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# Labour Rights as Human Rights



Edited by  
Philip Alston

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PHILIP ALSTON

Academy of European Law  
European University Institute  
in collaboration with the Center for  
Human Rights and Global Justice,  
New York University School of Law

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# Contents

<i>Notes on Contributors</i>	vii
<b>1 Labour Rights as Human Rights: The Not So Happy State of the Art</b> <i>Philip Alston</i>	1
<b>2 Social Rights in a Globalized Economy</b> <i>Simon Deakin</i>	25
<b>3 The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?</b> <i>Patrick Macklem</i>	61
<b>4 Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience</b> <i>Francis Maupain</i>	85
<b>5 The Labor Dimension of the Emerging Free Trade Area of the Americas</b> <i>Steve Charnovitz</i>	143
<b>6 Should the EU Have the Power to Set Minimum Standards for Collective Labour Rights in the Member States?</b> <i>A. C. L. Davies</i>	177
<b>7 The European Union and International Labour Standards: The Dynamics of Dialogue between the EU and the ILO</b> <i>Tonia Novitz</i>	214
<i>Index</i>	243

## Labour Rights as Human Rights: The Not So Happy State of the Art

PHILIP ALSTON

The role of workers' rights in the globalizing economy of the early part of the twenty-first century is much contested, both in theory and in practice. In contrast, the place of human rights seems significantly more secure, at least in theory, even if the tributes regularly paid to their central importance smack of hypocrisy. What does it mean then to ask, as the contributors to the present volume do—each in a different context and from varying perspectives—whether it is helpful or appropriate to approach labour rights as human rights? Why not transcend the arguments about the nature of rights, about their universalist pretensions, and about their cultural applicability to all peoples, by using a different language? We could choose instead to talk of labour 'principles', 'standards', or 'guidelines', or even workers' 'rights' but as an unspecified and separate category of rights that does not necessarily import all of the baggage of the human rights debates into efforts to promote and secure decent working conditions for all.

In part the choice of terminology will depend on context and on the role(s) that labour rights are perceived to have in addressing current challenges within the global order. Inter-governmental assessments of the nature of those challenges are often bland and uninformative and thus unlikely to shed much light on the debate over whether labour rights should be seen as human rights. A classic example is the diagnosis offered in the 'Sao Paulo Consensus', adopted by the eleventh conference of the United Nations Conference on Trade and Development (UNCTAD) in June 2004. Globalization itself is presented as a positive force that is capable of improving 'the overall performance of developing countries' economies by opening up market opportunities for their exports, by promoting the transfer of information, skills and technology, and by increasing the financial resources available for investment'. But the statement then goes on to present the other side of the balance sheet, albeit in rather muted terms. Thus, '[s]ome countries have successfully adapted to the changes and benefited from globalization, but many others, especially the least developed countries, have remained marginalized in the globalizing world economy. As stated in the Millennium Declaration, the benefits and costs of globalization are very unevenly distributed.'<sup>1</sup>

<sup>1</sup> See UN doc. TD/410, 25 June 2004, para. 1.

In fact, such carefully negotiated, lowest common denominator, statements tell us all too little about the real nature of the challenges faced. They also stand in marked contrast to the widely accepted starting point for the debate among labour rights specialists, which is the perception that labour rights have fared poorly as a result of globalization. This conventional wisdom is well captured by Sabel, O'Rourke, and Fung:

the present wave of globalization has given rise to widespread abuses, including child labor, punishingly long work days, harsh discipline, hazardous work conditions, sexual predation, and suppression of the freedom to associate and organize. These forms of servitude recall outright slavery in some instances, and provoke moral outrage the world over whenever they come to light. There is broad agreement among the world's publics that labor markets must be reregulated to curb these abuses.<sup>2</sup>

But even if those concerned with labour rights can agree on the diagnosis, they are much more divided when it comes to specifying the prescriptions that follow. In particular, from the perspective of the present volume, the key question remains whether the response is optimally, or even usefully, formulated in terms of labour rights. At one level this could be argued to be a non-question, since a bevy of labour rights were reflected in the Universal Declaration of Human Rights (UDHR) of 1948 and have subsequently been translated into a wide range of treaty provisions in both universal and regional contexts. They include: the right to be free from slavery, broadly defined to encompass the modern forms thereof (Art. 5 of the UDHR); the right to non-discrimination and equal protection of the law (Art. 7); the right to freedom of association (Art. 20); the right to social security (Art. 22); the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment (Art. 23); the right to equal pay for equal work (Art. 23); the right to form and to join trade unions (Art. 23); and the right to reasonable limitation of working hours (Art. 24).

