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The Rise and Demise of the 'Social Clause' in the Doha Round

Implications for the ILO-WTO Coherence Quest

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THE RISE AND DEMISE OF THE 'SOCIAL CLAUSE' IN THE DOHA ROUND IMPLICATIONS FOR THE ILO-WTO COHERENCE QUEST

By Simon Pahle[1]

Abstract: The international labour movement's campaign to secure effective ILO-WTO coherence by way of a 'social clause' failed in the 1990s. Many purported beneficiaries of such a clause conceived of the proposal as a proverbial 'terrorist', rather than a 'freedom fighter'. Reappraising debates in India and the US, this paper understands the failure in terms of discursive struggles played out both within national contexts, and in the transnational domain. It is argued that previous attempts at unpacking the debate have either employed too simplistic schema, or paid insufficient attention to its transnational dynamics. However, once such shortcomings are addressed, we can begin to see the outline of the how the international union movement (ITUC) can pursue ILO-WTO coherence after Doha. However, it is anything but certain that ITUC can manage to keep such a quest within a politics of the possible: It requires that ITUC's most powerful constituents become wedded to a genuinely internationalist position and process.

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INTRODUCTION

The plight of working people in the context of globalization is anything but a fringe concern. It resonates deeply with critiques of globalization, and sits at the heart of momentous fads such as fair trade labelling and 'corporate social responsibility'. However, in terms of global governance and the quest for coherence, the international union movement's hitherto failed attempts to get a social clause into the WTO merits particular attention: Since such a clause would *somehow* make exporting countries' enjoyment of market access rights in overseas markets *somewhat* conditional on its observance of ILO obligations[2], it drives at a more structural and comprehensive coherence mechanism than remains illusive in the case of in civic regulation or corporate voluntarism.

There is no dearth of academic engagement with the idea of a social clause. A sizeable amount of scholarly work has engaged with whether a social clause is *desirable,* measured against transcendental referents of the infinitely right, whether conceived of in terms of economics[3], ethics[4], or development more broadly[5]. While such explorations certainly merit attention, the approach here is different: It is aligned with another sizeable camp of studies[6] that have tried to understand why the spearhead proponent of the social clause, ICFTU/ITUC[7] – while undertaking "the most wide-ranging [campaign] in the history of the union movement"[8] – failed to secure sufficient support for the proposal from its own Southern constituents.

The above does not mean that I pretend to engage with the debate as unpartisan observer. I believe it is a matter of intellectual honesty to state one's own inclinations clearly. I do sympathise with the international trade unions' quest to put WTO at the service of inducing the protection of core labour standards across the global economic expanse. The point here is that merely espousing my substantive opinions on the social clause is likely to make much

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[2] I use somehow/somewhat to emphasise that no one proposal has been consistently indeterminate in one way or another. Indeed, such vagueness has played a considerable role in fomenting the discursive politics discussed in this paper.
[3] E.g., Bhagwati 1995, 2002, 2004; Martin & Maskus, 2001
[4] E.g., Gross 2003
[5] Dessing 2001
[6] Van Roozendaal 2002; Hensman 2001; Kolben 2006; Anner 2001
[7] In 2006, the International Confederation of Free Trade Unions (ICFTU) merged with World Confederation of Labour (WCL) to form a new mega-confederation, the International Trade Union Confederation (ITUC) with some 166 million members. Visit http://www.ituc-csi.org/
[8] ICFTU, 1999a: 76

less of a difference than are efforts which adds to the union movements' understanding of why the very people supposed to benefit from the social clause have been lukewarm if not outright alien to the idea. Such an understanding will be imperative for the future quest for ILO-WTO coherence: The social clause idea will invariably come up against considerable resistance. So, unless the union movement manages to forge an internationalist compromise within its own ranks, the quest will certainly fail.

The paper sets out with a brief history of social clause attempts leading up to its final demise as the current WTO negotiation mandate was agreed on in 2001 Doha Ministerial[9]. The second part of the paper contends that social clause feud must pay attention to discursive politics, and outlines how discourse theory may be employed to this effect. This informs the subsequent critical appraisal of the most comprehensive study of the social clause campaign to date, Gerda van Roozendaal's monograph *Trade Unions and Global Governance* (2002). By way of revisiting some of the perceptions and arguments that characterized the debate in India, I question whether her way of unpacking the debate – as an argumentative struggle involving articulations of either an *interventionist* or a *liberalist* discourse on globalization and workers' rights – captures the discursive politics that defeated the social clause proposal.

Resonant with issues raised in the second part, I thirdly consider the transnational dynamics of the campaign: While proper embedded studies of discursive politics *within* specific polities are certainly necessary, I argue that it is just as important to emphasise how such dynamics spill *across* polities. This perspective allows me to suggest that ICFTU's failure cannot be accounted for in terms of failing to sufficiently graft the campaign on the points of view of Southern labour alone. The fact that the most powerful Northern unions – the US peak federation AFL-CIO in particular – were not wedded to ICFTU's position and strategies, may have been a decisive factor.

In the fourth part I discuss what the implications might be for the international union movement's ILO-WTO coherence quest. Most scholars reviewing the rise and demise of the social clause proposal in the 1990s conclude that core labour standards now ought to be

[9] The title of this paper might come across as somewhat misconceived, since the social clause was decisively rejected *before* the Doha Negotiations had commenced. The main events of the rise and demise happened in the *interim years* between the Uruguay and Doha Round, when WTO members discussed what would be negotiated in the Doha Round. For want of a better alternative, I have resolved to denote these preparatory years as part of the Doha Round.

fortified elsewhere than in WTO. I question this conclusion, suggesting that the failure, rather than of signifying the end of any ILO-WTO linkage, may help the union movement's identification of key zones and dynamics of contestation, both substantively and in process terms. However, to forge commitment to genuinely internationalist positions and processes across its constituency, will be a daunting challenge for ITUC.

I. A Repeated Call – Falling on Deaf Ears

The issue of linking trade and labour standards emerged already in the 1890s, when the US and British governments enacted trade laws to ban import of products made with prison labour. Attempts at a multilateral instrument have antecedents as far back as the 1948 Havana Charter of the stillborn International Trade Organisations (ITO), which included a clause requiring members to "take whatever action that may be appropriate and feasible to eliminate [unfair labour] conditions within its territory"[10]. But ITO was eclipsed by GATT, and while its general exception clause (Art XX) permitted restrictions on importation of goods made with prison labour, GATT made no mention of countries' labour rights obligations.

