

**Deepening the Social
Dimensions of Regional
Integration**

UNU-CRIS

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An Overview of Recent Trends and Future Challenges in Light of the Recommendations of the Report of the World Commission on the Social Dimension of Globalisation ¹

Introduction

The report ‘A Fair Globalisation: Creating Opportunities for All’ of the World Commission on the Social Dimension of Globalisation claims that regional integration can contribute to a more equitable pattern of globalisation, but only if regional integration has a strong social dimension. According to the Commission, regional arrangements can achieve this by empowering people and countries to better manage the global economic forces, by helping to build capabilities needed to take advantage of global opportunities, and by improving the conditions under which people connect to the global economy (WCSDG, 2004:71).

It is true that, at least in theory, regional integration schemes can offer a number of possibilities for the development of, for example:

regional *social, health and labour regulations*;

regional mechanisms that give citizens a voice to challenge their governments in terms of *social rights*;

regional intergovernmental forms of *co-operation in social policy*;

regional cross-border *investments* in the area of social policy;

regional social *redistribution schemes* (Yeates and Deacon, 2006; Deacon, Ortiz and Zelenev, 2007);

regional *coordination of economic and developmental policies*;

regional initiatives in *capacity building and innovation* to strengthen the capabilities of people; or

inter-regional agreements and arrangements related to social issues.

The rationales for such regional social policies include: seeking protection from market forces, which are increasingly regional and global, and the ‘race to the bottom’, generating economies of scale, international risk pooling, and seeking a stronger voice in international and national negotiations (Deacon, Ortiz and Zelenev, 2007:8-10).

Within the UN system, such ideas about reinforcing the regional level in order to ‘tame’ globalisation are increasingly popular. In the July 2006 session of ECOSOC the UN Secretary-General declared that multi-stakeholder policy dialogues at the national and regional level have to be developed “with the objective of building national and regional capacity to develop a multi-disciplinary approach to economic and social issues” (UNSG, 2006). Earlier that year, UNESCO organised a High-Level Symposium on the Social Policy Dimension of Regionalism in Montevideo in the context of the UNESCO International Social Sciences Policy Nexus Forum (Deacon, Yeates and Van Langenhove, 2006). The resulting Buenos Aires Declaration called upon “the regional organisations such as MERCOSUR and the African Union, in association with social scientists and civil society, to further develop the social dimension of regional integration and [called] upon the UN to facilitate inter-regional dialogues”.

¹ Francis Baert, Frédérique Channac, Philippe De Lombaerde, Brigid Gavin, Thomas Greven, Eva Hartmann, Maria Cristina Macovei, Isabella Torta, and Luk Van Langenhove have contributed to this Report. Frédérique Channac (Sciences Po, Bordeaux) and Eva Hartmann (University of Lausanne) wrote parts of this document while being visiting researchers at UNU-CRIS with a research mobility grant from the EC 6th FP GARNET Network of Excellence. The authors are personally responsible for the contents of the document. The document has been written for academic purposes; it does not represent, in any way, official positions of UNU-CRIS, United Nations University, or the United Nations.

Nevertheless, it remains a question for empirical research to determine to what extent the regional level is indeed (becoming), as the ILO report claimed, 'a stepping stone' to take advantage of global opportunities and to ensure that the benefits of globalisation are fairly distributed.

The present report presents an overview of some recent trends and future challenges regarding the deepening of the social dimensions of regional integration, in light of the Recommendations of the Report of the World Commission on the Social Dimension of Globalisation. The focus will be mostly on socio-economic and labour-related issues (regional social dialogues, common frameworks on labour standards, coordination of social and labour market policies, coordination of FDI policies, labour migration, skills recognition etc.). Health, utilities regulation, housing, disaster prevention and management, conflict prevention, and human rights were also identified as potential areas for regional social policies (Deacon, Ortiz and Zelenev, 2007), but the developments in these fields are left outside the scope of this document.

The way the social dimension of regional integration is and will be shaped depends on the 'depth' of the regionalisation process in the respective regions. As the WCSDG Report rightly acknowledges, regional arrangements take many different forms: from free trade areas to 'deeper' political and economic projects (WCSDG, 2004:71). In this paper, we will refer to both 'deep' and 'shallow' regional arrangements. And whereas we will focus on institutionalised forms of regional integration, if relevant we will also refer to some other regional cooperative schemes in our overview, such as the regional consultative processes for migration. Considering this institutional variety will allow us to assess the present and future of regional (social) governance in some detail.

The report is organized in six sections. In section one, the WCSDG Report is taken as point of reference for a general reflection on the opportunities and challenges that regional social governance presents for making globalization 'fairer'. Next, a *tour-du-monde* of trends and challenges in different regions in the world is presented. The tour starts in the European Union (EU), as it is the deepest and most institutionalised regional integration scheme (section two), before assessing the emergence of a social dialogue and a social dimension of the regional integration processes in the Americas (section three), Africa (section four), and Asia and the Pacific (section five). Section six concludes.

1. Regional Governance for a Fair Globalization

The Report on 'A Fair Globalization' presents a whole list of policy recommendations that should contribute to a better distribution of the potential benefits (and costs) of globalization. These recommendations target the different governance levels: national, regional and global. Policies and rules shaped at these different levels by different instances and actors should therefore be seen in the context of a multi-level governance reality. In this document, the focus is on the regional level, although linkages and compatibilities with what is happening at the other levels should be constantly taken into account. The WCSDG refers to the regional governance level with respect to: (i) the need to build representative regional institutions and organize regional social dialogues, (ii) the importance of linking trade liberalization (at the global and regional level) to the respect for labour rights, (iii) the need to make investment rules more development-friendly, and (iv) the urgency to provide a more appropriate regulatory framework for migration.

Strengthening democratic regional governance and establishing regional social dialogues

The WCSDG referred quite extensively to the need to strengthen regional governance,

based on principles of participation and democratic accountability: “Representative bodies, such as regional parliaments, have an important role to play. We believe that regional integration should be advanced through social dialogue between representative organisations of workers and employers, and wider dialogue with other important social actors, on the basis of strong institutions for democratic and judicial accountability. The creation of tripartite or wider councils and forums at the regional level (...) provides an important institutional framework for such dialogue” (WCSDG, 2004:73).

A striking feature of globalisation, as the WCSDG rightly stated, has been the rapid emergence of a community of civil society organisations (CSOs), who network globally to tackle issues of concern to citizens throughout the world. While the nature and frequency of contact and mode of interaction between international agencies and CSOs vary, the trend towards increased collaboration has been across the board. CSOs and other non-state actors are increasingly looking for their place in the international system (Weiss and Gordenker, 1996; Willetts, 1996; Fox and Brown, 1998; Higgott, et. al., 2000; Scholte, 2004b) and make a major contribution to raising and debating the issue of a fairer globalisation. They raise public awareness, undertake research, document the impact of globalisation on people, communities and the environment, mobilise public opinion and ensure democratic accountability. CSOs increasingly start to change the nature of global social dialogue (WCSDG, 2004:125).

The focus on participation within regional integration is mainly a governance question about whether regional bodies have the mandate to address social concerns, and if so, how they are in fact addressing them. What role do regional structures play in social dialogue? Some copy existing tripartite negotiation forums like EESC, other regional organisations are still looking for appropriate ways to consult CSOs and try to overcome specific regional difficulties.

Fair trade through the protection of labour rights

Increasing openness to global competition has imposed costs on labour in industrial countries through downward pressure on wages, the erosion of social security systems, the weakening of trade unions and labour standards. In developing countries, increasing openness has exacerbated child labour and other violations of core labour standards established by the ILO (Granger and Siroën, 2006).

In its assessment of multilateral trade rules, the WCSDG stressed the importance of a generalized adherence to the ILO Declaration of Fundamental Principles and Rights at Work in order to protect and promote workers’ rights worldwide as an essential aspect of ‘fair trade’ (WCSDG, 2004:82). At the same time, the WCSDG favoured asymmetric obligations as a function of the development levels of the trading partners (WCSDG, 2004:85). Attempts by the international trade union movement and other civil society groups to establish a global, legally binding regime of social standards have not been successful. The multilateral approach to labour standards in the WTO was rejected at the Singapore Ministerial Meeting in 1996 and a similar political consensus was repeated in the Doha Declaration of 2001. Opposition to a multilateral regime for social standards came from developing countries’ governments (but also business and economists) who feared that it would undermine their comparative advantage in low wage, labour-intensive industries (Dasgupta, 2000).

While the trade-labour linkage has been side-stepped at the multilateral level, labour standards are now increasingly incorporated into Regional Trade Agreements (RTAs) and bilateral FTAs, led by the United States and the EU (Greven, 2005; Grynberg and Qualo, 2006). Since the early 1980s, and the early 1990s respectively, they are both also using unilateral measures such as the Generalised System of Preferences (GSP), which operates under the WTO, for purposes of improving labour standards in developing countries.

The US has been a leader in advancing bilateral and regional FTAs as the Doha Round of multilateral trade negotiations has run into increasing difficulties. Many of its bilateral FTAs are North-South agreements, based on asymmetric negotiating power. Because developing countries

are too weak to refuse the demands of their most important trading partners, they are now often accepting at the bilateral and regional level what they have refused at the multilateral level. The “rush to regionalism” has included a number of contentious “behind-the-border issues” such as investment rules, intellectual property rights and, to some extent, labour rights (IISD, 2004). From the perspective of developing countries, resisting the priorities of industrialised countries in these fields is considerably more difficult than in multilateral trade negotiations. We cannot address the larger question of whether the highly controversial linkage of core labour rights (as defined by the 1998 ILO Declaration) to trade is “protectionism in disguise” or beneficial from a development perspective (as well as from a human rights perspective). However, it is useful to take a closer look at the recent developments regarding labour rights provisions in regional FTAs (see sections 2 to 5).

Towards development-friendly regional-global investment rules

From the perspective of workers in developing countries, the implications of increased openness are to a large extent independent from the ownership (national versus foreign) of the firms where they are employed. However, employment in MNE subsidiaries has a number of specific characteristics related to the scale of the company, the mobility of the subsidiaries, and their integration in global production chains. At the same time, host countries have some degrees of freedom to tackle socio-economic issues through their foreign investment policies and regimes.

The current regulatory landscape for FDI is fractioned, lacks transparency and, contrary to other areas of economic regulation, is characterized by a very weak multilateral governance level (Young and Tavares, 2004; Reiter, 2006). At the same time, bilateral investment treaties (BITs) and investment clauses in regional agreements have proliferated.² Both types of agreements have come under closer scrutiny and have met with stronger opposition. It is this situation that led the WCSDG Report to emphasize the need for a multilateral development-friendly regulatory framework for FDI (WCSDG, 2004:34,87,106), to be achieved through a policy development dialogue involving all relevant international organisations with a balanced representation of all interests (WCSDG, 2004:136). The Commission also referred to the regional dimension in a number of occasions:

it observed the increase in the number of BITs and investment clauses in regional agreements and expressed its concern “that developing countries may be accepting unfavourable terms in BITs as a result of unbalanced negotiations with stronger developed country partners” (WCSDG, 2004:87);

it recommended collective action, especially among developing countries and starting at the regional level, to define their interests, avoid incentive competition and negotiate regulatory frameworks, which could then become the building blocks of a multilateral framework (WCSDG, 2004:86-88); and it observed the over-concentration of FDI inflows in certain developing sub-regions and countries and suggested that a better spread can be reached through stable and transparent business and regulatory environments (WCSDG, 2004:27-29).

Regional collective action and rulemaking, as suggested by the Commission, could indeed reproduce a number of potential benefits of a multilateral investment regime (greater transparency and less incompatibilities leading to lower transaction costs, less rules competition among capital importing countries, ...), while at the same time making progress on, for example, finding a new balance between domestic policy objectives and investment provisions and

² The stock of concluded BITs is now above 2500 of which around 2000 are currently in force (Lizarazo, 1997; UNCTAD, 2005, 2006a). However, the new trend towards the renegotiation of BITs indicates the imperfection of the regulatory framework and indicates the existence of problems in the application of BITs, especially in a North-South context (UNCTAD, 2006a:2). The proliferation of new generation FTAs with investment provisions is considered as the most important recent phenomenon in international rulemaking on investment (Reiter, 2006). These so-called Preferential Trade and Investment Agreements (PTIAs), as defined by UNCTAD (2006b), have demonstrated a rising trend over the most recent years and doubled their number since 2000, bringing the stock of concluded PTIAs at the end of 2005 at 232. On the basis of the negotiation processes under way UNCTAD, expects even more pronounced increases in the coming years. Developing countries are party to 79% of all PTIAs, developed countries are party to 54% of the agreements (UNCTAD, 2006b:7).

reaching more transparency and balance in dispute settlement. Collective renegotiation of BITs at the regional level might be an interesting option, although the economically and politically 'optimal size' of the regions remains to be established, as well as the legal bases for such collective action.³

We see at least three investment-related aspects on which developing regions could take new initiatives, with the potential to contribute to a more harmonious relationship between FDI policies, on the one hand, and socio-economic policies, on the other. The first refers to a balanced re-evaluation of the inclusion of performance criteria in investment regimes in the light of their future regulation.⁴ Whereas European type BITs tend not to include provisions on performance criteria, the US/NAFTA type agreements feature restrictions on performance criteria. The majority of BITs concluded between developing countries do not address performance requirements.⁵ Free trade agreements usually do include provisions on performance requirements.

