

Social rules and sustainability in the Americas

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Printed in Canada

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This publication is a project of the International Institute for Sustainable Development, in co-operation with the United Nations Environment Programme and the Organization of American States.

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Social Rules and Sustainability in the Americas

Preface: The TRSA III Project

The “Trade Rules and Sustainability in the Americas” Project

STARTING FROM THE QUESTION, “how could trade rules in the Western Hemisphere foster and not undermine sustainability objectives?,” this three-volume study reviews existing trade, environment and social regimes in the Americas, then uses the Winnipeg Principles as a framework to analyze the situation and suggest mechanisms for progress toward sustainability. As such, the TRSA project is a study of models and lessons learned from the trade and sustainable development debates around rapidly-evolving international, regional (hemispheric), sub-regional and bilateral regimes in the Americas. It aims to analyze the interaction among developing economic, ecological and social regimes, particularly with regard to trade measures, in the Western Hemisphere, and to make recommendations for new hemispheric rules that support sustainable development. The research and analysis is a case study of the applicability of the “Trade and Sustainable Development Principles (The Winnipeg Principles)”¹ in the Americas (Box 1).

The first report from the project, *Trade Rules and Sustainability in the Americas*, focused on trade regimes. The book summarized the existing network of hemispheric, regional and sub-regional trade and integration regimes, and commented briefly on social and environmental aspects of those regimes. It then surveyed lessons learned from the trade and economic integration arrangements in order to develop, through a participatory analytical process using the seven Winnipeg Principles, recommendations for the potential Free Trade Area of the Americas.

The second report, *Ecological Rules and Sustainability in the Americas*, examined existing and potential environmental regimes in the Americas and made recommendations for advancement of this co-operation agenda within the context of ongoing FTAA negotiations. It argued that increased recognition and support are needed for the capacity-building and information-sharing roles played by regional and global environmental agreements. It found that such support is also needed for the capacity-building institutions and grassroots networks which, though they may lack formal treaty status, play an essential role in strengthening international co-operation for the environment. The report suggested that more effective international policies and better coordination are needed to address challenges in the international implementation of environmental commitments. After surveying existing ecological regimes in the Americas, the report proposed the creation of a new, networked, ecological co-operation instrument for the Western Hemisphere. It also recommended opening an informal, high-level space for information exchange, expert dialogue, analysis and capacity building on hemispheric trade and sustainability concerns.

This third and final report, *Social Rules and Sustainability in the Americas*, uses a “rights-based approach” to examine social regimes in the Western Hemisphere and develop recommendations for future hemispheric co-operation on social policy in the context of advancing FTAA negotiations. It discusses the Inter-American Human Rights System, the Pan American Health System and various structures of the Organization of American States, and surveys examples of innovative sub-regional co-operation instruments on health, human rights,—including socio-laboural rights, social security, gender and indigenous peoples’ participation—corporate social responsibility and other social issues from across the Americas. Extending the Winnipeg Principles analysis to social regimes, it proposes ways that the complex and inter-related international frameworks for social development, including human rights protection, could be strengthened as part of an Americas integration process that would support equitable sustainable development.

Box 1: What is “Winnipeg Principles” analysis?

A group of international experts, convened by IISD through 1992–93, endorsed the “The Winnipeg Principles,” seven indivisible guides for trade and trade-related environment and development policies, practices and agreements to help ensure that they work to achieve sustainable development. We use these principles in this study of the Americas social co-operation regimes, by basing our research on the following questions:

Efficiency/Cost Internalization: How can we support a more efficient use of resources, and ensure that true values are being reflected in costs in the Americas through trade liberalization and related international development co-operation on social issues in the Americas? What are the implications of this approach for labour rights, and for health and education as social services?

Environmental Integrity: How do social regimes integrate environmental integrity, in the Americas? How can these regimes help to identify and respect limits to the regenerative capacity of ecosystems, avoid irreversible harm to plant and animal populations and species, and ensure protection for valued and endangered areas, and what is the best role for trade measures?

Equity: Do developing hemispheric trade or social regimes contribute to social justice? How can we support a more just distribution of physical and natural capital, knowledge and technology, both within and between generations in the Americas?

Science and Precaution: How can new hemispheric social development regimes, particularly in the areas of health, agriculture and corporate social responsibility, respect the precautionary principle? How can objective criteria in science promote better long-term decisions, and how can short-term development goals be balanced against lack of scientific certainty as to risk?

International Co-operation: How can new Americas social development regimes and related trade measures promote linkages across borders and identities, and enhance international systems of co-operation at all levels? How can and do they resolve disputes on human rights and other social issues?

Subsidiarity: How could developing hemispheric social regimes, especially in the area of health policy, contribute to decision-making on the best possible level? How can we ensure that the lowest jurisdictional and political level, depending on the nature of the issues, is assigned priority consistent with effectiveness in the Americas?

Openness: How can new social development regimes be negotiated in a transparent, open and participatory way? How can we strengthen civil society participation in the Americas integration process relating to human rights and social justice issues?

The TRSA research project was about process as well as products. It aimed, through participatory approaches and dialogues, to strengthen research and analytical capacity in the Americas on these issues and to provide a tool to increase informed public participation in current trade policy-making processes. With guidance from an expert advisory council, an interdisciplinary research team from diverse sectors of society based in Argentina, Uruguay, Ecuador, Brazil, Costa Rica, St. Lucia, Dominican Republic, Mexico, Chile and Canada investigated these issues for more than six years as part of a continuing project. Methods included literature and Internet reviews; in-depth interviews and participatory sessions with government leaders; meetings with social movement actors and other experts from diverse sectors; and analysis of strategic intervention points and mechanisms. By seeking perspectives from civil society experts, public and private sector leaders, academia, and Agenda 21 major group actors, it was possible to draw upon a wide range of experiences from many levels and generate concrete policy recommendations for decision-makers across the Americas.

Endnote

- 1 International Institute for Sustainable Development, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994).

Social Rules and Sustainability in the Americas

Thanks and Acknowledgements

We gratefully acknowledge the guidance and support of David Runnalls, President of the International Institute for Sustainable Development (IISD), who has chaired the advisors of this project from its inception. We also appreciate the advice, revision and critique given by our group of advisors: Dick Ballhorn (Department of Foreign Affairs and International Trade); Kevin Banks (Human Resources Development Canada); Andy Bowcott (Environment Canada); Eric Dannenmaier (Tulane University); Ross Duncan (Health Canada); Brennan van Dyke (United Nations Environment Programme Regional Office for North America); Dan Esty (Yale GETS); Mark Halle (IISD); Yolanda Kakabadse (Fundación Futuro Latinoamericano); Ricardo Melendez Ortiz (International Centre for Trade and Sustainable Development); Konrad von Moltke (IISD); Luis Niño (Government of Venezuela); Robin Rosenberg (North-South Centre); Ricardo Sanchez Sosa (United Nations Environment Programme Regional Office for Latin America and the Caribbean); Lloyd Timberlake (AVINA Foundation); Scott Vaughan (Organization of American States) and Dale Whiteside (DFAIT).

We also wish to thank Hussein Abaza, Brennan van Dyke and Enrique Leff of the United Nations Environment Programme; Vaughan Lowe of All Souls College and Sandra Fredman of Exeter College at Oxford University; James Crawford and Daniel Bethlehem of the Lauterpatch Research Centre for International Law at Cambridge University; Dan Esty and Monica Araya of GETS at Yale University; and Armand de Mestral and Ashfaq Khalfan of the Centre for International Sustainable Development Law at McGill Faculty of Law, for their hospitality and support.

We owe sincere gratitude to the AVINA Foundation; the Canadian International Development Agency; the International Development Research Centre; Health Canada; Environment Canada; the Department of Foreign Affairs and International Trade of Canada; the United States Agency for International Development; and the Organization of American States Environment and Sustainable Development Unit; as well as Fundación Futuro Latinoamericano of Quito; the North-South Centre of Miami; and the International Union for the Conservation of Nature; for their financial or in kind support at different points in our project. We mention in particular Stephen Schmidheiny (AVINA Foundation), Janine Ferretti (Inter-American Development Bank), Scott Hajost (IUCN – The World Conservation Union) and Gisele Morin Labatut (IDRC). We also wish to acknowledge the contributions of helpful government and inter-governmental officials, including Noreen Smith, Renata Wielgosz, Jenna Mackay-Alie, Beth Rohr, David Morgan and Martin Roy (Canadian government), Zoila Giron and Jose Manuel Salazar (OAS) and Mariane Schapher United Nations Economic Commission for Latin America and the Caribbean.

Our sincere thanks to the academics, business and civil society experts whose comments in developing the work were invaluable, especially Aaron Cosbey and David Boyer of IISD; also Pierre Marc Johnson and Karel Mayrand of the Hemispheric Trade and Sustainability Symposium (HTSS); Gustavo Alanis of el Centro Mexicano de Derecho Ambiental (Mexico); John Audley of the Carnegie International Endowment for Peace (USA); Nicolas Lucas of the World Resources Institute; Manuel Baquedano and Sarah Larrain of the Instituto de Ecología Política (Chile); Coral Rey of Consumers International (Chile); Anne Mitchell of the Canadian Institute for Environmental Law and Policy (Canada); and the other civil society leaders who were interviewed at different points in the project. And we thank the organizers and participants of the UNEP, IISD and IUCN 2001 Hemispheric Trade and Sustainability Symposium in Quebec City, and the earlier UNEP, IISD and partners from the 2001 Conference on Latin American and Caribbean Perspectives on International Trade, the Environment and Sustainable Development in Mexico City. Finally, we would like to thank Natasha Ward as a co-contributor, and Karina Kessarís for her invaluable assistance in translation and editing.

1 Social Rules in the Americas



HOW CAN SOCIAL POLICY CO-OPERATION AGREEMENTS IN THE AMERICAS, especially in their use of trade measures for social purposes, support the broader goals of sustainable development? Has enough progress been made to “eradicate poverty and discrimination” in the Western Hemisphere? In the context of hemispheric trade liberalization, is there a need for a strengthened social development co-operation agenda, or even new hemispheric social instruments to achieve these goals? If so, based on a survey of existing regional and sub-regional social accords in the Americas, what are the best models for such a new regime? How could this regime be most coherent and effective, and help to ensure that trade and social policies are mutually supportive and sustainable? This study has generated recommendations to address these questions, starting from several key assumptions.

1.1 Regional Integration Processes in a Globalizing World

Regional integration agreements (RIAs) must be understood as regimes in their own right,² frameworks of legal norms, policies and institutions formed in diverse economic,³ environmental and social contexts. Trade and social development policies provide key intervention points in regional regimes, where a balancing of economic development and social progress objectives must occur. Coherence in this respect has three aspects. First, trade agreements must be sensitive to social concerns, demonstrating respect for hemispheric human rights commitments. Second, effective measures must be set in place for strengthened regional co-operation on important social priorities such as human rights (including socio-laboural issues, and the participation of indigenous peoples and women), health, and education, and these should include provisions for economic measures where appropriate. Third, there must be spaces for dialogue and joint policy-making or dispute resolution in the

inevitable areas of overlap, either for synergies or conflicts. In this area of overlap, policies can be formed to mitigate social costs or impacts of trade liberalization, to govern the use of trade measures for social purposes, and to discuss distribution of the benefits of liberalization. Other sustainability issues less obviously related to economic policy can also be debated. RIAs are founded upon international co-operation, and the overall context of an integration process can generate much needed political will to advance important social and ecological co-operation agendas.

1.2 A Hemispheric Research Perspective is Needed

In this study, we deliberately take a *hemispheric* research perspective. The unique geographic and political context suggested by current conditions is not limited to a description of the hemisphere as the sum of five sub-regional integration arrangements, nor a battle between two faceless geopolitical areas (North and Latin America), with the Caribbean and the needs of smaller economies in *voce sotto*. Rather, a hemispheric research perspective can be used, which seeks out developing commonalities among new economic, social and environmental contexts in the region as whole.⁴ This Americas perspective is more appropriate to globalization, reflecting new alliances across the continents. This presents challenges in statistical analysis, requiring additional aggregation of data, but addresses the potential of new international regimes in the Americas.

1.3 The Proposal of Social Co-operation Agendas in the Americas Integration Process

As in the prior TRSA studies, the “The Winnipeg Principles” methodology is being extended to *potential* rather than simply *existing* social co-operation arrangements. Indeed, in the context of the Americas integration process, heads of delegations and ministers from labour, human resources, education, health and development ministries in 34 governments of the Americas have been meeting to share visions and priorities, and discuss how they can meet the most pressing social challenges of the hemisphere. In view of the Third Summit of the Americas (Quebec City, April 20–22, 2001), many urgent social challenges were brought to the attention of leaders. However, the future policy directions identified by the heads of state were not prioritized in any clear way, and few follow-up mechanisms have been identified. The forward-looking character of the hemispheric agenda requires analysis based on future scenarios rather than historical data. This also opens unique opportunities for recommendations to be taken into account if more coherent social development regimes are proposed, and will generate useful comparative research on existing social agreements at all levels if it is not.

1.4 Integration in the Americas: A Long Trajectory

Closer co-operation and integration in the Americas was initiated over a hundred years ago at the First Pan American Conference in 1889. The process was given new impetus at the 1994 Miami Summit of the Americas, where heads of state agreed upon four main goals: democracy; economic integration and free trade; elimination of poverty and discrimination; and sustainable development and conservation in the Americas (Box 2).

Box 2: “The Americas Integration Process”

1994 Summit of the Americas Mandate: “Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas.”

“... Although faced with differing development challenges, the Americas are united in pursuing prosperity through open markets, hemispheric integration, and sustainable development... We reiterate our firm adherence to... the principles of the sovereign equality of states, non-intervention, self-determination, and the peaceful resolution of disputes. We recognize the heterogeneity and diversity of our resources and cultures, just as we are convinced that we can advance our shared interests and values by building strong partnerships.

... The 1994 Miami Summit Agenda themes:

1. To preserve and strengthen the community of democracies of the Americas.
2. To promote prosperity through economic integration and free trade.
3. To eradicate poverty and discrimination in our hemisphere.
4. To guarantee sustainable development and conserve our natural environment for future generations...”

*Sources: Miami Summit Declaration of Principles, Summit of the Americas Implementation homepage, U.S. Department of State’s Summit Co-ordinating Office, December 1994 Miami Summit.*⁵

In spite of energetic efforts in the 1994 Miami Summit, the 1996 Santa Cruz Summit on Sustainable Development⁶ (Box 3), the 1998 Santiago Summit of the Americas, the 2001 Quebec City Summit of the Americas (Annex 9), and the first steps taken by the Health and Environment ministers of the Americas process (Table 3, below in the chapter on Environmental Integrity), much remains to be done.

Around 35 per cent of the Latin American Caribbean (LAC) region's 502 million people—about 177 million people—live in poverty.⁷ All “the countries of the Americas face common problems of high unemployment, unsatisfactory growth rates and environment damage.”⁸ According to United Nations Economic Commission for Latin America and the Caribbean (ECLAC) figures, between 1990 and 1995 economic growth in the region averaged slightly over two per cent per annum, but the number of poor people in the region rose by 12 million.⁹ As such, sober reflection reveals that development efforts have fallen short of important social goals to date.

In addition, the hemispheric integration initiative faces very real political opposition in many countries of the Americas as it attempts to move beyond conferences.¹⁰ However, momentum in the region appears to be growing—an overall impetus exists of 34 governments and a community of more than 1,200 negotiators committed to a common hemispheric agenda. The ambitious Miami, Santa Cruz and Quebec City Summit Agendas are only beginning to be implemented. National leaders do not have all the answers; they need business and civil society engagement to face hemispheric challenges.¹¹ Ability to meet sustainability objectives will deeply affect its legitimacy among the Americas public, and will be essential to the success of the Americas integration process.

It is hoped that this study can advance proposals to support that agenda. A strategy and common research methods were identified in meetings at the Trade and Environment Workshops held parallel to the FTAA Ministers Meetings in Quito, Ecuador, in October 2002, and draft results were presented in an Americas Trade and Sustainable Development Forum parallel to the FTAA Ministers Meeting in November 2003, at Miami, USA. In addition, they were released in the 2003 Greening the FTAA Conference in Montreal, Canada, and in the Meeting of Labour Ministers of the Americas in 2003. Organizations involved in the study from all sub-regions have also developed materials and hosted conferences based upon data and capacity compiled in the course of this research. The final report will be submitted directly to the “FTAA Committee of Government Representatives for the Participation of Civil Society” and will be made available to governments, civil society and others for capacity building work.

Box 3: An “Agenda 21” for the Americas

A hemispheric summit was held in Bolivia in 1996, where 34 governments of the Americas gathered to produce a Declaration and Action Plan based on the following framework. The 1996 Santa Cruz de la Sierra Declaration of Principles emphasized principles of:

- a. Equitable economic growth
- b. Social dimensions

- c. A healthy environment
- d. Public participation
- e. The development and transfer of technology
- f. Financing
- g. Strengthening of the legal framework

The 1996 Plan of Action for the Sustainable Development of the Americas was structured with initiatives for action on:

- 1. Health and education
- 2. Sustainable agriculture and forests
- 3. Sustainable cities and communities
- 4. Water resources and coastal areas
- 5. Energy and minerals

The plan also contained a section on institutional, financing, technology and other co-operation aspects, including:

- 1. Institutional arrangements
- 2. Financing
- 3. Science and technology transfer
- 4. Public participation

*Sources: 1996 Santa Cruz de la Sierra Declaration of Principles and Plan of Action for the Sustainable Development of the Americas.*¹²

1.5 Sustainability and Social Policy

A common conceptual framework was needed to provide guidance for this study, one which considered the views of diverse actors in current regional social and human rights debates, though the study can only represent the views of its authors.

Sustainable development is an integrated and interdisciplinary process based on all three pillars of international economic, ecological and social development.¹³ As re-affirmed in the World Summit on Sustainable Development in Johannesburg, sustainable development has a strong social agenda, related to the eradication of poverty, human rights (including women's rights, the rights of indigenous peoples and labour rights), health, education and corporate social responsibility.¹⁴

In Quebec City, 2001, heads of state re-affirmed the goal of sustainable development and the urgent need for mutually-supportive economic, environmental and social policies in the Americas.¹⁵ In the long term, these three sets of policies must be coherent. A country cannot achieve its important social objectives by degrading the common resources or ecosystems of the Western Hemisphere or by closing its borders to trade and investment. Indeed, as the poor and vulnerable depend most closely on the environment and migration for their livelihoods, they are often first to suffer adverse impacts of destructive policies. Wealth generated in these instances is seldom equitably distributed, and even if it were, would only last in the short term.

As such, sustainable development suggests not simply less pollution, or more equitable distribution of resources, but rather a commitment to a different kind of growth.¹⁶ This growth seeks to achieve basic needs and better quality of life for human beings without sacrificing the needs of future generations, other species or their ecosystems. It perceives development as freedom, seeking to expand capabilities and opportunities for human beings.¹⁷ Such growth can generate resources for social infrastructure and long-term environmental priorities through fair trade, on micro and macro levels.¹⁸

Sustainable development is a starting point, and a sustainability perspective can deepen the analysis where appropriate (Box 4). From these conceptual starting points, this study seeks to identify appropriate hemispheric social legal and policy frameworks to promote sustainability.

Box 4: Sustainable Development and Sustainability

Sustainable development, as coined by the 1987 World Commission on Environment and Development, is based upon meeting the needs of present generations without compromising the ability of future generations to meet their needs. A sustainable development approach recognizes economic, social and environmental priorities for development and provides a way forward which includes social, economic and environmental conservation objectives. A sustainability perspective goes one step further, requiring a paradigm shift.

Sustainability suggests structural, economic and social changes to live within ecological limits, changes that are needed in the industrialized economies as well as developing countries. Activities are sustainable when they:

1. use materials in continuous cycles;
2. use continuously reliable sources of energy; or

3. come mainly from the qualities of being human (i.e., creativity, communication, co-ordination, appreciation, spiritual and intellectual development.)

The governments of the Americas have made many statements to the effect that... “[d]evelopment strategies need to include sustainability as an essential requirement for the balanced, interdependent, and integral attainment of economic, social, and environmental goals.” It appears they are willing to take up the challenge of sustainability.

Sources: *World Commission on Environment and Development, Our Common Future* (Oxford: Oxford University Press, 1987), *Knickerson, M. Guideposts for a Sustainable Future Project* (Perth: The Sustainability Project, 1996), and the *Santa Cruz de la Sierra Declaration, Bolivia, 1996, Art.2.*

1.6 An Overview of the Social Rules and Sustainability in the Americas Study

This book begins with a broad-brush description of significant social conditions in the Americas today, and an outline of existing systems of international human rights legal norms and instruments. The book is then structured to offer innovative hemispheric policy options, based on examples of place where these mechanisms have been proven, in the context of existing and proposed regimes. Chapter 2 describes the existing social regimes in brief detail from a rights-based approach, providing examples of concrete existing mechanisms, from sub-regional and other social agreements, which might serve as models or provide lessons. (Trade and related regimes are covered in the first report, *Trade Rules and Sustainability in the Americas*, and ecological regimes are covered in the second report, *Ecological Rules and Sustainability in the Americas*). In Chapter 3, sections 3.1 through 3.7 summarize the *Social Rules and Sustainability in the Americas* research and analysis, reviewing the social aspect of the Americas integration process through the lenses of the Winnipeg Principles:¹⁹ cost internalization and efficiency; environmental integrity; social equity; science and precaution; international co-operation; openness; and subsidiarity. As the study discusses elements of a potential hemispheric social regime, each chapter proposes policy options and innovative institutional measures or mechanisms to support sustainability objectives. Chapter 4 then summarizes our recommendations for a hemispheric social co-operation agenda, based on the Winnipeg Principles analysis. Some general policy options and conclusions are highlighted in Chapter 5. Chapters 6 and 7 provide the text of the Protocol of San Salvador to the Inter-American Declaration on Human Rights, and other useful resources. These are referenced to provide sources of more detailed information for those pursuing further study of these topics.

Endnotes

- 2 Regimes can be seen as an evolving continuum; from dialogue and sharing of information, to more defined frameworks for cooperation, to binding norms in a more precise legal sense. J. Vogler, *The Global Commons: A Regime Analysis*, (West Sussex: John Wiley & Sons Ltd, 1995) at 22, or J. Brunnee and S. Toope, "Environmental security and freshwater resources: Ecosystem regime building," *American Journal of International Law* 91, No. 11 (January 1997). See also K. Von Moltke, "International environmental management, trade regimes and sustainability," International Institute for Sustainable Development. (Winnipeg: IISD, 1996).
- 3 In WTO Chapter XXIV terms, regional integration arrangements themselves range in size and depth from free trade agreements without common external tariffs to customs unions with aspirations of a common market.
- 4 One of the underlying rationales for the establishment of the Organization of American States, not to mention any eventual FTAA, is built on the premise that countries in the Americas share certain social values and cultural identity. To the extent that this is the case, the internalization of social costs within the Americas through hemispheric action could advance at a faster rate than similar efforts within a global context.
- 5 *Summit of the Americas*, <<http://americas.fiu.edu/summit/Agreements/zdope.txt>>
- 6 The 1992 Earth Summit in Rio de Janeiro, Brazil, established a framework to address the challenges of protecting the environment and development communities while respecting people's quality of life. In 1996, the Americas became the first region in the world to produce a blueprint for action. In December of that year, the hemisphere's heads of state and government met in Santa Cruz de la Sierra, Bolivia, and agreed on an ambitious agenda to promote sustainable development.
- 7 World Bank, *World Development Report: Attacking Poverty*, (Washington: World Bank 2000–2001).
- 8 Charnovitz, S. "Trade and Environment: Next Steps." In *Trade and Environment: the International Debate*, United Nations Conference on Trade and Development, Latin American Economic System, (Caracas: UNCTAD/SELA, 1995).
- 9 ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session Mexico City April 3–7, 2000.
- 10 In the Santiago Summit of the Americas, April 1998, President Frei of Chile's opening speech recognized that "great social and organizational challenges lie ahead." He has been proven right.
- 11 General Secretary of the OAS, Cesar Gaviria, in his presentation to the Second Summit of the Americas, Santiago, Chile, April 18, 1998, stated; "[t]he questions are many and varied. How do we make integration not only a commercial process, but one of vast social and political consequence? How are we going to

preserve the political freedom of the governments, the legislatures, and public opinion in the entire hemisphere? How do we make all this effort benefit the smaller economies and the lowest wage earners?" Also, as per President Clinton of the USA's address to the same fora, "If economic integration in a global economy is to work for all people, we must demonstrate that we can have economic growth and lift labour standards for all workers. We must demonstrate that we can grow the economy and preserve, indeed, even improve the environment. (The new) civil society committee (in the FTAA process) will give the peoples of our nations the change to make that argument, and we must prove that we can make the argument work."

- 12 Organization of American States Unit for Environment and Sustainable Development homepage; <http://www.oas.org>
- 13 D. Mcgormick, "Sustainable development and human rights: An integrated conception." *International and Comparative Law Quarterly* 45, (October 1996), Ward, H., "Common but differentiated debates: Environment, labour and the world trade organization." *International and Comparative Law Quarterly* 6, (July 1996), or S. Hudson, "Trade, environment and the pursuit of sustainable development." *International Trade and The Environment*. World Bank Discussion Paper No. 159. Ed., P. Low, (Washington: World Bank, 1992) p. 55.
- 14 See the United Nations World Summit on Sustainable Development, Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation [hereinafter JPOI], in Report of the World Summit on Sustainable Development, Johannesburg, South Africa, August 26 to September 4, 2002, A/CONF.199/L.1 (New York, United Nations, 2002). The JPOI can be found online: http://www.johannesburgsummit.org/html/documents/summit_docs.html
- 15 Summit of the Americas Declaration and Plan of Action, Quebec City, 2001, available online: <http://www.oas.org>
- 16 World Commission on Environment and Development, *Our Common Future*, (Oxford: Oxford University Press, 1987), p 43.
- 17 See A.K. Sen, *Development as Freedom*, (Oxford: OUP, 2001). For a discussion of link to trade and sustainable development, see A. Cosbey, "New Views of Trade and Sustainable Development: Using Sen's Conception of Development to Re-examine the Debates" Paper presented in Cancun WTO Symposium on Trade and Development, Sept. 2003), online: http://www.iisd.org/pdf/2003/trade_iisd_cancun_report.pdf
- 18 International Institute for Sustainable Development, *Source Book on Trade and Sustainable Development: The New Research Agenda*, (Winnipeg: IISD, 1994), p. 11, where it is suggested that "fair trading arrangements enrich those on both ends of the exchange, and enable producers to engage in the activities they do most efficiently." OXFAM defines fair trade as "a fair price for fairly produced goods," and the International Federation of Alternative Trading estimates over

- US\$50 million a year in 1997 trading. N. Robins and S. Roberts, *Unlocking Trade Opportunities: Case Studies of Export Success from Developing Countries*, International Institute for Environment and Development, United Nations Department of Policy Coordination and Sustainable Development, (New York: IIED / UNDP, 1997); S. Zadek and P. Tiffen, *Fair Trade: Paths to Sustainability*, New Economics Foundation, Twin Trading, (U.K.: IIED, 1997).
- 19 International Institute for Sustainable Development, *Trade and Sustainable Development Principles – The Winnipeg Principles*, (Winnipeg: IISD, 1994).

2 The Social Tapestry of the Americas



WHAT IS A SOCIAL REGIME?²⁰ Social regimes are not universally or even regionally definable. Rather, they are relative to circumstances—products of particular national, regional and global dynamics. And they are particularly prone to influence from prevailing social, economic and political paradigms. In a state of law, particularly in western democratic regimes shared by countries of the Americas, social regimes are grounded in universal human rights law and aim to ensure basic human dignity.²¹ Thus, a social regime can be described as the network of rules, regulations and institutions that guarantee basic human dignity, as understood by a given society.

Social conditions in the Americas are diverse, complex and poorly documented.²² So are the interwoven social regimes of human rights, health and education co-operation instruments which have evolved at many levels. This preliminary diagnostic exercise on social regimes in the Americas focuses on what should be done (the international law and principles at play) and what is actually being done (the trends and social conditions in the Americas today). This permits a further analysis of what can be done (the development of recommendations), when what should be done is not.

In this chapter, we will survey existing international human rights law and the Inter-American Human Rights System, highlighting important hemispheric social commitments related to health, education, labour rights, freedom from discrimination based on gender or race, and other human rights. Then, we comment on existing trends in social conditions, noting whether these rights are being realized. Finally, we will highlight several specific trade-related sub-regional and international instruments which seek to guarantee or support social objectives related to these rights. We will focus on general, mainly sub-regional social co-operation instruments. These emerging comprehensive

regional social accords (RSAs) utilize measures and institutions such as common standards, policy coordination, assessment of policies, monitoring, information and public participation, and might present good models for future hemispheric co-operation in this area.

2.1 A Rights-based Approach to Americas Social Regimes

This book takes a rights-based approach to social regimes in the Americas. A “rights-based approach to development” focuses on what have been traditionally considered economic and social issues (poverty, health, education) from a rights perspective, i.e., treating them as *human rights of individuals* and not as merely public policy aimed at general social economic development, somehow void of a legal context. As such, social regimes will be described as a derivative of, grounded in, inspired by and subject to, basic universal and regional human rights frameworks. They are built on and defined by these frameworks, which include the Universal Declaration on Human Rights, the American Convention on Human Rights, the Inter-American Declaration on the Duties and Rights of Man, the Protocol to the American Convention on Economic, Social and Cultural Rights (the Protocol of San Salvador), national constitutions and other laws, including sub-national legislation.

In particular, the Protocol of San Salvador to the Inter-American Declaration on Human Rights is a pivotal human rights instrument in the Western Hemisphere and provides a forward looking agenda for a rights-based approach to social development in the Americas. (See Annex 7, below). In addition, and of a less binding nature, many social elements of the Action Plan from the 2001 Quebec City Summit of the Americas lay out an agenda for social development within the context of the present hemispheric co-operation agenda, as this was recently developed by consensus among 34 governments of the Americas.²³ (See Box 4, above). Taken together, these provide a general framework to survey hemispheric social issues and to sketch the regimes developed to address joint challenges.

The Inter-American Human Rights System (IAHRS) dates to 1948, the year the Organization of American States (OAS) was founded, and the year of the proclamation of the American Declaration of the Rights and Duties of Man.²⁴ In 1969, the Inter-American Specialized Conference on Human Rights, drawing upon the American Declaration, the European Convention on Human Rights, and the International Covenant of Civil and Political Rights, approved the American Convention on Human Rights (the Convention).

Twenty-five of the 35 countries of the Western Hemisphere have ratified the Convention and are legally committed to observing and protecting the rights it recognizes.²⁵ The Convention significantly strengthened human rights protection in the hemisphere by standardizing over two dozen rights within the

Convention's 82 Articles.²⁶ The Convention established a two-tiered, treaty-based structure (which includes the Inter-American Court on Human Rights, alongside the Commission) that has characterized the Inter-American system for the protection of human rights ever since. In 1988, the OAS General Assembly adopted the Protocol of San Salvador, an Additional Protocol to the American Convention on Human Rights, establishing economic, social and cultural rights in the region.²⁷ This treaty is a critical addition to the hemisphere's body of socially-relevant international law, and is binding upon all parties to the Convention who have ratified it (this does not include either Canada or the United States). It will be discussed further below.

The American Declaration on the Duties and Rights of Man

The 1948 American Declaration first described the rights that states should observe and protect. Apart from most of those contemplated in the Convention, the American Declaration includes various social and economic rights. The Convention is different in this respect because it only provides that states are committed to adopting measures to achieve the recognition of cultural, social and economic rights, but it establishes individual human rights in greater detail.²⁸ The Declaration emphasizes the importance of human rights obligations in the Americas, confirming that other treaties (which might include trade agreements) should support this system of human rights. (See Box 5).

Box 5: The 1948 American Declaration

The Introduction of the American Declaration, in its first paragraph, states:

“... the American peoples have acknowledged the dignity of the individual, and their national constitutions, recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;”

“... The international protection of the rights of man should be the principal guide of an evolving American law;”

“The affirmation of essential human rights by the American states together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American states as being suited to the present social and juridical conditions,... that they should increasingly strengthen the system in the international field...”

Source: The 1948 American Declaration on the Duties and Rights of Man.

The Declaration establishes a set of rights which have become the heart of the Americas social contract, namely rights relative to personal and community well-being, such as: the Right to Family (Art. 6), the Rights of Pregnant Women and Children (Article 7),²⁹ the Right to Health (Art. 11),³⁰ the Right to Education (Art. 12),³¹ the Right to Work (Art. 14), the Right to Leisure Time (Art. 15) and the Right to Social Security (Art. 16).

The rights enshrined in this Declaration define our pillars of human dignity and create the *framework* for a social regime of the Americas. This social regime, or human dignity framework, is subsequently further developed by a series of other hemispheric legally-binding agreements, and its protection is entrusted to the hemisphere's principle human rights tribunals (the Inter-American Commission and the Inter-American Court on Human Rights). These tribunals have, since their creation, monitored and enforced our hemispheric social contract, ensuring state compliance with their international obligations.³²

The American Convention

The American Convention (the Pact of San José) dates from 1969 and entered into force in 1978. It was strongly influenced by the European Convention on Human Rights, the American Declaration on Human Rights approved in 1948, and the International Covenant of Civil and Political Rights. The American Convention, of all international instruments, is one of the most complete and extensive human rights doctrines.

States party to the Convention agree to respect and ensure the free exercise of the rights enumerated in the Convention to all persons under their jurisdiction. In this context, governments of state parties have both positive and negative duties. They have the obligation not to violate the rights of persons, and they must simultaneously adopt reasonable and necessary measures to guarantee the free exercise of the rights of the individual.³³ This last obligation, with respect to the adoption of measures, will be important in our discussions of trade regimes, as the question arises as to whether trade regimes (as a product of an act of state) should take human rights law into account.

The preamble of the American Convention clearly re-affirms the states of the hemisphere's commitment to a system of personal liberty and social justice, in which individuals enjoy civil, political, economic, social and cultural rights. Through its various articles, the Convention defines the protected rights,³⁴ and in Chapter III, recognizes economic, social and cultural rights.

Progressive Realization of Human Rights

States ratifying the American Convention also commit themselves to the progressive realization of the rights contained. This is important when we consider development (or dismantling) of social regimes in the hemisphere over time.³⁵

The Commission, on the issue of progressive development, has interpreted this article to mean that there is a legal obligation to take measures in this field with determination.³⁶ It has indicated recently that the “progressive character with which most international instruments characterize state obligations related to economic, social and cultural rights, implies for states that they are immediately obliged to generally procure the constant realization of the rights established without regression.”³⁷ Regression in the area of economic, social and cultural rights can result in a violation, among others, of the obligation established by Article 26 of the American Convention.

In this respect, the states of the hemisphere that have ratified the American Convention and subsequent human rights treaties, have the general obligation to procure the constant realization of economic, social and cultural rights. This obligation also implies that they should not adopt any regressive measures that might affect the current level of development, even if in extraordinary circumstances. However, an analogous application of Article 5 of the Protocol of San Salvador suggests that there may be justification for laws that restrict and limit economic, social and cultural rights, as long as they have been promulgated with the objective of preserving the general welfare within a democratic society, and that they not contradict the reason and purpose of the said rights. With respect to trade regimes and other development frameworks, it is clear that such frameworks (trade regimes and others), as they are not in any way extraordinary circumstances that merit deviation from these obligations under international law, are bound by progressive obligations to ensure human rights realization.

While many issues pertinent to work, health, education, food and housing, among other socially relevant development topics, can be viewed (and are, in practice, generally viewed) from a philanthropic or economic growth perspective, they are most importantly human rights. And in the Americas, states are bound by their international obligations in the context of international and hemispheric human rights law.³⁸ Focusing on these issues from a rights-based perspective invariably raises important questions regarding state obligations and legal liability, as framed by international law.

The Protocol of San Salvador

The *Additional Protocol to the American Convention on Human Rights* in the area of Economic, Social and Cultural Rights, or more commonly, “the Protocol of San Salvador,” was signed at San Salvador in 1988 by 18 member states and entered into force in 1998.³⁹ The Protocol of San Salvador (PSS) contains 22 articles outlining economic, social and cultural rights. To date, 12 countries have ratified the Protocol, though over 20 have signed.⁴⁰

The PSS re-affirms the intention of its parties “... to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal

liberty and social justice based on respect for the essential rights of man;” and that ... “[human] rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favour of the realization of others can never be justified...”⁴¹

In its Preamble and Articles, modern concepts of social development, human dignity, social justice and sustainability frame a common intention in the hemisphere. They serve to further establish our social contract. The SSP begins by recalling state obligations to adopt measures and bring the hemispheric contract into national spheres. It subsequently proceeds to outline and commit to human rights covering the most basic needs, social, economic and cultural rights grounded in work, social security and health. Then, the state parties guarantee the protection and access of the individual to such rights as food, education, culture and the environment.⁴² References to human dignity appear throughout the SSP.

All of the Articles of the SSP address social regimes. Their consolidation into international, regional and sub-regional law in the hemisphere marks an important step in the construction of our hemispheric social regimes. Though it has only recently come into force, and more than half of the countries of the hemisphere have yet to ratify, it nevertheless sets the tone for social, economic and cultural objectives.

Enforcement and Compliance Mechanisms

The Inter-American System has established two institutions in charge of protecting human rights in the hemisphere, the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights.⁴³ The Commission receives individual complaints, makes site visits, and produces country reports or thematic reports, as well as makes recommendations to countries. If its findings merit further judicial review, cases are forwarded to the Inter-American Court on Human Rights for final judgment. The Court is the jurisdictional instance and is the guardian in charge of ensuring compliance with responsibilities assumed by states with respect to the protection of human rights.

The Court and Commission have been very active in the protection of human rights and in rendering justice to victims of human rights violations perpetrated by states. However, the vast majority of cases reaching the Inter-American Human Rights System have involved civil and political rights violations perpetrated by the dictatorships of the late 20th Century. While the case docket has begun to change over the last several years, and particularly since the ratification of the Protocol of San Salvador, the Court is only just beginning to receive cases involving economic, social and cultural rights.

The Commission and Court have impressive influence over the conduct of states, and in cases where sentences have favoured victims, compliance is fairly high. It should be noted, however, that the Commission generally works to pressure states into reaction to resolve disputes before they reach Court level. Few cases have actually reached the Court on Human Rights, which has rarely been required to decide in favour or against a state. Due to this, the Commission itself has significant influence, and also sets important precedents through its written commentaries. Its decisions and writings are used by human rights defenders to persuade national and international tribunals on a variety of legal issues before the courts.

In the Americas, this system has served to set precedent on the interpretation of international and hemispheric law. It has important influence on national legislation, policy-making and even the decisions of national and local courts. To this end, the system can serve as a guiding element in the quest for the future development of social protection mechanisms.

The Inter-American Human Rights System has the potential to serve as a judicial safeguard for compliance with social rights, and in particular as a guarantee for the hemisphere's social regimes, though it is currently subject to significant restraints. The system is already overwhelmed by its existing case docket, which as mentioned, centres mostly on more traditional human rights cases (on civil and political rights) which reach the Commission year round.⁴⁴ Without financial support and political commitment to its mandate to expand, its potential to address problems arising from trade remains limited.

2.2 Trends in Americas Social Conditions

Since the signing of the International Declaration on Human Rights and the creation of the hemisphere's body of human rights, the international arena has gone through a series of transformations which have altered political and economic development priorities.

In the Americas, the democratic wave that began in the early 1980s profoundly altered social and political organization. Some of these changes were positive, others were not. Hemispheric co-operation institutions have come to place high priority on social justice and development issues, including human rights. The OAS, through the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, has made real progress in recent years.⁴⁵ According to reports on implementation of the decisions reached in the 1994 Miami Summit of the Americas and subsequent Summits, many countries have approved key reforms in their legal systems, improving their domestic human rights institutions and their civil and political rights records.⁴⁶ As such, respect for civil and political rights has improved dramatically in the region, with a few notable exceptions.⁴⁷

However, in terms of respect for social, economic and cultural rights, much work remains to be done.⁴⁸ Today, the main challenge facing the inter-American human rights system more broadly is not further development of treaties. Rather, it is implementation, and the extension of political will toward essential social, economic and cultural rights, especially the rights of the most poor.⁴⁹ The Protocol of San Salvador and other inter-American Human Rights instruments must be ratified and further strengthened by all governments,⁵⁰ and further work must be done to ensure that communities and individuals are aware of their rights and can access them. This work should build on the recommendations of the 2003 Declaration of Margarita from the OAS High Level Meeting on Poverty, Equity and Social Inclusion (CIDI, OEA/Ser.W/IX.1, RANPEIS/DEC. 1/03).

The two most salient characteristics of global economic growth in the latter half of the twentieth century have been its unprecedented pace and its uneven distribution between countries and regions.⁵¹ The majority of peoples in the Americas still lack access to basic human needs and basic services. Aggregated figures suggest that life expectancy, infant mortality rates, access to clean water and adult literacy have improved considerably in Latin America and the Caribbean in the past decades. Yet, these basic social indicators vary within countries, and also from region to region, and inequality is also pronounced in this regard. As mentioned above, around 35 per cent of the Latin American Caribbean (LAC) region's 502 million people—about 177 million people—live in poverty.⁵²

According to United Nations Economic Commission for Latin America and the Caribbean (ECLAC) figures, between 1990 and 1995 economic growth in the region averaged slightly over two per cent per annum while the number of poor people in the region rose from 197 million to 209 million. The largest concentrations of poverty are found in Haiti, Central America, the Andean region and North-Eastern Brazil.⁵³ Poverty is most prevalent among women, children and certain ethnic groups such as indigenous peoples and people of African descent.⁵⁴ The urban poor consist mainly of female heads of households, fathers with little or no formal education and unemployed young people. The rural poor consist of small-scale farmers, subsistence farmers with little opportunity to overcome poverty via agriculture, along with landless workers and indigenous groups. Migrant workers, in particular, face daily battles with exploitation and human rights abuse.

The Americas are the region with the worst distribution of income in the world.⁵⁵ Inequities exist not only in terms of income distribution, but also with regard to public policy and services. That is, the existing inequities are structural and systemic. The fall of the “communist alternative” and increasing liberal economic globalization have eroded the role of state as a paternal figure providing elementary public services and empowered to protect human rights and more

generally, human dignity. Some have suggested that in many parts of the Americas, the state was, in any case, not able to effectively meet these goals.⁵⁶

The 1980s and 1990s were the era of privatization of public services. Social regimes, constructed on existing public infrastructure and policy, almost vanished for most of the population.⁵⁷ Prior to this policy shift, state enterprises and public ministries used national budgets deriving from state-run enterprises to finance the Americas social regimes.⁵⁸ Public health and education services varied considerably from country to country, and were often rudimentary. In some, institutions and services were of very high quality, and in others, conditions were desperate.⁵⁹

In today's theory and practice, social regimes appear to have gone from being rights-based, that is, systems in which everyone is *entitled* to basic human dignity and is protected by universal human rights, and in which the state is the keeper and protector of these rights, to a situation in which more and more, the universality of these rights is becoming less tangible, and only accessible for specific sectors of the population.⁶⁰

The reduction of the state, divestiture of publicly-run enterprises, and increasing roles for private enterprises in the provision of public services (such as health care and education) has altered the landscape of social policy in the Americas.⁶¹ In most countries, state services are in less demand, private health care providers have flourished, and the most economically independent sectors privately contract health care, education or both. Social regimes are becoming more linked to specific services of the state provided to specific target groups, particularly the more vulnerable sectors of society. Public services are increasingly left to support individuals and families that cannot provide themselves with private social services.⁶² In this new paradigm, the state is transformed into a regulator or controller of quality and fair play, while the private sector increasingly provides the services.⁶³

Private health care and education services might solve problems of universal access and protection efficiently and within reasonable economic costs. Where they do so, this system can be seen as a reasonable alternative. However, in many instances, the state lacks capacity and effective authority to adequately undertake its new "comptroller" role—it cannot ensure fair access, efficiency, reasonable cost and/or quality.⁶⁴ As will be discussed below with regard to the equity chapter, the most vulnerable groups include indigenous peoples, women and migratory workers. Services provided by the state to vulnerable groups do necessarily guarantee basic human rights or minimal levels of human dignity.⁶⁵

In the Americas, recent studies observe growing inequality, increased poverty levels, and growing inequity of access to basic social services.⁶⁶ It appears that

today, more than ever, quality of social services received is directly proportional to income level. The more you have, the better you are serviced.

The Americas Today: Deconstruction of the Social Contract

From the public sector perspective

In many countries, public services have deteriorated, and the state has been unable to fulfil its role as a guarantor of rights. The reduction of government involvement (and lack of capacity among institutions that remain) means that services are not available to meet basic needs for the most vulnerable. On one hand, budgetary constraints are a critical problem, for example, for health care and education facilities.⁶⁷ On the other hand, in spite of a few exemplary exceptions, corruption seems systemic in many parts of the Americas, and resources that are provided often do not arrive to those who need them.⁶⁸ Whether through “pork barrel politics” in the United States (or recent scandals on the stock market), or through misdirection of government funds in Venezuela or Haiti, the result has been loss of confidence in both public and private systems. This trend has resulted in higher quality private services replacing traditional state-run services. Those families that can afford private schooling and health care opt for the more expensive private services, while those that cannot afford the private alternative are obliged to receive lesser quality services, and can be forced into inequitable access to social regimes. Such “two-tiered” systems where the state lacks capacity to regulate, can quickly risk compromising basic human rights and can reinforce existing inequities. This has been commented upon, in the Americas, as the disappearance of the social “public good,” a value that was traditionally protected and guaranteed by the state, and one that remains enshrined, on paper, in hemispheric and domestic constitutional law.⁶⁹

From the user’s perspective

For some, these trends lead to higher quality health care, education and other services. Unionization, better working conditions and access to “modern” anti-discrimination laws can improve the lot of the fortunate. However, the consequences of these trends for the majority of less fortunate users have not been as positive. Impacts include greater inequity of quality and access, marginalization, physical separation from services,⁷⁰ as well as reductions in affordability, efficiency (timeliness) and material availability (persistent shortages of supplies). According to a recent study, in the Americas, increasing sectors of the population are being pushed into cycles of poverty and despair—a system of “social exclusion.”⁷¹ This social exclusion is caused by barriers to access to social services for marginalized sectors.⁷² Prior members of the “middle classes” are forced out of the formal economy (and society), into poverty, where they are no longer able to maintain their part of the social contract. As stated by

Gore, “Exclusion is the absence of participation, it is segregation, abandonment, and oblivion.”⁷³ In rural areas, traditional social supports in rural societies disintegrate as well, and many small subsistence farmers in the region find themselves without livelihood or access to social services. In urban areas, the process of exclusion is consolidated when poor sectors coalesce in urban peripheries, becoming alienated from centres of public life and participation and finding further barriers to public social services.⁷⁴

Future Directions for Social Regimes in the Americas

The principal challenges for the future of social regimes in the Americas are based on growing inequity and lack of access to social welfare. Growth and economic development priorities are perceived to take higher priority than the need for effective social regimes and basic human rights guarantees, leading to poverty and inequality.⁷⁵ What have been considered inalienable rights, social services that were essential to basic human dignity, become tradable goods, negotiable and differentiated with respect to their cost, quality and accessibility. It is as though social security, education, health care and other universally accessible rights are placed on the supermarket shelf, and while some can readily purchase these products freely, others are not even allowed access to the supermarket.

Heads of state from the Americas identified certain pressing social problems for the region in Quebec City in 2001. Their priorities were summarized above in Box 5. Upon analysis, it is clear that from the perspective of these leaders, many priorities are competing for attention. Highest among these are inter-related social priorities such as:

- human rights and fundamental freedoms;
- labour and employment, including migratory workers;
- poverty;
- health;
- education;
- gender equality; and
- indigenous peoples.

As will be noted in more detail below, such social and human rights are recognized in most constitutions of the Americas.⁷⁶ But though laws may be strong, compliance is another matter. In practice, in many cases, constitutional law has not fully extended into everyday life, to provide necessary protections or guarantees. Changes in protection for labour rights are one example. Core labour rights have been weakened by legislative initiatives and reforms seeking

to address labour inflexibilities (“flexibility” laws), which have granted companies greater discretionary control over working conditions, terms of contracts, security and benefits.⁷⁷ According to many commentators, such laws have led to more dangerous working conditions in many countries of the hemisphere, a reversal of past labour victories.⁷⁸ The unions argue that most of these reforms contradict constitutional protections and domestic social regimes constructed to protect the rights of workers.⁷⁹ Such national trends have different reasons. In some cases, social laws were developed, but were not accompanied by implementation mechanisms. In others, human rights instruments have been ignored or gone unused. Often, there is little access to information or education on rights (making constitutional law alien to common individuals); there is little or no participation in public life, or even just a growing national disconnection between common individuals and core decision-making processes.⁸⁰

Under these conditions, there is a priority need to achieve effective compliance with international obligations. To implement and improve Americas social regimes, it will be necessary to build and strengthen social welfare and equity. The Canadian International Development Agency (CIDA) and the Canadian Foundation for the Americas (FOCAL) recommend a focus on four key policy directions: economic growth and fiscal discipline; increased access to assets and opportunities by the poor; institutional reform of the social sector; and improved social safety nets.⁸¹

Urgent solutions are needed to address pressing social challenges in each of these areas. An integrated vision of sustainable development is needed to attain a balance between political, economic and social interests, and to address their relationship with the environment. It is not enough to develop or strengthen social regimes built on new institutions to provide services. It is also necessary to ensure that these services are accessible to the majority of the population, and the most vulnerable members such as indigenous peoples, women and migratory workers.

Such agendas can be advanced both with respect to decision-making processes, and their influence on the general population (through the creation of norms, institutions, public policy, etc.). For all of these, education and awareness are very necessary. Individuals and civil society will need to learn how to access and exercise their rights. Such public control over the instruments and obligations of states is one of the strongest forms of social balance and equity. National and regional judicial systems offer many tools which can be analyzed and used to protect individual rights, and judiciaries have a role in applying principles and protection mechanisms.

According to FOCAL, Americas policy-makers are recognizing this shift in priorities.⁸² Though macro-economic policies remain important, focus is gradually shifting to reforms oriented toward governance and institution

building. These “second-generation reform” policy options focus on the creation and reform of national financial institutions and boosting the competitiveness of the private sector; increasing the transparency and accountability of public and private sector institutions; reform of the financing and delivery of social services such as education, healthcare and social security (including the restructuring of social ministries); reform of labour legislation and practices; and the overhaul of the administration of justice.⁸³ However, as FOCAL warns, second-generation reforms can be quite costly, with impacts that are not often immediately felt. Administratively, these can be more complex than macroeconomic reforms, as they require the engagement of a large number of government agencies and social actors. And ultimately, these initiatives must be implemented by national governments, though support from international financial institutions, multilateral development agencies and the region’s multilateral political body—the OAS—is clearly necessary. In this respect, the recent 2003 Declaration of Margarita from the OAS High Level Meeting on Poverty, Equity and Social Inclusion provides important guidance and suggests some ways forward (CIDI, OEA/Ser.W/IX.1, RANPEIS/DEC. 1/03).

The Summit of the Americas process, in particular, has been an important promoter of second generation reforms with action items enshrined in the texts of the 1994 Miami Summit; the 1998 Santiago Summit; and the 2001 Quebec City Summit. The Summit texts however, do not prioritize or sequence the myriad of action items, and few clear implementation or monitoring mechanisms are provided.

The Rights-based Approach to Poverty and Links to Trade Liberalization

In recent years, the number of poor in the Americas has increased.⁸⁴ As noted above, according to figures from the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), between 1990 and 1995 economic growth in the region averaged slightly over two per cent per annum while the number of poor people in the region rose from 197 million to 209 million.⁸⁵

Two points are particularly important with regard to this trend. First, extreme poverty, in and of itself, is a violation of human rights. This leads to responsibilities and could even imply a need for reparations. According to the Inter-American Commission on Human Rights, states have specific obligations relating to extreme poverty, as such conditions are a generalized violation of civil, political, economic, social and cultural rights.⁸⁶ Second, poverty has a significant economic cost. Poverty costs countries through loss of workforce productivity, through incremental costs of public services (especially health and social assistance services), through lack of education and human development potential, through violence and security expenses.⁸⁷ Increased poverty also has a toll on country identity and image, deterring potential foreign direct investment.

Essentially, it can be persuasively argued that extreme social conditions generate uncertainty and limit the human resources necessary for a healthy economy.⁸⁸ As such, the trade-social regime dynamic seems an essential aspect of healthy economic growth and sustainable development. As new trade agreements are negotiated in the Americas, particularly at the hemispheric level, it becomes critically important to understand the potential impacts of trade on social development, particularly its effects on marginal and unprotected populations (urban and rural poor, squatters, ethnic minorities, indigenous communities), as well as small economic agents (such as small producers, artisans, rural inhabitants, retail merchants, etc.). The most vulnerable are often directly affected by variations in macroeconomic performance.

Recent studies demonstrate that trade liberalization scenarios can impact the environment and on the realization of basic social or human rights.⁸⁹ The trade-human rights relationship is being increasingly analyzed and debated.⁹⁰ The Americas trade agenda needs to undertake a serious consideration of the social impacts of trade dynamics. A rights-based approach to trade negotiations centres on guaranteeing effective social regimes to accompany any liberalization measures. This approach gains legitimacy and becomes more urgent as social conditions worsen. It is clear that more research and analysis is needed, but so are recommendations—concrete instruments that can help to strengthen and implement human rights commitments and the social regimes designed to deliver them. In the next section, we will briefly survey existing sub-regional and other international instruments, illustrating different options for new hemispheric social co-operation mechanisms.

2.3 Analysis of Existing Hemispheric Trade-related Social Instruments

In the Americas, each sub-region has developed a host of different treaties and accords to address the social priorities identified above. A summary is provided in Tables 1 and 2, below. Some of these agreements are also accompanied by implementation, monitoring and reporting instruments, and other innovative institutional arrangements, and all are worthy of further study, debate and analysis to glean lessons learned and best practices.⁹¹

The MERCOSUR

In the MERCOSUR, the 1991 Treaty of Asuncion has no express mention of social and labour matters, though its preamble sets out a generic objective of accelerating development processes with social justice. The MERCOSUR Labour Ministers 1991 Declaration of Montevideo lays out the need to address labour aspects of MERCOSUR and improve working conditions, a proposal to create a working sub-group on labour issues, and considers the possibility of a Social Charter for MERCOSUR.⁹² In Articles 28–30 of the

Protocol of Ouro Preto, the MERCOSUR Economic and Social Consultative Forum (FCES) was established and given a role to guarantee participation of different sectors. With nine representatives per country (36 members), the FCES advises the Common Market Council (the Consejo Mercado Común, or CMC).⁹³

Governments created a working sub-group (First as No. 11, then as Working Sub-group No. 10 in Consejo Mercado Común Decision N° 20/95) to take up matters dealing with labour relations, employment and social security, with eight committees to study various topics. Committee 1 handled individual work relationships; Committee 2, collective work relationships; Committee 3, employment and labour migration; Committee 4, vocational training; Committee 5, worker health and safety; Committee 6, social security; Committee 7, labour costs in land and ocean transport; and Committee 8 addressed the ILO Conventions. Sub-Group No. 10 and its committees, like the ILO, have a tripartite composition of government, labour and employers representatives, and have held a number of meetings, some of which included other representatives from civil society.⁹⁴ Sub-Group No. 10 drafted the MERCOSUR Multilateral Convention on Social Security (Recommendation No. 3/95), and in 1998, the Socio-Labour Declaration of MERCOSUR.

This Declaration led to the creation, in 1999, of a tri-partite Socio-Labour Commission with a regular calendar of meetings and a mandate to make consensus recommendations on social issues for adoption by the Common Market Group.⁹⁵ The Socio-Labour Commission has established a Labour Market Observatory (Observatorio del Mercado de Trabajo) of the MERCOSUR, and has successfully led a CMC Resolution on Professional Qualifications. Recently, the Technical Group on Social Development in the MERCOSUR, Chile and Bolivia has developed a Statistical System of Social Indicators (Sistema Estadístico de Indicadores Sociales).⁹⁶ MERCOSUR ministers of Labour also meet to address regional issues and provide political high-level guidance for the regime.

As part of the MERCOSUR social agenda, there is also a Working Sub-Group No. 11 on Health issues, and regular meetings take place between MERCOSUR Health ministers. And there is a Specialized Meeting on Women's Issues, with a strategic plan and program of work for the sub-region.

The Andean Community

In September 1995, the Andean Declaration on Social Development reaffirmed the right of all people of the region to education, to the fruits of science and technology, to culture, and to health. While hortatory in nature, the Declaration focused on social, economic and cultural rights. It highlighted the pressing need to adopt specific measures for incorporating disadvantaged social groups into the economic, social, civic, cultural and political life. It

called for new strategies to promote employment and committed to eradicate all forms of social discrimination. Equitable income distribution was stressed as a basic aim of social development.

Four years later, the May 1999 Act of Cartagena Social Agenda focused on creating jobs and guaranteeing improvements in education, health and social housing. It provides for an Andean Community migration policy and a guarantee for migrant workers rights; an educational, cultural, and science and technology policy aimed at safeguarding and promoting the Andean identity; and an Andean strategy on sustainable development. In particular, education ministers were given the tasks of (a) developing programs to harmonize Andean educational systems and to secure mutual recognition of professional licences, certificates, and degrees; (b) taking measures to strengthen the Andean cultural identity and promote integration values; and (c) prioritizing educational policies in border areas. Ministers of culture undertook a program to (a) coordinate cultural policies, and (b) execute a multicultural project known as “the Andean Route” to promote the sub-region’s traditions, history and common legacy. Assistance was provided to implement Health programs within the framework of the Hipólito Unanue Convention, for issues such as building healthy frontiers, strengthening epidemiological surveillance systems, sub-regional coordination for emergency and disaster measures, harmonization of medicinal products and good manufacturing practice; multilateral and bi-lateral health agreements; and establishing telemedical and health promotion programs for Aymara communities in Bolivia, Peru and Chile.