The Uruguay Round (1986-94) expanded the ambit of the multilateral trade regime into a number of trade-*related* issues – "aspects of the production process that are intrinsic to the production of goods and services for trade, but in themselves do not constitute […] tradable entities"[11]– such as specifying states' obligations regarding enforcement of intellectual property rights (TRIPS) and protection of inter-state investor rights (TRIMS and partly GATS). This expansion seemed to suggest that the time was ripe for a social clause. At several different occasions, US (and France) suggested the establishment of a WTO working group on the issue. In 1990, a US proposal received support from EU, Canada, Japan, the Nordic and some East European countries, but still failed to produce a favourable Ministerial decision, as developing countries feared that a working group would lead to a multilateral instrument that could be used for protectionist purposes[12]. US tried to strong-arm a working group reference into the end-of-round Marrakech Ministerial Declaration[13] but developing countries' resistance was unrelenting.

[10] Quoted in Charnovitz,1995: 170
[11] Wilkinson, 1999:166
[12] Van Roozendaal, 2002: 17
[13] *Ibid:* 97

In preparation of the first WTO Ministerial in Singapore (1996), US again proposed that a working group be established. Just as before, a great majority of developing countries opposed the proposal fiercely. In his plenary statement, Brazil's Minister said that "the protection of core labour standards [must not] be utilized as a 'scapegoat' to deal with the problem of structural unemployment in the developed economies"[14]. The Indian Minister made clear that even if the proposal was for the establishment of a working group, there could be no doubt about what proponents would like this to lead to: "We do not see any purpose in bringing this subject into the WTO except possibly to use trade measures to enforce labour standards, if not now, then at a future date"[15]. Eventually, the *1996 Singapore Ministerial Declaration* (Art 4) concluded:

> "We renew our commitment to the observance of internationally recognized core labour standards. 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. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard we note that the WTO and the ILO secretariats will continue their existing collaboration"[16]

The chances for a social clause being negotiated in the upcoming round were, once again, greatly decimated. But ICFTU was heartened by the fact that this was the first time governments had pledged, in a multilateral trade treaty, their commitment to core labour standards. Moreover, WTO members had mandated ILO to conclusively identify the meaning of 'core labour standards'. In June 1998, ILO successfully adopted the *Declaration on Fundamental Principles and Rights at Work* (hereafter, ILO1998), whereby the following labour standards were deemed fundamental: Freedom of association and the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective elimination of child labour; and the elimination of discrimination in respect of employment and occupation[17].

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[14] http://www.wto.org/english/thewto_e/minist_e/min96_e/st8.htm
[15] http://www.wto.org/english/thewto_e/minist_e/min96_e/st27.htm
[16] http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm
[17] ILO, 1998. The Declaration makes clear that members, "even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation, to respect, promote and realize […] the fundamental rights which are the subject of these Conventions" and that the rights mentioned are considered "fundamental to the rights of human beings at work, irrespective of level of development of individual member States". There is, nevertheless, considerable disagreement as to what this means in practice:

Proponents might have thought that this clarification altered political circumstances sufficiently to turn the fortunes of the social clause around. Before and during the failed 1999 *Seattle Ministerial*, US continued touting the working group idea. The interpretation that the Seattle breakdown was in some part *caused* by this insistence is certainly an exaggeration. In fact, a proposal for a discussion group, drafted by Costa Rica, was actually on the table as the Ministerial broke down[18]. But the assumption that this reflected any change in developing countries' determination to refuse negotiations of the issue was proven equally erroneous. In fact, as the working group idea was flouted yet again at the 2001 *Doha Ministerial*, a leading developing country such as India seemed more recalcitrant that ever: "We firmly oppose any linkage between trade and labour standards. The Singapore Declaration had once and for all dealt with this issue. We should firmly resist negotiations in this area; it is not desirable, now or later. We consider them Trojan Horses of protectionism"[19]. Consequently, the Doha Declaration, which sealed the mandate for impending negotiations, merely referred back to the Singapore Declaration.

II. THE DISCURSIVE POLITICS OF THE SOCIAL CLAUSE: BEYOND DICHOTOMY

It is difficult to make much sense of the rise and demise of the social clause proposal without paying due attention to discursive politics. *Prima facie* characteristics of the feud compel such attention: One seemingly singular policy proposal was inscribed with radically different meanings by people that otherwise share concerns about human rights in the context of deepening globalization. While some saw it as a proverbial *freedom fighter* which would "transfer the benefits of trade liberalisation to ordinary people in developing countries"[20], others were equally certain about it being a *terrorist*, "a stick with which to beat the third world"[21].

That people conceive of seemingly same politics in very different ways is commonplace. Yet the divergence here is quite remarkable. This is in no small part due to the fact that the social

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Universality is not the same as uniformity, and there exists no agreement as to how one can determine whether a member is acting in observance of obligations or not (Van Roozendaal, 2002: 44ff). See also Alston, 2005.

[18] Anner, 2001: 15

[19] http://www.wto.org/english/thewto_e/minist_e/min01_e/statements_e/st10.pdf

[20] ICFTU, 1999b

[21] Martin Khor (Third World Network), quoted in Green Left Weekly, 2000

clause was and remains a largely *unspecified* policy idea. It has no previous incarnation or multilateral forefather, and thus no manifest outcomes against which various judgements could converge. Moreover, the proposal resonates with deeply contentions issues of multilateral market governance. Hence, the social clause brings to mind a phantom that everyone has heard of and most believe to hold great power, in one way or another, but no one has ever seen. This warrants an appraisal in keeping with the central preoccupation of discourse theory: Since the *signifier* (the name itself, e.g. "social clause") has no inherent property which determines how it is translated into *signified* (the meaning, e.g. "freedom fighter" or "terrorist"), the question is how diverging meanings are created.

Radical divergence does not mean that there is no regulation – no limits, fixity, or reason – involved when people arrive at their different interpretations. I propose we think of such interpretations as somewhat regulated by discourses pertaining to field at hand, globalization and labour. A discourse is here understood as "an ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities"[22]. This conception of discourse is akin to Geertz's famous conception of *cultures*: Webs of meaning that human beings have suspended themselves in. I consequently use *thought-culture* as a metaphor for discourse. Since thought-cultures command 'routinized interpretative commitments', they play a key role when people render the world meaningful – for instance, when they render meaning to a signifier such as 'the social clause'.

