

MULTINATIONAL GOVERNANCE AND WORKER RIGHTS IN THE GLOBAL VILLAGE

Ed Broadbent

A critical aspect of corporate governance is the manner in which domestic and multinational corporations treat their workers, from compensation and job safety to issues such as child labour and the right of employees to organize unions. Former NDP Leader Ed Broadbent, also a former president of the International Centre for Human Rights and Democratic Development, examines globalization and international trade from the perspective of worker rights and concludes there is much to do in the developed world to improve the treatment and the simple human dignity of workers in the developing world. And if exploiting a child, either sexually or for labour, is unacceptable at home, it is no less unacceptable abroad.

L'un des aspects critiques de la gouvernance d'entreprise réside dans le traitement réservé aux travailleurs des sociétés nationales et multinationales, tant au chapitre de la rémunération et de la sécurité d'emploi que du travail des enfants et du droit à la syndicalisation. Ed Broadbent, ancien chef du NPD et ancien président du Centre international des droits de la personne et du développement démocratique, examine la mondialisation et le commerce international sous l'angle des droits des travailleurs. Il en conclut que les pays développés pourraient faire beaucoup plus pour améliorer le traitement et la dignité humaine des travailleurs des pays en voie de développement. Si l'exploitation des enfants en milieu de travail ou à des fins sexuelle est inadmissible chez soi, par exemple, elle devrait l'être tout autant à l'étranger.



When the Berlin Wall came tumbling down in 1989, democratic leaders throughout the world correctly proclaimed history had taken an important shift. The first President Bush asserted we were witnessing a new world order, which was widely taken to mean the world was now open to pluralist democracy and capitalist economies. Throughout the democratic world prime ministers and foreign ministers asserted the important role rights and trade would play in their foreign policy.

For a brief period, the two seemed to receive equal emphasis. However, it soon became clear that democratic governments were more preoccupied with the spread of market economies and the development of trade than with defending democracy and human rights. International financial institutions insisted that developing countries adapt to the "new" economic order. When it came to pressure, trade rules were on the front burner and rights didn't even make it to the stove. In 1995 the World Trade Organization came into being, and since then, for the supporters and critics alike, it has been the principal focus of international activism.

Citizens in developed democracies support trade because they believe it leads to more jobs. However, while they are self-interested, they are neither selfish nor cynical. As François Mitterrand once observed, they do not think their political leaders should see themselves merely as travelling salesmen. Canadians want trade, but they also believe in democracy and in the principles of the Universal Declaration of Human Rights. In short, as confirmed in a large public opinion survey undertaken by the Commission on Canadian Democracy and Corporate Accountability, they believe trade *and* rights should be complementary aspects of our foreign policy. There is strong evidence that citizens in other North Atlantic democracies have similar views. Nonetheless, apart from a few consistent countries like Germany, Norway, Denmark, Sweden and Holland, most of their governments have largely ignored the fact.

In this context I define globalization to mean the process of consolidating the world into one big market economy by the progressive elimination of barriers to international trade and investment. Providing it's fair as well as free,

virtually all the governments represented recently at Cancun would agree that the global goal should be expanded trade in goods, services and capital.

Trade between nations did expand greatly in the 1990s. According to data recently cited by Bob Wolfe of Queen's University, it grew annually by 6 percent, double the rate for the GDP. While some developing countries, notably China and India, have had high levels of growth and significant reductions in poverty, negative or no growth has characterized many more. While there have been some general benefits from this globalization, notably lower inflation rates around the world, there can be no doubt about who has benefited most.

Between 1990 and 2002 the number of transnational corporations grew by 86 percent, growing from 35,000 to 65,000 [UNCTAD World Investment Report]. Increasingly liberated from national borders of any kind, they roam at will throughout the globe, spreading investment in developed and developing countries alike. As well, in virtually every OECD country, the tax share paid by corporations has been significantly reduced. At the beginning of the 1990s the large majority of funds passing from North to South came through the hands of democratic governments. Now over 80 percent of such investment passes through the hands of North-based corporations. For many governments in the developing world, the most important northern relationship is no longer with democratically elected governments but with transnational corporations accountable only to their shareholders.

While global and regional trade agreements alone (initiated by the developed democracies) cannot be said to have produced the statistical pattern noted above, they certainly have been a major contributor. These international legal instruments have given corporations more freedom of action. The expansion in their mobili-

ty constitutes an increase in their de facto power, not only in terms of governments but also over individuals as employees and as members of local, national and international communities. The trade agreements bestowing these new powers, including (within NAFTA) the right to sue governments, have not been balanced by additional provisions entailing new obligations pertinent to either human rights or environmental concerns.