Emphasis was placed on the need to reinforce the participation of business people and workers in the integration process, and the General Secretariat was instructed to increase their support for Business and Labour Advisory Councils. Labour ministers were instructed to take measures to move ahead with the coordination of policies on job promotion, labour studies and training, job health and safety, social security, and labour migration, and to prepare a Draft Protocol Amending the Simón Rodríguez Convention.⁹⁷ In June 2000, the Act of Lima created an Andean Advisory Council of Labour Ministers. CAN ministers of labour coordinate efforts in five areas of social and labour integration: job promotion, job training, health and safety on the job, social security and labour migration.

In the Act of Carabobo of June 2001, the ministers responsible for executing social welfare, health, labour, education and housing policies were entrusted with drawing up a Comprehensive Social Development Plan to confront the pressing problems of poverty, social exclusion and inequality in the sub-region. It was decided to set up an Andean Forum on social and economic development. As part of the effort to build up the Andean Statistical Information System, access to harmonized and periodical data on social development and

the informal sector were emphasized. In the 2001 Declaration of Machu Picchu, a Working Committee on Indigenous Peoples Rights was established, with the participation of indigenous peoples organizations, human rights organizations, civil society and representatives of the member states. Strong support was to be given to all efforts aimed at promoting and protecting the basic rights and freedoms of the indigenous peoples and to promote the OAS Declaration on the Rights of Indigenous Peoples.

Other Andean social co-operation instruments are also being developed. An Andean Labour Observatory has been proposed to collect statistical data and information about labour provisions and employment programs. A proposal is being drafted with the assistance of the Iberian-American Social Security Organization (OISS) to amend Decisions 112, "Andean Social Security Instrument" and 148, "Regulations for the Andean Social Security Instrument." National legislation on labour migration has been reviewed with the assistance of the International Organization for Migration (IOM) and a proposal is being drawn up to amend Decision 116 "Andean Labour Migration Instrument."

The Central American Common Market

The Central American Integration System (SICA) has economic, social and sustainable development streams, and is supported by institutions such as the Central American Court of Justice as well as a general administrative secretariat.⁹⁸

The social stream (SISCA) includes one principal Treaty, the 1995 Central American Social Integration Treaty (Tratado de la Integración Social Centroamericana). This treaty commits governments to progressive social integration for sustainable development (Art. 1), co-operation and solidarity to provide basic services, develop the potential of all Central Americans and overcome poverty (Art. 2) and establishes a social sub-system of SICA (Art. 3). Among other principles, the treaty recognizes social development as a universal human right, the human being at the centre of sustainable social development, and commits to end social exclusion (Art. 6). Among other sub-regional activities, it commits governments to identify and co-operate on social development issues, gradual harmonization of social policies, dedicate resources to end structural causes of poverty, starting with the most disadvantaged, and promote local government and community action (Art. 8). As part of the Central American Social Sub-System, the treaty establishes a Social Consultative Committee (CCIS) to advise the Central American Common Market, and a council on social integration, (Consejo de la Integración Social), a Council of Social Ministers (Consejo de Ministros del Area Social) and a secretariat (Secretaría de la Integración Social), and recognizes the INCAP (Instituto de Nutrición de Centroamérica y Panamá), the BCIE (Banco Centroamericano de Integración Económica) and the ICAP (Instituto Centroamericano de Administración Pública as technical support (Art. 9),

leaving an open door for other members (Art. 10). Articles 11–23 lay out the institutional structure, ratification procedures and other aspects of the treaty.

There is a Social Integration Council formed of relevant high-level representatives, and a Secretariat for Central American Social Integration (SGSICA) based in Panama City.⁹⁹ These bodies coordinate a Strategic Plan for Development and Social Integration 2020. The SGSICA appears to play a role in obtaining funds for regional social sustainable development projects related to education, health and infrastructure development, such as a Social Vulnerability Reduction Program.¹⁰⁰

As part of the economic stream (SIECA), there is also a Regional System of Labour Information, with an internet accessible database and a Programa Regional de Modernización del Mercado Laboral (a sub-regional IDB-USAID-SIECA initiative to promote Central American compliance with core labour standards and ILO Conventions, raise awareness and provide information).¹⁰¹ These economic aspects of integration are considered fundamental to the broader Central American strategy for development.¹⁰²

The CARICOM

The CARICOM mission statement is to “provide dynamic leadership and service, in partnership with Community institutions and Groups, toward the attainment of a viable, internationally competitive and sustainable Community, with improved quality of life for all.” Poverty and vulnerability are recognized as serious challenges in the Caribbean sub-region.¹⁰³

The main CARICOM institution to address social issues in the sub-region is the Council for Human and Social Development (COHSOD). COHSOD structures its work within a two-year cycle during which four Ordinary Meetings are convened. An Inter-Sessional Committee comprising the current, outgoing and incoming Chairman is responsible for organizing the COHSOD between sessions, and Caribbean Community Secretariat is recognized as the Secretariat of the COHSOD, with assistance from a Committee of Officials from CARICOM member states.¹⁰⁴ The COHSOD coordinates co-operation on regional social programs such as CCH11, Human Resource Requirements and Strategic Inter-Sectoral Alliances with Gender and Development, Youth and Drug Demand Reduction; as well as Regional Strategic Plans for HIV/AIDS, Prevention and Control of Non-Communicable Diseases.

The CARICOM has a full suite of social co-operation programs. CARICOM member states, with the assistance of UNAIDS, have been holding “en bloc” negotiations with pharmaceutical companies to gain access to cheap antiretroviral drugs. There are also regular meetings of CARICOM ministers of education, which coordinate to take advantage of sub-regional research and planning,

and Ministries of Youth Affairs and National Youth Councils, which co-operate to attract funding for sub-regional efforts. There is also a significant civil society component of the CARICOM, which hosts Forums and Encounters for the sub-region, and responds to a Civil Society Charter of the CARICOM.

The CARICOM Declaration of Labour and Industrial Relations Principles sets out the general labour policy to which the Region aspires, consistent with international labour standards and other international instruments. These include principles on labour policy, industrial relations, labour relations, collective bargaining, equality of opportunity, remuneration, right to work, termination of employment, industrial action, occupational health and safety, social security, disputes settlement, employment policy, discrimination, CARICOM, labour administration and industrial relations.¹⁰⁵

The 1996 CARICOM Agreement on Social Security is quite an interesting instrument, addressing the need for freedom from discrimination and the need to protect the rights of the most vulnerable. It establishes harmonization of the social security legislation of the member states of the Caribbean Community and equality of treatment with respect to invalidity pensions; disablement pensions; old age or retirement pensions; survivors' pensions and death benefits in the form of pensions (Art. 2). It establishes mutual recognition of contribution periods for voluntary insurance; and bars reduction, modification, suspension, and forfeiture of benefits due to residence in any states party to the treaty (Art. 3 and 4). Its provisions lay out social security rules for persons employed in transnational companies operating in the region (Art. 7), itinerant persons (Art. 8), persons employed in international transport or on ships (Art. 9 and 10) and other circumstances, including exclusions. It contains provisions governing social security benefits for invalidity, old age, retirement, survivors, and disablement pensions, as well as death benefits, in all parties (Art. 16 to 24). It also lays out a common set of rules for determination of invalidity, investigations and medical examinations, duties of examination institutions and medical supervision, payment of claims, settlement of disputes and other matters (Art. 33–51). The treaty establishes a sub-regional Committee of Heads of the Social Security Schemes for CARICOM (Art. 25–26), administered by the CARICOM Secretariat. Essentially, the treaty lays out a common regime for social security for the CARICOM.¹⁰⁶

In the 1982 Co-operation Agreement between the International Labour Organization and the Caribbean Community and its later Amendments, the ILO and CARICOM agree to co-operate with each other on matters arising in the spheres of labour, social policy and related matters of mutual interest to the two agencies. A later modified Agreement sought to focus particularly on the areas of policy development, institution and capacity building, and other matters.¹⁰⁷

The North American Agreement on Labour Co-operation

The NAALC carries forward the commitment of the Preamble to the NAFTA to “improve working conditions and living standards” (Art. 1) in all Parties; to “protect, enhance and enforce basic workers’ rights”; to strengthen co-operation on labour issues among governments and citizens; to ensure that the Parties will work to protect high labour standards; and to ensure that each Party retains its ability to set its own labour standards.¹⁰⁸

The NAALC elaborates eleven labour principles (Annex 1) that the countries are committed to encourage: freedom of association and the right to organize; the right to collective bargaining; the right to strike; prohibition of forced labour; labour protection for children and young persons; minimum employment standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; compensation in such cases; and, protection of migrant workers.

The NAALC establishes a Commission for Labour Co-operation (Art. 8) which comprises a Ministerial Council (Art. 9) and a Secretariat (Art. 12). The Commission is assisted by a National Administrative Office (NAO) in each country (Art. 15). The Council, comprising cabinet-level representatives from each country, directs the implementation of the Agreement. The Secretariat, overseen by the Council and located in Dallas, Texas, prepares regular background reports and conducts studies and supports any working groups or committees as well as arbitral panels set up by the Council.¹⁰⁹

The National Administrative Offices in each country compile and transmit information (Art. 21) to the Secretariat and receive and register public communications on a full range of issues including matters relating to the enforcement of labour laws. In addition, the NAOs will respond to: public requests for information, and issues relating to the enforcement of labour laws. The Secretariat, in co-operation with the NAOs, carries out analysis of labour laws, regulations, and administrative procedures, as well as with respect to employment rates, wages, labour productivity and human resource development. They will also facilitate co-operative activities on a wide range of labour issues. Government to government co-operative consultations will be held at several stages to resolve problems concerning the effective enforcement of labour laws by seeking constructive solutions.

Ministers (Art. 22) would consult only on issues after factual consultations at the officials’ level (NAOs), and they would make every attempt to arrive at a mutually-satisfactory resolution of any problem. Ministers could launch a comparative evaluation by independent experts (Art. 23) of enforcement patterns related to occupational safety and health and other technical labour standards on matters that are trade-related. The report

would be made public (Art. 26) and would be used as part of the consultation process.

If the Council (Art. 27) is unable to resolve a trade-related labour dispute, concerning the enforcement of the occupational safety and health, child labour and minimum wage laws it may, by a two-thirds vote, convene an arbitral panel (Art. 28–29). The panel will investigate and make public its findings (Art. 37). A compliance mechanism has been established in the event that an arbitral panel finds a persistent pattern of failure by a country to effectively enforce its labour law.¹¹⁰ If a country fails to correct the problem (Art. 38–39), the panel may impose a fine (Article 39:5(b)) of up to US\$20 million, for the first year. In the future, the fines shall be no greater than .007 percent of total tri-national trade of goods. If a fine is imposed on Canada, the fine would be enforceable by domestic courts. In the case of the U.S. and Mexico, failure to pay the fine would result in suspension of NAFTA benefits (Art. 41), including the imposition of a duty, based on the amount of the fine.

The NAALC entered into force on the same day as the NAFTA (Art. 51) and provides for the accession (Art. 53) of any country or group of countries to the agreement. A country may withdraw (Art. 54) from the NAALC on six months written notice.

Several other instruments also deserve special attention in the search for innovative models for social co-operation in the Americas. In particular, three bilateral treaties, and one “inter-regional treaty,” though extremely recent, are worthy of considerable analysis and study as they develop.

The Canada-Chile Agreement on Labour Co-operation

The Canada-Chile Free Trade Agreement (CCFTA) aims to create an expanded and secure market for the goods and services produced in their territories, enhance the competitiveness of their firms in global markets, create new employment opportunities and improve working conditions and living standards in their respective territories, and protect, enhance and enforce basic workers’ rights.

Following the 1996 negotiation of the Canada-Chile Free Trade Agreement, an Agreement on Labour Co-operation came into effect on July 5, 1997. Similar to the NAALC which complements the NAFTA, the bilateral agreement seeks to improve working conditions and living standards in both countries and protect, enhance and enforce basic workers’ rights. Under this Agreement, the two participating countries are committed to effectively enforcing their own labour legislation; co-operating on labour matters; and promoting the following eleven labour principles: freedom of association, the right to bargain collectively, the right to strike, prohibition of forced labour, labour protection for children and young persons, minimum employment stan-

dards, elimination of employment discrimination, equal pay for men and women, prevention of occupational injuries and illnesses, compensation in case of occupational injuries or illnesses and protection of migrant workers.¹¹¹

There are six obligations undertaken by the Parties under the Canada-Chile Labour Co-operation Agreement. These are: a) Levels of Protection: each Party shall ensure that its laws and regulations provide for high labour standards, and shall strive to improve those standards; b) Government Enforcement Action: each Party shall promote compliance with and effectively enforce its labour law through appropriate government actions; c) Private Action: each Party shall ensure that persons with a legally-recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial (as appropriate), judicial or labour tribunals for the enforcement of the Party's law; d) Procedural Guarantees: each Party shall ensure that its proceedings for the enforcement of its labour law are fair, equitable and transparent; e) Publication: each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application are made available; and f) Public Information and Awareness: each Party shall promote public awareness of its labour law.

The Commission for Labour Co-operation and Ministerial Council were created to implement the Agreement. The Agreement has two main components: a Co-operative Work Program and a process for handling issues of concern to the two countries.

If differences arise, the Agreement provides for co-operative consultations, independent evaluations, and ultimately, a dispute resolution process in certain cases when issues related to the enforcement of labour legislation cannot be resolved by the two countries through consultation. The Commission for Labour Co-operation consists of a bi-national Ministerial Council which is supported by a National Secretariat in each country. The Council of Ministers of Labour or their designees is to meet every year and to review progress and approve the work plan which the National Secretariats are responsible for implementing. In Canada, the Secretariat resides within the Labour Branch of Human Resources Development Canada. In Chile, the Secretariat has been established within the structure of the Ministry of Labour and Social Security. Each National Secretariat is responsible for planning and organizing participation in co-operative activities; responding to public requests for information; compiling and transmitting information to its counterpart; preparing reports and studies and providing support to any working groups or committees set up by the Council; and receiving and reviewing public communications on a range of labour issues including concerns relating to the enforcement of labour laws in the other country.¹¹²

The Canada-Costa Rica Labour Co-operation Agreement

While the Canada-Costa Rica Labour Co-operation Agreement is structured in a way that parallels the NAALC and Canada-Chile LCA, there are certain areas where differences are apparent.

Administratively, the Canada-Costa Rica LCA is much simpler, and does not include provisions for national secretariats, evaluation committees of experts or panel rosters. As such, it might have a more direct relevance and be a more inclusive model for smaller economies in the Americas with less administrative capacity.

In terms of its scope and coverage, both models cover eleven principles and rights. However, the Canada-Costa Rica LCA obligations in Annex 1 are directly related to the ILO Declaration on Fundamental Principles and Rights at Work, which came into effect after the Canada-Chile LCA. Review procedures also apply to all of Annex 1, so the difference in the area of consultations relates to coverage of the scope as well. In the Canada-Chile LCA, resolution of disputes applies to only three areas of enforcement. General Consultations are a separate Article (13) under Institutional Mechanisms and can take place on matters concerning the “interpretation and application of the Agreement” and “on any matter that may affect its operation.” This includes concerns about the application of labour law in Annex 2 (minimum employment standards, OSH, occupational injuries, etc.) Ministerial Consultations are part of the Review section and must relate to the obligations in Annex 1. In the Canada-Chile Labour Co-operation Agreement, consultations are not an institutional provision but can cover any matter related to the Agreement. In addition, with regard to arbitral panels, the Costa Rica agreement does not contain monetary fines. If a failure has not been remedied, the other party may take “reasonable and appropriate measures, exclusive of fines or any measure affecting trade” to encourage remedies. This may be interpreted to include enhanced technical assistance but is not stated in the agreement.¹¹³

Finally, in terms of co-operative activities, the developmental component of the Canada-Costa Rica LCA is stronger than in the Canada-Chile LCA.

The Labour Co-operation Chapter of the Chile-United States Free Trade Agreement

The Chile-United States Trade Agreement contains a co-operative agenda to promote worker rights. Labour obligations are part of the core text of the trade agreement. Both parties re-affirm their obligations as members of the International Labour Organization (ILO), and shall strive to ensure that their domestic laws provide for labour standards consistent with internationally recognized labour principles. The Chile-U.S. FTA makes clear that it is inappropriate to weaken or reduce domestic labour protections to encourage trade or

investment. The Agreement also requires that parties shall effectively enforce their own domestic labour laws, and this obligation is enforceable through the Agreement's dispute settlement procedures. Procedural guarantees in the Agreement will ensure that workers and employers will have fair, equitable and transparent access to labour tribunals/courts. A co-operative mechanism is provided to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labour. Co-operative activities may include discussions of legislation, practice and implementation of the core elements of the ILO Declaration on Fundamental Principles and Rights at systems for the administration and enforcement of labour laws.

All core obligations of the Agreement, including labour and environmental provisions, are subject to the dispute settlement provisions of the Agreement. Dispute panel procedures set high standards of openness and transparency, with open public hearings; public release of legal submissions by parties; a special roster of labour or environmental experts for disputes in these areas; rights for interested third parties to submit views. The emphasis is on promoting compliance through consultation, joint action plans and trade-enhancing remedies, and an innovative enforcement mechanism includes monetary penalties to enforce commercial, labour, and environmental obligations of the trade agreement.¹¹⁴

The Cotonou Agreement between the European Union and the African, Caribbean and Pacific (ACP) countries.

Signed in June 2000, the Cotonou Agreement is the latest extension to the Lomé Convention (established in 1975). The Agreement provides the 77 ACP countries (South Africa excepted) with an extension of existing non-reciprocal preferential access for certain ACP agricultural and other goods to the EU market at least through 2002, when a preparatory period will begin during which ACP countries will build their capacities to withstand freer trade.¹¹⁵ Caribbean signatories are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

The Agreement is built on three interrelated components: political dialogue, trade and investment, and development co-operation. A "regionalizing" agreement, the new accord emphasizes a joint approach to combat poverty, promote sustainable development and work towards gradual integration of ACP countries into the world economy and the WTO system.¹¹⁶ It emphasizes five "pillars": a comprehensive political dimension, participatory approaches, a strengthened focus on poverty reduction, a new framework for economic and trade co-operation, and a reform of financial co-operation.

Commencing 2002–2008, the EU and ACP will negotiate WTO compatible and reciprocal trade agreements to be implemented from 2008 to 2020. Cotonou Economic Partnership Agreements (EPA) are performance-based and subject to peer review—they aim to establish an entirely new framework for trade and investment flows between the EU and the ACP based on reciprocity, regions and special treatment for LDCs.¹¹⁷ EPA negotiations between the EU and each region were launched in September 2002. As part of the accord, the EU has pledged to provide ACP countries with about US\$12.5 billion (EUR \$13.5 billion) in official development assistance (ODA). Some US\$670 million over the next 5 years will be provided for additional assistance to the Caribbean countries.

ACP-EU co-operation is formally steered by three “official” bodies: the ACP-EU Council of Ministers, (charged with political guidance, and made up of members of the Council of the EU, representatives of the European Commission, and a member of the government of each ACP country, with an alternating presidency and annual meetings), the ACP-EU Committee of Ambassadors (assists the Council of Ministers, and monitors implementation, made up of member representatives) and the Joint Parliamentary Assembly (a forum for dialogue and consultation, to discuss issues pertaining to development and raise public awareness, and to adopt resolutions and make recommendations, made up of equal numbers of EU and ACP parliamentary representatives). It is supported by an ACP Secretariat in Brussels and the European Commission Directorate General (represented by the Development Director General, with support from Humanitarian Aid Office (ECHO), the External Relations DG and the Common Service for External Relations (SCR), and a National Authorizing Officer (NAO) and specialized agencies in the field.¹¹⁸

The participatory approach established under Cotonou offers new hope for better integrating social and economic concerns and for more democracy. Those provisions have already led to a number of initiatives. Non state actors were consulted on nearly all the Country Strategy Papers elaborated until now and specific funding has been earmarked for civil society in two thirds of them for a total amount of 170 million over the next five years.

The Commission is convinced that trade and regional integration can make an important contribution to poverty reduction, sustainable growth and beneficial integration into the world economy.¹¹⁹

Table 1: Selected Social Instruments in the Americas

Region and members	Treaty Instrument and Institutions
<p><i>Americas</i></p> <p>OAS Inter-American Human Rights System</p>	<p>1948 Charter of the OAS</p> <p>1948 American Declaration on the Rights and Duties of Man</p> <p>1969 American Convention on Human Rights</p> <p>1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador)</p> <p>Inter-American Commission on Human Rights and Inter-American Court of Human Rights</p>
<p><i>MERCOSUR</i></p> <p>(Brazil, Argentina, Uruguay and Paraguay, with Chile and Bolivia as Associate members)</p>	<p>1991 Treaty of Asuncion (Preamble)</p> <p>1991 Protocol of Brasilia for the Settlement of Disputes</p> <p>1991 Declaration of Montevideo by the MERCOSUR Labour Ministers</p> <p>1992 Protocol for Co-operation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters (created Central Authority)</p> <p>1994 Additional Protocol to the Treaty of Asuncion on the Institutional Structure of MERCOSUR (Protocol of Ouro Preto, which created the MERCOSUR Economic and Social Consultative Forum)</p> <p>1997 MERCOSUR Multilateral Social Security Agreement</p> <p>MERCOSUR Social and Labour Declaration</p> <p>1998 MERCOSUR Social and Labour Declaration, established the MERCOSUR Social and Labour Commission, with National Commissions</p> <p>2000 Consejo Mercado Común Decision N° 9/95 in 2000 (Para 3.2 of Ch I & II covers the social dimension), and Consejo Mercado Común Decision N° 20/95 (created a Working Sub-Group No. 10 with eight committees)</p>

Region and members	Treaty Instrument and Institutions
<p><i>Andean Community</i></p> <p>(Colombia, Ecuador, Peru, Venezuela and Bolivia)</p>	<p>1969 Subregional Integration Agreement (Treaty of Cartagena)</p> <p>1973 Simón Rodríguez Convention on Migration (Caracas)</p> <p>1976 Protocol to the Simón Rodríguez Convention created Business and Labour Advisory Councils,</p> <p>1977 Andean Social Security Instrument (Decision 113)</p> <p>1977 Andean Labour Migration Instrument (Decision 116)</p> <p>1979 Regulations for the Andean Labour Migration Instrument (Decision 148)</p> <p>1982 Andean Labour Administration Instrument (Caracas)</p> <p>1986 Andean Labour Institute was created.</p> <p>1995 Andean Declaration on Social Development,</p> <p>1996 Protocol Amending the Andean Subregional Integration Agreement (Cartagena Agreement) created new institutional structure for Community.</p> <p>1996 Protocol Amending the Treaty Creating the Court of Justice of the Cartagena Agreement provides for jurisdiction over labour disputes.</p> <p>1998 Hipólito Unanue Convention (on health co-operation),</p> <p>1999 Andean Social Agenda (1999 Cartagena Agreement),</p> <p>2000 Andean Council of Labour Ministers (Act of Lima).</p> <p>2001 Act of Carabobo created Comprehensive Andean Social Development Plan and the Andean Forum on Social and Economic Development</p> <p>2001 Declaration of Machu Picchu on Indigenous Peoples, led to creation of Andean Working Committee on Indigenous Peoples Rights</p> <p>Codification of the Cartagena Agreement (Decision 406)</p> <p>1998 Act of Guayaquil (Decision 406) to facilitate free movement of persons.</p>

Region and members	Treaty Instrument and Institutions
<p><i>Central American Integration System</i></p> <p>(Guatemala, El Salvador, Nicaragua, Honduras, Costa Rica and Panama)</p>	<p>1960 General Treaty on Central American Economic Integration (Managua)</p> <p>1991 Protocol of Tegucigalpa (created the Central American Integration System)</p> <p>1992 Central American Court of Justice</p> <p>1992 Declaration on Social Security</p> <p>1993 Protocol to the General C.A. Economic Integration Treaty (Guatemala)</p> <p>1994 Central American Alliance for Sustainable Development</p> <p>1995 Central American Social Integration Treaty (created Social Integration Council, Secretariat for Central American Social Integration (SGSICA), Central American Strategic Plan for Development and Social Integration 2020)</p> <p>1995 Central American Treaty of Democratic Security</p> <p>1995 Protocol to the General Central American Economic Integration Treaty (Declaration of San Salvador II)</p> <p>1997 Central American Union Proclamation</p>
<p><i>CARICOM</i></p> <p>(Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago)</p>	<p>1973 Treaty Establishing the Caribbean Community and Common Market (Treaty of Chaguaramas)</p> <p>1982 Co-operation Agreement between the International Labour Organization and the Caribbean Community and its later Amendments</p> <p>Charter of Civil Society for the Caribbean Community</p> <p>1995 Caricom Declaration of Labour and the Industrial Relations Principles</p> <p>1996 Caricom Agreement on Social Security</p> <p>1997 Protocol Amending the Treaty Establishing the Caribbean Community (Created the CARICOM Council for Human and Social Development – COHSOD)</p> <p>1998 Protocol III: Industrial Policy (Castries, St. Lucia)</p> <p>1998 Protocol V: Agricultural Policy (Castries, St. Lucia)</p>

Region and members	Treaty Instrument and Institutions
<p>CARICOM</p> <p>Observers: Aruba, Bermuda, Cayman Islands, Colombia, Dominican Republic, Mexico, Netherlands Antilles, Puerto Rico, and Venezuela</p> <p>Associate members: Anguilla, the British Virgin Islands, and Turks and Caicos Islands)</p>	<p>Caricom Model Law on Occupational Safety and Health in the Working Environment</p> <p>Caricom Model Law on Protection of Workers during Industrial Action</p> <p>Draft Model Labour Legislation Regarding (i) Termination of Employment; (ii) Registration, Status and Recognition of Trade Unions and Employers' Organizations; (iii) Equality of Opportunity and Non-discrimination in Employment</p>
<p>North American Free Trade Agreement</p> <p>(Canada, United States of America and Mexico)</p>	<p>1994 North American Free Trade Agreement (NAFTA)</p> <p>1994 North American Agreement on Labour Co-operation (NAALC)</p> <p>Commission for Labour Co-operation, with Ministerial Labour Council and Secretariat, and with National Administrative Offices (NAOs) in each country</p>
<p>Chile-Canada FTA</p> <p>(Chile and Canada)</p>	<p>1996 Canada-Chile Free Trade Agreement (CCFTA)</p> <p>1997 Canada-Chile Agreement on Labour Co-operation</p> <p>Commission for Labour Co-operation and Ministerial Council, and National Secretariats</p> <p>Canada-Chile Agreement on Labour Co-operation 2003–2004 Plan Of Action</p>

Region and members	Treaty Instrument and Institutions
<p><i>Costa Rica-Canada FTA</i> (Costa Rica and Canada)</p>	<p>2002 Costa Rica-Canada Labour Co-operation Agreement</p>
<p><i>Chile-U.S.</i></p>	<p>[2003] Chile-United States Trade Agreement Chapter on Labour Laws</p>
<p><i>Cotonou Agreement</i> (Caribbean countries)</p>	<p>1975 Lomé Convention 2000 Cotonou Agreement, covering</p> <ul style="list-style-type: none"> - Economic Partnership Agreements (EPAs) between African, Caribbean and Pacific (ACP) governments and European Union - European Development Fund - Three institutions: the ACP-EU Council of Ministers, the ACP-EU Committee of Ambassadors and the Joint Parliamentary Assembly - Supported by an ACP Secretariat and the European Commission Directorate General ('DG-DEV'), also National Authorizing Officers
<p><i>Global</i></p>	<p>1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up ILO Convention No. 169 on the Rights of Indigenous Peoples</p>

Developed by Authors, 2003

Table 2: Comparative Review of Americas Labour Rights Treaties

Labour issues	Caricom	Mercosur	CAN	SICA	NAALC	IAHRS
<p><i>Fundamental rights:</i></p> <p>Freedom of association and the right to organize, right to collective bargaining, elimination of forced labour, abolition of child labour, elimination of discrimination and equal remuneration.</p>	Yes	Yes	No	No, only non-discrimination	Yes	Yes, but collective bargaining
<p><i>Conditions of work:</i></p> <p>Right to work, the working day, rest, fair or adequate remuneration, stability in employment, promotion or upward mobility, standards for women workers, disabled persons, vacations, holidays, occupational safety and health, and mechanisms for settling labour disputes.</p>	Yes	No, only dispute settlement	No	No, only remuneration	Working day, remuneration, safety and health	Yes, but dispute settlement
<p><i>Employment:</i></p> <p>Promotion of employment, labour mobility, migrant workers, vocational training, and vocational guidance</p>	Yes, but vocation guidance	Yes	Yes	Yes, but vocation guidance	Employment promotion and vocation guidance	Yes, but vocation guidance

Labour issues	Caricom	Mercosur	CAN	SICA	NAALC	IAHRS
Labour administration: Labour administration and labour inspection	Labour admin	Labour inspect	Yes	No	No	No
Social security: General social security, allowances for employment accidents or occupational diseases, compensation for work-related injuries or illnesses, medical care, funeral expenses, unemployment protection, old-age pensions and survivors' benefits	Yes, but funeral grants and unemployment protection	Social security and unemployment protection	Yes, but survivors pensions	Social security	No, but compensation for work-related injury and illness	Yes, but funeral grants and survivors pensions
Compliance: Promotional, supervisory and monitoring bodies	Promotional bodies	Yes	No	Promotional bodies	Yes	Yes

Source: A. Ciudad Reynaud, *Labour Standards and the Integration Process in the Americas* (Geneva: ILO, 2001). See also D. Martinez, V. Tokman and J. Wurgaf, *Las Dimensiones Laborales de la Integración Económica en América Latina y el Caribe: Working Paper No. 8* (Geneva: ILO, 1995).

This very preliminary survey reveals a spectrum of social co-operation instruments covering issues as diverse as health, socio-laboural policy, social security, protection of the rights of indigenous peoples, education and culture. Each sub-region seems to have chosen different priorities, though all contain some provision for labour co-operation, and appear to have mechanisms in place for dialogue between ministers of culture, health and education. This social co-

operation agenda, though very recent in several sub-regions, appears to respond solidly to the commitment to social, economic and cultural rights highlighted in the Protocol of San Salvador, and on paper, demonstrates that co-operation is more than possible on these issues in the Americas.

If such co-operation is accepted and successful at the sub-regional level, these examples should also be considered as potential models (or a collection of policy options) for the Americas. However, very little comparative analysis has been done to date. An excellent compilation was recently prepared by the International Labour Organization (ILO), focused specifically on labour standards.¹²⁰ A more detailed hemispheric inventory (*diagnostico*) is necessary to build on this work, and test the implementation and institutional capacity of the broader inter-related range of social treaties and institutions in the Americas. Such a *diagnostico* can identify gaps, and find places where they are being sufficiently addressed through domestic law and policy, which are being resolved through global measures pursuant to international human rights commitments, and which might benefit from regional (hemispheric) intervention as the economies and societies of the Americas continue to draw more closely together. A particular focus on the way that new sub-regional accords and other instruments use trade measures for social purposes (TMSPs) may also reveal that such economic measures are fairly common in the Americas. As suggested by the analysis in the following chapters, existing sub-regional and other social co-operation instruments in the Americas provide a rich source of examples and certain important lessons for a hemispheric integration process.

Endnotes

- 20 Our objective is not to confine the term since it will vary by nature from context to context, but rather to give the reader some guidance so as to place our analysis in context and within a specifically-defined framework.
- 21 H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals*, (2nd ed Oxford: OUP, 2002) pp. 868–903.
- 22 For a broad sketch, see Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000. See also S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 23 These documents incorporate the chapter on health and education of the Action Plan from the 1996 Santa Cruz Summit of the Americas on Sustainable Development. We will also draw upon the results of the meeting of health and environment ministers of the Western Hemisphere held in Ottawa, Canada, in 2002. Available online: <http://www.ec.gc.ca>.
- 24 Much of the historical information on the Inter-American Human Rights System in this section is adapted from, “Toward a New Vision of the Inter-American Human Rights System,” César Gaviria, Secretary General of the Organization of

- American States, *Journal of Latin American Affairs* – F/W 1996. See also OAS, *The OAS and the Inter-American System*, (Washington: OAS, 1999). And see H. Gross Espiell, *Derechos Humanos*, (Lima: Cultural Cuzco S.A., 1991).
- 25 The ratifying states are: Argentina, Bolivia, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
 - 26 The protected rights of the Convention are: The right to juridical personality (to be recognized as a person before the law); the right to life; the right to humane treatment, including the right not to be subjected to cruel, inhuman, or degrading punishment or treatment; freedom from slavery; the right to personal liberty; the right to a fair trial by a competent tribunal; freedom from *ex post facto* laws; the right to compensation in the case of sentencing be a final judgment through a miscarriage of justice; the right to privacy; freedom of conscience and religion; freedom of thought and expression; the right to reply or to make a correction to inaccurate or offensive statements; the right of assembly; freedom of association; rights of the family; the right to a name; rights of the child; the right to nationality; the right to property; freedom of movement and residence; the right to participate in government; the right to equal protection of the law; and the right to judicial protection against acts that violate fundamental rights.
 - 27 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador,” O.A.S. Treaty Series No. 69 (1988), *entered into force* November 16, 1999, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992), available online: <http://www.cidh.oas.org/Basicos/basic5.htm>. The Protocol is binding to all parties to the Convention who have ratified it, at present, this includes 12 countries (though more have signed), but not the United States nor Canada.
 - 28 See A.C. Reynaud, *Labour Standards and the Integration Process in the Americas*, (Geneva: ILO, 2001). See also *Human Rights: How to Present a Petition in the Inter-American System*, (Washington: OAS, 2000).
 - 29 “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”
 - 30 “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”
 - 31 “Every person has the right to an education... that will prepare him to attain a decent life, to raise his standard of living and to be a useful member of society. ... Every person has the right to receive, free, at least a primary education.”
 - 32 Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-10/89, Interpretación de la Declaración Americana de los derechos y Deberes del Hombre dentro del marco del art. 64 de la Convención Americana de Derechos Humanos, 14 de julio de 1989, Ser. A N° 10 (1989), párrs. 35–45. See also Corte

- Interamericana de Derechos Humanos, James Terry Roach y Jay Pinkerton c. Estados Unidos, Caso 9647, Res. 3/87, 22 de septiembre de 1987, Informe Anual 1986–1987, párrs. 46–49. And see Rafael Ferrer-Mazorra y Otros c. Estados Unidos de América, Informe N° 51/01, caso 9903, 4 de abril de 2001.
- 33 See N. Buergenthal and D. Shelton, *La Protección de los Derechos Humanos en las Américas*, (Washington: Instituto Interamericano de Derechos Humanos, 1990) pp. 41–42.
- 34 *Inter alia*: Right to Privacy (Art. 11); Freedom of Thought and Expression (Art. 13); Rights of the Family (Art. 17); Rights of the Child (Art.19); Right to Property (Art. 21); Right to Participate in Government (Art. 23). The provision, at Article 4.1, that the right to life “shall be protected, in general, from the moment of conception” has generated controversy with regards to women’s rights to security of person or use of post-conception contraceptives. This concern is addressed later in this chapter.
- 35 With respect to progressive development, Article 26 states: [t]he states parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.
- 36 [...] “while Article 26 does not enumerate specific measures of execution, leaving it up to the state to determine administrative, social, legislative and other measures that are most appropriate, it expresses the legal obligation on the part of the state to address this process with determination and adopt progressive measures in this field. The principle of progressive development establishes that such measures should be adopted in a way that is consistent and that promotes the full effectiveness of those rights.” (unofficial translation) See CIDH, *Informe sobre la Situación de los Derechos Humanos en Ecuador*, OEA/Ser. L/V/II.96, Doc. 10 rev. 1 at 25.
- 37 CIDH, *Segundo Informe sobre la Situación de los Derechos Humanos en Perú*, OEA/Ser.L/V/II.106, Doc. 59 rev, 2 de junio de 2000, pár. 11. (capítulo VII).
- 38 A. A. Dulitzky and I. J. Alvarez, “Notas Sobre el Desarrollo Sustentable Como Derecho Humano,” *Revista Futuros*, N° 1 año 2003 Vol. 1, available online: <http://www.revistafuturos.htm>
- 39 Signatory countries include: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. See <http://www.oas.org>
- 40 To date, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, and Uruguay have ratified the Protocol. Canada and the United States are among those countries that have not. See <http://www.oas.org>

- 41 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," O.A.S. Treaty Series No. 69 (1988), entered into force November 16, 1999, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992), available online: <http://www.cidh.oas.org/Basicos/basic5.htm>
- 42 *Ibid.*
- 43 H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals*, (2nd ed., Oxford: OUP, 2002) 868–903. See online: <http://www.cidh.oas.org>, and <http://www.corteidh.or.cr>
- 44 S. Davidson, *The Inter-American Human Rights System*, (Aldershot: Dartmouth Publishing Company, 1997).
- 45 Basic Documents Pertaining to Human Rights, OEA/Ser.L.V/II.82doc.6 rev.1(1992). In <http://www.umn.edu/humanrts/iachr/general.htm>
Also see IACHR Home. In <http://www.oas.org/EN/PROG/ichr/index.htm>
- 46 *Words into Deeds. Progress since the Miami Summit. Report on Implementation of the Decision Reached at the 1994 Miami Summit of the Americas*, (Washington: U.S. Department of State, 1998) at 5. See also UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 47 S. Davidson, *The Inter-American Human Rights System*, (Aldershot: Dartmouth Publishing Company, 1997).
- 48 See also UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 49 See ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 50 As noted above, Canada, the United States and several other countries of the Western Hemisphere have not yet ratified the American Convention on Human Rights, nor the Protocol of San Salvador. Legal scholars and women's groups have expressed concern about ratification of the American Convention, stating that Article 4.1 might limit the rights of women to security of person or prevent use of post-conception contraceptives. See, e.g., Canada, Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights: Report of the Standing Senate Committee on Human Rights, Shirley Maheu & Eileen Rossiter, Chair and Vice-Chair (Ottawa: Senate of Canada, May 2003). Available online: <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep04may03-e.htm>. However, according to the IAHR, this provision should not necessarily be interpreted that way. See Baby Boy Case, Resolution 23/81, March 6, 1981, *Annual Report of the Inter-American Commission on Human Rights 1980–1981*, pp. 23–45, at 35. This Convention and especially, its Protocols, also commit to protection of many important rights

- for women and others. The legal issues associated with this concern and others must be investigated and mechanisms, such as interpretive Declarations or reservations (as permitted at Article 75 of the Convention) found to resolve them, in order to permit ratification.
- 51 A commonly used yardstick of inequality is the Gini coefficient – which can range from 0 (perfect equality) to 1 (complete inequality). Between 1990 and 2000 in the Americas, this indicator rose from 0.4 to 0.5 – toward greater inequality.
 - 52 World Bank, *World Development Report: Attacking Poverty*, (Washington: World Bank, 2000–2001).
 - 53 World Bank, *World Development Report: Attacking Poverty*, (Washington: World Bank, 2000–2001).
 - 54 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002). And see Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
 - 55 C. Gaviria, Speech to Santiago Summit of the Americas, (Washington: OAS, 1998).
 - 56 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002). And see Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
 - 57 From 1971 to 1998, a period during which nearly every government in Latin America reduced trade regulations and capital controls, 17 in 18 Latin American countries showed a deterioration of employment, real wages or both. Women in Latin America are working more than ever before, however 23 per cent of them earn less than minimum wage. In Mexico, between 1981 and 1994, as the country undertook major structural reforms in preparation for a closer economic relationship with the rest of North America, poverty levels rose dramatically from 50 to 66 per cent. See Canadian Council for International Cooperation, *Poverty Needs to be on the Agenda*, Briefing Paper, March 2001.
 - 58 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
 - 59 World Bank, *World Development Report: Attacking Poverty*, (Washington: World Bank, 2000–2001).
 - 60 As such, many are concerned countries are moving from a legalistic conception, in which all persons are bearers of social rights, towards a system in which only certain rights of certain individuals are guaranteed. This implies that while some individuals can assure human dignity for themselves, others become “beneficiaries” of limited social assistance, consequently diluting the role and responsibility of the state as guarantor and protector of such rights. In short, many fear that our social contract, and our social regime, is in collapse. See N. Birsall and A. de la

- Torre, *Washington Contentious: Economic Policies for Social Equity in Latin America*, (Washington: Carnegie Endowment for International Peace and the Inter-American Dialogue, 2001). And see ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 61 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 62 UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 63 *Ibid.*
- 64 ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000. And see Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
- 65 *Ibid.*
- 66 *Ibid.*
- 67 For example, public hospitals often lack basic inputs such as alcohol, cotton, x-ray negatives, medication, injections, etc., and with schools lacking didactic materials, reasonable salaries for teachers, and maintenance budgets. This can be linked to segregation of public health. See S. Salvador, *Liberalization of Trade in Health Services in Latin America and the Caribbean: Main Challenges*, (Montevideo: IDRC/TEC, 2003). See also O. Adams and C. Kinnon, “Measuring Trade Liberalization Against Public Health Objectives: the Case of Health Services” WHO Task Force on Health Economics, Technical Briefing Note, (Geneva: WHO, 1997).
- 68 Corruption of the state is a root problem in the system leading to the collapse of public services and infrastructure, as well as growing public skepticism with respect to all activities related to state operations. N. Birsall and A. de la Torre, *Washington Contentious: Economic Policies for Social Equity in Latin America*, (Washington: Carnegie Endowment for International Peace and the Inter-American Dialogue, 2001).
- 69 See ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). And see UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 70 For example, the lack of basic social services in marginal or “squatter” settlements, see M. E. Keck, *La pobreza y el medio ambiente en el entorno urbano de América Latina*, (Baltimore: Johns Hopkins University Press, 2001).
- 71 The “social exclusion” approach, according to a recent study, has descriptive, analytical, and normative advantages. “It has descriptive value in that defines poverty as a state of relative deprivation, going beyond the simple income-based definitions. Analytically, it has value in highlighting the interrelationships between poverty, productive employment, and social integration, all of which are important in understanding the processes associated with globalization. In particular, it

- helps address the rise in the number of those made permanent superfluous in the global economy; the problems created by increasingly blocked international migration; the backlash by some social groups trying to curb competition and technologically driven skill polarization and the dualization of labour markets.” C. Gore, “Markets, Citizenship and Social Exclusion” in J. M. Harris, T. A. Wise, K. P. Gallagher and N. Goodwin (eds), *A Survey of Sustainable Development*, (Boulder: Island Press, 2001) p. 65.
- 72 Such as the impossibility of obtaining stable work, the degree of participation in public life, the inability to maintain common formal communication structures (telephone, an address, etc.) See ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). And see UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 73 C. Gore, “Markets, Citizenship and Social Exclusion” in J. M. Harris, T. A. Wise, K. P. Gallagher and N. Goodwin (eds), *A Survey of Sustainable Development*, (Boulder: Island Press, 2001) at 65.
- 74 Structural adjustment programs of the 1980s and 1990s, were particularly difficult for poor sectors, which saw rising prices in food products, rising unemployment in the formal sector (both in private and public spheres), and the reduction of social services offered. See M. E. Keck, *La pobreza y el medio ambiente en el entorno urbano de América Latina*, (Baltimore: Johns Hopkins University Press, 2001).
- 75 B. Kliksberg, “Los escenarios sociales en América Latina y el Caribe,” *Rev Panam Salud Pública/Pan Am J Public Health* 8(1/2), 2000.
- 76 In the specific case of the consecration of the right to a healthy environment, the majority of the constitutions of the region, many of which are fairly new, recognize the importance of a healthy environment. Argentina 1994 (Article 41), Bolivia 1967 (Article 137), Brazil 1988 (Article 225), Chile 1980 (Article 19), Colombia 1991 (Articles 8, 49, 79, 80, 86 and 88), Cuba 1992 (Article 11 y 27), El Salvador 1983 (Article 69), Ecuador 1983 (Article 19), Guatemala 1985 (Article 97), Guyana 1980 (Articles 25 and 36), Haiti 1987 (Articles 253 and 258), Honduras 1982 (Article 145), Mexico 1917 (Article 25), Nicaragua 1987 (Articles 60 and 102), Panama 1980 (Article 110), Paraguay 1967 (Article 132), Peru 1993 (Article 2 par. 22), Uruguay 1997 (Article 47), Costa Rica (Articles 46 and 50).
- 77 S. Polaski, *Trade and Labour Standards: A Strategy for Developing Countries*, (Washington: Carnegie Endowment for International Peace, 2003).
- 78 E. Lee, “Globalization and Labour Standards: A Review of Issues” (1997), Vol. 136, *International Labour Review*.
- 79 L. A. Compa and S. F. Diamond, eds., *Human Rights, Labour Rights and International Trade*, (Pennsylvania: University of Pennsylvania Press, 1996).
- 80 See IIDH, *Los derechos económicos sociales y culturales: un desafío impostergable*, (Washington: Instituto Interamericano de Derechos Humanos, 1999).

- 81 CIDA, *CIDA's Social Development Priorities: A Framework for Action* (Ottawa: CIDA, September 2000). And see CIDA, *Closing the Gap: A Strategy for CIDA in the Americas*, (Ottawa: CIDA, January 2001). See also FOCAL, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 82 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 83 *Ibid.*
- 84 UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 85 ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). See also ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 86 The Inter-American Commission on Human Rights considers that extreme poverty constitutes a generalized violation of human rights, both civil and political, as well as economic, social and cultural. The requirements of the human right to a decent standard of living, transcends the content of the right not to be executed arbitrarily, the right to personal integrity, the right to personal freedom, the rights related to representational democracies and to other civil and political rights. In addition to designating sufficient public funds to social and economic rights, states should ensure the appropriate use of those resources. Experience shows that extreme poverty can seriously affect institutional democracy, as it contributes to the degeneration of the democratic structure and makes public participation, access to justice, and the general enjoyment of human rights illusory. (unofficial translation). See Comisión Interamericana de Derechos Humanos, *Tercer Informe sobre la Situación de los Derechos Humanos en Paraguay*, 2000, Cap. V, párr. 17.
- 87 K. Helmore and N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor*, (Bloomfield: Kumarian Press, 2001). See also World Bank, *World Development Report: Attacking Poverty*, (Washington: World Bank, 2000–2001).
- 88 *Ibid.*
- 89 C. Kirkpatrick and N. Lee, (1999) WTO New Round. Sustainability Impact Assessment Study. Phase Two. Main Report. (Manchester: European Commission; Institute for Development Policy and Management and Environmental Impact Assessment Centre, University of Manchester). Online: <http://idpm.man.ac.uk/sia-trade/Phase3/final.pdf>. See also C. Kirkpatrick, N. Lee, J. Curran, J. Franklin., C. George and H. Nomura (2002). *Further Development of the Methodology for a Sustainability Impact Assessment of Proposed WTO Negotiations*. (Manchester: European Commission; Institute for Development Policy and Management and Environmental Impact Assessment Centre, University of Manchester). Online: <http://idpm.man.ac.uk/sia-trade/Phase1/frontpage1.htm>.

- 90 L. A. Compa and S. F. Diamond, eds., *Human Rights, Labour Rights and International Trade*, (Pennsylvania: University of Pennsylvania Press, 1996).
- 91 For an excellent comparative study related specifically to one important aspect of social regimes–labour standards, see A. Cuidad Reynaud, *Labour Standards and the Integration Process in the Americas/Las Normas Laborales y el Proceso de Integración en las Americas*, (Geneva: ILO, 2001).
- 92 A. J. Robles, “Balance y perspectivas de los organismos sociolaborales del MERCOSUR,” *Revista Pistas* N° 8, Dec 2002. Report from Taller de Formación y Debate “El futuro del MERCOSUR,” organized April 30–May 2, 2002 by the Coordinación de Asuntos Internacionales del Ministerio de Trabajo, Empleo y Seguridad Social. Online: <http://www.fes.org.ar>
- 93 See Organization of American States SICE Database on FTAA Issues, online: <http://www.oas.org>
- 94 See O. E Uriarte, “La ciudadanía laboral en el MERCOSUR,” *Derecho Laboral*, Montevideo 1998, Tomo XLI N° 190. Online: [http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#\(*\)](http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#(*))
- 95 The Socio-Laboural Commission has a considerable discretion and means to accomplish its mandate. It delivers reports of its governments to the parties, makes observations, conducts reviews and responds to questions on the application of the Socio-Laboural Declaration. It receives complaints of non-compliance with the Declaration, and can even develop proposals to modify Declaration, as the Declaration itself provides opportunities for bi-annual updates and review. See <http://www.mercosur.org.uy>
- 96 Grupo Técnico de la Reunión de Ministros y Autoridades de Desarrollo Social del Mercosur, Bolivia y Chile (21 y 22 de marzo de 2002), online: <http://www.mercosur.org.uy/pagina1esp.htm>
- 97 See the Declaration of Cartagena de Indias – Final declaration of the Meeting of Ministers of Labour of the Andean Community and Action Plan Approved at the Conclusion of the Meeting of Ministers of Labour of the Andean Community (Cartagena de Indias, May 23, 1999). Online: http://www.comunidadandina.org/ingles/document/Act_n9.htm
- 98 See Central American Integration System, online: See also Solís, L. G. and Solano, P., “Central America: The Difficult Road Towards Integration” FPP-01-07 (2001) online: http://www.focal.ca/images/pdf/central_america.pdf And see Consejo de Integración Social, Secretaría Técnica de la Integración Social, Visión Estratégica del Desarrollo y la Integración Social de Centroamérica para el Año 2020 y Estrategias Y Líneas De Acción Al 2010, SICA (San Salvador, 20 de octubre de 2000) online: http://www.sgsica.org/sisca/docs_sisca/Vision.pdf
- 99 SGSICA, online: <http://www.sgsica.org/sisca/index.php>
- 100 INCAE, *Centroamérica en El Siglo XXI: Una Agenda Para la Competitividad y el Desarrollo Sostenible*, (Alajuela: INCAE, CLACDS Centro Latinoamericano para

- la Competitividad y el Desarrollo Sostenible and HIID Harvard Institute for International Development, 1999) at 1–23.
- 101 SIECA, online: <http://www.laboral.sieca.org.gt>
- 102 R. Najera, “Orígenes, evolución y perspectivas de la integración centroamericana” *La integración como instrumento de desarrollo: sus perspectivas y desafíos para Centroamérica*, Panorama Centroamericano 66 (Guatemala: Instituto Centroamericano de Estudios Políticos, 1997).
- 103 See online: <http://www.focal.ca/images/pdf/caribbean.pdf>
- 104 See CARICOM, COHSOD V: Investing in Human Resource Development with Equity, online: <http://www.caricom.org>. See also “Rules of Procedure for the Council for Human and Social Development (COHSOD), online: <http://www.caricom.org>.
- 105 See CARICOM Declaration of Labour and Industrial Relations Principles, online: <http://www.caricom.org/labourprinciples.htm>
- 106 See 1996 CARICOM Agreement on Social Security, online: <http://www.itcilo.it/english/actrav/telearn/global/ilo/blokkit/carisoc.htm> See also commentary, online: <http://www.caricom.org/socsec.htm>
- 107 See Amendment to 1982 <http://www.caricom.org/archives/agreement-ilo-caricom-amendment.htm>
- 108 1994 North American Free Trade Agreement, online: <http://www.nafta.org>
- 109 See NAALC Secretariat, online: <http://www.naalc.org>. See in particular Commission for Labour Cooperation, Comparative Guide to Labour and Employment Laws in North America. Labour Relations Law In North America (Washington: NAALC, 2000).
- 110 For a summary of disputes to date under the NAALC, see Human Rights Watch, online: <http://www.hrw.org/reports/2001/nafta/nafta0401-05.htm>
- 111 See First Annual Report Canada-Chile Agreement On Labour Cooperation (July 1997 – June 1998) online: labour-travail.hrhc-drhc.gc.ca/doc/ialc-cidt/eng/e/backen.htm#background
- 112 See Ministerial Council Report on the Three-Year Review of the Canada-Chile Agreement on Labour Cooperation (December 2002) online: labour-travail.hrhc-drhc.gc.ca/psait_spila/aicdt_ialc/2003_2004/report_english.htm
- 113 Communication with Dale Whiteside, Deputy Director, Strategic Trade Policy, Department of Foreign Affairs and International Trade, Government of Canada, June 26, 2003, on file with authors.
- 114 USTR Summary of Chile-U.S. Free Trade Agreement, online: http://www.ustr.gov/regions/whemisphere/samerica/2002-12-11-chile_summary.pdf
- 115 See online: <http://www.acpsec.org/gb/lome/lome1.htm> See also online: europa.eu.int/comm/development/cotonou/index_en.htm

- 116 K. von Moltke, "A Road Map for a Cotonou Investment Agreement," Report prepared for the Commonwealth Secretariat, 2003. Also at <http://www.iisd.org/trade/pubs.htm>. See also ICTSD, online:<http://www.ictsd.org/html/weekly/story1.27-06-00.htm>
- 117 ECDPM. 2001. Cotonou Infokit: Regional Economic Partnership Agreements (14). Maastricht: ECDPM. Online: http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index?readform & http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/ED09769D167CB327C1256C520059BBD4?OpenDocument&Cotonou_Agreement
- 118 ECDPM. 2001. Cotonou Infokit: The Institutions (6). Maastricht: ECDPM, online: http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index?readform & http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/ED09769D167CB327C1256C520059BBD4?OpenDocument&Cotonou_Agreement.
- 119 European Commission, *The Cotonou Agreement Enters Into Force Today*, (Brussels April 1, 2003), EC, online: europa.eu-un.org/article.asp?id=2201&lg=5
- 120 For an excellent comparative study related specifically to one important aspect of social regimes – labour standards, see A. Cuidad Reynaud, *Labour Standards and the Integration Process in the Americas/Las Normas Laborales y el Proceso de Integración en las Americas*, (Geneva: ILO, 2001).

3

Winnipeg Principles Analysis of Americas Social Regimes



A LIBERALIZATION PROCESS IS TAKING PLACE among the countries of the Americas. According to the 2001 Quebec City Summit of the Americas Declaration, and the 2003 Miami Statement of Americas Trade Ministers, these efforts are laying the foundations for an Americas integration process. This process will be more likely to advance constructively if trade rules foster rather than frustrate sustainability. Pressing social policy challenges needs to be addressed through implementation and enforcement of human rights commitments (including health and other basic needs) and increased commitment to improving conditions and services for the poor and the most vulnerable. On bilateral and sub-regional levels in the Americas, as well as in certain hemispheric social co-operation initiatives, innovative instruments can provide models for future policy options. Using the Winnipeg Principles, this study examines existing experience with these instruments and suggests co-operation mechanisms or policy options for an Americas integration process that supports more equitable sustainable development. The following analysis highlights initiatives or measures which offer lessons for the design of an Americas social co-operation agenda.

3.1 Equity

Social development is one of the most challenging issues facing contemporary human institutions and societies. Inequity is defined as the unequal distribution of physical and natural capital, knowledge and technology. Inequity perpetuates itself, leading to increased poverty and in extreme situations, violations of social, economic and cultural rights.¹²¹ These conditions contribute to environmental degradation and affect political security, particularly in small economies. Sustainable development seeks to end the poverty cycle by ensuring that development policies can address both present and future human needs.

Coordinated domestic and international action is needed to eradicate poverty. The Winnipeg Principle of Equity recognizes that in the transition to sustainability additional obligations should be assumed by those, primarily in the developed world, who have used resources in the past in a manner which limits the options of current generations, particularly in developing countries. It also recognizes that trade liberalization can contribute to greater equity through the dismantling of trade barriers that harm developing countries.¹²²

The principle of equity refers to the fair distribution,¹²³ both within and between generations, of physical and natural capital, as well as knowledge and technology.¹²⁴ As such, more just distribution of the benefits of trade liberalization is an important tool for achieving greater equity.¹²⁵ Sustainable development can convert free trade into fair trade, both by generating additional resources for distribution and by seeking better distribution of existing resources.

Principle 5 of the 1992 Rio Declaration states that “[a]ll states and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease disparities in standards of living and better meet the needs of the majority of the people of the World.” Yet, current conditions reveal this goal has not yet been met. 358 persons in the world accumulate more wealth than 2,300 million people.”¹²⁶

In the Americas, these inequities are highly pronounced. The wealthiest 10 per cent of the population receives over 40 per cent of all national income, while the poorest 20 per cent receives less than 4.5¹²⁷ per cent.¹²⁸ Reducing inequality is the key to attacking poverty, as has been underscored in a number of recent studies and reports by international institutions such as the IADB, the World Bank, the IMF and ECLAC.¹²⁹ At present, such inequalities have not been adequately addressed in the Americas. On the contrary, the Americas continues to be the region with the greatest inequality in the world. Not only is there a growing gap between the rich and the poor in the hemisphere, but there is also a growing gap among qualities of life for human beings in “have” and “have-not” countries.

For more than a decade, experts have recognized the importance of a strong social pillar in sustainable development policy.¹³⁰ In the 1992 UNCED, it was convincingly argued that developed countries, which have seized and spent more of the world’s resources, have special obligations to repair not just damage to the natural world, but also damage to human communities which have suffered inequities, both in developed and non-developed countries.

But is it possible to limit this analysis to relations among nations? Perhaps not. For long-term social sustainability between and within generations, equity requires focusing on the areas where it is most needed—the most marginalized and disadvantaged peoples and groups, within the region, sub-regions and

even within nations. The social extension of this principle of “common but differentiated responsibility” is particularly clear with regard to the needs and rights of the Americas’ indigenous peoples.

The application of the equity principle to evolving trade regimes in the Americas was discussed in the first study of this series, *Trade Rules and Sustainability in the Americas*.¹³¹ Innovative investment policies and financing mechanisms are needed to ensure that wealth generated by hemispheric trade liberalization will serve to address problems of poverty and human right violations, including gaps in basic health and education services. One way to do this is to design trade rules which respect and implement the principle of equity, as addressed in the prior study. But a further question remains—how do social regimes themselves support equity in the Americas? How could hemispheric structures improve these efforts?

Proponents of hemispheric integration must develop new ways to strengthen existing social development accords, institutions and programs to support equity in the Americas, and where necessary, propose new ones. Instruments must be developed to ensure that social services, such as health, education and social security, are accessible to all in an equitable way. This is the core challenge addressed below. Existing sub-regional social co-operation regimes must be evaluated from the perspective of their contribution to greater equity in their jurisdiction. And the lessons learned may generate models for the Western Hemisphere.

This chapter reviews recognition and implementation of the principle of equity in Americas social regimes, based on an analysis existing sub-regional co-operation instruments. It does so with a view to generating recommendations for the Americas integration process, in particular the FTAA and the Summit of the Americas.

