

AN EMERGING ASIAN TIGER CHASING THE AMERICAN DREAM: LABOR, POLITICS AND ECONOMICS IN THE PHILIPPINES

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INTRODUCTION

“We have gathered here today to salute the unique friendship that has bound Filipinos and Americans for many decades and that has shown a capacity for endurance despite every vicissitude. . . . Ours is a friendship built on certain values we hold in common, values that uphold democracy, liberal and open societies . . . and individual liberties.”¹

President Fidel Ramos

President Ramos’ dramatic statement was made in a speech during the celebration of the 50th year of independence from the United States in 1996. The speech was an important one for Ramos, whose purpose was to direct his people to embrace the United States as a new partner in economic growth and cooperation, and to inform them that a possible severing of ties may lead to disastrous results for the Philippines.² There is much truth to what he spoke of that day, but, in the context of labor, there lurks a fallacy.

President Ramos’ truth is that within the last few years the Philippines, under the guidance of his administration, has become a vibrant, free-market economy.³ This change was not

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1. Author unknown, *Manila Hails Friendship with U.S.*, UPI, July 4, 1996, available in LEXIS, Nexus Library, UPI File.

2. *Id.*

3. *Philippines; History*, Business Intelligence Report World of Information, October 1996.

achieved by suppressing the democratic rights regained after the fall of the Marcos regime in 1986, but through policies aimed at cutting through the mass of protectionist legislation which had accumulated during the previous 30 years.⁴ It has been said that President Ramos' success is attributable to the application of martial expedients to economic problems with the bonus of no loss to democratic rights.⁵ President Ramos, after his election in 1992, said that his administration should be judged *exclusively* on the performance of the economy.⁶ That plea to measure success by GDP alone alerts the astute observer that there are storm clouds being seeded by issues that Ramos does not want to cast a shadow on his economic triumphs—namely, the rights of the workers being sacrificed on the altar of economic growth.

Before one can focus on the black clouds hovering over the Ramos administration, it is necessary to look at his success in economic development. The growth in Philippine GDP is remarkable.⁷ What was once known as the "Sick Man of Asia" has emerged as a "Newborn Asian Tiger." The GNP expanded 7.1% in the first half of 1996, and economists agree that the GNP for all of 1996 will be between 6% and 6.5% making it the fifth straight year in which growth has accelerated.⁸ Inflation fell to 4.4% in September 1996, the lowest rate in seven years and down from 11.2% at the start of the year.⁹ Exports increased 19.4% in the first half of the year to \$9.6 billion, while imports surged 26.4%.¹⁰ Much of this is attributed to President Ramos' strategy of luring U.S. and European investors to the Philippines, stressing its Catholic and democratic characteristics in contrast to the corporate authoritarianism of the rest of Asia.¹¹ In response, the United States has remained the largest investor in the Philippines. The attraction to investors is not the religious and democratic values espoused by President Ramos, but a desire to exploit the Philippines' cheap labor. The exploitation of human resources has become valuable to many foreign companies, and an edge used to full advantage by the Philippine government.

But cheap labor does not come cheaply to the Filipinos who toil for these foreign entities. There is a high price to pay and the

4. *Id.* at 9.

5. *Id.*

6. *Id.*

7. Even with the current crisis, the GDP expanded 5.1%. Myardo Macarag, *Philippine Economy Shows Surprising Strength, but Cautiousness Remains*, AGENCE FRANCE-PRESSE, February 2, 1998.

8. Rigoberto Tiglao, *Newborn Tiger*, 1996 WL-FEER 10570076, October 24, 1996. For 1997, the GDP increased 5.8%. Myardo Macarag, *supra* note 7.

9. *Id.*

10. *Id.*

11. *Philippines*, *supra* note 3.

currency is basic human rights. Areas are set up called Export Processing Zones (EPZs) in 70 countries, including the Philippines.¹² EPZs are seen as concentration camps where workers face a slew of abuses to labor rights, child labor, and payment of starvation wages.¹³ In the Philippines, the government often chooses not to apply the local laws in the EPZs.¹⁴ It is understood that to attract foreign investors, governments in developing countries offer companies a range of tax advantages, often backed by promises not to allow trade union activity in the EPZs.¹⁵

This underside to Ramos' economic plan has created festering opposition in local communities. Soldiers have harassed small-scale gold miners who have worked to prevent multinational mining companies from taking over the land; paramilitary forces have killed and abused labor organizers.¹⁶ Abuses against trade unionists under the regimes of Marcos and Aquino persist in today's supposedly democratic government. For example,

Companies operating in the Calabrazon economic zones aggressively deny their employees' right to organize and frequently abuse their workers. Employers routinely fire workers engaged in union organizing activity and carefully question potential employees about their attitudes toward unions in an attempt to screen out union sympathizers. It is reported that armed guards stand at the gates of the economic zones, intimidating workers and preventing organizers from entering.¹⁷

The parallel of democracy between the U.S. and the Philippines used in President Ramos' rhetoric is a perverse one. Labor rights are integral to the spirit and practice of Democracy and to the spirit of the worker.

With this in mind, many political commentators and development analysts view the battle of local communities and government and big business against workers as an inevitable cost of development.¹⁸ They argue that economic modernization sometimes requires the sacrifice of other interests, such as political pluralism and workers' rights. They further argue that while human rights violations should be avoided as much as possible,

12. Shada Islam, *Labor: EPZ abuses Denounced by Union Body*, INTER PRESS SERVICE, April 29, 1996, available in 1996 WL 9810299.

13. *Id.*

14. *Id.*

15. *Id.*

16. Robert Weissman, "Development" and the Denial of Human Rights in Ramos's Philippines, 7 HARV. HUM. RTS. J. 251 (Spring, 1994).

17. *Id.* at 265.

18. *Id.* at 252.

some abuses may be inevitable in the transformation of a national economy.¹⁹

This paper proposes that the Philippines is different from other countries with modernizing economies in that it does not have to sacrifice so easily the rights of workers. This is due to previously enacted labor laws patterned after the Wagner Act in the United States. In addition, characteristics such as a dominant Catholic background, democratic principles, a highly skilled labor force, and a dominant English-speaking population will allow the Philippines to retain high foreign investment. Such characteristics will soften the blow of forcing foreign companies to allow workers the labor rights to which they are entitled, thereby increasing wages and workplace safety.

In recent months, a financial crisis, known as the "Asian Flu", has swept through most of Asia. The majority of countries in Asia are in economic turmoil, although the Philippine economy remains the strongest in Southeast Asia.²⁰ Most agree that the country will certainly weather the current regional financial storm within the next three years.²¹ In fact, many analysts expect foreign and domestic investment to continue to grow.²² A major reason for this rationale is that the country's characteristics are consistently emphasized to lure foreign investment into the country.

Although there is great optimism for the Philippines' economy during this financial crisis, the country has not been completely sheltered from the shocks of instability and insecurity. It has been hit by a fall in its currency and stock market and a painful increase in interest rates.²³ As a result, the economy has affected the state of labor. Inasmuch as the country has become more favorable to foreign investment due to its resilience in the past months, there has been a stable flow of growth with regard to foreign companies settling in the Philippines.²⁴ By favoring foreign investment more strongly than ever before, the Philip-

19. *Id.*

20. Eric De la Cruz, *UZ Upbeat on RP*, AOL online, www.ultravista.digital.com, January 15, 1998.

21. *Id.*

22. Edward A. Gargan, *Last Laugh for the Philippines: Onetime Joke Economy Avoids Much of Asia's Turmoil*, NEW YORK TIMES, December 11, 1997, at D1.

23. *Id.*

24. Foreign investors, rather than shying away in alarm, as they have elsewhere in the region, are still coming to the Philippines. As one example, Seagate, an American market of hard disk drives, is planning to open a plant. *Id.* In addition, seven joint venture agreements worth \$3.76 billion were signed between the Philippines and the U.S. government and private sectors in the Cagayan economic zone to provide key utilities to support commercial and industrial firms in the zone. Jemileen U. Nuqoi, *U.S. Businessmen Optimistic About RP*, BUSINESS WORLD (MANILA), Nov. 28, 1997.

piners' government has indicated a growing reluctance to further any progress that labor groups have made in recent years.

No one suggests that labor rights can be achieved in a short time. It took decades for unions in the United States to gain the reputation they have today. But the lessons learned from the history of Filipino labor policy and its impact on its people can place labor rights on a more even keel while the country negotiates the rapids of economic development and its currency crisis. With the emerging concerns of labor exploitation and the pressure the U.S., and other Western countries, have put on developing countries, now is the time for the Philippines to reflect on its present labor policies and remedy ills facing the Filipino laborers.

Part I describes the history of labor law in the Philippines and the state of disarray it is in today. Part II examines President Ramos' plan for economic development in the Philippines and how organized labor has been either ignored or suppressed. Part III explores organized labor in the Philippines today. Part IV explores the relationship of U.S. investment and its contribution to the exploitation of Labor in the Philippines. Part V examines measures used by the U.S. to ensure a modicum of compliance by developing countries with labor standards promulgated by the International Labor Organization. This section also reviews relevant international organizations and the positions of developing nations and developed nations on the issue of labor and trading rights. Part VI first analyzes these organizations and suggests improvements to accommodate labor issues on a global scale. It then presents evidence that the Philippines, although touting high democratic principles and human equality, has vehemently opposed the U.S. in promoting the merger of labor and trade rights. His avoidance of labor issues has seriously strained President Ramos' credibility as the leader of a democratic government. The section concludes that the Philippines need not follow the lead of other modernizing economies that have taken protective measures against developed countries. The Philippines is unique; it possesses characteristics that align it more with the U.S. than with its Asian counterparts. This can be advantageous to the Philippines' government, allowing it not only to sustain a good relationship with the U.S. and other Western nations, but also with its own citizens.

I. PHILIPPINES' HISTORY OF LABOR LAW

In order to understand the history of the Philippines' labor laws, one must look to the political conflict concerning the country's economy and how it has influenced labor policies. The economy, once primarily agricultural, shifted dramatically to an

industrial base in the past 40 years, especially in the last two administrations. But, ironically, as the economy became industrialized and export-oriented, equity and welfare became low priorities. Thus, labor rights were subordinated to the promotion of economic growth, as measured by GDP.

Trade unionism goes back to the last years of the Spanish colonial regime in the Philippines, and since 1898 has continued under the rule of the United States.²⁵ In 1908, a Bureau of Labor was created by the Spanish authorities, and trade unions were permitted by law, although they were not protected.²⁶

Beginning in 1935, the government established an organized labor relations system, including a Court of Industrial Relations, and the registration of unions with the authorities.²⁷ The Philippines Government opted for a system of compulsory arbitration, contrary to the hopes of the U.S. that the Philippines would follow their system of collective bargaining.²⁸ The result was a stabilization of labor relations and an improvement of material conditions of the workers in agriculture and industry.²⁹

A. THE INDUSTRIAL PEACE ACT OF 1953

After World War II, the Philippines achieved full independence from the U.S. in 1946.³⁰ In 1948, agriculture accounted for 71.5% of the labor force.³¹ Also around that time, the Philippines adopted an import substitution industrialization (ISI) strategy which primarily focused on the promotion of locally owned industries which catered to a relatively large domestic market in order to conserve foreign exchange and to promote industrializa-

25. JOHANNES SCHREGLE, *NEGOTIATING DEVELOPMENT: LABOUR RELATIONS IN SOUTHERN ASIA*, 39 (1982).

26. *Id.* at 39 ("Trade union action in the 1920s and 1930s was determined more by political considerations than by efforts to improve the remuneration and working conditions of union members through negotiations with employers and the authorities. During this period there was communist agitation and growing economic problems in agriculture and budding manufacturing industries. Labor matters were decided by management with little government intervention. In the early 1930s, there was increasing labor unrest, expressed in violence and work stoppages.").

27. *Id.*

28. *Id.* ("The Philippines main reasons for compulsory arbitration were the following: the trade unions were weak and fragmented, therefore, incapable of developing an orderly collective bargaining system; a preference for court decisions was deeply rooted in the Philippines; and the government was determined to combat labour unrest and exercise control over labour by a system of binding court decisions.").

