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# UNU-CRIS Working Papers

W-2013/7

## Regionalising Global Social Policy in Times of Economic Crisis

Author: Stephen Kingah

## **The author**

Dr. Stephen Kingah is Research Fellow at UNU-CRIS and can be reached at [skingah@cris.unu.edu](mailto:skingah@cris.unu.edu)

United Nations University Institute on Comparative Regional Integration Studies  
Potterierei 72, 8000 Brugge, BE-Belgium  
Tel.: +32 50 47 11 00 / Fax.: +32 50 47 13 09  
[www.cris.unu.edu](http://www.cris.unu.edu)

## Abstract

This article presents the manner in which regional organisations have been applying some of the underlying tenets of global social policy (GSP) in their respective regions. It notes the challenges regional entities face in doing as well as arguing that the application of GSP at the regional level is logical given the global nature of present challenges, the effects of which are often felt at both regionally and locally. Included in the analysis are some of the theoretical premises justifying social policy both at the global and regional levels. During a period of economic hardship there is often pressure to roll back regional endeavours to manage social challenges including substantial inequalities between persons, sub state regions and states. However it is exactly during such a period that robust regional measures have to be put in place to integrate global social policy; map out new social responses to problems or implement existant regional social norms.

**Key words:** Global social policy; regional social policy; regionalism; crisis.

## Introduction

Since 1997 the notion of Global Social Policy (GSP) has gained significant attention. Following the excesses revealed by the global financial debacle of 2008 and the attributed ripple effects which can still be felt throughout the world, one could argue that GSP is in its Halcyon Days because of the importance and validity of the argument of taking care of the most vulnerable in these times of need. GSP is a term associated with Deacon who developed the concept in an effort to mirror the needs and challenges that have characterised the globalisation process, especially during the 1990s onwards.

GSP takes its roots from social policy, a notion commonly used at national or municipal levels. Social policy at the domestic level relates to “mechanisms, policies and procedures used by governments, working with other actors to alter the distributive and social outcomes of economic activity.”<sup>1</sup> In this regard it has redistributive, regulatory and rights-oriented aspects. This definition is referred to again in the forthcoming paragraphs.

Alternatively, social policy can also be described as the body of collective interventions that directly impact on transformation in social welfare, social institutions and social relations.<sup>2</sup> Social welfare is understood in utilitarian circles as the net balance of pleasure over pain that an individual may experience.<sup>3</sup> Social institutions are put in place to secure the acceptable social minimum. Yet what constitutes the acceptable social minimum is relative.<sup>4</sup> Social relations in turn provide the initial pretext for social welfare.

The accelerated speed of globalisation has provoked many questions regarding the compatibility of an expanding globalisation on the one hand and the development of social buffers on the other. Increasingly there appears to be social strains in many countries as global capitalism takes

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<sup>1</sup> Bob Deacon, The Politics of Global Social Policy, Paper presented at the United Nations Research Institute for Social Development (UNRISD) Conference on Social Knowledge and International Policy Making: Exploring the Linkages, Geneva (20-21 April 2004), 4.

<sup>2</sup> Bob Deacon, Isabel Ortiz and Sergei Zelenev, Regional Social Policy, *DESA Working Paper* No. 37 ST/ESA/2007/DWP/37 (June 2007), 3.

<sup>3</sup> Stuart White, Social Minimum, *Stanford Encyclopaedia of Philosophy*, at <<http://plato.stanford.edu/entries/social-minimum>> (Accessed on 28 March 2008).

<sup>4</sup> *Id.*

hold.<sup>5</sup> In recent years some economists have gone as far as arguing that the market mechanism as an institution cannot solely be relied upon to ensure adequate social welfare for the needy. It is postulated that over reliance on the market alone can be disastrous for development.<sup>6</sup> This analysis of domestic social contours has been extrapolated to the international as well as global levels in the discussions regarding global inequality.

Deacon has articulated the dimensions of GSP. He argues that the notion can be comprehended as the mechanisms, policies and procedures that are used by intergovernmental organisations that work in conjunction with other actors to achieve two goals. The first goal relates to influencing and guiding national social policy. The second is about the provision of a supranational social policy.<sup>7</sup>

In the second sense, he further explains that GSP refers to global social redistribution, global social regulation and global social rights.<sup>8</sup> In discussing the links between these various components of GSP he convincingly argues that “[there] should be no free trade without global social regulation. There should be no global social regulation without redistribution. To ensure citizens (and not their governments) benefit there should be no global social redistribution without the empowerment of citizens before a global court of social rights.”<sup>9</sup>

Today, with levels of inequality greater than ever witnessed before and as unemployment soars, along with significant threats to social security, one could be tempted to argue that GSP, as a concept, is in its Halcyon days. Yet the concept remains largely in gestation. Notwithstanding commendable efforts by proponents of Third World Approaches to International law, the discipline of international law as such provides little explanation concerning why global social policy ought to be adhered to above other approaches. This is, in part, because the corpus of international development law is still couched in best endeavour terms. No state can be

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<sup>5</sup> Nicola Yeates, *Globalization and Social Policy: From Global Neoliberal Hegemony to Global Political Pluralism 2 Global Social Policy* (2002), 72.

<sup>6</sup> Amartya Sen, *Defining the Monterrey Consensus: Which Consensus?* 48 *Commonwealth Secretariat Economic Paper* (2002), 12.

<sup>7</sup> Deacon, *supra* note 1, at 4-5.

<sup>8</sup> Bob Deacon, *The Governance and Politics of Global Social Policy*, 4 *Social Policy and Society* (2005), 437.

<sup>9</sup> *Id.*, at 438.

internationally compelled to be materially good to others in a greater and longer term mission seeking to rid the world of poverty. But one must acknowledge the slight variance to this fact introduced by the law on sustainable development that leans more towards the environmental perspective and increasingly to the well-developed body of international human rights law which consists of strong development oriented provisions. That said, even if GSP can barely be explained on the basis of international law as such, this is not the case for regional social policies that tend to be encapsulated in the form of regional regulations, decisions and directives that are either directly or indirectly binding on states. The faculty of compliance becomes the core issue and necessarily varies from one region to the next, with the EU being the region that registers the most important pull in enforcing compliance.

