

ASYMMETRIC GOVERNANCE, LABOUR STANDARDS, AND MIGRANTS' RIGHTS

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Abstract

The emergence of a fundamentally reshaped global labour market regime during the last three decades has been marked by increasing informalisation of employment and followed by precarious working conditions, most seriously affecting irregular migrants. A range of social and political movements on transnational, regional and national level have generated strategies and discourses of contestation that emphasize the prominence of universal and collective rights. In connection with these initiatives the paper addresses the issue of accountability and contingencies for the implementation of labour, migrants' and human rights and the ILO's decent work agenda within the existing global governance architecture. It is argued that setting up a workable model for codification and institutionalisation of labour standards, human rights and migrants' rights cannot be left to the currently asymmetric global governance regime. The essential role of global and regional trade union confederations and other civil society organizations (CSOs) in repositioning the issue of a rights-based approach to migration, labour standards and development onto the terrain of a fair globalisation is emphasized.

Key words: global governance, decent work agenda, migrants' rights, human rights.

INTRODUCTION

Ongoing processes of globalisation have so far been streamlined towards ‘accumulation by dispossession’ (Harvey, 2005), implying a momentous shrinking of labour rights (Hertel, 2009). As politics of de-regulation, corporate restructuring or structural adjustment deprive labour of the protection and bargaining power, formerly provided by regulated labour markets and redistributive social policies, a contingent ‘re-commodification’ of labour (Papadopoulos, 2005; Slavnic, 2010) forces increasing categories of workers to sell their labour at the price offered by the market at any time. The emergence of a fundamentally reshaped global labour market regime during the last three decades has been marked by increasing informalisation of employment and precarious working conditions. New, often irregular, migration flows have become an important element in this configuration of a global labour market (Bauder, 2006) and a concomitant (re)commodification of labour, stripped of basic human, labour and migrants’ rights (Overbeek, 2003).

This development can also be described in terms of a massive momentum provided by the implementation of a ‘disciplinary neoliberalism’ and a ‘new constitutionalism’ re-affirming private property rights (Gill, 2005). It is contingent on a significant normative shift from the priority of an integrated bundle of social, labour and human rights towards the primacy of private property rights and the interpretation of human rights in terms of market and individual freedoms (Harvey 2005). It has led to a configuration of a political economy of exacerbated inequality. It has fed a global ‘economic metabolism’ (Luxemburg, 1951/63:444), marked by the asymmetric inclusion of developing, as well as former socialist countries of Central and Eastern Europe, into the landscapes of an ongoing financialisation of the global economy (Dore, 2008).

All of this has brought forth great challenges for nation states, global and regional socio-economic bodies and, not least, for trade unions and other organisations of civil society. In spite of a plethora of existing conventions and declarations that pledge universal human rights, their

implementation has fallen short of impact in terms of changing practices in national contexts. This is perhaps best exemplified by irregular labour migrants' and unacknowledged asylum seekers' lack of effective 'rights to have rights' (Arendt, 1958; Krause, 2008; Schierup, Hansen and Castles, 2006) and their related exposure to the, often, worst forms of precarious work and living conditions. The informalisation of the economy and its nexus to a persistent lack of irregular migrants' rights is also among the most exigent contemporary social problems calling for the interrogation of cosmopolitan claims (Soysal, 1994; Munck, 2007), which state a growing moral power of international human rights regimes for national states' recognition of non-citizens' rights.

Drawing on the rising strength of such a 'moral cosmopolitanism', we are, in fact, witnessing what appears to be a so-called 'Polanyian' counter-movement' (Polanyi, 2001 [1944]) against the unbridled advance of a deregulated market economy (Piore, 2009). Yet, although a multifaceted 'counter-movement' of today appears similar to the social upheavals following in the wake of the great economic and social crisis and the depression of the early 1930s, there are reasons, argues Michael Piore (2009), not to pursue this comparison too far. Although the 'theories that guided deregulation and globalization in the closing decades of the 20th century are the direct descendants of the laissez faire ideas that guided globalization a century ago', he contends (Piore, 2009:162), the kind of social policies that emerged from the great depression of the 1930s have largely been discredited. On this background, among other, our times 'counter-movement' appears, he argues, to take the form of many particular localised social struggles that are hardly guided by any coherent theory or programme.

1. In *The Great Transformation*, written in the aftermath of the deep economic, political and social crisis of the 1930s, the economic historian Karl Polanyi (2001 [1944]) argued that social stability, and with it an environment favourable for long term investment and sustainable economic development, has, across the history of capitalism, been intimately dependent on a 'double movement'. This implies a precarious balance between 'two organizing principles in society', he argued. The one is the principle of economic liberalism, aiming at the establishment of a 'self-regulating market', and the other, the principle of social protection embedded in a counter movement aiming at the conservation of man and nature as well as productive organisation.

Although this may be true, nevertheless a range of social and political movements on transnational, regional and national level have generated strategies and discourses of contestation that emphasize the prominence of universal and collective rights. They convey a positive sense of freedom and justice connected with a reaffirmation of labour rights as citizen rights together with migrants' rights and human rights (Munck, 2007; Gentile and Tarrow, 2009). In connection with these initiatives we argue (following Jones, 2010), for a 'full liberal view' and a broader conception of human rights. In this perspective human rights as written into the *Universal Declaration of Human Rights (1948)*, the *International Covenant on Civil and Political Rights (1966)*, and the *International Covenant on Economic, Social and Cultural Rights (1966)* are *universal, indivisible and entail egalitarian values*. According to this view human rights are also 'interest-based, institutions-generating' moral claims, to be used as a normative ground necessary for evaluating existing institutions or institutional change from the point of view of a shared humanity and social justice (Jones, 2010: 118). We take accordingly a critical stance in relation to 'orthodox', more 'restricted' conceptions of human rights as 'minimalist interpretations' that simply list the rights without addressing the issue of social justice and equality. In the most comprehensive and ambitious interpretation it is also justifiable to address the issue of universal human rights in terms of a pursuit of global social justice, i.e. transnational social rights and social citizenship (e.g. Faist, 2009).

That is where this paper takes its point of departure. We set out to depict an emerging wide and inclusive conceptualisation of a multi-level global governance regime. We examine cursorily its main actors, discourses and practices in order to critically scrutinize the structuring of human and labour rights discourses and contingencies for their institutionalisation, implementation and the promotion of global social justice. We claim that a critical exploration of strengths and weaknesses of existing strategies and practices, connected with the promotion of a rights-based migration regime and labour rights, is of paramount importance for reframing the migration and development nexus in terms of an alternative development model.

