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Sisyphus at Work:
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Inhaltsverzeichnis

Sisyphus at Work: On the Efforts to Achieve a Fair, Internationally Recognised Labour, and Social Order

Work, in all its manifestations and with its very different returns, is an indispensable feature of human existence. Consequently, labour policy and social policy are concerned with shaping the immediate conditions of everyday life. The composite term "labour and social standards" indicates that the way in which people work and earn their living has always been the expression of a specific, but changeable, social order. In local or national contexts social relations are governed by specific regulations based on legal norms but also on local customs and habits, traditions and cultures which may possibly contradict the legal norms. Because work is so closely linked with the particular characteristics of specific social orders, the content and validity of international and transnational norms and rules face immense challenges when applied at the national and local level. Over the last third of the 20th century these challenges have been exacerbated by globalisation processes. The enforcement of free trade regimes and the deregulation of capital transactions, facilitated by technological progress and digitisation, gave an unprecedented momentum to the world economy the destructive potential of which erupted in 2008 in the global financial and economic crisis. However, it should not be overlooked that these new transborder technological, economic and cultural linkages also harbour the potential to find creative ways of dealing with the problems of social reproduction.

To assess the prevailing situation, this paper will first outline the historical impulses leading to the establishment of a "global sectoral order"[1] in the field of labour and social standards, and present its institutional and international legal foundations, in particular the mandate of the International Labour Organization (ILO[2]) (1). The current ILO Agenda for Decent Work Worldwide (2) and the problems encountered in the implementation of international labour and social standards laid down in the Agenda (3) will then be examined against the background of general trends and specific socio-economic contexts. This will be followed by a discussion of the possibilities and limitations of influencing transnational companies as dominant global economic actors (4). Different approaches in terms of state will-formation and capacity building will then be discussed with a view to overcoming the divide between norms and actual policies in the field of international labour and social standards (5). The paper will conclude with a few summary reflections (6).

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[1] On this conceptualization cf. the volume by Breitmeier et al.: Sektorale Weltordnungspolitik, 2009.
[2] It should be pointed out that these initials also stand for International Labour Office, the Organisation's administrative headquarters.

1. Institutional and International Legal Foundations

The initial impetus for the conceptualisation of global, fundamental labour and social standards was given by the First World War, which was perceived as a civilisational catastrophe. The principal international regulatory organisation in the labour and social policy sector at the global level is the ILO, which was founded in 1919 as part of the Treaty of Versailles, initially with 45 member states from Europe, America and Asia and, 90 years on in 2009, a membership of 183 states. The intention right from the start was to interlink and coordinate domestic and international issues and conflicts, to create an internationally enforceable law for the improvement of working and living conditions in every country, and in this way contribute to social justice and facilitate fair trade between countries. The ILO's status was reinforced when the United Nations was established after the Second World War. From the beginning, however, there was a clear tension between the dual objectives of improving working and living conditions on the one hand and facilitating fair competition between states on the other.

In 1944, while World War II was still raging, a "Declaration concerning the Aims and Purposes of the International Labour Organization" was drawn up, endorsing its original mandate and universal validity. After the founding of the UNO in 1945, the ILO became its oldest specialised agency, cooperating primarily with the UN Economic and Social Council. The significance of the social dimensions of peace was emphasized in Article 55 of the UN Charter, which stipulates the promotion, inter alia, of "1) higher standards of living, full employment, and conditions of economic and social progress and development"; 2) "solutions of international economic, social, health, and related problems"; and 3) "international cultural and educational cooperation". The Declaration of Human Rights, adopted in 1948, also includes similar articles (cf. Art 4, 20, 22-25).

In 1966 the UN General Assembly adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both Covenants came into force in 1976 and mutually acknowledge in their preambles that (as stated in the preamble of the Covenant on Civil and Political Rights) "...in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

The codification of human rights by the UN gave a new legitimacy to the political objective of obtaining decent human working and living conditions in all parts of the world. Yet even today, the dividing lines in international law can by no means be said to have been effectively overcome. In particular, the newly emergent Asian economies have latched onto the global capitalist economy, but these countries object to the human rights discourse which they claim serves Western interests. Their resistance must be seen within a global context, however, for the greatest challenges to the political goals and objectives of the ILO and to the social human rights instruments since the latter decades of the 20th century are proving to be the almost global dominance of (neo-)liberal politics, the deregulation of the finance markets and the expansion of transnational business activities (Giegerich/Zimmermann 2008).

2. The ILO Agenda for Decent Work Worldwide

From the beginning, the ILO has pursued three key areas of activity to fulfil its mandate of promoting just living and working conditions. Historically, the most important area is the establishment of international labour and social standards. The plenary body of the ILO, the International Labour Conference, decides on substance and procedures for labour and social norms, on the one hand through international conventions[3] that must be ratified by the individual member states in order to become legally binding in accordance with international contract law, and on the other hand through recommendations to member states as well as resolutions and declarations. The second major area of activity comprises technical aid and cooperation, in other words *capacity building*, and the third covers research and consulting. To this end the International Labour Office in Geneva has an extensive knowledge base that is continually developed and which it uses internally for political and organisational learning purposes and externally for the purposes of political persuasion (Senghaas-Knobloch/Dirks/Liese 2003).