I define globalization to mean the process of consolidating the world into one big market economy by the progressive elimination of barriers to international trade and investment. Providing it's fair as well as free, virtually all the governments represented recently at Cancun would agree that the global goal should be expanded trade in goods, services and capital.

What I find bizarre is the almost universal failure of today's economists and liberal democratic theorists to respond to this phenomenon. There is good reason to believe that John Locke and Adam Smith, the founders of liberal political and economic thought, would be astonished by the modern corporation's accumulation of power internationally.

Smith and Locke were concerned about concentrations of power and notably how it could be abused. For Smith, competitive markets complemented by strong, regulating governments enforcing the rule of law should help ensure the majority of individuals would benefit from a capitalist economy without suffering from what he saw as the avaricious and power-seeking drives of the business class. For Locke, writing earlier, it was the protection of individual rights from the power of the quasi-feudal state and church that liberal political institutions derived their justification. There is thus reason to believe that neither Smith nor Locke would be as passive about today's global reality as are most of their liberal democratic successors.

Many politicians have espoused the view, which some actually believe, that the presence of a market economy combined with economic growth have

a straight-forward cause and effect relationship with democracy. This is, of course, not true. Otherwise Germany, say in 1938, or Chile under Pinochet, would have been among the world's leading democracies. As would China today.

Globalization is resulting in the trade agreements and commercial rights that are necessary for a market economy. As I have noted, it has also

led to significantly reduced poverty in some developing countries. However, to pick up on a phrase once used by Klaus Schwab, head of the World Economic Forum, when it comes to human rights, and in particular those rights essential for workers — the majority in any society — the gulf between the promise and the reality of expanding trade is wide and deep.

Human rights are not abstractions. Many of those demonstrating in Seattle, Quebec City and most recently Cancun are well aware of this. More than many of those representing governments at the negotiating tables, they understand that the UN system of civil, political, economic and social rights refer to the real life experience of men, women and children. As the UN rights covenants appropriately assert, these rights refer to entitlements base on our inherent claim as human beings to a life of dignity.

Let me give you some examples of the precarious state of workers rights in particular. A few years ago I visited three developing nations whose GDPs had been growing and whose rights remain threatened or denied outright: China, Thailand and Indonesia.

Market-based economic reforms were introduced in China in the 1980s. One of the results was increased pressure



AP Photo

A typical working environment in a sweatshop in the developing world. Multinationals, writes Ed Broadbent, need to recognize the rights of workers abroad.

for democracy that came from the new urban workers and intellectuals. However, politics matters. Instead of responding positively to demands for more rights, the autocratic communist government (still in the hands of a Leninist party) ordered the tanks onto Tiananmen Square, and the world witnessed a bloody massacre followed by arrests. Among others arrested was a railway worker, Han Dongfang, who was imprisoned without charge. He was tortured and subsequently released. When I visited China he had fled the country. His only "crime" had been demanding the right of freedom of association, the right to an independent union; independent, that is, from control by the Communist Party.

While all major civil and political rights were and remain repressed in China, the government has been especially harsh when it comes to trade union rights. According to the internationally credible Asia Watch, following the massacre at Tiananmen Square no student or intellectual was sentenced to death. But 45 workers were. And among those active in the democratic movement, more workers than other demonstrators also disappeared into labour camps. And a higher percentage of workers were tried and received higher sentences when convicted than did academics and students.

In Thailand, I met with young workers one night after their shift in factories outside Bangkok. A worker told me she

survived the fire that killed 188 in a factory making Cabbage Patch dolls, in spite of being locked in, by jumping from the fourth story and landing upon the bodies of friends. Moving from factory to factory, she now works as an organizer to inform workers of their completely unenforced health and safety rights. Following this tragedy, other toy factories in two of China's export zones had identical fires. In one of these, 87 lost their lives. In every case the barbarous excuse was the same. Management claimed it was necessary to lock workers in to stop them from stealing and to prevent them from leaving work early.

In Indonesia, I met with labour and other human rights activists outside Jakarta. The meeting had been called to talk about the impact of globalization and the need for rights (assembly, association, speech). That gathering, however, was held in secret because any meeting over five people in Indonesia needed government approval. Among other matters discussed was the recent tragedy of "Marsinah," a young woman who had attempted to exercise her right of association by organizing an independent union. One weekend she was taken in by the security forces, tortured, raped and murdered. Her body was dumped on the streets of Jakarta as a warning to others. At the time in Indonesia another courageous trade union activist (Mughtar Pakpahan) had been arrested and charged with "criminal" behaviour for advocating doubling the minimum wage from two dollars to four dollars a day.