This question needs, in fact, to be pursued in terms of two major critical perspectives. One should, emphasizes Piore (2009), be critically concerned with a scrutiny of the actual appropriateness of a formal, ostensibly universalistic, framework of action in relation to a multitude of different economic, social, political and cultural conditions and discourses on the ground with respect to the particular voices and political discourses of national governments, local struggles and social movements, etc. The other perspective, with which we shall exclusively be concerned in this paper, pertains to the actual *accountability* of an emerging global governance regime, in terms of coherence of normative discourse, codification, institutionalisation and of modes of implementation and sanctions. Are movements of civil society, indeed, confronted with a model of global governance, embedded in asymmetrical relations of power giving unilateral preference to the interests of TNCs and financial capital? Are discourses of social justice unyieldingly subsumed to the primacy of 'economic growth' without access to sanctions or genuine policies and practices in terms of actual implementation? Or can we discern a more complex picture where the struggles and politics of external actors - and here we particularly focus on trade unions and other organisations of civil society - may intersect and interact positively with *internal* cleavages and developments within the dominant global governance organisations, which may further a genuinely affirmative and multilaterally deliberated stance in terms of social policies and labour standards as (relatively) autonomous policy goals and practice?² The main questions pursued are: *Who governs? Who sets the agenda? Who are the decision-makers? Who acts? Whose actions play a role? Who is responsible? For what and to whom?*

In this perspective we highlight issues for further discussion with the focus on an 'inclusive accountability' as conceptualised by Lafont (2010). She differentiates between democratic *sovereignty* and democratic *accountability*. While the former involves the participation of all decision-takers in policy-making, the latter, democratic accountability,

2. As in the case of the development of the World Bank, critically examined by Vetterlein (2007).

she argues, indicates the democratic requirement that representatives be accountable ‘*to all those subject to their decisions*’ (Lafont, 2010:195). So the question of ‘inclusive accountability’, even to those non-citizens that lack political representation, can be translated into an issue concerning mechanisms and tools that could guarantee accountability to all decision takers. This understanding of accountability, she further claims, could also address the evident failure of a state-centric approach to human rights (e.g. Beitz, 2009) to conceive non-state actors’ (TNCs, multilateral organizations such as the WTO, the World Bank and the IMF) responsibility for the protection and respect of indivisible human rights (Lafont, 2010). So, by differentiating between the obligations to ‘*respect, protect and fulfill*’ human rights she claims that states are responsible for protection and enforcement of human rights obligations. However, ‘a universal obligation’ to *respect* human rights is to be shared by both state and non-state actors (Lafont, 2010: 203). This shared responsibility is especially pertinent considering the devastating impact of the imposition of the conventional neoliberal development policies on social and human rights, especially in the decision-taking developing states. In the present conjuncture of the reaffirmation of transnational consensus, in support of austerity measures as the main policy response to the recent financial crisis, the issue of the powerful global policy-makers’ obligation to protect human, labour and migrants’ rights is even more legitimate to address. So, the overall question for deliberation is the following: Can these powerful multilateral actors and the most powerful states be made accountable for respecting and promoting human rights and labour rights’ claims as well as their translation into practice?

The paper is structured as follows. In the first part we present the contours of an emerging global governance regime in terms of its normative, technical and institutional dimensions. We go on to critically situate initiatives for promoting global social justice in general, and labour and migrants’ rights, in particular. The third section investigates implications of the ILO’s ‘decent work agenda’ for the promotion of migrants’ and labour rights, discussing different stakeholders’ strategies and the significance of their discourses and practices for a reframing of the neoliberal understanding of development and migration management. We stress in

particular the essential role of global and regional trade union confederations, other civil society organizations (CSOs) and the PGA in repositioning the issue of a rights-based approach to migration, labour standards and development onto the terrain of a fair globalisation. Setting up a workable model for codification and institutionalisation, reconceptualising human rights in terms of an accountable global social policy with migrants' rights and labour rights as essential pillars, cannot be left to the currently asymmetric global governance regime, nor to the initiative of concerned national governments or regional bodies like the EU or NAFTA. It will hardly come about without being impelled and underpinned by a multifarious social countermovement to neo-liberal globalisation.

Finally, we emphasize that we deliver, in this paper, a predominantly Northern, Transatlantic perspective, with particular attention to the ongoing degradation of the European social model and the loss of its prominence as a model for the pursuit of global social justice. We underline, however, that the way forward is in the development of a truly global multi-cited critical approach that includes other regional perspectives and transborder research venues (e.g., the argument of Faist, 2009: 29).

AN EMERGING GLOBAL GOVERNANCE REGIME, NEW DEVELOPMENT PARADIGMS AND THE URGE FOR INCLUSIVE ACCOUNTABILITY

The management of economic and socio-cultural globalisation has implied a shift from government to governance, cast in different recombinations of common and country-specific institutional responses and producing political consequences across the globe.

Global governance has been defined as 'the set of normative, social, legal, institutional and other processes and norms, which shape, and in some cases regulate and control the dialectical interplay of globalisation and fragmentation' (Clarke and Edwards, 2004:6). Clarke identifies three interconnected levels of global governance: *normative*, *technical* (scientific and social) and *institutional*. He underscores the importance of legalisation and codification of normative claims. *Normative* governance

is here understood as a set of ideas and ethical principles that shape a vision of an international regime, generate shared values and stimulate actors' behaviour. The *technical* dimension of governance consists of scientific and social mechanisms and arrangements that enhance multilateral and transnational solutions to global challenges and problems. The *institutional dimension*, involving both existing multilateral institutions, states and public policy networks, has arguably evolved towards 'a more complex system in which a variety of actors (states, citizens, international organizations, corporations, and NGOs among others) interact in a multi-layered system shaped by a variety of norms and institutional arrangements' (Clarke, 2004: 262). Without doubt the system of global governance and its agenda has predominantly been shaped by the most powerful and economically advanced countries, OECD, the organisation of the most developed countries, led by G7 and clearly dominated by the USA, as well as by transnational corporations. This point is of paramount importance for the understanding of the processes of legalisation based on various global norms, ranging from soft to hard codification, and evaluated in terms of level of legal obligation, precision and delegation of normative claims.

The main global governance actors have primarily and consistently navigated the process of globalisation towards a creation of a liberal trade regime and a related financial and monetary system. It has become embodied in the establishment of the WTO following the Uruguay Round. In processes of negotiation surrounding the establishment of the current global trade regime, global governance itself has also been rearranged. The Bretton Woods international financial institutions (IFIs), namely the World Bank and the IMF, have become instrumental in the imposition of the neo-liberal model and the promotion of free capital mobility. Strongly supported by the USA and the advanced economies the IFIs have also received an exclusive position apart from the rest of the UN organisational architecture; a clear mandate and required resources to promote hierarchical global economic governance, insulated from democratic grievances. In spite of its adoption of a more affirmative view on social policies, relating to a modified perspective of development, as compared to a radically economic position in the

1980s (e.g. Vetterlein, 2007), the World Bank has in practice persistently endorsed the Washington consensus, including downward social policy reforms and flexible labour laws, regardless of the rising discontent with its social and democratic deficit as well as its obvious failure to deliver economic development and employment.

