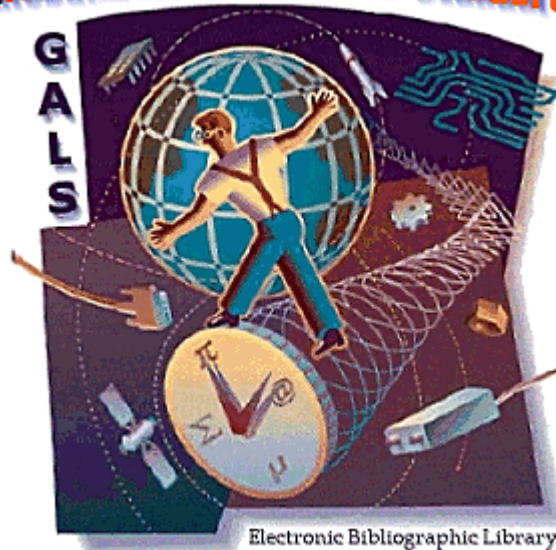


Globalization and Labor Standards



GALS Newsletter

March, 2007

Volume 6, No. 3

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The Globalization and Labor Standards Project has initiated a Working Papers Series. GALS Working Papers can be found at in PDF format at www.laborstandards.org. They are listed separately as well as cross-referenced and integrated into the GALS library. The library contains links to the full text of the Working Paper. GALS Working Papers are also listed in the newsletter.

NAFTA/GATT

Alben, Elissa, "GATT and the Fair Wage: A Historical Perspective on the Labor-Trade Link", *Columbia Law Review* v. 101 (2001) p. 1410-1447

Abstract:

This article traces the early history of the General Agreement on Tariffs and Trade (GATT) to argue that while GATT is certainly amendable to linking labor standards with trade negotiations, the language of the Agreement and the historical understanding of what constituted "fair" trade is difficult to reconcile with the dominant contemporary approach to fair labor standards. The author focuses on debates in 1953 about whether to admit Japan to the GATT, and notes that at the time of Japan's petition for admission, an interpretation of fair trade that would have permitted trade sanctions for "unfair labor conditions" was rejected in favor of a wage-based understanding of fair trade. Based on this early history, the author writes that Article XX of the WTO, a provision often relied upon by modern advocates of linking trade and labor standards, "was not crafted to address labor standards concerns, or even human rights principles generally," but was more likely "designed to prevent countries from obtaining a comparative advantage through extreme forms of cost minimization." By contrast, most contemporary discussions of what constitutes "fair" trade relies the four fundamental labor rights adopted by the ILO in 1998 - freedom of association and collective bargaining, elimination of compulsory labor, abolition of child labor and protection against discrimination in employment. The author posits that the shift away from a wage-based approach toward the newer human rights approach might be a way to avoid the accusations from developing countries that it is protectionist to link trade to labor standards because their low wages are their main source of comparative advantage. While history "is not on the side of those who advocate entirely delinking trade and labor issues," the author concludes that the considerable difference between the original wage-based understanding of labor standards incorporated into the 1947 GATT and the more recent human rights understanding based on the ILO fundamental rights should compel scholars and labor activists to choose between returning to wage-based concepts of labor standards or resorting to "interpretive strategies" that seek to redefine provisions of the GATT in ways that will establish a link between human rights and trade issues.

Subjects: [International Labour Organization \(ILO\)](#), [NAFTA/GATT](#), [Trade Agreements](#), [Trade Conditionality](#)

Full-text links: || [WESTLAW](#) || [LEXIS-NEXIS](#) ||

Taylor, Chantell, "NAFTA, GATT, and the Current Free Trade System: A Dangerous Double Standard for Workers' Rights", *Denver Journal of International Law and Policy* v. 28 (Fall 2000) p. 401-435

Abstract:

