and supervision can share responsibility. This observation should not be read as an endorsement of a "trade based" policy response. There is no doubt that trade based

responses such as the social clause is another term for economic sanctions or trade embargos. And such a response is completely unacceptable.

One of the main arguments of the labour intensive developing countries is that imposition of labour standards will adversely affect their comparative advantage. This would minimize their international competitiveness. Surprisingly however there is no conclusive evidence supporting this fear. A better understanding is needed of how international competitiveness and trade performance is linked with compliance with internationally recognized core labour standards.

In contrast, the picture on possible impact of labour standards on rights is less ambiguous. Mere imposition of labour standards is unlikely to eliminate exploitation, discrimination and other exploitative labour practices. Labour standards have to be supplemented by other rights for them to achieve the desired result.

Bibliography.

Books

Aghion, Philippe and Williamson, Jeffrey G., *Growth, Inequality and Globalization: Theory, History and Policy* (Cambridge: Cambridge University Press, 2000)

Alston, Philip (Ed.), Revised English Edition Karel Vasak General Editor, *The International Dimension of Human Rights* (Paris: UNESCO, 1982)

Balasubramanyam, V. N. (ed.), *Jagdish Bhagwati: Writings on International Economics* (Delhi: Oxford University Press, 1997).

Bhagwati, Jagdish N and Hudec, Robert E (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 1: Economic Analysis*, (Cambridge: M.I.T. Press, 1996).

Bhagwati, Jagdish N and Hudec, Robert E (ed.), *Fair Trade and Harmonization: Pre requisite for Free Trade? Volume 2: Legal Analysis*, (Cambridge: M.I.T. Press, 1996).

Biggs, Margaret A., *The Challenge: Adjust or Protect?* (Ottawa: The North South Institute, 1980)

Cranston, Maurice, *What are Human Rights?* (London: The Bodley Head, 1973)

Crome, John, *Reshaping the World Trading System: A History of the Uruguay Round* (The Hague: Kluwer Law International, 1999)

Donnelly, Jack, *Universal Human Rights in Theory and Practice* (USA: Cornell University Press, 1989)

Das, Bhagirath Lal, *The World Trade Organization Agreements: Deficiencies, Imbalances and Required Changes* (Penang: Third World Network, 1998)

Dijek, Pituo van and Faber, Gerrit (Ed.) *Challenges to the New World Trade Organization* (Amsterdam: Kluwer Law International, 1996)

Ehrenberg, Ronald G. (Ed.) *Labour Markets and Integrating National Economies* (Washington D.C.: The Brooking Institution, 1994)

Herzenberg, Stephen, Perez-Lopez, Jorge and Tucker, Sturat (Ed.), *Labour Standards and Development in the Global Economy* (Washington D.C.: US Dept. of Labour, Bureau of International Affairs, 1990)

John, J. and Chenoy, Anuradha M. (ed.), *Labour Environment and Globalisation* (New Delhi: New Age International (P) Ltd., 1996).

Krueger, Anne O. (Ed.), *The WTO as an International Organization* (New Delhi: Oxford University Press, 2000)

Krugman, Paul R. and Obstfeld, Maurice, *International Economics: Theory and Policy* (USA: Harper Collins Publishers Inc., 1991)

Lechner, Frank J. and Boli, John, *The Globalization Reader* (Oxford: Blackwell Publisher, 2000)

Lee, Eddy (Ed.), *Export Processing Zones and Industrial Employment in Asia: Papers and Proceedings of a Technical Workshop* (Singapore: International Labour Office, 1984)

Macfarlane, L.J., *The Theory and Practice of Human Rights* (London: Maurice Temple Smith, 1985)

Mehra, Malini (Ed.), *Human Rights and Economic Globalization: Directions for the WTO* (Sweden: Global Publication Foundation, 1999)

Plant, Roger, *Labour Standards and Structural Adjustments* (Geneva: International Labour Office, 1994)

Rodrik, Dani, *Has Globalization Gone too Far?* (Washington DC: Institute for International Economic, 1997)

Srinivasan, T.N., *Developing Countries and the Multilateral Trading Systems: From GATT to the Uruguay Round and the Future* (Delhi: Oxford University Press, 1998).

Vaidyanathan, N., *International Labour Standards: For Social Justice and Development of Labour* (New Delhi: Deep and Deep Publications, 1992).

Articles

Alston, Philip, 'Making Space for New Human Rights: The Case of the Right to Development' *Harvard Human Rights Yearbook Volume 1*. 1988.

Basu, Kaushik, 'Child Labour: Causes, Consequences and Cure with Remarks on International Labour Standards', *Journal of Economic Literature* September 1999 Volume xxxvii No.3 (Nashville: American Economic Review, 1999).

Basu, Kaushik, 'The Poor Need Child Labour', *New York Times*, November 1994.