In substantive terms, the ILO labour and social standards were initially codified in sectoral conventions – and later in general conventions – on minimum standards for working conditions in dependent employment (for instance with regard to working hours, occupational safety and accident prevention) and in conventions on minimum standards for the provision of security against livelihood risks such as unemployment, sickness, old age and invalidity. From the outset, however, there was dissent even among the leading western European founding

[3] Including supplementary protocols which are adopted later.

states over the definition of legal minimum standards – whether they should be understood as the lowest level of protection, in accordance with British philosophy, or as desirable standards for all.[4] At the time of the ILO's foundation, moreover, the conventions were shaped by ideological assumptions that fulfilled neither the precept of equality nor of general inclusion. The protective function of work-related rights were originally developed in blind obedience to the patriarchal gender and legal relations of industrial society at the time, when generally discrimination against women was the legal norm (Gerhard 1997), and the early conventions took into account neither the working and living conditions of the majority of employees in countries that were not yet industrialised, nor those in the so-called non-metropolitan territories of the colonial powers. The wording of the conventions allow a flexible application of the rules in different societal contexts, but the particular socio-economic structures of non-industrialised countries at the time did not become an issue until the 1960s, in the course of decolonialisation (Senghaas-Knobloch 1979). The burdens and problems of social reproduction, which were for a long time placed blindly on women and ignored, have only recently begun to receive some attention (Floro/Meurs 2009).

It was Juan Somavía, the first General Director of the ILO who does not come from a classic industrial country, who emphasized at his inaugural speech in 1999 that the mission of the ILO relates to *all* working people. In his new, programmatic "Agenda for Decent Work Worldwide", he states: *"The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity…* The ILO must be concerned with workers beyond the formal labour market – with unregulated wage workers, the self-employed, and homeworkers" (ILO 1999, 4).[5] And indeed, the vast majority of the global population working today are by no means in formally regulated employment to which classic labour legislation applies. Even in the classic industrial countries, there is significant growth in "atypical forms" of employment. The registered unemployed, possibly even in receipt of unemployment or welfare benefits, represent only a small percentage of all "underemployed" workers in search of gainful work.

In 2008 the ILO members formally endorsed the unity of their strategic objectives in their solemn "Declaration on Social Justice for Fair Globalization". The general support for a Global Jobs Pact, launched by the ILO in the summer of 2009 in the light of the world eco-

[4] Cf. Murray 2001, especially p. 52ff.
[5] Number 2 of Vol. 142, 2003, of the International Labour Review is dedicated to a discussion of this issue.

nomic crisis, indicated a growing receptiveness for the goals of the ILO, though there is little clear evidence that it will actually lead to the necessary policy revision by states or in the world of states.

The Agenda for Decent Work Worldwide is an integrated approach with four strategic objectives, namely the promotion of rights at work, employment promotion (with jobs of an acceptable quality), social protection, und social dialogue. The first step towards promoting rights at work was already made in 1998 by the ILO member states when they adopted a "Declaration on Fundamental Principles and Rights at Work", which was based on minimum permissible protective rights that had already been stipulated at the World Summit for Social Development in Copenhagen in 1995. These include the right to freedom of association and collective bargaining, the prohibition of forced labour, the abolition of (defined) unacceptable forms of child labour, and the elimination of discrimination. These rights are also anchored in the Universal Declaration of Human Rights of 1949 as well as the International Covenants on Civil and Social Rights of 1996. They correspond to a total of eight ILO conventions to which all debates on so-called fundamental labour or social standards relate (cf. box 1) and which are directly applicable in all socio-economic contexts.[6]

Box 1: The Eight Core Labour Conventions of the ILO

- C87 Freedom of Association and Protection of the Right to Organise Convention, 1948
- C98 Right to Organise and Collective Bargaining Convention, 1949
- C29 Forced Labour Convention, 1930
- C105 Abolition of Forced Labour Convention, 1957
- C138 Minimum Age Convention, 1973
- C182 Worst Forms of Child Labour Convention, 1999
- C100 Equal Remuneration Convention, 1951
- C111 Discrimination (Employment and Occupation) Convention, 1958

These fundamental principles and rights are seen as the "rules of the game" or criteria for a level playing field in the international economy. Following Martha Nussbaum (1999) and Amartya Sen (1999), they can also be described as capability rights in the sense that they

[6] In the following I shall use the rough classification used by the ILO staff, namely classic industrial countries, transition countries and developing countries (cf. Ghai 2006, p. 4).

serve to develop the livelihoods of working people. The Governing Body of the ILO prioritised four further conventions: Conventions No. 81 and 129 on Labour Inspection, Convention No. 144 on Tripartite Consultation on International Labour Standards, and Convention No. 122 on Employment Policy. These conventions do not yet substantively regulate working conditions such as working hours and safety at work. By 2009 the International Labour Conference, the plenary body of the ILO, had adopted a total of 188 conventions and 195 recommendations covering a vast range of topics. Today, after several revisions, 76 conventions have been brought up-to-date and recommended to the member states for ratification (see also ILO 2005).

