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# THE ILO FROM GENEVA TO THE PACIFIC RIM

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THE ILO FROM GENEVA TO THE PACIFIC RIM

West Meets East

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# The ILO from Geneva to the Pacific Rim

West Meets East

Edited by

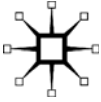
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Softcover reprint of the hardcover 1st edition 2016 978-1-137-55473-4

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First published 2016 by  
PALGRAVE MACMILLAN  
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Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

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ISBN 978-1-349-57592-3 ISBN 978-1-137-57090-1 (eBook)

DOI 10.1057/9781137570901

ILO ISBN: 978-92-2-129648-5

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

The ILO from Geneva to the Pacific Rim : West meets East / Jill M Jensen, Nelson Lichtenstein.

pages cm. — (International Labour Organization (ILO) century series)  
Includes bibliographical references.

1. International Labour Organization – History. 2. International labor activities – Pacific Area. 3. Labor movement – Pacific Area. I. Jensen, Jill M, 1965 – editor. II. Lichtenstein, Nelson, editor.

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# Acknowledgements

Most of the chapters in this volume were first delivered as talks at a February 2011 conference held at the University of California, Santa Barbara. The prime sponsors and funders of the conference were the ILO Century Project and the UCSB Center for the Study of Work, Labor, and Democracy. Additional support came from the MacArthur Foundation Chair in Global and International Studies, the Hull Chair of Feminist Studies and the Interdisciplinary Humanities Center, all at UCSB.

Among the participants at the conference were Shin-ichi Ago, Richard Appelbaum, Jeff Ballinger, Eileen Boris, Anita Chan, Dorothy Sue Cobble, Annie Delaney, Richard Falk, Norberto Ferreras, Leon Fink, Jennifer Fish, Mary Margaret Fonow, Dana Frank, Jason Guthrie, Dorothea Hoehntker, Jill M Jensen, Marilyn Lake, Nelson Lichtenstein, John Logan, César F Rosado Marzán, Daniel Roger Maul, Lorenzo Mechi, Carmen De Michele, Jan Nederveen Pieterse, Jian Qiao, Emmanuel Reynaud, Andrew Schrank, Chris Tilly, Patricia Kurczyn Villalobos, Marley Weiss, Haley Wrinkle and Changzheng Zhou. We would like to thank Regina Monticone, Charlotte Beauchamp and Chris Edgar, all of the ILO, as well as Jennifer McCall of Palgrave Macmillan and Vidhya Jayaprakash at Newgen Knowledge Works. Special thanks go to Emmanuel Reynaud, director of the ILO Century Project when the 2011 conference took place; and to Dorothea Hoehntker, whose energy and expertise proved invaluable as this project moved toward publication. Without their interest and support this volume would not have been possible.

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# List of Abbreviations

ACFTU	All-China Federation of Trades Unions
AFL	American Federation of Labor (United States, historical)
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations (United States)
BFC	Better Factories Cambodia
CEC	China Enterprise Confederation
CEDA	China Enterprises Directors Association
CITU	Centre for Indian Trade Unions
CPEDA	China Private Enterprise Directors Association
CSR	corporate social responsibility
CUT	Central Única de Trabajadores [Unified Workers' Central (Chile)]
EEC	European Economic Community
ERP	European Recovery Programs
FAO	Food and Agricultural Organization of the United Nations
FHWW	Federation of Homeworkers Worldwide
FNV	Federatie Nederlandse Vakbeweging [Dutch Federation of Trade Unions]
GATT	General Agreement on Tariffs and Trade
GID	Gender in Development
GMAC	Garment Manufacturers Association of Cambodia
HNI	HomeNet International
HWW	Homeworkers Worldwide
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDWN	International Domestic Workers Network
IHM	International Homeworkers Movement
ILC	International Labour Conference
ILO	International Labour Organization, International Labour Office
ILR	<i>International Labour Review</i>
IMP	International Mapping Project
ITO	International Trade Organization
ITUC	International Trade Union Confederation

IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KMT	Nationalist Kuomintang (China)
LDMAA	Labour Dispute Mediation and Arbitration Act (China)
LDMAL	Labor Dispute Mediation and Arbitration Law (China)
MFA	Multi-Fiber Arrangement
MoLSS	Ministry of Labor and Social Security (China)
MoU	Memorandum of Understanding (China)
NLRA	National Labor Relations Act (United States)
NMT	Non-Metropolitan Territories
OECD	Organisation for Economic Co-operation and Development
PRC	People's Republic of China
READ	Rural Education and Development Foundation
ROC	Republic of China
RTA (US)	Reciprocal Trade Agreements (United States)
SACOM	Students and Scholars Against Corporate Misbehavior
SEWA	Self-Employed Women's Association
SGEA	Second Generation Entrepreneurs Association (China)
SHG	Self Help Groups
STIBTTA	Sindicato de Trabalhadores da Industrias do Bordado, Tapicarias, Textil e Artesanato [Union of Embroiderers Madeira (Portugal)]
TAP	Technical Assistance Programme (ILO)
UN	United Nations
UNCSW	United Nations Commission on the Status of Women
UNDP	United Nations Development Programme
UNECOSOC	United Nations Economic and Social Council
UNEPTA	United Nations Expanded Programme of Technical Assistance
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSFED	United Nations Special Fund for Economic Development
UP	Unidad Popular or Popular Unity (Chile)
WGIP (UN)	Working Group of Indigenous Peoples (United Nations)
WID	Women in Development
WIEGO	Women in Informal Employment: Globalizing and Organizing
WTO	World Trade Organization
YEA	Young Employers Association (China)
YWCA	Young Women's Christian Association

# Introduction

*Jill M Jensen and Nelson Lichtenstein*

This volume brings together a series of original essays by scholars from various national settings and disciplines to explore the role of the International Labour Organization (ILO) in the nations bordering the Pacific, largely East Asia and Latin America, chiefly in the years following the Second World War. Our approach is primarily historical, but with a clear methodological focus: how ideas and practice characteristic of decades past have often played a decisive role in shaping contemporary efforts, both transnational and within a single nation, that advance decent labour standards and social and economic reform today.

Headquartered in Geneva, and in the years following the First World War administrated by Europeans who saw the uplift and emancipation of industrial labour as their most pressing task, it is not surprising that the construction of a body of international labour standards reaching beyond the North Atlantic community was fraught with complications. This volume therefore first explores some of the imperial propensities and racial tensions encountered and accommodated by the ILO when it sought to construct standards for Asian labour during the interwar era. Critically examining the era of decolonization, other chapters chart ILO efforts to encourage economic development and modernization in the immediate post-Second World War years, even as the Cold War and its ideological imperatives shaped development programmes, country-specific labour legislation and international labour standards. The rise of a feminist imperative within the ILO and among women and men in sections of the world once labelled underdeveloped has proven highly influential in recent decades, as have ILO efforts to leverage the worldwide reduction in trade barriers on behalf of the workers most directly impacted by the globalization of so much economic activity and the mass migration of men and women seeking work throughout the global South.

Our book also considers the ILO's relationship to a set of global institutions whose ostensible goals and purpose often replicate or compete with those of the venerable Geneva-based organization. To the "right" of the ILO stand the numerous corporate codes of social responsibility, funded by the powerful brands and retailers whose supply-chain practices have generated much criticism from consumers in the United States and Europe. And on the "left" are scores of nongovernmental organizations (NGOs) whose activism in Asia, Africa and Central America impatiently prods transnational corporations and local governments to accept and enforce labour and environmental standards as mandated through the ILO Convention-making process.

All this is of enormous contemporary relevance because the explosive rise of export manufacturing in East Asia, Central America and much of Latin America is shifting the centre of gravity of production and world trade from the old core in the North Atlantic to the nations bordering the Pacific Ocean. Despite much discussion about the emergence of a post-industrial economy, more people labour on an assembly line today than at any other moment in world history. And even more make and distribute things in a wide variety of venues, from home workshops to village markets and on to hyper-efficient big-box stores. The establishment of a set of humane, uniform and enforceable labour standards for these hundreds of millions of workers therefore inserts itself onto the agenda, not only of trade unions and other nongovernmental organizations, but of international trade bodies as well as those of governments, such as Brazil, Cambodia, Chile, China, the Republic of Korea, Mexico and Taiwan (China), which have come to see an organic relationship between social stability, political legitimacy and a rise in domestic living standards. Countries such as Bangladesh, the Dominican Republic, El Salvador, Honduras and Viet Nam face battles of even greater intensity and consequence.

The global economy has been transformed during the past several decades from one in which large manufacturers were politically and economically dominant to one in which retailers such as Wal-Mart and Carrefour increasingly prevail. This shift has been associated with a change in the nature of production: from one characterized by large factories, controlled by manufacturers and typically based nationally, to one comprised of globally disaggregated supply chains with multiple layers of contracting and subcontracting in which accountability for labour conditions is legally diffused, and knowledge of the actual producers is far from transparent. Production of many goods and some services is thus readily shifted around the globe, even from a country

such as China, which has reportedly lost production to other Asian countries as a result of rising wages and the implementation of the new contract labour law in that large nation.<sup>1</sup> Globalized production networks – the massive outsourcing of actual manufacturing to hundreds of thousands of factories worldwide – have thus greatly eroded the power of workers throughout the world.

The ILO reports that during the last two decades union membership has fallen to less than 20 per cent in almost half the nations it surveyed, with the greatest declines coming in those nations bordering the Pacific Rim.<sup>2</sup> This means that a labour standards/human rights-based model of social regulation has become increasingly necessary, and possibly even more efficacious than collective bargaining or labour laws governing the working population of a single country. One manifestation of this is found in the rise of scores of worker and environmental nongovernmental organizations that have played such a prominent role in the exposure of workplace human rights abuses in recent years. Human Rights Watch, the Workers Rights Consortium and many other groups, some directing their fire at particular companies like Wal-Mart, have made millions of consumers and citizens aware of the new sweatshop universe that exploits labourers in Central America, China and South-East Asia.

Attempting to adjust to these new pressures and changing conditions, in 1998, the ILO reemphasized a set of “core” or “fundamental” labour standards that it set out in the Declaration on Fundamental Principles and Rights at Work. The ILO sought to ensure that workers in the new post-Cold War market economies would be assured of freedom of association and the right to collective bargaining. The ILO also recommitted itself to the abolition of forced labour, child labour and discrimination on the grounds of race, gender or nationality.<sup>3</sup> Recognizing that mere declarations of principle were not enough, the ILO followed promulgation of its Decent Work Agenda from 1999 with a 2002 World Commission on the Social Dimensions of Globalization, an independent body called upon to review “interaction between the global economy and the world of work.” Through this initiative, ILO officials investigated how and why global production and commerce had led to late twentieth-century deterioration in working conditions in East Asia and elsewhere. The Commission’s 2004 report, *A Fair Globalization: Creating Opportunities for All*, aimed for a “process of globalization with a strong social dimension based on universally shared values, and respect for human rights and individual dignity; one that is fair, inclusive, democratically governed and provides opportunities and tangible

benefits for all countries and people.”<sup>4</sup> This was followed in 2008 by the formal ILO Declaration on Social Justice for a Fair Globalization.<sup>5</sup>

The ILO is nearly a century old and, as the single most important and admired transnational body that has as its *raison d'être* the advancement of the well-being of the world's working class, it has been the subject of numerous historical studies and analytical examinations.<sup>6</sup> Founded in 1919 in the shadow still cast by war and revolution, the ILO has long sought to systemize and internationalize labour, employment and social welfare standards. It began by focusing on a European nucleus of nations in the 1920s, with Great Britain and France as key actors. It proved a controversial organization with a difficult mission because higher wages and shorter hours for some workers seemed to merely consign other groups of workers, industries, firms and nations to a noncompetitive purgatory. China stood as one important example.<sup>7</sup> Moreover, not all members of the ILO were steeped in the tradition of tripartite industrial governance, the formula at the centre of the ILO vision, as representatives from labour, business and the state convened to resolve industrial conflict and set social standards. Thus, countries in Eastern Europe or among current or former colonies, many without a vigorous tradition of industrial regulation or trade union action, considered the ILO approach problematic.<sup>8</sup> Of course, during the first half of the twentieth century, the nation-states of Europe remained first among equals and it was out of their legal culture and industrial practice that the tripartite, state-regulatory ILO model emerged.<sup>9</sup>

The Second World War proved a turning point in the redefinition of the ILO's core mission and in a shift of focus from Europe to regions that would soon be denominated as part of the “Third World.” With the ILO headquarters temporarily shifted to North America, the institution finally forged closer ties with officials, reformers, unionists and businesses in Latin America, Canada and the United States. The promulgation of labour standards ceased as ILO officials devoted all of their energy upon plans for a reconstruction of Europe and the world, including the economic development of those colonies and former colonies whose working populations had little in common with the industrial proletariat of America and Europe. The ILO therefore orchestrated a series of “labour missions” throughout the Western Hemisphere, during which international experts and local officials discussed not only traditional issues involving industrial relations and social insurance, but also policies that would encourage new industries, greater trade and the shift of workers from subsistence agriculture to urban manufacturing.<sup>10</sup> Such initiatives, which had actually begun in

Europe prior to the war, were greatly expanded during the early post-war years as the American New Dealer, David Morse, served as ILO Director-General. Between 1948 and 1970, the number of member States doubled, the old industrialized nations became a numerical minority – although they still provided a lion's share of the budget – and the institution became a truly worldwide presence.

