10. The 1998 ILO Declaration: responding to globalization and impacting corporate labor behavior

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INTRODUCTION

In June 1998 the Conference of the International Labour Organization (ILO) unanimously[1] approved a Declaration of Fundamental Principles and Rights at Work. This was recognized as a momentous occasion for it was only the second time in the ILO's long history that a declaration had been proclaimed, with the first such being the famous 1944 Declaration of Philadelphia near the end of World War II which charted a human rights and economic justice course for the ILO. The 1998 Declaration did not announce new principles. Rather it shone a spotlight on the enduring values of the tripartite ILO and renewed the commitment of the 174 member states to upholding those principles. What was not perceived in June 1998, and what could not have been anticipated at that time, was that the exact articulation of the four fundamental principles would have an impact far outside the walls of the ILO such that twenty years later these principles would be accepted without question as the authoritative statement of workers' human rights and thus would be inserted into free trade agreements, company codes of conduct, and the guidelines of other multilateral organizations. This has implications for companies overseeing global supply chains as it should result in changes with regard to their labor practices.

THE ROAD TO THE 1998 DECLARATION

Driven by the mandate contained in Part XIII of the Treaty of Versailles which created it,[2] the ILO concentrated on setting minimum labor standards from 1919 to the outbreak of World War II. The Versailles Treaty had listed matters requiring 'urgent attention,' most of which related to the harsh working conditions in the early twentieth century. Today we look back and focus on the substance of these conventions, such as the eight-hour day and the prohibitions on child labor. But most important and often unrecognized is the reason why the device of international conventions was selected. Edward Phelan, one of the key drafters of the British proposal that became Part XIII, realized that any statement intended to improve working conditions would have no real effect unless it was specific and unless governments committed to applying the standard in their country (Phelan n.d., pp. 214–15). The early years of the twentieth century had been ones where global trade was not only extensive but also fiercely competitive. Phelan knew that Britain would be unlikely to commit to a labor standard unless competitor countries also committed to that standard. To stop what would later be called 'the race to the bottom', he proposed the device of conventions which governments would ratify and would commit to

applying the labor standard in their country. He also proposed a tripartite structure for this new organization because he firmly believed that only those who would be applying the standard in actual work situations would understand the issues involved and thus they – employers' and workers' representatives – should be involved in drafting those standards (Bellace 2019, pp. 293–94).

The experience of fascism and the atrocities that occurred during WWII led the ILO to go beyond the subject areas of its mandate listed in the Treaty of Versailles and to consider what needed to be done to establish economic and social justice for working persons. The 1944 Declaration of Philadelphia declared that 'freedom of expression and of association are essential to sustained progress' and that 'poverty anywhere constitutes a danger to prosperity everywhere'. Presaging the 1948 Universal Declaration of Human Rights, the 1944 Declaration proclaimed that 'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.'

Groundbreaking conventions on freedom of association, collective bargaining, and equal remuneration were quickly adopted in the aftermath of WWII. But the momentum ended by the 1950s with the beginning of the Cold War. The ILO like other international organizations was caught up in the ideological and power battle between the Communist bloc and the Western market economies. The tripartite representatives of the latter countries resolutely supported the ILO and free (independent) trade unionism rather than have the ideology of Communist states prevail.

In 1989 the world changed. Two major political and economic developments combined to move the ILO to take a forceful stance in (for the ILO) an unusually short period of time. The first was the end of the Cold War and the second was the resistance to increasing globalization.

Implications of the Fall of the Berlin Wall

In 1989, with the fall of the Berlin Wall, some questioned the continuing relevance of the ILO. Some, especially employer representatives from the advanced market economies, criticized what they viewed as the bureaucratic and unimaginative approach of the Office which they asserted did little more than roll out new conventions year after year. They pointed out that since the 1970s the number of member states ratifying newly adopted conventions had declined sharply with some conventions having a very low level of ratification. They asked what the ILO actually did beyond issuing conventions, and whether it effectively and efficiently delivered services.

Appointed in 1989, Michel Hansenne was the first ILO Director General of the post-Cold War era. He was confronted with the task of redefining the role of the ILO in the new political environment, both internally and externally (Bellace 2001). As 1994 would mark a significant double anniversary for the ILO, the 75th anniversary of its founding and the 50th anniversary of the Declaration of Philadelphia, the announcement of a significant policy initiative was expected.

Increasing Globalization

The beginning of the 1990s heralded another potent change. An increasing number of people were losing faith in globalization as they began to realize that there were both positive and neg-

ative effects, and that there were winners and losers from global trade. In the United States, the major political battle that raged over congressional approval of the North American Free Trade Agreement (NAFTA) in the early 1990s was forerunner of the anti-globalization demonstrations at the end of the 1990s. The controversy also raised another issue particularly pertinent to the ILO. At the last minute congressional approval of NAFTA was delayed[3] because Democrats in the US Congress demanded a labor clause which would commit the three trading nations to abide by labor standards. Pressure reached a critical point after NAFTA had been agreed and, responding to demands that free trade be fair trade and thus based on fair competition, the Clinton administration negotiated an aptly labelled 'side agreement' to NAFTA, formally called the North American Agreement on Labor Cooperation (NAALC). The September 1993 agreement on NAALC smoothed the way for Congressional ratification of NAFTA.

Those who drafted this side agreement, however, were presented with the task of deciding what standards or principles to include. Everyone assumed that international labor standards would be the basis for the NAALC list, but as there were 173 ILO conventions at this point[4] and some were obviously more relevant to the challenges of globalization, it was obvious that some selection would have to be made (Lee 1997). There was, however, no template with the most important ILO conventions listed. The drafters included 11 labor principles in Article 49 of the NAALC: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labor; labor protections for children and young persons; minimum employment standards; elimination of employment discrimination; equal pay for men and women; prevention of occupational injuries and illnesses; compensation in cases of occupational injuries and illnesses; and protection of migrant workers (Compa 2001; also see Compa, Chapter 15 in this volume).