The second objective of the ILO Agenda for Decent Work Worldwide is the promotion of gainful employment. Though this was already relevant shortly after the ILO was established when the Great Depression set in, Convention 122, adopted in 1964, was the first separate standard specifically for the promotion of employment policy. The classic interpretation of the ILO mandate had been to protect workers as far as possible from the exploitation of their labour power, i.e. to limit the commodification of their labour power; however, in many third-world countries the livelihoods of peasant farmers were becoming marginalised without the emergence of new industries to provide an alternative source of earnings. Precarious economies, characterised by a lack of resources, rights and protection, developed in the fast-growing urban centres and formed the marginal pole of peripheral capitalist economies (Quijano 1974). With its World Employment Programme in the 1960s, the ILO entered the arena of development policy in opposition to the prevailing opinion that equated development with economic growth (Senghaas-Knobloch 1979). The ILO did not, however, succeed in gaining a decisive influence on the development discourse, which from the 1980s was dominated by free-trade ideology and the prescriptions of the so-called Washington Consensus of the international financial institutions. Not until 2005 was decent work acknowledged as one of the Millennium Goals and a key instrument for reducing poverty; the Annual Ministerial Review of the UN Economic and Social Council first endorsed the views and objectives of the ILO in summer 2006 and again in summer 2007 with its "Declaration on Full and Productive Employment and Decent Work".

Social protection is the third component of the Agenda for Decent Work Worldwide. The fact that in 2008 the Millennium Goals, drawn up in 2000 with the aim of halving extreme poverty by the year 2015, were still far from realisation in 2008, and rarely discussed at all in 2009 in

the wake of the global economic crisis, points to the relevance of the ILO programme. But by including those in irregular or informal work, or employed in homeworking trades, the magnitude of the new challenges facing social security and social protection in the various socio-economic and socio-political contexts becomes manifest. In most of the classic industrial countries most elements of social security are bound to formal employment. A second, lower-level, means-tested social welfare net exists alongside the contributory social security system. The growth in insecure employment (fixed-term employment, contract work) in recent years gives rise to a new, increasingly significant social problem in OECD countries. In the same way as Convention No. 122 has become the central reference convention in terms of employment policy, Convention No. 102 from 1952 establishes a set of minimum social security standards: In this convention the category of people covered by social security is for the first time optionally defined as part of all employees (and their wives and children) or as part of the economically active members of the population and their wives and children, or as part of the residents (as specified in Art. 9); in this way, the right to social security no longer refers only to employees and their families but, optionally, to the population as a whole.

In many transition countries, not only inequality, but above all open unemployment, poverty and insufficient social protection are widespread. A particularly pressing issue is how the numerous people in the developing countries – where only a small percentage of working people are in formal employment – can be protected against vulnerability and contingency, i.e. the inability to live off their own earnings due to unemployment, illness, old age or other hardships (Saith 2006). The unemployment category makes little sense, because their immediate physical survival depends on activities of any shape or form, however unproductive, damaging or destructive they may be.[7] In the light of such highly problematic trends, the ILO has calculated that for a number of countries only a small proportion of their respective GDP would be necessary to substantially improve the life conditions of large sections of the population; using model calculations and field studies it demonstrated how even in the poorest countries the means for basic health care, old-age pensions and school education could be provided (Cichon/Hegemejer 2007), whereby support for self-help groups and co-operatives play a crucial role. Taken as a whole, it is a question of reconceptualising social protection systems not as an expense to be avoided but as a major investment in the future of a community.

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[7] Sengenberger 2009 (forthcoming) draws up a new, more differentiated set of indicators for measuring employment figures that for the first time takes account of the actual conditions in all parts of the world.

The fourth strategic objective of the ILO is the promotion of social dialogue. Right from the outset, not only governments should be involved in decisions over labour and social standards, but also the representatives of those affected: workers (trade unions) and employers. Even today this innovation is unique in the context of international relations and international agreements. The principle of tripartism is incorporated in the decision-making bodies as well as in the provisions of the labour standards (Convention 144) and in technical cooperation organised by the ILO. The purpose and objective of social dialogue is the realization of freedom of association as a fundamental right to promote and protect collective labour interests. Traditionally, social dialogue in the ILO member states is based on employer and employee representation. In the light of heterogeneous and changing economic structures, however, social dialogue faces new obstacles. In the classic industrial countries, there is an emergence of new problems relating to labour and social standards as a result of new, flexible forms of employment and work and the decline in trade-union representation (Senghaas-Knobloch 2008). Transition countries, too, have undergone not only a considerable degree of de-industrialisation and a complete reform of their social security systems, but also a large drop in membership in the newly constituted trade unions. And in developing countries, where the highest proportion of workers are employed in the informal economy, classic social dialogue was never of great significance to working life.