Economic development and technical assistance to that end soon became the focus of ILO activities in the newly emergent former colonies. Just months after India achieved independence in 1947, the ILO organized its first Asian regional conference in New Delhi. There Prime Minister Jawaharlal Nehru urged the organization to turn all its energies toward the problems of economic development, while at the same time making plain that the underrepresented poorer nations of the world deserved a greater role within the ILO's governing structure.<sup>11</sup> Monetary resources and expert personnel were indeed transferred to Latin America and the non-communist Asian nations, with much attention devoted to vocational education, economic modernization and the social welfare.

The ILO established the Asian Field Office for Technical Training in Bangalore, India, and later the Regional Office for Asia and the Pacific in Bangkok, Thailand, after numerous meetings aimed at considering "manpower problems in relation to Asian development."<sup>12</sup> In the 1950s, the ILO focused efforts on agrarian reform and rural development programmes, moving into agricultural education in the 1960s. In the 1970s, it initiated expanded technical and vocational training efforts through offices in Islamabad and New Delhi. The ILO Population Programme, with focus on national population policies (a combination of labour needs, family planning and quality-of-life assessments), and the Asian Manpower Plan on vocational training were important initiatives of this era.<sup>13</sup> As the years went on, the ILO also ran projects from area offices in Manila, through a branch office in Tokyo and a national office in Jakarta. Meanwhile, the ILO officially designated a regional office in Latin America and the Caribbean in the early 1960s. Lima, Peru, had served as an ILO centre for the study of inter-American social security since the Second World War, and later became a liaison point for the Andean region, particularly after the official launch of the Andean Indian Programme in 1952. This initiative surveyed labour conditions for indigenous populations and made recommendations for improvement.<sup>14</sup> In addition to the office in Lima, today the ILO has several offices in Latin America, including Mexico City, San José and Santiago. ILO officials marginalized the promulgation and enforcement of labour standards in these developing nations and, to a degree, for

decades tended to overlook the right of workers to freely associate. It would take the explosive growth of export-oriented manufacturing in the years after the end of the Cold War to push these traditional ILO concerns back to the top of its agenda.

The ILO stands as a vast and dynamic international organization, eliciting not a history but a series of overlapping, even contradictory, histories. For example, what were the perspectives and the demands of those ILO delegates from the Pacific Rim nations when they participated in the annual International Labour Conferences convened by the ILO in Geneva? What opinions did civil servants from outside Europe put forward within the various sections of its headquarters, the International Labour Office? And how did policies formulated within the ILO actually play out when deployed and applied in the field, where they encountered a disparate set of economic, political and cultural environments?

As part of the ILO Century series, this volume contributes to the perspective of those who participated in ILO work well beyond that organization's Geneva headquarters. We hope it will illuminate "the interplay between state and non-state actors in the shaping and implementation of, or opposition to, ILO social reforms."<sup>15</sup> Although the ILO has indeed promulgated a set of well-crafted Conventions covering the rights of association, the right of equal pay for equal work, the right to social security and the like, these agreements require the approval of a wide set of actors: representatives of labour and management as well as the governments of the many states in which such Conventions will hold sway if they are to take root under such different and difficult local conditions. Although the power and legitimacy of the ILO is derived from its tripartite structure, with representatives of workers, employers and governments, and from its universalism and global reach, its weakness in our time arises out of the weakened capacity of nation-states to regulate their own economies as well as out of the decline of trade union power, which has all too often rendered the ILO commitment to tripartism a mere formalism. Moreover, the fact that neither the United States nor China has ever approved an ILO Convention guaranteeing workers the right of free association speaks volumes about the challenges facing this organization.

*The ILO from Geneva to the Pacific Rim: West Meets East*, offers a historically oriented set of 12 essays that probe the successes and failures of the ILO in four distinct but interrelated areas of scholarship. The first three essays comprise the section "Beyond Europe: The ILO Encounters the Pacific World." Written by a distinguished set of internationally well-known historians, these essays discuss the fraught, racially and imperially

conditioned, encounter between Anglo-European labour reformers and an awakening Asian nationalism during the interwar years. They demonstrate that when it came to raising Asian labour standards in this era, the legacy of white supremacy and imperial presumption proved an obstacle of great power and complexity despite the ILO's social democratic policies and programmes. Thus, in his essay on ILO efforts to raise and make uniform labour standards for maritime labour, Leon Fink demonstrates that during the 1920s and 1930s British and other European efforts to sustain their own domestic shipping fleets, combined with the racism embedded within the colonial relationships of that era, subverted ILO universalism when it came to equal rights and standards for Chinese and Indian seamen. Likewise, as Marilyn Lake points out, it was within a late imperial framework identifying "advanced" and "backward" peoples that Australia and other Western countries offered their support to the ILO project of universalizing labour standards. Threatened by cheap "Asiatic" labour, Australia's engagement with the ILO was a form of internationalism pursued to defend a racially coded national interest.

But East–West racial/imperial tensions were not the only dichotomy facing ILO standard-setting bodies. In Dorothy Sue Cobble's account of the effort of the Japanese feminist Tanaka Takako to protect the interests of women workers in her homeland, she demonstrates that in 1919 and later years some of the most contentious ILO disputes arose, not between the West and the rest, but within the same nation. Thus, the fight over the abolition of night work for women workers in Japan was as much a struggle between men and women and workers and employers within that island nation as it was a contest between Japan and the European states that initially founded the ILO.

In the next section, "The Dilemmas of Development," three authors offer new perspectives on how, in the early Cold War era, the ILO shifted much of its work from a defense of labour standards in the advanced industrial nations to a much greater focus on economic development and enhanced labour productivity, albeit with mixed results. This shift began immediately after the Second World War when, as Jill M Jensen demonstrates, a new emphasis on growth and economic development in the global South generated a conflict between those nations (including Chile and Mexico) which sought to link trade liberalization to foreign economic assistance and higher labour standards, and those North Atlantic powers that saw free trade alone as the key to a higher standard of living in the Third World.

Likewise, Daniel Maul explains how under the liberal Cold War leadership of David Morse, the ILO shifted much of its energy away from

a Eurocentric effort to set labour standards for industrial workers and toward technical assistance and development aid for East Asia and Latin America. However, this emphasis on productivity and modernization sometimes clashed with core ILO Conventions, including those that banned forced labour and assured workers freedom of association. The ILO's developmental initiatives therefore muddled the historic purposes of the Organization. In this context, Eileen Boris explains that a discourse of economic development, not women's rights, was key to the shift in the ILO's programme for rural Asian women in the immediate post-war years. She historicizes the ILO category "women in developing countries," charting how the self-employment of these women became a programmatic ILO mechanism for rural employment, especially when in the 1980s and 1990s the challenge of global inequality stood at the centre of ILO debates over the very meaning of "development" itself.

The third section of the book is entitled "The Human Rights Revolution." Here we examine the extent to which new global sensibilities concerning human rights and women's equality have advanced the ILO agenda. Annie Delaney, Jane Tate and Rosaria Burchielli offer an account of how movements in support of home-based workers have utilized ILO Conventions to challenge the historical determination that homework was "unorganizable." Their essay shows the ways in which organizations speaking on behalf of these workers have utilized the ILO Home Work Convention, 1996 (No. 177), yet they note that reference to international standards does not easily translate into effective legislation at the national level. In their essay on domestic work, Jennifer Fish and Jennifer Turner show that by framing the difficulties faced by domestic workers as those involving fundamental human rights, the ILO has reached well beyond those sectors of the economy in which a formal work relationship has been the norm. The ILO's Domestic Workers Convention, 2012 (No. 189), has both established a set of labour standards for this exploited but, heretofore, nearly invisible population, and perhaps even more important, offered ideological and moral sustenance to those diverse social movements that seek to improve the lives of individuals who labour in this highly precarious world of work.

Of course, a discourse of "rights," like that centred on development, can sometimes eclipse more traditional ILO efforts to defend trade unionism, collective bargaining and social equality. Cesar F Rosado Marzan demonstrates how this shift took place in his study of international efforts to reform the Pinochet dictatorship in Chile after the coup of 1973. While the defense and celebration of human rights proved the most internationally efficacious path toward an amelioration of

the dictatorship imposed by General Pinochet, the successful effort to emphasize a defense of the most fundamental political and civic rights (protections against unjust imprisonment and the suppression of free speech, etc.) eclipsed efforts in Chile and elsewhere to defend ILO labour standards, especially those embodied in Conventions promoting freedom of association and trade union collective bargaining.

In the final section of the book, "Success and Failure in the New Asian Economy," three authors probe the historical, sociological and legal roots of a pressing set of contemporary issues facing the ILO as it seeks to make its influence felt in East Asia. China, now in the midst of a world-historic transformation involving the proletarianization and urbanization of a large proportion of its population, faces challenges considered by Changzheng Zhou, Clifford Donn and Minghua Zhao. Within the last several decades, tens of millions of Chinese migrant workers have flooded the ever-growing coastal provinces, where thousands of export-oriented production facilities feed the supply chains that stand at the heart of global commerce. In his chapter on legal protection of the right to old-age insurance for these migrant workers, Zhou identifies a disastrous social insurance gap dividing these workers from those with more secure legal status in the coastal cities. The most urgent task for the Chinese Government, he argues, is to unify the country's piecemeal insurance system and thus build a social security system of the type advocated by the ILO.

Meanwhile, Donn and Zhao compare the extent to which the two most important industrial nations in the world, China and the United States, have ratified what the ILO considers its core labour standards. The protection and advancement of freedom of association, involving the right of workers to form unions and bargain with their employer, has been central to the ILO mission since its founding. Yet, China and the United States, along with Brazil, India and the Islamic Republic of Iran – with over half of the labour force of ILO member States – have not ratified the key ILO Conventions bearing on this vital right. Donn and Zhao explain why important political and corporate interests in both countries have made the ratification of ILO Conventions Nos. 87 and 98 so difficult, paying particular attention to the evolution of the labour law in both nations and the consequent devaluation of worker rights in the formally democratic United States nearly as much as in authoritarian China.

Finally, Nelson Lichtenstein offers a critical history of the ILO's effort to accommodate itself to the idea of corporate social responsibility. These factory-monitoring programmes first arose in the 1990s as a management-initiated and controlled effort to fend off consumer criticism

of egregious supply-chain practices. In the Better Factories Cambodia programme, which was established in 2001 in order to raise wages and improve working conditions in the garment industry of that nation, Lichtenstein argues that ILO-sponsored tripartite mechanisms focused on the amelioration of industrial conflict at the local factory level proved inadequate in a world of global supply chains, where real power and resources lie outside the boundaries of the nation-state. However, in the wake of the Rana Plaza tragedy, a more hopeful tripartite schema seems to offer promise in Bangladesh, where the ILO has helped establish the Accord on Fire and Building Safety that actually makes transnational retailers and brands take some legal and financial responsibility for the reform and mitigation of hazardous conditions in many of the nation's 4,000-plus apparel factories.

## Notes

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5. ILO, "Declaration on Social Justice for a Fair Globalization," adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008.
6. Producing monographs such as Daniel Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–70* (Basingstoke and Geneva: Palgrave Macmillan and ILO, 2012); and E. C. Lorenz, *Defining Global Justice: The History of U.S. International Labor Standards Policy* (Notre Dame, IN: University of Notre Dame Press, 2013). Also, in a growing collection of edited volumes such as S. Kott and J. Droux, eds., *Globalizing Social Rights: The International Labour Organization and Beyond* (London: Palgrave Macmillan, 2013); G. Rodgers, E. Lee, L. Swepston and J. Van Daele, eds., *The International Labour Organization and the Quest for Social Justice, 1919–2009* (Geneva and Ithaca, NY: ILO and Cornell University Press, 2009); J. Van Daele, M. Rodríguez García, G. Van Goethem, and M. van der Linden, eds., *ILO Histories: Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century* (Bern: Peter Lang, 2010); and K. Basu, H. Horn, L. Roman, and J. Shapiro, eds., *International Labor Standards: History, Theory, and Policy Options* (Malden, MA: Blackwell, 2003). Also, in journal articles, such as D. R. Maul, "‘Help Them Move the ILO Way’: The International Labor Organization and the Modernization Discourse in the Era of Decolonization and the Cold War," *Diplomatic History*, 33, no.3 (June 2009), 387–404; J. Jensen, "From Geneva

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## **Part I**

# **Beyond Europe: The ILO Encounters the Pacific World**

# 1

## A Sea of Difference: The ILO and the Search for Common Standards, 1919–45

*Leon Fink*

As the very artery of international commerce, merchant shipping offers an ideal setting for examining the changing rules applied by both individual states and, ultimately, an organized world community, to workers across the nineteenth and twentieth centuries.<sup>1</sup> With the rise of powerful nation-states joined by a global marketplace in the nineteenth century, recruitment and regulation of a seafaring labour force emerged as a high priority and a vexing problem for Western powers such as Great Britain and the United States. For the early twentieth century, to which I direct my attention in this chapter, a combination of the de-skilling impact of steam and diesel power, the hypercompetition among shipping powers and a worldwide reach for cheap labour threatened wage and living standards established by a previous generation of collective bargaining and political accommodation. No occupational sector thus looked with greater hope to the establishment of the International Labour Organization (ILO) in 1919 as a mechanism for restoring a semblance of order and humane treatment in the labour market. Given the diversity of the international seafaring labour force, however, regulation – whether global and national in inspiration – inevitably reflected the racial and ethnic, as well as imperial, designs of the regulators themselves. When ethnic as well as deep political and economic differences prevented global regulations from taking hold, national actors, by the mid-1930s, took matters into their own hands. Despite its many failures, however, by 1950 the ILO and especially the ILO maritime division beckoned as one of the few broadly international bodies to survive the wreckage of economic depression, another world war, and large-scale collapse of democracy with both its machinery and aspirations intact.