29. *Id.*

30. *Id.*

31. AMANDO DORONILA, *THE STATE, ECONOMIC TRANSFORMATION, AND POLITICAL CHANGE IN THE PHILIPPINES, 1946-1972*, 60 (1992).

tion and local entrepreneurship.³² Efforts were made by the trade unions to establish strong and representative central organizations.³³ As the industrial sector expanded in the mid-50s, the number of unionized workers increased to 500,000 workers, from 151,000 in 1951.³⁴ The number of registered unions increased from 435 to 839 during the 1950s, with a new generation of union leadership in ISI industries such as textiles, banking, sugar, and mines.³⁵ In 1953, fewer than 50 collective agreements were established, but, by 1972, there were 852.³⁶

The growth of unions not only reflected industrialization, but also the enactment in June, 1953 of the Industrial Peace Act.³⁷ This was based on the Wagner Act, and promoted free collective bargaining, voluntary arbitration, unfair labor practice legislation, and business unionism.³⁸ In addition, it included certification elections, labor injunctions, and required bargaining in good faith.³⁹ However, the power of the Court of Industrial Relations to settle labor disputes by a binding award was limited to certain industries essential to the national interest. The significance of this legislation, also known as the Magna Carta of Labor, was that it redefined the framework of industrial relations and marked the shift of the union movement from compulsory arbitration to collective bargaining as the primary method of resolving disputes.⁴⁰

Although the law encouraged collective bargaining, it was nonetheless a paternalistic piece of legislation designed to divert the union movement from the political militancy of the 1930s and 1940s and channel its demands into American-style "bread and butter" unionism.⁴¹

The Industrial Peace Act liberalized registration procedures for unions, a weapon previously used to control unions, and en-

32. Sarosh Kuruvilla, *Linkages Between Industrialization Strategies and Industrial Relations/Human Resource Policies: Singapore, Malaysia, the Philippines, and India*, 49 *INDUS. & LAB. REL. REV.* 635, 636 (July, 1996).

33. Schregle, *supra* note 25, at 39 ("There was the creation of the leftist Congress of Labor Organizations, which was superseded by the more moderate Philippine Association of Free Labor Unions. In addition, the Federation of Free Workers was created under the influence of the Catholic Church and, in 1954, the Philippines Trade Unions Council was formed. But Philippines trade unions have never been sufficiently united to designate any one trade union organization to speak for all workers of the country.").

34. Doronila, *supra* note 31 at 60.

35. Kuruvilla, *supra* note 32, at 646.

36. Schregle, *supra* note 25, at 40.

37. Doronila, *supra*, note 31, at 60.

38. Kurivilla, *supra*, note 32, at 646.

39. Schregle, *supra* note 25, at 40.

40. Doronila, *supra* note 31 at 61.

41. *Id.*

couraged conciliation of industrial disputes.⁴² But these compromises merely disguised the expansion of the power of the State to intervene in such disputes.⁴³ This legislation bestowed upon the President the power to certify a dispute to the Court of Industrial Relations if, "in his opinion, there exists a labor dispute in an industry indispensable to the national interest."⁴⁴

The labor legislation was, in part, a response to the conflict between the interests of the new entrepreneurial bourgeoisie and the agricultural exporters.⁴⁵ The latter strongly supported any legislation designed to support the urban workers, which they thought may weaken the entrepreneurial elite, and the exclusion of agricultural workers from the new framework of industrial relations indicated the influence of this elite on the legislation.⁴⁶ It was also suggested that the entrepreneurs did not oppose the legislation because their perception was that unions were weak, and the idea of collective bargaining was not considered a threat.⁴⁷

The unions' weakness was partly due to its fragmentation and of the high level of unemployment.⁴⁸ Although the industrial sector expanded, the labor-absorption capacity of the economy was low.⁴⁹ One benefit was the Minimum Wage Law of 1951 which applied only to industrial workers.⁵⁰ This was created on the advice of a report by a U.S. economic survey mission which had visited the country in 1950.⁵¹

The political influence of Labor was nonexistent. Their fragmented nature split the Labor vote. The disunity of the workers, or the apparent absence of consciousness of their class interests, may have accounted for their failure to act as a pressure group seeking the passage of welfare legislation.⁵² Since the concentration of organized unions was in the industrial centers, the labor

42. *Id.*

43. *Id.*

44. *Id.* at 60, 61, (quoting David Wurfel. *Trade Union Development and Labor Policy in the Phillipines*, 12 *INDUS. & LAB. REL. REV.* 582 (July, 1959).

45. *Id.* at 60.

46. *Id.* at 62.

47. *Id.*

48. *Id.* The high level of unemployment has continued to plague the Philippines. ("For example, from 1956 to 1973 the average annual rate of growth of the labor force was 2.6%, and the average annual rate of increase in employment in the same period was 3.1%, leaving an average annual unemployment of 7.4%."). See also, Ramos *Presents an Optimistic Outlook for 1997 Economy*, *The Asian Wall St. J.*, Jan 3, 1997, at 3. (Unemployment in October 1996 was 7.4%, down from 8.4% in the same month a year earlier. The Philippines' unemployment rate in 1997 is expected to be around 7% in 1997.)

49. Doronila, *supra* note 31, at 63.

50. *Id.* at 63.

51. Schregle, *supra* note 25, at 40.

52. Doronilla, *supra* note 25, at 63.

constituency was defined by a narrow regional base electorally.⁵³ In essence, there was extensive fragmentation wherein various unions had conflicting interests and goals, and it was difficult to mobilize them electorally as a block.⁵⁴

With these weaknesses, the industrial sector was able to avoid disruptive disputes. This period of time for unions has been described by one author as "relatively free only because it is weak, or free from government domination only because it is divided and practically under management domination."⁵⁵

Although there was a sense of disillusionment from the unions, this was also the decade that marked the development of the modern industrial sector, a vigorous entrepreneurial class, and the nucleus of a skilled labor force.⁵⁶

B. 1962-1972 PERIOD OF EXPORT-ORIENTED INDUSTRIALIZATION

The decade of the 1960s was an economically anemic decade in contrast to the high-growth decade of the 1950s.⁵⁷ In the second half of the 1950s, there was a governmental response to the decline of industrialization during the mid-1950s in the form of decontrol measures.⁵⁸ This culminated in the devaluation of the peso and removal of some of the labor protections in some sectors.⁵⁹ There are two competing stories as to why the protectionist strategy of the early period of the 1960s deteriorated and, thus, opened the door to foreign investment.

Once elected in 1962, President Diosdado Macapagal dismantled exchange controls because of the corruption connected with them and the pressures of exporters for a more favorable exchange rate.⁶⁰ He made corruption the main issue of his reform platform. He believed in the principle of free enterprise, allowing the market to operate with less State regulation.⁶¹

One story is that a reaction to internal pressure from both the industrial and agricultural elites resulted in this mixed approach to industrialization of relaxing some, but not all, controls. The agricultural elite continued to push for economic liberaliza-

53. *Id.*

54. *Id.* at 64.

55. *Id.* (quoting John J. Carroll, *Philippine Labor Unions*, 9 PHILIPPINE STUDIES 220, 252, (No. 2, April 1961).

56. Rene E. Ofreneo, *The Labour Market, Protective Labour Institutions and Economic Growth in the Philippines*, in WORKERS, INSTITUTIONS AND ECONOMIC GROWTH IN ASIA 255-301, Gerry Rodgers ed., 1994).

57. *Id.*

58. Doronila, *supra* note 31, at 66.

59. Kuruvilla, *supra* note 32, at 646.

60. Doronila, *supra* note 31, at 66.

61. *Id.*

tion and free trade, while the new industrial elite argued for a continuation of protection for ISI industries.⁶² But the other story is that the shift of policy was due to external pressure to dismantle exchange controls. Some authors have suggested that the U.S. government, responding to pressure by American investors seeking easier repatriation of their profits, and American exporters frustrated by protectionist obstacles, forced President Macapagal to abolish import and exchange controls.⁶³ The U.S. used the World Bank and the International Monetary Fund (IMF) in this intervention.⁶⁴

Whether internal or external pressures in the 1960s determined industrial policy-making is beyond the scope of this analysis. Given the balance of payments deficits, the government was forced to go to the IMF and to acquiesce in IMF-suggested policies of opening up the economy, but the political clout of the Filipino industrialists prevented any substantial lowering of protection for local industrialists.⁶⁵ Therefore, what took place in the 1960s was a gradual and piecemeal reorientation of the industrial policy towards export orientation while protection of local industry was provided in new forms. This mainly consisted of the devaluation of the peso and ending the foreign exchange program on one hand, and tariff protection to shelter local industrialists on the other.⁶⁶

The result was a country that lost some tempo in the economic acceleration game as it crawled through the 1960s. The growth process weakened primarily because there was a great deal of confusion on economic directions which resulted in a crisis in ISI and a failure of EOI to develop roots.⁶⁷ Throughout this decontrol period, there was also a trend of declining real wages in the non-agricultural sector.⁶⁸ Although real wages began to rise in the late 1960s, the devaluation of the peso at the end of the decade sharply reversed the trend.⁶⁹ Trade union rivalries and fragmentation and workers' demands for wage increases were the main factors giving rise to labor unrest.⁷⁰

62. Kuruvilla, *supra* note 32 at 646.

63. Doronila, *supra* note 31, at 66.

64. *Id.*

65. Ofreneo, *supra* note 56, at 115 ("A joint U.S.-IMF loan package of \$300 million attached conditions for economic liberalization: 1) devaluation of the peso; 2) abolition of import and exchange controls licensing; 3) extension of incentives to foreign capital; and 4) tightening of domestic credit.")

66. Ofreneo, *supra* note 56, at 273.

67. *Id.* at 276.

68. Doronila, *supra* note 31, at 158.

69. *Id.*

70. Schregle, *supra* note 25, at 40.

C. PRESIDENT MARCOS, MARTIAL LAW AND CHEAP LABOR

In 1969, President Ferdinand Marcos was elected to take over what had become an economy in complete discord. Marcos, during his pre-martial law regime, followed the posture of President Macapagal of devaluing the peso and setting up high tariff walls of protection. What followed were two important developments in the 1970s: the tremendous expansion of agricultural production and the regimentation of labor under the martial law regime.

From 1971 to 1980, there was a dramatic leap in agricultural production due to a modernization program created by President Marcos which declared the 1970s as the decade of "countryside development."⁷¹ The agricultural production and productivity, with the exception of sugar, increased dramatically, while the rate of labor absorption in agriculture did not grow as fast because the technology used was either labor-displacing or not labor intensive.⁷² A large number of small farmers, settlers and tribal minorities were displaced from the land, either by the land-grabbing by powerful interests or through the brutal process of competition where the small farmers were destroyed by the big operators.⁷³ This resulted in an increased number of landless rural workers, and landlessness and underemployment from agricultural modernization depressed the real wages of those in the labor market.⁷⁴

The country was shaken by a number of large-scale strikes, often combined with mass demonstrations of workers, in a number of industries. Attempts were made in the Philippine Congress to ban strikes in certain essential services, but it was met with strong resistance on the part of the unions.⁷⁵ As a result, President Marcos instituted martial law in September of 1972.⁷⁶ With martial law in effect, the government curtailed a number of labor rights which, in turn, weakened labor's bargaining power.⁷⁷ Organized labor was silenced during the first few years of martial law.⁷⁸ Militant labor and peasant leaders were jailed, while their organizations were outlawed.⁷⁹ General Order No. 5 banned all forms of group actions and prohibited workers

71. Ofreneo, *supra* note 56, at 280.

72. *Id.* at 281.

73. *Id.*

74. *Id.*

75. Schregle, *supra* note 25, at 40.

76. *Id.*

77. Ofreneo, *supra* note 56, at 281.

78. *Id.* at 281.

79. *Id.*

from exercising their right to strike.⁸⁰ A tripartite National Labor Relations Commission was set up to strengthen government intervention in dispute settlements through compulsory arbitration.⁸¹

A new labor relations system was formed at the urging of Marcos, and its legal basis was embodied in the Constitution promulgated in January of 1973.⁸² This was a part of the president's "New Society," and it was supposed to guarantee the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane working conditions.⁸³ This system was defined in a comprehensive Labor Code and advanced on May 1, 1974.⁸⁴

The Code excluded a number of workers from joining any labor organization for purposes of collective bargaining.⁸⁵ Work stoppages were prohibited in vital industries, including firms involved in the export trade; regulations were placed on the right to strike and on lock outs. The operation of foreign trade organizations in the country and their assistance to Philippine trade unions came under the control of the government, and the Trade Union Congress of the Philippines was created⁸⁶ to help organize a pro-government movement in an effort to bring about a "one industry-one union" structure.⁸⁷ Unions were required to become affiliated with one recognized labor center, the Marcos-controlled Trade Union Congress of the Philippines.⁸⁸

The government also formed the institutions of Wage Control to combat the rise of wages and to keep them at cheap levels in support of what Marcos called the "Open Economy."⁸⁹ There were two groups classified in the institutions of Wage Control: those that limit the wages and benefits workers were entitled to by law; and those that limit the wage increases and other benefits

80. *Id.*

81. *Id.*

82. Schregle, *supra* note 25, at 41.

83. *Id.*

84. *Id.*

85. *Id.* ("These workers included supervisory employees, whose unions in the pre-martial law period provided some intellectual leadership to the labor movement; security guards; employees of all religious, charitable, medical, or educational institutions 'not operating for profit'; and government employees.")