While the ILO, after a period of disregard in recent years, has succeeded over the past decade in getting their problem definitions and proposals for solutions back on the international agenda, in practical terms this has been to little avail. Other international institutions, dominated by OECD countries – such as the World Bank Group and the World Trade Organisation (WTO) – are still much more influential. For instance, structural adjustment programmes implemented by the World Bank in accordance with the Washington Consensus of the 1980s led to considerable deviations from former governmental economic and social policies (Rodgers et al. 2009: p. 195 ff), resulting in a sharp decline even in primary school attendance and an increase in child labour in the global south[8] because the governments were ordered to implement rigid cutbacks and privatisation. Bangladesh, for example, has now delegated a substantial part of its school system to NGOs, giving rise to a fragmentation of the school system.[9] These side-effects of the credit conditions were ignored for a long time by the multilateral

[8] In 2007 UNESCO registered an increase in school attendance again, but deplored the quality of the schools and the neglect of the primary level.
[9] See the doctoral thesis by Andrea Schapper, forthcoming, University of Bremen.

finance institutions that imposed them, and to this day they have not acknowledged responsibility for them.

3. Implementation of the ILO's Labour and Social Standards

The ILO is renowned for its highly elaborate supervisory system. The functioning of its regular monitoring system depends on the ratification of the conventions adopted at the International Labour Conference by the ILO member states, as this makes the latter accountable with respect to observing the conventions. Though Article 19 of the ILO Constitution also allows the ILO to request reports with regard to recommendations and non-ratified agreements, the whole concept of the ILO's labour and social standards is oriented towards the ratification of the conventions; to that end the "Declaration on the Fundamental Principles and Rights at Work", issued in 1998, marked the launch of an ILO campaign for the ratification of the eight core conventions cited above. The first component in the enforcement of the conventions is the obligation of the member countries, in accordance with the regular reporting system, to report periodically on the application of the conventions that they have ratified. The real impact of the system lies in the requirement that the governments present their reports to the most representative national employers' and employees' associations for comment. The number of comments on government reports has in fact increased quite substantially over the last few years. Of course, it goes without saying that domestic criticism has little chance of being articulated and effecting change if freedom of association only exists on paper, or if existing trade unions do not represent significant sections of the working population and the international trade union associations have limited access.

A second component of the ILO monitoring system is the annual examination of the submitted reports by an independent legal Committee of Experts on the Application of Conventions and Recommendations. This committee determines the annual status and developments in specific areas of regulation, and identifies individual country cases of persistent violation, but also notes manifest improvements, on the basis of material drawn up by the ILO staff. Around 20 such individual national cases are also dealt with at oral hearings with the respective government delegates during the annual International Labour Conference.

Thirdly, and in addition to periodic reporting and monitoring, there also exists a procedure for Representations of Nonobservance of Conventions, which can be initiated by labour represen-

tatives and delegates at the International Labour Conference in accordance with Article 24 of the Constitution. Here, the Tripartite Committee on Freedom of Association plays a special role in that it receives representations from employers' and employees' associations about violations of the principles of freedom of association by members – and in a departure from the other rules – independently of whether the relevant conventions have been ratified by the country in question or not. Of particular significance here are representations submitted by the international trade union associations concerning the suspension of work-related rights, and quite frequently also fundamental rights such as the right of association, in special economic zones in peripheral capitalist countries where export goods are produced, mostly with foreign money. The Committee examines the representations, draws its conclusions and submits its recommendations to the Governing Body. It is evident from the conclusions of the supervisory bodies of the ILO that the restriction or repression of civil liberties "even today are still one of the chief causes of violations of the freedom of association" (IAA 2000, 30).

Fourthly, there are provisions for a specific complaint procedure, which – though seldom used – may be initiated in accordance with Article 26 of the Constitution by one government against another which has also ratified a particular convention, or by staff of the ILO.[10] Taken as a whole, the ILO's procedures for monitoring and supervising provide strategies for administrative or management "dialogue" as well as "quasi-judicial" procedures and public shaming, though it has no sanctioning powers (Bartolomei de la Cruz/Potobsky/Swepston 1996; Zangl/Zürn 2004).

In order to identify conforming and non-conforming state behaviour in terms of international labour and social standards, it makes sense to distinguish a) *adherence*, i.e. states' formal voluntary commitment to comply with international standards, b) *implementation*,[11] which above all means the adaptation of domestic national legislation to international standards, and c) domestic *enforcement*. The formal commitment to international standards that states undertake when they ratify conventions also entails the requirement to periodically submit reports. The degree to which states have fulfilled their commitment to implement and enforce various ratified ILO standards can be inferred from the diplomatic expressions of concern articulated by the supervisory bodies such as "direct requests", "observations" ("with" and "without satis-

[10] Germany, for instance, was the addressee of a complaint in 1985 about violating the Employment and Occupation Convention No. 111 with about employment bans ("Berufsverbote") for public employees. A Commission of Inquiry was set up. The German government refused to implement its decisions.
[11] On this definition cf. Böhning 2005.

