The International Labour Standards Regime:
A Case Study in Global Regulation

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Abstract. The World Trade Organisation's (WTO) consistent rejection of proposals for the inclusion of a Social Clause into its existing rules and regulations has prompted the International Labour Organisation (ILO) to examine alternative ways in which global consensus on the regulation of labour standards can be developed. In this paper, we map the failure of the Social Clause debate by reference to the outcome of successive WTO Ministerials and examine the role of executive leadership and related epistemic activity in the development of the international labour standards regime (ILSR). We conclude that the switch to a focus on a regime of core labour standards provides the most promising platform for progress in labour protection and an influential outcome in placing the ILO at the heart of attempts to integrate social policy into global economic governance.

Introduction

The post-war expansion in international trade and the complexity of issues addressed by contemporary trade negotiations have led to an attendant expansion in the focus and activities of those international organisations with responsibilities for trade regulation. This upsurge in activity has brought with it widespread public attention. One dramatic and highly visible dimension of this has been mass demonstrations and violent protests during the meetings of world and regional organisations. Another has witnessed a proliferation of civil society campaigns designed to draw attention to the persistent and increasing ills of the global economy. In the face of persistent environmental degradation, human rights abuses, corporate corruption and the suppression of labour rights, a key dimension of these campaigns has been a call for the establishment and invigoration of mechanisms for global standard setting and enforcement. Common to all have been demands for change and greater transparency in the nascent system of global economic governance.

Set against this backdrop, our paper explores the impact of the debate over a linkage between trade and labour standards (the so-called Social Clause) on one such mechanism of global standard setting: the International Labour Organisation (ILO)-centred international labour standards regime (ILSR). Our
purpose is to illustrate how the ILSR has adapted to, and developed within, a system of global economic governance that places little emphasis on the maintenance of minimum standards of protection. At the core of our analysis is the notion that the creation of the World Trade Organisation (WTO) provided an opportunity to extend the regime’s reach by means of the trade-labour standards linkage. We argue that despite significant debate and an outcome that failed to establish a firm linkage between trade liberalisation and minimum labour standards, alternative models of international standard setting have emerged. Some take the form of voluntarist codes of conduct adopted by private actors such as multinational corporations. Others involve governments strengthening domestic social protection in line with internationally agreed norms. All, in some way, make reference to standards established by an ILO revitalised by the trade and labour standards debate and seeking to extend the scope of the ILSR by means of the Declaration on Fundamental Principles and Rights at Work and the Decent Work agenda. As we argue below, the ILO has returned to its roots in the Declaration of Philadelphia 1944 and has once more taken on the mantle of international promoter and defender of not just labour standards, but also a broader social partnership in economic development. In taking up this broader agenda, the ILO is carving out a role as a key player in the heartland of global economic policymaking.

In developing our argument, we first set out what we mean by the term ‘international labour standards regime’ and explore the significance of its ‘epistemic community’ in developing and regulating this regime. Second, we plot the development of the ILSR concentrating on those aspects of its evolution pertinent to our study. Third, we explore the debate around labour standards and international trade as it took place within the WTO. Fourth, we examine the response of the ILSR to the settlement of the trade and labour standards debate. Finally, we offer our concluding comments.

**Regimes and Epistemic Activity**

The growth in intergovernmental institutions since the end of the Second World War represents an attempt by states to institutionalise their international relations around key challenges. The 1944 Bretton Woods Agreement not only provided the supporting framework for the post-war trade system (the General Agreement on Tariffs and Trade - GATT) but, through the establishment of other international agencies such as the International Monetary Fund (IMF) and the World Bank, promoted further expansion of intergovernmental organisations. The new multilateralist agenda gradually disassembled the imperial trading systems, expanded economic integration and deepened political reciprocity. In the process, multilateralism encouraged an ‘international political society – an expanding web of international norms, treaties, and institutions giving rise to sustained co-operation and higher levels of governance above the nation-state’ (Weiss, 1999, 66). International regimes – implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in
a given area of international relations (Krasner, 1982) – are an outcome of this accommodation-seeking ‘society.’ Trade, labour standards, human rights and the environment are prominent examples of international regimes that constitute an increasingly complex multilateralist framework. Each comprises a set of principles, norms and rules that govern state behaviour, frame international co-operation and act as a reference point in legitimising non-governmental initiatives. Inevitably, the pursuit of liberalisation in trade and finance, attendant market reforms and the crumbling of the Keynesian welfare state have thrown the spotlight on the influence of international institutions on domestic policy and the character of domestic regimes (Gourevitch, 1996). Also, the articulation of inter-governmental engagement (through regime principles, rules and decision-making procedures) poses questions about how this engagement is constructed, developed and regulated.

