Colloque international
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Contribution de

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Speech on the centenary of the ILO
J’aimerais tout d’abord remercier vivement le Centre d’études sur l’intégration et la mondialisation pour l’invitation à l’Organisation internationale du travail de participer dans cette symposium illuminant dédier aux accords de commerce et les normes internationales du travail et la place spéciale pour la célébration de centenaire de l’OIT.

My aim this morning will be to address the evolution in trade agreements and their growing cognizance and reflection of the importance of international labour standards to the promotion of a fair and level playing field essential not only to free and fair trade but also to ensuring social justice and universal and lasting peace. Globalisation and trade however also pose multiple challenges to the ILO and its decent work agenda. In addressing these, I will try to set out some considerations to chart a path for labour standards in the future.

First, I will start with a brief history of the ILO and its recognition, implicitly or explicitly, throughout its history of the role it could and should play in relation to international trade. Second, I will touch upon the impact that certain trade arrangements have had on promoting the decent work agenda and the importance of the ILO supervisory machinery to this end. Third, I will observe recent (Guatemala) and on-going considerations for withdrawal of trade

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1 The views expressed herein are the personal views of the author and do not represent those of the Organization or its members.
preferences (EBA Cambodia, Myanmar) and acceleration of consultation procedures (Korea) and the possible contribution these steps may make for the promotion of fundamentals principles and rights at work, as well as their possible consequences on the integrity of ILO mechanisms. **Fourth**, I will explore the new generation of free trade agreements with a focus on the Comprehensive Economic and Trade Agreement between Canada and the European Union (the CETA) and the differences and similarities with the USMCA. **Finally**, I will conclude by reflecting upon the space to be filled by the ILO in the continuing discussion on trade and labour standards.

**First**, since its very inception, the ILO through its constitutional mandate has been pondering the significance of universal labour standards for the treatment of workers and its relevance to economic development. The preamble to the 1919 Constitution declares that ‘the failure of any one nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries’. This was the first international recognition that comparative advantage based on a disregard for labour rights and decent working conditions cannot and should not be used as a legitimate competitive practice. It was incumbent upon the international community to ensure that this would not occur by adopting international labour standards in a global forum representing countries at all levels of development, business and labour. The signatories of the Versailles Peace Treaty recognized the critical importance of common labour standards to avoid a race to the bottom and the endangering of new-found peace.

While regrettably the adoption of international labour standards and their supervision did not manage to avert the second-world war, the ILO continued to prove its vital importance to the new world order. After a brief exile just up the hill at McGill, the ILO’s mandate was reinvigorated in 1944, recalling that labour is not a commodity, that all human beings 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 and that the
attainment of the conditions in which this shall be possible must
constitute the central aim of national and international policy, in
particular those of an economic and financial character. The ILO was
given the mandate to examine and consider all international
economic and financial policies and measures in the light of this
fundamental objective.

While the 1998 Declaration on Fundamental Principles and Rights at
Work was driven by an obsession emanating out of the 1996 WTO
Ministerial Conference that labour standards should not be used for
protectionist trade purposes, a decade later, when adopting the ILO
Declaration on Social Justice for a Fair Globalization, the
international community could not deny the veracity of the
proposition that the violation of these fundamental principles cannot
be invoked or used as a legitimate comparative advantage. The ILO
was called upon to provide assistance to Members wanting to
promote strategic objectives jointly within the framework of bilateral
or multilateral agreements.

In a world in which public outcry and discontent is expressed with
ever-increasing volume in respect of the impact of trade on working
lives and a sense of inequality is ever-growing, these messages are a
stark reminder that peace is rooted in social justice.

While none of what I have referred to above gives the ILO a mandate
to promote trade agreements, it does call upon the Organization to
play its role to the fullest to ensure the protection of workers’ rights
and dignity across the globe through whatever means. Where trade
agreements make reference to these rights, the ILO has the tools and
the legitimacy for their equal application.

