

The International Labour Organization in its Second Century

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I. Introduction

In April 1998, at the annual meeting of the American Society of International Law, a plenary panel held a discussion regarding non-state actors in international law. After one panelist alluded to the experience of the International Labour Organization (ILO), Jessica Tuchman Mathews, President of the Carnegie Endowment for International Peace, and also a panelist, responded by declaring that the ILO “has indeed been around forever, but it also has done nothing forever, so it is not terribly interesting”.¹ The few ILO hands in the hall were shocked. How could someone so knowledgeable about global affairs make such a preposterous statement?

Without a doubt, the ILO has achieved a great deal. Founded in 1919 as part of the Treaty of Versailles, the ILO was one of the earliest multilateral organizations and the first permanent organization to draft treaties on a regular basis. It was also the first intergovernmental organization to provide for full participation by non-governmental organizations (NGOs) which, alongside government representatives, have voting rights in the ILO (in what is known as “tripartism”, government, worker, and employer representatives exercise an equal role in the ILO). As of March 2000, the ILO had crafted 182 labor treaties (called conventions) and 190 non-binding Recommendations covering a broad range of subjects. The labor laws of every country have been influenced to some extent by the ILO.

But the ILO is not focused solely on the labor market. Throughout its history, the ILO has advocated higher labor standards not just to promote economic growth, but to pursue social justice and peace. Although peace has often been broken since 1919, the ILO’s efforts to protect vulnerable workers, to combat unemployment, and to promote freedom of association are generally recognized as having contributed to democratization and social stability. In 1969, the ILO won the Nobel Peace Prize.

The example of the ILO was an important inspiration to the human rights movement. At its first meeting in 1919, the ILO approved two conventions on child labor, thereby showing that more broadly conceived human rights treaties were possible. According to René Cassin, principal author of the Universal Declaration of Human Rights, the

¹ “The Challenge of Non-State Actors”, *ASIL Proceedings* 92 (1998), 20 et seq., (35).

Constitution of the ILO demonstrated that fundamental individual freedoms could be given a contractual foundation among states.² The ILO also showed the possibility of establishing procedures to investigate derogations from freedom of association by governments. As Judge Nicolas Valticos (of the European Court of Human Rights) has noted, ILO inquiries contributed to resolving high-profile disputes in places as diverse as Japan, Spain, Chile, and Poland.³

The importance of the ILO in giving a social dimension to the global economy has been recognized by leading jurists. For example, in a collection of tributes in honor of the ILO's 75th anniversary,⁴ Judge Mohammed Bedjaoui of the ICJ declared that "one can only rejoice at the immense amount of work that has been accomplished by the ILO since 1919, and ... realize the extent to which it has developed international legislation for the protection of workers"⁵ In the same volume, Judge Stephen M. Schwebel of the ICJ remarked that "it is clear that, if the ILO did not exist, it would have to be invented".⁶ He also called attention to political scientist Ernest B. Haas' landmark study of the ILO which concluded that the ILO had "a record of which any international agency can be intensely proud".⁷

In 1995, the Commission on Global Governance made an accurate prediction that with the increasing openness of global markets and greater labor mobility, the ILO "will only grow in relevance".⁸ Following six years without high-level attention to the ILO by his Administration, U.S. President Bill Clinton attended the ILO's annual conference in June 1999. Declaring that there is "no organization whose mission is more vital for today and tomorrow", Clinton commended

² N. Valticos, "International Labour Standards and Human Rights: Approaching the Year 2000", *International Labour Review* 137 (1998), 135 et seq.

³ Valticos, see above, 135 et seq., (144).

⁴ *Visions of the Future of Social Justice, Essays on the Occasion of the ILO's 75th Anniversary*, International Labour Office (ed.), 1994.

⁵ M. Bedjaoui, "For a World Charter of Human Labour and Social Justice", in: *Visions of the Future of Social Justice*, see above, 25 et seq., (26).

⁶ S. Schwebel, "The Prescience and Pertinence of the ILO", in: *Visions of the Future of Social Justice*, see note 4, 257 et seq.

⁷ Id., 258 quoting E.B. Haas, *Beyond the nation-State: Functionalism and International Organization*, 1964.

⁸ *Our Global Neighborhood*, Report of the Commission on Global Governance, 1995, 269.

the ILO for its efforts on child labor and promised to seek greater funding for it from the U.S. Congress.⁹ He also suggested that the IMF, the World Bank, and the World Trade Organization (WTO) “should work more closely with the ILO, and this Organization must be willing and able to assume more responsibility”. Other national leaders have given the ILO strong endorsements. Ruth Dreifuss, the President of the Swiss Confederation, characterized the ILO as the “world’s social conscience”, and called it one of the “three pillars of international economic culture” along with the WTO and the Bretton Woods institutions.¹⁰ President Ernesto Zedillo of Mexico emphasized to the World Economic Forum in January 2000 that “national governments as well as multilateral institutions such as the ILO should promote the rights of workers with fair and modern legislation, good agreements, and better enforcement”.

The purpose of this article is to explore the evolving concept of international labor law and the changing relationships between the ILO and other international organizations. The article, following the introduction, has four parts. Part II presents a short survey of recent developments regarding the ILO and international labor standards. Part III steps back and considers the rationale for international labor standards and the ILO. Lastly, Parts IV and V come full circle to respond to the criticism of the ILO voiced by Jessica Mathews and shared by many.¹¹ Part IV discusses internal ILO improvements. Part V addresses the ILO’s relationship with other international organizations.

⁹ “Remarks to the International Labour Organization Conference”, *Weekly Compilation of Presidential Documents* 35 (1999), 1117. See S. Greenhouse, “Clinton to Seek Big Increase in Funds to Fight Child Labor Abroad”, *New York Times* of 7 February 2000, A 4; B. Stokes, “Bring on the Carrots”, *National Journal* of 25 March 2000, 982.

¹⁰ “President Dreifuss: If You Want Peace, Seek Justice”, *World of Work*, July 1999, 8.

¹¹ For example, R. Wright, a Washington journalist, recently wrote: “The ILO has been in existence for 81 years and, lacking the force of sanction, has been unable to do much of anything”. R. Wright, “Continental Drift”, *The New Republic* of 17 January 2000, 18.

II. Survey of Recent Developments

There is no perfect point in time to begin a survey of recent developments in the ILO. In all organizations, new initiatives reflect, to some extent, those that have gone on before, and this is especially true for the ILO which was established to address perennial social problems.

1. Copenhagen Summit

The best place to start is the first top-level intergovernmental assembly on human and social development — the UN's World Summit for Social Development of 1995. The chairman of the Summit's preparatory committee was Juan Somavía, Chile's Permanent Representative to the United Nations, who was later to become the ILO Director-General. No treaties emerged from the Social Summit, but approval was given to a Copenhagen Declaration that sought to improve national and international social policy. The governments agreed to "place people at the centre of development and direct our economies to meet human needs more effectively".¹²

One key element in the Copenhagen Declaration was the commitment to fundamental labor standards. Although the terms "fundamental" or "core" were not used, the Declaration committed governments to "safeguard the basic rights and interests of workers and to this end, freely promote respect for relevant International Labour Organization conventions, including those on the prohibition of forced and child labor, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination".¹³ By pointing to this set of ILO conventions, the governments underlined their centrality as compared to scores of others that had been negotiated over the past decades. The idea that some labor standards might be core or foundational had long been under discussion, but the ILO had been unable to delineate such standards.¹⁴

¹² Copenhagen Declaration on Social Development, para. 26 lit.(a), reprinted in: United Nations (ed.), *The Copenhagen Declaration and Programme of Action 1995*, DPI/1707-9515294-August 1995, also available at www.webonly.com/socdev/wssd.htm

¹³ Id., Commitment 3 lit.(i).

¹⁴ A core standard is a very important one; it can also be foundational when it is a precondition for the attainment and enjoyment of other labor rights.

The Programme of Action approved by the Social Summit pushed further the new appreciation for core standards. Specifically, the Copenhagen Programme suggested that even when states are not parties to key ILO conventions, they should be "... taking into account the principles embodied in those conventions".¹⁵ This attention to non-parties was a significant achievement for those seeking to recast fundamental labor standards into a universal responsibility of all governments, not just the governments that had expressly consented through ratification of the relevant ILO conventions.