Though sailing ships continued to carry a substantial portion of the world's trade up to the First World War, the twentieth-century configuration would be one of iron (and later steel) hulls and steam (and later diesel) engines. Among other impacts, the distinctions in pay and status between officers and engineers on the upper end and able-bodied seamen and firemen or stewards on the lower grew ever starker.<sup>2</sup> Welcoming the arrival of an eminently interchangeable cast of deckhands and firemen, employers of the American Steamship Association scoffed at union attempts to maintain the old three years' apprenticeship requirement for able-bodied status – "three months at most would be amply sufficient."<sup>3</sup>

Not surprisingly, the public image of the seaman suffered as well. As a jumble of unskilled labourers recruited from across the world, the image of the seaman had lost its exotic lustre. The dean of the new genre of realist sea fiction (as in *Lord Jim* and *Nigger of the Narcissus*) was Joseph Conrad who, as a young Polish émigré, had worked on 18 (mostly British) ships until his "retirement" in the mid-1890s.<sup>4</sup> But perhaps the starkest portrait was that offered by Eugene O'Neill, who, first inspired by a Conrad novel, shipped out at age twenty-one on one of the disappearing square-riggers and then included the sea in 19 of his 44 plays as "an integral part of the action."<sup>5</sup> Driscoll, the hard-living protagonist of O'Neill's early *S.S. Glencairn* series, thus disparages his steamship workmates who have asked him for a song: "Ye've heard the names av chanties but divil a note av the tune or a loine av the words do ye know. There's hardly a rale deep-water sailor lift on the seas, more's the pity."<sup>6</sup> In starker terms still, the Irish stoker, Paddy, speaking to his American buddy, Yank, in *The Hairy Ape* (1921) contrasts the days of "clippers wid tall masts touching the sky – fine strong men in them" with that of "bloody engines pounding and throbbing and shaking... choking our lungs wid coal dust... caged in by steel from a sight of the sky like bloody apes in the Zoo!" Marginalized both on ship and off by respectable society, Yank's combustible anger lands him in prison, from where he can identify vicariously with working-class political rebels. Listening from his cell to a denunciation by a US senator of the Industrial Workers of the World as "the Industrial Wreckers of the World," Yank erupts, "Wreckers, dat's de right dope! Dat belongs! Me for dem!"<sup>7</sup>

Industrialized work routines, miserable pay and workplace conditions, a polyglot labour force breeding tensions and the threat of radical upheaval – these were main themes of "sea writers" across the early twentieth century. They were also the themes that ILO reformers, seeking to bring order and stability to wildly fluctuating labour markets, confronted

during the organization's first decades of work. Conceived amid post-war apocalyptic fears or millennial expectations (depending on the observer) attendant to mass strikes and armed uprisings across Europe, the Americas, and beyond, the ILO might best be considered a "reformers' redoubt" from revolution. As world political architect Woodrow Wilson said at the time, "We are running a race with Bolshevism, and the world is on fire."<sup>8</sup> Led by social democrats generally attached to unions and socialist or labour parties, the post-war labour body sought to find capitalist partners willing to make a "deal" in the interests of long-term social stability as well as social justice.<sup>9</sup> That out-and-out insurrectionism was already less of a threat by 1920, when the ILO got down to business, immediately weakening the odds that the Organization could corral the grand social compromise it sought. Moreover, the ensuing years of rising nationalist tensions dwarfed the very "class conflict" international labour standards were meant to allay. As a result, momentum slowed and resources dwindled for projects of interclass as well as international cooperation on almost every front. That said, the discussions within the organization on policy prescriptions for what latter-day commentators would call the "global economy" have a remarkably present-day feel. The ILO might thus well be seen as *the* pioneer attempt to deal with the effects of globalization on working people.

The United States would play a fitful role in the ILO's development. Just as President Woodrow Wilson laid the foundations for the League of Nations, then watched helplessly as his country failed to join, so the president of the American Federation of Labor (AFL) Samuel Gompers served as a moving spirit for the ILO, only to face the same rebuff from the US Congress. During the Paris Peace Conference, Gompers, indeed, presided over the Commission on International Labour Legislation that drafted the constitution for the ILO. Within his federation's own ranks, Gompers first prevailed over the vituperative objections to the international body by the International Seamen's Union leader, Andrew Furuseth, who was loathe to subject his members to what he feared would be a British attempt to dilute workplace standards (including a "right-to-quit-in-port" guarantee) recently accomplished at the national level by the La Follette Act of 1915. Though Gompers strongly argued for putting a La Follette-like article into the ILO's very "international labour charter," once it was rejected by the delegates, he stood firmly, and permanently, as an ILO advocate.<sup>10</sup> Yet, it surely pained the AFL leader, along with other eager American labour internationalists, to be forced to the sidelines during the inaugural International Labour Conference (ILC) held October 1919 in Washington, DC.<sup>11</sup>

Like the League of Nations, the ILO, of course, soldiered on in the absence of the world's newest superpower, although, in the case of the ILO, sustained interest from key labour, business, and civic groups led to a reversal of policy and belated US entry into the Organization in 1934.<sup>12</sup> Buttressed from the beginning by enthusiastic support from Europe's leading trade union federations, the ILO officially justified its support for labour organization as a contribution to world "peace and harmony." "[I]njustice, hardship and privation," read its charter, stoked "unrest" (i.e., communist revolution) and a downward economic spiral likely only to spur further world war.<sup>13</sup>

Though organically tied to the League of Nations – and subsequently the United Nations organizational structure, it embraced a unique representational and juridical process.<sup>14</sup> Adopting the British War Cabinet's formula for incorporating both business and trade union representatives in its counsels, the ILO embraced "tripartism," with each national delegation composed of Government (2 votes), Employers' (1 vote) and Workers' (1 vote) group members.<sup>15</sup> From its inception, the ILO sought to establish "international labour standards" that would, in turn, be accepted and incorporated into the national laws of affiliated member States. Such standards took the form either of Conventions (international treaties to be ratified by member States, and considered legally binding upon the signatories once adopted by at least two member States) or Recommendations (nonbinding guidelines), either of which required a two-thirds majority of voting delegates to be adopted.<sup>16</sup>

The first ILO Director, Albert Thomas, French socialist politician and wartime minister of munitions, approached the Organization (which he affectionately called "la maison") with great expectations. As his English-language deputy recalled:

He sensed the stirring of new forms, a recasting of ideas, a greater response and responsibility of the masses. He was confident that new and more daring methods, having found an almost accidental juridical sanction, could ride safely on that lifting wave against the opposition of prejudice and the drag of accepted procedure. It was a deeper and a wider vision, and it could not be immediately shared. Like Columbus, he saw a world beyond the horizon of his fellows, and he laid his plans and settled his methods on other assumptions than theirs.<sup>17</sup>

Nowhere, moreover, were the principles and aspirations of the ILO more quickly on display than within the maritime field. The wartime

collaborative efforts of Havelock Wilson's National Sailors' and Firemen's Union and the employers' Shipping Federation spilled over into larger efforts of standard setting within the umbrella of the ILO and its effective sponsorship of a series of maritime sessions of the annual ILC. The first one took place in Genoa, Italy, in June 1920, initially joining representatives of the International Seamen's Federation (the British-American maritime union spinoff from the larger International Transport Workers Federation) with their counterparts from the International Shipping Federation, which had in turn sprouted from its British Employer-group parent. Despite their considerably smaller numbers than other occupational groups like railway workers or dockers, seamen drew more immediate international attention. Following on prior traditions of maritime lawmaking, "the ILO," as historian Bob Reinalda has documented, "adopted more international regulations for the seafarers than for any other group." In the interwar period, ILO maritime sessions of the ILC (the only industry-specific forum of its kind within the international organization) adopted 13 Conventions and six Recommendations and added another dozen Conventions in the immediate post-Second World War (1946–49) years.<sup>18</sup>

Those seeking to draft what they called an "International Seamen's Code" at the 1920 Genoa Conference – the first single-industry conference in the life of the infant ILO – acknowledged from the beginning that shipping was a peculiarly international enterprise. First, unlike most other workers, seamen were a polyglot, multilingual lot, regularly working "in several countries" as well as "on the world's highway, far removed from the usual reach of public authorities." As such, as an "international community," they would be best served by a "uniform law."

However compelling the larger logic, when it came to international standards, the devil was in the details. In the maritime field, a cardinal illustration of the difficulties of agreement lay in the basic principle of a limitation of working hours. Although "eight hours" had been adopted as an objective for all workers as early as the Versailles Treaty, attempts to apply it to maritime work had been tabled at the initial 1919 ILC in Washington and left to the first special maritime session of the ILC in Genoa, in 1920, to adjudicate. The 30 countries assembled there, however, quickly confronted a fact that would regularly frustrate the search for common labour standards: there was no single, but rather several, maritime labour markets, depending upon both the physical and racial geography of commerce. South Asian seafarers, to take the most prominently debated example, had been paid one-third to one-fifth

the British (or European) wage since the mid-nineteenth century.<sup>19</sup> In response, how could the ILO legislate a global norm?

Reporting from a special subcommittee meeting, governmental delegate Charles Hipwood, from the British Board of Trade, first voiced the problem to the assembled delegates in Genoa. Though all British parties agreed that “the present hours of Lascars [the Indian seamen who signed on to special ‘Asiatic’ articles for remuneration far below the standards of British seamen] should be reduced,” he averred, “further than that we found it very difficult to go.” On top of a draft convention adopting the universalistic “principles of the 8 hr day and 48 hr week,” Hipwood therefore proposed a special “Lascar” article allowing for a lower standard, to be subsequently negotiated among government, shipping and Indian seamen representatives.<sup>20</sup>

As reports from the proceedings made clear, openly imperial powers like Belgium and France as well as the shipping colossus, Great Britain, which clothed its South Asian empire in quasi-autonomous legal forms, could not square their interests with a simple, global “eight-hour” labour standard. Rather, they sought to allow for racially and/or geographically derived corollaries to the main trunk of an international principle. As Belgian Government spokesman and director of the Royal Observatory, Georges Lecointe, explained of the African seamen employed by French ships on the Red Sea and Belgian black boatmen in the Congo, “They have not the same ability to work as the white men of course, and so, if a uniform régime were applied to them, the Belgian shipowners could no longer engage these people and... they would be deprived of their work.” Until “native” skill levels reached those of their Western contemporaries, therefore, Lecointe proposed to divide crew members into distinct ethnic groups with appropriate work hours assigned to each group.<sup>21</sup>

Among international labour legislators, however, it was not just “imperialists” who invoked the race card. Just as antebellum free soilers sought to keep blacks – slave or free – from settling in their own northern states, so several ILO Workers’ delegations feared, and sought to curtail, economic competition from a cheaper, “coloured” labour force. Australian Government delegate Robert Storrie Guthrie, a former seaman and trade union leader, was perhaps most explicit in rejecting a separate “Lascar” article within the regulation of hours. Proud of his own country’s “white” labour policies (“in Australia [we have] no black labour carrying one pound of cargo or one passenger along the 12,000 miles of our coastline”), he warned that Indian crews must be “confined to the Indian trade” or else “this Conference will have failed.” In short,

argued Guthrie, there could be but one seamen's code: "The war has been won, and in the conditions of the settlement of that war was this, that there should be a standardization throughout the world. Whether they were black or white did not matter to ourselves." Guthrie's universalistic logic, minus its racialist intent, was echoed by Italian seamen's leader Giuseppe Giulietti, who urged Indian seamen to trust to the power of the international workers' movement rather than national employer or governmental interests to lift them up.

The Indians, for their part, saw the hoary hand of protectionism behind every assertion of universal standards. Government spokesman, Captain D. F. Vines of the Royal Indian Marine, pleaded for respect for the Indians' place in international waters within a calibrated ILO standard of hours regulations to make up for their own lack of strong unions. Responding to the arguments of the union delegates, Vines reminded them that during the war, Indian seamen had carried food and merchandise to Britain, France and Italy: "You did not want to push them out then. Are you now going to try and push them aside?" A. M. Mazarello, president of the fledgling Asiatic Seamen's Union in Bombay endorsed Vines's support for a "Lascar" article that "will permit India to follow the international movement without going too quickly, and will provide at the same time a protection for Indian sailors."<sup>22</sup> With each side sticking to its own, "principled" position, maritime shorter-hours legislation (which required a two-thirds majority to become an ILO Convention) failed by a single vote in 1920. A breakthrough on this issue would wait another 17 years.<sup>23</sup>

Even as substantive reform lagged, the tone of international discussion indisputably changed during the interwar years in one important respect: The protective, if condescending, discourse on the part of European Governments toward the workers in their imperial possessions notably diminished, replaced by the beginnings of self-representation from the developing world itself. In particular, new voices of anger and frustration were registering from the representatives of Asian seamen, who experienced conditions far worse than those of their western brethren, and who no longer put any faith in separate "Asian" articles. In 1929, Indian ILO Workers' delegate to the ILC, Muhammed Daud, a Calcutta lawyer who gave up his practice during the noncooperation movement to become president of the Indian Seamen's Union, described a desperate situation where 250,000 seamen were competing for 50,000 jobs and expressed "disappointment regarding the benefits for which we had hoped from this Organization." Despite repeated calls since the Versailles Treaty for "better wages, better regulation of hours of work, better treatment

from the shipowners, and better treatment when in port," he saw little evidence of progress. "If the different Governments continue to act in this way," Daud warned, "there is the danger workers in the East will begin to turn their attention to the programme of Moscow."<sup>24</sup> Joining Daud in demanding a special study of Asian sea labour, Chau Chit Wu, adviser to the Chinese Workers' Delegation, claimed that 160,000 of his countrymen were employed by foreign shipowners in highly unfavourable conditions. Typically, he reported, they received L2 to L3/month, compared to the non-Asiatic rate of L9 or L10/month; similarly, hours restrictions (along with overtime pay) and workplace accident compensation were regularly relaxed for Chinese seamen. Indeed, they had twice conducted prolonged strikes from Hong Kong since 1922 against the "general contempt" and "inequality of treatment" shown them. Together Wu and Daud urged support for state employment bureaus as well as protection for the "freedom of association" in the conduct of trade unionism. In addition to securing an "Asiatic enquiry" in 1929, the rising new nationalist voices militated against separate Asian articles to any agreement.