In the early 1990s also looming was a major change in the multilateral system for regulating trade which had been set by the 1944 Bretton Woods agreement. After 40 years, the General Agreement on Tariffs and Trade (GATT) was deemed inadequate because GATT was simply what its name stated: an agreement. Desirous of increasing trade, the major trading countries wanted an organization with greater capacity. In 1994 the Uruguay Round Agreements established the World Trade Organization (WTO) which would come into existence on 1 January 1995. The WTO was designed to be a permanent institution with its own secretariat overseeing trade agreements and with more power to adjudicate disputes. There was nothing in the GATT or in the new WTO rules that addressed labor standards. With rising anxiety about the impact of global trade, there were calls to link labor standards to trading privileges. This was raised at the first Ministerial meeting of the WTO in Singapore in December 1996. While stating that it renewed its 'commitment to the observance of internationally recognized core labour standards,' the WTO declined to make this link. Rather it took the position that the 'International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.'[5]

The ILO Response to Globalization

In 1994 the ILO did roll out the expected strategic plan with the issuance of the report, *Defending Values, Promoting Change*. In it Director General Hansenne charted the path the ILO should take. He focused on seven core ILO conventions, all concerned with fundamental human rights. Hansenne declared that the ILO would strongly promote these seven conventions, and would undertake a campaign urging member states that had not ratified the core

conventions to do so. Having staked out this ground, Hansenne then moved to achieve the necessary consensus, and in particular, what specific rights would be deemed 'fundamental' and what specific conventions would be termed 'core' conventions. At the time this was a surprisingly difficult issue as the tripartite constituents had differing views regarding how many fundamental principles should be listed, and which conventions might be linked to them.

To gain support for his proposal Hansenne seized the opportunity presented by the March 1995 World Summit for Social Development in Copenhagen, being chaired by Chile's ambassador, Juan Somavia, a known advocate of people-centered development. The Summit concluded with the government leaders adopting a Programme of Action which was closely aligned to the ILO's concept of basic workers' rights. The seven conventions listed in the 1994 ILO report met with the government leaders' approval in Copenhagen,[6] and thus became the basis for the four fundamental principles that would emerge in the ILO Declaration (see below).

This outcome was a major political victory for Hansenne as it enabled him to push his agenda forward with dispatch, and to avoid becoming bogged down in interminable debates over which conventions to list as 'core'. Moreover, at a time when issues such as child labor were being placed on the global political agenda by independent human rights groups, delay could have cost the ILO, which had adopted its first convention on child labor in 1919, the ability to be the first UN organization to announce action on this topic, with the attendant global visibility on the ILO. Thus, the ILO's ability in 1994 to identify seven conventions[7] as 'core', and especially its identification of child labor as an area that needed fundamental protection, put it in the position to be a key player in the debate on globalization and worker rights that became increasingly prominent at the end of the 1990s.

The speed of the ILO's response was accelerated by the WTO's statement. The proposal tying trade privileges to adherence to labor standards through the WTO mechanism had been flatly rejected at the first WTO Ministerial meeting in December 1996 but the ministerial statement had pointedly said that there was a specialized UN body, the ILO, which handled such matters. This in a sense served as an impetus as it provided a challenge to the ILO to act and to make progress on the task of identifying fundamental rights and crafting a statement which the International Labour Conference (ILC)[8] would adopt. At the Copenhagen World Summit, government leaders had expressed their support for certain fundamental labor rights. Workers' representatives at the ILC would support a strong statement emphasizing these rights. The question was whether certain South and Southeast Asian countries would agree and whether employer representatives would agree (Tapiola 2018, pp. 32–6).

In the mid-1990s, not only was anti-globalization sentiment growing, but anti-globalization groups were organizing internationally into a movement, as the demonstration in Madrid during the 1994 annual meetings of the International Monetary Fund and World Bank indicated. This compelled companies to consider what responses would indicate businesses' commitment to socially responsible conduct. In the 1996–98 period, the employers' vice chair at the ILC was the US employers' representative, and the recent American experience with the struggle to have NAFTA ratified and the list of 11 principles in the NAALC may have influenced the Employers' Group to support Hansenne's proposal, namely a succinct statement of four fundamental principles with seven linked conventions to be expressed in a declaration of the ILC. Hansenne's view, one based on acute calculation of the political currents within the ILC, had prevailed with the result that important subjects, such as safety and health at work, were not included. This led some to assert that the 1998 Declaration represented something

of a retreat from the ILO's comprehensive view of rights (Alston and Heenan 2004, p. 233) whereas others viewed it as an advance in the move to consider workers' rights as human rights.

The United States was the world's largest economy and American companies were leaders in global trade but, as of 1998, the US had ratified only one of the original seven core conventions, in part the result of its general posture of non-ratification since it had joined the ILO in 1934. Despite its posture of non-ratification, the US government, workers' and employers' representatives strongly supported the 1998 Declaration. To an extent this reflected the fact that aside from freedom of association, the fundamental rights were not controversial in the US and for the most part were already required by US laws.[9] In addition, in light of the political debate over NAFTA, the US government took the position that abuses of workers' basic rights in other countries were not acceptable and it supported the ILO's monitoring of an agreed upon set of fundamental rights as an important mechanism for establishing a level playing field in trade.

THE RIGHTS IN THE 1998 DECLARATION

The 1998 Declaration set out four 'principles concerning the fundamental rights which are the subject of those [core] Conventions,' namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.

These four fundamental principles were linked to eight[10] conventions.

The intent of the 1998 Declaration is somewhat opaque due to its convoluted language. It can be understood to be merely a proclamation of broad principles which have garnered broad support or alternatively, it can be understood as a commitment to specific rights that can be placed in four categories. It may be that the groups within the International Labour Conference (governments, employers, workers) had different conceptions of what this Declaration would mean in practice.

The title states 'fundamental principles and rights at work' but the text sets out 'the principles concerning the fundamental rights which are the subject of those Conventions'. From this it appears that the fundamental rights are found in the linked conventions, with the four listed principles akin to a headline or sort of a shorthand method of summarizing what the fundamental rights are. In other words, one is led to conclude that an understanding of the meaning of the four principles can only be gleaned by reference to the underlying core conventions. One example of the importance of a more complete exposition of the member state's commitment is child labor. Although there is overwhelming support globally for the elimination of child labor, what exactly that means is not clear. The principle calling for the elimination of child labor gives no indication of the complexity of the commitment since a multi-layered analysis is required relating to the age of the person, the nature of the work, and the level of economic development in the country concerned.[11]

Status of the Linked Core Conventions

To those familiar with the ILO, this distinction between principles and rights immediately presented an issue; namely, what was the difference between the principles to which all member states were obliged to respect and the conventions which expressed rights and imposed obligations on member states which had ratified them. Moreover, the ILO had long possessed a supervisory body which monitored the compliance of member states with the ratified conventions.[12] This supervisory mechanism, however, did not extend to those member states which had not ratified a convention.