This brings me to my second point concerning the ILO tools for trade.
The legitimacy of the ILO as the only global organization setting
international labour standards through dialogue with business and labour is unquestioned. Similarly, it has a unique and robust system of supervision that combines reporting and complaints-based assessments, tripartite and independent review. It is the only international organization to have a tripartite body that reviews complaints of violations of freedom of association regardless of the ratification of the relevant conventions – a mechanism that Canada has had a hefty experience with. All of these tools have made the ILO the agency of reference for an unbiased appraisal of compliance with labour standards and principles of universal import.

Labour rights violations in Myanmar/Burma is an example of the farthest use made of ILO tools in reviewing trade relations with a country due to its systematic and grave abuse of fundamental human and labour rights. Recourse to an independent investigative Commission of Inquiry, the highest mechanism in the Organization’s supervisory arsenal, for systemic use of forced labour and the adoption of a resolution by all ILO member States calling for a review of their trade relations with the country to ensure that they could in no way be used to perpetuate the system of forced labour has been the closest that the organization has come to sanctioning a country for non-observance of labour standards. Both the United States and the European Union had withdrawn preferences to Myanmar before the adoption of this resolution but they looked to the ILO throughout the first decade of the 21st century for the signal that improvements to the situation could enable them to reengage. This came in 2012 when the resolution was withdrawn following the first democratic elections and the adoption of an extensive plan for the elimination of forced labour. The EU took its signal and restored trade preferences in 2013 (EBA), while the US followed in 2016. The EU, US, Japan, Denmark and the ILO are now partners in the Myanmar Labour Rights Initiative which builds on their combined strength to leverage continuing improvements in the field of labour rights. While the
current circumstances are challenging, especially in the light of the UN independent international fact-finding mission report on Rhakine, Kachin and Shan States, and the EU is monitoring the conditions for retaining preferences the combined efforts on labour rights have shown their efficacy for achieving progress on the ground.

In reviewing the conditionality for continuing support to Swaziland (now eSwatini) through the African Growth and Opportunity Act (AGOA), the United States used ILO benchmarks as expounded upon through its supervisory mechanisms, including tripartite conclusions identifying serious failure by the annual Conference Committee on the Application of Standards, and proceeded to withdraw trade preferences for Swaziland. The European Union Parliament’s international trade committee (INTA) found itself similarly bound to query whether the trade preferences it grants to countries like Swaziland in order to incentivise them to deliver human and labour rights had failed given the serious abuses identified, including the dissolution of both the employers’ and the workers’ confederation, and whether it was time to review more seriously its criteria in this regard.

In the end the EU was not compelled to take that next step as the leverage from the US withdrawal of AGOA brought sufficient pressure to bear for the Government to make all the changes requested by the ILO supervisory bodies, including the elaboration of a code of good practice for police in relation to protest actions. The process brought about a change of mind-set as the Prime Minister recognized the critical importance of the social partners in achieving the necessary changes and has committed to resolving and future challenges through social dialogue. The restoration of AGOA has created an encouraging environment for foreign direct investment and opened up the opportunities for employment and economic growth.
While continuing work always remains, the above examples show us how the dialogue between trade and labour standards can be mutually reinforcing and provides stories supporting the importance of equal treatment in including labour provisions in trade agreements and creating a fair and level playing field for labour rights.

