

What Future for Social Rights under Global Trade? Reflections and Scenarios

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Abstract

In the perspective of strong re-launch of the linkage between international trade and promotion of core labour standards we need a fair-trade complying with the rules, the principles of equality, solidarity and correctness within exchanges; a trade (and an economic development) that is not founded on competitive devaluation of social regimes, but, on the contrary, become an occasion to promote a sustainable development.

1. Precarious lives and uncertain future

People are scared because of security, migration and climate change issues. People are also worried about the economic crisis and poverty. The protracted levels of high unemployment in several countries, together with the growing prevalence of low-wage jobs and insecure patterns of employment, contribute to rising social discontent in many States.

The challenge is particularly acute for the younger. For the first time since the Second War, there is a real risk that the European generation of today's young adults ends up less well-off than their parents.

The technological advances of the Fourth Industrial Revolution have fundamentally altered society in ways both seen and unseen. This digital transformation has changed how people live and work.

The various changes affecting the world and the real sense of insecurity felt by many have given rise to a growing disaffection with mainstream politics and institutions at all levels. This often manifests itself through indifference and mistrust towards the action of public authorities. It also creates a vacuum too easily filled by populist and nationalist rhetoric.

In addition, today, we are experiencing a slowdown, if not a real crisis of the models of regional integration, caused by the resurgence of economic nationalisms. Even Countries that have traditionally championed an open global economy, like USA and UK, are now looking into ways to put a brake on imports, limit immigration and favour domestic production.

So, a lot of questions arise.

What tools can be used to convey a new consensus and cohesion phase in the international community where development policies, international business transactions and social and environmental sustainability coexist harmoniously? And what responsibilities, in this confused and fluid scenario, must take the economic actors, especially the multinational companies that move investment and productive locations globally? Finally, what is the future of social rights?

Of course, answering these questions is hard matter.

2. The link between economic development and economic growth

Development is often understood as a synonym for economic development or economic growth.

Social and economic development is closely related, not only conceptually, but also in the practices of social and economic relationships. The link between economic and social sphere is not an unnatural invention and it's not related to utopia or ideology. Countries that have emphasized education, health and related aspects of social development tend to have the best economic performance.

In fact, the fundamental Treaty on human rights, The International Covenant on Economic, Social and Cultural Rights contains the idea of integration between economic and social sphere.

Also, in the European Union construction, the social harmonization has been conceived since its inception as functional to avoid forms of dumping and competition distortions founded on normative disparities, judged as inconvenient with regards to the functioning of the internal market. This justification is based on a certain idea of a regulated market, an *ordo-liberal* vision in which the adoption of a minimum of internationally recognized social norms is a pre-requisite for trade, which can facilitate the liberalization of interstate trade by guaranteeing equality of basic legal conditions for any economic operator.

Also the USA praxis, codified in the Section 301 of the 1974 Trade and Tariff Act, allows to get to the notion of fair trade, connoting it in a social perspective: as a matter of fact, having in mind that regulation, the trade policies of foreign Countries founded on the systematic violation of workers' internationally recognized labour rights, represent an unreasonable, unfair and inequitable trade practice. It is a trade practice that is considered unreasonable, not the violation of social rights.

Therefore, the reciprocal loyalty in the trade relations implies the respect of fundamental social rights.

3. Labour law as a right of sustainability

There is a linkage between liberalization of exchanges and labour law which entails a growing inter-dependency among economies, favoured by a strong expansion of the movements of capital and trans-national companies within international exchanges.

This linkage constitutes a foundational element of international labour law. The function of labour law has been evident since its inception: it consisted in contrasting the opportunism of States that would push – or were pushing – to postpone the protection of workers' rights with respects to the economic or competitive interest of their enterprises. For that, the 1998 International Labour Organization Declaration on Fundamental Principles and Rights at Work, and the fundamental Conventions, promote a supranational system of social standards.

Labour law, especially if projected in the international and supra-national dimension, may be considered as a right of sustainability: the respect of fundamental social rights and, more generally, the conditions of effectiveness of labour laws are part of the prerequisites of a globally sustainable competition. In fact, the economic development without integration would lead to the deterioration of the quality of life in the short term and the consumption of capital in the long term.

A careful analysis of the sources of international law allows explaining a hard core of “unconditioned” social rights, they may not be inflected by reason of the different economic and cultural situations. These rights have already been contemplated by the International Labour Organization's Conventions, by the Universal Declaration of Human Rights and by the 1966 UN Treaties on political and civil rights and economic and social rights; they have been recognized as “fundamental” by the Declaration of Copenhagen on social development and consecrated by the historical Declaration adopted by the 1998 International Conference of Labour in Geneva. We are dealing with freedom of association and right to collective bargaining; with the prohibition of forced and mandatory labour; with the protection of minor labour; with the prohibition of discrimination. This set of *core labour standards* must therefore be considered of universal application, so much so that the International Labour Organization requires the compliance with it to member States merely by reason of their belonging to the Organization. We are dealing with workers' rights that essentially behave like internationally recognized human rights.

4. The importance of social clauses

For that, social clauses must be relaunched and find space and revival.

With social clause we intend peculiar norms having as an object the internationally recognized rights that States and, consequently enterprises (in their role of employers) must comply with, to be able to benefit from determined effects of international trade liberalization, that is to avoid incurring in actual economic sanctions.

The social clause has a codification function of already operating principles in the field of general international law: the trade treaties that bear it inside should, consequently, be interpreted as a confirmation, broadening and specification of already existing common norms.

So, we face the perspective to insert a social clause in international trade treaties that may institutionalize a formal linkage between openness of the market, economic and social progress, improvement of labour conditions and abolition of the most intolerable forms of exploitation.

Indeed, the social clause is a very controversial matter, because, if on one hand it may be considered one of the most efficient instruments to sustain and promote the interactions between international trade and social rights, on the other hand, it shows many criticalities for its structure and concept. Such criticalities may be found even in the most advanced chapters intended to sustainable development: in terms of ability to create effective processes of harmonization of social standards, in terms of effectiveness of the assumed commitments, with problems both in terms of monitoring, and, most of all, in terms of procedures of controversies resolution and of sanctioning system, therefore risking of being a merely exhortative instrument for social justice “on paper”.

But, despite this, fair trade can be considered as a means to complete the game of free trade, guaranteeing to the State and economic actors that none of the global players will take advantage of the unfair benefits that result from the non-application of the national or international social norms. Social standards therefore penetrate in the regulative sphere of trade law as an instrument of implementation of a principle of fair competition at the international level, aimed at limiting the phenomena of social dumping.

The difficulties in negotiating commercial mega-treaties could be resolved in a new impetus for bilateral treaties, assuming for the first-time commitments, albeit still very temperate, in the field of the protection of social rights and environmental issues. The role of the World Bank and of institutional investors could be result amplified in this context, by developing a financing project and an international cooperation where stabilization clauses prohibiting States from amending the existing regulatory framework at the time of funding will eventually contain derogations for social and environmental rights. The multinational enterprise, whose social and economic power surpasses that of individual national States, could find a new planetary legitimacy if it adopted and carry out with seriousness and commitment, throughout the production chain, contained in the International Labour Organization Regulations.

Of course, the demand to link trade agreements with social agenda objectives requires the use of general trade sanction towards violating Countries, as the suspension or prohibition of market access for those products which violate the fundamental social rights.

Hence, the way to go beyond the mere logic of “moral suasion” is the social clause, which allows a decisive step forward to the promotion of fundamental social rights.

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