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THE WORKERS IN THE GLOBALIZED ECONOMY: THE EUROPEAN WAY TO THE FOUNDATION AND ENFORCEMENT OF THE SOCIAL RIGHTS

Maurizio Del Conte*

I. Introduction

In recent years, a new term has spread like wildfire to become a catch-all word in all regions of the world—globalization. The word is ubiquitous, splashed in newspapers, dissected in essays and academic journals, bandied at symposiums, quizzed by the man in the street and shouted against by marching protesters. It is used to chart scenarios for the future, and it is denounced as the cause of the evils of our society. It helps focus on the gap between rich and poor countries and emphasizes the interdependence of all the peoples of the earth. For many, globalization is the implacable foe, for others it is the powerhouse of social growth. But, just exactly what is globalization? Does the term itself have an unequivocal meaning?

The wide circulation and many different interpretations of the word underscore the difficulty in pinning it down to a distinct and unifying notion accepted by all. This is the important aspect of my brief presentation.

In the Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development of March 12, 1995, globalization was defined as “the consequence of increased human mobility, enhanced communications, greatly increased trade and capital flows, and technological developments.”¹ This is the broad definition of the notion of globalization on which I shall base my observations. From that standpoint, globalization is a new state of affairs which embraces the social, economic and cultural areas. It is pointless and misleading to grade on the scale of moral values. Globalization is part of a process of history, and I believe that it is more beneficial to examine the problems raised by this process and to seek remedies rather than vociferously opposing or denying it.

At the Copenhagen Summit of 1995, participating countries declared that globalization creates opportunities for sustained economic growth, development of the world economy, shared experiences and cross-fertilization of ideals, cultural values and aspirations.² At the same time, they recognized that poverty, unemployment and social disintegration have too often accompanied the changes and adjustment processes.³

The Copenhagen Declaration identified the challenge of managing the process of globalization so as to increase its benefits and mitigate its potential negative effects upon people.

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¹*Copenhagen Declaration on Social Development and Programme of Action*, U.N. World Summit for Social Development (1995), available at <http://www.visionoffice.com/socdev/wssdco-2.htm>.

²*Id.*

³*Id.*

II. The "Social" Concerns of the FTAA

The FTAA project is inspired by a perception of globalization. It aims to facilitate and encourage entrepreneurial activity and, more generally, commercial and economic exchanges at transnational levels and within specified geographic areas. Although I speak specifically of the European experience, it is necessary, if only succinctly, to touch upon the well-known concerns which the FTAA project has generated.

To put it briefly, there are two angles to the problem: the standpoint of labor interests in the United States, and the standpoint of labor interests in the lesser-developed countries. In regard to the interests of American workers, imports from developing countries, where labor costs are lower, would inevitably drag wages downward in a bid to keep American products competitive against less expensive imported goods.⁴ Moreover, where American products can not stake a claim to higher quality or dependability, American companies would be forced into massive layoffs or closings.⁵ As to developing countries, the concern is that a free trade accord would contain social clauses, particularly on minimum wage. Raj Bhala observes that "to impose an artificial minimum wage in developing countries, in an effort to eliminate or narrow the wage differential between developing and developed countries, would rob developing countries of the comparative advantage in industries in which they are presently competitive, such as agriculture and low value-added manufacturing."⁶

The creation and development of the European Community gave rise to similar problems.⁷ Contrary to what may have been feared, such problems did not prove insurmountable. Indeed, that very social issue taken up by the European Community proved to be the driving force to move from what was a mere free trade agreement to what is turning out to be, and is increasingly destined to be, a political union of the peoples of Europe.

III. Origins and Development of the European Economic Community

The Treaty of Rome of 1953 laid the foundation for the European Economic Community.⁸ While the signatories to the Treaty did not doubt that the liberalization of trade between member states would inevitably bring about a general increase in the living and working standards of European workers, they decided neither to include a specific provision nor draft an independent treaty with regard to these social and labor issues.

⁴ See CARY C. HUFBAUER & JERRY J. SCHOTT, *NAFTA: AN ASSESSMENT* 11-18 (rev'd ed. 1993).