However, at the turn of the Millennium, the 'Bretton Woods paradigm' and its optimism concerning eradication of poverty, through developing countries' embracement of a GATT/WTO driven international trade regime (Thérien, 2005), has been put increasingly in question. An alternative 'UN-paradigm' (Thérien, 2005), which is informed by a different understanding of the nexus between global liberalisation and poverty, inequality, deterioration of social conditions, human and labour rights, has been initiated by several funds, commissions and agencies affiliated to a complex and disjointed UN scheme under the ECOSOC co-ordination mechanism. This includes the UNDP (United Nations Development Programme), the ILO (International Labour Office), the UNICEF (United Nations Children's Fund) and the OHCHR (Office of the High Commissioner for Human Rights) in collaboration with the IOM (International Organisation for Migration). These multilateral agencies, within their overlapping mandates to promote human development, labour rights and social justice, have in the course of the 1990s elaborated a comprehensive theoretical and policy framework for the promotion of the social dimension of globalisation.

This alternative, UN paradigm to development and globalisation has, in fact, been taken into consideration by the most powerful actors, G20, the EU, the WB, and the IMF. An emerging global governance has been, however, and still is, as presented in diagram 1.1, marked by an *asymmetric dualism*. This dualism reflects normative asymmetries informed by neo-liberalism and the related subordination of global governance to the supremacy of a free trade regime and the canon of the free movement of capital (See Figure 1).

FIGURE 1
Approaches to (fair) globalisation

ONU Paradigm	Bretton Woods Paradigm
<ul style="list-style-type: none"> • Integrated policy approach/ interplay between macroeconomic, trade, employment and social policies – fair trade • Regulation of global capital market • Inclusion of ‘decent work agenda’ into the MDGs and Poverty Reduction Strategy • Bilateral, regional trade agreements and WTO negotiations • Global socio-economic floor • Human rights, migrants’ rights and workers’ rights for all including irregular migrants and workers in informal employment – Fair migration rules 	<ul style="list-style-type: none"> • Trade not Aid - Free Trade as a main development instrument - WTO • Corporate Social Responsibility (CSR) • Migration management • Poverty Reduction Strategy • Millennium Development Goals (MDGs) • De linking ILO social clauses from WTO consultations (1996)

Source: Thérien (2005)

A profound asymmetry is also reflected in the technical and institutional dimensions of the global governance architecture and has not been challenged by the global financial crisis. This is paradoxical, especially considering its catastrophic socio-economic impact, related de-legitimation of the finance-led development model and a reaffirmation of critical alternatives, claiming the importance of social policies and labour rights. We are, argues Gill (2005:182), witnessing processes concerned with ‘attenuating and co-opting democratic forces in order to prevent a second Polanyan “double movement”’; a composite oppositional social movement that might impel ‘authoritative re-regulation’. Discourses emphasizing social justice, human rights and the importance of setting up a decent work agenda have certainly been included into normative frameworks for global governance. But they have been subordinated to the exigencies of free trade, and the dominant exclusionary institutional practices propelling financialisation of the global economy and economic austerity have not been effectively challenged and countered at the present state. This reinforces the momentum of an emerging global labour market regime marked by:

- the expansion of transnational trade, FDI, mergers and acquisitions, and the configuration of asymmetric global production chains;
- new forms of global 'commodification' or 're-commodification' of labour;
- global and regional migration regimes that entail a further polarisation and segmentation of the labour force divided by complex intersections of skill, ethnicity, gender, origin and 'race';
- growing informalisation of the labour market in advanced as well as developing economies;
- the establishment of rights-depressing regional and global business-friendly frameworks for migration management and securitisation.

In order to start identifying both obstacles to and contingencies for an authoritative challenge to the dominant discourse on migration and development we address, in the following section, the genesis of an alternative discourse of globalisation; a discourse which appears, at least at face value, attentive to global social justice, labour rights and migrants' rights.

A DISCOURSE OF GLOBAL SOCIAL JUSTICE, 'DECENT WORK AGENDA AND FAIR GLOBALISATION

A discussion on the international labour standards, devised and supervised by the ILO, has played an important role in the development of this alternative discourse on globalisation, especially in connection with the establishment of the WTO. Discussions of its potential impact have been centred on the weak impact of non-binding ILO conventions and recommendations and the need to link the multilateral trade agreements such as the ITO, GATT, WTO and NAFTA to labour standards in terms of sanction-based social clauses (e.g. Malmberg and David, 1998). In order to redress a repeated decline with respect to an inclusion of social clauses into WTO negotiations, and the exclusion of the ILO from these negotiations, the UN General Assembly decided, however, in June 2000 to commission the ILO the task of formulating a comprehensive global employment strategy. The ILO, given a golden opportunity to restore its derailed position within the

global governance framework, reaffirmed its mandate to promote social justice through forging a 'decent work agenda' (DWA), formulated by its Director-General Juan Samovia in the 1999 *Decent Work Report* (ILO, 1999). According to the Report the ILO's primary goal is 'to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity' (ILO, 1999). The DWA corroborated the basic principle of the ILO Constitution. It stands for the 'de-commodification' of labour and it reaffirmed the 1998 Declaration on Fundamental Principles and Rights at Work. It has also appealed to a bundle of previously declared international human, social, economic and cultural rights. The Declaration affirmed eight core conventions that ensured *freedom of association, recognition of collective bargaining, elimination of forced labour, prohibition of child labour, elimination of discrimination in employment and occupation and right to income*. These rights are also linked to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1995 World Social Summit Declaration and Commitments.

Moreover, the ILO's revitalised engagement in reaffirming and promoting labour standards is also connected to other more ambitious goals, such as promotion of employment, social protection, security and social dialogue, including strategies to achieve these goals and addressing all workers, even those in irregular employment, self-employed and home-workers. Besides these ambitious goals and strategies, the DWA goes beyond the assertion of a universal social floor of economic globalisation. It also challenges the conventional approach to global economic development and growth and it proposes an integrated approach to sustainable development and macroeconomic policies that recognise economic benefits of reducing a 'decent work deficit'. In his 2001 Report, the Director-General claims that decent work is 'affordable' and 'feasible', that it needs coherence in order to encompass both economic and social objectives, while emphasising its universality (ILO, 2001).

In pursuing these goals the ILO's experts have collaborated not only with trade unions, employers and governments. They also opened a dia-

logue with global social movements and NGOs. A series of annually issued reports and numerous discussion papers centred on different facets of employment, deteriorating working conditions and poverty followed. One of the most significant and challenging reports is *Decent Work and the Informal Economy* (ILO, 2002). The preparation and the endorsement of the report involved lively and heated debates between academics, feminist activists, NGOs as well as trade unions, governments and employers. In fact, the main framework for the discussion and the report was presented by the WIEGO (Woman in Informal Employment Globalizing and Organizing), a global research policy network led by Marty Chen, a Lecturer at the Kennedy School of Government, Harvard University (Chen, Vanek and Carr, 2004). Other organisations involved were IRENE (International Restructuring Education Network Europe), the Global Labour Institute, ICFTU (the International Confederation of Free Trade Unions) and a dozen other NGOs and campaigners that delivered regional and country reports during the preparatory process. The main issues were the following: who was to represent the workers in the informal economy and how to enable the participation of the NGOs, already working with informal workers, at the International Labour Conference (ILC), the annual meeting of the member states representatives in Geneva, Switzerland. The ILO's procedures are based on tripartite formal representations. Each member state delegation consists of two government delegates, one employer and one worker delegate, as well as their advisors. Since employer and worker delegate represent major national formal organisations respectively, the demand for change in the procedures in order to enable the participation of the NGOs was met by the amendment taken at the 90th ILC Session on the occasion of the presentation of the report on the informal economy.

