

Part I

1. History and Current Relevance of Protecting Core Labor Standards

1.1. *Historical Discussion*

Connection labor standards with international trade dates back at least to the 18th century. The finance minister of Louis XVI considered integrating social standards into international trade (Frank 1999, Servais 1989). At the beginning of the 19th century the British parliamentarian Charles Hindley advocated to safeguard English labor laws through an international agreement (Wet 1998). The labor movement drew political conclusions from the increasing unification (today cast as globalization) of the world well over a hundred years ago (Hobsbawn 1975). A multilateral organization with a tripartite structure (governments, unions, and employer associations) was established with the ILO in 1919. The ILO is the oldest surviving global labor and more generally human rights organization.

However, only after the atrocities of the German National Socialists did individual human rights gain a higher standing on the international level in relation to the principle of sovereignty (Berkovitch 1999). Although an uneasy relationship exists between sovereignty and the claim that human right standards are universally applicable (see Bretherton 1998), after World War II, universally recognized norms laid down in human rights declarations and conventions established a “formal international regime of human rights” (McNeely 1998: 15, Bornschier 1990, 1994, Riedel 1998, Roberts & Kingsbury 1993). This led to the emergence of a “World Society”, a common reference frame sharing the same norms.

The human rights proclaimed in the *Universal Declaration of Human Rights*, by the UN in 1948, contains all of the fundamental labor standards with the glaring exception of those regulating child labor. Over the ensuing

years, these proclaimed rights were further codified into more binding contracts like the “Pact for Civil and Political Rights” and the “Pact for Economic, Social and, Cultural Rights” in 1966 (Bornschier 1990, for a differentiation between more and less binding international law see Döhring 1999: 1-24, for an outline of how unequal treaties are in international law see Nozari 1971 and for further details see section 4 of Part I).

In the 90s, protecting the civil and social human rights of workers attained a yet greater relevance through the current acceleration of economic globalization.

1.2. Current Discussion

Labor rights are portrayed to be in jeopardy due to the increasing leverage of transnational corporations *vis á vis* nation states. The global increase of liberalization and deregulation policies as well as free trade regimes, and new, more efficient communication and transportation technologies have undermined national regulations restraining or channeling the mobility of products or capital (Dombois & Hornberg 1999, Frey 1997, Portes 1994, Sauviant 1993, World Bank 1998: 341, World Bank 2000: 34).

Third World countries increasingly depend on the private sector for foreign capital due to the decrease of development aid (World Bank 1998: 341). Many developing countries have changed their strategy from an import substitution to an export orientated strategy (Portes 1994). Transnational corporations (TNCs) are no longer seen as intruders but as welcome guests (Frey 1997, Sauviant 1993).

These developments intensify the competition among developing countries (DC) for foreign investment.⁵ Some observers caution that lowering labor standards is likely to evolve into an increasingly popular strategy for at-

⁵ Beyond this general statement, the consensus ends. There is, e.g., considerable dispute what globalizations does to the wages or the jobs of the unskilled (Bhagwati & Dehejia 1994, Wolf 1997 vs. Bluestone & Harrison 1982, Wallace & Rothschild 1988).

tracting coveted foreign investment, leading to a “race to the bottom” (Greven & Scherrer 1998: 78, for a divergent view see Langhammer 1999).

In contrast to the 1960s, the majority of exports are now industrial (and not agricultural) products manufactured by wage laborers (Kulesa 1995, World Bank 1998: 323, World Bank 2000: 59, see figure 9). Therefore, an increasing percentage of the population would be effected by competition induced labor right violations.

Greven & Scherrer (1998: 78) argue these developments have already lead to an increasing violation of fundamental labor standards, particularly child labor, on a global scale. Whether their statement is referring to the rise in absolute numbers of laboring children rising (which would not be surprising because of the growing world population) or a rise in the rate of laboring children in an age cohort is unclear. Likewise, it is not clear whether violations are increasing or whether there is a larger propensity to report such violations because of rising awareness and the proliferation of International-Non-Governmental-Organizations. I will argue that in fact the number of children working relative to their age cohort is decreasing while the attention devoted to this fundamental labor standard is increasing. Before I develop this argument, I will first define the term “fundamental labor standard”.

2. Fundamental Labor and Social Standards: A Definition

According to Greven and Scherrer (1998: 12) “social standards” is the encompassing term for two components:

(1) The rights that are supposed to be respected regardless of the developmental stage of the countries are termed as *fundamental* or *core* by the ILO and development agencies, respectively. These fundamental labor standards are to a large degree identical to what the World Bank calls (*social*) *human rights* and the Organization for Economic Cooperation and Development (OECD, whose member states are colloquially referred to as “the West”) designates as *workers rights*. These rights are the freedom of association, the right

to collective bargaining and the prohibition of forced or child labor and discrimination in training, occupation and employment (for more details see section 4, Part I).

(2) More broadly the term encompasses minimum requirements when drafting workers labor contracts regarding working hours, wages, and social insurance, etc. These requirements can be conceived of as the fundamentals of social policy goals. Social policy can be conceptualized as the „Gesamtheit der staatlichen Maßnahmen zur Wahrung und Mehrung von materieller Sicherheit und Chancengleichheit bei Einkommen, Gesundheit, Wohnung, Bildung und im beruflichen Bereich.“ (Meyers Lexikon 1998: 229, see also the similar definition of Reinhold 1992: 553) (Author translation: Social policy is the totality of measures by the state to maintain and increase material safety and equal opportunity concerning income, health, living, education, and in the employment sector.) Up to the twentieth century, social policy was the answer to the “workers’ question” (Achinger 1971). Its most important function was to regulate the process of social polarization. The regimentation of working life was expanded to an expansive system of income maintenance and health insurance. The term “social policy” encompasses the labor market policy, employment legislation, and social insurance. The fundamental labor standards are what the social policy legislation originally focused on. The separation between fundamental labor standards and social standards varies slightly between the specific international organizations (see section 4 of Part I). All these organizations, though, distinguish between rights at work that should be maintained independently of the country’s level of development and standards that are only required once a country has surpassed a certain income level.

3. Initiatives and Strategies to Promote Labor Standards

In recent years, the increasing economic globalization has spurred a renewed interest in the protection of labor rights. Considerable dissent exists about the best means to achieve this (see also Abu Sharkh 2000 for an overview). The overarching question is whether private initiatives are sufficient to protect labor standards or whether governmental, multilateral initiatives are required. If it is the latter, is moral persuasion enough or are more coercive measures needed? (for a discussion see Freeman 1994, Greven & Scherrer 1998, ILO 1997b: 29, Kunz 1999, Langille 1994, Liubici 1998, UNICEF/IMUG 1997, Windfuhr 1999a).

Different kinds of initiatives have developed to impede the alleged “race to the bottom” of labor standards (Abu Sharkh 2000, Diller 1999, Hilowitz 1997, OECD 1999). On the one hand, there are mainly non-governmental initiatives that are either wholly private, civil society based or a so-called “public private partnership”, i.e. a joint venture between companies, NGOs, and/or national governments. Roughly these initiatives can be divided into three types: (1) ethical trademarks or labels with Codes of Conduct or company owned social labels and (2) partner or social labels like Fair Trade that developed through the cooperation with government bodies, NGOs, and/or corporations. Furthermore, there are (3) governmental and multilateral initiatives like the ILO that offer cross country or sector agreements of supranational organizations.

An overview of the non-governmental initiatives, their differences and the discussion about their effectiveness will be given in section 3.1. In particular, I will expatiate why international observers argue that private initiatives do not suffice and governmental multilateral initiatives are required to promote core labor standards.

3.1. Non-Governmental Initiatives to Promote Labor Standards

Neoliberals argue that a strictly market based solution of sponsored social labels and/or Codes of Conduct are preferable to the codification of workers rights by states (Freeman 1994). A known representative of this position is the Harvard economist Freeman (1994: 91): “. . .policy makers should give greater weight to a labelling strategy for determining standards: provide consumers with information about the labour standards under which products are produced, and then trust the market to reward products made with good standards and penalise those made with poor labour standards.“ According to this position, strictly market based solutions employing non-governmental social standard initiatives suffice; governmental initiatives, codification efforts or coercive measures to impede an alleged “race to the bottom” do more harm than good.