Considering the limitations of international law to explain and justify the basis of GSP, can international relations theories be used instead? Realism, liberalism, constructivism and international society approaches can serve as valuable theoretical avenues to indicate how and why states have approached GSP. Realists for instance would broadly regard matters of social policy as issues of 'soft politics' given their prioritisation of matters of high stake political nature. In other words, unless social constraints threaten the very existence of states, in the form of significant demographic depletion for example, they see no reason why matters of social policy should preoccupy those in positions of significant decision-making power. In terms of RSP and GSP realists would be more apprehensive still. For Machiavelli and his disciples statecraft is not about altruism and woe betides the leader who spends the resources of citizens to pacify distant ethical conveniences.<sup>10</sup> Morgenthau for instance would forcefully argue that such policies may only be entertained to the extent that they keep threats at arms' length from the realm.<sup>11</sup> Elements of state survival take precedence over those of justice<sup>12</sup> and however entertaining it can be to embrace elements of justice as basis for action, the difficulty is always that individuals as well as states would not always agree on what is just.<sup>13</sup> Consequently from a

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<sup>10</sup> See Niccolo Machiavelli, *The Prince* (1999), 65; Robert Jackson and Georg Sorensen, *Introduction to International Relations: Theories and Approaches* (2003), 68 and 73.

<sup>11</sup> Hans Morgenthau, *Scientific Man Versus Power Politics* (1965), 165.

<sup>12</sup> Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (1996), 5.

<sup>13</sup> Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989), 30.

realist perspective social policy that is crafted to address concerns beyond state survival are of minor consequence or value.

Unlike realists, liberals take a different approach. They depart, like Kant, from the belief in the intrinsically good nature of humans. Their belief in the capacity of states to cooperate and engage in solving common problems is limitless.<sup>14</sup> For them, it is trite that states cooperate in helping each other resolve problems. Sociological liberals even go further noting that in transnational cooperative endeavours, government efforts have to be aligned and married to those of individuals and social groups.<sup>15</sup> In an era of social media the resonance of this could not be more poignant and convincing. For inter-dependent liberals companies and international organisations play an important role in addressing common challenges.<sup>16</sup> In inter-dependent liberalism one can identify the full potential and justification for the existence of regional social policy (RSP) championed, in part by regional organisations.

For constructivists what matters is the transmission of ideas, be this in the form of norms or principles. Constructivism has an important explanation for the existence of social policy. For instance one cannot understand the vital role that social policy now plays in many regional schemes without acknowledging the strong push for such policies by the EU, both at the European level and more broadly in its inter-regional cooperation with other regions of the world.

The arguments stated by international society approaches to international relations emphasise responsibility. The core element is that social policies make sense given that richer states are those that have gained the most from the emergence of a system of rights. Put otherwise *noblesse oblige*: privilege entails responsibility. Alternatively proponents of international society also base their perspective on the notion of humanitarian responsibility. How abhorrent, they would argue, to sit idly while other human beings are starved or pushed to death for lack of the basic needs of life.

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<sup>14</sup> *Id.*, 105.

<sup>15</sup> See James Rosenau, Citizenship in a Changing Global Order, in: *Governance Without Government: Order and Change in World Politics* (J.N. Rosenau and E.O. Czempiel eds., 1992), 274 et seq.

<sup>16</sup> Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (1977), 24-26.

This paper discusses what the notion of GSP is, presenting the various types or levels of social policy in a quest to identify whether and how GSP is being appropriated at the regional level. Having already considered some of the theories of international relations and their perspective on social policy, certain insights are also drawn from political philosophy in examining some of the reasons that underpin the existence of GSP. The analysis covers the European Union and regions of the South, including SADC (Southern African Development Community), MERCOSUR (Common Market of the South), ALBA (the Bolivarian Alternative for Latin America), CEMAC (Central African Economic and Monetary Union), ECOWAS (Economic Community of West African States), ASEAN (Association of South East Asian Nations) and the EAC (East African Community). This is done in view of ascertaining to what extent regions are embracing the three aspects of global social policy (developed by Deacon) including regulation (labour and environmental standards), redistribution mechanisms and respect of (social and economic) rights provisions. While these aspects are not exhaustive, they are an accurate reflection of the most fundamental features of what global social policy is. Further, it must be noted that the ambition of the paper is limited in terms of geography. Eight regional entities are selected to cover those from the North, the South and the emerging countries. They are the main regional bodies with a relevant profile concerning social policy in the three areas listed of regulation, redistribution and rights. The paper concludes by discussing some of the key challenges that limit the prospect of realising the goals of GSP and their regionalisation by the regional organisations studied.

## **Reasons for a GSP**

What is the basis for a GSP? The reasons behind the elaboration of the redistributive component of GSP can be founded on various premises including egalitarianism; utilitarianism; social justice and cosmopolitanism. Egalitarians believe in equality for all and disagree that one per cent of the adult population in the world in the year 2000 owned 40 per cent of the global assets.<sup>17</sup> Egalitarians rest their claims on ethics, beneficence and morality. They draw inspiration in this regard from the work of Hume, who was renowned for his theory of moral sentiment. This stood in contrast with the views of Hobbes who regarded human nature as brutish, dangerous,

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<sup>17</sup> Deacon *et al.*, *supra* note 2, at 1.



precarious and self-centered. Later writers such as Peter Singer applied the notions of egalitarianism and moral philosophy as a means of helping the needy and poorer countries. Singer made a distinction between preventing evil and promoting good and asserted that those in rich countries are morally obliged to avert something bad or evil from happening if it is in their power to do so without having to sacrifice anything of comparable moral importance.<sup>18</sup> In the face of preventable diseases and poverty, for example, persons ought to donate both time and resources towards their eradication until they reach a point at which, if they give any more, they would cause equal suffering to themselves in the process. In his early writings, Singer believed that helping the needy, even to the point that one becomes poor, is not a significant moral sacrifice as it is only a discharge of an obligation of beneficence.<sup>19</sup>

Utilitarianism was espoused and defended by Jeremy Bentham and John Stuart Mill. For Mill an action is right and proper if it leads to the greatest possible balance of beneficial effects or to the least possible balance of negative consequences. For utilitarian advocates, beneficence such as a GSP is good to the extent that it makes the greatest number of people possible happier.<sup>20</sup>

In terms of social justice arguments, the writings of John Rawls have been an inspiration for those most concerned with the manner in which benefits from social and economic cooperation are allocated.<sup>21</sup> The most trenchant defence of social justice as a driver for GSP is offered by Brian Barry. He argues that “those who have benefited most from the existing system of rights – the rich and powerful – are those who bear the heaviest responsibilities, because the way in which they use their advantages has such a large impact on the lives of everyone else.”<sup>22</sup>

Cosmopolitans defend the view that humans have shared values and a shared future. A strong global social policy is therefore justified as it seeks to ensure that individuals from every and any nation and background have access to the basic needs in life. They go as far as to contend that “no local loyalty can ever justify forgetting that each human being has responsibilities to every

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<sup>18</sup> Tom Beauchamp, The Principle of Beneficence in Applied Ethics, *Stanford Encyclopaedia of Philosophy* (2008).