The point is that these stories from my personal visit to three Asian countries are not isolated incidents. Globalization has simply not delivered the rights promised by so many politicians and corporate executives. According to the most recent information [ICFTU Annual Report on Violation of Trade Union Rights, 2003] China and Indonesia, as well as Mexico, Haiti and Brazil (I have visited them all) were singled out as examples of government-led repression of rights.

According to the ICFTU's well-documented official figures, last year 30,000 people were fired, 1,000 organizers were attacked and beaten, 89 were

sent to prison and 213 trade unionists were murdered (mostly in Columbia) — all for attempting to exercise their right to form an independent union.

Have we learned anything from our own history? The development of democracy took place after or during the industrial revolution in most North Atlantic democracies. The demand for specific workers' rights and other democratic rights was part and parcel of the same historical process. In Europe, in particular, workers used their civil rights to found the trade union movement and went on to acquire suffrage and to build strong democracies. This struggle, in broad terms, is now underway in many developing countries. Empirical studies have shown that there has been a positive correlation between the presence of strong independent unions and democracy. And globally, today, as the American scholar Virginia Leary has written, the rights of workers in a given country are probably the bellwether for the status of rights in general.

At the very time governments from all parts of the world are making it easier through trade agreements for business to trade and invest, build alliances and associations so that they can profit, many governments in developing countries reduce, hold back or totally violate the freedom of working people to build alliances and associations so they can survive. Rather than furthering the democratic process, globalization in these circumstances is resulting in the opposite. And most governments in the developed democracies, who have benefited most from globalization, remain indifferent. The spread of international law should entail protection of the human rights of workers as well as the commercial rights of companies. Otherwise, as Adam Smith pointed out in *Wealth of Nations*, the rule of law "so far as it is instituted for the security of property, is in reality instituted for the defence of the right against the poor, of those who have

some property against those who have none at all."

We should begin practising what we preached when the Berlin Wall came down. For starters, we should see that the voluntary code of conduct applied to corporations in the United Nations Global Compact is totally insufficient. We don't say implementation of other rights will be voluntary. Why should those of workers? Existing trade agreements must be seen for what they are, namely, legally binding commitments that affect not only the commercial interests of corporations but also, inescapably, the men and women who work for these corporations. By improving the position of corporations in international trade agreements, we increase their

We should begin practising what we preached when the Berlin Wall came down. For starters, we should see that the voluntary code of conduct applied to corporations in the United Nations Global Compact is totally insufficient. We don't say implementation of other rights will be voluntary. Why should those of workers?

mobility. Without related action on behalf of working people, we thus intensify the competitive economic struggle on the side of corporations. Trade agreements, in short, are not neutral in their effects. It's for this reason that all trade agreements should include clauses protecting these basic human rights most pertinent to economic life. In this respect, at least, NAFTA was a start. NAFTA has side agreements on basic workers rights. While the side agreement is weak in substance, it did establish the important precedent of linking trade and human rights.

A worker human rights clause in trade agreements would help ensure that working men and women would not be forced to work in conditions where their rights are denied. At the

heart of such a clause would be freedom of association, and specifically the right to establish independent trade unions. [The right to an independent union is the only right found in both the Covenant on Civil and Political Rights (article 22) and the Covenant on Economics, Social and Cultural Rights (article 9)]. The other three core labour rights found in the International Labour Organization's 1998 *Declaration on Fundamental Principles and Rights at Work* should also be included: a ban on child and forced labour and the right of equal treatment or nondiscrimination.

I should add that many countries already have fine labour laws on the books and many have ratified the necessary ILO conventions. Very often the problem is not with the written documents, which look wonderful, but rather with the total absence of enforcement. Compliance with ILO conventions is not required by law. It is voluntary. Many governments have been extraordinarily creative when it comes to finding new ways to limit freedom of association. Tactics range from torture and imprisonment of union leaders, to actively buying of activists, to passively allowing companies to get away with illegal practices, to

elaborate legislative means, which make it impossible for workers in a given sector to unionize to defend their rights. During a two-year period in the mid-1990s (1992-94) the number of legal barriers used to effectively deny workers their rights increased from 70 to 250.

Such a rights clause would not, of course, regulate wages. International wage regulation would unfairly discriminate against poorer countries. A rights clause would regulate process, not guarantee monetary outcomes. It would significantly strengthen the ability of ordinary people to use internationally recognized rights to improve their conditions of life.