86. In 1975, the Trade Union Congress of the Philippines was formed and was given official government recognition. It was originally made up of some of the most powerful unions including the Associated Labor Unions, the Philippine Transport and General Workers Organization, and the Federation of Free Farmers. Ronald J. Peters, *Labor Education in the Philippines*, 19 *Labor Studies Journal* 22, (1994).

87. Schregle, *supra* note 25, at 41.

88. Kuruvilla, *supra* note 32, at 647.

89. *Id.*

that workers could obtain by collective agreements.⁹⁰ The weakness of the labor movement and the lack of unity among the labor leaders provided opportunities for the employers and government representatives to exploit.⁹¹ In this decade, real wages plunged 24.4% for skilled workers and 27.4% for unskilled workers.⁹²

Collective bargaining was seriously repressed by the strike ban, the issuance of injunctions to prevent or stop strikes, and the government takeover of disputes through compulsory arbitration.⁹³ Collective bargaining was so regulated and labor's power was so weakened that labor's position was reduced to one of "collective begging."⁹⁴

Thus, institutions such as wage fixing and collective bargaining which helped organized labor achieve a certain success in the 1950s, were transformed under martial law into institutions for lowering the cost of labor in the formal sector of the economy in the name of the export oriented industrialization strategy.⁹⁵ This marked the dawning of cheap labor. The National Manpower Youth Council ensured a constant supply of trained workers, and the Apprenticeship Program allowed children aged 14 and older to be employed in export industries at a fraction of the prevailing minimum wage.⁹⁶

D. THE END OF MARTIAL LAW AND THE AQUINO ADMINISTRATION

In January of 1981, President Marcos lifted the state of martial law, and the Minister of Labor and Employment prepared a Labor Relations Bill which was enacted in August 1981.⁹⁷ The most important provision of the act was the restoration of the right to strike.⁹⁸ Other provisions encompassed the registration of collective agreements, unfair labor practices, the settlement of labor disputes by methods compatible with both collective bargaining, arbitration, and the employer's right to dismiss workers.⁹⁹

90. *Id.*

91. Ofreneo, *supra* note 56, at 283.

92. *Id.* at 282.

93. *Id.* at 282. ("One result of these repressive measures taken by the government was that there were no recorded strikes in 1973-1974.")

94. *Id.*

95. Kuruvilla, *supra* note 32, at 647.

96. *Id.*

97. Schregle, *supra* note 25, at 42.

98. *Id.* ("Only when a strike or lockout adversely affects the national interest may the Minister of Labor and Employment either decide the dispute or refer it to the Industrial relations Commission for compulsory arbitration.")

99. *Id.*

Although there was a lifting of the strike ban, new laws were substituted strictly regulating the conduct of strikes. But these laws were ignored by striking workers during 1983-85.¹⁰⁰ Both radical and moderate unions were openly denouncing the Marcos regime and conducting strikes and mass actions.¹⁰¹

A major development on the labor front was the rise of a union, the Kilusang Mayo Uno (KMU), which espoused "genuine trade unionism."¹⁰² KMU forged ties with the Philippines affiliates of the Prague-based World Federation of Trade Unions (WFTU).¹⁰³ The Marcos regime failed to suppress the growing strength and influence of these radical unions, and the Philippines became the strike capital of Asia.¹⁰⁴

Popular resentment against the authoritarian regime of President Marcos reached a high point after the assassination of Benigno Aquino in August, 1983.¹⁰⁵ Labor unrest, debt crisis, political uncertainties, and capital flight all contributed to a deepening general political and economic crisis.

One major factor instigating labor unrest was the Structural Adjustment Program (SAP) initiated in the first part of the 1980s.¹⁰⁶ "The strategic thrust of SAP was more determined implementation of EOI and deregulation of the economy, coupled with a systematic closure of inefficient Filipino firms."¹⁰⁷ The World Bank's report on the Philippines emphasized that priority should be given to the continued expansion of labor-intensive manufacturing to take advantage of the competitive aspect of la-

100. Ofreneo, *supra* note 56, at 284.

101. *Id.* at 283.

102. *Id.* at 284.

103. *Id.*

104. *Id.*

105. *Id.* at 284.

106. *Id.* This was based on criticisms by the World Bank and other economists that the Philippines industrial structure still remained highly protectionist and inward-looking, with the EOI industries consisting of only a small part in the economy. Measures included the downward restructuring of the tariff system and the liberalization of imports, new export-enhancing schemes, restructuring of the investment incentives system to facilitate investment application processing and encourage export ventures, rationalization of certain industries such as textiles, cement, electronics, etc., financial reforms such as the flexible exchange rate for the peso, interest rate deregulation and unibanking reforms in the banking industry, fiscal reforms such as better mobilization of domestic resources through tax and non-tax measures, dismantling of government monopolies and privatization of some government corporations, and continuing diversification of energy sources.

107. Kuruvilla, *supra* note 32, at 648.

bor costs.¹⁰⁸ Foreign investment increased by a striking 1156% after SAP was implemented.¹⁰⁹

The consequences to labor rights were disastrous. The anti-protectionist nature of SAP had a negative impact on industries and firms catering to the domestic market. Industry went into a state of chaos where manufacturing was the hardest hit.¹¹⁰ The decline in manufacturing's share of overall employment amid a shrinking economy meant plant closures, shutdowns, and reduced production.¹¹¹ The number of closures of domestic firms climbed from 831 in 1981 to 2,284 in 1984.¹¹² Layoffs in manufacturing occurred where most of the trade unions' members worked.¹¹³ Many of the strikes conducted by the unions were over the issue of layoffs.¹¹⁴ Cheap labor, an implicit requirement in labor-intensive export firms, was another main issue in the labor disputes involving export-led firms.¹¹⁵ At least 60% of workers in the growing export sector were still receiving less than the minimum wage.¹¹⁶

The economic crisis eased somewhat with the flight of President Marcos and the election of a new government in February 1986, with Corazon Aquino as President.¹¹⁷ President Aquino loosened the more repressive elements of Marcos' labor policy, but this did not result in the strengthening of the labor movement, nor did it promote more stable industrial relations.¹¹⁸

SAP was continued in the new democratic administration, and was even broadened, especially with regard to the import

108. *Id.* As a response to the currency crisis that began in 1997, the World Bank is assisting the Philippines by strengthening its social safety nets to mitigate the effects of the crisis, particularly on employment. The World Bank is preparing a \$90 million assistance to aim at increasing incomes of the poor and providing basic services. This is part of a \$1 billion special loan package in 1998 committed solely to the Philippines. *World Bank Helps Fund Social Safety Net for Philippines*, ASIA PULSE, March 12, 1998.

109. *Id.*

110. Ofreneo, *supra* note 56, at 285.

111. *Id.* at 287.

112. Kuruvilla, *supra* note 32, at 648.

113. *Id.* This period also witnessed a decline in union membership from 12.2% to 9.3% in the early 1980s.

114. *Id.*

115. *Id.* ("The Export Processing Zone in Bataan (BEPZ), reputed to be a strike-free zone in the 1970s, saw not only an outburst of individual strikes in individual companies and even zone-wide strikes.")

116. Kuruvilla, *supra* note 32, at 648.

117. Ofreneo, *supra* note 56, at 287. ("In February 1987, a new Constitution was ratified, and national elections for the Senate and the House of Representatives were held a few months later. Almost 15 years after Marcos dissolved Congress, it was reopened as an independent branch of government."). Yoshihara Kunio, *THE NATION AND ECONOMIC GROWTH: THE PHILIPPINES AND THAILAND*, 133 (1994).

118. Kuruvilla, *supra* note 32, at 649.

liberalization program which was reactivated with the liberalization of 700 items in 1986, the dismantling of some government supported monopolies and the implementation of the privatization program.¹¹⁹

In the first year of the Aquino administration, there was an unprecedented rise in the number of strikes, partly because of the new democratic freedom and partly because of the continuing efforts of organized workers to recover eroded incomes.¹²⁰ In addition, the easing of rules governing union formation resulted in even more fragmentation of the labor movement with 7 or 8 national centers, 155 national federations along an endless number of political lines, and more than 5,600 independent local unions organized on a general unionism principle.¹²¹ Inter-union rivalry resulted in a weak union movement, with few union victories in representation elections.¹²²

The unions relied on the minimum wage as the floor for collective bargaining; however, their economic muscle was weakened by the restrictions on strikes, the government's crackdown on illegal strikes, and employers' replacement of striking workers.¹²³ President Aquino, in response to the complaints of the business community against militant unionism, took a hard-line stance towards industrial disputes and revived the harsh features of the strike law (first implemented by Marcos) described above.¹²⁴ Although trade unions claimed to have a total of 3,000,000 members, the actual number of workers under collective bargaining agreements was less than 600,000.¹²⁵

Concurrently, the government launched a proactive program by promoting the organization of labor management councils (LMCs) in enterprises, encouraging parties to a dispute to submit their cases to voluntary arbiters, and by conducting more active mediation-conciliation services.¹²⁶

With the combination of the above labor relations measures and the improved politico-economic situation, there was a down-trend in strikes beginning in 1989, but labor's obsession with recovering real incomes remained strong.¹²⁷ Between 1987-1991, a number of labor mass actions, mainly through the general strikes, were launched to press the government to adjust the minimum

119. Ofreneo, *supra* note 56, at 288.

120. *Id.*

121. Kuruvilla, *supra* note 32, at 649.

122. *Id.*

123. *Id.*

124. Ofreneo, *supra* note 56, at 288.

125. Kuruvilla, *supra* note 32, at 649.

126. Ofreneo, *supra* note 56, at 288.

127. *Id.*

wage.¹²⁸ This resulted in favorable wage increases in 1987, 1989, and 1991.¹²⁹ But the militancy of organized labor in pursuing wage increases contributed to the political, economic and industrial turbulence. Investors in the 1980s never failed to cite labor strife as one of the ten reasons not to invest in the Philippines.

Although there were some strides for the unions, there was still little or no enforcement of the existing labor laws. In fact, in 1988, the Philippine Department of Labor and Employment reported that 40% of the nation's businesses were violating the nation's labor standards.¹³⁰

The lesson is clear from the 1970s and 1980s. Squeezing labor, by restricting certain labor institutions such as unionism and collective bargaining, can indeed lead to some economic growth. Yet this would inevitably lead to labor unrest, whose consequences for the stability of society and the economy are difficult to predict. Also, it is suggested that pressures from external bodies such as the U.S., World Bank, and the IMF could strongly influence a government's industrialization strategy and consequently the industrial relations system.¹³¹

II. PRESIDENT RAMOS AND THE PHILIPPINES 2000 PROGRAM

President Ramos was elected by the narrowest of margins in 1992, with a goal to restore political stability and to jump-start the economy. Although his predecessor managed to add some democratic luster to the country's badly tarnished international image, the country was still unappealing in the eyes of the international financial markets. In the beginning of this, the present period, the Philippines profile looked weak and ineffectual. Energy shortages resulted in daily brown-outs of up to 8 hours, traffic jams paralyzed Manila, poverty increased sharply over the past two decades with the official rate of poverty at an alarming 40%.¹³² In 1991, the GNP was \$47 billion, the GNP per capita

128. *Id.*

129. *Id.*, at 289.

130. Andrew K. Stutzman, *Our Eroding Industrial Base: U.S. Labor Laws Compared with Labor Laws of Less Developed Nations in Light of the Global Economy*, 12 DICK.J. INT'L L. 135, (Fall 1993).

131. In early 1998 economists have concurred that decades of IMF supervision have set the country's economy on a steady but unostentatious growth. Edward A. Gargan, *supra*, note 22. After 34 years, the Philippines has met the Fund's targets for economic stability. *Id.* Thus, IMF supervision has become a blessing in disguise for the Philippines as the Asian Flu has crippled the countries around it.