Approaching the social clause debate as discursive politics is not quite the same as undertaking an argumentative study[23], since a discursive politics approach explores how arguments are *articulations of* more comprehensive thought-cultures. This is an important distinction. First, an argumentative approach may well assume that arguments are a mere *means* by which people express and further their interest. A discursive politics approach certainly agrees that people articulate and promote their interests through language, but the relationship between interest and language is not straightforward since interest itself is conceived of in language. Secondly, and related to the former point, discourse is intimately related to identity. It is by being interpellated by and articulating discourse that the actors

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[22] Hajer, 1995:44

[23] For attempts at organising the social clause debate in argumentative taxonomies, see Griffin *et al*, 2003; and Kolben, 2006.

become socially differentiated, and the discourse is enlivened in social life and takes on political significance.

This does not mean that any one actor is therefore swayed by or identify solely with any single discourse. Any place or issue in social life is sought imbued with meaning by multiple discourses, just as any one actor is interpellated by multiple and variable discourses depending on context and role of the moment. But the extent to which any one discourse holds sway over an actor's way of giving meaning to the world may nevertheless vary: Some actors may collate insights form different thought-cultures when relating to a phenomenon, drawing on discourses as repertoires. Others may tend to conceive of the phenomenon in terms of a singular discourse, suggesting such a degree of identification with a specific thought-culture that it might be thought of as something of an interpretative straightjacket.

Few would take issue with the statement that discourse, in the general sense, does regulate the way people make meaning of actions. But the actual *identify, name and demarcate* the specific discourses in play in any particular field is a considerably more contentious affair. Then, "discourse becomes an *entity that the researcher projects onto reality* in order to create a framework for the study [Consequently, they are] objects that the researcher constructs, rather than as objects that exists out there, ready to be identified and mapped"[24]. Hence, whenever specific articulations – tangible texts existing independently of the researcher – are taken to be articulations of a specific thought-culture whose name and boundary is the artefact of the researcher, we are invariably in epistemologically muddied waters.

However, it seems rash to give up altogether the attempt of trying to understand people's diverging problem definitions as articulations of different thought-cultures: Most readers will readily agree that there *is* a *neo-liberal* thought-culture out there, and that this thought-culture compels many people to make 'routinized interpretations' on the basis of often implicit assumption relating to efficiency, methodological individualism and utility maximization. Most readers will also agree that neo-liberalism is *not* the only comprehensive and pervasive thought-culture there is. Still the epistemological problem remains, so the researcher's inferences about the relationship between articulations and thought-cultures should be subject to considerable doubt.

[24] Phillips & Jorgensen, 2002: 144

Van Roozendal's monograph suggests that the debate about trade and labour rights can be understood as an argumentative struggle between *two* discourses – an *interventionist* and a *liberalist* one[25]. From this point of departure she explores whether international union movement – which she associates with the *interventionist* discourse – was successful in terms of imposing their problem definition and favoured problem closures onto politics both in domestic domains (US and India) and in international institutions (OECD and ILO) during the 1990s.

The substantive kernel of the *interventionist* discourse is the competitive deregulation thesis: While globalization has enhanced the *mobility* of capital and goods, it has entrenched the *immobility* of labour. Most of developing countries' production activity is integrated in buyer-driven commodity chains; here, buyers are relatively few and coordinated, while producers are numerous and poorly coordinated. This structures global economic bargaining in a very unfortunate way from the point of view of labour since the fierce competition on the supplier side may compel producers and governments to flout core labour standards in order to gain competitive edge.

Even in a situation where domestic companies and governments would *want* to protect labour rights, they are deterred by global market forces: If the individual producer enforces standards unilaterally, without his competitors doing the same simultaneously, he is sure to be the 'sucker' as his products become more expensive than that of his competitors. This political economy is one of coordination failure and a race to the bottom[26]. The remedy is to organize some labour rights out of the market competition altogether, on a sufficiently high level of governance. Whereas the free market situation tends to *confer market advantages* on exporters that flout core labour standards, a social clause would *penalize* these exporters, and thus induce a race to the acceptable.

The *liberalist* discourse provides a very different view on the global political economy. The idea that there is any such thing as a race to the bottom is itself challenged on account of FDI's inclination to pay higher wages than domestic capital. The argument that an onus on FDI performance is blind to the core logics of the race to the bottom – namely, that

[25] Van Roozendaal 2002: 50-68.
[26] The commonalties between the race to the bottom and a 'prisoners' dilemma' game are discussed by Cooke, 2005; and by Chan & Ross, 2003.

multinational companies increasingly organize global production through sourcing so as to use Southern companies as cost-cutting proxies – is dismissed with reference to negative correlation between core labour standards enforcement and export growth. The main tenet of the liberalist discourse is that overall global welfare, and its relative distribution improves with the rolling-back of politically motivated market interventions, not by introducing new interventions.

Indeed, what is likely to make the greatest difference to labour's plight is a genuinely liberalized world economy in which labour *too* would move freely across borders. It is readily recognized that the prospects for such liberalization is extremely slim. Nevertheless, free trade in goods itself is structurally beneficial for labour since trade integration leads to 'factor price equalization' and thus convergence in labour standards. Indeed, the assumption is that the attainment of rights is a function of welfare growth, not the opposite. Nor can labour standards be conceived of as 'externalities' (justifying market intervention): The worker herself is an agent who sells her services in the marketplace and she is capable of calculating whether or not the market value of the work opportunity outweighs the fact that a certain bundle of rights and benefits do not follow. Market interventions, in general, are vulnerable to capture by narrow interests and exploitation in contravention of the common good. A social clause would be exceptionally vulnerable to such capture since it will tempt Northern unions to regulate away the comparative advantage flowing from developing countries' labour abundance.

