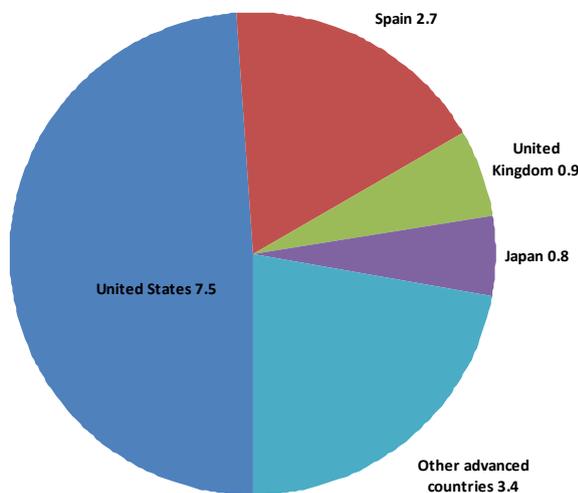


## International Labour Standards: an old instrument revisited

by Frank Hoffer

During the last decades, labour markets in many countries have been deregulated and trade union strength has declined. Trade liberalization and deregulated financial, product and labour markets created a mutually reinforcing trend towards weaker regulatory provisions. Lower labour market protection and increased precarious employment resulted in a declining wage share and growing inequality. The lack of wage-based aggregate demand that followed from these dysfunctional developments translated into massive export surpluses in some countries and debt-financed consumption in others. The crisis has proved that both trends were unsustainable.

The crisis has shown not only that “employer-friendly” labour market regimes are not employment-friendly, but also that they are dangerously pro-cyclical. In the US and Spain, two countries characterized respectively by underdeveloped labour market protection and massive precarious employment, the economic downturn rapidly translated into massive employment and wage losses. These two countries actually account for two-thirds of all crisis-related job losses in the advanced countries.



Change in number of unemployed people in advanced countries: 15.3 million

Source: IMF-ILO, 2010, Oslo, <http://www.osloconference2010.org/discussionpaper.pdf>

Labour legislation has the double function of protecting workers against hazardous working conditions and abuse of market power as well as acting as an automatic stabilizer against the volatility and over-shooting of under-regulated labour markets. However, in recent decades there has been a regulatory race to the bottom. Deregulatory ‘successes’ in one country created parallel pressures to emulate it in neighbouring countries. True, not all countries deregulated to the same extent and some countries continued to pursue

a high protection/high productivity path, but no country remained unaffected by the general tendency towards lower levels of protection. While a few individual countries managed to maintain and sometimes extend protective regulation under the current globalization regime, all felt the pressure to reduce labour costs by weakening employee rights and protection. This demonstrates the need for coordinated action to reverse the overall trend.

During the three decades that prepared the grounds for the Great Recession, mainstream opinion in policy-making circles ignored or forgot what had been common sense 90 years ago when the ILO was founded.

*“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.”*

Multinational companies and the global financial sector have undermined the capacity of democratic societies to ensure the sovereignty of the people and of law over the logic of the market. Profit seeking at the expense of the public good becomes an unavoidable reality when irresponsible business practices become legally possible. Sustainable enterprises based on the principles of collective bargaining, fair wages, non-discrimination, taxation and respect for labour standards are out-competed by those who do not hesitate to employ children, ignore minimum wages, evade taxation, circumvent labour legislation, save on health and safety and environmental protection, and abuse the open global economy to demand evermore preferable conditions for investment and externalize as many costs as possible to society.

Universally applicable national labour legislation is necessary to avoid unfair competition within countries. It steers the economy towards a growth model based on innovation and product competition instead of exploitation. International Labour Standards<sup>ii</sup> complement and reinforce actions at national level. They are based on the understanding that in a global economy, national regulation must be harmonized and coordinated through an international labour standard setting process. They are safeguards against social dumping and can generate the mutual trust among nations that is a precondition for a stable open economy. Open markets can only be maintained when regulatory arbitrage is limited. If countries strive for export surplus by keeping wage growth systematically below productivity growth, they build up huge global imbalances and overcapacity that are not sustainable. Such strategies will either trigger a global race to the bottom or force other countries to adopt protective counter-measures.