As we show below, the case of the ILSR demonstrates that co-operation seeking is not just an accommodation between domestic and international interests but is also an outcome of the activities of executive leadership and related epistemic communities that inhabit international organisations. In this regard, international institutions actively help states to accomplish their objectives through the generation of ideas, the identification of points of consensus and the construction of contingent policy initiatives arising from this consensus. For us, this institutional activity constitutes one key but under-researched starting point in understanding the political economy of international standards and codes.

We now turn to the role and importance of the ILO’s own epistemic community – its executive leadership and network of technical experts. An epistemic community is a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain (Haas, 1992, 3). The diffusion of ideas and the generation of information frameworks in which states can reduce uncertainty and engage around mutual areas of interest both underpins and complements executive activity. Here a regime’s epistemic community plays a key (but often unacknowledged) role in international policy co-ordination. It provides direction and coherence derived from this expertise and competence, creating a degree of autonomy for the community and its international organisation.

Successive ILO Director Generals have placed great emphasis on the Organisation’s research activities in an effort to address many of the socio-economic questions posed by economic downturn, unemployment and social dislocation. This emphasis broadened the competence of the ILO beyond standard setting to the creation of an unrivalled body of knowledge that demonstrated the economic as well as the social importance of international labour legislation. For example, at the end of the Second World War the ILO ‘had the world’s foremost collection of technical experts on social policy questions’
The epistemic activities of successive ILO administrations have been an important factor in forging links between domestic and international interests and developing an organisation that has sought more inclusive and socially active global governance. Regime-drift experienced by the ILO in the post-war period was an outcome of the marginalisation of these ambitions in favour of the bi-polar politics of the Cold War which conditioned its institutional activities (Hughes, 2002, 170). The end of the Cold War, the reconfiguration of alliances in the wake of post-colonial development, the emergence of new economic powers in Asia and Latin America, and the rise in domestic challenges to the doctrine of market liberalism have forged a more complex form of multilateralism that has presented new challenges to the institutional processes and policy prescriptions of international organisations. These challenges and their internal and external manifestations suggest that international regimes will require new frameworks and modes of thinking among influential epistemic communities. This is unequivocally the case in the ILO and its ILSR.

At this stage, we should emphasise that global interdependence means that groups active at the domestic level increasingly have ‘regime interests’. To follow Haggard and Simmons (1987), international welfare initiatives are not only rooted within particular policy decisions but also the compliance of states to regime norms, the way international co-operation is institutionalised and how legitimacy is afforded to the regime through the access it provides to private actors. ‘Domestic’ actors also now act internationally by means of participation in international organisations and the international regimes in which these organisations operate. They become part of, and determinants of, the form taken by regimes and, consequently, are intimately involved in global governance. The ILSR illustrates how, once established, the ILO actively used its unique tripartite platform across member countries and within the ILO structure and associated policy initiatives to fuse domestic and international interests. The process of ‘active collaboration’ has informed the strategies of the ILO’s epistemic community and has been articulated in multilateral activities by identification of interests, the advancing of ideas accommodating interests and the engineering of consensus around social policy issues arising from these interests. Domestically, this process has been complemented (and reinforced) by ILO-managed technical programmes involving direct engagement with domestic actors representing its tripartite constituency but more recently including broader civil society movements. It follows that regimes develop as their constituencies come to observe and accept the long-term welfare-increasing benefits of regime co-operation (Weiss, 1999). As an outcome, regimes become more durable and their institutional ‘value’ is increased as states and other actors turn to a regime’s epistemic community for advice and leadership. In essence, it is through this activity that regimes, once established, take on a life of their own (Keohane, 1989).
The ILO and the ILSR: A Brief History

With our initial argument for the importance of epistemic activity in place, we turn to a brief historical account of the ILO and the ILSR. The implementation and monitoring of labour standards have been the primary concern of the ILO since 1919. The end of the First World War brought with it a consensus amongst the victorious nations around the need to develop and implement international labour legislation. The belief that labour-management relations could no longer be addressed solely by national legislation was prompted by a number of factors: fear of the politicisation of labour and the spread of labour unrest became increasingly acute following the Bolshevik revolution of 1917; the challenge of rising intra-European competition as European economies began the task of post-war reconstruction; the changing contours of international competition as the new industrial might of the United States challenged in the North and Japanese industrialism threatened colonial markets in the South; the international links being forged across labour movements provoking a clear and persistent call for international co-operation on the regulation of labour standards; and a demand that labour-related provisions be included in any post-war peace treaty and put into legislative action (Alcock, 1971; Cox, 1977; Haworth and Hughes, 1997). As a result, Article XIII of the Treaty of Versailles became the first multilateral agreement to establish an organisation – the ILO – dedicated to the pursuit of social justice and the elevation of labour standards to formal international status. It is this pursuit, conducted for much of the ILO’s life in terms of the promulgation and monitoring of Conventions, that gives rise to the contemporary ILSR.

