



Dialogue on
Globalization

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Working Time and International Competitiveness

KATHERINE HAGEN

1 Introduction

Working time is at the centre of social and economic policy in a globalizing world. It is a key element, along with wages and working conditions, for economic growth, an inclusive labour market and high employment rates. It has been, furthermore, an integral element in the pursuit of social justice, specifically in the context of international standards defining basic workers' rights. Not only was working time the subject of the very first ILO convention in 1919, but it has repeatedly been the focus of ILO standard-setting initiatives. The most basic of these are the Hours of Work (Industry) Conventions, 1919 (No. 1) and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) 1 and 30.¹

The accumulation of working time standards has been an issue of concern to the ILO Governing Body in its review of ILO standards. Recent proposals to update the basic conventions, however, have been entertained, but the Governing Body has not yet agreed to proceed with an actual revision. The Governing Body did decide that they should be reviewed, and the two main conventions (Nos 1 and 30) are the subject of the 2005 General Survey for the ILO Conference by the ILO Committee of Experts on the Application of Conventions and Recommendations.² The Committee recommends a consolidation into one new standard.

This paper is part of a project being carried out by the Geneva Social Observatory and funded by the Friedrich Ebert Foundation to look at current trends and policy challenges dealing with working time. The project was initiated with a preliminary roundtable discussion in November 2004 to explore diverse perspectives from different parts of the world.

This paper builds on the themes that were highlighted in the roundtable discussion. It is intended to facilitate further dialogue on the issues of working time and international competitiveness.

The paper is directed to a review of the ongoing quest for improved national and international working time policies and the search for better coherence among them. These challenges are typical of the cross-border problems between countries, between ministries, and between inter-governmental institutions that FES is dedicated to addressing. In seeking a bridge-building role, FES supports a dialogue on ways that the concept of working time can be better understood in the context of encouraging global and national policy options to respond to increasing international competition and that are, as a result, more coherent across boundaries - but that are also more in tune with the needs of both social justice and economic well-being in today's global economy.

Among the significant features of the current working time debate are the long-term downward trends in average working time in industrialized countries, the changing mix of what is meant by full time and part time work, the "flexibilization" of working time and the effect of changes in the organization of work. These are features of the current debate that are prevalent in the way that working time is evolving in modern economies.

On the other hand, the emerging integration of developing and transitional countries into a globalizing economy has contributed to another set of counteracting trends. Not only are working time practices in these countries symptoms of a different level of development; they are also creating tensions where these different working time practices are contributing to the competitive advantage of developing country economies, particularly in the export sectors of these economies.

Attention in this paper is directed first to the situation in developing countries and then to the situation in industrialized countries. In general, the situation in developing countries is affected by trade-related monitoring of working time practices by external groups who rely on existing international ILO standards (essentially revolving around the 48

1 *ILO, Hours of Work (Industry) Convention (No. 1, 1919) and Hours of Work (Commerce and Offices) Convention (No. 30, 1930), at www.ilo.org.*

2 *ILO, Hours of Work: From Fixed to Flexible?, General survey of the reports concerning the Hours of Work (Industry) Convention (No. 1, 1919) and the Hours of Work Commerce and Offices) Convention (No. 30, 1930), International Labour Conference, 93rd Session 2005, Geneva: ILO (2005), at www.ilo.org (hereinafter referred to as *Hours of Work General Survey*).*

hour workweek, one day off in seven, and some form of paid holidays). While most countries have laws in place that are consistent with these standards, there are pressures related to inadequate enforcement capabilities and non-compliance in certain export-oriented sectors. In addition, there is concern about the limited nature of coverage, particularly in terms of the extensive informal economy in most developing countries. These conditions have led some to argue that existing international standards may not be relevant for countries that are still struggling to develop. A prime example is found in some recent publications and programmes of the World Bank, which have called these standards as too restrictive and not conducive to a favourable investment climate in developing countries.³

The pressures in industrialized countries, on the other hand, are related to the pressures that are reversing the downward trends in working time, as illustrated most recently by the changes in specific bargaining agreements in Germany and in amendments to the 35-hour workweek in France. These reversals are largely attributable to the pressures of international competition and signify the increasingly vulnerable nature of domestic policies for reducing working time in order to stimulate job creation to the competitive dynamic of productive workers elsewhere being available to work longer hours – and at less pay per hour, too, of course. But the reversals are also part of a larger phenomenon in many industrialized countries toward increases in working time in certain sectors while decreases are occurring in others, thereby increasing the working time gap. Then there are the many ways in which working time arrangements are being diversified. All of these trends are detracting from the relevance of existing workweek and workday standards and call for an entirely new approach to the regulation of working time practices.

2 Trends in developing countries

In developing countries, the typical standard on working time is the original regulatory

framework as laid out in ILO Conventions No. 1 and 30.⁴ In both cases, the basic starting point is the description of regular working hours as constituting a maximum of 48 hours per week.⁵ The standards varied on other aspects, such as when you could waive the limit to make it 56 hours for a regular workweek, and also as to when one could implement a 10-hour day as opposed to a limit of an 8-hour day. These variations notwithstanding, the general rule has been to expect developing countries in today's world to strive to achieve a 48-hour workweek as the established frame of reference. This is so, even though the typical workweek in industrialized countries is understood to be no more than a 40-hour workweek, with many industrialized countries having limits that are even lower (e.g. France at 35 hours).