2. Promoting Fundamental Standards

A year before the Social Summit, the ILO Governing Body had established a Working Party on the Social Dimensions of the Liberalization of International Trade. The Governing Body took this action following discussion of then-ILO Director-General Michel Hansenne's annual report wherein he had declared that "an unbridled liberalization of trade can work against the social objectives of the ILO".¹⁶ Hansenne called on the ILO to become a party to the debate being held within the General Agreement on Tariffs and Trade (GATT) on the linkage between trade and labor standards. At the GATT Marrakesh Ministerial in April 1994 which founded the WTO, many trade ministers had addressed the connection between trade and labor, and had stated that improving labor standards was the responsibility of the ILO and should not be brought into the WTO.¹⁷

Within the ILO Working Party, an early consensus emerged on the need to consider the ILO's institutional capacity within this new economic context and in the wake of the Social Summit.¹⁸ Ongoing discus-

¹⁵ Programme of Action, para. 54 lit.(b), in: Copenhagen Declaration, see note 12.

¹⁶ ILO, *Defending Values, Promoting Change*, Report of the Director-General, 1994, 58.

¹⁷ For example, Thai minister Supachai Panitchpakdi stated that his government shared the view of many countries that workers' rights was not an issue over which the GATT had competence and that it would be more properly addressed in other organizations such as the ILO. GATT Doc. MTN.TNC/MIN(94)/ST/15 of 12 April 1994.

¹⁸ ILO Working Party on the Social Dimensions of the Liberalization of International Trade, Future of the Working Party, ILO Doc. GB.276/14/1,

sions in the Working Party and in other ILO committees led to the idea of drafting a new ILO declaration that would categorize certain ILO principles as fundamental and find a way to improve the ILO's oversight over national implementation.

These efforts reached fruition in June 1998 when the ILO Conference approved a new Declaration on Fundamental Principles and Rights at Work.¹⁹ The use of the term "Declaration" was meant to recall the ILO's "Declaration of Philadelphia" of 1944 which was later incorporated into the ILO's Constitution.²⁰ The new Declaration is not a treaty, and is not part of the ILO Constitution, but may in the future be viewed as part of the organic law of the ILO.

The Declaration lays down a set of obligations that are binding upon all member governments. Even when they have not ratified the listed Conventions, governments "have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, *the principles concerning the fundamental rights* which are the subject of those Conventions".²¹ These fundamental principles include: (1) freedom of association and the recognition of the right of collective bargaining, (2) elimination of all forms of forced or compulsory labor, (3) the effective abolition of child labor, and (4) the elimination of employment and occupation discrimination.

The Declaration's Annex provides for two types of follow-up, both of which are promotional rather than supervisory. For each of the fundamental principles, non-ratifying governments are required to submit reports every year on changes in their related law and practice. These reports will then be reviewed by the ILO Governing Body. The other follow-up is for the ILO Director-General to write a report as to provide a "dynamic global picture" each year on one of the four fundamental principles. This report is then to be discussed in both the annual

para. 5, 1999. In March 2000 the name was changed to the Working Party on the Social Dimensions of Globalization.

¹⁹ ILO Declaration on Fundamental Principles and Rights at Work, *ILM* 37 (1998), 1237 et seq.

²⁰ H. Kellerson, "The ILO Declaration of 1998 on Fundamental Principles and Rights: A Challenge for the Future", *International Labour Review* 137 (1998), 223 et seq. (noting that the only other ILO Declaration regarded apartheid).

²¹ ILO Declaration on Fundamental Principles and Rights at Work, see note 19, para. 2 (emphasis added).

ILO Conference and the Governing Body. The first global report, on freedom of association, will be considered at the June 2000 Conference.

The Declaration provides an answer to two critiques that have been leveled at the ILO. One is that the ILO failed to prioritize among the different rights and standards that had been legislated in previous conventions. The Declaration remedies this by focusing on four fundamental rights. The other critique was that the ILO made it too easy for countries to enjoy membership while incurring few substantive obligations regarding the treatment of workers. Although the ILO had, as early as 1951, set up a special procedure to review complaints about the violation of freedom of association by governments that had not ratified the relevant ILO conventions, this procedure was not applied to other fundamental rights.²² Of course, it is not typical in international law for a non-party of a convention to be expected to follow it. So this complaint about the ILO was somewhat misplaced. Nevertheless, to its credit, the ILO rose to the challenge and carefully crafted language in which governments acknowledged that ILO membership entails obligations regarding core labor principles. Francis Maupain, the former ILO Legal Adviser who was a key drafter of the Declaration, observed in a recent speech that this acknowledgement “represents in itself a very significant, if not revolutionary, step in international constitutional law.”²³

3. Forced Labor in Myanmar

Another important recent development is the greater willingness of the ILO to respond to gross violations of treaty commitments. In 1999, the ILO took the unprecedented step of condemning Myanmar for persistent violations of the Forced Labor Convention (No. 29) and for failure to respond to repeated recommendations by ILO supervisory bodies.²⁴ The ILO is punishing Myanmar by withdrawing invitations to meetings and opportunities to receive ILO technical assistance (other than

²² L. Swepston, “Human Rights Law and Freedom of Association: Development through ILO Supervision”, *International Labour Review* 137 (1998), 169 et seq., (175).

²³ F. Maupain, “Worker Rights and Multilateral Trade”, Vienna Symposium on the WTO after the Seattle Ministerial Conference, Vienna 8–9 December 1999.

²⁴ *ILM* 38 (1999), 1215 et seq.

technical assistance to eliminate forced labor).²⁵ In June 2000, the annual ILO Conference may impose further sanctions pursuant to the provision in the ILO Constitution that authorizes the Conference to consider action that it may deem wise and expedient to secure compliance.²⁶

4. Child Labor

The problem of child labor has always been on the ILO's agenda. But the ILO's efforts were denigrated by many economists who tended to consider child labor abuses as an inherent and irremediable feature of underdevelopment. The tide began to turn in 1994 when Jan Tinbergen, a Nobel prize winner in economics, circulated an open letter of Nobel winners calling for stronger action against child labor. Research and advocacy by the UNICEF has also been a very positive factor.

In 1992, the ILO strengthened its efforts by initiating the International Programme on the Elimination of Child Labor (IPEC). By 1999, IPEC had become an alliance between 19 donor countries, 67 participating countries, and the ILO.²⁷ Many of these projects are working well, and IPEC has attracted more funding from governments in each two-year budget cycle. IPEC has experimented with new approaches to eliminate child labor and seeks to replicate policy successes elsewhere. The successful programs include better education and training for children, alternative income opportunities for families, and more effective monitoring systems. One important lesson has been that countries need to have in place accountable institutions that invite broad public involvement.

In 1998, the ILO began consideration of a new convention on child labor. Although a growing number of governments were ratifying the leading ILO Convention on child labor No. 138 — the Convention concerning Minimum Age for Admission to Employment —, many governments and experts came to favor a new convention focusing on

²⁵ F. Williams, "ILO Bars Burma over Forced Labour", *Financial Times* of 18 June 1999, 4. At that time, the ILO was not engaged in any technical assistance projects in Myanmar.

²⁶ Constitution of the International Labour Organization [hereinafter ILO Constitution], article 33. See also International Labour Press Release ILO/00/9 of 29 March 2000.

²⁷ International Labour Office, *IPEC Action Against Child Labor*, 1999, 4.

the elimination of the worst forms of child labor. When the ILO Conference began its first discussion of this new Convention, it opened its doors to the activists in the Global March Against Child Labor that had traveled from five continents to the Palais des Nations.²⁸ The world's children, symbolically, were coming to the ILO to demand a treaty.

The new Convention No. 182 was approved unanimously by the ILO in June 1999. Among its key points, the Convention directs governments: (a) to prevent the engagement of children in the worst forms of child labor, (b) to provide assistance for removal of children from the worst forms of child labor and for their rehabilitation and social integration, and (c) to ensure access to free basic education, and wherever possible vocational training, to children removed from child labor.²⁹ The Convention defines the worst forms of child labor as encompassing slavery; debt bondage; forced labor; use, procuring or offering of a child for prostitution or pornography; or production and trafficking of drugs, and other work likely to harm the health, safety or morals of children.³⁰

In December 1999, the United States became the third country to ratify the new child labor convention. This is significant because the United States has a very weak ratification record on ILO conventions, a record that has undermined U.S. efforts to encourage other countries to ratify and adhere to ILO conventions. In ratifying the Convention, however, the U.S. government continued its quaint practice of joining ILO conventions only when they do not require any improvement in U.S. law. For example, the U.S. Fair Labor Standards Act does not cover work by children on family farms.³¹ In support of its contention that this exemption may be maintained consistent with the new ILO treaty, the U.S. Senate resolution of ratification contains an "Understanding" stating that Convention No. 182 does not apply to family farms and is not intended to lead to any change in the Fair Labor Stan-

²⁸ "Child Labour Takes Center Stage at 86th International Labour Conference, Global Marchers Received by ILO", ILO Press Release 98/24 of 2 June 1998.

²⁹ Convention concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor (No. 182) of 17 June 1999, article 7, in: *ILM* 38 (1999), 1207 et seq.; M.J. Dennis, "The ILO Convention on the Worst Forms of Child Labor", *AJIL* 93 (1999), 943-948.