The high unemployment, poverty and political strife of the inter-war years provided a dramatic lesson in how economic policies and tariff wars could impact upon labour conditions and undermine political stability. One significant outcome of early investment in ILO research capabilities was that its economists were among the first to understand the seriousness of the economic depression (Endres and Fleming, 1996, page 220). In response, they advocated ideas and policies which challenged established economic orthodoxies and prompted ‘historic shifts in thinking ... on labour and social issues’ (Editorial, ILR, 1994, page 433). The political and economic consequences of the inter-war Depression broadened ILO epistemic competence beyond pure labour issues and the generation of international labour Conventions into the realm of economic policy. It was an important shift. In the post-war emphasis on the institutionalisation of international collaboration, the ILO established political support for its credentials as a legitimate and vital part of reconstruction plans.

Key in this support was the ILO’s Declaration of Philadelphia 1944 which placed great weight on the role of international economic and financial policies in aiding post-war economic recovery and social progress. In acknowledging this role, the Declaration anticipated the economic and political problems
associated with post-war reconstruction and gave prominence to the pursuit of full employment and the protection of human rights. Faith in concerted international action around an integrated programme of social and economic progress constituted a re-launch of the ILSR and a reformulation of the principles and norms of regime membership. While the generation of international labour standards remained the visible manifestation of regime activity, the Declaration also acknowledged that standards depended not only on legislation but on economic prosperity, political democracy and the protection of human rights. It was an acknowledgement that embedded itself in a new ILO constitution, provided the framework for new initiatives in the ILSR, and ensured that the ILO became the first specialised agency of the newly established United Nations.

Hence, during the years following the end of the Second World War, a number of factors coincided: as the only significant pre-war international organisation to retain its status, the ILO became a focal point for post-war international co-operation; the relationship between economic policy and social justice became more defined in what have come to be called the post-war accommodations; and the debate about a linkage between international trade and labour standards grew. This coincidence presented the ILO with a major opportunity to influence the post-war world in labour legislation, industrial relations and human rights.

However, over the ensuing decades, the ILO’s pursuit of labour rights and social justice became less attuned to changes in the economic orthodoxies of the post-war Bretton Woods institutions, the IMF and the World Bank. As the membership and liberalisation agenda of the GATT grew, so did the influence of lending mechanisms employed by the IMF and World Bank. In the 1980s, both institutions became advocates of market liberalisation as internal changes in thinking and policy reflected the pre-eminence of neo-liberal agendas (Stiglitz, 2002, page 13). These agendas attached new conditions to IMF and World Bank lending policies. Articulated in Structural Adjustment Programmes (SAP), borrower countries were required, amongst other things, to implement stabilisation policies such as currency devaluation and reducing state expenditure, while concurrent adjustment conditions required the removal of price controls, public subsidies and ‘protectionist’ trade tariffs. Employment was addressed in strict pricing terms with unionised labour in particular construed as a fundamental impediment to the efficient functioning of the market mechanism. Under this ideological onslaught, the post-war relationship between economic policy and social justice dissolved and with it the influence of the ILO in the new structures of multilateral policy making. The authority of the ILO, and, hence, the vitality of the ILSR, were widely questioned.
As a result, the ILO has at times found itself lacking both credibility and influence in international forums convened to govern the international economy or facilitate trade and investment liberalisation. Thus, whilst today a orthodox consensus exists in market economies that increased trade and investment liberalisation is one of the driving forces for global economic progress, the multilateral mechanisms which have articulated this consensus have very little to say about its social dimension. Indeed, the institutions at the core of global economic governance are unaccustomed to thinking about a social dimension for two main reasons – social considerations were seen to be the concern of national governments, rather than international institutions engrossed in technical economic and financial issues, and, once the structural adjustment model was in full swing from the later 1970s, social considerations were consigned to secondary status.

The WTO and the Social Clause

Although the ILO found its influence waning during the 1980s, and with it the ILSR, an opportunity was to present itself for the ILO to re-insert itself into the core of global economic policy-making. Building on a long history, the contentious issue of linking trade agreements with labour standards (the so-called ‘Social Clause’) resurfaced during the Uruguay Round of GATT negotiations (1986-1994). The Round was punctuated by what continues to be a profound rift between the US and EU over agriculture, and fault lines emerged between developed and developing states over the questions of services, intellectual property and investment. However, political tensions also developed over the issue of whether the yet-to-be-established WTO should incorporate certain ‘social’ provisions in its legal framework. Given the difficulties in moving forward on substantive trade issues, an agreement was reached that certain ‘additional items’ would be discussed at some future point, of which the labour standards issue was but one. However, these issues were ‘parked’ without a clear understanding of how they should be resolved.