3.1.1 The Equity Principle in the Americas Social Regimes

Social development is a critical priority along with democratization, trade liberalization and environmental protection. These are necessary to guarantee sustainable development in the hemispheric integration process. A developing regime for social justice that started two decades ago is now being strengthened in the Western Hemisphere. As described above, in an increasingly globalized world, this regime is reflected by numerous interrelated human rights institutions and other instruments.

In spite of this complex mix of hortatory declarations and action programs, many commentators have expressed deep concern about the level of real political commitment to the implementation, on the ground, of international social development promises.¹³² For example, the Hemispheric Social Alliance has recommended that present trade liberalization processes be

frozen, and poverty be addressed directly by developing an alternative model of social co-operation for the Americas.¹³³ Others, especially in developing country governments, question these proposals, wondering how, in the present context, they could afford new development measures without revenues generated by trade and economic growth.¹³⁴

A different view is possible. Americas social development regimes, especially those for human rights, exist to eradicate poverty and prevent human rights violations. These institutions and initiatives seek to promote greater equity, *per se*. But if all the social development institutions and treaties surveyed above have been working to increase equity, why has the situation not improved markedly in the Americas? Why is the Americas still the region of the greatest inequality in the world, and why does the UNDP observe an ever-increasing number of poor? Part of the reason may be, as argued by many protest movements, that economic actors are more powerful than social regimes, and the two are often found working at cross-purposes.¹³⁵ But this is still only part of the answer. There is also a need to improve the effectiveness of social regimes in the Americas, so that these can make a stronger contribution to sustainable development. In the current context of transformation for hemispheric regimes, there appears to be a genuine space in the Americas integration agenda for social co-operation measures between governments. The equity principle, applied to a social regime suggests two directions for such analysis.

First, the hemispheric integration agenda can focus on strengthening existing co-operation mechanisms aimed at ensuring more equitable distribution of existing resources (and, where necessary, designing new ones). This begs the question: how should existing regimes be strengthened or reformed, and what kinds of new instruments could help to achieve this progress?

Second, hemispheric integration can seek to secure stable regional economic growth and generate additional resources for poverty alleviation, setting in place concrete measures to show that new trade and economic policies can take human rights and social development priorities into account.¹³⁶ This begs another question: What kinds of trade measures might aid in this effort?

Though these are not mutually exclusive policy directions, this chapter will address each in turn.

3.1.2 Equity: Focusing on the Most Vulnerable

In terms of explicitly taking equity into account in existing hemispheric social services and programming, much more remains to be done. Which existing regimes and instruments most require strengthening, and what specific measures could be undertaken? Equitable distribution policies must address not only gaps between developing and less developed countries, giving the poorest top priority, but also be directed toward ensuring that the most vulnerable

sectors in the Western Hemisphere as a region, such as marginalized women, indigenous peoples, youth, children, campesinos, diaspora populations, migrant workers and others, can gain better access to essential social services. This section will focus on three examples of recent hemispheric trends and challenges related to the most vulnerable groups: indigenous peoples, women and migratory workers.

One of the most significant challenges that is shared across the Americas concerns respect for indigenous peoples rights and social development.¹³⁷ In the 1994 Miami Summit, the Plan of Action took first steps towards addressing the issue of indigenous peoples. Governments resolved to revise and strengthen domestic laws for the protection of the rights of minority groups, women and children, and indigenous populations and communities. In the 1998 Santiago Summit of the Americas, indigenous peoples needs and rights were addressed as a higher international priority.¹³⁸ In the Santiago Plan of Action, governments agreed to a series of co-operative actions in order to increase the participation of indigenous populations and improve their quality of life, and to provide desperately needed resources for education, health and professional development.

The 2001 Quebec City Summit Plan of Action followed up this initiative, focusing on the need to create bridges of dialogue between governments and indigenous organizations, peoples and communities. Indeed, it is necessary to continue developing processes to assure the full participation of indigenous peoples in the Inter-American System and complete the Americas Declaration on the Rights of Indigenous People.¹³⁹

How can this be done most effectively? Sub-regional social regimes provide models worthy of further analysis. In particular, the Andean Community has developed a new mechanism for indigenous peoples co-operation that is worthy of greater examination. In the 2001 Declaration of Machu Picchu, a Working Committee on Indigenous Peoples Rights was established, with the participation of indigenous peoples organizations, human rights organizations, civil society and representatives of the member states. This Declaration, and its Working Committee, will focus specifically on promoting and protecting the basic rights and freedoms of the indigenous peoples, and on promoting adoption and full implementation of the OAS Declaration on the Rights of Indigenous Peoples. Such measures must be backed by action on a national level. In Lima, Peru, on October 5, 2001, the National Commission of the Andean and Amazonian Peoples (CONAPA) was created.¹⁴⁰ This new body's function is to promote, coordinate, direct, execute and supervise policies, programs and projects related to organized indigenous populations and Afro-Peruvian communities, and to serve as a facilitator and coordinator between those peoples, the state and the market.¹⁴¹ The CONAPA and other

Andean initiatives are already bearing fruit.¹⁴² National level action on these issues is equally important to ensure their implementation on the ground. For example, to promote and strengthen government policies vis-à-vis indigenous peoples, the government of Colombia and indigenous peoples are jointly studying the OAS draft American Declaration on Indigenous Peoples. Colombia is working with these communities on the subject of traditional knowledge. It has also established a fellowship program that enables indigenous students to receive a higher education, and brought indigenous peoples into the subsidized social security system and health service.¹⁴³

The Arctic Council initiative, an innovative sub-regional co-operation mechanism concerned with natural resource management and other issues in the northern polar regions, is a particularly strong model for the inclusion of indigenous peoples.¹⁴⁴ The Arctic Council is a high-level intergovernmental forum that provides a mechanism to address the common concerns and challenges faced by the Arctic governments and the people of the Arctic. The Council is a unique forum for co-operation between national governments and indigenous peoples. Six international organizations representing many Arctic indigenous communities have the status of Permanent Participants of the Arctic Council and are involved in the work of the Council in full consultation with governments.¹⁴⁵ The Arctic Council is a regional forum for sustainable development mandated to address all three of its main pillars: the environmental, social and economic. From the beginning, Arctic governments¹⁴⁶ and indigenous peoples joined together to make environmental monitoring and assessment a key element of the Arctic Council's agenda. Groundbreaking reports have been prepared and have attracted global attention to the state of the Arctic environment. The approach of the Council encourages continuous dialogue among scientists, policy planners, Arctic residents and political level decision-makers. The decision-making of the Council is heavily based on the scientific work done under the umbrella of the Council and also influenced by the traditional knowledge of indigenous peoples. Co-operation within the Arctic Council establishes a common knowledge base, spreads information on best practices and lessons learned and has an important role in the development of policy recommendations for national, regional and local leaders. Its governance structure is unique, and highly inclusive yet accountable for both states and indigenous people members.¹⁴⁷ It could provide a model for inclusion of indigenous peoples at the sub-regional level.

Another important priority is the need to secure greater respect for the rights of women in the Americas. The Quebec City Summit of the Americas Plan of Action requests the OAS to "facilitate the integration of a gender perspective in the work of all its bodies through its specialized organs and particularly the Inter-American Commission on Women (CIM)." The CIM, which has been responsible for important treaties to strengthen the rights of women in the

Americas,¹⁴⁸ has a special role to implement this mandate as the technical advisor to the Summit Implementation Review Group (SIRG) on all aspects of gender equity and equality and recognizes the importance of the CIM in follow-up to relevant Summit recommendations. It requests governments to provide for an appropriate level of resources to the CIM to carry out its role as the principal hemispheric policy-generating forum for the advancement of the human rights of women and particularly of gender equality. It is important to ensure that all relevant Americas institutions become more open to women and gender issues and are able to help governments ensure women's equality. To this end, the Plan also committed to ensure that government connectivity programs and programming at local, national and regional levels promote the use of information and communications technologies as a mechanism to address inequalities between men and women and to "integrate a gender perspective representative of the diversity of women within various groups, including indigenous peoples and rural and ethnic minorities."

The Plan of Action also recognizes the need to strengthen systems for collecting and processing statistical data disaggregated by sex and adopt the use of gender indicators that "...make it possible to improve the monitoring and assessment of regional and international agreements..." How, concretely, will this be achieved? One proposal is to design further hemispheric monitoring and reporting mechanisms, accessible by Internet, to provide aggregated and comparable information on conditions and trends with regard to gender equity in the Western Hemisphere.

Another sign both of progress and the need for further work is ratification of the Inter-American Convention for Prevention, Sanction and Eradication of Violence Against Women (the "Convention of Belém do Pará"), which came into effect March 5, 1995. Under the auspices of this Convention, many national laws must be reformed to improve the participation of women in political decision-making processes. To date, this Convention has been ratified by 26 governments. But further concrete measures are still needed to implement the Convention. The work of the OAS and women's organizations in this area should be strengthened.

Finally, as mentioned above, a third and crucial priority for the Americas is respect for the rights of migrant workers. There are about 47 million migrants in the Americas.¹⁴⁹ According to the ILO, in the Americas, the decade of the 1990s saw important changes, sometimes reversals, in migration flows, which have prompted a re-examination of policies and greater efforts among states to coordinate their actions. Migration from Latin America and the Caribbean to the United States has grown dramatically over the last 50 years.¹⁵⁰ New trends also include irregular migration, people smuggling, and concerns about brain drain. In Latin America, changing economic fortunes as well as internecine

civil strife has led to reversal of traditional flows and a cooling of initiatives at sub-regional levels to establish greater freedom of movement.¹⁵¹ Pressures to protect jobs in the face of very volatile financial markets and intensifying global competition in export markets have also played a part in the problem. As in other parts of the world, states are being challenged to find mutually beneficial ways through which migration could continue to provide people greater human security and not place them at risk of exploitation and abuse. The most exhaustive legal instrument regarding human rights of migrants is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that enlarges the protection of the fundamental human rights to all migrant workers, including undocumented workers, and establish additional rights for migrant workers in regular situations and their families. This instrument also contains regulations aimed to eliminate the exploitation of migrant and clandestine movements.¹⁵² The International Labour Organization, through its Americas Office and its Social Protection Sector's International Migration Programme, is seeking to implement the Convention through diverse initiatives.¹⁵³ Regional integration agreements in the Americas (CARICOM¹⁵⁴11, Andean Community and MERCOSUR) provide the legal and political framework for the free cross-border movement and residence of workers, though these are in different stages of formulation and adoption. For example, the Comunidad Andina has recently approved an Andean Instrument for Labour Migration, while the MERCOSUR is debating a Free Residence Agreement. Several bilateral agreements have also been signed in the Americas between countries of the region, as well as with countries from other regions. In the 1990s, 87 bilateral agreements were signed in Latin America (9 on readmission, 6 on regularization, 10 on labour, 2 on promotion, 31 on free movement, 23 on assisted return and extradition, and 3 on migrants' protection). Regional migration dialogue processes are also proceeding, such as the Puebla Process,¹⁵⁵ and is participating in the Lima Process.¹⁵⁶

One way to change existing inequalities is to specifically target public sector reforms, in areas such as education and health, toward the most marginalized peoples. Two examples are possible. The first is in relation to education policy. In the absence of specific efforts to make educational initiatives more relevant to marginalized groups, increases in education spending can risk simply reinforcing the current unequal distribution of human capital. Policies to make schools work for the most poor include improving the quality of education, decreasing the quality gap between public and private, and rural and urban schools, and guaranteeing continuity within the school system. Incentives are needed for vulnerable (especially female) children to stay in school, and skills should be taught that are necessary for today's economy and society (learning to learn rather than simply repeat facts).¹⁵⁷ Governments can increase spending on social programs and ensure that traditionally marginalized groups

have access to means to fulfill their basic needs, but they must also provide sufficient levels of education and training, accompanied by the opportunities generated by policies such as the promotion of small and medium-sized enterprises and land reform.¹⁵⁸ Some progress has been made in this area. For example, the 1998 Santiago Summit of the Americas focused on co-operation between education ministers, and launched several new hemispheric initiatives to improve access to primary education. According to recent reports, 90 per cent of children in the Western Hemisphere from 7 to 12 years old are now receiving basic education. Literacy programs for adults, training workshops for teachers and nutritional programs are also being implemented, and targeted initiatives are focusing on the most marginalized, such as the Americas' indigenous children.

Second, a positive example of a hemispheric institution that specifically seeks to ensure equity in their programming is the Pan American Health Organization (PAHO). In its efforts to improve health, PAHO targets the most vulnerable groups including mothers and children, workers, the poor, the elderly, and refugees and displaced persons. It focuses on issues related to equity for those who lack access to health, and on a Panamerican approach encouraging countries to work together on common issues.¹⁵⁹ The PAHO promotes primary health care strategies, which reach people in their communities, to extend health services to all and to increase efficiency in the use of scarce resources. It assists countries in fighting old diseases that have re-emerged, such as cholera, dengue and tuberculosis, and new diseases such as the spreading AIDS epidemic, providing technical co-operation including education and social communications support, promoting work with non-governmental organizations, and support for programs to prevent transmission of communicable diseases. The PAHO is also involved in prevention of chronic diseases such as diabetes and cancer, which are increasingly affecting the populations of developing countries in the Americas.

The PAHO has intensified its efforts to examine the true state of health for Americas populations and identify where inequalities lie. Program efforts focus on correcting inequality, taking into account decentralization and change of state functions, on showing that health has a role to play in the success of other sectors, and on how attention to health affects positively other aspects of human development.¹⁶⁰ Advocacy in this area is also directed to reducing pernicious gender inequity, which reflects in some health problems of women. PAHO also continues to emphasize the approach of health promotion as applied to people and not an abstract construct. Top priorities for PAHO include improvement of drinking water supplies, adequate sanitation, and increased access to health care for the poor, with a focus on equity.¹⁶¹

3.1.3 Creating More Equitable Economic Instruments in the Americas

In order to benefit future generations and generate sustainable prosperity, trade and social policies and programs should be implemented in a mutually-supportive manner. Three concrete steps in particular can be taken.

First, countries can establish new treaties, commissions or instruments (such as socio-laboural commissions, agreements on labour co-operation, or social integration treaties) as part of the regional integration process. As seen above, sub-regional economic integration projects and bilateral trade agreements in the Americas, including MERCOSUR, the NAFTA, the Caricom, the Central American Common Market and the Andean Community, as well as the Canada-Chile and U.S.-Chile Free Trade Agreement, have recently begun to provide institutional mechanisms and programs to address social issues and provide for equity. The MERCOSUR Socio-Laboural Commission presents a particularly interesting model in this respect.¹⁶² Also, for example, in the Labour Side Agreement of NAFTA, a series of National Offices has been created which serve to consider complaints of labour rights violations.¹⁶³ This mechanism is being used to call attention to changes needed in labour law, to protect the labour rights of another very vulnerable group—migrant workers.¹⁶⁴ In one case, Mexican Union presented a demand before the North American Commission for Labour Co-operation, expressing concern that the USA had not applied its own labour laws with respect to the rights of migrant workers.¹⁶⁵ One possibility is that social issues can be included within the text of trade agreements, rather than in side-agreements. One as-yet-untested example of this approach is the Labour Chapter of the Chile-U.S. Free Trade Agreement. The newest U.S.-Chile free trade agreement has been questioned by its critics,¹⁶⁶ but is also thought to be one model for more to come.

Second, countries can set up programs and mechanisms within a trade process to encourage greater equity among larger and smaller economies. Two global agreements provide other interesting models for trade treaties to incorporate equity considerations, and one hemispheric program is already helping to improve the situation, though it requires strengthening and to be made accessible to civil society efforts. In terms of global models, members of the World Trade Organization (WTO) recently committed to address the problem of marginalization of least-developed and developing countries.¹⁶⁷ In November 1996, the WTO General Council approved the draft Plan of Action for the Least Developed Countries (LDCs), studying the feasibility of binding preferential tariff trades in a WTO preferential scheme for LDCs.¹⁶⁸ It must be noted, however, that such inter-governmental plans to benefit LDCs can only be partially successful in ensuring more equitable trade. They address equity between countries, but cannot ensure that the distributional aspects are addressed nor that wealth generated through trade goes to the most vulnerable and marginalized peoples.¹⁶⁹

A more developed approach is found in the new Cotonou Agreement between the European Union and African, Caribbean and Pacific countries. As noted above, the Agreement is based on the EU and ACP countries negotiating WTO compatible and reciprocal trade agreements, called Economic Partnership Agreements (EPAs). These EPAs aim to establish an entirely new framework for more equitable development assistance. As part of the accord, the EU has pledged to provide ACP countries with about US\$12.5 billion (EUR \$13.5 billion) in official development assistance (ODA). Some US\$670 million over the next 5 years will be provided for additional assistance to the Caribbean countries. The EU will also provide market access and investment, but in a structured relationship with the smaller economies, one based on reciprocity, regions and special treatment for LDCs.¹⁷⁰ Each EPA is negotiated between the EU and the specific region, and commits to certain mutually agreed development targets. The overall relationship is governed by a council of the recipients and donors, as outlined in Chapter two. The ACP countries will have to show that they can plan and achieve poverty reduction strategies, and their rewards will be performance-based. The EPAs are subject to peer review—by other developing countries of their region, rather than by northern observers or consultants. This agreement is a new development, and will be important to track as a potential example for other accords.

One positive step that has been taken recently in this regard is the establishment of the Hemispheric Co-operation Programme. In the 2001 Quito Declaration, ministers “recognized the broad differences in the levels of development and size of the economies of the countries participating in the FTAA negotiations [and] re-affirmed their commitment to create opportunities for the full participation of the smaller economies and to increase their level of development.”¹⁷¹ They also stressed “the importance of co-operation to enable the strengthening of the productive capacity and competitiveness of countries with different levels of development and size of the economies, especially the smaller economies” and “re-affirmed the need for technical assistance, as well as specific provisions for addressing these situations.”¹⁷² The Hemispheric Co-operation Programme parallels another set of measures, specific guidelines as a way of addressing differences in the levels of development and size of economies of FTAA countries.¹⁷³ By way of complementary supporting measures to the guidelines, the TNC instructed that the Consultative Group on Smaller Economies, with the technical support of the Tripartite Committee and based on the contributions of the Negotiating Groups, to submit a proposal for a Hemispheric Co-operation Program (HCP).

The HCP Instrument lays out principles, objectives, characteristics, modalities, guidelines for implementation, administration and financing (see Box 6). The Principles state that the Summit of the Americas process has broader objectives linked to the strengthening of democracy, the creation of greater prosper-

ity, social justice, and the realization of human potential, and that the Program shall recognize that the strengthening of the socioeconomic environment sought by the Summit process is intimately linked to the success of the FTAA. It aims to provide a central element of support for the FTAA, and to be conceived in the context of national development objectives and strategies and be part of an agenda for economic growth and development and poverty reduction. They state that the HCP will respond to the requirements and challenges to development arising from implementation of the FTAA, in particular, involve the private sector as well as other sectors of civil society in the identification of proposals and execution of programs, and enable countries, especially the smaller economies, to participate beneficially and equitably in the FTAA.

According to the instrument, the HCP modalities will include establishment of a mechanism to receive, disseminate, evaluate, and consider possible financing of specific project profiles submitted by FTAA countries and groups of countries or negotiating groups. It will also include establishment of a mechanism to enable countries to define, prioritize, and articulate needs related to strengthening the capacity for i) preparing for negotiations, ii) implementing trade commitments, and iii) adjusting to integration. It will seek interaction between countries seeking assistance to improve their trade-related capacities and those countries and institutions that are in a position to provide assistance, through, for example, roundtable meetings focusing on specific areas of need, including the preparation of studies related to fiscal scenarios, socio-economic impact and competitiveness analysis. Information on needs identified in the data base, project profiles, and other sources will be used as input to facilitate exchanges between donors and countries. It will also include other additional forms of technical assistance, and institutional co-operation that complements current and future multilateral and bilateral programming. And it will include experience and knowledge transfer related to FTAA topics through workshops, internships and other mechanisms. There is provision for additional modalities to be developed.

Box 6: The Hemispheric Co-operation Program

Objectives of the HCP

- Strengthen the capacity of countries to implement and participate fully in the FTAA in order to contribute to growth with equity and broad-based economic development.
- Assist countries to effectively address and overcome the challenges and maximize the benefits associated with trade liberalization in the FTAA.

- Promote greater interrelationship between the objectives and requirements of development and those of trade liberalization.
- Complement current and future multilateral, sub-regional and national programs aimed at:
 - Strengthening productive capacity and fostering the competitiveness of the economies;
 - Encouraging the development of innovation capacity and the transfer of appropriate technology; and
 - Improving mechanisms for responding to economic shocks.
- Enhance institutional strengthening and capacity building for policy-making, development of negotiating strategies and implementation of the FTAA.
- Increase coordination among donors and between donors and recipients with the objective of maximizing co-operation and technical assistance.

Characteristics of the HCP

- Contain plans or subprograms, objectives and goals reflecting the priorities identified by countries for the short, medium and long term.
- Have a dynamic character which will enable it to respond to the changing needs of countries.
- Comprise activities that address concrete needs.
- Include mechanisms for monitoring and evaluation.
- Could be executed through programs and actions of regional and sub-regional scope or by countries or groups of countries.
- The thematic content shall reflect the issues addressed by the FTAA agreement both during the negotiation and implementation phases.
- Should include mechanisms for coordination and communication between and among FTAA Governments, donors, and beneficiaries under the Hemispheric Co-operation Program.
- Shall promote a more efficient use of the existing Technical Assistance Database, through, among other mechanisms, its updating and dissemination.

Guidelines for HCP Implementation

Countries participating in the FTAA that seek assistance under the HCP shall develop national or regional strategies that define, prioritize, and articulate their needs related to strengthening the capacity for:

- i) preparing for negotiations,
- ii) implementing trade commitments, and
- iii) adjusting to integration.

The aforementioned categories should be addressed simultaneously, taking into account the changing needs over time.

In order to facilitate coordination and sharing of experiences, the strategies should follow a common format that will be developed by the Consultative Group on Smaller Economies, with the assistance of the Tripartite Committee. The Tripartite Committee and other donors will assist countries, upon request, in the timely development of national or regional strategies.

While these strategies are being prepared, the HCP will also respond to immediate assistance needs for the purpose of strengthening the participation of countries in the negotiations. Without prejudice to new inclusions, the attached Appendix summarizes requests to date, many of which have application to more than one country. This document, as revised, can be used to select those projects that require immediate technical assistance and implementation for a country or a group of countries to strengthen their participation in the negotiations.

Administration

The CGSE will ensure the effective and transparent execution of the HCP and will supervise and evaluate its progress. Under this overall management, the Tripartite Committee will coordinate the activities below and present periodic progress reports to the CGSE.

With the support of the Tripartite Committee, each country or group of countries shall provide timely reports to the CGSE on progress made.

To ensure progress in the implementation of the HCP, a transparent management process could include:

1. Sessions on lessons learned from prior experiences of countries and the Tripartite Committee in preparation for the participation in negotiations, implementation of trade commitments and adjustment to integration and related technical and financial assistance programs. Other institutions can be invited to attend.

2. Round table discussions between donors and recipients, including early identification of funding requirements.
3. Effective participation in these discussions by representatives of interested parties.

Financing

FTAA countries recognize that successful development and implementation of a Hemispheric Co-operation Program will require financial support for HCP activities to complement the resources of beneficiary countries. This issue will require coordination and consultation within FTAA governments, and between governments and multilateral and regional financial institutions. These sources of support, financial and non-financial, should be secure, predictable and multifaceted.

Sources of support, financial and non-financial, for the HCP could include, among others, the following:

- Countries participating in the FTAA and their co-operation agencies,
- Academic institutions,
- Private sector entities,
- Foundations and other organizations, and
- Regional and multilateral financial and development institutions.

Source: Annex III to the Free Trade Area of the Americas Seventh Meeting of Ministers of Trade Ministerial Declaration from Quito, Ecuador (November 1, 2002).

Further policy guidance should also be sought from the recent 2003 Declaration of Margarita from the OAS High Level Meeting on Poverty, Equity and Social Inclusion which suggests several new directions for economic and social co-operation toward growth with equity in the Americas (CIDI, OEA/Ser.W/IX.1, RANPEIS/DEC. 1/03).

A third strategy is worthy of consideration. To ensure greater equity in the Americas, even innovative inter-governmental trade/development agreements are not the only place to focus analysis. Outside formal trade agreements, other economic programs have a great deal of impact on sustainable and equitable development in the Americas.¹⁷⁴ These policies must also take equity considerations into account. Two examples will suffice.

According to the estimates of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), 69 out of every 100 new jobs cre-

ated between 1990 and 1997 were in the informal sector, which now employs 47 per cent of the working population in the region's urban areas.¹⁷⁵ As noted by FOCAL, this means that almost half of the working population have low salaries, few or no benefits, little or no social protection, and do not pay income taxes.¹⁷⁶ Less than five per cent of Latin American micro-entrepreneurs have access to formal financial services.¹⁷⁷ Programmes to involve labour unions in trade debates cannot always reach these sectors. International and national agencies and institutions, including grassroots organizations, which focus their efforts on improving the lot of the informal sector, and their ability to achieve sustainable livelihoods, must become involved in facilitating a dialogue to address the needs of these excluded groups.¹⁷⁸ Specifically targeted initiatives which address the needs of this "informal sector" can further improve their circumstances.

In another example, much has been recently made of fair trade programs, which can benefit poor producers in developing countries, and micro-credit programs for women.¹⁷⁹ Such fair trade programs are gaining popularity and capturing market share, capitalizing on explicit consumer premiums for social justice goals which are monitored.¹⁸⁰ Micro-credit programs are also gaining increased donor confidence. However, it is important that these programs, too, make an effort to target the most vulnerable groups, and wherever possible, focus on supporting the most marginalized communities. These communities often face barriers at all levels, and cannot participate in national or regional markets. As will be seen later, many pro-poor trade and micro-credit programs show special attention to these issues.¹⁸¹ Some can even be run by the "target" groups themselves. In the Americas, Indigenous Peoples trade exchanges demonstrate the viability of such approaches. For example, an International Trade Agreement exists between the Mohawk nation of Kahnawake and the Indigenous Peoples of Oaxaca,¹⁸² and a small business exchange program has been established to help indigenous communities become more self-sufficient, as has been demonstrated by the Shuswap (Alkali Lake, B.C.) and Otomi (Central Mexico).¹⁸³ The Canadian International Development Agency has established a funding program to support such indigenous-to-indigenous co-operation initiatives—such programs should be encouraged and lessons learned from their experiences should be shared broadly.¹⁸⁴

3.1.4 Recommendations

Developing trade regimes could contribute to social justice and support a fair distribution of physical and natural capital, knowledge and technology in the Americas towards the strengthening of the social regime in the region. As recommended in *Trade Rules and Sustainability in the Americas*, trade negotiations can take measures to incorporate substantive core labour standards into the

text of the FTAA and to address the concerns of labour constituencies in the FTAA debates, to support studies and programs to identify and address trade-related equity issues, and to implement a new hemispheric co-operation program in such a way that it serves to strengthen equity and facilitate greater participation of small economies in trade negotiations.¹⁸⁵ Policy-makers can also implement programs to facilitate market access for marginalized communities in fair trade projects. Further recommendations are possible, in terms of supporting more equitable social regimes.

Commit to Renew and Strengthen Human Rights Regimes

Governments can commit to renew and strengthen human rights regimes, as these are specifically geared to increase equity in the Americas. This may require launching measurable, transparent, accountable initiatives to improve implementation of existing commitments. Social, cultural and economic rights are a high priority in the Americas, respect for these human rights will greatly improve the lot of the poor and most vulnerable, and help to address the most pressing social challenges. The Protocol of San Salvador is a litmus test for the Americas. It should be ratified by all governments of the Americas integration process, including Canada and the United States, and implemented immediately. In addition, training and capacity building programs should be strengthened to encourage the most vulnerable groups to access the instruments of the Inter-American Human Rights Systems.

Improve Access to Services for the Most Vulnerable

Second, all actors must take equity into account in developing hemispheric programming, and ensure that efforts to improve services are specially targeted to reach the most marginalized populations. Existing hemispheric and sub-regional programs must be strengthened to ensure that the most vulnerable groups, such as indigenous peoples, women and children, and migrant workers, can gain improved access to basic health, education and other services. This can be done by assessing access to such programs by most vulnerable sectors and making such assessments public, by launching open and transparent consultative processes aimed at improving and strengthening these programs, and by improving the governing structures of instruments to ensure that those “targeted” are also “partners” in the delivery of services. It can also be done by providing new and additional resources for such programs. In particular, as per the hemispheric mandate from the Quebec City Summit of the Americas, an open and transparent process of consultations between the states and indigenous peoples throughout the Hemisphere should be launched to strengthen and reform the Inter-American Indigenous Institute (IAII). The OAS IAI requires more resources and support to continue its work to improve human rights and social conditions among Americas indigenous peoples. The IAI could also be strengthened by developing broader consultation mechanisms to engage

indigenous experts in its programming in order to secure a more balanced relationship between indigenous peoples and nation-states.

Address Needs and Rights of Migratory Workers in the Hemisphere

States should work to find mutually-beneficial ways through which migration could continue to provide people greater human security, and not place them at risk of exploitation and abuse, starting with immediate ratification and implementation of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that enlarges the protection of the fundamental human rights to all migrant workers, including undocumented workers, and establish additional rights for migrant workers in regular situations and their families.¹⁸⁶ Considering recent trends and statistics in the Americas region, governments may also wish, in the context of the ILO, to consider creating an Americas instrument to address problems related to migration. Such an accord could be modeled on the regional instruments in CARICOM,¹⁸⁷ Andean Community and MERCOSUR, building on (or combining) the Puebla Process¹⁸⁸ and the Lima Process.¹⁸⁹

Strengthen Civil Society and Government Hemispheric Co-operation and Capacity Building

Third, present inequalities between the larger economies of the Western Hemisphere and the smallest ones must be recognized and addressed. The Hemispheric Co-operation Programme is a good first step, but only provides capacity building on trade-related issues necessary to complete negotiations, and only to countries. It needs to be significantly expanded, to address issues related to hemispheric integration more broadly. In addition, certain funds should be set aside for applications from independent hemispheric partnerships between registered non-profit civil society organizations to conduct capacity building and public awareness activities related to the Americas Summits agenda. Lessons learned from experience with Economic Partnership Agreements used by the Cotonou Agreement should be carefully reviewed, with a view to improving and expanding the Programme. The institutional mechanisms and peer review processes used by these “regional” development/trade co-operation agreements offer an interesting approach. Such an approach may serve to ensure, in an open, transparent and respectful way, that some of the benefits of increased market access and development assistance are guaranteed toward poverty eradication and other programs with concrete, measurable results.

Ensure Social Policy Coherence and Participation

Finally, better links should be developed between social development agencies, institutions, programs and organizations, and ongoing sub-regional and

regional trade negotiations processes. This is beginning to happen in the FTAA, and has already happened to some degree in various sub-regional processes. The first step is for a stronger linkage and advisory role to be recognized for social development oriented inter-governmental organizations in economic processes. These agencies should use present political will to strengthen and leverage increased support for effective, binding and representative social institutions. A second step, also discussed in the Openness Principle analysis below, involves civil society, indigenous peoples and micro-enterprise. Inter-governmental agencies and other social development institutions have a role to play in facilitating inter-linkages by those who seek dialogue with economic policy-makers, including those concerned with improving conditions for the majority working in the informal economy of LAC, and economic processes.

3.2 Efficiency and Cost Internalization

The full internalization of social and environmental costs associated with economic activity forms the cornerstone of both economic and sustainable development theory. From an economic perspective, markets are principally instruments for communicating the costs and benefits associated with human interaction. A market is said to be “efficient” when all costs and benefits are accounted for through market transactions—a result which is said to produce maximum social welfare. By contrast, when the market fails to communicate costs effectively, it results in reduced or “sub-optimal” welfare outcomes.¹⁹⁰ To further complicate the matter, it seems that trade economics defines consumer surplus as equating an increase in public welfare. From a sustainable development perspective then, efficient markets primarily provide a tool for generating optimal resources to “meet the needs of present and future generations.”¹⁹¹

The task of designing policy to internalize social costs faces a number of technical difficulties. First, there is an infinitely vast range of “costs” which may be deemed to be “social costs” suitable for internalization. In economics, for example, “social cost” refers to the “total cost” to society as a whole resulting from a given action.¹⁹² Under this conception any cost imposed upon society through economic activity is, in fact, a “social cost.” Although the internalization of social cost in this sense must remain the ultimate objective for both economic and sustainable development policy-makers, this analysis relies on the conceptual, albeit imperfect, distinction between the “social” and “environmental” domains of public policy. For practical reasons we limit the analysis in this section to the very specific but universally recognized social costs associated with the labour conditions and worker treatment, including health and safety.¹⁹³

A second major technical difficulty facing the internalization of social costs relates to the measurement of the “value” of social costs. Social “goods” and “bads” typically have their foundations in “moral” *right* and *wrong* and, as

such, may defy measurement altogether. The value associated with basic freedoms such as the “freedom to associate” or the “freedom from forced labour” may be deemed to be inherently beyond monetary valuation. Even when valuation of such “goods” is deemed acceptable for practical reasons, quantification is made particularly difficult by inconsistencies between personal, local and cultural world-views.¹⁹⁴

As a result of the difficulty of “pricing” social goods, it may be inappropriate to expect any clear determination of the costs resulting from the existence or absence of specific social practices.¹⁹⁵ In the arena of certain “essential” social goods in particular, the project of cost internalization will turn less on the “measurement” of any particular costs imposed on society and more on the development of rules which ensure the provision of such goods *a priori* while letting the market determine the price associated with such “internalization” through normal market processes.¹⁹⁶

Nevertheless, it is important to note that, despite the overall challenges facing the internalization of social costs, there is clear evidence that low labour costs are regarded as an important competitive advantage to developing country products and that the maintenance of sub-standard labour standard policies is one tool for ensuring competitiveness.¹⁹⁷ The existence of the perceived link between reduced labour standards and increased competitiveness, whether well-founded or not, demonstrates the need to promote the internalization of social costs through proactive policy measures.¹⁹⁸

In this section, we provide a brief overview of the different instruments being used across the Americas to ensure that essential “social goods” are provided along global supply chains to highlight some of the more promising tools currently available and suggest directions for development in this field.

Cost internalization of social goods in the Americas is achieved along a spectrum of instruments ranging from measures enforced by centralized local, national, regional and international governing bodies (command and control) to market-based measures which use economic incentives as the means to achieve internalization objectives. We consider each of these separately.

3.2.1 Command and Control Cost Internalization in the Americas

Command and control instruments, namely those specifying explicit social conditions to be met over the course of economic activity and enforced through a system of legal obligation, provide the principal means for “internalizing” the costs associated with providing certain social goods. An effective regulatory regime that sets out specific social conditions which must be met in the course of economic activity, effectively “forces” subjects of the regulatory system to “internalize” the costs associated with the provision of such goods.¹⁹⁹ Where all players operating within a supply chain are so regulated,

the costs will be internalized throughout the system and ultimately reflected in the pricing mechanism. A wide range of command and control instruments are used in the Americas to ensure that basic labour standards and working conditions are met along the supply chain.

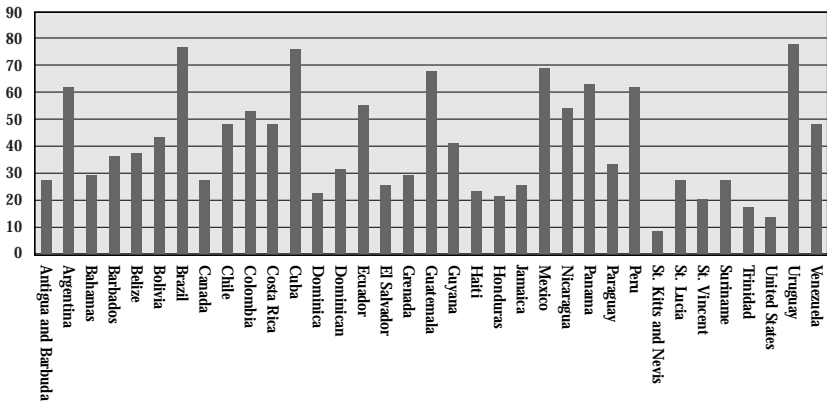
International Regimes

At the international level, the International Labour Organization has operated as the primary body for establishing working conditions and labour standards instruments since 1919. The ILO system, composed of 184 Conventions and 194 recommendations, represents a vast body of international labour law. For the most part, the legal status of any given ILO Convention within a particular country depends upon whether or not the country has ratified the instrument or not. Where ratification has occurred, the government of the signatory country is obliged to ensure that its terms are met through applicable labour law at the national level. The ILO does not have recourse to force or economic sanctions for the enforcement of ratified conventions but instead relies on regular reporting obligations combined with public recommendations and observations to improve compliance. Article 24 of the ILO Constitution allows any national or international workers organization to lodge a complaint to the ILO Committee of Experts regarding a country's non-compliance with a convention that it has ratified. Article 26 allows other ILO member states to lodge similar complaints. In addition to this, a special Committee on Freedom of Association proactively produces investigative research and recommendations with respect to compliance with this fundamental ILO principle.

Although the ratification of specific ILO conventions cannot be equated with actual performance of labour standards protections, it does represent the beginning of a process of good governance with respect to labour relations. Box 6 provides a summary of the ratification rates of specific countries in the Americas. Countries with the lowest rates of ratification, surprisingly, include Saint Kitts and Nevis, the United States, Trinidad, Haiti, Dominica, Honduras, El Salvador and Canada.

In addition to the ratification process, ILO members, by virtue of their membership, are obliged to comply with the basic principles set forth in the constitution of the ILO and those "core" ILO Conventions enumerated under the auspices of the 1998 Declaration on the Fundamental Principles and Rights at Work.²⁰⁰ These "core" ILO standards, represent a minimum base of universally accepted labour standards and as such provide a solid minimum foundation for the internalization of labour-related social costs in the Americas.

Figure 1. Ratification Rates of ILO Conventions in the Americas



Source: International Labour Organization, see www.ilo.org. “Ratification rates” refer to the percentage of the total number of ILO treaties that have been ratified—there are 184 ILO Conventions in total, at present.

Sub-Regional Regimes

The ILO System has established an international network of local offices in the Americas region, and the OAS provides a secretariat for an informal ILO office for the Americas. Some important steps toward greater co-operation on labour matters are being taken at the sub-regional level. Most noteworthy among these are those related to MERCOSUR, NAFTA and other trade agreements.

MERCOSUR

The MERCOSUR trading block has provided a unique testing ground for substantive harmonization of labour standards through the implementation of a common market. Although the founding treaty to the MERCOSUR makes no explicit mention of labour standards, and establishes no institutional mechanism for the treatment of such standards, a number of other instruments under MERCOSUR do. Most importantly, the Social-Labour Declaration of 1998 sets forth a set of fundamental principles and rights of workers for application within the MERCOSUR region. The Declaration, in addition to providing a formal recognition of the importance and applicability of a number of key labour standards (including non-discrimination, equity, migrant labour, forced labour and child labour) in the MERCOSUR region, is particularly notable for its potential as a legal instrument with “direct application” in MERCOSUR member countries.²⁰¹ A Socio-Laboural Commission has been

established and charged with the task of ensuring the promotion and application of the Declaration among the member countries. The Commission's tripartite structure, which will also be addressed below in the "Openness Principle" analysis, is made up of separate National Commissions which provides a unique window for multi-stakeholder development and application of labour law in the MERCOSUR sub-region.

The Declaration is also supported by two important tripartite discussion fora: the Technical Committee on Industrial Relations, Employment and Social Security (Subgrupo de Trabajo No. 10 sobre relaciones laborales, empleo y seguridad social, or SGT 10)—created under the Montevideo Declaration (1991) and the Socio-economic Consultative Forum (1996). The MERCOSUR labour standards package establishes a common set of principles and rights applicable to the MERCOSUR region. These are formally subject to a regional tripartite governance structure and in this sense, MERCOSUR may be said to be a leader in terms of regional co-operation towards the application and enforcement of core labour standards. The development of clear enforcement procedures under the MERCOSUR institutions for labour standards protection will be necessary to ensure effective implementation of the principles and rights formally recognized by the members of the common market.²⁰²

The North American Agreement on Labour Co-operation

The North American Agreement on Labour Co-operation (NAALC), signed as a side agreement to the North American Free Trade Agreement in 1993, has provided a model for linking the protection of labour standards with trade liberalization which has since been applied in at least two other bi-lateral agreements since its initial implementation.²⁰³ The NAALC obliges Mexico, Canada and the United States to undertake effective enforcement of their respective labour laws as well as provide for basic procedural guarantees to workers and their representatives through their legal systems.²⁰⁴ Although the NAALC has been criticized for its failure to ensure compliance with internationally agreed labour standards under the ILO,²⁰⁵ the Agreement's more general procedural protections do apply equally to all three countries. The NAALC is also recognized as providing a leading-edge example of the use of trade sanctions as a final tool for the enforcement of labour standards. Article 29 of the agreement allows for the establishment of an arbitral panel to make determinations on persistent violations in the application of occupational safety and health, child labour or minimum wage technical labour standards and can, in the case that such violations are found to be "trade-related" and "mutually recognized," give rise to the use of trade sanctions against the violating party.²⁰⁶ Despite the NAALC's potential use of trade sanctions as a basis for enforcement, no such sanctions have resulted under the agreement to date.²⁰⁷ Although many have criticized the investigation and dispute resolution proce-

dures under the agreement, there can be little doubt that the agreement's establishment of National Administrative Organizations and corresponding procedures for local labour representatives to make representations to the Commission, has resulted in increased media and political exposure of certain undesirable labour practices across the NAALC's member countries.²⁰⁸ From an operational point of view, it is generally recognized that the NAALC's greatest asset to the region is its active role in promoting labour rights, and ensuring information exchange, education and communication among stakeholders and governments of the three countries.²⁰⁹

Table 3: Enforcement Mechanisms Under the NAALC

The NAALC employs a multi-step enforcement process built heavily on information exchange and co-operation. The co-operative approach largely explains the absence of any trade sanctions resulting from the process to date. The major steps in the NAALC's co-operative enforcement process are:

	Scope	Process
1) <i>NAO Review and Consultation (Article 21)</i>	<p>NAO Review: "Labour law matters arising in the territory of another Party" (the definition of "labour law matters" covers Labour Principles 1–11)</p> <p>NAO Consultation: "The other Party's labour law, its administration, or other labour market conditions in its territory"</p>	<p>Individuals, unions, employers, non-governmental organizations or other private parties may file submissions seeking NAO reviews in accordance with the domestic procedures established by the country's NAO may initiate the process</p>
2) <i>Ministerial Consultations (Article 22)</i>	<p>"Any matter within the scope of this Agreement"</p>	<p>The labour minister of any NAALC partner may request consultation with another minister, with regard to any labour law matter reflecting Labour Principles 1–11</p>

	Scope	Process
3) <i>Evaluation Committee of Experts (ECE) (Article 23)</i>	“Patterns of practice by each Party in the enforcement of its technical labour standards” (technical labour standards are defined as labour law matters related to Labour Principles 4–11)	A single country may initiate the establishment of an Evaluation Committee of Experts following a Ministerial Consultation. The ECE performs independent, non-adversarial analysis and recommendations covering all three NAALC countries’ labour law enforcement in the particular subject area raised in the request for an ECE
4) <i>Dispute Resolution by an Arbitral Panel: Articles 27-29</i>	“Alleged persistent pattern of failure to effectively enforce occupational safety and health, child labour or minimum wage technical labour standards.”	Pending the release of an ECE, a party may request further ministerial consultations (Article 27), a special meeting of the Council (Article 28) and finally, if still not resolved, a party may request 5-member Arbitral Panel may be requested to examine the enforcement of laws related to Labour Principles 5, 6 and 9, and develop an “action plan” to remedy a persistent pattern of failure. Failure to implement the plan may result in fines or trade sanctions (Article 29)

Similar side agreements have been established under the Canada-Chile Bilateral Free Trade Agreement and the Canada-Costa Rica Bilateral Free Trade Agreement, suggesting that the concept is replicable even on a small scale.²¹⁰ The use of the model in the bilateral setting, however, faces important challenges. First, these latter agreements use “monetary enforcement assessments” rather than the withdrawal of trade benefits as the final enforcement tool. These assessments have a cap which effectively reduces their effectiveness as either a deterrent or corrective device. Second, given that one of the main criticisms of the NAALC is its not having sufficient resources to carry out its mandate effectively,²¹¹ the multiplication of bilateral agreements fol-

lowing the NAALC model risks establishing a growing number of bureaucratic institutions with increasingly diminishing resources for actual monitoring and implementation activities. Although the model represents a promising route for improved labour communications and enforcement across the Americas, the trend towards the creation of weaker institutions through bi-laterals is a threat to the effectiveness of this tool over the longer term. Given the resources required for effective implementation of obligations under the NAALC model, it is arguably more suited to regional rather than bi-lateral applications.

National Regimes

Most countries in the Americas have some form of national “labour code” which arguably provides the primary instrument for ensuring that fundamental rights are respected in formal employment positions. In some cases, however, labour rights are covered primarily under constitutional law with few supporting labour laws.²¹² Health and safety regulations also ensure that the social costs of economic activity are internalized within the pricing mechanism. In the case of both types of regulation, the scope and effectiveness of their implementation vary significantly between countries. Where labour issues are a problem in the Americas, it is usually not due to lack of national legislation but rather two other problems. First, it can be a result of inadequate enforcement. The sources of ineffective labour enforcement are multiple but among the most important are lack of capacity and infra-structure, persistent and extreme poverty, and corruption. Second, it can be a result of jobs not being covered by labour law at all. UN ECLAC estimates that from 1990 to 1997, 69 out of every 100 new jobs created in LAC were in the informal sector, and that this sector now employs 47 per cent of the working population in the region’s urban areas.²¹³ As noted by FOCAL, this means that almost half of the working population have low salaries, few or no benefits and are not really subject to labour standards, minimum wage requirements or other norms.²¹⁴ In such a situation, it is small wonder that labour laws can appear more of a luxury than a reality.²¹⁵

National labour laws operate as the most direct means for internalizing the social costs associated with production. However, given the growing importance of international trade flows, the importance of regional and international command and control regimes cannot be underestimated. The potential for countries to enhance their competitiveness in international markets by externalizing social costs has grown exponentially with globalization, possibly making international labour enforcement instruments a necessary component of effective labour standards enforcement across the Americas. The relatively recent movement towards the use of market-based instruments as a tool for promoting and enforcing labour standards compliance at the international

level offers particular promise as a complement to more traditional command and control techniques. As another significant advantage, these market measures can have an effect on that large and undeclared informal economy.

3.2.2 Market-based Cost Internalization Measures in the Americas

Despite the existence of a wide body of labour standards law across the Americas, inefficiencies in enforcement and implementation have led to a rapid growth of market-based initiatives over the past decade and a half. Notwithstanding the difficulties associated with determining the “actual costs” associated with labour standards, market-based instruments are particularly attractive from a cost internalization perspective because they create a direct link between adjustments in the pricing mechanism and compliance with specific labour practices.

Most market-based regimes in the Americas to date have been developed and implemented in North America. Generally, these initiatives fall into one of three different “market approaches” to enforcing or influencing labour standards and associated social goods along the supply chain. First, conditionalities based on national enforcement of labour standards, including those imposed by preferential purchasing policies and export credit agencies, second, government procurement programs and contract compliance requirements, and third, private sector and civil society initiatives.

Conditionalities

Governments across the Americas, through their economic relations with each other, provide a wide range of trade and development benefits falling outside trade agreements *per se*. By making such additional benefits conditional on the effective enforcement of core labour standards, certain countries provide important economic incentives towards the internalization of the cost of providing such goods in global markets. Although unilateral tools such as these are more vulnerable to creating market distortions, and thus less preferable, than internationally or regionally agreed actions, barriers to co-operation at the international level have resulted in these tools taking an important role in labour enforcement across the Americas. The use of such initiatives by the United States, the main proponent of conditionality requirements within the Americas to date, has been attributed to substantive changes in the enforcement of labour standards in a number of cases.

Preferential Purchasing Systems

The most widely used and arguably most powerful tool using the conditionality approach to date, is the U.S.’s Generalized System of Preferences.²¹⁶ The Generalized System of Preferences operates under a waiver accorded by the parties to the GATT in 1971,²¹⁷ allowing non-reciprocal preferential treat-

ment to developing countries with a view to increasing opportunities for international trade. The U.S.'s GSP system was implemented in 1974 under the auspices of promoting "trade not aid." Access to the GSP system has traditionally been restricted on the basis of meeting certain basic conditionalities linked to select aspects of U.S. foreign policy. In 1984, Congress added compliance with "internationally recognized worker rights," including minimum age requirements and a prohibition on forced labour, as basic eligibility requirements for preferences under the system.²¹⁸ Specific GSP regimes with similar labour standards provisions have been enacted for the Caribbean region (Caribbean Basin Initiative (1984)) and the Andean region (Andean Trade Preferences Act (1991)). Between 1985 and 1995, 101 labour rights petitions were filed under the GSP, resulting in 63 reviews of 39 countries.²¹⁹ In August of 2002 the GSP system was renewed until December 2006.

Direct changes in government practice with respect to labour standards protections in select countries have been attributed to the GSP.²²⁰ Meanwhile, other countries, by being prevented from receiving GSP benefits, have been less able to use low labour standards as an instrument for gaining competitiveness. In such cases, the GSP operates as a rough instrument for "correcting" the price mechanism by raising the costs of production for products coming from regimes where labour standards are likely to be poor.

However, the GSP operates on the basis of national assessments of labour standards enforcement rather than the actual labour practices in any given supply chain. This gives rise to several problems, and ultimately threatens its efficiency as a tool for cost internalization. First, the U.S. GSP system has been frequently criticized as a tool for political bargaining rather than enforcing labour standards.²²¹ In addition, because the existing GSP model punishes or benefits *whole countries*, individual supply chains may benefit *without* internalizing full social costs, or alternatively, may be punished even though they *do* employ high labour standards. In order to improve its efficiency as a tool for the internalization of social costs, the GSP systems would benefit considerably from a clearer set of rules based on ILO core labour standards and their respective conventions.²²² The implementation of a "product-based" GSP system which provides GSP benefits on the basis of compliance *along the supply chain*, could also help significantly in overcoming the inefficiencies facing the current country based approach to GSP benefits.²²³

Ultimately, the cost internalization impact of the GSP along the labour standards front may be becoming increasingly irrelevant as tariffs are reduced in the FTAA, the "advantage" offered by tariff preferences is reduced and with it the importance of the GSP as a tool for adjusting prices.²²⁴ Over the long term, an alternative mechanism will likely be necessary to provide effective market incentives in the face of market integration.

Export Credit Agencies

Export Credit Agencies and Investment Insurance Agencies, commonly known as ECAs, are public agencies that provide government-backed loans and insurance to private corporations from their home country to do business abroad, particularly in the financially and politically risky developing world.²²⁵ Over the past decade civil society groups have exerted increasing pressure on ECAs in Canada and the U.S. to implement conditionalities on financing arrangements based on compliance with core ILO labour standards.²²⁶ Although most ECAs do *not* use labour standards conditionalities, there are examples of some that do. The Overseas Private Investment Corporation (OPIC)²²⁷ under the Overseas Private Investment Corporation Amendments Act (1985) specifies that “[t]he Corporation may insure, re-insure, guarantee or finance a project *only if* the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights to its employment force.”²²⁸ Meanwhile, companies receiving OPIC support must commit to compliance with basic labour standards.²²⁹ Despite the formal requirements associated with OPIC projects, a wide number of NGOs remain concerned about the human rights implications of OPIC funded projects.²³⁰ Key criticisms of the OPIC system relate to the lack of enforcement, lack of public consultation in decision-making and an overall lack of administrative transparency.²³¹

Since the 1985 OPIC Amendments Act, labour standards based conditionalities have been built into other aid programs, including the World Bank’s Multilateral Investment Guarantee Agency (MIGA, 1988) where administrators are required to consider whether a country has taken steps to afford workers internationally recognized rights when making loans or providing insurance. The 1993 amendments to the Foreign Aid Appropriations bill bars the U.S. from providing assistance for the purpose of establishing or developing in a foreign country any export-processing zone or designated area in which the tax, tariff, labour, environment, and safety laws of that country do not apply.²³²

Procurement and Contracting Requirements

As the largest consumers of goods and services in the Americas, governments have the potential to exercise considerable influence on markets. Although a number of efforts have been made to institutionalize environmentally or socially preferable procurement programs across North America,²³³ government procurement is only just coming onto the radar screen in Latin America and the Caribbean as a route for promoting labour standards *per se*.²³⁴ Where regimes have had demonstrably poor human rights records however, municipalities across North America have shown a willingness to use “contract compliance” laws to avoid providing them with economic support through procurement activities.²³⁵ At present the single largest inhibitor to the use of pro-

curement as a wide-spread tool for ensuring internalization of labour costs at the regional level is the absence of any widely established and implemented mechanism for identifying goods and services produced in compliance with basic labour standards. Recent activity over the past decade in the area of codes development, however, is in the process of addressing this barrier to proactive procurement policy.²³⁶ Depending on the drafting of the new FTAA rules, these negotiations have the potential to either support or greatly weaken the ability of governments to require social and environmental policies through conditions on contracts.

Public procurement policy can be harnessed to the achievement of sustainable development goals in many different ways, and trade rules can variously recognize, require or restrict these mechanisms. Procurement conditions can be imposed at different stages of the tendering process—qualification criteria, pre-award negotiations, award stage preferences, contractual requirements or sanctions (e.g., limits to bids for future contracts). And requirements can differ greatly, too. They can be directed at discriminated racial/ethnic communities, women, disabled people or religious minorities. Some simply forbid discrimination against marginalized groups, while others require compliance with labour laws or fair wages. Still others set aside portions of contracts for firms owned by traditionally disadvantaged communities, in order to stimulate entrepreneurship, or simply contribute toward economic empowerment of that group. The mechanisms used to achieve these policies also differ. Some allow the government contractor to require certification of certain practices (such as compliance with “voluntary” labour or environmental standards), others require them to monitor a workforce, appoint an equal opportunity officer, notify statistics or even allow the government authority to inspect the workplace.²³⁷ Still others simply require declarations that the bidder follows domestic labour laws. Perhaps the most controversial are those which “set aside” certain portions of government contracts for underprivileged groups.

The FTAA government procurement negotiations could limit or restrict the use of such instruments completely, simply guarantee that the contracting process is fully transparent, or (the most advisable course of action) actually recognize certain procurement requirements, while limiting others. An open, transparent and participatory hemispheric debate about which social and environmental procurement policies should be used and recognized throughout the Americas, which should be permissible as exceptions and which should be restricted, would greatly help to clarify both social policy goals and procurement policy effectiveness as a tool for social justice in the Americas.

Private Sector and Civil Society Voluntary Initiatives

One of the most dynamic tools for internalizing the social costs of production over the past two decades relates to the use of voluntary codes or standards sys-

tems for ensuring that basic social costs are respected throughout any given supply chain. Voluntary codes typically provide systems for ensuring that certain levels of working conditions are maintained throughout the supply chain. Depending on the format of the code, it may serve primarily as an internal management tool, a marketing tool, or both. The growing expanse of labour standard related codal systems can be divided into four basic categories: private codes; association codes; multi-stakeholder international codes and inter-governmental codes.

Although each model has its own strengths and weaknesses, the key challenge facing such initiatives is balancing the flexibility required to generate widespread industry buy-in with credible standards and enforcement procedures. In the Americas region the most active voluntary “labour” based systems are those of the Fair Labour Association certification system, Social Accountability International’s SA8000 and the Worldwide Responsible Apparel Production (WRAP) system. Fair trade labelling, as administered by Fair Trade Labelling Organizations International (FLO), which has been experiencing rapid growth in the Americas since the founding of Transfair Canada and Transfair USA in the mid-1990s, is distinguished from the FLA, WRAP and SA8000 codes by its inclusion of economic and environmental criteria in addition to core ILO criteria within its standard.

The SA8000 is generally regarded as providing the highest level of protection for labour standards and that in closest accordance with ILO declarations and conventions. The WRAP notably falls short of meeting the “universal” ILO standard through its reliance on the application “local” labour law.²³⁸ FLO certification, on the other hand, arguably takes the task of “internalizing social costs” further than any of the strictly labour standard initiatives through its explicit incorporation of criteria related to the preservation of equity and democratic representation.²³⁹

More generally, voluntary initiatives represent a new policy direction for labour standards management, focusing on the utilization of supply chain governance structures for managing labour standards rather than relying solely on “external” governance structures of the state. Although it would be incorrect to view such instruments as possible replacements for effective legislation, they can play an important role in building capacity towards compliance, reducing any competitive advantage associated with poor labour standards performance and improving the overall labour relations governance by focusing on practices along the supply chain directly responsible for labour conditions. Voluntary initiatives also operate by improving information flow on activities along the supply chain and so provide a mechanism for improving market communication (and thus efficiency).

However, voluntary initiatives, as a group, also face a set of specific challenges to their functioning as tools for *cost internalization*. One of the main short-

comings of voluntary initiatives is that they must operate within markets which, as a general rule, do not fully internalize the costs associated with the protection of labour standards. Code compliant companies, facing competitive pressures from non-compliant companies, are forced to keep costs related to code implementation and monitoring to a minimum. To the extent that *effective* enforcement of labour standards through such systems is threatened by limited resources, then procurement policies, GSPs and other preferential policy tools can provide needed incentives for ensuring that such systems remain effective without placing them out of the market. Policy thus plays a critical role in ensuring that the costs associated with such initiatives are actually internalized within the market. In the absence of supportive policy, voluntary measures do little, to address the problem of cost internalization *per se*.²⁴⁰

Ensuring the effectiveness of monitoring and enforcement procedures is a second major challenge facing voluntary initiatives. As with other international labour instruments, the key determinant of overall effectiveness relies on the enforcement procedures associated with the instruments. Given the absence of common standards on what constitutes an adequate system for standards administration and compliance measurement in the sector, there is considerable room for variations in monitoring structures across initiatives. With market pressures reducing the resources available for enforcement procedures, initiatives may have incentives to cut on monitoring procedures. It may come as no surprise then that the initiative with the greatest number of factories certified, WRAP, also faces the greatest challenges in maintaining the credibility of its certification claims.²⁴¹

Finally, virtually all of the existing voluntary initiatives have been led, designed and implemented primarily by northern stakeholders. Although no doubt inspired by good intentions, the lack of southern input into the development of such systems must be considered an important shortcoming. Although recent efforts to integrate southern NGOs and workers within the monitoring process,²⁴² are clearly steps in the right direction, there is a need for such initiatives to be vigilant in ensuring accountability to and input from southern stakeholders.