After years of deadlocked conferences and dashed hopes, ILO maritime reform was again propelled by the twin storm clouds of worldwide depression and communist insurgency (this time within the international labour movement). The breakthrough for global standards on hours and manning provisions came at the maritime session of the ILC in Geneva in 1936.<sup>25</sup> The Government delegate from France and Chairman of the Conference Preparatory Committee, André Haarbleicher, director of the French Merchant Marine and officer of the Legion of Honor, who would later die at Auschwitz, opened discussion with a warning that "there is considerable risk of social disturbance if this Convention is rejected."<sup>26</sup> British trade union leader and Labour Party stalwart, Ernest Bevin, who served as adviser to the Workers' delegation from the British Empire, pressed the point. Bevin condemned rising trade barriers and increasing restrictions on emigration, likening them to medieval Britain's Five-Mile Vagabond Act, which limited peasants from leaving their villages. "World organization," he suggested, "must take the place even of empires if we are going to solve modern economic and other difficult problems." Start with the "regulation of hours of labour on terms of equality," he counselled the trading powers of the globe, adding that they could further "narrow the field of competition" by eliminating selective government subsidies, quotas, and varying currency standards. Ensuring the seamen's welfare, said Bevin, was thus "but a step towards something bigger and better: Anyone who votes against this Convention today is voting for

the continuation of the miserable world chaos which we find around us, whereas a vote in favour of the Convention will be one contribution, however small, to the removal of that chaos."<sup>27</sup>

Even as the Depression's heightening impact hardened resistance to higher standards among many employers – the British, Dutch and Norwegians, for example, persisted with the 12-hour day – two new factors had come into play on behalf of international standards. First, in many countries, as two contemporary researchers discovered, "the wider extension of [economic subsidies to business] gave seamen an opportunity to appeal to their governments to grant subsidies only where reasonable labour standards were in force."<sup>28</sup> Perhaps more significant still was the inaugural (and very active) presence of a US delegation within the international organization itself. With a suspension of the rules and a special joint resolution that Massachusetts Republican congressman George H. Tinkham labelled "one of the most contemptible intrigues ever attempted in the parliamentary history of this country," President Roosevelt had secured US participation in the ILO in June 1934.<sup>29</sup> In keeping with the regulatory spirit of the early New Deal, the bill's supporters, like Representative Samuel Davis McReynolds, a Democrat from Tennessee, directly linked the move to the domestic standards setting machinery of the National Industrial Recovery Act and Agricultural Adjustment Act. "We can proceed faster and farther in this direction of standards," advised McReynolds, "if standards are also being raised in most of the other countries of the world."<sup>30</sup> Indeed, California representative, Charles J. Colden (Democrat), called the ILO the "foundation stone upon which enlightened souls of every nation are attempting to build a new deal."<sup>31</sup>

Yet, in addition to extending New Deal-type regulations across national borders, another possibility for the ILO, at least briefly, occupied policy-makers' attention. After the Supreme Court's *Schechter* decision of May 1935 striking down both the National Industrial Recovery Act (NIRA) and the Agricultural Adjustment Act AAA and leaving the president's economic programme in shambles, use of the ILO Convention process – like the more famous "court-packing" plan – beckoned, at least until the Court noticeably began stepping back from its confrontational economic stance, as a possible way round a constitutional bottleneck.<sup>32</sup> Picking up a thread from Columbia University political scientist and legislative technician Joseph Perkins Chamberlain, who had conceived of the idea as early as 1927, Isador Lubin, Commissioner of Labour Statistics, and US ILO delegation chief, John Winant (former New Hampshire Republican governor and future wartime ambassador to Great Britain who would

serve briefly as ILO Director, 1939–41), both recommended an ILO strategy for labour and social welfare policy.<sup>33</sup> Suggesting an alternative to the normal legislative process that was susceptible to court review, Lubin thus wrote Secretary of Labor Frances Perkins in May 1936, “We should establish the precedent of submitting [ILO] Conventions to the Senate so that in the event we wish to test out the treaty-making power as a vehicle for securing social legislation a definite precedent will have been established.”<sup>34</sup> The stratagem appeared to take immediate effect, as suggested by a presidential message to Congress in June 1936 urging consideration of five ILO draft Conventions, including “reduction of hours of work to 40 a week” – this a full year and a half before the president’s domestic Fair Labor Standards Act, embodying the same principle, was enacted by Congress.<sup>35</sup>

However grandiose their expectations for the world body in general, the Americans clearly arrived at the ILC’s 1936 maritime session with enthusiasm. The US delegation was led, in 1935–36, by Government delegate Robert W. Bruere, erstwhile editor of *The Survey* and National Recovery Administration official. He was accompanied by an employer representative from the US flag carrier Moore & McCormack Co. and a labour delegate from the near-moribund International Seamen’s Union (first the ailing 83-year-old Andrew Furuseth, and then chief union legislative counsel, Paul Scharrenberg, both eager, despite earlier misgivings about the ILO, to extend principles originally codified in the 1915 La Follette Act), creating one of the few tripartite delegations united by strong reform and regulatory predilections. The rationale for unanimity was not far-fetched. Like France and Russia, the United States already enforced the 8-hour workday and 3-watch system as opposed to the traditional 2-watch system of 4 hours on and 4 hours off that added up, for most of the world’s sailors, to a 12-hour workday. As Harvard economist Carl J. Ratzlaff had argued in 1932, “American employers and laborers [will be] directly [and positively] affected by the ‘leveling’ up work of an international economic organization such as the ILO.”<sup>36</sup> Again second only to Great Britain as a maritime power since the First World War, the US presence decidedly advanced the chances for maritime reforms inside that world body.<sup>37</sup>

To be sure, pressure for regulatory economic action was generally intense by mid-1936. To fend off plunging price and production schedules, Workers’ and Government delegates at the 20th Session of the ILC in Geneva pushed for hours limits in multiple industries. Yet, despite an energetic push for standards, particularly the 40-hour week, the textiles convention, the symbolic centre for international industrial agreement

(let alone similar measures for construction, iron and coal industries), failed to reach the needed two-thirds threshold for passage.<sup>38</sup> Indeed, of “landed” industries, only the peculiar arenas of the glass bottle industry (a classic repository of child labour) and public works (which, by definition, lacked private sector opponents) secured Conventions limiting working hours.<sup>39</sup>

It thus proved a real breakthrough that in its fourth such effort since 1920, and amid what US delegate Bruere called “miserable world chaos,” the first Hours of Work and Manning (Sea) Convention (No. 57), sailed through the 1936 session. Though applying only to “international” voyages, exempting catering and clerical employees, and allowing exceptions according to “national regulations” or “collective [bargaining] agreements,” the three-watch, eight-hour day-at-sea, and six-day-week-in-port system was finally enshrined as an international norm and slated to “come into force” as soon as it had been ratified by at least five of the big (i.e., over one-million tons) maritime countries.<sup>40</sup> Still, US Labor Commissioner (and Columbia University economic historian) Carter Goodrich marvelled that “in this most international of industries,” the advocates of regulation had “won a signal and unexpectedly complete victory.”<sup>41</sup> Indeed, ratification by the United States in 1938 had even overcome the combined opposition of the British shipping and seamen’s representatives, who continued to collaborate in a two-track system subordinating Indian and Chinese labour.<sup>42</sup>

Yet, even the passage of a Convention exposed a degree of cynicism as well as the practical limits associated with ILO diplomacy. The assenting majority, for example, included many votes from countries effectively unaffected by the outcome. Even as the Mexican Government happily subscribed to the “fundamental principles of social doctrine,” it allowed that the subject had “no immediate repercussions” upon the national economy. China similarly offered eager support for the “eight-hour day” even though “we have no such [internationally trading] ships in our country.” While supporting the measure, the Soviet Union found it almost equally inconsequential. “In our country,” proudly proclaimed the government delegate, a Mr Markus,

the abolition of private ownership of the means of production, the nationalisation of shipping, the liquidation of the capitalist class and the absence of private ship owners have put an end to the exploitation of seamen. Soviet seamen are working for themselves, for their own society, and consequently they work shorter hours than those of any other country in the world.<sup>43</sup>

Opponents of regulation, to be sure, did not find the convention terribly constricting. The government delegate for India, for example, though not casting a negative vote, made clear that the draft Convention, representing too much of a departure from the contemporary practices, would never be adopted by his country. Likewise, the Dutch, who claimed to have lost nearly 20 per cent of their shipping due to industry subsidies and protectionist trade policies of others, would not countenance further intrusions on their marketplace manoeuvrability by paying overtime rates. "I am not in the easy position," rued C. J. P. Zaalberg, director of the Dutch National Society for the Protection of Shipping Interests, "of those... who say to themselves 'We have no merchant marine, but we want everybody in the world to have a happy life, and so we shall vote for this convention.'"<sup>44</sup> After all the argument and all the waiting, the 1936 Hours and Manning Convention never came into force: Ten years after its passage, only three nations (Australia, Belgium and the United States) had ratified its terms.<sup>45</sup>

In the late 1940s, despite more auspicious political circumstances, the same frustrations continued to plague the ILO's legislative process. At the maritime session of 1946 ILC in Seattle, with Western labour movements quickly recuperating their numbers and feeling their strength following immense wartime sacrifices, the leverage of labour delegations to the ILO was likely never greater. As C. Jarman, delegate from the British National Union of Seamen, reminded the assembled delegates, "More than 30,000 British merchant seamen had lost their lives in the war. If any of the contributions to victory needed no emphasis, it was theirs. The seafarers were entitled to expect that the governments would show their appreciation of the sacrifice made in fulfilling the pledges given them during the war."<sup>46</sup>

On paper, the pledges were indeed fulfilled. Major breakthroughs in 1946 came in a Wages, Hours of Work and Manning (Sea) Convention (No. 76), which extended the previous eight-hour pledge to all "ratings" (i.e., nonofficers) but, even more dramatically, established the world's first minimum wage for any occupation at sea, setting the "basic pay for a calendar month of service" at "not less than sixteen pounds (UK) or sixty-four dollars (USA)." In a separate Convention on paid vacation at sea, the required supermajority of delegates added an extra three days to the minimum vacation package. In reaching for a universal standard, the problem of "third-world" (i.e., Chinese, Indian and African) seamen on "first-world" ships was finessed in an elegant, if temporary, manner. The preparatory committee reportedly was thus "unanimous in its view that there ought not to be any discriminatory treatment of these seamen

by reason merely of their race... The majority were agreed, however, on the necessity for taking account of the fact that it is at present the practice to employ these seamen in larger numbers than would be the case if the crew were composed of nationals of the country of the ship's flag." Thus, without specific mention of any racial or national-origin group, Article 6 of Convention No. 76 singled out "the case of ships in which are employed such groups of ratings [i.e., non-officers] as necessitate the employment of larger groups of ratings than would otherwise be employed." For these employees who once would have fit under the rubric of "Asian Articles," an "adjusted equivalent" of the minimum scale would thus be created – a rate to be negotiated between shipowners and seafarer unions, or failing agreement, between the governments of origin of both employer and employee.<sup>47</sup> With delegates united in principle on a "levelling-up" strategy for seafaring labour, shipowners did receive consideration in their concern to ensure "fair competition." The labour delegates agreed that the Convention would not become operational until at least nine of the major shipping powers had ratified its terms.

Before the vote, some employer delegates still openly worried. A Norwegian shipowner had predicted in the preparatory sessions, "If this Convention were ratified it would mean a revolution, and they were not prepared to assist in bringing about the obsequies of their industry."<sup>48</sup>

Those who feared ILO lawmaking might have saved their angst for another forum. As had occurred with its 1936 forebear, the far-reaching Convention No. 76 never came into operation. Indeed it did not get close. Until yet another maritime session of the ILC revised and updated maritime standards in 1958, only Australia had ratified the "revolution" of 1946.