Others even argue that the increasing human rights activism, the heightened vigilance of the media, and the new communication possibilities via internet has initiated a „race to the top“. Spar argues that the adoption of Codes of Conduct in the 1990s have produced a domino effect: „When Reebok refused to sell balls made with child labour, so did all of its competitors“ (Spar 1998: 10). Where the ceiling exists is not clear though. Singer (1993) argues that the connection between the ethical conduct and the success of a firm is curvilinear.

Critics (Langille 1994, Greven & Scherrer 1998, Liubici 1998) espouse that relying solely on labeling strategies has several drawbacks. According to them, private social standard initiatives cannot replace state policy because the initiatives (1) often do not cover the core labor standards, (2) frequently provide no clear monitoring if the standards these initiatives allege to uphold are indeed met and (3) there are a multitude of free riders among the many different initiatives.

In the following sections, I give an overview over the different types of initiatives, their history, and their assessment. Furthermore, I show how international organizations have responded to these assessments.

3.1.1 Typology of Non-Governmental Initiatives

Although a simple typology is difficult due to the proliferation of social standard initiatives in the last decade (ILO 1998), one could split the non-governmental initiatives into two types: (1) ethical trade marks that are established by a single company committing to maintain certain labor standards, e.g. by proclaiming a Code of Conduct; (2) partner labels that are formed by a joint cooperation between different companies, NGOs and/or government ministries. Through social labels, i.e. texts or symbols such as the smiling rug on the back of the carpets of *Rugmark*, social labels symbolize that certain, self-defined labor standards are upheld in the production process of these products.

3.1.1.1. Ethical Trademarks and Codes of Conduct

The most common way of establishing an ethical trade mark is to subscribe to a Code of Conduct. “*Code of conduct*” refers to a “written policy, or statement of principles, intended to serve as a commitment to a particular enterprise conduct” (ILO 1998: 11). The commitments made are often in response to market pressures and held in very general terms with no provision for implementation measures.

Modern codes of conduct originated early in the 20th century (ILO 1998: 11). One of the first ethical trademarks was the Co-op trade name of the Cooperative Wholesale Society (Zadek et al. 1998). Another is the model code for advertising and marketing practices put forth by the International Chamber of Commerce. The labor provisions in the 60s and 70s were targeted towards internal management practice (Statement of the United States Council for Business 1997).

In the late 70s, the first *subscription codes* developed. Subscription codes are based on external, i.e. third party, commitment and monitoring (ILO

1998). Well known examples are the Sullivan Principles (1977) which gave guidance to firms in South Africa and the MacBride Principles (1984) that set standards for firms conducting business in Northern Ireland.

In the late 80s and 90s several new trends have emerged: (1) a proliferation of codes, (2) the extension of the applicability of the code beyond the headquarters of the multinational corporation to joint ventures, licensees, and other contractual relationships (ILO 1998). Although codes of conduct exist in all 22 ILO sectors of activity, sectors producing consumer products “appear more conducive to their development, including textiles, clothing, leather and footwear, commerce, food and beverages, and the chemical and toy industries” (ibid.). Examples include the shoe manufacturer *Reebok* and the German clothing giant *C&A*.

3.1.1.2. Partner and Social Labels

As pointed out above, in the course of the proliferation and expansion of codes a broader range of actors is now involved including workers’ organizations, industry associations, NGOs and other private groups. Partner labels can be created by the joint cooperation of government ministries, NGOs and companies within a country or branch.

These initiatives often show the consumer through text or symbols on the product that certain labor standards are observed in the production process of the goods by affixing a „social label“; the label is thus a statement about the production process of the product and – in contrast to eco labels – not about the product itself (see Diller 1999, ILO 1998, 1999a, Hilowitz 1997, Windfuhr 1999b).

The first „social label“ was the *White Label* for lady and children underwear in the 19th century (Zadek et al. 1998): The label guaranteed that the production of the clothes was taking place in production sites that followed the existing factory laws, produced the products on factory grounds, did not demand overtime and did not employ children under the age of 16. *Fair Trade* is a well known contemporary example of a label resulting from the cooperation

of governmental authorities, Non-Governmental-Organizations and/or corporations (ILO 1998).

3.1.2. Differences between Non-Governmental Social Standard Initiatives

There are a number of differences between the purely company sponsored and the hybrid (i.e. involving the cooperation of governments or NGOs) non-governmental initiatives that I will outline in the following sections.

3.1.2.1. Differences in Number and Extensivity of Social Standards Considered

Social labels involving the cooperation of NGOs or workers typically exhibit marked differences:

(1) A *greater number* of dimensions of social standards: In contrast to pure business initiatives that often only entail a few fundamental labor standards they contain a broader range of workers' rights, in particular trade union rights like the freedom of association and the right to bargain collectively.

(2) In part, *greater extensivity* of the mentioned dimensions: In contrast to multilateral initiatives of the ILO the mentioned dimensions are more comprehensive. E.g. in the context of the „child labor“ dimension they do not only demand that child laborers be replaced by adults but also call for “supplementary” policies like establishment of educational programs for former child laborers.

However, at the end of the 90s there was a major *consolidation* about *which dimensions ought to be* part of private initiatives. The ILO-conventions were taken as a template.⁶ In 1999⁷, the firms belonging to the

⁶ In interviews I held with leading representatives of businesses during a workshop organized by the Federal Ministry for Economic Cooperation and Development (Bundesministerium fuer wirtschaftliche Zusammenarbeit und Entwicklung, BMZ) concerning the role of the ministry in promoting ecological and social labels and Codes of Conduct („Die Rolle des BMZ bei the Förderung von ökologischen and sozialen Gütesiegeln and Verhaltenskodizees“), relief was

Foreign Trade Federation of German Retail (Außenhandelsvereinigung des Deutschen Einzelhandels, AVE) pledged to only buy from manufacturers compliant with certain labor regulations when purchasing goods. The AVE-declaration was supposed to be the basis of the supply Codes of Conduct of the European umbrella organization of the Foreign Trade Association. In the world of international private sector models, Social Accounting 8000 (SA 8000) provides very similar guidelines to AVE.

While four of the dimensions exactly match the fundamental labor standards of the ILO, the AVE Declaration even goes beyond the core labor standards on several points:

- (1) „Erection and maintenance of requirements of the safety of the work environment and the health of the employees;
- (2) Prohibition of practices violating human and workers rights regarding the design of the work place, the environment, and the working time;
- (3) Securing adequate (on the basis of local conditions) wages that allow the fulfillment of all the elemental material needs of the employees.“

The stipulation, implementation, and control of these rules should include all subcontractors. According to the statement of leading representatives of business during the Workshop of the Federal Ministry for Economic Cooperation and Development (Bundesministerium fuer wirtschaftliche Zusammenarbeit und Entwicklung, BMZ) concerning the role of the ministry in promotion of ecological and social labels and Codes of Conduct)⁸, monitoring is in reality limited, due to practical reasons, to large suppliers.

Concerning the number and extensity of social standards that businesses are expected to comply with, there thus seems to be somewhat of a consensus in industry. The larger debate now focuses on *who* is to monitor busi-

expressed that an internationally recognized guideline existed that could serve as an orientation point. (Bonn, Germany, March 24, 2000).

⁷ Nov., 11.1999, Cologne, Germany,

⁸ March 24, 2000, Bonn, Germany

ness' compliance within these standards. E.g. the AVE model as well as the business standard SA 8000 lack a neutral monitoring system. The monitoring of social standards is supposed to be integrated into the quality control of the firms and is not to be conducted by neutral monitoring systems according to AVE. SA 8000⁹ proposes neutral agency monitoring.

The stance towards monitoring is to date the most marked difference between corporate initiatives and multilateral, NGO or workers initiatives and most decisive issue of contention as stated in interviews the author conducted with participants during the Workshop mentioned above. While the latter provide for an external control of businesses, the former reject these (see Diller 1999, ILO 1998, especially in regard to *Fair Trade* see Kunz 1999). Since this is probably the most severe drawback of private initiatives the following section is devoted to an overview and discussion of different monitoring models.

3.1.2.2 Differences in Monitoring Models

Monitoring models can be divided into two main categories:

(1) Internal monitoring which can again be subdivided into: (a) company monitoring and (b) agency monitoring.

(2) External monitoring which can be classified into (a) foundation monitoring and (b) independent monitoring.

In the following sections, I will discuss the different models as well as their advantages and limitations.

