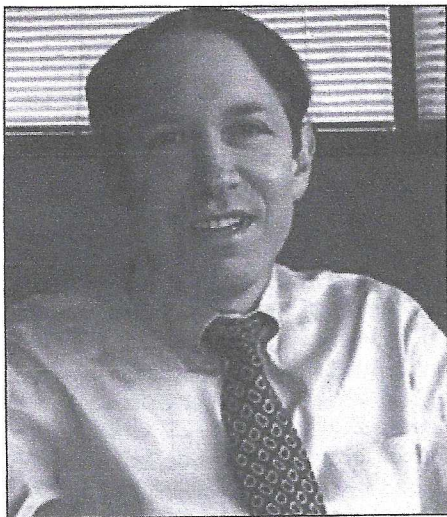


Ideas for the ILO's "Second Century"



Steve Charnovitz

ILO Focus presents the second in a series of occasional interviews with knowledgeable people in the labor relations field. This exchange took place in several conversations with Steve Charnovitz expanding on his views expressed in "The International Labor Organization in its Second Century," published in the Max Planck Yearbook of United Nations Law (Vol. 4, 2000).

Labor Standards and Fundamental Rights

Why are international labor standards needed?

National labor standards are needed to correct market failure and to support the dignity of the individual. Left unattended, a labor market will not achieve an optimal level of workplace safety and reemployability.

The movement for international labor standards began in the late 19th century. The basic idea was that governments acting alone would select suboptimal labor standards out of a fear of losing competitiveness. Today, economists recognize that good labor policies and standards enhance national competitiveness.

How did the current attitude toward core labor standards evolve?

The move to declare certain principles

fundamental labor rights, such as freedom of association and the right to collective bargaining, began concretely with the Copenhagen Declaration. In 1995, at the UN's World Summit for Social Development, governments committed to safeguard basic worker rights and promote respect for certain core ILO conventions. In addition, the Program of Action approved at the Social Summit recast fundamental labor standards into a universal responsibility of all governments, not just those that had ratified the relevant conventions.

The ILO built on this experience in enacting its *Declaration on Fundamental Principles and Rights at Work*. This skillfully drafted Declaration affirms that ILO membership entails obligations regarding core labor principles.

How does the 1998 Declaration help achieve this goal?

The Declaration's Annex provides for two types of follow-up, both of which are promotional more than supervisory. In so doing, the Declaration provides an answer to two criticisms that had been leveled at the ILO. One was that the ILO did not prioritize among the different rights and standards. The other was that ILO membership was too much a free ride; governments could join without ratifying the core conventions. The Declaration remedies this by focusing on four fundamental rights and making respect for these principles a responsibility of ILO members.

Globalization and Labor

There's a lot of talk today about putting a human face on the global economy. What do you see as the ILO's role in addressing this challenge?

The global economy does not need more personality; it needs better law. The sharp edges of the global economy ought to be softened. In an age of economic and cultural globalization, international labor law should confirm the dignity of each individual. With better safety

nets guaranteed through law, worker fears about economic change and trade liberalization would diminish.

Ideally, the ILO and the World Trade Organization would work together on a key task, namely reviewing and supporting government programs to provide assistance to workers who lose their jobs because of trade or other manifestations of globalization. Right now, the WTO gives no attention to this issue.

By virtue of its structure, the ILO is the only UN organization that provides voting rights to non-governmental organizations. So why do you seem to criticize the ILO's interface with civil society?

The ILO cannot rest on its laurels. It needs to become more open to input from NGOs. At present, the ILO accords full participation rights only to worker and employer organizations. Yet they reflect just a narrow band of the broad spectrum of civil society interests in the ILO's work. Providing more opportunities for consumer, human rights, development, and other groups to participate would improve the quality of the ILO's deliberations and strengthen the ILO's public support.

In addition, the ILO needs to provide more opportunities for other business groups besides employer organizations.

How do you see the international financial institutions fitting into this picture?

