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5 International Labor Standards

In the preceding chapters, we looked at how the workings of the market are confined by boundaries (chapter two) and how the notions of human dignity and decency might fit in these boundaries (chapters three and four). In principle, we have the tools needed to make an appraisal of the ILO's Decent Work Agenda as a moral market boundary. However, before we can commit to that specific task we still need to have a clearer picture of the ILO itself and one of the important elements of this agenda: international labor standards.

International Labor Standards is the name given to the conventions adopted by the International Labour Conference, which in turn is part of the institutional framework of the International Labour Organization. These standards, which are devised to help in securing worker rights and improving the working conditions, serve as market boundaries in their own right. They deal directly with one of the key production factors of economics, namely labor and are inherently normative because that is what standards are by definition.[102] Moreover, their entire history is set against the backdrop of the perceived dangers of the effects of intense (international) competition, i.e. the market forces. Their emergence—as well as the founding of the ILO as originator and guardian of these standards—can be seen as questioning the doux-commerce theory discussed in chapter one.

In the first section of this chapter, we take a closer look at the evolution of labor standards. Their history is not just a story of changing ideas on how labor should be regulated. Any overview of this history should take into account the changes in the labor process itself (for instance, the industrialization of labor) and overall societal and cultural changes.[103] In this, labor standards exemplify how market boundaries can be seen to change over time. The overview presented here focuses on the highlights of the evolution of labor standards, zooming in on the distinct developments regarding the standardization of labor standards and attempts at creating international consensus on the minimal demands regarding working

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[102] And because the standards concern human action and activities, we can also assert that they are normative in the moral sense of the word.

[103] For instance, Michael Mann asserts in his work *The Sources of Social Power* (1986, 1993) that the use of labor can be described as having gone through three stages of compulsion "from slavery to serfdom to "free" labor."(1986, p. 152); see also Polanyi (1944) and Zelizer (1994).

conditions. This overview is subdivided between the abolition movement and, secondly, the advancement of labor regulation. The former can justifiably be called the first internationally organized attempt to adjust labor related wrongs while the latter presents us with the antecedence of the ILO.

Section 5.2 covers the history and institutional characteristics of the International Labour Organization. This history is closely connected with the process of the internationalization of markets often described as globalization. This process presents labor standards with various issues, most of which arise from what has become known as the theory of the race-to-the-bottom. Apart from its role in shaping international labor standards, this thesis was also a driving force behind the renewed interest in international labor standards in recent times.[104] In its most basic form, the thesis states that heightened international competition as a result of increased trade (nowadays often denoted as globalization) will increase the pressure to cut labor costs and achieve greater flexibility in the production system, which will have a negative impact on the (acquired) levels of labor standards and conditions (see e.g. Lee, 1997 and Moran, 2002). This section will also cover various approaches that have been put forward to address this issue in terms of enforcement. In the third section of this chapter, we turn to the current situation of labor standards whereby the focus lies not only with the acceptance of labor standards but also the effectiveness in securing adherence. The chapter will be wrapped up with a summary.

5.1 The evolution of labor standards: a brief overview

A comprehensive overview of the emergence of labor standards in the history of humankind would fill many pages. The outline presented here is, therefore, out of necessity a mere collection of some of the more visible aspects of this history. For a more in-depth description of the history of labor standards, I refer to the publications of Engerman (2003), who provides a comprehensive overview of the introduction of labor related legislation; Mann (1993) for the social context of this history; and Braithwaite and Drahos (2000) for an account of how labor regulation became globalized. After some brief remarks on the definition and

[104] See e.g. Flanagan (2006), Held (1999); Hirst and Thompson (1999), Kabeer (2004), Kaul, Grunberg, and Stern (1999), Legrain (2002), Steger (2002) and Wolf (2004)

justification of labor standards, the remainder of this section will look at the historical evolution of labor standards.

5.1.1 Defining labor standards

In generic terms, labor standards refer to all those rules governing the manifestation of labor whether regarding the size and composition of the labor force or the circumstances under which labor is performed, i.e. working conditions. As such, labor standards are part of labor market institutions, which has a broader scope in that it comprises "<…> rules, practices and policies—whether formal or informal, written or unwritten—all of which affect how the labour market works." (Berg and Kucera, 2008, p. 11). Whereas the institutions cover the whole spectrum of anything relating to the labor market and its workings, labor standards are the official manifestations thereof.

In any discussion on labor standards, one needs to make a distinction between *de jure* and *de facto* labor standards. The former refers to the institutional arrangements regarding the conditions under which the act of work is expected to be performed and the latter to the actual conditions under which labor is performed. Needless to say that there can and often are differences between the two; a country may experience poor labor practices that do not match the labor legislation it has in place. It is also possible for an economy to have far better *de facto* labor standards than one would expect given the *de jure* labor standards it has in place. In addition, one should be aware that, although the two often go hand in hand, the nature of the causality remains unclear: it is not a given that introduction of labor standards may lead to improvement in labor outcomes (see e.g. Stern, 2003).

In the historical journey of labor standards provided in the text below, the focus is mainly geared towards *de jure* labor standards. And within this type, a further division can be made based on the intention underlying the standards, namely between those geared towards outcomes and those concerned with the process or workings of the labor market.

Outcome oriented standards mostly contain a prescription regarding specific results, such as: introducing a limit to the number of working hours or the introduction of a specific minimum wage. These can be contrasted with those standards aimed at influencing the workings of the labor market (or process) that often take on the form of rights that, once implemented, will help workers realize their own desired outcomes. Examples of this type include the right to

form a union or the right to collective bargaining. Both types of standards are important in their own right yet in the debate on international labor standards, much of the focus goes towards those dealing with outcomes e.g. those dealing with the minimum age for workers.

In his historical survey of the emergence of labor standards, Engerman (2003) notes that the justification for standards today is not dissimilar from those used in the past. In general, the arguments for standards can be divided into two categories, the moral and the practical. The latter group (which can also be denoted as the economic or strategic category) contains those arguments that appeal to the benefits of having standards, e.g. in the form of increased efficiency or overall economic growth. The underlying causality may take on different forms, for instance it can be argued that better working conditions will have beneficial results in the form of higher productivity. Another example of the practical category is the argument that prohibiting work at a young age will enable children to have an education resulting in a better educated workforce that in turn is conducive for overall economic growth.[105]

The moral arguments are usually related to the workers themselves protecting their physical but also spiritual (moral) well-being. And when it comes to moral arguments in favor of labor standards, slavery presents itself as an excellent example. Although the abolition of slavery can be viewed as an early form of the implementation of labor standards (unquestionably the earliest form of *international* labor standards), there are important differences between abolitionism and labor standards that make the interconnection less straightforward. In the case of slavery, its abolition was not so much due to the abhorrence of the working conditions but rather the condition of slavery itself. It was the idea of human beings as property, as an actual commodity, that was the primal driver (but certainly not the only) for the abolitionist movement. In the next section, we turn to this particular part of the history of labor standards, the abolition of slavery.

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[105] See also Streeck (1997) who states that is incorrect to view top-down regulation as being always disruptive to the economic process. Companies can also benefit from imposed regulatory constraints, which he calls "Beneficial Constraints X", and improve economic performance. He considers labor standards to be an example of a beneficial constraint: "Constraining, choice-limiting social obligations, like a high floor of general labour standards, may be economically beneficial because they may protect rational actors from spending time and resources on exploring sub optimal options, and force them to concentrate their efforts on making successful use of potentially more productive alternatives." (Streeck, 1997, p. 204).

5.1.2 The Abolition of Slavery

The rise of the feudal system more or less replaced the old system (e.g. of Roman origin) of slavery in Europe. The Church played a pivotal role during the eleventh century in the abolition of the so-called 'peasant slavery', by releasing slaves from their own estates. It also offered its workers on these estates better working conditions that put pressure on the feudal rulers to follow their example. However, the same period saw the emergence of colonial slavery with the start of the first crusades. During the subsequent centuries, this form of slavery developed further, e.g. through the exploitation of African labor in the new world (Braithwaite and Drahos, 2000, p. 223).