³⁰ Convention concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor, article 3.

³¹ U.S. Senate Treaty Doc. 106-5, at 37-38, 55.

dards Act.³² The same reluctance to upgrade U.S. law is the reason that the United States has failed to ratify the ILO Convention on Freedom of Association and Protection of the Right to Organize (No. 87).³³

5. Labor Standards and the Trading System

Labor standards and trade have been linked throughout the 20th century.³⁴ This linkage was apparent even in the earliest multilateral treaties on labor and trade. The first multilateral labor treaty, adopted in 1906, prohibited the manufacture, sale, and importation of matches containing white phosphorus, a highly toxic chemical.³⁵ The first multilateral trade treaty, the International Convention for the Abolition of Import and Export Prohibitions and Restrictions, provided that its disciplines against import bans would not apply to prison-made goods.³⁶

The linkage between labor and trade was given new emphasis in 1994 when the United States and France raised this issue during the preparation for the Marrakesh GATT trade ministerial conference that year. The labor issue was hotly debated at Marrakesh. While most of the governments opposed putting labor standards on the WTO's agenda, several governments offered their support. For example, Austria stated that "we believe that the WTO should not hesitate to look into questions such as child exploitation, forced labor, or the denial to workers of free speech or free association, and their interrelationship

³² U.S. Congressional Record of 5 November 1999, at S1426.

³³ See C. Coxson, "The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting Labor Law Reforms Through the ILO as an Alternative to Imposing Coercive Trade Sanctions", *Dickinson Journal of International Law* 17 (1999), 469 et seq., (485–491).

³⁴ S. Charnovitz, "The Influence of International Labour Standards on the World Trading Regime," *International Labour Review* 126 (1987), 565 et seq.; G. Caire, "Labour Standards and International Trade", in: W. Sengenberger/D. Campbell (eds), *International Labour Standards and Economic Interdependence*, 1994, 297 et seq.

³⁵ Convention respecting the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches of 26 September 1906, article 1, reprinted in: 203 Consol. T.S. 12.

³⁶ International Convention for the Abolition of Import and Export Prohibitions and Restrictions of 8 November 1927, LNTS Vol. 96 No. 2238, Protocol, Section VI. The treaty did not enter into force.

with trade".³⁷ In the end, however, the Ministerial took no action on labor rights.

The issue arose again, with greater intensity, at the next global trade meeting, the Singapore Ministerial conference of December 1996. WTO members were polarized. A few governments proposed that the WTO take some organizational action on labor rights, but a much larger group insisted that the WTO avoid the issue entirely.³⁸ The WTO members compromised by agreeing to place in the WTO Singapore Declaration a very carefully worded paragraph on labor standards. It contained these key points:

"We renew our commitment to the observance of internationally recognized core labor standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them ... We reject the use of labor standards for protectionist purposes, and agree that the 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 Secretariats will continue their existing collaboration."³⁹

Although the opponents of recognizing labor rights as a trade issue intended this paragraph to kill that debate, it failed to do so. As seen below, the issue came back to haunt the WTO Seattle Ministerial three years later. In the intervening years, the WTO and ILO Secretariats did continue their "existing collaboration". The collaboration was virtually non-existent in 1996 and remained so through 1999.

The attention to labor issues in the 1994 and 1996 trade ministerials, together with the UN Social Summit, generated momentum within the ILO for the Declaration on Fundamental Principles and Rights at Work. At the time that WTO member governments took action in Singapore to "renew" their commitment to core labor standards, the ILO had not yet determined what the core standards are. The Singapore Declaration spurred these efforts. In addition, when the WTO pointed to the ILO as the competent body to set labor standards, this had the surprising effect of boosting the ILO's prestige and morale. Although it

³⁷ Statement of W. Schüssel, GATT Doc. MTN.TNC/MIN(94)/SI/93 of 14 April 1994.

³⁸ S. Charnovitz, "Trade, Employment and Labour Standards: The OECD Study and Recent Developments in the Trade and Labor Standards Debate", *Temp. Int'l & Comp. L. J.* (1997), 131 et seq., (154-158).

³⁹ Singapore Ministerial Declaration, in: *JLM* 36 (1997), 220 et seq., para. 4.

is difficult to imagine how the two-year-old WTO could enhance the standing of the 77-year old ILO, that is indeed what happened!

Because the WTO treaty of 1994 had catapulted the WTO to the top ranks of powerful international organizations, the Singapore Declaration's recitation of the obvious had the strangely anointing effect of increasing the ILO's self-confidence about its role.

Before turning to the WTO Seattle Ministerial, it will be useful to summarize the important developments in the ILO during the 1990s. One key initiative was the new ILO Declaration which denotes a basket of labor rights as "fundamental" and declares that all member governments have an obligation to promote these principles. Considerable impetus for this initiative came from within the ILO, but both the UN Copenhagen Summit and the WTO Singapore conference should be credited for stimulating the ILO to act. Indeed, the WTO has been willing to accept this credit. In an October 1998 speech, WTO Director-General Renato Ruggiero stated that the consensus the WTO had reached in Singapore "has opened the door for the International Labour Organization and its Declaration to make real progress on the issue of the social clause".⁴⁰ The other key ILO initiatives were IPEC and the new Convention to counter egregious child labor practices. These successes were facilitated by growing public concern about child labor abuses, particularly abuses linked to products destined for export.

6. WTO Seattle Ministerial

The WTO Ministerial Conference commencing in Seattle in November/December 1999 was supposed to launch a new trade round but that did not happen. The governments could not agree on the agenda of the new round. The negotiations in Seattle were complicated by police barricades, tear gas, and nightly curfews that resulted from the large citizen protests against the WTO.

One of the many areas of disagreement was what, if anything, the WTO and the new trade round should do to promote fundamental worker rights. At one end of the spectrum were the unions, which had been pushing for a "social clause" in trade rules for decades. This was

⁴⁰ R. Ruggiero, "A Global System for the Next Fifty Years", Speech at Chatham House, 30 October 1998, available at www.wto.org/wto/speeches

not just American and European unions.⁴¹ The International Confederation of Free Trade Unions (ICFTU) has been a longtime advocate of such action. In a publication prepared for Seattle, the ICFTU called on the WTO to start an examination of how to incorporate labor standards into WTO mechanisms and processes and to provide a full role for the ILO in those discussions.⁴²

On the other side were vocal developing countries. In mid-1998, Julius Nyerere, former President of Tanzania, gave a thoughtful speech explaining why the South opposed taking trade-related social standards in the WTO and preferred that this issue be kept in the ILO. "For compared with the WTO", Nyerere declared, "the ILO is democratic in structure, and does not seek to usurp the national sovereignty of any state".⁴³ A year later, following a meeting of G-15 countries, the Chairman's Summary stated that

"The delegations rejected any linkage between trade and core labour standards. They recalled that this issue had been finally settled in the Singapore Ministerial Declaration. They decided to resolutely oppose any renewed attempt to raise this issue in the WTO."⁴⁴

Looking for middle ground were many industrial country governments. In June 1999, the G-8 Cologne Summit stressed "the importance of effective cooperation between the WTO and the ILO on the social

⁴¹ J. Mazur, "Labor's New Internationalism", *Foreign Aff.* 79 (2000), 79 et seq. "Union Leaders from 145 Countries Seek Enforceable Labor Standards in Trade Pacts", *BNA Daily Report for Executives* of 11 April 2000, A-14.

⁴² International Confederation of Free Trade Unions, *Building Workers' Human Rights into the Global Trading System*, 1999, 75-76; "Labor Unions Urge WTO to Set Procedures for Handling Worker Rights in Trade Talks", *BNA Daily Report for Executives* of 30 November 1999, AA-5.