132. Weissman, *supra* note 16, at 255.

was \$720, real growth in GNP was estimated at 0.1%, inflation was estimated at 17.6%, while unemployment was at 10%.¹³³

In comparison to the booming economies of the Asian Newly Industrialized Countries (NICs) such as Taiwan, South Korea, Hong Kong, and Singapore, and emerging NICs of Malaysia and Thailand, the Philippines was looked upon as a country of stagnation and decay.¹³⁴ But within this transitional period, efforts were made under Aquino, and accelerated by the Ramos administration, that would prove to be beneficial to the economy and damaging to the laborers.

In 1991, a new Foreign Investments Act went into effect, allowing foreigners to own as much as 100% of the equity in strategic industries, including export-oriented enterprises and those requiring large capital and advanced technology.¹³⁵ With this law in effect, and the government's October, 1991 decision to reduce duties on capital imports, the Philippines became open to an increase in foreign investment in the following year.¹³⁶

Two areas exploited by the Aquino administration were export processing zones (EPZs) and industrial estates (IEs). They became tempting areas of investment for the global world, and were used as selling points by all developing countries. With respect to the Philippines, by 1991, over 50 sites were available or in development.¹³⁷ One of the advantages of these areas touted in a business report was labor: "Labor-management relations have in general been untroubled at industrial estates and EPZs. Good labor relations stem in part from the attractiveness of jobs at the estates in areas of high unemployment. If problems arise, local authorities are *anxious* to be helpful in order to keep manufacturing operations running" (emphasis added).¹³⁸

Once elected in 1992, President Ramos intended on accelerating the move to foreign investment. The objective of Ramos Philippines 2000 program has been to transform the country into a NIC by the year 2000 through a plan that is ambitiously optimistic.¹³⁹ The goals are attracting foreign investment, orienting both the manufacturing and agricultural sectors towards exports,

133. David M. Forman, *Protecting Philippine Overseas Contract Workers*, 16 Comp.Lab.L.J. 26, 30 (1994).

134. Weissman, *supra* note 16, at 255.

135. This act was the first major change in foreign investment legislation since 1968. *Philippines*, *supra* note 3.

136. John D. Forbes, *Investors Show Growing Interest in EPZs and Industrial Estates*, East Asian Executive Reports, December 15, 1991, at 9.

137. Forman, *supra* note 133.

138. *Philippines*, *supra* note 3.

139. Weissman, *supra* note 16, at 256.

and investing in infrastructure.¹⁴⁰ The government will direct new investment in the manufacturing sector into a series of 15 Regional Industrial Centers (RICs) that will function as expanded EPZs offering companies tax breaks and other incentives and infrastructure support.¹⁴¹

Weissman argues the strategy used by Ramos is weak and success is slight. Ramos' attempt to imitate the success of the Asian NICs is flawed because the NICs built up their internal market, protected domestic producers, and limited foreign investment.¹⁴² Having built up their internal economies, the NICs emphasized the promotion of exports, but under very different conditions than the Philippines today.¹⁴³ They faced relatively little global competition for their low-wage exports since most of the third world countries were looking inward.¹⁴⁴ Today, most countries are conducting low-wage export strategies so the situation on a global level of competition is radically different.¹⁴⁵ As an Asian country with a poorly developed infrastructure and little experience in domestically controlled high technology production, the Philippines has little to offer besides low wages.¹⁴⁶

But the news in recent years has not only been supportive to the Philippines, but outright optimistic regarding the program implemented by Ramos. One article which presented an interview with President Ramos exclaims that he has brought his country greater political stability and economic growth than it has known for decades.¹⁴⁷ The Philippine economy is now expanding at a rate of about 5% a year, far ahead of the contracting economy under dictator Ferdinand Marcos and his successor, Corazon Aquino.¹⁴⁸

III. ORGANIZED LABOR TODAY IN THE PHILIPPINES

While the economy of the Philippines has improved, the question remains as to whether labor conditions have followed

140. *Id.* ("[His targets include] achieving a growth rate of ten percent, lowering the number of families in poverty by ten percent, increasing the national investment rate by half, and more than doubling the annual rate of export growth to a level of 27.1% by 1998.")

141. *Id.* at 257.

142. *Id.* at 258.

143. *Id.* at 259.

144. *Id.*

145. *Id.*

146. *Id.*

147. Jim Mann, *Fidel Ramos: Building a Stable Democracy in the Philippines; Interview with Fidel Ramos*, Los Angeles Times, November 5, 1995, at 3, part M.

148. *Id.* "But in our case, we choose democracy first, and then work on the economy later."

suit. Unfortunately, the labor movement has been forced into a deep slumber, and is on the verge of a coma-like existence if controls by the government are not challenged.

Ironically, in an interview with President Ramos in November 1995, he assured the U.S. that the administration puts democracy in place first, instead of the economy.¹⁴⁹ But the track record shows a different story for organized labor. The Philippines remains among the poorest countries in terms of *per capita* income, ranking below Lesotho, Mauritania, and Sri Lanka, and barely above Zambia, Togo, and the Central African Republic.¹⁵⁰ The liberalization of labor regulations to make union formation easier has resulted in an increasingly fragmented labor movement.¹⁵¹ For example, in 1994, out of a civilian workforce of 24.5 million there were about 3.1 million union members, slightly above 12%.¹⁵² In addition, there were approximately 6,300 registered unions with 5,100 existing collective bargaining agreements.¹⁵³ However, only about 660,000 union members were actually covered by these agreements.¹⁵⁴ The declines in real wages and job security, the downward revision in labor standards, and an extremely weak union movement indicate that industrial relations and human resources policies have helped sustain a low cost development strategy.¹⁵⁵

Firms feeding export growth in the Philippines say their main reason for coming to the country is labor.¹⁵⁶ However, stories of repression by the Philippines government have filtered into the mainstream of U.S. national news. In addition, equally alarming stories of the plight of workers placed between a wall of poor working conditions and wages, and the hardship of nothing at all, have also been reported.

One article pronounced that EPZs often operate like concentration camps where workers face a shocking catalog of abuses.¹⁵⁷ In the Philippines, employers have "no union, no strike" policies that ban legal protection for workers. The coun-

149. *Id.*

150. Forman, *supra* note 133, at 30.

151. Kuruvilla, *supra* note 32, at 649.

152. Peters, *supra* note 86, at 23.

153. *Id.*

154. *Id.*

155. Kuruvilla, *supra* note 25, at 649.

156. Hugh Filman, *Electronics Industry Helps Philippines Build Growing Export Sector*, Deutsche Presse-Agentur, August 7, 1996.

157. EPZs are just one example of how governments will sacrifice the rights of the worker in order to solicit foreign companies. In their race to attract foreign investors, governments in developing countries offer companies a range of tax advantages, often backed by promises not to allow trade union activity in the EPZs. Islam, *supra* note 12.

try's violations of trade union rights and the labor code is effectively a part of the zones' comparative advantage, and is an assurance to Asian governments across the board that trade unions will not get in their way.¹⁵⁸ Defending workers' rights, promoting decent wages and working conditions for millions, is becoming an increasingly dangerous job.¹⁵⁹

President Ramos' program for economic growth has led to violations of workers' rights and abuses against trade union activists.¹⁶⁰ The military and the Civilian Armed Forces Geographical Units (CAFGUs) attacked trade unionists, especially those members in the Kilusang Mayo Uno (KMU) and the National Federation of Sugar Workers.¹⁶¹

The main characteristic of trade unions that have contributed to the government's resentment towards them is that, historically, the trade unions were Communist-infiltrated.¹⁶² The organizers of the Communist Party who represented the urban sector in 1930 were trade union leaders.¹⁶³ In the mid-1950s, the Philippines lost several thousand work days to industrial disputes due to the strong influence of Communist ideology.¹⁶⁴ One of the trade unions that evolved from these strong Communist-based unions was the KMU.¹⁶⁵ In the mid-1980s, the KMU was responsible for the increase of strikes wherein the country lost a few million workhours to strikes.¹⁶⁶ In addition, the KMU succeeded in bringing workers in a number of foreign multi-national companies under its umbrella.¹⁶⁷ As a result, industrial discipline tended to become weaker in many of these companies, and the production cost tended to increase or the product quality suffered.¹⁶⁸ The reactions of the Ramos government to the red flag of Communism is no different from the reactions of its predecessors.

158. Shada Islam, *Worker Woes: Pro-union Group Slams Asian Governments*, 1996 WL-FEER 9081042, (July 6, 1995).

159. *Id.*

160. Weissman, *supra* note 16, at 264.

161. *Id.* (These attacks began during the Aquino administration and have persisted to the present day.)

162. Kunio, *supra* note 117, at 161.

163. *Id.*

164. *Id.*

165. *Id.* (“[T]he KMU became the second largest labour federation, claiming several hundred thousands in membership. The number may be an exaggeration, but it was a highly visible labor federation, organizing various demonstrations and national strikes (*Welgang bayan*) in the cause of the poor (peasants, workers, and slum dwellers).”)

166. *Id.* at 162.

167. *Id.*

168. *Id.*

Like trade unionists, peasant organizers also bear the brunt of the government's attacks where violations of peasants' human rights are connected to Programme 2000's projects. As one author sadly writes, "the abuse of peasants, workers and indigenous people will probably continue, even if the [program] does not meet its stated goals. The Philippine government will pursue foreign investment in resource extractive sectors, manufacturing, and infrastructure with or without improvements in the national economy."¹⁶⁹

IV. U.S. INVESTMENT IN THE PHILIPPINES

The Philippines is a long-established marketplaces for American businesses, with the U.S. maintaining close commercial and diplomatic ties since the Asian nation's independence.¹⁷⁰ One major historical exchange was the rejection of the renegotiated Military Bases Agreement by the Philippines Senate in September, 1991, which denied U.S. military forces continued access by U.S. military forces to Philippine military bases.¹⁷¹ This action, coupled with the Philippines evicting both the U.S. Subic and Clark Air bases in 1992, was a "tantrum of nationalism" as one writer observed.¹⁷² This marked an end to the chapter of "special relations" with the U.S., and the beginning of a new chapter in the bilateral relationship.¹⁷³ As the level of military and security collaboration diminished, other elements in the relationship, largely trade and investment, were strengthened as the foundation for increased bilateral cooperation.¹⁷⁴

In the economic sphere, the U.S. continues to be a major driving force in the Pacific; for the Philippines, it has been the single largest investor and principal trading and economic power over the years.¹⁷⁵ A blessing in disguise for the Philippines economy, they have transformed both former U.S. bases to be special economic zones. Both bases have become the key to economic growth. Companies such as Texas Instruments, Federal Express, Intel, Motorola, Philips, Federal Express, Gerber, and Reebok have relocated or sub-contracted to the Philippines. The coun-

169. Weissman, *supra* note 16, at 265.

170. *Philippines: Shows Major Commitment to Opening Up Foreign Investments in Recent Years, But Overlooked by those Seeking a Marketplace*, World Trade, July 1, 1996

171. Robert R. Romulo, *Philippine Foreign Policy: New Policy in a Changing World Environment*, 17 FLETCHER F. WORLD AFF. at 131, 137 (Summer 1993).

172. Uli Schmetzer, *The Lights go Back on for Philippines, No Longer the 'Sick Man of Asia'*, CHICAGO TRIBUNE, November 13, 1994, at 1C.

173. Romulo, *supra* note 171, at 137.

174. *Id.*

175. *Id.* at 138.

try's electronic exports have jumped from \$7.55 billion in 1995 to \$10 billion in 1996.¹⁷⁶ Their total exports will reach \$50 billion of which \$27 billion will be from semi-conductors and electronics.¹⁷⁷ But at the same time, there have been reactions to these relocations, mostly concerning labor and human rights.

The shoe corporations have been strongly criticized in the press, which has alleged that the factories in the Philippines and other Southeast Asian countries exploit mostly teenagers and young women.¹⁷⁸ The employees work 15-16 hour days, doing endless piece work; many live away from their families in barracks. Toy companies, too, subcontract in the Philippines, attracted by cheap labor and weak enforcement of wage and safety laws.¹⁷⁹ It was even stated by one individual that there may be problems for the export sector in the Philippines, warning that Filipinos could price themselves out of the market if they are too aggressive in labor negotiations.¹⁸⁰ Indeed, some exporters say that the minimum wage of 165 pesos (a mere 6 dollars) a day in Manila is too high.¹⁸¹

V. PROTECTIONS OFFERED FOR ORGANIZED LABOR

Many protections are afforded organized labor on an international level. The United States has addressed the problems through enacting laws, but the true enemy of labor is the Philippines government. At this point there is little hope the economy will afford the Filipino laborer a decent wage and safe working conditions. But some openings have been pursued by institutions hoping to stir the government into listening to the cries of its

176. Mark LePeduc, *The Philippines: Asia's Next Silicon Valley?*, ELECTRONIC BUYER'S NEWS, October 21, 1996.

177. *Id.*

178. See Sallie Tisdale, *Shoe and Tell: The Quest for American-made Sneakers*, THE NEW REPUBLIC, September 12, 1994, at 10.