The Origins of the Focus on the 48-hour Workweek for Developing Countries

The 48-hour workweek target was not necessarily articulated as such in any official documents, but it has been interpreted in numerous settings to be the accepted norm. The US took the lead on this by introducing compliance with a set of internationally recognized labour standards as a precondition for its Generalized System of Preferences (or GSP system) in its trade law starting in 1984.⁶ The law referred to five categories of workers' rights – the right to freedom of association, the right to collective bargaining, no child labour, no forced labour and "acceptable" conditions of work. This last category was

3 World Bank, *International Finance Corporation and Oxford University Press. Doing Business in 2005: Removing Obstacles to Growth*. Washington, DC: The World Bank (2005).

4 ILO Conventions No. 1 (1919) and No. 130 (1930), the texts of which are available at: www.ilo.org/ilolex/index.htm.

5 Convention No. 1 states, "The working hours of persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, shall not exceed eight in the day and forty-eight in the week..." Convention No. 130 says, "The hours of work of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day, except as hereinafter otherwise provided..."

6 A summary of the US Omnibus Trade and Tariff Act of 1984 may be found at: www.dbtrade.com/legal_sources/crs_summary_tt_1984.htm Title V of this Act addresses the issue of workers' rights.

specifically meant to include “acceptable” minimum wages, working time and occupational safety and health.

Although Congress did not further define what it meant by acceptable conditions of work, and thus did not legislatively enact a definition of acceptable working time, the term “acceptable working time” came to be defined as a 48-hour workweek, along with a 24-hour rest period every 7 days, overtime pay for hours in excess of 48 hours, and the prohibition of compulsory overtime. This interpretation of the meaning of “acceptable working time” has been integrated into the interpretation of US trade law obligations by the US State Department in its programme, mandated by Congress, to review compliance by all countries under the GSP system, with internationally recognized workers’ rights.

Interestingly, the EU did not immediately follow suit, perhaps because the EU itself was evolving in the 1970’s and 1980’s. The regulation of trade at the EU level did not incorporate international labour standards until the 1990’s, first with a bar against child labour only and subsequently with a broader range of international labour standards, although not including the category of “acceptable conditions of work” as such. It is only in the US trade law that one finds a conditionality associated with this category of labour standards and thus with a conditionality associated with a working time standard.

However, it is also the case that concerns about acceptable conditions of work became a major issue in consumer movements calling for compliance with international labour standards. In fact, many of these consumer movements, such as Fair Trade, started with a focus exclusively on conditions of work – calling for minimum wages, decent working time practices and basic safety and health protections – and not on the core labour standards that came to be enshrined in the ILO Declaration of Fundamental Principles and Rights at Work in 1998. This eventually changed, of course, but it is interesting that early consumer movements were directed at seeking to ensure decent working conditions without any particular concern about freedom of association and the right to collective bargaining. Of course, these movements were also con-

cerned about no child labour and no forced labour, and many of them also pushed for non-discrimination principles as well. The main point, however, is the “disconnect” between conditions of work standards in consumer-driven codes versus their absence in the official identification of core labour standards – and the inclusion of the right to association and bargaining in the core standards and their absence in more voluntary, consumer-driven codes.

A study of corporate and other codes of conduct was conducted by the ILO, with updates, to evaluate the content and processes for implementing codes of conduct related to international labour standards.⁷ Suffice it to say here that the study showed that there was extensive inclusion of conditions of work standards in these codes, including working time provisions, and the working time provisions tended to feature a 48-hour workweek and the related provisions for rest, holidays and overtime. This has also become the norm in various multistakeholder initiatives, including the Ethical Trading Initiative⁸, SA 8000⁹, and the Fair Labor Association.¹⁰ The basic expectation is that countries should comply with at least a 48-hour workweek, plus one day off every 7 days, no compulsory overtime, a premium rate for overtime, and a maximum of 12 hours of overtime per week – or their own labour law if it includes more rigorous requirements.

More recently, the US Department of Labor commissioned a project with the US National Academies of Sciences to develop a comprehensive set of indicators for core labour

7 *Urminsky, M. “Self-regulation in the workplace: Codes of conduct, social labeling and socially responsible investment”.* Geneva: ILO Management and Corporate Citizenship Programme Working Paper No. 1, 2001, at: www.ilo.org/public/english/employment/multi/download/wp1mcc.pdf.

8 *A copy of the Ethical Trading Initiative’s “base code” can be downloaded* at: www.ethicaltrade.org/Z/lib/base/index.shtml.

9 *Documentation relating to Social Accountability’s 8000 standard appears* at: www.sa-intl.org/Document%20Center/Documents.htm.

10 *The text of the Fair Labor Association’s Workplace Code of Conduct is* at: www.fairlabor.org/all/code/index.html.

standards and acceptable conditions of work. The two-year study culminated in a series of publications on specific issues and seminars and a major report defining what is meant by core labour standards and acceptable conditions of work standards and proposing a set of indicators for measuring compliance with these standards – classified into four categories – that is, legal framework, governmental performance, outcomes and associated factors. The project also produced a comprehensive data base, called WebMILS with definitions of all proposed indicators and reference materials for every country with regard to sources of data to populate these indicators.¹¹

The Monitoring of International Labor Standards Committee (MILS) reviewed the legislative history regarding acceptable conditions of work, including working time, and opted to endorse a variation of the definition of acceptable working time used by the US State Department. That is, they agreed that the definition should refer to the objective of a 48-hour workweek or less, based on ILO conventions, one full day of rest every 7 days, and a specific number of paid holidays, again based on ILO conventions which provide for up to 3 weeks of paid holidays per year.¹²

The Issue of Overtime in Developing Countries

The question of overtime appears to be one of the most significant issues in relation to problems with compliance with working time standards that arise in the monitoring programmes of these voluntary codes. This is so even though the national policies of most countries are fully consistent with the basic set of conditions regarding regular working hours, overtime limits, days of rest and paid holidays. The issue is not the legal framework on working time but the implementation of the laws,

and more importantly implementation of the laws with regard to overtime and premium pay for overtime.