This article contrasts the enforcement mechanisms for protecting corporate and investor rights under the North American Free Trade Agreement (NAFTA) and the World Trade Organization/General Agreement on Trades and Tarrifs (WTO/GATT) with those provisions for the enforcement of labor rights in the International Labor Organization (ILO) and the NAFTA side letter on labor issues, known as the North American Agreement on Labor Cooperation (NAALC). NAFTA provides private investors with standing to sue national governments directly, the right to binding arbitration if an investor believes that a government has breached an obligation under NAFTA that caused the investor to incur a loss and provisions for unlimited damages for corporations when they lose money as the result of a federal law that does not comply with NAFTA. The WTO contains similarly strong enforcement mechanisms for

corporations against governments, including penalties and trade sanctions. By contrast, the ILO has no coercive enforcement mechanisms while those included in NAALC are extremely limited. Despite hortatory language in the NAALC concerning freedom of association, the right to bargain collectively, the right to strike, the right to minimum employment standards, and so on, NAALC's Ministerial Council can only hear complaints concerning forced labor, equal pay for men and women, worker compensation, and protection of migrant rights. Further, it is only required to respond to disputes in three areas - child labor, minimum wages and occupational health and safety. Even then, the Ministerial Council may only respond if proof exists of a "persistent pattern of failure by the other Party to effectively enforce" its own labor laws. If the Ministerial Council declines to review a matter, then it may be referred to an Evaluation Committee of Experts, whose remedies are limited to "non-adversarial and non-binding recommendations on the issue." The author argues that protecting workers should be equal to dismantling trade barriers and protecting intellectual property, and considers it an "unacceptable evasion of responsible governance to strategically exclude labor issues from the heart of global commerce."

Subjects: [FTA](#), [Labor Rights in General \(Misc.\)](#), [NAFTA/GATT](#), [Trade Agreements](#), [Trade Conditionality](#)

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Right to Strike

Kovacs, Erika, "The Right to Strike in the European Social Charter", *Comparative Labor Law & Policy Journal* v. 26 (2005) p. 445-476

Abstract:

This article reviews the major case law of the European Committee of Social Rights (Committee) concerning the right to strike set forth in the European Social Charters of 1961 and 1996 (Charter). While the European Union does not purport to change the regulations of the right to strike of the respective member states, the Committee has declared the laws of some member states as either consistent with or contrary to the Charter's guarantee of the right to strike. The Committee has disagreed with various attempts to limit the right to strike, such as Germany's laws permitting strikes only when aimed at concluding a collective bargaining agreement, the UK's prohibition on secondary action, and Malta's prohibition on recognitional striking. The Committee has also ruled on some procedural aspects of the right to strike, permitting laws requiring a cooling-off period, rejecting laws requiring mediation or arbitration prior to calling a strike, and refusing to permit ballot requirements that set fifty percent or more as a threshold for calling a strike. The Committee has reversed course several times on whether member states may restrict the right to call a strike to trade unions or whether unorganized workers may call a strike. The author notes that these repeated reversals stem in part from differing philosophical views about whether the right to strike is a collective right whose aim is to equalize the power of employees with that of their employers, or whether it is an individual right akin to a civil liberty. The reversals also stem from differences between member states about the nature of the individual employment contract. In countries such as Germany, France or Sweden, the individual employment contract is "suspended" during a strike with respect to the employee's obligation to work and the employer's obligation to pay wages, but remains in effect for all other purposes. The practical effect of this view is to protect striking workers from dismissal or other forms of reprisal. By contrast, in the United Kingdom, the employment contract is considered repudiated by striking workers, so that the employer owes no right to continued employment or right to reinstatement along seniority lines.

Subjects: [Country-Specific Case Studies](#), [European Union](#), [Secondary Strikes and Boycotts](#)

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Links to Related Projects

The International Labour Organization's (ILO) Informal Economy Resource Database:

<http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

ETUI Labourline: <http://www.labourline.org/Etui>

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at

dbensman@smlr.rutgers.edu.

Labor and Global Change Database: <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

LabourWeb: <http://www.lex.unict.it/eurolabor/en/>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

The Marco Biagi Centre for International and Comparative Studies:
<http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's website will soon offer an English version.

Trade Unions and Labor Relations Database: <http://www.polwiss.fu-berlin.de/tu/english/>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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