⁹ see www.cepaa.org, Feb. 2002

3.1.2.2.1. Internal Monitoring: Company Monitoring and Agency Monitoring

Company monitoring exists if the employees or suppliers inspect the company premises. This is the most common type of monitoring, e.g. used by Levi-Strauss . The advantage of company monitoring is that it is very efficient and inexpensive. It can be integrated into existing control inspections, e.g. quality control.

According to the model of *agency* monitoring, the company mandates a third party, e.g. a public accountant in the case of *Wal Mart*, to undertake the audits. SA 8000 also proposes such a system: The company can choose its own accountants. However, these accountants have to be certified by an independent organization like CEPAA.¹⁰

The internal monitoring models contain a number of grave drawbacks according to critics: Their credibility is low in the eyes of the consumer (Liubici 1998) since the company has a number of massive conflicts of interest. Furthermore, if the social standards inspection is attached to existing quality inspections, there is the danger that these inspectors are not qualified to assess the labor standards and/or do not possess the trust of the workers (ibid.). Among internal monitoring models agency monitoring seems to be the more trust worthy option since the inspectors need to be accredited by another organization.

3.1.2.2.2. External Monitoring: Independent and Foundation Monitoring

A third model is the monitoring by *independent* external organizations such as trade unions and religious or human rights organizations. Proponents of this approach argue that this is the most credible and worker friendly version. However, it is also the most difficult to finance.

To erect a *foundation* based monitoring system, one or more multinational corporations need to establish a foundation together with trade union or human rights NGOs (Liubici 1998). The head of this foundation is com-

¹⁰ see www.cepaa.org

posed of the initiators, who draw up a Code of Conduct or a Labeling-System. The company accepting the code or labeling pays into the foundation. These resources are used to commission a consulting company to watch over the compliance of these standards. The Rugmark Foundation employs this system (ibid.).

External monitoring models are more credible from a consumer and workers perspective but less cost-effective. The majority of companies reject them since they fear industrial espionage (ibid.). Critics maintain that independent monitoring runs the same risk of being partial as company monitoring because they are still paid by the companies.

Foundation monitoring, however, is the best alternative taking into account objectivity, credibility, cost-effectiveness, and affordability (ibid.). Herbst (1998: 5) and Liubici (1998) argue that two additional criteria should be considered when evaluating monitoring systems: (1) To subject the work of the foundation to an external examination and evaluation (vgl. Herbst 1998: 5). This external investigator could be the state agencies or international organizations such as the ILO. (2) It is of vital importance that any violations are publicized since the availability of such information for consumers is the prerequisite for decisions against the purchase of goods – which is the primary leverage for adherence to company codes. Publicizing violations is something neglected even by high-reputation initiatives like the Rugmark Foundation (Liubici 1998).

3.1.2.2.3. Limitations of Private Monitoring Models

Critics point out that private monitoring models have at least five serious limitations (Herbst 1998: 5, Liubici 1998). (1) Affordability: Experiences in the USA have shown that a monitoring system without enough financial resources does not function. (2) The informal sector: Small, scattered work places in the informal sector cannot be monitored. (3) Non-transparent industries: Remote plantations or industries with a horizontal range of manufacturing, i.e. many subcontractors, are also impervious to monitoring efforts. (4) Employer evasion strategies: Known strategies are extending the subcontractor

chain or increasing informal cottage industry labor. (5) Employee evasion strategies: Especially if unemployment is high and/or the economic situation is depressed, employees are unlikely to report labor standard violations. Evading worker protection regulations is well documented in the case of child labor (Liubicic 1998). Forged identification cards with incorrect ages were found in Morocco, Guatemala, Honduras, the Dominican Republic, the Philippines and El Salvador (ibid.).

3.1.3. Summary: Advantages and Disadvantages of Non-Governmental Social Standard Initiatives

As shown above there are many, very different initiatives concerning the covered standards and the employed monitoring systems. The multitude of labels and codes confuses the customer, hence the consumer motivation to pay a premium on ethical products may suffer (Greven & Scherrer 1998). Furthermore, the low accountability diminishes the incentives for businesses to actually implement the alleged social standards. Free-riding is thus facilitated (Langille 1994, Greven & Scherrer 1998, Liubici 1998), and multi-nationally recognized standards are watered down (ILO 1997a).

The reach of non-governmental initiatives is also very limited in scope. Private company initiatives do not encompass the majority of the working population but only the employees of the particular firm and often not even that (OECD 1999). Workers with temporary work contracts may be excluded. Frequently, social label initiatives include only emotionally laden dimensions like child labor while other fundamental rights, especially the trade union rights, are not included into the scope of their initiative.

The perhaps most important argument is that historical experience, e.g. in South Africa, shows that voluntary codes are only effective if combined with state rules. The official position of the ILO is thus that labeling initiatives cannot replace the work of the government or intergovernmental organizations (ILO 1997a); they can, however, impart new impulses and increase the recog-

nition and effectiveness of social standards beyond the normal audience of the ILO.

To maximize the effectiveness of the different labels and Codes of Conduct a number of observers advocate their international harmonization, i.e. a standardizing which social standards are essential and how monitoring is to be assured (Langille 1994, Greven & Scherrer 1998). Liubici (1998) suggests an industry wide or at least national standardization of labels.

A harmonization would mitigate the confusion of the consumers and impede the free-riding of “pseudo social labels“. From a business point of view, standardized codes contribute to keep the costs of implementing the codes low because everyone adopts the same code and can share the cost of inspectors. Expenses incurred by the firm include: costs for changing the management system, schooling of the employees concerning their rights and consequential social charges, as well as costs for controls, reporting and public relations (Herbst 1998). Whether or not these expenses can be passed on to the consumer depends on product and branch specific traits like the price elasticity of the good (Zadek et al. 1998). Furthermore, past experience shows that if the product is important for the consumer’s identity constitution, they are willing to pay a premium for ethical products they can identify or show their “ethicalness” with (ibid.). “Ethical clothes” thus have a higher marginal substitution rate than “ethical pots and pans”.

Besides standardization, Langille (1994), Greven and Scherrer (1998) argue that codification and the ensuing possibilities of sanctions are needed to evade the danger of a prisoner’s dilemma. International codification falls into the jurisdiction of international law and hence the realm of (international) governmental organizations. In the following section, I will give an overview over governmental strategies and discuss two most debated strategies of international governmental organizations to promote labor standards.

3.2. Governmental Initiatives and Strategies to Promote Labor Standards

3.2.1. National Strategies

3.2.1.1. USA

The *Department of Labor* has repeatedly advocated to observe the fundamental labor standards (in particular the right to organize and bargain collectively and prohibition of forced or child labor) and acceptable working conditions (like no discrimination) due to ascriptive traits, minimum wages, compliance with health and security standards, limiting the working time to 8 hours/day and 48 hours/week, and granting fringe benefits like health insurance.

Like the EU, President Clinton asked the WTO and the ILO "to work together, to make certain that open trade lifts living conditions and respects the fundamental labor standards that are essential not only to workers rights, but to human rights everywhere."¹¹

The USA has already established a number of positive incentives in different trade agreements to implement labor standards. In the *Caribbean Basin Initiative*, the *Overseas Private Investment Cooperation* and the *Generalized System of Preferences* (GSP) the granting of preferential trade agreements is linked to the efforts of the country to observe the core labor standards. According to the *General System of Preferences* (GSP) a number of products of developing countries (DCs) have a preferential market access, provided the countries adhere to fundamental labor standards (Frank 1999). Section 502 (b) (8) of the *Tariff Act* of 1984 grants the President to withhold benefits of the GSP towards a country that "has not taken or is not taking steps to afford internationally recognized workers rights to workers in the country" (see OECD

¹¹ <http://www.us.ilo.org/news/focus/982/art1b.html>, Feb 2002.

1995). These steps also have to be taken in the so-called *Export Processing Zones* which are otherwise often exempt from national regulations (Perez-Lopez 1997)

US-imports from the Caribbean can lose their tariff exemption provided by the *Caribbean Basin Initiative* if the working conditions in these countries are not acceptable and their right to organize and bargain collectively is refused. The granting of technical cooperation (development aid) by the American *Agency for International Development* (USAID) is also coupled with respecting the core labor standards (Compa 1993).