This issue had been confronted once before, shortly after two of the core conventions[13] were adopted. The tripartite Committee on Freedom of Association (CFA) was established as a committee of the ILO's Governing Body for the sole purpose of deciding cases involving alleged specific violations of freedom of association, with Conventions No. 87 and 98 the relevant linked conventions to the constitutional principle. Regardless of whether a member state had ratified these conventions, the CFA was given jurisdiction to review complaints without the consent of the government. The legal basis for this review was deemed to rest in the ILO Constitution according to which member states, by virtue of their membership of the ILO, are bound to respect the fundamental principles of the Constitution. In a similar vein, the ILC in 1998 supported the requirement that there be a 'follow-up' report produced, such that the conduct of non-ratifying member states would not escape scrutiny. Each year, the global report would consider the actual state of implementation of one of the four basic rights (in order of their appearance in the Declaration). The annual report would give information (on the situation in non-ratifying member states) not previously available.

Ratification: Securing Commitment from ILO Constituents

Adoption of the 1998 Declaration was not seen as an end in itself, but rather as the basis for the ILO's calling on member states to commit to rights expressed in the fundamental principles by ratifying the core conventions. In March 1999, Juan Somavia became the ILO's Director-General. At the time no ILO convention adopted since 1985 had even 30 ratifications, and most had less than 15. Few member states had ratified all eight core conventions. Somavia seized the momentum from the adoption of the 1998 Declaration and directed major institutional resources to the ratification campaign. A highly visible success came when Convention No. 182, Worst Forms of Child Labour, adopted in 1999 received 44 ratifications in its first year, and 61 by March 2001. By 2005, of the ILO's then 178 member States, 116 had ratified all eight core conventions and a further 22 had ratified seven.[14] Every EU member had ratified all eight conventions. Particularly relevant to global supply chain issues as it sets the standard for the minimum age children can be working in factories, Convention No. 138 experienced the most dramatic increase: from 46 in 1998 to 135 ratifications in 2005.

It may be that the timing of the ratification campaign was propitious in that it coincided with the anti-globalization movement when widespread concern about the social impact of the globalization of markets was cresting. Governments may have been unusually responsive to the ILO's call to ratify the core conventions, but the willingness to ratify the core conventions has continued. In 2019, the ILO's centenary year, most of the core conventions had over 170 ratifications (with 187 member states) with Convention No. 182, Worst Forms of Child Labour, on the verge of universal ratification. The most controversial core conventions, Nos.

87 and 98 (freedom of association, and collective bargaining) had 155 and 167 ratifications respectively.[15]

With two significant exceptions every major nation has ratified at least five of the eight. However, two major trading nations are laggards: China has ratified only four of the eight, and the United States has ratified only two.

The success of the ratification campaign had ended the discussion over the possible difference between the standards applied by the Committee of Experts when examining the compliance of ratifying member states with a given convention and the standards that would be used in a follow up report regarding the application of a fundamental principle in a non-ratifying member state as it was no longer a real issue. It also laid to rest the worst fears raised by some regarding the ambiguous link between the fundamental principles and the core conventions. As Professors Alston and Heenan (2004, p. 242) had warned:

> The failure to link the content of the core standards in any definitive way to the terms of agreed conventions is a way of empowering a variety of new actors, such as multinational corporations and trade groups in the apparel, footwear, petroleum, and other industries, to set their own standards in determining what they will do in relation to each of the core labor rights. This will lead not only to a heterogeneous outcome, but also to a chaotic and possibly destructive one that stands in stark contrast to the International Labor Code's reliance upon a single, global institutional framework to set standards (although implementation remained a local- or national-level activity). The ILO maintains the sole global system of labor standards.

MULTIPLIER EFFECT OF THE UN GLOBAL COMPACT

The ILO Declaration was adopted in June 1998. In January 1999 the World Economic Forum convened in Davos. In the intervening six months, anti-globalization groups had become even more active. Both the UN Secretary General and the ILO Director General attended the 1999 Davos forum. At Davos Kofi Annan proposed the initiation of 'a global compact of shared values and principles'. He directly addressed business leaders by calling on them 'individually through your firms, and collectively through your business associations – to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices.'[16] What he did not explain was what exactly motivated his response to this challenge, in particular why he sought a partnership with business although he indicated that they were the key players in advancing a human rights agenda. He did, however, note that globalization of the world economy was more fragile than previously thought and that there were dangers when globalization of markets outpaced the ability of societies to adjust for the disruptions that this causes. He warned that there was 'enormous pressure from various interest groups to load the trade regime and investment agreements with restrictions aimed at reaching adequate standards' thereby implying that business, along with governments, had an obligation and a self-interest to act to mitigate the negative consequences of globalization.

Throughout 1999, anti-globalization sentiment mounted, reaching a climax in November 1999 when WTO ministers met in Seattle. There were massive street protests outside the convention center, with the number of protesters dwarfing any previous anti-globalization demonstration during a meeting of an international economic organization. The Seattle protest marked the first time the internet had been used to bring together and coordinate opposition to

globalization, not only persons geographically distant from each other but also persons from groups that historically had not acted together, such as human rights NGOs and labor unions.

The November 1999 Seattle demonstration likely prompted the UN Secretary General's office to accelerate work on drafting the compact first proposed in January 1999. UN initiatives to regulate the conduct of transnational companies usually had taken the form of codes of conduct and were the product of a cumbersome and time-consuming UN committee system (Sagafi-nejad and Dunning, 2008). In contrast, the compact proposed by Kofi Annan appears to have originated in his office and the final draft, with the selection of the rights to be included, did not go through any UN committee. There is no record of any public debate or forum on the idea of a 'compact' with business. As such, fast progress was made, with the UN Global Compact launched on 26 July 2000.