One should note that the matter of the legal framework on overtime has been studied, along with the development of appropriate indicators for measuring compliance with overtime standards, in a project that has been implemented by Hagen Resources International called "The Tripartite Development of Indicators for Conditions of Work," also funded by the US Department of Labor. As a follow-on to the NAS project, this initiative has singled out conditions of work standards as necessarily being developmental in thrust, even in the way that they have been articulated as international labour standards. The ILO standards relating to conditions of work, that is to say, the standards relating to minimum wages, working time and occupational safety and health, all include a developmental component that acknowledges the right of countries to implement the standards according to their level of development. This is different from the core labour standards, which are deemed to be universally applicable regardless of the level of development. Thus, the HRI project has singled out the conditions of work standards as requiring a different form of measurement for compliance than the core labour standards.¹³

The HRI project, furthermore, was premised on the priority given to domestic tripartite participation in articulating the developmental objectives and priorities and therefore of developing indicators for measuring compliance with conditions of work standards that reflect these developmental priorities. It was also argued that each country's developmental priorities should be influenced by their own measurement of progress regarding compli-

11 US Department of Labor (2005), *WebMILS: Monitoring International Labor Standards*, at <http://www.dol.gov/ilab/webmils/>.

12 National Academy of Science, *Monitoring International Labor Standards: Techniques and sources of information, Report of the Committee on Monitoring International Labor Standards*, Washington, D.C.: The National Academies' Press (2004), p. 238.

13 HRI made a presentation emphasizing this distinction to the NAS Committee in October 2002 and subsequently prepared a study which included an assessment of the current state of international standards on working time. See K. Hagen, *The Tripartite Development of Indicators for Conditions of Work: An Assessment of the Issues*, prepared for the HRI Cooperative Agreement with the US Department of Labor No. E-9-K-2-0089, Geneva: HRI(March 2003), available at www.hrigeneva.com.

ance with and improvement in compliance with international standards on acceptable conditions of work. The project has produced some interesting results, especially with regard to working time.

The project has been implemented with studies of eight countries, four in the Caribbean (Barbados, Guyana, Jamaica and Trinidad and Tobago) and four in Southern Africa (Botswana, Lesotho, Namibia and South Africa).¹⁴ In most of these countries, it appears that the basic workweek standard is LESS than a 48-hour workweek! In several countries, including Jamaica, the legally defined normal workweek is actually 40 hours. What is more, in South Africa, where the legally defined normal workweek is 45 hours, the government is supporting sectoral bargaining (which plays a significant role in setting conditions of work policies in that country) where the parties are agreeing to working time arrangements well below the 45-hour workweek and more in line with working time policies in industrial countries.

Another interesting development regarding working time is illustrated by the effect of progressive working time policies on a country like Jamaica, with its 40-hour standard. Jamaica experienced a very dramatic increase in foreign direct investment and domestic jobs in the apparel-for-export sector in the 1990s, only to see much of it flee to countries with less stringent laws, including a 48-hour or more workweek. The influx of investments and jobs had occurred because of the lure of cheap labour and proximity to the US market, but the sudden outflow occurred, it seems, because other nearby countries had longer working time rules to start with or even increased their workweek to attract the investments, whereas the Jamaican govern-

ment apparently refused to consider a waiver of its 40-hour workweek.¹⁵

The HRI project is also showing that the available data on compliance with working time laws in these eight countries do not show any serious problems. The averages, where they are available, show patterns that are well below the 48-hour workweek objective, even including data on overtime. This flow of information, however, is not consistent with the information that is being gathered, albeit in different countries, with regard to excessive overtime and non-payment of premiums for overtime, in various monitoring projects.

Abuses of Overtime

Comprehensive reports have been prepared for the factories covered by the Fair Labor Association (FLA), for one. The reports show that wage payments are often below the legal requirements for overtime pay, plus they show repeated instances of inadequate record-keeping of overtime. The FLA notes that these kinds of problems are associated with pressure to achieve high production quotas, along with inflexible and short production deadlines.¹⁶ Similar observations have been made by the Ethical Trading Initiative (ETI) and Verité. Both Verité and ETI have specifically mentioned chronic problems in China,¹⁷ and the

14 These studies have been integrated into the forthcoming publications on Conference Proceedings for the Tripartite Development of Indicators for Conditions of Work, based on meetings that were held for the four Caribbean countries in Port of Spain, Trinidad and Tobago on 4-5 November 2004 and for the four Southern African countries in Cape Town, South Africa on 20-21 January 2005.

15 One can speculate about why the Jamaicans did not agree to a waiver. In part, it may be because the investors were mostly Asians with weak political connections to the government, but it is also the case that Jamaica has a strong evangelical Christian movement that has blocked other types of changes in the working time laws of Jamaica having to do with more flexible hours and working on Sundays. This strong resistance to modifications of working time laws on religious grounds may well have played a role in the decision not to agree to a waiver to the apparel manufacturers.

16 The text of the Fair Labor Association's Annual Report for 2004 may be found at: www.fairlabor.org/2004report/. The 2003 Report is at: www.fairlabor.org/all/transparency/charts_2002/Public%20Report%20Y1.pdf.