At best, a good gauge of international sentiment – and a model debating forum for competing visions of industrial regulation that might in turn be appropriated in collective bargaining agreements – the ILO consistently proved a source of unrequited love for even its most active suitors.<sup>49</sup> The British had long been cautious regarding the ILO's reach. The Americans, as well, who had belatedly but all the more eagerly turned to the ILO to raise worldwide standards to a level in at least some minimal correspondence with its own, soon adopted other strategies. Indeed, witnessing the timing of events developing across congressional, parliamentary and ILO clocks, it appears that government officials and their labour allies, even as they "played the international field," had simultaneously been hatching plans to "marry the girl next door" in the form of national shipping subsidies and seamen's protective legislation. Beginning in the mid-1930s, both the British and the Americans (following in the footsteps of Japan, Italy, Holland

and France) took major steps towards a subsidized national merchant fleet and privileged hiring laws for native-born seamen. Unfortunately, as nearly always happens in moves towards national protectionism, welfare for one's own national workforce also contained an uglier side of discrimination. In Britain, the Colored Alien Seamen Order enforced an "outsider" status on Caribbean and Asian-born subjects of the empire; similarly, the workplace provisions of the US Merchant Marine Act of 1936 included a citizen-only clause aimed directly at Asian, and especially Filipino, seamen.

At least for the two greatest shipping powers of the interwar world, the "global sea" of competitive shipping and motley maritime crews proved a more threatening than inviting proposition. As the initial decades of ILO experience suggested, there existed no obvious instrument by which minimal worldwide codes of skill, safety and conditions of labour could be imposed. Both Great Britain and the United States, in a period of social-democratic currents stirred by strong labour movements, opted to insulate their maritime labour forces as well as their shipping industries from outside competition. The economic impact of such measures, which will not concern us here, only accelerated the long-run decline of both shipping powers on the world stage. The combination of flaccid international standards and protectionist cocoons by the leading Western sea powers set the stage for the post-1960s rise of flags of convenience as an advance guard of worldwide industrial globalization.

For all its travails, however, internationalism on the high seas did not – perhaps could not – go away. It can only be briefly noted here that even as the Atlantic superpowers turned away from the rest of the maritime labouring world, that world did not stand still. In particular, both the Chinese and the Indian seafaring populations – the accursed objects of much Western restrictive activity – already by the Second World War had gained important new leverage. In both cases, wartime service in the Allied cause together with rising nationalist sentiment at home, the latter accentuated by resentment of imperial and/or racist disdain from Western "superiors," triggered a rising assertiveness. Amid the collective fight against Japan, mass desertions by Chinese seamen in US ports effectively forced an attenuation of long-functioning exclusion laws. In the case of the Indians, a succession of wartime strikes together with pressing labour shortages produced a dramatic jump in wages and benefits. Yet, as Gopalan Balachandran has argued, it was "only ... in the context of the self-consciously modern project of the new nation-state – that Indian seamen finally shed their badge as 'coolies' to emerge as workers."<sup>50</sup> An important step on that path was the 1948 complaint to the

ILO by A. K. Serang, son of founding Indian seamen's leader Mohamed Serang, about the corrupt hiring practices associated with the shipping company ghat serang (labour agent) monopoly control of the labour market. The First Asian Maritime Conference, held in 1953 in Ceylon, proved a turning point. Shortly thereafter, government-run seamen's employment offices were established in Bombay and Calcutta, as well as in Hong Kong, Pakistan and Singapore.<sup>51</sup> The story, to be sure, carries a broader point. If Western trade unionists often found international organizations like the ILO to be toothless tigers, their counterparts in developing nations often looked to them as both political and economic lifelines.<sup>52</sup> Moreover, in the post-Second World War era, particularly with mounting concerns about conditions on ships attached to "flags of convenience," both ILO standards promoting a global minimum wage for seafarers and the mobilization of third-world seafarers would assume a new public prominence.

## Notes

1. I particularly thank Harold Lewis, Gopalan Balachandran, Jeremy Seekings, Denver Brunzman, Nelson Lichtenstein, and Susan Levine for their suggestions and criticisms of earlier drafts of this chapter; in addition, Thomas Dorrance provided valuable assistance in the course of my research.
2. E. W. Sager, *Seafaring Labour: The Merchant Marine of Atlantic Canada, 1820–1914* (Montreal: McGill-Queen's University Press, 1989), 245–49. Sager notes that 1876 was the last year that total tonnage from sailing vessels exceeded that of steamships in UK-registered vessels, but that as late as 1910, a majority of US and Scandinavian tonnage was still powered by sail.
3. H. H. Raymond testimony in Cong. Rec. 63rd Cong., 1st Session Senate, 1913, 50, pt. 6: 5697.
4. J. Kramer, "Conrad's Crews Revisited," in B. Klein, ed., *Fictions of the Sea: Critical Perspectives on the Ocean in British Literature and Culture* (Burlington, VT: Ashgate Publishing Company, 2002), 157.
5. A. Gelb and B. Gelb, *O'Neill* (New York: Harper and Brothers, 1962), 157.
6. E. O'Neill, *Early Plays* (New York: Penguin, 2001) quotation from "The Moon of the Caribbees" [1917], 6.
7. E. O'Neill, "The Hairy Ape," in *Three Great Plays* (Mineola, NY: Dover Publications, 2005), 104, 129.
8. A. Read, *The World on Fire: 1919 and the Battle with Bolshevism* (New York: Norton, 2008), vii.
9. A British government delegate to the Paris Peace Conference later recalled, "the fears of possible labor troubles and disturbances made them ready to treat the matter as one of urgency. That such fears were seriously felt was evident from the fact that M. Clemenceau considered it necessary to concentrate sixty thousand troops in the streets of Paris on the first of May to keep a labor demonstration from getting out of hand."

10. The international labor charter included nice principles and was included in Part XIII of the Treaty of Versailles, <http://www.ilo.org/public/english/bureau/leg/download/partxiii-treaty.pdf>.
11. J. T. Shotwell, ed., *The Origins of the International Labor Organization* (New York: Columbia University Press, 1934), Vol. I (E. J. Phelan, "The Commission on International Labour Legislation"), 191–95; H. B. Butler, "The Washington Conference," 305–30.
12. E. C. Lorenz, *Defining Global Justice: The History of US International Labor Standards Policy* (Notre Dame, IN: University of Notre Dame Press, 2001), 75–103; To woo US policy-makers, ILO advocates appealed directly to the similarities between the originating spirit of the international organization and the emergency measures of the Depression era New Deal – particularly, the National Industrial Recovery Act of 1933 – to construct a new "partnership between industry, labor, and government." J. T. Shotwell, ed., *The Origins of the International Labor Organization* (New York: Columbia University Press, 1934), I, 357–67, quotation 359.
13. The Constitution of the ILO formed Part XIII, or the Labor Section, of the Treaty of Versailles. <http://history.sandiego.edu/gen/text/versaillestreaty/ver387.html>; re: the ILO as an anti-Communist buffer, see C. J. Ratzlaff, "The International Labor Organization of the League of Nations: Its Significance to the United States," *American Economic Review*, 22 (September, 1932), 455.
14. Although League members automatically became chartered members of the ILO, an opening was also left for non-League members to join the ILO.
15. E. J. Phelan, "British Preparations," in Shotwell, *Origins*, I, 105–26.
16. International Labour Organization, *The Rules of the Game: A Brief Introduction to International Labour Standards* (Geneva: ILO, 2005), 12–16.
17. Tribute by F. Blancard in *Albert Thomas, 1878–1978* (Geneva: ILO, 1978), 5; E. J. Phelan, *Yes and Albert Thomas* (New York: Columbia University Press, 1949 [1936]), 58.
18. B. Reinalda, "Success and Failure: The ITF's Sectional Activities in the Context of the ILO," in Reinalda, ed., *The International Transport Workers Federation, 1914–1945: The Edo Fimmen Era* (Amsterdam: Stichtingbeheer IISG, 1997), 138–40; By 2005, the ILO had adopted 185 Conventions and 195 Recommendations, more than 60 of which pertained to seafaring. *The Rules of the Game*, 17, 64.
19. R. Ahuja, "Mobility and Containment: The Voyages of South Asian Seamen, c. 1900–1960," in *International Review of Social History*, 51 (2006), Supplement, 112.
20. "Hours of Labour and their Effect on Manning and Accommodation," League of Nations, International Labour Office, Seamen's Conference, Genoa, 9 July 1920, Genoa, 416.
21. *Ibid.*, 417.
22. "Hours of Labour and their Effect on Manning and Accommodation," League of Nations, International Labour Office, Seamen's Conference, Genoa, 9 July 1920, Genoa, 423–24; Gopalan Balachandran suggests that Mazarello (and thus the decisive maritime hours vote) may have fallen victim to the influence of P&O and government interests who supplied his interpreter. "Conflicts in the International Maritime Labour Market: British and Indian

- Seamen, Employers, and the State, 1890–1939," *Indian Economic & Social History Review*, 39 (2002), 94–95.
23. A. Marsh and V. Ryan, *The Seamen* (Oxford: Malthouse Press, 1989), 108–10; F. J. A. Broeze, "The Muscles of Empire: Indian Seamen and the Raj," *Indian Economic and Social History Review*, 18 (1981), 52–55. Two less controversial Conventions banning child labour under 14 and restricting shipside recruitment bosses and brokers were approved in Genoa. Otherwise, prior to 1936, the only maritime measures to reach the two-thirds threshold required the signing of articles of agreement for all seagoing vessels (1926) and the repatriation of foreign seamen to their home country (1926); [http://www.ilo.org/ilolex/cgi-lex/conv\(ed\)pl?](http://www.ilo.org/ilolex/cgi-lex/conv(ed)pl?) (accessed 5 March 2009).
  24. *Record of Proceedings*, International Labour Conference, Geneva, 12th session, 24 October 1929, 157.
  25. Reawakening fears of worldwide revolution and social breakdown, the stock market crash and economic depression of the 1930s paradoxically lifted the global profile of the ILO as a potential agent in dealing with the employment crisis. D. P. Moynihan, "The United States and the International Labor Organization, 1889–1934" PhD diss. (Fletcher School of Law and Diplomacy, 1960), 469.
  26. *Record of Proceedings*, International Labour Conference, 21st and 22nd Sessions, Geneva 1936, 117.
  27. *Ibid.*, 133.
  28. W. G. Rice and W. E. Chalmers, "Improvement of Labor Conditions on Ships by International Action," *MLR* 42 (May 1936), 1181–1203, quotation 1191.
  29. Moynihan, xi; Cong. Rec., 74th Cong, 1st Session, 1935, 78, pt. 2: 1683.
  30. Cong. Rec., 73d Cong, 2d Session, 1934, 78, pt. 11: 12580.
  31. Cong Rec., 74th Cong., 1st Session, 1935, 79, pt. 3: 2583.
  32. New Deal advocates certainly had reason to fear for the future of national labour and welfare legislation. Not until March 1937 did the Supreme Court (in the famous "stitch in time saves nine" case) reverse itself and uphold a state minimum wage law. Within weeks, it likewise upheld the National Labor Relations Act and the Social Security Act, thus both averting a constitutional crisis and rendering unnecessary such radically alternative paths as the ILO to domestic social legislation. R. McElvaine, *The Great Depression: America, 1929–1941* (New York: Three Rivers Press, 1993), 286; Lorenz, 108.
  33. Lorenz, 96–110.
  34. Lubin, as quoted in Lorenz, 109.
  35. Cong Rec., 74th Cong., 2d Session, 1936, 80, pt. 9: 9999.
  36. Ratzlaff, 450–51.
  37. Rice and Chalmers, 1195.
  38. On the 1936 world textile conference, see Lorenz, 113–19.
  39. W. E. Chalmers, "International Labor Organization: Results of International Labor Conference, June 1936," *MLR* (1936), 323.
  40. <http://www.ilo.org/ilolex/cgi-lex/convd.pl?C057> (accessed 24 July 2008). The same conference passed an additional convention establishing a minimum paid vacation of not less than nine days for all crew members.
  41. C. Goodrich, "International Labor Relations: Maritime Labor Treaties of 1936," *MLR*, 44 (1937), 349, 354. A British collective bargaining agreement

- the previous summer adopting the rudiments of the three-watch system reportedly paved the way for the needed supermajority of delegate votes.
42. G. Balachandran, "Conflicts in the International Maritime Labour Market: British and Indian Seamen, Employers, and the State, 1890–1939," *Indian Economic & Social History Review*, 39 (2002), 96–99.
  43. Record of Proceedings, International Labour Conference, 21st and 22nd Sessions, Geneva 1936, 120, 127, 129. The Soviet delegate, a Mr Markus, pointedly did not mention the suppression of the Kronstadt sailors' uprising in March 1921.
  44. *Ibid.*, 129, 121–22.
  45. International Labour Conference, Report III (Part 2), "Lists of Ratifications by Convention and by Country," 91st Session, 2003.
  46. Preparatory Committee, Report 9, "Wages, Hours, Manning," International Labour Conference, 28th Session, Seattle, Washington, 1946, 47.
  47. <http://www.ilo.org/ilolex/cgi-lex/conved.pl?C076>. *Record of Proceedings*, International Labour Conference, 28th Session, Seattle, Washington, 1946, 306.
  48. Preparatory Committee, Report 9, "Wages, Hours, Manning," International Labour Conference, 28th Session, Seattle, Washington, 1946, 47.
  49. A. Marsh and V. Ryan, *The Seamen* (Oxford: Malthouse Press, 1989), 154–55.
  50. J. Hyslop, "Steamship Empire: Asian, African and British Sailors in the Merchant Marine, c. 1880–1945," *Journal of Asian and African Studies*, 44 (1), 63–64; G. Balachandran, "Producing Coolies, (Un)making Workers: A (Post-)Colonial Parable for the Contemporary Present," Paper presented to "Workers, the Nation-State and Beyond: The Newberry Conference on Labor Across the Americas," Chicago, 18–20 September 2008.
  51. Telephone interview with Abdulgani Serang (grandson of A. K. Serang and currently General Secretary of the National Union of Seafarers of India, NUSI), 3 March 2009; "The ILO and Seafarers," *ITF Journal*, 29 (Autumn, 1969), 59.
  52. See, for example, F. J. A. Broeze, "The Muscles of Empire: Indian Seamen and the Raj," *Indian Economic and Social History Review*, 18 (1981), 43–67; J. Seekings, "The ILO and Welfare Reform in South Africa, Latin America and the Caribbean, 1925–50," in J. van Daele et al., eds., *ILO Histories. Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century* (Bern: Peter Lang, 2010), 145–72.