179. Haider Rizvi, *Labor-Asia: No Joy from Asian Toys*, INTER PRESS SERVICE, February 20, 1996. In a recent New York Times article, the hourly wage estimate (for sewing) for the Philippines as of the spring of 1996 was 62 cents an hour. Other East Asian countries hourly wages were also cited including Japan at \$16.29/hour, Taiwan at \$5.10/hour, Malaysia at \$1.64/hour, Indonesia at \$0.34/hour, and China at \$0.28/hour. Steven Greenhouse, *Voluntary Rules on Apparel Labor Prove Hard to Set*, N.Y. TIMES, February 1, 1997, at A1.

180. Filman, *supra* note 156.

181. The current economic crisis has plunged the peso's value over 30%. The peso has fallen to a low of 46 pesos to the U.S. dollar. Raul C. Dancel, *Weak Links in Banking Sector, Politics Pose Risks to Growth*, BUSINESS DAILY, January 30, 1998. This has greatly affected the progress of union organizations' attempts to increase the minimum wage. The labor sector, complaining that oil prices and transport fares have risen due to the peso's depreciation, have been asking for a wage increase of 100 pesos (\$2.87 in U.S. dollars). *Philippine Labor Sector Urged to Put Off Wage Rise*, XINHUA ENGLISH NEWSWIRE, October 27, 1997.

working class of organized labor. "It's part of the democratic practice of nation-states to allow workers to claim their share (of wealth they helped produce) under collective bargaining negotiations."¹⁸² The first part of the discussion will address some of the international organizations that have addressed or attempted to address the rights of workers, and international organizations that have opposed them. This part will focus primarily on a global level and uses the U.S. and the Philippines as the models of developed and developing countries. This part examines how organizations have been used by both countries to either suppress or address organized labor and worker rights.

The discussion will examine the organizations' impact on labor standards. The article will examine the Philippines internally and show that strengthening organized labor need not be detrimental to the GDP. The unique characteristics of the Philippines sets this developing country apart from those that are in the same economic and labor oriented situation. The foundation and the strength of the Philippines lies mostly in their quest for democracy, not exclusively economically, but in a balance for human justice and equality as well.

A. THE UNITED STATES ADDRESSES LABOR RIGHTS

A trend has emerged in addressing labor rights, moving to the forefront arguments between the developed countries and the newly emerged, developing countries. The United States has become one of the leaders in expressing hopes of improving the rights of workers in third world countries. Thus, it is important to highlight some measures that the U.S. has taken to ensure that the rights of workers are protected.

The U.S. Congress has suggested that the denial of worker rights within a country leads to the suppression of economic and political benefits and thus lowers the costs of production; this unfairly obtained price advantage, in turn, results in discrimination against U.S. products at home and abroad.¹⁸³ Congress has also demonstrated that businesses engaged in trade have an economic incentive to move from countries where worker rights are protected to those countries that deny worker rights; the absence of labor rights lures companies to relocate or enables them to suppress labor protests in rights-respecting countries.¹⁸⁴ In response, the U.S. is pursuing both a unilateral and multilateral

182. Johanna Son, *Asia-Pacific: Lots of Talk about Business, Little about Workers*, INTER PRESS SERVICE, October 31, 1996.

183. Theresa A. Amato, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U.L.REV. 79, 82 (1990).

184. *Id.* at 82.

approach toward linking labor standards and international trade. Since this topic goes beyond the scope of this paper, the two approaches will be only briefly discussed.

With regard to the U.S.'s unilateral approach, Congress has implemented a worker rights provision in four pieces of legislation.¹⁸⁵ The provisions, which are discussed below, reflect the five International Labor Organization (ILO) Conventions that establish: (i) the right to associate with other persons;¹⁸⁶ (ii) the right to organize and to bargain collectively;¹⁸⁷ (iii) the right to avoid forced or compulsory labor;¹⁸⁸ (iv) the right for children under 14 years of age to avoid industrial employment;¹⁸⁹ and (v) the right to a minimum wage and maximum work week.¹⁹⁰

The first three statutes that the U.S. has implemented include the Caribbean Basin Initiative (CBI), the 1984 amendments to the Generalized System of Preferences (GSP), and the 1985 amendments to the Overseas Private Investment Corporation (OPIC) Act.¹⁹¹ These statutes target developing countries who receive nonreciprocal trade benefits conferred by the U.S.¹⁹² The statutes allow the U.S. to suspend the nonreciprocal benefits of any beneficiary nation that violates worker rights.¹⁹³

Both the CBI and GSP grant non-reciprocal, duty-free treatment to eligible goods for all countries the president deems to be beneficiary countries.¹⁹⁴ Each act permits the president to terminate its beneficiary status on the basis of its violation of labor rights and other conditions.¹⁹⁵ Unfortunately, the CBI legislation has been ineffective. A developing country's adherence to worker rights is merely a nonbinding criterion which can, but need not, form the basis for a decision to terminate a country's CBI status.¹⁹⁶ The GSP provision has been used somewhat more frequently, although no action has yet been taken to investigate the Philippines under this legislation.¹⁹⁷

185. *Id.* at 83.

186. ILO Convention 11, Right of Association (Agriculture) Convention (1921).

187. ILO Convention 98, Right to Organise and Collective Bargaining Convention (1949).

188. ILO Convention 105, Abolition of Forced Labour Convention (1957).

189. ILO Convention 5, Minimum Age (Industry) Convention (1919).

190. ILO Convention 1, Hours of Work (Industry) Convention (1919); ILO Convention 131, Minimum Wage Fixing Convention (1970).

191. Amato, *supra* note 183, at 96. 22 U.S.C. § 2191a (1988)

192. *Id.*

193. *Id.*

194. *Id.* at 97.

195. *Id.*

196. *Id.*

197. *Id.* at 100.

OPIC is a federally chartered and operated corporation that provides insurance and financing for private investment in developing countries.¹⁹⁸ It requires that insurance and financing be denied to U.S. companies investing in countries that are not taking steps to adopt and implement laws that extend internationally recognized worker rights.¹⁹⁹

The fourth statute is the Omnibus Trade and Competitiveness Act (OTCA), which is different in that the U.S. government may challenge the act, policy, or practice of foreign governments or their instrumentalities that adversely affect U.S. trade.²⁰⁰ The act allows the United States Trade Representative to take all appropriate and feasible action against any unreasonable or discriminatory act, policy, or practice that burdens or restricts U.S. commerce, including the failure to protect worker rights.²⁰¹ Before OTCA, the President had only two possible sanctions to invoke in response to worker rights violations, but OTCA expanded the arsenal of sanctions.²⁰² The advantage of OTCA, over GSP and OPIC, is that the sanctions can be directed at specific products or industries where violation of worker rights are concentrated. Thus, the negative effects of sanctions on the general economy and general population of the offending state can be contained.²⁰³

One implication of the unilateral approach of enforcing international worker rights is that it conflicts with international law notions of state sovereignty.²⁰⁴ The other implication is the argument that the sanctions are used as protectionist measures, rather than fair trade. Protectionist standards would, in effect, require that labor conditions in other states be made equal to those of the U.S.²⁰⁵ Labor standards promoting fair trade, on the other hand, would focus on distortions in a country's labor market caused by anti-labor policies and actions,²⁰⁶ and would use ILO Conventions as a benchmark.

Whether this legislation is protectionist and/or violative of state sovereignty depends on how it is implemented. One way to avoid over-reaching is to emphasize union rights such as freedom

198. *Id.*

199. *Id.*

200. *Id.* at 101.

201. *Id.* at 101-103.

202. Harlan Mandel, Note, *In Pursuit of the Missing Link: International Worker Rights and International Trade?*, 27 COLUM.J.TRANSNAT'L L. 443, 466 (1989).

203. *Id.* at 466-467.

204. *Id.* at 455 (Sovereignty embodies the ideas of internal dependence and territorial supremacy.). For an analysis of sovereignty and the unilateral approach to enforcing worker rights internationally, see *id.*, at 455-459.

205. *Id.*, at 460.

206. *Id.*, at 459.

of association and the right to organize.²⁰⁷ This is a lesser intrusion on state sovereignty than mandating a minimum wage, maximum hours, or health standards.²⁰⁸ This is a lesser intrusion because they are positive rights, requiring the state merely to refrain from suppressing attempts to organize labor and from interfering with the collective bargaining process.²⁰⁹ By following this route, the U.S. can encourage the Philippines to implement laws that are already in place, and give unions the necessary space to voice their concerns without fear of reprisal.

B. THE U.S., THE GENERAL AGREEMENT ON TARIFF AND TRADE (GATT) AND THE WORLD TRADE ORGANIZATION, ITS SUCCESSOR²¹⁰

The multilateral approach seeks the creation of multilateral machinery, through the General Agreement on Tariff and Trade (GATT), for instituting trade-related responses to worker rights violations.²¹¹ This is the only internationally recognized regime for trade regulation which provides the norms, rules, and procedures relevant to conduct within the international economic system.²¹² GATT is both an institution and an agreement which has a highly developed system of rules and dispute-resolution mechanisms, although it does not impose sanctions or enforce the international trade rules.²¹³

There has been widespread recognition of GATT's inability to regulate large areas of trade primarily because no international consensus can be reached on how to regulate these politically sensitive areas.²¹⁴ One such area in its regulatory framework is the absence of any policy governing labor standards mainly due to the developing world perceiving labor regulation as a device of the developed world aimed at nullifying the developing world's most exploitable comparative advantage—cheap labor.²¹⁵

The U.S. contends that GATT is the appropriate forum to address the trade effects of lack of support for worker rights, yet several countries question the competence of GATT to regulate rights and contend that either the International Labor Organization (ILO) or individual nations should address labor rights

207. *Id.* at 461.

208. *Id.*

209. *Id.*, at 461-462.

210. The U.S. and the Philippines are affiliated with the WTO.

211. *Id.* at 444.

212. Amato, *supra* note 183, at 87.

213. *Id.* at 88.

214. *Id.* at 90-91.

215. *Id.* at 92.

problems.²¹⁶ Unless U.S. negotiators can convince other contracting parties that an internationally accepted standard for the treatment of labor would benefit all members of the trade order, it is unlikely that the U.S. will be able to obtain a multilateral agreement on labor rights.²¹⁷

The WTO, GATT's successor²¹⁸, held its first Ministerial Conference in December, 1996.²¹⁹ Established on January 1, 1995, the WTO supplies the legal framework for international trade.²²⁰ The organization administers the Uruguay Round Agreements, which are contractual obligations among the United States, the Philippines, and the WTO's 122 other members to reduce trade barriers.²²¹ One argument that stirred animosity between nations was the issue of labor standards in developing countries. There were many issues that were considered, but there was a push from the West to place labor issues at center stage.

The U.S. and the Philippines sat on opposite sides of the argument. Asian governments argue that their trade success reflects hard work and good business planning, but some industrialists, trade unions and some Western governments say it is because Asia exploits workers.²²² Seven industrialized nations, including the U.S., have signed a statement that, for the first time, makes a connection between core labor standards and trade.²²³ On the other side of the spectrum, 24 poor countries, including the Philippines, are completely unconvinced of the need for a statement that would combine labor standards and trade rules.²²⁴ The Philippines was consistent in its position that

216. *Id.* at 93-94.

217. *Id.* at 95.

218. WTO is the successor of GATT as an oversight and dispute settlement multilateral framework. While GATT oversaw trade in goods alone, WTO oversees implementation of various agreements under UR-GATT which include trade in services and intellectual property rights, as well as provision of dispute settlement and trade policy review machineries. Jemileen U. Nuqui, *Special Report: 4th APEC Economic Leaders Meeting: This Creature Called APEC*, BusinessWorld (Manila), November 18, 1996.

219. Robert O'Quinn, *Trade Talk Strategies . . . With Green Blockade?*, ASHINGTON TIMES, December 9, 1996, at A17.

220. *Id.*

221. *Id.*

222. Shada Islam, *Here Comes Trouble: Western Countries Link Asian Workers' Rights to Trade*, 1996 WL-FEER 7998602 (April 18, 1996).