Ultimately, the success of voluntary initiatives will depend largely on their ability to remain accountable to key stakeholders along supply chains. In light of this, these initiatives and policy tools supporting them should focus on ensuring that they apply measurable, meaningful and international standards; establish and provide independent monitoring procedures; implement highly transparent reporting practices; incorporate local, especially southern, stakeholder perspectives and provide a clear framework for multi-stakeholder input.

Box 7: Voluntary Private Sector and Civil Society Labour Standards Initiatives in the Americas

Private Codes in the Americas

Private codes refer to codes that are developed by companies for their individual use. The list of such codes is, of course, long and diverse. The past decade and a half has, however, given rise to a number of high profile private labour-related codes such as those implemented by the GAP, Levis Straus, Nike, Liz Clairborne and Reebok. Private codes, which may be developed for a variety of reasons including activist pressure, brand preservation and/or recognition of a responsibility to respect basic human rights, vary widely in the commitments they offer to protect. Although some private codes make reference to ILO core labour standards and enforcement through suppliers and sub-contractors, they tend to be less ambitious than their multi-stakeholder counterparts and often have no form of independent monitoring.²⁴³ Company specific codes have most commonly been criticized for their lack of transparency and multi-stakeholder participation in the development process and ineffective monitoring procedures. Nevertheless, the ability of private initiatives to make decisions unilaterally, has also allowed them, in some cases, to explore new accountability mechanisms with greater flexibility than some multi-stakeholder initiatives.²⁴⁴

Association Codes in the Americas

In an effort to reduce the transactions costs associated with private codes and take advantage of economies of scale various industry and trade associations have grouped together to develop common standards and reporting mechanisms related to labour standards and working conditions. Examples under this category include the International Federation of Football Association's (FIFA) (1996)²⁴⁵ framework agreement to prevent the use of child labour in the production of soccer balls and the more recent Worldwide Responsible Apparel Production (WRAP)²⁴⁶ initiative to monitor working conditions in apparel members' factories. Although offering the advantage of a "shared" standards system, these systems, being industry led, are usually regarded as harboring the same transparency, independence and monitoring challenges as those facing private codes.

Multi-stakeholder Initiatives in the Americas

Over the last decade a new category of initiatives has emerged based on the development of a shared vision of labour standards implementation and enforcement through multi-stakeholder dialogue and co-operation.

These initiatives, which typically involve an external party, such as an NGO, working in tandem with industry to develop standards and reporting mechanisms, tend to place a greater emphasis on accountability to all stakeholders as well as on the use of international labour standards as a benchmark for their own codes. The Global Reporting Initiative, developed by the CERES, is one example of corporate social responsibility.²⁴⁷ These initiatives have also been the forerunners in developing independent monitoring systems. Besides the obvious advantage of having a tendency towards broad inclusiveness and accountability, multi-stakeholder initiatives also provide the priceless benefit of inciting constructive dialogue among stakeholders who might otherwise not work together. Some of the better-known initiatives in the apparel industry include the Fair Labour Association (FLA),²⁴⁸ Social Accountability International (SAI),²⁴⁹ the Workers Rights Consortium (WRC).²⁵⁰

Intergovernmental Initiatives in the Americas

A final category of codes are those developed by international institutions with direct or indirect government involvement. Examples include the OECD Guidelines on Multinational Enterprises,²⁵¹ the ILO Tripartite Code on Multi-national Enterprises, and the Global Compact. Such codes tend to be fairly general with limited reporting, transparency and enforcement mechanisms. On the other hand, their greater flexibility permits wider buy-in, presumably a pre-requisite to meaningful multi-stakeholder co-operation over the long term.

3.2.3 Recommendations

The principle of cost internationalization, although critical to sustainable development from a theoretical perspective, faces important challenges in its implementation with respect to social costs in the Americas.²⁵² These challenges lead to important recommendations.

Recognize the 1998 ILO Declaration as the Minimum Social Baseline

Most of the difficulties arise from the complexity inherent in mapping social costs onto the market mechanism. In order for the principle to provide effective policy direction in the Americas, a clear vision of “minimum social baselines” for the Americas must be established. At present, the core ILO standards established under the Declaration on the Fundamental Principles and Rights at Work, provide the closest approximation to such a baseline with respect to the economic activity. In trade agreements, such as the Canada-Costa Rica Free Trade Agreement or the Chile-United States Free Trade Agreement, the 1998 ILO Declaration can be recognized and supported. It can even be made

enforceable, subject to binding dispute settlement. This model must be explored for future FTAA negotiations.

Support a Mix of Market-based and Command-and-control Social Instruments

Both “command-and-control” and “market-based” mechanisms will continue to play an important role in the internalization of labour-related “social costs” in the Americas over the coming decade. On the one hand, countries and regions, in setting forth laws and enforcement procedures for the protection of basic labour standards, can ensure that all industry players are faced with a minimum playing field which *includes* the costs of providing basic social liberties and goods along the supply chain. On the other hand, where public resources and local infra-structure are inadequate to enforce such standards, governments, enterprises and consumers can operate as a catalyst in the promotion of market signals which correct for competitive advantages associated with low labour standards.

Support Innovative Social Public Policies in an Integrating Regional Economy

It is important to note however, that the *full* internalization of labour-related social costs fundamentally depends upon public policy. Voluntary initiatives, although important tools for promoting labour standards compliance, still must compete in imperfect markets that often externalize the costs of compliance with core ILO labour standards. Governments can play a critical role in influencing the pricing mechanism either directly (through preferential fiscal policy) or indirectly (through procurement policy, general education and awareness raising campaigns and other support for multi-stakeholder initiatives). Given the heterogenous nature of governance structures across the Americas, it is clear that improved internalization of labour-related social costs in the Americas will turn on the adoption of a multi-pronged approach. For governments desiring to help in promoting the internalization process, the following further recommendations can be made:

- First, governments can continue and expand their operation as facilitators of multi-stakeholder dialogues towards the development of common standards and monitoring procedures across existing voluntary initiatives.²⁵³ Governments need to develop a widely-established and implementable mechanism for identifying goods and services produced in compliance with basic labour standards. They can also encourage existing initiatives to take concrete and substantive measures towards the integration of southern players in the administration and monitoring of codes.
- Second, in WTO and FTAA negotiations, governments should permit differential treatment for products demonstrating compliance with PPMs related to the protection of internationally-recognized

labour standards. After an open debate, they may also choose to recognize the use of “market-based” incentives such as preferential procurement policies and contract compliance requirements to support products which comply with ILO-consistent standards.

- Third, procurement policies can become a useful tool to ensure internalization of labour costs at the regional level. There is a need for careful and public investigation of the potential for linkage between social policies and government procurement before concluding the FTAA.
- Fourth, further exploration is needed of the possibility of explicitly addressing labour concerns in regional and global trade arrangements through, for example, a revised form of the NAALC (based on the ILO 1998 core standards) at the level of the FTAA. It would also be valuable to explore and debate the potential of a product-based GSP system for promoting compliance with core ILO labour standards.

3.3 Environmental Integrity²⁵⁴

This chapter seeks to analyze, in a very preliminary manner, integration of environmental and social aspects in the context of regional development and cooperation, with a focus on the role of trade and trade policies. Rather than an exhaustive inventory of all existing initiatives, it provides a brief survey of certain trends regarding this integration in the Americas. This serves as a basis for discussion on how integration has occurred in the past, whether further integration is desirable, and if so, how this could be brought about in the future.

Originally, for this section we sought examples of social regimes which integrated environmental integrity goals. However, in most cases, it appears that integration occurs the other way round, or does not occur at all. The main exception is the recent linkage between hemispheric health and environmental policies. Sustainable development, meaning balanced, coherent, integrated progress on environmental protection, equity and social inclusion, and economic growth, still seems far ahead. The current institutional setting in the Americas would have to undergo significant adjustments to provide an adequate basis to address the complementarities and trade-offs implied by sustainable development.

This section takes a preliminary look at current social regimes in the Americas on the regional (Inter-American) and the national levels (in national constitutions), and then considers the integration of social rules and environment in trade regimes in the Americas, focusing on NAFTA, MERCOSUR, Caricom and the Andean Community, as well as international financial institutions. There is also a reflection on social and environmental market regimes, highlighting a number of fair trade and eco-labeling initiatives throughout the Americas.

3.3.1 Definition of Environmental Integrity

According to the environmental integrity principle, trade and development should respect and help maintain environmental integrity. This involves recognition of the impact of human activities on ecological systems. It requires respect for limits to the regenerative capacity of ecosystems such as fisheries and forests that are vulnerable to irreversible depletion; actions to avoid irreversible harm to plant and animal populations and species; and protection for valued areas such as designated parklands or sites of internationally recognized ecological, cultural or historical significance.”²⁵⁵

Below, we examine how deeply these environmental aspects have been integrated in current social regimes in the Americas, and how deeply they are specifically integrated in the social regimes that are directly linked to trade, through trade agreements or private market regimes.

3.3.2 Environmental Integrity in Inter-American Social Regimes

The environment does not play a significant role in the early Inter-American Human Rights System. In fact, the 1948 American Declaration on the Duties and Rights of Man does not explicitly incorporate any mention of the environment or natural resources. The Right to Health, as established in Article 11 of the Declaration, does not mention contamination or the natural environment.²⁵⁶

It was not until the Additional Protocol to the American Declaration on the Duties and Rights of Man of Rights, the Protocol of San Salvador, that the Right to a Healthy Environment (Article 11, SSP) was explicitly incorporated into the Human Rights System of the Americas:

- “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The states parties shall promote the protection, preservation, and improvement of the environment.”

For its part, the OAS’s (Organization of American States) 2001 Inter-American Democratic Charter states, at Article 15:

“The exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations.”

Both frameworks are relatively anthropocentric, reflecting their social character. However, it is interesting to note that the Protocol of San Salvador also incorporates the protection of the environment *per se*, and thus possibly

implicitly refers to the intrinsic value of the ecosystems and the duty of, in this case, the state, to promote the protection of these ecosystems.

There is one clear example of linkage between a social and an “environmental” set of priorities in the Americas, dating from a rather recent set of hemispheric co-operation initiatives. In 1995, the Pan American Charter on Health and Environment in Sustainable Human Development (Washington, October 3, 1995) was agreed, and in 2001, ministers of the Environment held a meeting in Montreal where they agreed to a joint meeting of both health and environment ministers. For the first time, Environment authorities of the Western Hemisphere sought to coordinate their agendas with a social authority (Health ministers), drawing upon the support of the Pan American Health Organization (PAHO), as well as the United Nations Environment Programme North American and Latin American and Caribbean offices. The joint meeting was successfully held in Ottawa, Canada and sought to take stock of progress achieved in implementing the Pan American Charter on Health and Environment in Sustainable Human Development, to identify priority areas for renewed emphasis and co-operative initiatives, and to explore ways of moving the environmental health agenda forward in the Americas and globally. The 2002 HEMA Ministerial Declaration agreed to establish a HEMA task force to plan follow up initiatives and ensure future implementation of agreements. (See Box 8). This inter-governmental HEMA Task Force would take advantage of existing fora—such as PAHO Ministerial Councils and UNEP Regional Offices, as well as other relevant international, regional, and sub-regional organizations to maintain momentum.

Box 8: 2002 Health and Environment Ministers of the Americas

The HEMA co-operation meeting was held to:

- take stock of progress achieved in implementing the Pan American Charter on Health and Environment in Sustainable Human Development,
- identify priority areas for renewed emphasis and co-operative initiatives, and
- explore ways of moving the environmental health agenda forward in the Americas and globally.

The 2002 HEMA Ministerial Declaration agreed to establish a HEMA task force to plan follow up initiatives. This inter-governmental HEMA Task Force would take advantage of existing fora—such as PAHO Ministerial Councils and UNEP Regional Offices, as well as other relevant international, regional, and sub-regional organizations to maintain momentum.

The ministers also agreed to focus on certain areas of priority which require concerted action across the region:

- Integrated management of water resources, including water contamination and basic sanitation;
- Air quality;
- Health implications of natural and human-made disasters;
- Sound management of chemicals;
- Potential health impacts of climate variability and change particularly with respect to small island developing states;
- Workers' health, including the detrimental impact of HIV/AIDS on productivity;
- Food security and safety; and
- Ethics of sustainable development from a health and environment perspective.

As initial goals, they agreed to consider:

- Advancing... universal coverage and hygiene, [and] adopting the Millennium Summit Goals related to water...;
- Preventing and abating water pollution from urban, industrial and agricultural sources through integrated water resource management²⁵⁷...;
- Undertaking an economic and technical assessment of sewage and water treatment systems... including a comparative analysis of best and affordable practices in the application of instruments (economic, regulatory, policy) and a valuation of health benefits...;
- Exploring and using best practices for the improved management of solid wastes (including biomedical wastes)...;
- Fulfilling their commitment to phase out lead in gasoline and to further this work by developing national strategies to phase out lead from other sources;
- Developing national action plans to reduce air emissions from transportation sources including actions to decrease sulfur in gasoline and in diesel;
- Developing strategies to improve indoor air quality in homes, workplaces and public facilities;

- Bringing into force the Stockholm Convention, with a focus on the development of POPs inventories, and in particular on reducing reliance on, and seeking alternatives to, DDT;
- Developing pollutant release and transfer registries as a tool to manage exposure to chemical releases;
- Developing prevention, preparedness and response plans in cases of emergencies and disasters to reduce vulnerability of populations; and
- Undertaking scientific research to improve our understanding of the health and environment effects of climate variability, including vector-borne diseases and of climate change....

To respond to threats to human health and the environment, ministers agreed to:

“To further the development of this capacity across the region:

- enhance our surveillance and monitoring of the health of populations, and of ecosystems.
- capacity-building for integrated health and environment assessments for the region...
- further develop, harmonize as appropriate, and use indicators to inform decision-makers in environment and health management, and in national public policy, both domestically and within the hemisphere, of the current state of affairs and on the progress which is made.
- ... develop a set of indicators for children’s health and the environment and water quality.
- ... further exchange and disseminate knowledge...
- ... review the capacities of our current pan-national institutions to determine their abilities to assist nations and to review the capacities of individual countries to access, understand and use knowledge to address the common and unique problems which exist in each country and across the region...
- ... explore means to improve the sharing of information for action and the exchange of best practices...
- ... co-operate on training and development programs across the region...

- ... facilitate and support programs of public education and awareness, particularly with respect to encouraging compliance with and enforcement of laws and regulations.”

Sources: *Environment Canada*, http://www.ec.gc.ca/international/regorgs/hema_e.htm. See <http://www.iisd.ca/linkages/sd/sdheml> for a report of the first meeting.

This process lacks profile and resources, but is an important first step toward linking hemispheric social and environmental priorities. It should be supported, and greater efforts must be made at all levels to involve civil society and others in its deliberations and in implementing its agreed outcomes.

3.3.3 Environmental Integrity in National Social Regimes

Generally speaking, national constitutions of the Americas reflect Art. 11 of the Protocol of San Salvador, and recognize the right to a healthy environment. The following table details a selection of national constitutions and the provision these make for the rights to a healthy environment or an environment free from contamination.

Table 4: Social Provision and Environmental Protection in Constitutions of the Americas

National Constitution	Article and Description
<i>Chilean Constitution</i> (October 24, 1980)	Chapter 3, Constitutional Rights and Freedoms, Art 19, clause 8. The right to live in an environment free from contamination. It is the right of the State to ensure that this right is upheld and ensure the protection of the natural environment.”
<i>Ecuadorian Constitution</i> (June 5, 1998)	Chapter 2 Civil Rights, Art 23. Clause 6. The right to live in a healthy and ecologically balanced environment which is free from contamination, and Chapter 5, Collective Rights. Art. 86. – The State shall protect the rights of the population to live in a healthy and ecologically balanced environment, that guarantees sustainable development. It shall ensure that this right is upheld and ensure the preservation of the natural environment.
<i>Costa Rica Constitution</i> (1949, updated with Reform 8106/2001)	Chapter 5: Rights and Social Guarantees: Each person has the right to a healthy and environmentally balanced environment. Thus each person can denounce acts that infringe upon this right and can ask for repair of damage produced.

National Constitution	Article and Description
<p><i>Argentina</i> (August 22, 1994)</p>	<p>Chapter 1, Declarations, Rights and Guarantees. Article 41. All citizens shall have the right to enjoy a balanced and healthy environment which is appropriate for human development and for productive activities necessary to satisfy every day needs without jeopardizing those of future generations.</p>
<p><i>Venezuela</i> (Constitución de la República Bolivariana de Venezuela, 1999)</p>	<p>Chapter V Social and Family Rights, Article 87. Each person has the right to work... Each employer guarantees adequate security, hygiene and environmental working conditions. The State adopts measures and creates institutions to control and promote these conditions. And Chapter IX Environmental Rights Article 127. It is the right and the responsibility of each generation to protect and maintain the environment for its own benefit as well as to that of future generations. Each person has the right to live in a secure, healthy and ecologically equilibrated environment. The State protects the environment, biological and genetic diversity, ecological processes, natural parks and monuments and other areas of special environmental interest... It is a fundamental responsibility of the State, with the active participation of society, to guarantee an environment free from contamination, in which air, water, soils, coasts, the climate, the ozone layer, living species, are particularly protected, according to the law.</p>
<p><i>Mexico</i> (1917, revised August 14, 2001)</p>	<p>Article 4. All people have the right to an adequate environment, suitable for their development and well-being.</p>
<p><i>Bolivia</i> (1967, amended 1995)</p>	<p>Article 7. Each person has the fundamental rights to life, health and security.</p> <p>Article 158. The State has the obligation to defend human capital by protecting the health of the population,... and by aiming to improve the quality of life of the family.</p>
<p><i>Colombia</i> 1991 Constitution updated to 2001 Reforms</p>	<p>No mention of health in environmental context, i.e., right to a healthy environment.</p>

National Constitution	Article and Description
<i>Peru</i> 1993	No mention of health in environmental context, i.e., right to a healthy environment.
<i>Canada</i>	No mention of health in environmental context, i.e., right to a healthy environment.
<i>United States of America</i>	No mention of health in environmental context, i.e., right to a healthy environment. ²⁵⁸

Developed by Authors, 2003.

In this sense, though most constitutions in the Americas reflect a high value for human rights and other matters regarding social structures, there is little attention given to environmental integrity in its own right. Rather, environmental integrity is seen as a function of human well-being.²⁶⁰ A healthy environment is regarded as a means for a healthy and productive population,²⁶¹ not as an end in itself. Furthermore, environment in this context is seen basically as a question of pollution, related to health, not as a question of how the natural heritage contributes to human well-being and quality of life.

Apart from their constitutions, many countries of the Americas have established advisory councils or high-level bodies to integrate social, environmental and economic policy-making. National Councils for Sustainable Development, created through the Earth Summit at a worldwide level, might serve to harmonize and coordinate social and environmental agendas. Argentina, Brazil, Bolivia, Chile, Costa Rica, Dominica, El Salvador, Grenada, Honduras, Jamaica, Mexico, and Panama have all implemented this institution.²⁶² Though there is no formal National Council on Sustainable Development in the USA or Canada, these countries have opted for different models. The USA formerly maintained a President's Council on Sustainable Development (USA) and Canada has a National Roundtable on Environment and Economy (which does not have a mandate to fully consider the social aspects of sustainable development) in Canada.²⁶³

3.3.4 Integration of Social Rules and Environment in Trade Regimes

The integration of social aspects into trade agreements has been discussed above. However, how far have social and environmental aspects been integrated jointly, or addressed together, and has this taken place in a coherent, parallel

or complementary way.²⁶⁴ Almost all the sub-regional agreements include some reference to social aspects, some in a more explicit and detailed manner and others relegating it to a more secondary role. Environmental aspects also figure in these trade or co-operation agreements, the different forms of which have been analyzed by authors such as Cordonier Segger and Borregaard (2002)²⁶⁵ or Cordonier Segger, *et al.*, (2001).²⁶⁶ Notably, where there has been a more explicit and in-depth integration of social and environmental aspects into the agreements, this was done rather separately. Environmental integrity cannot, in general, be considered part of the social agenda of these agreements.²⁶⁷ Sustainable development may appear in the preambles of the agreements, but in more operational terms, most social and environmental aspects are kept separate.

In the case of the NAFTA, as well as in the Chile-Canada Free Trade Agreement, there are two extremely separate side agreements, one on environment and one on labour co-operation. Although there is some mention of social issues in the environmental side agreement, these refer basically to environment-related issues, e.g., education on environmental matters, health related to environmental problems. In the NAFTA and the Chile-Canada FTA natural resources management is not explicitly included in the environmental agreements. However, this is not as straightforward as it seems. In the context of integration of social (again, health) and environmental aspects in NAFTA, a Pesticide Safety for Agricultural Workers Program was recently initiated (June 2000) by the NAFTA Technical Working Group on Pesticides. This is a joint effort between Mexico and the United States to coordinate activities on risk reduction in pesticide use among those who work with or around them, but particularly migratory farm workers. The general goals of this program are to coordinate and integrate programs and activities targeting this population at all levels of government and with nongovernmental organizations, to reduce human exposure to pesticides and decrease the incidence of pesticide poisonings, promote risk reduction measures in the proper use and management of pesticides, strengthen coverage of pesticide safety education programs and risk awareness efforts, and ensure the continuity of national and state programs and bi-national co-operation. The project builds on the expertise and experiences gained through EPA's development and implementation of the U.S. Worker Protection Standard, the pesticide applicator certification and training regulation, and the pesticide and national health care providers strategy. The TWG provides an effective mechanism for coordination activities and notes the importance of coordinating with other appropriate programs such as the Commission for Environmental Co-operation (CEC).²⁶⁸

In the Andean Community, the social dimension of the Andean common market was developed from the start, and a Social Agenda has evolved over the past years, containing today an Integrated Social Development Plan, which

refers to increasing citizen participation in the integration process, and which aims at contributing to the Member Countries' coordination and co-operation on social development issues. On July 3, 2001, the environmental authorities of the five Andean countries approved the "Guidelines for Environmental Management and Sustainable Development in the Andean Community," the sub-region's first collective effort in this sector. This effort concentrates on environmental issues such as conservation and sustainable use of biodiversity, environmental quality, trade and the environment, and international environmental fora.²⁶⁹ Finally, in 2002, the Andean Community approved in Decision 523 the Regional Biodiversity Strategy. In the context of integration of environmental and social aspects this Strategy is relevant along three of its six lines of action: 4.2., referring to the equitable sharing of benefits derived from biodiversity; 4.3., referring to the protection of indigenous and local knowledge, and 4.4., referring to the development of scientific knowledge and technologies for the sustainable use and the protection of biodiversity, preventing and minimizing risks to human health.²⁷⁰

Environment and social aspects are also clearly separated in the MERCOSUR. It is interesting to note that in this case, environmental matters were integrated at a much earlier stage than social aspects. The first Working Group Meeting on Environment was held in 1995, its first Environmental Protocol was not accepted, and a new Framework Agreement on the Environment was drafted in 2000. This still awaits ratification. It promises creation of a sub-regional Environmental Information System, the exchange of experiences and technology in the area of cleaner production, and common work on the management of chemical substances and on natural disasters. While these issues have social ramifications, including health implications in the case of chemicals management, and potentially severe social impacts on communities and livelihoods in the case of events such as droughts, floods or hurricanes, these impacts are not formally recognized in the Framework Agreement. The Framework Agreement recognizes sustainable development and the social importance of the environment in its preamble, but it only peripherally addresses the ramifications of such a system. It was not before 2000 that Ministerial Meetings on Social Development were formally institutionalized, and not until 2001 that the Declaration of Montevideo outlined a framework under which social aspects would be discussed. Emphasis has been given to the creation of a system of homogeneous social indicators throughout the region, work on poverty alleviation, basic social services, and the strengthening of public participation in decision-making processes.²⁷¹

CARICOM has negotiated a Civil Society Charter, has a Declaration of Labour and Industrial Principles and maintains an Agreement with the International Labour Organization (ILO). Sustainable development has been integrated in its Work Program since 1999. However, once again, this work pro-

gram concentrates mainly on addressing environmental aspects rather than constituting an integration of social and environmental issues. Prominent issues in the work program are environmental management, climate change, renewable energy development and science and technology. All of these issues have strong social dimensions, but the only agenda item that refers more explicitly to sustainable development is the “mobilization of resources for local sustainable development.”²⁷² One further Caribbean process does, however, deserve mention. The CARICOM, with the support of the Canadian government, recently completed the 2001 St. Georges Declaration, which does integrate both health and environmental issues in a sustainable development context.²⁷³ This Declaration, should implementation be monitored and supported, might prove a model for future integration in other sub-regions of the Americas.

The Central American Integration System (SICA) has economic, social and sustainable development streams, and stands as an example of the most highly integrated system in the Americas. In the social stream, the Social Integration System of Central America, sustainable development is established as the primary goal, in Art.1, Art.7 and Art.8. of the Central American Social Integration Treaty of 1995. Article 7 c) and 8a) make explicit reference to the protection of the environment and ecosystems that are vital to human life. In the Strategic Vision 2020–2010, designed by the Council of Social Integration, environmental deterioration is included as an important aspect in the description of the social situation, referring to health and poverty impacts of environmental deterioration. The plans of action address environmental issues within the context of the social programs covered by the sub-regional treaty, in co-operation initiatives focused on strengthening food sanitary controls, and reducing cholera and other water contamination-related illnesses.²⁷⁴

One tool for further integration of social and environmental aspects may be the recently-established Environmental Impact Assessments (EIA), or further, the use of Sustainability Impact Assessments (SIA) of new trade agreements. The European Union (EU) has, for example, carried out an SIA in the context of its co-operation agreement signed in 2002 with Chile, and is carrying out another SIA during 2003 to accompany its negotiations with MERCOSUR. In the EU-Chilean SIA, which focused primarily on Chile rather than on the EU, environmental indicators played a paramount role.²⁷⁵ However, social indicators such as poverty and health and education were also included.²⁷⁶ In Europe, and in United Nations programs, SIAs have attracted greater recent interest than EIAs, as these processes seek to ensure that integration of social and environmental aspects is guaranteed from the outset. While in the U.S. and in Canada, EIAs of trade agreements are required by law since the beginning of this century, in the rest of the Americas this is not the case, and SIAs carried out by LA country governments are still further from realization. The decision of the rest of the countries in the region with regard to making assessments oblig-

atory is being anxiously followed by regional NGOs—what is sometimes underestimated is the importance of the choice between EIA and SIA.

3.3.5 International Financial Institutions

International financial institutions that work at the regional level, such as World Bank or Inter-American Development Bank, have a strong presence in economic, but increasingly also in social affairs in the region. Rather than constituting formal political regimes, they represent *de facto* currents that have to be taken into account when dealing with the socio-economic map of the region. The integration of social and environmental aspects in these institutions, is rather advanced at project or program levels, even though it is not clear in how far this integration is mainstreamed into all activities. In this sense it is important to remember that both aspects do not stand at the center of operations but have been given more emphasis only in the last two decades.

Box 9: World Bank ESSD Network

With regard to the World Bank probably the best example of integration is given by the Bank's Environmentally and Socially Sustainable Development (ESSD) Network which comprises three areas: Environment, Rural Development, and Social Development. The goal of ESSD is to contribute to the Bank's mission of fighting poverty by improving poor people's livelihoods, health, and security today and in the future. ESSD does this by helping to enhance environmental quality and natural resource management; maintain the global ecosystems; improve access to natural resources; and generally increase poor people's capacity to improve their lives and influence the decisions that affect them. Additionally, the World Bank program for the Latin American and Caribbean region maintains a Social Development Team (LCSEO). The principal mission of LCSEO is to improve the quality of life of people of the region by promoting sustainable economic development and social inclusion, while at the same time respecting cultural diversity.²⁷⁷

The Inter-American Development Bank, for its part, has created a Sustainable Development Department with two sub departments: Human Resources and Social Development and Environment and Natural Resources. The Human Resources and Social Development program is predominantly concerned with social issues such as social dialogue, social inclusion, labour markets, children and youth, health, urban development, violence, etc., and makes virtually no cross reference to environmental issues and/or the protection of biodiversity. The integration of social and environmental issues is more evident in the Environment and Natural Resources Program, particularly reflected in the Agriculture and Rural Development program which addresses the social issues

of agriculture and poor communities, stating that “Agriculture and the management of natural resources have a potentially central role for achieving greater efficiency, equity and sustainability in the development of the rural economies; complementing other activities such as infrastructure, energy, finance, telecommunications, water, education and health.” The agriculture and rural development program is made up of three programs: Agricultural development, rural finance and rural poverty reduction. These programs build on providing a sustainable backdrop for environmental and social issues. The Agricultural Development program emphasizes that the development of the sector plays an important role in the reduction of rural and urban poverty and in the sustainable management of natural resources.²⁷⁸ The Rural Poverty Reduction program states “Reducing poverty requires complementing the macroeconomic policy framework with social strategies to achieve structural changes in the development of human capital and in the quality of life of rural populations.”²⁷⁹ These options for reducing rural poverty exist in a context where the agricultural sector is still the main income source and, as a result, its development affects efforts to reduce poverty.

The strategy paper for rural poverty reduction recognizes the potential of organic and sustainable trade for poverty reduction and the role of the woman in terms of labour in rural agriculture. It also underlines the importance of provision of health services. It also states that in addition to programs aimed directly at rural development, (regional development, agricultural development, sustainable development, etc.) the Bank has financed a number of rural development activities that fall into other sectors such as health, education, infrastructure, although no references are made to specific projects.²⁸⁰

Although there is apparently a significant effort to integrate environmental and social issues in operations, these institutions still face heavy criticism for operational social and environmental impacts. In certain occasions the banks have, *ex-post*, succeeded in integrating social and environmental aspects. A good example for this is the Meso-American Biological Corridor (MBC), funded by the World Bank. One of the main criticisms at the beginning of the MBC was its excessive focus on wildlife and protected areas, and its initial social and cultural insensitivity, in an area facing intense social demands, many of which had deep cultural roots. To revamp at least in part this weakness, several European international co-operation agencies funded the development of a social component to the MBC. The social component of the MBC essentially reflects the need to change the role that grassroots organizations and indigenous peoples play in the use and management of biodiversity, giving them a more pro-active role within the program, rather than integrating issues or health and labour into issues of conservation. In order to achieve this objective, two Community Management Workshops were held in 2000 to discuss the MBC with local communities. During the Central American Community

Management workshop,²⁸¹ a number of recommendations were put forward as to how a social component would be incorporated into the program. The end result of this process was the preparation of the Mesoamerican Community Biodiversity Management program (MCBM) Standards Manual.²⁸² In the case of the introduction of the MBC project in Belize, for example, due care has been taken to involve the community from the outset as per the social component of the program. More specifically the MBC in Belize have placed importance on local education on the program and the wider implications of biodiversity conservation. The MBC has been negotiating with the Ministry of Education in Belize in order to define ways in which to incorporate the concept of Biological Corridors into the Primary Education Curriculum.²⁸³

3.3.6 Environmental Integrity in Social Market Regimes

Environmental and social aspects can be integrated not only through policy regimes but also through the market, or even through factual integration in innumerable community based organizations. Within the scope of this chapter, a discussion of the current integration at the level of market regimes is manageable, and can throw light upon the development of alternative mechanisms for sustainable development. Over the past years, social and environmental market regimes have evolved very dynamically, both at the national and regional levels. Here, we will consider this second phenomenon.²⁸⁴

Box 10: Fair Trade

Fair Trade is commerce with a commitment to developing equitable partnerships between marketers in highly industrialized countries and low income producers in developing regions of the world, in order to guarantee a fair wage for their work and a fair price for their products. The principal fair trade products in Latin America are coffee, cocoa and bananas. Whilst few figures are available for Latin America, the 2002 report on fair trade trends in the U.S. and Canada, reported a 50 per cent increase in fair trade between 2000 and 2001.²⁸⁵ According to the Fair Trade Foundation, gross sales by fair trade federation companies combined with sales of Fair Trade coffee sold by conventional companies, neared \$100 million in the U.S. and Canada in 2000.²⁸⁶ The European Fair Trade Association reported that the annual turnover (or the net retail value of EFTA member sales) of EFTA members in 2001 was approximately 100 million Euros. 34 per cent of fair trade goods sold through the EFTA come from Latin America.²⁸⁷ Fair trade organizations operating in the Americas include Fair-trade, Fair-trade Foundation, Global Economy, and IFAT (International Federation of Alternative Trade). The declared objectives of Fair Trade regimes include, amongst top ten principles, “environmental sustainability.”²⁸⁸

In recent years there have been co-operation efforts between some fair trade and certain eco-labeling schemes, in particular fair trade and organic agriculture. At the international level Fair Trade and IFOAM, the International Federation of the Organic Agriculture Movement, have embarked upon co-operative efforts. At the level of the Americas, there have also been specific initiatives. For example, the SAN, Sustainable Agriculture Network, is a growing coalition of Latin American environmental groups working together with farmers and other stakeholders to develop social and environmental standards for responsible, eco-friendly agriculture and dedicated to promoting tropical conservation. The SAN groups are working with producers of bananas, coffee, citrus, sugar cane, cocoa and cut flowers and exploring oil palm, fruits and cattle. Two of the world's leading banana companies are fully engaged in the program, and more than 15 per cent of the bananas in international trade now come from SAN certified farms. About 200 coffee farms and 2,000 small cocoa farms are enrolled. The program benefits more than 50,000 rural families. The SAN has worked in the past with FLO, SAI, labour unions and other groups to develop and refine social standards for farmers and workers, including seasonal labourers.²⁸⁹

With regard to eco-tourism, there are also interesting dynamics at the regional level with regard to integration of environmental and social goals. Ecotourism is recognized as the fastest growing sub sector in a worldwide tourist industry worth US\$462 billion annually.²⁹⁰ Nature-based tourism is hailed as a sustainable option for tourism which, given well-defined criteria, sustainable management, participation, and certification, may contribute to the protection and survival of protected and delicate ecosystems and local communities. EcoRed Latina, for example, is an initiative whose principal objective is to encourage and improve the emerging Ecotourism market in Chile, and providing new forms of livelihoods to local communities, by means of a certification scheme for groups of special interest tourism (ecotourism, heritage tourism, ethno-tourism, recreational fishing, agricultural tourism).²⁹¹ The label is based on a set of codes for good practice and infrastructure and equipment guides which have been created in line with international standards. It is hoped that, by improving rural tourism offered in small villages in different areas of the region, communities will be able to better look after their own social, environmental and economic interests. An interesting example of the integration of environmental aspects into socially oriented tourism in the Americas is demonstrated by the Pro-Poor Tourism Partnership, a collaborative research initiative between the International Centre for Responsible Tourism (ICRT), the International Institute for Environment and Development (IIED), and the Overseas Development Institute (ODI).

Box 11: Pro-Poor Tourism

“Pro-Poor Tourism (PPT) is tourism that results in increased net benefits for poor people.... There are many types of pro-poor tourism strategies, ranging from increasing local employment to building mechanisms for consultation. Any type of company can be involved in pro-poor tourism—a small lodge, an urban hotel, a tour operator, an infrastructure developer. The critical factor is not the type of company or the type of tourism, but that an increase in the net benefits that go to poor people can be demonstrated.”²⁹²

PPT is working in Ecuador, with a small not-for-profit company Tropic Ecological Activities whose main aim is to demonstrate the “viability of environmentally, socially and culturally responsible tourism” as an alternative to the oil industry in the Ecuadorian Amazon. The company hopes to help indigenous communities to value their increasingly threatened natural and cultural resources, and to help channel outside interest and necessary policy changes to encourage both biodiversity conservation and programs for cultural empowerment at the community level.²⁹³

Labeling schemes for sustainable forest management, particularly national versions of the Forest Stewardship Council (FSC) have also been widely introduced in the Latin American region. These schemes, beyond defining environmental management criteria for forests, put emphasis on some basic social rules such as the rights of indigenous peoples, the respect for existing international social conventions, and the enhancement of social and economic well-being of forest workers and local communities.²⁹⁴

3.3.7 Recommendations

At the regional level, the social and the environmental regimes, in spite of significant sustainable development rhetoric over the last two decades, are just beginning to meet. It will take some time for the two broader areas of social and environmental policies to grow together. To implement sustainable development in practice as it is conceptualized in theory (the integration of social, economic and environmental objectives), there is still far to go.

Nevertheless, interesting attempts of integration have occurred at different levels in the Americas, including not only the integration of principles of environmental integrity in national constitutions and chapters on human rights, but also first integrations of social and environmental aspects in financial institutions, in markets, and in sub-regional trade agreements. Though common sense would suggest that the integration of environmental aspects into health, labour, education, poverty would be beneficial and, in many cases necessary,

often integration has occurred the other way round. Indeed, there appears to be a stronger inclusion of social issues in environmental programs, regimes and policies.

The most encouraging examples are found in the area of linkages between health and the environment, at the hemispheric and sub-regional levels. The most basic integration of social and environmental issues occurs through the integration of environmental aspects in human rights regimes—the social, economic and cultural rights recognized in the Protocol of San Salvador, as well as most national constitutions refer to the right to live in an environment free from contamination. Natural resource issues are much less prominent in these frameworks. The ownership of natural resources, the right to their exploitation and safeguards to prevent overexploitation are not part of these general frameworks. These issues have, on the other hand, figured prominently in private certification schemes, specifically forestry certification.

Due consideration has to be given to existing institutions and the different existing ways and modes of integration, taking into account the basic integration in the Protocol of San Salvador, integration in the National Councils on Sustainable Development, regulations and efforts surrounding Sustainability or Environmental Impact Assessments of trade policies, as well as integration in market regimes such as Fair trade and Eco-labeling schemes. Within this context, the following preliminary policy options can be identified.

Support Further Investigation of Ways to Realize Environmental Rights

Environmental integrity enters the social agenda through an anthropocentric perspective. However, the right to an environment free from contamination figures significantly more prominent than the duty and obligation to protect the environment and natural resources. In terms of natural and cultural heritage, a uniquely Americas model of integration should be based on specific regional conditions, for example, taking into account and benefiting from the patterns and ideas that have existed in indigenous cultures with regard to a basic respect towards the environment and its resources. Also, interesting concepts to be discussed further in this context relate to the conversion of natural into social capital.

Support and Develop the Hemispheric Health and Environmental Program

Social regimes have been integrated in trade agreements to a greater extent than environmental regimes, and both have been integrated in a parallel rather than joint manner. MERCOSUR, NAFTA or CARICOM have parallel social and environmental protocols and agreements, but integration between these appears to be minimal. Within the social regimes of existing sub-regional or bi-lateral trade agreements, environmental issues have been almost completely absent. The most successful linkages to date appear to revolve around the above-mentioned

Health and Environment Ministers of the Americas (HEMA) process. This process is still relatively low profile in the Americas, and requires greater involvement from civil society, the media and political leaders to achieve its goals. As one of the only examples of forward-looking hemispheric processes which address both social and environmental goals, and seek to implement the goals of the hemispheric Health and Environment Charter for Sustainable Human Development, this process requires increased support and recognition. In particular, the commitments to carry out joint health and environment assessments, and act upon their results, should be followed up.

Evaluate the Benefits of Linkages

The integration of environmental issues at the level of specific health, labour, education and poverty-oriented co-operation programs certainly requires more analysis, something also necessary for evaluating the actual implementation of some of the integration initiatives mentioned in this chapter. Where integration has occurred, involved actors have alluded to the benefits this integration implies. However, as of today, no thorough evaluation of these benefits has been carried out.

Evidently, integration permits to establish trade-offs between environmental and social aspects and facilitates the identification of opportunities for win-win-win situations. The often criticized “developed country bias” towards environmental protection has probably been reflected in a presence of environmental regimes, separated from social regimes. Whether that is the model to be followed in the region should be a conscious decision, in which questions such as the correlation between environmental degradation and inequality in the region should also be analyzed.²⁹⁵ In the past trade policies and trade have played some role in the regional integration process between social and environmental regimes. This role should be strengthened, given the increasing emphasis on sustainable development in public and private trade regimes.

3.4 Openness Principle

According to the Winnipeg Principles, greater openness will significantly improve environmental, trade and development policies.²⁹⁶ Just as access to information is essential for effective participation by producers and consumers in markets, public participation (including transparency) is essential for the formulation and practical implementation of development and social policies.

A demand for increased openness is at the heart of the current debate about the right to participate (formally and informally) in public dialogues to inform the direction of social and trade policy. Citizens, organized communities, and civil groups want to affect policy outcomes, especially when decisions will have a direct impact upon them as individuals, organizations and social movements.

The Winnipeg Principle of Openness comprises two basic elements: first, timely, easy and full access to information for all those affected; and second, public participation in the decision-making process by among others environmental and development NGOs, industry groups and scientists. A third element, access to justice (including intervention rights in cases involving public interests) is also extremely important, and is addressed below as well as in the section on International Co-operation.²⁹⁷

The instruments for openness in social regimes are incredibly varied. Often, these are tailored specifically to respond to particular cultural or political conditions, or to the specific problems at hand. These range from commitments to make information available (including monitoring and reporting requirements, public inventories, indexes and assessments), public consultations or public advisory committees, to full complaint and appeal processes in which members of the public have standing, with results binding on parties to such processes. In Box 12, a selection of openness mechanisms are summarized, with examples.

Box 12: An Openness Tool Kit

- Multi-stakeholder participation processes, such as the MERCOSUR Social and Economic Forum
 - Technical (expert) and popular consultation processes, such as the independent Expert Commission in the NAALC, or the Joint Public Advisory Committee in the NAAEC
 - Citizen participation in impact assessment processes, such as public consultation phase in the Ontario Social and Economic Impact Assessment
 - Provisions for public “Right to Know,” such as Freedom of Information Act in the U.S.
 - Disclosure requirements for companies and government agencies, such as the Peruvian
 - “Amparo,” such as the Mexican right to review of administrative acts.
 - Permission to submit amicus curia brief in dispute settlement, such as the NAFTA Methanex Chapter 11 Claim Tribunal decision
 - Standing for public interest groups in dispute settlement, such as the Inter-American Human Rights Commission and the Inter-American Court of Human Rights.
-

While it is widely recognized that openness and accountability should be enshrined in domestic processes of social policy-making, this is only beginning to be understood at the international level. Often, attitudes and institutional procedures have lagged behind the changing nature of international relationships. These relationships have been altered by increasing globalization of economic activity and growing awareness that serious social development problems cannot be adequately addressed through action at the national level alone.

With regard to the debates about openness in Americas social regimes and its links to trade, it is possible to focus on two core elements. First, what can be learned about the degree and form of openness in social development and human rights co-operation instruments, both in how these accords were negotiated, and in their implementation and monitoring? Second, trade and investment norms are increasingly affecting the potential for poverty eradication, social policy and development in the Americas. In turn, the norms of transparency, access to information and access to justice, common in social development and environmental decision-making processes, are increasingly generating expectations in economic fora.²⁹⁸ How are the economic processes responding, particularly the sub-regional economic integration processes in the Americas and the FTAA, and what can be done to increased openness to the social policy aspect of these debates?

The two branches of enquiry lead to a set of more complex questions. What is the current situation for openness in existing Americas social regimes (the hemispheric state of play)? How have governments, civil society and the private sector sought to ensure openness in existing sub-regional/bi-lateral social regimes of the Americas—what works and what doesn't? What are appropriate recommendations for the Americas? How can new social development regimes be negotiated and implemented in a transparent, open and participatory way? How can the participation of different social sectors (including NGOs, unions, women, indigenous peoples and youth) in Americas trade decision-making processes be strengthened?

3.4.1 Openness in Americas Social Regimes

Greater openness can help to improve decision-making, bringing more actors into co-operation for a goal, multiplying the impact of policies and leading to greater legitimacy.²⁹⁹ Especially with regard to social development treaties and institutions in the Americas, there is a further pressing reason for openness in the formulation, implementation and monitoring of laws, programs and policies. In the past, governments held a high degree of responsibility for delivery of social programs, and formulated policy with little formal involvement from the public (or the “target populations” for the measures in question). However, two trends are changing this model of decision-making,

First, social programs are increasingly moving away from seeing their “targets” as passive receivers of benefits or social services, and toward a “partnership” or “client” model.³⁰⁰ Second and more sobering, tight budgets, fiscal reform and, often, imposed structural adjustment policies, are leading states to controversial measures such as the privatization of social institutions.³⁰¹ In the face of these conditions, NGOs, trade unions and peoples movements undertake a growing burden of social justice work. Their traditional roles expand exponentially. Advisory processes, policy dialogues and other consultation processes must be developed to ensure that these actors can give feedback to improve the effectiveness of the social programs they deliver.³⁰² These trends, in the Americas, are altering the landscape of social policy-making at the domestic and, increasingly, international level as labour unions and human rights NGOs gain knowledge and sophistication. Social issues are not just debated within governmental circles any more but, rather, further feedback from civil society is expected, even encouraged in many ways.

What instruments exist to ensure openness in sub-regional and hemispheric social regimes across the Americas? Are these instruments becoming more effective? A brief survey of recent literature reveals that the principle of openness has advanced in the region in the past years. Progress has occurred very slowly, but it is moving in the right direction (for example, reforms in Mexico are worth documenting) and this trend is likely to continue to grow.

In each sub-region, there are specific examples related to public participation, and public access to information or justice. Table 5 summarizes the main sub-regional instruments with regard to access to information, public participation and access to justice.

Table 5: Comparative Table of Openness in Social Regimes

Accord/ Instrument	Web address	Transparency	Participation	Access Justice
HEMA - First meeting of HEMA Ministers - Follow-up process	http://www.ec.gc.ca/international/regorgs/hema_e.htm	Certain info made available through OAS HEMA meeting info was disseminated freely Follow-up inter-governmental only, less transparent to date	Provisions on the need for openness in the Charter Consultations in Canada, no info on other countries. Observers selected to attend HEMA meeting	No dispute resolution mechanism

Accord/ Instrument	Web address	Transparency	Participation	Access Justice
<p><i>IAHRS</i></p> <ul style="list-style-type: none"> - IAHR Commission - IAHR Court 	<p>http://www.cidh.oas.org/DefaultE.htm</p> <p>http://www.corteidh.or.cr/index-ingles.html</p>	<p>Information, cases and reports all made available on Web site</p>	<p>Civil society experts participate in, and call, meetings and are consulted</p>	<p>Excellent, civil society groups can prepare <i>amicus</i> briefs or bring cases</p>
<p><i>Mercosur</i></p> <ul style="list-style-type: none"> - Sub-Group 11 - Socio-Laboural Council - Social and Economic Consultative Forum 	<p>http://www.mercosur.org.uy/</p> <p>http://www.mercosur.org.uy/pagina1esp.htm</p>	<p>High levels of info available to public via Web site</p> <p>Documents released before meetings of Sub-Groups</p> <p>Declarations released to public after meetings</p>	<p>Social indicators process, with info available on web</p> <p>Civil society sessions prior to Sub-Group meetings</p> <p>Joint biz/union/gov participation in Council</p>	<p>No information on whether civil society intervenor roles or <i>amicus</i> brief rights</p>

Accord/ Instrument	Web address	Transparency	Participation	Access Justice
<p><i>CARICOM</i></p> <ul style="list-style-type: none"> - COHSOD - Civil Society Charter and Forums 	<p>http://www.caricom.org/</p> <p>http://www.caricom.org/archives/cohsod/cohsodindex.htm</p>	<p>Limited info available on Web site, but regular newsletter is circulated</p> <p>Accessible and helpful officials fill the gaps</p>	<p>Open conferences with civil society participation and action programs</p> <p>Low resources but high civil society engagement</p> <p>New HCP project in Dominican Republic</p>	<p>Discussions of a Caribbean Court of Justice, no decision yet on civil society inter-venor roles or <i>amicus</i> brief rights</p>
<p><i>CACM</i></p> <ul style="list-style-type: none"> - Social Integration Treaty - Regional Labour Information System - Central American Court 	<p>http://www.sieca.org.gt</p> <p>http://www.sgsica.org/</p>	<p>Very little treaty implementation info</p> <p>Excellent new comparative legal databases on web</p> <p>Court Judgements released to public and available for study</p>	<p>Few engagement processes, but labour unions involved</p> <p>Low resources and civil society engagement</p> <p>New HCP civil society project in Nicaragua</p>	<p>Individuals can bring cases to the CA court</p> <p>No information on inter-venor roles or <i>amicus</i> brief rights</p>

Accord/ Instrument	Web address	Transparency	Participation	Access Justice
<p><i>Andean Community</i></p> <ul style="list-style-type: none"> - Social and Economic Forum - Andean Court Justice 	<p>http://www.comunidadandina.org/agenda.asp</p>	<p>High levels of info available on public access Web site</p> <p>Public release of decisions</p> <p>Court Judgements released to public and available for study</p>	<p>Annual civil society event, NGOs/ academics engaged</p> <p>Experts consulted in regional councils and advisory processes</p>	<p>Individuals can bring cases to court</p> <p>No information on intervenor roles or <i>amicus</i> brief rights</p>
<p><i>Chile-U.S. FTA</i></p> <ul style="list-style-type: none"> - Labour Chapter 	<p>http://www.ustr.gov/new/fta/Chile/text/18text.pdf</p>	<p>Guaranteed provisions on access to information for public</p>	<p>Unions engaged</p> <p>Guaranteed advisory processes, but new</p>	<p>Complaints process for appeal</p>
<p><i>North American Agreement on Labour Co-operation</i></p>	<p>http://www.naalc.org/</p>	<p>Public access to certain documents, mainly via National Offices and NAALC Web site</p>	<p>Unions and development organizations use process</p> <p>Official public advisory processes and activities</p>	<p>Complaints process for NGOs re: labour law violations, etc.</p>

Accord/ Instrument	Web address	Transparency	Participation	Access Justice
<i>Canada- Chile Labour Side Agreement</i>	http://www.dfait-maeci.gc.ca/tna-nac/bilateral-en.asp#03	Public access to info, provisions for public clearinghouse of info	Unions/NGOs engaged Official policy dialogues and advice process	No information on complaints process or appeal
<i>Canada- Costa Rica Labour Side Agreement</i>	http://www.dfait-maeci.gc.ca/tna-nac/costa_rica-en.asp	Public access to info, provisions for public clearinghouse of info	Unions/NGOs engaged Official policy dialogues, capacity and advisory roles	No information on complaints process or appeal

Several particular lessons can be learned from transparency, participation and access to justice instruments in sub-regional level initiatives. These deserve special mention.

First, it is interesting to note that in the social arena, civil society organizations and labour unions are able to use regional social participation mechanisms (including complaints procedures) as part of their overall strategies to reform labour laws, and as a stimulus to form regional partnerships. This function depends on their energy and expertise, the receptivity of the national offices, and the governing procedures enshrined in the treaty. The North American Agreement on Labour Co-operation (NAALC) has had several years of experience, and over 24 “complaints” have been lodged with National Administrative Offices (NAOs) in the three NAFTA Parties, following a lengthy process determined by the provisions of the NAALC Treaty.³⁰³ The Secretariat, overseen by the Council and located in Dallas, Texas, prepares regular background reports and conducts studies and supports any working groups or committees as well as arbitral panels set up by the Council.³⁰⁴ The NAOs in each country compile and transmit information (Art. 21) to the

Secretariat and receive and register public communications on a full range of issues including matters relating to the enforcement of labour laws. In addition, the NAOs will respond to public requests for information, and issues relating to the enforcement of labour laws. This has developed into a “complaints” procedure used by civil society organizations, especially labour unions, to call public attention to human rights issues and pressure for policy changes in the three countries.³⁰⁵ Experience with this unique procedure, by which a complaint can be filed with the NAO of any other NAFTA party, has led some observers to comment that it has stimulated increased cross-border civil society networking and partnership, over time.³⁰⁶ Civil society organizations take advantage of the procedure by including an appeal to the NAO of their partners countries as part of an overall campaign to reform a repugnant labour law or related practice.³⁰⁷

Second, labour unions, consumers groups and social policy-oriented civil society organizations are often highly organized, and can readily coordinate to ensure representative participation in regional and sub-regional processes. This is particularly important when space is opened, on the official level, for their formal representation and advice.³⁰⁸ For example, labour unions and other social associations have been able to play a strong role in the actual social policy debates as the MERCOSUR develops. The MERCOSUR has several mechanisms which aim to ensure civil society (especially labour) participation in its deliberations.³⁰⁹ The MERCOSUR Sub-Group No. 10 and its committees, charged with labour and social issues, has developed a particular mechanism of representation to ensure higher degrees of participation from labour and business. Like the ILO, Sub-Group 10 has a tripartite composition of government, labour and employers representatives.³¹⁰ As such, labour unions have the opportunity to self-organize, and choose representatives to participate in the process, often professionals with expertise, recognition and professional networks that can be harnessed to ensure that their views have significant influence, and that their organizations are accountable to implement agreements. These have held a number of meetings, some of which included other representatives from civil society as well. In a short time, Sub-Group No. 10 has achieved fairly solid results using this process. They drafted the MERCOSUR Multilateral Convention on Social Security (Recommendation No. 3/95), and in 1998, the Socio-Laboural Declaration of MERCOSUR. This Declaration led to the establishment, in 1999, of a Socio-Labour Commission, which is described in more detail in the chapter on international co-operation, and above.³¹¹ This Commission has also adopted the tri-partite structure of membership and has focused on building collaborative working relationships with civil society and experts.

Third, the civil society groups which participate in regional integration processes are by no means unified, nor do they agree on their advice. Some are

not even “civil.” The social actors in an integration process are diverse, bringing very different views and expertise to the table. Well-established and traditionally-consulted organizations and actors, including industry and employers associations, but also many labour unions, discover new movements representing particular interests (women’s rights, indigenous peoples, health or the environment, even new human rights groups) in the process of participation. Each of these new social actors will be at different levels of institutional and organizational development—they will have different strategies, different capacities, and different needs. Often, the social actors are meeting each other, as much as they are meeting the governments, international agencies or others, in a participation process. Strong political will and commitment, from the governments as well as from the civil society groups, must be present and must intensify throughout a participation process in order to achieve successful outcomes. A good example of this lesson occurred in the Central American social integration process.

Poverty and exclusion have not abated through Central American integration. Indeed, according to FOCAL, over 70 per cent of the region’s inhabitants currently live under the poverty line, while illiteracy rates reach 50 per cent in some countries and are significantly higher among women, peasants and indigenous peoples.³¹² The integration process was hard pressed to include actors from such diverse social and economic backgrounds, divided by great inequality. The “Iniciativa Civil para la Integración Centroamericana” played a role in assuring that, in spite of very real “multiplicity and heterogeneity,” diverse social actors have been able to play a role in the Central American social integration process.³¹³ The ICIC was formed of thirteen regional organizations from black communities, indigenous groups, women’s networks, labour unions, small farmers and marginalized urban populations, small and medium-sized enterprises, human rights organizations, co-operatives and development NGOs. They organized, taking advantage of the democratic opening formed by the Esquipulas II Accords, and sought to insert their proposals into the Protocols of Tegucigalpa and Guatemala, as well as future Central American Summits and Ministerial Forums. In particular, through a series of national and regional consultations, the ICIC developed a broad proposal for the Central American Social Integration Treaty of 1995.³¹⁴ Others suggest that the Central American integration process can be invigorated “from below” by civil society. FOCAL observes that civil society organizations and individuals throughout the region (including the large private sectors represented by industrialists, bankers and other manufacturers) have continued to interact with each other regardless of the difficulties experienced by the “official,” mainly state-centred integration process. According to FOCAL, civil society’s “integration tempo” varies significantly from the governmental one, and could become an important starting point to build a true integration cul-

ture in Central America.³¹⁵ These civil society organizations were formally incorporated into SICA through the Advisory Committee, formed by 22 organizations representing a wide range of sectors including trade, industry, small and medium-sized enterprises, transport, unions and co-operatives, local governments, universities, indigenous peoples, peasants, women and Afro-Central Americans, among others.³¹⁶ Such political will, arguably, is continually growing in the Andean Community, as advisory institutions and policy consultation mechanisms continue to be set in place.³¹⁷

A fourth general observation is also possible. The precondition to effective public participation is access to information. This facilitates analysis and allows civil society organizations to develop views and positions which make their participation relevant. But information can also serve community organizations, academia and other members of the public directly, providing them with valuable data regarding, for example, comparative data for analysis of social trends, or health and environmental conditions. The recent U.S.-Chile FTA, the only trade agreement to date to include Labour and Environment Chapters directly in the text of the accord, commits to investigate the potential for a particular joint project between the two countries: the development of a Toxic Release Inventory (TRI) and other disclosure requirements for companies operating in the member countries. This is particularly innovative, as it is the first such arrangement, linked to a trade agreement, between a developed and developing country and might provide valuable information to consumers and others, increasing transparency but also generating a competitive dynamic (as it has in the TRI experience from the Community Right To Know Act in the U.S.) that results in lower pollution.³¹⁸ Though much depends on good faith reporting and independent verification, such a practice might yield considerable success applied to social issues such as workplace health and safety standards.

Hemispheric Experiences with Openness

While structures for openness are increasingly evident at the sub-regional level, comparable developments on the international, especially hemispheric, levels are still embryonic. As Americas civil society groups devote increased attention to such issues, it becomes necessary to find forms of participation appropriate to the different international organizations and negotiations. These changes in policy vis-à-vis participation have been occurring in the leading institutions of the region, mainly due to civil society pressure and increasing inter-governmental receptivity. Models can be found among the hemispheric processes which formally seek public involvement in the decision-making process. These include the Organization of American States (OAS), the Inter-American Development Bank, the Inter-American Human Rights System (Commission and Court of Human Rights), the United Nations Economic Commission for

Latin American and the Caribbean (ECLAC) and other regional initiatives. Several recent hemispheric advancements offer particular lessons.

