Minimum Labour Standards in a Globalized Economy

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I. Introduction

The recent financial and economic crisis has put a big question mark behind the neo-liberal paradigm. For a long time the prevailing approach was deregulation, leaving everything to the market. At least as far as financial markets are concerned, there seems to be a change of perception. The search for effective regulation of financial markets has to a great extent replaced the old neo-liberal approach.

The change of paradigm should not be confined to the financial market. It also should be applied to labour markets. The protagonists of deregulation of labour markets – among them for a long time also influential international financial institutions as the World Bank, the International Monetary Fund (IMF) and regional development banks – have been powerful up to now. They have been stressing negative economic effects of minimum wage systems, of systems of income security, of measures restricting free entry and exit of labour markets, of collective and centralized collective bargaining as well as of working time restrictions[1]. This view, however, is not only one-dimensional because it exclusively focuses on economic efficiency but it proved to be wrong as extended empirical research demonstrates[2].

Even if many long-term benefits are indirect and difficult to measure, empirical evidence shows that labour standards result in improved health and human capital which increases the productivity potential of workers. It particularly shows that fair working conditions result in improved motivation and willingness of workers for high performance. Long-term and stable relationship between the worker and the company provides incentives to companies to invest in training of their workers because the company is able to recover returns from training. Job security provides

[1] For a summary of this approach see W. Sengenberger, International labour standards in the globalized economy: obstacles and opportunities for achieving progress, in: D. R. Craig / S. M. Lynk, Globalization and the Future of Labour Law, Cambridge 2006, 331 et seq. (333 et seq.)

[2] For a comprehensive synthesis of the available research on the beneficial effects of international labour standards see W. Sengenberger, Globalization and Social Progress: The Role and Impact of International Labour Standards, Bonn 2002

incentives to workers to share their knowledge and skills with colleagues, in particular with young people and apprentices. In addition, it allows the workers to cooperate and increase productivity without fearing the loss of their job. Also at the macro-economic level empirical evidence is available for a positive effect of labour standards on trade competitiveness and growth.

In short and to make the point: the protagonists of deregulation seem to suffer of a reality gap. There should be no doubt that labour regulation is an essential input to a functioning market economy as well as a precondition for comprehensive and sustainable economic development. Therefore, implementation of labour standards should be considered as a form of investment in institutions which on the long run have not only a positive effect for the workers and the economy but a positive impact for the stability and the development of society as a whole. In the era of globalisation it goes without saying that such regulation cannot stop at national borders but has be international.

In addition it should be stressed that the economic dimension is only one among others. Labour standards primarily are to be seen in the context of human dignity as it is expressed by the actual program of the ILO on decent work for everybody. The fundamental rights perspective is playing an ever bigger role. The famous statement in the ILO's Philadelphia Declaration that "labour is not a commodity" still is valid and indicates that market rules are not sufficient to meet the needs of decent work corresponding to human dignity.

Summing up these introductory reflections, it becomes evident that effective international labour standards are of utmost importance. The question is whether the institutional arrangements developed so far are sufficient to meet this urgent need or whether they are to be modified or amended. This is the topic to be discussed in my sketchy contribution.

II. The Role of the ILO

1. The traditional Pattern of Standard Setting

The achievements of ILO in the area of standard setting undoubtedly is a success story which now lasts already more than 90 years and which barely can be overestimated. Almost 200 conventions and even more recommendations, covering all kind of aspects of labour law and social security law, are an impressive output[3].

However, the world of work has significantly changed during this long period of time. Therefore, it is no surprise that according to an assessment, started in 2002, it turned out that only 71 conventions and 73 recommendations are up to date. 54 conventions and 67 recommendations are totally outdated. For the remaining rest efforts of updating are made[4].