faction") as well as "interim reports". However, no conclusions as to the quality of implementation and enforcement can be drawn purely from the number of "requests" and "observations", as countries with low rates of ratification and, hence, relatively few obligations to report, obviously subject their specific domestic legal systems and practices to less scrutiny than countries with high ratification rates. Of course, however, the domestic political processes triggered by the ILO monitoring bodies can be observed over time.[12]

As a result of the aforementioned ratification campaign, the most common state commitments relate to the eight core conventions listed above, evident by the altogether high level of ratification. There are, however, clear regional distinctions: Almost all European and Latin American states have ratified almost all eight fundamental labour standards and implemented them in their national legislation. Quite a solid basis of core conventions' ratifications can also be found in countries in the whole of Southern Africa. In Asia, however, only two countries – Pakistan and Sri Lanka – have signed all eight conventions. Ratifications of Conventions 87 and 98, on rights of association and the right to collective negotiation, are extremely rare. Such hesitancy to ratify these conventions is put down by some authors to the Anglo-Saxon legal tradition, which does not concede employees in the so-called "essential services" the regular civil and political rights (including the right to strike) that other employees enjoy (Sankaran 2007, 12), whereby the bone of contention between governments and the Committee of Experts lies in the definition of the term "essential". Child labour and forced labour also remain a major issue in the whole Asian region. India, for instance, has ratified neither of the two fundamental conventions on the abolition of child labour, while China has ratified both. On the other hand, the two conventions on the abolition of forced labour have been ratified by India but not by China.

All states that have not ratified one or more of the eight fundamental conventions are bound under the 1999 Follow-Up to the "Declaration on Fundamental Principles and Rights at Work" to report annually to the International Labour Office what circumstances prevented the ratification of one or more conventions in question. The administrative dialogue involved is a procedure that cannot be equated with the regular monitoring procedure, but it nevertheless allows an ongoing observation of the actual circumstances. Each year, moreover, the International Labour Office publishes a survey of progress made in matters concerning one of the

[12] For a meaningful assessment of the status of implemented and enforced standards there are only a few country case studies. On the basis of a set of quantitative indices Böhning 2005 arrives at a highly critical overall as-

four norm areas: the right of association and collective negotiations, forced labour, non-discrimination and child labour. In 2007, for example, the ILO published its Second Report on the Eradication of Forced Labour (ILO 2007a). These surveys always discuss the relevant institutional mechanisms of other global and regional organisations as well. In this way, a knowledge base is built and continually enlarged on the current situation in each area in terms of compliance with fundamental principles and rights in the worlds of work.

The challenge confronting the Decent Work Agenda becomes all the clearer when one considers that while, when taken together, the fundamental and the priority conventions have succeeded in eliciting a relatively high degree of state commitment and accountability through state ratifications – though by no means in all regions! – the substantive agreements on working conditions in terms of pay, working hours, and occupational safety and health are ratified considerably less frequently. The ratification rate is particularly low for conventions on social security. The ILO has adopted 23 social security conventions, without counting the more specific regulatory instruments. The general reference convention for minimum social standards, No. 102, adopted in 1952 and still relevant today, provides for equal contributions by employers and employees to social security under the overall responsibility of the state, but was still only ratified by 46 states in December 2009. For over 40 years now, the ILO has not adopted any new conventions in the field of social protection. In 2001 the International Labour Conference adopted one resolution (ILO 2001a) and in 2007 one recommendation on social security.

In political and ideological terms, since the 1980s statutory state-organised workers' and social protection has been seen as an obstacle to development or a competitive disadvantage in the global economy. Even within the European Union there are debates along these lines. This is clearly reflected in the EU Commission's 2006 Green Paper on Flexicurity (Ciarra 2007). This Green Paper, which deals with the "Modernisation of Labour Law", is based on the (neo-)liberal dualistic view of protecting workers against protecting jobs,[13] which is criticised in internal ILO studies (Auer 2007). In the EU Commission's new approach it sees the necessity to promote a flexible lifestyle in individuals, and economic competition is clearly prioritised over working conditions, employment protection and social security (cf. Murray 2001),

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sessment.

even though Western European countries should know from experience that their economic success hinged on the establishment of – obviously differently structured – institutions for organising the labour markets and state welfare. As a consequence of the diverse forms of "atypical employment", and especially new types of fixed-term contract work[14], which are also on the increase among young, highly qualified workers, an ever-decreasing proportion of the population is covered and thereby protected by ILO conventions, even where they have been ratified and implemented.

A further problem is that many major states, including China, do not implement their national labour laws adequately, i.e. in the absence of an administration that is organised under the rule of law, they seldom penalise or even acknowledge legal offences. Political debates over the general restructuring of labour law to meet the challenges of globalisation are currently taking place at different political levels, and the ILO is actively contributing with its expertise, for instance on the positive relation between health and safety standards, employment protection and social security, and productivity growth.