The report stated that a growing informality, its complexity and the fact that most new jobs in developing and transition countries have been generated in the informal economy, challenge the term 'informal sector', which was regarded as being too narrow. An integrated approach to informalisation was proposed and the term 'informal economy' was advanced in order to denote the heterogeneity of the phenomenon. It should include both informal employment and infor-

mal business relations. It should also involve a diversity of actors – workers and enterprises- operating informally, such as own-account workers, street vendors, shoe-shiners, paid domestic workers employed by households, homeworkers and workers in sweatshops integrated in production chains, self-employed micro-enterprises and their family employees. According to the (ILO, 2002:2-3), these groups of actors share the common condition manifested in the lack of legal recognition and protection, extreme vulnerability and their dependence on informal institutional engagements that generate their own idiosyncratic ‘political economy’.³

A broad framework for this integrated approach was also elaborated based on the position that the informal economy can only be understood in connection with the configuration of the formal economy and that ‘decent work deficits’ seriously endanger decent work conditions in the formal economy by creating competitive pressures through unfair practices. Accordingly, the ILO defined its goal as the promotion of ‘*decent work along the entire continuum from the informal to the formal end of the economy, and in development-oriented, poverty reduction-focused and gender-equitable ways*’ (ILO, 2002:4).

The decent work agenda, as a part of a comprehensive strategy to remove the root causes of informality, consists of four modules: a) generating opportunities for employment and income, b) enhancement of rights at work, c) improvement of social protection and d) strengthening of representation and voice in the informal economy. Musiolek (2002) identified a whole range of policy tools to promote DWA goals in the context of the CEE/CIS countries:

- Ratification and implementation of core labour standards and the right to organise
- Promotion of entrepreneurship and small enterprises
- Mobility schemes and active labour market policies, including skill development and education
- Micro finances

3. This section builds on Likic-Brboric (2007).

- Social protection schemes
- Occupational safety and health
- Inclusion of work standards in informal work into urban planning

She also emphasized that the ILO, trade unions and NGOs have to involve all the international and national actors in the process of the realisation of DWA. Besides the ILO, the EU Commission and Parliament, regional bodies such as NAFTA and ASEAN, UN-based organisations, transnational companies, international trade unions and global social networks and movements were all to take responsibility for the implementation process. On the national level, the actors included not only central and local governments, labour inspectors, tax authorities, employers, trade unions and NGOs but also owners of informal businesses and their employees.

So, in pursuing these strategic goals and the overall organisational objective to reinvent itself as a main forum for social policy dialogue the ILO launched several other global initiatives. They have come to structure a discourse of global justice, solidarity and fair globalisation configured around the concept of decent work, alternative cognitive and normative frames in support of alternative policies aimed at a discursive reconfiguration of the global order.⁴ On the highest level the ILO initiated the WCSSDG (The World Commission on the Social Dimension of Globalisation) that produced its final report, *A Fair Globalisation* in 2004. The report takes stock on the impact of globalisation and proposes an inclusive framework for a fair global governance in order to balance global financial and economic institutions, free capital and trade flows, with a universal social floor, human and labour rights and fair rules for cross-border movement of people (WCSSDG, 2004). Another initiative concerns migration as an increasingly important global phenomenon and building the GMG (Global Migration Group) together with the IOM (the International Organization for Migration) and several other UN agencies, complementary to

4. A Gramscian hegemonic struggle for ideological reconfiguration of the political order of discourse and its institutionalisation as proposed by Fairclough (1992). See Likic-Brboric (2003).

UN initiatives in the field of migration. The UN Secretary General also launched the GCIM (Global Commission on International Migration) that presented its report in 2005 (GCIM, 2005). The report probed into the problems of global migration, especially the estimate of rising undocumented migration and reaffirmed existing legal mechanisms that should frame migration policies.

A Rights-Based Approach to International Labour Migration

Concomitantly to this venture the ILO initiated the elaboration of a ‘non-binding multilateral framework for a rights-based approach to labour migration and the establishment of a dialogue on migration in partnership with international and multilateral organizations.’ This is obviously justified considering the fact that globalisation has been accompanied by a regional configuration of precarity in developing countries and also its increasing prevalence in developed economies. Its designation is varying, such as *non-standard jobs* in Canada, *contingent work* in the USA, or *precarious jobs* in Western Europe (Waite, 2009). Precarious employment is here defined as ‘a variety of forms of employment below the socially established normative standards, which results from an unbalanced distribution towards and amongst workers of the insecurity and risks typically attached to the labour market’ (Frade and Darmon, 2005:107). According to Woolfson and Likic-Brboric (2008) migrants are especially vulnerable to intensified risk-burdening, along both spatial and contractual dimensions, and they are both physically and socially *dis*-located from structures of social protection and exposed to potential clusters of abuse. Furthermore, irregular/undocumented/ clandestine migrants, or ‘the stateless’ (Arendt, 1958), unacknowledged asylum seekers, find themselves in ‘a situation of radical rightlessness’ (Krause, 2008:344), without ‘voice’ or access to counter-balancing representational resources. Their situation could be designated as one of *hyper-precariety*, marked by super-exploitation (Woolfson and Likic-Brboric, 2008).

Considering the alleged importance of migration as a tool for the configuration of a balanced labour market, the ILO Multilateral Framework on Labour Migration is meant not only to reinforce the decent

work agenda, but emphasizes other 'principles and guidelines' for the implementation of a rights-based approach to international migration. These are, quoting ILO (2010:209), stated in terms of:

'ensuring coherence between labour migration, decent work, employment and other national policies; formulating and implementing labour migration policies guided by international labour standards and other relevant international instruments and multilateral agreements concerning migrant workers; addressing specific vulnerabilities faced by certain groups of migrant workers, including workers in irregular status; and insuring that labour migration policies are gender-sensitive.'

The ILO framework refers to and includes a battery of ILO fundamental conventions and recommendations, migrant specific instruments and UN Conventions (as delineated in Figure 2).