But coming to my third point of more recent and on-going examples calls for a critical eye. The outcome of the complaint against Guatemala under the Central American Free Trade Agreement (CAFTA) was a disappointment to many proponents of free trade as underpinning sustainable development. Guatemala had been identified by all of the ILO supervisory bodies for serious violations of trade union rights, culminating in a request for the establishment of a commission of inquiry, recalling the path followed by Myanmar. The evidence of abuse of labour rights, violations of the fundamental freedom of association and the right to life of trade unionists and leaders coupled with inadequate inspection, enforcement mechanisms or meaningful remedies led many to query whether trade and labour rights protection could really go hand in hand. The finding by the arbitral panel that the violation of fundamental labour rights did not affect trade signalled a fundamental flaw in the attempt to link trade and labour standards. At the same time, the continuing attention on the country by other countries with trade arrangements – such as the European Union - led to a growing pressure on the ILO supervisory bodies. The heightened gravity of language traditionally employed in cases lacking progress was circumvented out of pressure coming emanating from concerns for the trade implications. Political considerations began to weigh in on independent assessments leading to the closure of the complaint without the appointment of a Commission of Inquiry and in the absence of concrete and tangible progress on the government’s own commitments. While the closure came with a call for the ILO to
develop a robust and comprehensive technical assistance programme and the Government is obligated to report on the progress made in implementing its roadmap to the ILO Governing Body on a yearly basis, it is hoped that the ILO traditional powers of moral suasion, dialogue diplomacy and technical cooperation will be sufficient to achieve meaningful improvements on the ground and that its assessment of results will once again be free from the weight of political interests.

The European Commission is currently launching various levels of procedures under its FTA and other preferential arrangements. In the case of its FTA with Korea, it has begun consultations under its trade and sustainable development chapter. The request for consultations concerns the lack of progress by Korea on its commitment to make continued and sustained efforts to ratify the remaining four fundamental conventions on freedom of association, collective bargaining and the abolition of forced labour and the need for certain legislative amendments as identified by the ILO Committee on Freedom of Association.

Just two weeks ago, the European Commission began the process that could lead to the temporary suspension of preferential tariffs for Cambodia under the Everything But Arms scheme. Partner countries are expected to respect a number of human rights conventions, along with the eight ILO core conventions. The Commission has focused its process of intensive monitoring on human rights and violations of civil liberties, while concerns about the labour laws and their implementation have also been raised. If preferential tariffs are indeed suspended, one may query whether the impact may not result in a detrimental impact on workers’ rights.

Indeed, this is what has been maintained by the trade unions of Myanmar who fear that the withdrawal of their new-found trade preferences will plummet them back to the days where the absence of the international community left them with little to no protection.
The EU Commissioner has however emphasized that they are committed to helping Myanmar improve the situation, including through the Labour Rights Initiative, and ensure that the principles enshrined in the international conventions to which Myanmar has committed are not undermined.

For free trade to work and respond to opponents who insist that it only results in social dumping, its partners have a vested interest in demonstrating that these arrangements have a positive impact on the lives of working men and women. Cooperation is often the most valued mechanism for achieving this result, but the countries in question should also understand that their partner needs to show that it does not amount to empty words. Without meaningful proof of progress, there is increasing pressure on trading partners to take action.

My fourth exploration aims to show how these increasing pressures on trade negotiations have given rise to stronger, more detailed and robust agreements.

The CETA recognizes that economic, social and environmental elements are interdependent and mutually reinforcing components of sustainable development. The agreement is founded on a philosophy that trade and economic flows should contribute to enhancing decent work and environmental protection and thus encourages eco-labelling, fair trade schemes, best practices of corporate social responsibility and the integration of sustainability considerations in private and public consumption. It aims at transparency through public debate and civil society fora and highlights the importance of social dialogue. The commitment to ratify the fundamental ILO conventions gave way rapidly to Canada’s ratification of the remaining Convention on collective bargaining. The agreement takes a step beyond the core conventions by promoting occupational safety and health, minimum labour standards and non-discrimination, including for migrant workers. Enforcement of labour
law, labour inspection and adequate remedies for violation are seen as key. Concerns arising under the chapter are dealt with through consultations or expert panels and recommendations or mutually satisfactory action plans. The ILO is recognized as an important partner with valuable expertise, including as regards interpretative guidance.

The USMCA – or the CUSMA – labour chapter reaffirms the parties’ obligations to fundamental labour rights, minimum wages, hours of work and occupational safety and health. The right to strike is explicitly mentioned as an intrinsic corollary of freedom of association, clarifying any doubt that may have arisen from the ongoing debate of the social partners in the ILO. Even further, it recognizes the important role of workers’ and employers’ organizations in protecting internationally recognized labour rights, going beyond the notion of a right to acknowledge the significance of its effective exercise. It aims at broadening the scope of understanding of what is in a manner affecting trade.