The eighteenth and nineteenth century saw a change in the attitude towards slavery that was in part induced by the increase in the utilization of slave labor itself. This change in attitude subsequently resulted in the first large scale social and above all global movement: the abolition movement. There are several identifiable reasons underpinning the emergence of this movement. There was, for instance, strong opposition which originated from the Christian tradition that saw slavery as incompatible with its teachings. Others saw the presence of slavery as an anomaly within their missionary work.[106] The fruits of the enlightenment also contributed to turning the tide against slavery especially through the works of political philosophers, such as Montesquieu. Finally, slavery was increasingly seen as an instrument with little economic value in the new economic framework that accompanied the industrial revolution: the free labor market offered much better returns for the cost of labor introducing a more efficiency driven method of production whereby variable and marginal cost played a more important role. The labor market would also allow for a more efficient allocation of the workforce between the various sectors in the economy.

[106] In 1787, the London Abolition Committee (its full name being *the Society for effecting the abolition of the slave trade*) was founded. In the years preceding the founding of this organization, there were already many instances of protest against (trans-Atlantic) slavery must notably by the Quaker community in the USA as well as in England. The one thing that set this organization apart is that its founders were from different backgrounds, i.e. nine of the twelve founders were Quakers while the remaining three were Anglicans. The reason to single out the Committee is that it became (through the connections it had with organizations in various nations with similar objectives) the first "non-sectarian transatlantic organization". The first anti-slavery Convention was organized in 1840 and held in London.

Looking back, the abolition movement has done much pioneering work in the area of activism. Examples of these innovations include petitions, the consumer boycott, and using legal means through the courts. All of these methods were used to further the cause of abolitionism and create more awareness of the injustice associated with slavery.[107]

To recapitulate, the abolition of slavery has known three different stages: first the banning of slavery in Europe followed by the suppression of the slave trade, and lastly the abolition of the right to own slaves in the colonies. To this can be added that the history of abolition was by no means a straight line with an identifiable progression from one piece of legislation to the next. An example hereof can be found in France, which during the first Republic in 1794 abolished slavery but where it was reinstated under the auspices of Napoleon Bonaparte some eight years later. And even where abolition became permanent it did not always signal the end of all forms of forced labor especially through the so-called 'master-servant' laws that would not be repealed. In practice, these laws resulted in a situation whereby laborers were tied to their employer ('master') in many different ways, mostly economic in nature. For instance, the laws allowed an employer to charge their employees a type of tax for living on their estate that could be so high that the workers were compelled to forced labor in order to pay off their debts. These laws too were abolished in most of the Western European countries at the end of the nineteenth century.[108] This, however, does not hold for the world as a whole. Despite centuries of activism and the introduction of legislation, slavery (or in its evolved form of forced labor) is still to be found (see e.g. Bales, 2004) and the ILO considers it still to be one of its core focus areas.

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[107] The opposition against slavery finally found a responsive ear. The Slave Trade Act, which made slave trading an illegal activity throughout the British Empire, was passed by parliament on March 25, 1807. The British government then tried using bilateral negotiations to bring other nations around to abolish the slave trade or at least increase its regulation. During the second half of the nineteenth century, the efforts of the British Government (but also the changes in the political landscape of Europe, especially after 1848) led to the abolition of slavery in the colonies of almost all countries. The last major Western countries that outlawed slavery were the United States of America and the Netherlands (in its colonies) where prohibition was enacted as late as 1863, some 15 years after most other European countries. (Braithwaite and Drahos, 2000, p. 224)

[108] "After being reconstituted by legislative changes many times until the nineteenth century, the law of master and servant was finally repealed in England 1875 after one of the first coordinated trade union campaigns (..) In 1877 the Dutch parliament made the same move, declaring that the use of penal sanctions in a civil dispute was contrary to the classic liberal legal principle it was eager to follow." (Braithwaite and Drahos, 2000, p. 227)

We now turn to the surfacing of labor legislation. With abolitionism, it was mostly a single issue movement with a built-in aim of being made redundant as soon as possible. Labor legislation is more a continuous process aimed at shaping the form and conditions under which labor is supposed to take place. It is continuous, as ideas on this topic tend(ed) to change over time. In addition, the emergence of labor legislation was in its earliest forms a predominantly national affair. While abolitionism was virtually an international movement from the start, the international hook for labor legislation came much later in its history.

5.1.3 The emergence of (international) labor related legislation

Most historians put the starting date for labor standards, as they are currently understood, at 1802, which is when the first attempts were made to capture and offset the social costs associated with industrialization (Engerman, 2003, p. 36). It was in 1802 that the English Factory Act was adopted, which regulated the working day (twelve hours) and secondary benefits (e.g. schooling) for apprentices.[109]

The arguments for (as well as against) labor standards have changed little if at all over the last two centuries. The early forms of labour legislation share a common characteristic in that they were designed and drawn up for those groups that did not have a voice, i.e. children and women. Child labor especially was and still is one of the main issues people tend to think about when labor standards are discussed. The existence of child labor is often presented as a result of economic circumstances or even as a result of changes in those circumstances, i.e. globalization or the transition to a market system. These assumptions are, however, incorrect in that child labor was already present; e.g. child labor was not brought into existence by the industrial revolution. As E.P. Thompson notes in his groundbreaking work *The Making of the English Working Class* (1980), child labor was an intrinsic part of the economy, agricultural and industrial, preceding the industrial revolution. This, of course, does not alter the fact that child labor has been at the forefront with the introduction of labor standards. To this may be added that the story of combating child labor is closely connected with changes in opinions and ideas on the place of children in society and childhood.[110]

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[109] This date is set somewhat arbitrarily as this was not the first act regulating labor conditions. For instance, in 1788 a bill regulated, among others, the minimum age (i.e. eight years old) for chimneysweeps. However, the English Factory Act was broader in scope and was amended in subsequent years expanding the width as well as substance.

[110] See also §1.2.5

As far as the relationship between the intentions behind the introduction of legislation and actual outcomes (the removal of children from the workforce), there are some lessons to be learned from the past. Indeed a clear example of the way labor standards emerged and how the implementation of laws sometimes took some time before actually altering day-to-day practices is to be found in the legislative history regarding child labor in the Netherlands.

In the Netherlands, the first official move towards the prohibition of child labor dates back to 1874 when it became illegal for children to work in factories. The Children's Labor Act was implemented not to abolish but to restrict child labor and to curb the worst forms of child labor in mines, factories, and other workshops. As it turned out, the law was widely ignored, i.e. violated.[111] It was only with the introduction of compulsory education in 1901 that child labor in all its forms became truly illegal (de Regt, 2004). The Dutch example highlights several of the arguments against the imposition of labor standards that were and still are found across the globe. We see the resistance against primary legislation from employers as well as affected families but also an initial lack of commitment from the government to enforce actual adherence. One key difference with these past stories on the issue of child labor as well as other topics for labor legislation and the way we approach these issues today is that they were primarily treated and dealt with within the realm of the nation state. It was with the rise of cross border trade and the transnational outlook of social movements that addressing labor issues became increasingly more international.

Without doubt, it has been the ILO—ever since its inception in the wake of World War I—that has contributed most to globalizing labor rights over the last century. Although nearly all international conventions on labor conditions originate from the ILO, some pre-date the institution. Before the World War I, two international treaties on the topic of working conditions were signed, one covering the employment of women during the night and one on work with white phosphorous in the manufacturing of matches. Both were adopted in 1906 following two conventions held in Bern (1905) and in Berlin (1906) that were both organized by the International Association of Labour Legislation. This association, founded in Paris in

[111] In her article on this topic, Ali de Regt notes that "Employers thought they had to have this kind of cheap labor, while parents who needed their children's wages viewed the law as an attack on their parental rights."(de Regt, 2004, p. 373).