The USA has used its influence to promote observance of human rights, e.g. in Guatemala, by withdrawing economic support, enacting trade restrictions or impeding awarding international loans (Frey 1997, see also Servais 1989 for other initiatives of the USA). In the Dominican Republic, El Salvador, Haiti, and Honduras such measures seem to have initiated social reforms (Großmann and Koopmann 1994). Note that these examples should not cloud the fact that economic and strategic considerations override human rights concerns in order to perpetuate profitable trade relationships (e.g.: China) or when deciding who should receive technical assistance (e.g.: Israel).

In the middle of the 90s, the Clinton administration passed the *Model Business Principles* that request all multinational corporations to implement the *Codes of Conduct* as specified in these *Principles*. The American side thus does *not* generally prefer individual company or branch specific solutions as Herbst (1998) claims. NGOs and consumer organizations are more willing than their German counterparts, though, to officiate as *auditors* or *testimonials* of companies or branches (see the Report about the *US-EC Symposium II on Codes of Conduct and International Standards of Labor*). The USA took a positive stance towards a social clause and can look back on a history of positive incentives in trade agreements.

3.2.1.2. Germany

Already the Brandt-commission¹² had suggested fair social standards be stipulated “in order to prevent unfair competition and to facilitate trade liberalization” (cited according to Servais 1989: 426). Before the change of government from a conservative to a social democratic coalition in 1998, Germany belonged to the opponents of a social clause (also in the USA there are, of course, differences between administrations). The new minister (since 1998) of the Federal Ministry for Economic Cooperation and Development, Mrs. Wieczorek-Zeul, demanded in an official speech in the German Parliament (Bundestag)¹³ that social criteria need to have a more prominent place in international trade. In the internal policy paper about the implementation of fundamental labor standards in developing countries a constructive strategy is advocated; instead of enforcing the fundamental labor standards through trade regulations, the ILO and its program to reduce child labor, IPEC (International Programme on the Elimination of Child Labor, for a description of the program see IPEC 1998), should be strengthened and there should be a closer cooperation with other donors.

3.2.2. Regional Strategies

Regional organizations who are trying to regulate transnational companies are the Council of Europe, the European Economic Community and the Organization of American States (Frey 1997). The following section focuses on the European Union because it is the regional organization most closely paralleling a real government.

¹² This North- South-Commission was authorized by the World Bank and headed by Willy Brandt, a former chancellor of the FRG, belonging to the Social Democratic Party, SPD. The goal was to develop recommendations, to increase technical assistance, and to reform the international trade and finance system (see Nuscheler 1996).

¹³ Speech held in the Parliament (Bundestag) Nov. 10, 1998.

Example: European Union

The (voluntary) goals of the EU „Social Charter“ contain the conventions the ILO declared to be fundamental. All member states with the exception of Great Britain adopted the Charter. The goals read like a long list of vague wishes: right to move freely (over borders, comment of author), right to work and remuneration, improving the living and working situation, right to social security (meant in a general sense, not pensions, comment of the author), right to organize and bargain collectively, providing work place security and (advanced) vocational training, equal treatment of men and women, right to information, participation and consultation, right to health and security standards at the work place, protection of children and adults at the work place, protection of the elderly or physically challenged, and prohibition of child labor (OECD 1995). Surprisingly, some fundamental conventions like prohibiting indentured servitude, are not mentioned, perhaps because their observance is taken for granted.

The permanent delegation of the EU requested that the WTO should strive towards a closer cooperation with the ILO and the United Nations Environment Programme (UNEP) ¹⁴ and to grant the ILO a formal *Observer Status*. In the General Council only the following organizations hold this status: United Nations (UN), United Nations Conference on Trade and Development (UNCTAD), International Monetary Fund (IMF), World Bank, Food and Agricultural Organization (FAO), World Intellectual Property Organization (WIPO), and the Organization for Economic Co-operation and Development (OECD). The European Parliament traditionally espoused that GATT (*General Agreement on Tariffs and Trade*)/WTO should contain a social clause (Wet 1998).

A social clause could not even be passed within the EU, though. The European Parliament could not give the commission responsible for trade politics a binding mandate. The Council of Ministers could have taken action,

¹⁴ <http://www.wto.org/wto/ddf/ep/public.html>

because they have the authority to do so, but yielded to the hostile stance of Germany and Great Britain (Greven & Scherrer 1998). Also the Lomé-Agreement of the EU contains no social clauses (ibid.).

One social standard initiative the EU has instituted is that the European Schema of General Tariff Preferences (Schema allgemeiner Zollpräferenzen) grants special advantages for countries in which certain social and ecological requirements, especially the fundamental ILO-conventions, are required by law (Großmann & Koopmann 1994). However, the poorest countries are exempt from tariffs anyhow (Greven & Scherrer 1998).

The Commission of the European Union (Kommission der Europäischen Gemeinschaft 1999) recommended establishing a forum with the Fair-Trade-Movement to expand possible cooperation. The contemporary cooperation is limited to sparse subsidies. For example, in 1998 the designated resources for projects in the area of fair trade were merely 3.7 M. EUR according the Commission for the Council on Fair Trade (see also Fassa 1998).¹⁵

January 1999 the European Parliament passed the resolution that a draft for a Code of Conduct with a right to action for the aggrieved (right to sue) should be developed for international companies with their base in Europe (Windfuhr 1999).¹⁶ Already today, according to the Brussels Convention of 1968 (Art. 2), a company can be sued where it has its head office. This is interpreted as meaning that lawsuits from the whole world against businesses with offices in the EU are admissible (Howitt 1998). The new resolution would confirm this interpretation.

¹⁵ <http://europa.eu.int/search/s97.vts>, Search term: Sozialgütesiegel.

¹⁶ see also <http://europa.eu.int/search/s97.vts>

3.2.3. Multilateral Strategies

Since the establishment of the World Trade Organization (WTO), both “fair” and “free” trade advocates have increasingly focused their attention on international organizations. The main question of the debate is whether the “moral suasion” tactics of the ILO is effective or if more coercive measures like trade sanctions by the WTO are called for to uphold workers rights. The next sections discuss the history, mandate, and influence potential of the WTO and ILO.

3.2.3.1. WTO

On Jan. 1st 1995 the 26,000 page treaty of the WTO entered into force. At the end of the Uruguay Round the WTO had been established as an independent organization to take the place of the outdated GATT law. The *dispute settlement procedure* is the striking new feature of the WTO. With this new feature the WTO commands a more effective sanction instrument than almost any other international organization in history because a country can, in contrast to GATT, be sanctioned against its will (Reichert und Desai 1999) (Hilf 2000, see <http://www.wto.org/wto/about/dispute0.htm>).¹⁷

Most countries have become WTO members (World Bank 2000). If the WTO were to integrate labor standards into its trade rules, international labor rights would cease to be unenforceable for the first time in multilateral world trade, according to the proponents of a social clause, in contrast to bilateral initiatives which have a longer history (for the USA see Compa 1993, Frey 1997 and Großmann & Koopmann 1994, Servais 1989, Windfuhr 1999).

Fair trade proponents argue that workers rights should be protected by international regulations against the increased mobility of capital and the resultant “social dumping”. They advocate inserting a “social dumping clause” into the WTO. GATT-Article VI(I)(a)-(b)(ii) defines “dumping” as measures to

¹⁷ Another novelty of the WTO is the incorporation of new sectors like intellectual property.

illegitimately achieve cost advantages and provides the foundation for the definition of social dumping (see Wet 1998). “Social dumping” is hence the violation of social/labor standards to decrease production costs.

For fair trade advocates, protecting workers rights is compatible with free market principles since the freedom to sell one’s labor would be undermined by the violation of core labor standards such as the freedom from forced labor (Charnovitz 1994, Zeeb 1994). They criticize that the ILO is impotent, in that it cannot enforce a country’s formal commitments; they suggest that the protection of workers rights should be secured by the WTO.

3.2.3.2. ILO

The idea of international, concerted efforts to counteract the “human costs” of the industrial revolution first emerged in the 19th century (Gheballi 1989). The first international organization dealing with labor issues was established in 1919 in the form of the International Labour Organization (ILO). The mandate of the ILO is the promotion of humane conditions of labor through issuance of labor standard declarations and evaluation of a member nation’s voluntary code ratification and implementation.