First, national and international rule-making and dispute settlement should also be transparent, seeking, when appropriate, scientific and technical advice on environmental and developmental impacts and soliciting the views of the public, including specialists in relevant areas to the dispute settlement process. The Inter-American Human Rights System provides one of the most significant participatory mechanisms in the Americas—human rights groups and other public interest groups the right to bring a case alleging human rights violations, including violations of economic, social and cultural rights.³¹⁹

Second, actors within inter-governmental organizations can play a strong role in either supporting a civil society participation process, or stopping it. The Americas Summit of Sustainable Development, in Santa Cruz, Bolivia, 1996, called for civil society participation in decision-making processes in public questions. In response to this, experts from within the OAS developed an inter-American strategy for civil society participation in the decision-making processes on sustainable development.³²⁰ This process has resulted in higher levels of civil society involvement in all sustainable development activities of the OAS.

Third, when civil society organizations are able to gain access to the governing processes of an international institution, they can help to develop mechanisms for participation themselves. For example, the Centre for Environment and Human Rights of Argentina (CEDHA) and over seventy other organizations have helped the OAS itself to develop changes to its procedures to include civil society experts and others in the hemispheric deliberations.³²¹

In the health arena, the trend toward participation and openness has been particularly evident. The Pan American Health Organization (PAHO) has set procedures in place to consult and harness the power of NGOs, academics and professional health networks in their programming. In terms of access to information, their *Health in the Americas* series presents an invaluable resource, one of the only aggregated systems of data available on social issues in the Americas.³²² This type of reporting system provides a model for other hemispheric processes related to sustainable development. In terms of public participation, PAHO partners with research centres across the Western Hemisphere, invites experts from civil society and the medical profession to serve on its advisory councils and other bodies, and releases bids for tender to NGOs requesting proposal on issues such as tobacco control.³²³

This tradition of openness has continued throughout the first meetings of the Health and Environment Ministers of the Americas process.³²⁴ As mentioned above, this process is guided by the goals of the 1995 Pan American Charter on Health and Environment in Sustainable Human Development, goals which

include openness toward civil society.³²⁵ Indeed, the little-known Charter recognizes that “At each level of social and political organization, networks of collaborating interests and persons should be cultivated, to promote the integration of sectoral concerns and resources into development processes.” As a common priority, the Charter outlines “Defining and implementing arrangements for increased participation and grassroots action and control in socioeconomic development processes.” A call for civil society delegates and self-organized selection process, chaired by health and environment organizations of the host country, Canada, resulted in a small delegation of observers (and a youth team) participating in the Summit. These observers produced a declaration welcoming the co-operation process, but calling for further concrete progress in a number of key areas.³²⁶ However, the inter-governmental follow-up work has lacked resources, time and expertise to raise the profile of the initiative and include sustainable development oriented actors in the debates.

3.4.2 Openness for Social Aspects of Americas Trade Regimes

Civil society concern has existed from the start of the FTAA negotiations regarding transparency and public participation in the process. Political steps were taken, right from the start, to include business groups in the FTAA, through an Americas Business Forum.³²⁷ A Committee of Government Representatives on the Participation of Civil Society also exists.³²⁸ In spite of weak political support at its initiation (which led the Committee to be dubiously dubbed the civil society “mail-box” committee), and though this Committee has not been given equal weight to the Committee of Smaller Economies, the Trade Negotiations Committee, or negotiation groups, the mechanism has begun to make progress inspiring higher levels of public participation and feedback as negotiations progress.

Two important procedural measures have also been implemented, due mainly to civil society pressure and political leadership from the governments of Canada, joined later by Chile and Ecuador. First, in an unprecedented move for a trade negotiation, the FTAA Draft Text has been released for public review.³²⁹ With the public release of the second draft in Quito at the FTAA Ministerial in 2002, this step became part of the *acquis* of the FTAA negotiations process, allowing academic commentators, members of the public and civil society organizations to study the progress of negotiations and give more informed advice on national and hemispheric levels. Second, civil society organizations and academics which work on sustainable development issues have gained a space to participate in preparations for FTAA Ministerial Meetings, through presentations to trade ministers prior to the meeting.³³⁰ The struggle for civil society participation in FTAA negotiations has been long and challenging, for both governments and the diverse members of hemispheric civil society movements.

Civil society organizations and academics have, in recent debates, begun to develop a proactive agenda on the social development and human rights aspects of the FTAA negotiations themselves. Civil society is not, of course, homogenous by any means, and diverse proposals for measures to facilitate their participation have surfaced. A series of practical proposals were developed by environment and sustainable development-oriented research centres and civil society institutions at the Hemispheric Trade and Environment Forum, and were presented by Ecuadorian, Canadian and Central American representatives to the 2002 Meeting of Ministers of Trade of the Americas in Quito, Ecuador. These are summarized below in Box 13.

Box 13: Civil Society Proposals for Participation in FTAA Negotiations

Hemispheric Trade and Environment Forum Recommendations to the 2001 Quito Meeting of Trade Ministers of the Americas:

[Civil society organizations and academic institutions assembled in Quito at the Forum propose:]

1. That the following concrete mechanisms for informed public participation in the FTAA negotiations be established: a. Provide for observer status for civil society representatives in the FTAA Negotiating Groups, the Trade Negotiations Committee, and Ministerial meetings. In this regard, the MERCOSUR sub-groups and NAFTA procedures for participation are examples for the FTAA; b. Create effective mechanisms to ensure a right to a reasoned response to the contributions of civil society presented to the FTAA negotiating mechanisms. c. Generate transparent mechanisms for dissemination of information, such as inclusion of civil society contributions on the FTAA Web site, the preparation of indices of civil society presentations, and the publication of meeting summaries; d. Instruct the Technical Committee on Institutional Matters to establish an advisory body of experts; e. Adopt, at a minimum, the policies of the WTO for publication and release of documents; f. Facilitate civil society in following the final stages of negotiations; and in particular authorize the release of updated draft text; g. Recommend that the Inter-American Development Bank and other inter-governmental organizations provide funds to facilitate civil society participation in the negotiation process. h. Urge governments to include civil society representatives in national negotiating delegations;

2. Establish and strengthen substantive and effective regional and sub-regional consultative, incorporating initiatives of the OAS;
3. Establish and strengthen substantive and effective consultative mechanisms at the national level which integrates civil society participation in the different issues related to the FTAA negotiations process;
4. Establish opportunities and mechanisms for public participation that allow the consideration of interests and positions of non-governmental actors in FTAA dispute settlement procedures. In particular, the right of non-governmental actors to participate in dispute settlement procedures and to submit *amicus curiae* briefs should be recognized; and
5. Fulfill commitments adopted consistently and repeatedly by Heads of State, and embraced within international instruments and national norms, to integrate civil society in decision-making processes. In this regard, in the FTAA, ministers should analyze, develop and establish a permanent hemispheric environmental co-operation mechanism, with the following purposes: a. Compile and disseminate information, and undertake research and assessments with regard to trade and sustainable development; b. Coordinate technical assistance; c. Consult and collaborate with national, sub-regional and regional environmental authorities and institutions; d. Interact and consult regularly with civil society in the design and implementation of its work plan, and in addressing trans-boundary environmental problems.

Source: Authors, *FTAA Trade Ministers Meeting Trade and Environment Workshops Declaration on Civil Society Participation Mechanisms* (Quito: CEDA, FFLA, IISD and partners, 2001) available online: http://www.ceda.org.ec/pdf/recommendations_tv&e.pdf

The struggle for participation in Americas trade deliberations is not yet fully resolved. Only certain labour and social development organizations have access to dialogue mechanisms, and among these, many are selective as to the modalities of their participation in the hemispheric integration processes.³³¹ Other NGOs refuse to carry out civil discussions with ministers or negotiators, perceiving themselves as embroiled in a struggle for equity and solidarity, and preferring to focus on raising public awareness about their concerns regarding the FTAA.³³² On the other side, many governments, particularly from developing countries, are still not convinced that civil society groups can bring any useful contribution to the process. However, due in part to leadership from Canadian, Chilean, Dominican and Ecuadorian negotiators and

decision-makers, the 2002 Quito FTAA Ministerial Declaration demonstrates a certain commitment to strengthen civil society involvement in the FTAA negotiations.³³³ Part of the Quito Ministerial Declaration is excerpted in Box 14.

Box 14: 2002 Ministerial Declaration of Quito

“Transparency and the Participation of Civil Society

29. We re-affirm our commitment to the principle of transparency in the FTAA process and recognize the need to enhance and sustain participation of the different sectors of civil society in the hemispheric initiative.
30. In accordance with our commitment to transparency assumed at the Santiago and Quebec City Summits, we agree to publish the second draft of the FTAA Agreement on the official FTAA Web site in the four official languages today.
31. We appreciate the views that various sectors of civil society have provided us in the last year and a half and especially in parallel to the Nicaragua and Dominican Republic Vice Ministerial meetings and, within the framework of this meeting. We appreciate the recommendations made by the Seventh Americas Business Forum and the Civil Society Fora, organized with a broad representation of civil society, with whom we met in Quito. We encourage the holding of similar events organized parallel to the Ministerial and Vice Ministerial meetings with a broad representation of civil society. We also recall our meeting with civil society within the framework of the Quebec City Summit of the Americas. The views expressed constitute a valuable contribution to the negotiations, and we urge civil society to continue to make contributions in a constructive manner on trade-related issues of relevance to the FTAA.
32. Likewise, we encourage the organization of regional and national seminars related to the process of establishing the FTAA. We welcome the results of the various national seminars organized by FTAA countries and the North American regional seminar held in Merida, Mexico. We also take note of the fora and seminars on FTAA negotiations that different civil society organizations have carried out in the countries of the region and we invite them to present the conclusions of their work to the Committee of Government Representatives on the Participation of Civil Society (the Committee).

33. We reiterate the need to increase participation of the various civil society sectors in this hemispheric initiative, and likewise we instruct the Committee to foster a process of increased and sustained two-way communication with civil society to ensure that it has a clear perception of the development of the FTAA negotiation process. We also reiterate that all the FTAA entities, including the TNC, are to issue public statements at the conclusion of each of their meetings, and we instruct the TNC to provide guidance to the entities so as to ensure a substantial increase in the quality of the information provided. To this end, we instruct the Committee to continue its work to keep promoting transparency, and to identify and foster the use of best practices for outreach and consultation with civil society. We also instruct the TNC to ensure the timely improvement of the official FTAA Web site and the incorporation of more information on the FTAA process. We further exhort all countries in the Hemisphere to strengthen and deepen their consultation process with civil society at the national level.
34. We are grateful for the contributions received in response to the Third Open and Permanent Invitation that were provided on an ongoing basis to the Negotiating Groups and other entities and we reiterate our instruction to the Committee to continue to forward to the FTAA entities the contributions submitted by civil society that refer to their respective issue areas, and those related to the FTAA process in general.
35. We consider that the Committee is an important mechanism for fulfilling our commitment to transparency and we instruct the Committee to continue its work. We welcome the Third Report, which describes the activities of the Committee as well as the range of contributions received during this phase. We also instruct that the Third Report of the Committee be published on the official FTAA Web site. We further instruct this Committee to continue to forward contributions to FTAA entities as well as to submit a new report for our next meeting outlining its activities and the range of views it has received from individuals and organizations in the Hemisphere.”

Source: Ministerial Declaration of Quito, 7th Meeting of Ministers of Trade of the Hemisphere Quito, Ecuador, Nov. 1, 2002. Available online: www.oas.org

3.4.3 Recommendations

How can openness be strengthened in the Americas, in its social regimes and in trade negotiations which affect social policies? The principle of openness recognizes that since action by individual governments will often have significant international effects, there is a need for internationally-agreed criteria and mechanisms of public participation, access to information and accountability at the international level. These international standards and procedures can originate in environment, or even more often, social development and human rights processes, especially labour rights struggles. They eventually make their way, first as expectations and eventually as norms, into the economic decision-making processes. Many social regimes in the Americas have made considerable progress toward openness, and have innovated instruments or mechanisms that are worthy of consideration and analysis. The discussion above leads to the following specific recommendations:

Undertake strengthened capacity-building efforts, in partnership with civil society organizations, to improve access to the inter-American human rights system:

Disseminate, encourage and implement capacity building to ensure that public interest groups can access the Inter-American Human Rights system to redress wrongs, and gain awareness of their social, economic and cultural rights. Ideally, some of this capacity-building could be linked directly to trade-related social issues, and done in partnership with civil society organizations under the Hemispheric Co-operation Programme, but many other programs could also be strengthened, or launched where they do not yet exist.

Design accountable mechanisms for openness in the FTAA social regimes:

There is a need to study, develop and implement formal mechanisms for transparency, participation and access to justice mechanisms in the Americas economic integration process and the FTAA, particularly with regard to social policy. Specific tasks might be carried out by a new mechanism for co-operation on hemispheric social policy and development issues, or by the relevant organs of the OAS, but they must be carefully structured to generate meaningful results. Should a Social or Labour Advisory Council be created, it could be modeled on the innovative mechanisms established by the MERCOSUR, the CACM or the Andean Community, or on the Joint Public Advisory Council, as has the NACEC. Such a Labour and Social Development co-operation mechanism should incorporate provisions for tri-partite representation, as does the MERCOSUR Socio-Laboural Commission. A joint ILO-OAS commission could be set up to lay the foundations for negotiations.³³⁴ It should serve to facilitate dialogue, and provide a constructive hemispheric forum for complaints and accountability on sustainable development issues,

including those related to labour and social development. It could also include pragmatic provisions for information sharing, consultation mechanisms, and access to dispute settlement processes involving public interest issues such as environment and human rights. To avoid duplication, such a mechanism should be linked to existing inter-American human rights instruments. Transparency and the opportunity for interested members of the public to make submissions to dispute settlement processes are also important when public policy issues are involved. In the FTAA Chapter 9 (Dispute Settlement), at a minimum, adjudicating panels should entertain written submissions from non-governmental organizations, and panel decisions should be published with a minimum of delay. When concerns address labour, environment or other public interest issues, civil society organizations should be granted the right to bring cases or otherwise initiate factual reports.

Develop Americas sustainable development disclosure requirements:

Corporate social responsibility and accountability should be encouraged and strengthened in the Americas. One concrete mechanism which can be set in place to achieve this is the creation of a set of hemispheric disclosure requirements. Binding mechanisms can be set in place for requiring company-by-company disclosure of progress on social standards, such as core labour standards and human rights norms, as well as toxic releases and other environmental information. Like the co-operation projects mentioned in the Labour and Environment Chapters of the Chile-U.S. FTA, these disclosures can allow information (and competitive dynamics) to be used for improvements in compliance with standards.

Facilitate co-operation between diverse hemispheric civil society movements:

Participatory mechanisms should focus on garnering public involvement in decision-making processes, and also on building coherent Americas-wide civil society movements on labour, poverty, health, education and other social issues, within the broader framework of the sustainable development goal. The Hemispheric Trade and Sustainability Symposium, held in Quebec City in 2001, and the Americas Trade and Sustainable Development Forum, held in Miami in 2003, are steps in the right direction.³³⁵ Civil society and other NGO networks, academics, and other members of diverse sectors of society have significant work ahead in this regard. Governments and inter-governmental agencies, have a very valuable support role to play, and need to continue to improve consultation process through the Summit processes, including the ministerial meetings. Governments and civil society actors should together ensure that provisions for civil society participation, in form of Joint Public Advisory Councils, Clearinghouse Mechanisms, or Multi-Stakeholder processes, are built into the developing Americas social regimes, based on the

procedures recently negotiated in the OAS as well as innovations being attempted in other contexts.

Support Hemispheric Civil Society Research and Dialogue

Several key questions remain outstanding. First, to include civil society organizations working on social development in a trade decision-making process, is it enough to simply seek mechanisms to include (or provide an avenue for complaints from) labour organizations? Or is it necessary to reach more broadly, seeking mechanisms to include indigenous peoples, development organizations and other groups who can contribute perspectives from a broader cross-section of social movements? Second, what is the difference between “legitimacy” and “representation” for civil society organizations? Do civil society groups need to be democratically elected in the same way that governments do, in order to “represent” a particular viewpoint in hemispheric society, or is their role more one of offering expert advice, policy innovations, public awareness and independent assessment, and occasionally, a “watchdog” or monitoring function? Are different participatory mechanisms needed to ensure that each can be effectively included in policy-making? And finally, what to do when civil society groups themselves demonstrate their own considerable diversity, and disagree on key issues, or on the framework of the debate itself? Does a spectrum of views have less legitimacy than one single united front on a single issue? Should governments and others be permitted to simply pick and choose among the views presented? How to ensure that the participation mechanism creates space for all those of diverse voices? Further hemispheric research and dialogue, carried out by civil society groups in collaboration with governments, the private sector and inter-governmental bodies, is necessary to respond to these and other pressing questions. As recommended above, the Hemispheric Co-operation Programme and other capacity-building initiatives should open themselves to independent applications from hemispheric partnerships of registered non-profit civil society organizations seeking to help with this work.

3.5 Science and Precaution Principle

According to the Winnipeg Principles, science and precaution go hand in hand. In the development of policies intended to reconcile trade, environment and development interests, science can provide the basis for many necessary decisions, including the suitability of health, safety and environmental standards. However, action must sometimes be taken in the face of uncertainty and scientific disagreement, particularly where mistakes could have very serious consequences. It is therefore also essential, in certain instances, to adopt a precautionary and adaptive approach to prevent and reduce stress to the environment or health well before conclusive evidence is available concerning the risk of damage. Such an approach adapts as new scientific information becomes available.³³⁶

Science, by its very nature, is incapable of offering full proof in most cases. Scientific analysis involves working to disprove hypotheses—some stronger than others. Because it focuses on situations with significant uncertainty, the precautionary principle should be distinguished from the principle of prevention, which tends to operate when there *is* sufficient scientific evidence. Certainly, the precautionary principle does have a scientific threshold—it does not preclude or downplay the value of sound scientific analysis. But discussion on the precautionary principle often paints a picture of social or environmental policy decisions as a simple choice between sound science and a precautionary approach.³³⁷ Rather, both are necessary.

However, the twin approaches of continually developing sound science, and applying precaution in the face of uncertain risks, can be difficult to balance in decision-making processes. The issue has become highly controversial in the Americas, as the United States has systematically refused to acknowledge the role of the precautionary principle in decision-making, seeking to replace it with “risk assessment.” Indeed, experts have commented that Argentina’s different views on precaution with relation to the use and export of genetically modified organisms were the reason for blocks in the ratification of the first MERCOSUR Environmental Protocol.³³⁸ Science requires developing knowledge, while precaution means taking preventive measures even when risks are not scientifically certain. Democracy and good governance are a precondition for this principle, as decision-makers must find appropriate points of equilibrium between the costs of acting, or not acting, to prevent risks, even when this might lead to foregone development opportunities. In the current context of globalization and regionalism, public concerns have raised the profile of the precautionary principle in social, economic and cultural decision-making. Emphasis on science and precaution implies avoiding risks, not stopping progress.³³⁹ Current efforts to combat health and environmental problems are still woefully inefficient, while many serious risks are still taken without the public, or scientists, being consulted or protected. Respect for sound science and judicious application of the precautionary approach can improve decision-making processes and result in stronger social, economic and cultural rights. This can lead to better health and labour conditions.

Collaborative use of science in both environmental and social regimes is fundamental to international co-operation. For example, health co-operation instruments such as the Pan American Health Organization require accurate scientific data and analysis to improve health and social security systems.³⁴⁰ In addition, indigenous peoples have long applied traditional knowledge and preventive measures in their territories, and their traditional knowledge is increasingly being recognized, on the international level, as local science which offers valuable and sometimes unique lessons of adaptive management.³⁴¹

Though contentious, the precautionary principle still gains momentum. It is applied in sustainable development law, and directly for the implementation of health and environment regimes, and also human rights regimes. For example, the Cartagena Protocol serves to address environmental risks of modern biotechnology, and also to prevent human health risks and concerns.³⁴² And human rights instruments often provide for “precautionary measures” which can be invoked by a decision-making body or court when a situation threatens irreparable harm to persons.³⁴³

In the Americas social regimes, with regard to science and precaution, several controversial issues have worked their way onto the policy-makers agendas, and are raising important questions.

First, in certain sectors, decision-makers are increasingly being asked to collaborate in setting and maintaining common health and environmental standards and indicators systems. How can such standards be set in a way that respects and supports the need for sound science, and provides for precautionary margins of safety? When co-operative agreed frameworks are set in place, how can a new trade regime serve to support and reinforce (rather than confound) these standards? Second, in the Inter-American Human Rights System, the Court and Commission can request “precautionary measures” to protect human rights and communities. Do these measures work, and how can they be used to address pressing sustainable development issues? Third, how to address situations in which sound science is lacking, and risks are not only uncertain but actually unknown? Can risk assessment and risk management techniques be developed and supported on a hemispheric level? And finally, in the Americas, indigenous peoples traditional management techniques are being increasingly recognized as “local science.” Can the inter-American system support this process, and give it additional weight? This chapter will review existing programs in the Americas, and examine these aspects of these issues.

3.5.1 Science and Precaution in Americas Social Regimes

Social regimes of the Americas focus on delivering human rights, especially social, economic and cultural rights. Several important hemispheric institutions have been established to meet basic human needs and help to provide access to housing, health, social security, education, employment and a clean environment for all citizens of the Americas. There have been separate efforts at a hemispheric level to promote scientific co-operation and the use of sound science in decision-making, particularly by stimulating knowledge-sharing over the internet. Indeed, in the most recent Summit of the Americas in Quebec City, leaders committed to:

“Promote the popularization of science and technology necessary to advance the establishment and consolidation of a scientific culture in the

region; and stimulate the development of science and technology for regional connectivity through information and communications technologies essential for building knowledge-based societies.”³⁴⁴

Scientific co-operation and precautionary instruments are not unknown in the Americas. Though the Organization of American States (OAS) traditionally sought to incorporate approaches based on “prevention,”³⁴⁵ several hemispheric programs led by the OAS have recently included components based on both science and precaution. In particular, the new Mercocyt (Common Market of Scientific and Technological Knowledge) exists to promote science and technology transfer across the Americas.³⁴⁶ Scientific innovations and developments are also shared through new hemispheric institutions developed to promote the hemispheric integration agenda. For example, the Institute for Connectivity in the Americas was created by the Summits process to serve as an instrument for governments, civil society and businesses of the Americas.³⁴⁷

Americas sub-regions, similarly, have set several important scientific co-operation mechanisms in place on social issues. For example, in the MERCOSUR, the Preamble to the 1991 Treaty of Asunción reflected a generic objective of the promotion of science.³⁴⁸ Certain specific obligations were developed in the sub-regional social regime, which required the MERCOSUR to coordinate for the implementation of scientific and precautionary standards. The 1998 Socio Labour Declaration, at Article 17, recognizes that all workers have the right to exert their activities in a healthy and secure working environment which preserves the physical and mental health; and exhorts governments to prevent working accidents as well as professional illnesses. The later 2000 Buenos Aires Social Commitments Charter,³⁴⁹ signed by MERCOSUR, Bolivia and Chile, then provided a framework for joint scientific learning among the signatory countries. The Charter seeks to advance joint research and studies on vulnerability and social exclusion, decentralization and participation oriented to better meet decision-making processes on social policy and resource allocation.³⁵⁰

As another example, the September 1995 Andean Declaration on Social Development has proved innovative, re-affirming the right of all people to education, the fruits of science and technology, culture and health.³⁵¹ As such, the fruits of science and technology are recognized as social, economic or cultural rights in the Andean Community, and the sub-regional integration process seeks to support the realization of this right. In particular, two main Conventions seek to co-operatively deliver the fruits of science to the people of the Andes. The Andrés Bello Convention was created to promote educational, technological and cultural integration.³⁵² And, in the context of health prevention, the Hipólito Unanue Convention aims to support the countries’

efforts to improve their peoples' health.³⁵³ A common policy on science and technology was ratified in the May 1999 Act of Cartagena Social Agenda in order to safeguard and promote an Andean identity, along with an Andean strategy on sustainable development. Other instruments are being proposed, such as the Andean Labour Observatory to collect statistical data and info about labour provisions and employment programs.

The Central American Integration System (launched in the 1991 Guatemala Protocol) does not make explicit reference to science and precaution principles. However, the 1995 Central American Social Integration Treaty embarks on sub-regional activities that can be considered as preventive measures to end structural causes of poverty through government's co-operation on social development issues. There is also a venerable institutional arrangement, the 1976 Central America and Panama Commission on Science and Technology, for the promotion of science, capacity and infrastructure building in the region.³⁵⁴ The recent 2002 Declaration of Copán declares the need to increase investment in the human being, specifically to have access to education, training and science and technology. Also, in their 2002 Declaración de San Salvador governments committed to deepen co-operation, and coordinate the exchange of expertise among state members.³⁵⁵

The main social regime in the CARICOM is the Council for Human and Social Development (COHSOD). This agreement coordinates co-operation on regional issues. For example, the COHSOD seeks to address issues such as human resource requirements, strategic inter-sectoral alliances on gender and development, youth and drug demand reduction; regional strategic plans for HIV/AIDS, and for the prevention and control of non-communicable diseases. In Art. 64 on Research and Development at para. 2, the Caribbean states commit to the promotion of co-operation in research and technological development among countries and other states or international organizations. They also agree to facilitate co-operation in the exchange of scientific and technological information among members and competent institutions, and in the free movements of researchers in the community.³⁵⁶

As such, the value of scientific co-operation in social regimes and integration processes is well-recognized in the Americas, with one sub-region even recognizing a social right to the "fruits of science and technology." However, in the social regimes in the Americas at the hemispheric, sub-regional and bilateral levels, there appears to be few real linkages between scientific co-operation and recognition of precautionary principle. Mainly, the precautionary principle seems to be mentioned in the context of taking preventive measures, while scientific co-operation is driven alongside technological development. Do any hemispheric social regimes that actually take precaution into account in setting standards for health, the environment and other social priorities?

3.5.2 Setting Americas Standards with Respect for Science and Precaution

The Pan American Health Organization undertakes both prevention measures, and scientific and technical training to achieve citizens' well-being. It is involved in the prevention of chronic diseases such as diabetes and cancer, which are increasingly affecting the populations of developing countries in the Americas, and uses up to date scientific and medical information to ensure that their programs focus on the most vulnerable groups. In parallel, it is also in charge of disseminating scientific and technical information through publication programs. Does it play a role in setting health standards? If so, what could be the linkage between such standards, and FTAA negotiations on health services liberalization or trade in potentially harmful products?

Social regimes, and trade agreements, often rely upon technical rules and standards for health, safety, or sanitary and phytosanitary protection. Internationally agreed standards can be recognized in the FTAA, as they are in the NAFTA and other sub-regional accords. At Chapter 7 on Sanitary and Phytosanitary Standards, and Chapter 9 on all other standards-related measures, the NAFTA outlines how the parties should establish their respective levels of protection, set the standards which achieve those levels of protection, and base those standards on science. For both kinds of standards, NAFTA gives parties the right to establish the levels of protection they find appropriate. With SPS measures on human health issues, the parties are not required to do a sort of cost-benefit analysis, or be bound to enact the most cost-effective solution. Though some commentators have expressed concern that this provision does not apply to non-human health standards,³⁵⁷ these provisions can add considerable strength and relevance to those standards, and is an example of "mutually supportive" linkages between trade and social issues. If the standard requires a deviation from trade principles of non-discrimination and limits on technical barriers to trade, it will still be permitted if it is based on such recognized international or regional norms. However, countries also have a recognized right, in trade law, to set their own higher levels of health and safety standards. These standards are usually required to be based upon sound science, and not to discriminate arbitrarily against goods from the countries of their trading partners. For example, Chile recently implemented a ban on certain less expensive but more dangerous asbestos products to focus on developing asbestos substitutes, due to concerns about potential carcinogenic impacts on consumers (especially home improvement amateurs).³⁵⁸ Would they face a challenge from Canada under the FTAA, should it exist? Not necessarily. In the World Trade Organization, it has recently been demonstrated that carcinogenicity or serious health concerns may indeed justify such a restriction in trade law, as a product which produces health effects is not always considered "like" to one which may not, and non-discrimination obligations are not triggered by restrictions among un-like products.³⁵⁹

Much might depend on the wording of any commitments to restrict technical barriers to trade between the parties to the FTAA, and how a dispute settlement mechanism interprets such commitments. When a general exception is invoked to defend measure intended to protect human, plant or animal health or life, the burden of proof (including scientific proof) could fall squarely on the shoulders of those seeking to invoke the measure. In situations of true scientific uncertainty, that is a heavy burden to bear, particularly for developing countries. A requirement that countries provide sound scientific proof before accepting their health measures appears to run directly against the precautionary principle. For example, a health law or toxicity standard might be adjusted by a factor of 100 to provide a margin of safety, where risks are not certain. But how could a country prove that a factor of 100 rather than a factor of 10 was adequate, indeed necessary? The NAFTA contains a good example of a way to address this concern. While Chapters 7 and 9 of the instrument do require parties to determine the risks using sound scientific principles, the trade agreement does not prevent them from then choosing a given level of risk based on precaution. Indeed, Articles 907.3 of the SRM text and 715.4 of the SPS text expressly allow parties to enact environment, health and safety measures even where scientific evidence is inadequate to assess risk.³⁶⁰

3.5.3 Inter-American “Precautionary Measures” for Human Rights and the Environment

Precautionary measures are quite common in health and environment regimes. Interestingly enough, in Americas social regimes, “precaution” is also specifically applied and made operational by human rights instruments.

The Inter-American Human Rights Court (IAHRC) and the Inter-American Commission on Human Rights (IACHR) can request “precautionary measures” against countries of the Americas. Article 25(1) of the Commission’s Rules of Procedure provides: “In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the state concerned adopt precautionary measures to prevent irreparable harm to persons.”

This precautionary power applies specifically to human rights and humanitarian commitments in the Americas. The Commission has the ability to request that the Court (IAHRC) orders “provisional measures” in urgent cases which involve danger to persons, even when a case has not been submitted to the Court. Such authority to receive and grant requests for precautionary measures is a common instrument in social regimes, and an element of the practice of other international decisional bodies, as well as a well-established and necessary component of the Commission’s processes.³⁶¹ Indeed, where such measures are considered essential to preserving the Commission’s very mandate under the OAS Charter, the Commission has ruled that OAS member

states are subject to an international legal obligation to comply with a request for such measures.³⁶²

This power is not only applicable in cases of clear human rights violation. Precautionary measures have also been requested with regard to sustainable development for community needs and rights. The IAHRRC Resolution for Mayagna (Sumo) Awas Tingni, Nicaragua (September 6, 2002) in favour of the communities included precautionary measures, “with the object of preserving the integrity of the right to the use and enjoyment by the communities over their lands and resources...” in order to avoid the immediate and irreversible damage to their health, land and well-being.³⁶³ Recently, the CEDHA and CIEL filed another brief requesting such “precautionary measures” be enacted in protection of an indigenous community in Argentina, to protect them from cultural genocide.³⁶⁴

3.5.4 Risk Assessment and Risk Management in the Americas: A Potential Agenda for Co-operation

According to the Protocol of San Salvador, all citizens of the Americas have a right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. Indeed, at Article 10, governments commit that everyone shall have the right to health, and that in “order to ensure the exercise of the right to health, the states parties agree to recognize health as a public good.” In particular, the governments agree to adopt specific measures to protect these rights, such as primary health care (essential health care made available to all individuals and families in the community); extension of the benefits of health services to all individuals subject to the state’s jurisdiction; universal immunization against the principal infectious diseases; prevention and treatment of endemic, occupational and other diseases; education of the population on the prevention and treatment of health problems, and satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable. At Article 11, governments also commit to realize a right to a healthy environment, stating that “Everyone shall have the right to live in a healthy environment and to have access to basic public services” and that “the states parties shall promote the protection, preservation, and improvement of the environment.” How can the twin instruments of science and precaution help to realize these social rights?

One set of extremely pertinent ideas is put forward in the 1995 Pan American Charter on Health and Environment in Sustainable Human Development, which states that common priorities of the governments of the Americas include:

- “1. Updating and strengthening national and local strategies for implementing commitments made in United Nations and other international fora, concerning environment, health and development...”

2. Establishing or improving cross-sectoral monitoring/surveillance mechanisms able to identify and assess existing and potential hazards to humans and the environment...
3. Initiating early and effective action to control environmental conditions with adverse health effects on many communities and, in particular, providing adequate and safe water supplies and effective domestic and municipal sanitation systems for the large numbers of rural and urban dwellers currently deprived of such basic necessities... [and]
4. Extending and disseminating scientific and technical knowledge, by establishing linkages and networks for research and communication, and by progressively eliminating barriers to technology transfer within and among countries.”

Risk assessment, and risk management, provide one way to advance this agenda. The Health and Environment Ministers of the Americas (HEMA) process has committed to develop environmental and human health risk assessment. In particular, as mentioned above in the Environmental Integrity Principle Analysis, in their Declaration, ministers committed to “..enhance our surveillance and monitoring of the health of populations, and of ecosystems,” to undertake “capacity-building for integrated health and environment assessments for the region...,” to “develop a set of indicators for children’s health and the environment and water quality” and to “further develop, harmonize as appropriate, and use indicators to inform decision-makers in environment and health management, and in national public policy, both domestically and within the hemisphere, of the current state of affairs and on the progress which is made.” They also committed to “review the capacities of our current pan-national institutions to determine their abilities to assist nations and to review the capacities of individual countries to access, understand and use knowledge to address the common and unique problems which exist in each country and across the region... [and to] explore means to improve the sharing of information for action and the exchange of best practices...”³⁶⁵

Risk assessment provides an instrument to address scientific uncertainty. Indeed, risk assessment and management can have the single largest impact on sound health and environmental decision-making. Such approaches attempt to develop a systematic link between science and policy.³⁶⁶ In certain sectors, international organizations have attempted to develop global or regional codes for risk analysis or risk assessment.³⁶⁷ Risk assessments can assist problem solving in the most accurate and realistic manner possible, using cutting-edge principles and current information from scientific literature. Health and environment risk assessment instruments can be helpful in a number of areas, and an international institute or process might serve many countries in the

Americas. Such processes can help to identify, evaluate and manage persistent, bioaccumulative, and toxic (PBT) substances, and conduct chemical toxicity reviews. They can include the modeling of environmental pathways and assess exposures for a wide variety of pollutants. They can assist in developing methods, models, and guidance for countries undertaking risk assessment and management in a variety of areas. They can help to assess pesticide risk and provide registration support. An instrument can also conduct risk-based ranking, planning, and evaluation, provide regulatory impact assessment and support, assess site-specific human health and ecological risks, in support of developing cleanup standards and selecting remedies, assist in assessing risks at currently operating and planned industrial facilities, in conducting statistical evaluations of site and background data, and in evaluating consumer product risks.

3.5.5 Recognizing Local Science: Indigenous Peoples and Traditional Knowledge in the Americas

On a hemispheric level, certain OAS social programs explicitly recognize science and the need for precaution, particularly with relation to the impacts of development among indigenous peoples. The Draft Declaration of Indigenous Peoples Rights, at Article XXI, re-affirms the right to development and suggests precautionary measures to mitigate adverse ecological, economic, social, cultural or spiritual effects.³⁶⁸ Such an approach is commendable, but more remains to be done. The 2001 Summit of the Americas Declaration, with regard to this issue, commits governments to “[d]evelop processes to evaluate the efficacy of alternative health practices and medicinal products to ensure public safety and share this experience and knowledge with other countries in the Americas.” Local science, health practices and medicinal products, as well as adaptive management techniques, have been developed by indigenous peoples over the course of millennia through experimentation and careful monitoring. In many instances, the vestiges of knowledge which survive have been transmitted through oral histories or other techniques, and are part of a spiritual, historical and cultural heritage. Such practices and products could indeed be subject to evaluation, and new processes can be developed to ensure this is done well. However, the reason for such evaluation should not focus only on a need to “ensure public safety.” Such a process might be flawed from the start. Rather, this should be done in order to ensure that genuine practices and products can be recognized and valued in the Americas, and that rights to these processes are protected.

Indigenous peoples science can be considered sound science, and medicines based on homeopathy or local knowledge are not automatically suspect. In the context of globalization and regionalism, indigenous peoples of the Americas can offer scientific approaches and solutions based on non-industrialized cultures. Such practices often have important bioethical foundations.³⁶⁹ Some

have argued that this is due to several important elements—first, an alliance with nature and the respectful management of organic processes which are local, inexpensive and healthy; second, the recovery of remembrance, where spirituality plays a fundamental role before the materialist, individualist and mercantilist world, and third, the reformulation of sound science to become the “science for and by the peoples” by placing emphasis on new ways of elaborating, transmitting and applying scientific knowledge.³⁷⁰

3.5.6 Recommendations

Based on the analysis of existing instruments above, certain specific recommendations can be made.

Respect Science and Precaution in Setting and Recognizing Social Standards

Some support science, but not precaution. The two should go together, one proving its utility in situations where there is no scientific certainty. Those who oppose the precautionary principle mistakenly argue that it is a barrier to innovation and development.³⁷¹ It is not—rather, it can provide excellent incentives for firms and scientists to innovate for greater health and safety, to develop systems and technologies that can provide greater security about their products and services.

Some have observed that there is a need to move from science that ignores public participation to a science that builds upon, and involves, communities and other actors.³⁷² Precautionary processes can be extremely helpful for this purpose. Valuable public debate and decision-making can take place in the context of setting a precautionary health or safety standard and choosing the appropriate level of risk for a society. Trade law requirements for scientific proof to set health and safety standards are set in place to ensure that such measures are not enacted merely for “disguised protectionism.” However, when such provisions are not carefully drafted, the burden of proof can fall in the wrong direction. In many instances, especially in smaller economies of Latin America, full investigations of a risk do not exist, and resources are scarce to carry them out. Even when scientifically-sound studies have been carried out, there is often uncertainty about the appropriate margin of safety that is required to protect against threshold effects or irreversible damage to human health or the environment. While such investigations are proceeding, and afterwards, if there is still scientific uncertainty, space must be provided to use precaution. The need for precautionary measures should be recognized in the FTAA, so that the lack of scientific certainty as to the nature or extent of a serious risk is not used as an excuse to prevent a country from applying a health or safety measure. The burden to prove a risk should not fall only upon those defending a health or safety standard. But while there must be space in the

FTAA for precaution where it is needed, this should be coupled with clearly agreed regional or sub-regional guidelines for its use. Such guidelines may be best agreed within the scope of Americas health, safety and human rights instruments (i.e., within the social regimes themselves), and simply recognized in the trade agreements just as standards themselves can be recognized. New trade agreements in the Americas, in particular the FTAA, should include provisions similar to those in the NAFTA on standards. They should also provide for parallel discussions, among labour and other ministers, to set common hemispheric standards in areas where these do not exist, in order to ensure that social regimes improve as trade does.

Promote and Implement the IAHRs "Precautionary Measures"

The Inter-American Human Rights System has an important tool in the ability of the Court, or the Commission, to request precautionary measures. This precautionary power is limited to serious and urgent cases, but the Commission is permitted to act whenever necessary, and the standard of proof is precautionary—"according to the information available." It has the right to act on its own initiative or at the request of a party. While the only thing it can do is to request that the state concerned adopt precautionary measures, and this must be done in order "to prevent irreparable harm to persons," this is still a very valuable tool for human rights and socially-sustainable development. Such requests, coming from the Inter-American Human Rights Commission or the Court, shine a spotlight on the offending actions. In this way, they act in a similar manner to the North American Agreement on Labour Co-operation.³⁷³ In addition, the "oversight" function provided by this instrument can grant increased legitimacy and higher levels of protection of human rights, through an independent body, to all states, helping them to comply with their commitments. Such mechanisms, however, can only be useful if they are used. Officials from state parties should be trained in the use of these instruments, and civil society organizations with legal expertise, should be supported to spread awareness of such avenues and provide capacity building to communities that need them. In addition, the media must be better informed and trained to report on the pronouncements of the Court and the Commission, in order to ensure that these decisions become part of the public debates in the Americas.

Develop an Americas Instrument for Risk Assessment and Risk Management?

To strengthen the social regimes of the Americas, there is a need to connect respect for sound science with understanding and inclusion of precaution. By helping approaches to science and politics become more interdisciplinary, it is possible to link knowledge development with policy-making, ensuring greater relevance. In the context of the FTAA and the broader Americas integration process, opportunities arise for public debate about the role of precautionary

regimes in facilitating health, safety and environmental policies for industries, citizens, countries and peoples. One possible way forward would be to develop a common framework for risk assessment and risk management for certain key sectors in the Americas, laying out the basis for hemispheric scientific cooperation, and providing guidelines for use of the precautionary principle. Such an instrument should be flexible and innovative, as the precautionary principle can be applied in different ways, using an adaptive approach which depends on the countries involved and on local cultures. It should look beyond the development and transfer of technologies or just preventive measures. It should build on, and encourage, innovative research methods based on positive and constructive approaches to analyse potential hazards, threshold effects and irreversible harms or damages to health or the environment. Risk assessment and management processes can also serve as conduits for public participation. Scientific decision-making process and precautionary priority setting should be done with maximum possible dissemination of information and public participation. Assessment methods help to provide such means for participation.

Recognize Indigenous Peoples Traditional Knowledge as Local Science

Traditional views of science and technology must be made broader, to include recognition of traditional knowledge from indigenous peoples. Often developed incrementally over thousands of years and many generations, such traditional knowledge is adapted to, and focuses on, local problems, but can also offer innovative policy options to address hemispheric problems. A re-definition of “science” is needed, one which recognizes valuable traditional knowledge as an avenue to strengthen scientific certainty. Efforts to use and apply both science and precaution should take into account the traditional knowledge of indigenous peoples. Such knowledge is key to advancing scientific criteria in the decision-making process. Local science can provide an important element to reinforce social regimes in the Americas, particularly with regard to the adaptive management systems of indigenous peoples, and the needs of rural populations with special or unique health and social challenges. Any processes developed to “evaluate the efficacy of alternative health practices and medicinal products to ensure public safety and share this experience and knowledge with other countries in the Americas” must be carried out with broad goals and an open mind, and be truly independent, in order to provide a balanced view of both “public safety” risks, but also the benefits and spiritual, cultural and traditional aspects of such practices and products.

3.6 Subsidiarity Principle

“Subsidiarity recognizes that action will occur at different levels of jurisdiction, depending on the nature of issues. It assigns priority to the lowest jurisdictional level of action consistent with effectiveness. International policies

should be adopted only when this is more effective than policy action by individual countries or jurisdictions within countries.”³⁷⁴

Subsidiarity applies to social regimes in the Americas in very special ways.³⁷⁵ The principle implies that wherever possible, social problems should be addressed at the domestic or sub-national level, closest to those most affected, except where problems occur that require international co-operation. This seems to describe the position of most countries in the Americas with regard to social issues—policies related to health, education and social security are often seen as highly political and sensitive to the national interest, hence, best decided at home.³⁷⁶ Though international development assistance is permitted in a health crises, or natural disasters, social policies are generally sensitive political issues in most countries, and cannot be lightly internationalized.

In the context of regional integration, however, these bright lines blur, requiring new social policy responses.³⁷⁷ Social policies in different jurisdictions or countries can reflect differences in social conditions or development priorities, which may lead to disparities in social situations within countries or among groups of countries. When regional economies depend on a certain degree of stability in each member country, and trans-boundary movement of natural persons becomes more common, certain sensitive social issues may require international policy solutions.

Three sets of policies that can be affected in this way by globalization and economic integration are health and education services (including related financial services such as health insurance), human resource development (such as training of professionals) and social security (such as receipt of benefits by the elderly or the disabled). These issues lead to related domestic social policy challenges which probably must be considered at the international or regional level. How to regulate the provision of health care by telemedicine, or education by distance learning? How to extend the benefits of the social security system for transitory professionals, or for migrant workers?

Therefore, subsidiarity can help to define the best level where policy solutions should be sought. When the principle of subsidiarity is applied to social policies and issues in the context of global or regional integration, international co-operation mechanisms (and decentralization processes) become necessary in unexpected areas.

3.6.1 Subsidiarity in Americas Social Regimes

Subsidiarity, for social regimes, refers to the degree that a concern can be satisfactorily addressed within the boundaries of a particular jurisdiction. In general, social regimes are defined at national level, with certain issues addressed at a lesser jurisdictional level (municipalities, provinces, etc.), while others are carried out in co-operation with other countries through international entities

of a bilateral, regional or global nature. Recently, debates have revolved around the hemispheric level, seeking to clarify the role of regional social programs in the Americas. What is the most appropriate scale and scope for hemispheric level co-operation on social issues?

The principle of subsidiarity proposes that decisions should be made, consistent with effectiveness, at the level closest to those affected. However, the globalization process—a phenomenon linked to, and defined by, global development of technology, communications, and increasingly transnational economic and business strategies—has been accompanied by the deepening and broadening of the issues brought under coverage of liberalization commitments in trade agreements.³⁷⁸ This has led many to argue that new issues related to social regimes may also need to be addressed on the international level.³⁷⁹ The reform of social systems (such as health, education or social security) over the past decade in the Latin American and Caribbean countries has contributed to this same debate and led to similar conclusions. Of course, national governments are still the principal policy-makers for social systems, even those which exist irrespective of political boundaries. However, it is important to analyse which circumstances make global, regional or sub-regional action or response more appropriate than national control. In the Americas, the application of this principle is only beginning to be explored.

Potential levels of international decision-making for a problem include global (through multilateral accords and tribunals), hemispheric (comprising of the countries of the Americas), regional (generally described as Latin America and the Caribbean, and North America), sub-regional (the five sub-regions of the Americas) and bilateral. This creates a complex overlapping system of international obligations, and potentially hinders effectiveness. Which level is most appropriate to address which social issues? How do we ensure that new hemispheric regimes are still close to those most affected?

Subsidiarity in Liberalization of Americas Health Services

Health policy, in the Americas, often finds itself in that uneasy “no man’s land” between formerly national jurisdiction, and internationalization of individual problems (and solutions). For instance, in frontier regions between countries with different levels of health care or different costs of the services, consumers from one country go to the other to satisfy their needs.³⁸⁰ This takes place frequently along the borders because of geographical proximity. But it also occurs with people who have resources to pay for high-quality services in a foreign country or belong to a health insurance company that offers this choice (usually, a private or foreign one). Depending on the implications of these situations for the affected domestic health care systems and for people who cannot afford such services, different policy responses are possible, such as co-operation agreements between countries to address the problems generated by this

practice.³⁸¹ In particular, health services liberalization has become common in many countries of the Americas, including through the Medicare debates in the United States, and this practice is linked to liberalization commitments taking place at the international and sub-regional level.

Services liberalization is a particularly challenging part of international economic integration processes. In more limited spheres of integration (at bilateral, regional and hemispheric levels) deeper progress could potentially be made in areas such as liberalization of health services. The WTO does not block subsidiarity, though it does appear to limit co-operation to serious regional co-operation frameworks.³⁸² Thus, to the extent that progress is made on trade negotiations and on concession of preferences at different levels of integration, the hemispheric system could come to be a plus for the multilateral system, and the sub-regional and bilateral systems could be a plus for the hemispheric agreement.³⁸³

At the hemispheric level, FTAA negotiations have not advanced beyond GATS. The Services Negotiating Group had an April 1, 2002 deadline to submit its recommendations to the Trade Negotiations Committee (TNC) on negotiating procedures and means for evaluation by the TNC with a view to launching negotiations by May 15, 2002 at the latest. The negotiations are to conclude by January 2005 at the latest, and the agreement would take effect no later than December 2005. At the regional level, the North American Free Trade Agreement (NAFTA), the Common Market of the South (MERCOSUR), the Andean Community (CAN), the Group of Three (G-3), the Caribbean Community and the Caribbean Common Market (CARICOM) and the countries of the Central American Common Market (MCCA) without Panama, have signed services trade liberalization agreements. Only the MERCOSUR agreement used the same negotiation mode as GATS, involving a "positive list." The other agreements, following the NAFTA model, have been negotiated using a "negative list." "Positive list" negotiations mean that the agreement's member countries establish a list of the market access and national treatment commitments they grant to a particular service or service supplier by mode of supply. "Negative list" negotiations means that the agreement's member countries, as of its effectiveness, agree to grant market access and national treatment for all services, except those specified in a list, which will be liberalized over the course of future negotiations.

MERCOSUR has still not ratified the Montevideo Protocol establishing rules for liberalization of trade in services. This Protocol, signed in December 1997, includes lists of specific liberalization commitments signed by each country by sector and mode of supply. These lists, at least for health services, simply consolidate the same commitments as under GATS. Although the Protocol has not yet taken effect, member governments have continued to hold annual negotiating meetings. However, they have not stepped up the initial commitments.

In 1998, the Andean Community (CAN) established that to achieve full liberalization of trade in all services annual negotiations would be held on the basis of an inventory of measures restricting trade in services.³⁸⁴ This inventory was only approved October 31, 2001 (CAN Decision 510), and liberalization negotiations have not yet advanced since then. That Decision provides that in the two months following its effectiveness the CAN General Secretariat would submit a work schedule to the Member Countries with a view to moving ahead on the liberalization process.

On March 24, 2002, the MCCA signed its agreement for liberalization of trade in services, to take effect December 31, 2002. It provides for a process of progressive liberalization of the remaining restrictions (set forth in attachment I to the Agreement) through bi-annual negotiations.

The countries of CARICOM and Mexico under NAFTA seem to see little need to move ahead at regional level, since they have granted preferences at multilateral level in almost all sectors of health services. Mexico has signed liberalization commitments under GATS for all the health services. Consequently, given that NAFTA is one of the Agreements that has made the most progress in the integration of services, the preferences that can exist within the region with respect to GATS are in market access in mode 3 (FDI) for insurance, or in market access and national treatment in mode 4 (movement of professionals).³⁸⁵

Under the CARICOM Agreement, there appears to be greater progress at the regional level with respect to GATS in the movement of professionals. One of the most significant measures undertaken by CARICOM to liberalize trade in services in the sub-region has been the commitment to allow university graduates to move among, and work freely in, any of the CARICOM common market countries. For this, each member country was required to pass national laws implementing provisions to liberalize that movement. This agreement provides for elimination of all restrictions on trade in services through a program that is still in the process of being prepared.

Thus, at present there is no greater priority given to the regional level versus the multilateral level for trade in health services. In the future, given that these Agreements have provided for full liberalization of trade in services by the year 2005 in the case of CAN and by that date or sooner in the case of CARICOM, MCCA and MERCOSUR, regional preferences could be deeper than the multilateral ones. In addition, GATS is currently undertaking the negotiating round (one originally scheduled to start in the year 2000, and mandated to conclude in 2004). The degree of progress on liberalization of health services in that Round will set the stage for progress in the FTAA, and that in turn will be the basis for progress that can be made at a regional level.

It is interesting to note that within each regional block, the countries that signed GATS commitments in health services did so in similar sectors.³⁸⁶ Within CAN, all the countries signed commitments only in mode 3 for health insurance, with the exception of Ecuador and Bolivia, the least relatively developed in the region, which also incorporated hospital services. The MERCOSUR countries signed commitments only in mode 3 for health insurance. In MCCA, Costa Rica, unlike the rest, has signed commitments in medical services and in mode 2 for hospital services, while the other countries under the agreement either have not signed commitments or have done so only in health insurance. Panama, which is not part of the trade agreement on services but belongs to MCCA, has signed in insurance and hospital services. CARICOM, with the greatest divergences among its members, concentrates its commitments on medical and dental services. Finally, in NAFTA, Mexico has liberalized everything multilaterally, while Canada and the United States maintain certain clear reservations. The United States has signed commitments only in hospital services and health insurance, and Canada only in insurance. These similarities among the sectors liberalized under GATS by members of each regional block may be evidence of the fact that the countries maintain common positions regarding health services liberalization with their partners in the regional agreements. This is seen clearly in the case of MERCOSUR and CARICOM. In the MERCOSUR block there is special interest in attracting investment, in general.³⁸⁷ In CARICOM, the shared supply of medical services is a mode in expansion. This implies that trade in medical services will be increasingly liberalized among countries, both by movement of patients (mode 2) and by transfer of professionals (mode 4). As mentioned above, almost all the CARICOM countries already have national laws that permit free movement of professionals.³⁸⁸

Subsidiarity and Sub-Regional Social Security Co-operation

Social security systems contribute to the well-being of the population by protecting people from loss of income due to illness, old age, unemployment, disability, etc. According to FOCAL, in Latin America and the Caribbean, social security systems are highly segmented, covering middle class, urban employees and those groups that have the ability to organize themselves and be represented in public life. With few exceptions these systems do not protect the poor, and as such, fail to deliver on their most important social policy goals. In most countries of the Americas, reforms are attempting to incorporate new mechanisms into the social security systems, improving coverage and adapting to challenges posed by changing demographics in the region.³⁸⁹

Social security systems (and citizens) may begin to face an increasingly complex system of private and public rules, unless regional co-operation can be established during these reform processes. Agreements to harmonize and even-

tually integrate social security systems are gaining currency in the Americas, though much further analysis would need to be done before a hemispheric system could be realistically proposed.

In the Americas there are many sub-regional agreements which are making efforts to integrate their social systems. One which has gone furthest is the CARICOM (the Caribbean Community countries), which has developed an institution to address social issues in the sub-region called Council for Human and Social Development (COHSOD). This COHSOD administers the CARICOM Agreement on Social Security, which establishes the harmonization of the social security legislation of the member states. This regional instrument provides for shared health services, in recognition of the high degree of mobility among citizens and consumers within the region. Parties to the treaty have also opted for harmonization of courses and graduation exams for nurses. The equivalence is such that nurses can continue their studies in any country in the Caribbean Community. At the end of training, all take the same graduation exam. This ensures free mobility of these health professionals within the region. At the level of physicians, there is a common registry for all countries of the region, and a regional medical practice code that facilitates their mobility within the region. In almost all the countries of the Agreement, there are national laws guarantying free mobility of professionals in general.

Therefore, for these countries with common characteristics, small sizes and various integrated economic activities, it appears helpful and positive to have this kind of integration in their social systems. This does not mean that such a high degree of integration is necessarily the best choice for all integration regimes. For example, it might be less possible to harmonize accreditation and licensing requirements in countries with very different characteristics and languages. Indubitably, only health issues upon which hemispheric co-operation is clearly relevant and useful should be addressed at this level. In the area of health policy, however, there appears to be a growing category of such common problems and solutions.

Development of Human Resources, Movement of Professionals and Subsidiarity

If the hemispheric integration process is successful and the Americas draws closer together, there may be increased movement of natural persons. Professionals often undertake temporary movement among countries, upgrading their capabilities, fulfilling unsatisfied demand for professional services and enhancing their incomes or quality of life. With regard to the movement of professionals, there are different challenges for the guarantee of a minimum level of professionals to provide basic care. Such professionals face difficulties, as each country imposes different requirements on them, whether this is justified by the nature of the skills involved or not.³⁹⁰ These difficulties then

affect quality of professional care and access to such services in the country in question.

For example, among countries of the Americas, those in the worst situation in terms of the availability of physicians are Haiti and Guyana. These countries physician per inhabitant ratio is below the level proposed by WHO as a goal for the year 2000 (one physician per 5,000 inhabitants), and they continue to suffer from the exodus of such professionals. Jamaica exports health professionals (chiefly nurses), especially to the United States, but has a deficit of these professionals locally. According to information for 1995, 50 per cent of posts for registered nurses and 30 per cent of posts for midwives were vacant. That is, it invests in the training of professionals, but since it cannot keep them in the country it loses the investment made and has difficulties in providing good health services. In this instance, the exportation of professionals can cause problems, affecting a population's access to health care and the quality of the service provided, as well as the efficiency of the system due to the lost investment.

Brazil also suffers a scarcity of both types of professionals and has not signed liberalization commitments for either. In the case of highly-qualified nurses, it may not offer competitive employment and salary conditions to import them from abroad. It needs physicians in general, primarily in rural and remote areas of the country, but does not establish regulatory mechanisms to encourage their entry from abroad. If diploma equivalence systems are very complicated, and professional associations also impose strict qualifications tests for their acceptance, a country is likely to face difficulty importing skilled professionals. Consequently, despite the need for health personnel and the country's competitive difficulties in attracting such personnel from abroad, there are regulatory barriers to entry of such personnel. These erode the possibility of providing more equitable access to health care for all the population.

This situation can be improved, if not resolved, through international agreements—the options are usually either harmonization of the degrees and licensing systems, or mutual recognition of accreditation procedures and standards. Such agreements seem much more likely on the regional or sub-regional level than on the global level for a host of reasons which will be addressed below.

In the regional integration processes that attempt to resolve the problem of accreditation of degrees and licensing to liberalize movement of professionals in the health sector two possible mechanisms are proposed: harmonization or mutual recognition. A third, more unilateral approach is also possible but might not be feasible for most countries of the Americas.

The degree harmonization process is being undertaken in MERCOSUR. The four countries had to define, first, a glossary of common terms regarding health services. They had to determine which medical specialties would be

considered common to the four countries. Given the difference in the number of specialties existing in each country (between 60 and 70 in Argentina and Brazil, 48 in Uruguay and 29 in Paraguay) they proposed recognizing the existence of 28 basic medical specialties. They also agreed that there would be a single national registration by country, since in Argentina and Brazil this process is decentralized at province or state level, respectively. In November 2001, they proposed the creation of an evaluation commission to harmonize the training in medical specialties. After that, the issue of nurses and dentists would be addressed.³⁹¹

In NAFTA, harmonization is underway in training and certification of nurses. The Trilateral Initiative for Nursing in North America implemented in 1994 has worked on the harmonization of licensing and certification standards for nurses in the three countries. Representatives of nurses' organizations, governments and others identified similarities and differences in the training, standards and practices for nurses, and drafted recommendations for development of mutually-acceptable criteria for licensing and certification.³⁹² As mentioned above, the CARICOM also opted for harmonization of courses and graduation exams for nurses, allowing them to continue their studies in any country in the Community.