The most effective location of such a clause would be in the WTO agreement. Why there? For the very good reason that governments do take the WTO seriously.

As Michael Hart, one of Canada's leading experts on trade has written, "the WTO...provides the most advanced set of rules capable of being enforced among the community of nations." Bob Wolfe, in his Queen's University report on the recent WTO meeting in Cancun, observed that the WTO constitutes "part of a constitution for the world."

WTO article XVI:4 compels all signatory governments to comply with the agreement. It does so by obliging governments to ensure that domestic law is consistent with WTO "laws regulations and administrative procedures." Most governments of the world have signed on to the WTO and its obligations and all members states of the United Nations are obligated to implement the rights found in the Universal Declaration, including the rights of workers. A majority, including China, have other specific legal obligations because they have signed onto the Covenant on Civil and Political Rights.

Implementation of such a rights clause must be impartial. It could be done in the following way: When an alleged violation of the core rights is cited by a member country, a committee established by the ILO and WTO would investigate and make a report. If a violation is confirmed, they could recommend technical assistance to a government of good faith. If such help is refused, then an instruction to clean up their act over a specified period of time could be issued. Failure to comply with this last step should result in multilaterally imposed commercial sanctions. The fundamental objective of this process, as with the law in any country, is to ensure compliance by the vast majority — not to punish, ex post facto, the violators.

There is another step that Canada can and should take to foster a global rights environment for workers. It should begin to cause Canadian firms to behave properly. The Export Development Corporation should offer investment insurance and other assistance for a Canadian firm's overseas operations only on the condition that the company complies with the four core labour standards

in its operations in the host country. In terms of direct financial participation (loans and equity), Canada should join the US, Germany, the UK, Netherlands, Denmark, Norway and South Africa in linking such participation by the government with the company complying with core labour rights in its operations in the host countries. All of these governments have assumed a greater level of responsibility for ensuring their companies measure up to rights standards. Canada would now be playing catch-up in these areas of conditionality and worker rights.

However, the world requires leadership. It needs a good example of a democratic government prepared to say its companies simply cannot do in poorer countries what they can no longer do at home.

In a document outlining the key principles of our foreign policy, the government acknowledges its responsibility for ensuring proper behaviour by our corporations in their overseas operations. Specifically, it is asserted that governance and accountability is said to be "concerned with fostering improved accountability of the public and private sector in terms of establishing norms of democracy and human rights."

The Canadian Democracy and Corporate Accountability Commission recommended that Canada should work for three years to obtain multilateral agreement for the inclusion of a core worker rights and environmental protection clause in the WTO. After this period, we said Canada should take unilateral action on the issue of rights. There is a precedent involving the rights of a child.

The vast majority of Canadian men holidaying abroad do not sexually abuse children. But some do. Parliament therefore decided to make such action a criminal offence. A Canadian cannot abuse a child in such a way in Toronto or in Bangkok or he will be punished by the law.

Parliament currently has before it the so-called "Westray" bill, passed at the first reading stage. When this bill is adopted, corporate managers will be criminally responsible for ensuring the

safety and rights of their Canadian workers. Most Canadian companies, whether at home or abroad, do not violate workers rights. But some do. My point is obvious.

Surely, if we can prohibit Canadians in our Criminal Code from violating the rights of children abroad, we can also prohibit Canadian corporations from violating the rights of their parents. The Westray bill should be amended to take this into account.

The cliché is true: We are no longer simply citizens of our cities, provinces, and countries. We Canadians are now citizens of the world whose daily lives are being shaped by the new trade rules of globalization. But so are the working men and women I met on a human rights trip to Thailand, Indonesia and China — as well as those in El Salvador, Bangladesh, Kenya, Guatemala, Brazil and Mexico I met on other such occasions. As global citizens, we must make sure that the governments we elect and the corporations we buy from live up to basic democratic requirements. When it comes to rights, a young woman in Beijing deserves no less than her sister in Toronto. And when it comes to democratic governments, they should stop making trade agreements with only commercial rights. They should stop the complicit reinforcement of the inequality suffered by the millions whose labour is the essential foundation for all such trade in the first place.

When it comes to trade, the world is indeed becoming one big economy without borders. As we did years ago within democratic states, it's time to ensure that human rights have the same global reach as the rights of property. Until this happens, there can be no global democracy.

Ed Broadbent, former leader of the New Democratic Party, is a Fellow at the School of Policy Studies, Queen's University, and Co-Chair of the Canadian Democracy and Corporate Accountability Commission. This article is adapted from a presentation delivered at the "Globalization and the Future of Labour Law Conference" at the University of Western Ontario in October 2003.