17 See ETI's Key challenges in ethical trade: Report on the ETI Biennial Conference 2003 at: www.ethicaltrade.org/Zlib/2003/12/eticonf/page07.shtml and Verité's 2004 publication, "Excessive Overtime in Chinese Supplier Factories: Causes, Impacts and Recommendations for Action" at: www.verite.org/news/Excessiveovertime.

FLA has actually initiated an “Hours of Work in China” project to determine why excessive hours persist and to better define the underlying causes.¹⁸

ETI has sought to address the evidence of chronic exploitation of working time with a programme that was featured in their 2003 conference on how to develop “win-win” strategies to reduce working time. As ETI observed, there is a continuing cycle of low pay that encourages workers to work longer hours in order to earn as much as possible and of lowered productivity because of the long hours. Where employers are shown that reduced working hours actually increases productivity to the point that more value is added with shorter working hours, the inclination to push for long hours can be dramatically reduced. However, this does not take care of those situations where there are short deadlines and competition to bid for the work.

In general, then, these multistakeholder groups are working with individual suppliers and with their industrialized country buyers, to develop better monitoring for compliance, better incentives for reduced working time, and more reasonable deadlines and bidding practices by buyers in the apparel industry. Similar practices are also being addressed in similar ways in other consumer-related industries, such as toys and electronics.

A contrasting view of working time and development

In contrast, the World Bank has taken a significantly different approach. In the World Development Report (WDR) 2005 on “a better investment climate for everyone,” for example, the authors of the report suggest that labour regulation in developing countries, including the regulation of working time, exceeds or mimics the level of the regulations in developed countries – and that this is a bad thing.¹⁹ They argue that working conditions have im-

proved but only gradually in industrialized countries and that applying similar or higher standards at earlier stages of development or enforcement capacity creates problems. In particular, they argue, the system creates a protected elite – the “rentseekers” versus everyone else. They argue that these regulations benefit only a few and that they reinforce the tendency to widespread informality in the economies of developing countries. And what is worse, they claim, the data on the regulation of working conditions and wages show that the less regulated countries are doing better than the more regulated ones.²⁰ They specifically object to the practice of requiring overtime premium pay and recommend that US approach, where there is no federal requirement for premium pay for overtime, in contrast to the situation that they cite in several developing countries where the overtime pay is required to be at least twice the regular wage. And finally, they argue, the presence of standards that are too high simply contributes to a record of poor compliance with the standards.

The WDR 2005 also cites with favour a project sponsored by the World Bank called “World Bank Doing Business in 2004 » and commends its methodology for indicators on working time. Checking the Website for this project, one finds a “rigidity of hours” index that asks the following questions:

- Is night work restricted?
- Is weekend work allowed?
- Is workweek 5 and one half days or more?
- Can workday extend to 12 hours or more, including OT?
- Annual paid vacation of 21 days or less

Depending on the answers to these questions, one either gets a positive or a negative ranking on this “rigidity” index. Promoting reduced working time in developing countries

Countering this point of view, one finds extensive documentation of the benefits that accrue to reducing what one might call “excessive” working hours, although it is less clear that these benefits continue with simi-

¹⁸ As described in the Fair Labor Association’s “Update” newsletter of 7 December 2004. See: www.fairlabor.org/all/news/updates/20041201.pdf.

¹⁹ World Bank, *World Development Report 2005: A Better Investment Climate for Everyone*, Washington, D.C.: World Bank, 2005.

²⁰ *Ibid*, p. 145 (Fig. 7.5).

larly positive effect further down the line. In a report on working time and safety and health, Anne Spurgeon has shown that there was extensive evidence showing how reduced hours increased productivity as one moved from 70 or more hours per week to 55 hours and down to 48 hours, as occurred throughout the nineteenth century and into the early years of the twentieth century among factory workers.²¹ It is conceivable that the same rationale worked in bringing the normal workweek down to 40 hours in the 1930s and 1940s. Not only did productivity improve because workers produced more per hour than they had done with longer working hours, but the frequency of work-related accidents and down-time of trained workers was also reduced.

The safety and health argument against long working hours continues to be a legitimate argument, both in developing and industrialized countries. And, as Spurgeon has reported, problems may actually be increasing today because a significant and growing percentage of workers are working over 60 hours a week.²²

In any case, the issue in developing countries is mostly related to the dilemma of long hours being necessary to meet basic needs because of low pay. There is even the argument that workers themselves want to work long hours in order to save the money and use it for future investments at home. That is, they are drawn to the urban factory setting where they work long hours and live in company-owned dormitories for a couple of years in order to accumulate a nest egg and then return home to start up their own small enterprise. On the other hand, this only works when the wage differential between the home area and the urban factory setting is great enough to accept the tradeoff of long working hours. There are some indications

that even in China this may no longer be so clearcut.²³

Any survey of overtime and long working hours in developing countries should also take into account the impact of supply chain competition and overtime requirements to meet deadlines. One needs to include the consideration of a strategy directed to buyers to manage supply requirements differently and a campaign among consumers to create expectations for and a willingness to support compliance with acceptable conditions of work standards. One should be asking what are legitimate limits on working time and especially on overtime? What is the appropriate scope set down by legislative process? And what should be the participatory process in setting these thresholds?

One should also note that the thrust of monitoring activity has been in the apparel industry and to a lesser extent in the toy and electronics industry. What is to happen with the changing composition of outsourcing patterns, especially as they grow in the services sector, as opposed to the industrial sector, and in activities where the skill levels are relatively high? With comparable or higher skill levels among the workers in developing countries who are available to fill these kinds of jobs, what will happen to the traditional comparative advantage of skilled labour in industrialized countries?