The second aspect refers to the enhancement of the degree of transparency in dispute settlement between investors and host countries. This is one of the aspects of the last generation BITs, especially those following the US model, that has been heavily criticized by civil society organisations and trade unions. According to Petersen (2005:8), the most notable of all features of recent BITs has indeed been the incorporation of clauses granting foreign investors direct legal personality under international law. Contrary to the WTO practice, where disputes are settled between governments, investors protected by BITs can bring their claims against the host country governments directly before external arbitration tribunals, thereby avoiding the national host country jurisdiction. As there is no unique multilateral framework for investment, dispute settlement is arranged in different ways. In most of the recent BITs, dispute settlement clauses refer to ICSID; to a lesser extent to the rules of the UN Commission on International Trade Law (UNCITRAL), and even less to the arbitration facility of the International Chamber of Commerce or to the Arbitration Institute of the Stockholm Chamber of Commerce (Petersen, 2005:9; UNCTAD, 2006c). Only in the case of ICSID all arbitrations are publicly disclosed. This makes it difficult to monitor investment-related conflicts as possible indicators of the quality of the international investment regime, and explains part of the criticism on the lack of transparency and accountability in these matters from the side of civil society and certain countries. From the information that is available, it can be inferred that only since the beginning of the 1990s, litigation related to BITs has really taken off. It has steadily risen since then and averaging about 10 arbitrations per year over the decade. Especially arbitrations under the NAFTA regime explained this growth. In 2003, the numbers increased dramatically and since they amount to more than 35 cases per year (Petersen, 2005:12), although a stagnation seems to be observable since 2005 (UNCTAD (2006c:2). Many analysts see these figures as a warning light, indicating that BITs seem to start to generate problems especially in developing countries and that therefore the instrument should be re-evaluated and re-designed. Many of these problems are related to the emergence of unforeseen policy implications of treaty commitments. Petersen (2005) has

³ An interesting phenomenon in this respect is the emergence of plurilateral organisations that have played a role in promoting BITs or drafting BITs for their members include the Asian-African Legal Consultative Committee (AALCC) who published a BIT model, and the ACP Group who pursued the signature of BITs within the framework of the Lomé conventions (Dolzer and Stevens, 1995:5-7). Regional organizations have played similar roles. For example, a convention was signed between CARICOM and Venezuela aiming at the promotion of BITs between the latter and any individual member of the regional organization.

⁴ These requirements were used extensively by host countries during the 1960s up to the 1980s as a partial substitute of more restrictive controls over FDI. They seek to link the benefits and guarantees for foreign investors to reaching minimum levels of local content, employment, exports, knowledge transfer, etc. Given its nature as a mechanism to enhance benefits to the host economy derived from foreign investment and due to its distortionary effects on the allocation of resources at a global level, developed countries promoted the dismantling of performance criteria through the negotiation of bilateral and regional investment agreements, although quite some variability between the contents of individual (bilateral and regional) agreements can be observed (CNUST, 1988; Lizarazo Rodríguez, 1997). At the multilateral level, the agreement on TRIMs ('Dunkel text') of 1991 prohibits 'local content requirements' and 'trade balancing requirements' as conflicting with the prohibition of quantitative restrictions and the GATT principle of national treatment. The agreement also included an illustrative list of TRIMs (GATT, 1994:166-167). The agreement was of particular importance for Latin American and Southeast Asian industrializing economies, where local content and export requirements were often used in their –mainly national– investment regimes (Takacs, 1994; Cuyvers et al., 1996). The implementation of the TRIMs framework for performance requirements has been slow (Reiter, 2006). A majority of countries have not fulfilled their notification obligations and many developing countries negotiated longer phase-out periods for performance requirements.

⁵ Exceptions are, for example, the BITs between the Dominican Republic and Ecuador and between El Salvador and Peru.

summarized these as follows: (i) the combination of vague and open-ended treaty texts and the application of standard BIT models, on the one hand, and the un-transparent, *ad hoc* and decentralized dispute settlement, on the other, is leading to increasingly divergent and conflicting rulings; (ii) BITs may restrict the taxation powers of the host country when tax measures are contested by investors as indirect forms of expropriation; (iii) bilateral treaties may restrict the possibilities for host governments to regulate in the public interest in areas such as health, education, safety or the environment; (iv) BITs may hinder positive discrimination measures that seek to remedy past injustices (for example, in favour of minority or indigenous groups). UNCTAD sees the surge in investment disputes not necessarily as unhealthy by itself. However, it acknowledges the vulnerability of developing countries because of their limited technical and financial resources to handle the disputes and the potential impact on their reputation. UNCTAD therefore calls for more technical assistance to developing countries (UNCTAD, 2006c:8). Regional coordination and consolidation of resources would therefore be most welcome.

A final aspect on which new action could be taken by regional organizations concerns the non-binding Codes of Conduct for MNEs. These are not new instruments but the EU has recently picked-up the idea again and has linked it to the concept of corporate social responsibility. Although such initiatives are positive per se, the effectiveness and potential scope of non-binding guidelines probably need further assessment from the side of developing countries.

Building a regulatory framework for international migration: the role of regions⁶

Apart from the quantitative growth in migration flows experienced in the last decades and foreseen for the coming decades (Channac, 2007a,b), the patterns of cross-border movements have also changed deeply and qualitatively with the globalisation process and the evolutions it entails in terms of mobility and communication. As a result, some new political preoccupations now emerge as priorities on the global agenda, such as the fight against human trafficking and smuggling, the increase of irregular migration as opportunities to follow regular migration routes have been curtailed, or even the development of internal displacements. Moreover, the human and social rights of migrants and members of their families remain very often ignored or consciously scorned. Quite often migrants lose their entitlements to social security benefits in their home country owing to their absence, and at the same time, they encounter restrictive conditions in the host country with regard to their coverage by the national social security system (GCIM, 2005:18). On the other hand, many host countries welcome migrant workers' contribution to their social pension funds as a way of sustaining their pension schemes. However, mechanisms that ensure that retired migrants can fully benefit from the old age pension scheme once they return to their country of origin are often absent or underdeveloped. Hence, the same payment obligations are imposed on domestic and migrant workers, but the latter are unable to derive the same benefits if they go back. This situation creates strong incentives for migrant workers to work in the informal sector of the economy and to stay after their period of employment has expired.

However, cross-border movements of people concern more and more countries around the world. If well managed – orderly and cooperatively - cross-border movements can trigger or enhance economic and social development, both in countries of origin and destination, as shown by the recent interest in the role of remittances or notions such as “brain circulation”. Migration patterns and issues (forced migration, remittances, etc.) may differ and evolve sensibly between regions (UN, 2004a, 2006). Regional specificities exist, related to the nature of migration in the different regions, as regards integration or return policies, or, more generally, immigration or emigration policies (UN, 2006, 2004a-b, 2002). Nonetheless, much more emphasis is now put, at this regional level, on the positive effects of cross-border movements of people as regards

⁶ A more elaborated treatment of the issues covered in this section, including their linkages with initiatives at the global level, can be found in Channac (2007a).

developmental issues for developing countries, or economic growth and demographic deficit compensation for industrialised aging countries, and, consequently, on the means to reap these benefits by managing migration orderly and efficiently.

In its final report, acknowledging these changes in migration patterns and policies, the WCSDG recommends the development of a multilateral framework for “orderly and managed” cross-border movements of people, a framework that could contribute to “enhance global productivity” and “eliminate exploitative practices” by “complementing measures to achieve a more balanced strategy for global growth and full employment”. According to the World Commission, with a global framework based on more democratic rules and the respect of the human rights of migrants, the countries of origin and destination, as well as the migrants themselves, could maximize the benefits of migration and minimize the negative sides: this framework could “provide uniform and transparent rules for cross-border movements of people” and “balance the interests of both migrants themselves and of countries of origin and destination”. The WCSDG insisted further on the fact that “the issues and problems associated with the movement of people across national borders cannot be addressed by single countries acting in isolation or on a unilateral basis”. Thus, this implies the development of effective cooperation arenas at the regional level.

The actions proposed by the World Commission are three-fold: first, enhanced complementarity and coherence between different levels of governance, regional integration being a necessary but insufficient step if not complemented by a global framework; second, a broad-based decision-making framework, that is a framework opening governance processes to new actors having interests and/or expertise in the field of migration; and third, revitalized international institutions, towards an approach to multilateralism based on the enlargement and the respect of the human rights of migrants workers and the members of their families, the revitalization of international institutions being also an important tool to promote deeper regional integration (WCSDG, 2004:94,96-99).

Since the 1990s, dialogues on the governance of migration have been gradually set up at the regional level, and this is an element consistent with the WCSDG’s recommendation (WCSDG, 2004:74). However, if regional cooperation is indeed expanding, it is nonetheless necessary to remain cautious on its nature and purposes, but as well on its real contribution to the promotion of a more social approach of migration management. In fact, at the regional level, cooperation can follow two main different, but also complementary, ways: migration management can then fall in the ambit of regional integration processes or agreements, which are formal, mainly binding, agreements, and/or cooperation for migration can also be developed through informal and non-binding consultative regional processes.

Regional Consultative Processes for Migration (RCPs) have multiplied in various regions of the world.⁷ Even if all these processes have some peculiar characteristics depending on different regional contexts and on the conditions determining their creation, they all share some essential common characteristics which allows gathering them under the generic name of regional consultative processes for migration. Three main characteristics distinguish the RCPs from classic regional or international institutions: “(1) informality — they are a process, not an institution, meaning that working toward an eventual goal is an important aspect of the process; (2) openness — as agreement on all issues is not required, all options can be explored openly, thus increasing the number of possible solutions to issues; (3) efficiency — as there is a minimum administration, direct communication is more easily possible between high level officials and experts in regional consultative processes.” (Klekowski von Koppenfelds, 2001; Thouez and Channac, 2005; Thouez and Channac, 2006). Consequently, what elements could

⁷ For instance, for Africa, the MIDSA (Migration Dialogue for Southern Africa — 2000) and the MIDWA (Migration Dialogue for West Africa — 2001); for central and east Asia, the Bali Conference (2002), the Manila Process (1996) or the Issik-Kul Dialogue (2000) ; for North America, Latin America and the Caribbean islands, the South American Conference on Migration (Lima Process — 1999), the Regional Conference on Migration (Puebla Process — 1996) or the Seminar for the Caribbean Region; and, for Europe, the IGC (Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia — 1985) and the Budapest Process (1991-93) (Klein Solomon, 2005; Thouez and Channac, 2005).

indicate that these RCPs work towards promoting a more social approach of migration management at the regional level or not?

The RCPs' main aim is to build networks of information exchange between participating governments, and so to promote, on the one hand, relations of trust and confidence amongst actors, and then a common understanding of migration issues, and, on the other hand, some convergence, harmonization, in migration practices and policies between various levels of decision-making, from the global to the national level — and/or the other way round.⁸ To enhance multilateral cooperation at the regional level, RCPs lean partly on existing formal regional agreements or institutions. Previous experiments of regional multilateral cooperation probably facilitate the establishment of new RCPs.⁹

However if RCPs are facilitating networking at the regional level, UN institutions could play a crucial role in developing the “open-regionalism” evocated by the World Commission. Migration flows are not only taking place between countries inside the same region; they also have an important inter-regional and inter-continental dimension.

This was also one of the RCP's shortcomings identified by the Global Commission for International Migration in its final report, which recommended that “additional efforts are required to ensure that regional consultative processes on migration have worldwide coverage, engage civil society and the private sector, and are not focused solely on migration control” because “greater interaction between the different processes is essential given the global nature of migration” (GCIM, 2005:70,82). This conclusion surely agrees with those of the WCSDG as regards cross-border movements of people. Some recent initiatives tend to settle such inter-regional cooperation processes.¹⁰

Enhancing intra-regional portability of skills and labour qualifications¹¹

In most regions of the world unskilled workers such as construction workers, domestic workers, and agricultural labourers dominate the flow of migration. However, skilled, professional, and business migration has gained in importance in recent years. The migration flow to high-income countries has increasingly been dominated by skilled migration (Salt, 2001:17).

The issue of brain drain and brain gain is highly related to the mobility of skilled labour. Cadres with internationally or regionally recognised skills and qualifications are more likely to migrate. In general, there is a high correlation between FDI and skilled labour migration. The recognition of qualifications improves migrant workers' access to positions at the upper end of the value chains in the host countries. Such positions are usually linked to

⁸ For a critical evaluation of the RCPs, see Commission on Human Security (2003), Channac (2004, 2007a), and Thouez and Channac (2005).

⁹ In Africa, while associating some southern EU states, the *Conference on Western Mediterranean Cooperation (5+5)* also gathers all the UMA's member states (*Union of Arabic Maghreb*). In addition, the MIDSA (*Migration Dialogue for Southern Africa*) exactly follows the borders of SADC and of COMESA; and ECOWAS and the UEMOA are closely associated to the development of the MIDWA (*Migration Dialogue for West Africa*). In Latin America, RCMPs are bound to regional economic groupings, such as MERCOSUR, OAS, or even CARICOM. For Asia and the Pacific, ASEAN, SAARC, PIF and APEC support the majority of the RCPs.

¹⁰ This is the case, for instance, of the African Union, following the resolution adopted in 2001, that considered a draft Migration Policy Framework for Africa, a document that proposes guidelines for migration management not only at the sub-regional level, but more broadly for the African region, encompassing sub-regional cooperation processes (African Union, 2006). Another interesting example of the development of inter-regional initiatives is the Brussels Declaration on Asylum, Migration and Mobility – and the Plan of Action – adopted by the Governments of the ACP Group during the 1st ACP Meeting of Ministers responsible for Asylum, Migration and Mobility held in Brussels in April 2006. The main objective of this Meeting was to formulate concrete ACP policies on asylum, migration and mobility to address migration issues in a cooperative, coordinated and efficient manner. Furthermore, the 2nd ACP Civil Society Forum, which took place in Brussels in April 2006, complemented the defined ACP Position on Migration and Mobility, and clearly indicated the importance granted to non-state actors' involvement in the debate on migration for the ACP Group (ACP, 2006a,b,c). Another example of the development of inter-regional initiatives has been the launch, in 2003, of a discussion, in the framework of the Asian-African Legal Consultative Organization (AALCO), on a draft model agreement for migration, as legal migration is the item n°5 on the AALCO' work programme. Earlier, in June 2001, in New Delhi, the AALCO adopted a “final text of the AALCO's 1966 Bangkok principles on status and treatment of refugees Asian-African Legal Consultative Organization (Resolution 40/3), an instrument that seeks to strengthen refugee protection in these two regions.

¹¹ For more elaborated treatment of this issues covered in this section see Hartmann (2006).

improved rewards (salary and other benefits) and a higher status in the host country. As a result, recognition is likely to have a positive impact on the level of remittances. The recognition of skills has also positive effects for the host country as it creates incentives for migrants to work in the formal sector in spite of the difficulties they may encounter as regards social security benefits. Some sending countries have deliberately started to train more professionals than their labour market can absorb with a view to taking advantage of the shortage of skilled labour in high-income countries and to capitalise on their quality training programmes. However, for other countries that do not have the capacity to produce enough qualified labour even for the domestic market such a brain drain may have a devastating impact. Nevertheless, even when countries train more people than they need for their domestic market, they are confronted with major problems related to remittances as long as no compensation mechanisms are in place. This money usually goes back to private households in the home country, and the government, which usually paid at least part of the training costs, receives little money. Host countries, on the other hand, benefit from skilled labour from abroad without paying the cost of their education. In short, benefits and costs are unequally distributed.