But this formal recognition is only part of the overall picture. We must also look at what states and international organizations, not to mention employers in general and major transnational employers in particular, are doing and saying in relation to those rights.

One starting point is the increasing popularity of the term 'labour principles', which is used in both the North American Agreement on Labor Cooperation (NAALC) annexed to the North American Free Trade Agreement (NAFTA),<sup>3</sup> and the International Labour Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work.<sup>4</sup> In the case of the NAALC the explanation for the choice of terminology ('guiding principles') is that the drafters specifically wished to

<sup>2</sup> Charles Sabel, Dara O'Rourke, and Archon Fung, 'Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace' (2000), available at: <http://web.mit.edu/dorourke/www/PDF/RLS21.pdf>, p. 4.

<sup>3</sup> For the text of NAALC, see <http://www.naalc.org/english/agreement.shtml>.

<sup>4</sup> ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 86th Session, Geneva, June 1998 [hereinafter ILO Declaration], available at: <http://www.ilo.org/public/english/standards/decl/declaration/index.htm>.



avoid references to international standards and needed a term that would embrace the principles underlying the disparate national law of the three contracting states (Canada, the United States, and Mexico). The explanation is different in the case of the 1998 ILO Declaration. It asserts that all member states of the ILO, regardless of which specific labour conventions they have ratified, are bound by a set of four 'core labour standards', consisting of freedom of association, freedom from forced labour and from child labour, and non-discrimination in employment. Several competing explanations for its emphasis on principles have been offered.<sup>5</sup> The most plausible is that the drafters felt they could not refer to the relevant principles as rights in relation to states that had not ratified the specific International Labour Conventions that correspond to each of the four issues identified. This explanation overlooks the fact that each of the relevant principles is recognized as a human right in the Universal Declaration of Human Rights, in the International Covenant on Economic, Social and Cultural Rights, which is binding upon 149 states, and in a very large body of other international legal standards.

But rather than focus on questions of terminology, the main concern of the contributors to this volume is with the institutional arrangements by which effect can be given to labour rights, whether at the national or international level. The contributors thus pay considerable attention to the implementation arrangements contained in some of the key international agreements, such as the NAFTA and the Free Trade Agreement of the Americas (FTAA), and to the approaches adopted within the context of the main institutional settings, such as those of the ILO and the European Union (EU). It is for the readers of this collection to decide for themselves, based on the overall picture that emerges, as to whether labour rights really are best promoted under the rubric, or within the framework, of human rights.

While the perspectives of the various contributors to the volume vary significantly, it must be acknowledged that they are united by an acceptance of the view that labour rights warrant certain forms of protection within the framework of the emerging global economic system. They also agree that the institutions that are the focus of their analyses have important roles to play in that regard. As a result of these shared assumptions, the range of views expressed in the volume does not reflect the extent to which labour rights are not only strongly under siege in various settings, but also of very limited relevance in some national contexts.

The latter phenomena are perhaps best illustrated by taking note of some of the attitudes that prevail towards internationally recognized labour rights in the United States. While the US example is not necessarily a good indicator of the attitudes of a great many other countries, including in particular those of the European Union, there are several reasons why it is highly instructive for present purposes: (1) because of the extent to which US policies have succeeded in influencing the approaches adopted in international organizations, such as the ILO; (2) because the labour

<sup>5</sup> For a detailed analysis, see Philip Alston, 'Core Labour Standards' and the Transformation of the International Labour Rights Regime', 15 *European J. Int'l L.* (2004) 457.

policies promulgated by US-based corporations are highly influential; and (3) because the bilateral and regional trade policies of the United States have been of major importance in shaping the international debate over the relationship between trade liberalization and respect for core labour standards.