Finally, there is the importance of a functioning labour inspectorate. Waivers of legal requirements are one thing. Overly idealistic limits are another. But an important element in the overall equation is the capacity of developing countries to actually enforce their own high standards. Although some of the inadequate enforcement could be attributed to the unwillingness to enforce unrealistically high standards (and standards that are recognized as being too high but without any po-

21 A. Spurgeon, *Working Time: Its impact on safety and health*, Geneva, Switzerland: International Labour Organization, 2003, p. 23.

22 *Id.*, p. 25.

23 *BBC Monitoring Service*, « Labour shortage in China's south due to workers migrating east, » 02 March 2005. This article notes that the disparities between rural and urban wages has been diminishing in China, making it more difficult than in the past to fill the many unskilled factory jobs in the expanding industrial centers like Shanghai.

litical will to lower them), one should also take into account the importance of assisting developing countries with the improvement of their capacity to enforce their own laws. Thus, a well functioning labour inspectorate should be one of the priorities for advancing an overall package of policy coherence. A realistic enforcement programme is an integral element in ensuring legitimacy and credibility of respect for international labour standards.

3 Trends in industrialized countries

There is an extensive literature on the changing characteristics of working time in industrialized countries. Reference will be made here to some of the trends that have been identified, not only in the quantitative aspects but also the qualitative aspects of working time. Our focus will be on the ways in which working time is being affected by global competition, but we will also take a look at the dynamics of the relationship between the concepts of part-time and full-time work as well as the "return of overtime".

Moving beyond the 48-hour workweek – and the 40-hour workweek

The first and most basic trend has been the steady decrease in the amount of time defined by law as normal or regular working time and the resulting decrease in average hours worked. At the beginning of the twentieth century, the industrializing countries of Europe and North America moved to the 48-hour workweek, and then in the 1930s and 1940s, to the 40-hour workweek. Safety and health reasons converged with productivity improvements to justify these changes. In the last several decades of the twentieth century, many advanced industrial countries supplemented these reasons with an interest in a better work/life balance. The demand for more family and leisure time led to the acceptance of even shorter working hours, as did the demand for reducing unemployment. Regulations also came into play with regard to restricting "unsocial" hours. These phenomena had more effect on working time policies in European economies than they did in either the North American or Japanese economies, but there, too, one saw a decrease in average hours worked.

One interesting study, drawing on data over a 130-year time span, shows that average hours worked in advanced industrial countries decreased by 47% in the market sector, measured as average hours worked in relation to the population aged 15 or older.²⁴ The author shows that the most significant determinant of this decrease in hours worked was a reduction in supervisory activity due to technological progress, that is to say, a decline in the number of supervisory workers in relation to the number of production workers. The effect is deemed to explain anywhere from 46 to 80% of the decrease in hours worked in the 15 countries in the study, or a population weighted average of a 41% decrease in hours worked. Another interesting aspect of this study is that the author found no clear pattern in terms of the employment rate, which she/he found to be influenced by tax policy but not by any decline in hours worked. On the whole, however, in the same period, she found that there had been an aggregate decline of 8% in the employment rate.

This phenomenon connects to the changing nature of work organization in these countries. Not only for technological reasons, but also for changes in the philosophy of work organization, there is less hierarchy and supervisory control of work and more emphasis on decentralized decision-making, team work and a general restructuring of what Harvey calls "the temporalities" of work.²⁵ As she reports, there are variations in the way that work has been reorganized from country to country, but the general pattern is that the system of work organization and the nature of the employment relationship have changed. And along with these changes have come changes in working time arrangements – not so much a change in the amount of working time but more a matter of a change in the scheduling

24 Alexander Ueberfeldt, "Working Time over the 20th Century", *University of Minnesota Job Market Paper*, Minneapolis, MN: Federal Reserve Bank, 2005, at: <http://center.uvt.nl/macro/workingtime.pdf>.

25 M. Harvey, "Economics of time: a framework for analyzing the restructuring of employment relationships," in A. Felstead and N. Jewson, Eds., *Global Trends in Flexible Labour*, Basingstoke: Macmillan, 1999, pp. 22-23.

of that working time. Flexible schedule within a range of hours per day is the most obvious example. Other changes, brought about by the demand for a "24-hour" economy, include more widespread use of weekend hours, night shifts, alternating night and day shifts, compressed weeks, and even hours averaging (over a period of time up to a year in some instances) and on-call time.

Another phenomenon has been the increase in the amount of part-time work. The greater proportion of women in the active labour market has meant an increase in dual-earner households, as well as an increase in households headed by a woman. Most of the employment of women has been in part-time employment, reflecting the continued presumption that women have more family responsibilities than men and the further presumption that they are not the primary breadwinners in their households. However, these presumptions are changing in some countries, where one sees an increasingly mixed pattern of male and female employment in part-time work, as has happened in the Netherlands. This mixed pattern, at least in the case of the Netherlands, has been a result of government policies encouraging part-time work. Similar policies have influenced the mix of part-time and full-time work in the Scandinavian countries. What this means for working time patterns is connected to the proportion of the working age population that is actually employed but with a decreasing average hours per person working, even as the average hours per person might not have changed or may even have gone up.