The ILO Human Resource Development Recommendation, adopted in 2004, calls upon ILO members to promote recognition and portability of skills, competences and qualifications not only at the national but also at the international level (ILO, 2004a). The Committee on Employment and Social Policy, whose mandate it is to advise the Governing Body of the ILO, has put this issue on the agenda with a view of further promoting the transferability and recognition of skills in the context of the Global Employment Agenda (GEA) (ILO 2007). The ILO recommends the strengthening of quality assurance for training and education and underlines the importance of social dialogue and collective bargaining within this framework. At the centre of the recommendation lies the establishment of national qualifications frameworks. We will outline the recognition regulations of a selected number of regional integration agreements such as the EU, MERCOSUR, CARICOM, NAFTA, SADC, ASEAN, SAARC and some more other bilateral agreements in the following sections. Particular attention will be paid to the efforts of the EU where a regional recognition regime has been developed furthest.

2. The Contribution of the EU to a Fair Globalisation

Europe has experienced accelerated economic integration over the past two decades. The creation of a unified regional market has been achieved by wide-ranging liberalisation of trade, services capital and labour markets – all of which has brought major adjustment costs in its wake. The process has been pushed even further by the formation of economic and monetary union (EMU), which has removed countries' ability to use the exchange rate to deal with economic problems. Consequently, countries have to rely more on policies such as labour market flexibility to adjust to external shocks. The overall result has been increased competition and increased adjustment pressures (Ardy, Begg, Schelke, Torres, 2002).

Economic integration has brought positive results through higher economic growth and reduction of poverty. In parallel to this, social cohesion has been achieved by combining economic integration with flanking social measures. Since the 1980s, under pressure from social groups, social policy has been gradually built up. About half of its social policy directives have been established in the 1990s. Today, the 'social *acquis*' includes harmonised standards governing occupational health and safety of workers in the workplace as well as other aspects of employment such as gender equality and non-discrimination; the creation of a European Charter of social rights, and the pursuit of the social dialogue at the European level through the creation of European Works Councils (Gavin, 2001).

A 'social policy protocol', based on the 1989 Charter on the Fundamental Rights of Workers, was annexed to the 1992 Maastricht Treaty. Some member countries, notably the UK,

refused to sign the Charter. Following the election of Tony Blair the social policy protocol was repealed and the social agreement was incorporated into the Amsterdam Treaty of 1997, which since then provides the legal basis for social policy directives under articles 138 and 139 of the EC Treaty.

‘Social dialogue’ in the EU refers to the bipartite dialogue between management and labour unions at the regional level to negotiate framework agreements on various aspects of employment for example the first framework agreement of 1995 was on parental leave. These agreements are then presented to the Commission in the framework of the tripartite dialogue and if accepted then become EC directives. Progress in this framework has led to an increasing number of European laws including the equal treatment of men and women, protection of workers health and safety, social security, information and consultation of workers etc, as well as on special measures to combat social exclusion.

The Nice Treaty, which entered into force on 1 February 2003, strengthened the European Economic and Social Committee (EESC) in its role as the institutional representative, at the European level, of organised civil society. The civil society dialogue is not to be confused with the social dialogue as they are quite separate concepts. Civil society dialogue applies to all legislation of the EU and not just social policy. Civil society dialogue is concerned about getting better legislation and about making the Commission more accountable. In the interpretation of the EESC, the organised civil society encompasses three groups: the employers’ group, the employees group and the more recent group with various interest groups. The EESC is increasingly involving CSOs and European and trans-national networks that are not (yet) directly represented within it in its work by various means. It was strengthened in this process by the European Commission, which made a commitment to cooperate with it within the framework of a Protocol signed on 7 November 2005, replacing the previous Protocol of 24 September 2001 (EESC, 2005). In February 2004, the EESC adopted several proposals for stronger and more structured cooperation with European CSOs. The EESC decided to set up a Liaison Group to interact with these organisations and designed to be both a liaison body and a structure for political dialogue. The Liaison Group ensures that the EESC has a coordinated approach towards these organisations, as well as monitoring joint initiatives.

Structural funds – between development and social policy

Since 1989, the creation of a financial mechanism to aid the development of the poorest countries and regions through the structural funds has become a key policy. The amount of funding available has increased significantly and management of the funds has been completely reformed. The increased importance of the structural funds reflected the fears of policy makers that the accelerated integration resulting from the internal market programme of 1992 and the commitment to EMU adopted in 1993 could exacerbate disparities between rich and poor countries unless remedial measures were taken. It also signalled a political message of solidarity to the poorer countries that they would receive assistance to help them address the adjustment costs that could result from the quickening pace of integration.

Compared to other regions, Europe has achieved a significant degree of equitable development¹² that is reflected in the increasing convergence of incomes. In the past, the poorest countries were Ireland, Spain and Portugal, all of whom have benefited from EU membership. Ireland’s gross domestic product (GDP) per capita rose from 60 per cent of the EU average, when it joined the EU in 1973, to 125 per cent in 2002. Spain and Portugal, with respective GDP per capita of 71 per cent and 54 per cent at the time of accession in 1986, reached 86 and 71 per cent in 2002. The poorest countries in the EU today are the former communist countries of Central and Eastern Europe (CEE) who joined in 2007. Short-term indications point to the fact that they are already on a path of economic growth. Cohesion funds currently account for 4 per cent of GDP in the poorest countries and that is expected to rise to 10 per cent by 2013. In terms

¹² The divergence between income per capita between the richest and poorest countries in the EU-25 is ten to one, whereas in East Asia, the rate is that of a hundred to one.

of employment, 2.5 million additional jobs are expected to be created (Hübner, 2005).

Set-up in 1957, the European Social Fund (ESF) represents the main financial instrument of the European Union to support economic and social cohesion, by reducing the differences in living standards across EU Members States and regions and by promoting employment in the EU. 'The ESF's remit is to support measures which aim to prevent and combat unemployment, develop human resources and foster social integration in the labour market, so as to promote a high level of employment, equal opportunities for men and women, sustainable development and economic and social cohesion'.¹³

The Commission report 'European values in the globalised world' in 2005, underlined that beside the positive effects of open trade, there is a need to assist those who are facing the negative outcomes of globalization through job losses. In order to support Member States governments to reintegrate workers into the labour market, President Barroso proposed the establishment of a Globalization Fund; the proposal was endorsed at the December 2005 European Council. The European Globalisation adjustment Fund (EGF) represents an innovative instrument aimed "to provide additional support for workers made redundant as a result of major structural changes in world trade patterns (...) Activation of the Fund should be subject to strict criteria relating to the scale of economic dislocation and its impact on local, regional or national economies" (European Council conclusions of December 2005). The novelty of EGF is the direct support offered to the workers who have been made redundant, and not the companies or institutions, through active labour market tools such as counselling, job search and mobility allowance, and micro-credits. However, the Fund will apply only where the redundancies have a major impact on a region or sector, and 'therefore there is an EU dimension in terms of scale and impact' (MEMO/06/486).¹⁴ EGF is financed by unused community funds, and has been made available since January 2007, and is foreseen to be 500 million EUR per year. France was the first member state to apply for a contribution from the Fund, followed by the German and Finish governments.

The Lisbon Agenda – response to globalisation

Since 2000, the EU economic and social model has been increasingly reshaped by the 'Lisbon agenda' that has been endorsed at the highest political level. The Lisbon agenda aims to create a competitive knowledge society to achieve higher economic growth, increased competitiveness, and create more jobs. All of this is to be done without harming social cohesion or the environment. Thus, the EU model has been redefined to include high economic growth, and a high level of social and economic cohesion². This is Europe's response to globalisation in order to make business and labour more competitive and better able to take advantage of the opportunities arising from globalisation.

Prior to this, based on the new provisions of the Amsterdam Treaty, the Luxembourg European Council in 1997 paved the way for the European Employment Strategy (EES), also known as the 'Luxembourg process'. The EES is designed as the main tool to give direction to and ensure coordination of the employment policy priorities to which Member States should subscribe at EU level (European Employment Observatory). The Lisbon European Council in 2000 set full employment as an overarching long-term goal for the new European economy.¹⁵

The EES initiated a new working method at EU level – the Open Method of Coordination (OMC). The OMC is based on five key elements: subsidiarity, convergence, management by objectives, country surveillance and an integrated approach. The main areas covered are employment, social inclusion, pension, health, research and innovation, and education and training. The policy goals of the OMC in the employment area are to increase the employment rates and to lower unemployment. EES aims at achieving better European convergence of

¹³ <http://europa.eu/scadplus/leg/en/lvb/l60016.htm>

¹⁴ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/486&format=HTML&aged=1&language=EN&guiLanguage=en>

¹⁵ Targets for employment rates for 2010 - 70% overall and 60% for women

national employment strategies, while respecting national diversity. The goal is to promote high employment rates, but not at any price (preserving quality of jobs, avoiding tax competition between countries).

Cohesion policy is now the key instrument for achieving the objectives of the Lisbon agenda. The role of cohesion policy is to make countries and regions more attractive to investment, to promote innovation and to create more and better jobs. The reform of the structural funds has shifted financial support towards research and development, innovation, more and better jobs. Two thirds of the cohesion funds are now spent on the Lisbon objectives (Hübner, 2005).

However, social groups are sceptical that the Lisbon strategy can effectively combine economic, social and environmental objectives in a mutually re-enforcing way.¹⁶ They see the Lisbon strategy as ‘growth at all costs’ where economic growth is given priority over social objectives. They reject recent Commission statements that ‘growth automatically creates social cohesion’, which are based on purely quantitative calculations of GDP per capita. Costs generated by economic growth on social protection, public health and the environment are externalised from such calculations.

The European Trade Union Congress (ETUC) together with the Social Platform of social NGOs, and the European Environmental Bureau (EEB) expressed their reservations to the European Council that the main emphasis of the Lisbon agenda was on the economic pillar of competitiveness and building an internal market without barriers for business.¹⁷ They fear that ‘growth at all costs’ will undermine social objectives and decent working conditions in the EU.

A recent European Parliament (EP) report shows how many European companies that benefited from EU structural funds later de-localised production to either Eastern Europe or Asia (Hutchinson, 2006). During the period 1995-2001, 95,000 jobs were lost in France alone, making an average annual loss of 13,500 jobs as a result of outsourcing to emerging market economies – especially to China which is the preferred destination (Aubert and Sillard, 2005). In the absence of any multilateral agreement binding multinational corporations, the EP report calls for a new international initiative on labour standards in the global economy.

It is true that the European Commission has focussed strongly on economic growth - ‘the sick man’ of the Eurozone in recent years. Weak growth rates averaged around 1.5 per cent per annum between 2002 and 2005, but last year saw a marked improvement with growth at 2.7 per cent and projected 2.4 per cent for 2007.¹⁸ Critics argue, however, that the strict macroeconomic disciplines imposed by EMU have also contributed to low growth and high unemployment. The structural imbalance between the centralised powers of the EU in the field of economic integration compared to the de-centralised powers for labour and employment, which is left to national ‘action plans’ results in a negative trade-off between economic and social policy (Fitoussi and Laurent, 2006). There is, however, no agreement on a common strategy for reform of EMU to increase the social benefits. Even so, there appears to be a growing consensus that reforms are needed to allow countries greater fiscal leeway to deal with the needed structural reforms – especially as regards education and labour markets (Debrun and Pisani-Ferry, 2006).

Intra-European free movement of persons and the portability of skills: recent developments

In general, regional integration processes are mainly focused on economic issues, such as the establishment of free trade areas. As regards migration, the main purpose of regional agreements is the facilitation of the person’s movements on an intra-regional basis, as a condition to the further deepening economic integration. The system of free movement of

¹⁶ See Social Platform Resolution for European Council, 2005

¹⁷ See Comments and Proposals for the 2006 Spring Council on the Lisbon Strategy, by ETUC, Social Platform and EEB.

¹⁸ See EU Annual Report on the Eurozone, 2007.

persons between the EU Member States is certainly the most accomplished and documented example of such regional integration. However, the idea of free movement of persons and of facilitation of labour migration is not restricted solely to the EU, and progress in this way has been accomplished in the rest of Europe.¹⁹

Free movement of persons represents one of the fundamental freedoms guaranteed by the Community law and is a way of creating a European employment market and of establishing a more flexible and more efficient labour market (COM (2002) 649). However, one of the tension points between welfare states and the developing common market has arisen over regulations governing the mobility of labour across the jurisdictional boundaries of member states (Wallace, Wallace and Pollack, 2005). In order to facilitate the free movement of workers in the European labour market, the European Commission launched in 1994 the European Employment Services (EURES). One of the aims of EURES is to provide information on living and working conditions, labour market policies and rights related to free movement of workers in all Member States.

Migrant workers may face some problems regarding the recognition of the national qualifications. In this sense, the EU is particularly active in the area of mutual recognition of qualifications. Mutual recognition is considered to be instrumental to the realisation of market integration. The EU has put the development of a European Qualifications Framework (EQF) at the top of its agenda (Copenhagen Declaration) (European Commission, 2002; Council of the European Union, 2002). In 2006, the European Commission took steps to advance this process by making a proposal for a recommendation of the European Parliament and the Council on the establishment of the European Qualifications Framework (European Commission, 2006a).

This endeavour had gained momentum through the agreement of the European Education Ministers in 2005, on the occasion of a ministerial meeting in Bergen (Norway), to relate their project, the European Area for Higher Education, to the EQF. The conference in Bergen followed up a political process, which started in 1999 with a conference in Bologna where European ministers responsible for higher education signed the Bologna Declaration. The creation of the European Area for Higher Education lies at the centre of this process, which became known as Bologna process. This inter-ministerial process is member driven and is only partly related to the supranational oriented arrangements of the EU, which has little competence in the field of education. A major legal framework of the Bologna process is the UNESCO-Council of Europe joint convention on the recognition of higher education in the European Region adopted in 1997.²⁰ As a result of the ministers' decision in Bergen to relate their endeavour to the EQF, a European recognition regime has come into existence which includes different legal frameworks.