Representatives of the United States sometimes present themselves as strong supporters of the labour rights approach of the ILO,<sup>6</sup> but the reality is rather more complex. The United States has indeed sought to encourage other countries to accept various obligations designed to ensure that those countries will respect core labour standards. The rationale is that competitiveness in international trade will thereby be ensured through the establishment of a level playing field in terms of labour conditions.<sup>7</sup> But within the United States itself the situation is not so straightforward. A leading US labour lawyer has succinctly summed up the current position:

International human rights, including labor rights, have made almost no discernible mark upon American domestic law. That is not because the United States rejects the existence of international human rights in the labor context. . . . But the United States does not embrace the full scope of the obligations that international law imposes on states with respect to those rights. If it did, or if there were more effective mechanisms for the enforcement of international norms, then international law would provide critical traction for efforts to expand and invigorate the protection of workers' associational activity.<sup>8</sup>

But even this rather sobering assessment does not reflect the extent to which there are continuing challenges stemming from US labour lawyers, policy-makers, and academics to the very notion of labour rights as understood internationally. In the name of flexibility and competition, strong arguments have been put forward for treating labour standards as impediments to market freedom and thus to the promotion of economic development. For present purposes it is perhaps best illustrated by revisionist analyses of US constitutional law that seek to show that the overturning of the so-called *Lochner* era was a mistake. *Lochner v. New York*<sup>9</sup> was the high point in a series of cases in which the Supreme Court held that common law rights to property and to contractual autonomy could not be overridden by legislative attempts to regulate working hours and conditions, such as minimum wages. Although the US Constitution did not explicitly recognize any right to 'liberty of contract', the Court effectively read it into the Due Process Clause of the Fourteenth Amendment. In later years this approach was definitively overturned and the Court looked benignly upon efforts to ensure workers' rights, an approach which continues to prevail today.<sup>10</sup>

<sup>6</sup> Thus, the long-time representative of the US employers to the International Labour Conference, Edward Potter, has noted that '[o]ver the last 20 years, the U.S. business community has been at the forefront of being a positive, proactive participant in the promotion of ILO human rights in the United States and in other countries'. Potter, 'Swimming Upstream: Ratification of ILO Conventions' (2003), available at: <http://images.ctsg.com/pdfs/ilo/speeches/04edwardpotter.pdf>, at 3.

<sup>7</sup> See generally Charnovitz, Chapter 5 below.

<sup>8</sup> Cynthia L. Estlund, 'The Ossification of American Labor Law', 102 *Columbia L. Rev.* (2002) 1527, at 1587–8.

<sup>9</sup> 198 US 45 (1905).

<sup>10</sup> See generally David E. Bernstein, 'Lochner's Legacy's Legacy', 82 *Texas L. Rev.* 1 (2003).

In a recent analysis, and one which is not atypical of a significant stream of US labour law analysis, it has been argued that the *Lochner* approach represented far better economic theory than the regulatory assumptions that came to replace it:

[*Lochner*] allowed greater room for workers and their employers to create hours of work that suited their concrete situations. Long and painful hours would decline when advances in productivity made them unnecessary, but it does not follow that good things would come from forcing those hours to fall before any such advance took place.<sup>11</sup>

Although the historical analysis deals with the situation in the nineteenth and early twentieth centuries, the author argues that the lessons for today have yet to be learned:

In the twenty first century, those laws still stand as an obstacle to getting the package of hours and wages that suits workers, in terms of work during the daytime, with flexible hours, and benefits determined by demand rather than by their relative ability to circumvent hours rules.<sup>12</sup>

In other words, the sort of protections for workers that were upheld by the Court in *Lochner* actually constitute counter-productive interferences in the free choice of workers, who should be able to decide for themselves whether to work very long hours, to do so at weekends or overnight, to be entitled to certain minimum benefits in terms of vacation, health insurance, or maternity leave, and so on.

But the situation in the United States is less atypical than labour rights proponents might wish. At the international level there is no shortage of voices playing down the utility of labour rights and advocating instead the need to promote labour market flexibility and overall economic growth as not only the best, but the only realistic, way to move towards the realization of the adequate standard of living to which workers, and indeed all individuals, are entitled. The current state of international thinking and of the political consensus on these issues can be gauged from two recent events, which at first glance yielded quite different results, but on closer inspection suggest an equally pessimistic prospect in terms of the promotion of labour rights as human rights. They are the outcome of the eleventh United Nations Conference on Trade and Development (UNCTAD XI) and the report of the Global Commission on the Social Dimensions of Globalization. Each of these will now be examined with a view to drawing conclusions as to the current status of international support for the promotion of labour rights.