The activities of the ILO, the IMF and the World Bank should be made mutually supportive. The IMF and the World Bank should not recommend national policies that undermine fundamental labor rights. By the same token, the ILO should periodically examine its conventions to make sure that those standards do not inhibit long-term economic growth. My impression is that such self-examination does not occur.

If more countries adhered to ILO conventions regarding freedom of association and child labor, it might be much easier to provide debt relief and promote greater investment in those countries.

Are there any particular areas where the ILO should do more?

Yes, the ILO should tackle the problem of barriers to immigration. The ILO has

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several important conventions dealing with the treatment of migrant workers. But they don't address the openness of political borders.

Another issue that the ILO might focus on is corruption in public and private institutions, and the impact of corruption on employment generation and human development.

Trade and Labor Rights

What do you think about efforts to link trade to worker rights?

No exertion is needed to link trade and worker rights. These issues have interpenetrated each other for over a century. The real issue is what additional actions governments should take to promote both objectives.

I would like to see the ILO take more responsibility for explaining to the public how trade can promote the ILO's goal of "decent work." Conversely, the WTO should give attention to the problem of worker exploitation in export processing zones that has undermined public support for open trade.

But what should the WTO do specifically? Do you endorse the use of trade sanctions to promote compliance with core labor rights?

No. Today, only two international organizations regularly authorize trade sanctions to coerce compliance with international norms. The two are the U.N. Security Council and the World Trade Organization. In my view, both of these institutions overuse trade sanctions. I would not like to see the ILO or other international agencies copying these practices.

The use of trade controls for a specific instrumental purpose is a totally different matter. Banning the importation of a good that violates a copyright, or that is unhealthy to the consumer, or that promotes the killing of endangered species is an appropriate use of trade controls at the national level.

But shouldn't there be effective ground rules or incentives against the use of the worst forms of child labor?

Yes. The ILO established its first ground rule on child labor in 1919. Eighty

years later, the ILO approved the new convention against the worst forms of child labor. These rules are complemented by the ILO's program for the elimination of child labor.

How would you evaluate the U.S. government's initiative in 1999-2000 to establish a WTO Working Group on Trade and Labor?

It was well-intentioned but too divergent to the views of the rest of the world. It's important to get the ILO and WTO working together. But, in my view, too many U.S. officials got hung up on establishing a body within the WTO, as if a new box on an organization chart matters.

There's been a lot of discussion lately about corporate codes of conduct. Do you think they are helpful?

Absolutely. Business codes of conduct provide standards for socially minded corporations. They also provide a benchmark by which investors and consumers can evaluate corporate social performance.

Informational tools, like social labels, can also help individual economic actors consider the performance of the producer as well as the performance of the product.

Are there other initiatives that you think could help promote good social performance?

I think it's time to sponsor a project to rank countries by the quality of their labor and human resource policies. We need something along the lines of the Environmental Sustainability Index that was started by the World Economic Forum in 2000. There are already some signs that countries at the bottom get embarrassed and take steps to improve their environmental policies.

Obviously, the ILO couldn't do this, but a private group could.

Promoting Compliance

Critics charge that the ILO lacks teeth. How would you answer this?

Early in its history, the ILO made the conscious choice to rely on a so-called voluntary approach to compliance rather than test the coercive mechanisms available to it in the Treaty of Versailles. The

ILO's leadership realized that if the ILO was to succeed it would not do so by flashing its teeth, but rather by extending its hand in partnership.

The ILO actually helped to invent the idea of regular review of governmental compliance with international rules. Such reviews, especially when conducted in a transparent manner, are still the best way for any international organization to induce compliance.

Now I recognize that many people say that the ILO should become more like the WTO and have a dispute settlement system enforced with trade sanctions. I think that's exactly wrong. The WTO should become more like the ILO and refrain from using counterproductive trade sanctions.

Many labor and civil society groups are supporting the idea of adding a so-called social clause to the WTO, whereby the WTO would require governments to adhere to international labor standards the same way that it requires them to adhere to intellectual property rights. Why do you disagree with that approach?