<sup>19</sup> *Id.*

<sup>20</sup> Beauchamp, *supra* note 18.

<sup>21</sup> Alan Ryan, *Justice* (Oxford: Oxford University Press, OUP, 1993), 13; John Rawls, Distributive Justice, in: *Justice* (Oxford: OUP, 1993), 74.

<sup>22</sup> Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), 144.

other.”<sup>23</sup> Cosmopolitanism foster the notion that by working together people from every nation “can raise standards of living by adopting new policies on trade and aid, prevent or treat diseases with vaccines and pharmaceuticals, take measures against global climate change, encourage resistance to tyranny and a concern for the worth of each human life.”<sup>24</sup>

The main objections to GSP can be deduced from libertarian arguments. Libertarians such as Robert Nozick have defended the position that the basis for social justice is individual (self-ownership) rights which may not be violated even for the sake of augmenting social welfare.<sup>25</sup> One of the main strands of this position suggests that individuals cannot be obliged to use their labour (or resources) without their consent. Although libertarians entertain instances where the state might come in to ensure that welfare benefits are maximised, they broadly disagree with any attempt to forge social minimums akin to global social policies. For classical liberals like Hayek, the key is freedom and if the government taxes A to ensure a social minimum benefits B, then the government is reducing the freedom of A. In sum, the freedom of A is better than the welfare of B.<sup>26</sup> Yet the response to the approach of Hayek is that poverty diminishes freedom. However, libertarians will retort that the social minimum for B’s favour is synonymous to enslaving A and making B lazier:<sup>27</sup> A perfect silhouette for double jeopardy.

The second objection to a GSP that is driven by beneficence is directed at proponents of social justice arguments. Unlike Barry and Singer, moral philosophers like Bernard Gert believe that people, like countries, have no obligation to be good. For Gert the objective of morality has to be that of preventing evil rather than the active pursuit or promotion of a supposed good.<sup>28</sup> Writers such as Gert would look suspiciously at proposals for a GSP. They would ask why states such as those in Africa should be helped if some of them cannot have good national institutions and good domestic policies.<sup>29</sup>

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<sup>23</sup> Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: Norton, 2006), xvi.

<sup>24</sup> *Id.*, at xiii.

<sup>25</sup> Robert Nozick, *Anarchy, State, and Utopia* (1974), 28-35.

<sup>26</sup> Friedrich Hayek, *The Constitution of Liberty* (London: Routledge, 1993).

<sup>27</sup> See White, *supra* 3.

<sup>28</sup> See Beauchamp, *supra* note 18.

<sup>29</sup> Robert Calderisi, *The Trouble with Africa: Why Foreign aid isn't Working* (New Haven: Yale University Press, 2007), 160.

From the perspective of rights and regulation legal philosophers such as Finnis, legal strongly proclaim that human rights are critical and important for wellbeing and social relations. This position can be traced back to the works of earlier philosophers including Aristotle and Aquinas. Such rights have been articulated since the Second World War to now include first generation rights (civil and political); second generation rights (social, economic and cultural) and third generation ones such as the environment. This notwithstanding, since the elucidation of the French Declaration on the Rights of Man and of the Citizen in 1789 there has been a firm resistance to the blind acceptance of the salience of rights. For instance the statesman and philosopher Edmund Burke took issue with the rather abstract nature of the concept, concerned that the idea was too vague because it was bereft of a political context of applicability. Bentham, who was an ardent utilitarian, took the view that the universality of human rights was an illusion, farcical and unhelpful. He was of the opinion that such rights could actually have deleterious effects on the well-being of society. This position was also shared by Marx who was keen to regard freedom as being fully attained and optimised through others in society rather than in sequestered and isolated bundles of rights.

## **Regional Social Policy (RSP)**

RSP was first articulated explicitly by Deacon in 2001 as a set of regional policies involving social regulation, redistribution and rights.<sup>30</sup> Besides the existence of social policy at the national and global levels there is also social policy at the regional level.<sup>31</sup> The idea of regional social policy has been developed partly as a demonstration of the frustrations surrounding the desire to reach a sort of ‘social nirvana’ at both domestic and global levels. It has been persistently argued that regionalism, with a social dimension, is the appropriate *via medium* for the future. In this regard it is stated that relations within and between regions could provide the proper template on which global social redistribution could be charted.<sup>32</sup> Deacon has noted that: “there appears to be a stalemate along north/south lines on global social policies with the South accusing the North of

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<sup>30</sup> Bob Deacon, *Influencing Regional Social Policies from Above: Case Study of Sub-Saharan Africa*, UNUCRIS Working Paper 2011/02, at 6.

<sup>31</sup> Deacon *et al.*, *supra* note 2, at 2.

<sup>32</sup> Deacon, *supra* note 8, at 442.

co-opting international organisations for its goals and the North accusing the South for giving low priority to progressive social agenda.”<sup>33</sup>

One of the strengths of a regional social policy option is that it is regarded as a stepping stone to a global social policy.<sup>34</sup> Although the attainment of a regional approach to social policy is still problematic due to a lack of funding, Deacon concludes that “a world of regions each with a strong social dimension could provide an alternative and more effective model of global social governance to redress world asymmetries.”<sup>35</sup>

The acceptance of GSP at the regional level has been limited even when there appears to be success at raising its profile. It has been hard for many regions to shape their social policies or reflect those engineered at the global level. But why has this been the case? First, since the development of the trade integration theory by Viner there has been a tendency to anchor regional integration around Free Trade Agreements (FTAs). This trend was further strengthened during the last quarter of the 20<sup>th</sup> century as regions in Europe and North America focused more on trade liberalisation. The predominance of liberalisation and a strong assumption that regionalism was synonymous to FTAs in the first generation of free trade agreements explains why there has been a slow buy-in at the regional level of GSP influence on policy decisions. A minor reversal of this has been witnessed following the endorsement of a second and third generation of FTAs, ones that are far more reflective overall of the new strands of regionalism, thus incorporating aspects such as security, the environment and social policies.