Conventions legally are considered to be international treaties which are to be ratified in order to be binding for the member countries. There, however, a significant problem arises. The member state's inclination to ratify is unfortunately rather low. This is particularly true for developing countries. The reason seems to be that they are afraid of competitive disadvantages in case of ratification. On the whole 60 percent of the member states of the ILO ratified less than a quarter of the conventions and more than 20 percent of the member states even less than one tenth[5].

The ratification record, however, is not the only problem. The bigger problem lies in the discrepancy between ratification and implementation in actual practice. It has to be kept in mind that particularly in developing countries there is a lack of administrative and infrastructural preconditions for such a factual implementation. Monitoring mechanisms are only available to a limited extent. In many cases trade unions are much too weak to function as a monitoring actor. Governments quite often are not very much interested in implementation in actual practice because they are afraid of losing competitive advantages which they in a short-minded perspective see in low labour costs and a low level of workers' rights.

[3] See for a comprehensive overview on the ILO's standard setting activities N. Rubin (ed.), Code of International Law, 2 volumes, Cambridge 2005
[4] B. Hepple, Labour Laws and Global Trade, Oxford / Portland 2005, 63
[5] B. Hepple, ibidem, 35

In addition the monitoring machinery of the ILO is not very efficient. There are rather sophisticated procedures[6]. But their effect is rather modest. This first has to do with the fact that the material for monitoring is provided by reports which are written by the member states themselves. Trade unions and employers' associations are entitled to cooperate in the elaboration of these reports. This, however, does not change the fact that these reports remain problematic since also these organisations are often not eager to list up domestic deficiencies in these reports. But even where the reports are correct and where deficiencies of implementation are discovered by the monitoring bodies of the ILO, the monitoring procedure is merely built on the principle of mobilization of shame. The idea is that for mere image reasons a member state accused in such a way will further on be rule abiding. Whether this expectation is met, remains more than doubtful.

Nevertheless the impact of the monitoring bodies should not be underestimated. The committee of experts as well as the committee on freedom of association have developed an impressive set of case law. Even if the binding effect of this case law is very problematic, it should be seen that in many jurisdictions it serves as a point of reference and, thereby, may have an impact on shaping the legal structure in many countries.

Another well known problem refers to the fact that labour standards as elaborated in the context of the ILO only are relevant for the formal sector. However, in most developing countries in Africa, Latin America and South East Asia the informal sector is much bigger than the formal one[7]. And it is rather increasing than decreasing. This perhaps is the biggest challenge for the ILO. It would be a futile attempt to try to simply formalize the informal sector in these countries. The informal sector will remain without a link to traditional employment relationships. The ILO is well aware of this dilemma. First attempts to develop alternatives are made. But they are by far not sufficient. The Convention 189 of June 2011 concerning decent work for domestic workers together with the respective Recommendation is an important first step into the right direction. It not only equalizes the standards for domestic workers with those of other workers but tries to take account of the specific conditions in which domestic workers perform their work.

[6] For details see J. M. Servais, International Labour Law, The Hague 2005, 24 et seq.
[7] See W. Sengenberger (FN 1),341

2. Reform Strategies

Well known and most spectacular was in 1998 the ILO's attempt by the well known Declaration on Fundamental Labour Rights to at least make sure that irrespective of ratification the member states have to abide to four fundamental rights contained up to then in 7 core conventions. These fundamental rights are freedom of association including the right to collective bargaining, prohibition of forced labour, prohibition of child labour and prohibition of discrimination for all kind of reasons. A follow-up procedure in the declaration, to which I will come back later on, paves new ways for implementation. There is an ongoing debate whether the list of fundamental rights in the Declaration should be extended, for example by a right to a living wage or by a right to health and safety.

Moving away from mere standard setting the ILO in 1999 initiated the famous "Decent Work Agenda" focusing on decent work for all. This ambitious program is built on four pillars: (a) Job promotion by establishing a sustainable institutional and economic environment; (b) Strengthening social protection; (c) Promotion of social dialogue and (d) Promotion of employees' rights at work. These four pillars are conceived as inseparable, coherent and supporting each other. The decent work agenda has succeeded in gaining much attention throughout the world. It is not only stimulating discussions on how to meet the goals embedded in this comprehensive concept but it also serves as a base of legitimacy putting at least soft pressure on the actors in the member states of the ILO.