The motivation for its creation were manifold; the ILO’s self-portrait is thus the following:¹⁸

The initial motivation was humanitarian. The condition of workers, more and more numerous and exploited with no consideration for their health, their family lives and their advancement, was less and less acceptable. This preoccupation appears clearly in the Preamble of the Constitution of the ILO, where it is stated, "conditions of labour exist involving ... injustice, hardship and privation to large numbers of people. "

The second motivation was political. Without an improvement in their condition, the workers, whose numbers were ever increasing as a result of industrialization, would create social unrest, even revolution. The

¹⁸ <http://www.ilo.org/public/english/about/history.htm>

Preamble notes that injustice produces "unrest so great that the peace and harmony of the world are imperiled."

The third motivation was economic. Because of its inevitable effect on the cost of production, any industry or country adopting social reform would find itself at a disadvantage vis-à-vis its competitors. The Preamble states that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

Another reason for the creation of the International Labour Organization was added by the participants of the Peace Conference, linked to the end of the war to which workers had contributed significantly both on the battlefield and in industry. This idea appears at the very beginning of the Constitution: "universal and lasting peace can be established only if it is based upon social justice."

A very similar picture is drawn in a case study on the evolution of the ILO by Ghebali (1989, for history and documents of the Paris Peace Conference against the backdrop of which the ILO was created see Scott 1934).

The ILO was, in effect, an early human rights instrument since many of the workers rights are also human rights. The human rights proclaimed in the *Universal Declaration of Human Rights* by the UN (1948) contains all of the core labor standards with the exception of the ones regulating child labor:

- Art. 4 of the UN-HR prohibits slavery and bonded labor,
- Art. 20 of the UN-HR, says „everyone has the right to freedom of peaceful assembly and association“
- Art. 23 (4) of the UN-HR establishes „everyone has the right to form and to join trade unions“,
- and Art. 23 (2) „Everyone, without discrimination, has the right to equal pay for equal work“.

Although Art. 25 (2) reads: „Motherhood and childhood are entitled to special care and assistance“, the banishing of child labor is the one labor right not to be found in the declaration.

3.2.4. Typology: Coercive versus Voluntary Multilateral Strategies

When discussing the strategies, I outline the basic differences between the free versus fair traders as they crystallized in the debate about integrating a social clause into the WTO. I discuss the different arguments for and against a social clause. This discussion about integrating a social clause into the WTO provided the impetus for the ILO to consolidate and more forcefully push for the implementation of the fundamental labor standard code.

3.2.4.1. Coercive Strategies and their Justifications

Since the establishment of the World Trade Organization (WTO), fair trade advocates have increasingly focused their attention on implementing a social clause into the WTO and have espoused such a clause as the most promising multilateral initiative. Fair trade representatives portray the ILO, the traditional organization responsible for upholding labor rights, as a toothless tiger, which cannot enforce countries' formal commitments. As explained above, they advocate extending the mandate of the WTO to cover labor issues, since the WTO, unlike the ILO, commands over an effective sanction instrument.

For fair traders, respecting the fundamental labor standards is compatible with the principles of the market: „Since the liberalization of trade is based on the freedom to negotiate and contract, would it not be logical to consider that the only conditions which are held to be ‘normal‘ are those which are freely established on the labour market between supply and demand” (cited according to Wet 1998: 448). Unfairly attained cost advantages by violating these “normal” conditions are the major contention for fair traders (Greven & Scherrer 1998).

They argue that if the production is maintained through indentured servitude (a violation of the fundamental ILO-conventions) the freedom to negotiate is superseded (Charnovitz 1994, Zeeb 1994). Such “externalities” that are not reflected in the price send the wrong signals to the markets that are increased by trade (ibid.). Thus the plight of the truly disadvantaged is compounded because only marginalized sections of the population are threatened by indentured servitude.

More generally, fair traders argue that although trade enriches the participating nations according to the Weltbank (1995), not all parts of the societies benefit (Charnovitz 1994, Zeeb 1994). In a study of Latin-American countries Frank concludes (1999: 67): “steigende Exportziffern waren keineswegs von höheren Löhnen oder sinkenden Armutskenntzahlen begleitet ” (higher export figures were not accompanied by higher wages or decreasing poverty rates, translation by the author). Thus it is not trade as such but only “fair trade” (trade with goods produced under fair labor standards) that is beneficial to large parts of the populations in trading nations.

Many proponents of fair trade argue that these violations can only be impeded through *binding* international regulations due to the mobility of capital, the resulting prisoner’s dilemma and the danger of social dumping¹⁹ (Greven & Scherrer 1998). They argue that portraying a social clause as “protectionism in a social guise” is only a feint: Even if all ILO-conventions that the international trade unions demand are implemented, the labor costs would still be too low to stop any cost induced relocation of production sites from the First to the Third World. So jobs in the First World would not be “protected” from being relocated into the Third World. This argument believes past experience points to the beneficial effect of social provisions in trade agreements. Case studies about the General System of Preferences (GSP) of the USA show that in the Dominican Republic and Guatemala, changes in labor laws and attaining collective labor agreements were prompted by the GSP-system (see

¹⁹ See GATT-Article VI(I)(a)-(b)(ii) for the basis that this definition of dumping is based on (siehe Wet 1998).

Frank 1999). Thus, advocates of fair trade typically view a social clause favorably (Greven & Scherrer 1998).

3.2.4.2. Voluntary Strategies and their Justifications

Today there are two positions against a social clause: neoliberals and social justice oriented left-wing activists. In lieu of this coercive measure, they advocate the strategy of the ILO although neoliberals still question if any international government regulation should exist at all.

For neoliberal “free traders” national differences in labor laws are just another component of trade inducing comparative (cost) advantages. „[The neoliberal economic doctrine] sees labour standards as an interference in the market process, impeding efficiency, creating suboptimal allocation of labour, stifling competition, deterring investment and constraining growth . . . and sees the best protection for workers in highly competitive, unregulated labour markets” (Wet 1998: 447). For proponents of this position, setting voluntary standards is already potentially too much interference; coercing countries to implement them is detrimental for economic welfare. Thus they reject a social clause as another negative element of state interference. The parallel argument from a political perspective is that a social clause would, like any coercive international mechanism, disregard national sovereignty.

However, not only neoliberals but also left-wing activists such as Windfuhr (1999) reject a social clause due to ethical issues of selective application: A social clause would constitute a very selective protectionism that cannot be justified from an ethical standpoint since working conditions in the trade sector are often better anyhow than in the rest of the economy; furthermore, the worst forms of exploitation are not found in the manufacturing sector but in service and agriculture (Liemt 1989). Besides, a trade boycott would also adversely effect businesses in the sanctioned country that produce under better circumstances in regards to labor rights (Windfuhr 1999).

It is morally difficult to justify restricting trade sanctions to violations of workers rights. Sapir (1995: 792) summarizes this view point aptly: “. . .

. children in many poor countries are subject to many other evils such as prostitution and assassinations by death squads . . . Are food and life not basic human rights?“ The NGO *FoodFirst Information and Action Network* (FIAN) takes a similar position. Why should a social clause be instated in connection with trade and not also with public capital flows (financial assistance) or strategic decisions like defense treaties (Liemt 1989)?

Windfuhr (1999) argues that although humanitarian reasons demand that developing countries be helped to maintain their human capital by stopping labor violations such as child labor, a social clause is not a promising method. Frank (1999) also argues that for the truly disadvantaged such coercive measures yield few advantages; a more crucial factor to elevate the standard of living would be a more socially-oriented policy of the World Bank and IMF (Frank 1999).

Furthermore, it is doubtful that a mechanism could be found that is acceptable to all parties (Liemt 1989, see also the omnibus volumes of Malanowski 1997 and Langhammer 1999). If the penalties of violation of social standards were not consistent, such a system would create more problems than it would solve (*ibid.*). Arbitrary application of labor agreements would further enhance the fear developing countries have of protectionism under a social guise and could induce counter-reactions in developing countries. For example, the US-American Smoot-Hawley Act (1930) demonstrated protectionism has a very negative effect on the world economy (Windfuhr 1999).

In fact, even if social clause enforcement were consistent, the vast differences in economic resources would cause trade sanctions to be unequal. Trade sanctions of Guatemala against the USA would not have a big impact while they may be detrimental in reverse.