Second, GSP elements, including decent labour standards and environmental benchmarks, are also issues which countries have a keen desire to control and do not easily relinquish to regional bodies to manage. As such many regional entities have exhibited a general lack of willingness and importantly also the (leadership) capacity and legitimacy to act in the area of social policy promotion and enforcement.

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<sup>33</sup> *Id.*

<sup>34</sup> *Ibid.*, at 4-6.

<sup>35</sup> *Ibid.*, at 22.

Third, in periods of grave economic crisis, countries tend to exhibit signs of protectionism.. In Europe discussions regarding the future of the Euro and the European Union have been marked by dissentient German voices over calls for more financial transfers going from Germany to crisis ridden countries, including Greece and Cyprus. It is very difficult in times of economic hardship to consider the implementation of GSP at the regional level. It becomes, in short, simply a major political challenge.

Finally, cultural specificities and national identity sensitivities make it hard to define common regional social approaches in dealing with social challenges and contingencies. Various countries respond to global problems in a certain way as a result of these specificities and unique norms. Regional approaches that seek to incorporate GSP at the regional level run the risk of mimicking a one size fits all approach which may result in rejection at the national level.

However, applying GSP through regional organisations makes sense. To begin the transnational dimensions of global and local challenges are numerous. Problems such as communicable ailments, illegal migration, climate change and capital flight, amongst others, are all issues that are best dealt with at the regional level, even though they are global challenges the effects of which are typically felt at the local level. In addition, the regionalisation of GSP is often positive for the smaller countries within a region. This is because once GSP disciplines are locked-in within regional rules, the bigger countries in the region experience a higher opportunity cost in non-compliance, especially in those regional constellations where they serve as the drivers, guarantors or leaders of the regional project. But what are some of the concrete steps being taken in some of the regions to apply the measures reflective of GSP?

## Elements of GSP as Applied in the Regions

### ASEAN

ASEAN's social policy is rudimentary. This is because of the ASEAN mode of governance, as well as lack of financial support from member states. Unlike in the EU, ASEAN only has declarations and suggested means of dealing with social issues. Implementation is left to the states. The most conspicuous expression of the social dimension in ASEAN is the Socio Cultural Community. Respecting regulation, in ASEAN the strong inter-governmental nature of operations entails that the direct embrace and enforcement of strong social standards (labour and the environment) is underdeveloped.

On the matter of redistribution, an important step was the adoption, in 2000, of the Initiative for ASEAN Integration (IAI) aimed at counteracting core-periphery divergence arising from ASEAN FTA liberalisation. IAI is the main tool for social redistribution.<sup>36</sup> It is inspired by the experience of the European Union with regard to its Structural Funds. Its main goal is capacity building and technical cooperation in the poorer countries of Cambodia, Laos, Myanmar and Vietnam.<sup>37</sup> In 2002 the IAI 6 year work plan was submitted and by 2006 it resulted in 132 projects. Forty five million dollars was secured for IAI and the ASEAN Six (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand) paid 63 percent of that total amount, while donors such as South Korea, Japan, India, Norway and the EU paid the remainder.<sup>38</sup> The Vientiane Action Plan (VAP) that replaced the Hanoi Plan of Action is aimed at narrowing the economic divide between the countries and also deepening regional integration.<sup>39</sup> The VAP was adopted by leaders during the 10<sup>th</sup> ASEAN Summit meeting held in Laos on 29 November 2004.<sup>40</sup> Its theme was to move “towards shared prosperity and destiny in an integrated, peaceful and caring ASEAN Community.” Apart from IAI on convergence or redistribution, there is also

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<sup>36</sup> Jenina Joy Chavez, “Social Policy in ASEAN: The prospect for integrating migrant labour rights and protection,” 7(3) *Global Social Policy* (2007), 362.

<sup>37</sup> Christopher M. Dent, *East Asian Regionalism* (Abingdon: Routledge, 2008), at 103.

<sup>38</sup> *Ibid.*

<sup>39</sup> Dent, *Ibid.*, 105.

<sup>40</sup> ASEAN, Vientiane Action Program 2004-2010.

the ASEAN Development Fund which was created in 2006 to finance the VAP on two year rolling basis.<sup>41</sup> Given that contributions from ASEAN states to these funds are small they are mainly used for capacity building rather than to finance heavy structural projects such as infrastructure.

ASEAN also runs other schemes. It supports the implementation and further development of growth areas. These areas are the Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA), the Indonesia-Malaysia-Singapore Growth Triangle (IMS-GT), the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT), and the inter-state areas along the West-East Corridor (WEC) of the Mekong Basin in Vietnam, Laos, Cambodia and Northeastern Thailand within the ASEAN Mekong Basin Development Cooperation scheme.<sup>42</sup>

The promotion of human rights has been the weakest link in ASEAN but it is now gaining traction since its inclusion in the VAP annex.<sup>43</sup> Discussions on the treatment of unskilled labourers have also been lacking. For Chavez this means that any attempt to address social issues in the region without this component will be unsuccessful.<sup>44</sup> The ASEAN way has been detrimental to socio-political developments because of the issue of non-intervention. To address this problem ASEAN has used the ASEAN-X formula to solve problems whereby members ready to cooperate on certain issues can do so. It has recently been able to address the issue of migration for skilled but not unskilled migrants and this remains a problem in the region.<sup>45</sup> It has no human rights charter as such but the endorsement of the new ASEAN Charter was a watershed in terms of upholding human rights. The move was initially resisted by countries such as Myanmar and even Singapore. The organisation has now created an intergovernmental human

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<sup>41</sup> Chavez, at 363.