The issue of a linkage between trade and labour standards was, however, the subject of heated debate during the WTO’s first ministerial meeting in Singapore in December 1996. The purpose of the meeting was to deal with outstanding issues, as well as to assess the WTO’s performance in its first two years of operation. Treatment of the trade-labour standards linkage was determined by complex and far broader factors associated with the regulation of international trade. The concerns of developing countries were particularly important. Mindful of the history of discrimination associated with the GATT – in particular, for example, the exclusion of agriculture and textiles from measures to liberalise trade – developing countries were wary of any proposals seeking to introduce new exceptions into the WTO’s legal (contractual) framework (Wilkinson, 2001, pages 403-408). They feared that such moves would empower members to suspend their procurement of most-favoured-nation (MFN) status vis-à-vis other
members deemed non-compliant. This wariness was compounded by the fear of a resurgence in unilateralism by the US (a chief advocate of a linkage between trade liberalisation and the maintenance of minimum standards of labour). The result was a concerted effort on the part of developing states to block the WTO’s discussion of ‘additional items’, in turn firmly blocking the establishment of a legal commitment to a Social Clause backed up by the WTO’s dispute settlement mechanism (DSM) – see Figure 1.

The Singapore meeting resulted in the issuing of a Declaration that sought to put an end to the Social Clause debate, but which also committed the WTO’s membership to a broad acceptance of core labour standards (WTO, 1996: paragraph 4). The statement was not, however, unchallenged. The declaration committed members of the WTO to the observance of core labour standards; it attempted to put an end to suggestions that the WTO had any responsibility in this area; it rejected the use of labour standards as a vehicle for protectionism; it sought to safeguard the comparative wage advantage of developing countries; and it pointed to the continuation of ‘existing collaboration’ between the WTO and ILO secretariats. Yet most contentious was the assertion that the WTO and ILO would ‘continue their existing collaboration’. Though intended merely as a ‘throw away line’ (Stigliani, 2000: page 188), the suggestion that the WTO and ILO would continue their collaboration appeared to open up an avenue for a future discussion of the trade-labour standards link. Such suggestions drew hostile comments from the chair of the Singapore Ministerial Conference – Yeo Cheow Tong – who strongly denied that the declaration constituted grounds for future discussions around the Social Clause (Yeo, 1996). The debate was not, however, to end in Singapore, and re-emerged over the course of the WTO’s next three ministerial meetings (Geneva, Seattle, and Doha – see figure 2).

The WTO’s second Ministerial Meeting in Geneva witnessed the first mass demonstrations against the WTO. The WTO’s then Director-General, Renato Ruggiero, reacted to the demonstrations in his address to the ministerial conference. Set against a backdrop of increasing social distress resulting from the Asian financial crisis and its spread to Latin America and the former Soviet Union, Ruggiero argued that the WTO needed to ‘give answers to issues of very real public concern’, citing ‘social conditions’ and ‘employment’ as among the most pressing. Although Ruggiero did not directly mention the labour standards issue, his comments were interpreted by some as containing the potential to
reopen the debate. His suggestions for dealing with ‘the interrelationships which undoubtedly exist’ and the assertion that greater collaboration take place among key world organisations looked to be unlocking, if not reopening, the door for a future WTO investigation of the labour standards issue. They also added substance to calls for the WTO and ILO to engage in some meaningful collaboration. It seemed, then, that the Singapore decision was indeed far from emphatic, and that a new, potentially divisive moment had emerged within the international trade regime.

Geneva was followed by three interrelated events, which proved significant for the outcome of the Social Clause debate. First, public hostility to the perceived social consequences of neo-liberal restructuring grew in intensity and was threatening to derail the global liberalisation project. Certainly, by the late 1990s, the primacy enjoyed by neo-liberal thinking was increasingly questioned by governments and wider civil society.

Second, an important mutation occurred in the proposed content of a linkage between trade and labour standards. Proposals shifted away from a legal commitment to the maintenance of minimum worker rights supported by the WTO’s Dispute Settlement Mechanism (DSM) to an acceptance of the Singapore endorsement of core labour standards, coupled with a US/EU suggestion that a joint WTO/ILO forum be convened. Such proposals were not, however, met favourably in either institution. Suggestions that the remit of the WTO be extended into the area of core labour standards sat uncomfortably with the ILO’s traditional emphasis on voluntarism and moral suasion as the principle forms of regime regulation (Haworth and Hughes, 1997: pages 189-93). There were also elements within the ILO who feared the consequences of closer links with the WTO because of possible disruption of the ILO’s tripartite status quo (with implications for operational activities within the ILO). Meanwhile, within the WTO, the technical trade specialists were unimpressed by the prospect of closer involvement with the ILO. Many WTO members shared this view, believing that the social issues played no role in the technical work of the WTO. Amongst WTO staff, there was a view that social issues should be addressed in a ‘third’ location, perhaps somewhere in the broader framework of UN institutions. The Singapore rejection of the social clause model and its identification of the ILO as the appropriate forum for such issues met the preferences of many staff in both institutions as well as those of many WTO member economies. Paradoxically, as we shall see, in time it also provided the ILO with an opportunity to revitalise its role as the international institution at the heart of the ILSR.