1900, and considered to be the forerunner of the ILO, was not an organization of governments but consisted of representatives from various national associations that had been campaigning for international action in the field of labor legislation. The first International Labour Office connected with this organization was opened in Basel on May 1, 1901.[112]

5.2 The International Labour Organization

Between its inception and 1919, the International Labour Office had organized various conferences on the topic of harmonizing labor laws and presided over the adaptation of the two aforementioned international conventions. With all these activities, this voluntary organization had laid the ground works upon which the ILO was to be launched. (Ellis, 1928, pp. 211-213)

5.2.1 Inception and History

The International Labour Organization was founded during the peace talks at Versailles in 1919 in the slipstream of the newly formed League of Nations. Two motives accompanied the establishment of this organization. On the one hand, it was a kind of reward for the workers who had contributed to the War effort. Secondly, it was a conscious attempt to protect capitalism against the threat of communism and bolshevism.

The latter motive, arguably the more dominant one, was thought to work in two ways. First, it was thought that to 'give' the workers their own international organization would keep labor movements in check. Second, this new organization would prevent nations from igniting a race-to-the-bottom with regard to labor standards and thereby playing right into the hands of the communists (Braithwaite and Drahos, 2000, p. 232/233). From this alone, it is clear that one of the reasons for founding the International Labour Organization was to be able to take action on an international level towards safeguarding (and where necessary improving) the labor conditions around the world. This idea was thought to be so essential that it was even incorporated in the preamble of its constitution: "Whereas universal and lasting peace can be

[112] Although the overview of the emergence of the ILO provided here aims to be concise one further name needs to be included, namely that of Daniel Le Grand (1783–1859); he is considered to be the principal originator of the idea of international labor legislation. He repeatedly appealed to various European governments for joint agreement on labor legislation, which he considered to be a necessary tool in order to eliminate and prohibit 'merciless competition' (ILO 1998, p. 3). Also any in-depth study would have to include organizations, such as the International Benevolent Congress of 1856/7 and the international factory and mine labor conference, better known as the Berlin Conference of 1890 that was the first occasion where governments assembled to discuss labor standards. (ILO 1998, p. 4)

established only if it is based upon social justice; and whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled...; Whereas also 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;" (International Labour Organisation, 1919, 2008).

A striking aspect of the preamble is that it clearly indicates that, even at that time, the problem of defection was acknowledged. Countries that are unable or unwilling to adhere to humane labor conditions will form an obstacle for other countries that are willing to comply.

Transnational labor legislation is considered to be politically sensitive today as much as in the early days of the ILO. Indeed its founding was surrounded by opposing views on topics ranging from the substance (i.e. what type of labor laws) to the processes by which the ILO should proceed. One of the issues that were subject to intense debate was the matter of how the new organization would go about enforcing labor standards. The position of the US, voiced by the founder/president of the US Federation of Labor, Samual Gompers, was that "moral suasion and reasoning" should be the preferred method to bring less advanced nations up to speed regarding labor standards. European countries, on the other hand, were more inclined towards to idea of compulsion and enforcing conformity to "an elaborate system of minimum wages, hours of labor, and insurance schemes." (New York Times, 1919). In the end, an agreement was reached that dictating standards to developing nations might prove to be counterproductive by alienating the support of those countries where standards were in fact the lowest.

The ambition of the ILO was to make the impact of the new international institution structural and lasting: "the international idea is not 'a kind of watery friendship' without profit or hope of endurance, but a practical 'movement for the ordered improvement of the lot of mankind." (Deputy-Director of the Labour Office Butler cited in Sumner, 1921a). And through its work on creating international labor standards, the organization has succeeded in making this lasting impact.

Structure

The organizational structure of the ILO marks its salient feature, namely that of consensus building. The basic principle is that of the tripartite system whereby workers, employers, and governments all have a seat at the conference table. The conference table refers to one of the three bodies that comprise the ILO, namely the International Labour Conference (the other two being the Governing Body and the Office of the ILO). The Conference is held annually and offers a platform to the representatives of the member states to discuss social and labor related issues. The delegation of each member state consists of two representatives of the government as well as one delegate of the employers and workers, respectively. It is at the annual Conference that ILO's international labor standards are created and adopted. Members are then asked to ratify these standards so that they will become codified by their own national labor laws.

Although the tripartite system guaranteed the inclusion of representatives of unions and, therefore, labor itself, the infighting between the various unions led one commenter to remark: "There are too many Trade Unions and too little Trade Unionism." (Barnes cited in Sumner, 1921a). This may not be the case nowadays but the impact of striving for complete unison among all the constituents does have its drawbacks. This issue not only arises between the three groups but also between the different member states. When it comes down to formulating international agreements, the smallest common divisor is more often than not the leading indicator. This practice has increased considerably with the accession of developing countries. This practice becomes particularly evident when reviewing the language used in ILO documents. Expressions like "adequate measures" and "appropriate protection" are often used without a clear definition (Braithwaite and Drahos, 2000, p. 234).

5.2.2 Devising Standards

The aim of creating international standards guiding economic processes introduces the question of whether immediate universal application is appropriate. Even if the substance of most standards is deemed universally acceptable, their implementation may be faced with certain hurdles. This is especially so for countries with less than perfect institutional arrangements or lacking the appropriate organizational resources to embed the standards in the local labor market.

In the first section of this chapter, a division was introduced between standards that aim to generate specific outcomes and those that target the workings or process of the labor market. A further distinction can be made that is related to the stringency of implementation of the standards; it is thus not so much targeted at the standards themselves but rather covers the issue of implementation. Here, we can differentiate between standards that are aspirational in character and those aimed at establishing minimums. To clarify this distinction, we can look at the way it emerges in the already discussed Universal Declaration of Human Rights (see 3.2.3). Most of the rights (the civil and political rights) contained therein are considered to be minimums and should be followed. They are devised in order to create a level of individual protection that should be enjoyed by all, a bottom below which no human person should ever be allowed to fall.

This can be contrasted with the economic, social, and cultural rights listed in the UDHR of which it explicitly states that adherence is to be expected 'in accordance with the organization and resources of each state' (Article 22). No demand is made for full compliance but countries are expected to ensure the 'progressive realization' of these rights (see Biermans, 2005; Donnelly, 2003; Shue, 1996). Compliance is something we should aspire to but immediate adherence is not a prerequisite and is made dependent on the context (mostly the level of economic development) wherein these rights are supposed to come into being. In the case of international labor standards we can find similar distinctions made, in that the temporal aspect of compliance comes into play.

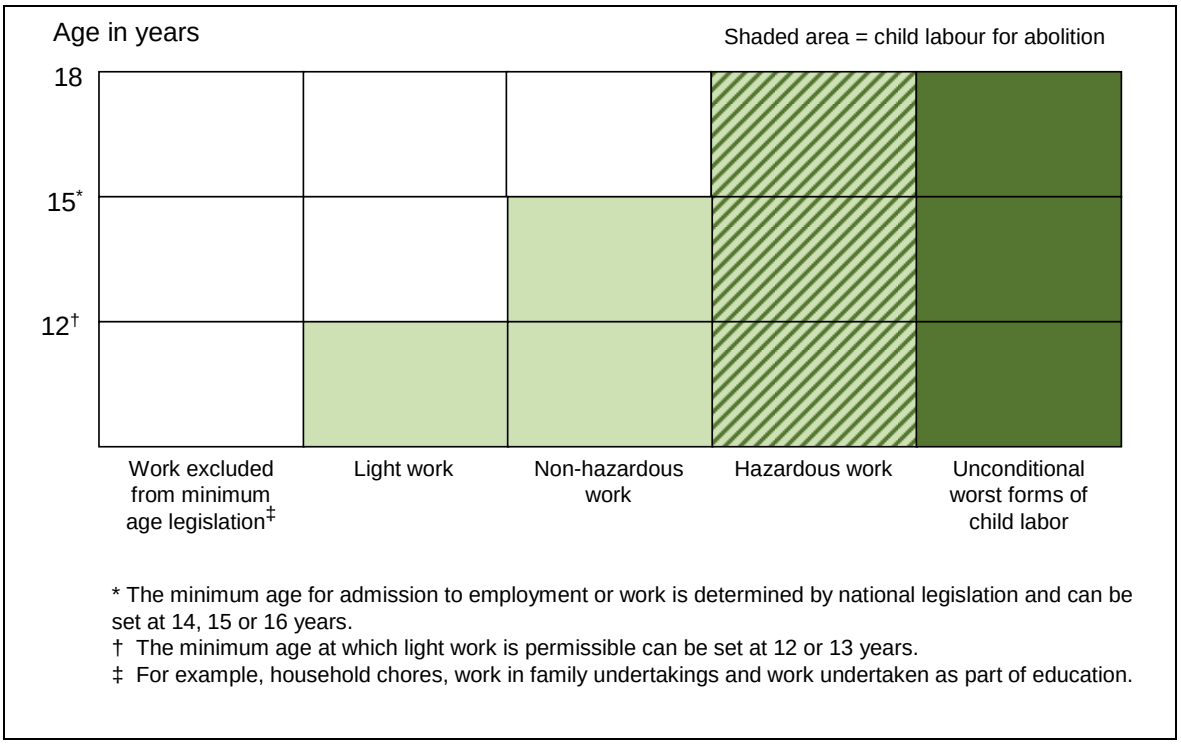
Many of the standards developed by the ILO can rightfully be described as being aimed at creating universal minimums. However, there are also instances where the ILO has incorporated a more dynamic approach to standard setting wherein a certain degree of aspiration is introduced. This, however, is done without recourse to the language found in the UDHR but rather by differentiating between various standards based on timing and thereby stating which minimum standards are thought to be applicable immediately and which (other) standards should follow suit. An example of this approach can be found in the various conventions related to the issue of child labor. These conventions show how the ILO uses absolute minimums (stating what is expected from all member countries without avail) in combination with the formulation of ultimate aims.

