

Introduction and Conclusion Paragraphs

Part 1: Introduction

Over the past century a number of international efforts have focused on the promotion of workers' welfare and recognized the interrelationship between labour, trade and economic development. First, preceding the establishment of the ILO, Switzerland European countries attended diplomatic conferences in Bern, Switzerland to draft bi-lateral agreements that regulated labour conditions in order to remediate the abhorrent working conditions that accompanied rapid industrialization.¹ Then, in 1919, the global community negotiated a clause in the Treaty of Versailles whereby states would endeavour to secure humane labour conditions domestically and in all countries to which their commercial and industrial relations extended.² That treaty also led to the establishment of the ILO, which asserted the importance of worker welfare as a social justice issue in its foundational constitution: "... universal and lasting peace can be established only if it is based upon social justice" and "[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."³

In 1944, as WWII drew to a close, the connection between labour, trade and economic growth merited attention at Bretton Woods, where 44 of the allied nations gathered to negotiate the post-war economic order. Here, the original vision of a three-pillar system designed to

¹ W.A. Dymond, *Core Labour Standards and the World Trade Organization: Labour's Love Lost*, Canadian Foreign Policy ISSN 1192-6422 Vol 8(3), 99-114 (Spring 2001) at 103.

² *Id.* at 104.

³ International Labour Organization, *ILO Constitution*. Available at <http://www.ilo.org/public/english/about/iloconst.htm> (accessed on Dec. 10, 2009).

facilitate economic recovery was articulated. The three pillars were the International Trade Organization (ITO), the International Monetary Fund (ITF), and the World Bank (WB). However, the ITO pillar failed to materialize, largely because of the USA's congressional disapproval of the inclusion of clauses in the Havana Charter, which aimed to regulate various activities related to economic growth, including employment standards.⁴ Nevertheless, a simultaneous conference held by the ILO in Philadelphia supported the relationship between labour and trade by producing the Philadelphia Declaration, which endorsed the economic objectives of Bretton Woods while concurrently reaffirming ILO members' commitments to labour standards.⁵

The link between labour and trade was again asserted in 1947-1948, when labour standards were central to the agenda of a UN Conference on Trade and Employment.⁶ The global community also recognized the link when it negotiated the 1947 GATT multilateral trade agreement. Although Articles I & III of the GATT enshrined free trade principles, Article XX was included to create General Exceptions to address social concerns.⁷

The dramatic changes that were to come in the decades to follow led GATT members to found the WTO in 1995; the new institution incorporated the GATT as an umbrella treaty for trade. In response, the ILO held a conference to clarify its mandate in relation to the new institution's role and objectives. Immediately following the first ministerial conference of the WTO in 1996, the ILO took further steps to reinvigorate the principles and commitments

⁴ Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 5 Chi. J. Int'l L. 625 (2005), at 628-629.

⁵ Ed Lorenz, *Bringing Law to Globalization Through the ILO Conventions: A Labor Perspective of the Core Labor Standards*, 11 MSU-DCL J. Int'l L. 101 (2002), at 106.

⁶ Virginia A. Leary, *Workers Rights and International Trade: The Social Clause*, in *Fair Trade and Harmonization*, Vol 2: Legal Analysis (Jagdish Bhagwati and Robert E. Hudec eds., Cambridge, MIT Press, 1997), at 188.

⁷ Cho, *supra* note 4, at 628-629.

pronounced in the Philadelphia Declaration, by adopting the 1998 *Declaration of Fundamental Principles of Rights at Work*.⁸

Since then, several initiatives by the U.S.A and other developed countries have sought explicit recognition of the importance of labour standards but have failed due to strenuous opposition from developing countries.⁹ The tension between developed and developing nations was evident in the WTO's rejection of a proposal to formally link labour standards and trade at the First Ministerial Conference the WTO held in Singapore after its establishment. Here, the WTO gave the following statement in response to an effort to enhance the profile of the relationship between trade and labour: all WTO members will observe core labour standards (CLS), but "[t]he International labour Organization (ILO) is the competent body to set and deal with these [core labour] standards."¹⁰ This statement effectively undermined the proposed link.

Shortly afterwards, proposals by the USA, the EU and Canada to place labour standards within the WTO jurisdiction were compromised at the third ministerial meeting of the WTO in Seattle.¹¹ The reason for this was that developing nations opposed President Bill Clinton's proposal for trade sanctions to be imposed for violations of core labour standards, which prevented the achievement of consensus regarding the WTO's role as the arbitrator of labour standards.¹²

This cursory summary of the global trade community's recent efforts to address the interconnection between labour and trade reveals uncertainty as to whether the two should be formally linked and whether the WTO is the institution which should be responsible for

⁸ Laurence Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 Vand L. Rev. 649 (2006), at 709.

⁹ Dymond, *supra* note 1, at 104.

¹⁰ Ministerial Conference of the World Trade Organization, Singapore Ministerial Declaration, adopted Dec. 13, 1996, 36 I.L.M. 218 (1997).