⁴³ J. Nyerere, Excerpts from "Are Universal Social Standards Possible?", *Bridges*, October-November 1999, 11, available at <http://www.ictsd.org>

⁴⁴ "G-15 Communiqué on WTO Ministerial", para. 21, *Inside U.S. Trade* of 10 September 1999, 9. The G-77 made a similar statement. See also "Moves to Link Trade, Labor Could Scuttle Seattle Round, Developing Countries Warn", *BNA Daily Report for Executives* of 9 November 1999, A-10. For a critical perspective, see C. McCrudden/A. Davies, "A Perspective on Trade and Labor Rights", *Journal of International Economic Law* 3 (2000), 43 et seq., (61) (asking how far should we accept that when a government opposes the linkage of trade and labor issues it is representing the interests of the country as a whole, or the interests of a small elite within the country).

dimensions of globalization and trade liberalization".⁴⁵ In October 1999, the European Commission called for the ILO and WTO to organize a joint ILO/WTO Standing Working Forum on trade, globalization, and labor issues.⁴⁶ The Commission further proposed a ministerial-level meeting in 2001 to examine this work. In November 1999, the U.S. government suggested a WTO Working Group on Trade and Labor.⁴⁷ Its initial assignment would be to produce a report for the next WTO Ministerial Conference, and in drafting the report the WTO Working Group was to have consulted the ILO, UNCTAD, and international financial institutions. Charlene Barshefsky, the U.S. Trade Representative, explained that her proposal was "fully consistent with the Singapore consensus".⁴⁸

It was unfortunate that the European Commission and the U.S. government were unable to agree upon a joint proposal. This lack of agreement may suggest that the individual proposals were being advanced solely for internal political purposes and did not represent a genuine effort to attain practical results. Moreover, neither the U.S. Administration nor the Commission were willing to devote much political capital toward building developing country support.⁴⁹

At Seattle, the campaign to secure WTO action suffered a setback when President Clinton revealed in an interview that he wanted to see "core labor standards ... be a part of every trade agreement," and that he favored "a system in which sanctions would come for violating any provision of a trade agreement," but that these results had to be attained "in steps".⁵⁰ Already fearful of the slippery slope that would follow

⁴⁵ G-8 Summit Communiqué, para. 26, available at www.state.gov/www/issues/economic/summit/99communiqué.html

⁴⁶ European Communities, "Proposal for a Joint ILO/WTO Standing Working Forum", WTO Doc. WT/GC/W383 of 5 November 1999. "Lamy on EU's Approach to Trade and Labor Issues", *Inside U.S. Trade* of 3 December 1999, Special-5.

⁴⁷ "U.S. Proposal on Labor Rights", *Inside U.S. Trade* of 1 November 1999, 1. A month earlier, Canada had proposed a WTO working group on international economic policy coherence. WTO Doc. WT/GC/W/360.

⁴⁸ U.S. Proposal on Labor Rights, see above, 2.

⁴⁹ See "U.S., EU Labor Proposals Get No Backing; Unions Press for More", *Inside U.S. Trade* of 12 November 1999, 10.

⁵⁰ Telephone Interview, *Weekly Compilation of Presidential Documents* 35 (1999), 2485; G. de Jonquieres "Clinton's Demands Threaten Turmoil at WTO Summit", *Financial Times* of 2 December 1999, 1; "Clinton Strongly Criticized by EU, Others on Use of Sanctions to Enforce Labor Rules",

from *any* discussion of labor within the WTO, the developing countries saw the President's candid statement as a vindication of their hard-line opposition. The developing countries did not want labor standards to come into the WTO immediately, or in steps.

Even as the Seattle Ministerial ended in disarray, notable support had coalesced around a proposal that governments establish a Forum on Trade, Globalization, Development, and Labor Issues to be comprised of relevant international organizations, such as the WTO, ILO, World Bank, and UNCTAD.⁵¹ The Forum was not intended to be in the WTO or to be established by the WTO. It was to be established by governments. Therefore leading supporters of the Forum such as Canada can continue to pursue it outside the WTO.

Although the WTO has not established a cooperative status for the ILO as it has for many other international organizations, the International Labor Office (i.e., the ILO Secretariat) was invited to send observers to Seattle. This invitation was taken up by Director-General Somavía who submitted a paper to the WTO Ministerial and maintained an active presence in Seattle.⁵²

Somavía's paper gave the WTO credit for promoting worker rights. It explained that the Copenhagen Social Summit identified seven basic ILO Conventions as "the social floor of the emerging global economy".⁵³ Then Somavía stated:

"The WTO was one of the first to grasp the significance of this, when trade ministers meeting in Singapore in 1996 renewed their governments' commitment to the observance of internationally recognized core labour standards, and affirmed their support for the ILO's work in promoting them."

Somavía's account demonstrates the increasing interpenetration of international organizations. In 1996, the WTO declared that it wished to

BNA Daily Report for Executives of 3 December 1999, AA-3. In a press conference held at Davos in January 2000, Gene Sperling, an assistant to President Clinton, claimed that Clinton had "never mentioned trade sanctions" in the interview. White House Press Release of 29 January 2000.

⁵¹ "U.S., EU Back Off from Modest Proposals for Labor Rights-Trade Link", *Inside U.S. Trade* of 10 December 1999, 1 et seq., (19).

⁵² See ILO, "ILO Calls for New Multilateral Initiative to Address Social Implications of Globalization" of 1 December 1999.

⁵³ "Decent Work for All in the Global Economy: An ILO Perspective", para. 13, Submission by Juan Somavía, available at www.ilo.org/public/english/bureau/dgo/speeches/somavia/1999/seattle.htm

keep out of the ILO's business. Three years later, however, the new head of the ILO praised the WTO for boosting the ILO's work.

7. Other Developments

In closing, Part II takes brief note of other important developments regarding the ILO. Perhaps the most significant was the selection of Somavía to be Director-General, effective in 1999. Somavía, the first person from a developing country to head the ILO, is superbly qualified for this task, both from his longtime leadership in the United Nations and his previous leadership positions in civil society.⁵⁴ In his first Director-General report, Somavía pointed to two central problems for the Organization. One was the lack of a clear set of priorities within the ILO. The other was that the end of the Cold War had weakened the sense of common purpose among worker and employer groups. In an effort to refocus the ILO, Somavía initiated an administrative reorganization to sharpen the ILO efforts toward achieving four strategic objectives.⁵⁵ They are: (1) implementation of the Declaration on Fundamental Principles, (2) employment promotion, (3) social protection, and (4) improving the social dialogue among labor, management and government.⁵⁶ This is a set of objectives that can be explained to the public.

Somavía's familiarity with the UN System will be of enormous help to the ILO in handling its complex relationship with the UN for example, the ILO has been concerned about an idea being considered in ongoing UN reform efforts — that is, to separate “normative” from “operational” responsibilities.⁵⁷ Normative work would remain a responsibility of specialized agencies (like the ILO) while operational activities (e.g., technical assistance) would become more centralized. Although ILO officials recognize the program and efficiency benefits of better coordinated UN technical assistance, they are concerned that such a change would undermine the unity of the ILO's mission.

⁵⁴ See generally J. Somavía, *People's Security. Globalizing Social Progress*, 1999.

⁵⁵ ILO, *Decent Work*. Report of the Director-General, 1999, 2–3.

⁵⁶ Somavía, see note 53. Somavía uses the theme “decent work” to summarize the ILO mission.

⁵⁷ “UN Reform: Implications for the ILO”, ILO Doc. GB.271/8/2, March 1998, paras 26–30.

Since the Social Summit, the UN System has devoted more attention to labor rights. In January 1999, UN Secretary-General Kofi Annan proposed a "Global Compact" with "world business" regarding human rights, labor standards, and environment.⁵⁸ In August 1999, a Sub-Commission of the UN Commission on Human Rights adopted a resolution regarding "Trade liberalization and its impact on human rights".⁵⁹ The resolution calls on "governments and international economic policy forums" to undertake comprehensive and systematic studies of the human rights and social impacts of economic liberalization programs, policies, and laws.⁶⁰

National legislators have also been increasing their international cooperation on multilateral social issues. In May 1999, the ILO signed a cooperation agreement with the Inter-Parliamentary Union (IPU).⁶¹ The IPU, founded in 1889, will work to secure ratification of ILO conventions in each country. In February 2000, the IPU cosponsored a meeting of parliamentarians in conjunction with the UNCTAD X conference in Bangkok. The parliamentarians declared that "mechanisms are needed to ensure that globalization and liberalization effectively lead to improvements in labour and environmental standards, the protection of children and, generally, respect for human rights."⁶²

Finally, it should be noted that labor issues are receiving a more prominent place in the policy agendas of the World Bank and the IMF. Until the 1990s, the World Bank and the IMF seemed to have little sympathy for labor rights or social protection. This changed following years of criticism of the adverse human impact of IMF lending conditions and following a better understanding of the role of democracy and social capital in promoting economic growth. (The appointment of James D. Wolfensohn as president of the Bank in 1995 was also a key factor). When considering labor issues, the Bank and IMF now invite input from the ILO. In 1994, the ILO was invited to be an observer to

⁵⁸ See www.unglobalcompact.org. The Global Compact has been endorsed by the International Chamber of Commerce and the ICI/TU, among others.

⁵⁹ "Trade liberalization and its impact on human rights", Resolution 1999/30, Sub-Commission on the Promotion and Protection of Human Rights of 26 August 1999.

⁶⁰ *Id.* para. 5.

⁶¹ Cooperation Agreement between the International Labor Organization and the Inter-Parliamentary Union of 27 May 1999.