Figure 2.
ILO institutional framework for rights-based migration

Fundamental Conventions	
	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
	Forced Labour Convention, 1930 (No. 29)
	Abolition of Forced Labour Convention, 1957 (No. 105)
	Equal Remuneration Convention, 1951 (No. 100)
	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
	Minimum Age Convention, 1973 (No. 138)
	Worst Forms of Child Labour Convention, 1999 (No. 182)
Migrant-specific instruments	
	Migration for Employment Convention (Revised), 1949 (No. 97)
	Migration for Employment Recommendation (Revised), 1949 (No. 86)
	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
	Migrant Workers Recommendation, 1975 (No. 151)
Other ILO Conventions	
	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
	Labour Inspection Convention, 1947 (No. 81)
	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
	Protection of Wages Convention, 1949 (No. 95)
	Social Security (Minimum Standards) Convention, 1952 (No. 102)
	Plantations Convention, 1958 (No. 110)
	Equality of Treatment (Social Security) Convention, 1962 (No. 118)
	Employment Policy Convention, 1964 (No. 122)
	Labour Inspection (Agriculture) Convention, 1969 (No. 129)
	Minimum Wage Fixing Convention, 1970 (No. 131)
	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
	Nursing Personnel Convention, 1977 (No. 149)
	Occupational Safety and Health Convention, 1981 (No. 155)
	Maintenance of Social Security Rights Convention, 1982 (No. 157)
	Occupational Health Services Convention, 1985 (No. 161)
	Safety and Health in Construction Convention, 1988 (No. 167)
	Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
	Safety and Health in Mines Convention, 1995 (No. 176)
	Private Employment Agencies Convention, 1997 (No. 181)
	Maternity Protection Convention, 2000 (No. 183)
	Safety and Health in Agriculture Convention, 2001 (No. 184)
United Nations Convention	
	1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Source: (ILO, 2010: 268-269)	

While the ILO multilateral framework for migration is an impressive document, it suffers from the long-standing non-binding character of the ILO and other international human and labour rights instruments. Voluntary policy guidelines and an asymmetric social dialogue that leaves the national governments the main prerogative to opt-out from the international conventions and recommendations do not meet the challenge of an obvious implementation failure. This takes us to the most critical issue, clearly formulated by Faist (2009:24), as 'whether in transnational political multilevel systems rights can be legally claimed at all'.

All of these initiatives together clearly present a formidable paperwork and discursive exercise. However, the actual options for implementing alternative approaches that entertain social justice in terms of workers' rights and labour standards must be discussed in a historical perspective and analysed in the context of the prevailing international political economy. By this we understand a 'geopolitical economy', that reclaims and transforms the role of the nation state in the process of shaping globalisation, in general, and global migration, in particular (Samers, 1999).

On the whole, political discourses on migration have demonstrated a gap between arguments and analyses developed within a 'rights perspective', on the one hand, and an 'economic perspective', on the other (Solimano, 2001). Nevertheless, as reflected in both perspectives, free migration is generally expected to have positive effects on economic growth of both receiving and sending countries. Migration is assumed, accordingly, to reduce global inequalities in the long run while, at the same time, promoting transnational citizenship rights. This is indeed highly doubtful, as, for example emphasized by Martin (2009) with reference to critical approaches that draw attention to difficulties experienced in protecting cross-border low-skilled migrant workers effectively. Furthermore, rising irregular migration and informalisation of the economy is seen to bring about social and political turbulence, social conflicts, racism and xenophobia.

The downward pressure that irregular migration has played on wages and deterioration of working conditions clearly beg multifaceted exploration of consequences of international migration. In the context of the regional free trade arrangement NAFTA, the rising income inequalities

in the US and almost three decades of ‘wage squeeze’ (Peterson, 1994) and deterioration of wage differentials for unskilled labour are attributed to the combined effects of migration and free trade (Borjas, 1999; Solimano, 2001). Furthermore, as demonstrated by Solimano (2001), authoritative studies on international migration point to a positive correlation between free trade and rising international migration, which runs contrary to established economic theories on migration and trade, such as the *Mundell model*, predicting less migration in the context of free trade and capital mobility. This relates, accordingly to ongoing general discussions on the depressing impact of international trade on labour standards, especially for low-skill workers (Arestoff-Izzo et al., 2007).

Last but not least, a prevalent enthusiasm concerning migration as an effective instrument for *development* has been questioned by critical ‘perspectives from the South’ (Castles and Wise, 2007). These, ‘migration paradoxes’ must, accordingly, be analysed in conjunction with critical development studies pointing towards other discrepancies between optimistic expectations implied by liberalisation and de-regularisation policies, as informed by mainstream neoliberal economics, and their real disappointing economic impact (Panchamukhi, 2000).⁵

Implementation Quagmire: Actors and Strategies

Following a critical failure to link social clauses to the WTO trade agreements and Dispute Settlement Mechanisms in 1996, the ILO has become the principal norm-setting actor for labour standards. Several implementation tracks can be identified in the processes related to the promotion of DWA and migrant workers’ rights:

5 Panchamukhi (2000: 1) identifies five paradoxes that have been disregarded by the conventional development studies: ‘(i) the paradox of growth and stability, (ii) the immiserizing effects of structural adjustment, (iii) the paradox of growing unemployment in a framework of full employment goals, (iv) the growth of market imperfections while pursuing a strategy of creating perfectly competitive markets, and (v) the paradox of the World Trade Organization trading system’

- lobbying and advocating for the ratification and realising DWA, core labour standards and migrant-specific conventions and recommendations;
- promotion of labour standards and social clauses through trade-related instruments, such as unilateral, bilateral and regional trade agreements;
- voluntary codes of conduct and Corporate Social Responsibility (CSR).

However, on the background of the prevailing optimistic *laissez faire* global scenarios the ILO has had serious difficulties in promoting and establishing social clauses and labour standards as an effective norm for the international trade regime (Malmberg and David, 1998). The dominant power of the WTO in setting trade norms and the concomitant international political consensus in a decisive support for further liberalisation of trade in services (GATS) has accordingly not been matched by a parallel liberalisation of migration regimes and the promotion of migrants workers' rights and DWA. On the contrary, we have seen a turn towards the 'securitisation' of migration regimes that is focused on the construction of border control mechanisms. Furthermore, evidence has confirmed the trade related regression of labour standards and migrants workers' rights especially in low-skilled labour intensive export industries both in developing and advanced economies (OECD, 2007; Arestoff-Izzo *et al.*, 2007). Several important explanations for such a low real impact of the labour standards and DWA have been identified:

- A plethora of documents, reports and parallel standards without real impact
- The lack of organisational capacity, legitimacy and political power of the main actors (ILO, UN –based institutions, Trade Unions, NGOs) to promote the agenda and the organisational competition for legitimacy
- Decent work formally supported but not pursued by governments
- Coherent and integrated policy approach has not been embraced by governments.

Actually, there already exists a plethora of international rules, norms and regional instruments that make up a comprehensive human rights-based

approach to migration in general, and labour and irregular migration in particular. This would, if implemented, protect migrants from the worst kinds of exploitation and human trafficking (ILO Conventions 97 and 143) while guaranteeing respect for migrants' rights by the 1990 UN Convention on the Protection of Rights of All Migrants and Members of Their Families.⁶ However, these universal declarations, conventions and recommendations have, to a great extent, proved toothless since they are not backed up by effective sanctions. Some studies of the articulation of an international regime and its normative basis have even pointed to a weakening or counterproductive effect of the inflated plethora of parallel standards and instruments that reflect organisational competition within the UN system (Ghosh, 1998; Hasenau, 1990). The most conspicuous case of the lack of political will to protect migrant workers rights is the fact that the Migrant Workers Convention has been initiated in 1980, adopted in 1990, started to be ratified in 1998, coming into force in 2003 after thirty, mostly sending countries having ratified it. The receiving countries have, for the most part, not ratified this convention.