In its publication *A future without child labour*, the ILO (2002a) makes a distinction between children who are economically active and child labor. The distinction is in part the result of the ambition to quantify the situation of child labor: "To be counted as economically active, a child must have worked for at least one hour on any day during a seven-day reference period. "Economically active" children is a statistical, rather than a legal, definition. It is **not** the same as the "child labor" that is referred to with regard to abolition." (ILO, 2002a, p. 15). Child labor is a collection of the collection "economically active" children and it is child labor and its abolition that is high on the ILO's agenda (see also Figure 5–1 below).

The aims of the ILO in combating child labor can be viewed as being defined by three binary issues. The first has to do with the question of whether a child is too young for the type of work that is under review (i.e. "under the minimum age specified for that kind of work"). Secondly, there is the issue of whether or not the work can be described as being 'hazardous'. Finally, there is a category for work that is deemed to be "Unconditional worst forms of child labour". Under this heading falls all work that is not subject to any debate or consideration (that may be found in the other classes) and should not be done by children under any circumstance; child pornography or prostitution are clear examples.

Overall this approach shows how the ILO combines the strictness of rules (in the form of standards) with the accommodation to economic, social, and cultural circumstances. Figure 5–1 is a graphic representation of the ILO's approach to the issue of child labor. Note that the darker the color the more immediate the demands on abolition are; the white areas are deemed to be admissible yet part of the group of "economically active" children.

Figure 5–1 Basic distinctions in ILO child labor standards



Source: ILO (2002a, p. 10)

Enforcement of International Labor Standards

Forging international standards by way of consensus among different groups from different countries is not a simple task and enforcement of the standards once adopted has turned out to be no less difficult. That the issue of enforcement was going to be tough was already clear in the early days of the ILO: "The Treaty lays down an elaborate procedure to be followed against defaulting Members, culminating in the employment of the "economic weapon," but this, difficult and insecure in itself as it is, appears in so guarded and optional a form that but little utility can be claimed for it." (Sumner, 1921b, p. 85).

When it comes to enforcement, the primary actors are national governments who do not only function as legislators of the rights encapsulated in the standards but also as enforcers of the associated laws. The current practice regarding enforcement at the ILO follows a specific procedure. When violations of labor standards are detected, the ILO will first talk to the relevant government. Recalcitrant governments are then subjected to a public reprimand and are called upon to mend their ways and carry out the necessary actions. The effect of 'naming and shaming' does have its limits. Weisband (2000, p. 652) finds that repeated warnings lose their power or effectiveness. When a reprimand does not result in the desired adjustments, the

ILO will in some cases send in a team to conduct field research, which will be used to assess whether (successful) changes have taken place. Research into this particular approach of enforcing labor standards revealed that it was more effective in more advanced countries as opposed to less developed countries (Braithwaite and Drahos, 2000, p. 238).

From this, one could infer that the key aspect of the ILO's ability to secure adherence is the desire of its member states to be respectable members of the international community. Once this desire diminishes there is not much the ILO can do. Over the years various approaches have been proposed to secure adherence to international labor standards especially in light of increased international interdependence, a.k.a. globalization. In the next section, we take a closer look at some of these approaches and initiatives in this particular setting.

5.2.3 The Race to the Bottom

In the text above, it was noted that one of the key issues facing international coordination has to do with the impacts of defection of one country to adhere to labor standards. This problem of defection, increasing the competitive advantage of a country via a loosening of labor laws, is (not unlike the introduction of these laws) quite old. Engerman (2003, p. 71, n10) makes mention of the Swiss banker (and later finance minister of Louis the XVI) Jacques Necker who in his 1788 treatise *De l'importance des opinions religieuses* touched upon the idea of gaining a competitive advantage, albeit only temporarily through the abolishment of Sunday as a day for rest: "Were a barbarous ambition to abolish in one state the Sabbath, the abolition would probably procure it a degree of superiority, if it was the only one that adopted such a change; but as soon as others followed their example, the advantage would disappear." (Necker, 1788, p. 204). This insight was clearly resonated in the preamble of the ILO (§5.2.1) but can also be found in contemporary debates on the consequences of globalization.

The 1990s saw a renewed interest and attention for international labor standards. In his study on labor standards and globalization, Lee (1997) attributes this rise in interest to three developments: an ideological change in favor of a neoliberal approach to public management, the decline in labor standards due to the fall of communism (the threat of a workers revolt having subsided) and globalization. The central idea behind the harmonizing of business regulations is to create a certain degree of fairness and a level playing field. This is particularly the case with policies and issues that have a clear normative dimension, as is the case with labor standards and environmental regulations. Indeed, it could be argued that there is no

compelling reason why international trade would follow a different set of rules than those guiding the way other economic activities are carried out. Dani Rodrik in his work on globalization takes his cue from this to conclude that: "Much of the discussion surrounding the 'new' issues in trade policy—that is, labour standards, environment, competition policy, corruption—can be cast in this light of procedural fairness" (Rodrik, 1997, p. 11; also cited in Lee, 1997). With 'procedural fairness', Rodrik refers to the evaluation of how a particular outcome is generated, i.e. the underlying process. And this is an important aspect especially seen in light of Rodrik's assertion that "most people attach values to processes as well as outcomes." (1997, p. 5; also cited in Lee, 1997).

This contemporary debate on globalization has brought about a large body of literature on its emergence, nature, processes, and manifestations. This includes historical overviews and new additional research in what is now commonly known as the first wave of globalization: the period between 1870 and 1914 (see e.g. Bordo, Eichengreen, and Irwin, 1999; Held, 1999; Hirst and Thompson, 1999). Although there are many similarities between this first wave of globalization and its successor (of which the starting date is still in dispute with some putting it at end of World War II and others with the fall of the iron curtain) there are likewise many fundamental differences. One of the main dissimilarities is that today's form of globalization has a relatively free movement of capital and goods; it does not allow for the free mobility of labor. Whereas the first wave of globalization was marked by large movements of workers across national borders, today workers from the Third World are largely locked out of the wealthier countries.[113] Therefore, without the ability to vote with their feet, the only option open for this group to enjoy better working conditions and worker rights is to secure adherence in their own domicile.