This strategy has two recent follow-ups: (a) The declaration on social justice and fair globalization of 2008. Thereby, the decent work agenda is strongly confirmed and even greater emphasis is put on support and technical cooperation. (b) The declaration on recovering from the crisis: a global jobs pact of 2009. This is an action program containing principles for promoting recovery and development as well as mechanisms to accelerate employment creation. jobs recovery, building sustaining enterprises, building social protection systems and stimulating social dialogue. In short it formulates a strategy to shape a fair and sustainable globalization.

These declarations and action programs signify somehow a change of paradigm. Mere standard setting is no longer considered to be a sufficient strategy. It is combined by a soft law approach. Thereby, it establishes a link between standard setting and technical cooperation. Such a comprehensive and highly sophisticated strategy is not meant to have short term effects but to change the infrastructure of the member states as well as the actors' involvement on the long run in order to pave the ground for decent conditions on the labour market. To a great extent it is focusing on building up consciousness all over the world for the necessity of reforms as indicated in these declarations.

3. Re-thinking the Role of the ILO

In spite of the indicated change of paradigm the question remains whether the ILO needs further reconstruction to play its role even more efficient. Recently Brian Langille strongly attacked the ILO's activities and pleaded for a radical change[8]. Anne Trebilcock, responding to Langille, accuses him to "knock down a strawman"[9]. This is certainly true when Langille writes that the ILO is focusing merely on detailed rules of "hard law and when he asks for a shift from "hard law" to more "soft law"[10]. As shown above, this shift is already happening to a great extent. However, there are areas where Langille's critical approach seems at least justified to a certain extent.

Whether conventions are too detailed and whether it would be better to more often substitute detailed rules by mere principles[11], deserves attention. The lack of sufficient ratification may well be implied by too detailed rules. Of course there are patterns of flexibility built in quite a few conventions[12], allowing for example the member states to ratify only fragments of conventions step by step, thereby giving them more time for preparing the conditions for full ratification. Convention 102 on social security is a good example of this. However, the very low ratification rate of this very convention shows that this kind of flexibility is by far not sufficient to destroy the fears in particular of developing countries to not be able to meet the still too detailed

[8] B. Langille, Imagining post „Geneva consensus" labor law for post „Washington consensus" development, Comparative Labor Law & Policy Journal 2010, 523 et seq.
[9] A. Trebilcock, Putting the record straight about international labor standard setting, Comparative Labor Law & Policy Journal 2010, 553 et seq. (553)
[10] B. Langille, op.cit., 545
[11] B. Langille, op.cit., 530
[12] A. Trebilcock, op.cit., 556 provides examples of such flexibility

rules of this convention. Therefore, Langille's plea for fewer details and more principles should be taken seriously. A thorough analysis of all the conventions and of the reasons for not ratifying them – which cannot be provided here – might be helpful to shed light on this controversy.

More important seems to be another topic of Langille's criticism: The impact of the concept of universality. He is pleading for a shift from universal to a more local, contextual and embedded approach[13]. Universality from the very beginning of the ILO and for good reasons has been a constitutional element of its politics[14]. And of course the idea of universality cannot be given up in the light of a global economy and due to the fact that human rights are universal[15]. Nevertheless it might look as if Langille again is only attacking a strawman. After all the ILO has established regional offices and tries by all kind of strategies of technical cooperation to meet specific circumstances of specific regions. This definitely is an important progress. Much has been done in this respect. However, it well may be doubted whether this regional approach has a real impact on the machinery of standard setting. There it seems that the idea of universally equal application still prevails.