Export processing zones are given special mention in the USMCA where waivers or derogations from minimum wages, working time and OSH are not allowed. The provisions on enforcement are more detailed than the CETA referring to training of inspectors, onsite inspections, record keeping, the establishment of worker-management committees, appropriate sanctions, such as fines and remedies, including reinstatement. The commitments on discrimination go beyond the grounds set out in the ILO Convention to include sexual orientation, gender identity and caregiving responsibilities. Emphasis is placed on the exchange of information, sharing of best practices, study trips and collaborative research – such as the development of analytical tools related to equal pay for work of equal value - as a means of improving labour standards. Here again, the expertise of the ILO is acknowledged and indeed is specifically relevant to the annex on worker representation in
collective bargaining in Mexico. The specific steps set out in this annex aim at responding to on-going gaps identified by the ILO supervisory bodies in the form of so-called protection contracts which violate freedom of association. Mexico too ratified the Collective Bargaining Convention shortly after the conclusion of the USMCA, leaving the US as the only partner not to have ratified all eight core conventions.

The tools for addressing concerns under the labour chapter range from cooperative labour dialogues, to consultations to arbitral panels for dispute settlement. Resort to the latter could render the USMCA more effective, but this would depend on its effective implementation, as well as on the degree to which meaningful cooperation might be more efficient in achieving the goals of the chapter.

In conclusion, the growing references in trade agreements to the ILO 1998 Declaration and its four overarching principles founded upon eight Conventions and now a Protocol is the quintessential proof that the soft law approach can be the incubation of a firmer development of jus cogens. But once the international legal framework is set, what mechanisms and interactions are most necessary to ensure that the link between trade and labour standards truly works? Are sanctions a necessary component? Can the carrot work without the stick?

The EU trade commissioner espouses 15 practicable actions to improve the implementation and enforcement of trade and sustainable development chapters. These include working with the ILO to ensure a coherent approach in the implementation of ILO conventions, while resorting to the ILO’s expertise for technical assistance. Today, the ILO’s Standards Department backstops EU funded technical cooperation projects to assist government in reporting and implementation in Armenia, Bangladesh, Cabo Verde, Guatemala, El Salvador, Mongolia, Myanmar, Paraguay, Philippines, Thailand and Viet Nam – all with some form of trade arrangement in
force or being finalised. This has the effect of not only improving the impact of the trade agreement or buoying support for its conclusion, but also of bolstering compliance with international labour standards and respect for the recommendations emanating from standards supervision.

Another aspect highlighted by the Commissioner is the monitoring role of civil society. Social dialogue is recognized as being at the heart of fundamental principles and rights at work with a special role for social partners in organizing and monitoring of labour markets and workers’ rights.

Is there a utopia of trade and labour standards? To quote the former ILO Executive Director, Kari Tapiola, there is no simple formula to determine when pressure works better than encouragement. In an attempt to strike some meaningful balance of the two, from an ILO standards perspective, I would put forward for consideration the following elements: 1) any effective link needs to be based on pre-determined credible and coherent benchmarks; 2) assessment of their compliance should be independent of the parties and objective; 3) what is expected abroad should be equally applied at home; 4) the state has the duty to ensure respect through enforcement and remedy while companies have a responsibility to respect; and 5) a conducive environment can be created through continued development cooperation and dialogue. All of these are the ILO mantra and the ILO mandate. The ILO serves as both a benchmark and a source of concrete solutions.

Into the brighter future, as an Organization we must heed the call of the World Commission: The mandates of the WTO, the Bretton Woods institutions and the ILO reflect complementary and compatible objectives and are interlinked and mutually reinforcing. Their in-built synergies need to be better exploited through the establishment of more systemic and substantive working relations. Echoing the ILO Constitution, the World Commission reminds us that
today, more than ever, the success of the human-centred growth and development agenda depends upon the coherence of trade, financial, economic and social policies; this is the task of the ILO as it embarks upon its next hundred years.