On the other hand, Cuba produces an excess of health professionals as part of its strategy for exportation of health services and co-operation with needy countries. That exportation is temporary and is administered by government agencies. The most frequently used instrument has been through signature of solidarity agreements with developing countries in Africa and in Latin America, such as Nicaragua. In recent years, there has been increased use of the hiring system where remuneration is paid by the foreign government or entity. Such contracts have been signed with Middle Eastern countries like Libya, and the Latin American market has been broadened in countries like Belize, Ecuador, Venezuela, Brazil, Peru and Bolivia. Cuba primarily exports doctors, but also nurses, dentists and engineers specializing in medical equipment. Cuba thus exports professionals without eroding medical attention in the country. It does not lose the investment made in training because the outflow of professionals is temporary and is part of a government strategy for international co-operation (under solidarity agreements) and for generation of foreign currency (under contracts).³⁹³

Other countries can adopt unilateral strategies for exemption from requirements for entry of certain professionals, when they have a deficit of such professionals and want to recruit abroad. This is the case, for example, of the United States, which has promoted entry of nurses by granting special visas that allow entry to the country for a limited time without the need to obtain certification from the United States Department of Labour. Since 1989, dif-

ferent types of visas have been made available, broadening the spectrum for all types of health providers that have obtained a Bachelor's Degree. As many as 500 visas have been granted to nurses per year, and since 1994 the states' departments of public health have had the possibility of hiring up to 20 physicians per year to cover areas where there is a scarcity of personnel.³⁹⁴ The country also grants special visas to nurses and physicians from Canada under a trade agreement signed in 1989, and to highly-qualified professionals from Canada and Mexico under NAFTA.³⁹⁵ While this less co-operative strategy maintains high domestic control, and can ensure that health care needs are met if predicted accurately, it is perhaps less practical as a model. Few countries in the Americas have the same luxury to pick and choose among many potential skilled entrants each year.

International debates on regulations focus on the importation of professionals but do not often consider the consequences of their exportation. Liberalization without careful attention to these issues would not solve all problems, but might instead generate more. Many developing countries suffer the loss of professionals (and investments in education, training and development) without any compensation from developed countries, while simultaneously finding that skilled human resources are insufficiently availability. Often, these countries lack competitive characteristics to attract such skilled professionals. International efforts to open up movement of professionals must take into account potential social impacts, and resolve some of these challenges as part of the de-regulation debate.

De-Centralization and "Second Generation" Social Sector Reform

The principle of subsidiarity can also be extended to the relationship between national governments and sub-national governing structures. There are seven federal nations in the Western Hemisphere: Argentina, Brazil, Canada, Mexico, United States, St. Kitts-Nevis and Venezuela. International accords affect powers which, in federal states, are in the purview of provincial or local jurisdictions. With the social reforms in the Americas, a principal objective was the decentralization of the provision and financing of social services. This, in addition to the federal structure of many countries, can function as an impediment for many governments bound by liberalization commitments at the global level (for example, in the services negotiations at the World Trade Organization). For this reason, the validity of sub-national trade-related social measures has been scrutinized by other governments, or international competitors, seeking to reduce barriers to trade and investment. Very large countries or countries with very different social realities need decentralized policies. But they also require international and national co-operation mechanisms to address their problems. In these cases, the solution may be to identify regions with similar problems in the provision of services (for example, needs for professionals—doctors, nurses or other

specialists—in the remote areas of their countries) and design co-operation mechanisms to solve problems at the level. As explained by Savedoff, a senior economist at the Inter-American Development Bank's Sustainable Development Department, with regard to decentralization processes in health systems, "the main challenge for international co-operation in this issue is to improve the transfer of management technologies." Another difficulty for many developing countries is related to the transference of technology in general but much more for the health sector. In this sense, Savedoff is also convinced that the international community should help countries identify their problems, and then, co-operatively seek the best solutions.³⁹⁶

It is increasingly accepted that social measures can be taken in the context of agreed international social goals, and that this can require sub-national coordination and coherence. It also requires achieving a governance balance between social governance systems at the central government level, and the corresponding obligations and jurisdiction of states, provinces or cantons. In addition, subsidiarity should not stop at the national or even provincial level, it also implies empowering community and indigenous peoples' participation in local social issues. Social subsidiarity must recognize that linkages extend from the local level to the multilateral level and vice-versa and, as noted, are still almost independent of administrative boundaries. This implies that the full extent of relevant social systems must be taken into account when designing co-operative mechanisms to ensure social problems are addressed at appropriate cultural and community scales.

In the Americas, hemispheric, regional and sub-regional co-operation arrangements are beginning to incorporate the subsidiarity principle, "particularly in the clarification of national-local democratic relationships and in the changing relationships with indigenous peoples."³⁹⁷ But the challenge still remains for governments to evaluate which is the best way to guarantee that this principle is actually applied.

Recent reforms which took place during the decentralization process in the Americas have resulted in impacts on social systems.³⁹⁸ Sometimes the final aim of these decentralization processes appeared to be reduction of burdens on central budgets. In these instances, the necessary technical and financial conditions for an efficient delegation of functions were not adequately established, and political decisions may even continue to be adopted at the national level, while the responsibility for delivery of services falls upon the sub-national units.

Pre-Regulation of Social Policy in the Americas

International objectives of liberalization processes, guided by the different trade agreements, imply deregulation of national systems. However, to achieve social policy results, many systems actually require a careful, focused re-regu-

lation. Social services (health, social security, education and so on) are provided by imperfect markets, and these often need good regulation to achieve efficiency and quality of these services. As such, it is very important that countries embarking on the process of international liberalization of social services establish solid regulatory frameworks and effective control procedures. This is, in effect, the central challenge. Many developing countries, especially smaller economies in the Americas, suffer from very weak regulatory capacity and almost ineffective control mechanisms. These problems directly affect the efficiency and quality of services, but also, access to services and equity, though this is usually a central objective of the system.

A good example of the need for regulations to be carefully designed before liberalization procedures are set in place occurred in Chile. Private insurance companies (called ISAPREs) began operating in 1981, without the presence of a supervisory authority or a regulatory framework. Ten years later, the Superintendency of ISAPREs was finally created.³⁹⁹ There was evidence of inequitable access to health services generated by the free operation of such insurance companies (the lack of regulations and the state's limited ability to exercise control), as well as problems with quality of the services. Now, new reforms of health insurance systems are being debated to address the problem of inequity.⁴⁰⁰

How best to regulate the market to guarantee the entry of foreign providers, encouraging the improvement of the performance of the system and the quality of their results, while avoiding inequity and increasingly unequal distribution of training opportunities? If a system is appropriately regulated, the liberalization and entry of private insurers can have positive effects on system efficiency and quality. If it generates competition, this can lead to a reduction of prices and greater access to services provided by such insurers. Similarly, if it fosters technology transfer or improvement in service qualities, those benefits could be distributed over a broader spectrum of the population.

Health insurance services are highly portable. Many countries and their citizens seek ways to be provided with access to foreign health care services, especially if these are not already available in the country. For these reasons, governments can even promote the selling of health care services to foreign consumers.⁴⁰¹ However, prior to discussing the liberalization and movement of health insurance services, legal liability must be addressed, and systems set in place to ensure mutual recognition of certification for the establishments providing medical care abroad. In relation to the liberalization of services, then, the challenge is both national and international at the same time.⁴⁰²

3.6.2 Recommendations for the Americas

In essence, social subsidiarity implies that governments must address social concerns at a level which reflects the scale of the social challenges, and the gen-

eral subsidiarity principle suggests that this should result in decision-making by those most closely affected. This requires both defining the scale of the impact, and identifying those who will be affected. Only then can the “most effective level of government” be determined with any degree of success.

For social regimes in the Americas, this study recommends that regional, sub-regional and hemispheric integration processes take subsidiarity into account in planning health, education and other social services liberalization. The principle provides a conceptual foundation for a new, integrated hemispheric management based firmly upon coherent, coordinated sub-regional and regional management systems. The countries of the Americas have established different agreements on social regimes at the sub-regional level. These structures should be consulted and made part of the policy-making process at the hemispheric level, along with representatives of groups that depend on their services.

Investigate Future Needs for Hemispheric Social Services Co-operation Measures

As mentioned above, CARICOM has an institution for social issues and has just established sub-regional agreements on social security, health and education. MERCOSUR has also a working group involved in the issue of health (and the harmonization of licensing procedures of health professionals) and another working sub-group addressing social security systems. It has just signed a Multilateral Convention on Social Security. The Andean Community of Nations (CAN) has been working on educational issues (the harmonization of educational systems, the acceptance of professional licenses, certificates and degrees and the definition of educational policies in border areas), on health issues (with regard to healthy frontiers, telemedical and health promotion programs for the Aymara communities in Bolivia, Peru and Chile), and on social security issues (related with the coordination of policies in the different countries). The Central American Integration System (SICA) has undertaken a gradual harmonization of social policies and defined a Strategic Plan for Development and Social Integration 2020.

Undertake Ex-Ante Assessment of Services Liberalization to Define Best Regulations

For positive results from the international trade liberalization process in social services (health, education, social security, and so on), good communication and coordination is absolutely essential between trade policy-makers and social policy implementers. This is important for defining what kind of liberalization is to be sought, and how to achieve it. Coordination is also important so that social sector managers can be aware of the mechanisms that should be put in place in order to avoid negative impacts and to make the most of the

positive impacts that can be generated. Given the importance of the social side of hemispheric integration, and commitments that have been undertaken to achieve services liberalization and integration over defined periods, there is an urgent need for assessment. As liberalization commitments in trade agreements are not easily revoked or modified, it would be advisable to conduct full assessments and consultations prior to making such commitments, and ensure that full studies have been done to evaluate their possible impacts on the social systems. This assessment should evaluate ways to harmonize, mutually recognize or otherwise coordinate the sub-regional social policy-making structures, and address the possible implications of a hemispheric agreement in services from a sustainability perspective.

As hemispheric integration proceeds, new governance structures will be needed to ensure that decision-making can continue to move toward being made closest to those most affected. Respect for this principle places a strong caution on the creation of extensive new international structures or institutions, suggesting that where appropriate, networks of existing smaller regimes might be more appropriate.

3.7 International Co-operation Principle

Sustainable development requires strengthening international systems of co-operation at all levels, encompassing environment, development and trade policies.

The most desirable forms of international co-operation will avoid conflicts, through international efforts at development and environmental protection, and by improving the functioning of the global trading system. When international disputes do arise, they must be resolved internationally. This requires open, effective and impartial dispute settlement procedures that protect the interests of weaker countries against the use of coercive political and economic power by more powerful countries. Procedures for handling these disputes must be capable of addressing the interests of the environment, development and the economy together. This may involve changes to existing rules, changes to existing dispute settlement mechanisms, or the creation of new mechanisms.

Increasingly, as globalization intensifies, countries are expected to be held to their regional or global social development (especially human rights) commitments. The best case scenarios presented by hemispheric rhetoric clearly propose a “race-to-the-top” whereby quality of life improves as economic integration proceeds. To make this a reality, international and NGO pressures on governments for development and respect for human rights must increase, and so must international development financing for social spending.

In some cases, countries may need to exchange some national sovereignty for global progress on sustainable development. Historically, there are many

examples of countries making such exchanges for progress on important global issues, but it has only occurred when the countries involved have seen it to be in their best interests. In the Americas, countries signing a multilateral treaty, or subscribing to regional social organizations such as the Pan American Health Organization, are usually making such a “deal.” This type of international co-operation will be critical to achieving sustainable development in today’s context. Progress on Americas human rights, health or education issues can only come about with the sustained co-operation of developing countries. Such co-operation is unlikely to be forthcoming if these countries feel they are being victimized by unilateral trade sanctions undertaken by large economic powers, in the absence of internationally-agreed rules for their use.

3.7.1 Hemispheric Social Development Co-operation in the Americas

As international co-operation deepens in a regional integration process, there is room for both international law and for additional benefits of “soft law” provisions. At the global level, non-binding declarations with considerable suasion and moral force include the Millennium Development Goals, the results of the Monterrey Conference on Financing for Development, many national Poverty Reduction Strategies, even the regional WSSD plan of action in the Americas.

There are many existing hemispheric development institutions whose objectives and mandates focus on social development in the Americas.⁴⁰³ It can reasonably be asked—in this area, is there any need to develop new ones in all areas? For certain pressing social development issues in the Americas, such as health, or human rights, it might be better to re-affirm, strengthen and increase commitment and support for existing hemispheric projects.

For example, the Pan American Health Organization (PAHO) has a long-standing history of building international co-operation on hemispheric health issues.⁴⁰⁴ The PAHO is an international public health agency, working to improve health and living standards of the people of the Americas. PAHO has an ambitious work program, and is financed both through member governments, and through an innovative Foundation mechanism.⁴⁰⁵ It is governed by health authorities in its member states,⁴⁰⁶ and is carefully embedded as the regional body in an international system of health co-operation.⁴⁰⁷ This health collaboration found expression at the highest political level when American heads of state in their Summit in Santiago accepted a health initiative called “Health Technology Linking the Americas.” According to PAHO, the Pan American approach is a part of its history and the spirit of Pan Americanism continues to stimulate technical co-operation among countries in health. PAHO has helped countries work together toward common goals, and to initiate multi-country health ventures in Central America, the

Caribbean, the Andean Region and the Southern Cone. Experience has shown practical benefits such as the solidarity that helped Central America after hurricane Mitch, and there are numerous other examples.

Two examples highlight the value of regional co-operation in this regard. First, the countries of Latin America and the Caribbean joined together over 20 years ago to buy vaccines through a revolving fund, bringing them tangible benefits and helping advance PAHO's efforts to eliminate or control vaccine-preventable diseases. These are among the Organization's most notable successes, starting with the eradication of smallpox from the Americas in 1973; a triumph followed five years later by global eradication of the dreaded disease. Second, a major effort committing the Americas to embark on polio eradication in 1985 finally succeeded in September 1994, when a distinguished International Commission declared the Americas officially polio-free. The last case of polio in the Americas was identified August 23, 1991 in a young boy named Luis Fermín Tenorio Cortez, in Junín, Peru. Since then, despite intensive surveillance, no cases of polio have been detected anywhere in the Americas, and the World Health Organization is now working toward the goal of eradicating polio globally.

The PAHO recognizes the role of the private sector in the delivery of services, by fostering dialogue and partnerships with the Ministries of Health across the Americas. It does not appear to rely on coercive measures or trade sanctions, nor does it even apply binding laws *per se*. Rather, working through inter-governmental and professional awareness campaigns, technical assistance, capacity building and research grants, it has made a positive commitment to improving health in the Americas.⁴⁰⁸

One of the most recent manifestations of this co-operative manner of addressing common hemispheric challenges has been the launching of a Health and Environment Ministers of the Americas (HEMA) forum, which combines international co-operation among 34 countries with international co-operation among two different sectoral agendas.⁴⁰⁹ The HEMA is described more fully in the section on environmental integrity, but responds to an integrated health and environment agenda from the 1995 Pan American Charter on Health and Environment in Sustainable Human Development, and may become a framework for deeper co-operation on certain linked social and environmental issues as it can build on the solid institutional foundations that can be provided by the PAHO.

Another example of functioning social regimes in the Americas is the Inter-American Human Rights System, described in more details in earlier chapters. As Inter-American co-operation grows stronger, accession and implementation of the hemisphere's human rights commitments, including to the Protocol of San Salvador, should naturally follow.⁴¹⁰ But there is no reason that

closer economic co-operation would automatically lead to closer co-operation on other issues of great economic and social importance. The actual achievement of the human rights, poverty eradication and development goals of the Summit of the Americas⁴¹¹ becomes even more important in this context, as much of the legitimacy of the process depends on governments and others living up to their commitments in this area. There is a strong need to build political will and commitment to the ratification and implementation of the Inter-American Human Rights institutions and accords, and to raise awareness of their utility among organizations and individuals throughout the Americas.

3.7.2 Sub-Regional Trade-Related Social Development Co-operation in the Americas

Sub-regional social and labour co-operation frameworks exist to support sharing of technology and capacity building, both those related to trade, and broader social policy issues. In addition, in the last five years, a cross-fertilization of institutional innovations appears to be occurring between the different sub-regions. Perhaps FTAA negotiations have even played a role in strengthening each sub-regional effort, by building informal networks between North American, Andean, Central American, South American and Caribbean trade and economic officials, as the technical experts in each country have been forced to work more closely with those from their regions to address ever more complex challenges in the negotiations. What can we learn about international co-operation from these experiences? Three particular examples stand out.

First, there is much to be learned from the innovative market access related mechanisms being established under the Cotonou Agreement, and how they build on existing (deep and wide-ranging) international development co-operation in the Caribbean region. Negotiated by the trade, not development, authorities of the European Union, and signed in June 2000, the Cotonou Agreement is the latest extension to the Lomé Convention (established in 1975). It is built on three interrelated components: political dialogue, trade and investment, and development co-operation. It emphasizes five “pillars”: a comprehensive political dimension, participatory approaches, a strengthened focus on poverty reduction, a new framework for economic and trade co-operation, and a reform of financial co-operation. As a “regionalizing” agreement, the new accord emphasizes a joint approach to combat poverty, promote sustainable development and work towards gradual integration of ACP countries into the world economy and the WTO system. As a framework, it presents opportunities to turn trade and investment policies toward sustainable development.⁴¹² The Agreement provides 77 ACP countries with an extension of non-reciprocal preferential access for certain ACP agricultural and other goods to the EU market at least through 2002, when a preparatory period will begin during which ACP countries will build their capacities to withstand freer trade.⁴¹³

The governance structure adopted by the Cotonou Agreement is very interesting to those concerned with international co-operation. ACP-EU co-operation is formally steered by three “official” bodies:

- the ACP-EU Council of Ministers, (charged with political guidance, and made up of members of the Council of the EU, representatives of the European Commission, and a member of the government of each ACP country, with an alternating presidency and annual meetings);
- the ACP-EU Committee of Ambassadors (assists the Council of Ministers, and monitors implementation, made up of member representatives); and
- the Joint Parliamentary Assembly (a forum for dialogue and consultation, to discuss issues pertaining to development and raise public awareness, and to adopt resolutions and make recommendations, made up of equal numbers of EU and ACP parliamentary representatives).

It is supported by an ACP Secretariat in Brussels and the European Commission Directorate General (represented by the relevant Director General, with support from Humanitarian Aid Office (ECHO), the External Relations DG and the Common Service for External Relations (SCR), and a National Authorising Officer (NAO) and specialized agencies in the field.⁴¹⁴ The participatory and co-governance approach established under the Cotonou Agreement offers new hope for more democratic international co-operation arrangements. As noted above, both the process and content of the Cotonou “Economic Partnership Agreements” is interesting—unique peer review provisions ensure that countries in a similar region help to evaluate whether a party has reached its development goals. Though the agreement will provide significant amounts of development assistance funding to the “regions,” it does so within a mutually agreed framework, one that provides opportunities for the developing country to have a voice in determining policy directions and control over the process.

Second, it is significant to examine the gradual process adopted by the Andean Community. They focused first on education and cultural exchanges, building up a common sub-regional identity and deeper understanding. Then, through a step-by-step social dialogue, they developed a common sub-regional social policy. Exchange programs, cultural events and educational initiatives were launched very early in the integration process, even as the Andean Community members continued to struggle with disagreements and economic challenges. These continued and were expanded. In September 1995, a new Andean “Declaration on Social Development” re-affirmed the right of all people to education, the fruits of science and technology, culture and health.

This rather hortatory series of common policy directions laid the groundwork for more binding instruments. In May 1999, the Act of Cartagena Social Agenda was announced. This accord was structured around goals of employment, education, health and social housing. It provides for a Community migration policy and guarantees the rights of the migrant worker. It also provides for a common educational, cultural, and science and technology policy, aimed at safeguarding and promoting the “common Andean identity” (which, by this time, was more secure). It is worth noting that ministers of culture were entrusted to further coordinate the Andean member countries cultural policies, and also to execute a special multicultural initiative known as “the Andean Route.” This project builds on the sub-region’s traditions, history and common legacy. The integration process continued, and in June 2001, the Act of Carabobo launched a joint process between social welfare, health, labour, education and housing ministers for a Comprehensive Social Development Plan to confront the pressing problems of poverty, social exclusion, and inequality in the sub-region. This process of gradual movement from declaration to agenda to comprehensive plan, will be underpinned by consistent efforts to build a common sub-regional identity on cultural and educational levels.

Third, in some cases, the creation of formal institutions and fora for sub-regional dialogue has played a major role in deepening international co-operation around one of the most controversial issues: labour rights. In the MERCOSUR, labour ministers and social justice organizations from all four member countries embarked on a co-operation process together. This has proved reliable, over the course of considerable changes in the sub-region, because it is backed by formal frameworks for dialogue, deepening technical co-operation among experts and officials, and continuous high-level political support. MERCOSUR labour ministers met in 1991 to address the lack of labour or social issues in the Treaty of Asuncion. Their 1991 Declaration of Montevideo laid out the need to address labour aspects of MERCOSUR and continually improve working conditions, proposing the creation of a working sub-group on labour issues, and the possibility of a Social Charter for MERCOSUR.⁴¹⁵ The importance of international co-operation becomes clear in this example. Labour Ministries from the four countries of the MERCOSUR joined to create a working sub-group, which became the Working Sub-group No. 10 (Consejo Mercado Común Decision No 20/95). This sub-group agreed to address issues such as labour relations, employment and social security, with eight committees to study various topics.⁴¹⁶ As mentioned above, like the ILO, sub-group No. 10 and its committees have a tripartite composition of government, labour and employers representatives, and operate through a regular schedule of meetings.⁴¹⁷ Sub-Group No. 10 has taken on various projects which solidified their authority as an international mechanism for social co-operation. It drafted the MERCOSUR Multilateral Convention on Social Security (Recommendation No. 3/95), and in 1998, the

Socio-Labour Declaration of MERCOSUR. This Declaration led to the creation, in 1999, of a tri-partite Socio-Labour Commission, again with a regular calendar of meetings and a mandate to make consensus recommendations on social issues for adoption by the Common Market Group. MERCOSUR ministers of labour provide political high-level guidance for the regime, but the sub-regional network of co-operation on labour issues that has formed now stretches far deeper and more comprehensively than the formal institutions. The initial co-operation arrangement spawns forum for joint initiatives and trust-building which, in the end, form the most important foundations for a sub-regional or regional project.

3.7.3 *Recommendations*

In an age of myriad (and rapidly proliferating) international processes and commitments, how to ensure that governments (not to mention other actors) place priority on their hemispheric social commitments? The OAS and other inter-American institutions have had significant challenges in this regard, leading some commentators to call their co-operation initiatives “toothless.” There are two leading strategies in this respect—the carrot and the stick.

Support and Strengthen Access to Binding Social Dispute Settlement

First, while the goals of trade, environment and development are compatible in principle, in practice conflicts will inevitably occur. These must be resolved internationally without resort to economic or political coercion. Trade policies are international by definition and should be developed within a co-operative regional framework. Unilateral action—an option generally available only to a few large countries—should be considered only when all possible avenues of co-operative action have been pursued. Effective hemispheric dispute settlement systems must be created and maintained, on social issues in their own right, and as they relate to trade and investment. These must provide for appropriate participation and access to justice for civil society groups and members of the hemispheric public, so that governmental feet continue to be held to the fire in all sub-regions. However, trade sanctions are the least desirable policy option, signifying failure by all the parties concerned. Respect for the principle of non-discrimination in trade represents an essential step in this direction. The rules, which existing dispute settlement mechanisms for trade interpret, might require adjustment to ensure that the interests of the environment are more adequately addressed. As well, existing mechanisms might include more expertise in environment and development matters, and new mechanisms might be established for the treatment of conflicts primarily related to these areas.

Invest in Hemispheric Social Development

Second, as the other side of the coin, co-operation mechanisms must address the need to generate resources for social development, resources which will be

used for poverty alleviation leading to more security, throughout the whole hemisphere. These programs must focus on the poorest of the poor, and on ways to ensure that “emerging” groups do not fall back into poverty through exclusion caused by unanticipated effects of liberalization. The Inter-American Development Bank and other funding bodies have made a start, but much more remains to be done.

Investigate New Forms of International Co-operation on Social Issues

But a third approach is also possible. Just as there is a significant difference between international co-operation and truly global co-operation, it is possible to move from international co-operation on a regional level, to truly regional co-operation. In a world characterized by increasingly regionalized economic activity, attention is now focused on the ability of countries and whole regions to compete with each other in the international marketplace. To capture the full benefits of competition, there must be co-operation; countries must subscribe to rules-based trading systems which define the conditions of competition in regional and, indeed, world markets. Making such a system work for sustainable development will require new forms of co-operation in many areas. For example, the introduction of sustainable practices for the production of internationally-traded commodities with significant social or environmental impacts may require innovative new joint regimes involving both producers and consumers. In the Americas, many civil society and innovative businesses are willing to move in this direction and, indeed, are already working together under “fair trade” and other labels, as discussed above.

For the Americas, the best forms of social development co-operation will involve proactive measures to improve human well-being and respect for human dignity on the international level, and this should also improve the functioning of the global trading system. These measures might include more initiatives aimed at technology sharing, capacity building, transfers of resources and debt relief, an opening of protected markets, and co-operative cost internalization. Progress in these areas of hemispheric co-operation will address the root causes of many apparent trade/human rights/environment conflicts, in particular large disparities in technical capacity for social development, environmental management and a lack of resources to invest in these priorities. Co-operation may also take the form of multilateral agreements on social issues of concern to all parties in the Americas. Countries in a position to exercise leadership in dealing with sustainable development issues should do so by devoting the time and energy needed to achieve such regional accords.

Endnotes

- 121 According to FOCAL, poverty tends to be inter-generational. The children of poor parents disproportionately fail primary school and hence fail to clear the first hurdle in the path out of poverty. In Latin America and the Caribbean, only

- a small proportion of young people manage to rise significantly above the educational level of their parents. See FOCAL, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002). See also ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC 2000).
- 122 IISD, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994) p.14. See also D. Runnalls and A. Cosbey, *Trade and Sustainable Development. A Survey of the Issues and A New Research Agenda*, (Winnipeg: IISD, 1992).
- 123 *Ibid.*, at 36.
- 124 As in the case of renewable resources, when these are overexploited and degraded, equity problems arise between generations. The same happens when non-renewable resources are depleted without wise re-investment of their benefits. *Ibid.*, at 20. See also K. von Moltke, *The Maastricht Treaty and the Winnipeg Principles on Trade and Sustainable Development*, (Winnipeg: IISD, 1995) at 22.
- 125 K. von Molke, *International Environmental Management, Trade Regimes and Sustainability*, (Winnipeg: IISD, 1996) at 20.
- 126 Dialogo 2000, *El Costo Humano de la Deuda Externa: Un Dialogo entre los pueblos para un futuro para nuestra América*, (Buenos Aires: Dialogo 2002, April 1998).
- 127 ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). See also ECLAC, Equity, Development and Citizenship, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 128 ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). See also ECLAC, Equity, Development and Citizenship, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 129 This has been underscored in the UNDP Human Development Reports (New York: UNDP, 1995, 1996, 1998 and 2003) and in the UN-sponsored Summits in Copenhagen on Social Development 1995, and Beijing on Women 1997, along with the UN Millennium Summit. See especially UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003). See also ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000).
- 130 IISD, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994).
- 131 M.C. Cordonier Segger, M. Bastida Munoz, P. Ribeiro Meireles and J. Zalles Taurel, *Trade Rules and Sustainability in the Americas*, (Winnipeg: IISD, 1999).
- 132 See, e.g., the various Declarations of the Peoples Summits of the Americas, available online: <http://www.civil-society.oas.org/People-summit.htm>
- 133 As stated by M. Escribano of the Quebec Network on Continental Integration (RQIC) “The HSA is a popular and constructive alternative. It will allow us (popular sector, social organizations and trade unions) to unite forces and put the brakes on the disastrous effects of neoliberal globalization.” According to the

- Hemispheric Social Alliance, they are “a forum where progressive organizations and movements from around the Americas can gather, strategize, share information and plan joint actions. As the base and strength of this movement grows, [they state that they] will be in an even better position to fight for an alternative and democratic development model for [their] societies.” See Alianza Social Continental/Hemispheric Social Alliance, available online: <http://www.asc-hsa.org/castellano/site/home.php>
- 134 For example, survey the position statements of the governments of Latin America and the Caribbean recent FTAA and WTO negotiations, available online: <http://www.wto.org> or <http://www.oas.org> for FTAA, analysis at <http://www.ictsd.org> See also C. McCrudden, *Buying Social Justice*, (Oxford: OUP, 2003).
- 135 M. Barlow, “The Free Trade Area of the Americas and the Threat to Social Programs, Environmental Sustainability and Social Justice in Canada and the Americas,” *A Policy Paper of the Council of Canadians*, (January 18, 2001).
- 136 *Ibid.*, p. 20.
- 137 For instance, the Vienna Declaration and Programme of Action, in Part 1, 25, states that, “... it is essential for states to foster participation by the poorest peoples in the decision-making process...”; the Copenhagen Declaration, in Paragraph 25th, states the Governments’ commitments to a political, economic, ethical and spiritual vision for social development that is based on human dignity....” Many other instruments ought to be considered starting with the Universal Declaration of Human Rights; the Beijing Platform for Action; the Habitat Agenda; the Rome World Food Summit Plan of Action; the International Covenant on Economic, Social and Cultural Rights, in which Article 1, refers to self-determination of Peoples. The International Covenant on Civil and Political Rights; the Convention on Elimination of All Forms of Racial Discrimination, in which Article 5 refers to equality in enjoyment of civil, political, economic, social and cultural rights; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child, which in Article 27, refers to the Standards of Living; and the ILO 169 Convention Concerning Indigenous and Tribal Peoples, which, in Article 6, refers to participation in all levels of decision-making. In effect, it is necessary to include and ensure indigenous peoples participation within this process in the Hemisphere. The American Declaration on Indigenous Peoples, in Article 15, states, “Indigenous Peoples have the right to participate without discrimination if they decide so in the decision-making, in all levels, in relation to matters which would affect their rights, their lives and destinies.” Declaración Americana de los Derechos Indígenas stated in the Environmental Forum. Peoples of the Americas Summit. Participación Ciudadana. 10 Iniciativas prioritarias de la Sociedad Civil para la Integración Hemisférica.
- 138 In Santiago, long-standing Americas debates around the cultural, historic and demographic identities of indigenous groups were also resolved, as the term “indigenous peoples” was accepted, instead of the phrase “indigenous populations.” See <http://www.summit-americas.org/chileplan.htm#Indigenous%20Populations>

- 139 See <http://www.oas.org/consejo/CAJP/Indigenous%20special%20session.htm>
- 140 Supreme Decree No. 111-2001-PCM.
- 141 CONAPA is made up of 22 members, who represent state agencies, indigenous and Afro-Peruvian organizations, and civil society; all of them, including the Commission's president, perform their duties on an ad honorem basis.
- 142 Law No. 27811 recently established a regime protecting the collective knowledge of indigenous peoples vis-à-vis biological resources, making Peru the first country in the world to develop and enforce such a regime.
- 143 Colombia's National Report on Implementation and Monitoring of the Mandates from the Quebec Plan of Action. November 2002–March 2003.
- 144 For more information, see <http://www.arctic-council.org>
- 145 The indigenous populations in the Arctic are represented by the Aleut International Association, the Arctic Athabaskan Council, the Gwich'in Council Internacional, the Inuit Circumpolar Conference, the Russian Association of Indigenous Peoples of the North, and the Saami Council.
- 146 Its member states include Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States.
- 147 Decisions within the Arctic Council are taken at meetings of foreign ministers or their designates of the member states and the political leaders of the Permanent Participants. Ministerial meetings are held every two years. The chairmanship of the Council and accompanying Secretariat rotates among member states. Between the ministerial meetings, the operation of the Council is administered by the Committee of Senior Arctic Officials, composed of representatives of foreign ministries of the member states and representatives of indigenous peoples as Permanent Participants of the Arctic Council. Its meetings are prepared by the Arctic Council Chair and normally take place in the country of the Chair. The basic responsibility for the implementation of regional policies lies with the states and their sub-regional administrations.
- 148 CIM serves as an international forum where the concerns of women in OAS member states are brought into the foreground of public discourse. Using international commitments as leverage, CIM has supported the efforts of women to secure their civil and political rights. Though international conventions, which recognize women's rights, standards are established against which the provisions of national laws can be judged and eventually changed. The principal Inter-American conventions for which CIM has been responsible are: The Convention on the Nationality of Women (Montevideo, Uruguay, 1933); the Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, Colombia, 1948); the Inter-American Convention on the Granting of Political Rights to Women (Bogotá, Colombia, 1948); and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará, Brazil, 1994). See <http://www.oas.org/CIM/english/About.htm>

- 149 In thousands, this includes 37,941 in the Caribbean (2.8 per cent of the population), 135,129 Central America (0.8 per cent of the population), 345,738 in South America (1.1 per cent of the population) and 314,113 in North America (13.0 per cent of the population). In Latin America and the Caribbean as a whole, there are 518,809 (1.1 per cent of the population). See UN, *International Migration Report 2002*, Population Division (Geneva: United Nations, 2002).
- 150 In 1950 only nine per cent of residents in the United States born abroad were from Latin America and the Caribbean. In 2002, the corresponding figure was 52.2 per cent (36.4 per cent from Central America and Mexico, 9.6 per cent from the Caribbean and 6.2 per cent from South America).
- 151 ILO, *International Labour Conference 2004: General Discussion on Migrant Workers Based on an Integrated Approach*, Background Paper by the International Labour Office, Social Protection Sector, International Migration Programme for Tripartite Consultation ILO Member States of the Americas (Geneva: ILO, 2004).
- 152 The UN Convention will entry in force in July 2003 and has 21 ratifications. This instrument has been ratified in the Americas by Belize, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico and Uruguay; it has also been signed by Chile and Paraguay.
- 153 For more information, see online www.ilo.org
- 154 See D. Fuchs and T. Straubhaar, *Economic Integration in the Caribbean: The development towards a common labour market*, International Migration Papers No. 63, ILO, 2003.
- 155 The Regional Conference on Migration, or Puebla Process, is a Mexican initiative aimed to the adoption of a multilateral approach on migration, which takes note that there is an interaction of different factors in sending and receiving countries and points out the importance of the observance of human rights of all migrants. Member states are: Belize, Canada, Costa Rica, El Salvador, United States, Honduras, Guatemala, Mexico, Nicaragua, Panama and the Dominican Republic.
- 156 The South American Conference on Migration, or Lima Process, is made up of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela.
- 157 N. Birsall and A. de la Torre, *Washington Contentious: Economic Policies for Social Equity in Latin America*, (Washington: Carnegie Endowment for International Peace and the Inter-American Dialogue, 2001).
- 158 K. Helmore and N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor*, (Bloomfield: Kumarian Press, 2001).
- 159 The Organization's essential mission is to strengthen national and local health systems and improve the health of the peoples of the Americas, in collaboration with Ministries of Health, other government and international agencies, non-governmental organizations, universities, social security agencies, community

- groups, and many others. See Pan American Health Organization, online: <http://www.paho.org/english/paho/what-paho.htm>
- 160 PAHO and its Member Countries are committed to improving the safety of blood in the Americas, launching a blood safety initiative designed to ensure that all blood for transfusion is free of disease and to increase the number of volunteer blood donors. A major priority for the Americas is cutting infant mortality, and PAHO is mobilizing new political, institutional and financial resources to prevent an additional 25,000 infant deaths every year through application of the Integrated Management of Childhood Illness strategy, a simple and practical approach in which primary health care workers are taught a complete process to evaluate the health status of children brought to a health post or clinic. They learn to recognize signs of disease and evaluate and treat them. They learn to give parents information on how to prevent disease in the home. If they see danger signs indicating the infant could die, they are taught to treat the child immediately or take him or her to a hospital. Its Governing Bodies have mandated PAHO to move aggressively in the fight to reduce the use of tobacco, emphasizing the health aspects and the high cost to the countries of tobacco use.
- 161 See PAHO, *Health in the Americas – 2002 Edition*, Volumes I and II (Washington: Pan American Health Organization, 2002).
- 162 See also O. Uriarte, “La ciudadanía laboral en el Mercosur” Versión actualizada del artículo publicado en la revista Derecho Laboral, Montevideo 1998, Tomo XLI N° 190.
- 163 See K. Banks, “Civil Society and the North American Agreement on Labour Cooperation” in *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges*, J. Kirton and V. Maclaren, eds. (Burlington: Ashgate, 2002). For a summary of disputes to date under the NAALC, see Human Rights Watch, online: <http://www.hrw.org/reports/2001/nafta/nafta0401-05.htm> . See also: labour-travail.hrdc-drhc.gc.ca.
- 164 See S. Polaski, *Trade and Labour Standards: A Strategy for Developing Countries*, (Washington: Carnegie Endowment for International Peace, 2003).
- 165 *Interhemispheric Resource Center Bulletin*, A Quarterly publication. Dec. 97. Nos. 47–48
- 166 “U.S. labour and environmental groups charge the pact fails to adequately protect workers’ rights and safeguard against pollution. They say it could spur U.S. companies to set up in countries with less stringent regulations, as they claim the North American Free Trade Agreement with Mexico already has done.” According to the Chilean Alliance for a Fair and Responsible Trade (acjr), the negotiation process ignored civil society’s demands till the end. K. Ridder 6/8/2003 Miami. Press communiqué. “tlc Chile-Estados Unidos: el Largo Viaje del Día hacia la Noche” La Alianza Chilena por un Comercio Justo y Responsable (ACJR), Santiago, June 5, 2003.
- 167 *Sustainable Development*. Published by IISD. Vol. 3 No. 6. December 1996, at 1.

- 168 *Ibid.*, at 5 and 8.
- 169 H. Rogelio Torres, *Environmental Rent: Co-operation in a Multilateral Trading System*, (Winnipeg: IISD, 1998).
- 170 ECDPM. 2001. Cotonou Infokit: Regional Economic Partnership Agreements (14). Maastricht: ECDPM. Online: http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index?readform & http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/ED09769D167CB327C1256C520059BBD4?OpenDocument&Cotonou_Agreement
- 171 The Programme is described in Annex III to the Free Trade Area of the Americas Seventh Meeting of Ministers of Trade Ministerial Declaration from Quito, Ecuador (November 1, 2002). Available online: http://www.ftaa-alca.org/Popup/PopQuitoHCP_e.htm
- 172 Annex III, Free Trade Area of the Americas Seventh Meeting of Ministers of Trade Ministerial Declaration from Quito, Ecuador (November 1, 2002). Available online: http://www.ftaa-alca.org/Popup/PopQuitoHCP_e.htm
- 173 These were formulated by the Trade Negotiations Committee (TNC) with the support of the Consultative Group on Smaller Economies and the Tripartite Committee, and approved in the IX Meeting of the Trade Negotiations Committee (TNC), held in Managua, Nicaragua in September 2001.
- 174 K. Hansen-Kuhn, *U.S. Foreign Policy. Infocus. Free Trade Area of the Americas*, Infocus. Interhemispheric Resource Center. Institute for Policy Studies. Vol. 3 No. 6, April 1998.
- 175 ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000).
ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000.
- 176 FOCAL, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 177 Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
- 178 K. Helmore and N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor*, (Bloomfield: Kumarian Press 2001).
- 179 Max Havelaar, Fair Trade Conditions, available online: http://www.mashavelaar.org/Eng_han.htm
- 180 “Fair Trade is a voluntary scheme where consumers choose to pay more in order to ensure that disadvantaged producers in poor countries get not just a living income but something more: a fair trade premium.” In M. Kunz, “Fair Trade Works Better: Deals for Disadvantaged Producers,” *Bridges Between Trade and Sustainable Development*, November 1997, Vol. 1 No. 5. ICTSD. p. 5 and p. 11.

- 181 K. Helmore and N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor*, (Bloomfield: Kumarian Press 2001).
- 182 Haudenosaunee, Mohawk Nation and Kahnawake, *Position on the Protection of Intellectual Properties for Commercial Misuse*, Dec. 21. 1997.
- 183 Shushwap – Otomi Small Business Programme, February 1998 on file with authors.
- 184 See Indigenous Peoples Partnership program, CIDA, online: <http://www.acdi-cida.gc.org>
- 185 M.C. Cordonier Segger, *et al.*, *Trade Rules and Sustainability in the Americas*, (Winnipeg: IISD, 1999).
- 186 The UN Convention will entry in force in July 2003 and has 21 ratifications. This instrument has been ratified in the Americas by Belize, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico and Uruguay; it has also been signed by Chile and Paraguay.
- 187 See D. Fuchs and T. Straubhaar, *Economic Integration in the Caribbean: The development towards a common labour market*, International Migration Papers No. 63, ILO, 2003.
- 188 The Regional Conference on Migration, or Puebla Process, is a Mexican initiative aimed to the adoption of a multilateral approach on migration, which takes note that there is an interaction of different factors in sending and receiving countries and points out the importance of the observance of human rights of all migrants. Member states are: Belize, Canada, Costa Rica, El Salvador, United States, Honduras, Guatemala, Mexico, Nicaragua, Panama and the Dominican Republic.
- 189 The South American Conference on Migration, or Lima Process, is made up of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela.
- 190 There is considerable evidence that the social and economic costs “externalized” by markets hit those most in need with the greatest severity. According to the UNDP, for example, 90 per cent of the 2.7 million deaths due to respiratory problems caused by pollution annually occur in developing countries. UNDP, *Human Development Report 1999: Globalization With a Human Face*, (New York: UNDP, 1999) at 31. Statistics such as this suggest that imperfect markets are also a threat to the Winnipeg Principle of Equity, addressed above.
- 191 IISD, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994).
- 192 The total social cost of any activity is the sum of the cost to the individual undertaking the activity and the cost imposed upon society at large as a result of such activity. For example, the social cost of driving a car is the sum of the private costs (gas, maintenance, etc.) and the cost upon society (environmental damage, congestion, etc.). R.E. Baxter and R. Rees, *Dictionary of Economics*, (Middlesex: Penguin, 1985) at 405.

- 193 Even limiting social costs to those costs of a particularly social character (e.g., costs primarily involving human relations), leaves a voluminous range of potential costs for consideration. Economic activity can impose social costs in an infinite number of ways such as by promoting morally reprehensible values (through, say, racially discriminatory advertising) or by promoting social actions that are physically harmful to society (through, say, violence in movies) or by simply giving rise to the direct mistreatment of others. Given the breadth of potential social costs and the fact that many, if not most, examples vary in intensity between cultures and individuals, policy oriented towards the internalization of social costs at the international level must focus on the most fundamental and universally recognized forms of social costs externalized under current market structures. Core labour standards, as set forth under the ILO's 1998 Declaration on the Fundamental Principles and Rights of Work, form a coherent and universally accepted foundation of "social goods" which must be provided in the work environment and thus provide an ideal example of the types of social goods suitable for broad internalization. See *infra* note.
- 194 One of the underlying rationales for the establishment of the Organization of American States, not to mention any eventual FTAA, is built on the premise that countries in the Americas share certain social values and cultural identity. To the extent that this is the case, the internalization of social costs within the Americas through hemispheric action could advance at a faster rate than similar efforts within a global context.
- 195 In this respect, the internalization of social costs is a very different task than the internalization of environmental costs which, as an effect of impacts on the physical world, can often be priced through the development of more complete property regimes.
- 196 Although it is inherently difficult to place numerical values on the broad social costs associated with economic activity, the existence of certain social situations can nevertheless exert direct and measurable economic costs upon society. For example, the absence of protections for freedom of association and other basic worker rights have been cited as having the following economic effects: Reduced efficiency and overall economic growth associated as a result of reduced morale; Increased risk of labour disputes and civil unrest which can lead to important economic costs; Higher probability of work-related accidents which can lead to increased medical costs for society; Higher probability of illness or injury which can lead to economic costs in the form of reduced productivity. See Organization for Economic Cooperation and Development, *Trade Employment and Labour Standards: A Study of Core Workers Rights and International Trade*, (Paris: OECD, 1996) pp. 77–88.
- 197 Although no comprehensive study exists on the actual use of low labour standards to attract investment, developing countries frequently make the link and at least six cases have been observed where governments have deliberately attempted to reduce core labour standards in Export Processing Zones (EPZs) as an inducement to attract foreign investors. In Panama, for example, legislation explicitly restricts the right to strike in EPZs. See OECD, *ibid.* at 100. See also Economic

Research Institute, *Panama – Compensation and Benefit Legislation* Webpage <http://www.salaryexpert.com/seco/careerjournal/hrcodes/PANAMA.htm> accessed July 4, 2003.

- 198 Compliance with labour standards may actually lead to greater productivity and overall efficiency resulting in “cost savings.” In such cases the *internalization* of social costs can actually be regarded as a profit making investment.
- 199 Note here that the cost of goods provision is not necessarily equal the cost of “not providing” the social good—given the complexity of identifying which social goods “should” be internalized, it is helpful to rely on international instruments as a starting point.
- 200 The eight core conventions are: Forced Labour Convention (No. 29); Freedom of Association and Protection of the Right to Organize Convention (No. 87); Right to Organize and Collective Bargaining Convention (No. 98); Equal Remuneration Convention (No. 100); Abolition of Forced Labour Convention (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Minimum Age Convention (No. 138); and Worst Forms of Child Labour Convention (No. 182).
- 201 Although no mention of direct application is made in the Declaration or by any other MERCOSUR instruments, articles 1, 2 and 8 contain explicit rights susceptible of direct application. Moreover, the solemn nature of the declaration arguably places it on a level above local law in a manner akin to the Universal Declaration of Human Rights. See O. Ermida Uriarte, *Le Declaración Socilaboral del Mercosur y Su Aplicabilidad Judicial*, (Montevideo: Law Faculty, 2001).
- 202 S. Polaski, *Trade and Labour Standards: A Strategy for Developing Countries*, (Washington: Carnegie Endowment for International Peace, 2003). See also O. E. Uriarte, “La ciudadanía laboral en el Mercosur,” *Revista Derecho Laboral*, Montevideo 1998, Tomo XLI N° 190.
- 203 The Agreement on Labour Cooperation Between the Government of Canada and the Government of the Republic of Costa Rica and the Agreement on Labour Cooperation Between the Government of Canada and the Government of Chile.
- 204 The agreement binds member countries in two distinct manners. The main labour provisions are covered by Article 3 of the agreement which requires each country to “effectively enforce its own labour law.” Under this branch, the agreement does not set the content of required labour practices, but rather obliges parties to apply their self determined laws. By contrast, Articles 4–8 set forth specific obligations with respect to due process which must be respected by all member countries.
- 205 Much criticism has been based on the concern that nationally established laws lack both the depth and stability of ILO standards. Mexican labour law, for example, does not require that unions be established through elections and does not provide clear courses of action for many labour practices which would be deemed

- “unfair” under labour law in Canada and the U.S.. This has put into question the representativeness of some Mexican unions and the effectiveness of the Agreement in such cases. *Plant Closings and Labour Rights: A Report to the Council of Ministers on the Effects of Sudden Plant Closings on Freedom of Association and the Right to Organize in Canada, Mexico and the United States* (Commission for Labour Cooperation) accessed at <http://www.naalc.org/english/publications/nalmcp.htm>.
- 206 Article 41 provides for the suspension of benefits where a persistent pattern of non-compliance has been identified without the adoption of adequate rectification measures.
- 207 As of April 2003, the Commission for Labour Cooperation had received a total of 25 public submissions on labour matters since its establishment in 1994. Of these, 12 were against Mexico, 11 against the U.S. and 3 against Canada. 19 of the 25 submissions were accepted for review and 13 of the submissions resulted in Ministerial Consultations. See <http://www.naalc.org/english/publications/ppcharten2.htm>
- 208 See K. Banks “Civil Society and the North American Agreement on Labour Cooperation” in *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges*, J. Kirton and V. Maclaren, eds. (Burlington: Ashgate, 2002).
- 209 Pursuant to Article 10 of the agreement parties undertook a review of the agreement in 1998. Extensive public consultations on the effectiveness of the agreement revealed a general recognition of the usefulness of the information generation, exchange and cooperative activities of the CLC. The main criticisms of the agreement were its failure to enforce internationally recognized labour standards; the strict conditions which have to be met to bring about “hard” enforcement action; the existence of unduly onerous procedural barriers for bringing submissions to an effective hearing and a shortage of resources for pursuing labour cooperation to an appropriate level. See *Review of the North American Agreement on Labour Cooperation* at http://www.naalc.org/english/publications/review_part2.htm
- 210 The Canada-Costa Rica Agreement on Labour Cooperation offers an important advance over the NAALC model by building obligations to implement and enforce core ILO standards within the agreement. See, Art. 2. *Agreement on Labour Cooperation Between the Government of Canada and the Government of the Republic of Costa Rica*, (2002).
- 211 *Supra* note.
- 212 Both Peru and Brazil have fairly strict formal labour laws, but it is difficult to assess their spread and applicability vis a vis the constitutional provisions.
- 213 ECLAC, *The Equity Gap, A Second Assessment*, (Santiago: UN ECLAC, 2000). See also ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000.

- 214 FOCAL, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8 (Ottawa: FOCAL, 2002).
- 215 Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
- 216 U.S.C. 19 S. 2702. Canada is the only other country in the Americas region having implemented GSP-type legislation. The Canadian Trade, Investment and Industrial Cooperation program (CARIBCAN) provides preferential treatment to 18 Commonwealth Caribbean countries and territories but does not use labour standards as a conditionality requirement.
- 217 The Decision on Differential And More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly referred to as the “Enabling Clause,” allows the GATT member countries to authorize non-compliance with Article I obligations where the measures in question are designed to help developing countries build markets for their products. See Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision of November 28, 1979, L/4903.
- 218 U.S.C. 19 S. 2702(b)(7). Note that the GSP contains no provisions on non-discrimination. See Bama Athreya, *Trade is a Womens’ Issue*, in “Foreign Policy In Focus” (Vol. 7), No. 15, December 2002.
- 219 P. Harvey, *US GSP Labour Rights Conditionality “Aggressive Unilateralism” or a Forerunner to a Multilateral Social Clause*, (Washington: International Labour Rights Fund, 1995), p. 1.
- 220 Chile, Paraguay and Sri Lanka have each allegedly implemented labour reforms as a result of pressure under the GSP system. Multinational Monitor *Working for Labour Rights: An Interview with Pharis Harvey*, (1995).
- 221 Craig Forcese, *Putting Conscience into Commerce: Strategies for Making Human Rights Business as Usual*, (International Centre for Human Rights and Democratic Development, 1997) at 85.
- 222 A noteworthy shortcoming of the existing conditionalities under the GSP system is the absence of any conditionality based on “non-discrimination”—an addition which would be necessary to bring its level of protection in conformity with the core labour standards of the ILO. Bama Athreya, “Trade is a Women’s Issue,” *Foreign Policy In Focus*.
- 223 In the past, it would have been difficult to distinguish between product on the basis of their having employed high labour standards in their production. The growth in international multi-stakeholder private sector and civil society initiatives designed to identify products on this basis, arguably makes this type of GSP regime more plausible than ever before. Such a GSP system could complement rather than replace existing nationally based GSP initiatives.
- 224 The margin of benefit for developing countries under the US GSP, for example, declined by 2.8 percentage points with the negotiation of the Uruguay Round.

- Continued liberalization in the Americas threatens such instruments over the long term. See Bonapas Francis Onguglo, *Developing Countries and Unilateral Trade Preferences in the New International Trading System*, Chapter 4 in Miguel Rodriguez Mendoza, Patrick Low and Barbara Kotschwar (editors), *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations*, Washington, D.C.: The Brookings Institution Press/Organization of American States, 1999.
- 225 ECAs account for US\$50–70 billion annually in support for large industrial and infrastructure projects and are the single biggest component of developing country debt. See ECA Watch Web site at <http://www.eca-watch.org/eca/index.html>.
- 226 See ECA Watch Web site at <http://www.eca-watch.org/index.html>
- 227 The Overseas Private Investment Corporation (OPIC), an autonomous, self-sustaining federal government corporation created in 1969 by the U.S. government, was established with the mandate of insuring overseas projects “against loss due to political risks such as war, revolution, insurrection, civil strife, expropriation, abrogation of contractual rights and inconvertibility of currency.” The OPIC also provides loans and loan guarantees for foreign projects. James Zimmerman, “The Overseas Private Investment Corporation and Worker Rights: the Loss of Role Models for Employment Standards in the Foreign Workplace,” *Hastings International and comparative Law Review* (1991), p. 603.
- 228 Emphasis added. *Overseas Private Investment Corporation Amendments Act of 1985*, Pub. L. No. 99–204, s. 5, 99 Stat. 1669, 1670–71 (codified at 22 U.S.C. s 219a(a)(1) (1985)).
- 229 The Jobs Through Exports Act of 1992 requires recipient investors to permit freedom of association while respecting local labour laws. Jobs Through Exports Act of 1992. s. 102–22 U.S.C. 2191(a)(a) 106 Stat. 3651.
- 230 For example, 95 groups from 24 countries recently condemned OPIC for its funding of Indonesian oil and gas projects on the basis of the country’s poor environmental and human rights record. See “95 Groups from 24 Countries Call on OPIC to Cancel Funding to Indonesian Oil and Gas Projects” Press Release on the Environmental Defense webpage at <http://www.environmentaldefense.org/pressrelease.cfm?ContentID=2726> . Similarly, a recent OPIC funded project in Guatemala was found to have been involved in the illegal firing of 158 employees for union involvement without any formal response from OPIC itself. See Rights Action Press Release, May 2002.
- 231 While focusing on the impacts of ECAs in Indonesia, the Jakarta Declaration has a global “call for reform” that includes: 1. Transparency, public access to information and consultation by ECAs and the OECD ECA Working Party; 2. Binding common environmental and social guidelines and standards that are no lower and less rigorous as those of the World Bank Group and OECD Development Assistance Committee; 3. The adoption of explicit human rights criteria guiding the operations of ECAs; 4. The adoption of binding criteria and guidelines to end ECA abetting of corruption; 5. The adoption of a commitment only to finance economically productive investments; 6. The adoption of com-

- prehensive relief for developing countries for ECA debt. See the Jakarta Declaration at <http://www.eca-watch.org/goals/jakartadec.html>
- 232 *Foreign Policy In Focus*, Volume 2, Number 15, January 1997 <http://www.foreignpolicy-infocus.org/briefs/vol2/v2n15trd.html> P. Harvey, Director of International Labour Rights Fund (ILRF). T. Barry (IRC) and M. Honey (IPS) (eds).
- 233 D. E. Bernstein, *Only One Place of Redress: African Americans, Labour Regulations, and the Courts from Reconstruction to the New Deal*, (Indiana: Duke University Press, 2001) at 66–67.
- 234 See also S. Shezi, “Public Procurement as an Instrument of Government Policy” (Paper delivered to the 9th International Public Procurement Association Conference, Copenhagen, Denmark, June 1998), available online: <http://www.pwdprocure.co.za/orientation.html> and see H.K. Neilsen, “Public Procurement and International Labour Standards” (1995) 4 *Public Procurement Law Review* 94.
- 235 Municipalities with Burma contract compliance law as of May 1997 were New York, NY; Berkeley, CA; Madison, WI; Santa Monica, CA; Ann Arbor, MI; San Francisco, CA; Oakland, CA; Carrboro, NC; Takom Park, MD; Boulder, CO; Chapel Hill, NC.
- 236 C. McCrudden, *Buying Social Justice*, (Oxford: OUP, 2004).
- 237 C. McCrudden, *Buying Social Justice*, (Oxford: OUP, 2004).
- 238 Maquiladora Solidarity Network Codes Memo: Number 13 accessed at <http://www.maquilasolidarity.org/resources/codes/memo13.htm>, July 4, 2003.
- 239 See <http://www.fairtrade.net>
- 240 Although code compliant supply chains do internalize certain social costs, the market itself does not. The result is a transferring of the public goods problem from employers to consumers. Although consumers express a strong willingness to pay more for “socially responsible” products in surveys, the actual markets for these products remains very small. See R. Crowe and Simon Williams, *Who Are the Ethical Consumers*, (London: The Cooperative Bank, 1999).
- 241 According to Terry Collingsworth of the U.S. International Labour Rights Fund, “Wrap is “an industry dominated project [set up] to avoid outside, legitimate monitoring. In short, it’s a dodge and so regarded by everyone except industry.” See <http://www.maquilasolidarity.org/resources/codes/memo13.htm#A>.
- 242 Recently a number of Central American monitoring organizations have joined forces with the Research Centre for Feminist Action (CIPAF) in the Dominican Republic, the Central American Labour Research and Education Centre (ASE-PROLA) and the Nicaraguan Maria Elena Cuadra Movement of Working and Unemployed Women (MEC) to form the Regional Initiative for Social Responsibility and Jobs with Dignity. Reebok in Hong Kong, on the other hand, has used factory workers to participate in monitoring process. MSN document.

- 243 The Body Shop's Trading Charter (1994) specifically refers to their commitment to respect human rights "as set out in the Universal Declaration of Human Rights." K. Gordon and M. Miyake, "Deciphering Codes of Corporate Conduct: A Review of their Contents." Working Papers on International Investment, Number 1999/2. Organization for Economic Co-operation and Development, November 1999.) This study of 246 voluntary codes found that "41.2 percent of the codes dealing with labour issues mention obligations on sub-contractors or other business partners" (Pp. 14). In 12 cases the codes "threaten" to terminate the contract with the supplier or contractor if their standard is not met throughout their supply chain (pp. 26).
- 244 For example, Liz Clairborne and the GAP have led the way in developing procedures for using southern-based NGO monitoring of their facilities. Latin American based monitoring groups include El Salvador Independent Monitoring Group (GMIES), the Guatemalan Commission for the Verification of Codes of Conduct (COVERCO) and the Honduras Independent Monitoring Team (EMI-H).
- 245 World Monitors; <http://www.worldmonitors.com/showarticle.cfm?Key=1639> for information regarding the establishment of a new international monitoring body for child labour in Sialkot, Pakistan.
- 246 <http://www.wrapapparel.org/infosite2/index.htm>
- 247 It is nascent in Latin America with about 12 companies reporting or three per cent of all GRI reporters. See <http://www.globalreporting.org>.
- 248 <http://www.fairlabor.org>
- 249 <http://www.cepaa.org/>
- 250 <http://www.workersrights.org/>
- 251 Guidelines for Multinational Enterprises, in Organization for Economic Cooperation and Development, Declaration on International Investment and Multinational Enterprises. The Guidelines were first adopted in 1976. See <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/oecd.htm#text>
- 252 The principle may also be viewed as somewhat unbalanced in its wording as well, providing no express mention of the need for internalizing "social costs" *per se*.
- 253 The FLA is one example of a process initially facilitated by government. In Canada, a similar process has been facilitated under the auspices of the Ethical Trade Action Group.
- 254 The authors would gratefully acknowledge the careful analysis and excellent research of Natasha Ward, RIDES, co-author of this section.
- 255 IISD, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994).
- 256 S. Davidson, *The Inter-American Human Rights System*, (Aldershot: Dartmouth Publishing Company, 1997).