Also the ILO cautioned against integrating a social clause into trade relations or GATT/WTO because it would depart from the voluntary principle and the mechanism of moral or political persuasion (Wet 1998). The ILO worries that the threat of sanctions will provide member states an incentive not to ratify important ILO-conventions (ILO 1997b). According to inter-

national law a country can only be sanctioned for violating conventions that it has ratified because conventions are not binding international law but merely contract law (Döhring 1999).

3.2.5. Advantages and Disadvantages of Coercive and Voluntary Measures Measures or Methods? Positions of Social Scientists, NGOs, Trade Unions, and Governments

3.2.5.1. Social Scientists

As described above, the academic discussion of arguments for and against establishing a social clause are often confounded by the difficulties of defining social standards. However, even observers that promote establishing social standards often doubt that they can be established by negative incentives like a social clause (a social clause that would impose punishments) because such a clause has a number of unintended side effects, injustices, and inconsistencies; they argue that for the truly disadvantaged, such measures of force bring few advantages (see also Abu Sharkh 2000, Charnovitz 1994, Frank 1999, Langhammer 1999, Liemt 1989, Malanowski 1997, OECD 1995, Piepel 1995, Sapir 1995, Windfuhr 1999, Wet 1998, Zeeb 1994).

3.2.5.2. NGOs

Among activists there is a tendency to approve coercive measures. The NGO umbrella organizations *Erklärung von Bern* and *Brot für die Welt* released a study of 67 NGOs in South and East Europe showing that 91% of the organizations favor a social clause and 95% favor an ecological clause (Greven & Scherrer 1998). In general, the positions are rather heterogeneous and reach from advocating a social clause and implementing the ILO conventions regarding the right to organize and bargain collectively (*Oxfam* in Great Britain), up to the energetic criticism of social clauses by the *Third World Network* in Kuala Lumpur/Malaysia. In general, Asian NGOs are far more skeptical towards a social clause than their Latin American or African counterparts; they

advocate positive incentives and financial as well as technical cooperation (ibid.).

3.2.5.3 Trade Unions

National and international trade unions like the German Trade Union Federation, the World Federation of Work, and the European Trade Union Federation strive to establish a social clause to enforce social standards. Also the *International Confederation of Free Trade Unions* (ICFTU) sees the fundamental labor standards as binding. As a result, it advocated that these standards should be fostered by linkage to trade agreements (Greven & Scherrer 1998).

During the World Congress (1996), 800 delegates of organized employees from 127 countries and 196 trade unions, unanimously passed eight core elements to establish global security (ibid., Stückelberger 1996). Social clauses were the first point on the agenda (ibid.). Behind the emphatic advocacy to enforce social standards is also the self-interest of northern trade unions to hinder the wage erosion of their (less qualified) members within the northern unions. However, if indeed the working conditions in the north, especially concerning wages, is eroded through increasing stress of competition *because* of the liberalization of trade, it is not empirically conclusive, but only alleged in theory (for the Stolper-Samuelson Theorem see Bhagwati & Dehejia 1994, Deardorff & Hakura 1994).

3.2.5.4. Governments

3.2.5.4.1. Developed Countries

Among these governments, only the USA, France and a few other European countries, especially the Scandinavian ones, officially promote a social clause (Greven & Scherrer 1998). France is a precursory advocate regarding social clauses. During the Copenhagen Summit of the European Community in 1993, France suggested a social „progress clause“ for the trade relations with Third World countries (Großmann & Koopmann 1994). The idea to an-

chor social clauses in multilateral trade regulations received official consent from the countries Ireland, Greece, Italy, Portugal, and Spain as well as from the contemporary candidates for joining the European Community: Norway, Austria and Sweden (ibid.). The German, British and Dutch governments criticized the endeavor (ibid.). Germany argued against a social clause. Rather it has advocated strengthening voluntary measures such as the ILO. The USA advocated implementing a social clause into the WTO and can look back on a long history of positive incentives in trade agreements.

3.2.5.4.2. Developing Countries

The majority of governments in the Newly Industrialized Countries and Developing Countries are against implementing and often even against ratifying core labor conventions with a social clause. They still worry that a social clause is protectionism in a social guise (Greven & Scherrer 1998). Especially Mexico and India denounced the concern about workers rights as disguised protectionism (Großmann & Koopmann 1994).

The question if social standards could be used to substitute open protectionism, which was supposed to be dismantled through the WTO, cannot be answered across the board. To a large degree it depends on how much the costs for labor would rise by implementing the respective dimensions (Liemt 1989). Furthermore, the effect would hinge on the intensity of the competition in the branch (ibid.). In general, there is a consensus in the international community that introducing the fundamental labor standards would *not* lead to a substantive increase in costs and in some cases might decrease production costs (OECD 1995, Weltbank 1995).

Furthermore, the developing countries criticize the questions of social standards being chosen as the central theme and oppose the view that they independently form the current unbalances in the world economy ;especially in view of the impact of market access in industrialized countries and the low and falling commodity prices (regarding commodity prices see Windfuhr 1996). Additionally, they argue that bad labor standards are not only due to national factors but also due to the international distribution of power (Liemt 1989).

In Seattle, many developing countries declined to take up new themes like social standards until the existing power misbalance (e.g. less personnel from developing countries, World Bank 2000) in the WTO was resolved (German Watch — International Center for Trade and Sustainable Development). The selectivity with which the powerful nations focus their attention on human rights violators, invalidates their efforts in the eyes of many developing countries (Bhagwati & Bello 1999).

The hostile stance of many developing countries' governments also has national political reasons according to Wet (1998). This suspicion is reinforced by the oddity that developing countries only accentuate the disadvantages they would have towards the developed countries, and not the advantages that they would have amongst each other (Wet 1998), although most of the trade of developing countries is conducted among themselves. (World Bank 1998). Especially regarding the implementation of the right to organize, many governments harbor the fear that trade unions could become a vanguard of political resistance (Greven & Scherrer 1998).

Furthermore, Western companies threaten to change their location if certain fundamental labor standards are implemented, like the right to organize, as was the case with different US companies in Malaysia (see Compa 1993).²⁰ The segment of the population benefiting from human rights violations is mostly the elite of these countries. Greven & Scherrer (1998: 28) argue that despite the appearance that the divide between social clause proponents (e.g. the USA) and social clause opponents (e.g. Malaysia) is a North-South issue, the actual political explosiveness lies in the conflict of interest between business and labor: "die eigentliche politische. . . Brisanz [resultiert] aus dem Interessengegensatz von Kapital and Arbeit her".

²⁰ Großmann and Koopmann (1994) argue that other motives than avoiding social standard legislation are much more paramount when deciding where to invest. Countries with low social standards have not turned out to be capital magnets. Likewise labor intensive branches do not form the centroid for international direct investments.

3.2.6. New Developments

To date, no social clause has been instituted into the WTO and it is increasingly unlikely that this will take place. The WTO Director Mike Moor stressed to the trade unions during the Seattle Conference (1999) that he intends to maintain a „good working relationship“ between the ILO and the WTO but that the ILO is responsible for labor issues:

“There is no difference between us on the vital importance of advancing labour standards. . . The challenge is not for one organization to do the work of all, but for all organizations to work together in a more coherent way. Whether it's the ILO, UNICEF, WHO, the World Bank, IMF, or the WTO, we need cohesion in tackling these problems.”²¹

The theme „labor standards“ is now the responsibility of the *Working Party on the Social Dimensions of the Liberalization of International Trade*, an arm of the ILO. This cooperation is a sign of progress. During the first WTO minister conference in Singapore, the WTO had withdrawn its invitation to the ILO due to pressures from some developing countries.²² Combining this action with the above statement illustrates that the WTO does not intend to incorporate labor standards into its regulations, be it as a social clause or in any other fashion.

However, the discussion about a social clause has lead to the demand to set clear priorities between different kinds of social standards. The OECD (1995) had argued that the many different social standards promoted by the ILO impede concerted action; it is not clear which social standards do not hamper economic growth and which do. This has lead to a prioritization of some types of social standards over others in the international community.

²¹ <http://www.wto.org/wto/ddf/ep/public.html>, Feb. 2001

²² <http://www.hartford-hwp.com/archives/25a/015.html>, Feb. 2001

4. Which Labor Standards Have to be Implemented Regardless of Intra-National Factors? A Crystallizing Consensus

4.1. The Consensus: An Overview

The debate about a social clause forced international governmental and non-governmental organizations to reach a consensus regarding the prioritization of labor standards. Most international organizations now distinguish between „labor *rights*“ also called “*fundamental*” or “*core*” labor/social standards and social standards in general.