This leads to another question which is closely linked to the topic of universality. In particular in the area of social security conventions tend to be inspired by patterns of industrialized states which turn out to be rather irrelevant for developing countries. In addition they are focusing on the formal sector, ignoring the complex structure of the informal sector. As already indicated above, the ILO for quite a while has discovered the informal sector as an area to be coped with. However, the idea behind the ILO's approach still seems to be to transform the informal sector into a formal one: a futile attempt given the size of the informal sector and the very strong traditional perceptions of a labour market in developing countries. Neither the existing conventions nor the decent work agenda meet the needs of the informal sector.

This now leads to Langille's main attack. According to him the ILO's approach is a "we know what is good for you system"[16]. He is pleading for a shift from top down to

[13] B. Langille, op. cit., 542
[14] See M. Weiss, Some reflections on the future of the ILO, in ILO (ed.), Visions of the future of social justice. Essays on the occasion of the ILO's 75th anniversary, Geneva 1994, 213 et seq. (214)
[15] See also A. Trebilcock, op. cit., 554
[16] B. Langille, op. cit., 532

bottom up in the area of standard setting. This attack is strongly rejected by Trebilcock who refers to the fact that the process of developing labour standards gives governments and social partners many possibilities to influence their elaboration[17]. And she also refers to the two thirds majority which is required for passing conventions. However, the question remains whether she is not underestimating the tremendous influence of the experts of the International Labour Office. It seems that the expert knowledge situated in the office is of utmost importance in shaping the conventions, limiting in practice very much the influence of the process Trebilcock is referring to. Therefore, it might well be a worthwhile effort to reflect on how to establish and strengthen a real bottom up approach.

This question of course is linked with another delicate one, namely whether the tripartite structure by itself still is appropriate to play a significant role in such a bottom up approach. In many countries, particularly in the developing world, trade unions are marginalized in a way that their input almost can be neglected. Therefore the question arises whether the traditional ILO structure is to be amended by including non governmental organizations (NGO) and by giving them a voice in this process. Of course this might imply problems of legitimacy and problems of representativity. But an attempt in this direction should be made.

A last of Langille's many proposals deserves attention: his suggestion to shift from command and sanction to assistance[18]. If Trebilcock denies that there are sanctions at all[19], she seems to ignore the spirit in which conventions are made. There cannot be any doubt that the monitoring bodies are supposed to examine whether the member states abide to the standards. Of course, as indicated above, this monitoring activity is rather inefficient. This, however, does not change the simple fact that it is supposed to end up in "naming and shaming" as a form of sanction. Member states evidently want to prevent such an outcome, even if it is inefficient. Therefore, the reports tend to be written in order to escape such a "sanction". Langille is to be supported if he thinks that the monitoring bodies should not act as small claim courts[20], sanctioning bad behaviour. It would be much better if these bodies were

[17] A. Trebilcock, op. cit., 554 et seq.
[18] B. Langille, op. cit., 542 and 545
[19] A. Trebilcock, op. cit., 563
[20] B. Langille, op. cit., 538

simply supposed to be confronted with deficiencies in order to help the respective countries to build up structures which allow factual implementation of the standards. Then the member states would be more willing to list up problems they are confronted with. And the link between standards and technical cooperation would become as close as possible.

This short essay is not the place to provide an in-depth analysis of how the ILO might better take use of its potential in the future than it has been doing it in the past. I simply would like to indicate that there is room for improvement. However, even if the ILO would succeed in strengthening its efficiency, there is no doubt that the ILO is only one element in a combined strategy to develop and spread international labour standards.