## 1. UNCTAD XI (2004)

The United Nations Conference on Trade and Development, which is in fact an organization, despite its misleading title, is in some respects the international

<sup>11</sup> Christopher T. Wonnell, *Lochner v. New York* as Economic Theory (unpublished manuscript), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=259857](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=259857), p. 97.

<sup>12</sup> *Ibid.*

institutional incarnation of George Bernard Shaw's youthful communist. Shaw is reputed to have said that '[a]ny man who is not a communist at the age of twenty is a fool. Any man who is still a communist at the age of thirty is an even bigger fool.'<sup>13</sup> UNCTAD was founded in 1964 by Raúl Prebisch and strongly reflected the views of Latin American dependency theorists and other radical development economists.<sup>14</sup> By the age of 20, it had become the *bête noire* of the Reagan Administration, which unsuccessfully put forward a good many proposals for its disbandment. But by the age of 30, and even more so 40 (in 2004), it had followed Shaw's advice and become a reputable member of the trade establishment. So much so that the most prominent opponent of any linkage between labour rights and the World Trade Organization, Jagdish Bhagwati, has often suggested that the best way to break the stalemate in this area is for the ILO and UNCTAD to collaborate with a view to promoting respect for international labour standards in the context of international trade.<sup>15</sup>

The international trade union movement took this prospect seriously and submitted a lengthy and detailed statement of objectives<sup>16</sup> to UNCTAD XI, which took place in June 2004. The statement argued that the 'evidence of the past few years shows that without effective protection for basic workers' rights in the international trading system, those developing countries which genuinely seek to protect workers' human rights and raise basic living standards are vulnerable'. Unusually in such a context, the statement singled out the problems caused by 'competition from authoritarian governments like China which are ready to violate their own workers' basic rights in order to achieve export maximisation'.<sup>17</sup> Seeking to respond to the fear that labour standards would disadvantage the poorer countries whose competitive advantage lies partly in low wages, the trade unions argued that the least developed countries would be the primary beneficiaries of measures to achieve the more effective protection of fundamental workers' rights, because they are in direct competition with one another rather than with the workers in industrialized countries.<sup>18</sup> The statement then presented an instrumentalist appeal to the UNCTAD conferees:

Besides the fact that core labour standards are fundamental human rights for all workers irrespective of countries' level of development, they provide numerous benefits which

<sup>13</sup> <http://www.elise.com/quotes/quotes/shawquotes.htm>.

<sup>14</sup> See Rubens Ricupero, 'The Globalization of Raúl Prebisch' (11 October 2001), available at: [http://www.southcentre.org/info/southbulletin/bulletin22/bulletin22-03.htm#P125\\_23382](http://www.southcentre.org/info/southbulletin/bulletin22/bulletin22-03.htm#P125_23382).

<sup>15</sup> Bhagwati, 'Let the Millennium Round Begin in New Delhi', article cited in Panagariya, 'Trade-Labor Link: A Post-Seattle Analysis' (2000), available at: <http://www1.worldbank.org/wbiiep/trade/videoconf/panagariya.pdf>, at 18.

<sup>16</sup> ICFTU [International Confederation of Free Trade Unions] and TUAC [Trade Union Advisory Committee—affiliated with the Organization of Economic Co-operation and Development] Statement to UNCTAD XI, available at: <http://www.icftu.org/displaydocument.asp?Index=991219322&Language=EN>.

<sup>17</sup> *Ibid.*, para. 11.

<sup>18</sup> *Ibid.*, para. 12.

outweigh their superficial cost, such as higher productivity, more social and political stability, fewer accidents and a lower level of absences due to illness.<sup>19</sup>

It concluded by arguing that 'respect for core labour standards needs to become a sine qua non for development strategies in all countries world-wide'.<sup>20</sup> Given the importance attached to UNCTAD by commentators like Bhagwati, the response of the conference to these arguments was little short of stunning. In the 27 single-spaced pages of the 'Sao Paulo Consensus',<sup>21</sup> which reflected the carefully negotiated outcome of UNCTAD XI, there is not a single reference to labour standards, labour rights, workers' rights, or core standards.