⁵ See Thea Lee, *Happily Never NAFTA: There's No Such Thing As a Free Ride*, in *THE CASE AGAINST FREE TRADE: GATT, NAFTA, AND THE GLOBALIZATION OF CORPORATE POWER* 70-75 (Earth Island Press ed. 1993).

⁶ RAJBHALA & KEVIN KENNEDY, *WORLD TRADE LAW: THE GATT-WTO SYSTEM, REGIONAL ARRANGEMENTS, AND U.S.* 162 (1999 Supp.).

⁷ See HELEN WALLACE, *EUROPE: THE CHALLENGE OF DIVERSITY* (1985); Massimo d'Antona, *Mercato Unico Europeo ed aree Regionali dovoli: le Conseguenze Guiridiche*, L.D 50 (1992) at <http://www.lex.unict.it/eurolabor/archivio/ipcr/doc11/doc11.htm>.

⁸Treaty of Rome, Mar. 25, 1957, 298 U.N.T.S. 140.

Such results were viewed as the inevitable consequence of the economic growth which the Treaty would generate in the respective member states. In other words, faster growth and greater wealth would translate into better wages and standards of life for workers. In hindsight, it is clear that such a view was narrow-minded, insofar as the improvement of social and economic conditions of European workers went well beyond what may be measured in proportion to the growth of the Gross National Product of the respective member states. The process of commercial integration has led to the growing influence of Community institutions on the economic and social policy-making of member states, particularly by the Council and the European Commission, as well as by the European Court of Justice.

As early as the 1960s, new regulations were being issued to facilitate competition between companies inside the European Community. It soon appeared that in order to create a playing field that would effectively stimulate competition, it was necessary to introduce regulations on industrial relations and employment conditions. Thus, just to mention a few significant examples, the EC passed directives on collective dismissal and on transfer of undertaking.⁹

Both these directives entrench the principle of the participation of representatives of the labor force in the key stages of the decision-making process of the company. The directives require that management keeps the unions informed of management plans and consult with the unions regarding management decisions in order to examine the options which would prove less detrimental to the interests of labor. By so doing, these Directives ensure fair competition by harmonizing the rules which the respective member states apply to companies in the process of restructuring.

European integration is further entrenched in the paramount principle of free circulation between member states.¹⁰ According to the Treaty of Rome¹¹, the creation of a common market implies the elimination of all barriers to free trade, free circulation of persons, services and capital between member states. Under European law, workers may circulate and work freely inside the frontier-free zone of the community, regardless of the nature of the activity pursued, the type of employment contract (subordinate or non-subordinate) or the nature of said contract (permanent or seasonal).¹² It is worth noting that the right of free circulation of workers inside the Community is grounded in the fundamental principle of non-discrimination on the basis of nationality enshrined in the Treaty of Rome. It is now quite evident that the free circulation of persons, enterprises, and services greatly enhanced the flow of all available resources within Europe, particularly human resources, creating a positive impact on enterprises. The Community's social policy, however, only went into high gear and made a quantum

⁹ See Council Directive 75/129 on the approximation of laws of the Member States relating to collective redundancies (amended by Council Directive 92/56 and consolidated by Council Directive 98/59) and Council Directive 77/187 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (amended by Council Directive 98/50 and consolidated by Council Directive 2001/23).

¹⁰ See ANTHONY ARNULL, *THE GENERAL PRINCIPLES OF EEC LAW AND THE INDIVIDUAL* (1990) (discussing the remaining barriers to the free movement of persons within the European Community); *Medium Term Social Action Programme* COM(95)134 final at 13.

¹¹ *Supra* note 8, art. 3.

¹² See GIANNI ARRIGO, *IL DIRITTO DEL LAVORO NELL'UNIONE EUROPEA* 227 (1998).

leap at the close of the 1980s. There were four key stages to the process: the European Single Act of 1986; the Community Charter of the Social Rights of Workers of 1989; the Maastricht Treaty of 1992; and the Amsterdam Treaty of 1997. It is safe to say that, in a little more than ten years and under the impelling necessity to harmonize social regulations, the European Community made huge steps forward.¹³

First, the European Single Act of 1986 (hereinafter ESA) modified the founding Treaty of the EC of 1957. In particular, the ESA provided that the full liberalization of the market should be accompanied by a project for social and economic cohesion designed to mitigate the economic and social impact of such liberalization. The principal tool to actuate this project was the reform of the funds apportioned for financing structural social policies. In addition, the ESA expanded the field of competence of the community to enable, among other things, the passing of Directives to harmonize the occupational safety and health standards applied in the respective member states.