Insertion of Declaration Language into the Global Compact

In concept and in substance, the UN Global Compact was virtually unchanged from what Annan had suggested in January 1999 with one significant difference. Although he used the term 'labor standards' in his Davos speech, Kofi Annan had not specified what he had in mind. He was, however, aware that the International Labour Conference only months earlier overwhelmingly had approved the Declaration of Fundamental Principles and Rights at Work, and therefore if this statement of rights was used it would not meet resistance from business groups. In the final draft of the Compact, the labor articles are not labelled 'labor standards' or 'labor rights'. They are in a section simply titled 'Labour'. These four principles word-for-word mirror the four fundamental principles of the ILO's 1998 Declaration as if the drafter of the Global Compact had cut and pasted them from the ILO Declaration into the Global Compact draft.

Lawyers may quibble about the less than precise wording of the UN Global Compact. For instance, the first two principles commit businesses to support human rights generally, with no listing of human rights documents, and then there are four labor standards, three principles relating to the environment and one principle relating to corruption. It is not clear whether the labor section lists principles relating to human rights at work or adds labor standards not considered a human right. Nor is there any explanation of how these four principles relate to the eight ILO core conventions. Despite the legal vagueness, the language used in the Global Compact is unusually direct and can be understood by company executives and managers, which was its intended audience.

At the time the UN Global Compact was launched companies were under pressure to undertake a socially responsible stance, in particular with regard to their supply chains. Corporate social responsibility (CSR) was a topic of debate. Those charged with drafting their company's code of conduct looked for a template to use, and did not ponder questions such as whether the company itself should decide what it wanted to be responsible for versus what society considered its human rights responsibilities to be (Campbell 2006, p. 256). Rather, those drafting the company code of conduct looked for a template of items that should be covered in such a code and the UN Global Compact provided a list. An understanding of what the four labor principles would actually mean in practice might have been lacking, in part because the Global Compact website did not explain this or provide a link to the ILO core conventions.[17] But the influence of the Global Compact's labor principles is clear. The language used in most company codes of conduct is the language used in the 1998 ILO Declaration.

The UN Global Compact is often not mentioned in legal articles because it is not part of international law, either hard law or soft law. It is exactly what Kofi Annan said it would be; namely, a voluntary alignment by businesses of their operations with human rights norms. No company must sign the Global Compact. Signatory companies are asked to submit a 'communication on progress' which is posted to the Compact's website, but there is no monitoring at all of a company's behavior with regard to the principles (Rasche and Kell, 2010, p. 9). Failure to post reports can result in a company's being dropped from the list of signatory companies. This only occurs after a substantial period of non-reporting since the Global Compact Office views its task as encouraging companies to make progress and to report on this rather than expelling those who do not.

Diffusion of ILO Principles through the Global Compact

If one views the UN Global Compact as a promotional device, an innovative initiative designed to affect corporate behavior, it can be viewed as a success because it drew the attention of businesses worldwide to obligations regarding their supply chains they had not previously recognized or accepted. One reason for this was the technological savvy and powerful communication skills of the Global Compact Office, directed by Georg Kell, which harnessed the power of the internet to reach the target audience. There were no long, carefully worded documents setting out the Global Compact with detailed explanations. Everything was on the website, attractively laid out and easily navigated, with the text in language easily understood by managers. Persons who had no idea what the 1998 ILO Declaration was, and who would have found it extremely difficult to find ILO Convention No. 138, Minimum Age, could now click on Google (which started in 1998) and search for 'Global Compact' and when that page popped up, could click on 'child labor'.

Within ten years of the adoption of the 1998 ILO Declaration, its aims had been greatly advanced because of the synergistic activity of the UN Global Compact office. The four fundamental principles had been pushed out to managers worldwide and were being included in company codes of conduct, most of which imposed obligations on suppliers to comply with the code. Moreover, without so stating expressly, the 2000 UN Global Compact had conveyed the notion that these four fundamental principles were part of human rights and businesses were being asked to align their operations with human rights and to avoid being complicit in human rights abuses. In contrast, even though many scholars would view the four fundamental principles as expressing human rights, the 1998 ILO Declaration nowhere used the term 'human rights', perhaps to sidestep potential opposition from the Employers' Group in the ILC to such a strong term with definite international law implications (Fenwick and Novitz 2010; Bellace and ter Haar 2019).

UN GUIDING PRINCIPLES: MOVING FROM FUNDAMENTAL PRINCIPLES TO HUMAN RIGHTS

At the UN, activity aimed at the conduct of companies extended beyond the UN Global Compact but that is what received most of the attention, in part due to its direct, web-based approach and the significant promotional activity devoted to raising the awareness of business. Other parts of the UN, however, were considering the same issue of business conduct

and human rights in a more traditional mode. In the 1970s and 1980s the UN had been unsuccessful in its attempts to draft a code of conduct for transnational corporations but in 1997 the UN Sub-Commission on the Promotion and Protection of Human Rights established a working group charged with preparing a working document on this issue. (Weissbrodt 2003, pp. 902–3). In August 2003, the UN Sub-Commission approved 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'.[18] This was a landmark statement for the UN Sub-Commission because while recognizing that governments have the primary responsibility to protect human rights nonetheless in section A.1. it also imposed an obligation directly on business when it stated: 'transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect and ensure respect of and protect human rights.' The adoption of this document led to fierce opposition from the International Organisation of Employers and the International Chamber of Commerce, which viewed the proposed Norms as imposing on companies something which was the obligation of states. At this point the full Commission on Human Rights declined to act which might have derailed the progress of this proposal. But after vehement protests by human rights proponents, it accepted the suggestion of the British government that an independent expert be appointed to study best practices of businesses with regard to human rights.