## 2. THE WORLD COMMISSION

In their statement to the UNCTAD conference, the trade union movement had attached great importance to the recommendations contained in the report of the World Commission on the Social Dimensions of Globalization, which was issued in February 2004. The International Labour Conference, meeting at the same time as UNCTAD XI, also strongly welcomed the approach reflected in that report.<sup>22</sup>

The Commission was appointed by the Governing Body of the ILO in 2001 with the mandate of preparing a 'major authoritative report' with a particular emphasis on 'the interaction between the global economy and the world of work'.<sup>23</sup> Even by the standards of most of its predecessors in the genre of world commission reports, this one boasted a large and influential group of Commissioners and was launched with significant fanfare. It was chaired by two Heads of State (from Finland and Tanzania), and included 19 Commissioners 'of recognized eminence and authority'.<sup>24</sup> The group also included a former President of Uruguay, a former Prime Minister of Italy, Nobel Prize-winning economist Joseph Stiglitz, the President of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the President of the International Organization of Employers. One of the central challenges for the World Commission was to identify the best means by which the global trade agenda could best be reconciled with the ILO's long-standing emphasis on the protection of workers' rights.

The importance of the work of the Commission in terms has been noted by Virginia Leary, who characterized it as an encouraging sign that labour rights would

<sup>19</sup> *Ibid.*, para. 16.

<sup>20</sup> *Ibid.*

<sup>21</sup> UN doc. TD/410, 25 June 2004.

<sup>22</sup> For responses to the report, see International Labour Conference, Ninety-second Session, Geneva, 2004, *Provisional Record* 10.

<sup>23</sup> *A Fair Globalization: Creating Opportunities for all: Report of the World Commission on the Social Dimensions of Globalization* (2004) 148, Annex 2. Part of the analysis that follows draws upon Philip Alston and James Heenan, 'Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work', 36 *New York University Journal of International Law and Politics* (2004).

<sup>24</sup> *A Fair Globalization*, note 23 above, p. 148.

be given their due in the emerging international response to globalization.<sup>25</sup> Unsurprisingly, the Commission concluded that 'core labour standards' must be a key part of the 'broader international agenda for development' which the report identified and called for a reinforcement of 'the capacity of the ILO to promote' such standards.<sup>26</sup> But the real question that it was called upon to answer in this respect is how such broad but worthy goals can be effectively promoted and how an agenda of both growth and social equity can be combined. The Commission answered this part of its mandate by proposing a four-part agenda. In identifying the most important steps that it considers should be taken in terms of the global debate over the appropriate relationship between the world's trade and labour agendas, it has made a major contribution to the ongoing dialogue.

The Commission's agenda in relation to labour standards consists of: (1) mainstreaming; (2) technical assistance; (3) increased resources for the ILO; and (4) possible sanctions in response to persistent violations of labour rights. We need to examine each of these options in turn.

The first element is to adopt a strategy of mainstreaming. While the World Commission does not use that term, it is an expression that is well known in the human rights domain and that perfectly describes the proposed strategy. Thus, the Commission addresses itself to 'all relevant international institutions' and calls upon them to 'assume their part in promoting the core international labour standards and the Declaration'. More specifically, those institutions are called upon to 'ensure that no aspect of their policies or programmes impedes realization' of the core standards.<sup>27</sup> The strategy of mainstreaming is one that is usually premised upon a recognition (even if it remains unacknowledged), that the human rights actor on its own lacks much of the clout necessary to achieve the goals in question and that it therefore needs to invoke the assistance of other more powerful actors. While the Commission does not identify those actors specifically, it is clear that at least the World Trade Organization and the World Bank would be among those to which the invocation is directed. In so far as the recommendation is addressed to the WTO, it is, in most respects, a convenient fudge, since that Organization has made it clear in the Declaration adopted at its Singapore Ministerial Meeting in 1996 that it saw no role for itself in relation to labour standards and that the ILO 'is the competent body to set and deal with these [internationally recognized core labour] standards', and reaffirmed the Ministers' support for the ILO in 'its work promoting them'.<sup>28</sup>

<sup>25</sup> Virginia A. Leary, 'Form Follows Function: Formulations of International Labor Standards: Treaties, Codes, Soft Law, Trade Agreements', in Robert J. Flanagan and William B. Gould IV (eds.), *International Labor Standards: Globalization, Trade, and Public Policy* (Stanford: Stanford University Press, 2003) 179.