One should not think, however, that the avenue to integration of social standards proved smooth and easy.¹⁴ In 1989, the veto of the United Kingdom prevented the then twelve members from incorporating a body of fundamental social rights for workers into the EC treaty. The other eleven members were reduced to signing a Solemn Proclamation, known as European Charter of Fundamental Social Rights of the Worker of 1989. However, due to the opposition of the United Kingdom at the time it was issued, the Charter did not have the binding power of the other regulating acts passed by the Community.

Once again, in 1992, at Maastricht, eleven of the twelve member states were eager to proceed along the lines laid down by the Charter of Fundamental Social Rights of the Worker of 1989. In spite of the staunch opposition by the United Kingdom, the eleven signed a Separate Accord on Social Policy, giving themselves power to have recourse to the institutions and procedures of the EC Treaty to adopt and enforce between themselves such provisions and measures as would be expedient to carry out the Accord.

Among other innovations, the Accord grants the representative trade unions and employers associations of the respective member states the right to have apposite delegations participate in the promulgation of community social regulations. Thus, the notion of Social Dialogue proved essential in building consensus around harmonization procedures. Social Dialogue proved beneficial for enterprises too, as it enabled them to participate in the working groups drafting community standards on labor and industrial relations and, by so doing, to resolve sensitive issues with the unions early on, prior to the passing of new standards.

In 1997, the contents of the Separate Accord on Social Policy of 1992 became part of the EC Treaty, following a change of heart by the United Kingdom. The United Kingdom finally decided to recognize the binding power of European social standards and, consequently, to ratify the new Treaty.

In the wake of the Treaty of Amsterdam, a new Title (VIII) dedicated to employment was included in the EC treaty. In fact, Article 125 of the EC Treaty

¹³ See Hugues De Jouvenel, *L'Europe en mutation. Une Fresque des Grandes Tendances d'Evolution Economique, Sociales et Culturelles*, ATTI DEL FORUM SOCIALE EUROPEO (1996).

¹⁴ See Jean Vogel, *L'Europe Sociale 1993: Illusion, Alibi ou Réalité?*, EDITIONS DE L'UNIVERSITÉ DE BRUXELLES (1991).

provides that "Member States and the Community shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change."¹⁵

The scope of this Article gives the European Community the authority to ensure that the respective employment policies of the Member States are calibrated to the prospects and outlines of macroeconomics. Local employment policies are expressly subject to compliance with Community Directives on employment, which are themselves subject to compliance with Directives on economic policy. Community policies regarding economics are thus inseparable from policies regarding employment.

The development of the EC Treaty from a mere free trade agreement into a full-fledged union between states, built around a consensus over economic and social policy, has brought about substantial benefits to the enterprises operating inside the community. First, the playing field for competing enterprises with regard to direct and indirect labor costs has been leveled to the point of making it practically impossible for the respective players to resort to social dumping. Second, free access to human resources across the Community has been made available without incurring added costs, whether direct or indirect. Third, a better social climate has resulted from improved industrial relations, underpinned by Social Dialogue and collective agreements which increasingly precede the passing of Directives.

IV. From the European Social Rights to the European Fundamental Rights

It must be observed that EC Treaty still remains a trade agreement. The growing importance of social rights regulations in the Treaty have nonetheless helped fuel the development of the economies of member states within a framework aimed at protecting fundamental social tenets. Economic data show that, over the last twenty years, the total amount of man-hours lost to work stoppages within the European Community have declined sharply. This suggests that a social climate is taking root in Europe in which conciliation prevails over confrontation. Also, there is a growing perception in Europe that the priorities of enterprises operating on a free market, a market which is ever stretching its boundaries to encompass new regions of the world, do not conflict with the exigencies of social justice. However, they can and must find in the latter, the foundation that ensures the stability of the system.¹⁶

This view is largely shared by the Court of Justice of the European Community. Its proceedings show that the extensive interpretation of social rights has lent these rights great importance, elevating these rights to the status of fundamental rights.¹⁷ In such an environment, there is a growing consensus over new initiatives

¹⁵EC TREATY art. 125.