The Commission on Human Rights asked the UN Secretary-General to appoint this expert as his Special Representative and, in July 2005, he appointed Professor John Ruggie.[19] Ruggie's appointment lasted longer than expected in part because of what Ruggie himself described as the 'deeply divisive debate' between business enterprises and human rights groups regarding the nature and extent of the responsibility of businesses to observe human rights (Ruggie 2013, pp. xxiii, 3). Ruggie ultimately was able to devise an approach which met with general acceptance. Sometimes referred to as the 'Protect, Respect and Remedy' framework, this approach places responsibility on governments to respect and protect human rights and to remedy violations, and on businesses to respect human rights. The report of the Special Representative was adopted by the UN Human Rights Council on 16 June 2011.[20]

The UN Guiding Principles (UNGP) puts a spotlight on the 'corporate responsibility to respect human rights' and lists five foundational principles, the first of which declares 'Business enterprises should respect human rights'. Saying that business has a responsibility to respect human rights inevitably leads to the question of which ones, since many human rights seem solely within the province of government to respect and protect. Regarding this question, the UNGP refers to benchmark documents. In Part II, paragraph 12, the UNGP states:

> The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Thus in 2011 the UN Commission on Human Rights took the position that the ILO's 1998 Declaration expressed internationally recognized human rights. In the commentary on foundational principle 1, the Commission supplied 'the authoritative list of the core internationally recognized human rights' (which included the fundamental principles) and further added that these 'coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work' set the benchmarks for assessing human rights impacts. This was a more emphatic comment on the

status of the link between the eight core conventions and the four fundamental principles than the ILC itself had expressed in 1998.

THE REALITY OF FUNDAMENTAL WORKER RIGHTS IN A GLOBALIZED ECONOMY

By 2011 it seemed as if the four fundamental principles set out in the ILO's 1998 Declaration were accepted universally and that the eight linked core conventions were viewed as part of the bundle of workers' human rights. The implications of what this meant in practice now caused a major controversy to erupt at the ILO and was a brake on efforts to soften language in free trade agreements (FTAs) that referred to the four fundamental principles (Agusti-Panareda 2015, pp. 348–9).

The ILO 2012 Controversy

Of the four fundamental principles, the one that had always been the most controversial was freedom of association. Although 'freedom of association' was listed as a matter urgently needing attention in the Treaty of Versailles, over the decades it periodically caused ruptures at the ILC regarding exactly what types of conduct it protected. As far back as the 1920s, some governments insisted that national law should determine the parameters of the right to strike and other forms of industrial action, a posture which stymied efforts to produce a more precise instrument on freedom of association. In 1947–48, in the discussions that led to the adoption of Convention No. 87, some government representatives proposed that the text include the qualifier that employer and worker associations could act but only in a lawful manner. Since a country's laws would determine what was lawful action, this proposed qualifier if successful would have undermined the right to engage in industrial action since at the time it was well known that the laws in some countries banned forms of industrial action that Convention No. 87 was designed to permit. In addition, permitting national law to determine the limits of a right in an international convention would have undercut the basic premise that international law sets a standard. Government representatives at the ILC were more concerned with notions of national sovereignty whereas employer representatives accepted that workers have freedom of association but as expected their notion of what actions that protected was far narrower than the views expressed by worker representatives at the ILC.

From the early 1950s through the late 1980s, the Employers' Group at the ILC supported a reading of Convention No. 87 that deemed the right to strike an integral part of freedom of association (Bellace 2016, p. 33). This changed after the fall of the Berlin Wall. At the 1994 ILC, Director General Michel Hansenne proposed what he termed a world social platform, a statement setting out the core values of the ILO. The Workers' Group predictably was entirely supportive, while the Employers' Group expressed concerns. At this ILC, the discussion on the General Survey of the Committee of Experts on Freedom of Association was exceptionally long and contentious. The US employers' lead spokesperson, Edward Potter, commented that 'the extensive interpretation given by the Experts to these Conventions, as illustrated by the right to strike, represented one of the obstacles in their use in a social clause' but expressed his view 'that the principle of freedom of association should be greatly simplified, perhaps to one sentence, to be implemented in any meaningful way in a trade regime'.[21] Responding to critics

who charged that 'reducing the principles of the Convention to one single sentence in a social clause would be a far too simplistic approach',[22] the US employers' representative stressed that the 'need for consensus is particularly acute in cases involving freedom of association' and observed that '[f]or the most part, this has not proven to be a problem except when the issue involves the right to strike'.[23] Thus, the employers in 1994 pinpointed the right to strike as problematic in any attempt 'to create a direct link between' a statement on fundamental principles 'and the regulation of world trade'.[24] Despite this, as discussed above, the Employers Group in 1998 did support the Declaration on Fundamental Principles with its one sentence regarding freedom of association, and made no comment whatsoever about a right to strike. Fourteen years later, their silence was broken.

In June 2012, one year after the UN Guiding Principles had been adopted, the Employers' Group at ILC for the first time asserted that the meaning of the right to strike under Convention No. 87 was narrower than many understood and that it was beyond the mandate of the Committee of Experts to take the position that a right to strike is implied in the convention.[25] As such, the Employers refused to consider any individual case for review by the Committee on the Application of Standards (CAS) which involved the right to strike. This firm stance resulted in no cases being examined during the CAS session for the first time in the eighty-year history of the Committee of Experts.[26]

Since 2012, various attempts have been made to return to the pre-2012 status quo. The controversy that erupted in 2012 has not been resolved, although a modus operandi for moving past deadlock in the CAS has been agreed.[27] However, the Employers' determination to have a narrow view of a right to strike prevail has now moved to the ILO's Committee on Freedom of Association, a sign of the Employers' serious disagreement that the right of workers to engage in industrial action is implied in the fundamental principle, freedom of association. This is not merely a theoretical issue. In low-wage industries throughout the global supply chain, workers demanding higher wages or safer working conditions have no bargaining leverage except strike power. The right to strike then is the foundation of workers' organizational capability. Because the ILO's fundamental principles are now embedded in other documents, it is not surprising that the Employers' strongly held position rears its head in other forums.

Labor Clauses in FTAs

Ever since NAFTA it has been assumed that a free trade agreement will have a labor clause that sets out certain rights, and since 1998 the four fundamental principles of the ILO Declaration had routinely been included. What exact language is used and what procedures are laid down for enforcing those rights varies. As such, it not easy to determine whether worker rights have been effectively linked to trading rights.

A recent FTA illustrates this. During the administration of President Barack Obama the United States led the effort to conclude a twelve-nation trade agreement called the Trans-Pacific Partnership (TPP). Although the United States upon the election of President Donald Trump declined to ratify TPP, the other 11 nations proceeded to sign the Comprehensive and Progressive Trans-Pacific Partnership, which adopted the entire TPP treaty with some minor exceptions.[28] There were no changes to Chapter 19, the Labour chapter.[29] The TPP, as promoted by the Obama Administration had promised much. US Trade Representative Michael Froman had declared that it raised 'labor … standards around the world to the highest level ever, and these are fully enforceable standards'.[30] Yet, the TPP's Labour chapter contained

a definition of rights and a dispute resolution process that tracked earlier US FTAs; agreements which had carefully circumscribed the rights such that they did not embody the ILO core conventions. Some may have felt this necessary to ensure Congressional approval since the United States has ratified only two of the eight core conventions, and American labor and employment law is seriously out of compliance with several of the core conventions, including freedom of association.