III. Codes of Conduct

In the last few decades multi national enterprises (MNE) have become more and more powerful in defining the context in which they are active. This very early has led international institutions to focus on MNE, urging them to observe minimum standards for all their subsidiaries all over the world. The forerunner in this context was the Organization for Economic Cooperation and Development (OECD) which passed already in 1976 “The OECD guidelines for multinational enterprises”, last amended in 2006. The ILO followed one year later in 1977 by its “Tripartipe Declaration of Principles on Multinational Enterprises and Social Policy”, last revised in 2007 and presently in the stage of further revision. And the latest of these codes is the United Nations’ (UN) “Global Compact”, issued in 1999 by Kofi Annan who then was UN General Secretary. Even if the already mentioned economic and political power of the MNE was the reason for the development of the OECD and ILO guidelines, their title is somehow misleading. They are explicitly only addressed to MNE. However, they are intended to cover companies in general, not only MNE. They do not want to create gaps between MNE and domestic companies, even if it has turned out that this is a futile hope. In reality there is a segmentation between these two categories of enterprises.

These “external” guidelines were mainly meant to enrich the fantasy of management in the MNE in elobarating so called private codes of conduct. Such codes have become numerous and are mainly a product of the last two decades. They are in practice confined to MNE, thereby creating gaps between their working conditions and those of domestic companies.

Even if these codes are by no means homogeneous, they all refer to the core fundamental rights as contained in the already mentioned ILO Declaration of 1998. For the rest there are big differences between them. Even more significant are the differences between different branches of activity[21]. To just give an example: In the textile industry the main emphasis is on child labour whereas in the chemical industry or in the transport sector it is on health and safety. Many codes simply refer to the whole set of ILO standards as well as to the law of the respective host country whose wording often has nothing to do with actual practice there[22].

It should be mentioned that not only the contents of the codes are very different from each other but also the genesis of these codes. Originally most codes were unilaterally established by the companies. However, to an increasing extent there is a new generation of codes called “multi-stakeholder” initiatives[23]. Human rights groups, community and development organizations participate in formulating such codes of conduct. These “multi-stakeholder codes” contain also provisions on monitoring, verification, certification of supplier factories, enforcement mechanisms and transparency. Among the most prominent actors in this activity of monitoring codes of conduct are the “Fair Labour Association”, the “Workers Rights Consortium”, the “Social Accountability International”, the “Ethical Trading Initiative”, the “Clean Clothing Campaign” and “Worldwide Responsible Apparel Production”, to just give some examples of an almost endless list.
[24]

[21] For an example of such branch specific codes see G. van Liemt, Codes of Conduct and International Subcontracting: a ‘private’ road towards ensuring minimum labour standards in export industries, in: R. Blanpain (ed.), Multinational Enterprises and the Social Challenges of the 21st Century, The Hague / London / Boston 2000, 167 et seq.
[22] For an illustration of the big variety of codes see C. Scherrer / T. Greven, Global Rules for Trade: Codes of Conduct, Social Labeling Workers’ Rights Clauses, Muenster 2001 and K. Webb (ed.), Voluntary Codes: Private Governancem the Public Interest and Innovation, Ottawa 2003
[23] For details of this development see L. Compa, Corporate Social Responsibility and Workers’ Rights, Comparative Labor Law & Policy Journal 2008, 1 et seq. (5 et seq.)
[24]

Many of the codes only cover the relationship between the MNE and their employees. However, to an increasing extent sub-contractors as well as the whole supply chain and some times even clients are included. Normally such codes require that in case of violations these either have to be corrected or the business relationship has to be stopped. The latter, of course, is a very ambiguous sanction since it may lead for the employees of the sub-contractor or the client to the loss of the job and, thereby, to a further worsening of their situation.