In many parts of the world, the opportunities for working people to collectively represent or to assert their interests have deteriorated. The transformation of classic industrial societies to service economies has been accompanied by a drop in trade-union organisation (as well as employers' associations), so that consequently they have also lost influence. In transition and developing countries, the basic civil right of association is often restricted; or national legislation is not implemented. Civil society organisations that seek to close this gap are traditionally more involved in social issues than in workers policy, and are more active as advocacy groups. But this is precisely their weakness in terms of finding solutions, as advocacy can only lead to long-term local improvements if the victims articulate their rights and the legal bodies learn to observe their duties.

In the light of this situation, the ILO has decided to attach more weight to the development of local institutions and capacities. It therefore supports employees' collective self-representation groups in the informal economy, such as for example SEWA, the Self-Employed Women's Association (ILO 200b), offers training on elementary occupational safety and health meas-

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[13] This is accompanied by a justification for dismantling or modifying state social welfare instruments from "state care" to "enabling social policy" (von Maydell et al. 2006). For a critical appraisal see Kaufmann/Schwan 2007.

[14] Martinez 2004 describes this trend as "delabourisation".

ures and makes national and local actors aware of the problems of child labour, in particular its worst manifestations such as prostitution, debt slavery and hazardous work. To cite one example: since its appointment in 1992, the ILO *International Programme on the Elimination of Child Labour* (IPEC) has cooperated in India with the government, trade unions, employers' associations, national research and training institutions as well as other civil society partners in numerous projects. The ILO's integrated approach includes taking children out of hazardous jobs and getting them into school education, promoting prevention by supporting public educational institutions, job training for young people and finding alternative income opportunities for the families of working children.

4. The Potential and Limits of Exerting Influence on the Practices of Transnational Companies

One way that the ILO can make a considerable impact is through the accountability requirement of its member states, and consequently the true efficacy of international labour and social standards is called into question by the activities of multinational and transnational enterprises. Although endeavours have been made to make such companies accountable through international law (Nowrot 2004), it is virtually impossible to impose an accountability obligation on them for the social consequences of their decisions over investments and investment withdrawals, and thus they possess the means to pressurize national and local governments and employees. For this reason the ILO emphasizes how important it is for national governments to win back political space and regain the capacity to make effective political decisions (Jenkens/Lee/Rodgers 2007, 29, 42ff.).

Through the management strategies of global sourcing, decentralised businesses and transnational supplier chains, workers are faced with the additional problem of direct competition in the global sectoral labour markets on top of the classic problems of international market competition of commodities. Striking examples of this can be found in the IT and in the textile and garment industries, in the manufacture of vehicles and in international merchant shipping (Dirks 2001). Transnational companies are barely represented in the traditional national employers' representative bodies, but have instead built up their own agencies that cut across state political spaces and put actors in the classic political spaces under pressure. As early as 1977, in response to this problem, the ILO adopted the "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy". Prior to this in 1976 the Organisation for Economic Cooperation and Development adopted "Guidelines for Multinational En-

terprises" on responsible corporate governance and industrial relations in its "OECD Declaration on International Investments and Multinational Enterprises". In 2000 the eight Core Conventions were explicitly incorporated into the ILO's Tripartite Declaration and the OECD Guidelines.

The ILO's "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy" is not binding under international law, but it does provide a forum for drawing the attention of governments, employers' associations and trade unions at regular intervals (every three to four years) to the question how the activities of transnational companies affect social sustainability at the local level and as well as rights at work. In the OECD Declaration, multinational as well as national companies are called upon to examine complaints and settle disputes, though a specific complaints mechanism is not provided.

The "Guidelines for Multinational Enterprises" in the "OECD Declaration on International Investments and Multinational Enterprises" can be regarded as a kind of hybrid mechanism. The OECD member states are required to recommend guiding principles for responsible behaviour to multinational companies with headquarters in their respective countries. As an implementation measure, provisions are made for the establishment of so-called national contact offices in the OECD member states; these contact offices are entrusted with the promotion and implementation of the rules, including a complaints procedure. Between June 2000 and January 2005 only 40 complaints procedures were concluded. One of the main effects of the mechanism (cf. Utz 2006) is that businesses may be required to justify themselves in cases brought to the national contact offices. Only few national contact offices have managed to establish a dialogue between the companies concerned and the people affected by their decisions, however. In all other cases they were unable to persuade the companies to cooperate.

A promising link between voluntary company codes of conduct and legal agreements might be the roughly 60 collective framework agreements that have been concluded since the turn of the new century between large multinational companies on the one hand and international sectoral trade unions, trade union federations and global works councils on the other (Lang 2006; Papadakis 2008). These framework agreements on compliance with the ILO's fundamental labour standards can be used by trade unions at different company locations in various countries to conclude local tariff agreements that refer directly to the ILO standards covered in the framework agreements. Again, however, the fact that only a very small number of bind-

ing framework agreements has been concluded points to the fundamental problem that the right of association and trade union collective bargaining powers – which form the very heart of regulated social dialogue – are rejected by many multinational enterprises.