Article 19.3 which sets forth the 'Labour Rights' states that 'Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration', followed by the four fundamental principles found there. Three of the four are stated exactly as stated in the 1998 Declaration, but the child labor principle is stated oddly: 'the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour.' This strikes a discordant note because in the Declaration two conventions are linked to that principle, Conventions No. 138 and 182, and No. 182 is Worst Forms of Child Labour. Those familiar with the Declaration might wonder why Convention No. 182 is highlighted in this fashion. The answer, buried in the footnotes, is comprehensible only to those who are extremely well informed. Footnote 3 states: 'The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.' This means that the four principles found in the ILO's 1998 Declaration have been severed from the eight core conventions. Rather than linking the core conventions to the four principles as many believe the 1998 ILO Declaration does, a view with which the 2011 UN Human Rights Council's Guiding Principles on Business and Human Rights agrees, the TPP's Article 19.3 severs the link, and it makes this bold move almost in a hidden way.

The consequences of de-linking the core conventions from the fundamental principles are grave. For instance, now that the prohibition on 'child labour' in Chapter 19 is de-linked from the core conventions mentioned in the 1998 Declaration, we only know from the text itself that children under 18 should not be permitted to engage in work dangerous to their physical or moral being. We do not know at what age they are permitted to work in a factory (which is stipulated in ILO Convention No. 138). Companies with global supply chains are much more likely to encounter situations where adolescents are working in the factories of their suppliers. By de-linking C. 138 from the principle, the CPTPP means that there is no international standard, no specific minimum age for employing minors that is applied to companies upon whom the treaty confers trading privileges.

The force of the labor rights declared in Article 19.3 is further diluted by a provision that appears in footnote 4 of Chapter 19 which states: 'To establish a violation of an obligation under Article 19.3.1 (Labour Rights) … a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties.' The phrase 'in a manner affecting trade or investment between the Parties' had by 2016 become a template because it had been used in other U.S. FTAs, although its meaning had not yet been litigated. On 14 June 2017 the first case raising the issue of a violation of a 'labor clause' in a US free trade agreement was decided by an arbitral panel in a case against Guatemala.[31] This arbitration arose under the Dominican Republic–Central America Free Trade Agreement (CAFTA-DR). The key provision mirrored the wording of footnote 4. Despite egregious violations of workers' rights, which were well documented in complaints brought to the ILO's Committee on Freedom of Association, and noted in Observations of the ILO's Committee of Experts, the arbitral panel found that the complainants had not met the burden of proof imposed by Article 16 because, among other

things, they had not shown cause-and-effect between these severe violations and an effect on trade (Brooks 2018; also Brooks, Chapter 17 in this volume).

The USCMA: Targeted Response to Violations

Viewing NAFTA as one of the worst trade deals in history, Donald Trump during the 2016 presidential campaign committed to renegotiating it. In January 2020, he signed the revised FTA, coined the 'USMCA', the US–Mexico–Canada Agreement. Reflecting the fact that the Democrats won control of the House of Representatives in the 2018 midterm elections, chapter 23, the Labor chapter of the USMCA, contains very significant changes from prior FTAs.[32]

At the outset of the chapter, in the definition section, it states that the term 'labor laws' means statutes and legal provisions 'that are directly related to' the list of 'internationally recognized labor rights'. In Article 23.2.2, this is emphasized by stating that the 'Parties recognize the important role of workers' and employers' organizations in protecting internationally recognized labor rights'. The prime source of internationally recognized labor rights are the conventions of the ILO. Thus, without mentioning any specific ILO convention, the USMCA accepts that the fundamental principles of the ILO Declaration are understood by reference to the linked core conventions. Although Article 23.3 of the USCMA follows the language of prior FTAs in requiring the Parties to have legal provisions that set forth the rights 'as stated in the 1998 ILO Declaration', and in footnote 3 states that the 'obligations set out in this Article, as they relate to the ILO, refer only to the ILO Declaration on Rights at Work', the text makes clear that this FTA takes a broader view of those rights. For instance, with regard to freedom of association, footnote 6 states: 'For greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike.' As this has been the most controversial internationally recognized right,[33] and one that caused a major dispute at the ILC in 2012, the inclusion of footnote 6 marks a major change in US FTAs by tying trade preferences to an acceptance that workers, in organizing labor unions and in bargaining, may engage in concerted activities, such as strikes.

Since 1993, no country that has signed an FTA with the US has ever been fined or had its trade privileges revoked, even when severe infringements of freedom of association have occurred. Two major reasons explain this. First, the process of moving from complaint to arbitration, involving government-to-government negotiations, has been complex and extremely slow. Second, as noted above, to establish a violation the complaining Party is required to show that noncompliance had affected trade or investment between the Parties. The one case since 1993 that has reached formal arbitration – involving Guatemala as discussed above – took nine years from the initial complaint to the final decision and the US complaint was ultimately rejected because the panel found no effect on trade (Brooks, Chapter 17 in this volume).

The USCMA takes a radically different approach (see Compa 2019). While Article 23, footnote 4 states that 'a failure to comply' with the obligations 'must be in a manner affecting trade or investment between the Parties', the burden of proof is reversed. Footnote 5 states: 'For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.'

The USCMA also responds to the criticism of the extremely slow process, one which the respondent could manipulate to slow the complaint in moving forward. Chapter 31 provides a mechanism whereby a complaint can be filed and processed more promptly after a period of consultation with the complainant having the option whether to utilize mediation or other

dispute resolution mechanisms. Likely to be of more use is the Facility-Specific, Rapid Response Labor Mechanism set out in Annex 31-A. This permits the aggrieved party to file a complaint alleging rights violations at a specific facility of a company. Remedies may include suspension of preferential tariff treatment for goods manufactured at the facility or the imposition of penalties on goods manufactured at or services provided by the company. This provision is much more likely to persuade companies not to violate workers' rights as the company itself incurs penalties. Further, this process has the advantage of sidestepping the diplomatic pressures that invariably arise with threatened country-wide penalties. Moreover it avoids penalizing good employers for the failures of some (ibid.).