Bhagwati, Jagdish 'Letters to the Editor', *Foreign Affairs* Volume 79 No. 3 May-June 2000 (USA: Council on Foreign Relations, 2000)

Castle, Robert, Chaudhuri, DP, Nyland, Chris and Nguyen, Trang, 'Labour Clauses, The World Trade Organization and Child Labour in India', *The Indian Journal of Labour Economics*, Vol.40, No.1, 1997 (New Delhi: Indian Society of Labour Economics, 1997) pp.51-65.

Charnovitz, Steve, 'Promoting Higher Labour Standards', *The Washington Quarterly* Volume 18, Number 3 (USA: The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 1995) pp. 167-190.

Charnovitz, Steve, 'The Influence of International Labour Standards on the World Trading Regimes' *International Labour Review* 126 September-October 1987 <http://www.geocities.com/charnovitz/ILO.htm>

Charnovitz, Steve, 'The International Labour Organization in its Second Century,' *Max Planck Yearbook of United Nations Law* (Kluwer Law International, 2000).at <http://www.geocities.com/charnovitz/planck.htm>

Chaudhuri, D.P., 'Basic Human Rights, Core Labour Standards and Relative Educational Deprivation of Youth in India', *The Indian Journal of Labour Economics* Vol. 42, No. 1, 1999(New Delhi: Indian Society of Labour Economics, 1999)

Deshpande, L.K, 'Labour Standards and Structural Adjustment', *The Indian Journal of Labour Economics*, Vol.42, No.1, 1999. (New Delhi: Indian Society of Labour Economics, 1999) pp. 59-69.

Donahue, Thomas R, 'Letters to the Editor', *Foreign Affairs* Volume 79 No. 3 May-June 2000 (USA: Council on Foreign Relations, 2000)

Dunkley, Graham, 'Belaboured Playing Fields, Labour Standards, Globalisation and New World Orders', <http://www.arts.monash.edu.au/ausapec/citer23.htm> (1996)

Dunning, Harold, 'The origins of Convention No.87on freedom of association and the right to organise', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).

Harrison, Anna and Leamer, Edward, 'Labour Markets in Developing Countries: An Agenda for Research' *Journal of Labour Economics*, Volume 15, No. 3, Part 2, July 1997, Sponsored by the World Bank (Chicago: The University of Chicago Press in Association with the Economic Research Centre /NORC, 1997).

Heggade, Odeyar D. 'International Labour Standards and India: The Case of Women Labour' *The Indian Journal of Labour Economics* Vol. 41, Conference Issue, 1998(New Delhi: Indian Society of Labour Economics, 1998)

Human Rights Watch, 'Chapter IV: Work' *Indivisible Human Rights* (New York: Human Rights Watch, 1992)

ILO, 'Introduction', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).

ILO, 'Globalization and Labour: New Universal Ground Rules Needed', *World of Work ILO*, No.20 June (Geneva: International Labour Office, 1997).

Islam, Rizwanul, 'Economic Reforms, Employment and Labour Market in South Asia' *The Indian Journal of Labour Economics* Vol. 39, No.3, 1996 (New Delhi: Indian Society of Labour Economics, 1996)

Kellerson, Hilary, 'The ILO Declaration of 1998 on fundamental principles and rights: A challenge for the future', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).

Lee, Eddy, 'Globalisation and Labour Standards: A review of issues', *International Labour Review*, Volume 136, No. 2 Summer 1997 (Geneva: International Labour Office, 1997) pp. 173-189.

Lee, Eddy, 'Globalization and employment: Is anxiety justified?' *International Labour Review*, Volume 135 1996, Number 5 (Geneva: International Labour Office, 1996) pp 485-497.

Mah, Jai S., 'Core Labour Standards and Export Performance in Developing Countries', *The World Economy*, Volume 20, No.6 September 1997. (Oxford: Blackwell Publishers Ltd., 1997) pp.773-785.

Marks, Stephen P., 'The Human Rights Framework for Development: Five Approaches', Francois- Xavier Bagnoud Center for Health and Human Rights at Harvard School Public Health. Boston, 2000

Marks, Stephen P., 'Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives' *American Journal of Public Health*, October 1999, Volume 89, No. 10 (USA:, 1999)

Mazur, Jay, 'Labour's New Internationalism', *Foreign Affairs* Volume 79, Number: 1, Jan/Feb 2000 (New York: Council on Foreign Relations Inc., 2000) pp.79-93.