<sup>42</sup> Ludo Cuyvers, "Contrasting the European Union and ASEAN Integration and Solidarity," paper presented at the Fourth EU-ASEAN Think Tank Dialogue "EU and ASEAN – Integration and Solidarity" European Parliament, Brussels, 25-26 November 2002, at 4.

<sup>43</sup> Chavez, at 365.

<sup>44</sup> Chavez, at 369.

<sup>45</sup> Jenina Joy Chavez, A Social Charter for the ASEAN? Deepening Integration by Regionalising Labor Solidarity and Social Standards, Paper presented at the High-Level Symposium on the Social Dimensions of Regionalism Montevideo, Uruguay, 21-23 February 2006, at 9.

rights commission. Embracing human rights precepts at the regional level entails that countries may be amenable to ASEAN interference in their internal matters. But this is not an easy matter in ASEAN given its tradition of non-interference.<sup>46</sup>

## European Union

Respecting the EU, there is a well-developed corpus of norms on regulation in almost every conceivable area. Issues surrounding the environment fall under the Union's competence. For this reason the Commission has very broad powers in this area and can propose wide ranging regulations that cover diverse matters on the environment. This is also the case for labour standards where the Commission is at the heart of key proposals that directly relate to this area. There has been a strong tendency not only to forge international norms on labour and social matters including the environment but also to incorporate these international standards and rules at the EU level once they are adopted globally.

Regarding convergence the EU has been a clear pace setter in terms of developing structural and cohesion funds to facilitate the equitable social and economic progress of the various regions in the member states.<sup>47</sup> When the European Community (EC) was forged, it was hoped that elimination of tariffs will bring benefits to all. But this was not to be the case. Pursuant to Art 235 of the Treaty of the EC, the EC created the European Regional Development Fund (ERDF) in 1975.<sup>48</sup> The key driving principle behind the ERDF has been additionality and complementarity.<sup>49</sup> Major changes were introduced to the scheme in 1979 (more projects and horizontal development policy) and in 1984 (community programs were introduced). With the accession of Greece, Spain and Portugal to the EC in the late 1980s a true regional approach developed as there were substantial proportions of the population in these countries that were

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<sup>46</sup> Yuen Foong Khong and Helen E.S. Nesadurai, "Hanging Together, Institutional Design, and Cooperation in Southeast Asia: AFTA and the ARF," in *Crafting Cooperation: Regional International Institutions in Comparative Perspective*, (Amitav Acharya and Alastair Iain Johnston eds., Cambridge: CUP, 2007), pp. 32-82, at p. 45.

<sup>47</sup> Bob Deacon, *Global Social Policy and Governance* (London: Sage, 2007), at 165.

<sup>48</sup> Regulation 724/75/EC(1975) OJ L73.

<sup>49</sup> Fabiano de Andrade Correa, A Legal/ Institutional Analysis of FOCEM, the MERCOSUR Fund for Structural Convergence, in: *The Law of MERCOSUR* (Marcilio Toscano Franca Filho, Lucas Lixinski and Maria Belén Olmos Giupponi eds., Oxford: Hart Publishing, 2010), at 403-405.



regarded underdeveloped. In 1987 the Single European Act introduced the idea of economic and social cohesion (with the goal of reducing the disparities between the regions: Art 130).<sup>50</sup> In 1988 another regulation<sup>51</sup> was introduced and it provided the horizontal criteria for the implementation of structural funds.. It included five new goals for the structural funds amongst which were combating industrial decline; addressing long term unemployment; and bolstering rural development. The first goal in this regard was promotion of structural adjustment and development of the regions that were struggling behind. Eighty percent of the structural funds were dedicated to this single goal. The criterion used to select most of the underdeveloped regions was the propensity to attain below 75 percent of the EC average per capita Gross Domestic Product (GDP). This was criticised as some analysts advocated the use of the human development index of the United Nations Development Program (UNDP).

Then entered the Maastricht Treaty that introduced a new fund (European Cohesion Fund) to help the poorest states (Spain, Portugal, Greece and Ireland) deal with environmental and transport infrastructure. In 1999 the goals of the Structural Fund were further streamlined and reduced to three. This change was passed in view to cover the incoming Central and Eastern European Countries (CEECs) as new members to the EC. The latest reform via Regulation 1083<sup>52</sup> covers the period 2007-2013 and reflects changes introduced by the Lisbon Treaty with more streamlined objectives such as: convergence; regional competitiveness and employment; and territorial cooperation.<sup>53</sup>

Bojnec notes that the EU regional, structural and cohesion policies have mitigated the occurrence of any extreme differences in the level of economic development between EU Member States and within the countries by particular regions. However, with the recent enlargement of the EU there are considerable differences in the level of economic development because the poorer countries and their poorest rural regions entered into the newly enlarged EU. In the new financial perspective 2007-2013, the cross-border countries' areas may need to be treated in a different

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<sup>50</sup> Correa, 406.

<sup>51</sup> Regulation 2052/88/EC(1988) OJ L185.

<sup>52</sup> Regulation 1083/2006/EC (2006) OJ L210.

<sup>53</sup> Correa, 408-409.

way.<sup>54</sup> As argued by some, EU social cohesion policy leaves much to be desired.<sup>55</sup> In terms of weaknesses there have been issues surrounding transparency raised due to the special provisions allowed for some of the regions.<sup>56</sup> What EU regional policy can achieve should not be over-estimated. Such policies cannot be made good by poor national labour and tax rules.<sup>57</sup>

Concerning human rights, the respect and promotion of fundamental rights is one of the goals of the EU and is encapsulated in various treaties. The respect for human rights has become high profile as a result of the Lisbon Treaty which incorporates the Charter of Fundamental Rights into the constitutional framework of the European Union. Of even greater importance in the realm of human rights is the adherence to the European Convention on Human Rights and Fundamental Freedoms which is regarded as a key component in being an EU member state. This Convention system, with its respected court in Strasbourg, has heard many cases on social matters. The European Human rights system also operates an important European Social Charter or the Charter of Turin which is sanctioned by the European Social Rights Committee.