In fact, in a major study published by the OECD in 2004, called "Clocking in and clocking out," the authors have observed that, in general, the maintenance of quality of life in industrialized countries requires more people working longer years.²⁶ Another interesting

observation of the OECD study is that high productivity countries as a group have higher employment rates but lower hours per worker.²⁷ It should be noted that the OECD study has used annualized comparisons, a method which works well to take into account the range of paid time off and other variations to the normal workweek. The study shows that the total number of hours worked in the US is much higher than in Europe. Europe has more paid holidays, reduced full-time hours and more part-time workers than the US. However, the study also shows that other countries have also experienced an increase in average working hours, countries like the UK and Australia in particular. The OECD rankings actually show that Australia has the second longest working hours in the OECD after South Korea.²⁸

The changing mix of full-time and part-time work and overtime

While there is more flexibility in working time, especially with regard to part-time work, in many countries the total amount of working time has actually gone up. This has been known for some time to be the case in the United States, and the gap between the US and Europe generally increased steadily in the 1990s. What the OECD report points out is that the increased productivity performance of the US versus Europe in the 1990s is attributable to the increased working time in the US, along with differences in which categories of workers are working longer and how long rather than a higher output per hours worked. This implies that Europeans are choosing to forego income for more leisure, whereas Americans are choosing to earn more and forego leisure.

Reinforcing this study, the ILO survey on Conventions 1 and 30, which has been prepared

26 OECD, *Clocking in and clocking out: Recent trends in Working Hours*, OECD Policy Brief, October 2004. Paris: OECD Publications (2004) at: www.oecd.org/dataoecd/42/49/33821328.pdf and OECD, « *Recent Labour Market Developments and Prospects: Clocking in (and out): several facts of working time*, » in *OECD Employment Outlook 2004*, Paris: OECD Publications (2004) at <http://www.oecdbookshop.org/oecd/>

[diplay.asp?lang=EN&sf1=identifiers&st1=812004121p1](http://www.oecd.org/dataoecd/42/49/33821328.pdf).

27 OECD *Employment Outlook 2004*, p. 29.

28 As Sharan Burrows, the head of the Australian Council of Trade Unions and the newly elected President of the ICFTU, observed in the GSO roundtable on working time in November 2004, *this increase in working hours is proving detrimental to worker health, productivity, occupational safety and family relations*.

for the Committee on the Application of Standards at the 2005 Conference, reports that hours actually worked have increased in Australia, Egypt, Latvia, New Zealand, Panama and Sweden.²⁹ The report does not list the US in this category, although the data from the US in their charts would suggest that the average has gone up in the US as well, which is consistent with other studies about the US. In contrast to these countries, however, the report does show a progressive reduction of normal hours of work almost everywhere else.

Another aspect of working time trends that should be addressed is the approach taken in another ILO study of working time in industrialized countries, which points out the problems of working time “surpluses and deficits.” In terms of a “surplus” in working time, this study shows that much of the increase in hours worked in countries like the US and Australia is attributable to an increase in overtime hours, even as the normal hours have stayed the same or gone down. Because overtime hours are measured only as hours in excess of normal full-time hours, and because more men than women are employed full-time in these countries, the phenomenon of excessive overtime, working more than 50 hours a week, falls most heavily on men.

Actual limits on overtime plus regular working hours are quite varied. In South Korea, the maximum is 56 hours; in Switzerland, it is 60 hours; in the US, there are no federal limits. Even in the EU, there has been pressure to ease up the restrictions on working time. The EU Working Time Directive, adopted in 1993, has been considered the most restrictive working time policy in the world, limiting work to an average of 48 hours per week calculated over a period of no more than 4 months, with very limited opt-outs (except that the UK applied a general opt-out for indi-

vidual workers).³⁰ In 2003, the Directive was modified to allow averaging over a 12 month period rather than 4 month period and to modify the opt-out option, specifically in relation to the calculation of time while people, such as physicians, are not actually working but are “on call.”³¹

As the ILO study notes, some of this overtime is probably voluntary. Men – and women – are working in high-pressured professional jobs where advancement is dependent on long hours on the job. In many countries, as in the European Union, managerial and professional workers are exempt from working time restrictions on overtime, aren't paid on an hourly basis and therefore earn no more than otherwise for the extra time on the job. But it is actually not seen as “extra time.” Rather, it is considered normal for such workers to work 50 or 60 or more hours per week. Many of them even boast about how well they are treated by their employers and fellow workers who make sure that dinner is brought in, that the fitness center is always open and even that child-care arrangements are flexible enough to keep them on the job. Everyone is part of the team, and everyone needs to be there to complete the legal pleadings or the advertising copy or the investment portfolio or the marketing plan. There appears to be no suggestion that working time should be any different.

In other situations, however, the overtime is connected to actual overtime benefits. And the ILO study shows that much of this is happening, in the manufacturing sector in particular, mostly in countries where national regulation of working time is relatively weak or where collective bargaining is highly decentralized or non-existent – the US, the UK and Australia – but also in Japan. In these situations, the competitive pressure of getting the

29 International Labour Office. “Hours of Work: From Fixed to Flexible?” Report III (Part 1B): General Survey of the reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Geneva: ILO, 2005, p. 24, at: www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1b.pdf.

30 EU Council Directive 93/104/EC of 23 November 1993 regarding certain aspects of the organisation of working time, Official Journal of the EU, 1993 (L307).

31 EU Directive 2003/88/EC of the European Parliament and of the Council regarding certain aspects of the organisation of working time, Official Journal of the EU, 2003 (L299/9), at www.europa.eu.int/eur-lex/pri/en/oj/dat/2003/1_299/1_29920031118en00090019.pdf.

product out is subject to sudden schedule changes, plus the practice of overtime is often preferred to the extra cost of hiring additional workers. While it is also the case that many workers like the extra pay they get from working overtime, the problem is how to protect against involuntary overtime practices.