Van Roozendaal concludes that, in the case of US, international trade unions were fairly successful in terms of imposing their interventionist problem definition and favoured problem closures onto the domestic domain. In the cases of OECD and ILO, their successes were mixed. However, in the case of India, they were utterly unsuccessful, and strikingly so with regards to the Indian trade unions. From early 1995 and onwards, Indian newspapers "began to print a slew of editorials that, by and large, opposed the worker's rights clause, arguing that it was motivated by bad faith and was not in the best interest of India"[27]. Most were articulations resonant with the liberalist discourse, for example: "Here is protectionism in a new garb aiming to strike at the main competitive advantage of the poorer countries, namely

[27] Kolben, 2006: 236

their relatively cheap labour"[28]. Many trade unionists, too, articulated concerns in keeping with the liberalist schema:

> "Developed countries are using the so-called social clause as a weapon to deny us market access in their part of the world and to prohibit the entry of our products into their markets"[29]

> "The attempt to introduce a social clause […] is essentially to introduce unilateral protectionist barriers to multilateral trade"[30]

> "The developed countries…indulge in protectionism of their self-interest in the name of fixation on labour standards, child labour, human rights and environmental concerns etc, unilaterally to hit the labour-intensive and traditional sectors of developing countries" [31]

Van Roozendaal takes the main feature of the social clause debate to be "the absolute agreement between trade unions, employer's organisations and the government"[32] and considers "the claims of the coalition against the social clause were the same as the claims of the neo-liberals"[33].

But conceiving of India's broad opposition to the social clause in terms of a *liberalist problem definition* may be to overstate the case, especially since she notes that the central trade unions were at pain to make clear that their social clause rejection was "totally different from that of the government since it involves the rejection of the WTO/GATT"[34]. In fact, the Indian debate comprises a plethora of anti-social clause articulations that, *prima facie*, sit at considerable unease with the liberalist schema:

> "We don't see the WTO as an impartial body; it's highly political body and there is a definite agenda behind that. It represents the interests of big corporate capitalism. We don't see anything to be gained by labour standards to be operated by a body that is essentially a tool of corporate capitalism" [35]

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[28] *The Hindu*, Jan 23, 1995; quoted in Kolben, 2006: 237)
[29] *Central Trade Unions Organisations of India* Appeal, 1995; quoted in Van Roozendaal: 124
[30] *Centre of India Trade Unions* (CITU); quoted in Kolben, 2006: 245
[31] *INTUC,* quoted in Kolben, 2006: 245
[32] Van Roozendaal, 2002: 113
[33] *ibid:* 131
[34] *ibid:* 132
[35] CITU, quoted in Kolben, 2006: 250

> "By hijacking its [ILO's] functions, the imperialist countries in fact want to completely neutralize the might of workers and enable the transnationals to call the shots through WTO" [36]
>
> "[O]n some points employers and workers do not differ, because the main problem is with the multinationals. The social clause is an attack on the country. We did unite with the local capitalist in fighting the imperialist and making demands. It is to save our economic independence"[37]

Rather than asking if such *not-so-liberalist* 'blips' suggest that another thought-culture than the liberalist was at play, Van Roozendaal interprets them as mere *ex post facto* justification with which the unions could deflect attention from their too-close-for-comfort relationship with Indian government on the matter. True, the government followed a very determined strategy to close ranks on the issue – both amongst developing country governments and domestic political players. Through the *Dehli Declaration* (January 1995), G77 ministers agreed that the social clause would "negate the benefits which the liberalization of trade is intended to bring about, thus aggravating further […] the existing problem of unemployment and distress"[38], and a newspaper reported that the intention was to "destroy the moral underpinnings of the social clause idea which has enabled Western democracies to sell it to their electorates"[39]. The government also convened the Standing Labour Committee, and put forward a resolution "asking for a unified stance the government, unions and employers opposing a workers' rights clause [which] passed unanimously"[40]

I nevertheless contend that Indian trade unions way of articulating its opposition can be seen neither as variation over an essentially liberalist theme, nor be reduced to a rhetoric with which to cloak cooptation. Some of the most vocal Indian unions were affiliated with the communist-leaning World Federation of Trade Unions (WFTU) rather than ICFTU; consequently, they had not taken any part in any of the organizational processes leading up to the social clause proposal, nor been exposed to the interventionist discourse. Notably, WFTU's own process of arriving at determined its opposition to the social clause had little to do with any close consideration of the social clause idea itself, and a lot to do with the fact that WFTU "is opposed to *all* attempts to institutionalise international relations through institutions such as the WTO […] because it considers such bodies to be agents of

[36] CITU, quoted in van Roozendaal, 2002: 125
[37] AITUC, quoted in van Roozendaal, 2002: 126
[38] Quoted in Kolben 2006: 239
[39] *ibid:* 240
[40] *ibid*: 235

imperialism"[41] It is precisely those kinds of assumptions that seem to have shaped the Indian unions' articulations. And they certainly owe little to the liberalist discourse – even if the "protectionism" (the liberalist shorthand for whatever is 'bad') was tossed into arguments every once in a while. I propose that we rather consider a sizeable share of Indian unions' opposition as expressions of a pervasive thought-culture in its own right: a *counter-hegemonic* discourse[42].

The counter-hegemonic discourse sees political intervention in the market as a prerequisite for labour rights attainment. Indeed, the very idea of a benevolent market is questioned. Hence, the problem is not that of market *intervention itself* – as in the liberalist thought-culture – but rather *who* intervenes and on *what terms*. While the social clause may point to the right problem, it points to the wrong place. WTO is taken to facilitate the institutionalisation of big corporations' interests, aided by a few friendly and powerful governments, so its putative democratic vocation is little more than crust of niceties on top of neo-colonial domination logics.

Neo-imperialist countries are seen to preside over a toolkit – both furnished by and readily available to big business – which perpetuates global inequality and exploitation. This is so with regards to the political process of *negotiating* new trade laws: Rich countries can afford to exert undue pressure on developing country governments through threats and side-payments. The same also goes for the *enforcement* of trade law: WTO's compliance mechanism, retaliation upon verdict of the dispute settlement procedure, is only useful to those countries with the biggest market power. Indeed, the core intention of the sponsors of WTO is the overall betterment of capital's bargaining power *vis a vis* labour. It is therefore a contradiction in terms to seek to bring labour rights protection into its ambit. And in the unlikely event that WTO were to was to do a good job may even lead to the legitimization of his otherwise bad guy antics.

Does it matter whether we take the mentioned oppositional statements to be odd deviations from an essentially liberalist schema, or articulations of a thought-culture in its own right? I

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[41] (Griffin et al: 2003: 476; emphasis added

[42] The webpages of *Our World is Not for Sale* (OWINFS) at http://www.ourworldisnotforsale.org/index.asp, attest to pervasiveness of such a thought-culture, and to the relative consistency of 'routinized interpretative commitments' across singular articulations in different policy areas. What I consider a coherent *counter-hegemonic* reading on the social clause debate may be found in John, J & Chenoy, A (nd).

think it does. If we stick to the former reading, as Van Roozendaal does, we might conclude that, if only the liberalist concern could be placated, the social clause quest would be greatly facilitated. But in terms of understanding discursive politics in India's civil society, this might to allow the whimsical mouse detract our attention away from the elephant in the room. And then one can easily get trampled.