¹¹ Dymond, *supra* note 1, at 105.

¹² Cho, *supra* note 4, at 629.

advancing this link. The corresponding debates have therefore centred on two key questions: First, why should trade be formally linked to labour? Second, if the link should be made, should the WTO be the forum responsible for formalizing it (which essentially asks what form the linkage should take)?

This essay will address the second question and argue that the linkage should not occur within the WTO because it is not “designed, structured or suitable to operate in the way that one organization with major human rights responsibilities would.”¹³ Consequently, assigning this project to the WTO would defeat the goal of effectively enforcing global labour standards.

Part II of this essay will consider recommendations as to how the trade-labour link could be created within the existing structure of the WTO, and the rationale for *why* it should be created within the WTO. The author contends that the link may only be achieved if there are significant changes to the WTO’s constitution, structure and procedures. However, given the WTO’s general resistance to addressing labour issues, it is unlikely that such changes will be successfully pursued.

Part III examines features of the ILO that are blamed for its seeming inability to fulfil its mandate of implementing and enforcing labour rights at the global level. This examination is important because it is the ILO’s perceived inability to fulfil its purpose that has motivated segments of the global community to claim that the WTO should be tasked with the trade-labour linkage. Finally, Part IV will support the paper’s thesis by considering the specific WTO features which impede the organization’s capacity to effectively enforce labour rights. The paper will conclude that the successful advancement of the trade-labour linkage requires the creation of new forum that incorporates the expertise of the WTO and ILO.

¹³ Philip Alston, *Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann* 30 (2002) (Jean Monnet Working Paper No 12/02), available online at <http://www.jeanmonnetprogram.org/papers/021201-02.html> as cited in Cho, *supra* note 4, at 635.

Part V: Conclusion

It has been nearly a century since the global community first identified the need for a forum to advance the link between trade and labour. The need has been accentuated since that time because the relationship between trade and labour has become far more complex and the international community has assumed an increased responsibility for the welfare of workers throughout the globe. This paper has demonstrated that contrary to the viewpoint of many, the WTO is *not* the institution best suited to advancing the trade-labour link. Therein, it has provided a detailed examination of the reasons why the WTO is incapable of successfully forging the link. As the very existence of the WTO is predicated upon the advancement of trade, its structure, mandate and culture accordingly have a pro-trade bias. The WTO is essentially designed to *reinforce* the supremacy of free trade over worker rights, so by definition it cannot promote labour rights if those rights create a significant barrier to trade. It follows that the WTO cannot be expected to aspire towards the universal observance of labour standards. In fact, to take on this monumental responsibility would degrade its status within the international community.

However, the ILO likewise has a limited capacity to create an effective trade-labour link. As discussed in Part II of the paper, the ILO is plagued by a number of weaknesses, particularly an inadequate ability to apply a hard ‘stick’ when it is necessary to ensure universal compliance with labour obligations. Furthermore, like the WTO, the ILO is structurally biased to favour the interests of labour. Its mandate of advancing international labour rights therefore subordinates trade interests, which represents a conflict. If the ILO were to create the linkage without the WTO’s involvement, the linkage would be out of touch with the international system of trade

regulation. As a result, it would be unable to include the legal reforms necessary to ensure that the pursuit of workers' rights does not compromise multilateral trade considerations.¹⁴

Fortunately, the limitations of both institutions do not mean that it is impossible to forge a successful trade-labour link. To the contrary, these limitations point to the need for an entirely new forum and in so doing, are instructive in terms of what that forum should look like and what its mandate and objectives should be. Accordingly, recent literature has seriously and systematically investigated what procedural and institutional parameters would enable a forum to successfully link trade and labour;¹⁵ the vision of an inter-institutional effort is a common theme in this discourse. In essence, although neither the WTO nor the ILO is designed to effectively link trade and labour on their own, the involvement of both is critical to the successful achievement of that link. Each possesses particular expertise that is crucial to ensuring that the terms of the linkage and its implementation balance the interests of trade and labour. Furthermore, the two institutions have established relationships with the states who must be engaged in the creation of the link to ensure that they will accept the legitimacy of the link and commit to observing its terms.¹⁶

The author concludes that for the trade-labour linkage to be successful, it should be housed in a new forum that is external to the WTO and ILO but accords these two institutions permanent and integrated roles. As each has unparalleled expertise on one 'half' of the link, they should be permitted to retain a sphere of authority in the supranational governance of the trade-labour link. The linkage will most certainly demand that the ILO and WTO make some changes, but the world's current political and economic landscape demands that such changes occur. The author considers what changes are realistically possible in claiming that a collaborative effort

¹⁴ Guzman, *supra* note 49, at 888.

¹⁵ Cho, *supra* note 4, at 638.

¹⁶ Alvarez, *supra* note 87, at 148-149.

between the ILO and WTO is critical to the establishment, development and success of the new forum. To this end, the international community must build upon these international institutions while recognizing that the boundaries of these organizations are fluid, and require ongoing modifications if the dual goals of social justice and economic development are to be met.