Fifteen years ago, I would have endorsed it. But I've changed my mind after learning more about the politics of a social clause and about international organization theory. To the extent that we need international harmonization on labor, the world community needs to tackle this problem in the ILO.

It is a delusion to think that what can't be fixed in the ILO can be successfully fixed in the WTO.

But some critics say that the ILO approach is ineffective for the current challenges of globalization.

The ILO has been a highly effective agency in its 80-year history. Many of the critics who dump on the ILO have not taken the time to study it.

In June 2000, ILO delegates passed a resolution under Article 33 of the ILO Constitution aimed at compelling Myanmar to comply with Convention 29 on forced labor. As you know, that resolution is now in effect.

The ILO has termed the resolution "historic." What do you see as its significance?

It was an historic achievement, for which the employer and worker representatives deserve a great deal of credit. The significant step was that the ILO moved away from its self-contained orientation. The ILO called the attention of other inter-

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Corporate Responsibility in the Global Economy

ILO Expands Programs to Promote, Support Best Practices

In the last few years, codes and guidelines designed to guide multinational corporations in their efforts to be responsible corporate citizens have proliferated. Many of them include provisions dealing with labor relations.

There are broad initiatives, like the OECD Guidelines and the Global Sullivan Principles, and programs which offer to provide a seal of approval to companies that meet certain standards.

There are also hundreds of individual company codes of conduct written by corporations to suit their own operations and

philosophies.

But what constitutes a "good" initiative? Or the "right" one?

Although the answer lies in the eye of the beholder, the ILO has taken the lead among international organizations in helping multinational corporations define and implement best labor practices.

"It is becoming increasingly important for companies in the global marketplace to act in a socially responsible way," Göran Hultin, Executive Director, Employment Sector, told *ILO Focus*. "It is important, however, that doing so is seen not only as a responsibility but also as good for business.

"The challenge for international organizations is not merely to be an additional voice, but truly to add value based on their

institutional mandate, reach and experience," he added. "The ILO is in a unique position to do this. Our programs are designed to reconcile socially responsible business practices with improved enterprise productivity."

In addition to working with other United Nations agencies to promote the Global Compact, the ILO has developed a number of resources for multinational corporations. These include

- the *Tripartite Declaration on Multinational Enterprises* (MNEs),
- a new database on Business and Social Initiatives,
- and numerous research and technical assistance programs.

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national organizations and governments to Myanmar's violations of Convention 29.

As you know, Article 33 is open-ended. It gives the Governing Body the power to recommend to the International Labor Conference "such action as it may deem wise and expedient to ensure compliance" with the recommendations of an ILO Commission of Inquiry.

This is a pretty powerful enforcement tool. Do you see any possibility that it will be applied more broadly in the future?

Yes, but one hopes there won't be many occasions to do so. The ILO will always be a more effective educator than a police officer.

Improving the ILO's Performance

Why does your article advocate a de-emphasis on new ILO conventions?

Conventions are an appropriate instrument of cooperation. But because they are treaties, they should be reserved for those few issues on which legally enforceable guarantees are needed.

For many labor issues, the ILO Recommendation may be the better instrument because it can advise countries as to the

most effective practices on particular issues. In addition, recommendations can be changed more easily than treaties.

Why do you contend that the Home Work Convention (No. 177) should not have been a convention?

Abuses in home work are a serious problem and need attention. But I am skeptical that this problem warranted a treaty. So far only two governments have ratified it. Perhaps more ratifications are on the way. But I worry that a conven-

tion that draws only two signatories is counterproductive to the idea of an international labor code.

What steps do you think the ILO should take to strengthen its effectiveness?

It's done a lot over the past few years. The international policy community talks about the ILO much more positively today than it did five or ten years ago.

Here is one specific suggestion: The ILO should consider setting up an Eminent Persons Group to offer advice on addressing the challenges of globalization. Many other international organizations have used such high-level, independent groups to great effect. To my knowledge, the ILO has never reached out to a panel of outsiders. The "Wise men" commission of the general

agreement on tariffs and trade of the mid-1980s would be a good model for the ILO.