An important tool designed to facilitate mutual recognition within the European region is the European Credit Point Transfer System (ECTS). Such credit systems, which are also widespread in the US and are increasingly being adopted in other countries, facilitate the comparison of different degrees. The establishment of formal quality assurance and accreditation systems has also become a major issue on the Bologna agenda. In 2005, the ministers agreed on establishing the European Register for quality assurance and accreditation agencies that meet European standards. These standards have been developed by the European Association for Quality Assurance in Higher Education (ENQA), and were adopted by the education ministers in the Bergen Communiqué on *The European Higher Education Area - Achieving the Goals of*

¹⁹ Several European regional organisations have the objective to foster regional integration and have developed instruments to facilitate the movement of persons. In 1992, an Agreement on the free movement of the Commonwealth of Independent States (CIS) had already been signed. This cooperation in the CIS was deepened in 1994, when CIS Member States signed the Council of Europe's Agreement on Cooperation in Labour Migration and Social Protection, even if the implementation phase seems to progress slowly. In 1998, an agreement was signed to combat irregular migration in the CIS. Moreover, in 2003, CIS countries elaborated a Draft Convention on the legal status of migrant workers and members of their families. In May 2001, the Eurasian Economic Community was also established with the aim to create a custom union and a common market between its Member States. Some provisions were then relative to the adoption of common guidelines concerning border security.

²⁰ To date, the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (CETS No. 165) has been signed or acceded to by 46 countries of Western and Eastern Europe. But also Australia, Canada, the US, and Israel have signed the convention, though out of this group only Australia has so far ratified it. This joint convention of UNESCO and the Council of Europe is a revision of the Convention on the Recognition of Studies, Diplomas, and Degrees concerning Higher Education in the States belonging to the European Region, adopted at Paris, 21 December 1979 (UN Treaty Series No. 20966).

2005 (European Parliament and Council, 2006).²¹ The European Register is designed to ensure that quality assurance and accreditation agencies that are active in Europe meet certain standards. Hence, the Register establishes a kind of meta-control at the regional level, and aims at improving trust in the reliability of the information provided about the quality of degree awarding institutions. The European Register is, in other words, another instrument designed to facilitate mutual recognition of higher education qualifications.

The EFQ has benefited from the standard-settings of the Bologna process in several ways. The ECTS has paved the way for the development of a transfer system of learning credits for vocational education and training, the European Credit Transfer System for Vocational Education and Training (ECVET) (European Commission, 2005a). The European Commission has also taken up the issue of quality assurance of the awarding institutions. In 2005 the Commission established a European Network on Quality Assurance in Vocational Education and Training similar to ENQA, which was established in 2000 (European Commission, 2005b). Common standards for assessing and accrediting vocational training will further facilitate the comparability of certificates and awarding institutions.

The importance of the EQF must be seen in the context of the General System Directives for professional recognition of the EU.²² Directives are strong instruments, as compliance with their requirements can be enforced through the European Court of Justice. Unless there is a substantial difference, the recognition Directives obliges EU member states to recognise the qualifications of other EU members for professional purposes. Hence, a member state is only allowed to require a compensation mechanism when the matters covered by the migrant's education and training differ substantially from those covered by the diploma required in the host Member State. As a result, the definition of substantial difference has become paramount when defining equivalence. The common classification system of the European Qualifications Framework, as well as common standards for quality assurance and accreditation, further specify what may count as substantial differences. These standards constrain significantly the reasons that may be given to justify a refusal. In short, the European recognition arrangements stand for a complex combination of instruments, which belong to different legal frameworks, such as UNESCO and the Council of Europe.

The external dimension of economic and social coherence

In its external policies, the EU works together with the multilateral institutions to improve global social policies. Since the publication of the WCSDG report in 2004, and the UN Summit on the follow up of the Millennium Development Goals, which endorsed it in 2005, the EU has further strengthened its external efforts to confront the formidable social challenges that globalisation presents for the millions that are excluded from its benefits.

The EU does not seek to export its own social model or to promote harmonisation with its own social standards. In addition, together with the World Commission, it strictly refuses any sanctions-based approach to labour standards in international trade agreements (European Commission, 2004). Instead, it relies on the expectation that its external partners should uphold their multilateral obligations that they have undertaken. Almost all countries have ratified the UN Universal Declaration of Human Rights. Therefore, the EU believes that all countries, whatever their level of economic development, should uphold their obligation to protect core labour standards (CLS) which are, in fact, universally recognised human rights. Moreover, the EU reserves its right to suspend development aid in cases of severe violation of human rights.

²¹ ENQA used to be a network, which was established in 2000 by the European Commission. In November 2004, the General Assembly transformed the Network into an association. For further information see www.enqa.eu

²² The first general system Directive regulates the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (Directive 89/48/EEC). The second general system Directive for recognition, supplements the first by regulating the recognition of professional education and training of at least one-year's duration, which is not covered by the first Directive (Directive 92/51/EEC). Finally, Directive 99/42/EC introduces a system for access to certain commercial, industrial or craft occupations that are not covered by the other two Directives.

The EU recognises that the incorporation of labour standards into free trade agreements (FTAs) with third countries or regional groupings is politically sensitive because developing countries fear that such provisions could be used as a form of protectionism (Dasgupta, 2000). Therefore, the EU restricts its requests to respect for human rights, which include core labour standards. Since 1992, the EU has included a human rights clause in all agreements with third countries. The clause defines respect for human rights and democracy (as laid out in the Universal Declaration on Human Rights) as an “essential element,” and it applies to more than 120 countries today. “A violation of human rights may allow the EU to terminate the agreement or suspend its operation in whole or in part” (Der-Chin, 2003).²³

Regarding non-core labour standards, the EU takes a more flexible approach and encourages countries to adopt those standards according to their socio-economic level of development. Many countries have already adopted multilateral obligations concerning ILO labour standards but frequently fall short of proper implementation in their domestic economies. To encourage better implementation and monitoring, the EU offers special incentives arrangements through its unilateral Generalized System of Preferences (GSP).²⁴ The EU now aims to go beyond labour standards and to work towards the promotion of decent work, especially in developing countries. In 2006, the EU launched a new policy for decent work – meaning more and better jobs with welfare protection, equal opportunities and social dialogue – all of which can help developing countries to fight poverty (European Commission, 2006d).

To conclude, the EU is now committed to improving economic and social coherence through its internal and external policies. It has moved beyond the traditional approach of labour standards to a broader understanding of social policy, which incorporates the qualitative aspects of decent work for all. Development aid should be targeted towards social and economic coherence as a means of reducing poverty.

Towards a development-friendly investment regime: a role for the EU?

In the EU, the member states are still competent to negotiate international investment treaties. The role of the EU, as a regional organisation, has therefore been very modest until now, at the same time as individual member states have continued their activism regarding BITs. A consequence of this split competence between the national and supranational level in the EU is that investment-related clauses in the European extra-regional FTAs are normally less comprehensive than the provisions in the BITs. Moreover, most of these FTAs explicitly refer to the BITs signed by EU member countries. A look at these investment-related clauses reveals the poor coverage of the issues usually covered by the BITs (Szepesi, 2004). Especially post-admission provisions and protection against expropriation are poorly represented, if not completely absent. Only in the Jordan agreement, a clause on national treatment can be found. The agreements with Mexico and Chile are somewhat more sophisticated than the Euro-Mediterranean Association Agreements (EURO-MED Agreements), revealing the important influence of the NAFTA model on the American continent. The post-admission provisions in these agreements are basically GATS compatible, rather than GATS plus. For the services sector, explicit reference is made to GATS commitments. The agreement with Chile is the first to extend national treatment to all non-service sectors, and is, in general, the most developed FTA in investment. Recently, the EU has discussed investment issues on behalf of the member states at the WTO, but the issues were not withheld in the Doha Round negotiations.

²³ Critics such as MEP Richard Howitt point out a lack of enforcement and a double standard favouring economically important countries while criticizing smaller countries such as Myanmar/Burma. See also: http://www.eubusiness.com/Institutions/060515154807.135z74mw/sendto_form.

²⁴ The EU system contains ‘special incentive arrangements’ which provides for greater tariff reduction. To be eligible for this scheme, it is not strictly necessary for countries to have ratified ILO conventions, it is sufficient if the country has incorporated the substance of the convention into its domestic legislation. The special incentive arrangements can be temporarily withdrawn by the EU in cases where compliance is lacking or insufficient monitoring occurs. However, the special incentive arrangements of the EU were unsuccessfully challenged by India in the WTO for being offered in a discriminatory way (WTO, 2004). It must be said, though, that India was more concerned by its loss of parity with trade competitors benefiting from the EU scheme, rather than challenging the substance of labour standards.

On a different track, in its 2006 Communication on the ‘Implementation of the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility’ (European Commission, 2006b), the Commission committed itself to continue to promote corporate social responsibility globally and refers explicitly to the UN Millennium Development Goals, the ILO Guidelines for MNEs, the OECD Guidelines (OECD, 2000), and the UN Global Compact. The Commission backs the launching of a European Alliance for Corporate Social Responsibility. The real impact of these efforts remains to be seen, however.

The promotion of social dialogues in inter-regional relations

Since the beginning of the 1990s, the EU has started promoting a dialogue on social issues and the inclusion of human rights clauses in its inter-regional negotiations. During a speech at the ILO/European Commission forum on globalisation and employment in May 2005, the EU Trade Commissioner Peter Mandelson argued that EU trade policy must have a social dimension. Mandelson went even further by stating that the EU uses trade policy to intensify good governance and good social practices through the General System of Preference (GSP) and the European Partnership Agreements in negotiations with the ACP regions. At the same time, EPAs have been at the centre of debate and criticism from civil society and some international NGOs, accusing the EU of imposing its trade condition to weaker countries.

The EU has developed two levels of inter-regionalism with Latin America. On the one hand, there is a general forum for dialogue between the EU and the Latin American and Caribbean countries (EU-LAC) and the EU and Latin America (the Rio group). On the other hand, the EU has some specific bi-regional dialogues with MERCOSUR, the Andean Community and CARICOM. The first official summit between head of states and governments, between the EU and Latin America and the Caribbean took place in 1999 at Rio de Janeiro. The event ended with the declaration of intention of creating a ‘bi-regional strategic partnership’. During a second summit in Madrid in 2002, the areas of cooperation were clearly defined and a new commitment was made in order to strengthen institutions and social equity. Finally, the summit in Mexico in 2004 at Guadalajara focused mainly on the problem of combining economic growth, social justice and poverty reduction. In Guadalajara, social cohesion became a common objective and an essential axe of the EU-LAC relations. The latest summit took place in Vienna in May 2006 where the EU-LAC commitments were renewed. Moreover, in Vienna it was decided to open negotiations for an Association Agreement with Central America and to initiate a process between the EU and the Andean Community to develop a future Association Agreement. In particular, and related to social issues, the final declaration in Vienna says: “We will continue to give social cohesion a high priority in our bi-regional cooperation and assistance programmes”. In terms of policy implementation, the EU has set some programmes of assistance such as “EUROSociAL” (2004), a 5 years programme of 30 million euros that foresees assistance from the European Commission to Latin American Countries to develop and implement social policies. The programme aims at strengthening social cohesion through education, administration of justice and employment and taxation policies.

Beside the forum EU-LAC, the EU has also established bi-regional relations with MERCOSUR, the Andean Community and CARICOM. Trade Commissioner Peter Mandelson said that through the foreseen association agreements, the EU aims to foster a deeper partnership with both regions, based on the promotion of human rights, democracy and good governance. In 2006 the European Economic and Social Committee (EESC) has released an opinion²⁵ on the EU-Andean Community relations. Section 5.5 - “*The social content of the EU-Andean Community partnership*” states that the agreement should contain a social chapter that could complement and counter-balance the one on trade and political dialogue. Moreover, the document stresses the importance of establishing technical cooperation and other assistance programme related to the promotion of social rights.

²⁵ “Opinion of the European Economic and Social Committee on EU-Andean Community Relations” (2006/c 309/18)

In 2000, the EU and the African Caribbean and Pacific (ACP) states signed the Cotonou Agreement. The agreement sets a number of rules and allows for a number of privileges in the relations between the EU and the ACP group, such as market access, technical assistance etc. The Cotonou Agreement makes explicit reference to internationally recognised social rights, labour standards as those defined by the ILO and UN Conventions. Article 2 of the Agreement states the equality of the partnership and the support for participation and dialogue with civil society and economic and social partners. Article 9 lists a set of principles and political issues related to the respect of human and social rights and the importance of cooperation towards sustainable development. Moreover, article 25 is entirely dedicated to social sector development and lists a set of priorities such as education, reinforcing health policies, gender equality etc. The problems today are related to the actual implementation of Cotonou. Under the Cotonou Framework, the parties agreed to negotiate separate sets of bilateral/regional treaties that would be focused on the specific realities of each region (West Africa, Eastern and Southern Africa etc). These Economic Partnership Agreements (EPAs) are due to be completed in 2008, but have been fiercely criticised by some international NGOs and some countries within the ACP groups as imposed unilaterally by the EU and as dangerous for the economic reality of the developing countries. Another important problem related to the progress in the negotiations is the overlapping membership of regional actors in Africa. For example, six SADC member countries, which are members of COMESA as well, decided to negotiate as Eastern and Southern Africa (ESA). In a document produced by the ACP-EU Follow-up Committee of the ECSC, some proposals have been made to improve the partnership in the preparation of the EPAs (EESC, 2006d). The document firstly assessed that still a lot needs to be done to effectively implement a social dimension within the Cotonou Agreement, and that social dialogue has a key role within the different regions' sustainable development. Furthermore, it highlights the important link between trade and development, and it insists that development in ACP countries should go hand in hand with the eradication of poverty. Finally, the document affirms that EPAs should include a social dimension alongside trade and finance.