## MERCOSUR

MERCOSUR is also a region that has experienced an expansion of its social mandate as it increasingly seeks to reflect international social standards within the region. In the field of regulation there is a substantial body of MERCOSUR norms in the area of core labour standards and the environment and some of the major cases heard by the adjudicative arms of MERCOSUR have been visibly hinged on such matters. Some of the important MERCOSUR norms on social regulation include its Social-Labour Declaration; the Agreement on the Regularisation of Internal Migration; Agreement against Illicit Traffic of Migrants; Agreement on Regional Cooperation for the Protection of Children in Situations of Vulnerability and Agreement on the Implementation of Shared Databases of Children in Situations of Vulnerability

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<sup>54</sup> Stefan Bojnec, Regional and structural policies in less favoured and cross border areas: An example from Slovenia, in 15 *Jahrbuch der Österreichischen Gesellschaft für Agrarökonomie* (2006), at 126.

<sup>55</sup> Centre for European Economic Research (CEER), *The Future of EU Structural Policy*, Mannheim, 13 February 2008, at 1.

<sup>56</sup> CEER, at 7.

<sup>57</sup> CEER, at 13.

in MERCOSUR and Associated States. The MERCOSUR Social Charter is also important.<sup>58</sup> The Charter states that there is a need to work at the regional level to help in more destitute areas and it also advocates non-discrimination and the equal treatment of people. It calls for the protection of the rights of migrants as well as minority and indigenous communities.

From a social redistribution perspective the region has developed the MERCOSUR structural fund, a fund which is highly supported by the Brazilian Government as a means of reducing the inequalities between the various countries in the region. The MERCOSUR Fund is known as FOCEM or *Fondo de Convergencia Estructural del MERCOSUR*. FOCEM is regarded as one of the main achievements of MERCOSUR.<sup>59</sup> The fund is essentially an instrument of redistribution for resources, financed with the support of the majority of the larger partners, as a function of their participation in the regional GDP. It is designed to finance physical infrastructure projects and activities which seek to improve competitive conditions in the regions of less developed countries of MERCOSUR: Paraguay and Uruguay.<sup>60</sup>

It was created due to the realisation that in some regions benefits were not realised due to the elimination of tariffs. There was increased agreement that free trade alone would not address development concerns. Given that intra-regional trade is huge for the poorer members (Paraguay and Uruguay) it was believed that greater liberalisation within the region would have substantive fiscal effects on these countries. The countries felt that MERCOSUR had to compensate them for liberalising.

The fund itself was created by a MERCOSUR Council (CCM) Decision 45/04 of 16/12/2004 to support less developed members and regions, aimed at promoting structural convergence within the regional entity. CCM Decision 18/05 on the regulation of the Fund, amongst others, states that it will focus on four areas: structural convergence; competitiveness; social cohesion; and the

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<sup>58</sup> Charter of Buenos Aires on Social Commitment in MERCOSUR, Bolivia and Chili, Washington DC, 30 June 2000.

<sup>59</sup> Fabiano de Andrade Correa, *A Legal/ Institutional Analysis of FOCEM, the MERCOSUR Fund for Structural Convergence*, in: *The Law of MERCOSUR* (Marcilio Toscano Franca Filho, Lucas Lixinski and Maria Belén Olmos Giupponi eds., Oxford: Hart Publishing, 2010), at 396.

<sup>60</sup> G. Calfat, R.G. Flores, M.F. Granato and A. Rivas, *Dealing with MERCOSUR Assymetries: Criteria for Allocating Regional Fund Resources*, 30 September 2009, at 3.

fortification of the institutional structure and integration process as a whole.<sup>61</sup> Argentina and Brazil account for 27 and 70 percent respectively of the 100 million dollar annual fund. Paraguay and Uruguay account for 1 and 2 percent. But both gain 48 and 32 percent of the benefits (respectively). The funds are non-reimbursable donations. But member states must finance over 15 percent of the approved projects.<sup>62</sup>

Human rights are an issue area which is increasingly receiving the attention from the group, even if in reality it still trails behind the Organisation of American States as the relevant regional human rights authority. MERCOSUR possesses some human rights instruments, such as the Protocol of Asuncion on the Commitment to the Promotion and Protection of Human Rights.<sup>63</sup> In the famous *Bridges Case*, the MERCOSUR *ad hoc* arbitration court held that the issue of protest in the dispute between Argentina and Uruguay was an element that Argentina had to deal with through its criminal procedures. The court upheld the claim by Uruguay that the failure of the Argentinean Government to deal with the environmental protests violated the agreement on the free movement of goods and persons within MERCOSUR.<sup>64</sup> In effect, the court appeared to take a counter intuitive approach that seemed to be inconsistent with the freedom to demonstrate and assemble. Yet it maintained that this was not the case. Considered from a broader perspective and in the context of this specific case, it is clear that Argentina did not want to bear the cost of the pulp mills along the Uruguay River and used the argument of freedom of expression to justify their reluctance to fund it.

## ALBA

A model for regional social policy at work that is often used as the antithesis to neo-liberal regionalism is the Bolivarian Alternative for Latin America or the ALBA. It is made up of Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Nicaragua, St Vincent and the Grenadines and Venezuela. ALBA is regarded as an alternative to the World Bank/ IMF

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<sup>61</sup> Correa, 397-399.

<sup>62</sup> Correa, at 400.

<sup>63</sup> Lucas Lixinski, Human Rights in MERCOSUR, in: *The Law of MERCOSUR* (Marcilio Toscano Franca Filho, Lucas Lixinski and Maria Belén Olmos Giupponi eds., Oxford: Hart Publishing, 2010), 354-355.

<sup>64</sup> Lixinski, at 357-362.