U.S. Policy Implications

You've laid out several challenges for the ILO, both in its own activities and in relationship to the multilateral system. What, if anything, should the U.S. do to help?

The United States should ratify the Convention on Freedom of Association (No. 87). The failure to do so punctures a hole in American credibility on the entire range of worker rights.

This point was driven home to me in 1983 when I was on the U.S. government team that negotiated labor rights conditions with several Caribbean Basin countries. Whenever I brought up ICFTU complaints regarding a denial of freedom of association, the government on the other side of the table retorted that the United States had not even ratified that ILO Convention.

It's time for the United States to join the 133 other parties to this fundamental treaty. ❖

Currently an attorney with Wilmer, Cutler & Pickering in Washington, DC, Steve Charnovitz began his career at the U.S. Department of Labor. Before entering private law practice, he was Director of the Global Environment & Trade Study at Yale University, and before that Policy Director of the U.S. Competitiveness Policy Council. He also served as a Legislative Assistant to the Speaker of the U.S. House of Representatives, specializing in trade and tax issues. Mr. Charnovitz asked ILO Focus to emphasize that the views expressed here are his own.



U.S. Ratifies Convention on Safety For Mine Workers

President Clinton on January 5 signed ILO Convention 176 on safety and health in mines. The U.S. Senate gave its consent to ratification on September 20, 2000.

The U.S. becomes the sixteenth country to ratify the convention.

Outgoing Secretary of Labor Alexis Herman said that "experience under U.S. mine safety law has shown that most mining deaths are preventable. Convention 176 reflects that experience and helps to strengthen labor standards worldwide."

Herman praised the people and groups who helped make ratification possible. "I would like to commend the Mine Safety and Health Administration's former Assistant Secretary, Davitt McAteer, the United Mine Workers and the National Mining Association for their work in negotiating Convention 176," she said. "I would also like to express thanks to Senator Byrd, Senator Helms, and other mining state senators who worked to make this happen."

Adopted by ILO members in 1995, the convention defines the steps governments must take to protect mine workers, including provisions for routine inspections and on-the-job training.

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Elaine Chao Takes Office As Secretary of Labor After Unanimous Confirmation (Page 3)

Governing Body's Agenda Includes Core Labor Rights and Budget Priorities

The ILO Governing Body will have a weighty agenda when it convenes on March 2.

The question of whether Myanmar [Burma] has made any progress in complying with Convention 29 on forced labor will likely grab the headlines, but there are a number of other items that merit notice.

The Director General's special representative is slated to report on labor rights in Colombia, and the Committee on Freedom of Association will take up the situation in Venezuela.

Governing Body delegates will also review the results of the 7th survey on the effectiveness of the *Tripartite Declaration on Multinational Enterprises and Social Policy* and the report of the Joint Maritime Commission.

Delegates will also discuss the proposed program and budget for 2002-2003, *(Continued on page 2)*

ILO Special Envoy Presses for Constitutional Reforms in Venezuela

An ILO special envoy was in Venezuela at the beginning of February for high-level meetings on trade union rights.

Juan Manuel Sepúlveda met with senior Venezuelan officials and other key figures to press the Venezuelan government to take steps to modify two articles of the Venezuelan constitution which are in conflict with ILO conventions on freedom of association and the right to collective bar-

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Myanmar Reacts To Mounting Pressure — Or Does It?

Two Months After ILO Action, Country Remains in the Spotlight

Since the Governing Body paved the way two months ago for full implementation of a resolution aimed at compelling Myanmar [Burma] to comply with Convention 29 on forced labor, there has been considerable speculation about how the country's government would react.

Press reports from the region have suggested three factors may have contributed to the decision of the ruling State Peace and Development Council to hold the first talks in five years with opposition leader Aung San Suu Kyi:

- the threat of further sanctions, precipitated by the ILO's action, which could further devastate a country already in dire economic straits;
- a desire for international legitimacy;
- the recent visit by UN Special Envoy

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