In its relations with Asia, the main forms of ongoing inter-regional dialogue at the moment are the EU-ASEAN dialogue and the Asia-Europe Meeting (ASEM). The EU-ASEAN dialogue is carried out at Ministerial level and has been enhanced in recent years as consequence on the one hand of the economic crisis in Asia at the end of the 90's, international terrorism and health concerns related to pandemic threats in Asia. In 2001 the European Commission published the document 'Europe and Asia a Strategic Framework for Enhanced Partnership' in which it underlines the unique nature of the relations with Asia both from an economic point of view and a political one. The Cooperation between the EU and ASEAN dates back to 1980 and it is based on the Co-operation Agreement. It is relevant to note that due to the nature of the Burma/Myanmar government, the EU has refused to sit in meetings with the latter and therefore Burma/Myanmar doesn't participate to the EC-ASEAN meeting. In this particular case, the EU has shown to be an intransigent human rights promoter and the European Commission has stated that Myanmar could be the cause of the stall in the negotiations to establish a free-trade agreement with ASEAN.

The second form of inter-regional dialogue, ASEM aims at enhancing cooperation between the regions and promoting equal partnership. High-level meetings take place between heads of states and governments. The latest summit in September 2006, celebrating the tenth anniversary of ASEM, took the important decision to include additional countries (Bulgaria and Romania on the EU side - India, Mongolia, Pakistan and the ASEAN Secretariat on the Asian Side). This decision will change the shape of this regional forum, constituted now of 45 members and encompassing 60% of the world population. In the summit's final declaration,²⁶ the ASEM leaders jointly underlined the link between economic development, social protection and sustainable development.

²⁶ Helsinki Declaration on the Future of ASEM 10-11 September 2006

3. The emergence of a social dimension of regional integration in the Americas: clash of models?

The regionalisation process in the Americas is currently going through a phase of reconfiguration, characterised by rising tensions between new and old schemes and between different political views on the future of regional governance. The emergence of a *new regionalist* model in the 1990s, based on the NAFTA model, was seriously questioned and opposed when the Free Trade Area of the Americas (FTAA) was proposed by the US as a framework for the economic integration of the continent. As a counter-proposal, the Bolivarian Alternative for the Americas (ALBA) was launched by Venezuela, arguing precisely that the social and political dimensions of integration are as important as the economic dimensions and that regional integration should not be based on neo-liberal principles of liberalization and deregulation.²⁷ This alternative is currently developing as a hub and spoke scheme, lead by Venezuela, mostly based on bilateral commitments to cooperate in a number of policy areas, including education, health, culture and knowledge transfer.²⁸ In between these two contending models, the existing more institutionalised schemes in the different Latin-American sub-regions continue to further develop their policies and instruments and to take new initiatives in the socio-economic area, although the context in which they operate is one of institutional uncertainty. In this respect, at the Cuzco Summit in December 2004, the South American Community of Nations was launched, and later (in April 2007) re-named as Union of South-American Nations (UNASUR).

In the following sections, recent trends and challenges related to the deepening of the social dimensions of these integration processes will be reviewed, followed by a discussion of the relevant aspects of the NAFTA model. In the area of social policies and social dialogue, the most relevant cases are the Andean Community and MERCOSUR.²⁹ The Central American Common Market (CACM) does not deal with labour rights, although civil society forums exist in which unions participate.

Andean Community: important achievements, uncertain future

The Andean Labour Advisory Council (ALAC) is an advisory institution of the Andean Integration System that is comprised of top-level delegates chosen directly by the representative organisations in the labour sectors of each of the member countries. The ALAC expresses opinions with regard to programs or activities of the Andean sub-regional integration process that are of its interest. Today, the ALAC is governed by Decisions 441 and 464, approved by the Andean Community Commission pursuant to the Guideline of the Andean Presidential Council ordering the attainment of "fuller participation" by this sector "in the construction of an integration process leading to the creation of a common market". In its first meeting, held on 3 December 1998, the ALAC adopted its by-laws, which established its composition and functions. Another important participative body is the Andean Business Advisory Council (CCEA) that is governed by Decisions 442 and 464 and is made up of representatives of employers' organisations. In addition to the aforementioned participative forum, the Andean Community has other instruments at its disposal, such as the Simón Rodríguez Agreement, which consists of a tripartite forum for debate, participation and coordination between labour ministers, employers and employees. This agreement was one of the first instruments of Andean social integration but in 1983, the agreement came to a standstill. On 24 June 2001, the Agreement took on its current format with the Protocol of Substitution of the Simón Rodríguez Agreement.

²⁷ *Acuerdo entre el Presidente de la República Bolivariana de Venezuela y el Presidente del Consejo de Estado de Cuba, para la aplicación de la Alternativa Bolivariana para las Américas*, La Habana, 14 December, 2004. See also: www.alternativabolivariana.org.

²⁸ In June 2007, Bolivia, Cuba, Nicaragua and Venezuela signed a Memorandum of Understanding to create the Bank of ALBA.

²⁹ For a more detailed review, see Martínez (2004).

The Labour Council is only consulted on an ad hoc basis and has relatively little influence on Andean Community decision-making. For some observers it “is merely a forum for debate”.³⁰ Issues like safety and health in the workplace, labour migration, social security and capacity building are discussed but with little consequence. Labour rights are not covered, but there is a declaration regarding the protection of human rights. The Andean Community is nowadays working on the establishment of an Economic and Social Council (EESC, 2006c; ETUC, 2006a; Tizón, 2004) and on the Consultative Council of the Indigenous Peoples of the Andean Community.

In the context of Latin America, the Andean Pact has played a pioneering role with respect to intra-regional migration. As soon as in 1973, an “Andean Migration Card” was launched following the adoption of the decision 397 of the Andean Group. Other decisions tending towards facilitating movement of persons have been adopted since by the Andean Community. In 2001, Decision 503 on “recognition of national identification documents” recognizes the possession of a national identification document as the only requirement for travel, and Decision 504 created the Andean Passport by January 2005. Other instruments also deal with migration issues inside the region, such as the Andean Labour Migration instrument (Decision 545, 25 June 2003) and the Social Security instrument (decisions 546 and 583), or some instruments facilitating procedures, such as Decision 526 on “Airport incoming immigration formality booths for nationals and foreign residents of Member Countries”. Free movement of persons is also seen as a precondition for the further implementation of the Andean Common Market.

Decision 439 of the Andean Community of Nations on Services Trade, adopted in 1998 established a general framework of norms and standards with a view to liberalising trade in services in the Andean Community region (Dangond, 2000). The Community is currently drafting a decision that will establish norms and standards aiming at facilitating the recognition of academic degrees and national requirements, in addition to professional diplomas. In more general terms, a number of government-to-government agreements and conventions for cultural cooperation have been established in Central and Latin America, which provide for the recognition of higher education qualifications. One well-known example is the *Convenio Andrés Bello* signed or acceded to by ten countries of Central and Latin America, and Spain. This framework, established in 1970, has become an important platform designed to improve communication and facilitate agreement between the education ministries. One important means is the list of equivalent degrees, designed to assist members in the comparison of higher education qualifications.

In 2007, technical meetings were held to prepare the introduction of the “Andean Labour Card” in 2008. This mechanism should help the citizens of the Andean countries with respect to the mutual recognition of university titles, free movement of labour, labour rights, pensions and social security.

MERCOSUR: a new social agenda

In MERCOSUR it was only after trade union agitation, mainly from the Coordination of Trade Unions of the Southern Cone (CCSCS) that a working group (Subgroup 10) was set up in 1991 on ‘Labour relations, employment and social security’ (Newell and Tussie, 2006:48). This was done at the level of the Common Market Group, the executive organ of MERCOSUR. The subgroup provided a forum for discussion of labour issues and the development of recommendations to member states. For example, it has recommended that governments ratify basic ILO conventions (Weeks, 2000). In 1994, the inclusion of a social charter was rejected but the Economic and Social Consultation Forum (FCES) was created, a tripartite structure for labour, business, and NGOs. Its recommendations, however, have no binding authority on the MERCOSUR governments.

In 1998, the Social-Labour Declaration created a tripartite MERCOSUR Social-Labour

³⁰ Interview, Luciano Sanín, director of the National Trade Union School in Medellín.

Commission, consisting of twelve government, labour, and business members (da Motta Veiga and Lengyel, 2003). Governments annually submit a report on changes in national labour law and practice. The declaration covers core labour rights including migrant workers' rights and commits the member countries to enforce their own labour laws. While these institutions conduct some useful work on minimum standard setting, they are advisory rather than enforcement institutions. In contrast to the freedom of movement guaranteed to investors, this is not very useful protection. The participatory and consultative mechanisms have given civil society actors a voice in the MERCOSUR integration process but there is no effective labour rights regime (Polanski, 2004).

MERCOSUR adopted in 2002 an Agreement on residence for nationals of MERCOSUR States, Bolivia and Chile, which grants temporary residence for a maximum of two years, then eventually transformed into permanent residence for citizens of Member States. The recognition regulation provided by the Protocol of Montevideo of MERCOSUR acknowledges the right of a member state to recognise the education, experience, licences, matriculation records, or certificates obtained in the territory of another member or any country that is not a member of MERCOSUR without requiring an extension to other MERCOSUR members. However, the signatory parties commit themselves to encourage the relevant bodies in their respective territories, including those of governmental nature, as well as professional associations and colleges, to develop mutually acceptable rules and criteria for the exercise of activities and to propose a recommendation on mutual recognition to the Common Market Group. The parties have mandated the Commission to review the recommendation, and each party is requested to encourage the competent authorities to implement it. In 1999 the Board of Architecture, Agronomy, Geology and Engineering Professional Entities for MERCOSUR Integration adopted a resolution on the temporary exercise of professional activities by foreign architects, agronomists, geologists, and engineers. A cross-sector initiative was launched by the ministers responsible for education in 2000 when they adopted the Memorandum of Understanding on the implementation of an experimental accreditation mechanism for the recognition of university degrees in the countries of MERCOSUR (MEXA). A Working Group of Specialists in Accreditation of Higher Education (GTEAE) was charged with the elaboration of both principles and procedures for such recognition, based on quality assurance through evaluation and accreditation processes. As with ENQA in the European context, a network for quality assurance agencies, the Iberoamerican Quality Network, has been established to facilitate the exchange of information and experiences amongst quality assurance and accreditation agencies.³¹

At the 2004 Regional Employment Conference political leadership emphasised the need to give the issue of employment generation a more central place in regional and national public policies. A Declaration of MERCOSUR Labour Ministers called for the drafting of a Strategy of Employment Growth for MERCOSUR. For that purpose, the Council of the Common Market (CMC) created a High-Level Group (GANemple) (CMC Decision 46/04). A draft proposal of such a strategy was approved at the Presidential Summit of Córdoba in July 2006, where the need to (re-)formulate and implement a social agenda for MERCOSUR was strongly emphasized. The strategy was based on two principles: (i) the generation of (decent) employment should be achieved through the articulation of macro-, meso- and micro-economic policies, on the one hand, and labour, social and educational policies, on the other; and (ii) all policies should be aimed at respecting and reaching labour rights and principles as contained in the Social-Labour Declaration and in the ILO declaration on fundamental rights. The decision-making process takes place on two interrelated levels: regional and national. Technical assistance was initially provided by the MERCOSUR Labour Market Observatory, but the creation of the Social Institute of MERCOSUR, with a broader mandate, was prepared by a working group (GISM) at the level of the CMC, the political organ of MERCOSUR. This Institute is conceived as a body that should design, promote and implement regional social policies. The objectives of the Institute also include the construction of a harmonized system of social indicators. It is

³¹ The Spanish name is Red Iberoamericana para la Acreditación de la Calidad de la Educación Superior (RIACES).

further foreseen that the decision-making procedures of MERCOSUR in the area of social policies will be adjusted in order to convert the intentions expressed at the Córdoba Summit into reality.

Finally, through Decisions 45/04 and 18/05 of the CMC, the Fund for Structural Convergence of MERCOSUR (FOCEM) was created. This fund, which should particularly benefit the smaller member states (Uruguay and Paraguay), resembles in its objectives the European structural funds. FOCEM is still in its pilot phase, with the first projects approved in 2007.

CARICOM: progress with respect to labour migration

In the case of CARICOM, since 1997 the Charter of Civil Society recognizes fundamental labour rights. There is a mechanism for submitting complaints regarding labour rights violations but there are no sanctions. Consequently, as of yet there have been no complaints (Human Rights Watch, 2001). Trade unions are consulted on all trade matters through a formal mechanism and there is a policy of harmonisation of labour rights, e.g. regarding health and safety.

The Caribbean Community Single Market and Economy (CSME) established a single open market and waived cross-border restrictions, as a way to facilitate the free movement of labour (articles 45 and 46). In January 2005, the CARICOM Passport had been launched, firstly by the Republic of Suriname. Following the launch of the CARICOM passport, another initiative, the OECS Passport, has been delayed and then abandoned. Another progress in CARICOM relates to less strict limitations on visa requirements to ensure hassle-free movements of visitors during the 2007 Cricket World Cup. Moreover, in January 2006, the Central American Passport, designed and adopted by the four Members of the C-4 Treaty (El Salvador, Guatemala, Honduras and Nicaragua), became effective. All these events reflect progress in the cooperation between the countries of the region on the movement of persons.

CARICOM member states agreed to set up or employ appropriate mechanisms to establish common standards to determine equivalency or accord accreditation to diplomas, certificates, and other evidence of qualifications secured by nationals of the other member states. Currently, university graduates, artists and musicians, sportspersons, media workers, managerial, supervisory and technical staff as well as the self-employed can move freely without work permits. In order to have their qualifications recognised, they must however obtain a Certificate of Recognition of CARICOM Skills Qualification, also called a CARICOM Skills Certificate, from their home or host country's ministry responsible for issuing skills certificates.³² Since 2002 a Competency Based Education and Training model for vocational training has been developed by the Council for Human and Social Development (COHSOD). The major effort to coordinate vocational training and education culminated in the Memorandum of Agreement between the Community members establishing the Caribbean Association of National Training Agencies (CANTA) in November 2003. CANTA has been given a mandate to establish a regional qualification framework.³³ This framework covers five levels of skill, responsibility, and autonomy and ties this to typical entry requirements, credits, and academic levels. To date, some 120 occupations have been recognised and certified under CANTA (CANTA Secretariat, 2005:37-38).