In order to avoid such a situation, governments need a mechanism that credibly ensures a regulatory floor applicable in all countries. This does not imply the establishment of absolute common standards, but it does involve a commitment towards a similar approach to labour protection in each country. Many labour standards do not entail substantial costs and can be applied in all countries independently of the level of development; such labour standards include the right to organize, the right to non-discrimination, the right to consultation with workers and employers, the right of workers to refuse work under hazardous conditions, the right to the safe handling of health-threatening chemicals and pesticides, and the right of workers' organizations to access enterprises. Other standards, such as maternity protection, protection against excessive hours of work, and minimum annual vacation, are essential for workers' health and should not be undercut under any circumstances. Moreover, many standards provide for flexibility in recognition of different levels of development. For example, coverage of a limited number of risks like unemployment, sickness, old age or invalidity for a certain percentage of the population is sufficient for ratification of the minimum social security convention.

In 2009, ILO member states identified a set of labour standards for recovery as part of the Global Jobs Pact (GJP). They reiterated the importance of the core labour standards as human rights, but also recognised that for a regulatory response to the crisis, a much more comprehensive labour standards package was required.

The standards identified in the GJP can be grouped into five areas:

- *Empowering* workers to represent their interests by guaranteeing and promoting the right to organise and to bargain collectively as outlined in Conventions C. 87 and 98;
- *Protecting* employees at the workplace against all forms of discrimination (C. 101) and abuse of force by employers (C. 29), against unjustified dismissal (Convention 158) and against the loss of wages in case of bankruptcy;
- *Guaranteeing* minimum wage levels (C. 131) and social transfers that provide an adequate income floor (C. 102) and responsible public procurement policies (C.94);
- *Enforcing* the application of labour laws and collective agreements for all workers through full recognition of the employment relationship and efficient labour inspections (C. 81);
- *Focusing* all financial and economic policies on the objective of full, freely chosen and productive employment (C. 122).

International Labour Standards are a potentially strong element to improve global governance and create the trust among nations that all countries apply labour standards – adapted to their level of development – in order to avoid a race to the bottom. This crisis must be the moment to strengthen governments' commitments to labour standards as a contribution towards a globalization that respects workers' rights and results in greater equality within countries and among nations. Universal ratification of existing ILO Standards would be a major contribution to coordinated global governance.

The current ILO supervisory mechanism of regular reporting and independent assessment by a Committee of Experts is one of the most elaborate supervisory mechanisms in the United Nations (UN) system, but it has nevertheless not been strong enough to achieve the universal (or even close to universal) application of labour standards that member states expressed as desirable when they founded the ILO. Nearly all governments voted for the adoption of most conventions at international labour conferences. However, they have very often not followed up with ratification, let alone implementation.

The previous decades of deregulatory irresponsibility have made a minority much richer and more powerful, but this regime did not serve that well societies at large. Continuing the drive for deregulation of labour markets will lead to a further rise in inequality, declining wage shares and unsustainable imbalances. If governments fail to provide credible international policy coordination including minimum labour standards, a re-nationalisation of economies will take place sooner or later. It might turn out as one of the ironies of history that those who continue to press for uncontrolled markets despite the bitter lessons of the Great Recession will be much more successful in destroying globalisation than the anti-globalisation campaigners of the last decades.

Convincing governments and overcoming the resistance of market fundamentalists will crucially depend on the work of trade unions at both national and international levels. Trade unions have more influence in the ILO than in any other UN body, as they are part of its decision making structures. This is the time to campaign vigorously and to call on governments to consider a new ILO instrument with the sole objective of increasing the commitment to ratify and the capacity to implement existing labour standards. Moral persuasion and public exposure have proven to be insufficient incentives. The new mechanism should create a stronger pressure on governments to submit non-ratified conventions to their parliaments and to create financial obligations for all member states (except the least developed countries) that fail to do so or that fail to implement ratified conventions. These contributions should form a global fund for the promotion of international labour standards and help member states to create efficient and protected labour markets.

A universal application of labour standards would be a major contribution to a well regulated global economy. Moral hazard and free riding are the enemies of all universal regulations. Whenever governments have been genuinely committed to mutual obligations, they have also been serious about enforcement. Demanding financial compensation from those who want to strive at the expenses of others is not a penalty or a sanction. It is necessary in order to level the playing field and to ensure that International Labour Standards do what they are supposed to do: de-commodifying labour.

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<sup>i</sup> Preamble ILO constitution (1919, Geneva) <http://www.ilo.org/ilolex/english/constq.htm>

<sup>ii</sup> <http://www.ilo.org/ilolex/english/index.htm>