All these codes are, of course, legally non binding. They are “light touch” regulations or “soft law”. There is only a moral obligation of the MNE to respect them. Unfortunately it happens quite often that the content of the codes is unknown to the employees as well as to those persons who are responsible for implementing them. Then of course there is no awareness of violation. In case of unilaterally developed codes the companies are very much interested in internal conflict-resolution. Therefore, in these cases the outside observers do not learn anything about possible violations. However, many companies want to make perfectly clear that they are not interested in hiding violations have decided to be exposed in regular intervals to so called “external monitoring”. This of course applies – as already mentioned – to all “multi-stakeholder codes” of the new generation. Such monitoring procedures prove to be quite efficient. In case of negotiated codes it depends on the strength and vigilance of the partner with whom the code was established whether and in how far the public can be mobilized and thereby put pressure on the company’s management. In this respect up to now the NGOs have proved to be rather efficient. For example the NGO “clean clothing campaign” has succeeded to provoke immediate reactions of multinationals in case of violations which happened in developing countries. In short and to make the point: even if the codes are not legally binding and even if there are still deficiencies in implementing them, to a bigger and bigger extent the external pressure in case of violation can no longer be ignored.

In the meantime quite a few MNE use the standards of their employment relationships as marketing strategy and therefore initiate competition for the better in this area. In this context to a significant extent "social labelling" plays an important role. Products of companies fabricated according to the rules of the game get a label

in a so called certification procedure. It is not surprising that those who get such labels use them in their marketing strategy.

IV. International Framework Agreements

The most recent development in this context consists in agreements which are concluded between global union federations and a growing number of MNE[25]. Even if already in 1988 such an International Framework Agreement (IFA) was signed between the French transnational food company BSN (renamed Danone in 1994) and the International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)[26] the IFA are a phenomenon which really started only in the first decade of the 21st century. Mainly two developments within the international trade union camp made this new strategy possible: the transformation of the former International Trade Secretariats (ITS) into Global Union Federations (GUF) and the merger of the two largest international confederations, the International Confederation of Trade Unions (ICFTU) and the World Confederation of Labour (WCL) into the single International Trade Union Confederation in 2006[27]. The by far most active GUF in this field is the International Metalworkers' Federation (IMF) followed by the Union Network International (UNI), the Building and Woodworkers International (BWI), the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), the already mentioned IUF and the International Textile, Garment and Leather Workers' Federation (ITGLWF)[28]. The conclusion of IFA is rapidly increasing. Therefore, the fact that the number of IFA compared to codes of conduct is still small, should not be overestimated. This will change soon. So far the MNE which have concluded IFA almost exclusively are based in Europe[29].

[25] For an interesting account of this development see R.-C. Drouin, Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges, Comparative Labor Law & Policy Journal 2010, 591 et seq.
[26] For details see D. Gallin, International framework agreements: A reassessment, in K. Papadakis (ed.), Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework ?, Geneva 2008, 15 et seq (26 et seq.)
[27] See K. Papadakis, Introduction, in K. Papadakis, op. cit., 1 et seq. (6)
[28] Ibidem 4
[29] See A. Sobczak, Legal dimensions of international framework agreements in the field of corporate social responsibility, in: K. Papadakis, op. cit., 115 et seq. (116)

The IFA should not be confused with traditional collective agreements concluded by the two sides of industry on national level. They do not specify in detail terms and conditions of employment but rather set a framework for the relationship between the MNE and the trade unions, the workers, again mostly throughout the whole supply chain. The GUF and the MNE "function in this context not so much as classical bargaining parties but rather as civil society actors shaping and channelling 'culture' as a catalyst both for change in mentalities and subsequently for the formulation of relevant public policies and laws"[30] The ICFTU insists that the IFA "establish frameworks of principle and are not detailed collective agreements. They are not intended to compete or conflict with collective bargaining agreements at national level"[31].

Nevertheless the IFA are a new quality compared to codes of conduct with which they should not be confused. Whereas codes of conduct to a great extent were intended to escape any engagement with trade unions, the GUF and their affiliates in the different countries are now recognized as partners with whom arrangements are to be made. As far as the content is concerned, the IFA reaffirm the ILO conventions to a much bigger extent as codes of conduct. In particular the IFA contain a machinery of joint monitoring which generally introduce three important tools: "(a) joint monitoring committees that consist of management and workers' representatives and that are intended to meet regularly in order to assess progress or deal with conflicts; (b) proactive strategies aimed at creating a managerial culture respectful of the IFAs; and (c) the adoption of incentives for workers representatives at local, national and cross-border levels to report violations"[32]. How efficient these mechanisms are in actual practice will be a most interesting topic of empirical research in the future.