Labour rights, investment rules and migration in the NAFTA model

The new generation trade agreements in the Americas have mostly been modelled on the US-Canada FTA and NAFTA (De Lombaerde and Garay, 2006). In terms of labour rights, three periods can be distinguished regarding US policy. First, the NAFTA labour side agreement (North American Agreement on Labour Cooperation - NAALC) was negotiated with Canada and Mexico, designed chiefly to appease the US labour movement, which, however, continued to

³² For more details see www.jis.gov.jm/special_sections/caricomnew/applyingForACaricom.html

³³ See Memorandum of Agreement establishing the Caribbean Association of national training agencies (CANTA). <http://www.cinterfor.org.uy/public/english/region/ampro/cinterfor/news/canta.doc>

oppose NAFTA. Subsequently, one demand of labour rights advocates was that provisions needed to be in the body of the agreement and enforceable like commercial provisions. Second, the Clinton administration negotiated different versions of labour rights provisions in the body of several trade agreements – a period of innovation and experimentation. Third, following renewal of fast track authority, the Bush administration pursued a standardised approach of negotiating labour chapters in all its trade agreements. There are some important similarities across the three periods:

1) In every case, the US administration introduced the labour rights issue in international negotiations, reflecting domestic politics.

2) The key commitment is always the enforcement of existing national labour law (in addition, non-derogation clauses are absent or weak, allowing for discretionary weakening of national standards), indicating the limited interest of the respective US administration in international commitments.

3) Cumbersome processes lead to sanctions, making such sanctions highly unlikely.

Most agreements passed Congress against the opposition of the US labour movement; the exception was the 2001 US-Jordan FTA. Unions in the US disagree with the fundamental assumption behind the focus on the enforcement of domestic labour law, namely that “the national legislation of the three countries incorporates the core principles, while the right to observe them varies according to the countries’ level of development and is not due to a deliberate effort to avoid compliance” (Martínez, 2004:15).

Of all the FTAs with labour rights provisions – with the obvious exception of the EU – the 1994 NAFTA is the only one that has a long enough record to allow an analysis of its effectiveness. The NAFTA labour side agreement (North American Agreement on Labour Cooperation) enumerates eleven basic labour principles but essentially only commits the parties to the enforcement of their existing national labour law: “Each party shall promote compliance with and effectively enforce its labour law through appropriate government action.” (NAALC, 1993, Art. 3). In fact, there is not even an explicit prohibition regarding the weakening of labour law for the parties to the NAALC: Article 3 of the NAALC recognizes “the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations.” (NAALC, 1993). Actual enforcement provisions entail a three-tiered structure that precludes sanctions or fines outside child labour, minimum employment standards and occupational health and safety. In cases involving freedom of association and the right to bargain collectively, arguably the most important of the core rights, the enforcement ends with ministerial consultations between the labour ministers.

The NAALC created a Commission of Labour Cooperation (CLC), consisting of a ministerial council (the three labour ministers) and a secretariat, which deals mostly with cooperative endeavours and studies. The NAALC also set up an institutional structure to deal with complaints regarding non-enforcement of domestic labour law (“submissions”). So called National Administrative Offices (NAO) in each signatory’s labour department receive and process submissions from civil society concerning non-enforcement of labour law in either of the two other countries. These submissions are not limited to matters affecting trade. The NAOs are obligated to provide information if requested from any of the other NAOs. Based on its review, the NAO can then request ministerial consultations. If these do not resolve the issue, there is no further action on problems involving freedom of association, the right to bargain collectively, or the right to strike. For all others, a three-person evaluation committee of experts (ECE) can be appointed, which will develop a report for review of the ministerial council, including recommendations to improve compliance. A five-member arbitration tribunal can be appointed. In case of child labour, minimum employment standards and occupational safety and health, a “persistent pattern of non-enforcement” can ultimately result in monetary assessments (fines) – which will be paid into a fund to improve enforcement of labour law in the offending country) – or, if the fines are not paid, trade sanctions. Finally, each member state has also established a

national advisory committee (NAC), composed of employer, labour and government representatives (Banks, 2002: 196).

Most studies of the NAALC come to negative conclusions as far as the tangible practical and legal results of the submissions are concerned (Ayres, 2004). Most submissions were filed before 2000 (most affecting Mexico, but several also addressing labour rights violations in the US); since then there has been a “submission fatigue,” probably due to a “disappointment trap” (Dombois et al., 2003). If unions and NGOs stop using it because it is too expensive and ineffective, cooperative activities may also end altogether. Submissions, however, can be a useful tool, among others, to gain some political space.

The participatory elements and regional focus of NAALC have led to the development, or strengthening, of transnational networks of unions and human rights organisations and have provided greater publicity than ILO complaints. Few had foreseen such cross border union cooperation in the context of an agreement perceived as directed solely against Mexico.³⁴

With the exception of the innovative textile agreement with Cambodia, negotiated by the Clinton administration in 1999, bilateral and regional FTAs after the NAALC have always focused their labour rights provisions on the enforcement of existing national labour law (the so called “Jordan formula”). Thus, to a certain extent they depart from the commitment to “internationally recognized labour rights” embodied in the various unilateral labour rights provisions in US trade law.³⁵

While the project of a FTAA seems gridlocked indefinitely – with labour rights being only a secondary issue of contention – the US has continued on its course of negotiating bilateral and regional FTAs. These are explicitly part of a strategy of “competitive liberalisation” and thus aim to go beyond the WTO status quo on tariffs and non-tariff issues such as investment rules and intellectual property rights. Domestic US politics, however, have forced labour rights on the agenda. The 2002 Trade Promotion Authority (TPA) limits the time Congress can debate a trade agreement negotiated by the president and allows only for an up-or-down vote, but this “fast track” came at a price: It obligates the United States Trade Representative (USTR) to “promote respect for worker rights (...) consistent with core labour standards of the ILO” (Sec. 2102(a)(6)). In section 2102(b)(12)(G), the TPA instructs negotiators to seek provisions that “treat United States principal negotiating objectives equally with respect to (i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies.” However, the so called “no retaliation” clause, added to the TPA at the last minute, states that “no retaliation may be authorized” when a party fails to enforce its law based on an exercise of discretion, e.g., regarding the allocation of resources. The TPA expired on May 31, 2007.

After negotiating several bilateral FTAs, the US concluded an inter-regional FTA with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic.³⁶ Its labour chapter is essentially the same as in the US-Chile and US-Singapore trade agreements. It includes labour rights provisions in the body of the agreement. The parties guarantee that they will enforce their domestic labour laws. Non-enforcement can lead to “monetary assessments” (i.e., fines) or trade sanctions, provided it affects trade. Parties will also “strive to ensure” that they will not weaken labour laws in a manner affecting trade. In addition, parties reaffirm their commitment to the labour rights entailed in the 1998 ILO Declaration. These latter provisions, however, are non-enforceable, as disputes, arising under them cannot be brought to dispute

³⁴ For the exemplary transnational cooperation in the Kuk Dong case, see: Fédération internationale des ligues des droits de l’homme (FIDH) (2006).

³⁵ The US-Cambodia Bilateral Textile Agreement, which was renewed in 2001 but expired at the end of 2004 because of the expiration of the quota system of the Multi Fibre Arrangement (MFA), included the possibility for Cambodia to win bonus quota for textile and apparel exports to the US. At first, the quota could be 14% annually (increased to 18% in 2001), on the condition of “substantial compliance” of garment factories with Cambodian and international labour standards (as defined by US trade law). The ILO monitored the agreement, and the cost of monitoring was borne by the two governments and the Cambodia Garment Manufacturers Association. UNITE, a US union, assisted Cambodian unions with organizing.

³⁶ The Dominican Republic is not yet a full partner to the agreement due to unresolved legislative issues unrelated to labour rights.

resolution. The agreement also includes provisions regarding cooperative endeavours on labour issues.

DR-CAFTA does go beyond the Chile and Singapore bilateral agreements in two respects: There will be cooperation with the ILO to improve existing labour laws, and US-assisted building of local capacity to improve labour law compliance (Labour Cooperation and Capacity Building Mechanism) (USTR, 2004). Funding issues, however, are unresolved. The FTA was highly controversial in the US, in part because Congressional Democrats considered a commitment to enforce domestic labour law as insufficient. Central American trade ministers reacted to this situation by announcing the creation of a working group that identified areas where labour law reform and improved compliance were needed. As is often the case, there was considerable leverage to improve the labour rights situation before the agreement was passed. There may be little leverage left, however, once it is in place.

Since 1994, Canada has been using the NAALC as a model in its FTAs with Chile and Costa Rica, focusing on the effective enforcement of domestic labour law (there is only the standard reference to prison labour in the Canada-Israel FTA; Human Rights Watch, 2001; Salazar-Xirinachs, 2001). There will be labour side agreements to its FTA with Singapore as well as a Central America Four Agreement on Labour Cooperation, parallel to the Canada-Central America Four FTA.

Moving now from trade to investment, chapter 11 of NAFTA is considered (and also criticized) as a model for many of the new generation comprehensive and detailed investment rules at the regional level. Its characteristics are best identified when compared to, for example, European FTAs and/or BITs. The NAFTA agreement goes further in at least four areas: (i) its scope of application is quite wide and is not restricted to FDI; it also includes equity and debt security, debt finance, and real estate; (ii) post-admission provisions (national treatment and MFN principles) are GATS plus; (iii) strong investment protection provisions are foreseen, including reference to indirect expropriation; (iv) investor-to-state dispute settlement is foreseen under ICSID or following UNCITRAL rules (Szepesi, 2004). Typical for the US model is the fact that, contrary to the European model, investment clauses in FTAs were a direct application of its BIT model or went even further (Reiter, 2006).³⁷

With respect to the movement of persons, NAFTA, signed in 1994, and NAALC contain provisions for a facilitated movement of persons, which is conceived as a way to further develop a regional free trade area. However, referring to Chapters 12 and 16 of the NAFTA, there is no general freedom of movement, as these regional instruments organize a temporary entry only for certain categories of persons, that is for business persons and persons in relation to the provision of service. The Trade NAFTA (TN) visa also aims at facilitating the movement of professionals, by allowing admission for a renewable period of one year.

The parties to NAFTA agreed to ensure that measures relating to qualification, requirements, and procedures, as well as technical standards and licensing requirements should not constitute unnecessary barriers to trade in services (Pínera González, 2000). However, in contrast to the EU, NAFTA does not require the parties to recognise experience, licences or certifications obtained in the territory of another party or a non-party. It only acknowledges the right of a member to recognise qualifications similar to the MERCOSUR provisions (NAFTA Art.1210.2). As a consequence, the NAFTA provision for recognition of qualifications provides for unilateral, bilateral, or pluri-lateral recognition arrangements. NAFTA aims at strengthening these arrangements by providing a platform for the development of recommendations on recognition standards. These standards may include the accreditation of schools and academic programmes, as well as a specification of the length and nature of experience required for

³⁷ The US-FTAs that followed NAFTA applied the same model, more or less literally (Akpan, 2005). Applications of the US/NAFTA model to third country agreements include the ASEAN Investment Area (ARIA) of 1998, the agreements signed by Japan with Singapore (2002), Korea (2002) and Mexico (2004). Mexico and Chile have played a role as secondary hubs in the diffusion of the US/NAFTA model (Reiter, 2006).

licensing, and of continuing education and ongoing requirements to maintain professional certifications. To date, such recommendations have been established for engineering and legal services. No regional qualifications framework has been developed so far between the NAFTA parties. Notably in the US, a self-regulated and market-based approach prevails. Companies or associations offer certification and educational testing of skills and competence. In certain sectors, non-governmental organisations have been assigned the task of establishing national standards e.g. the National Institute for Metalworking Skills (NIMS). Such an approach encourages workers to certify their skills and employers to recognise such certifications. Some companies and associations have started to provide their certification services across borders. A similar trend can be observed in the field of higher education, where accreditation agencies offer programme accreditation to higher education institutions in other countries (Eaton, 2002). In the field of regulated professions mutual recognition agreements of professional associations play a crucial role in facilitating cross-border recognition of professional qualifications. The Inter-recognition Agreement between the *Committee of Canadian Architectural Councils* (CCAC) and the *National Council of Architectural Registration Boards* (NCARB), for instance, permits Canadian and US architects whose provinces/states are signatory to the Agreement to be eligible to be licensed in a jurisdiction that is also signatory. 34 US states and 7 Canadian provinces have signed this recognition agreement so far.

4. Africa: building blocks for regional social governance

The African continent counts a considerable number of regional integration initiatives. However, their results are often considered as disappointing because of a lack of structural stability (peace and security) and inadequate institutional designs (van Ginkel, Court and Van Langenhove, 2003; Kennes, 2003). Multiple overlapping memberships are also considered as one of the factors that complicate regional governance in Africa (UNECA, 2006).

In the following paragraphs, we focus on recent developments in two areas: regional social dialogue, and intra-regional labour migration.

A new framework for regional social dialogue

Social dialogue represents an important tool in strengthening the social dimension of Africa's engagement in the global economy. Generally speaking, the relations between African civil society organisations (CSOs) and governments have often been rather distant, of marginal importance, problematic and/or conflictuous (Bayart, 1986; Fatton, 1995; Monga, 1995). Civil society participation in Africa addresses mainly issues of peace and security (Murithi, 2005) and pandemic diseases like HIV/AIDS (EESC, 2006b). However, efforts to establish a more institutionalised partnership between politicians and civil society at the regional level were actually initiated during the transformation of the Organisation of African Unity (OAU) into the African Union (AU). In 2001 and 2002, the OAU organised two OAU-Civil Society Conferences (Murithi, 2005:116-118).

Three important initiatives call attention to the importance of integration of employment and decent work into the African political and civil agendas. A first step was made at the 37th Ordinary Session of the Assembly of Heads of State and Government of the OAU, which was organized in Lusaka, Zambia in July 2001, when it was decided that a Ministerial Meeting on Employment Promotion and Poverty Reduction in Africa would be organized.³⁸ Consequently, in April 2002 in Burkina Faso, a meeting of the OAU's tripartite Labour and Social Affairs Commission was organized, where member States acknowledged the importance of job creation in Africa. Moreover, at the Second Summit in July 2003, in Maputo, Mozambique, the Assembly

³⁸ Decision AHG/Dec.166 (XXXVII)

of African Heads of State and Government decided³⁹ to organize an Extraordinary Summit on Employment and Poverty Alleviation in 2004. All the AU Member States were invited to attend the Summit and the AU Commission was asked to organize it, in collaboration with the Regional Economic Communities (RECs), the ILO and other Partners and Stakeholders. The Summit took place in September 2004 in Ouagadougou, Burkina Faso and the result was a Declaration, a Plan of Action and a Follow-up Mechanism for the promotion of employment and poverty alleviation.