- 257 Mainly through efforts to fulfill commitments made in the 2001 Montréal Declaration on the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA).
- 258 In the case of the United States and Canada the lack of presence of environmental rights can partly be attributed to the Constitutions inability to recognize third generation rights at all (they mainly guarantee only civil and political rights) and partly because their constitutions are hard to amend.
- 259 For most of the constitutions referred to here, see <http://www.georgetown.edu/pdba/Constitutions/>. For Canada see <http://laws.justice.gc.ca/en/const/index.html>, for the U.S. see <http://www.law.cornell.edu/constitution/constitution.overview.html>
- 260 UIT the exception of Venezuela that incorporates an environmental rights article.
- 261 In this alternative context, see for example, the Bolivian constitution that speaks about the concept of “human capital.”
- 262 For National Councils on Sustainable Development see <http://www.ncsdnetwork.org>
- 263 President’s Council on Sustainable Development (USA), the President’s Council on Sustainable Development was created by President Clinton to advise him on sustainable development, and states that its goal was to “develop bold, new approaches to integrate economic, environmental, and equity issues.” [It sees itself as a] “ground-breaking partnership of diverse leaders from business; multiple levels of government; and community, environmental, labour, and civil rights organizations.” Available online: <http://es.epa.gov/cooperative/websites/pcsd.html>, and NRTEE, which seeks to provide decision-makers, opinion leaders and Canadians with sustainable development recommendations, available online: <http://www.nrtee-trnee.ca>
- 264 For further discussion on integration in sustainable development law, see M.C. Cordonier Segger and A. Khalfan, *Sustainable Development Law: Principles, Practices & Prospects*, (Oxford: OUP, 2004).
- 265 M.C. Cordonier Segger and N. Borregaard, “Sustainability and Hemispheric Integration: A look at the diversity of existing approaches” in *Greening the Americas: Lessons from NAFTA*, C. Deere and D. Esty (eds) (Boston: MIT Press, 2002).
- 266 M.C. Cordonier Segger, M. Leichner, N. Borregaard and A.K. Gonzales, (2001) *A New Hemispheric Mechanism for Ecological Cooperation?* CONCEPT PAPER for the ECOS-IISD Policy Dialogue, WSSD LAC Regional Preparatory Committee Meeting Rio de Janeiro, Oct. 23, 2001.
- 267 Interesting to note is also that the subregional agreements, if these contain environmental chapters, working groups or the like, concentrate on pollution issues rather than on natural resource issues.

- 268 Source: http://www.hc-sc.gc.ca/pmra-arla/english/pdf/nafta/risk/pest_safety_ag_workers-e.pdf (NAFTA Technical Working Group on Pesticides Project Sheet Sep 2002).
- 269 www.comunidadandina.org
- 270 www.comunidadandina.org. A Memorandum of Understanding between the Secretariat of the Andean Community and Conservation International, signed on June 13, 2003, refers to the implementation of the Decisión, and specifies concrete activities to be carried out.
- 271 See <http://www.medioambiente.gov.ar> and <http://www.mercosur.org>
- 272 Available online: <http://www.caricom.org>
- 273 Available online: <http://www.caricom.org> and <http://www.caricom.org/archives/cohsod/cohsodv.htm>. Civil society organizations are invited to attend meetings of the COHSOD on social issues.
- 274 See Consejo de Integración Social: Visión Estratégica 2020–2010, <http://www.sgsica.org/sisca/docs>
- 275 See Planistat (2002) Sustainable Impact Assessment (SIA) of the trade aspects of negotiations for an Association Agreement between the European Communities and Chile, (Specific agreement No. 11) Final Report 2002, European Comisión, Brussels.
- 276 In the theoretical part of the study the indicators that are announced include: income, life expectancy, mortality rates, nutritional levels, literacy rates, school enrolment rates. In the implementation of the study, indicators that are primarily considered are wages, temporary vs permanent jobs, unemployment, labour safety, indigenous issues.
- 277 See Worldbank Web site and content therein on LCSEO, currently under: <http://wbln0018.worldbank.org/External/lac/lac.nsf/b049da6cf1e07c60852567d6006c4ed3/92277372132437488525694a006c35c0?OpenDocument>
- 278 IADB – Strategy for Agricultural Development in Latin America and the Caribbean (1999), <http://www.iadb.org/sds/doc/RUR102e.pdf>
- 279 IADB – Rural Poverty Reduction Strategy Paper (1998), <http://www.iadb.org/sds/doc/RURPOVstrat.pdf>
- 280 IADB – Rural Poverty Reduction Strategy Paper (1999), <http://www.iadb.org/sds/doc/RURPOVstrat.pdf>
- 281 A similar workshop was held for Andean Community Biodiversity Management.
- 282 It is worth noting that the Mesoamerican Community Biodiversity Management program (MCBM) Standards Manual and a set of publications were elaborated by local NGO's. In the case of Central America by studios Rurales y Asesoría Campesinos (ERA) and in the case of the Andean Community by Sociedad Nacional de Ambiente in Peru.

- 283 “Belize works to introduce MBC Concept,” <http://www.biomeso.net/http://www.biomeso.net/bancoconocimiento/B/BelizeworkstointroduceMBCConcept/BelizeworkstointroduceMBCCConcept.asp>
- 284 A remarkable example of a domestic social scheme is the Barter Network in Argentina. How this new form of market mechanism contributes to sustainable development in the country has been described for example in Banuri and Najam (2002) eds.
- 285 See Fair Trade Foundation, 2002 Report on Trends in the Fair Trade Industry – Executive Summary.
- 286 See Fair Trade Foundation, 2002 Report on Trends in the Fair Trade Industry – Executive Summary.
- 287 See The European Fair Trade Association <http://www.eftafairtrade.org/efta.asp>
- 288 The Fair Trade Foundation Principles and Practices states that “environmental sustainability in one of their 10 principles, similarly Global Economy General Principles include “Environment” as one of their 12 principles and IFAT state “Concern for the Environment”
- 289 See SASA <http://www.isealalliance.org/sasa/about/index.htm>
- 290 WTO (2001).
- 291 Interview with Gonzalo Salamanca, Fundación Chile: <http://www.ecoredlatina.com>
- 292 http://www.propoortourism.org.uk/what_is_ppt.html What is Pro-Poor Tourism?
- 293 http://www.propoortourism.org.uk/ecuador_cs.pdf No 6. Practical strategies for pro-poor tourism. Tropic Ecological Adventures – Ecuador. Scott Braman and Fundación Acción Amazonia, April 2001
- 294 See for example principle 1.1 of the FSC (<http://www.fsoax.org>), and Principles 5, 6 and 7 of the Chilean certification system CERTFOR, <http://www.certforchile.cl>
- 295 DFID, EC, UNDP and World Bank, *Linking Poverty Reduction and Environmental Management: Policy Challenges and Opportunities*, (Washington: IBRD/World Bank, 2002).
- 296 IISD, *Principles of Trade and Sustainable Development*, (Winnipeg: IISD, 1994).
- 297 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, 38 I.L.M. 517, online: UNECE <http://www.unece.org/env/pp> [hereinafter Aarhus Convention]. The United States and Canada, as members of the UN ECE region, have had the opportunity to become parties to the Aarhus Convention, but to date, have declined. A made-in-the-Americas approach, which avoids the constitutional issues reportedly blocking their participation, might be a step forward.

- 298 Karen Hansen-Kuhn, "U.S. Foreign Policy In Focus: Free Trade Area of the Americas" In *Focus Interhemispheric Resource Center Institute for Policy Studies* Vol. 3 No. 6 April, 1998.
- 299 M.C. Cordonier Segger, M. Bastida Munoz, P. Ribeiro Meireles and J. Zalles Taurer, *Trade Rules and Sustainability in the Americas*, (Winnipeg: IISD, 1999).
- 300 UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003). See also K. Helmore and N. Singh, *Sustainable Livelihoods: Building on the Wealth of the Poor*, (Bloomfield: Kumarian Press, 2001).
- 301 ECLAC, *Equity, Development and Citizenship*, ECLAC 28th Session, Mexico City, April 3–7, 2000. And see Q. T. Wodon, *Poverty and Policy in Latin America and the Caribbean*, World Bank Technical Paper No. 467, June 2000.
- 302 *Interhemispheric Resource Center Bulletin*. A Quarterly publication. Dec. 97. Nos. 47–48 at pp. 9 and 10 and pp. 2–4.
- 303 The NAALC carries forward the commitment of the Preamble to the NAFTA to "improve working conditions and living standards" (Art. 1) in all Parties; to "protect, enhance and enforce basic workers' rights"; to strengthen co-operation on labour issues among governments and citizens; to ensure that the Parties will work to protect high labour standards; and to ensure that each Party retains its ability to set its own labour standards. The NAALC establishes a Commission for Labour Co-operation (Art. 8) which comprises a Ministerial Council (Art. 9) and a Secretariat (Art. 12), and is assisted by a National Administrative Office (NAO) in each country (Art. 15). The Council, comprising cabinet-level representatives from each country, directs the implementation of the Agreement. If the Council (Art. 27) is unable to resolve a trade-related labour dispute, concerning the enforcement of the occupational safety and health, child labour and minimum wage laws it may, by a two-thirds vote, convene an arbitral panel (Art. 28-29). The panel will investigate and make public its findings (Art. 37). A compliance mechanism has been established in the event that an arbitral panel finds a persistent pattern of failure by a country to effectively enforce its labour law. For a summary of disputes to date under the NAALC, see Human Rights Watch, online: <http://www.hrw.org/reports/2001/nafta/nafta0401-05.htm>
- 304 See NAALC Secretariat, online: <http://www.naalc.org>. See in particular Commission for Labour Cooperation, *Comparative Guide to Labour and Employment Laws in North America*. Labour Relations Law In North America (Washington: NAALC, 2000). The NAALC elaborates eleven labour principles (Annex 1) that the countries are committed to encourage: freedom of association and the right to organize; the right to collective bargaining; the right to strike; prohibition of forced labour; labour protection for children and young persons; minimum employment standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; compensation in such cases; and, protection of migrant workers.

- 305 R. Alexander, "Experience and Reflections on the Use of the NAALC" in *Memorias: Encuentro Trinacional de Laboristas Democráticas*, (Mexico: Universidad Nacional Autónoma de México, 1999).
- 306 See J. Graubart, "Giving Teeth to NAFTA's Labour Side Agreement" in *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges*, J. Kirton and V. Maclaren, eds. (Burlington: Ashgate, 2002).
- 307 See K. Banks, "Civil Society and the North American Agreement on Labour Cooperation," in *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges*, J. Kirton and V. Maclaren, eds. (Burlington: Ashgate, 2002).
- 308 J. Grandi and L. Bizzozero, "Hacia una sociedad civil del Mercosur: Viejos y nuevos actores en el tejido subregional," *Participación de la sociedad civil en los procesos de integración: Seminario*, (Montevideo: ALOP, CEFIR, CLAEH, 1998).
- 309 In Articles 28–30 of the Protocol of Ouro Preto, the MERCOSUR Economic and Social Consultative Forum (FCES) was established and given a role to guarantee participation of different sectors. With 9 representatives per country (36 members), the FCES advises the Common Market Council (the Consejo Mercado Común). See Organization of American States SICE Database on FTAA Issues, online: <http://www.oas.org>
- 310 See O. E. Uriarte, "La ciudadanía laboral en el Mercosur," *Derecho Laboral* (Montevideo 1998) Tomo XLI N° 190. Online: [http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#\(*\)](http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#(*))
- 311 See <http://www.mercosur.org.uy>
- 312 L. G. Solís and P. Solano, *Central America: The Difficult Road Towards Integration and the Role of Canada*, FPP-01-07 (Ottawa: FOCAL, 2001).
- 313 W. Campos, "La participación social en la integración social centroamericana: La ICIC," *Participación de la sociedad civil en los procesos de integración: Seminario*, (Montevideo: ALOP, CEFIR, CLAEH, 1998).
- 314 The former President of ICIC explained that they felt many of their views were not taken into account in the document prepared for the regional leaders. In addition, the final draft Treaty was also not sent to the ICIC, nor to the SICA Consultative Committee, in enough time to give them opportunities to make meaningful comments. Though civil society leaders were invited to give a 10 minute presentation of their views at the Summit itself, ICIC members did not feel this process made a real participation possible, and hence, were hard-pressed to support the goals of the new Treaty nor become part of its follow up activities and programs. These groups were not reassured by the creation of an Advisory Council for the Central American Integration System, as the concern about political will meant they perceived it as having only symbolic value. See W. Campos, "La participación social en la integración social centroamericana: La ICIC," *Participación de la sociedad civil en los procesos de integración: Seminario*, (Montevideo: ALOP, CEFIR, CLAEH, 1998) at 261.

- 315 L. G. Solís and P. Solano, *Central America: The Difficult Road towards Integration and the Role of Canada*, FPP-01-07, (Ottawa: FOCAL, 2001). These authors observe that though the SICA Advisory Committee has no decision-making capacity within the SICA, it is entitled by the Protocol of Tegucigalpa to advise the Secretary General of SICA in all matters pertaining to regional integration. Thus, it has provided the Central American governments with important alternative visions of regional development. It also constitutes a strategic and privileged interlocutor before the international community.
- 316 E. J. Chamorro, “El Sistema de Integración CentroAmericana: desarrollo e impacto,” *Participación de la sociedad civil en los procesos de integración: Seminario*, (Montevideo: ALOP, CEFIR, CLAEH, 1998) at 149.
- 317 J. Castro Bernieri, *La participación de los ciudadanos en la Comunidad Andina*, Consultor Jurídico, Secretaría General de la CAN, Sept, 2001, online: <http://www.comunidadandina.org/agenda/participacion3.htm>
- 318 R.V. Percival, A. S. Miller, C. H. Schroeder and J. P. Leape, *Environmental Regulation, Law, Science and Policy*, (New York: Aspen Law and Business, 2000) 3rd ed. at 531, describes the 1986 U.S. Emergency Planning and Community Right to Know Act Pub. L. 99-499, 100 Stat. 1613 (1986), 42 U.S.C. ss 11001-11050. See Hamilton, “Exercising Property Rights to Pollute: Do Cancer Risks and Politics Affect Plant Emission Reductions?” 18 *J. Of Risk and Uncertainty* 105 (1999) for an exploration of the unexpected benefits of this approach.
- 319 See J.D. Taillant, “A Rights Based Approach to Development,” *Presentation to the World Social Forum Seminar on Globalization and Human Dignity*, March 2, 2002 Porto Alegre, Brazil. Online: <http://www.cedha.org.ar/cedha.htm>. The Center for Human Rights and Environment (CEDHA) is a non-profit organization promoting sustainable development through the promotion of the symbiotic relationship existing between the environment and people, and striving to build awareness of the importance of addressing human rights and environmental protection in all development processes. Their Access to Justice Programme has sought to assist those with claims to gain access to the IACHR and the IAHR. See also results of the Hearing on Human Rights and Environment, at the Inter-American Commission on Human Rights, Organization of American States, October 16, 2002, Washington, DC.
- 320 See OAS, online: <http://www.oas.org/usde.isp.htm> . See also M.C. Cordonier Segger, M. Araya, A.K. Gonzalez-Lutzenkirchen, N. Lucas, M. Bastida Munoz, and J. Zalles Taurel, *Ecological Rules and Sustainability in the Americas*, (Winnipeg: IISD, 2002) at 60–61.
- 321 Grupo Participación en las Américas, “Sobre el Fortalecimiento de la Participación de las Sociedad Civil en Actividades de la OEA y a Nivel Hemisférico” presented to the Reunion Consultiva Anual de las organizaciones acreditadas ante la OEA, March 28, 2003, Washington DC, USA. Online: http://www.cedha.org.ar/docs/doc116-spa.htm#_ftn1. See also OAS, online: <http://www.oas.org>

- 322 *Health in the Americas, 2002 Edition*, is the Pan American Health Organization flagship publication analyzing the health situation and trends in the Region of the Americas. In their 2002 edition, the analysis of Health in the Americas is oriented toward documenting inequalities in health. It seeks to show analysis at both the Regional and country levels. Volume I's eight chapters present a Regional perspective on the current health situation, including analyses of the status and trends of several important health and health-related indicators and determinants, ranging from mortality and changes in life expectancy to the impact that income-level and income-distribution inequalities have on the population's health. Volume II presents the most up-to-date health situation analysis for each of the 48 countries and territories of the Americas. The report is a product of a Region wide analytical effort that is conducted using a common framework that includes an analysis of overall health status, specific health problems, and the response of health systems and services.
- 323 In general, see <http://www.paho.org>. See also *Call for Proposals for NGOs on Tobacco Control, Channel the Outrage: Using the Framework Convention on Tobacco Control (FCTC) to build a global public health movement*. A World Health Organization (WHO) Project Funded by the United Nations Foundation WHO-Glo-01-205, online: <http://www.paho.org/English/AD/SDE/RA/toh-convocatoria.htm>
- 324 A Report of this meeting is available from Environment Canada, online: http://www.ec.gc.ca/international/regorgs/hema_e.htm
- 325 More information about the Charter is provided above in the section on Environmental Integrity, and the full text of the Charter is available online: <http://www.oas.org/usde/summit/bolivia%20health.htm#APPENDIX>
- 326 See "Response of NGO Observers at the Meeting of the Health and Environment Ministers of the Americas," Available online: http://www.ec.gc.ca/international/regorgs/docs/english/NGO_RESPONSE_eng.htm
- 327 An Americas Business Forum was held as part of the November 2003 FTAA ministers' meeting in Miami, Florida. Available online: <http://www.miamiftaa2003.com/>
- 328 Committee of Government Representatives for the Participation of Civil Society, available online: <http://www.oas.org>
- 329 Release of FTAA Draft Text, in Buenos Aires and Quito, available online: <http://www.dfait-maeci.gc.ca>
- 330 Available online: <http://www.oas.org>
- 331 Canadian Labour Congress, "Statement by the Canadian Labour Congress to the House of Commons Sub-Committee on Trade and Trade Disputes of the Standing Committee on Foreign Affairs and International Trade Regarding the Free Trade Area of the Americas" (Ottawa: CLC, March 29, 2001).
- 332 See, e.g., J. Ruben, "In Quito, the FTAA Goes on the Defensive" published by the Americas Program (Silver City, NM, Interhemispheric Resource Center, November 12, 2002). Available online: <http://www.americaspolicy.org/citizen-action/focus/0211quitoact.html>

- 333 2002 Declaration of Trade Ministers of the Americas, Quito, Ecuador available online: <http://www.oas.org>
- 334 Michel Dion, Democracy and Human Rights: Towards an ILO-OAS Joint Committee for a Human and Labour Rights Agreement, Presentation at the OAS Special Committee on Inter-American Summits Management OAS Headquarters, Washington, D.C. September 19, 2000. Available online: <http://www.summit-americas.org/CEGCI%20Meetings/19-SEPT-00-CEGCI/m-dion-presentation-eng.htm>.
- 335 For more information about the Hemispheric Trade and Sustainability Symposium, see <http://www.iisd.org/trade/qc2001/>. For more information on the Americas Trade and Sustainable Development Forum (ATSDF), see <http://www.miami.edu/nsc/pages/ATSDFissues.html>. At the ATSDF, a working group discussed formal participation mechanisms in the FTAA, including the proposal of the Government of Chile for a "Civil Society Consultative Committee." This group recommended that such a committee be gender balanced, reflect the geographical and demographical diversity of the region, and integrate different sectors of civil society working on environmental, social, cultural and other issues related specifically to the FTAA. They also recommended that it should linked to (and derive legitimacy from) an officially recognized and open Trade and Sustainable Development Forum, to be held as part of periodic FTAA meetings, support civil society research and capacity building, and play a role in information-gathering, monitoring and reporting on sustainable development issues related to trade, and have access to reliable, independent financial resources to facilitate its work.
- 336 International Institute for Sustainable Development, *Trade and Sustainable Development Principles*, (Winnipeg: IISD, 1994).
- 337 See H. Ward, available online: <http://www.iisd.org>
- 338 K. Von Motlke, Communication and expert advice, IISD, Nov. 29, 2003, on file with authors.
- 339 J. Reichman and J. Tickner, *El Principio de Precaución en Medio Ambiente y Salud Pública: De Las Definiciones a la Práctica*, (Barcelona: Icaria-Más Madera, 2002).
- 340 PAHO, available online: <http://www.paho.org>
- 341 See V. Toledo, *Ciencia, Sustentabilidad y Sociedad del Riesgo*. (México: In Press, 1993). See also R. Sclove and M. Scammel, "Protecting Public Health and the Environment: Implementing the Precautionary Principle en Practicing the Principles." In C. Raffensperger and J. Tickner eds. (Washington, D.C: Island, (1999) at 252–265. The ILO Convention 169 recognizes traditional scientific knowledge and practices, though national constitutions still need to implement juridical frameworks for that purpose.
- 342 In order to promote biosafety, the Protocol uses various precautionary instruments, such as a detailed prior informed agreement process, a framework for risk assessment and risk management, provisions for capacity building and public

- awareness. It also provides, as a central innovation, for a Biosafety Clearinghouse mechanism to exchange scientific information about products and their results.
- 343 See e.g., American Convention on Human Rights, Art. 63(2); Rules of Procedure of the Inter-American Court of Human Rights, Art. 25; Statute of the International Court of Justice, 59 Stat. 1055, Art. 41; Rules of Procedure of the United Nations Human Rights Committee, U.N. Doc. CCPR/C/3/Rev.6, Art. 86; Rules of Procedure of the European Commission of Human Rights, revised Rules updated to May 7, 1983, Art. 36; Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on 6 October 1995, Art. 111.
- 344 Third Summit of the Americas, Quebec, 2001, see Annex 10.
- 345 The CICAD (..) Antidrug Strategy in the Hemisphere Program refers in point 5 to the hemispheric efforts for the implementation of national antidrug plans which include among other, prevention, remediation, alternative development and enforcement. Available online: <http://www.cicad.oas.org>
- 346 The Common Market of Scientific and Technological Knowledge Program (MERCOCYT Program) is a multinational instrument of the OAS member states that furthers contact among universities and research centers throughout the Hemisphere. Its purpose is to promote cooperation and sharing of scientific and technological information by assisting activities that complement the member states' efforts in research, pre-competitive technological development and support to encourage innovation. The program also promotes cooperation to train highly qualified human resources through research and activities to support innovation. The Permanent Committee responsible for the MERCOCYT Program is made up of high-level delegates from the member states, preferably officials from the national science and technology agencies. It has adopted a gradual approach to developing the MERCOCYT Program, starting out with pilot projects and other specific cooperation activities to be carried out on a voluntary participation basis, using the existing institutional capacities and with as much operational decentralization as possible. The Department of Scientific and Technological Affairs of the OAS serves as the Technical Secretariat of the Program. Available online: http://www.science.oas.org/english/publicae_pol.htm, see also <http://www.oas.org/EN/PINFO/arsge79e.htm>
- 347 ICAmericas.net is the collaborative and interactive portal for public policy-makers, entrepreneurs, community activists, and digital leaders interested in using the Internet and information technology to improve the development gap in the Americas. Available online: <http://www.icamericas.net/index.php?newlang=eng>
- 348 In regard to the scientific aspects, the Preamble states as follows: "CONVINCED of the need to promote the scientific and technological development of the states Parties and to modernize their economies in order to expand the supply and improve the quality of available goods and services, with a view to enhancing the living conditions of their populations." The same preamble makes a general reference to precautionary aspects: "BELIEVING that this objective must be achieved by making optimum use of available resources, preserving the environ-

- ment, improving physical links, coordinating macroeconomic policies and ensuring complementarity between the different sectors of the economy, based on the principles of gradualism, flexibility and balance.” See <http://www.sice.oas.org/trade/mrcsr/mrcsr1.asp>
- 349 Charter of Buenos Aires on Social Commitments, June 30, 2000, Buenos Aires.
- 350 Available online: http://www.cinterfor.org.uy/public/spanish/region/ampro/cinterfor/publ/mcferr/pdf/an_doc.pdf and <http://www.mercosur.org.uy/pagina1esp.htm>
- 351 Available online: <http://www.comunidadandina.org/ingles/who/social.htm>
- 352 With reference to the Andrés Bello Convention, although this does not form part of the institutional structure of the Andean Community, it coordinates and carries out activities of common interest with the General Secretariat of the CAN, in accordance with a Cooperation Accord signed on September 2, 1998.
- 353 The Hipólito Unanue Convention (CONHU) forms part of the Andean Integration System (AIS). It became a part of the institutional structure of the Andean Community through adoption of Decision 445, approved by the Andean Council of Foreign Ministers on August 10, 1998.
- 354 See <http://www.senacyt.gob.pa/ctcap>
- 355 See Secretaría General del Sistema de Integración Centroamericana, *Memoria de Labores*, (Guatemala: SG-SICA, 2002) available online: <http://www.sgsica.org>
- 356 See also Status of the Free Movement of Skills and the CARICOM Social Security Agreement, available online: <http://www.caricom.org>
- 357 See A. Cosby, *et al.*, *Environment and Trade: A Handbook*, (Winnipeg: IISD/UNEP, 2001). See also M.C. Cordonier Segger, *et al.*, *Ecological Rules and Sustainability in the Americas*, (Winnipeg: IISD/UNEP, 2002).
- 358 M.C. Cordonier Segger, “Precaution, Trade Law & Justice: Global Review of the Safe Level of Risk” in *Regulating Ecologically*, J. Wargo (ed.) (New Haven: Yale University Press, forthcoming).
- 359 M.C. Cordonier Segger and M. Gehring, “The WTO and Precaution: Sustainable Development Implications of the WTO Asbestos Disputes,” 15:3 *Oxford Journal of Environmental Law* 2003 at 289.
- 360 See A. Cosby, *et al.*, *Environment and Trade: A Handbook*, (Winnipeg: IISD/UNEP, 2001). See also M.C. Cordonier Segger, *et al.*, *Ecological Rules and Sustainability in the Americas*, (Winnipeg: IISD/UNEP, 2002).
- 361 See Regulations of the Inter-American Commission on Human Rights, approved by the Commission at its 660th Meeting, 49th session held on April 8, 1980, and modified at its 64th, 70th, 90th and 92nd sessions, Art. 29; Rules of Procedure of the Inter-American Commission on Human Rights, approved by the Commission at its 109th special session held from December 4 to 8, 2000, Art. 25; Annual Report of the IACHR 1996, Chapter II(4); Annual Report of the

- IACHR 1997, Chapter III(II)(A); Annual Report of the IACHR 1998, Chapter III(2)(A); Annual Report of the IACHR 1999, Chapter III(C)(1); Annual Report of the IACHR 2000, Chapter III(C)(1).
- 362 See IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEASer.L/V/II.111 doc. 21 rev. (6 April 2001), paras. 71-72; Juan Raul Garza v. United States, Case No. 12.243, Report No. 52/01, Annual Report of the IACHR 2000, para. 117.
- 363 There exist other cases where the Court has taken similar preventive measures to protect indigenous communities rights. For example, the case of the Communities Jiguamiandó and Curbaradó, Colombia. Court Resolution March 6, 2003. Available online: <http://www.corteidh.or.cr>
- 364 The Center for International Environmental Law (CIEL) and the Center for Human Rights and Environment (CEDHA) recently filed an amicus curia brief at the Inter-American Commission on Human Rights on behalf of the Wichi and four other indigenous communities in northern Argentina. The brief asks the Commission to grant precautionary measures to halt further development until the government of Argentina prepares an environmental impact assessment and consults with the indigenous peoples threatened by the development. The Wichi and other indigenous communities also have asked the Commission to enforce Argentina's promise to honor their land claims. The amicus brief urges the Commission to recognize the symbiotic relationship between indigenous peoples and their land, an important stepping-stone in efforts to strengthen the link between human rights and the environment. The brief asks the Commission to take precautionary measures forcing Argentine authorities to halt a road and bridge project, and several other public works that threaten the environment, culture, and lifestyle of the Wichi, Chorote, Chulupi, Toba, and Tapiete indigenous communities of northern Argentina. The road is designed to connect Brazil with Pacific ports in Chile to facilitate the globalization of trade. The Wichi fear that the road will bring heavy truck traffic and pollution, and will facilitate the transmission of AIDS and other diseases. Available online: <http://www.ciel.org/Announce/wichipressrelease.html>
- 365 2001 Health and Environment Ministers of the Americas Declaration, Ottawa, Canada, available online: Environment Canada, http://www.ec.gc.ca/international/regorgs/hema_e.htm See <http://www.iisd.ca/linkages/sd/sdhem/> for a report of the first meeting.
- 366 K. von Moltke, *International Environmental Management, Trade Regimes and Sustainability*, (Winnipeg: IISD, 1996).
- 367 See, for example, the efforts of the World Organization of Animal Health (OIE, originally the Office International des EpizootiesO) with 167 member countries. The OIE Risk Analysis Group for the Americas has been working to develop a risk analysis Code Interpretation. See <http://www.aphis.usda.gov/oieamericas/recommendations.htm> General information on OIE is available online: http://www.oie.int/eng/OIE/en_oie.htm

- 368 Draft Declaration of Indigenous Peoples Rights, available online: <http://www.oas.org>
- 369 M. Bastida Munos and G. Patrick, “La bioética multidimensional como eje conductor de políticas de sustentabilidad en América Latina y el Caribe,” in E. Leff and M. Bastida Munos (eds.), *Comercio, Medio Ambiente y Desarrollo Sustentable: Perspectivas de América Latina y el Caribe*, (Mexico: UNEP, 2001) at 235. Available online: http://www.rolac.unep.mx/educamb/esp/comercio_y_medio_ambiente.pdf
- 370 See F. Berkes and C. Folke (eds.), *Linking Social and Ecological Systems. Management practices and social mechanisms for building resilience*, (Cambridge: Cambridge University Press, 1998). See also V. Toledo, *Ciencia, Sustentabilidad y Sociedad del Riesgo*, (México: In Press, 1993).
- 371 See D. Santillo and P. Johnston, “Principio de precaución y evaluación de riesgo” in J. Reichman and J. Tickner, *El Principio de Precaución en Medio Ambiente y Salud Pública: De Las Definiciones a la Práctica*, (Barcelona: Icaria-Más Madera, 2002).
- 372 See J. Reichman and J. Tickner, *El Principio de Precaución en Medio Ambiente y Salud Pública: De Las Definiciones a la Práctica*, (Barcelona: Icaria-Más Madera, 2002). Scientific and social consensus develop through conferences and public debates. In Norway, after a consensus conference had been held on genetic engineering, the government took into account the results. This led it to forbid the production of genetically modified agriculture, due to scientific and public concerns about potential risks.
- 373 See K. Banks, “Civil Society and the North American Agreement on Labour Cooperation,” in *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges*, J. Kirton and V. Maclaren, eds. (Burlington: Ashgate, 2002).
- 374 International Institute for Sustainable Development, *Trade and Sustainable Development Principles*, (Winnipeg: International Institute for Sustainable Development, 1994), pp. 23–24.
- 375 This chapter is based on research done for S. Salvador, *Liberalization of Trade in Health Services in Latin America and the Caribbean: Main Challenges*, (Montevideo: IDRC/TEC, 2003). The authors of SRSA would like to acknowledge the kind support of the government of Canada, particularly Health Canada, for its realization.
- 376 UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003).
- 377 S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8, (Ottawa: FOCAL, 2002).
- 378 D. Lipson, “The World Trade Organization’s Health Agenda,” *British Medical Journal (BMJ)*, 323 (2001) 1139–40.
- 379 León, F. (2000) “Modernización y comercio exterior de los servicios de salud,” División de Desarrollo Social, Serie Políticas Sociales 37, CEPAL, Santiago de Chile.

- 380 UNCTAD-WHO, *International Trade in Health Services: A Development Perspective*, Zarilli S. and C. Kinnon (eds) (Geneva: UNCTAD-WHO, 1998). See also D. Woodward, N. Drager; R. Beaglehole, *et al.* "Globalization and Health: A Framework for Analysis and Action," Commission on Macroeconomics and Health, CMH Working Paper Series Paper No. WG 4: 10, Department of Health in Sustainable Development, (Geneva: WHO, 2001).
- 381 J. Frenk, O. Gómez-Dantés, O. Adams, *et al.*, "The Globalization of Health Care," in *International Cooperation in Health*, M. McKee (ed), (London: Oxford Medical Publications, 2001).
- 382 In particular, Article V of General Agreement on Trade in Services (GATS) establishes that the preferences granted by WTO countries at another level of integration (hemispheric, sub-regional or bilateral) must fulfill two requirements to be exempted from the general obligation of Most Favoured Nation treatment. The agreement must have substantial sectoral coverage, in terms of sectors, volume of trade affected and means of supply, and must provide National Treatment to Party States, "substantially" eliminating all discrimination. According to the same article, developing countries enjoy a certain flexibility in the application of this second requirement, but its scope is not specified.
- 383 Abugattas Majluf, L. (2000) "Liberalización del comercio de servicios: opciones e implicancias para América Latina y el Caribe," Brief 9, Latin American Trade Network (LATN). See also ALADI, "Compromisos asumidos por los países miembros en materia de comercio de servicios, en los distintos acuerdos vigentes" ALADI/SEC/dt 418 (Montevideo: Asociación Latinoamericana de Integración, 1999).
- 384 Decision 439 of June 11, 1998.
- 385 Apparently Mexico took until the year 2000 to liberalize 100 per cent entry of FDI in Financial Services (in this case insurance) for its NAFTA partners, and in mode 4 progress was made on elimination of the nationality and permanent residence requirements, but recognition is still not automatic, see R. Chanda, "Trade in Health Services." Commission on Macroeconomics and Health, CMH Working Paper Series Paper No. WG 4: 5 (Bangalore: Department of Economics & Social Sciences, Indian Institute of Management, 2001).
- 386 ALADI (1999) "Compromisos asumidos por los países miembros en materia de comercio de servicios, en los distintos acuerdos vigentes," ALADI/SEC/dt 418, Asociación Latinoamericana de Integración, Montevideo.
- 387 Resolution No. 36/00 of the Common Market Group establishes as a particular interest for deepening of the services liberalization commitments "analysing the possibility and establishing negotiating modes to move ahead on elimination of existing restrictions in the commercial presence supply mode, both as regards market access and national treatment."
- 388 S. Salvador, *Liberalization of Trade in Health Services in Latin America and the Caribbean: Main Challenges*, (Montevideo: IDRC/TEC, 2003).

- 389 In most of the Americas, birth rates are falling and the working age population is growing. See UNDP, *Human Development Report: Millennium Development Goals – A Compact among Nations to End Human Poverty*, (New York: UNDP, 2003). If quality education becomes more accessible and adequate employment is generated, the opportunity exists for the average income of the population to rise and for inequalities to decline. However, if the opportunity is not exploited, the growing labour supply will bring about more informal employment and unemployment, and the wage gap will widen further between skilled and unskilled workers. It can be persuasively suggested that social security systems need to reflect these changes. See S. Wilson-Forsberg, *Addressing Poverty and Inequality in Latin America and the Caribbean: A Social Primer*, FPP-01-8, (Ottawa: FOCAL, 2002).
- 390 S. Stephenson, “Multilateral and Regional Services Liberalization by Latin America and the Caribbean,” (Washington: OAS Trade Unit Studies Organization of American States, 2001).
- 391 Presentation by Dr. Luiz Sobania at the Workshop “Latin American and Caribbean countries...,” organized by IDRC, in Montevideo, April 24–25, 2002.
- 392 UNCTAD-WHO, *International Trade in Health Services: A Development Perspective*, (ed.) Zarilli S. and C. Kinnon (eds), (Geneva: UNCTAD-WHO, 1998) at Ch. 8.
- 393 D. Diaz and M. Hurtado, “El comercio internacional de servicios de salud: principales cuestiones y oportunidades para los países de América Latina y el Caribe,” *Serie Informes Técnicos* No. 33 (Washington: Programa de Políticas de Salud, División de Salud y Desarrollo, Organización Panamericana de la Salud, 1994).
- 394 R. Chanda, “Trade in Health Services.” Commission on Macroeconomics and Health, CMH Working Paper Series Paper No. WG 4: 5 (Bangalore: Department of Economics & Social Sciences, Indian Institute of Management, 2001).
- 395 J. Frenk, O. Gómez-Dantés, C. Cruz, *et al.*, “Consequences of the North American Free Trade Agreement for Health Services: A Perspective from Mexico,” *American Journal of Public Health*, eds. American Public Health Association, 84(10) 1994 1591–1597.
- 396 Pan American Health Organization, *Pan American Journal on Public Health*, 8 (1/2), 2000, p. 141.
- 397 M.C. Cordonier Segger, *et al.*, *Trade Rules and Sustainability in the Americas*, (Winnipeg: IISD, 1999) at 50.
- 398 D. Maceira, *Fragmentación e incentivos en los Sistemas de Atención de la Salud en América Latina y el Caribe*, (Washington: Banco Interamericano de Desarrollo (BID), 1996).
- 399 N. Homedes and A. Ugalde, “Privatización de los servicios de salud: las experiencias de Chile y Costa Rica,” *Gaceta Sanitaria* 2002; 16(1) 2002 at 54–62.

- 400 S. Salvador, *Liberalization of trade in health services in Latin America and the Caribbean: main challenges*, (Montevideo: IDRC, 2002), p. 23.
- 401 The term “portability” refers to the fact that services provided outside the country are part of the services covered by national health insurance. This would be resolved by reimbursement of the cost incurred by the beneficiary or by direct payment to the health provider of the other country.
- 402 M. Gajardo and F. Gómez, *La liberalización de los servicios educativos: tendencias y desafíos para América Latina*, (Buenos Aires: LATN, 2003), p. 3.
- 403 These include IAHRC and IACHR, OAS, PAHO, ECLAC, IDB, and ILO has an Americas office.
- 404 The Organization’s essential mission is to strengthen national and local health systems and improve the health of the peoples of the Americas, in collaboration with Ministries of Health, other government and international agencies, non-governmental organizations, universities, social security agencies, community groups, and many others. See Pan American Health Organization, online: <http://www.paho.org/english/paho/what-paho.htm>
- 405 In addition to its core budget financed by quota contributions from its Member Governments, PAHO also seeks outside funding to help implement special programs and initiatives in response to vital health needs. Voluntary tax-deductible contributions for PAHO health and education projects in the Americas may be made to the Pan American Health Organization and Education Foundation (PAHEF).
- 406 The health authorities of PAHO’s member states set PAHO’s technical and administrative policies through its Governing Bodies. PAHO member states include all 35 countries in the Americas; Puerto Rico is an Associate Member. France, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland are Participating States, and Portugal and Spain are Observer States.
- 407 PAHO enjoys international recognition as part of the United Nations system, serving as the Regional Office for the Americas of the World Health Organization, and as the health organization of the Inter-American System. PAHO is based in Washington, D.C., and has scientific and technical experts at its headquarters, in its 27 country offices, and its eight scientific centers, all working with the countries of Latin America and the Caribbean in dealing with priority health issues. The Organization also executes projects for other United Nations agencies, for international organizations such as the World Bank and Inter-American Development Bank, for official development cooperation agencies of various governments, and for philanthropic foundations.
- 408 PAHO strengthens the health sector capacity in the countries to advance their priority programs through intersectoral action, promoting an integral approach to health problems. It also works to improve women’s health, promoting the greater integration of women in society, as well as awareness of their importance

- as both recipients and providers of health services. PAHO also trains health workers at all levels, through fellowships, courses and seminars, and the strengthening of national training institutions. It leads in the use of advanced communications technologies for information, health promotion, and education, working with journalists in many countries. See PAHO, *Health in the Americas – 2002 Edition* Volumes I and II (Washington: Pan American Health Organization, 2002).
- 409 See Box 8, above, Health and Environment Ministers of the Americas, available online: <http://www.ec.gc.ca>
- 410 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador,” O.A.S. Treaty Series No. 69 (1988), entered into force November 16, 1999, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992), available online: <http://www.cidh.oas.org/Basicos/basic5.htm>.
- 411 See the 2001 Quebec City Summit Plan of Action, below in Annex 9.
- 412 K. von Moltke, “A Road Map for a Cotonou Investment Agreement,” Report prepared for the Commonwealth Secretariat, 2003. Also at <http://www.iisd.org/trade/pubs.htm>. See also ICTSD, online: <http://www.ictsd.org/html/weekly/story1.27-06-00.htm>
- 413 Caribbean signatories are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See online: <http://www.acpsec.org/gb/lome/lome1.htm>. See also online: http://www.europa.eu.int/comm/development/cotonou/index_en.htm
- 414 ECDPM. 2001. Cotonou Infokit: The Institutions (6). Maastricht: ECDPM, online: http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index?readform & http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/ED09769D167CB327C1256C520059BBD4?OpenDocument&Cotonou_Agreement
- 415 A. J. Robles, “Balance y perspectivas de los organismos sociolaborales del MERCOSUR” *Revista Pistas* N° 8, Dec 2002. Report from Taller de Formación y Debate “El futuro del MERCOSUR,” organized April 30–May 2, 2002 by the Coordinación de Asuntos Internacionales del Ministerio de Trabajo, Empleo y Seguridad Social. Online: <http://www.fes.org.ar>.
- 416 Committee 1 - Individual work relationships; Committee 2 - Collective work relationships; Committee 3 - Employment and labour migration; Committee 4 - Vocational training; Committee 5 - Workers health and safety; Committee 6 - Social security; Committee 7 - Labour costs in land and ocean transport; and Committee 8 - Agreements with the ILO.
- 417 See O. E. Uriarte, “La ciudadanía laboral en el Mercosur” *Derecho Laboral*, Montevideo 1998, Tomo XLI N° 190. Online: [http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#\(*\)](http://www.ilo.org/public/spanish/region/ampro/cinterfor/publ/sala/ermida/ciud_lab/index.htm#(*))

4 General Conclusions



4.1 Research, Develop and Implement Sustainable Frameworks for Hemispheric Trade that Supports Poverty Eradication

While increased trade may lead to increased wealth, it is not clear that the FTAA will actually reduce poverty, and even less clear that it will lead to a more equitable distribution of wealth. Will the social costs of the FTAA be born by some, while the benefits all go to others, as some claim? How does trade liberalization affect equity (measured by such indexes as the Gini Coefficient), within regions and countries? There is a need for credible, impartial Social Impact Assessments of ongoing trade liberalization negotiations (on hemispheric, sub-regional or national levels). These assessments, and the decision-making processes that are informed by them, should be participatory. They should generate action plans, mitigation strategies or appropriate flanking measures, with measurable benchmarks that can be monitored. Such assessments should take into account the economic impacts of deteriorating social conditions. Social impact assessments can run parallel to environmental impact assessments, but a new approach could be most constructive, based on integrated consideration of both social and environmental impacts together: integrated or “Sustainability Impact Assessments.” Future environmental impact assessments should also include social considerations, especially taking into consideration potential impacts on indigenous communities and other vulnerable populations.

Trade liberalization, as it is currently occurring, is neither good nor bad for social development. Much depends on setting appropriate social policies, flanking measures and sequencing options into place. These measures include the development of accountable institutional mechanisms and monitoring frameworks to ensure openness and access to justice with regards to trade-related social and human rights commitments. For example, countries must

commit not to lower social standards to attract investment throughout the region, and a mechanism is needed to ensure these commitments are monitored and enforced. Other specific social recommendations for the FTAA negotiations were prepared by the research group, and are summarized below:

Box 15: Social Aspects of the FTAA Working-Group Agendas

The FTAA agenda promises both risks and opportunities for social development. To address social sustainability through trade liberalization in the Americas, each of the FTAA negotiating groups holds gains and trade-offs for both developed and developing countries in the Americas. As a very preliminary and non-exhaustive list of suggestions, certain provisions, of mutually benefit to both social development and trade, could be considered in the context of the FTAA's negotiating group agendas:

Agriculture

- Identify and reduce agricultural subsidies which harm southern farmer livelihoods.
- Reduce use and mitigate impacts from intensive pesticide and agro-chemicals (farmer and children's health impacts, including accidental poisonings), establish frameworks for regulations on information dissemination for trade in agro-chemicals, and encourage trade in organic products.
- Recognize the principle of food security in the FTAA.
- Coordinate with the FAO, UNDP, UNEP, CBD and UNCTAD on safe release of genetically modified organisms, consumer information systems relating to GMOs and segregation of crops to allow local farmers to export non-GMO products.
- Identify the conditions in which agriculture plays a unique role in rural sustainability, linking to recent work by the World Bank and FAO.

Government procurement

- Improve transparency in government procurement choices, to improve contracted services and performance.
- Establish hemispheric procurement allowances and incentives for socially-sound goods and services which respect core labour standards and other ILO Conventions.
- Investigate and confirm appropriate hemispheric linkages between social policy and procurement.

Investment

- Agree that core labour and safety standards, permissible technology transfer requirements and other social development standards should not be lowered or waived to attract foreign investment.
- Prevent requirements for financial compensation to companies in exchange for expenses incurred or limits on property use due to legitimate development and enforcement of social and human rights regulations.
- Improve incentives for, access to information about, and capacity to comply with, socially sound “ethical investment” criteria.

Market access

- Advance incentives for “fair trade” products for trade.
- Develop hemispheric social development management systems, based on analysis of the possibilities for mutual recognition of systems or performance standards for certification and social labelling. Fair trade labels and certification efforts could enhance market access opportunities that arise due to increased social justice consciousness in many markets, but developed countries must assist lesser developed countries to comply with any new requirements.
- Explore the opportunities and establish mechanisms for taking advantage of the growing demand for socially-sound goods and services in many countries.

Dispute settlement

- Recognize, in the FTAA, commitments to, and the binding precedence of, international human rights law, should conflicts occur between social development and human rights objectives and the objectives of trade agreements.
- Ensure inclusion of provisions allowing dispute-settlement bodies to access social development and human rights expertise when necessary.
- Support and strengthen the international human rights system, which can provide multilateral monitoring of, and accountability for, human rights violations. Include provisions to address gaps in enforcement of social development laws.
- Establish mechanisms for civil society access to information and participation in dispute settlement mechanisms, including pro-

cedures for submission of citizen amicus curiae briefs to any FTAA dispute settlement processes.

Subsidies, anti-dumping issues and countervailing duties

- Identify and reform subsidies that lead to unsustainable levels of exploitation and corresponding loss of community livelihoods (e.g., fisheries subsidies).

Services

- Negotiate an international hemispheric instrument, modeled on the SPS agreement, to establish principles and enable each state to establish without risk of challenge the level of public health services it wishes to provide for its people, and require that each state justify trade measures that would limit or prevent trade in health-related goods and services by demonstrating these serve to support the health objectives chosen.
- Recognize and commit to progressive realization of economic, social and cultural rights such as health and education in the text of the FTAA.
- Provide exemptions for countries that wish to “carve-out” public services such as health and education.
- Commit to ensure that liberalization rules support relevant ILO Conventions (such as No. 155 Occupational Health and Safety Convention, 1981) and other social instruments.

Intellectual property rights

- Recognize that access to and benefits of genetic resources must be equitably shared between farmers, include provisions to regulate bio-prospecting and provide for traditional and indigenous collective rights over intellectual property concerning seeds, medicines, farming techniques and other knowledge.
- Recognize the need to ensure public access to knowledge and technology for developmental purposes, including access to generic medicines for life-threatening illnesses such as AIDS.

Competition policy

- Strengthen competition authority access to information about products and production processes, to prevent misrepresentation and ensure higher standards of consumer information in the Americas.

- Increase human rights-related information on products and production processes to promote the differentiation of products, competition and the creation of new market niches.
 - Negotiate relevant social and labour rights exemptions in competition policy for the Americas.
 - Provide support and capacity building to strengthen competition authorities in each sub-region, and provide for co-operation on investigations against regional cartels or monopolies.
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Ensuring that social and trade aspects of hemispheric co-operation are appropriately integrated is only part of the picture. It is also important to ensure that social and environmental aspects are integrated, wherever there are potential synergies or significant trade-offs. At the regional level, social and environmental regimes, in spite of all that has been stated about sustainable development over the last two decades, are just beginning to meet. It will take more time for these policies to grow together. Nevertheless, interesting integration attempts have occurred at different levels in the Americas, including not only the integration of principles of environmental integrity in national constitutions and chapters on human rights, but also preliminary integration of social and environmental aspects in financial institutions, in markets, and in sub-regional trade agreements. The most basic integration of social and environmental issues occurs through the integration of environmental aspects in human rights regimes—the Protocol of San Salvador as well as most national constitutions refer to the right to live in an environment free from contamination. The Health and Environment Ministers of the Americas 2002 Ministerial Declaration with its areas of priority and concrete goals provides another important step towards integration of social and environmental aspects. Other concrete areas of necessary future integration include a better understanding of environmental problems that are directly linked to, or even caused by poverty, unsustainable consumption patterns that are linked to the lack of internalization of externalities in the production of goods due to equity considerations, the creation of jobs through the expansion of the market for environmental goods and services. Just as more research is needed on the social aspects of the FTAA agenda mentioned above, so is more research and analysis needed to address the linkages between social and environmental integration in processes such as the HEMA.

4.2 Strengthen the Inter-American Human Rights System

As agreed in the Quebec City Summit of the Americas, political and legal commitment to the mandate of the Inter-American Human Rights System (IAHRS) must be significantly increased. The San Salvador Protocol and other inter-American Human Rights instruments must be ratified and further

strengthened by all governments.⁴¹⁸ The IAHRs should be granted increased authority and financial support, and concrete mechanisms should be set in place to facilitate access to justice for all those which need it. Concrete measures are needed to strengthen and improve the inter-American human rights institutions, in particular the functioning of the Inter-American Court of Human Rights and the Inter-American Human Rights Commission. These efforts can focus on further universalizing of the inter-American human rights system, increasing ratification and compliance with its founding instruments, strengthening respect for the decisions of the Inter-American Court and the recommendations of the Commission, facilitating access to the IAHRs and substantially increasing resources to maintain ongoing operations. In addition, both the Court and the IACHR should become permanent mechanisms. Further work must also be done to ensure that communities and individuals are aware of their rights and can access them.

But the Inter-American human rights system has evolved in the past decade. Social regimes accord growing importance and recognition to social, economic and cultural rights, as recognized in the 2003 Declaration of Margarita from the OAS High Level Meeting on Poverty, Equity and Social Inclusion (CIDI, OEA/Ser.W/IX.1, RANPEIS/DEC. 1/03).⁴¹⁹ These rights can be affected by trade liberalization processes, and require very careful protection before further steps are taken to liberalize economies. This is one of the reasons that all States should take steps to immediately ratify and implement the Protocol of San Salvador, setting in place transparent, accessible monitoring and compliance mechanisms. The Protocol of San Salvador is the litmus test of hemispheric commitment to human rights in a new economic, social, environmental and cultural context of integration.

Furthermore, human rights are the fundamental foundations of social regimes, and whether or not States choose to incorporate human rights language into trade doctrine, they remain bound by their obligations. Human rights have been guaranteed in the national constitutions of the Americas, in seminal hemispheric conventions, and in international covenants and conventions. Certain human rights obligations are also recognized as part of international customary law or as *ius cogens* norms, from which no derogation is possible. Countries of the Americas have an obligation to progressively realize these human rights, and trade negotiations are not exempt from this obligation. Economic liberalization agreements which serve to weaken this system of human rights law risk being found socially and perhaps even legally contestable.

Existing global and regional trade regimes do not seem to adequately address existing human rights law. Indeed, many countries seem unwilling to consider the relationship between trade and human rights law. Yet, as we have shown, the FTAA is being authored by States that are bound by international and

increasingly, hemispheric human rights law, and these rights provide valuable guidance for new economic commitments. Any new trade regimes must be established within the context and framework of existing regional and global human rights doctrines. The FTAA and other economic liberalization instruments must support, rather than potentially frustrating, human rights goals.

The Inter-American Human Rights Commission can be called upon, and indeed, might even be the natural forum, for trade related disputes that address issues of social, economic and cultural rights, even those related principally to trade. For example, the IAHRs dispute settlement mechanism will shortly rule on the issue of labelling, and consumer access to information, on genetically modified organisms. Trade, consumer rights, health and social development actors would be wise to closely monitor this case.

4.3 Develop a New Hemispheric Socio-Labour Co-operation Mechanism?

The 2001 Quebec City Summit of the Americas Plan of Action recognized that employment is the most direct way in which economic activity is linked to the improvement of the standard of living of citizens and that true prosperity can only be achieved if it includes protecting and respecting basic rights of workers as well as promoting equal employment opportunities and improving working conditions for people in all countries in the region, with special attention to those in the informal sector, to people belonging to ethnic and religious minorities, and also other vulnerable persons including women, youth, indigenous, migrant workers, persons with disabilities and persons with HIV/AIDS. It noted the importance of investing in human resource development, of promoting employment security consistent with economic growth and of developing mechanisms to assist workers with periods of unemployment. It also noted the need to strengthen co-operation and social dialogue on labour matters among workers, their organizations, employers and governments.

Many developing country governments fear, and resist, links between trade and labour standards. This is not a fear of labour standards improvement—indeed, most are parties to the ILO Conventions and have agreed to related Declarations. Rather, there is a fear that badly-drafted measures could limit their access to new markets, or even worse, privilege their competitors in countries that do not have to comply with such social or labour standards. Any labour-related provisions in FTAA should not “condition” normal market access gains, nor create additional hoops or protectionist red tape for developing country producers.

One innovative proposal is that the FTAA could permit, or even support, preferential treatment for certain LAC products based on their compliance with core ILO standards or other multi-laterally agreed and monitored measures.

The distribution of trade preferences through a GSP regime based on product compliance with core ILO labour standards (rather than country compliance with such standards) could provide a more effective tool for linking trade benefits with socially-desirable economic behaviour. If this direction was chosen, several policy options could make such a link. For example, governments could promote common social objectives across the Americas by allocating preferential treatment or expedited tariff reduction under the FTAA to products which comply with “regionally recognized” social certification monitoring systems (in a manner similar to those currently under investigation within the WTO with respect to environmental goods and services). To the extent that unilateral measures for promoting labour standards internationally (such as the U.S. General System of Preferences, the Andean Trade Preference Act, the Caribbean Basin Recovery Act, etc.) are deemed practical or appropriate tools for promoting sustainable development, such tools can also be studied, in light of the new context presented by the existence of international labour standards monitoring initiatives.

In addition (and perhaps more acceptable to most countries of the Western Hemisphere), a co-operative hemispheric labour agenda is possible, and indeed, highly desirable. This co-operative agenda can be defined and led by the meetings of labour ministers of the Americas, but should be backed by a co-operation mechanism with deliverable goals, measurable outcomes and specific monitoring and participation provisions.

The 2001 Quebec City Plan of Action re-affirmed the work of the Inter-American Conference of Ministers of Labour with its Plan of Action adopted in 1998, and asked labour ministers to collaborate to identify areas where further work needs to be done. The International Labour Organization (ILO) 1998 Declaration on the Fundamental Principles and Rights at Work and its Follow-Up needs to be adopted and implemented, within a framework of improved collaboration and coordination between labour ministers, the OAS, the ILO, ECLAC, as well as the IDB and the World Bank. For this to be achieved, new mechanisms are needed to build the labour laws and standards implementation capacity of smaller economies and their institutions. Indeed, there is much that can be done on a domestic level, to develop and implement effective labour market policies; to collaborate with employers and labour organizations to develop and generate information on labour markets; to host tripartite consultations, dialogues and establish dispute resolution strategies.

A hemispheric Agreement or Commission on Socio-Labour Co-operation, modelled on elements of the MERCOSUR Socio-Laboural Commission and the North American Agreement on Labour Co-operation (NAALC), could fill a valuable niche in the promotion of labour standards protection across the Americas. A new hemispheric mechanism can generate larger economies of

scale, and supporting the social vision of a “common identity” across the Americas. The experience of the MERCOSUR Socio-Laboural Commission demonstrates that tri-partite delegations of business, labour unions and governments can achieve valuable progress on social and labour issues. Indeed, the current labour ministers of the Americas meetings follow this same tri-partite representation. Such a mechanism, whether included as a Chapter of the FTAA, as a parallel agreement or as a combination of both, must allocate specific resources to information sharing and co-operation on a measurable socio-laboural co-operation agenda, with mechanisms for monitoring and enforcements. The experience of the NAALC to date demonstrates that linking labour standards enforcement to trade relations can have a positive impact on the attention and effort devoted to labour standards protection both domestically and internationally—and this even without the actual use of the trade measures available under such an agreement. Civil society groups have used the NAALC complaints procedure as part of their broader efforts to bring about positive social policy changes. Bilateral labour co-operation agreements, such as the Canada-Chile Agreement on Labour Co-operation and the Canada-Costa Rica Agreement on Labour Co-operation, provide potential models, as does the new Labour Chapter of the Chile-U.S. Free Trade Agreement. Such a labour co-operation mechanism can serve to support a shared social vision for the Americas by building on existing human rights commitments within current OAS instruments and incorporating *explicit* reference to core ILO standards (as is done in the Canada-Costa Rica Agreement on Labour Co-operation). Several other issues can be addressed by such a co-operation mechanism to protect the rights of the most vulnerable. The Plan of Action also called for action to promote and protect the rights of working women, and to remove structural and legal barriers to gender equality at work. It called for hemispheric ratification and implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and identified the need for national laws, regulations and policies to come into conformity with this Convention.

Respect for the rights of migrant workers, who are often made more vulnerable by abrupt international economic changes, is also important. Close co-operation is needed between countries of origin, transit and destination in order to ensure protection of the human rights of migrants. Commitments were made in 1998 at the Santiago Summit concerning the protection of the human rights of migrants, including migrant workers and their families, and also in the 2001 Quebec City Summit of the Americas. These agreed to strengthen co-operation among states to address, with a comprehensive, objective and long-term focus, the manifestations, origins and effects of migration in the region; and to establish an inter-American program within the OAS for the promotion and protection of the human rights of migrants, including migrant workers and their families.⁴²⁰ States should work to find mutually-

beneficial ways through which migration could continue to provide people greater human security, and not place them at risk of exploitation and abuse, starting with immediate ratification and implementation of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As mentioned above, this Convention enlarges the protection of the fundamental human rights to all migrant workers, including undocumented workers, and establish additional rights for migrant workers in regular situations and their families.⁴²¹ Considering recent trends and statistics in the Americas region, governments may also wish, in the context of the ILO, to consider creating an Americas instrument to address problems related to migration. A new hemispheric instrument, linked to the FTAA and the commitments in the Protocol of San Salvador, and containing complaints procedures similar to those offered in the NAALC, might help to protect the rights of migrant workers. Such an accord could be modeled on the regional instruments in CARICOM,⁴²² Andean Community and MERCOSUR, or could be achieved by giving hemispheric scope to the Regional Conference on Migration (Puebla Process⁴²³) or the South American Conference on Migration (Lima Process⁴²⁴).