# 2

## The ILO, Australia and the Asia-Pacific Region: New Solidarities or Internationalism in the National Interest?

*Marilyn Lake*

### **In partnership with the Asia-Pacific region**

In April 2010, following the G20 Labour and Employment Ministers meeting in Washington, the International Labour Organization (ILO) announced that the Government of Australia and the ILO had signed a five-year Partnership Agreement that would provide \$15 million in the first two years to promote employment and decent work conditions in the Asia-Pacific region. Endorsement of the agreement ensued from representatives of the Labor Government, trade unions and employers in terms that echoed Australia's earliest engagements with the ILO – engagements which always emphasized the benefits that would accrue to Australians of higher living standards in the Asia-Pacific region.

“The Australian Government welcomes this new way to partner with the ILO to improve the lives of working people in our region,” said Senator Mark Arbib, minister for employment participation. President of the Australian Council of Trade Unions Sharan Burrow, a strong advocate of the Australia–ILO Partnership Agreement agreed: “This is a great step towards further collaboration with the ILO and we hope to expand on this in the very near future.” Peter Anderson, CEO of the Australian Chamber of Commerce and Industry observed that the partnership represented joint regional leadership by the ILO and the Australian Government. “It also signals that the well being of labour markets and economies of our near neighbours is important to Australia and the global community.”<sup>1</sup>

The press release emphasized the agreement's "historic" nature. It was the first time that the Australian Government had funded "an overarching package of labour programs through the ILO."

Although historic in one sense, the package was nevertheless in keeping with Australia's long tradition of engagement with the ILO, which had, from the first, emphasized that the enhancement of global labour and living standards – especially for Australia's regional neighbours in Asia and the Pacific – was not primarily an altruistic project, but rather one of central importance to the maintenance of Australia's own living standards. National interest had informed Australian commitment to internationalism from the beginning.<sup>2</sup>

Australian attitudes had long been informed by a policy of "good-neighbourliness towards Asian nations," in the words of legal historian, J. G. Starke. In a chapter on "Australia and the International Labour Organisation" for a collection on *International Law in Australia*, Starke noted that Australia had always sought to cooperate with Asian ILO member States in matters of common interest and suggested it was a tribute to Australia that the Fifth Session of the ILO's Asian Regional Conference was held in Melbourne in 1962, with 19 countries represented. There they adopted "the resolution of Melbourne" that set out a large number of desirable standards aimed at economic and social advancement in Asia.<sup>3</sup>

The economic and social advancement of Asian countries was a key motivation for Australian Labor's enthusiastic support of the ILO from the beginning, but it also explains the limits of Australia's response to and engagement with ILO initiatives, which might be understood as one legacy of the colonial division of the world into so-called "backward" and "advanced" countries and Australia's foundational status as a "white man's country."<sup>4</sup> The policy of offering technical assistance and partnership agreements to enhance the development of Asian/Pacific neighbours represents a continuation in a different form of Australia's original relationship with and investment in the ILO, an approach that might be best characterized as internationalism in the national interest.

## The history of migration and living standards

The management of migration – and its restriction – have been considered crucial to Australian (and, relatedly, Canadian as well as New Zealand's and the United States') living standards since the nineteenth century. Migration has also been an important concern for the ILO, which established the International Emigration Commission that first met in

Geneva in 1921. Its report in the *International Labour Review* noted that this was the first occasion on which an official international commission had dealt with the question of formulating “an international policy” governing matters such as supervision of emigration agents, dissemination of information to prospective emigrants, the deduction of wages in advance of emigration, minimum conditions on ships and trains and equality of treatment between nationals and foreign workers.<sup>5</sup>

It was a concern to limit immigration that framed and explained the White Australia Policy, inaugurated with the Commonwealth of Australia as a nation-state in 1901. One of its key planks was the Immigration Restriction Act, which aimed to bar cheaper labour in the form of “Asiatics” through the ruse of a dictation or literacy test. As one spokesperson for White Australia explained: “Coloured aliens engaging in any occupation subject white men in the same occupation to an utterly unfair and improper competition.” The secret of the coloured man’s success was “his complete indifference to the moral and social standards of his fellow white citizens.” He worked from dawn till dark seven days a week; he ate little else than rice; he clothed himself in rags; and lived in a hovel.<sup>6</sup>

One of the key architects of the White Australia Policy was the liberal-minded lawyer, H. B. Higgins, member of the new federal parliament in 1901, attorney general in the first short-lived Labor Government of 1904, and president of the Commonwealth Conciliation and Arbitration Court from 1906. In the landmark *Harvester* judgment of 1907, a radical decision that directly challenged employers’ emphasis on profits and productivity, Higgins famously declared for a “fair and reasonable” living wage defined in terms of human needs, rather than productive output. If an employer could not afford to pay decent wages, declared Higgins defiantly, he had no right to do business in Australia.

Higgins was also a keen supporter of the second piece of legislation introduced in 1901 to enact the White Australia Policy, the Pacific Islanders Labourers Bill to provide for the deportation of so-called “Kanakas,” brought to labour in “slave-like” conditions on the sugar cane plantations of north Queensland in the late nineteenth century. The bill was immensely important, Higgins told his fellow members of the federal parliament – “the most vitally important measure on the programme the government has put before us” – because its passage would determine whether

northern Australia should be peopled by white men or not. I feel convinced that people who are used to a high standard of life – to

good wages and good conditions – will not consent to labour alongside men who receive a miserable pittance and who are dealt with very much in the same way as slaves.<sup>7</sup>

Higgins spoke from personal knowledge. His brother-in-law, G. E. Morrison, the future correspondent in Peking for the London *Times*, had exposed the appalling and often fatal conditions of islander labourers on trading ships and sugar plantations, while working as an investigative journalist for the *Age* and *Leader* newspapers in Melbourne.

After visiting the United States in June 1914, where he was warmly welcomed by members of the feminist National Consumers League, the American Association for Labor Legislation, and Justices Frankfurter, Hand and Brandeis, Higgins elaborated on his case for the minimum wage as a necessary instrument in securing social justice and industrial peace in “A New Province for Law and Order,” commissioned by the *Harvard Law Review* and published in 1915. Frankfurter commended the article to his friend and mentor Oliver Wendell Holmes: “It seemed to me to have all the romance of bending theories to the test of life – of trying to adjust conflicting demands to larger common interests, or at least making men know their demands through disinterested expert guidance.”<sup>8</sup> Holmes would later quote Higgins on the benefits of industrial arbitration in his dissenting judgment in *Adkins v. Children’s Hospital*.<sup>9</sup> In the framework of White Australia, Higgins was pioneering a new jurisprudence that encouraged the work of US jurists in developing a “new body of law” in industrial relations that would put “the human factor in the central place.”<sup>10</sup> But to which humans should these standards apply?

How to reconcile the maintenance of high living standards across all countries with the emigration of two million people every year from poorer, overpopulated nations was a key question of the International Emigration Commission. In its 1921 report, the Commission noted that English-speaking countries gave explicit preference in immigration policies to Anglo-Saxon migrants and actively restricted the immigration of Asians. “Australia,” it noted,

with its immense uninhabited territories, situated at the point of contact between the white and yellow races, has an immigration policy which concerns itself primarily with safeguarding the ethnic character of its future population. The Government is anxious to settle the unoccupied land with farmers, and to obtain white labour. The organised workers on their side, however, are opposed to the

influx of [any] foreigners, which might result in lowering the traditionally high standard of living in their country.<sup>11</sup>

Indeed, because organized Australian workers opposed all immigration, they declined to recommend the appointment of a delegate to the 1921 conference.

The Commission report also observed that "Japan, China, India, and the Dutch Indies, with their excess of population, find it difficult to endure the condition of inferiority in which they are kept by reason of special immigration laws." They also found it difficult to endure the racial discrimination to which Asians were routinely subjected in employment in the self-styled "white men's countries" of Australasia, North America and South Africa and thought the elimination of discrimination should be high on the agenda of the newly formed ILO. Should not racial discrimination in employment be a key target for an international body dedicated to achieving social justice across the world?<sup>12</sup>

The Chinese delegate to the Emigration Commission, Li Tehuin, proposed that the agenda for the ILO's annual International Labour Conference (ILC) include the following goal: "The improvement of the present conditions of living of Chinese emigrants, who suffer from economic disadvantages in certain countries." Mindful of their obligation to pay "due regard to the sovereign rights of each state," the Commission was reluctant to endorse this recommendation, but agreed to the following substitute proposal: "Equality of treatment from the economic point of view, without distinction of country of origin, of all immigrants legally admitted into the country of immigration."<sup>13</sup> Each country had the right to decide who would be legally admitted to its territory, and as Adam McKeown has argued, border control had emerged in the late nineteenth century as a key means of defining national sovereignty, its main historical dynamic the determination of citizens of the West to exclude migrants from the East.<sup>14</sup>

As the report of the International Emigration Commission made clear, the organized workers of Australia opposed all immigration as posing a threat to their high standard of living, which had been achieved not as a result of international mobilization, but of local political labour campaigns. These stretched back to the 1850s, when the eight-hour day was first achieved by stone masons in the colony of Victoria and into the twentieth century, when Australians elected the first Labor Governments in the world and pioneered, in the words of Ohio State Professor M. B. Hammond, "the body of social legislation which has drawn the eyes of all the world to Australasia, and which marks the most

notable experiment yet made in social democracy."<sup>15</sup> Australian Labor representatives determined to maintain immigration restrictions but, as a corollary, to support the ILO's work in raising labour standards across the world.

### "Advanced" and "backward" countries

Some of the contradictions that would define Australia's involvement with the ILO as well as the national and racial dimensions of its engagement with the twentieth-century politics of internationalism were evident from the beginning. Australia was a founding member of the ILO and a strong supporter of its goals because political leaders believed Australian standards were already in advance of the rest of the world and that other countries should follow its example to make high industrial and living standards uniform. As a self-styled "white man's country," Australia saw itself as in the vanguard of a new kind of civilization, defined not in terms of antiquity or cultural riches, but in terms of the standard of living, a veritable model in its advanced industrial conditions. The delegation to the 1921 ILC reported accordingly: "Apart from the items anthrax and white lead, the agenda from an Australian standpoint was not particularly important, as the proposals in the other items were either much below the standards already in existence, or were not applicable to Australia."<sup>16</sup>

Like most Western countries, Australia understood its participation in the ILO in terms of the colonial and racialized division of the world into "advanced" and "backward races." In 1902, the British liberal statesman, James Bryce, published his influential Romanes lectures, called *The Relations of the Advanced and Backward Races of Mankind*, in which he referred to the "successful" steps taken by "the Californian and the Australian" to "avert race contact": "[W]here the methods have been most stringent, the desired result is being attained."<sup>17</sup> He went on to justify the policies, "crudely selfish as some of their arguments may appear," in terms of upholding labour and living standards. Australians and Californians "seem to be right in believing that a large influx of Chinese labour would mean the reduction of the standard of life, and with that the standard of leisure and mental cultivation, among the artisan class."<sup>18</sup>

The ILO was thus conceptualized by Australian Workers' delegates in this context as an instrument whereby "advanced" (Western) countries would set an example for "backward" (Eastern) ones and exert international pressure to achieve worldwide reform. In 1923, E. J. Holloway, secretary of the Victorian Trades Hall Council and Australian Workers'

delegate to the ILO, reported there was strong criticism in Geneva of Australia's failure to ratify ILO Conventions, which was all the more regrettable because of the need to pressure "backward" countries to lift their standards. Holloway explained to the Workers' group at the ILC in 1923 in Geneva that existing Australian law was already in advance of the Conventions:

But they stated that even if it were only a formality, we should do it to help others, for they said the failure of the Australian Government to ratify the Conventions made it much harder for them to get more backward Governments to move.... I hope the Government will see the wisdom of complying with this appeal and thus help the people in the more backward countries get some little improvement in their lot.<sup>19</sup>

"My own opinion is that the International Labour Office and the Conferences should be continued," Holloway said, "because they are the greatest factor in existence in the effort to make more uniform the economic and social conditions of the people in the various countries of the world."<sup>20</sup>

But the subsequent failure of Australian federal and state governments to ratify ILO Conventions, including the Hours of Work (Industry) Convention, 1919 (No. 1), on the eight-hour day, which had been introduced into the Australian colonies in 1856, continued to cause adverse comment.<sup>21</sup> As Holloway reported:

The Conference complained bitterly against those Governments who send Delegates and take part in all the Conferences, but yet have not ratified the conventions agreed to, and in this respect we were in a bad way for judging by the Director's Report, Australia was one of the worst offenders, for she had failed to ratify the resolutions carried by the last two or three conferences.<sup>22</sup>

And the following year, future prime minister John Curtin, then working as a labour journalist in Perth, made the same point more strongly, pointing out that Australia was failing in its obligations under the Peace Treaty. It is "unworthy," he wrote,

of the general claim that Australian industrial legislation, in its reformist and humane aspects, is in advance of the world standard, that we should be so remiss in this fundamental feature of the functions of the International Labour Conference and the obligations

devolving on us under the Peace Covenant... As, broadly speaking, the conventions and recommendations referred to do not involve vital changes in the existing industrial conditions obtaining in Australia, it is most unsatisfactory that the procedure, which has to be followed in order to comply with our obligations as a member-state, is not set in motion.<sup>23</sup>

Curtin noted that the Workers' group was particularly critical of Australia's failure to ratify "the Washington Convention limiting the hours of work in industrial undertakings to eight in the day, and 48 in the week." This, from a country that had pioneered the shorter working day and 44-hour week. Surely it was not asking too much, he added, to expect that prompt action should be taken to add Australia's name to the list of the ratifying countries.<sup>24</sup>

The failure of governments to ratify Conventions, Workers' delegates argued, would undermine the international project. "The foundation of the whole structure of mutual international guarantee and supervision is in the act of ratification. Without that the protection intended to be provided for the worker will be non-existent." Convention No. 1, on hours of work, was "essential to any reasonable conception of what is meant by the term 'social justice' as applied to the working conditions of the industrial classes." Curtin concluded his report to the Australian Government and parliament with a passionate plea. "By not ratifying the convention Australia was withholding its support from an economic reform and a moral principle which is definitely related to the welfare and progress of humanity and therefore of the peace of the world."<sup>25</sup> It was time for Australia to show international leadership. Australian Governments for their part continued to argue that as a federated nation state it was impossible to proceed with ratification in most cases, because under the Australian constitution jurisdiction over industrial matters belonged to the states, which were difficult to coordinate.