223. *Id.* ("The United States, Britain, Canada, Japan, Italy, Germany and France signed the document.")

224. Associated Press, *U.S. Wants Trade Talks to Include Labor Issues*, ARIZONA REPUBLIC/PHOENIX GAZETTE, October 14, 1996, at E4.

the labor issue was better placed on the table at the meetings of the International Labor Organization.²²⁵

The U.S. and other developed countries promoted the ideas of labor standards in tandem with trade, by attempting to put a social clause into the GATT regulatory framework. The U.S., a primary proponent for this clause, suggested that a GATT working party be established.²²⁶ The working party would examine the possible relationship of worker rights standards to GATT Articles, objectives, and related instruments, whether the denial of internationally recognized worker rights impedes the attainment of the objectives of GATT, and the possible effects on international trade of failure to respect internationally recognized worker rights.²²⁷ The thinking was that by making the International Labor Organization's core labor standards a trade issue, the WTO could guarantee that workers would finally benefit in the global arena of free and open trade.²²⁸

Unfortunately, the U.S. met substantial opposition from developing countries. The primary problem is a lack of trust where the developing countries do not see it as an act of cooperation, but one that will destroy what they have struggled to build. In September, 1996, many developing countries, including the Philippines, came out hard against making trade conditional on improved labor standards, workplace safety, labor rights or environmental protection.²²⁹ A majority of the countries in the WTO felt the United States was pushing the social clause as a protectionist ploy to demolish competition, with the labor rights issue as ammunition.²³⁰ Interestingly, the unique stance of the Philippines was put to its most difficult test. Due to its combination of unique characteristics, the Philippines had to make a decision of which side, if any, they would stand firmly behind on the labor issue. As discussed below, the results proved educational and slightly optimistic.

Although the Philippines' labor force is among the least compensated in the Pacific Rim, U.S. Embassy officials stated that the Philippines itself was not exactly the target of America's concern over the absence of core labor standards and child labor

225. *Philippines Leader says Human Rights Issues Separate from Trade*, AGENCE FRANCE-PRESS, November 27, 1996.

226. *supra* note 170, at 93.

227. *Id.* at 93. The U.S. also suggests that the party put forward proposals on worker rights issues and report its findings and conclusions to the GATT Council.

228. Teddy Casino, *Future Tense: Labor a Pawn in World Trade Organization Meet*, BusinessWorld (Manila), December 13, 1996, at 4.

229. Associated Press, *U.S. Wants Trade Talks to Include Labor Issues*, THE ARIZONA REPUBLIC/THE PHOENIX GAZETTE, October 14, 1996, at E4.

230. *Id.*

practices.²³¹ The country's labor laws and conditions are far more acceptable to the Americans compared with some of its Southeast Asian neighbors.²³² In addition, other factors led to siding with the U.S. on the issue of combining labor with trade at the WTO. The U.S. is the Philippines biggest trading partner and its largest source of foreign investments over the last two decades.²³³ Politically, the U.S. remains the Philippines' closest ally, even after the removal of American military facilities in the former Clark Air Base and Subic Naval Base in 1992.²³⁴ The Philippines was also hoping to benefit from improved economic conditions and its American style democratic regime to get a larger share of American investments which are expected to flow into the region's infrastructure.²³⁵

On the other hand, The Association of Southeast Asian Nations (ASEAN) is the Ramos administration's topmost priority in its foreign and trade policy thrusts. ASEAN, discussed in detail below, has been against any efforts to bring labor standards and other social issues into international trade organizations.²³⁶ Since the Filipino government subscribes to the spirit of the Association of Southeast Asian Nations (ASEAN) solidarity, it does not want to alienate itself in order to get American investors to invest in the country, and increase the export of Philippine goods to the U.S. market at the expense of ASEAN.²³⁷ This battle between loyalty to the U.S. and the Southeast Asian nations was evident at the WTO meeting.

The result of the WTO meeting, with respect to the issue of labor, was that for the first time in 50 years of GATT, labor standards made it in the final declaration.²³⁸ Labor standards were given prominent treatment in Paragraph 4 of the declaration indicating the importance the developed countries felt it deserved.²³⁹ Paragraph 4 asserts that labor standards are not to be

231. Paul N. Villegas, *RP to Back ASEAN Stand at 1st WTO Ministers Meet*, *BusinessWorld* (Manila), December 3, 1996, at 1.

232. Paul N. Villegas, *Focus: 1st WTO Ministerial Conference: Walking the Tightrope*, *BUSINESSWORLD* (Manila), December 11, 1996, at 1.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. Cristina D. C. Pastor, *Focus: 1st WTO Ministerial Conference: RP Delays ITA Entry*, *BUSINESSWORLD* (Manila), December 16, 1996, at 1.

239. *Id.* The declaration reads, "We renew our commitment to the observance of internationally recognized core labor standards. The ILO is the competent body to set and deal with these standards and we affirm our support for its work in promoting them. We believe economic growth and development fostered by an increase in trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the

used for trade protectionism, and that the ILO is the competent body on this issue.²⁴⁰ While the Philippines went along with ASEAN in arguing against any link between labor and trade, it had no serious objections to Paragraph 4.²⁴¹ The Philippines' position was that they adhered to the universal declaration on human rights (where workers' rights were included).²⁴² As long as it was clearly stated that labor standards were an ILO matter, the Philippines was not against putting labor in the main declaration. It is this attitude and position that shows that the Philippines may be a model country which other developing nations could follow.

C. THE INTERNATIONAL LABOR ORGANIZATION (ILO)²⁴³

The International Labor Organization (ILO) is unique in that the representation of the 174 countries is tripartite.²⁴⁴ Workers, employers, and governments meet at every stage of the ILO's work to debate, decide policy, and to approve the program and budget.²⁴⁵ The preamble to the constitution defined the ideals, aims, and principles of the ILO as "universal peace" and "social justice."²⁴⁶ In an effort to obtain the goal of improved conditions for the working men and women of the world, "the ILO was assigned two main functions: to establish international labor standards, and to collect and distribute information on labor and industrial conditions."²⁴⁷

The ILO was the first international organization to address issues which traditionally had been considered domestic concerns, as evidenced by its early realization that industrial development was a fundamental social and human concept as well as an economic concern.²⁴⁸

U.S. relations with the ILO are special because its ties to the organization are older and deeper than with any other interna-

comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO secretariat will continue their existing collaboration." Jemileen U. Nuqui, *Focus: Labor Standards and Trade: Finding the Linkage*, BusinessWorld (Manila), December 17, 1996, at 1.

240. *Id.*

241. *Id.*

242. *Id.*

243. Both the United States and the Philippines are members

244. *Strategies and Achievements of the International Program on the Elimination of Child Labor (IPEC)*, FEDERAL NEWS SERVICE, July 15, 1996 (prepared statement of Anthony G. Freeman, Director, Washington Branch International Labor Office.).

245. *Id.*

246. *Id.* at 51.

247. *Id.*

248. *Id.* at 57.

tional organization.²⁴⁹ But American involvement has fluctuated; it did not become an official member until 1934, withdrew its membership in 1977, rejoined in 1980, and continues to be a member today.²⁵⁰ Presently, the U.S. has insisted that its trading partners adhere to basic worker rights, and has given the ILO an infusion of new strength in recent years. The U.S. attempted, but failed at the WTO meeting, to push through a proposed policy of punishing with trade sanctions nations which fail to comply with labor rules.²⁵¹

One disadvantage of the ILO is that it has no legal mechanism to enforce its Conventions embodying international labor standards.²⁵² It relies on moral force. It is a matter of enlightened self interest for the world community of nations to extend democratic values and to secure basic human rights.²⁵³ It is beyond the scope of the paper to analyze the duties of the ILO, but, in general, the ILO is more a gesture of recognizing worker rights, and not a mechanism used for enforcement.

The ILO is actively discussing the issue of linking labor and trade.²⁵⁴ But instead of focusing on trade sanctions and labor standards, a working party was created to discuss the social dimension of trade liberalization.²⁵⁵ Presently, the ILO has failed to come up with a concrete position for the linkage.²⁵⁶

D. ASIA PACIFIC ECONOMIC COOPERATION (APEC)

Launched in 1989, APEC consists of 18 economies including the U.S. and the Philippines.²⁵⁷ APEC members are referred to as economies and not as countries due to the inclusion of Hong Kong, a Chinese Territory formerly under British rule, and Taiwan, whose national sovereignty is not officially recognized by many countries.²⁵⁸ The combined population of APEC countries comes to almost 40% of the world's population, and their combined GDP comes to about 52% of global output.²⁵⁹ This loose

249. *Id.* at 66.

250. *Id.*

251. Nuqui, *supra* note 239.

252. *Id.* at 49.

253. *Id.*

254. Nuqui, *supra* note 239.

255. *Id.*

256. *Id.*

257. Velisarios Kattoulas, *Human Rights Groups say APEC Ignores Labor Rights*, REUTERS NORTH AMERICAN WIRE, November 15, 1995. Also included are Japan, China, South Korea, Singapore, Indonesia, Malaysia, Thailand, Brunei, Australia, New Zealand, Papua New Guinea, Canada, Mexico, Chile, Hong Kong, and Taiwan.

258. Nuqui, *supra* note 218.

259. *Asia-Pacific: Economic Growth does not Guarantee Rights*, INTER PRESS SERVICE, November 17, 1995.

organization was formed to facilitate goals to reduce trade barriers, open investment opportunities, and foster the exchange of goods, services, technology, and information among themselves as well as nonmember economies.²⁶⁰ APEC plans to achieve these objectives primarily through such mechanisms as reducing tariffs, and adopting trade-related standards for goods, technology and services.²⁶¹ This organization relies on a consensus-building machinery patterned after the ASEAN mushawara decision-making process.²⁶² The ASEAN system enforces a "7-minus-X" arrangement in which any of the seven ASEAN members who is not ready to adopt specific ASEAN initiatives may follow suit after a commonly acceptable grace period.²⁶³ APEC adopted a similar arrangement by relying on "concerted unilateralism," a concept by which APEC seeks to reinforce this tendency of countries to open their economies, mostly voluntarily, though sometimes under threat of retaliation, in order to compete in the international marketplace.²⁶⁴ The idea is that they liberalize for the advantages it offers them rather than to obtain reciprocal benefits from others.²⁶⁵ The only real coercive element is supposed to be peer pressure applied through a system of monitoring.²⁶⁶

APEC met in November, 1995, to build upon a declaration issued the year before to achieve free and open trade and investment by the year 2020.²⁶⁷ But APEC has continuously ignored the issue of labor rights; instead, it annually focuses informally on lessening barriers to investment and trade.²⁶⁸ The accusation by labor activists is that APEC pays too much attention to what business can gain from achieving free trade by 2020, and not enough to workers' concerns over decent wages and freedom to organize unions.²⁶⁹

Labor campaigners met the last week of October, 1996 to draw up a "Trade Union Vision for APEC" prior to the November 25 summit meeting in the Philippines.²⁷⁰ The solution lies in

260. Nuqui, *supra* note 218.

261. *Id.*

262. *Id.*

263. *Id.*

264. Barry Wain, *On the Road to Free Trade*, THE ASIAN WALL STREET JOURNAL, November 22, 1996, at 10.

265. *Id.*

266. *Id.*

267. Cameron W. Barr, *APEC Urged to Examine Darker Side of Free Trade*, THE CHRISTIAN SCIENCE MONITOR, November 17, 1995.

268. Kattoulas, *supra* note 257.

269. Son, *supra* note 182.

270. *Id.* The labor campaigners belong to the Asia-Pacific Labor Network of the International Confederation of Free Trade Unions (ICFTU).

ensuring that economies have mechanisms, ranging from collective bargaining accords to action against the use of child labor, to make the transition of free trade more painless and to ensure that businesses do not profit from exploitative practices.²⁷¹ This document was given to President Ramos, host of the 1996 APEC summit, on October 31, 1996. The document urged APEC to commit itself to eliminate exploitation, discrimination, and repression in the workplace which holds back workers' contributions to growth.²⁷² The aim is not to put a break in economic development, but to ensure there is a balanced economic development.²⁷³ If the concerns of workers are not heeded, free trade will result in inequality, which, in turn, will lead to greater political instability. It is a point that should concern the Philippines, due to its recent past of political chaos. Much of the instability that was created was due to the workers' rights not being acknowledged or enforced. Mass demonstrations, as during the Aquino administration, were due to the absurdly low wages paid to workers, which, in turn, reflected government's goal of keeping labor costs low.