The actual manifestation of labor (*de facto*) standards varies between (but also within) countries. These variations or diversity in standards can be attributed to differences in social/cultural/political traditions and, of course, to the level of economic development. For economists, it is the latter that functions as the focal point in the empirical literature. However, while comparing the situation of labor standards in developing countries with

[113] See, for instance, Hirst and Thompson (1999), Plender (2003) and Flanagan's book *Globalization and Labor Conditions* (2006).

developed countries, one should keep in mind that these two groups have had different trajectories that can—to some extent—explain the present differences. For instance, colonialism did not help or assist in the globalization of labor law that can be seen in the world today. In fact, most countries in the South, the majority being former colonies, have experienced a certain degree of delay in changing their legal system[114]: "Colonialism did not forge the globalization of labour law that we see in the world today, because colonialism pushed the South back to legal systems that applied in earlier periods of Western history—to pre–feudal laws of a slave system during mercantilism, to pre-capitalist master and servant laws during the industrial revolution and into the twentieth century. Hence, just as labour law in the North was moving from penal to civil law, penal laws were being installed in the South." (Braithwaite and Drahos, 2000, p. 227). To this, one may add the fact that many entrepreneurs who moved from developed to developing countries discovered that it was easier to adopt local customs than to uphold customs from their original domicile; in most cases this turned out to be the most efficient approach (2000, p. 228). The point here is that there is a historic dimension to labor standards that should not be ignored especially in any attempt to explain differences in the attained levels of labor standards.

In the debate on the effects of globalization, this historical dimension receives little to no attention. Rather, the focus is on the perceived threat for many developed countries for their domestic labor force from the foreign competition based on low labor costs. By not adhering to and enforcing international labor standards and basic workers rights that developing countries have created, so runs the argument, a situation is created wherein there is no level playing field in the global production of goods and services. Harmonization of labor standards it is argued will amend this while also providing workers in the developing world the protection to which they are entitled. Therefore, demands for the enforcement of labor

[114] It is also interesting to note the large differences in the trajectory of the advancement of labor rights in advanced nations. To illustrate this particular point: between 1872 and 1914 a total of eight workers were killed in the United Kingdom during hostilities surrounding the labor movement. For Germany and France, the number of casualties was sixteen and thirty-five, respectively. During the same period, between five- and eight hundred workers were killed in the United States in labor related riots and demonstrations (Mann, 1993, p.635 cited in Braithwaite and Drahos, 2000, p. 229).

standards are complemented with the call for the possibility of using trade sanctions as a possible means of exercising pressure.[115]

This position, and especially the part about securing better working conditions for the workers in developing countries has been met with skepticism from the developing world itself. Many of these countries consider their supply of cheap labor as their main competitive advantage in the global economy. Attempts by more developed countries to enforce labor standards via trade agreements are often rejected as being nothing more than protectionist in intent. The claim made by developing countries is thus that the introduction of prohibitive measures in international trade regarding child labor amounts to a situation wherein the children in developing countries "are being used to protect jobs in the developed countries." (Hasnat, 1995).

This argument is not completely without grounds and touches on the earlier introduced differentiation between the moral and the practical argument in favor of labor standards. There are groups that attach great importance to the moral reasons for introducing labor standards in the realm of trade, having in mind the wellbeing of the workers in the developing world. These groups are complemented by other groups that are predominantly motivated by the practical reasons of securing existing labor conditions in the developed world. In short, the inclusion of labor standards in trade agreements has had and still has diverse groups of supporters and associated motivations.

The economic profession too has offered some support for the critical stance of developing countries at the inclusion of labor standards in trade agreements. This does not imply that there is no economic case to be made for the inclusion of labor standards in these agreements. If we only look at the distribution of the cost for leveling the playing field with regard to labor standards, we find a possible argument in favor. In broad terms, it is to be expected that there will be consequences for producers as well as consumers. The way the costs are distributed

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[115] Combing the international labor standards and international trade usually takes on the form of pleas for the inclusion of a social clause in the treatises underpinning international trade. Such a clause could stipulate that no goods or services produced in violation of agreed upon standards may rightfully be subjected to import restrictions. Although labor standards have not been included in multilateral trade agreements there is a tendency to include them in bilateral trade agreements. Also note that this instrument of trade sanctions lies outside the ILO's sphere of influence and the question of its permissibility belongs to the workings of the WTO.

depends largely on the way compliance with the labor standards is secured. In the case of a one-sided introduction of labor standards in a given country (i.e. without harmonizing the labor standards on a global level) the costs will disproportionally be borne by its producers compared to its consumers who would still have the choice between domestically produced goods and imports. While the domestic producers see their cost of production increase the prices of imported goods would remain the same thereby hindering the ability of domestic producers to pass on the full amount of additional costs to the consumers in the form of higher prices.[116] On the other hand, if all countries would introduce higher standards simultaneously, the 'burden' of increased cost of production could be more evenly distributed between producers and consumers.

However, the dominant train of thought has been that labor standards or any standards for that matter should not be included in trade agreements. At the heart of the argument lies the assumption that increased international trade makes all parties involved better off in the long run. The increased wealth (as a result of trade) will improve labor standards in the exporting developing countries. Hindering trade with e.g. a social clause will make it more difficult for these countries to grow their way out of social injustice.

In addition, an argument can be made that forced harmonization can have unintended consequences harming those groups who were thought to benefit from the harmonization. Child labor is a clear example of this. On the one hand, it can easily be argued that child labor should be strictly prohibited. On the other hand, it has to be acknowledged that a strict enforcement of a ban on child labor might generate outcomes that, from a moral point of view, are far worse than the starting point. A harrowing example hereof is the case of such a ban in Bangladesh, which resulted in some of the children landing in prostitution.[117]

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[116] This in turn could have an effect on the number of workers employed

[117] Bhagwati (2002b, p. 77); see also Pierik and Houwerzijl (2006) and ILO–IPEC (2004); Note that the less desirable consequences will result if implementation takes place without supporting measures.

Therefore, rather than forcing compliance with labor standards in a top-down approach, e.g. through the inclusion of a social clause in trade agreements, these arguments make the case that other avenues should be explored that do not interfere with the workings of the market and/or allow for the labor market to adjust itself more gradually. In other words, a market solution, a bottom-up approach to this issue, is deemed preferable.

Richard Freeman, who has written extensively on the topic of labor standards, argues in his 1994 publication "A Hard-Headed Look at Labor Standards" for a market solution to counter dire working conditions and low adherence to labor standards in the form of labeling; products are labeled to indicate that it was produced under acceptable circumstances. The attractiveness of labeling lays in the fact that it side-steps the objections associated with protectionism. Under this approach the issue of attaining better labor conditions and labor standards is viewed as mere consequences of consumer preferences, sometimes referred to as "moral preferences" (e.g. see the discussion of a 1995 paper by Srinivasan in Stern, 2003). Allowing the market to function unhindered will yield changes in economic endowments and shifts towards better labor conditions. Note that here we see an implicit assumption of the doux commerce thesis whereby the market if allowed to operate will yield beneficial results. The logical conclusion of this approach is that the absence of labor standards is the direct result of a lack of (consumer) demand for them.

Although the market solution has received much support (from the realm of policy making[118] as well as from the halls of academia[119]) its effectiveness has been doubted since the early years of the twentieth century.[120] More recently, economic experiments have shown that the market solution may lead to sub optimal solutions. In their 2003 publication *Can labor standards improve under globalization?*, Elliot and Freeman include a synopsis of economic experiments on actual consumer behavior, which indicates that consumers are willing to punish companies (i.e. not buying goods that they know to have been produced under dire circumstances) but are less inclined to 'reward' good behavior: "Information about bad conditions can greatly reduce the price at which firms sell their products, whereas information about good

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[118] See e.g. Hasnat (1995), Steger (2002) and *The National Security Strategy of the USA* (White House, 2006)
[119] See e.g. Freeman (1998), Bhagwati (2002a, 2002b, 2004), and Wolf (2004) as well as broader discussions thereof in Rodrik (1997) and Basu *et al* (2003).
[120] See the discussion of the effectiveness of the National Consumer League Label by Brooks (1900)

conditions raises revenues only modestly. If consumers responded more to information about good conditions, activists and firms would have common ground on which to work." (Elliott and Freeman, 2003, p. 46). This outcome does not necessarily eliminate the effectiveness of labeling but does lower expectations.