The topic of the Extraordinary Summit on Employment and Poverty Alleviation in Africa was “*Strategies for Employment Creation and Enhancing Sustainable Livelihoods*”. One of the most important meetings was the African Social Partners’ Forum, on the theme “*Decent Work: a Driving force for Africa’s Development*”, which represented the first assembly of the representatives of African workers and employers’ organization as social partners. The promotion of a tripartite social dialogue and decent work were the main topics on the agenda. The social partners agreed on the fact that “the vitality of social dialogue is depending on strong, autonomous and representative partners and institutions of social dialogue”.⁴⁰

The background paper prepared by the AU Commission, highlighted that the main objectives of the Summit should be to: (i) significantly raise the level and increase the growth rate of productive employment in all sector of the economy, (ii) to promote increased and decent employment opportunities throughout the economy with adequate social protection and respect for core labour standards, (iii) to strengthen participation and voice. In the same line, the expected outcomes of the Summit were among others: (i) better institutional arrangements and capacity for delivering employment programmes and poverty alleviation interventions, (ii) partnership and greater participation by all stakeholders and integrated approach in designing and implementing programmes to combat poverty and unemployment (EXT/ASSEMBLY/AU/2 (III)).

In the Declaration on Employment and Poverty Alleviation in Africa, the Heads of State and Government of the AU acknowledged the importance of strengthening “social dialogue mechanisms and institutions as a means of realizing participatory democracy involving the social partners and civil society in policy making, implementation, evaluation, and monitoring” (EXT/ASSEMBLY/AU/3 (III)). In order to promote productive employment and poverty alleviation, the Economic, Social and Cultural Council (ECOSOCC) and the Labour and Social Affairs Commission of the AU have become the principal fora for discussion and partnership between Governments, social partners and civil society. Additionally, they are devoted to support the ongoing efforts of the Governments, social partners and civil society organizations to promote the decent work development agenda of the ILO. Furthermore, the Heads of State and Government committed themselves to boost the role of RECs in their attempt to promote a productive employment dimension into the regional and inter-regional cooperation agenda. An important asset is the designation of the Member States and RECs⁴¹ as main implementation bodies of the Plan of Action and Declaration, and the AU Labour and Social Affairs Commission is delegated to coordinate the implementing mechanisms. The first comprehensive Evaluation Reports are expected to be presented in 2009 and 2014.

The Third Extraordinary Session on Employment and Poverty Alleviation reinforced the roles of the RECs and ECOSOCC of the AU. Based on the provisions of the Articles 5 and 22 of the Constitutive Act of the AU, ECOSOCC is designed as an advisory body composed of different social and professional groups of the member states of the Union. ECOSOCC is meant to give effect to the principle of participation of the African peoples in the activities of the Union (Art. 4(c)) and recognition of the need to build a partnership between governments and all segments of civil society (Preamble). After some organisational delay (Sturman and Cilliers,

³⁹ Decision: Assembly/AU/Dec.20 (II)

⁴⁰ Conclusions of the African Social Partners’ Forum <http://www.africaunion.org/EMPLOYMENT/Conclusion%20Social%20partners%20en.pdf>

⁴¹ Eight RECs are accredited to the AU: ECOWAS, COMESA, ECCAS, SADC, AMU, IGAD, CEN-SAD, EAC (First Conference of African Ministers of Economic Integration in March 2006, Ouagadougou, Burkina Faso, CAMEI/Consol. Report (I))

2003) ECOSOCC was installed by the Third Ordinary Session of the African Union, held in Addis Ababa, between 6 to 8 July 2004, deciding to adopt the Draft Statutes of ECOSOCC⁴² and requested the Chairperson of the Commission to take urgent measures to launch and operationalize ECOSOCC. The 2004 Nobel Peace Prize winner Wangari Maathai from Kenya was elected the first president. The composition of ECOSOCC includes social groups, professional groups, non-governmental organisations and cultural organisations. ECOSOCC's structure includes a General Assembly, a Standing Committee, 10 Sectoral Cluster Communities⁴³ and a Credentials Committee. It is still too early to evaluate these initiatives at the continental level.

Prior to these initiatives, at the 37th Summit of the OAU in July 2001, the African leaders launched the New Partnership for Africa's Development (NEPAD). NEPAD is designed to address the current challenges facing the African continent and its core objectives are "to eradicate poverty and to place African countries on a path of sustainable growth and development". However, even if the main purpose of NEPAD is poverty mitigation, there was no explicit mention of employment promotion. In this context, the Plan of Action for Promotion of Employment and Poverty Alleviation of the Ouagadougou Summit in 2004, promote employment as the core element of NEPAD's priorities. In addition, employment creation and poverty alleviation should be used as indicators in the NEPAD African Peer Review Mechanism. Furthermore, the SADC Ministerial Meeting - "*Towards an African Regional Social Policy*" - in Johannesburg in 2006 underlined that NEPAD Action Plans have to expand its areas by adding decent employment and social integration in order to ensure African social development.

Several steps have been taken to set-up social dialogues at the sub-continental (regional) level. The original ECOWAS Treaty included, as it does today, a Social and Cultural Affairs Commission designed to "provide a forum for consultation generally on social and cultural matters affecting the member states" (Art. 49). Article 82 of the Revised Treaty represents a step forward by explicit referring to workers and employers among those whose involvement in the integration process should be encouraged. However, the Revised Treaty makes no specification on how the social partners would be formally consulted (Robert, 2004). In 2001, the representatives of the member states signed the ECOWAS Protocol of Democracy and Good Governance. Article 28 stipulates that social dialogue should be promoted by the member states and that "employers associations and workers unions shall meet regularly among themselves and with political and administrative authorities with a view to preventing social conflict" (ECOWAS Protocol on Democracy and Good Governance (ECOWAS, 2001)).

In order to institutionalize the dialogue between Civil Society Organizations (CSOs) and ECOWAS, in December 2003 the West African Civil Society Forum (WACSOF) was created. WACSOF was designed to have the role of an advisory body and partner of ECOWAS. At the 2nd Annual Meeting of WACSOF held in Accra, Ghana in 2005, the representatives of West African Civil Society recommended that "ECOWAS member states, in negotiating and signing Economic Partnership Agreements (EPAs), should do so in consultation with expertise within civil society, as available within WACSOF, and avail themselves of their expertise and perspectives".⁴⁴ However, issues related to employment and labour standards are not covered by WACSOF. Due to financial constraints, WACSOF's agenda in 2006 was restricted to two major topics: Democracy and Good Governance, and Peace and Security.

The Southern African Trade Union Co-ordination Council (SATUCC), a sub-regional labour organisation, is involved in SADC since its creation in 1983. The main scope of SATUCC is to establish a regional trade union movement that would influence SADC policies at regional and national levels. In 1995, the Council of Minister established the SADC Employment and

42 Assembly/AU/Dec.42 (III)

43 1) Peace and Security 2) Political Affairs 3) Infrastructure and Energy 4) Social Affairs and Health 5) Human Resources, Science and Technology 6) Trade and Industry 7) Rural Economy and Agriculture 8) Economic Affairs 9) Women and Gender and 10) Cross-cutting Programmes.

44 Communiqué of the 2nd West African Civil Society Forum, 2005.

Labour Sector, based on a tripartite structure, including representatives from the government, business, and trade unions in the region. However, until then SATUCC was engaged in SADC through the Southern African Labour Commission. The Extraordinary Summit in 2001 agreed on a new structure for SADC institutions, and therefore, the Employment and Labour Sector was included in the Social and Human Development Programme. Although SATUCC is considered as “the strongest regional voice calling for regional cooperation”, its capability to establish a tripartite role in SADC is limited. This limitation is due to the fact that even if SADC is structured as a supra-national body it does not have binding law-making powers and controlling judicial institution (LRS Research Report, 2004). Nevertheless, the main achievement of SATUCC is the development of a social Charter of Fundamental Rights of Workers in Southern Africa, which is ratified by nearly all SADC countries.

In the East African Community, there is a sub-regional trade union organisation, the East African Trade Union Council (EATUC), which promotes labour issues, including the ratification of international labour standards by the member states and the harmonization of labour law.

Regarding promotion of social dialogue within CEMAC, the tripartite seminar held in Bangui in September 2000, attended by the labour ministers, should be mentioned. One of the most important outcomes of the seminar is the recommendation to create a CEMAC tripartite social commission. It was also decided that the social and economic dimensions should have the same importance in formulating development policies.⁴⁵ Subsequently, the second tripartite meeting was held in 2003 aiming at analyzing the possibility of creating a permanent social dialogue structure within CEMAC and discuss further steps in promoting social dialogue in the sub-region. As a result of these two meetings, in 2006 the Council of Ministers adopted a set of rules on the creation, the composition and the functioning of the sub-regional Tripartite Social Dialogue Committee.⁴⁶ The main attributions of the new tripartite Committee are the reinforcement of social dialogue within CEMAC, free movement of workers and fundamental principals and rights at work (Art. 4). Furthermore, Art. 6 stipulates that the main mission of the Committee is to contribute to the consolidation of the process of social negotiation with a view to prevent and manage social conflicts. The Committee, which comprises the ministries of labour of the member states, as well as representatives of the employers and workers organizations, meet on an annual basis. The decisions and recommendations issued by the Committee are adopted by consensus (Art.9).

A significant role in promoting social dialogue at the regional level is played by the ILO, which under its PRODIAP programme contributed to the creation of the Tripartite Social Dialogue Committee (CEMAC) and the Labour and Social Dialogue Council (WAEMU). An ILO-PRODIAP programme started in 1998, financed by the Belgian government. During the first phase, (1998-2003) PRODIAP activities included 21 national studies on the state of social dialogue and tripartite cooperation, as well as assistance in four sub-regional tripartite meetings. The adoption of the declaration of Ouagadougou regarding the strengthening of social dialogue at the sub-regional level of the WAEMU in 1999 and the tripartite meetings of CEMAC are considerable results of the PRODIAP programme. Consequently, in its second phase, PRODIAP encouraged the creation of a network of social dialogue experts for the French speaking countries of Central Africa and the Great Lakes region. The meeting held in Kigali in May 2005 gathered numerous participants and they expressed the need to strengthen the capacity of government officials as well as of social partners to mediate in labour disputes.

Further steps in support of labour migration

Since 1975 and the Lagos Treaty establishing the ECOWAS, one of the aims of this regional organisation has been the removal of obstacles to free movement of people (preamble and article 27). This idea was further pursued in 1979 with the ECOWAS Protocol on free

⁴⁵ <http://www.ilo.org/public/french/region/afpro/abidjan/publ/oit11/social8.pdf>

⁴⁶ Règlement n° 13/06-UEAC-083-CM-14

movement of persons and the right of residence and establishment, but also, in 1992, with the revision of the Treaty of the ECOWAS. ECOWAS launched an ECOWAS passport in 2000, to be used alongside the ECOWAS Travel Certificate. In 1991 still, the Abuja Treaty launched the African Economic Community, a regional institution aiming at promoting the intra-regional free mobility of labour, as indicated in its article 43 on “free movement of persons, rights of residence and establishment”. Later, in December 2001, the ECOWAS adopted a Political Declaration and an Action Plan against Trafficking.

Within UEMOA the free movement of persons, rights of residence and establishment are fully harmonized with those of ECOWAS. Furthermore, the member countries have abolished entry visa requirements.

CEMAC has taken the initiative to harmonize the labour codes of the member states in order to allow its citizens to work in another member state, after obtaining a valid contract and work permit. In 2000, a CEMAC passport has been introduced with the responsibility for delivering and administrating it resting with the individual member states. Additionally, in order to develop a common standard of training and education for its labour force, CEMAC encouraged the creation of community-sponsored training institutions in different member states (ECA, 2007).

The SADC Windhoek Treaty of 1992 also contains provisions for the movement of people across borders. In the SADC region, in 1994, visa requirements were abolished for travel of SADC citizens inside the region, and then, in 1997, negotiations were launched on a Draft protocol on the facilitation of movement of persons in the SADC. The protocol was finally signed in Gaborone in August 2005.

Member states of SADC signed the Protocol on Education and Training in September 1997, and this came into force in 2000. In the Protocol, the member states agreed to “take all steps possible to act together as a Community, in the gradual implementation of equivalence, harmonisation and standardisation of their education and training systems under this Protocol”.⁴⁷ As part of the implementation strategy the Technical Committee on Certification and Accreditation (TCCA) was established in 1997, with a view to developing policy guidelines, instruments and procedures to achieve the goals set out in the protocol. Since 2001 major efforts have been undertaken to develop standards and a classification system for national qualification systems that will make it possible to link them to a regional qualifications framework, in order to improve the understanding of the systems in other countries. Such a mechanism would permit comparisons between entry requirements, curricula, and exit qualifications (Samuels, 2003). The project seeks simultaneously to pool efforts to improve the general standards of skills, knowledge, and values. In June 2005, the recently established Integrated Committee of Ministers approved the SADC Qualifications Framework concept paper which provides guidelines and a proposed implementation plan for the development of such a framework. So far, national qualifications frameworks have been established mainly in South Africa and Namibia.⁴⁸

The development of regional qualifications frameworks for regulated professions has also become a topic of the agenda. The Eastern, Central and Southern Africa College of Nursing (ECSACON) has developed a prototype of a Profession Qualification Framework (PRF) that is designed to help countries of the region to develop their country-specific PRF documents. The framework addresses the scopes of practice standards, competencies, and the core content and standards for education. Four countries have so far developed their own documents – Botswana, Lesotho, Uganda, and Zambia (Ward, et al. 2005).

The revision of the UNESCO convention on the recognition of higher education for the African states, originally adopted in 1981, has attracted interest in recent years.⁴⁹ The African

⁴⁷ See Protocol on Education and Training Article 2h, www.sadc.int/english/documents/legal/protocols/education_and_training.php

⁴⁸ For an overview of the national qualifications framework in South Africa, see www.saqa.org.za, and for Namibia see Gertze (2005).