The United Nations Global Compact between the UN and multinational companies, which came into force in 2000, stands for the purely voluntary principle. Signatories to the Compact undertake to guarantee ten principles, including compliance with the ILO's fundamental labour standards. The trade-off is that no monitoring, accountability or prosecution takes place. After strong protests from nongovernmental organisations, however, the Compact was slightly modified to the effect that since 2004 each company signatory to the UN Compact at least has to submit a periodical *Communication on Progress* in the implementation of the stipulated principles.

The rapidly growing popularity of the concept of Corporate Social Responsibility as an instrument of voluntary self-regulation indicates a trend towards the privatisation and socialisation of political regulatory mechanisms at the international level (O'Rourke 1999), and despite the global financial crisis and historically unprecedented measures to overcome it this trend has not been broken in the least. Thousands of the over 60 000 multinational companies have drawn up their own codes of conduct, not seldom only in response to the publicization of scandals by nongovernmental organisations, civil society groups or local initiatives, all of which endeavour to monitor compliance with the voluntary commitments. As a consequence of this, the companies in turn have appointed in-company officers or staff to deal with the implementation of the codes of conduct; in addition, auditing companies have been established to issue certificates or labels for products or production facilities. Again, in response to the commercial certification companies, NGOs – sometimes in cooperation with trade unions – offer their own guidelines for codes of conduct. In the meantime a whole certification industry has been established. Ultimately, however, it should be realised that the real impact of voluntary conduct codes depends on the potential power of NGOs to mobilise consumer boycotts. In particular, businesses that produce brand name products must be prepared to face market setbacks if they are exposed and pilloried by NGOs. Conversely, however, this also means that at best, it is only possible to ensure worker protection through conduct codes or product or company labels for those employed in the production of goods bought by consumers in industrialised countries (e.g. toys and garments). The extent to which social protection and protection of workers' rights can be ensured through conduct codes is therefore very lim-

ited. Experiences in factories in China in the information and communications industry, which is dominated by foreign investors, show that under certain circumstances civil societal actors sometimes succeed in starting up self-organisation processes going (WEED 2007). Without the collective self-representation of the workers themselves however, and without effective state supervision, the effective observance of labour and social standards remains extremely selective (Barrientos 2007).

5. Bridging the Gap between Standards and Policies

The Decent Work Agenda positions the ILO in a global political ideological debate over whether or not economic development and employment are hampered by rights at work, social security and social dialogue. In the light of the burgeoning inequalities in the member states and the increasing disparity between the poorest and the wealthiest countries,[15] the ILO sees its chief task in promoting decent work to reduce this disparity, overcome poverty and achieve social justice (Rodgers/Lee/Swepston/Van Daele 2009). Given the asymmetrical distribution of prosperity, the ILO calls for an improved coherence between the global sectoral orders in the areas of human rights and labour and social affairs on the one hand and financial regulation and global trade on the other.

The major obstacle for a global sectoral order for employment and social policy is hardly the lack of substantive legitimation, which is relatively well ensured through the ILO's tripartite negotiation processes, but rather its inadequate implementation and application. Its success depends wholly on what institutions, groups of actors and resources are available locally to actually inspect working conditions, call for the application of the relevant legislation (also with regard to social standards) and to create a climate in which laws relating to the objectives of employment, working conditions and social protection are fulfilled as a matter of course. Failure to implement national and international work standards can, on the one hand, be due to insufficient state capacities. An exemplary model of capacity building to overcome this situation is the aforementioned International Programme on the Elimination of Child Labour (IPEC), which the ILO, using extra-budgetary funds, consistently built up and expanded through networking with other agencies in the early 1990s, combining assistance with ratification campaigns (Liese 2005). First signs of improvement in the child labour situation have

[15] The difference in average income per capita between the 20 poorest and the 20 wealthiest countries has risen from a ratio of 1:30 to a ratio of 1:74 over the past 40 years (IAA 2004, 37).

been documented (ILO 2006), although it is still a matter of dispute between the World Bank and the ILO whether these improvements can be put down to financial aid or to persuasive efforts at the local level; and although child labour is on the increase again since 2008 as a consequence of the global financial crisis.

On the other hand, the actual implementation of labour and social standards can also be obstructed by a lack of political will. In the light of the scandalous developments in the working and living conditions of seafarers (like the issue of child labour, this has been a perennial problem since the ILO's foundation in 1919!), the ILO endeavoured, through a new maritime framework convention, to create a common ground broad enough to increase the rate of ratification and implementation in this most global of industries, and to place itself on a par with the International Maritime Organization (IMO), which is concerned with technical standards: The Maritime Labour Convention, adopted in 2006, and which consolidates 70 already existing ILO seafarers' conventions into one framework, is now being put to the test. Like its predecessor, Convention No. 147 (a first reference convention for minimum standards in merchant ships), the new Convention (which has no number) provides not only for the monitoring of working and living conditions on board ships by the states in which the vessels are registered, but also by the states whose ports they visit (under separate Agreements on Port State Control, which are also used by the IMO). Whether or not the Convention – with an enforcement approach which is exceptional for the ILO – will receive sufficient ratifications to effectively regulate the globalised labour market for seafarers, will be decided in 2010, when EU countries are expected to ratify. The IMO has organised effective controls in flag states and port states for warding off polluting ships (Dirks 2001). It is to be hoped that the ILO's new Framework Maritime Convention will be similarly successful with the positive enforcement of international labour standards on global maritime traffic.