Core Labor Standards

The initial response of the ILO to the questions posed by globalization came in the form of the adaptation of what has become known as the 'core labour standards'. The emergence of these core labor standards can be seen as a concerted effort to break the stalemate arising from accusations that a call for greater adherence to labor standards was in fact thinly disguised protectionism. Adopted in 1998, the "ILO Declaration on Fundamental Principles and Rights at Work" resulted in the acceptance of a set of labor standards deemed to be so basic that they should be attainable by any country regardless of the level of economic development. The declaration binds all member states of the ILO to respect, promote, and realize the principles contained in these standards. These four "fundamental principles and rights at work" (embodied in eight different conventions) include: freedom from forced labor, non-discrimination at the workplace, the effective abolition of child labor and freedom of association, and the right to organize and bargain collectively. Note that the core labor standards include outcome orientated standards as well as those concerned with the workings of the labor market. In addition, the formation of this set of standards exemplifies the distinction between aspirational standards and minimum standards with all of them belonging to the latter. However, despite this being the case and despite the consensus on these 'core labour standards', agreement has yet to be forged on how to implement these and other labor standards in less developed countries (Elliott and Freeman, 2003, pp. 9-13).

The question remains as to why, if the international labor standards are so universal and the product of consensus among the parties directly involved is enforcement such an issue? Possible answers like the loss of (perceived) competitive advantage have already been mentioned. Another possible reason has to do with governments being unwilling to change the allocation of their budgets.[121] Even an appeal on cultural differences might be included in the range of possible answers. However, the debate on this issue seems to single out the economic factors, i.e. the idea of a loss of competitiveness and the subsequent implications of

[121] See Flanagan (2002)

this hypothesized reduction in competitiveness for the labor market in developing countries. And it is with this argument that any attempt of a top down approach aimed at improving working conditions is labeled (more often than not by economists) as a case of misguided intentions.

These intentions, so the argument goes, are based on an idea held by many in wealthier nations, namely that sweatshops are the shackles from which the poor must be freed. The intentions are said to be misguided for when it comes down to unskilled laborers in developing countries, a job in a sweatshop beats having no job at all. This argument is then supplemented by the idea that Western boycotts and protests are detrimental to the position of these unskilled laborers; freed from their shackles, the workers will find themselves beholden to Marx's dual freedom: they are now free to sell their labor on the market, and, in case there is a lack of buyers and with no capital of their own, they are free to starve.

When focusing on these consequences, it would seem that there are fundamental problems with the application of these standards, for application leads to irresolvable (normative) problems. Fung *et al.* (2001b; 2001) propose a different approach in promoting better labor conditions, which they consider is more suited to address these problems.

5.2.4 An alternative view on Enforcement

For Fung, O'Rourke, and Sabel (2001a; 2001b), practical application is the guiding principle throughout their publication "Realizing Labor Standards: How transparency, competition, and sanctions could improve working conditions worldwide." What the authors propose is a system wherein social and regulatory pressures create a form of competition that will lead to improvements in labor standards ("norms that describe acceptable conditions of work and wages", 2001a, p.4) and "ratchet" them upwards.

Their approach is based on the idea that rather than constraining the rapidly changing forces and processes of globalization, these forces should be redirected towards the advancement of social ends. Instead of relying on bans, limits, or constraints (a top-down approach), they see important roles for voluntary initiatives, but also for social and peer pressure from private companies themselves. With this, they hook up with the trend in the private sector in dealing

with labor standards whereby various international companies compiled and formulated their own standards, e.g. in the form of codes of conduct.[122]

The ultimate goal is to attain and realize the highest level of standards taking into consideration the local level of economic development. When reviewing working conditions in a factory in Vietnam the comparison should be done with a factory in, for example, Indonesia rather than one in Western Europe or North America. In short, the goal is to secure the most ambitious and highest feasible labor standards for workers possible given the level of economic development of the country where they reside. Minimum standards would emerge by comparing similarly situated facilities in similar economic circumstances. With the emphasis placed on the overall economic development context, the Ratcheting Labor Standards (RLS) approach is in a good position to ward off accusations of protectionist behavior.

The public at large should have access to the data generated from the continuous monitoring of labor conditions. This would lead to the creation of social and financial incentives for companies to monitor their own production facilities and those of their suppliers and check whether conditions are improving. Moreover, the information might in turn be used to determine what the minimum standards in any specific region should be. For companies this would be of extra interest because this would enable them to create some sort of ranking. Fung *et al.* believe that this will create the necessary competition among companies and thus incentive for wooing the approval of their (potential customers) that will in turn create an upward pressure in favor of higher labor standards. Installing periodical competitive comparisons between companies on their labor standards record will then lead to the continuous improvement of actual labor conditions thereby creating a 'race-to-the-top'.

According to the authors, reputation has become so important that revelations of wrongdoings with regard to labor conditions will not only have a preventative influence but also an improvement effect: "We believe that reputation is so critical today, and improving labor standards so feasible, that a public ranking system like RLS would amplify even relatively few voices into substantial workplace improvements." (Fung, O'Rourke, and Sabel, 2001a, p. 39).

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[122] The Global Compact initiative of the UN as well as the Global Reporting Initiative might be viewed as related to these developments.

Critique

In her discussion of the RLS approach, Murray (2001) thinks the authors overlooked the fact that the ILO also incorporates the economic development context. However, as the authors themselves explain, RLS is an attempt to "… fill the gap between the promise and performance of rights agenda, not to substitute for it." (Fung, O'Rourke, and Sabel, 2001a, p. 88).

Some commentators think Fung *et al* expect too much of their strategy. Especially their emphasis on the aspect of reputation reaps a lot of criticism. One of the questions raised is what to do with less high-profiled companies. These nameless companies usually do not have a reputation that they have to protect by any means. In practical terms, the question posed to the authors of RLS is what their strategy has to offer to companies manufacturing nondescript items like paperclips (see Broad, 2001; Moberg, 2001).

A similar criticism can be levied against the approach when the informal sector is taken into account. The informal sector, which constitutes a large part of production for exports, is more difficult to reach and thus more difficult to subject to the approach laid out, or as one commentator notes: "When you abolish child labour in this international sector through commonly adopted comprehensive policies like Ratcheting Labor Standards (RLS), without at the same time doing anything about the displaced children, the glow of moral comfort enjoyed by the consumer in rich countries who scrupulously looks for the "no-child-labor-used" label or certification is largely illusory." (Bardhan, 2001, p. 51). In addition to this, one has to bear in mind that the majority of working children are not active in the export industries (see e.g. Elliot and Freeman (2003) and Bhagwati (2002a)). And this raises the question of how effective this approach can be in those areas of the economy where there is no direct connection with the Western consumer?

And where there is such a connection there is still the issue of moral inequality. Workers in developing countries, having lost out in the lottery of life, cannot claim the same level of protection or labor standards as those that Western consumers enjoy. That is not to say that they will never attain the same level but, as Fung *et al.* stress, improvements will have to go step by step. With their preoccupation with outcomes, Fung *et al.* seem to lose sight of the underlying reasons as to *why* there are labor standards. These standards as well as those human

rights related to labor were called into existence because of a belief that they should be enjoyed by all. And that is what makes their approach somewhat unsatisfactory. The respect a human being deserves by virtue of his humanity should not be determined by Western consumers, which in fact would mean rejecting them as full members of the commonwealth of humankind.

All in all, the approach presented by Fung *et al.* contains various novel ideas on the enforcement of labor standards that go beyond the realm of official legislative institutions by creating more public attention to the working conditions of laborers in the developing world and through this increased attention improve their lot. In their own way, they are addressing an issue that is a major hindrance in the advancement of labor standards and worker rights around the globe, the unwillingness of governments to actually secure adherence and actively help in speeding up compliance. Far too often we can find representatives stating that there is no budget to assist implementation, with child labor as an already mentioned example. And in some cases, one has to conclude that the statement "we can't" is in fact shorthand for "we won't". We shall return to this issue in the next section where the focus lies with the actual status of worker rights around the globe.