From a legal point of view there are many open questions in connection with IFA. There is still a lack of legal framework for the conclusion of such international agreements. As codes of conduct IFA do not fit into the existing set of legal categories, there is no access to Courts in case of violations. Neither MNE nor GUF

[30] K. Papadakis / G. Casale / K. Tsotroudi, International framework agreements as elements of a cross-border industrial relations framework, in K. Papadakis, op. cit., 67 et seq. (85)
[31] ICFTU, A trade union guide to globalisation, 2nd edition Brussels 2004, 95
[32] K. Papppadakis / G. Casale / K. Tsotroudi, op. cit., 74

do have a mandate to fix binding regulations for the subsidiaries and their workers throughout the world including all the elements of the supply chain. And last not least: The conclusion of IFA is voluntary because there are still too many legal and factual obstacles for international industrial action[33].

Whether in the foreseeable future the ILO will succeed to establish a legal framework to support international collective bargaining patterns may well be doubted. However, as Renée-Claude Drouin[34] suggested, much could be done by the ILO by way of technical cooperation. This could range from advisory support in the period before conclusion of the IFA to provide mediation or arbitration services to the parties of the IFA.

Presently quite a bit of research is done on the factual implementation of IFA. Thereby factors can be identified which support the intended effects as well as factors which prevent such a development.[35]

IV. Conclusion

The ILO has played for more than nine decades an important role in setting international labour standards. In spite of its admirable achievements the problems embedded in the structural pattern of the ILO should not be overlooked. The low rate of ratification, the gap between ratification and implementation in practice, the inefficiency of the monitoring procedure and the difficulty to provide proper responses to the needs of the informal sector are well known problems. The ILO has succeeded in transcending the mere standard setting approach by adding soft law strategies, thereby stimulating consciousness for the worldwide need of building up sustainable structures. However, the question remains whether the ILO needs a structural reform in order to improve its performance. There seems to be in particular a need to increase the flexibility of the standards by not going to much into details, to better

[33] See for details J. M. Servais, Labor Law and cross-border cooperation among trade unions, in: M. E. Gordon / L. Turner (eds.), Transnational cooperation among labor unions, Ithaca 2000, 44 et seq.
[34] R.-C. Drouin, The role of the ILO in promoting the development of international framework agreements, in: K. Papadakis, op.cit., 237 et seq (246 et seq.)
[35] See the overview in K. Papadakis, Globalizing industrial relations: what role for International Framework Agreements?, in: S. Hayter (ed.), The Role of Collective Bargaining in the Global Economy, Geneva 2011, 277 et seq. (284 et seq.); an interesting and enlightening example of such an ongoing research is the paper by M. Fichter et alii, Going local with global policies: Implementing international framework agreements in Brazil and The United States, presented at the 7th ILERA Regional Congress of the Americas on 24 August 2011

combine the universal approach with regional perspectives, to develop appropriate concepts for the informal sector, to replace the top down by a real bottom up procedure and finally – and most important – to replace the sanction oriented monitoring structure by a concept of assistance, thereby closely linking standard setting with technical cooperation.

However, even if the potential of the ILO would be brought to its optimum, the institution alone still would remain only a part of the machinery to set and spread international labour standards. It needs to be complemented by activities of private actors. Of utmost importance in this context are the codes of conduct of MNE and and even more important the IFA concluded between MNE and GUF. These private activities should not be conceived as rivals to the ILO's mission. The two sides depend on each other and produce synergy effects by a public-private-policy mix for which no alternative is available. This not only means a combination of public and private but also a combination of "hard law" and "soft law". Only this double combination has a chance to be successful – at least in a long-term perspective.