(International Monetary Fund) - supported neo-liberal approach to social and economic development.<sup>65</sup> If one is keen to consider a radical form of regionalism fully driven by social concerns, look no further than ALBA. This free trade agreement of the peoples (*Tratado de Comercio de los Pueblos*) represents a geographically non-contiguous region that was forged by Venezuela and Bolivia as a response to the US' desire to create a Free Trade Area of the Americas. ALBA is a unique form of integration that seeks to challenge the quintessential paradigm of liberalisation-based regionalism. It is considered a protective mechanism against the capital imperialism represented by the US and the West.<sup>66</sup>

Its leaders portray it as a paragon of solidarity and justice, as opposed to capitalism's inclination for constructive destruction that inevitably leads to weak abuses and injustices against the majority of the population. ALBA is driven on two important precepts which include national sovereignty and self-determination. It is run by the logic that the member states can still make significant exchanges amongst themselves even if they are bereft of merchandise which can be sold. It has a strong social component with the creation of a social council, as well as an ALBA Bank, to finance social programs in ALBA countries. The regional body also prides itself in its strong program to support people with disabilities. Doctors are sent door to door to identify and assist people with disabilities at low or no cost to patients. The program has benefited over three million people within the region and beyond. ALBA leaders have also been keen to adopt a holistic approach to social problems by focusing on the most vulnerable segments of society, including excluded groups (indigenous people and Afro descendants). The organisation also takes pride in its approach of using barter negotiations to enhance cooperate between the various members, as Venezuelan oil for instance is traded for Cuban medical skills. So the ideas of international social standards, social convergence and technical cooperation are fundamental notions at the very essence of the ALBA model of integration.

It is true that questions may be raised surrounding the sustainability of the model. Venezuela has been the country to bear a large proportion of the cost. Yet the fact that the project has continued to exist regardless means that there are at least some tangible benefits from the ALBA model of

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<sup>65</sup> Deacon *et al.*, *supra* note 2, at 3.

<sup>66</sup> Federico Fuentes and Ruben Pereira, ALBA giving hope and solidarity to Latin America, *Green Left*, 28 November 2011, at <http://www.greenleft.org.au/node/49622>.

integration based and driven by social concerns. What ALBA is doing is effectively retaining and applying elements of GSP in a very unique manner responding to the needs of the citizens in its member states. It can be deduced from the aforementioned observations that ALBA addresses matters of convergence and rights in a very holistic fashion. Strong attention is placed on aspects of the rights of workers, as well as on the rights of indigenous communities keen not to see their environments destroyed due to rapid industrialisation.

### **Southern Africa: SADC**

In the area of social regulation SADC possesses weak norms in the field of labour standards. In the realm of the environment there is a protocol on shared water courses that hinges on environmental aspects. In terms of convergence funds this is not as pronounced as it is within the Southern African Customs Union (SACU) which operates an important revenue pool. This pool has been crucial for the development of the smaller countries.

On the matter of respecting human rights, the events in Zimbabwe in the past few years, whereby innocent citizens were molested by Government forces, left a dark ghost on the image of SADC, namely because the organisation was regarded as not doing enough to criticize the actions of President Mugabe. Independent of the fact that all the SADC states have endorsed the main international human rights texts and despite the inclusion of human rights protections as one of the goals of the SADC Treaty, Western nations continue to call for a more robust pro-human rights approach by SADC in Zimbabwe. Furthermore, SADC cannot boast of a clean slate on the manner in which the rights of foreign workers, especially those from Zimbabwe and Mozambique, were violated in South Africa during the immigrant killings of 2008.

SADC's tribunal has heard cases that have major social rights implications. For instance in the Campbell cases the tribunal (now under moratorium) found against the Government of Robert Mugabe for illicitly taking the landed property of the plaintiffs.<sup>67</sup> The tribunal has also ruled in favour of a distressed plaintiff against the SADC Secretariat in a case brought on before it on

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<sup>67</sup> *Mike Campbell and 78 Ors. v Government of Zimbabwe*, SADC (T) Case No. 2/2007, at 57-58.

grounds of unfair dismissal. So, in the field of human rights, there is evidence, albeit anecdotal, that SADC has important human rights provisions (in its treaty) that are being implemented by the institutions in spite of the pressure that are brought to bear on these institutions by political masters.

### West Africa: ECOWAS

ECOWAS has expressed a desire to develop important regulations in the area of core labour standards and the environment. This is useful for a region that has had to grapple with issues of child slave labour, desertification and the dumping of toxic waste especially in Côte d'Ivoire. On convergence, it is keen to develop a compensation mechanism that is similar to the EU's structural and cohesion funds. Sanctioned by the ECOWAS Treaty and a special protocol<sup>68</sup> the mechanism is meant to assist countries that suffer the adverse effects of tariff liberalisation within the context of trade liberalisation in the region.

In the realm of human rights protection the main ambition of the grouping is to fully align the rules of ECOWAS with the International Bill of Rights as well as to other international human rights instruments. One of the main goals in this regard will be to limit the rate of human trafficking that has become a serious issue in the region. The ECOWAS court has heard important cases in the field of human rights. These include cases upholding the rights of a woman against her slave owner<sup>69</sup> and another case in which the Government of Nigeria was held liable for the lack of adequate social service provision on the education for children.<sup>70</sup>

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<sup>68</sup> ECOWAS Commission, Protocol Relating to the Application of Compensation Procedure for Loss of Revenue Incurred by ECOWAS Member States as a Result of the Trade Liberalization Scheme, April 2002.

<sup>69</sup> *Hadijatou Mani Koraou v The Republic of Niger* ECW/CCJ/APP/0808, judgment ECW/CCJ/JUD/06/08, 27 October 2008.

<sup>70</sup> *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission*, ECW/CCJ/APP/0808.

## East African Community

For the EAC, there is a framework for social regulation in the area of core labour standards, as well as in the field of the environment. In terms of convergence, there is a cohesion fund the purposes of which are to assist the regional entity to limit inequalities between the regions and foster social convergence. Influential partners grouped in a constellation known as “Friends of the EAC” have been assisting the regional body in this effort. They contribute funds into a common reserve known as the Partnership Development Fund. In turn, the EAC uses the funds for its set priorities.<sup>71</sup>

Even if one of the main principles of the EAC is to enhance human rights,<sup>72</sup> the organisation has no direct mandate in the realm of human rights protection per se. Even if some of the member states have ratified key international human rights rules and assert that they respect these rules, practice leaves much to be desired, especially in light of the violence that ensued in Kenya following the 2007 elections. The EAC court of justice has had several opportunities to adjudicate in matters related to human rights. In the Katabazi Case<sup>73</sup> the court ruled against public authorities in Kenya and Uganda for acts that were declared inhumane and degrading in their treatment of the complainants.