5.3 The gap between promise and realization

Due to the origin of the renewed attention for labor standards, i.e. globalization, it is not surprising that much empirical work on the subject is on the relation between international trade and labor standards. More specifically researchers have tried to test the hypothesis of whether there is any credence to the notion of the race to the bottom, the idea that poor labor practices create a competitive advantage in the global economy thereby eroding achieved labor standards overall.

Many of the earlier studies on the relationship between labor standards and international trade utilized the number of ratifications of labor standards as a key variable. The easy availability of the data on ratifications make the choice understandable although not always wise as ratification does not necessarily equate with adherence. Not all countries that have failed to ratify some or all of the ILO's conventions are necessarily poor in adherence to labor standards. Secondly, countries that have ratified one or more conventions may do little or nothing to secure actual adherence. Other variables, often employed in empirical research on

labor standards, are outcome related in that they are descriptions of the actual labor market situation in a country. Examples of these are data on unemployment, education participation, and health (including accidents at work) to name but a few.

Among the main findings of the empirical literature we find that there is no evidence for the race to the bottom in that countries with substandard labor conditions do not obtain a competitive advantage in international trade because of it.[123] Low labor standards act as a hurdle in attracting Foreign Direct Investment rather than as an additional pull. Multinational enterprises seem to be treating the workers in developing countries (i.e. with lower labor standards) better in comparison with the way these workers are treated by other (i.e. local/native) companies (Flanagan, 2006). And with respect to the idea that imposing labor standards is detrimental to the economy, studies find that compliance with fundamental rights of workers has a positive effect on long-term income and long-term growth (Bazillier, 2004).

In order to obtain some insight into the current situation of compliance with labor standards, we will now take a closer look at actual labor conditions found among the member states of the ILO.

Worker Rights

Obtaining some idea on the actual adherence to labor standards or more broadly defined as worker rights, requires that we need to look at to what extent the enjoyment of these rights are realized. For this analysis we utilize the Cingranelli-Richards (CIRI) Human Rights Dataset (Cingranelli and Richards, 2010a), which includes an assessment of the government respect for worker's rights as listed in the Universal Declaration of Human Rights. A significant part of what are known as Socio-Economic Human Rights deal with the issue of employment. This connection can be found in the provisions and phrasings such as in the already mentioned article 23(1) "Everyone has the right to work, to free choice of employment, to just and

[123] Please note that not all research has the same findings, see for instance Samy and Dehejia (2009) including their discussion of the findings of various empirical studies on the topic of trade and labor standards (p. 304–306). Also note that some (e.g. Busse, 2002, 2004) have found differences in the effects for different types of labor standards: "Focusing on unskilled-labour-intensive goods and core labour standards, the results show that the effects of low standards depend on the type of standard: Weaker basic union rights are associated with a stronger comparative advantage. Forced and child labour also lead to an increase in the endowment of unskilled labour, and hence improve comparative advantage in unskilled-labour-intensive goods; the opposite occurs with discrimination against females" (Busse, 2002).

favourable conditions of work and to protection against unemployment." (United Nations, 1948). These rights have a clear overlap with the ILO's international labor standards and the way in which they are coded in the dataset makes this comparison even greater.[124] The coding system divides countries into three categories based on the level of overall adherence to these rights, namely: a) severely restricted, b) somewhat restricted, and c) fully protected. This dataset also provides the opportunity to take a rudimentary look at the relationship between economic development and the enjoyment of worker rights.

The analysis provided here aims to review (in a very basic manner) the assumption that a higher level of economic development goes with a higher level of adherence. Using the data for 2009, the average GDP per capita (PPP) for each of the three categories is computed. The results for a total of 171 countries are presented in Table 5–1.

Table 5–1 Average GDP per capita by the level of Worker's Rights adherence (2009)

	GDP per capita (PPP, current international $)			
Worker's Rights	Mean	Median	Std. Dev.	Freq.
Severely restricted	9,386	4,773	14,212	70
Somewhat restricted	14,747	9,154	15,383	95
Fully protected	29,363	34,994	13,841	6
Total	13,065	7,242	15,329	171

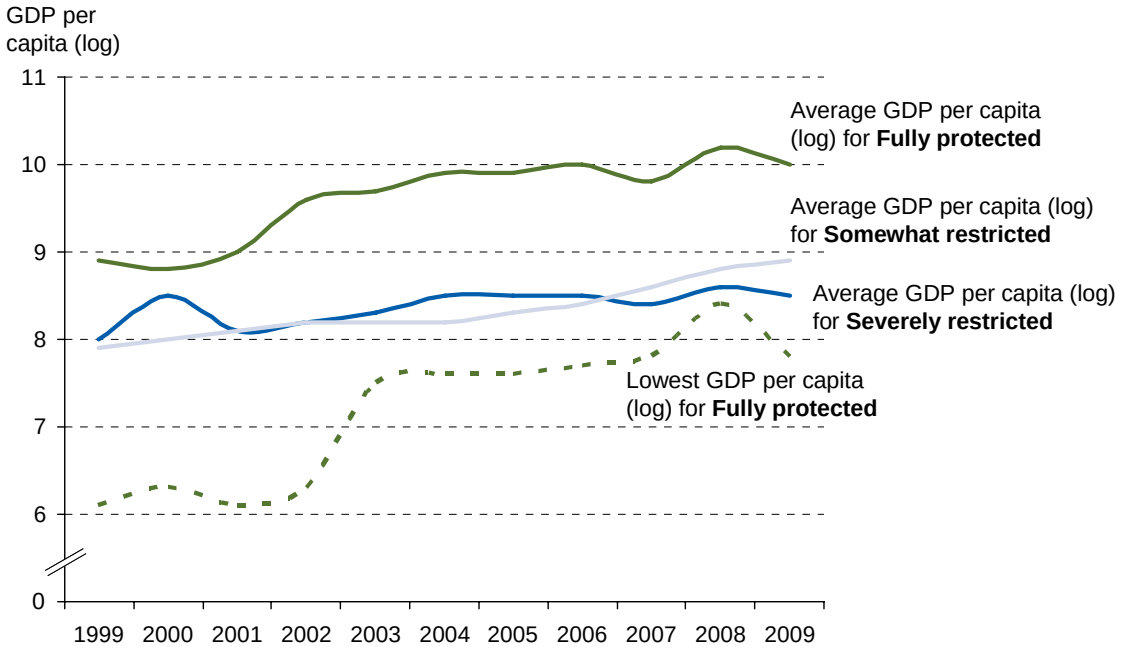
Source: Cingranelli and Richards (2010a)/ World Bank (2011)/ author's calculations (2011)

The results in Table 5–1 suggest that the protection of human rights, in this case worker's rights, is positively correlated with per capita GDP. However when we look at the distribution within each of the three categories the link becomes less evident. Figure 5-2 shows the development of the mean level of GDP per capita for each of the three possible levels of protection of worker's rights over the last decade. The *lowest* GDP per capita found in the category of fully protected worker rights is also included in this figure. This line is consistently below the averages associated with categories indicating poorer worker's rights records. This

[124] This CIRI indicator looks at various aspects in the UDHR related to work; the description of the data is phrased thus: "Workers should have freedom of association at their workplaces and the right to bargain collectively with their employers. This variable indicates the extent to which workers enjoy these and other internationally recognized rights at work, including a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." (Cingranelli and Richards, 2010b).

shows that low levels of GDP are not necessarily (i.e. by definition) associated with low levels of adherence to worker rights.

Figure 5-2 Development of the average GDP per capita (log) by the level of Worker's Rights adherence (1999-2009)



Source: Cingranelli and Richards (2010a)/ World Bank (2011)/ author's calculations (2011)

Next, we turn to the relation between the ratification of labor standards and the actual status of adherence.

The realization gap

Table 5–2 lists the eight labor standards that together constitute the set of core labor standards including the number of countries that have ratified the respective convention. In order to put these numbers into perspective one has to bear in mind that the total membership of the ILO at the end of 2009—and thus the maximum number of ratification—stood at 182.