¹⁶ See Marzia Barbera, *Dopo Amsterdam. I nuovi confini del diritto sociale comunitario*, PROMODIS ITALIA EDITRICE 17 (2000); Silvana Sciarra, *How "Global" is Labour Law? The perspective of Social Rights in the European Union*, in *ADVANCING THEORY IN LABOUR LAW AND INDUSTRIAL RELATIONS IN A GLOBAL CONTEXT* 99 (1998).

¹⁷ See Mario P. Chiti, *The role of the European Court of Justice in the development of the general principles and their possible codification*, in *RIDPC* 661 (1995); Francesco Mancini, *La tutela dei diritti dell'uomo: il ruolo della Corte di Giustizia delle Comunità europee*, in *RIDPC* 1 (1989); Bruno Nascimbene, *Tutela dei diritti fondamentali, sanzioni e controllo della Corte di Giustizia. Verso il Trattato di Amsterdam*, in *DUE* 223 (1997).

which, along with the further fleshing out of the EC treaty, would push the social policy of the community to new heights. Ultimately, the scope would be to expressly bring social rights on a par with the fundamental rights of the European citizens. In particular, at the Summit of Nice, on December 9, 2000, the Council, the European Parliament and the Commission approved a Solemn Proclamation combining in a single text the civil, political, economic, social and societal rights in a single text.

This Charter, which will not have binding power until it has been channeled through the proper procedural mechanisms, includes as fundamental rights the following: workers' right to information and consultation within the undertaking; right of collective bargaining and action; protection in the event of unjustified dismissal; and prohibition of child labor and protection of young people at work; social security and social assistance, which means that the EC recognizes and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices; and health care, which means that everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

V. Conclusion

Needless to say, it would require a wide stretch of imagination to consider the European system as a model to apply to markets in other regions of the world. More to the point, it would require a truly reckless stretch of imagination to try to compare the European Community to the community of states of the American continent. Cultural background, as well as personal inclinations caution against any form of comparison inspired by some kind of utilitarian project, by specifically the transplanting of the legal system of a specific geographical area to another area. I am not convinced that comparative study is indispensable to review the many legal options that have been adopted to resolve social and economic issues in different parts of the world.

In considering the creation of a free trade zone across the American continent, it is my belief that some of the solutions adopted in Europe are practicable options, particularly the notion of a trans-national economic and social union. I am fully aware of the fact that the first objection to any comparison between Europe and the American continent is that economic and social similitude among the respective states of Europe ensure such homogeneity as may not be found in the diversity of America. This difference, however, is not the main obstacle. A closer view of the facts and figures of member states of the European Community like France, Germany and the United Kingdom, on the one hand, and of Portugal or Greece, on the other hand, illustrates the great economic and social gap between these two groups. Moreover, if one looks at the next group of countries to be admitted into the Community, including Turkey, Cyprus and the Eastern countries, the dissimilarities in economic and social situations in Europe appear of no greater amplitude than those existing in the American continent.

Actually, the main obstacle to an economic and social union of the American continent is not so much technical as political. No progress in the process of European integration would have been accomplished, had the leading countries not come to accept the necessity to relinquish large chunks of their sovereignty over their respective economic and social policy. Such acceptance will prove even more crucial

in the future. Harmonization and integration mean, initially, getting into the spirit of compromise and relinquishing the unyielding 'non-negotiable' approach. It took Europe decades to learn the lesson and much still remains to be accomplished. The major challenge for the United States, today more than ever, will be to develop its capacity to build consensus in the search for political and economic compromise with other countries, starting with those in the American continent.

History teaches us that integration and harmonization of economic and social regulations, where such vision becomes reality, has positive effects for everyone. Integration and harmonization are the best answers to globalization which, whether we like it or not, is here to stay.