The KMU had planned to mount demonstrations and hold strikes across the Philippines in a "national day of protest" against APEC including a caravan of approximately 7,000 people that were to march on the northern freeport of Subic Bay where the summit was to be held.²⁷⁴ Thousands of workers from 11 federations, 7 regional alliances and 20 national labor formations were to take part in the labor campaign with an estimated 150,000 people participating nationwide.²⁷⁵ In addition, five "counter-conferences" were to run alongside the official meetings of APEC which showed that even the opposition were not in complete harmony on how to deal with APEC.²⁷⁶ Although the groups covered almost every point on the political spectrum, activists complained that the APEC summit was focusing on trade, investment and building megaprojects while ignoring issues fundamental to economic development such as workers' rights and the environment.²⁷⁷ Their main concern was that the common view of Asian leaders was that to generate foreign investment,

271. *Id.*

272. *Id.*

273. *Id.*

274. *Philippine Left-Wing Union Vows Nation-wide Protest during APEC Summit*, AGENCE FRANCE-PRESSE, November 17, 1996.

275. *Id.*

276. Johanna Son, *Philippines: NGOs Split Over How to Tackle APEC*, INTER PRESS SERVICE, November 20, 1996.

277. Paul Watson, *Asian Summit Turns Back on Human Rights: East Timor Not on Agenda as Leaders Meet in Manila*, THE TORONTO STAR, November 21, 1996, at A35.

they have to lower standards as if there was a race to the bottom.²⁷⁸ They also shared a dislike for the way in which the government has beautified the city for its VIP visitors.²⁷⁹ Dissidents' claimed that street children and beggars were swept from view, farmers forced to leave their fields and ordered not to harvest their crops, and troops were deployed to central Luzon on APEC duties are terrorizing residents.²⁸⁰ In addition, the government erected walls around some slums and bulldozed others, and offered squatters new housing outside Manila.²⁸¹ One hostile article reported that strikes were banned, an increase in wages was being blocked by Malacanang through the wage board, and threats were aired by the government to strikers: if they struck in APEC week, they were instantly dismissed from their jobs.²⁸²

A few days before the summit was held, police blocked a march by 1,000 APEC protesters in Manila, and two suspected communist guerrillas were killed in a clash 20 miles from the meeting site.²⁸³ Dozens of activists who belong to BAYAN, a leftist umbrella organization that represents one million unionists, students, women's groups, fishermen, teachers, and indigenous people, were arrested for posting anti-APEC posters in Manila's slums.²⁸⁴ Three separate convoys, filled with protesters heading for the summit, were repeatedly stopped and questioned by police in an effort to hamper their progress.²⁸⁵ Two thousand Philippine riot police stopped 10,000 left-wing demonstrators marching on the Asia-Pacific economic summit, but President Ramos did send a top aide to meet representatives of the demonstrators.²⁸⁶ Executive Secretary Ruben Torres and cabinet officials met 30 representatives and were given a set of resolutions rejecting the APEC forum. Although Torres was unsure if the government would be able to accommodate the requests, a spokesman for one of the main groups, believed they had made a political statement and delivered their message to the people.²⁸⁷

278. *Id.*

279. Barry Wain, 'Steady Eddie' Ramos Keeps his Cool as APEC Host, *THE ASIAN WALL STREET JOURNAL*, November 22, 1996, at 5.

280. *Id.*

281. James Cox, *Philippines on Rebound: Country Shows Off Gains to Pacific Rim Trade Group*, *USA TODAY*, November 20, 1996, at 1B.

282. Ninez Cacho-Olivarez, *My Cup of Tea: A Good Report*, *BUSINESSWORLD* (Manila), November 18, 1996, at 18.

283. Imbert Matthee, *Vocal grass-roots groups are the 'anti-APECs'*, *SEATTLE POST-INTELLIGENCER*, November 22, 1996, at A2. ("While probably unrelated to APEC, the clash was a reminder that the Philippines faces one of the world's last communist insurgencies even as it revels in economic growth.")

284. *Id.*

285. Martin Abugao, untitled, *AGENCE FRANCE-PRESSE*, November 24, 1996.

286. Cecil Morella, untitled, *AGENCE FRANCE-PRESSE*, November 25, 1996.

287. *Id.*

The protesters showed a collective effort of unity and strength, and Ramos, learning from the past, showed a willingness to listen.

The four page document adopted by the members of the APEC summit included, for the first time, a framework on economic cooperation and development that talks about reducing economic disparities among members, and making economic growth consistent with environmental equality.²⁸⁸ This was a sign that social concerns were finally climbing a few notches in APEC's focus on trade liberalization.²⁸⁹ "Sustainable development" in APEC documents would allow the developing countries to open markets at a pace that would consider liberalization's toll on small farmers, producers and labor.²⁹⁰ But the opposition saw this as mere lip-service, claiming that it is a mistake to think APEC's free trade agenda can be tamed this way because sustainability and free trade are incompatible.²⁹¹ As one opposer suggested, "APEC is a train going toward one direction and people are trying to stop the train. You may put in the phrase 'sustainable development' but the train is still heading in the opposite direction."²⁹²

E. THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

The ASEAN, once a small player with big dreams, has moved center stage in international affairs. Members include the Philippines, Indonesia, Malaysia, Singapore, Thailand, Vietnam, and Brunei.²⁹³ The ASEAN nations form a half-trillion dollar regional economy expected to double in size over the next decade.²⁹⁴ The association's key gatherings are no longer just regional affairs. Besides the member foreign ministers, high level delegations from China, Japan, the United States, Russia, South Korea, France, Spain, Australia, and other nations met with

288. Johanna Son, *APEC: Lip Service or Genuine Concern on Sustainable Growth?*, INTER PRESS SERVICE, November 26, 1996.

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* (Quoting Lori Wallach, director of the U.S.-based Public Citizen's Global Trade Watch.).

293. Ian MacKenzie, *ASEAN Ministers, business leaders criticize U.S. Policies*, THE REUTER BUSINESS REPORT, September 12, 1996.

294. *The U.S. and ASEAN: Forging a Common Approach to Common Challenges*, Department of State Dispatch, July 29, 1996 (written statement by Secretary Warren Christopher at the ASEAN Post-Ministerial conference, seven-plus-ten session.).

ASEAN in August 1995 during its annual ministerial meeting in Brunei.²⁹⁵

ASEAN is distinguishable from APEC, in that the latter is narrowly focused on pure economic affairs. ASEAN agendas include not only the usual trade and investment issues, but also issues from security, corruption and drug trafficking to pollution and labor rights.²⁹⁶

In 1996, during the WTO meeting and APEC gathering, ASEAN voiced an opinion on the issue of labor rights. ASEAN members criticized the U.S. for pushing labor issues and corruption onto the agenda at the WTO meeting in December, 1996. Secretary Christopher stated to ASEAN that one of the priorities of the first ministerial meeting of the WTO was to "begin dialogue on the relationship between trade and core labor standards. Our approach recognizes that different countries have different comparative wage levels. But workers everywhere should have the benefit of internationally recognized basic workers' rights that we all have endorsed."²⁹⁷ ASEAN members, as one writer observed, seemed to take considerable pleasure in rejecting U.S. ideas relating to trade and human rights.²⁹⁸ The consensus of ASEAN members is that labor issues are completely separate from trade and should be placed in the appropriate forum of the ILO (which lacks enforcement powers), not the WTO (which contains enforcement mechanisms).

VI. DISCUSSION

A. INTERNATIONAL ORGANIZATIONS: AN ANALYSIS

The description of the international organizations shows the depths to which the controversy runs, and that the Philippines and the U.S. are part of a massive web of nations trying to compromise in order to develop a consensus. But the problems with these organizations is that the adversarial nature, diverse interests, multiple personalities, and unavoidable differences render them virtually ineffectual.

This does not mean that we should do away with the organizations. They do contribute to the common good on a global level. However, the main problem with these organizations is that the issues are too large in scope, and the proposed solutions become too ambiguous and broad to implement. There is no follow-up on whether recommendations are being executed. In ad-

295. Editorial, *ASEAN Comes of Age*, ASIaweek, August 18, 1995.

296. *Id.*

297. Christopher, *supra* note 294.

298. Fred Hiatt, *Idealism is Very Often Supremely Realistic*, INTERNATIONAL HERALD TRIBUNE, August 3, 1996.

dition, if the proposed solutions are ignored, there is no duty to force any one country to adhere to these solutions. Something must change for more countries to acknowledge labor rights.

One proposal is the merger of the ILO and the WTO. Since the WTO is new to the league of organizations, there is no tradition mandating that it remain separate. The principles of the WTO are the same as GATT; but merging it with the ILO solves the issue of combining the complementary issues of trade and labor rights. They would, to some degree, still be separate bodies, but the substantive meetings would be held simultaneously.²⁹⁹ This would enable nations to understand the nature of cause and effect between trade and labor issues.

If there is no merger of these two bodies, and the WTO rejects investigating the relationship between trade and labor, the ILO should push its 173 member countries for more authority to extend surveillance of labor practices around the world.³⁰⁰ The ILO is authorized to act on complaints concerning only one of the five core labor standards that the U.S. wanted to discuss at the WTO meeting—the right to organize. The problem is that once it passes judgment on a country for failing to meet this standard, the ILO has no direct enforcement power. With respect to the other core standards, the ILO has no authority to oversee the observance of the prohibition against forced labor, prevention of the exploitation of child labor, the right of collective bargaining, and non-discrimination in employment.³⁰¹ By broadening the ILO's enforcement power, there is no direct pressure to combine labor with trade; most groups would be satisfied more with this arrangement. Some suggestions for expanding power in the ILO include special procedures to deal with complaints about forced labor and discrimination, and the codification of certain principles that members would be encouraged to observe in the process of trade liberalization. The ILO panel has also recommended 'moral sanctions,' which is a means to persuade member countries to treat their workers better.

Another suggestion is to have groups continue to descend on these meetings to place pressure on them to address labor issues. Labor representatives that were not part of APEC protested in the Philippines, pressured the WTO into recognizing worker rights, and helped the ILO gain power to defend core standards. It was the unity of labor leaders that assisted them in

299. Simultaneous meetings would focus attention on the interrelationship between labor and trade even without a formal merger since the labor issues would shape the trade agenda.

300. Eduardo Lachica, *Labor Seeks Hearing at Trade Meetings*, THE ASIAN WALL STREET JOURNAL, October 17, 1996.

301. *Id.*

trying to get a hearing at the meetings in November and December of 1996. As seen in examples above, it is labor groups that have pushed for an agenda and have placed themselves out on a limb to force the organizations to see that the issue will not go away.

B. THE PHILIPPINES: AN INTERNAL OBSERVATION

In examining the history of labor in the Philippines, one discovers a remarkable openness to organized labor, in contrast to most third world countries. This is one advantage that this country has in achieving a legitimate labor system because there is already one in place. The shortcomings of their system are that it is highly fragmented today, and there is no unity between unions.³⁰² Another obvious issue is the minimal role organized labor plays in government. The government, as seen previously, operates as an adversary rather than a partner in creating laws and enforcing them for unions and worker rights. What the government has not learned from the past is that by suppressing labor issues and ignoring labor rights, the country becomes unstable politically and then economically. These twin evils, in turn, are the main reasons countries lose foreign investment. In light of the foregoing discussion, it is clear that the Philippines should stop trying to simplify the question as either labor-oriented or economic-oriented. The development of labor institutions and the economic development strategy of the country must go hand in hand.

Education and Skills

One suggestion is that a competitive edge of the economy is neither commodities nor low-wage labor, but skill, entrepreneurship, and research. Although cheap labor has been an advantage of developing countries such as the Philippines, it not something a country can hold onto for very long. The Philippines has one of the lowest labor costs in Asia, but selling cheap labor can only last so long.³⁰³ To avoid driving down wages and maintaining a cheap labor force, or illiterate population, there is an alternative called human resource led development. This implies rising productivity of a well-motivated labor force. By investing in the labor population, you raise the education of the people, decrease the unskilled cheap labor group, and restructure a higher earning working force adapting to the needs of foreign export industry.

302. There is even a saying that exclaims that every union leader acts like a general at war.

303. Mark LePendus, *Asia's Next Silicon Valley?*, ELECTRONIC BUYER'S NEWS, October 21, 1996, at 66.

This results in achieving a marketable labor force that is educated and earning higher wages for its more complex tasks, while simultaneously taking some pressure off the unskilled, uneducated garment workers luring foreign direct investment to the Philippines for the purpose of exploiting its cheap labor.