⁶² Final Declaration of the Parliamentary Meeting on the Occasion of UNCTAD X of 11 February 2000, available at www.unctad-10.org

the Bank-Fund annual meetings. In 1999, the ILO was given observer status at the IMF's Interim Committee (now the International Monetary and Financial Committee). This year, the International Development Association (IDA) is requiring the Bank's country assistance strategies to consider core labor standards.⁶³

This concludes the survey of recent developments. Before discussing ways to improve the ILO, it will be useful to take a step back to reflect on the ILO's *raison d'être*.

III. Mission of the ILO

Part III examines the case for the ILO. The first section discusses the rationale for a government role in labor standards and for international cooperation. The second section positions the ILO in contemporary debates about globalization. This Part concludes that world society can benefit from a well-functioning ILO.

1. Rationale for International Labor Standards

In 1919, when the ILO was founded, the rationale for international labor standards was self-evident. Heavily influenced by the trade union movement and the socialist party politics of the time, the founding fathers believed that enlightened regulation of the workplace would protect workers and prevent social unrest. These ideas triumphed to a large extent and spread throughout the world.

Today, there is considerable skepticism about the efficacy of labor regulation. Moreover, trade unions are often smaller and less influential in major industrial countries than they were a generation ago. The different contemporary political and economic context provokes the question of whether international labor standards are needed. And, more basically, should government regulate the labor market at the national level?

The main reason that governments impose labor standards and provide subsidies is to correct market failure. Left unsupervised, a labor market will not achieve an optimal level of workplace safety, employ-

⁶³ "ILO Relations with Bretton Wood Institutions", ILO Doc. GB.276/ESP/5 of November 1999.

ment security, and skills training. This will leave workers and society worse off than they could be. Of course, not all workers need the intervention of government; many workers can bargain for themselves. But the typical worker might not have command of the necessary information or the ability to bear the transaction costs that would ensue in an unregulated environment.

Government-set labor standards are justified for one additional reason — namely, to defend the human dignity of each individual. This is the basis for policies to combat discrimination, prevent exploitation, and provide employment opportunities. In his 1991 Encyclical *Centesimus Annus*, Pope John Paul II explained that “The obligation to earn one’s bread by the sweat of one’s brow also presumes the right to do so. A society in which this right is systematically denied ... cannot be justified from an ethical point of view, nor can that society attain social peace”.⁶⁴ A century earlier, Pope Leo XIII in *Rerum Novarum* had extolled worker associations as a way for workers to engage in self-help that seeks to rebalance the asymmetries of power between the employer and the solitary individual.⁶⁵ This influential encyclical led governments to tolerate and nurture labor unions. Later it was recognized that the process of collective bargaining requires governments to establish a responsive labor law framework.

These concerns justify national labor laws, but why have international standards. Why should one country care about labor law beyond its border? Governments coordinate labor policy for the same reason they coordinate other policy areas, namely, to influence other governments and to achieve cooperation.

In general, there are three reasons why Country A might want to influence Country B. First, activities in Country B may cause *economic* harm in Country A — for example, currency instability, expropriation, or tariff discrimination. Second, activities in Country B may cause *physical* harm in Country A — for example, missiles, disease, or pollution. Third, activities in Country B may cause *mental* harm⁶⁶ in Coun-

⁶⁴ *Centesimus Annus*, para. 43, available at www.vatican.va/holy_father

⁶⁵ *Rerum Novarum*, available at www.osjspm.org/cst/rn.htm - The Pope preferred Christian associations. He posed the timeless question: “[W]hat would it profit a worker to secure through an association an abundance of goods, if his soul through lack of its proper food should run the risk of perishing?”. *Id.*, para. 77.

⁶⁶ See C.C. Hyde, “The Influence of Mental Reactions on the Development of International Law”, *AJIL* 24 (1930), 357–359.

try A — for example, distress from the practice of slavery, tyranny, or genocide.

The ILO was motivated by all three rationales for intergovernmental coordination. These rationales continue to undergird the ILO today.

The *economic rationale* was stated clearly in the initial ILO Constitution (i.e., the Treaty of Versailles) which declared that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”.⁶⁷ Experience suggests that the “obstacle” is not so formidable because good labor standards engender net economic benefits. Occasionally the benefits have vastly exceeded initial expectations. For example in 1921, the ILO enacted an occupational health convention to restrict the use of lead paint.⁶⁸ Years later, lead paint was recognized as an important public health problem. Countries that had ratified and implemented the ILO standard faced far lower remediation costs.

The *physical security rationale* for the ILO is embodied in the statement in the ILO Constitution that “universal peace ... can be established only if it is based on social justice.”⁶⁹ Today the ILO is not perceived as a primary peacemaking agency. But labor policies do sometimes have physical transborder implications. For example, high unemployment and government oppression can lead to immigration pressures.

The *mental harm rationale* for the ILO was that international law could be used to promote universal values. For example, the drafters of the ILO Constitution stated their recognition that “the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance ...” and highlighted the need for “the abolition of child labour” and the “continuation of their education ...”⁷⁰ Today, key ILO standards are part of a large body of international human rights law.

Although the case for international cooperation on labor is solid, it should be kept in perspective. Cooperation is dictated on the environment because ecosystems ignore national borders. Cooperation is dic-

⁶⁷ Treaty of Versailles, Part XIII Preamble.

⁶⁸ Convention concerning the Use of White Lead in Painting (No. 13) of 19 November 1921, British and Foreign State Papers, 135 et seq., (397).

⁶⁹ Treaty of Versailles, Part XIII Preamble.

⁷⁰ Id. article 427.

tated on banking because financial markets cross national borders. Yet the same is not true for labor markets which often stay within borders.⁷¹ Although multinational enterprises engage in global production, a global labor market has not yet arisen. Thus, many labor issues will not need to be decided internationally or to be inscribed in international labor law.

2. Contemporary Challenges

The Treaty of Versailles established the postwar labor agenda. This included: prevention of unemployment; protection of the worker against sickness, disease, and injury; recognition of the principle of freedom of association; the organization of vocational and technical education, abolition of child labor; and the principle that men and women should receive equal remuneration for work of equal value.⁷² These goals do not look very different from a progressive agenda today.

A cynic could view this persistent agenda as demonstrating that the ILO has done nothing forever, but that is far from the truth. The ILO has responded constructively to these goals during its eight decades of operation. But employment, labor, and social problems are not permanently solvable in the same way that, say, smallpox has been stamped out by the World Health Organization. Rapid technological change, international competition, population growth, political upheavals, and many other factors will make labor problems a tough challenge for each generation.

During the past few years, a growing consensus has emerged that major international institutions — such as the IMF, the World Bank, and the WTO — are not adequately advancing economic growth in low-income countries and are not keeping up with the social problems engendered by economic globalization. The collapse of negotiations for a Multilateral Agreement on Investment and the failed launch of the new trade round in Seattle are the most visible result of the tensions between North and South. And more such failures may lie ahead.

⁷¹ There are exceptions such as transborder migrant workers, the preservation of social security rights accrued in more than one country, and labor regulation for seafarers. The ILO has conventions on these issues. Recently, the ILO and IMO have established a joint working group. "Seafarers call 'Mayday'", *World of Work*, December 1999, 22–23.

⁷² Treaty of Versailles, Part XIII Preamble and article 427.

The new shibboleth calls for “putting a human face on the global economy”, but this popular metaphor is inapt. Facelessness is not the problem. Indeed, the impersonality of the capitalist economy helps make it so successful (and more so in the internet economy). A faceless economy is likely to be more meritocratic than an economy associated with family, village, and traditional hierarchies. The human face, alone, is no guarantee that power will be exercised benignly.

The global economy does not need more personality; it needs better law. The sharp edges of the global economy need to be softened. Yet this is a task not for the compassionate face, but rather for elected decisionmakers working with business and civil society. In an age of economic and cultural globalization, international law must further define and safeguard individual rights. This was the task given to the ILO when it was established in 1919 and is a task no less urgent today.

The increased integration and interdependence of the world economy has reinforced the ILO’s importance. The ILO can be part of the solution to the current backlash against economic globalization in both rich and poor countries. Even though international trade delivers enormous benefits, open markets and WTO rules are being challenged as inimical to individuals, families, communities, and popular self-government. Although there may be a kernel of validity to these concerns, the solution is not a retreat to nationalism and autarchy. Rather, governments and civil society must strengthen the social dimension of international economic law.