### **Common interests**

The apparent contradictions of the Australian approach – internationalist yet nationalist, engaged but defensive – were clearly articulated by John Curtin, who was, perversely it might now seem, strongly committed to the ideals of both international socialism and the White Australia Policy. He saw the historic task and practical work of ILO as providing a resolution to this apparent contradiction. The ILO – together with the Pan-Pacific Trade Union Congress – would work to lift labour

conditions and wages across the region and thus end the dual threats of cheap labour and imperial exploitation that, in his view, made the White Australia Policy necessary.

"Racial hatred," Curtin wrote in 1924, the same year in which he attended the ILC in Geneva, was a "poisonous drug" that would undermine humanity's common interest in progress. Lifting labour standards would in his view help to dissolve racial hostilities.<sup>26</sup> "The people of the world have many things in common," Curtin wrote in the *Westralian Worker*, "economic interests, science, art, ideas, ideals. Ranged against those common interests there are traditions, prejudices, hatreds, national barriers, sectarian differences, language obstacles and racial conflicts that have proved so effective in keeping peoples segregated. The common interests are the vital means of social advancement, and it is upon them that the emphasis of constructive thinking must be laid in any effort to promote world understanding."<sup>27</sup>

It was this "constructive" thinking and advocacy of workers' common interests that Curtin took to the ILO in 1924. According to their own historical narratives, Australian workers' "heritage" of advanced industrial and social legislation was the achievement of the pioneers of the national labour movement, who had battled in the nineteenth century against the forces of privilege and property and notably against the "Black Slave trappers," who brought Pacific Islanders to work in the sugar plantations of Queensland. "It was not until the Laborites of Queensland could be given the actual legislative and political backing of the Laborites of the rest of the Commonwealth [in 1901] that the black stain was removed from Australia's escutcheon."<sup>28</sup> Australia, Curtin believed, should defend its "white soul," but it must do so by treating "excluded peoples" such as the Chinese and Japanese as civilized peoples. The Chinese and Japanese were "different," but they should be treated with respect. And Australians should be wary of imperial British attempts to cast Japan as "a probable invader."<sup>29</sup> Australian Labor should build alliances with Chinese and Japanese workers even as it also determined to prevent them from migrating to Australia.

Of the "backward" countries, it was "Asiatic" nations, broadly defined, who were identified at the ILO as the major challenge to those who wanted to lift worldwide living and industrial standards. Thus the Seventh Session of the ILC in 1925 resolved that the Office should

collect and publish all available information regarding the conditions of labour in Asiatic countries; and also requests the Governing

Body of the International Labour Office, in consultation with the Governments concerned, to undertake, as far as possible, a documentary inquiry into the conditions of labour in those countries, more especially in China, India, Japan, Persia, and Siam, and in the colonies, protectorates, and mandated territories in Asia.<sup>30</sup>

More specifically, the Seventh Session of the ILC in 1925 resolved to “instruct the International Labour Office to put itself into communication with the Chinese Government and the Governments of the Powers possessing Concessions in China with a view to urging upon them the necessity of early and effective action being taken to prohibit the employment of young children in industry in China.”<sup>31</sup>

The attention of the ILO had been drawn to the problem of child labour in China by campaigns waged by church groups and organizations such as the YWCA (the “Y”), which publicized the brutal exploitation of child labour in burgeoning Chinese factories, especially those run by the British and other imperial powers. In 1924 the Shanghai “Y” published *The Long Hard Day*, a pamphlet exposing the effects of “Western industrialism” as evident in Zhabei, a low-lying expanse of textile mills, between the Yangtze River and Shanghai’s Red Light district, and in which some 80 per cent of the workers were women and children. Factory workers pleaded to the world to close the gap in the working conditions of Western and Eastern workers: “When will we be treated as the European workers? We may be called the factory animals of the world of darkness.”<sup>32</sup>

One of the main authors of the pamphlet was Eleanor Hinder, an Australian science graduate and labour reformer recruited to work with the YWCA in Shanghai. She had previously been employed as a welfare worker in Sydney, where she had written one of the first trade union pamphlets for female department store workers.<sup>33</sup> *The Long Hard Day* was widely distributed, eliciting support from political and labour leaders across the world, including from Australian Prime Minister (and former labour leader) William Hughes. Hinder mused that the “Y” was now leading a social revolution in labour rights.<sup>34</sup>

As historians Sarah Paddle, Sophie Loy-Wilson and Fiona Paisley have shown, a network of English-speaking women reformers played a key role in publicizing and seeking to improve factory working conditions in Shanghai in the 1920s. Agatha Harrison, a graduate of the London School of Economics and an expert on industrial affairs, was appointed in 1920 as the first industrial secretary of the Shanghai branch of the

YWCA, whose lobbying led to the Commission on Child Labour for the Council of the International Settlement. Harrison also established a number of settlement houses in the Chinese districts of the city so that Western women might live with the Chinese women, with whom they sought to work and whose conditions they sought to improve. Hinder lived in one of these settlement houses when she first arrived in Shanghai. Another British reformer, Adelaide Andersen, travelled to China under the auspices of the ILO from 1923 until 1926 on an "industrial visit," on which she reported in her book *Humanity and Labour in China*.<sup>35</sup> Anderson and Harrison toured Australia in 1923 and 1928 calling for the support of the Australian people in a campaign "to save China from some of the horrors [British] people went through during the Industrial Revolution," a call which found a ready response among trade unionists.<sup>36</sup>

Eleanor Hinder, who had visited the ILO in Geneva before her appointment to the YWCA in Shanghai, played a key role together with her American friend, Viola Smith, as a labour reformer in China in the interwar years. Unlike the men who represented their countries in national delegations at the ILO, these women were self-conscious internationalists, whose novel work Hinder theorized in the YWCA newsletter *Threads*:

International action is remarkably new to all of us and the first casting of small threads across the spaces that divide us may seem as futile as the spider's filament. But watch them by degrees strengthen into unbreakable bonds. A weaving has started that cannot easily be stopped....Slogans and posters and handbills, in terms people can understand, distributed broadcast at such times, have led to common thinking and engendered a group mind.<sup>37</sup>

During her long career as a reformer, Hinder worked for and in numerous international organizations, including the Shanghai Municipal Council, the government of the International Settlement in Shanghai, the Young Women's and Men's Christian Associations, the League of Nations, the ILO (as a special consultant on Asia), the Pan Pacific Union, the Pan-Pacific Women's Conference and, after the Second World War, the United Nations.

In Shanghai for more than 20 years, Hinder lobbied for and succeeded in establishing a new department of the Shanghai International Government called the Industrial and Social Division. As director, she worked with some 50 Chinese colleagues to produce major reports,

policy documents and inquiries into 20 different industries in Shanghai. She created a system of factory inspection, health and safety regulation, and industrial and technical training initiatives. She also emulated the Australian example in establishing a system of industrial relations based on conciliation, mediation and industrial agreements. Her friend Viola Smith, an American Civil and Foreign Service bureaucrat, made her career as an expert in American–Chinese foreign and trade relations. In 1919, Smith was a member of the editorial staff of the ILO at its inaugural conference in Washington, and in 1921 she embarked on a lifelong series of postings to China.<sup>38</sup>

The mid-1920s also saw the development of a strong sense of workers' solidarity between Australian and Chinese trade unionists, in exchanges that increasingly focussed on a critique of British imperialism in Asia.<sup>39</sup> Following the visit of Anderson and Harrison of the YWCA to Australia, a conference of Australian trade unions resolved, on the recommendation of George Waite, head of the Seamen's Union, to organize a publicity campaign to support the "Y" in its work for labour reform in China. Many Australian trade unionists also identified with the well-publicized campaigns on the part of Chinese workers against the combined forces of British capitalism and imperialism, struggles that intensified after British police, in 1925, fired into a crowd of Chinese unionists, provoking what came to be called the May 30th movement.

Once identified as the threat of cheap labour, Chinese workers began to be hailed by Australian trade unionists as fellow workers engaged in industrial struggle. In the words of Julia Martinez, writing about another context, "coolies" became "comrades" as Australian trade union leaders used petitions from Asian factory workers to compare their working conditions, as the conditions in Australian workplaces deteriorated with the onset of the Great Depression.<sup>40</sup> By doing so "they incorporated," as Loy Wilson suggests, "the localized demands of Australian unionists for better wages and working conditions into a world-wide campaign for Asian workers' rights and the 'liberation of Asia' from European imperialism."<sup>41</sup>

Such international solidarities, forged by women labour reformers and trade unionists in the 1920s, were, perversely perhaps, rendered more difficult to achieve at the ILO, the very organization that was intended to institutionalize workers' internationalism. In Geneva, the representation of workers' interests through national tripartite delegations (and in the first two decades all Australian delegates were men) invariably meant that Workers' delegates to the ILO had to negotiate the competing priorities of national interest and international class solidarity. They

went to Geneva as national representatives selected by the Australian Government.

This conflict was evident from the start when the Australian Workers' delegate at the 1921 ILC, Tom Merry, secretary of the South Australia Labour Council, had valiantly defended the use of lead in paint against the majority of other Workers' delegates, especially those from Europe, who had proposed that it be prohibited on health grounds. Australia was a leading lead exporter, and its commercial interests would be directly threatened by a ban. Acting prime minister, Nationalist Joseph Cook, had acclaimed Merry's appointment as very fortunate in terms of the national interest:

Being a painter by trade, his knowledge would give him a great advantage when the question of white lead in paint was considered by the conference. Mr Merry was a very level-headed man, and had a due appreciation of this important question, which was causing much discussion in Europe at the present time. The matter was also one in which Australia was vitally interested, and the effect of the decision on our mines, should it be averse, would be tremendous. Among other things Mr Merry would be able to furnish the delegates to the conference with an exemplification of the effects of white lead on his own person. He was certainly a fine healthy specimen of manhood after working all his life among paint.<sup>42</sup>

Merry had an unpleasant time in Geneva, where the ILC eventually adopted a Convention prohibiting the use of white lead in paint. He was subjected to personal attacks so severe that the British Workers' delegate felt compelled to defend him and extend his sympathy. Merry, for his part, recommended that English-speaking members of the ILO (the representatives of "white men's countries") should in future caucus before the annual conference to ensure a stronger solidarity in the face of what he considered to be concerted "continental" hostility.<sup>43</sup>

In 1928, John Curtin, the Australian Workers' delegate to the 1924 Conference felt obliged to defend Australian trade union participation in the Pan-Pacific Labor Congress in Shanghai from conservative charges that trade unionists were betraying the White Australia Policy, simply because, as Curtin wrote indignantly, "an Australian delegate sat in conference with Chinese, Japanese and Filipinos."<sup>44</sup> During the 1920s, Curtin had expressed strong support for Chinese attempts to end imperial occupation and new forms of capitalist exploitation. Imperial powers, he wrote, should get out of Asia and the Middle East.

With regard to the Pan-Pacific Labor conference in Shanghai in 1928, the Australian delegate “was not the only white man present,” Curtin protested, and “even if he had been, it is not easy to see what that has to do with throwing the White Australia Policy into the wastepaper basket,” as Nationalist Prime Minister Stanley Melbourne Bruce had accused the Labor party of doing.<sup>45</sup> On the contrary, Curtin asserted, “on the success of Labor depends the peace of the Pacific and the peace of the world.” It was a tragic irony that as Labor Prime Minister during the Second World War, Curtin would preside over the Australian confrontation with its worst nightmare: Japanese military aggression and bombing of northern Australia.