In the 90s a consensus emerged concerning which labor standards are to be respected regardless of intra-national factors: the so-called labor *rights*. According to the OECD (1995), implementing labor *rights* does not hamper economic growth, whereas mandatory implementation of general labor standards does. Empirical studies show that there is no correlation between labor right violations and the competitiveness of a country (ibid.). Labor rights and growth are therefore complements not substitutes. Core labor standards should be mandatory and actively promoted by international organizations (ibid.). The so-called labor *rights* are defined by the ILO in 8 conventions and are a subset of the general labor standards (see International Labour Organisation Convention 29°, 87°, 98°, 100°, 138°, 105°, 111°, and 182°).

However, the effects of labor standards, or social provisions going beyond core labor standards, such as the minimum wage, differ according to the macroeconomic situation of a country. Their implementation should thus be left up to the discretion of individual countries (Weltbank 1995). There is a common distinction in the contemporary development literature between so-called „labor *rights*“ that are to be respected regardless of the degree of a countries’ modernization and general “labor standards”, the implementation of the latter being contingent on the degree of development of the particular nation state (OECD 1995, Weltbank 1995). The next section outlines the definitions of the most important international organizations in detail.

4.2. Social Standards and Fundamental Labor Standards as defined by International Organizations

In the following passages, I will sketch the similar definitions of workers *rights*, as defined by important international actors, to show that there is a consensus about what constitutes fundamental workers' rights.

Most bilateral donors like the *Netherlands National Advisory Council for Development Co-operation* and multilateral donors like the *International Monetary Fund* (IMF) as well as trade union associations, cite the following dimensions of social standards as the most elemental and that, if a social clause should be established, ought to be included:

- renunciation of *avoidable* child labor (this differs from the conventions 138° and 182° of the International Labour Organisation),
- freedom of assembly (ILO- Convention 87°)
- the right to bargain collectively (ILO- Convention 98°).
- Most of the organizations also include:
 - banning gender specific wage discrimination (ILO- Convention 100°) and discrimination in employment and occupation (ILO- Convention 111°)
 - prohibiting forced labor (ILO- Convention 29° and 105°),
 - occupational health and safety (many²³, especially ILO-Convention 155°) (Liemt 1989).

²³ For a listing see <http://www.ilo.org/public/english/protection/safework/cis/oshworld/ilostd/index.htm>.

4.2.1. ILO

The ILO, the oldest specialized agency of the UN (and even pre-dating the UN), carries the main responsibility for defining and promoting workers rights. Eight of the ILO conventions (ILO-C.) are defined as *fundamental* labor standards and are termed as *human rights* by the *Governing Body* of the ILO. The ILO expects that every country, regardless of its level of development, must implement these fundamental standards covering the following five areas:²⁴

- Abolition of forced labor (ILO-Convention. 29° and 105°),
- Freedom of association and protection of the right to organize (ILO- Convention 87°),
- Right to organize and collective bargaining (ILO- Convention 98°),
- Equal Remuneration and Non-Discrimination in employment and occupation (ILO- Convention 100° and 111°, respectively),
- Prohibition of child labor (ILO-Convention 138° bzw. 182°).

According to the third ILO declaration (1998), all member states are obligated to implement these five fundamental rights – whether they have ratified them or not. The argument follows that by voluntary membership, all ILO members have already acknowledged the fundamental conventions of the ILO charter even if they have not ratified them individually.²⁵ In annual follow-ups, countries are obligated to report about their implementation of and progress concerning the fundamental labor conventions. These ILO-overview reports are supposed to foster the world-wide progress of fundamental labor standards.

²⁴ Next to these fundamental conventions, the ILO has also termed other social standards as human rights that are a specification of the fundamental conventions, particularly of the conventions covering the right to organize (e.g. ILO-Convention 141° specifies the right of farm workers to organize).

²⁵ See also the 86th Session Geneva, June 1998, see <http://www.ilo.org/public/english/10ilc/ilc86/com-dtxt.htm>.

This is a digression from the normal policy of the ILO. In Art. 20 of the ILO it states that “Any convention . . . shall only be binding upon the members which ratify it”. According to the usual policy, countries are not obligated to report about conventions they have not ratified.

4.2.2. UN

The *Universal Declaration of Human Rights*²⁶ (UN-HR) bears resemblance to the ILO core conventions (see above). Other UN conventions flank and repeat the social standards as defined by the ILO, e.g. the *UN Convention on the Rights of the Child* (see the discussion of the individual social standards for details). In the *Covenant on Economic, Social and Cultural Rights*²⁷ that had been ratified in the middle of the 90s by 127 out of 186 countries, the ratifying UN member states obligate themselves to respect the fundamental labor conventions and establish “just and favorable working conditions” (Art. 7). The latter includes adequate wages, limited work time and paid vacation (Wet 1998). However, none of these conventions prohibit child labor.

4.2.3. World Bank

Also the World Bank (Weltbank 1995) differentiates between core labor standards that should be respected regardless and standards that parallel the development of a country. The 8 core conventions of the ILO are grouped to the former. The only digression is that the World Bank only prohibits exploitative child labor while the ILO-Convention 138° generally prohibits the employment of children under 13 years (see Art. 7). The standards that are only required once the country reaches a certain level of development are health and security standards as well as minimum wages according to the World Bank.

²⁶ As adopted Dec. 1948 by the General Assembly of the United Nations.

²⁷ Adopted Dec. 1966, 999 U.N.T.S. 171.

4.2.4. OECD

The OECD (1995) also differentiates between workers *rights* that are to be observed under all circumstances and so-called working *standards*. This distinction is not identical with the differentiation in this dissertation between fundamental labor standards and social standards or the distinction undertaken by the ILO and the World Bank.

Like the OECD, the ILO and World Bank define workers *rights* as: Free from forced labor and slave labor (ILO-Convention 29° and 105°), right to organize (ILO-Convention 87°) and the right to bargain collectively (ILO-C. 98°) (OECD 1995: 13 and 21).

The OECD (1995) diverges from the ILO stance with respect to: Renouncing *avoidable* child labor (discrepancy from the ILO-Convention 138° and 182° but very similar to the World Bank stance on this issue). Regarding the conventions about health and security standards in the work place, the OECD (1995) classifies health and security standards as workers' *rights* (discrepancy towards the ILO-Convention 155° that demands concrete measures according to Art. 5).

In contrast to the ILO and World Bank (1995), the protection from discrimination (ILO-Convention 100° and 111°) is not counted to the workers *rights* but merely to the working *standards*. Also paying adequate wages, providing social benefits, limiting the working time to 8 hour/day and 48 hours/week etc. are, according to the OECD (1995), merely working standards that the respective country can determine itself.

This section has shown that there is largely a consensus concerning the “ranking” of labor standards among international organizations. The next section gives an overview of the state that these labor standards are in.

5. Recent Trends in Core Labor Standard Dimensions

In the following sections, I will briefly discuss recent trends in core labor standard dimensions as portrayed by the largely development sociological literature. Special attention will be given to the issue of child labor.

5.1. The Ban on the Usage of Child Labor as well as Limitations on Youth Labor in the Case of Hazardous Work

According to Compa (1993) and Scherrer (1998) child labor is rising world-wide.²⁸ Until the recent financial crisis, child labor fell in Asia, while it rose in Africa and the Eastern European countries (ILO 1997a).²⁹ About 61% of all working children live in Asia, 32% in Africa, and 7% in Latin America.³⁰ The percentage of child labor (as a percentage of all children between five and fourteen) is highest in Africa with a rate of 41.4%, followed by Asia (21,5%) (ILO 1999b). “Laboring children” are defined as children below the age of 15 that are part of the labor force. All people who meet the International Labor Organization’s definition of the economically active population comprise the labor force.³¹

UNICEF estimates that in the early 1990s about 80 Million children aged between 10 and 14 years conducted activities so strenuous that their

²⁸ Whether their statement is referring to the absolute number of working children rising (which would not be surprising because of the growing world population) or the rate of children in an age cohort working rising is again unclear.

²⁹ Child labor is not confined to the Third World. In industrialized countries the children of migrants often work (ILO 1997a).

