

Following intensive negotiations, agreement was reached on a text providing for Cuba to resume membership in the organization following "a process of dialogue" to be initiated by Cuba and "conducted in conformity with the practices, propositions and principles of the OAS."<sup>1</sup>

Cuba, which has often said that it does not wish to rejoin the OAS, promptly rejected the resolution. Cuba has often criticized the organization as biased and dominated by the United States, sometimes describing it as an "unburied cadaver."<sup>2</sup>

The text of the OAS resolution follows.

THE GENERAL ASSEMBLY,

RECOGNIZING the shared interest in the full participation of all the member states;

GUIDED by the purposes and principles of the Organization of American States (OAS) embodied in the Charter of the Organization and in its other fundamental instruments related to security, democracy, self-determination, nonintervention, human rights, and development;

CONSIDERING the open-mindedness that characterized the dialogue of the Heads of State and Government at the Fifth Summit of the Americas, in Port of Spain, Trinidad and Tobago, and that in that same spirit the member states wish to establish a revitalized and ample framework of cooperation in hemispheric relations; and

BEARING IN MIND that, pursuant to Article 54 of the OAS Charter, the General Assembly is the supreme organ of the Organization,

RESOLVES:

1. That Resolution VI, adopted on January 31, 1962, at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, which excluded the Government of Cuba from its participation in the Inter-American system, hereby ceases to have effect in the Organization of American States (OAS).

2. That the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.<sup>3</sup>

*State Department Notifies Congress of New ILO Conventions and Recommendations*<sup>1</sup>

The Constitution of the International Labour Organization (ILO) requires member states to bring new ILO conventions and recommendations adopted by the ILO Conference "before

<sup>1</sup> Ginger Thompson, *Imposing Conditions, O.A.S. Lifts Its Suspension of Cuba*, N.Y. TIMES, June 4, 2009, at A11; *Mr. Obama, Cuba and the O.A.S.*, Editorial, N.Y. TIMES, June 4, 2009, at A20.

<sup>2</sup> Frances Robles, *Cuba Rejects Rejoining OAS*, June 9, 2009, at <http://www.miamiherald.com/news/americas/cuba/story/1088353.html>.

<sup>3</sup> Organization of American States General Assembly Resolution AG/RES. 2438 (XXXIX-O/09), Resolution on Cuba (June 3, 2009), at <http://www.oas.org/39ag/english/>.

<sup>1</sup> This note was prepared by Steve Charnovitz of the Board of Editors, to whom the Editor extends his sincere appreciation.

the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.”<sup>2</sup> This provision, written into the original ILO Constitution in 1919, is unusual in international organizations in requiring member states to communicate conventions to legislative authorities. Commenting on this obligation in 1934, Manley Hudson noted in this *Journal*: “Although no obligation exists upon the members to take the action recommended by the Conference, or to ratify a draft convention, a serious consideration of each recommendation or draft convention becomes obligatory, and a failure to discharge this obligation may (under Article 416 [of the Treaty of Versailles]) be made the basis of a proceeding in the Permanent Court of International Justice.”<sup>3</sup> The obligation to transmit new conventions and recommendations contains an indicative time period of no more than eighteen months, and if possible, no more than one year, after the closing of the ILO Conference drafting the new instrument.

U.S. practice for fulfilling this obligation is illustrated by letters from the U.S. Department of State. On June 27, 2008, the assistant secretary of state for legislative affairs sent identical, separate letters to the speaker of the House and the president of the Senate transmitting the texts of the three most recently adopted ILO conventions and the three most recently adopted ILO recommendations.<sup>4</sup> Four of the transmitted instruments were adopted by the ILO in 2006: the Maritime Labour Convention, the Convention Concerning the Promotional Framework for Occupational Safety and Health (No. 187) and the associated Recommendation (No. 197), and the Recommendation Concerning the Employment Relationship (No. 198). The other two, the Convention Concerning Work in the Fishing Sector (No. 188) and the associated Recommendation (No. 99) were adopted in 2007 and thus were submitted to the Congress within the indicated eighteen months. From available documentation, it appears that the earliest ILO transmittal from the executive branch to the Congress occurred in June 1937, three years after the United States had joined the ILO. That was in the form of a message from President Franklin D. Roosevelt to the Congress.<sup>5</sup>

The 2008 State Department letter explains that the conventions and recommendations are being transmitted “[i]n accordance with the obligations of the United States as a member of the International Labor Organization.” The letter further states: “The Executive Branch is making no recommendation with respect to ratification of the three Conventions; nor is it proposing legislation or other action to implement any of the instruments.”

If the executive branch wanted to make a recommendation, it could do so by seeking a Senate resolution of ratification or statutory implementation by the Congress. The United States joined the ILO in 1934. The first ILO convention submitted to the U.S. Senate for advice and consent was the Officers’ Competency Certificates Convention (No. 53) of 1936. The U.S. Senate approved that convention, and the President ratified it, in 1938.

<sup>2</sup> Constitution of the International Labor Organization, Arts. 19.5(b), 19.6(b).

<sup>3</sup> Manley O. Hudson, *The Membership of the United States in the International Labor Organization*, 28 AJIL 669, 677 (1934).

<sup>4</sup> Letter from Jeffrey T. Bergner, Assistant Secretary, Legislative Affairs, U.S. Department of State to the Honorable Richard B. Cheney, President of the Senate, and the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives (June 27, 2008). The letter states that an enclosed letter from the U.S. Department of Labor sets forth additional information concerning the Conventions and Recommendations.

<sup>5</sup> Message to the Congress of the United States of America, 83 Cong. Rec. 8588 (1938).