In conjunction with these issues of organisational capacity and legitimacy, the ILO has long been criticised for its links with US hegemony, thus repressing more progressive labour rights claims (Vosko, 2002; Cox, 1977). Another problem is the ILO's inflexible approach and disregard for local contexts and cultures, which often leads to implementation failure. This pertains to the ILO's imposition of US-informed labour market regulations and guidelines for labour inspectors, critically discussed by Piore (2010), or to what is seen as the constraining impact of the ILO's interpretation of temporary migration in terms of forced labour (Rogaly, 2008). However, at the same time DWA stands out as the, so far, only global platform that could enable more ambitious pursuit of the rights of the most marginalised workers and thus challenge the existing hegemony of an emerging global governance regime departing from the Washington consensus and the neo-liberal free-trade doctrine (e.g. Vosko, 2002).

6. It took twelve years to be adopted and more than a decade to be ratified by necessary number of countries in order to come in force.

The ILO has, in point of fact, demonstrated an increasing organisational openness and capacity (Vosko, 2002:20), in particular following EU and OECD support for DWA. However, the discursive inclusion of the DWA and its normative appeal has not yet been paralleled by decisive implementation practices on the government and transnational level. ILO experts have been working on the dissemination of international labour standards in different national contexts through the Decent Work Pilot Programmes, but a recent review calls for 'a much more pro-active approach' (ILO, 2005). Instead, we have seen some initiatives to include labour standards in regional, unilateral and bilateral trade agreements and the proliferation of voluntary initiatives for CSR under the UN Global Compact Initiative.

Trade and Core Labour Standards: EU, OECD and NAFTA

The EU and its member states are the most significant actors shaping the global economic regime within the framework of multilateralism. While the EU has not been represented as a single actor in the World Bank, the IMF and the UN system, the Union has, however, become a member of the WTO in its own right. In that process the EU has cautiously communicated its support for different global initiatives to strengthen the social dimension of globalisation and to address the issues of social justice. It has supported re-scaling and transnationalisation of the social dimension of globalisation and the ILO's 'decent work' agenda. For example, in 2001 the European Commission conveyed its support for advancement of core labour standards and policy actions aimed to strengthen their efficient implementation. These include enhanced discussion within the ILO framework and inclusion of these issues into global development discourse, support for ILO technical assistance, inclusion of labour standards into GSP (Generalised System of Preferences), bilateral relations and trade agreements, corporate responsibility, social labelling and codes of conduct, *but* a 'rejection of sanction-based approaches in trade policy' (CEC, 2001). In 2004 the Commission responded to the WCSDG report by conforming to the apprehension concerning the downside of globalisation and a necessity

to promote the social dimension of globalisation both within European and global context. In its Communication (CEC, 2004), the Commission emphasized social aspects of the Lisbon Strategy, the importance of social dialogue, the European Structural Funds and the European Social Fund for buffering the consequences of rapid restructuring and for promoting human capital and ‘employability’ in the new (former CEE) member states. However, the significance of the European Social Model, policy instruments and methods in support of the social facets of the Europeanisation is downplayed in addressing the ‘rest’; i.e. other transition countries in the neighbourhood and ‘third countries’. These were to be supported by the new European Neighbourhood Policy or the mainstream development policy informed by the Millennium Development Goals, human rights and democratisation. In all of these communications, *the main goal and instrument for promotion of the social dimension has remained free trade*, including bilateral agreements, corporate responsibility and private social initiatives, while problems concerning the social effects of globalisation were to be addressed through research initiatives. The migration issue has only been referred to as a parenthesis and assigned to multilateral forums.

Although the European Trade Union Confederation (ETUC) has persistently called for the EU’s more active commitment to the DWA, as pledged by an exchange of the letters between the EC and the ILO in 2001, these issues came to be seriously attended first in 2006. It seems that Bob Deacon (2005) timely predicted a shift in the globalisation discourse towards a more serious consideration of universal social policies. Consequently, the European Commission’s communication (CEC, 2006), prepared jointly by the DG for Employment and Social Affairs, Foreign Relations, Development and Trade, seems to reflect ‘the spirit of the moment’. Here, the Commission emphasizes its strong leverage on reshaping globalisation through the inclusion of ‘decent work agenda’ as a ‘ninth Millennium Development Goal’ into all their external policies, including EU enlargement policy, neighbourhood policy and development cooperation. Furthermore, it promised to promote a ‘better management of economic migration’ building on previous experience concerning enactment of the free movement of workers, their rights and

integration within the EU. In this pursuit the EU has exerted a considerable power that resulted in the shift in the OECD (Organization for Economic Cooperation and Development) towards employment and social policies and the DWA, which also implied a stronger role of the Directorate for Employment, Labour and Social Affairs within the EU's internal organisational structure (Mahon, 2008). This is important considering the fact that OECD countries have signed 176 bilateral migration agreements with various countries as a way to manage migration flows (ILO, 2010: 200). ILO (2010) maintains that the ILO Migration for Employment Recommendation NO. 86 and its Annex, including an agreement on migrant workers containing clauses on social security, working and living conditions has been 'widely' used by many states. But, in fact, the list of states referred to is neither long, nor significant.

Hence, despite of social considerations, including the DWA, and the formulation of strong economic, political, human rights and governance arguments in support of the rigorous implementation of ILO core labour standards, it appears evident (e.g. Witte, 2008) that both EU and US trade instruments have had very little impact, in particular the EU GSP system. It applies an incentive-based approach, weakly sanctioned - especially in the case of the least developed countries (LDCs) - notwithstanding the existence of a complaint mechanism enabling trade unions and civil society actors to report cases of violation to the EC's GSP Committee. Other, bilateral trade agreements such as Economic Partnership Agreements (EPAs) focus more on human rights than on core labour standards (Witte, 2008: 35-36).

Furthermore, concerning the common market internal dimension, civil society actors, such as the *EurActive* have extended their criticism for the lack of addressing the actual deterioration of labour standards within the EU and the candidate countries (EurActiv, 2006). In her probing study on informal economy in CEE/CIS region Bettina Musiolek (2002) pointed to state policies of de-regulation in support of attracting FDI as main obstacles to the promotion of 'decent work agenda'. Only recently the CEE regional branch of the ICFTU has initiated the process of the inclusion of the workers in the informal economy. In that they recognise obstacles in terms of their own organisational

weakness, an enormous reliance of both private and state sector on the informal economy and the CEE states' ambivalence when it comes to regularise and formalise the informal economy (Glovackas, 2005). Considering strong nationalistic political discourses and movements in the CEE (Central and Eastern European countries) and a perceived lack of experience, institutions and administrative capacity for human rights based migration management as well as for the interaction with and integration of immigrants in local communities, the new member states are acknowledged to require particular economic resources, together with help to develop political instruments and a normative basis for acknowledgement and protection of migrant workers' rights and decent work conditions. This concerns even workers in the informal economy.