⁴⁹ The Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States,

education ministers amended the regional convention on the occasion of the 8th conference of African Education Ministers (MINEDAF VIII) in Dar es Salaam on 6 December 2002 (UNESCO, 2004:8).⁵⁰ A major point of reference for the revision is the new UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region. The African ministers have also declared interest in developing a credit point system similar to the European Credit Transfer System (ECTS) (UNESCO, 2004:5). The issue of quality assurance as a means for facilitating mutually recognition has also moved to the top of the agenda of the African higher education sector. The Association of African Universities, a forum of African higher education institutions, has initiated programmes designed to foster quality assurance systems in African universities.

5. Asia: towards a community of caring societies?

Generally speaking, formal regional integration is less developed in Asia and the Pacific than in other parts of the world. The initiatives tend to be more based on inter-governmentalism and to be less political. In the following paragraphs, we will review the case of the Association of South-East Asian Nations (ASEAN) and also refer to the South Asian Association for Regional Cooperation (SAARC), the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), the Asia-Pacific Economic Cooperation (APEC), and Arab Gulf Cooperation Council (AGCC).

Labour rights do not feature prominently on ASEAN's agenda, but the ASEAN Trade Union Council (ATUC) is pushing for a social charter and a framework for the protection of migrant workers.⁵¹ There are policy dialogues that include labour issues at various levels. The ASEAN Senior Labour Officials meet since 1975. This meeting has been discussing the ratification of ILO conventions, the ASEAN Occupational Safety and Health Network (ASEAN-OSHNET) established in 2000 (to which the People's Republic of China, Japan and the Republic of Korea – ASEAN Plus Three – have been invited), and the ASEAN-Japan Program on Industrial Relations (AJPIR) (ILO, 2004b; ASEAN, 2006).

With its ASEAN Vision 2020, ASEAN leaders vow to establish a community of caring societies with a common regional identity. In October 2003, they returned to Bali to update the original Bali Concord that laid the foundation for ASEAN cooperation. The declaration of ASEAN Concord II (Bali Concord II) provided for the establishment of an ASEAN community with three pillars, the ASEAN Security Community (ASC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC).

The Vientiane Action Programme (VAP) recognises the need to increase the participation of Track II (Asian People's Assembly, ASEAN ISIS, universities) and other mechanisms (ASEAN Business Council, ASEAN Inter-Parliamentary Organisation) in promoting political development initiatives. Such participation was encouraged in Malaysia during the 11th ASEAN Summit by which direct civil society input was given to ASEAN. Civil society participation should be improved: first by institutionalising the Civil Society Conference and expanding its participation, and second, by easing or eliminating or otherwise instituting a friendlier CSO accreditation system in ASEAN. The difficulty of accessing this system resulted in less than 60 CSOs officially accredited by ASEAN (Chavez, 2006:10) More emphasis on civil society participation can also be an important incentive to overcome the absence of a tradition of free and critical CSOs (Schmit, 1996: 178-187). The first ASEAN Civil Society Conference took place in Shah Alam (Malaysia) in December 2005. Some important proposals were: "to deliberate the ASEAN

adopted at Arusha on 5 December 1981 (UN Treaty Series No. 21522).

⁵⁰ See also UNESCO news release: UNESCO Conference of Ministers of Education of African Member States, Dar es Salaam, Tanzania, 2-6 December 2002, www.col.org/colweb/site/pid/3656

⁵¹ Regional Conference on Trade Union and NGO Collaboration in Promoting the Rights and Well-Being of Migrant Workers, September 7-8, 2006, Pasig City, Philippines.

charter, to involve civil society and other interested groups through public hearings in all ASEAN countries and (...) establishing a mechanism such as a Non-Governmental Liaison Center or a Permanent Civil Society Consultative Forum composed of civil society organisations independent from the governments and other influences. This will help to systematically channel civil society inputs to the ASEAN Secretariat and other ASEAN processes” (ASEAN, 2005).⁵²

The ASEAN Free Trade Area (AFTA) contains in itself no provision as regards migration and labour mobility, but it includes provisions related to the GATS Mode 4, with the ASEAN Framework Agreement on Services. The ASEAN also enhanced skill recognition with Skill Recognition Arrangements. In the field of professional recognition, registers such as the Chartered Professional Engineers Register (ACPER) have been established. These registers are designed to reduce barriers to international mobility of professional engineers and architects within the Members’ economies through the establishment of a soft meta-control for registered engineers and architects.

Other regional institutions have dealt with migration issues as a way to enhance trade relations and economic development in the regions, and, in that sense, have developed systems to facilitate the movement and circulation of certain categories of persons for limited periods of time. These Asian regional organisations favour openness, participation on a voluntary basis, consultations, both formal and informal, and a conjunction of binding and non-binding approach to migration management.

SAARC promotes non-binding arrangements based on mutual interest and understanding. There again, the main focus remains economic development, with a particular interest in free trade, but also on social issues, culture, environment, etc, with the adoption of the Trade Liberalisation Programme to be implemented until 2016. In 1992, SAARC developed a visa exemption scheme, restricted to only 21 categories of persons. Moreover, in January 2002, SAARC adopted a regional Convention on trafficking of persons.

Improving mutual recognition has also become an objective of SAARC. In 1989, its leaders decided to include education in the agreed areas of cooperation and established a Technical Committee on Education, which was transformed into the Technical Committee on Human Resource Development in 1999. This reorganisation is to be seen in the context of a new emphasis on human resource development for the future of South Asia. In 2002, with the occasion of the eleventh summit, the leaders decided to put the development of common educational standards through uniform methods of instruction and teaching aids on the agenda. Such common standards are seen as vital for improving the qualification of the members’ labour force and for facilitating the mutual recognition of qualification. A committee of Heads of University Grants Commission/Equivalent Bodies was established in 2003 with a view of elaborating the necessary modalities for the implementation of the leaders’ recommendation. The committee agreed on minimum requirements for the Bachelor degree and recommended that the degrees awarded by chartered universities in the region should be recognized by all member states based on the number of years studied, grades and credits obtained. Recognition of degrees will enhance the mobility of highly skilled labour and is thus crucial for the regional integration through stronger links in trade, transport, movement of people and flow of ideas. With India taking the lead, heads of state or government of SAARC underlined their willingness to ease visa regime on the occasion of their fourteenth summit in New Delhi, held in April 2007.

The Unified Economic Agreement signed in November 1981 opens the route for the AGCC countries to build a joint labour market policy and a GCC Free Trade Area. This Agreement set out that equal treatment of movement, work, residence and inheritance should be guaranteed by

⁵² Various ASEAN CSOs have been meeting to reflect on ASEAN’s role and future and to discuss specific concerns ranging from the environment to human rights. The ASEAN People’s Assembly, which was launched in 2000, is one such example of a collective endeavour that seeks to address issues of relevance to the region. On 20 September 2006, a seminar on building an ASEAN +3 Community by strengthening the roles of civil society has been organised by the National Economic and Social Advisory Council (NESAC) of Thailand. For ASEAN +3, there should be a discussion, among CSOs on their cooperation to build a community of caring societies and on the desirability and feasibility for the establishment of national Economic and Social Councils, learning on existing experiences, and for the establishment of the ASEAN +3 Economic and Social Council, learning on EESC’s experiences. The 2nd ASEAN Civil Society Conference took place in Cebu City (the Philippines) in December 2006.

similar AGCC market regulations (AGCC Secretariat General, 1981). The 2001 Economic Agreement between the AGCC states reinforced this principle, and stipulated that the movement of workers can be in both private and governmental sectors. Furthermore, Art.16 highlights that Member States should harmonize their labour policies in order to remove the barriers of intra-GCC movement of national labour force (AGCC Secretariat General, 2001). However, even if national labour mobility is without restraints, in practice, the Economic Agreement is not significantly carried out (Badr-El-Din A/ Ibrahim, 2005:15). In 2005, Saudi Arabia adopted a new employment law, stipulating that in companies 75% of the workers should be Saudi nationals. Nevertheless, due to intra-regional labour migration the financial flows from the host countries to workers' countries of origin increased, via labour remittances. These remittances contributed to diminishing the levels of poverty in labour-exporting countries, especially in the rural areas, from which most migrant labours originate. At the same time, migrant workers contributed to the economic revitalization of the host countries. Both labour migration and labour remittances have an important role in "integrating Arab markets with labour surplus and those with labour shortage" (ESCWA, 2007:175).

In the framework of the ANZCERTA, the Trans-Tasman Mutual Recognition Agreement (TTMRA) was established in 1996. The mutual recognition agreement builds on the mutual recognition agreement between the Australian Government and the State and Territory Governments of 1992, but includes New Zealand as well.⁵³ The recognition mechanism of the agreement is far-reaching and resembles in many respects the recognition arrangement of the EU. It builds on the country of origin principle, that is to say the agreement that a person registered to practise an occupation in one of the parties is entitled to practise an equivalent occupation in the other parties (with some exceptions, e.g. medical practitioners) (TTMRA Para G). In the field of regulated professions, a number of mutual recognition agreements have been established between the two countries.

APEC is basically a forum to facilitate trade and investment. Labour issues in APEC have been mostly limited to human resources, productivity, worker training, and education issues. Despite efforts of the ICFTU's Asia Pacific Labour Network (ICFTU/APLN), labour rights have not been addressed.⁵⁴ APEC developed the APEC Business Travel Card to facilitate the movement of business people. It also leads some activities as regards information exchange on migration. A Human Resources Development Working Group (HRD), established in 1990, aims at facilitating recognition of qualifications between the participating members. It also fosters links and strengthens collaborative initiatives between the members by organising regular meetings of education ministers. One major outcome in the field of professional recognition so far has been the APEC Engineers Register. The register was launched in 2000 followed by the Register for Architects in 2005 (APEC, 2005).

A regional qualifications framework has also moved up the political agenda in the Asia Pacific region. Australia has declared its interest in working collaboratively with regional partners to develop an Asian Pacific qualifications framework. So far, the APEC members Australia, New Zealand, Singapore, Malaysia, the Philippines and Mexico have developed their own national qualifications frameworks. In recent years, the revision the UNESCO convention on the recognition of higher education for the Asian Pacific region has become a topic on the regional agenda (UNESCO, 2000).⁵⁵ Based on an Australian initiative, the organisation University Mobility in Asia and the Pacific (UMAP) has developed the UMAP Credit Transfer System (UCTS). The issue of quality assurance and accreditation has also moved to the top of the agenda. The Asia-Pacific Quality Network (APQN) has been developed with a view to promoting quality assurance in higher education and building alliances between quality assurance and accreditation agencies. As in the European and African contexts, the revision of

⁵³ <http://www.coag.gov.au/mra/ttmra.htm>

⁵⁴ ICFTU/APLN 2004: Labour in the Future of the APEC Community, ICFTU/APLN Statement to the APEC Leaders' Meeting, Santiago, 20-21 November.

⁵⁵ The Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific was adopted in Bangkok on 16 December 1983 (UN Treaty Series No. 32021).

the UNESCO recognition convention, complemented by a number of criteria and standards further specifying what counts as substantial difference, would provide an interesting instrument for recognition of higher education qualifications. A regional qualifications framework could be another, less binding instrument making it possible to extend these standards to vocational training.

6. Conclusions

This report has addressed the trends and challenges with respect to the deepening of the social dimension of regional integration in light of the recommendations of the WCSDG (2004). We focused thereby on labour-related issues. Emerging regional initiatives and policies in the fields of health or security have not been addressed. Education has been only addressed with regards to recognition arrangements which have, however, an impact on domestic education and qualification systems.

As suggested in the WCSDG Report, regional integration can contribute to a fair globalization in different ways: (i) by strengthening democratic regional governance and establishing institutionalised social dialogues, (ii) by linking trade liberalization to the protection of labour rights, (iii) by contributing to a more development-friendly investment regime, and (iv) by building regulatory frameworks for labour migration.

As a general conclusion of our review, it can be said that the social dimensions of regional integration can be broadened and deepened in different ways. How this process is actually taking place (or, in some cases, why it is not taking place) in particular regions depends on the forms and contents of the regional institutions that are (being) built in different regions and the particular combination of demand for and supply of regional social policies that is in place. A general tendency can be perceived though that consciousness about the need for more and new policy initiatives in this area at the regional level is rising among several actors. More shallow forms of regional integration and inter-regional relations introduce social issues as part of the broader attempts to manage and regulate intra- or inter-regional flows of goods and services (trade), capitals (investment), and people (migration). In deeper, broader and more institutionalised forms of regionalism, more or less embryonic forms of what could be called regional social policies can and do emerge, through policy approximation, coordination and/or convergence. However, policy spill-over mechanisms and policy sequencing within regional integration processes are still not very well understood, mainly because they remain understudied – even if some new trends in regionalism studies are emerging, addressing these important questions.

From our review of trends and challenges in different regions in the world, a number of recent developments are worth highlighting. We started with the case of the European Union, where regional social policy has been gradually built up since the 1980s and which is an important regional actor with respect to the discussion on a Fair Globalization. At the intra-regional level, recent developments include the strengthening of the EESC, the inclusion of the new member countries from Central and Eastern Europe in the EU's structural policies and funds, the reorientation of cohesion policies towards the objectives of the Lisbon agenda, and the work on the mutual recognition of qualifications (EQF, ECTS). The EU has also continued to pursue a social agenda in its relations with other countries and regions. Apart from its contribution to the work done by multilateral institutions, the EU continued with its flexible approach regarding non-core labour standards, incorporated the promotion of decent work and social cohesion in its external social agenda, and promoted inter-regional social dialogues. The European case shows finally that with the development of regional social policies, it is likely that tensions will occur between the social and economic objectives of the regional integration project. The challenge for the EU, and for other regions, is to strike a sustainable balance between both sets of objectives on the basis of a regional political process.

We have seen that although there is quite some uncertainty about the model that will be followed in the Latin American and, especially, South American integration processes, there is a clear tendency towards the strengthening of the social dimension in several of the sub-regions. This is supported by new political coalitions and the broader civil society. It is the case of the Andean Community but especially MERCOSUR where a new social agenda has been adopted, the Social Institute of Mercosur has been created and the Fund for Structural Convergence was launched.

In Africa and Asia, progress has been made with respect to the institutionalization of regional social dialogues, involving both traditional and new social partners; this was especially the case in the African Union, ECOWAS and ASEAN. Concrete steps have also been set with respect to the promotion of the free mobility of labour and the portability of skills in ECOWAS, SADC, SAARC, the GCC and APEC.

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