³⁰ Recent ILO estimates (Neuen Züricher Zeitung 25.05.1999).

³¹ The labor force is comprised by all people who supply labor, potentially full-time, for the production of goods and services during a specified period. It includes both the employed and the unemployed. While national practices vary in the treatment of such groups as the armed forces and seasonal or part-time workers, in general the labor force includes the armed forces, the unemployed, and first-time job-seekers, but excludes homemakers and other unpaid caregivers and workers in the informal sector.

development was negatively influenced (Weltbank 1995). Children have a significantly higher risk of injury when performing the same tasks as adults (Graitcer & Lerer 1998). Furthermore, going to work is significantly negatively correlated with going to school (Canagarajah & Coulombe 1997). Child labor is, however, not the inverse of school attendance (Grootaert & Patrinos 1999). To what degree child labor and education are substitutes is unclear since “these two subject areas have been compartmentalized and separated from each other in the organization of government departments” (Burra 1989: 1, for an overview of child work and education in Latin America see Salazar and Glasinovich 1998, for a historical study in the USA on wage earning and education see Lutz 1916 and Speakman 1976).

Employing country level data is prone to an ecological fallacy. With aggregate level data (versus individual data) it is difficult to show that the child that works also goes to school or just does one or the other. Nonetheless broad trends can be shown.

Children are the main victims of „modern slavery“ (Bequele und Meyer 1995). While boys are mostly “street workers“, i.e. prowling the streets to perform menial tasks like polish shoes, girls tend to perform labor mirroring a commercialized form of their role as housewives (Canagarajah & Coulombe 1997).

In the 1990s child labor has become the most emotionally debated of the core labor issues (see the *Report of the Direktor-General*, ILO 1997b: 29). Ethical labels most frequently emphasize the prohibition of child labor (Diller 1999, ILO 1997b: 29). New intergovernmental initiatives such as the *International Programme on the Elimination of ChildLabor* have been created (see IPEC 1998). A study commissioned by the *International Program on the Elimination of Child Labor* of the ILO summarizes the reasons against child labor:

Child labour, for example, reduces school attendance and human capital acquisition, increases mortality and morbidity, increases the perceived value of children and birth rates, as well as increases income and sex

inequalities in society. A new reason for eliminating child labour is the increased globalization of the world economy, where countries with a skilled, educated labor force are likely to prosper in the future. (Anker 1998)

The many case studies that have been conducted have had partially contradicting results concerning the reasons children work. The reasons why a child works can be divided into push- and pull-factors. The most frequently cited push-factor is poverty due to low family income or unemployment (Archavanikul 1998, Black 1995, Grootaert 1998, Jennings 1999). Different studies name differing additional risk factors like age, sex, degree of parents education, geographic position (Canagarajah & Coulombe 1997), discrimination or migration of parents, single parenthood, and cultural factors (e.g. in West Africa, Thailand, the Philippines, and India the work of children is encouraged) (Black 1995).

The weighting of different cultural, geographic, and socio-economic factors also differs. Research in Ghana for example shows that *not* poverty but the high costs for schooling, the low quality, and the lacking relevance of school education are decisive factors (Canagarajah & Coulombe 1997). Grootaert and Patrinos (1999: 3) make a more cautious argument: “In some cases schooling problems contribute to child labor.”

In different sectors the relative importance of push- and pull-factors differ, e.g. near tourist centers pull-factors play a greater role. Children view it as attractive to command over their own income (Black 1995).

The literature on child labor usually focuses on reasons why children work (i.e. the supply side) and not why they are employed (i.e. the demand side). Exceptions are Anker et al. (1998) and, partly, Jennings (1999). Anker argues that minors are viewed as attractive employees because of their greater docility, their better health, and their lower labor costs. Furthermore, the literature does not contain a comprehensive cross-national longitudinal study but only, partially contradicting case studies. My dissertation seeks to fill this void.

5.2. The Right to a Free Choice of Employment and the Prohibition of Slave Labor

Especially in South East Asia, but also in Latin America, forced labor is still common (Bequele & Meyer 1999). Generally only children or prisoners perform forced labor (ibid., Kulesa 1995). The extremely low wages of children force them to accrue debt. Often children also work off the debts of their parents. Paying back the debts is often not possible so that the employment relationship evolves into indentured servitude (Black 1995). Even if no indentured servitude exists, a child often cannot change its employer because other potential employers often refuse to accept the “children of others” (ibid.).

5.3. The Right not to be Discriminated in Training, Employment, and Remuneration

Women and minorities are still strongly discriminated against (Weltbank 1995). The core ILO conventions prohibit discrimination due to sex, race, religion, or political views. In the scientific and developmental discourse the attention usually focuses on discrimination due to ascriptive characteristics such as sex.

In the mainstream sociology of gender,³² explanations of women’s social, political and economic status still focus on *intra-national* factors such as the degree of development and/or the strength of the women’s movement and the political opportunity structure, see Charles (1992), Rucht (1994), Skocpol (1991), Wright et al. (1995) for OECD nations, Kueppers (1994) and Molyneaux (1985) for examples from Latin America; Kuttub (1992), Danjana (1994), and Zughayar (1995) for case studies in Arabic countries, Sadie and Aardt (1995), Steyn (1998) and Zavis (1997) for accounts from Africa, Bumiller (1990, esp. ch. 6) for South Asia and Roodkowsky (1991) for a global perspective.

³² See the proposal for the research project “Equal Rights in the Context of the World Society” by Prof. Dr. Heintz, Johannes Gutenberg-Universität, Mainz, Germany for greater detail.

Scholars of the neo-institutionalist world society approach have shown that the increasing relevance of the international stage (e.g., in form of the UNO) goes hand in hand with changing gender roles (Berkovitch 1999, Bradley & Ramirez 1996, Ramirez & Meyer 1998, Ramirez & McEaney 1997, Ramirez et al. 1997, Ramirez 2000). The individual nations are internationally monitored as to whether they establish structures to end discrimination against women (Berkovitch 1999, ILO 1997b, Bretherton 1998, Wölte 1998). International campaigns such as “women’s rights are human rights” before the Vienna Conference (see Cook 1994, Holthaus & Klingebiel 1998, Kerr 1998, Peters & Wolper 1995) and development paradigms emphasizing women’s strategic gender needs (see Molyneaux 1985, Moser 1993, Zdunek 1997b), and mainstreaming (Razavi & Miller 1995), pressure nation states to erect formal provisions to end discrimination. The effectiveness of such provisions is still uncertain, however.

5.4. The Right of Association and the Rights to Form Trade Unions and Bargain Collectively

According to a study by the *World Labour Report* of the ILO in 65 countries, the unionization rate decreased more than 20% between 1985 and 1995 in 51% of the countries (Leisink 1999). In another 25% of the countries the rate fell between 5% and 20% (ibid.).

At the same time, flagrant violations against unions overall decreased although union rights violations are still common in many countries, e.g. China, Burma and Columbia (ICFTU 1999). Some campaigns and interventions of UN-agencies were successful: governments are more careful about openly confronting unions. However, while fewer countries officially outlaw unions, often more subtle mechanisms are employed to suppress them (ibid.).

In Latin America, e.g. Mexico, like in Asia, unions are frequently an instrument of the government, e.g. the *All China Federation of Trade Unions*. In Eastern Europe, union rights are being eroded, e.g. by new labor laws in Russia.

In the Middle East, especially in the Gulf States, unions are more often than not outlawed, strongly regulated or not accessible to the foreigners that comprise up to 80% of the labor force. *Export Processing Zones* remain off limits to unions (ibid.). Overall, the majority of employees in developing countries are not organized.

Many governments suppress unions. First, unions are viewed as a hot bed of opposition (Charnovitz 1994). Experiences in Africa suggest that free unions do in fact fight against undemocratic systems (Weltbank 1995). Secondly governments, especially in South East Asia, dread that wage demands could decrease economic growth. In fact, unions can often indeed raise the wages of their members above the mean wage level of the labor market. However, the suppression of unions also leads to an increase in the factor price for labor. Many governments feel pressured to appease the workers in the formal sector through privileges like higher wages (e.g. Kenya, Congo, Zambia, and Sudan) (Weltbank 1995).

In this section, I have show that world societal influences, direct or indirect, are not a focus in the literature dealing with core labor standards. The next section will set up a theoretical frame attending to this neglect.