IV. Improving the ILO’s Performance

There is a great deal of public concern about the violation of fundamental worker rights. Governments that engage in forced labor or deny freedom of association draw great scorn. Based on the belief that the ILO lacks the “teeth” to stop these violations, many people would like to empower the WTO to enforce core labor rights.⁷³ Columnist Wil-

⁷³ For a discussion of proposals, see R. Bhala, “Clarifying the Trade-Labor Link”, *Colum. J. Transnat’l L.* 37 (1998), 11 et seq.; C. O’Neal Taylor, “Linkage and Rule-Making: Observations on Trade and Investment and Trade and Labor”, *University of Pennsylvania Journal of International Economic Law* 19 (1998), 639 et seq.; R. Howse, “The World Trade Organization and the Protection of Workers’ Rights”, *Journal of Small & Emerging Business Law* 3 (1999), 131 et seq.

liam Safire wrote recently that “International trade that does not use its leverage to encourage personal freedom does not deserve the name of *free trade*”.⁷⁴

The use of trade sanctions to promote freedom may not be an effective course. For one thing, it is self-contradictory to deny the individual’s freedom to trade in order to promote other freedoms. Moreover, such sanctions will reduce the amount of trade, thus making everyone worse off.⁷⁵

Asking the WTO to restrict trade in products made by child labor is even more problematic.⁷⁶ These abuses are heinous, but are carried out by employers, not by governments. Empathetic citizens in rich countries have a much more direct way to curtail child labor than to enlist the WTO: they can send money to children in poor countries (or to NGOs helping the children).

Certainly, any attempt to assign labor standards to the WTO would be resisted by developing countries. If it was not clear beforehand, Seattle showed the futility of Clinton’s vision of achieving WTO enforcement of labor standards “in steps”. Instead, governments and stakeholders need to work together to improve the ILO.

Part IV of this article describes the operation of the ILO and then offers some specific suggestions for making the ILO more effective. With a dynamic leader (Somavía) at the helm — who may be the most activist Director-General since Albert Thomas — the ILO is well-positioned to capitalize on the heightened public concern for worker rights in order to push ahead with needed institutional improvements.

1. Structure of the ILO

The ILO was the first international organization that looked beyond states as monads.⁷⁷ States are the members of the ILO, but unlike typi-

⁷⁴ W. Safire, “The Clinton Round”, *New York Times* of 6 December 1999, A31.

⁷⁵ D. Brown/A. Deardorff/R. Stern, “Trade and Labor Standards”, *Open Economies Review* 9 (1998), 171–180.

⁷⁶ For example, see CUTS Centre for International Trade, Economics & Environment, *Eradicating Child-Labour while Saving the Child*, 1999.

⁷⁷ See W.M. Reisman, “The United States and International Institutions”, *Survival* 41 (1999–2000), 62 et seq., (75).

cal international organizations, states are not represented merely by their executive power. Each Member State sends four delegates to the annual ILO General Conference — two from government, one employer, and one worker. Each has one vote. The non-government delegates are chosen in agreement with employer and worker organizations which are “the most representative” in their respective countries.⁷⁸ The ILO also has a Governing Body comprised of 28 governments, 14 persons chosen by the worker delegates, and 14 persons chosen by the employer delegates. As a rule, the Governing Body meets three times a year.

ILO conventions are treaties. Enacting an ILO convention requires a two-thirds vote of the Conference delegates. After a convention is approved, every member government is obligated to bring it before the competent authorities in its country (e.g., a national parliament). But authorities are under no duty to ratify the convention. The use of the treaty form was an effort to establish binding legal obligations and to lock in commitments by ratifying governments.

The drafters of the ILO were not under any illusion that governments would always honor their legal commitments. In order to enforce conventions, a complaint procedure is available to the ILO Governing Body, a worker or employer delegate, or to co-parties of a particular convention. The Governing Body may appoint a Commission of Inquiry to consider the complaint and the Commission then reports its findings and recommendations. If a government disagrees with the recommendation of the Commission, it may refer the matter to the ICJ for a final decision. In the event that a government fails to carry out the recommendations of the Commission or ICJ, “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance forthwith.”⁷⁹ As of the end of 1999, no dispute had reached a stage where the ILO Conference took such action.

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. The Treaty of Versailles provided the possibility for recommending “measures of an economic character”⁸⁰ against scofflaw governments, but this road was never taken. Threatening action against renegade states ran contrary to the philosophy that

⁷⁸ ILO Constitution, article 3 para. 5.

⁷⁹ *Id.*, article 33.

⁸⁰ Treaty of Versailles, article 419.

countries should ratify and respect conventions because, in doing so, they would improve their own welfare. The key to securing acceptance of ILO standards by states was thought to be through “the confidence of the peoples [and] the support of public opinion ...”⁸¹

If the ILO was to succeed, it would do so not by flashing its teeth, but by extending its hand in partnership. Technical assistance was given to countries to implement ILO conventions and to draft labor codes. The ILO also sought to use transparency to establish compliance incentives. Governments that failed to ratify a convention were required to report at regular intervals on the state of their law and practice, and on the difficulties that were preventing or delaying ratification.

2. Rethinking ILO Instruments

The ILO Constitution provides for two instruments — conventions and recommendations — but offers little guidance in selecting one over the other.⁸² In its early practice, the ILO frequently employed recommendations alone, separate from conventions. But in post-World War II practice, the tendency has been to double-up conventions with recommendations.⁸³ The growing number of conventions and the lack of criteria as to when an issue merits a convention, have led sophisticated observers to complain about an “overproduction” of ILO conventions and a loss of organizational focus.⁸⁴ A Constitutional amendment approved in 1997 (and now awaiting ratification) would enable the ILO to abrogate outdated conventions.⁸⁵

Because conventions are international law, they should be reserved for those few issues on which legally enforceable guarantees are

⁸¹ A. Thomas, *International Social Policy*, 1948, 16.

⁸² See ILO Constitution, article 19 para. 1.

⁸³ ILO, *International Labor Conventions and Recommendations*, 1996, Vol. 3, iii-xl.

⁸⁴ This critique of the ILO goes back many years. E. Cordova, “Some Reflections on the Overproduction of International Labour Standards”, *Comparative Labor Law* 14 (1993), 138 et seq.

⁸⁵ “Informational note on the progress of work and decisions taken concerning the revision of standards”, ILO Doc. GB.276/LILS/WP/PRS/1, of November 1999.

needed.⁸⁶ Recent conventions on home work (passed in 1996) and private employment agencies (passed in 1997) do not qualify as such issues. Indeed, many of the ILO's 182 conventions should not have been enacted in treaty form.

When conventions are used, there is authorization in the ILO Constitution to provide flexibility for developing countries.⁸⁷ The Treaty of Versailles further stated that the parties "recognise that differences in climate, habits, and customs, of economic opportunity and industrial traditions, make strict uniformity in the conditions of labour difficult of immediate attainment".⁸⁸ This recognition was demonstrated from the beginning. One of the ILO conventions on child labor, enacted in 1919, provided more flexible rules for Japan and India than for other countries.⁸⁹ Indeed, it can be said that the idea of differentiated responsibility for developing countries emerged from ILO practice.

"Strict uniformity" in conditions of labor is not only difficult to attain, it is not a desirable long-term goal. ILO Conventions generally do not seek such uniformity however. They set minimum standards.⁹⁰ But if minimum standards are set too high for some countries, then following them could worsen the economy in those countries rather than better it.

There has been some tendency in the ILO to believe that the more regulations imposed on employer the better. The problem of excessive regulation arose early in ILO history when international women's NGOs complained about the ILO convention restricting night work by women.⁹¹ But the ILO has never systematically looked at whether national labor regulations or payroll taxes might be so excessive as to undermine the goal of preventing unemployment. The ILO should do so.

⁸⁶ The same point applies outside the ILO. The environment regime also has an overproduction of treaties.

⁸⁷ ILO Constitution, article 19 para. 3.

⁸⁸ Treaty of Versailles, article 427.

⁸⁹ Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (No. 5) of 28 November 1919, arts. 5-6, British and Foreign State Papers 134 et seq., (514).

⁹⁰ Article 19 para. 8 of the ILO Constitution provides that the adoption of a convention or recommendation will not be deemed to affect any law, award, custom or agreement which assures *more favorable conditions to workers* than those provided for in the convention or recommendation.

⁹¹ L. Rupp, *Worlds of Women*, 1997, 144-145.

A de-emphasis on writing new conventions could enable the ILO to devote more time to communicating information to member countries on how to conduct more effective labor and employment programs. This could be done via the "Recommendation" or something more updateable. The ILO has provided technical assistance for decades, but is not generally perceived as a "center of excellence" where anyone can learn about the best practices on key labor issues. Even if the Home Work Convention and Recommendation embodied best practices in 1996, they could soon be out of date in light of the Internet.

3. Using Market-Oriented Tools

The ILO should do more to promote market-oriented tools such as product labels and corporate codes of conduct.⁹² In truly global markets, the decisions of consumers, banks, insurers, tourists, and the media will be more influential than review processes in Geneva. Informational tools like social labels (e.g., Rugmark-see for further information under, www.rugmark.org/about/index.html) can enable individual economic actors to consider performance of the producer as well as the performance of the product. Business codes of conduct provide standards for socially minded corporations and serve as a benchmark by which investors and consumers can evaluate corporate social performance.