Third, proposals for a third location in which the social consequences of ‘market failure’ would be addressed began to emerge. Most notable among these was UN Secretary-General Kofi Annan’s launching of the ‘Global Compact’ (Hughes and Wilkinson, 2001: pages 155-159). Three features of the
Compact are noteworthy for our purposes. First, the Compact intended to draw together business, labour and civil society representatives in the pursuit of a moral adherence to its 9 principles. Second, of the 9 principles at the heart of the Compact, 4 relate to labour (of the remainder, 2 relate to human rights and 3 to the environment). Notably, the 4 labour principles are those at the heart of the labour standards debate. Third, the timing of the Compact's launch was important. Though the Compact was not formally launched until 26 July 2000, Kofi Annan chose to use the January 1999 meeting of the World Economic Forum (WEF) to give notice of its existence. This was the first WEF after the WTO's Geneva meeting. Taken together, it appeared that the Compact has been designed to achieve inter alia two ends: to take some heat away from a resurgence of pressure for the WTO to deal with social issues and to reinforce the shift away from a Social Clause towards a focus on core labour standards.

So how does this relate to the fortunes of the labour standards debate? The upsurge in civil hostility to the perceived consequences of WTO activities, the background provided by the Asian crisis, and the response of Ruggiero together pointed to an instance wherein the labour standards debate could have re-emerged on the WTO agenda. Ultimately, however, the opportunity was not realised. It did, nevertheless, generate an important reaction. Thereafter, a concerted effort emerged, played out over the next two ministerial meetings, to put an end to the debate once and for all.

The WTO's third Ministerial Meeting in Seattle in late November/early December 1999 ended in failure. Not only were designs for a new trade round temporarily shelved, but also the level of hostility within the meeting was such that members were unable to agree upon a ministerial declaration. The WTO's response was to embark on a dual strategy designed to unlock the Seattle inertia. The first and most significant dimension of this was to address the concerns of developing countries. However, the level of civil dissatisfaction directed towards the WTO in Seattle, as well as during the meetings of other international organisations in the immediate aftermath, also required the WTO to engage in a substantive dialogue with civil society organisations. Key to this dialogue was an attempt to abate suggestions that WTO rules offered multinational corporations an opportunity to disregard basic worker rights, and thus divert attention away from the labour standards issue.

This dual strategy was reflected in the outcome of the WTO's fourth, and to date most successful Ministerial Meeting – Doha 9-13 November 2001. The meeting witnessed a marked increase in the language of development in official documents, and a visible effort to nurture a closer relationship between the WTO and NGOs. But it also signalled a general acceptance of the closure of the Social Clause debate. Key to this was the issuing of a second Ministerial Declaration in which the labour standards issue was addressed. Like its Singapore predecessor, the Doha Declaration absolved the
WTO of any responsibility for labour standards and emphasised that the appropriate location for such
discussions was the ILO. In doing so, the Doha Declaration promulgated a clear division of labour
between the two organisations and their associated regimes, involving no significant overlap of interests
(WTO, 2001: paragraph 8).

In summary, since the conclusion of the Uruguay Round and the creation of the WTO, a concerted effort
to create a trade–labour standards linkage based on the Social Clause has failed. It has failed primarily
because nation states have been unwilling to commit in sufficient numbers to the linkage and because
of the political tensions underpinning the debate. States have preferred to keep separate two potentially
linked international regimes – the trade regime and the ILSR. Crucially in this regard, each respective
epistemic community has been keen to maintain an independence of thought that draws upon different
traditions and different methods of action in the development and regulation of their respective regimes.
This led to each episteme questioning the viability of the Social Clause and the efficiency of a joint
ILO/WTO regulatory mechanism. We would argue that this epistemic resistance has been an important
but often overlooked dimension to the failure of the Social Clause model. Given these difficulties, the
Social Clause always faced long odds. However, out of this failure has emerged new potential for the
ILO and the ILSR.

The ILO, the Social Clause and Decent Work

Clearly, as we note above, the demand for a Social Clause attached to multilateral trade agreements no
longer has sufficient political support for it to be established in the form originally envisaged by its
proponents. However, it is the institutional dimension to the debate that has opened up new avenues for
engagement on a social dimension to trade. In this regard the demand for a Social Clause to be
attached to the WTO-patrolled trade regime, and the resistance to this demand, has not only prompted
a reinvigoration of ILO activities and the international labour standards regime, it has exposed social
welfare limitations in the multilateralist agenda. Two factors provide the ILO with a platform on which to
establish itself as the principle forum for multilateralist engagement on social issues: the activities of the
ILO executive leadership; and the pursuit of the Decent Work agenda

Executive Leadership

The speeches of ILO Director-Generals have always been defined by their commentary on major social
and economic issues and their emphasis on institutional action – a practice first employed by the
founding Director of the ILO Albert Thomas and followed consistently by his successors (Cox, 1969). In
his Report to the 81st Session of the International Labour Conference in 1994, Michael Hansenne
marked the 75th Anniversary of the ILO by moving the Organisation centre stage in the debate over the social costs of globalisation. It was a time when hard questions were being asked about the ILO’s relevance in the face of a continuing decline in trade union membership, rising unemployment and the global spread of market liberalism. Hansenne argued that these changes underlined the importance of the ILO in balancing the needs of the state, society and the market at time when tensions between these institutions were no longer adequately subsumed by contemporary geo-political agendas (Hansenne, 1994).