<sup>26</sup> *A Fair Globalization*, note 23 above, p. 94, para. 426.

<sup>27</sup> *Ibid.*, p. 94, para. 426.

<sup>28</sup> WTO, Singapore Ministerial Declaration, WTO doc. WT/MIN(96)/DEC/W, 13 Dec. 1996, para. 4. Available at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/wtodec\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm). See generally Virginia A. Leary, 'The WTO and the Social Clause: Post-Singapore', 8 *European J. Int'l L.* (1997) 118.

Two other dimensions of this first element are also worthy of attention. One is that the focus of the recommendation is explicitly upon core labour standards, and not on either labour rights in general or on the Conventions that have been specifically ratified by individual states. The other is that the standard of responsibility specified is a very vague and potentially undemanding one. They are asked to ensure that their work does not 'impede' realization of those standards, rather than being asked to facilitate realization, or actively to promote it.

The second element is less problematic. The World Commission first draws a distinction between situations in which the Declaration standards have not been implemented due to a lack of political will and those where a lack of capacity is the problem. In practice, of course, such a distinction is very hard to draw, mainly because many states will be lacking in both in almost equal measure. But where capacity is the obstacle, the Commission recommends that:

Existing technical assistance programmes for the implementation of standards should be stepped up, including the strengthening of labour administrations, training, and assistance to the organization of workers and enterprises. This should include reinforcement of existing action to eliminate child labour.<sup>29</sup>

This is a very traditional ILO approach, but it is noteworthy that the recommendation again refers not to labour rights in general but only to the core standards (the 'fundamental principles and rights at work'), and that no new programs or innovations are called for, thus assuming that a lack of ILO resources is one of the major problems. And it is that specific issue to which the third element of the agenda is directed.

The third component is that the ILO should be strengthened by increasing the resources available to it for the following specific purposes: 'fair and appropriate supervision and monitoring, for promotional assistance, and for the Follow-up to the Declaration . . . and other procedures established in the ILO's Constitution.'<sup>30</sup> Once again, the emphasis is upon the Declaration but it must also be said that this particular recommendation might be seen to leave the door open for strengthening some of the more traditional ILO labour standards mechanisms. But the addition of the phrase 'fair and appropriate' to describe the supervisory and monitoring activities that should be supported can only be interpreted as implying that not all of the ILO's procedures could or should be thus characterized. It is clearly a qualification inserted in response to criticisms of some of the supervisory work being undertaken. The reference to 'other procedures established in the ILO's Constitution' also needs to be read in a technical manner as excluding, for example, the work of the Committee on Freedom of Association, which although based on principles contained in the Constitution is not established by it. Overall then, this third element, especially when combined with the first two, exhibits a marked reluctance to endorse the mainstream of the ILO supervisory activities in relation to labour rights. It also places an emphasis on the Declaration procedures, which are only ones specifically referred to, and reinforces this by an additional reference to promotional assistance.

<sup>29</sup> *A Fair Globalization*, note 23 above, p. 94, para. 426.

<sup>30</sup> *Ibid.*

The fourth and final element consists of a recommendation that, in response to situations 'where persistent violations of rights continue despite recommendations of the ILO's supervisory mechanisms', use be made of a procedure provided for in Article 33 of the ILO Constitution<sup>31</sup> in order to secure what the World Commission terms 'enforcement'.<sup>32</sup> This procedure has only ever been invoked once in the history of the ILO and that is in relation to Myanmar. That case study is explored in depth by Francis Maupain in Chapter 4 below. By June 2004 the International Labour Conference was compelled to conclude that none of the steps that Myanmar had been urged to take in the course of the preceding four years had been taken.<sup>33</sup>

Nevertheless, despite the ILO's reluctance to proceed down the Article 33 path, even in relation to Myanmar, the fact remains that this provision lies very much at the hard end of the spectrum of measures open to an international organization in such cases. Its invocation is thus not a matter to be taken lightly and the World Commission's suggestion that such a last resort measure could be used more frequently in the future is therefore significant. What is odd, however, is that the resort to sanctions seems rather far away on the spectrum from each of the other three elements identified. The Commission might reasonably have been expected to devote at least some attention to the strengthening of other aspects of the existing supervisory machinery before moving to that final level.