There is resistance to such market-oriented tools by employers and developing country governments. If poorly designed, social labels may lead to unjustified discrimination against certain products. Furthermore, such disparate systems can diverge from ILO conventions, and thus send conflicting signals to the marketplace.⁹³

Some observers have suggested that the ILO update its Declaration of Principles concerning Multinational Enterprises, approved in 1977. This would be a very difficult exercise and is probably not needed given

⁹² K. van Wezel Stone, "To the Yukon and Beyond: Local Laborers in a Global Market", *Journal of Small & Emerging Business Law* 3 (1999), 93 et seq.; Friends World Committee for Consultation, *Sharing Responsibilities for Labour Standards and Trade Liberalisation*, 1997.

⁹³ See K. Hagen, "Issues Involving Codes of Conduct from an ILO Perspective", *ASIL Proceedings* 92 (1998), 267 et seq., (274); "Further examination of questions concerning private initiatives, including codes of conduct", ILO Doc. GB.274/WP/SDL/1 of March 1999.

the plethora of codes of conduct written by private organizations. But the ILO could provide funding for an internet-based clearinghouse for such codes. It is interesting to note that the Organization for Economic Cooperation and Development (OECD) is now revising its Guidelines for Multinational Enterprises. The new section on Employment and Industrial Relations will include provisions regarding child labor, forced labor, and occupational health and safety. These issues are not covered in the current OECD Guidelines promulgated in 1976.⁹⁴

One final suggestion: The time is right to sponsor an initiative to rank countries by the quality of their labor and human resource policies. The ILO could not do this, for obvious reasons, but a private group could. In early 2000, the World Economic Forum started an Environmental Sustainability Index modeled after its longtime national competitiveness rankings.⁹⁵ There are already indications that some of the countries at the bottom have suffered embarrassment and may take steps to improve their environmental policies. The same favorable (“race to the top”) dynamic could be attempted in the labor field.

4. Improving Enforcement

Rule-setting international organizations need a strategy for enforcing their rules. Enforcement does not require troops or economic sanctions however. Public opinion can be a potent source of enforcement. This point was well made in an Open Letter from “Third World Intellectuals and NGOs Against Linkage” promulgated in September 1999 in the run-up to the WTO Seattle Ministerial. The Open Letter, spearheaded by Columbia University economist Jagdish Bhagwati, states that: “Today, if we are serious, we can open the ILO’s mouth and give it a new set of teeth. ... Do not underestimate the value of information and exposure as long as it is impartial between nations”.⁹⁶

⁹⁴ “OECD Revising Guidelines for Multinationals; Employment, Labor Standards Prominent”, *BNA Daily Report for Executives*, of 2 February 2000, C-1.

⁹⁵ See S. Charnovitz, “Environmental Sustainability Index Likely to Become Important Management Tool”, *International Environment Reporter* 23 (2000), 174–176.

⁹⁶ “Challenging Linkages of Trade to Non-Trade Issues”, *Economiquity*, November 1999, 2–4.

As designed in 1919 and modified in 1946, the ILO has a very sophisticated enforcement system providing for investigation and recommendation by an independent Commission of Inquiry, possible recourse to the ICJ, and possible action by the ILO Governing Body and Conference. In a recent study of these procedures, Francis Maupain pointed out that current ILO rules provide "a remarkable diversity and richness of institutional possibilities" for promoting compliance, some of which have "not been fully explored".⁹⁷ It is time to do so.

The first opportunity will occur in 2000 when the ILO takes up the case of Myanmar. Several options exist. The ILO could ask member governments to refer the matter to the UN Security Council. The ILO could officially notify other UN specialized agencies and ask them to consider ways of addressing this problem. Another option would be for the ILO to ask its member governments to bar Myanmar imports made using forced labor. Any of these actions would require a recommendation by the Governing Body and action by the Conference, both by majority vote.

Although the ILO has never called for economic measures against scofflaw governments, it did consider the use of a trade measure during the drafting of the Abolition of Forced Labor Convention in 1956-1957. The U.S. government proposed an amendment to prohibit trade in goods produced by forced labor.⁹⁸ (This was not a sanction for non-compliance, but rather a measure to implement the Convention). In the end, this amendment was not accepted.

Another institutional possibility is placing greater emphasis on enforcement of ILO conventions through national courts. This approach would not apply to Myanmar, of course, but would be feasible for countries that have an independent judiciary and allow individuals to enforce rights under a treaty. This strategy would require writing ILO conventions with clear rights for individuals. In many countries, there would need to be treaty implementing legislation to give individuals a private right of action against their own government. For various reasons, there was little travel down this road during the 20th century.⁹⁹

⁹⁷ F. Maupain, "The Settlement of Disputes within the International Labour Organization", *Journal of International Economic Law* 2 (1999), 273 et seq., (285, 293).

⁹⁸ Charnovitz, note 38, 162.

⁹⁹ See generally V. Leary, *International Labour Conventions and National Law*, 1982.

Yet a greater role for national courts would strengthen the ILO's supervisory system.

A last suggestion for promoting better implementation would be for the ILO to act more like the IMF and the World Bank in conditioning assistance on explicit policy commitments by recipient governments. The new Declaration directs the ILO to offer governments technical cooperation and advisory services to promote the ratification and implementation of fundamental Conventions.¹⁰⁰ The feasibility of this approach depends on providing greater funding to the ILO to utilize for providing technical assistance.

5. Increasing Civil Society Participation

A final recommendation is that the ILO should become more open to NGO input.¹⁰¹ This may sound strange given that the ILO is the only international organization to give NGOs and governments equal voting rights. Yet the ILO accords full participation rights only to selected worker and employer organizations, which reflect only a narrow swath of civil society. Groups that promote consumers, business, human rights, environmental protection, development, education, and women's issues, have only limited opportunities to contribute. Providing more participatory opportunities for them would improve the quality of the ILO's work and afford the ILO greater public support.

V. ILO's Role Among International Institutions

Part V addresses the ILO's relationship with other international agencies. The first section provides a brief historical review. The second section looks at the ILO's efforts to examine international economic policies. The third section makes recommendations regarding coordination. The final section proposes new labor policy initiatives.

¹⁰⁰ ILO Declaration on Fundamental Principles and Rights at Work, see note 19, para. 3 lit.(a).

¹⁰¹ See P. Alston, "Post-post-modernism and International Labour Standards: The Quest for a New Complexity", Sengenberger, see note 34, 95 et seq., (102); see ILO, see note 55, 76-77.

1. The ILO and Other International Agencies

Under the visionary leadership of Albert Thomas, the first ILO Director (1920–1932), the ILO collaborated with other international agencies in order to achieve its mission. In its first decade, the ILO sent a delegation to the Genoa Economic Conference, the war reparations discussions at Spa (Belgium), and to the World Economic Conference in Geneva. The ILO also participated in various organs of the League of Nations.¹⁰²

Following the end of World War II, the ILO attended the conference that adopted the GATT and the Charter of the International Trade Organization (ITO). At this conference, the issue of fair labor standards was debated, and an article committing each government to take appropriate and feasible action to eliminate “unfair labor conditions” within its territory was included in the Charter.¹⁰³ This article directed the ITO to cooperate with the ILO on any complaints regarding labor standards. Because of this provision and other ITO provisions relating to labor, the ILO and ITO Interim Commission prepared a formal cooperation Agreement in 1948.¹⁰⁴ The Agreement provided that representatives of each organization would be invited to attend the meetings of the other organization. The ITO Charter, however, never came into force and the GATT made no effort to revive the cooperative agreement.

The ILO in recent decades has not exerted significant influence on other international agencies. World Bank and IMF policies regarding employment and labor have improved, but only a little credit is due to the International Labor Office, which underperforms both in its analytical capacity and in its implementation of technical assistance. The ILO has had even less impact on the WTO which seems unwilling to enter into any cooperative arrangement with the ILO — despite the fact that the ancestral International Trade Organization of 1948 was eager to do so.

¹⁰² E.J. Phelan, *Yes and Albert Thomas*, 1949, 53–54.

¹⁰³ Charter of the International Trade Organization, article 7.1.

¹⁰⁴ S. Charnovitz, “Strengthening the International Employment Regime”, *Intereconomics* 30 (1995), 221 et seq., (225); “Relations of the International Trade Organization with Other Inter-Governmental Organizations”, ICITO/EC.2/2Add.5 of 13 July 1948, at 2. ITO Chapter II (arts 2 to 7) concerned Employment and Economic Activity.