III. Transnational Dynamics: Standing on the Wrong Foot, in the Wrong Corners?

The lukewarm if not hostile reaction in India suggests that the positions and tactics of ICFTU must have had a protectionist taint. But a closer look at the ICFTU campaign lends very little support to such a suggestion. It is true that the social clause was the brainchild of ICFTU's northern members, and that the confederation conducted the campaign in a lopsided way, ill-suited in terms of creating any genuine Southern union ownership[43].

But there is very little in the ICFTU proposals[44] that explains the *bête noir* role that social clause proposal was given. The confederation sought to make sure that the social clause mechanism would *fortify* ILO rather than surrender its competence to WTO, emphasising that ILO would be vested with the power to adjudicate – by way of a revamped trade policy review mechanism (TPRM) in the WTO[45] – whether a member was observing its ILO obligations or not. Moreover, before any action within the ambit of WTO could come about, a strengthened ILO-mechanism for providing assistance to the violating member would have to be exhausted. So, the argument that the social clause would be tantamount to let WTO 'hijack ILO functions', had no support in what the main advocate had actually suggested[46]. Furthermore, ICFTU's proposals also approached the question of sanctions with great care – perhaps too much care. In fact, the very word 'sanction' was circumvented altogether. It merely stipulated that 'trade measures' would be a last resort, if ILO remedies were fully exhausted.

[43] Anner, 2001
[44] ICFTU, 1994 and 1999a
[45] Supplementing member countries' own notifications, the WTO undertakes such reviews of members' trade policies every second, fourth or sixth year (the frequency being decided by the member's share of world trade)
[46] Whether ILO's membership would want the power that ICFTU's proposal would vest it with is quite another matter. ILO's government and business representatives have arguably put a lot of efforts into blocking improved compliance mechanisms within the ILO itself (see Van Roozendaal, 2002: 184-191)

But such caution failed to make an impression on social clause opponents: As the 1990s wore on the campaign came under increasing critique. The onslaught became particularly acute in run-up to the Seattle Ministerial. In fact, the social clause proposal had the very dubious honour of forging an unlikely coalition between the worst of enemies in the globalization debate, epitomized in the *Third World Intellectuals and NGOs Statement against Linkage*[47]. Signatories included a number of neo-classical academics on the one hand[48], *and* prominent anti-globalization intellectuals and activist on the other[49]. It made clear that:

> "The demand for a linkage [social clause] is the result of an alliance between two key groups: Politically powerful lobby groups […] whose moral face is little more than a mask which hides the true face of protectionism […] they stand against the trading and hence against the interests of developing countries, in fact advancing their own economic interests, and they need to be exposed as such […] On the other hand, there are morally-driven groups that genuinely whish for better standards […] While not deceptive and self-serving, they are nonetheless mistaken and must be rejected […] to prevent a contamination of their own moral agenda"

What had been an effective discursive coalition between liberalist and counter-hegemonic articulations in the Indian debate, had now become an explicit strange bedfellows coalition on a transnational level. Yet this critiques had very little to do with the main advocate's proposal. As a senior ITUC staff notes:

> "From the very outset we were highly aware of the extent to which the fear of protectionism could obstruct progress. This is very clear if you go back and look one of our major documents at the time, "The need for dialogue" [1994]. It was written for the very purpose of pre-empting critique on the protectionist issue, and it should have foreclosed the TWIN-SAL kind of reaction, had they just cared to study our position honestly"[50]

The perpetual protectionist fears were entirely vindicated, however. Once the debate is gauged in terms of its broader transnational dynamics, it becomes cleat that some of ICFTU's most influential Northern constituents propagated a social clause idea that had little resemblance with the carefully devised positions of ICFTU. By the mid-1990s, the peak union federation in US, AFL-CIO, already had a dismal track-record of successfully advocating for

[47] TWIN-SAL, 1998.
[48] *Inter alia*, Bhagwati, Srinivasan and Panagariya
[49] *Inter alia,* Walden Bello and Nicola Bullard (Focus on the Global South); Kristin Dawkins (IATP); and Oswaldo Sunkel
[50] James Howard, interview in Brussels, April 25, 2007.

protectionist acts "designed to lessen the effects of 'unfair' foreign competition on US firms"[51]. Such protectionist advocacy has its roots in the *1974 Trade Act*, whose *Section 301* enables the US President to restrict imports whenever these can be deemed to constitute 'unfair' trade practices[52]. The meaning of 'unfair trade' is unequivocal: It describes what an *exporter's practice does to competing US firms*. Its rationale has nothing to do with what the exporters' practice does in his domestic domain, let alone to his workers.

But this unequivocal rationale would soon become less than obvious. Soon 'fair trade' would be used to denote something very different – namely, the FLO label certifying scheme, which conjures up images of people being treated decently at the bottom of otherwise long and unruly global commodity chains. But it was precisely in the context of such discursive ambiguity that unions opted to go by way of a revision of the Trade Act's Section 301 to get the labour rights issue into general US trade policy. And while the popular connotations of 'fair trade' were adrift in the direction of fair-trade-as-foreign-workers'-rights, the policy rationale of Section 301 remained just as unequivocal as before – it had to do with fair-trade-as-fair-competition. Whether it was a shrewd calculated move to play on the ambiguity of 'fair trade', is beside the point since the campaign rhetoric of unions was openly protectionist. As congressmen Pease and Gephardt successfully drove the union-backed campaign to amend Section 301 through Congress in the late 1980s, AFL-CIO commented that:

> "Changing trade law and policy to provide timely and predictable relief to workers and industries *injured by imports* are also long overdue. America's fair trade laws must be strengthened to address new discriminatory commercial practices" [53]

The campaign eventually culminated in *The Omnibus Trade and Competitiveness Act* of 1988. The President's authority under Section 301 was extended, vesting him with power to use trade sanctions against trading partners failing to respect what was deemed as fundamental workers' rights[54]. The *Omnibus Act* is protectionist not only because Section 301 can only be invoked in the case of 'material injury on US companies', but also because of the standards it

[51] Van Roozendaal, 2002: 74
[52] "Section 301 (d) is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny US rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict US commerce". Quoted in Luce, 2005: 6
[53] Quoted in Van Roozendaal, 2002: 91; emphasis added
[54] These were: Freedom of association; the right to organize and bargain collectively; the prohibition of forced labour; minimum age for employment; standards for minimum wages, hours of work, and occupation health and safety.

deems 'fundamental' – minimum wages, in particular – may easily be interpreted as forcing cost-increases on southern producers.