Hansenne’s speech came two months after the debate over a linkage between trade and labour standards had threatened to disrupt the signing of the GATT Uruguay Round Agreements. As the first post-Cold War Director-General of the ILO, Hansenne was renewing the Organisation’s commitment to its tripartite roots and calling for a greater role for the ILO in global economic and social development. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted on 18 June 1998, represented the most visible outcome of Hansenne’s re-orientation of the ILO agenda toward a comprehensive response to the social costs of globalisation. The Declaration represented a commitment by its signatories to core labour Conventions such as Freedom of Association and the Right to Collective Bargaining, and a Follow-up requiring:

- those who had not ratified the core Conventions to submit a yearly report on progress in implementing the principles enshrined the core Conventions
- a four yearly report by all ILO members that provides an overview of national efforts to promote and implement the core Conventions

The Declaration is couched in terms of a tripartite commitment to uphold basic human values. The principles and rights emphasised in the Declaration are:

- Freedom of association and the right to collective bargaining: this requires the ability to form freely and join trade unions or similar organisations and to engage in voluntary collective bargaining leading to the implementation of collective agreements. Freedom of association and the right to collective bargaining require in turn a legal basis guaranteeing these rights, appropriate institutions, protection against discrimination in the exercise of these rights, and active and accepted involvement of the parties.
- Elimination of all forms of forced or compulsory labour: this covers a wide range of circumstances where the state or individuals require work to be undertaken under the threat of
deprivation (of food, land or wages), physical or sexual violence, imprisonment or restrictions on mobility.

- Effective abolition of child labour: children should enjoy the opportunity to develop physically and mentally to their full potential, with access to relevant, basic education. Certain types of child labour are deemed to be totally unacceptable – for example, slavery, trafficking, debt bondage, prostitution and forced military involvement. Other forms of labour are acceptable and depend on customary arrangements that do not restrict children in achieving their full potential.

- Elimination of discrimination in respect of employment and occupation: in this principle, discrimination at work on the basis of sex, race or colour, national or social origin, religious or political beliefs, disability, age or HIV status is unacceptable and should be opposed by both legislative educational measures.

The Declaration is based on the ILO’s ‘core’ labour standards and, consequently, is a restatement of the key elements of the Social Clause. It also addresses issues that go well beyond the work environment, and, in emphasising the status of the four principles and rights as ‘basic human rights’, asserts the ILO’s responsibilities for global social values.

The Declaration institutionalises attempts to reunite domestic and international interests on globalisation and social protection fragmented by the Cold War agenda. The debate on trade and labour standards and growing domestic concerns over the social costs of open markets and the pursuit of free trade have substantially influenced this re-convergence. In addition, a greater emphasis on its international activities by organised labour and the political defeats of centre-right governments in key economies such as the UK and the US during the 1990s shifted political opinion toward a more positive engagement with the ILO. The rejection of the WTO-patrolled Social Clause model in favour of the ILSR has ensured that the political pressure for governments to demonstrate (rather than prevaricate) their support for the ILSR continues both within and without the ILO.

**The Decent Work Agenda**

Hansenne’s successor, Juan Somavia, was elected on a mandate to pursue much of the agenda put in place by his predecessor. The twin themes of modernisation and renewal attempt to carry this agenda further. In this regard, a number of objectives are being pursued:
- The focus on the ILO’s ‘Decent Work’ agenda as a global requirement
- Strengthened tripartism and collective action among the ILO constituents
- A reformed and modernised ILO
- A clearer policy identity that will permit closer engagement with other [intergovernmental] institutions and actors.

The Decent Work (DW) agenda is central to the repositioning of the ILSR. In the DW report adopted in 1999, the overarching objective of the ILO was identified as the promotion of ‘opportunities for women and men to obtain decent productive work, in conditions of freedom, equity, security and human dignity’. In turn, this objective reflects the DW agenda’s status as the focal point of four strategic ILO objectives: rights at work, employment, social protection and social dialogue. Hence, the DW agenda is another restatement of the ILO’s acceptance of global responsibilities for social well-being writ large.