On the basis of this review of the recommendations adopted by the World Commission several conclusions seem appropriate. The first is that despite expectations that the trade and labour linkage would occupy a significant part of the report, relatively little space is devoted to the issue of enhancing respect for labour rights. The second is that the report focuses very heavily on the 1998 Declaration and the concept of core labour standards and by implication at least seems to diminish the importance of other means by which labour rights in general are being protected. The third is that, despite the reference to Article 33, the report is essentially concerned with promotional measures of the type associated with the Declaration rather than any of the more formal supervisory mechanisms of the ILO.

The report of the World Commission, which had been the brainchild of the ILO's Director-General Juan Somavia, was, perhaps unsurprisingly, welcomed unreservedly by the ILO. In his response to the Commission's report, the Director-General characterized it as charting 'a new way forward', being 'the first systematic

<sup>31</sup> Article 33 provides that: 'In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.' ILO Constitution, available at: <http://www.ilo.org/public/english/about/iloconst.htm>.

<sup>32</sup> *A Fair Globalization*, note 23 above, p. 95, para. 426.

<sup>33</sup> See International Labour Conference, Ninety-second Session, Geneva, 2004, *Provisional Record* 24, Part 3, 'Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)'; and also 'Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)', ILO doc. GB.289/8, March 2004.



international effort to find consensus' on globalization, and succeeding in being at once 'critical', 'positive', and 'realistic'.<sup>34</sup> But in the space of his 62 single-spaced page report the term 'labour rights' appeared only twice. The first time was to observe that the core labour standards are 'the stepping-stones to the realization of other human and labour rights',<sup>35</sup> and the second was to assert that the ILO is an organization 'based on the promotion of human and labour rights as a foundation for development'.<sup>36</sup> 'Core labour standards', on the other hand, are referred to almost twenty times in the report.

In contrast to this enthusiastic in-house reception, the external response has been rather more critical. While some commentators welcomed the report, the comments of others have served to underscore the lack of enthusiasm for labour rights that permeates much of the business community. Thus, the report was said by one commentator to be 'long on pious aspirations and short on rigorous analysis'. In his view 'Democracy, sovereignty and higher labour standards do not always, or even necessarily, go together with faster economic growth and more widely spread prosperity. Sometimes, we have to choose.'<sup>37</sup> The clear implication was that countries might opt for prosperity rather than labour standards, assuming that the two do not go together. Another commentator characterized much of the Report as 'starry-eyed and pie-in-the-sky'. He made a similar argument, albeit on a scale going beyond a focus on mere labour standards:

Democracy and civil society are no doubt fine things—social equity and the rule of law are certainly more likely in societies where they are present—but the embarrassing truth is that they are neither necessary nor sufficient to achieve economic growth.<sup>38</sup>

It is against the background of the relative neglect of labour rights by many participants in the international debates over appropriate responses to globalization that we now turn to consider the approach adopted by the different contributors to this volume.

### 3. OUTLINE OF THE BOOK

#### A. The Historical and Recent Evolution of International Labour Rights

In the cottage industry of academic production that has emerged around the meaning of 'globalization', two points are almost invariably made: (1) that globalization strengthens the hand of social, economic, and political forces that erode the social protections that once characterized welfare capitalism; and (2) that

<sup>34</sup> *A Fair Globalization*, note 23 above, pp. 4–5.      <sup>35</sup> *Ibid.*, p. 34.      <sup>36</sup> *Ibid.*, p. 47.

<sup>37</sup> Martin Wolf, 'Growth requires painful choices, not platitudes', *Financial Times*, 3 March 2004, p. 19.

<sup>38</sup> Janadas Devan, 'Bigger markets, faster pace...but who's in charge?', *Straits Times*, 12 March 2004, p. 11.