## Central Africa: CEMAC

CEMAC has not developed rules in the area of core labour standards and the environment. In the field of social convergence, CEMAC is notable for creating one of the main convergence funds in Africa. Given that the top priorities for the region include the elaboration of a regional economic program, securing of funding and strengthening of the Community Development

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<sup>71</sup> Interview: Birungi, EAC Secretariat, November 2011.

<sup>72</sup> Art 6(d), Treaty for the Establishment of the East African Community, As Amended on 14 December 2006 and 20 August 2007. The treaty can be accessed at <http://www.eac.int/>.

<sup>73</sup> *James Katabazi and 21 Others v. Secretary General of the East African Community and Another*, Reference N° 1 of 2007 (EACJ November 2007).



Fund<sup>74</sup> and showing a clear course to further develop regional compensation funds have been crucial. The fund was created in 2000 as an independent mode for financing the institution's regional projects.<sup>75</sup> It is from this fund that money for financing regional projects is sourced. But money for the fund itself is 1 percent deductible from the customs duties paid by third countries to goods entering CEMAC member states.<sup>76</sup> The lack of funds to strengthen the CEMAC Commission (which remains a work in progress)<sup>77</sup> especially its efforts to increase the development fund, has been a major stumbling block in the integration process.

In the field of human rights, the CEMAC court has not actually heard matters that relate directly to such rights. However in 2006 it adjudicated a case that related to the right to work, which itself is guaranteed under the Universal Declaration of Human Rights. In the case brought before the CEMAC court, the plaintiff sought to reverse a decision made by the defendant that resulted in the plaintiff's unfair removal from office.<sup>78</sup> The court ruled in favour of the plaintiff. It ordered the plaintiff be made whole. A good example of the progress made in various regions to articulate and implement the different components of social policies can be presented as follows:

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<sup>74</sup> CEMAC, "Étas des Lieux: Acquis et Défis du Processus d'intégration Régionale." Exerpts from the Draft of the Regional Strategy Paper of the European Community for Central Africa 2008-2013 (2009).

<sup>75</sup> Acte Additionnel n°03/00/CEMAC/046/CM/05 de 14 décembre 2000 instituant un mécanisme autonome de financement de la communauté et ses textes modificatifs subséquents.

<sup>76</sup> Côme Damien Georges Awoumou, "ECCAS or CEMAC? Which regional economic community in Central Africa?" in *Political Economy or regionalization in Central Africa* (ISS Monographs: Pretoria, Chrysanthus Ayangafac ed., November 2008), pp 109-149, at 113.

<sup>77</sup> CEMAC, *14ème Session Ordinaire du Conseil des Ministres: Programme d'Actions du Secretariat Executif de la CEMAC – Exercise* 2006.

<sup>78</sup> L'arrêt N° 02/CJ/CEMAC/CJ/06 du 30/11/2006, MOKAMANEDE *John Wilfrid C/ l'Ecole Inter- Etat des Douane de la CEMAC*.

**Table 1: Strides Made by Eight Regions in Developing Regional Social Policy<sup>79</sup>**

	<i>Regulation</i>	<i>Redistribution</i>	<i>Rights</i>
ASEAN	-	x	x
EU	x	x	x
MERCOSUR	x	x	x
SADC	-	-	x
ALBA	x	x	-
ECOWAS	x	x	x
EAC	x	x	x
CEMAC	-	x	-

## Conclusion: lessons for comparative social regionalism

As can be deduced from the evidence in this paper, the notion of GSP has notable strengths. It provides a proper template through which regional actors can seek to articulate more people-friendly policies in schemes that are often described as elitist. That said, one must also point to the fact that as a concept GSP is ridden with challenges. First, GSP is still being articulated at very high levels of abstraction. In other words, it remains a meta discourse.<sup>80</sup> One of the main outstanding tasks is to finely tune the concept in a manner within which global issues that affect local communities at the domestic level are fully understood. Second, it has been noted that the notion of GSP is directed more towards public institutions.<sup>81</sup> As such, it fails to take stock of other actors and agents that play an important role in terms of resolving global social issues. Third, as presently articulated, some aspects of GSP could be regarded as conditionality

<sup>79</sup> Source: Adapted from Deacon et al, *supra* note 2 at 15. The sign “x” represents the existence of measures in this light and “-“ indicates absence of measures.

<sup>80</sup> M. Hopenhayn, *Global Approaches, Dispersed Agents: Comments on Deacon: The Politics of Global Social Policy Change*, UNRISD conference (20-21 April 2004).

<sup>81</sup> See R. Munck, *Globalization and Social Exclusion: A Transformationalist Perspective* (Bloomfield, California: Kumarian Press, 2005).

disguised in welfare speak. Couched in these terms GSP talk can dampen the zeal of partner countries that could be in need of assistance yet sensitive to patronising discourse. Finally, it is hard to imagine how rich states can be encouraged, let alone, obliged to support the redistributive component of GSP. The most that can be hoped for is that desires would be couched in non-binding or best endeavour declaratory terms.

But these apparent claw-back elements need not be a distraction from the overall strength and usefulness of the concept in gestation. In terms of regionalisation, GSP varies. The European Union remains the leading region in the embrace of GSP at the regional level. However the current crisis may provide a pretext for skeptics to roll back gains and prospective benefits in this regard. Alternatively the crisis could provide grounds for social policy advocates to make a case that the crisis provides the ground and justification for greater cooperation in such issues in Europe and beyond. Besides, it is argued, the crisis at the global and European levels has been largely caused by the excesses of bankers and brokers at the expense of large segments of the population who are left to wallow in despondent social conditions. While the buy-in of GSP at the regional level, especially in Europe, has been limited by many factors, including differences between countries as well as the financial/economic crisis that has generated more inward looking proclivities, this could also serve as an opportunity to further shape social policies that benefit those who have largely been victimised by the crisis.

From a comparative perspective as indicated by the foregoing analysis, the EU remains a champion of regulations. It has made important strides in the fields of environmental and labour standards which could (taking account of relevant specificities) serve as insights to be drawn by other regional groupings. Regarding redistribution, regions that are less wealthy could benefit from the experiences of ALBA's signature approach or model whereby countries may still gain from regional exchanges even if they lack significant exports in merchandise. On the rights front it can be deduced that there is an increasing role for adjudicative bodies, especially in Africa's regional economic communities. But the challenge going forward will be to make political masters more amenable to the rulings of the courts.