The protectionist rhetoric of AFL-CIO continued unabated into the 1990s. Attempting to block NAFTA negotiations, the federation stated that "a free trade agreement with Mexico, a country where wages and social protections are almost non-existent when compared to our own, simply *invites disaster for US workers"*[55]. Such articulations were replicated in the context of the multilateral Uruguay Round negotiations, too. The *Labor Advisory Committee* (LAC) advised the government that, without a social clause "American workers would be exposed to competition with people working at the lowest conditions, [and] American jobs would then disappear"[56]. Moreover, LAC stressed that denial of workers' rights should be conceived of a 'subsidy' in GATT/WTO (and, by likely extension, subject to anti-dumping and countervailing measures). Towards the end of the Uruguay Round, ICFTU found it difficult to mobilize Southern support for its social clause proposal. But when "ICFTU asked the Americans to reconsider unilateral provisions on worker's rights, [the proposal was] not well received by AFL-CIO"[57].

After Singapore, American unions probably realized that the quest for a protectionist escape clause was a spent force[58]. They might even have pondered whether such a quest was outright inimical to the quest for social clause along the fair-trade-as-foreign-workers-rights. But AFL-CIO certainly remained the most visible and ardent social clause advocate, and cajoled the Clinton Administration to keep pushing for a WTO working group during the late 1990s. Given US unions' past rhetoric and the character of the legal instruments they had engineered in the unilateral domain, there could be little doubt as to what was in store if the US proponents got a social clause of their liking into WTO[59].

It is safe to assume that character and extent of US unions' protectionist advocacy was *not* directly legible for Southern unionist. But it is easy to imagine that it was so *indirectly*, through the mediation of activists and epistemic communities straddling the North-South

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[55] Van Roozendaal, 2002: 83
[56] *ibid*: 94
[57] *ibid*: 95
[58] ITUC's James Howard recalls that, in the Singapore to Doha interval, "AFL-CIO was consistently careful to frame its argument so as to *not* come across as protectionist". Interview, Brussels, April 25, 2007.
[59] AFL-CIO has certainly not refrained from continuing to exploit Section 301's 'fair-trade-as-fair-competition' rationale. As late as in 2004-2005, the federation compelled the US government to invoke *301* to restrict imports from China so as to rectify the unfair advantage China enjoys by way of its persistent workers' rights violations

spatial divide. It is probably not a coincidence that the harshest social clause critics in the 1990s were Indian academics working in the US, and Indian civil society. Bhagwati's role merits particular attention in this regard: It is well known that he served as 'freelance' advisor to the Indian government in the context of GATT/WTO negotiations[60], and that he put considerable effort into chronicling the US' politics of linking trade and workers' rights. So, Indian unions' unrelenting conviction about the protectionist motive behind the social clause method may owe quite a lot to Bhagwati's transnational interlocutor role. This role becomes particularly impressing in the case of the TWIN-SAL statement, which he initiated and drafted. Courting fierce globalization-critiques to sign a statement drafted by one of the staunchest and most visible defenders of globalization, attests to an epistemic brokerage of sorts.

It seems as if US' unions had given the idea of linkage such a bad name that, no matter how carefully ICFTU phrased its own proposals, it had to be a steep uphill battle. US' protectionism lent itself to the only frame amplification[61] that could have brought convergence between the *liberalist* and *counter-hegemonic* discourses – namely that the social clause was essentially a *North vs. South* conflict. The implication this had for WTO negotiations can readily be described in terms of two-level bargaining dynamics[62]: As Northern unions' protectionist aspirations reverberated across polities, Southern actors swayed by otherwise opposing thought-cultures arrived at converging problem definitions. In countries such as India, this allowed for a seemingly society-wide coalition against the social clause. Consequently, Southern negotiators could convincingly argue that the social clause would fall entirely outside of their domestic 'win-sets'.

These dynamics choked ICFTU's attempted frame amplification: Namely, that the social clause would impede the global race to the bottom, thereby denying multinational businesses the opportunity to exploit South-South competition, and providing unions a lever to curb domestic elites' use of the same competition as a pretext for labour rights violations. If these ways of thinking about the social clause had come to the foreground, Southern governments' argument that the social clause was not in their 'national interest' would have met with considerable suspicion in the domestic domain, and made it much harder to "destroy the

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[60] Van Roozendaal, 2002: 118
[61] Following Snow *et al* (1986: 469) *frame amplification* refers to "the clarification and invigoration of an interpretive frame that bears on a particular issue, problem, or set of events"
[62] Putnam, 1988

moral underpinnings of the social clause idea which has enabled Western democracies to sell it to their electorates" as India intended with the *Dehli Declaration*.

But if it the strength of the social clause resistance can only be understood in terms of a convergence between two very different discourses, there is more than a fear of protectionism to the matter. While the liberalist and counter-hegemonic interpretations are both compelled by self-interested behaviour of Northern unions, they still arrive at their respective rejections from very different vantage points. Liberalist articulations reject the trade-labour link *because of* a commitment to the very same commercial logics that the protectionists wanted to invoke, that of *fair-trade-as-fair-competition*. But labour rights are conceived of as an anomaly that would impede fairness by lending itself to protectionism. Counter-hegemonic articulations, on the other hand, reject the trade-labour link *because of* a commitment to labour rights. Northern protectionism just goes to show how ill-suited and divisive it would be to let the commercial logics of *fair-trade-as-fair-competition* safeguard these rights: Having to countenance labour rights abuses by way of proving the commercial costs that such abuses incur on someone else's business, in another part of the world, is taken to be a perversion.