Next Steps

The difficulty arises from the fact that in a globalized economy the traditional ILO strategy – of having member states voluntarily accept obligations and then within the territory of that state apply those rights in law and practice – may no longer be viable. This strategy depends on governments to take action but in an era when the governments of developing countries compete often on cheap labor to attract investment, governments may be disinclined to take action which will make labor more expensive or otherwise discourage foreign buyers. A government may lack capacity to take effective action, such as having a sufficient number of trained labor inspectors. But there is also the possibility that some governments ratify core conventions simply to clear the hurdle for being admitted to preferential trading status rather than as a way of showing commitment to applying the rights guaranteed in the convention.

As Francis Maupain pointed out, '[t]he single question both for standards and the Declaration, … is whether, and to what extent, they make a verifiable contribution to the advancement of the [ILO's] objectives in the real world (Maupain 2005, p. 442). The challenge is how the ILO should respond. As Kari Tapiola, who was a key actor in pushing the Declaration forward in 1998, has observed:

> There is no simple formula to determine when pressure works better than encouragement. Logically, assistance and cooperation exclude the use of trade or investment sanctions. If no alternative to sanctions is provided, there is little motivation to be constructive. On the other hand, if the option of sanctions is altogether excluded, the motivation will be limited as well. . . Credible threats, in turn, can be met only by credible promises. (Tapiola 2018, p. vi)

The ratification campaign has been successful, but the ILO must do more (Charnovitz 2000, pp. 175–7). Ratification is a first step, not an end it itself. The ILC must affirmatively support a reading of the 1998 Declaration that emphasizes that the principles derive their content from the linked core conventions, or else the principles lack 'definable content' (Alston 2005, p. 518). The tripartite constituents of the ILO must vigorously support its supervisory bodies in their monitoring of governments' compliance with ratified conventions. In addition, the ILO as a whole should strongly encourage other international organizations to link the observance of the fundamental principles and the core conventions to trading rights, and to highlight the need for true commitment. Further, the ILO's 'gamble on persuasion' must be reinvigorated by the tripartite constituents (Maupain 2013, p 14.). When ILO member states are negotiating free trade agreements that give the appearance of upholding the fundamental principles but which actually make their application in practice almost impossible to enforce, the discrepancy between commitment and action should be expressly discussed at the ILC. In so doing the ILO

would take the next step in making the 1998 Declaration a reality for workers. As one scholar has commented: 'the ILO anniversary may serve as a reminder of the power of institutional imagination to rebalance the asymmetries in trade agreements for the benefit of workers' (Santos 2019, p. 412).

Traditionally the ILO's 'gamble on persuasion' focused on governments taking action, as did free trade agreements. Yet nearly always the crux of the problem is the tension felt by governments seeking to encourage domestic companies to attract foreign buyers and the position of those companies seeking to compete in a global market. In highly competitive industries, companies taking the low road undercut those companies with better labor practices inevitably leading to a worsening of conditions as the latter sought to remain competitive.[34] Before 2020, the dispute resolution mechanisms for free trade agreements did not directly penalize the low-road companies for abusing worker rights.

The USMCA may provide the template for making the enforcement of workers' rights possible in practice. If so, other member states of the ILO, especially those in the EU, who have already committed to the principles in the 1998 Declaration, should utilize that template in their trade agreements. If this would happen, the calls made in 1996 to the WTO ministers in Singapore to link labor standards to trading privileges will be answered, and answered not by the WTO but in line with the WTO's position that the ILO is the competent body to set standards. After more than two decades, the individual member states have begun to implement their commitment to the fundamental principles by tying trade privileges to observance of internationally recognized worker rights.

NOTES

1. There were 273 votes in favor, none against, with 43 abstentions. Report of the Committee on the Declaration of Principles, ILO 86th Session, Geneva, June 1998. Accessed 18 April 2020 at https://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-decd.htm.
2. The Treaty of Versailles established an organization which has as its supreme organ the International Labour Conference (ILC), which currently meets annually. The Governing Body (GB) meets three times per year. The Treaty deemed the International Labour Office (the Office) the organization's secretariat. It is headquartered in Geneva.
3. NAFTA had been negotiated and was signed by President George H.W. Bush, a Republican. Bush lost the November 1992 election to the Democratic candidate Bill Clinton who had been supported by labor unions. The ratification period extended past the November 1992 election. See Compa, Chapter 15 in this volume for details.
4. For a listing of ILO conventions by number and year adopted, see https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::: (accessed 18 April 2020).
5. This statement is part of paragraph 4 of the Ministerial Declaration adopted on 13 December 1996, the final day of the meetings. *Singapore WTO Ministerial 1996: Ministerial Declaration, WT/MIN (96)/Dec, 18 December 1996*; accessed18 April 2020 at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm.
6. For the statement of Principles and Goals agreed upon at the Copenhagen summit, see https://www.un.org/development/desa/dspd/world-summit-for-social-development-1995/wssd-1995-agreements/cdosd-part-b.html (accessed 18 April 2020). Several line up with the subjects of the seven core conventions listed in the 1994 *Defending Values* report.
7. The seven were: Convention No. 87, Freedom of Association and Protection of the Right to Organise (1948); Convention No. 98, Right to Organise and Collective Bargaining (1948); Convention No. 29, Forced Labour (1930); Convention No. 105 Abolition of Forced Labour (1957); Convention No. 138, Minimum Age (1973); Convention No. 100, Equal Remuneration (1951); and Convention No.

111, Discrimination (Employment and Occupation) (1958). Convention No. 182, Worst Forms of Child Labour (1999) was added to the list of core conventions upon its adoption by the ILC.