Actually, since the latest 2006 enlargement EU level judicial practices in the field of labour law and social policy have had a negative impact on labour rights and implied member states' responses to global competition in terms of lowering protective standards (Krebbler, 2009). The recently communicated review of the EU Global Approach to Migration (CEC, 2008) and the simultaneous adoption of the directive on return of illegal migrants hardly tamper with the general trend in the EU's primary concern with economic growth and low inflation. Although the issue of migration is framed in terms of 'partnership and solidarity', the policy approach to 'illegal migration' emphasizes 'effective' return and security-oriented border control. This orientation constrains the contingencies for development and emulation of a right-based mobility/migration regime and the European social model. At the same time, the low level of wages and social protection in the NMS with new forms of labour casualisation—*cum*-informalisation enable a continued 'wage squeeze', re-commodification and vertical segmentation of labour in the OMS. The configuration of EU-level institutional framework for Freedom, Security and Justice, has reinforced a new EU-wide landscape of precarisation and insecurity, shaped by market fundamentalism. Moreover, the EU's target to combat irregular migration through stricter border control, Neighbourhood and development policies, can be seen as a regional strategy of neo-liberalisation of citizenship and re-commodification of labour, creating 'useful' migrants (Geddes, 2005: 788); a disposable labour force under conditions

more stringently monitored than the European temporary migrant labour systems of the 1960s ever were (Joppke, 2007). Finally, the recent political responses to the global financial crisis have only reinforced this dynamics. Migrant workers, regardless of their status seem to bear the main burden of the crisis (Plummer, 2010). The current economic decline and rising unemployment have also led to mounting populist mobilisation against migrant workers and an enlargement 'fatigue' across the EU old member states. The discrimination of the Roma people across the enlarged EU is perhaps the most telling example of the ineffectiveness of EU anti-discrimination instruments. At its present conjuncture, the EU project is driven towards multiple polarisations marked by the impact of 'fast-capitalism' and spontaneous xenophobic responses translated into nationalist-populist visions of an 'integral Europe' (Holmes, 2000). In effect, in the current juncture of the ongoing financial crisis, the actual potential of the EU's promotion of DWA for preventing further depreciation of labour standards appears difficult to evaluate.

Concerning the GSP system of the United States, it employs a punitive approach to labour rights violation. In addition anyone can make a petition concerning the violation of labour rights and thus initiate the review. In the case of the regional trade agreement NAFTA (North American Free Trade Agreement) an extensive framework for the promotion of labour rights and standards has been established in line with the North American Agreement on Labour Cooperation (NAALC). However, although the agreement involves far more ambitious goals than ILO fundamental conventions, strict punitive measures apply only in case of child labour, minimum employment standards and occupational health and safety. It also demands a rather complicated complaint procedure that can be initiated by trade unions and CSOs before the National Administration Offices for further review. Assessments of the NAALC and its impact have been mostly critical. FIDH (International Federation for Human Rights) report on the human and labour rights impact of the NAFTA in Mexico demonstrates futility of all national, regional and international legal instruments for the protection of human and labour rights in Mexico in general, and for the labour conditions in *maquila* industries, in particular (FIDH, 2006). The report concludes

that the regional asymmetries have so far favoured the US economy. However, the financial crisis and its impact in the US demonstrate that the end-game does not end in Mexico and does not affect migrant workers only. New regional and global interconnectivity, shaped within NAFTA, has created deep imbalances within the US economy by channelling and reinforcing inequality and poverty.

The case of Mexico calls for a clear analysis and identification of accountable actors, institutional frameworks and the validity of implementation mechanisms, since neither the governments involved, nor regional or global actors, have proved capable or willing to implement already existing and signed human and labour rights provisions. This stresses, as argued by Witte (2008:50), a dubious incorporation of labour rights provisions in trade agreements attuned to foreign policy agendas. Other important factors that influence the realising of the labour standards pertain to domestic policy and the role of strong trade unions and civil society exerting pressure on governments. This appears particularly important concerning the actual direction taken by employers themselves, as to their alleged support of human rights and labour standards in terms of ‘corporate social responsibility’.

Corporate Social Responsibility (CSR) and the Global Compact: A Business Dilemma?

Employers’ organisations are important and influential social partners in the ILO tripartite standard-generating procedures. The International Organisation of Employers (IOM) and European Business (former UNICE) have supported the DWA, and were also involved in the formulation of ILO Multilateral Framework for Migration (ILO, 2010:203). However, within the social dialogue the employers’ have interpreted the DWA in terms of minimum labour standards, disregarding more ambitious ILO claims for universal social protection. In the case of the migration dialogue their main interest has been to influence WTO consultations concerning global management of cross-border movement of professionals. In the context of a business friendly international climate and governments’ globalisation drive, it has been possible to relax the DWA and

subordinate its accomplishment to efficiency concerns and contextual considerations. The inability of states and international organizational actors' to negotiate a binding regulatory framework for the TNCs and the globally articulated public claims and attitudes in support for socially responsible business practices have, concurrently, generated various market-based initiatives for developing voluntary corporate codes and standards (Witte, 2008:55). During the last two decades we have seen an explosion of various codes and standards, as well as of new code-setting involving businesses, NGOs, various private-public partnerships and academic research. As to the number of codes and standards that address labour rights provisions Witte (2008) refers to OECD (2000) and ILO (1999) reports that list 153 and 268 such codes respectively. The codes and standards are mostly set up by individual companies and business associations, but there has been a trend towards multi-stakeholder alliances, involving companies, NGOs, trade unions, international organizations and governments taking the role of stipulating codes and standards, on the one hand, and supervising compliance, on the other hand. While most of these codes and standards seldom extend beyond core labour standards those of the multi-stakeholder alliances are most comprehensive in their content, include fair wages and working hours and refer to ILO conventions and recommendations (Witte, 2008: 62-63).

Engagement of the civil society actors and responsive governments has proved vital for the implementation records, and many different CSR accounting models have been developed. The most prominent is the UN Global Compact, a multi-stakeholder initiative involving 7700 companies, the United Nations and governments, civil society, and labour. The Global Compact declares the promotion of human rights (UDHR) and labour rights (The ILO Declaration on Fundamental Principles and Rights at Works) as its goals. An interesting partner is The Human Rights and Business Dilemma Forum, driven by Maplecroft, a profit oriented risk analysis company. The Forum presents excellent reports that clearly bring forward in-depth records of violations of human and labour rights in different contexts. It also presents different case studies in which the risks of TNCs become complicit in, for example, violations of human and labour rights of migrant workers due to the do-

mestic lack of or failure to implement labour law for migrants, as well as lack of control of recruiting companies. So the dilemma for responsible companies is formulated as follows:

How does a company ensure decent working conditions and equal treatment for migrant workers within its own operations or those of its business partners and suppliers when operating in a jurisdiction where migrant workers form a significant part of the workforce and where the government does not provide them with adequate protection? (<http://human-rights.un-globalcompact.org/dilemmas/migrant-workers/>)

The ethical dilemma between profitability prospects opened by governments' investor incentives, such as tax dispensations, wage checks and restrictions of union activities, on the one hand, and CSR, on the other, has been translated into fierce theoretical debates concerning the profitability potential of the CSR and its actual potential to promote the DWA and migrant workers' rights (c.f. Witte, 2008). While multi-stakeholder involvement and social mobilisation have proved crucial for the realisation of some private voluntary codes of conduct down the supply chain, the critical question is, as rephrased by Witte (2008:70), if these are 'merely a distraction and potentially a tool that will crowd out more thorough government and trade union intervention', 'limit the legal liability of global brands and prevent damage to their reputation'.