Table 5–2 Number of ratifications of the Core Labor Standards as of the end of 2009

Labour Standards	**# of Ratifications (max = 181)**		
	Absolute	*%*	*% weighted**
Forced Labor Convention, 1930 (No. 29)	174	*96%*	*74%*
Abolition of Forced Labor Convention, 1957 (No. 105)	169	*93%*	*75%*
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	150	*83%*	*46%*
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	160	*88%*	*50%*
Equal Remuneration Convention, 1951 (No. 100)	167	*92%*	*94%*
Discrimination (Empl. and Occupation) Convention, 1958 (No. 111)	169	*93%*	*91%*
Minimum Age Convention, 1973 (No. 138)	155	*86%*	*70%*
Worst Forms of Child Labor Convention, 1999 (No. 182)	171	*94%*	*81%*

* *Using the population size*

Source: ILO (2011)/ World Bank (2011)/ author's calculations

The first thing that becomes clear from this overview is that there is not one convention that can claim to have true universal backing in the form of universal ratification. The one convention that approaches this level the most is the convention on forced labor, which is also the oldest of this list.

The absence of universal ratification accentuates that the overview of total ratifications provides an incomplete picture. The reason for this lies in the fact that not all countries are alike and, therefore, not all ratifications carry the same weight. If a correction is made for the size of a country, e.g. by using the size of the population (serving as a proxy for the labor force), the gap between the actual ratification and universal ratification becomes clearer. The last two columns depict the number of ratifications as a percentage of the total possible ratifications as-is and when countries are weighted by the size of their population.

The table clearly indicates that an undue focus on the absolute number of ratifications provides us with not only an incomplete but in some instances also a misleading idea of the advancement of the core labor standards in the world today. Only the conventions relating to non-discrimination at the workplace show little change when weighted by population. The biggest difference can be seen concerning conventions that cover the formation and

operations of unions. More than 80% of the potential ratifications are reached when solely looking at the number of ratifications. When the ratifications are weighted with the size of the respective populations it becomes clear that only 50% of (nearly the entire) world population lives in a country where these conventions are ratified.

Flanagan (2006) looked into the relation between the act of ratification and various macro-economic factors. Among his main findings is that countries tend to ratify only those labor standards in which they are already in compliance. In other words when the 'economic cost' of ratification is low, that is none or only few adjustments in the local institutions are necessary, ratification will occur.

In Table 5–3, the number of core labor standards ratified is provided for each level of Worker's Rights adherence as found in the CIRI Human Rights Dataset.[125] The graph depicted below (Figure 5–3) shows the results when we make a binary distinction between countries based on whether or not a country has ratified the eight ILO conventions ("Ratified all")

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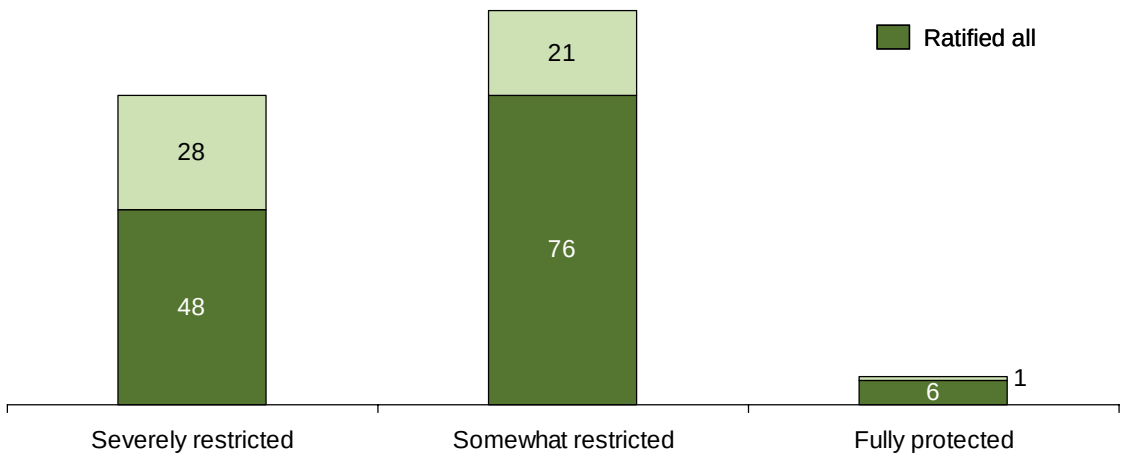
[125] Note that we now have a set of 180 countries due to the fact that no assessment is available for the status of adherence to worker rights in Somalia because of a complete collapse of central political authority in that country.

Table 5–3 No. of countries per no. of core labor standards ratified by the level of Worker's Rights adherence (2009)

*No. of CLS conventions ratified**	Severely restricted	Somewhat restricted	Fully protected	Total
8	48	76	6	130
7	11	10	0	21
6	2	5	0	7
5	8	1	1	10
4	3	3	0	6
3	1	0	0	1
2	1	1	0	2
1	1	1	0	2
0	1	0	0	1
Total	76	97	7	180

Figure 5–3 No. of countries per adherence level and level of ratification of Core Labor Standards (2009)



Source: Cingranelli and Richards (2010a)/ ILO (2011)/ author's calculations
* Number of conventions ratified on December 31, 2009

Table 5–3 shows that nearly two thirds of the countries where worker's rights are severely restricted have ratified all of the eight ILO conventions of the core labor standards. This indicates that there is a serious gap between the intentions (defined as ratification of the ILO conventions) and the actual practice of protecting worker's rights. Similarly, the fact that only

seven ILO member countries are deemed to have had fully protected worker rights in 2009 is cause for alarm in itself.

In 2005, the then head of Amnesty International, Irene Khan, in the introduction of the institution's international report chided governments for failing to fulfill the promise of human rights. Their betrayal of this promise showed itself in various ways: "They failed to show principled leadership through inaction, indifference, erosion of standards, impunity and lack of accountability." (Amnesty International, 2005). Based on the results presented in Table 5–3 and Figure 5–3, one would have to conclude that a similar case can be made for international labor standards and that their role as market boundaries is seriously under threat.

5.4 Chapter Summary

Although the issue of labor standards had been the subject of international attention for some time, the foundation of the International Labour Organization in 1919 put the concept of labor standards squarely on the international agenda. However, it was not until the 1990s that there was a clear return to the debate on these standards not only between the ILO's constituents but also in the public arena. Countries and multinational companies are thought to create a competitive advantage by putting aside labor and other standards. Likewise, the case was brought forward that some countries are unable to guarantee adherence to labor related rights.

The arguments for labor standards have changed little over the last two hundred years. The same can be said for the arguments opposing the enforcement of labor standards whether on a national or international level. The emergence of the call for labor standards in the form of labor regulation shows a distinctive pattern in that the earliest manifestations were geared towards those groups that were (thought to be) unable to speak up for themselves, namely children and women. It could be argued that the recent wave of interest in and advocacy of labor standards is again following this pattern in that some claim to be speaking on behalf of the poor (voiceless) workers in third world countries. However, nowadays the labor standards are also invoked to ensure that the standards attained by workers in developed countries will not suffer due to the forces of globalization. In short, the arguments for (and against!) labor standards now as in the past have a moral as well as a practical (i.e. economic or cost)

dimension. The presence of either dimension, but arguably especially the moral one, exemplifies how labor standards function as market boundaries. And although there were practical considerations that played a role in their emergence, labor standards were not predominantly initiated on the grounds of efficiency but rather on moral ideas on how the interaction between human beings and the market should take place. Their role as it were is the shifting of the boundaries that confine market activity with the aim of protecting or insulating the individual from indiscriminate market forces.

In this chapter, we have seen how the process of globalization has highlighted the issues surrounding the enforcement of labor standards. The ILO initial response was to set absolute minimums by way of introducing the concept of core labor standards in 1998. A year later, it launched its Decent Work Agenda as its definitive answer to globalization but also as its new rallying cry and mission statement. In the next chapter, we look at this new objective that the ILO has set for itself, namely the promotion of decent work for all. We are going to review the agenda itself, its underlying ideas (e.g. what is meant by decent) and whether it is able to effectively function as a market boundary.