8. The ILC is empowered to take certain actions, e.g., to adopt conventions and recommendations. It is tripartite with a 2-1-1 voting allocation (for each member state, the governments has two votes, and the employers' and workers' representatives each have one vote).
9. The position of the US employers was key at this point. In 1994, the US employers' lead spokesperson at the ILC in the debate on Convention No. 87 had indicated disquiet with the notion of freedom of association implying a right to strike, but by 1998, when he was the vice chair of the Employers' Group at the ILC, he strongly supported adoption of the proposed declaration. For a more detailed discussion, see Bellace (2016) text at fns 52–63.
10. At the time the Declaration was adopted in June 1998, Convention No. 182, Worst Forms of Child Labour, had not yet been formally adopted but it had already completed the first stage of the two-year adoption process. Upon its adoption the ILC in June 1999, it was immediately included in the Declaration's statement.
11. Convention No. 138 adopted in 1973 (and which consolidated many earlier conventions on the subject) focuses on the minimum age for persons to enter employment. The 1999 Convention No. 182 directs ratifying States to take a pro-active stance to abolish child labor in work situations which are physically or morally harmful to young persons regardless of whether the children are working under a contract of employment or are deemed to be employees under national law.
12. The Committee of Experts on the Application of Conventions and Recommendations, which was established by the ILC in 1926, produces an annual report following its examination of reports submitted.
13. Conventions No. 87 and 98.
14. The ratification campaign had been launched in 1995 by Director General Hansenne following his 1974 report *Defending Values.* Ten years later information on ratification was presented to the Governing Body's Committee on Legal Issues and International Labour Standards. *Ratification and promotion of fundamental ILO Conventions*, GB.294/LILS/5, accessed 18 April 2020 at https://www.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/lils-5.pdf.
15. For the ratification record, see *Ratifications of fundamental Conventions by country*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (accessed 18 April 2020).
16. For the text of the speech, see https://www.un.org/sg/en/content/sg/speeches/1999-02-01/kofi-annans-address-world-economic-forum-davos (accessed 18 April 2020).
17. See, for example, the Global Compact web page for principle three, freedom of association. It does not mention ILO Conventions No. 87 or 98, and it omits any discussion of the right to strike https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-3. In contrast, the web page regarding child labor does mention the relevant ILO core conventions https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-5 (accessed 28 Dec 2019).
18. UN Economic and Social Council, Subcommission on the Promotion of Human Rights 55th Sess. 2003. Commentary on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. E_CN.4_Sub.2_2003_38_Rev.2-EN.pdf.
19. Kofi Annan appointed Ruggie to this position a year before he stepped down as UN Secretary General. Ruggie had played a key role in drafting Kofi Annan's 1999 Davos speech and subsequently was tasked by Annan with setting up the UN Global Compact project (Ruggie 2017, pp. 9–10).
20. United Nations, Human Rights Council, Seventeenth session, Agenda item 3: *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*. Adoption of Resolution,17/4, Human rights and transnational corporations and other business enterprises. 16 June 2011. A/HRC/17/31 The Guiding Principles are found in the Annex to this report, pp. 6–27. http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf (accessed 18 April 2020).
21. ILO. Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report of the Committee on the Application of Standards, International Labour Conference, 81st Session, Geneva, 1994. [The report is Document 25 in the Provisional Record. Paras 115–148 comprise the chapter of the CAS report on the right to strike.] para. 91.

http://www.ilo.org/public/libdoc/ilo/P/09616/09616%281994-81%29.pdf (accessed 18 April 2020).
22. Ibid.
23. Ibid., pp. 25/24, para 92.
24. Ibid., pp. 25/69, para 255.
25. ILO. Third Item on the Agenda. Report of the Conference Committee on the Application of Standards. Extracts from the Record of the Proceedings, International Labour Conference, 101st Session, Geneva, 2012. ILC, CAS para. 82. The Employer members 'objected in the strongest terms' to what they perceived as 'the interpretation by the Committee of Experts of Convention No. 87 and the right to strike, to the use of the general survey with regard to the right to strike and to being placed in such a position by the General Survey' http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_190828.pdf (accessed 18 April 2020).
26. For a detailed discussion of the deadlock at the CAS in 2012, see La Hovary (2013) and Swepston (2013).
27. This occurred as a result of a special tripartite meeting in February 2015. For a discussion, Bellace (2016); also available online at http://dx.doi.org/10.1080/09615768.2016.1144430 (accessed 18 April 2020).
28. https://dfat.gov.au/trade/agreements/in-force/cptpp/official-documents/Documents/tpp-11-treaty-text.pdf (accessed 18 April 2020).
29. See https://dfat.gov.au/trade/agreements/in-force/cptpp/official-documents/Documents/19-labour.pdf.
30. Council on Foreign Relations, 2016. '*The Future of U.S. Trade and the Trans-Pacific Partnership: A Conversation with Michael Froman: TPP and American Leadership in the Pacific*.' June 20, 2016. http://www.cfr.org/trade/future-us-trade-trans-pacific-partnership-conversation-michael-froman/p37973 (July 29, 2016). See also the explanatory online publication, *The Trans Pacific Partnership: Protecting Workers*. Office of the U.S. Trade Rep., Exec. Office of the President, https://ustr.gov/sites/default/files/TPP-Protecting-Workers-Fact-Sheet.pdf (accessed 18 April 2020).
31. Dominican Republic–Central America–United States Free Trade Agreement, Arbitral Panel established pursuant to Chapter Twenty. In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR. Final Report of the Panel, June 14, 2017. Report available on the website of the US Trade Representative in English and Spanish. https://www.trade.gov/industry/tas/Guatemala%20%20%E2%80%93%20Obligations%20Under%20Article%2016-2-1(a)%20of%20the%20CAFTA-DR%20%20June%2014%202017.pdf (last accessed 15 October 2018). For a full discussion, see Brooks, Chapter 17 in this volume.
32. Chris Prentice and David Lawder, 'U.S. labor unions say NAFTA replacement does not go far enough for workers,' Reuters, 26 March 2019. accessed 18 April 2020 at https://www.reuters.com/article/us-usa-trade-labor/us-labor-unions-say-nafta-replacement-does-not-go-far-enough-for-workers-idUSKCN1R72H2.
33. For a discussion of the legal basis for asserting this right, see Vogt et al. (2020).
34. Anner (2019) in studying the garment industry in Delhi, India, concluded that the recent worsening of certain decent work deficits was linked to what he terms 'predatory purchasing practices'. Foreign buyers, seeking the lowest prices and quickest supply times, exerted downward pressure on wages and other conditions of employment as vendor companies competed to be the low-price bidder.

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