Mitra, Partha Pratim and Kaushal, Agrim, 'International Labour Standards in India: Some Key Issues' *The Indian Journal of Labour Economics* Vol. 41, No.4, October-December 1998 Conference Issue (New Delhi: Indian Society of Labour Economics, 1998)

MSc Public Sector Management-The World Economy,
<http://econserv2.bess.tcd.ie/amthews/IMI/Powerpoint/Lectures5/sld005.htm>

Murthy, K.S. Dakshina, 'India calls for Rejection of New Issues in WTO Agenda', *Hindustan Times*, August 18, 1999, <http://www.globalpolicy.org>

Nath, G.B., 'Linking International Labour Standards with Trade: Implications for India', *The Indian Journal of Labour Economics* Vol. 41, No.4, October-December 1998 Conference Issue (New Delhi: Indian Society of Labour Economics, 1998)

Osmani, Siddiqur Rahman, 'Human Rights to Food, Health and Education', UNDP *Journal of Human Development*, Volume 1, No.2, 2000 (USA: Carfax Publishing, 2000) pp.273-274.

Potobsky, Geraldo von, 'Freedom of association: The impact of Convention NO. 87 and ILO action', *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).

Ratnam, C.S. Venkata, 'International Labour Standards and India', *The Indian Journal of Labour Economics* Vol. 41, No.4, October-December 1998 Conference Issue (New Delhi: Indian Society of Labour Economics, 1998)

Sen, Amartya, 'Work and Rights', *International Labour Review*, Volume 139 2000, Number 2 (Geneva: International Labour Office, 2000)

Sengupta, Arjun, 'Realizing the Right to Development', *Development and Change* Volume 31 (2000) (Oxford: Blackwell Publishers, 2000) p. 559

Sharma, S.S.P, Swain, H.K, and Kumar, Promod, 'Labour Standards and Poverty in India: Emerging Issues', *The Indian Journal of Labour Economics* Vol. 41, No.4, October-December 1998 Conference Issue (New Delhi: Indian Society of Labour Economics, 1998)

Swepston, Lee, 'Human rights law and freedom of association: Development through ILO supervision' *International Labour Review*, Volume 137 No.2 1998, Special Issue: Labour Rights Human Rights (Geneva: International Labour Office, 1998).

Torres, Raymond, 'Labour Standards and Trade', *The OECD Observer*. No. 202 Oct-Nov 1996

Valticos, Nicolas, 'International labour standards and human rights: Approaching the year 2000', *International Labour Review*, Volume 137 1998, Number 2 (Geneva: International Labour Office, 1997)

ICFTU, 'WTO', *ICFTU Online*, Brussels, October 12 1999, <http://www.icftuc.org>

Documents.

Department of Foreign Affairs and International Trade Canada, 'Trade, Environment and Labour Standards', *Discussion Paper* Feb 2001, <http://www.dfait-maeci.gc.ca/tna-nac/social-e.asp>

ILO, 'Summary Description of ILO Equality Conventions, No. 100 & 111' [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

ILO, 'Fundamental International Labour Standards on Freedom of Association', [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

ILO, 'International Labour Standard on Forced Labour', [http://www.ilo.org/public/english/standards/norms/what are/index.htm](http://www.ilo.org/public/english/standards/norms/what%20are/index.htm).

ILO, 'International Labour Standards: How are labour standards used?' [http://www.ilo.org/public/english/standards/norms/how are/index.htm](http://www.ilo.org/public/english/standards/norms/how%20are/index.htm)

ILO, 'International Labour Standards: Why are international labour standards needed?' [http://www.ilo.org/public/english/standards/norms/why are/index.htm](http://www.ilo.org/public/english/standards/norms/why%20are/index.htm)

ILO, 'International Labour Standards', <http://www.ilo.org>.

ILO, *Private Initiatives and Labour Standards: A Global Look* at <http://www.unglobalcompact.org/gc/unweb.nsf/content/ilostuy.htm>

ILO, *ILO Declaration on Fundamental Principles and Rights at Work* Adopted by the Conference at its Eighty-sixth Session, Geneva, 18 June 1998. (Geneva: ILO, 1998)

ILO, 1997, *Governing Body Document* GB 268/WP/SDL/1/3, Extracts from Statements made at the Ministerial Conference of the WTO, Singapore 9-13 December 1996, Geneva.

ILO, *International Labour Standards: A workers' education manual* (Switzerland: ILO, 1982)

ILO, *Constitution of the ILO* (Geneva: ILO, 1919).

OECD, Letter, Vol. 5/6, July 1996, <http://www.carleton.ca/~imackcnz/oced.htm>

OECD, *Report to the Council at Ministerial Level on Trade, Employment and Labour Standards*, COM/DEELSA/TD (96) 9/FINAL, Paris, 1996 at <http://www.oecd.org>

UNDP, *Human Development Report 2000* (New Delhi: Oxford University Press, 2000)

WTO, *Singapore Ministerial Conference, Declaration Adopted on December 13, 1996* WT/MIN 96/DEC (Geneva: WTO, 1996)

WTO, *WTO: Annual Report 1999* (France: WTO, 1999)

WTO, *WTO: Annual Report 1997, Special Topic: Trade and Competition Policy* (France: WTO, 1997)

WTO, *WTO: Annual Report 1998 Special Topic: Globalization and Trade* (France: WTO, 1998)