This observation, that apparent agreement masks deep-seated differences in terms of thought-culture, also raise the question as to whether the different *pro-social clause articulations* can be conceived of as expression of the same *interventionist* discourse as Van Roozendaal seems to suggest. I doubt that it is helpful. True, various interventionist claims may converge into a discursive coalition in support of largely unspecified signifier such as 'the social clause' – just as counter-hegemonic and liberalist articulations may converge under a shared 'no'. However, the fierce discursive politics of opposition sheds light on the fundamental differences between pro-social clause articulations that invoke the commercial logics of fair-trade-as-fair-competition, and those that are largely uninterested in the fair-trade-as-fair-competition rationale, but simply want to use last-resort-sanctions as means to compel core labour rights observance in the context of globalization and market competition.

IV. Implications for the ILO-WTO Coherence Quest

Many scholars reviewing the rise and demise of the social clause proposal conclude that, while there is a case for linking trade and core labour standards, such linkage now ought to be

pursued elsewhere than in the WTO[63]. True, the quest for a *protectionist* WTO social clause is utterly exhausted. But is that the *only* variety of there can be? If ICFTU's problem description has merit – namely, that today's global political economy incites a race to the bottom, and that the establishment of an inviolable labour rights floor is illusive without a mechanism to countenance competitive deregulation – linkages in bilateral and regional trade agreements are unlikely to tackle the problem at hand. Key exporters whose non-compliance are thought to *drive* the race to the bottom, are unlikely to become party to any bi- or regional treaties with effective workers' rights clauses in them. Hence, even exporters that *are* bound by such agreements will have good reason to tacitly detract from their obligations: Their tariff rebates may be conceived as off-set by compliance costs that extant competitors do not have. Furthermore, compliance costs are certainly incurred on production destined for markets where no tariff rebate is on offer, and in these markets the compliant party is outright disadvantaged *vis a vis* the non-compliant competitor. Competitive deregulation, by principle, cannot be overcome in a piecemeal fashion.

While social clause proponents have sulked in their quiet corners for a while, their long-term determination has not ceased. Some peripheral WTO members have already made clear that they want negotiations on the issue after Doha[64], and the US Democratic Party is likely to raise the issue again, too[65]. The mood may be shifting amongst developing countries after China's WTO accession and the common perception that China is the proverbial black hole toward which the south-south race to the bottom inevitably gravitates. While there still is considerable unease about instituting the linkage at the level of WTO, a survey of opinions among both Northern and Southern trade unionists found that, "over time, extant union opposition to linkage has decreased significantly and is now, for all practical purposes, non-existent"[66]. In fact, ITUC claims that even "INTUC [Indian National Trade Union Congress] has now moved its position because they have become increasingly worried about China"[67]. Therefore, the return of the social clause to the WTO seems to be a question of *when, and on whose terms*, rather than *if*. In order to escape a mere reiteration of the 1990s' debacle, ITUC

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[63] Anner 2001; Hensman 2001; Kolben 2006

[64] In his address to the plenary of the 6th WTO Ministerial on December 14 2005, the Norwegian Minister said: "As we look ahead beyond this round, we must not be afraid of addressing new issues. Proposals have been put forward to include ILO standards in future WTO negotiations. Norway supports the idea, which is backed bylabour unions, of promoting coherence between the work of the WTO and the work of the ILO."

[65] Van Buhlow, 2007: 18.

[66] Griffin *et al* 2003: 490

[67] *ibid:* 493

must re-narrate the social clause idea, and recalibrate its campaign process, so as to forestall the convergence of the liberalist and counter-hegemonic discourses.

Foremost, the union movement must rethink how it relates to the banal fact that WTO negotiations are undertaken by governments. The experiences with US' social clause advocacy in the 1990s suggest that it must resist the temptation of relying on the most willing governments as if these were also the *most capable* champions of its cause. It seems that the union movement may only incite a sufficiently different discursive politics and dynamics by grafting its campaigning on constituent unions whose commitment to the internationalist position is beyond dispute, and capacitate these to compel *their* governments to champion a social clause. These are likely to be from developing country ranks. In fact, discursive politics of the past suggests that US is a more fitting *target* of a social clause campaign, than it is an *aide*. Targeting US could be construed as entirely warranted in light of the US poor track record in terms of ILO ratifications and its dismal labour rights enforcement practices in the one sector in which US exports are the most dominant – agribusiness. To get Northern unions to restrain themselves to support Southern chapters of the movement, while making sure that their own too-eager governments 'stay in the barracks', will be a daunting yet decisive challenge.

Identifying what a truly internationalist social clause may actually look like is another crucial task. The 1990s' demise suggests that rallying behind a somewhat open-ended proposal is not a good idea. Open-endedness leaves a lot to the imagination. The problem is that whoever is well versed with WTO negotiations knows quite well *what to imagine*. Recall that the US government (at the behest of AFL-CIO) never proposed anything more specific than a WTO working group, yet most observers readily knew what to make of it. Consequently, the union movement is unlikely to successfully impose its own problem definitions on the debate without, at the same time, presenting a quite specific idea of its problem closure so as to leave relatively less to the all-too-obvious imagination. From early on, it needs to be very clear what a social clause will *not* look like, and constituents must be wedded to such a vision.

Arriving at any such script can only happen by way of an inclusive and deliberative process within union movement itself. Still, the above exploration gives some indications as to the whereabouts of an internationalist position. The 1990's debate seems to have shut some doors and opened some. First, the 1996 Singapore Declaration (reaffirmed in Doha) prohibits WTO

members from using labour standards for protectionist purposes, or questioning the comparative advantage that flows from developing countries' labour abundance. Second, ILO1998 made clear *what* labour standards can be deemed 'fundamental' and these are, notably, of such a nature that their realization *per se* does not impair developing countries' general comparative advantage. In fact, OECD made clear that such 'process rights' need not raise labour cost *at all (…)*. While this claim is dubious (…), it is still true that ILO1998's definition renders unwarranted the fear core labour standard compliance threatens general comparative advantage. The assumption that North-South factor price differences cease to exist merely because Southern child and slave labour is systematically fought and labour organizes to demand better pay, is a gross underestimation of wealth differences across the North-South divide.