Concerning the actual impact, research has shown that some progress has been made in improving the working conditions and labour standards, especially in the long-term supplier chain contracts. However, the same reports emphasize that the most vulnerable, migrant workers employed by labour contractors or workers in the informal economy have remained unprotected (Barrientos, 2008; Barrientos, Dolan and Tallontire, 2003). Therefore it is central to move the discussion to new questions (following Witte, 2008: 76): 'Can voluntary standards evolve into hard law? Can governments play a role in monitoring? Can voluntary initiatives help strengthen capacity of national systems?'

Trade unions, NGOs and social movements

The above presented practices of implementation of global human rights claims, DWA and migrants' rights have two common traits: the lack of enforcement and implementation, on the one hand, but, on the other hand, their mobilising potential (Faist, 2009:27). The related question and problem is connected with transnational strategy and actual organisational capacity of non-state multilateral actors: trade unions, international NGOs, academic communities, and civil society at large. Can they accomplish a significant difference?

Basically, two venues of action have been pursued: one towards empowerment of the 'precariat', here understood as a disposable labour force without basic rights and security, and another concerned with governance of the production value chain, where the role of the multilateral agencies, TNCs and the state is put in focus. Concerning the former, there has been a divide between trade unions and NGOs. The trade unions, on the one hand, were criticised for bureaucratic style, nationalism and exclusion of those in the most precarious situation in terms of citizenship and labour market position, while praised for organisational capacity and internal democracy (Silverman, 2005; Eade and Leather, 2004). However, the mobilisation of trade unions against criminalisation of illegal immigrants in rallies across the USA and several European countries points towards a change in the trade unions' practices and attitudes.

DWA has proved to play an important role as a common platform for unification and consolidation of the International Trade Unions Confederation, ITUC, in 2006. The promotion of the DWA has improved unions' multi-level organisational capacity to act both locally and globally and to develop new forms of mobilisation and alliances with the CSOs (Schmidt, 2007). Furthermore, the new international labour social movements and their mobilisation for migrants' rights have also proliferated both on local and transnational level, bringing about a hope of a global 'countermovement' (Burawoy, 2010).

The NGOs, on the other hand, were praised for flexible organisation while criticised for a lack of coordination and for a focus on poverty reduction that disregards employment issues (Eade and Leather,

2004)⁷. Issues of employment and working conditions have, nevertheless, been addressed by, for example, the WIEGO research network in the policy handbook *Mainstreaming Informal Employment and Gender in Poverty Reduction* (Chen, Vanek and Carr, 2004). Another initiative was launched by PICUM (Platform for International Cooperation on Undocumented Migrants), an umbrella NGO located in Brussels. The report ‘Ten Ways to Protect Undocumented Migrant Workers’ (PICUM, 2005) calls for civic and trade unions’ engagement in the promotion of human and workers’ rights of undocumented migrant workers and their empowerment through a reformulation of EU integration policies and the European Social Inclusion Strategy. Recently, DWA was launched as the main platform of *Solidar*, a European network of 52 NGOs from 25 countries that campaigns for Social Europe, labour and migrants rights.

Last but not least, the DWA played a prominent role for mobilising migrants in the preparatory work preceding the 2008 meeting of the Global Forum for Migration and Development (GFMD). The report states that a rights-based approach to migration is not merely addressing rights ‘related to migrants and migration, but also to broader principles such as the right to development and the decent work agenda’. The goal of such an approach is stated ‘to ensure sustainable development while preventing the exploitation of those who move to live and work abroad’ (MFA, 2009:17). In conjunction with the promotion of migrant workers rights the importance of organising and including migrants themselves into the development debate has been acknowledged (Piper, 2009). In fact, the openness and plurality of the PGA network (Peoples’ Global Action on Migration, Development and Human Rights), together with the transnational mobilisation informed by a strong critical perspective on neo-liberal globalisation, might preclude the possibility of co-opting the tedious preparatory work to reframe migration and development nexus and thereby help to halt our current wave of commodification and precarisation of labour.

However, with all the enthusiasm that social mobilisation harbours a dose of caution is in place. As phrased by Burawoy (2010:312): ‘[o]ptimism today has to be countered by an uncompromising pessimism, not

7 See Waterman (2004) for a radical critique of the global civil society.

an alarmism but a careful and detailed analysis of the way capitalism combines the commodification of nature, money and labor, and thereby destroys the very ground upon which a “counter-movement” could be built.’

What is to be done? Inclusive Accountability Revisited

We have seen that the implementation problem pertaining to the DWA has been recast in terms of governance, understood as formal and informal sets of institutions and policies that establish the interplay between society and economy, but lacking resolute government action. We have seen, moreover, that powerful actors, like the TNCs, national states and regional governance bodies have mostly pursued fair trade initiatives, while being less enthusiastic in promoting DWA through sanction-based regulatory frameworks that promote migrant workers rights and assure realisation of human and labour rights. Many governments support the agenda formally. Yet, as we have seen in the previous presentation, the implementation responsibility has shifted away from governments towards open social dialogue and rests on broader civil society mobilisation. In the present context of the global financial crisis it is important to emphasize governments’ renewed free trade enthusiasm coupled with macroeconomic austerity diligence, which could incite a new cycle of social policy regression. This situation is precarious and it is high time for broad civil society actors to shift back responsibility to governments, regional bodies, as well as to the WTO and TNCs.

So, what could such a pro-active approach be? The basic argument of this paper is that national governments and the most powerful global governance and regional actors are accountable for the implementation of indivisible sets of human, labour and migrants’ rights. While states are still responsible for the fulfilment of these rights on their territory regardless of citizenship status, the global actors have to be accountable for the policy that respects these universal claims. With the new changing power constellations within the IMF and the WTO, with China and India taking more prominent positions, it is of utmost importance to set these states accountable for the flagrant violations of human and labour rights and standards on their territories.

For the EU and the Americas they have to reiterate the process of re-linking the ILO social clauses and its rights-based migration approach to WTO deliberations. It is, consequently, pertinent to include the ILO and the ITUC as equal social partners into ongoing WTO and EU consultations concerning the formulation of a regulated, employer friendly approach to global migration management.

Last but not least, the PGA, Trade Unions, academic activists, norm setting organisations within the UN structure and concerned governments of the GFMD, need to engage themselves in a creative process of simplifying normative claims, and setting up an efficient model for the institutionalisation, legalisation and codification of a rights regime guaranteeing a decent floor of social protection for all. It is a high time to make a transition from ‘decent talks’ to ‘decent practices’. We need to retrieve the ‘fair globalisation’ approach and a development model that recognises society, reconceptualises transnational solidarity in terms of a migration approach embracing human choices, entitlements and capabilities, but which need to rest on governments’ and dominant international actors’ accountability to promote global social justice.

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