Some would argue that it has to be restricted across the board and that this is in fact a preferred outcome for everyone. Barbara Byers, of the Canadian Labour Congress, described a "Get a life" programme that had been implemented by a British Columbian pulp mill. To minimise overtime and accomplish community ends like youth employment, this firm contracts out virtually all overtime. The ILO study cited above points out that the working time "deficit" is especially hard on women and youth. Although the issue is not only inadequately short hours but also an issue of many of these workers preferring full-time work to part-time work, the overall benefit of providing for part-time work where the work would otherwise be done through overtime is illustrated by this programme.

Germany and reversals in working time trends

Finally, one should take a special look at what is happening in Germany, where there has been a concerted "social welfare" approach to reducing working time. In the forefront of industrial productivity, Germany has pursued working time policies that combine an interest in improving the work/life balance for full-time workers and an interest in stimulating employment within the country. However, a parallel trend has been to decentralize and open up the potential for enterprise-based variations. The traditional ways of bargaining for binding minimum standards for employment and working conditions at the national level have given way to the increasing use of "derogation clauses." The growing importance of flexible working time arrangements has also shifted the negotiating authority to local works councils in place of the national trade unions.

Then, in this highly decentralized setting, there has come the pressure to support a general increase in working time for competitive reasons. No longer can the works councils

focus as effectively on stimulating employment within the country through reducing working time. Rather, the emphasis has shifted to retaining jobs in the face of threatened relocation of the work to other countries, especially other Central European countries where skilled workers are prepared to work for less pay and longer hours. This has happened especially in the heavy industrial sectors, metal and engineering, with recent agreements to increase working hours without raising wages in Daimler-Chrysler, Siemens, Karstadt-Quelle and Volkswagen. In an ironic twist of logic, Klaus Zimmermann, the President of the German Institute for Economic Research, has argued that extending working time without raising wages can lead to more demand for labour, more employment and higher output.³²

Another irony of the German situation is the way in which unemployment and underemployment concerns were initially addressed by negotiating steadily lower working time for full-time workers. Although some efforts were also made to introduce more part-time work, this has been less successful in Germany than in neighboring countries like the Netherlands, where the option of part-time work has been very popular. Because Germany has a pension programme based on employer/employee contributions and related to duration of employment, part-time workers have not been guaranteed sufficient participation in a pension programme as they have been in the Netherlands, and therefore the part-time option has not been widely used. It shows how important family-friendly benefits policies that cover both full-time and part-time workers can influence the popularity of the part-time option.

The current pressures in Germany relate to the phenomenon of full-time hours of work being as low as 28 hours per week for some highly skilled workers, as well as relatively low aver-

32 Klaus Zimmermann, « *Employment for All! Perspectives for a new Economic Policy,*» Lecture at the Free University of Berlin, 14 July 2004 at http://www.divv.de/english/dasinstitut/info/20040715_kfz_ringvorlesung.html Professor Zimmermann is the President of the German Institute for Economic Research and has written extensively on labour issues.

ages in major industrial sectors, such as the transport equipment sector, where averages tend to be around 35 hours per week. These hours may be too low when compared with working time in other nearby economies. Companies can play off one plant against another, especially as they control factories in several similarly situated countries regarding productivity.

4 Looking to the future

This brief look at working time trends in developing countries and industrialized countries leads one to suggest that global competitive pressures are working to force working time upwards while also leading to a widening menu of working time structures. The idea that a fixed number of hours per day or per week in a five-day workweek with weekends off can be the basic framework for the regulation of working time is no longer feasible. The array of ILO standards – 16 conventions and 11 recommendations, according to the latest ILO report – are very scattered and inadequate. So, in spite of the fact that working time regulation was the first item on the ILO's agenda when it was created in 1919, and in spite of the fact that there has been widespread interest in regulating working time country by country, the actual standards adopted by the ILO have had very poor ratification rates. It is timely that the ILO Committee of Experts has conducted a General Survey of the basic standards – and has taken a broader look at ILO standards on working time in the context of this General Survey.

Prior to the request for a General Survey on this subject, the focus of ILO deliberations had been on revising the standards but with strong resistance from the Employers. In 1993, the ILO convened an Expert Working Group on Working Time to consider the merits of revising Conventions 1 and 30. Although the experts nominated by the Governments and the Workers supported revision, the experts nominated by the Employers did not. At that stage, many of the upward trends in working time practices were not yet evident, and even the extent of abusive working time practices connected to the export trade in developing countries had not taken hold in people's minds. The proposed structure for revision of these conventions back in 1993, however,

was a structure oriented to reinforcing a national regulatory or bargaining process that seemed a bit unrealistic even then. Thus, the Employer experts were highly skeptical of the prospects for revised standard-setting where diversity and flexibility were – and are increasingly prevalent in practice.

Again, in 1996, the Employers in the ILO stated that it was not the right time to adopt new standards even though they recognized that the old standards were out of date and no longer relevant.³³ On that occasion, a Working Party on Policy regarding the Revision of Standards had just started its work and had identified the working time conventions as an area where revisions should be considered. The Workers were, of course, in favour of a general discussion at a future ILO Conference with a view to a possible standard-setting exercise, and it was the US Government representative who proposed the conducting of the General Survey on Conventions 1 and 30 as an interim solution to this impasse.³⁴ This proposal was accepted by the Working Party, and ultimately the Governing Body in its November 2001 session instructed the Committee of Experts to carry out the general survey in 2004, for review at the ILO Conference in 2005.³⁵

Today, with the recent history of considerable decentralization and flexibilization of working time, the fixed timeframes that are prescribed in Conventions 1 and 30 do not suit the current needs for basic protections in a more diversified working time environment. The demographic changes in the workforce, too, suggest a different approach. With a greater proportion of women in the workforce, a greater proportion of dual-earner households,

33 ILO, *Report of the Working Party on Policy regarding the Revision of Standards, Part II, Conventions in need of revision, GB 267/KUKS/4/2(Rev.)*, para. 28 (November 1996).