2. Review of International Economic Policies

In their planning for the United Nations, governments recognized the need for better coordination of international economic and social policies. The separate committees within the League of Nations to address economic and social problems were replaced by the ECOSOC. In that same vein, the ILO took action in the Declaration of Philadelphia (1944) to link economic and the social concerns. Among its provisions, the Declaration stated that

“... (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;

... (c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;

... (d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;...”¹⁰⁵

Later in the Declaration, the ILO Conference declared:

“Confident that the fuller and broader utilisation of the world’s productive resources ... can be secured by effective international and national action ... the Conference pledges the full cooperation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task...”¹⁰⁶

The ILO has not been very successful in fulfilling this mandate to examine and consider international economic and financial policies in light of fundamental ILO objectives. Some action along these lines was taken at the tripartite World Employment Conference of 1976. For example, the Conference recommended better financing for commodity exports from developing countries, greater market access for manufactured goods from developing countries, and reduction of developing country debt. But the Employers’ group and a number of industrial

¹⁰⁵ ILO Constitution, Annex, Section II.

¹⁰⁶ *Id.* Section IV.

country governments objected on the grounds that these recommendations were “outside the proper competence of the ILO”.¹⁰⁷ When split down the middle, the ILO cannot go forward.

In 1994, the trade issue resurfaced in the ILO with the establishment of the Working Party on the Social Dimensions of the Liberalization of International Trade. The Working Party collected information and served as a forum where “trade and labor” linkage issues could be discussed. But the Working Party did not (nor was it intended to) equip the ILO to examine and consider all international economic and financial policies in the light of its fundamental constitutional objectives. In its most recent report, the Working Party stated that it seems more necessary than ever before to have some kind of institutional interface to enable the ILO to make a tripartite contribution to other international organizations—for example, to the new International Development Architecture proposed by the World Bank.¹⁰⁸

The ILO should try again to gain the consensus of workers, employers, and governments to strengthen the ILO’s role in examining global economic and financial policies in light of fundamental labor standards. Peter Prove of the Lutheran World Federation has suggested that “the process of trade policy formulation should distinguish from the outset policies which will protect and foster dignified employment and those which may undermine existing achievements and the progressive realization of the right to work”.¹⁰⁹ The WTO has no plans for this type of a study. But such work could be carried out by the ILO in order to inform the planning for future trade negotiations.

3. Improving International Agency Coordination

Although agency specialization brings significant benefits, coordination among international agencies is needed. As economist Jan Tinbergen explained, international organs “ought not to act independently and

¹⁰⁷ “Declaration of Principles and Programme of Action” reprinted in: ILO, *Employment, Growth and Basic Needs, A One-World Problem*, 1976, 179 et seq., (187–188).

¹⁰⁸ Working Party on the Social Dimensions of the Liberalization of International Trade, sec note 18, para. 15.

¹⁰⁹ P. Prove, “Human Rights at the World Trade Organization?”, in: M. Mehra (ed.), *Human Rights and Economic Globalisation: Directions for the WTO*, 1999, 23 et seq., (34).

therefore at a given moment perhaps in conflict with each other; their decisions must not be incompatible".¹¹⁰ Most, if not all, international agencies have the authority to cooperate with other agencies. Indeed Wilfred Jenks (a legal scholar and former ILO Director-General) once contended that there was a "constitutional responsibility" of the concerned international organizations to cooperate in promoting full employment.¹¹¹

The activities of the ILO, WTO, IMF, and World Bank should be mutually supportive. If all countries adhered to ILO conventions regarding freedom of association and child labor, one persistent obstacle to public acceptance of trade liberalization would be removed. If industrial countries opened their markets to products from developing countries, economic growth and improvement in working conditions within developing countries would proceed more rapidly. Just as policy instruments are expected to be complementary at the national level, so too they should be at the international level. The IMF and the World Bank should not recommend national policies that undermine fundamental labor rights. By the same token, the ILO should not recommend policies that hinder long-term economic growth.

Some policymakers, frustrated by lack of coordination among specialized international organizations, have suggested more G-"x" meetings where heads of governments or ministers can confer. Like-minded governments should certainly meet when needed. But this conference method is inadequate to address North-South challenges and is inferior to using international institutions to help governments formulate their policies. Although the G-7 meetings on finance have been productive, it is unclear how this method could be fruitfully applied to employment, development, environment, and social problems.¹¹²

4. New Challenges for the ILO

If the ILO seeks greater engagement with other international agencies, it might consider two issues on which it has done little work in the past — immigration and worker adjustment to economic dislocation.

¹¹⁰ J. Tinbergen, *International Economic Co-operation*, 1945, 169.

¹¹¹ C. Wilfred Jenks, *The Common Law of Mankind*, 1958, 229.

¹¹² To give one example, in June 1999, the G-7 promulgated a "Charter on Lifelong Learning". It is basically a string of homilies.

The need for international action to promote freer immigration has often been noted. For example in 1927, Albert Thomas discussed the possibility of a Supreme Council on Migration and pointed out that the free flow of workers could be considered in the same way as the free flow of goods.¹¹³ Yet the ILO itself has not tackled this problem except for a vague, long-forgotten, Recommendation made in 1949 to facilitate the movement of manpower from countries which have a surplus to those that have a deficiency.¹¹⁴ This issue has not been addressed by the WTO either. The WTO Services Agreement promotes commitments to facilitate the entry of individuals providing services, but the Agreement excludes aliens "seeking access to the employment market".¹¹⁵ The inadequacy of current national policies is demonstrated by the example of the United States which has a shortage of skilled technical personnel and a tight labor market overall. Rather than increase immigration, however, authorities are unimaginatively responding by raising interest rates to dampen demand.

Another potential initiative is the facilitation of worker adjustment to economic change.¹¹⁶ Although the ILO has a number of conventions relating to domestic employment policy, vocational training, and unemployment benefits, there is nothing that commits nations that are prosperous to help those in distress. The ILO should work with the IMF, the World Bank, and the UNDP to offer "social safety net insurance" to developing countries that ratify and enforce key ILO conventions and yet find their economies overwhelmed by economic forces outside their control (e.g., currency and trade flows). One opportunity for considering this idea will be the World Employment Forum that the ILO will hold in 2001.

¹¹³ Thomas, see note 81, 109–111. Thomas spoke at an NGO forum in Geneva.

¹¹⁴ Recommendation concerning Migration for Employment (No. 86), para. 4 (1), in: ILO, see note 83.

¹¹⁵ General Agreement on Trade in Services, Annex on Movement of Natural Persons Supplying Services under the Agreement.

¹¹⁶ See D. Lea, "International Adjustment Assistance", in: C.F. Bergsten (ed.), *Toward a New World Trade Policy: The Maidenhead Papers*, 1975, 307.

VI. Conclusions

The ILO idea now begins its second century. In 1900, the International Association for Labor Legislation commenced as a semi-official organization composed of government agencies, NGOs, academics, and parliamentarians.¹¹⁷ After the war, a tripartite ILO was created in the Treaty of Versailles, and it is the only institution dating from this treaty that operates today.

The ILO serves two key purposes. By recommending good labor market policies and practices, the ILO promotes economic growth in every country. By prescribing certain minimum standards for workers as legal rights, the ILO protects the individual from coercion by government or from abuse within the market. The combination of economic growth and worker rights provides the best opportunity for securing social justice.

Some people say that the ILO is outdated in its “corporative” orientation and “command-and-control” culture. There is a grain of truth in these complaints. Some improvements are well underway, but more corrective action is needed.

With the election of Somavía as Director-General and the enactment of the new ILO Declaration, there is an opportunity for revitalization of the organization. The social problems of the world economy call for greater analysis and directed action. Recent high-level governmental statements made inside and outside the ILO have reinforced the ILO’s mandate to safeguard fundamental worker rights and to promote good governance.

Looking back and looking ahead, this study concludes that the ILO experiment will continue to be important.¹¹⁸ Internationally-set labor standards can help every country make better decisions on employment policy. Furthermore, the technique of the ILO Constitution, the positivist idea that states and civil society should formally work together to draft international rules and to put them into practice, has increasing implications for global governance. No one could seriously deny that during the 20th century, the ILO helped to propel the progressive de-

¹¹⁷ G.A. Johnston, *International Social Progress*, 1924, 27.

¹¹⁸ See E. Olson, “I.L.O., Long in Eclipse, Regains Some Prominence”, *New York Times* of 23 March 2000, C4.

velopment of international human rights law.¹¹⁹ As the ILO enters the 21st century, a key task will be to similarly influence the progressive development of international economic law. The Declaration of Philadelphia stated that it was a responsibility of the ILO to examine and consider *all* international economic and financial policies in light of the ILO's fundamental objectives. It is time for the ILO to rise to that challenge. Indeed, the ILO is uniquely positioned to do so as the only international organization comprising not just governments, but also individuals and their *free* associations.

¹¹⁹ The Impact of International Labour Conventions and Recommendations, International Labour Office, Geneva, 1976.

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