

# The Law of the Land

If treaties are the law of the land, then didn't the U.S. violate the law when the Senate voted to approve U.S. participation in the World Trade Organization (WTO)? The International Labor Organization's (ILO) constitution has a specific, unequivocal statement regarding the commodification of labor. Granted, the WTO was created over forty years after the ILO, but treaty obligations don't wear with age. They remain just as valid today as the day they became law.

## Fourteen Points to End War

The first world war started in 1914 with the murder of a monarch. The United States was neutral until 1917 when Germany announced a policy of unrestricted submarine warfare, which the United States considered a threat to American commercial shipping<sup>1</sup>. In 1918, President Woodrow Wilson issued a proposal of terms for ending the war. The proposal was delivered in a speech that became known as the [Fourteen Points](#) speech. The fourteen points included the suggestion of an association of nations, a system of international law and security and unrestricted trade.

World War I ended in 1919 with the signing of the Treaty of Versailles<sup>2</sup>. The Treaty of Versailles was the implementation of the Fourteen Points and included the League of Nations as the international association of nations. The League of Nations was the first attempt to establish a global structure to govern the actions of nations towards other nations and towards people.

## International Labour Office

Part XIII, Section 1, Articles 387-399<sup>3</sup> of the Versailles treaty defined an organization for labor stating the following as the reason:

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required...

The Second World War notwithstanding, the decade between 1940 and 1950 was devoted to establishing a new international organization for global "governance" known as the United Nations to replace the failed League of Nations.

## The Economic Triad

The triad for global economic regulatory authority under the United Nations system included specialized agencies for labor, finance and trade. The only surviving agency of the League, the International Labour Office, changed its name to the International Labor Organization (ILO) and transferred affiliations to the United Nations in 1946 following a conference in Montreal to revise the Conventions. It was the first agency of the economic triad.

In preparation for the transfer, a conference was held in Philadelphia to revise the ILO Constitution. The revision, known as the Declaration of Philadelphia<sup>4</sup> was adopted and annexed on the 10<sup>th</sup> of May 1944. The Declaration presents the aims and purposes of the ILO. The following is Article I of the Declaration:

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

(a) labour is not a commodity;

(b) freedom of expression and of association are essential to sustained progress;

(c) poverty anywhere constitutes a danger to prosperity everywhere;

(d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

On June 24, 1947, President Truman transmitted to the U.S. Senate for ratification, the Final Articles Revision Convention, 1946 (No. 80) agreed to in Montreal. The revision made the International Labor Organization the first specialized UN agency under Article 57 of the UN Charter. The convention was ratified by the Senate and was entered into force as a treaty on June 24, 1948.<sup>5</sup>

## Finance and Trade

The framework for the international financial system is known by the location where the delegates met to write the conventions, Bretton Woods, New Hampshire. The conference produced language to create the International Bank for Reconstruction and Development (World Bank) coupled with the International Monetary Fund. The third part of the triad was to have been the International Trade Organization negotiated in Havana, Cuba in 1947 and presented as the Charter of Havana.

On April 28, 1948, President Truman submitted the Charter to Congress under the name, 'Charter for the International Trade Organization (ITO).<sup>6</sup> The Charter was never ratified due to concerns for the sovereignty of our nation. It was withdrawn in 1950.

The negotiating framework produced at Bretton Woods that was to have become the organizational framework for the ITO became known as the General Agreement on Trade and Tariffs.<sup>7</sup> Even though it was provisional, GATT was used over the next 44 years as the framework for trade rounds that led to the final agreement signed in Marrakesh in 1994 that established the World Trade Organization.

## World Trade Organization

The Marrakesh Agreement<sup>8</sup>, Article IV - Structure of the WTO, Item 5 establishes the following:

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS").

These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

The GATS defines the types of services covered by the agreement using the term 'mode'. The following is a description of the GATS modes of services<sup>9</sup>.

The GATS distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

**Cross-border supply** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

**Consumption abroad** refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;

**Commercial presence** implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and

**Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

The question that begs to be asked about trade in services - particularly with Commercial presence and Presence of natural persons' is: Did the United States violate its treaty obligations with the International Labor Organization when it ratified the Marrakesh Agreement to create the WTO?

There is no ambiguity in the 1948 Declaration of Philadelphia, "Labor is not a commodity". It is indisputable that the biggest share of Service businesses involves labor and it is demonstrably true that global service companies are importing foreign workers to countries all over the world. From Thai workers imported to pick apples in Yakima Valley to Italian welders imported to Texas to build highways and Filipina women imported for domestic work. And in Iraq, Pakistani and Indian labor was imported for the reconstruction. There is ample evidence the world over, that GATS did in fact, commodify labor.

But that answer begs another, question. How do we define labor? It's clear from the example in mode 4 that the superficial intent was for services to be of an intellectual nature perhaps anticipating a legal challenge concerning the commodification of labor. But is it not possible that there is such a thing as intellectual labor?

The Marrakesh Agreement recognizes intellectual property as something of value that can be protected. Most intellectual property requires the involvement of many people to produce. That fact implies that there is such a thing as intellectual labor, defined as people involved in the production of intellectual property who are not owners of the property or investors in the property. They simply provide intellectual labor to build the intellectual property in the same way that a carpenter provides physical labor to build a building (real property).

It would be interesting to continue to explore the idea of intellectual labor because in this writer's opinion, a good case could be made for it, but regardless, it appears that the WTO Agreement did commodify labor with the inclusion of trade in services (GATS), and that was a violation of the aims and purposes of the ILO. Because of that, the ratification of the Marrakesh Agreement creating the WTO was a violation of the law of the land.

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<sup>1</sup> Michael Duffy, First World War, 'Origins and Causes', <http://firstworldwar.com/origins/causes.htm>

<sup>2</sup> Michael Duffy, "First World War" – 1919 Treaty of Versailles, <http://www.firstworldwar.com/source/versailles.htm>

<sup>3</sup> Michael Duffy, "First World War", International Labor Organization (Office) Articles 387-399  
<http://www.firstworldwar.com/source/versailles387-399.htm>

<sup>4</sup> International Labour Organization, 'Text of the Constitution', <http://www.ilo.org/ilolex/english/iloconst.htm>

<sup>5</sup> The American Presidency Project, President Harry S. Truman, Document #126, 'Special Message to the Senate Transmitting a Convention of the International Labor Conference', June 24, 1947 <http://www.presidency.ucsb.edu/ws/index.php?pid=12681>

<sup>6</sup> The American Presidency Project, President Harry S. Truman, Document #88, "Special Message to the Congress Transmitting the Charter for the International Trade Organization", April 28, 1949 <http://www.presidency.ucsb.edu/ws/index.php?pid=13443>

<sup>7</sup> Marcus Noland, Peterson Institute for International Economics, Speech: 'Understanding the World Trade Organization', February 16, 2000, <http://www.iie.com/publications/papers/paper.cfm?ResearchID=369>

<sup>8</sup> Juris International, Database of International Trade Law, Marrakesh Agreement, <http://www.jurisint.org/pub/06/en/doc/02.htm>

<sup>9</sup> World Trade Organization, "The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines", [http://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm#4](http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm#4)