The Philippines has already been hailed as the exception to other similarly situated countries in the area of skilled labor. Plentiful and cheap labor has been thought one of Asia's advantages in world trade and a premier drawing card for foreign investments.³⁰⁴ One writer observed that it is more a matter of being able to find people in sufficient numbers possessing the required skills.³⁰⁵ A survey of labor quality, cost, availability and stability graded countries on a scale of 0-10, with 0 representing the best situation and 10 the worst.³⁰⁶ The Philippines came in at 3.55, under Britain (3.50), and amazingly, above the U.S. (3.70).³⁰⁷ All other Asian countries came considerably below the Philippines.³⁰⁸ The Philippines seems to be in a position today to compete with the more developed countries in terms of overall labor attributes, and the country may have a competitive edge in terms of quality, cost, and availability of both skilled and unskilled labor.³⁰⁹

The strategy that the Philippines should focus on most is productivity to maintain global competitiveness. Boosting education is important to craft a workforce capable of adding value and keeping up with technology and management techniques. With English the dominant language of world business, the Philippines' English-speaking legacy—the result of its 1898-1946 history as a U.S. colony—is becoming an important asset in the global competition for investment dollars.³¹⁰ School in the Philippines is largely conducted in English, so nearly everyone, including factory workers, can speak it well enough to understand routine instructions and get by socially.³¹¹ English begins in the fourth grade and continues until high school where students must pass an English competency exam. In fact, the Philippines literacy level is 94%, one of the highest in Asia.³¹² The private sector

304. *Asia Warned of Labor Crunch, Philippines Held up as Exception*, AGENCE FRANCE PRESSE, September 22, 1996.

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.* Japan (4.40), Taiwan (4.41), Thailand (4.41), South Korea (4.58), Singapore (4.67), Malaysia (4.77), and Hong Kong (4.92.).

309. *Id.*

310. David Holley, *Megillah in Manila Economy in the Philippines has Finally Gone Global*, LOS ANGELES TIMES, January 10, 1997, at D1.

311. *Id.*

312. Ma. Salve I. Duplito, *RP Losing Competitive Edge Against Neighbors*,

plays a major role, and more so than in other East Asian countries. The suggestion is to continue and improve the education system and to use this advantage over the advantage of cheap labor.

The industry that would appear to be most interested is the electronics industry, and skilled labor is what they are looking for. President Ramos has emphasized the importance of electronics to the Philippines' economy, stating that by the year 2000 total exports will reach \$50 billion—and \$27 billion of that will be accounted for by semiconductors and electronics.³¹³ Only 29 U.S. electronics companies are set up there, compared to the 118 Japanese companies already in place. By attracting more U.S. investment, it will contribute to propel the Philippines into the ranks of the Asian tiger economies through an educated labor force with better wages through skilled jobs. This, in effect, will diminish the need to exploit the hopefully decreasing number of unskilled workers in industries. One investor remarked that low literacy rates dampen her interest in countries like India and China; her focus was on the Philippines' educated work force, cohesive social structure and improving policies on taxes and trade.³¹⁴ She concludes by saying, "There is a limited number of sneaker makers that the world needs."³¹⁵

Assistance to the Working Masses

Education is a part, but not complete solution to improving the lives of workers in the Philippines. There is still a large unskilled working population today that is being exploited in the worst sense. If they are not working in the EPZs, they are being exported to other countries to work under labor conditions that are established by the respective countries providing them work.³¹⁶ President Ramos, like his predecessor, has begun to tackle the sensitive issue of overseas workers, and Ramos has made it a priority to protect those workers from being abused.

Within the country, there must be similar attempts made to ensure that the working mass is protected. Especially during this period where there is a need to mobilize all possible resources for investment in future growth, painful adjustments are unavoidable. But President Ramos must be wary to take care that those adjustments do not unbalance the lives of the most vulnerable and the least able. The present financial crisis has been a

313. LePendus, *supra* note 303.

314. James S. Hirsch, *Happy Returns: Some U.S. Funds are Piling into Emerging Markets*, THE ASIAN WALL STREET JOURNAL, November 13, 1996, at 1.

315. *Id.* (quoting Joyce Cornell, a money manager.).

316. For a full analysis concerning overseas contract workers, See, Forman, *supra* note 133.

crucial test for President Ramos concerning this issue of balancing the needs of the economy and labor. Recent decisions by Ramos have brought mixed results with improving labor conditions. In a positive response, President Ramos called a National Employment Conference on February 4, 1998 to adopt strategic employment plans to cushion the effects of the economic crisis on employment and ensure the reintegration of displaced workers.³¹⁷ However, recent coping mechanisms have been criticized as short-term measures that will, in the long-term, prove disastrous. Initiatives such as job rotations and compressed work weeks will only serve to ensure that unemployment will somehow be spread.³¹⁸ There have already been reports by the Department of Labor and Employment announcing arrests of illegal recruiters who have been victimizing workers who have lost their jobs due to the economic crisis.³¹⁹

It is imperative to maintain protection for the poorer and weaker sections of society, or the result will be costly and counter-productive by creating social divisions and instigating social unrest. This led to the high instability and tensions between government and labor in previous decades, slowed economic progress, and deterred foreign investors.

Role of Labor Institutions

In the case of labor organizations, there is a need for adversaries to stop being exactly that—adversaries. Economic planners and development strategists should not look at unions as disruptive, but pay more attention on how to compromise policies on industrial relations with policies of education, science and the economy in order to develop skills and commitment to the workforce. Labor institutions, as shown in the Philippines history, are necessary in maintaining stability in both society and the economy, without which growth is not possible. They can also perform a stabilizing function, and play a major role in the industrial formation of an economy.

317. Eric Dela Cruz, *supra* note 20. At the Conference, it was reported that a total of 12,016 workers from 306 establishments had lost their jobs. *Special Report: Economic Summit: Labor Sector Bears Brunt of Continued Slump*, BUSINESS WORLD (PHILIPPINES), February 11, 1998. By the end of February, the Labor Department reported that the number increased to at least 18,864 workers with 477 companies either closing down or cutting labor forces. *Nearly 19,000 Philippine Workers Lost Jobs in 1998*, AGENCE FRANCE - PRESSE, February 23, 1998.

318. *Corporate Restructuring Seen to Help Business Survive Economic Crisis*, BUSINESS WORLD (PHILIPPINES), March 10, 1998 (quoting Jesus Estanislao, Former Finance Secretary and Dean of the Asian Development Institute).

319. *DoLE Scores on Illegal Recruiters*, BUSINESS WORLD (PHILIPPINES), February 25, 1998.

Labor institutions must play a role in empowering their members to striving for better treatment by the government. This begins with the leaders of unions to stop playing general and start playing advocate. They must be able to reach consensus with each other's unions before shifting their focus to the government. The unions should look to their members as dependent on each other, all seeking to achieve a common goal—the right to collectively bargain.³²⁰

The government must accept the fact that unions are players in the economic plan, and include them at the roundtable. When government shuts labor organizations out, it is implying that the workers must enjoy whatever benefits come their way without the ability to request what they truly need. This results in dissatisfaction in their jobs, and ultimately, dissatisfaction in their government. It is as if the government listens to business more than it listens to those that have elected it.³²¹

Democracy

The working masses should not be treated as mere objects of development, but as partners in a national undertaking. Grass-roots participation lies at the heart of economic democracy and is the key to hammering out a national consensus.³²² In order to make grassroots participation possible, institutional reforms in society are mandatory. This includes reforms that deepen the capacity of the working masses for creative and productive work, reforms that broaden the ownership of productive assets, and reforms that guarantee representation and participation of the masses in policy formation and implementation.³²³

This last advantage is that the Philippines, from U.S. ownership in its earlier years, is an Asian country with democratic ideals. This is highly unique because most other Asian nations are governed by authoritarian regimes. President Ramos summed up the Philippines' democratic principles in an interview on No-

320. Unfortunately, the "Asian flu" has affected labor unions as well. Total membership has fallen by at least 6% as more companies have resorted to layoffs to cushion a severe dent in their profits. Eric de La Cruz, *supra*, note 20.

321. An economic summit followed the recent Employment Conference in early February of 1998. Very little information on the summit circulated among the trade unions, and the unions feared that whatever progress was made at the Employment Conference would lose meaning in the economic summit. *Special Report: Economic Summit: Labor Sector Bears Brunt of Continued Slump*, BUSINESS WORLD (PHILIPPINES), February 11, 1998. A limited number of labor representatives were to participate, which only increased the anxiety of not being fairly represented. *Id.* This is one recent example of how labor is placed as a lower priority in significant economic decision-making.

322. Ofreneo, *supra* note 56, at 297.

323. *Id.*

vember 5, 1995: "Ours is a unique blend of Western democracy and Oriental values, and we are able to blend these in our society. But, in our case, we chose democracy first, and then work on the economy later. I don't think our people would have this otherwise. This is not to say we copied America's value models; ours is different, but, in many ways, ours is even more liberal."³²⁴

There is a wide gap between Ramos' statement of Philippine ideals and reality. What is most hypocritical is that the Asian nations with authoritarian governments who do not share democratic ideals are the same nations which which the Philippines is affiliated in ASEAN and APEC. Calling one's government democratic does not make it so. It is true that due to the democratic processes available in the Philippines, there is more voice given to the people. But a democratic system does not relax enforcement of labor laws, and justify the exploitation of individual workers on grounds that their exploitation is for the good of the rest of the country.

What is more interesting is that in defense of democracy, Ramos admitted that it hindered the achievement of high economic growth as compared to the authoritarian style of government.³²⁵ The Philippines was attacked for its lack of discipline and its U.S.-style constitution. But democracy is the key to success and President Ramos knows it. Ramos declared that authoritarianism is a receding tide the Philippines would not ride to development.³²⁶

If the president states the need for democracy as first and foremost on his list of priorities, his practice should reflect this. By allowing foreign companies to place themselves in the Philippines for the purpose of exploiting cheap labor, and by suppressing labor rights to accommodate foreign interests, he is, in effect, not executing his promise of a democratic system for the people. The ability of labor organizations to make progress becomes frozen and secondary to purely economic growth.

What is most confusing for the Filipino people is that because the Philippines is the first democratic republic in its region, the principles of democracy are more symbolic than a way of life. This is because it is overshadowed by organizations such as APEC and ASEAN that oppose labor issues. But the Philippines must emerge from its cocoon and become a model of strength for democracy that other nations may emulate. It must

324. Jim Mann, *Building a Stable Democracy in the Philippines; Interview with Fidel Ramos*, LOS ANGELES TIMES, November 5, 1995.

325. William Branigan, *Democratic Philippines Bucks Regional Trend*, THE WASHINGTON POST, November 12, 1994, at A17.

326. *Id.*

realize that its strengths stems from its differences not its lowest common economic denominator. Unity and power to the people is what makes a nation strong, and President Ramos must not confuse the power of the people with statistical growth in the GDP.

VII. CONCLUSION

This article has shown how labor has been subordinated to the needs of the Philippines' economy. As a result, foreign investment has raised the country's economic potential, while concurrently punishing the worker who contributes to this growth in GDP. What can be gleaned from the country's history is that labor law has been a part of the system, but has not yet reached its full potential. The lesson to be learned from the Marcos regime is that complete obliteration of rights leads to destruction and political and economic instability. The lesson to be drawn from the Aquino administration is that mere incremental improvement in worker rights are insufficient and result in huge mass actions against the government. But throughout each administration, the consistent theme was that labor must suffer for the good of the economy. The Ramos administration has followed his predecessors' policies completely.

U.S. investment in the Philippines was used as an example for two reasons: (1) it is the largest investor and, therefore, the most affected by change if the Philippines changes its labor policy; and (2) The U.S. has unique ties with the Philippines which have, to some degree, influenced the Philippines' policies and principles. The U.S. has also been a major proponent of a combined approach to labor and trading rights, which the Philippines has vehemently opposed. This is where their ties sever, and as President Ramos expressed, "this may lead to disastrous results."

But the Philippines stands in a more unique position than the rest of its region in Asia. This democratic country does not have to sever ties or be on opposite grounds with the U.S. because its distinctive strengths can sustain it from being overshadowed by authoritarian competitors. By balancing labor with trade, political stability will also remain intact. The Philippines traits include a highly educated population, already set labor laws, a dominant-English speaking nation, and a democratic government. As cheap labor recedes from being the trend, the Philippines will be way ahead of the tiger pack. But it is up to the people and the government to begin a new movement of 'People Power.'