In many ways, the anticipated success of the Maritime Labour Convention of 2006 is exemplary of the fate of the sectoral world order for labour and social standards in the age of globalisation. As in other industries, shipping companies are mostly decentralised. Shipbuilding contracts (and, hence, contracts for the building of working and living environments for seafarers), the choice of trade routes, the recruitment of crews, ship ownership, the funding and chartering of vessels, to name but a few aspects, all lie in the hands of different companies. However, the Maritime Convention places the overall responsibility for compliance with the codified regulations in the hands of the shipowners. This could become a model for other

global industries. A further characteristic of international maritime shipping, moreover, is that it is tied to a genuinely global sectoral labour market (Gerstenberger/Welker 2004). A unique, global tariff agreement system drawn up by the ILO has been in place for a long time, including global standard minimum wages for seafarers – though for seafarers from industrialised countries these are admittedly extremely low. The issue of different wage levels and social standards in multi-national crews has yet to be resolved satisfactorily.

6. Concluding Remarks

Since its foundation, the objective of the ILO – the oldest international organisation in the labour and social standards sector – has been the prevention and/or containment of socially destructive competition in commodity trade (Sengenberger 2005). Global sectoral labour markets and global supply chains for production pose new challenges to this objective. But labour and social standards have been bolstered by the new human rights discourse. New concepts and new approaches have also emerged, which certainly need to be taken further in order to bridge the gap that has hitherto existed between public law and labour law (Hepple 2006).

As in every other policy field, it is necessary to observe major trends and developments in the area of labour and social issues and examine their effects on existing regulations, as problems that have long been declared solved can reappear in a new guise. Old and new forms of forced labour are just one such example, the elimination of which belongs to one of the most fundamental labour rights (ILO 2007a, ILO 2007b). The first ILO Forced Labour Convention (No. 29) was adopted in 1930, and a second (No. 105) on the abolition of forced labour in 1959. Both conventions belong to the core labour conventions today. These conventions were supplemented in the context of the UN system. Currently, however, at least one or both ILO conventions have still not been ratified by Afghanistan, China, Japan, Canada, Laos, Madagascar, Montenegro, Myanmar, the Netherlands, Qatar, Samoa, the Solomon Islands, South Korea, Timor Leste, the USA and Vietnam, to say nothing of implementation problems. Furthermore, in the OECD countries, new implementation and enforcement difficulties have arisen that hamper the elimination of forced labour, for instance (as in prison management) due to the privatisation of functions that formerly lay in the hands of the state, and through the marked increase in human trafficking (especially of women and children), in connection with growing social inequalities in and between states.

Since the turn of the 21st century the ILO has succeeded in overcoming its marginalised position in international debates.[16] By its very nature, however, the effective implementation of international minimum labour and social standards depends on strong support at all political levels, and even in the year 2010 this can hardly be said to be the case, despite almost universal state membership in the ILO. The government representatives of the member states still speak a different language at the ILO committee meetings than at meetings of the WTO or financial institutions such as the International Monetary Fund or the World Bank. In the meantime, the effects of their own deregulation policy have caught up with the old industrial countries: Hundreds of thousands of unregistered men and women from the South, who left their home countries in search of a better life, have created a reservoir of highly vulnerable workers alongside the shadow economies already existing in Western countries. Just one example is the case of – usually female – home helps and carers in private households. Transnational care chains often reveal close links between carers' countries of origin and assignment: While in the USA and in the Gulf States it is most frequently women from the Philippines and other Asian countries (Ehrenreich/Hochschild 2004) who do the housework, in Italy there is a similar link with North Africa and in Germany it is with Poland. Chains arise when the housework to be done in the families of the migrant workers is in turn carried out by paid workers, who themselves also delegate their own work to others. It is public knowledge in all the countries of origin, and recently even in Poland, that children and relatives in need of care are frequently abandoned and left behind.

This example of a booming, highly informal employment sector clearly demonstrates that the prevailing world economy is blind to issues of social reproduction and social cohesion. The consequences – the lack of rights of irregular labour migrants in the OECD countries – also undermine the existing rights of regular employees. The dual reality of existing but not generally implemented law is having an impact on legal reality.[17] Issues that were long thought to have belonged to the past have re-emerged, sometimes in a criminalised form, as in the case of forced prostitution, and sometimes as a new, regular normality. The increase in atypical, but above all insecure employment and the growing share of low-wage employment in the classic industrialised countries show that these countries are now confronted with the same task that they faced in the early 20th century: that of considering the repercussions of their

[16] This is testifed by a joint study by the ILO and the WTO, cf. Jansen/Lee 2007.

own actions, also for the sake of their own future. Consequently, decent work has once more become a domestic issue for the founder states of the ILO.

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[17] For a particularly flagrant example see the feature in Deutschlandfunk by Conrad Lay on 22nd August 2006 on Chinatown in Prato, Italien.

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