34 *Id.*, paras. 27 and 31.

35 GB282/205, para. 44. *It might also be noted here that the Office has proposed anew that working time be put on the agenda of a future ILO Conference, putting it forward last November as one of the options for the 2007 Conference. The Governing Body chose other options instead, but one can anticipate that this will continue to be on lists for possible standard-setting activity.*

and an increase in part-time, flex-time, time banking, averaging over long periods of time and other variations, the approach of focusing exclusively on defining a "normal full-time workweek" does not take care of these kinds of situations. The Committee of Experts in its General Survey of Conventions 1 and 30 has come to the conclusion that there should be a single instrument taking into account the flexible working time arrangements of today. The Committee actually looked beyond these two conventions to note that the widely scattered nature of the conventions and recommendations dealing the relationship of working time to non-working time (hours and days of rest, holidays, etc) should also be reviewed.

The Committee has recommended that there should be one single, new instrument that deals with the questions of hours, weekly rest and annual paid leave - all together in one instrument.³⁶ The Committee lists a number of elements that should be included, should the ILO's constituents decide to proceed with such an instrument - ensuring the protection of the health and safety of workers, ensuring a "fair balance" between working and family time, no reduction in existing protections, and setting out certain maximum working hours and minimum rest periods, while also incorporating greater flexibility and accommodation of the modern variety of working time arrangements. Others would suggest that any such instrument should simply set out a procedure for adapting working time practices to each individual situation, with a flexible framework at the national level and a consultative process at the enterprise level.³⁷ The OECD, for example, has recommended that negotiations on working time should be highly decentralized but with certain minimums set out for health and safety.³⁸ Governments, furthermore, should play an active role in ensuring the integration of family friendly possibilities into

working time arrangements, including a tax and benefits structure that does not favor one kind of working time arrangement (one full-time worker per household) over the others (such as two part-workers per household).

In conclusion, fear of international competition has, from the very beginning, hampered the acceptance of these standards, and that fear has re-emerged as the main explanation for the reversals in the downward trends in working time that most people would like to see. The 24-hour economy, along with new methods of flexible production and flexible organization of work have exacerbated this competitive stimulus. Of course, the impact of information and communications technologies cannot be ignored, either, but the main impetus appears to be a renewed and ever-growing fear of international competition.

The working time standards of the twentieth century are among the standards that are up for intense scrutiny and revision in the twenty-first century. Perhaps one should not even suggest that these standards can be revised; perhaps the time is ripe for looking at alternatives to standard-setting processes at the international level. Perhaps the time is ripe for looking at less onerous and more cooperative ways to develop a framework for managing working time arrangements that are in the best interests of workers, families, communities and nations, while recognizing that the pressures of international competition are pressures that should be harnessed for the better management of working conditions. The GSO is not suggesting any particular solution but does believe that the parties to this debate should open it up to a broadened range of possibilities of defining an appropriate policy or standards-based solution.

The debate is indeed open for different points of view. Dramatic changes on how to define the very essence of appropriate standard-setting are being directed to the deliberations on the very central issue of how much time a person should be expected to devote to income remuneration as opposed to all the other aspects of a person's role in a family, community and society. The diversity of practices and the blurring of distinctions between remunerated and unremunerated working time are only the visible parts of this very large

36 ILO, *Hours of Work General Survey*, para. 333, p. 107.

37 *Conversations between the author and labour lawyers in both developed and developing countries in recent months would suggest that the essential ingredient in any new standard is flexibility to accommodate the working time needs of a 24-hour, service-oriented, knowledge-based global economy.*

38 OECD, *OECD Employment Outlook 2004*, p. 48.

iceberg that is challenging the ship of international labour standards. It is to be hoped that a constructive debate on an open-ended range of options for defining reasonable standards or policies on working time can be stimulated by the work of the Committee of

Experts and the deliberations of ILO constituents at the ILO Conference of 2005 - and that it can be translated into innovative solutions in other formal settings in the very near future.

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On the author:

Katherine A. Hagen is the Managing Director of the Geneva Social Observatory, which is a relatively new Swiss association (established in 2004) to promote a neutral forum for global dialogue and an information exchange on contentious social issues. Dr. Hagen served from 1994 to 2000 as the Deputy Director-General for External Relations and Executive Director for Social Dialogue at the International Labour Organization. Prior to her ILO service, she held high-level positions at AT&T in labour and employee benefits law and also served as a White House Fellow specializing in personnel management. Earlier in her career, she was a university professor of international and Asian studies, a social activist and a state senator (elected for three terms to the North Carolina Senate). Educated in law (UNC Chapel Hill) and international relations (BA from Oberlin College and MA and PhD from the American University), Katherine has also been providing consulting services on social responsibility, labour law, labour relations, international labour and human rights standards, and social sustainability since 2001.

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Friedrich-Ebert-Stiftung Geneva Office Chemin du Point-du-Jour 6 bis CH-1202, Geneva Tel.: ++41-22-733-3450 Fax: ++41-22-733-3545 fes.geneva@econophone.ch www.fes-geneva.org	Friedrich-Ebert-Stiftung Hiroshimastrasse 17 10785 Berlin Germany Tel.: ++49-30-26-935-914 Fax: ++49-30-26-935-959 Roswitha.Kiewitt@fes.de www.fes.de/globalization
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