DW is understood within the ILO in three ways –as an expression of popular aspirations in a political context; as an analytical concept allowing the ILO’s strategic objectives to be united effectively; as a policy framework for interventions ‘at the crossroads of economic, social and political agendas’. The DW agenda is carried forward in a number of ways. For example, eight DW pilot programmes have been implemented in Asia, Africa, Europe and Latin America. In the ILO’s Asian region, countries are developing tripartite National Action Plans by which DW will be promoted. DW has also been integrated into poverty reduction programmes. Finally, there is a range of DW-related country-based initiatives.

The National Action Plan (NAP) approach merits particular attention. The NAP approach is widely used elsewhere (in EU employment strategy and in APEC, for example). In the case of DW, it provides an important tripartite opportunity at national level to assess the coherence of national employment and social protection measures with the international standards agreed at the ILO. NAPs permit the domestic partners to assess how international standards should best be addressed in the particular social, political and economic contexts that apply. Thus, NAPs focus on the development of policy agendas and time frames appropriate to national circumstances. The intention is to develop this agenda on the basis of extended social and tripartite dialogue, which will allow the development of an integrated policy framework. Different policy foci emerge in different countries. For example, in Ghana, the Philippines and Panama, poverty reduction has been a central feature of NAPs. In Morocco, Bangladesh and the Philippines, industrial restructuring and improved international competitiveness are significant. Denmark and Kazakhstan have emphasised flexibility and social protection. Bahrain has emphasised fundamental rights and democratisation.
According to Berar (2003), much experience of NAPs has been positive, particularly in terms of making links between the DW agenda and higher level policy agendas. NAPs are proving to be flexible, evolutionary and effective in terms of the promotion of tripartite consensus. They appear to promote tripartite partnerships and a wider social dialogue and to focus attention on the relationship between national and international policy agendas. Berar also reflects on continuing challenges the NAP approach, including the need to improve tripartite partnerships, the development of improved capacity building and resource mobilisation, and the identification of robust DW indicators (for example, national benchmarks, and qualitative and quantitative indicators).

It is too early to make an assessment of the impact of the DW agenda and, as Berar (Ibid) points out, much work is still to be done on the monitoring and assessment of DW activities. Certainly, it would be precipitate and unwarranted to attribute success to the agenda. This is an important issue, but not the focus of this discussion. Our focus is on the strategic direction of the ILO and its ILSR. Under Hansenne and Somavia, the ILO has built on its traditional strengths and commitments in a refocusing of its activities away from the Social Clause to a much broader agenda. Instead of an emphasis on the trade and labour standards linkage, the ILO has translated its traditional emphases on work and social dialogue into a model of basic human rights in an integrated global economy. The adoption of the Declaration and the DW agenda reasserts a much broader responsibility for social, economic and political dialogue on the ILO’s part, and in many ways restates and modernises the 1944 Philadelphia vision.

The DW agenda recaptures the fundamental concerns that informed the early development of the ILSR – the promotion of fundamental principles and rights at work; social protection; social dialogue; and employment, enterprise creation and human resource development. Visible public interventions and the mobilisation of domestic interests around globalisation and social justice have seen a renewal of political investment in the machinery of tripartism. A significant influence was the desire to shift the trade and labour standards debate away from the regulatory instruments of the WTO and into the ILO. However, an added dimension to this shift is the emphasis on a parallel engagement with other global governance institutions as the ILO seeks a greater role in the multilateral system. The focus of this engagement is a carefully considered and proactive approach to social issues arising from the process of globalisation. Both Hansenne and Somavia have promoted this engagement in two ways: in terms of the renewal of political commitment to the ILO and the recognition of (and response to) mounting criticism of the failure of the multilateral system to engage in a cohesive and systematic approach to these issues. For Somavia – taking a more overtly critical stance than his predecessor – the tendency
for the institutions of this system to operate as autonomous, inwardly protective and self-serving entities has rendered multilateralism ‘an archipelago of basically unconnected islands’. He argues

Decent work … offers a way of combining employment, rights, social protection and social dialogue in development strategies. The difficulties faced by the traditional structural adjustment polices of the Bretton Woods institutions lie in part in their failure to incorporate these goals, and poverty reduction strategies will not succeed unless the same goals are built into them. At present, the Poverty Reduction Strategy Papers produced under the auspices of those institutions do not frontally address these issues. Reducing the decent work deficit is the quality road to poverty reduction and to greater legitimacy of the global economy (Somavia, 2001).

More generally, the ILO’s search for common ground on which to build an institutionally inclusive system of global governance is grounded in the belief that that in order to thrive, markets must be embedded in broader frameworks of social values and shared objectives. The piecemeal and fragmented approach of the Bretton Woods institutions to these frameworks and the failure to sustain a system-wide dialogue about the social dimensions of economic integration, underlines the task facing Somavia. While labour and civil movements are dealt with by arms-length diplomacy (except within the ILO), to a large extent the onus lies in the political commitment of governments to build a new consensus within and among the institutions of multilateralism. The sophisticated forms of activism employed by NGOs to garner support and influence public opinion, and the increasingly confrontational strategies employed by the global protest movements, demand a more considered response than has hitherto been employed by the targets of these protests (Hughes, 2002, page 170). The convergence of domestic and international interests (both aligned with the issues and critical thereof) around issues of globalisation, regulatory transparency, human security and social justice, places new demands on the system of global economic governance. The challenge for Somavia and the multilateral institutions with which he is seeking to co-operate is no more and no less than to nurture a reconfiguration of this system.