4.4 Develop Hemispheric Principles for Trade-related Health Policy

In the Miami and Santiago Summits, and in the Quebec City Summit of the Americas, governments recognized the work of the Pan American Health Organization (PAHO), and the need to implement the Shared Agenda for Health in the Americas signed by PAHO, the IDB, and the World Bank. They committed to various action initiatives.

In particular, governments committed to combat HIV/AIDS and its consequences. Resources need to be increased for research, prevention, education and access to care and treatment, especially for high-risk populations. They also committed to increase national access to treatment of HIV/AIDS-related illnesses. As they recognized, the provision and affordability of drugs, including reliable distribution and delivery systems, is highly important. Could the availability of affordable anti-retrovirals and other drugs for HIV/AIDS treatment be achieved through a hemispheric dialogue with the pharmaceutical industry? Other priorities were also identified. Governments will advance hemispheric and other programs to prevent, control and treat communicable diseases such as tuberculosis, dengue, malaria and Chagas should also be enhanced. They committed to promote healthy childhood development, and undertake domestic measures, such as community-based health care, and prevention and promotion programs to reduce health risks and non-communicable diseases. Finally, they agreed that innovative measures to connect people and provide health care to remote populations should be supported.

What more can and should be done? First, new hemispheric programs can be put in place, building on sub-regional health initiatives, and linked to the integration and services liberalization processes. A hemispheric equity-oriented health sector review and reform process should be launched, to ensure essential public health functions for all and improve quality of care. More accountable administration and the discovery of specific measures to ensure more equal access to health services and health coverage can do much to restore confidence in Americas health services. Hemispheric systems can also be set in place to promote use of scientifically validated, agreed-upon, common indicators for assessing effectiveness, equity and efficiency of health systems, although these must be accompanied by reliable funding. Regional co-operation initiatives could be considered for standards of practice, accreditation and licensing procedures, codes of ethics, and education and training programs for health personnel. A hemispheric program could be launched on alternative health practices and medicinal products, to share this experience and knowledge with other countries in the Americas. Smoking is still a serious threat to health throughout the Americas. Hemispheric programs to promote ratification and implementation of the Framework Convention on Tobacco Control and to reduce the consumption of tobacco products, especially as they affect children and adolescents, are badly needed.

But more should also be undertaken within the framework of hemispheric trade liberalization, especially if the FTAA might include liberalization of health services. In order to ensure coherence between trade liberalization and hemispheric health co-operation efforts, governments should investigate the possibility of negotiating a hemispheric agreement on principles of health co-operation, or including a brief statement on trade-related health co-operation in the FTAA itself. Such a statement or instrument could be negotiated by the joint Health and Environment Ministers of the Americas (HEMA) process, and link the FTAA process with the goals of the 1995 Pan American Charter on Health and Environment in Sustainable Human Development discussed above. It would serve to clarify the social benefits of the FTAA in the area of health care, and ensure that any liberalization commitments made in relation to the provision of health services are done in a framework which takes into account the special nature of these social policies. It would also provide cooperative agreements or other measures to ensure that national investments into health care, such as the training of health professionals, are not lost. The process for developing such an instrument must be open, transparent and participatory, and built on solid research into the linkages between health, trade and sustainable development law and policy. It should involve trade, health and environment officials from governments and inter-governmental agencies, and also civil society organizations.

4.5 Commit to Specific Measures for the Most Vulnerable: Americas Indigenous Peoples Participation and Gender Equality

It is extremely important that hemispheric integration clearly and directly benefit the most vulnerable and marginalized groups in the Americas. In particular, indigenous peoples and women are still heavily at risk in the Western Hemisphere. Various new hemispheric policy options are open to decision-makers in the context of closer hemispheric co-operation both within and outside the FTAA. Existing sub-regional co-operation mechanisms demonstrate that regional development co-operation can add social value, and this should focus on resolving shared social exclusion problems, to advance the status of certain groups. In particular, two specific sets of policy options should be further investigated by decision-makers in the context of the FTAA negotiations and the broader Summit of the Americas process.

First, in the context of the broader Summit of the Americas process, governments committed to make their best efforts, in accordance with national legislation, to encourage donors and others to support hemispheric exchanges among indigenous peoples and their organization, in order to promote their sustainable cultural, economic and social development, and in such other areas as may be identified by indigenous peoples. These commitments must not be forgotten. More effort is needed, building on present CIDA, USAID and other programs, to include indigenous peoples in this important work, to develop long-lasting hemispheric indigenous partnerships and to implement concrete projects with measurable benefits for the most marginalized groups. Leaders also committed to develop corresponding strategies and methods to consider and respect indigenous peoples' cultural practices and protect their traditional knowledge in accordance with the principles and objectives of the Convention on Biological Diversity. And they committed to increase the availability and accessibility of educational services in consultation with indigenous peoples, especially women, children and youth, in accordance with their values, customs, traditions and organizational structures. Governments and all other stakeholders should make sustained progress on the development and implementation of the Inter-American Declaration on the Rights of Indigenous Populations. Furthermore, to achieve all these goals together, they should also consider creating a co-operation mechanism to undertake implementation activities and monitor progress in this area. Such a mechanism could be modelled on the Andean Machu Picchu working group.

Second, the rights and needs of women need to be further enhanced and strengthened. Many international and hemispheric mechanisms exist to ensure that conditions in this area improve, but more work needs to be done. Perhaps furthest down the track, more must also be done to ensure that the most vulnerable populations gain non-discriminatory access to social security,

particularly if hemispheric integration deepens and movement becomes more common. Governments could eventually consider negotiating a Hemispheric Agreement on Social Security Benefits (modelled on the Caribbean and MERCOSUR Social Security treaties).

4.6 Strengthen Hemispheric Market Incentives for Corporate Social Responsibility

Companies are viewed two ways in civil and common law countries of the Americas. Some see companies as specific legal fictions, vehicles to generate profit for shareholders. The proponents of this “straight market view” believe that all corporate social responsibility standards should be purely *voluntary*, rather than forced or imposed by governments. From this viewpoint, such initiatives should only be undertaken by companies when they will clearly generate additional profit for shareholders. Others see companies as legal personalities, bearers of rights and also duties, with social obligations and a role to play in a society. From this viewpoint, companies are obliged to serve a greater public good, and endanger their “social license to exist” at their own risk. Both views agree that a company can and should take action to improve its “social bottom line,” leading to better morale, higher reputation, good will from shareholders, other companies and consumers, and other benefits.

However, such “corporate citizenship” depends on shareholders, other companies and consumers (as well as the public), being well-informed about a specific company or producer, understanding their unique circumstances and social conduct. In a larger, even hemispheric, marketplace, it may be very difficult for consumers (or even shareholders and investors) to obtain accurate information about socially just products, especially from developing countries.

Governments have a role to play in supporting the efforts of socially responsible producers in developing countries. Without appropriate incentives and policies, a new international market could easily get the signals wrong, missing the opportunity to grant well-deserved social premiums to producers due to distance or lack of information, rather than informed judgment. The solution is not higher barriers, but rather, more information, and more co-operation. Such co-operation must be backed by the right incentives. A hemispheric marketplace needs hemispheric social rules and incentives.

The Quebec City Summit of the Americas noted that businesses can make an important contribution to sustainable development and increasing access to opportunities, and that citizens and civil society organizations increasingly expect that businesses will carry out their operations in a manner consistent with their social and environmental responsibilities. Heads of state committed to support the continued analysis and consideration in the OAS of corporate social responsibility, while ensuring that civil society and the private sector, were appropriately and regularly consulted. More dialogue is needed on cor-

porate social responsibility in the Hemisphere, and concrete efforts to develop, adopt and implement principles of good conduct that will advance corporate social and environmental responsibility.

Hemispheric measures can be set in place. Efforts can be undertaken to develop mutually recognized certification systems and other incentives for more socially just products. Streamlined and reliable hemispheric information and monitoring systems can be set in place to report on corporate practices and reward leading companies. A growing number of international multi-stakeholder initiatives have developed systems to accountably measure and monitor compliance with basic, multi-laterally agreed labour standards or development objectives (such as the Social Accountability 8000 (SA8000), Fair Labour Association (FLA), and Worldwide Responsible Apparel Production Certification Program (WRAP) systems) in different sectors. As these “corporate social responsibility” monitoring initiatives become more refined, the market has a new opportunity to grant specific premiums and other incentives on the basis of social PPMs through the product chain.

4.7 Establish Reliable Permanent Mechanisms for Civil Society Participation

Civil society participation is essential to consolidate democracy. As recognized in the Quebec City Summit of Americas Plan of Action, such participation constitutes one of the vital elements for the success of development and human rights policies. Citizens have the right to participate, with equality and equity, in the decision-making processes affecting their lives and well-being. The diversity of opinion, experience and technical expertise of civil society constitutes a significant and valuable resource for initiatives and responses of government and democratic institutions.

Some significant progress has been made in this area, especially with relation to improved transparency in the FTAA negotiations, better access to the Inter-American Human Rights System (the Court and the Commission) for civil society and public interest organizations, and new mechanisms for civil society participation in the OAS. More needs to be done, however, especially as the FTAA negotiations move toward closure, to include marginalized groups in the public debates and processes, and to build capacity of civil society to participate in implementation of hemispheric integration agreements. In the social sphere, particularly with regard to services, transfers of duties must be accompanied with transfer of resources and voice. As such, it is vitally necessary to strengthen transparency and participation in hemispheric and national processes. Governments should seek to establish public and private funding instruments aimed at building the capacity of civil society organizations, to highlight their work and perspectives, and to promote accountability. They should also seek ways to directly include civil society organizations in the planning and delivery of programs,

especially under the new Hemispheric Co-operation Programme. With inter-governmental organizations and civil society partnership, they need to establish permanent, balanced mechanisms for consultation in all aspects of the Americas integration process, on environment, labour and other human rights issues, and trade, and ensure that these mechanisms are able to link successfully with each other across disciplinary (and very distinct community) boundaries. Strategies should continue to be developed at the national level and through the OAS, other multilateral organizations and MDBs to increase the capacity of civil society to participate more fully in the inter-American system, as well as in the political, economic and social development of their communities and countries, facilitating the participation of all sectors of society. These strategies should also increase the institutional capacity of governments to receive, absorb and act on civil society input and advocacy, particularly through the use of information and communications technologies.

Within the context of FTAA negotiations, many good recommendations were generated by the 2001 Quebec City Hemispheric Trade and Sustainability Symposium, held parallel to the Quebec City Summit of the Americas, the 2002 Quito Workshops on Trade and Environment, and the 2003 Miami Americas Trade and Sustainable Development Forum, held parallel to meetings of the FTAA ministers. In particular, one proposal has emerged which should be carefully considered by the FTAA committee of government representatives for the participation of civil society (CGRPCS). Building on the courageous proposal of the government of Chile, a Consultative Committee should be established to provide civil society advice to the FTAA, with participation from civil society organizations, academia and the private sector from across the Western Hemisphere. This committee should be linked to an officially recognized pool of experts from the Americas Trade and Sustainable Development Forum and the Americas Business Forum, for legitimacy and accountability, and should be empowered to make enquiries to address civil society concerns, for example by calling open public hearings or hosting panels to investigate particular complaints.

Civil society itself should promote the participation of diverse groups in forging stronger and more diverse participation in the debates; and develop awareness raising activities, in conjunction with relevant inter-governmental organizations, academic experts and others, as appropriate, to raise the profile of social development and human rights issues. The Inter-American Human Rights system provides a vital, and extremely powerful tool for civil society organizations, marginalized people and others to seek redress for social and human rights concerns. Efforts to develop this avenue of activity should be enhanced and supported, and more organizations across the hemisphere (especially from the environment and trade communities), should become informed about its institutional capacity and implications for sustainable development governance in the Americas.

Endnotes

- 418 As noted above, Canada, the United States and several other countries of the Western Hemisphere have not yet ratified the American Convention on Human Rights, nor the Protocol of San Salvador. Legal scholars and women's groups have expressed concern about ratification of the American Convention, stating that Article 4.1 might limit the rights of women to security of person or prevent use of post-conception contraceptives. See, e.g., Canada, *Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights: Report of the Standing Senate Committee on Human Rights*, Shirley Maheu & Eileen Rossiter, Chair and Vice-Chair (Ottawa: Senate of Canada, May 2003). Available online: <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/come/huma-e/rep-e/rep04may03-e.htm>. However, according to the IAHRC, this provision should not necessarily be interpreted that way. See *Baby Boy Case*, Resolution 23/81, March 6, 1981, *Annual Report of the Inter-American Commission on Human Rights 1980–1981*, pp. 23–45, at 35. This Convention and especially, its Protocols, also commit to protection of many important rights for women and others. The legal issues associated with this concern and others must be investigated and mechanisms, such as interpretive Declarations or reservations (as permitted at Article 75 of the Convention) found to resolve them, in order to permit ratification.
- 419 OAS CIDI (Consejo Interamericano para el Desarrollo Integral) High Level Meeting on Poverty, Equity and Social Inclusion OEA/Ser.W/IX.1 RANPEIS/DEC. 1/03 October 8–10, 2003, Isla de Margarita, Venezuela. Available online: <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.summit-americas.org>
- 420 These actions would take into account the activities of the IACHR and supporting the work of the IACHR Special Rapporteur on Migrant Workers and the UN Special Rapporteur on Migration.
- 421 The UN Convention will entry in force in July 2003 and has 21 ratifications. This instrument has been ratified in the Americas by Belize, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico and Uruguay; it has also been signed by Chile and Paraguay.
- 422 See D. Fuchs and T. Straubhaar, *Economic Integration in the Caribbean: The development towards a common labour market*, International Migration Papers No. 63, ILO, 2003.
- 423 The Regional Conference on Migration, or Puebla Process, is a Mexican initiative toward a multilateral approach on migration, which notes an interaction of different factors in sending and receiving countries and points out the importance of the observance of human rights of all migrants. Member states are: Belize, Canada, Costa Rica, El Salvador, United States, Honduras, Guatemala, Mexico, Nicaragua, Panama and the Dominican Republic.
- 424 The South American Conference on Migration includes Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela.

5

Table of SRSA Winnipeg Principles Recommendations



1. Equity

- Commit to renew and strengthen human rights regimes
- Improve access to services for the most vulnerable, especially indigenous peoples and women
- Strengthen hemispheric instruments to protect migrant workers
- Strengthen civil society and government capacity building
- Ensure social policy coherence and participation

2. Efficiency and Cost Internalization

- Recognize the 1998 ILO Declaration as the minimum social baseline
- Support a mix of market-based and command-and-control social instruments
- Support innovative social public policies in an integrating regional economy

3. Environmental Integrity

- Support further investigation of ways to realize environmental rights
- Support and develop the Hemispheric Health and Environmental Program
- Evaluate the benefits of linkages between social and environmental regimes

4. Openness

- Undertake strengthened capacity-building efforts, in partnership with civil society organizations, to improve access to the inter-American human rights system
- Design accountable mechanisms for openness in the FTAA social regimes
- Develop Americas sustainable development disclosure requirements
- Facilitate co-operation between diverse hemispheric civil society movements
- Support hemispheric civil society research and dialogue

5. Science and Precaution

- Respect science and precaution in setting and recognizing social standards
- Promote and implement the IAHRs “precautionary measures”
- Develop an Americas instrument for risk assessment and risk management?
- Recognize indigenous peoples traditional knowledge as local science

6. Subsidiarity

- Investigate future needs for hemispheric social services co-operation measures
- Undertake *ex-ante* assessment of services liberalization to define best regulations

7. International Co-operation

- Support and strengthen access to binding social dispute settlement
- Invest in hemispheric social development
- Investigate new forms of international co-operation on social issues

Annex 6: Protocol of San Salvador

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

“PROTOCOL OF SAN SALVADOR”

(Adopted at San Salvador, El Salvador on November 17, 1988, at the eighteenth regular session of the General Assembly)

Preamble

The States Parties to the American Convention on Human Rights “Pact San José, Costa Rica,” reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one’s being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified;

Recognizing the benefits that stem from the promotion and development of cooperation among States and international relations;

Recalling that, in accordance with the Universal Declaration of Human Rights and the American Convention on Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if condi-

tions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights;

Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and

Considering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into the protective system thereof,

Have agreed upon the following Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador:"

Article 1

Obligation to Adopt Measures

The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

Article 2

Obligation to Enact Domestic Legislation

If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.

Article 3

Obligation of nondiscrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Article 4 Inadmissibility of Restrictions

A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

Article 5 Scope of Restrictions and Limitations

The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.

Article 6 Right to Work

1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.
2. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

Article 7 Just, Equitable, and Satisfactory Conditions of Work

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

- a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;
- b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;

- c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;
- d. Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;
- e. Safety and hygiene at work;
- f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;
- g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;
- h. Rest, leisure and paid vacations as well as remuneration for national holidays.

Article 8

Trade Union Rights

- 1. The States Parties shall ensure:
 - a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;
 - b. The right to strike.
- 2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police

and of other essential public services shall be subject to limitations and restrictions established by law.

3. No one may be compelled to belong to a trade union.

Article 9

Right to Social Security

1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.
2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

Article 10

Right to Health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - a. Primary health care, that is, essential health care made available to all individuals and families in the community;
 - b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
 - c. Universal immunization against the principal infectious diseases;
 - d. Prevention and treatment of endemic, occupational and other diseases;
 - e. Education of the population on the prevention and treatment of health problems, and
 - f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 11

Right to a Healthy Environment

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Article 12

Right to Food

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

Article 13

Right to Education

1. Everyone has the right to education.
2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.
3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:
 - a. Primary education should be compulsory and accessible to all without cost;
 - b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

- c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
 - d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;
 - e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.
4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.
 5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

Article 14

Right to the Benefits of Culture

1. The States Parties to this Protocol recognize the right of everyone:
 - a. To take part in the cultural and artistic life of the community;
 - b. To enjoy the benefits of scientific and technological progress;
 - c. To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.
3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

Article 15

Right to the Formation and the Protection of Families

1. The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions.
2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.
3. The States Parties hereby undertake to accord adequate protection to the family unit and in particular:
 - a. To provide special care and assistance to mothers during a reasonable period before and after childbirth;
 - b. To guarantee adequate nutrition for children at the nursing stage and during school attendance years;
 - c. To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities;
 - d. To undertake special programs of family training so as to help create a stable and positive environment in which children will receive and develop the values of understanding, solidarity, respect and responsibility.

Article 16

Rights of Children

Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

Article 17

Protection of the Elderly

Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

- a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;

- b. Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- c. Foster the establishment of social organizations aimed at improving the quality of life for the elderly.

Article 18

Protection of the Handicapped

Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

- a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;
- b. Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter;
- c. Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;
- d. Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

Article 19

Means of Protection

1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.
2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.

3. The Secretary General of the Organization of American States shall also transmit to the specialized organizations of the inter-American system of which the States Parties to the present Protocol are members, copies or pertinent portions of the reports submitted, insofar as they relate to matters within the purview of those organizations, as established by their constituent instruments.
4. The specialized organizations of the inter-American system may submit reports to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture relative to compliance with the provisions of the present Protocol in their fields of activity.
5. The annual reports submitted to the General Assembly by the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture shall contain a summary of the information received from the States Parties to the present Protocol and the specialized organizations concerning the progressive measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and the general recommendations they consider to be appropriate in this respect.
6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.
7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.
8. The Councils and the Inter-American Commission on Human Rights, in discharging the functions conferred upon them in this article, shall take into account the progressive nature of the observance of the rights subject to protection by this Protocol.

Article 20
Reservations

The States Parties may, at the time of approval, signature, ratification or accession, make reservations to one or more specific provisions of this Protocol, provided that such reservations are not incompatible with the object and purpose of the Protocol.

Article 21
Signature, Ratification or Accession.

Entry into Effect

1. This Protocol shall remain open to signature and ratification or accession by any State Party to the American Convention on Human Rights.
2. Ratification of or accession to this Protocol shall be effected by depositing an instrument of ratification or accession with the General Secretariat of the Organization of American States.
3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession.
4. The Secretary General shall notify all the member states of the Organization of American States of the entry of the Protocol into effect.

Article 22
Inclusion of other Rights and Expansion of those Recognized

1. Any State Party and the Inter-American Commission on Human Rights may submit for the consideration of the States Parties meeting on the occasion of the General Assembly proposed amendments to include the recognition of other rights or freedoms or to extend or expand rights or freedoms recognized in this Protocol.
2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.

Annex 7: The Pan American Health and Environment Charter



PAN AMERICAN CHARTER ON HEALTH AND ENVIRONMENT IN SUSTAINABLE HUMAN DEVELOPMENT

Washington, 3 October 1995

Preamble

MINISTERS RESPONSIBLE FOR HEALTH, ENVIRONMENT AND DEVELOPMENT IN THE COUNTRIES OF THE REGION OF THE AMERICAS, meeting together for the first time in Washington, D.C., United States of America,

Guided by the collective commitment of our governments and societies to implement the Declaration of Principles and Agenda 21 of the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), and the mandates emanating from the Ibero-American Summits of Heads of States and Governments, sub-regional meetings of Heads of Government, and the Summit of the Americas (Miami, 1994);

Affirming that human beings are at the center of concerns for sustainable development and are entitled to a healthy and productive life in harmony with nature, and that human health requires a sound economic and environmental basis;

Convinced that the goals of equitable socioeconomic development, environmental protection, and healthy populations are interdependent and should be pursued in mutually-reinforcing ways that encourage people's participation and expand the recognized role of women in social development and natural conservation;

Aware of continuing man-made damage to human and natural resources—especially air, water and soil—that arise from non-sustaining economic policies and practices, increased urban concentrations, poorly managed technology applications, and inadequate social knowledge and behavior;

Considering that—as technology, information, finance and commerce are being globalized—our peoples are increasingly interdependent and disproportionately in need of collaborative action;

ADOPT THIS CHARTER AND RECOMMEND IT AS A GUIDELINE FOR FUTURE ACTION IN AND AMONG THE COUNTRIES OF THE AMERICAS.

Policy and Strategy Considerations

1. Protecting and promoting the health of all persons, in an environment that supports their wellbeing, should serve as the prime decision-making criterion in planning and managing socioeconomic development.
2. Preventing ill-health and environmental degradation is generally more humane and cost-effective than correcting and treating damage already done. Implementing this concept requires its inclusion in the programs of all sectors and organizations whose activities may advance or impede such prevention.
3. Sustainable economic development requires healthy families, capable workers and informed, responsible citizens—the products of sound and equitable social development. Economic growth is necessary, but insufficient in itself, for community health and a good quality of life.
4. The participation of individuals and communities in maintaining and improving their living environments should be encouraged and supported. Community participation should be structured into strategies for sustainable development, including primary environmental care, primary health care, and the education of children and adults. At each level of social and political organization, networks of collaborating interests and persons should be cultivated, to promote the integration of sectoral concerns and resources into development processes.
5. Protecting humans from health hazards in their natural and man-made environments requires not only initial provisions and designed safeguards, but also continuing surveillance and the capacity to act against acute and chronic dangers.
6. Development investments, public and private, should include support for building the human, technological and information

resources necessary to manage the long- and short-term environmental determinants of human health.

7. Under the powers of governments, those proposing changes should account for their environmental impacts, and those who pollute should pay the costs of correction.

Common Priorities

Despite differences in their needs and resources, our countries share some priorities. Certain long-standing environment-based health problems persist in many countries; all are vulnerable to the local impacts of economic, technological and demographic trends, as well as the impacts of global climate change and ozone depletion; and all countries need more and better resources to bring about sustainable development. Thus, our common priorities are:

1. Updating and strengthening national and local strategies for implementing commitments made in United Nations and other international fora, concerning environment, health and development.
2. Establishing or improving cross-sectoral monitoring/surveillance mechanisms able to identify and assess existing and potential hazards to humans and the environment.
3. Initiating early and effective action to control environmental conditions with adverse health effects on many communities and, in particular, providing adequate and safe water supplies and effective domestic and municipal sanitation systems for the large numbers of rural and urban dwellers currently deprived of such basic necessities.
4. Extending and disseminating scientific and technical knowledge, by establishing linkages and networks for research and communication, and by progressively eliminating barriers to technology transfer within and among countries.
5. Developing conceptual frameworks, action models, information systems, and human resources able to deal with development issues systematically, across disciplines and sectors, and at every level of social organization.
6. Defining and implementing arrangements for increased participation and grassroots action and control in socioeconomic development processes.
7. Redefining needs for international cooperation and support, in the light of national and local priorities in their sustainable development strategies.

Shared Responsibilities

The Rio Declaration of Principles affirms that all people “are entitled to a healthy and productive life in harmony with nature”. To make that entitlement—and its implied rights—a reality requires that people and institutions make responsible contributions to sustainable development.

All persons and families, in protecting and promoting their own health, are responsible for limiting demands on, and otherwise conserving, their shared environmental heritage, in cooperation with their neighbors and other community interests.

Local communities, whether governmental jurisdictions or informal social groups, are responsible for defining common interests and enabling families to make their small—but in the aggregate, enormous—contributions to community and planetary sustainability.

Non-governmental organizations and voluntary grassroots groups are responsible for helping to define and meet the social needs of sustainable development.

Economic enterprises and worker organizations, respectively—especially in the agricultural, manufacturing, energy and service sectors—are responsible for minimizing resource depletion and environmental pollution, for taking necessary restorative actions, and for ensuring safety and health in the workplace.

Social institutions, including schools, public safety and other service organizations, are responsible for taking environmental factors into account in their activities and for promoting sound environmental behaviors.

Health and environment organizations are responsible for identification and evaluation of environmental risks to health, epidemiological surveillance, and advising policy-makers in governmental and private organizations.

Communication and educational media should foster positive public attitudes and behaviors for health and sustainable human development.

Academic, research and intellectual communities should respond to society’s needs for knowledge and for developing expertise relevant to environmental and social trends.

Elected legislatures and executives, at all political levels, are responsible for establishing policy frameworks and laws, for enabling governmental and private agencies to undertake their respective and collaborative responsibilities, and for monitoring the implementation of the country’s policies for health and environment in sustainable development. It is incumbent on governmental organs to implement intersectoral and cooperative actions toward sustainable development, giving increased attention to citizen participation.

International agencies—multilateral, bilateral, and voluntary—should strengthen and better coordinate their support toward the human benefits of sustainable development.

Facing conditions and trends that threaten to expand human misery and inequity, urgent and continuing action to promote health and protect the environment through sustainable development is our responsibility: each of us—all of us.

Annex 8: The Quebec City Summit of the Americas Plan of Action Selected Human Rights and Social Commitments



Human Rights and Fundamental Freedoms

Implementation of International Obligations and Respect for International Standards

- Reaffirm their determination to combat and eliminate impunity at all levels within their societies by strengthening judicial systems and national human rights institutions;
- Combat, in accordance with international law, genocide, crimes against humanity and war crimes wherever they might occur, and in particular, call upon all states to consider ratifying or acceding to, as the case may be, the *Rome Statute of the International Criminal Court*;
- Support efforts in the OAS to consider the need to develop an inter-American convention against racism and related forms of discrimination and intolerance;

Strengthening Human Rights Systems

- Continue promoting concrete measures to strengthen and improve the inter-American human rights system, in particular the functioning of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (IACHR)
- Strengthen the capacity of governmental institutions mandated with the promotion and protection of human rights, such as national

human rights institutions, and contribute to... establishment of a network of all such institutions of the Hemisphere...

- Create and strengthen national human rights action plans, in accordance with the mandate of the 1993 *Vienna Declaration and Programme of Action*...
- Seek to promote and give effect to the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*... [and]
- Advance negotiations within the OAS on the *Proposed American Declaration on the Rights of Indigenous Peoples* with a view toward its earliest possible conclusion and adoption.

Migration

- Strengthen cooperation among states to address, with a comprehensive, objective and long-term focus, the manifestations, origins and effects of migration in the region;
- Promote recognition of the value of close cooperation among countries of origin, transit and destination in order to ensure protection of the human rights of migrants;
- Establish an inter-American program within the OAS for the promotion and protection of the human rights of migrants...
- Commit to undertake the widest possible cooperation and exchange of information among states concerning illegal trafficking networks...
- Establish linkages with sub-regional processes, such as the Regional Conference on Migration and the South American Conference on Migration...

Human Rights of Women

- Request the OAS, through its specialized organs and particularly the Inter-American Commission on Women (CIM), to facilitate the integration of a gender perspective in the work of all its bodies...
- Develop, review and implement laws, procedures, codes and regulations to guarantee compatibility with international legal obligations and to prohibit and eliminate all forms of discrimination based on gender, and continue work begun at the Santiago Summit that set the goal of legal equality between men and women by the year 2002;

- Develop additional policies and practices to combat violence against women, including domestic violence, in accordance with the definition established in the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (The Convention of Belém do Pará)...
- Consider signing and ratifying, ratifying, or acceding to, as soon as possible and as the case may be, the UN *Convention on the Elimination of All Forms of Discrimination against Women*, and its Optional Protocol;

Human Rights of Children and Adolescents

- Consider, signing and ratifying, ratifying, or acceding to, as soon as possible and as the case may be, the two Optional Protocols to the UN *Convention on the Rights of the Child*, specifically on the Involvement of Children in Armed Conflict, and the Sale of Children, Child Prostitution and Child Pornography...
- Integrate fully the human rights of children and adolescents into the work of hemispheric institutions, including the Inter-American Court of Human Rights, the IACHR and the Inter-American Children's Institute (IACI);

Health

Recognising that... the enjoyment of the highest standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition...; [and that] gender equality and concern for indigenous peoples, children, the elderly and under-served groups must be of paramount concern in the development of health policy;... [and as per the] *Shared Agenda for Health in the Americas* signed by PAHO, the IDB, and the World Bank:

Health Sector Reform

- Reaffirm their commitment to an equity-oriented health sector reform process, emphasizing their concerns for essential public health functions, quality of care, equal access to health services and health coverage, especially in the fields of disease prevention and health promotion, and improving the use of resources and administration of health services; promote the continued use of scientifically validated, agreed-upon, common indicators for assessing effectiveness, equity and efficiency of health systems;
- Strengthen and promote development of domestic standards of practice, accreditation and licensing procedures, codes of ethics, and edu-

cation and training programs for health personnel; improve the mix of health personnel in the provision of health services to better respond to national health priorities;

- Intensify efforts and share and promote best practices to: reduce maternal and infant morbidity and mortality; provide quality reproductive health care and services for women, men and adolescents; and carry out commitments made at the Cairo International Conference on Population and Development and its five-year follow-up in New York;
- Develop processes to evaluate the efficacy of alternative health practices and medicinal products to ensure public safety and share this experience and knowledge with other countries in the Americas;

Communicable Diseases

- Commit, at the highest level, to combat HIV/AIDS and its consequences, recognizing that this disease is a major threat to the security of our people; in particular seek to increase resources for prevention, education and access to care and treatment as well as research; adopt a multi-sectoral and gender sensitive approach to education, to prevention and to controlling the spread of HIV/AIDS and Sexually Transmitted Diseases (STDs) by developing participatory programs especially with high risk populations, and by fostering partnerships with civil society including the mass media, the business sector and voluntary organizations; promote the use of ongoing horizontal mechanisms of cooperation to secure the safety of blood; increase national access to treatment of HIV/AIDS-related illnesses through measures striving to ensure the provision and affordability of drugs, including reliable distribution and delivery systems and appropriate financing mechanisms consistent with national laws and international agreements acceded to; continue dialogue with the pharmaceutical industry and the private sector in general to encourage the availability of affordable antiretrovirals and other drugs for HIV/AIDS treatment, and promote strategies to facilitate the sharing of drug pricing information including, where appropriate, that available in national data banks; promote and protect the human rights of all persons living with HIV/AIDS, without gender or age discrimination; utilize the June 2001 UN General Assembly Special Session on AIDS as a platform to generate support for hemispheric and national HIV/AIDS programs;
- Enhance programs at the hemispheric, national and local levels to prevent, control and treat communicable diseases such as tuberculosis, dengue, malaria and Chagas;

- Promote healthy childhood development through: prenatal care, expanded immunization programs, control of respiratory and diarrheal diseases by conducting programs such as the Integrated Management of Childhood Illnesses, health education, physical fitness, access to safe and nutritious foods, and the promotion of breast-feeding;

Non-Communicable Diseases

- Implement community-based health care, prevention and promotion programs to reduce health risks and non-communicable diseases such as cardiovascular disease and including hypertension, cancer, diabetes, mental illness as well as the impact of violence and accidents on health;
- Participate actively in the negotiation of a proposed Framework Convention on Tobacco Control; develop and adopt policies and programs to reduce the consumption of tobacco products, especially as it affects children; share best practices and lessons learned in the development of programs designed to raise public awareness, particularly for adolescents, about the health risks associated with tobacco, alcohol and drugs;

Connectivity

Provide sound, scientific and technical information to health workers and the public, utilizing innovations such as the Virtual Health Library of the Americas; encourage the use of tele-health as a means to connect remote populations and to provide health services and information to under-served groups, as a complement to the provision of existing health care services...

Labour and Employment

- Recognizing that employment is the most direct way in which economic activity is linked to the improvement of the standard of living of our citizens and that true prosperity can only be achieved if it includes protecting and respecting basic rights of workers as well as promoting equal employment opportunities and improving working conditions for people in all countries in the region, with special attention to those in the informal sector, to people belonging to ethnic and religious minorities, other vulnerable persons including women, youth, indigenous, migrant workers, persons with disabilities and persons with HIV/AIDS; and noting the importance of investing in human resource development, of promoting employment security consistent with economic growth and developing mechanisms to assist workers with periods of unemployment, as well as of strengthening cooperation and social dialogue on labor matters among work-

ers, their organizations, employers and governments, [Heads of State agreed to:]

- Reaffirm the fundamental importance of the Inter-American Conference of Ministers of Labor... [and] direct Ministers to build upon the *Viña del Mar Declaration* which focused on the social dimensions of globalization and the modernization of Labor Ministries...
- Respect the International Labor Organization (ILO) *Declaration on the Fundamental Principles and Rights at Work and its Follow-Up*, adopted in 1998, adopt and implement legislation and policies that provide for the effective application of core labor standards as recognized by the ILO and consider the ratification and implementation of fundamental ILO Conventions;
- Consult and coordinate, domestically and regionally in the appropriate fora, with a view to contributing to raising the living standards and improving the working conditions of all people in the Americas; create a process for improved collaboration and coordination on the labor dimensions of the Summit of the Americas process¹...
- Develop new mechanisms to increase the effectiveness of projects and other technical assistance designed to build the capacity of smaller economies and their institutions to effectively implement labor laws and standards and to foster equality of opportunity with respect to gender, among others...
- Strengthen the capacity of the Ministers of Labor to develop and implement effective labor and labor market policies; collaborate with employers and labor organizations to develop and generate information on labor markets; participate in dialogue, tripartite consultations and dispute resolution strategies; and adopt ongoing strategies and programs as a core element for professional development in the labor market;
- Continue to work towards the elimination of child labor, and as a priority, promote the hemispheric ratification and implementation of the *ILO Worst Forms of Child Labor Convention, 1999 (No. 182)*...
- Promote and protect the rights of all workers, in particular those of working women, and take action to remove structural and legal barriers as well as stereotypical attitudes to gender equality at work, addressing, *inter alia*, gender bias in recruitment; working conditions; occupational discrimination and harassment; discrimination in social protection benefits; women's occupational health and safety; and unequal career opportunities and pay;

Gender Equality

- Recognizing that women's empowerment, their full and equal participation in the development of our societies, and their equal opportunities to exercise leadership are all central to the reduction of poverty, the promotion of economic and social prosperity, people-centered sustainable development²...
- ...[commit to] integrate a gender perspective into the programs, actions and agendas of national and international events, to ensure that women's experiences and gender equality are an integral dimension of the design, implementation and evaluation of government and inter-American policies and programs in all spheres;
- Strengthen national machineries and other government bodies responsible for the advancement of women and for the promotion and protection of the human rights of women; provide them with the necessary human and financial resources...
- Promote gender equity and equality and women's human rights by strengthening and fostering women's full and equal participation in political life in their countries and in decision-making at all levels...
- Reinforce the role of the CIM as the technical advisor to the Summit Implementation Review Group (SIRG) on all aspects of gender equity and equality and recognize the importance of the CIM in follow-up to relevant Summit recommendations; provide for an appropriate level of resources to the CIM to carry out its role as the principal hemispheric policy-generating forum for the advancement of the human rights of women and particularly of gender equality...
- Promote the use of information and communications technologies as a mechanism to address inequalities between men and women and ensure women's equality of access to these new technologies and to the requisite training; to this end, ensure that government connectivity programs and programming at local, national and regional levels, integrate a gender perspective representative of the diversity of women within various groups, including indigenous peoples and rural and ethnic minorities;
- Strengthen systems for collecting and processing statistical data disaggregated by sex, and adopt the use of gender indicators that ... make it possible to improve the monitoring and assessment of regional and international agreements...

Indigenous Peoples

- Recognizing that the unique cultures, histories and demographic, socio-economic and political circumstances of indigenous peoples... in the Americas necessitate special measures to assist them in reaching their full human potential...
- ... encourage donor agencies, the private sector, other governments, regional and international organizations as well as MDBs to support hemispheric and national conferences in order to exchange experiences among indigenous peoples and their organizations...
- Acknowledge the value that the world views, uses, customs and traditions of indigenous peoples can make to policies and programs related to the management of lands and natural resources, sustainable development and biodiversity...
- Increase the availability and accessibility of educational services in consultation with indigenous peoples, especially women, children and youth, in accordance with their values, customs, traditions and organizational structures, by promoting linguistic and cultural diversity in education and training programs for indigenous communities; promote national and regional strategies for indigenous women, children and youth...
- Promote ... institutional capacity, connectivity and linkages, including through national focal points, with other indigenous peoples of the Hemisphere;
- Promote and enhance... understanding of the contribution made by indigenous peoples in shaping the national identity of the countries in which they live;
- Develop strategies, measures, and mechanisms aimed at ensuring the effective participation of indigenous peoples in the design, implementation and evaluation of comprehensive health plans, policies, systems and programs...
- Support the Health of Indigenous Peoples Initiative, promoted by PAHO, in assisting states and in consultation with indigenous peoples, to formulate integrated public policies and health systems that foster the health of indigenous peoples... with particular emphasis on children;
- Reduce the digital, communications and information gaps between the national average and indigenous peoples and communities... including the use of indigenous peoples information networks;

- Promote the collection and publication of national statistics to generate information on the ethnic composition and socio-economic characteristics of indigenous populations...
 - Support the process of reform of the Inter-American Indian Institute, based on extensive consultations among states and indigenous peoples of the Hemisphere, and further develop processes to ensure broad and full participation of indigenous peoples throughout the inter-American system, including in the discussions on the *Proposed American Declaration on the Rights of Indigenous Peoples*.
- 1 In particular, this collaboration is to take place between Labor Ministries and “other appropriate ministries and key international institutions within the Americas that have a critical role to play in the improvement of labor conditions in particular the OAS, the ILO, ECLAC, as well as the IDB and the World Bank.”
 - 2 Heads of state endorsed the *Inter-American Program on the Promotion of Women’s Human Rights and Gender Equity and Equality* approved at the First Meeting of Ministers or of the Highest Ranking Authorities Responsible for the Advancement of Women, held in April 2000, by the CIM. They also endorsed the *Regional Programme of Action for the Women in Latin America and the Caribbean 1995-2000* and the further actions and initiatives adopted at the Twenty-Third Special Session of the UN General Assembly (Beijing +5) to implement the Beijing Declaration and its *Platform for Action*.

9 Recommended Resources



Amnesty International (AI)
(<http://www.amnesty.org>)

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. AI's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. AI's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights. Their Web site contains information on their campaigns and activities, useful reports and research results, and links to other human rights resources.

Centre for International Sustainable Development Law (CISDL)
(<http://www.cisdl.org/>)

The Centre for International Sustainable Development Law (CISDL) is based in the McGill University Faculty of Law. Founded in 2001, its mandate is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. CISDL works in cooperation with different departments of McGill University, the Université de Montreal, and the Université de Québec à Montreal. It is the leader of a 'Type II' Outcome from the World Summit for Sustainable Development, in partnership with the International Law Association and the International Development Law Institute, to build knowledge, analysis and capacity on international law for sustainable development. It leads a legal research and capacity building initiative on regional integration agreements and sustainable development, and has published exten-

sively in this area. Their Web site contains reports and publications related to sustainable development law, information on their recent research initiatives and notices of events and activities.

Common Frontiers of Canada

(<http://www.web.net/comfront/contact.htm>)

Common Frontiers is a multi-sectoral working group engaged in research, analysis and action around the social and economic effects of economic integration in the Americas. Their goal is to work with labour, environmental human rights, church development and economic justice organizations on ways to generate an alternate framework to re-regulate corporate power

Canadian Labour Congress

(<http://www.clc-ctc.ca/>)

The Congress is the national voice of the labour movement, who speaks for all workers and their families, in Canada and beyond. The Congress is actively involved with social justice groups. It has developed close ties with the women's movement, with seniors, with anti-poverty activists, with churches, environmentalists, peace activists and groups seeking social and economic equality at the national, regional and community level.

Dante B. Fascell North-South Center at the University of Miami

(<http://www.miami.edu/nsc/>)

For over a decade, the North-South Centre has been dedicated to the intensive study of complex global problems, with special emphasis on the Western Hemisphere. As an independent research and educational organization, it produces policy-relevant research aimed at facilitating the resolution of the most critical issues. The Centre's research, co-operative study, education, and training have benefited citizens of the Western Hemisphere by supplying significant knowledge and expertise relevant to an inter-American agenda that grows more pressing each year.

Economic Commission for Latin America and the Caribbean (CEPAL)

(<http://www.eclac.org/>)

The UN Economic Commission for Latin America and the Caribbean (ECLAC) was established by Resolution 106(VI) of the Economic and Social Council of the United Nations on February 25, 1948 as the UN Economic Commission for Latin America (ECLA) with the aim of helping Latin American Governments promote the economic development of their countries and improve the standard of living of their peoples. ECLAC also endeavours to strengthen economic relations, both among countries in the region and with other nations in the world.

Forest Stewardship Council

(<http://www.fscoax.org/principal.htm>)

The Forest Stewardship Council (FSC) is an independent, non-profit, non-government organization that was founded in 1993 by a diverse group of representatives from environmental institutions, the timber trade, forestry professionals, indigenous peoples' organizations, community forest groups, and forest product certification organizations from 25 countries.

Friends of the Earth International Trade Site

(<http://www.foe.org/international/trade/>)

Friends of the Earth International's Trade, Environment and Sustainability Programme (TES) aims to look at ways in which international trade patterns and regulations impact on environmental protection and the development of sustainable societies. Their aim is to raise public awareness about TES-related issues and to encourage concerned organizations and individuals around the world to work together to campaign for a more sustainable global economic system.

Hemispheric Social Alliance

(<http://www.asc-hsa.org/castellano/site/home.php>)

The HSA is a coalition of citizens' networks from the Americas. It has evolved out of more than a decade of cross-border cooperation among civil-society organizations, beginning with the development of a strong trinational network during the NAFTA debate during the early 1990s. As the official talks began to extend that model throughout the region, multisectoral coalitions on trade emerged in many countries. In 1997, the Brazilian CUT labor federation hosted a major summit of labor unions and NGOs held parallel to the FTAA trade ministers' meeting in Belo Horizonte, Brazil. The event involved the North American networks, as well as activists from several other Latin American countries. The final declaration <<http://www.developmentgap.org/beloeng.html>> of this gathering served as a framework for future collaboration to help build a movement in support of an alternative approach to the FTAA. Information about their campaigns and activities can be found on this Web site.

Integración, Comercio y Ambiente (INCA)

(<http://www.inca.or.cr/>)

This new Web site provides information about the environment in integration processes, and links to various trade and official FTAA Web sites.

International Development Research Centre (IDRC)

(<http://www.idrc.ca/>)

About the MERCOSUR: (<http://www.idrc.ca/lacro/investigacion/mercosur3.html>)

IDRC is a public corporation created by the Canadian government to help communities in the developing world find solutions to social, economic, and environmental problems through research.

International Centre for Trade and Sustainable Development

(<http://www.ictsd.org/>)

The International Centre for Trade and Sustainable Development (ICTSD or the Centre) was established in Geneva in September 1996 to contribute to a better understanding of development and environment concerns in the context of international trade. The Web site is among the best on these issues at a global level, and publications such as discussion papers and dialogue summaries can be found here. See also ICTSD. "BRIDGES/PUENTES/PASARELLES: Between Trade and Sustainable Development."

International Indian Treaty Council

(<http://www.treatycouncil.org/treatyinfopage.html>)

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America and the Pacific working for the Sovereignty and Self-Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Traditional Cultures and Sacred Lands.

International Institute for Sustainable Development

(<http://www.iisd.org/>)

IISD's mission is to champion innovation, enabling societies to live sustainably. IISD promotes the transition toward a sustainable future. It seeks to demonstrate how human ingenuity can be applied to improve the well-being of the environment, economy and society. The institute uses policy research, information exchange, analysis and advocacy. IISD's Trade and Investment Program Web site (<http://www.iisd.org/trade>) includes descriptions of current initiatives, links to many other useful resources and in-depth information on the Winnipeg Principles.

International Trade Centre

(<http://www.intracen.org/index.htm>)

The ITC is a technical co-operation organization, a collaborative initiative of the UNCTAD and the WTO, whose mission is to support developing and transition economies, and particularly their business sectors, in their efforts to realize their full potential for developing exports and improving import operations with

the ultimate goal of achieving sustainable development. ITC deals specifically with the operational aspects of trade promotion and export development.

International Labour Organization

(<http://www.ilo.org>)

The International Labour Organization is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919 and is the only surviving major creation of the Treaty of Versailles which brought the League of Nations into being and it became the first specialized agency of the UN in 1946. The ILO, especially through its regional office for the Americas, has played a key role in developing and supporting cooperation on labour and social issues in the Americas. The Web site contains valuable reports, comparative analysis and information resources on these issues in the Americas, including a searchable database system.

Inter-American Development Bank

(<http://www.iadb.org/>)

The Inter-American Development Bank, the oldest largest regional multilateral development institution, was established in December of 1959 to help accelerate economic and social development in Latin America and the Caribbean. The Bank was created in response to a long standing desire on the part of the Latin American nations for a development institution that would focus on the pressing problems of the region.

Free Trade Area of the Americas Tripartite Commission (FTAA)

(<http://www.ftaa-alca.org/>)

This site is maintained by the Tripartite Committee, which consists of the Inter-American Development Bank (IDB), the Organization of American States (OAS) and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) on behalf of the member governments of the countries participating in the Free Trade Area of the Americas This site follows the process initiated in the 1994 Summit of the Americas to integrate the economies of the Western Hemisphere into a single free trade arrangement.

MERCOSUR

(<http://www.mercosur.org.uy/> <http://www.mercosur.org/>)

This Web site contains information on the process of integration between Uruguay, Argentina, Brazil and Paraguay, known as MERCOSUR. It includes descriptions of the history and organizational structure of the MERCOSUR, copies of relevant treaties in Spanish and Portuguese, information bulletins, notices of meetings, and a special section on "MERCOSUR Social" with useful links and resources.

Multilaterals Project.

(<http://www.fletcher.tufts.edu/multilaterals.html>)

The Multilaterals Project, launched in 1992, is an ongoing project at the Fletcher School of Law & Diplomacy, Tufts University, Medford, Massachusetts to make available the texts of international multilateral conventions and other instruments. Although the project was initiated to improve public access to environmental agreements, the collection today also includes treaties in the fields of human rights, commerce and trade, laws of war and arms control, and other areas

National Wildlife Federation

(<http://www.nwf.org/>)

The National Wildlife Federation is the nation's largest member-supported conservation group, uniting individuals, organizations, businesses and government to protect wildlife, wild places, and the environment upon which we all depend. Through their grass-roots members, affiliates, and field offices nationwide, they educate, assist, and inspire people from all walks of life to conserve wildlife and other natural resources. Their common-sense approach to environmental protection balances the demands of a healthy economy with the need for a healthy environment, ensuring a brighter future for people and wildlife everywhere.

North American Commission for Environmental Co-operation

(<http://www.cec.org>)

The North American Commission for Environmental Co-operation (CEC) is an international organization whose members include Canada, Mexico and the United States. The CEC was created under the North American Agreement for Environmental Co-operation (NAAEC) to address regional environmental concerns, help prevent potential trade and environmental conflicts and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions established in the North American Free Trade Agreement (NAFTA). This Web site contains information about their research, factual reports process and other activities, and provides useful links and resources.

North American Commission for Labour Co-operation

(<http://www.naalc.org/>)

The North American Commission for Labor Cooperation is an international organization created under the North American Agreement on Labor Cooperation (NAALC). The Commission is formed of a Council of Ministers, a cabinet-level body in charge of policy-setting and decision-making consisting of the three labor ministers or their representatives; and a trina-

tional Secretariat that provides support to the Council and to the independent Evaluation Committees of Experts and Arbitral Panels the Council may establish under the provisions of the Agreement. The Commission works in close cooperation with the National Administrative Offices (NAOs), created by each government within their own labor ministry to implement the NAALC. This Web site contains information about their research, complaints process and other activities, and provides useful links and resources.

Organization of American States (OAS)

(<http://www.oas.org/>)

The basic purposes of the OAS are to strengthen the peace and security of the continent; to promote and consolidate representative democracy, with due respect for the principle of non-intervention; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states; to provide for common action on the part of those states in the event of aggression; to seek the solution of political, juridical and economic problems that may arise among them; to promote, by cooperative action, their economic, social and cultural development, and to achieve an limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the member state. The Environment and Sustainable Development Unit Web site contains useful information on environmental cooperation in the Americas, and other sections on social development, indigenous peoples and women's issues are also worthwhile resources. The Trade Unit Web site contains information and news notices, and also links to the SICE system of information on trade and integration in the Western Hemisphere.

OXFAM

(<http://www.oxfam.org/eng/>)

Oxfam International is a confederation of 12 organizations working together in more than 100 countries to find lasting solutions to poverty, suffering and injustice. With many of the causes of poverty global in nature, members of Oxfam International believe they can achieve greater impact in addressing issues of poverty by their collective efforts. To achieve the maximum impact on poverty, Oxfams link up their work on development programs, humanitarian response, lobbying for policy changes at national and global level. Their Web site contains information on popular campaigns and communications work is aimed at mobilizing public opinion for change. Of particular relevance may be their campaign site for "Make Trade Fair" (<http://www.maketrade-fair.com/>).

Pan American Health Organization (PAHO)

(<http://www.paho.org>)

The PAHO is the Inter-American cooperation mechanism on health. Its Web site contains many useful resources, including comparative health indicators, core health data, country profiles, trends and situation analysis, information on public health, an “atlas of inequity” and an online bookstore.

Secretaria General de la Comunidad Andina

(<http://www.comunidadandina.org/>)

The Andina Community is integrated by Bolivia, Colombia, Ecuador, Perú and Venezuela; it's main objective is to promote a development in balance and harmony among it's members through the economic and social integration of their folks.

Sierra Club of Canada

(<http://www.sierraclub.ca/>)

The Sierra Club is a non-profit member-supported, public interest organization that promotes conservation of the natural environment by influencing public policy decisions-legislative, administrative, legal, and electoral. The Sierra Club has been active in Canada since 1969, working to influence public policy and environmental awareness. Their trade campaign is part of a coalition, the Common Front on the WTO and Free Trade.

United Nations Development Programme (UNDP)

(<http://www.undp.org/>)

UNDP is part of the United Nations and upholds the vision of the United Nations Charter. UNDP's mission is to help countries in their efforts to achieve sustainable human development by assisting them to build their capacity to design and carry out development programs in poverty eradication, employment creation and sustainable livelihoods, the empowerment of women and the protection and regeneration of the environment, giving first priority to poverty eradication

United Nations Conference on Trade and Development (UNCTAD)

(<http://www.unctad.org/>)

Established in 1964 as a permanent intergovernmental body, UNCTAD is the principal organ of the United Nations General Assembly in the field of trade and development. Focal point within the United Nations for the integrated treatment of development and interrelated issues in the areas of trade, finance, technology, investment and sustainable development.

United Nations Environment Programme
UNEP Trade & Economics Unit: (<http://www.unep.ch/etu/>)

UNEP ETU's mission is to promote the further development and application of integrated environmental and economic analysis, policies and instruments for sound environmental management and sustainable development. They produce the Trade and Environment series, and other useful, impartial studies concerning economics, trade and environment.

United States Agency for International Development (USAID)
(<http://www.usaid.gov/>)

Environmental Law Centre. The United States Agency for International Development (USAID) is the independent government agency that provides economic development and humanitarian assistance to advance U.S. economic and political interests overseas. Established in 1961 by President John F. Kennedy.

United States Trade Representative
(<http://www.ustr.gov/>)

The Office of the U.S. Trade Representative (USTR) is responsible for developing and co-ordinating U.S. international trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters. The U.S. in Miami has also created a Summit of the Americas implementation page at (<http://americas.fiu.edu/state/>).

World Trade Organization
(<http://www.wto.org>)

The World Trade Organization (WTO) is the global international organization dealing with the rules of trade between nations. At its heart are the WTO Agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business. The Web site provides an invaluable resource for scholars of international trade, and contains the WTO Agreements, information about global trade and its laws, copies of WTO panel and appellate body decisions, news and notices of meetings, among other items.

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Mindahi Crescencio Bastida Muños is a traditional authority for the Otomi Peoples of the Lerma River Higher Basin, and a founder and current President of the Mexico-wide Indigenous People's Council for Sustainable Development, COMEDES, between 56 different races and a member of the North American Commission for Environmental Co-operation Joint Public Advisory Council. He has held positions with the United Nations Environment Programme Regional Office for Latin America and the

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macro-economic analysis, impacts of decentralization and democratization on local public sector management and capacity, municipal and provincial development programs, and strategic planning for local development. He worked in Cambodia in the development of a micro finance and village savings program and closely assisted an access to justice program strengthening human rights accountability and procedure. Further to his local agenda, Mr. Taillant has focused on developing participatory mechanisms and local planning tools for municipalities. At CEDHA Mr. Taillant is responsible for overall institutional programming and direction. He also heads the Sustainable Trade and Responsible Business Programs as well as advocacy and advisory work on Global Governance Institutions and on Strengthening Civil Society Participation in Hemispheric and Global affairs. He has published numerous works on human rights and environment linkages, including recently, guidelines focusing on the implications of human rights on corporate behaviour, civil society advocacy on human rights and business, as well as papers on human rights and sustainable development and on corporate social responsibility in the Americas. He is currently Executive Director of the Center for Human Rights and Environment.

Soledad Salvador is an associate researcher with the Interdisciplinary Center for Development Studies (CIEDUR) in Uruguay since 1994. She first became involved with labour issues doing research in the labour market and giving advice to the worker unions. During 1998 and 1999, she was commissioned by the Asociación Latinoamericana de Integración (ALADI) to conduct research and policy analysis on the integration process and trade issues. She also studied the implications of the liberalization of health services for Latin America and Caribbean countries for the Latin America and Caribbean Regional Office of the International Development Research Centre (IDRC). Presently, she collaborates with the “Gender and Development” Area of CIEDUR, focusing on the link between the liberalization of health services (and services in general) and developmental issues, such as social and gender equity. CIEDUR is a member of the International Gender and Trade Network (IGTN) and she participates in their research and training activities. Recently, Soledad completed a consultancy for the World Bank and the World Health Organization (WHO) on trade in health services and the General Agreement on Trade in Services, a case study of Argentina for the next WHO publication. She holds a degree in Economics and, a candidate for a Masters degree in Economics (Universidad de la República Oriental del Uruguay).

Jason Potts is Coordinator of the Sustainable Commodity Initiative—a joint IISD/UNCTAD venture committed to identifying proactive market-based policies and related instruments for promoting sustainable development across different commodities sectors. Mr. Potts is a lawyer by training with LLB and BCL degrees from McGill University and a specialization in trade law, sus-

tainable development law and corporate social responsibility. Prior to joining IISD, Mr. Potts worked with the Trade, Employment and Competitiveness Program at the International Development Research Centre, as well as the Commission for Environmental Co-operation on issues at the nexus of trade, environment and international development. Mr. Potts has published on competition policy, food policy, fair trade and the relationship between corporate social responsibility and sustainable development more generally.

Social rules and sustainability in the Americas

A Free Trade Area of the Americas (FTAA) is being negotiated, and aims to form a trading block stretching from Nunavut to Tierra del Fuego by the year 2005 as part of a larger integration agenda. This process will be more likely to advance constructively if trade rules foster rather than impede sustainability. Parallel to the FTAA, development and social cooperation links are being strengthened in the Americas through hemispheric meetings of Labour Ministers, Health and Environment Ministers, and others. The Mexico Special Summit of the Americas focuses on the need for social development in the Americas, and growth with equity. This equity must be also be developed between generations: sustainable development. The Inter-American Human Rights System, especially the American Convention on Human Rights and its Protocol of San Salvador on Economic, Social and Cultural Rights, provides a forward-looking agenda for a rights-based approach to social development in the Americas.

How do we most effectively address social development challenges in the Western Hemisphere, as part of an integration process? How can we improve conditions and services for the poor and the most vulnerable in the Americas? How can cooperation serve to increase implementation of human rights commitments (including rights to health care and other basic needs)?

Social Rules and Sustainability in the Americas, uses a “rights-based approach” to examine social regimes in the Western Hemisphere and develop recommendations for future hemispheric co-operation on social policy in the context of advancing FTAA negotiations. It explains the Inter-American Human Rights System, the Pan-American Health System and other structures of the Organization of American States, and surveys examples of innovative sub-regional co-operation instruments on health, human rights, including socio-laboural rights, social security, gender and indigenous peoples’ participation, corporate social responsibility and other social issues from across the Americas. Extending the Winnipeg Principles analysis to social regimes, it proposes ways that the complex and inter-related international frameworks for social development, including human rights protection, could be strengthened for an Americas integration process that would support more equitable sustainable development.