Sure, wherever there are export sectors whose competitive edge (and government whose political position) *is* intrinsically linked to fundamental labour rights violations, *enforceable* standards will be seen as a menace. Such opposition should be no worry to the international union movement – it should be made a point of. Indeed, as was noted by one of the few social clause defenders in the Indian debate, those who construe non-compliance with core labour rights as something of an advantage to be retained in the name of the common good, have probably not been at the receiving end of fundamental rights violations:

> "It is being borne home with every action of the government that *national interest* means only the interest of the minority rich […] Is it not the height of hypocrisy that our government should consider linking equal wages to men and women with trade to be against the interest of the nation? Is it not revealing that it considers giving a guarantee to stop child labour as harmful to our country? (Swaminadhan, in John and Chenoy, 1996: 56-57)

However, none of this is sufficient to appease fears of protectionist abuse of a WTO social clause. The above merely suggests that developing countries' *law-abidance* will only impair comparative advantage where it is grafted on outright abuse; its loss will therefore be mourned by few, and confer negligible protectionist gains on rich countries. What is says nothing about is whether the *enforcement method* can be used for protectionist purposes. It is quite obvious that, if the Section 301 may be used to suspend US market access rights of Chinese textiles, the *suspension itself* will offer temporary protection for US apparel industry,

quite irrespective of whether conformity with standards compromises Chinese comparative advantage or not.

To some extent, such concerns were reflected in ICFTU's past proposals. Recall that WTO trade measures against a specific member could come into consideration only if *two* consecutive ILO-reviews – in the context of a revamped TPRM – had found a member faulty of taking appropriate steps to promote and protect core labour rights. While this would certainly increase the politicization of ILO's monitoring and assessment exercises, it would also deny an individual member country the opportunity of making opportunistic decisions about another member's compliance. But ICFTU said very little about what trade measures could come of use, and on what grounds. Therefore, despite the checks that a reformed TPRM would offer in terms of determining *when* a member could be deemed in violation of its ILO1998 obligation, there was nothing in the suggestion to foreclose recourse to trade measures according to the logic that the US unions had touted all the while – that denial of workers' rights should be conceived of a 'subsidy' and be subject to anti-dumping and countervailing measures.

But this is exactly the logic that a re-narrated social clause must foreclose. If not, any claim as to its purported internationalist character will lack credibility, and will merely to reinvigorate the liberalist-cum-counter-hegemonic discursive coalition. The trade union movement should therefore take as its very point of departure that a prospective social clause cannot serve as the pretext for invoking the instruments that states normally take recourse to when justifying their suspension of WTO market access obligations – namely, those regarding anti-dumping or countervailing measures. These have an inherent protectionist quality[68]. In an early appraisal, ILO identified GATT 1994 Art XXIII (the Nullification and Impairment Provision) as a potential legal gateway for a social clause, on the grounds that it is fairly robust against protectionist use[69]. Presumably, such a gateway would placate liberalist fears. However, as I have made clear above, internationalist modalities must do more than merely foreclose protectionism. It must also respond to the counter-hegemonic claim that it is perverse to let the commercial logics of *fair-trade-as-fair-competition* safeguard these rights. And in these

[68] These instruments would require that margins associated with the "social dumping" or "exploitation subsidy" may be calculated (to thus stipulate the non-compliance money value). Moreover, their application would require that '*material injury on the importing party'* could be proven. See Lim 2001 for a thorough legalist discussion
[69] *ibid:* see chapter 5

respect, Art XXIII is just as ill-suited as any anti-dumping or countervailing measure: The party must still demonstrate that *it has suffered material injury.*

The only WTO instrument which is neither protectionist nor premised on the commercial logic of establishing material injury, is GATT 1994 Art XX – the general exception clause – which allows a member country to suspend its market access commitments in the event that this 'is necessary in order to protect, *inter alia*, public moral, human or animal life or health'. This provision is seen cover core labour rights to the extent that these are considered to be human rights[70]. The trade union movement should therefore take as its very point of departure that the social clause would only allow trade measures in the event that *two* consecutive ILO-reviews (in the context of a revamped TPRM) had found a member faulty of taking appropriate steps to promote and protect core labour rights; and only according to the rational of, and to the extent permitted by, Art XX. If the international union movement and the governments championing the social clause were seen to be committed to such a vision, it would not only placate protectionist fears but also stand a better chance of finding some modest resonance in the counter-hegemonic concerns.

This would till leave a number of intricate questions unanswered – including the extent of sanctions; how to shield the workers that *will* be adversely affected by last-resort sanctions; and how to avoid that the social clause invites 'window dressing' exercises in visible export sectors while inciting increasing sub-contracting and de-formalization so that labour rights abuses are merely forced underground. And even in the event that all these intricacies could be dealt with, through an inclusive internationalist process in the union movement, those most beholden to the counter-hegemonic discourse would still not support the international union movement's quest. Recall that actors such as the World Federation of Trade Unions is opposed to *all* attempts to institutionalise international relations through institutions such as the WTO – because it considers such bodies to be agents of imperialism.

In fact, their resistance will only increase: The more reasonable the social clause becomes, the more threatening it must be – indeed, a good social clause would run the risk of endowing legitimacy on the WTO. But that such actors will never come to support the ILO-WTO coherence quest should not worry the international union movement. Scores of constituents

[70] See OHCHR 2005

that are compelled by the counter-hegemonic discourse nevertheless *do* want to secure labour rights protection within the existing institutional order – if nothing else, while they wait for their counter-hegemonic revolution. These actors deserve the wholehearted attention of ITUC. Without their support and ownership, the quest for a social clause is unlikely to succeed.

Conclusion

The main argument of this paper is that the defeat of the social clause is best understood as a struggle of discursive politics. Reappraising the debates in India and the US I have argued that previous reviews – which have conceived of this as a struggle between articulations of either an interventionist or a liberalist discourse – has missed out on the role of third discourse: A counter-hegemonic one.

A key dynamic of the 1990s debate, I argued, was that the social clause idea resonated negatively with a counter-hegemonic discourse. This was not primarily because the main social clause advocate, ICFTU, was not careful about the way it phrased its own proposals. Indeed, a defining trait of the social clause defeat was the way in which transnational dynamics – primarily in the form of an openly protectionist rhetoric on the part of US unions – choked the very frame amplification that ICFTU was driving at. The very same dynamics fomented a surprising convergence between the liberalist and counter-hegemonic discourse on globalization and workers' rights.

In this regard, the rise and demise of the social clause in the Doha Round holds important lessons for the international union movement. In order to nurture a compromise attitude within its constituency it foremost must strive to make sure that the right governments champion for the social clause, and it will have to face the very difficult task of convincing some Northern unionist that there is no protectionist gain to be won from a social clause. In the very same vain it must propose true internationalist modalities that categorically preclude a social clause based on the commercial logics of proving material injury.

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