Conclusion

At one level, the ILO and its renewal of the ILSR is a case-study of success out of adversity. As the orthodoxy of neo-liberalism spread, the influence of the ILO as an international agency and the ILSR as an international regime receded in the wake of state-led economic restructuring and market reforms. Labour markets were deregulated and the legislative growth in labour protection reversed. In facing these challenges, the capacity of the ILO’s epistemic community to reposition and revitalise the organisation’s energies has again proven to be a key asset in seizing opportunities afforded by the Social Clause debate. The emergence of the Social Clause issue in the GATT and the subsequent
debate in and around the WTO embodied growing concerns over multilateralism’s failure to address the social costs of globalisation. However, without the necessary political and institutional support, the Social Clause model remains outside the growing and increasingly complex architecture of international labour protection. For us, the strength of the Social Clause lies not in the model itself – on which there lies little consensus – but in the debate which has highlighted deficiencies in the multilateral agenda and the web of alternatives that have arisen to rejuvenate debate around international labour protection. Each, in some way makes reference to core labour standards. These in turn have served to recognise, sometimes willingly, other times reluctantly, the institutional role of the ILO in promoting dialogue and capacity building in the development of social protection programmes. Moreover, in rejecting a WTO-patrolled Social Clause in favour of the ILSR the political pressure on governments to ‘deliver the goods’ has increased, prompting greater political investment in the processes and outcomes of ILO initiatives such as the Decent Work Agenda. It is as a consequence of this debate that the ILSR has a renewed energy and focus embodied in Hansenne’s and Somavia’s vision of a global economic order in which the ILO and the ILSR together promote and monitor social inclusion and protection. Whilst this vision does not go unchallenged, it strikes a chord with other international regimes (for example, the international trade regime), with increasingly widespread corporate practices promoting labour standards, and with national policy makers seeking to encourage economic growth with social inclusion and stability. Supporting this vision are the unmatched technical capacity building resources commanded by the ILO.

At another level, the case study also throws light on emergent global governance. The opportunity seized by Hansenne, Somavia and the ILSR’s epistemes emerges from the demand for a more integrated and transparent system of global governance. Fundamental to any sustainable, inclusive global order will be a combination of the protections embodied in ILO Conventions and measures commensurate with those of the Decent Work agenda. In support, the recent report by the ILO-sponsored World Commission on the Social Dimension of Globalisation calls for greater policy coordination between the institutions of global governance (ILO, 2004). The Commission’s proposal for a Policy Coherence Initiative (PCI) on growth, investment and employment calls for institutions of global governance to ‘adapt post-Second World War architecture to twenty-first century priorities’ (Somavia, 2004, page 5) and construct more integrated and coherent policy solutions to the challenge of globalisation. Hence, the repositioning of the ILO under Hansenne and Somavia is far more than an overcoming of adversity by an international agency; it is part of the ongoing configuration of an emergent system of global governance.
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Figure 1 – The ‘Social Clause’ Model

<table>
<thead>
<tr>
<th>Standards protected</th>
<th>Relevant ILO conventions</th>
<th>Enforcement mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of Association</td>
<td>No. 87 – Freedom of Association and Protection of the Right to Organise Convention (1948)</td>
<td>Instances of non-compliance would be used as the basis for a dispute settlement process to be enacted in the WTO and decided by a joint WTO/ILO Committee.</td>
</tr>
<tr>
<td>Right to collective bargaining</td>
<td>No. 98 – Right to Organise and Collective Bargaining Convention (1949)</td>
<td></td>
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<tr>
<td>Prohibition of forced labour</td>
<td>No. 29 – Forced Labour Convention (1930)</td>
<td></td>
</tr>
<tr>
<td>Restrictions on the usage of child labour</td>
<td>No. 105 – Abolition of Forced Labour Convention (1957)</td>
<td></td>
</tr>
<tr>
<td>Non-discrimination in employment</td>
<td>No. 111 – Discrimination (Employment and Occupation) Convention (1958)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No. 138 – Minimum Age Convention (1973)</td>
<td></td>
</tr>
</tbody>
</table>

Figure 2 - Support for WTO investigation of relationship between trade and labour standards across four ministerial meetings

- Supportive
- Unsupportive
- Non-committal

Ministerial Meetings:
- Singapore December 1996
- Geneva May 1998
- Seattle Nov/Dec 1999
- Doha November 2001