One of Curtin’s successors at the ILO, as Workers’ representative, Queensland trade unionist George Lawson echoed earlier Workers’ delegates in deploring Australia’s poor rate of ratification of Conventions and Recommendations and reaffirmed – against the scepticism of the Employers’ representative – the “paramount importance” of the work of the ILO to “the people of the world, particularly that section which comprises the workers.”<sup>46</sup> Once again, he stressed the “levelling up” effect of the work of the ILO and the desirability of eliminating “unfair competition”:

while I must frankly admit that no direct material advantage is gained to the workers of Australia, as the result of the deliberations of the Conference, a great deal of benefit must accrue indirectly as the result of such legislation being put into operation by the less advanced countries, which will mean the levelling up of all social legislation, thereby eliminating unfair competition of the international markets.<sup>47</sup>

Despite the deepening of class conflict and greater radical activism on the part of Australian trade unionists in the 1920s – and their identification with Asian workers as victims of imperial exploitation – national interests continued to trump class solidarities in the approach of Australian delegates to the ILO. Australians continued to congratulate themselves on their record of advanced labour reform, even into the 1930s Depression when this conceit had become increasingly difficult to sustain considering the wage cuts, increasing unemployment and no social insurance. The Australian minister for external affairs nevertheless affirmed in 1934:

We have to remember that, industrially, Australia is in the vanguard of nations. Our workers enjoy a higher standard than those of almost

any other country. This means that, in international trade, countries having a lower standard of wages and conditions for their workers are able more effectively to compete with Australia. From this it follows that any action taken to increase the standards of living in other countries which are in competition with us must be of material benefit to the Commonwealth.<sup>48</sup>

But still Australia dragged its feet in ratification. Much of the fairly sparse historiography on Australia's history of engagement with the ILO in the twentieth century focuses on its "relatively poor" record of ratification, with most writers explaining the pattern in terms of the difficulties experienced by a federal nation-state, in which State Governments retained major jurisdiction over working conditions and industrial relations.<sup>49</sup> In a paper prepared for the Constitutional Convention in 1942, the Labor attorney general and minister for external affairs, H.V. Evatt (who would become first president of the United Nations General Assembly), wrote:

It is an understatement to say that the result has been acutely disappointing. The Commonwealth has promptly submitted draft Conventions to the States immediately after receipt of the text thereof from the International Labour Organisation. It has been difficult to obtain their views with any degree of dispatch, and practically impossible to secure unanimous action.<sup>50</sup>

Significantly, however, Australia had speedily ratified Convention No. 29, the Forced Labour Convention, in 1932, just two years after the ILO set it in place.

Convention No. 29 was the first of what the ILO later defined in 1998 as the eight "Fundamental Conventions" to be ratified by Australia and is the exception that proves the rule. In order to prove that Australia was an advanced country in the face of allegations of barbaric treatment of Aboriginal workers in the pastoral industry in the north of the continent, the federal government determined to ratify the Forced Labour Convention immediately. In 1929, the minister for home affairs in the Scullin Labor Government, Arthur Blakely, was shocked to find conditions akin to slavery in the north: "aboriginals were being worked without any remuneration whatever."<sup>51</sup> He organized a conference of representatives of pastoralists, missionaries and the North Australian Workers' Union, but little changed in Aboriginal employment conditions. Australia's record of ratification of ILO Conventions received a

sudden boost, however. The Department of Home Affairs wrote to the prime minister in October 1931: "As there is no forced labour in the Northern Territory, it is recommended that the Prime Minister's Department be advised that it is desired that the Convention be ratified." By 1932, the ratification was in place.<sup>52</sup>

## Post-1946

The peculiar challenges of ratification in federal states with divided jurisdictions in industrial matters were recognized after the Second World War with the amendment of ILO Article 19, stating that Conventions or Recommendations could be submitted to "appropriate authorities," which may be those of the constituent states that comprised federal nations. In Australia's case, this resolution simply supported the long and complicated procedures already in practice.

In a major review article on the influence of ILO standards on Australian law and practice, C. E. Landau noted that, by 1987, Australia had ratified 46 of the total 162 Conventions adopted by the International Labour Conference, including "a considerable proportion of those that deal with such general questions as basic human rights, employment, labour administration and social security."<sup>53</sup> He also noted that a "turning point" had occurred during the period of the radical Whitlam Labor Government of 1972–75, especially in the field of human rights.

But there were continuities as well as change. During the 1970s and 1980s, Labor ministers repeatedly affirmed Australia's commitment to international labour standards in terms that echoed earlier understandings of Australia as an "advanced" society setting an example, no longer to "backward" countries, but to "developing" ones.<sup>54</sup> Thus did Minister for Labour Clyde Cameron address federal parliament in 1973 – echoing John Curtin in 1924 – about the importance of Australia ratifying ILO Conventions:

I would hope that all members share the Government's belief in the value of ratifying as many of the ILO Conventions as possible. ... It is essential that Australia have a good record of ratifications if we are to be able to speak with authority and standing in the international community on labour and social matters... as an advanced economy in a region comprising mostly developing countries, the Government firmly believes that Australia should be in the vanguard of countries taking action to foster and develop sound labour and social policies in accordance with international standards.<sup>55</sup>

It was important to set an example to the region. Of the four reasons the minister offered in support of the case for Australia boosting its rate of ratification, the need to “improve our own standards” came last.<sup>56</sup> During the 1970s, the Australian Government ratified four key human rights instruments – Conventions Nos. 87, 98, 100 and 111 – dealing with freedom of association, the right to organize, collective bargaining, equal remuneration and discrimination in employment.

However, although the White Australia Policy had been progressively dismantled from the 1950s and the Racial Discrimination Act passed in 1975, Australian Governments were reluctant to address the issues of indentured labour, a type of bonded labour that continued to be employed in the tropical north, and the status of indigenous peoples in Australia. Julia Martinez has documented how Australia continued to recruit Asian and Pacific indentured labour for its pastoral and pearling industries into the 1970s, long after the ILO’s two Forced Labour Conventions had been ratified by Australia in 1932 and 1960. “Australia,” Martinez wrote, “a supposed leader in the international labor reform movement, continued to import indentured Asian labor for the pearl-shelling industry until the early 1970s,” even though the practice was also contrary to the overtly exclusionary policies of White Australia.<sup>57</sup> Labour relations in the tropical north of Australia long posed a challenge to federal lawmakers in the temperate south. Although the post-Second World War Chifley Labor Government officially opposed the practice of indentured labour, it was not until 1973 that the Whitlam Labor Government finally abolished the practice.

The challenges posed by the “backward” status of Indigenous peoples – who also mainly lived in the tropical north – in Queensland, Western Australia and the Northern Territory – were more complex than dealing with imported indentured labour, as shown by the Australian Government’s initial refusal and subsequent prevarication over ratification of the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107). Successive Australian Governments had similarly refused to respond to questions from the United Nations Human Rights Sub-Commission on the Prevention of Discrimination and the Treatment of Minorities, arguing that Aborigines were “too primitive” to be regarded as a “minority” as understood in international law.<sup>58</sup>

The implications of Convention No. 107 were ambiguous for modern settler societies, as Ravi de Costa has suggested in his book on Indigenous transnationalism, *A Higher Authority*.<sup>59</sup> On the one hand, Convention No. 107, in line with earlier discourses on “advanced” and “backward” peoples, understood the position of Indigenous peoples in terms of

“backwardness” and their lack of “integration” into a modern Western country. The preamble referred to

populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefitting fully from the rights and advantages enjoyed by other elements of the population.

On the other hand, the Convention also called attention to the long-term implications of Indigenous dispossession and settler colonialism. Article 5 called for a new political relationship between national governments and Indigenous populations, while Articles 11–14 discussed Indigenous peoples’ rights to land and called for both recognition of traditional occupation as ownership and an end to the alienation of currently held lands and the removal of people without their “free consent.” Convention No. 107, de Costa suggests, “was the formal beginning of an international law of the human rights of Indigenous peoples,” but its limitations were also clear.<sup>60</sup>

In Australia, Aboriginal rights activists were alerted to this new development by veteran crusader Mary Bennett, who had asked the ILO in the 1930s to apply the Forced Labour Convention to the situation of Aboriginal people. In 1957, she drew attention to the potential of Convention No. 107 to provide a new framework in which activists could pursue campaigns for full citizenship and economic and social justice for Aboriginal peoples.<sup>61</sup> The significance of Convention No. 107 was immediately recognized by the new Federal Council for the Advancement of Aborigines that met in Adelaide in 1958 and in Melbourne in 1959. Most importantly, it enabled reformers to conceptualize a new kind of right – “land rights” – defined as collective rights to “native title.” But there was also disquiet about the limits of Convention No. 107 among Indigenous activists increasingly engaged with the ideas of self-determination and national sovereignty. Although the language of the revised Indigenous and Tribal Peoples Convention, 1989 (No. 169) dropped the goal of integration in favour of an emphasis on “the distinctive contributions of indigenous and tribal peoples to cultural diversity” and to “international co-operation and understanding,” the text’s use of the term “peoples” in place of “populations” contained no provision as to the rights that might accrue to “peoples” (rather than states) under international law.<sup>62</sup>

Those who asserted rights to self-determination saw the inadequacies of Convention No. 109 and critiqued its limits at the annual meetings of

the Working Group of Indigenous Peoples (WGIP) at the United Nations. Australian Indigenous activists showed little desire for the federal government to ratify Convention No. 109, and many have argued since that the ILO was an organization “whose basic concerns and institutional structure are ill-suited to advance the cause of Indigenous groups.”<sup>63</sup> Employment conditions for Indigenous peoples could not be separated from the larger issues of the legacies of colonialism relating to loss of land, languages, identity and culture.

## **Conclusion**

It was within the colonial discursive framework of “advanced” and “backward” peoples that Australia and other Western countries offered their support to the ILO project of universalizing labour standards. The terms of Australia’s engagement were also strongly influenced by its location in the Asia-Pacific region and the historical threat thought to be posed by “Asiatics” as a source of cheap labour and unfair competition. Australian engagement with the ILO – from 1920 through 2010 – can thus be seen as a form of internationalism pursued in the national interest, an approach that points to the complexities of the twentieth century project of internationalism in an age of nationalism, and the limited nature of Australian commitment to it. At the same time, at the unofficial level, it is clear that the idea of “international action” did inspire a range of non-government actors, including modern women labour reformers working in Shanghai with the YWCA and the ILO, trade unionists seeking anticolonial solidarity with Chinese workers to advance the interests of workers in the Asia Pacific and, later, reformers working with the radical Whitlam Labor Government of the 1970s.

But there was always tension between international initiatives and nationalist identifications, not least in the context of anti-imperial struggle. Thus did Eleanor Hinder find herself severely rebuffed when she suggested at the first Pan-Pacific Women’s Congress, held in Honolulu in 1928 that the next congress should meet in Shanghai. “If the next conference is going to be held in China,” retorted Me-Iung? Ting, medical director of Peiyang Women’s Hospital in Tientsin and president of the Chinese YWCA, “the invitation should be from the Chinese women.” Her assertion was reportedly an electrifying declaration that the time had come when the women of China would speak for themselves. China had for too long said, “yes, yes” said Dr Ting. Now it was time for the Chinese to say “no, no,” if they so desired.<sup>64</sup> From a Chinese woman’s perspective, internationalism might appear to be just

another form of imperialism. Henceforth, international engagement, asserted Mei Iung Ting, should be on Chinese terms. It was perhaps time she suggested, for the women of advanced countries to take a back seat.

## Notes

My sincere thanks to Lee-Ann Monk for her superb research assistance and Jill M Jensen for her collegial support.

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2. See more generally G. Sluga, *Internationalism in the Age of Nationalism* (Philadelphia: University of Pennsylvania Press, 2013).
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4. M. Lake and H. Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008).
5. *International Labour Review* 4 (1921), 537.
6. M. Lake, and H. Reynolds, *Drawing the Global Colour Line*, 154. There is a large historiography on race-based immigration restriction policies in Australia and the interrelationship of policies in the United States, Canada, New Zealand and South Africa. See C. Price, *The Great White Walls Are Built: Restrictive Immigration to North America and Australasia, 1836–1888* (Canberra: ANU Press, 1974); R. A. Huttenback, *Racism and Empire: White Settlers and Coloured Immigrants in the British Self-Governing Colonies 1830–1910* (Ithaca, NY: Cornell University Press, 1976); A. Markus, *Fear and Hatred: Purifying Australia and California 1850–1901* (Sydney: Hale and Iremonger, 1979).
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8. Frankfurter to Holmes 11 November 1915, R. Mennel and C.L. Compston, eds., *Holmes and Frankfurter: Their Correspondence 1912–34* (Hanover: University Press of New England, 1996), 39.
9. *Adkins v. Children's Hospital of the District of Columbia*, Supreme Court of the United States, 9 April 1923, no.795, LexisNexis.20. With this case, the majority in the US Supreme Court declared a minimum wage law for women, doing so in violation of the Fifth Amendment.
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11. *International Labour Review*, 4 (1921), 544.
12. *Ibid.*, 93.
13. *Ibid.*
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15. M. B. Hammond, "Judicial Interpretation of the Minimum Wage in Australia," *American Economic Review*, 3, no.2 (1913), 285.

16. Report of the Australian Delegation on the 3rd Session of the International Labour Conference (1921), *Commonwealth Parliamentary Papers*, 2, 1922, 1638.
17. J. Bryce, *The Relations of the Advanced and Backward Races of Mankind* (Oxford: Clarendon, 1902), 33.
18. Ibid.
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20. Ibid.
21. ILO Conventions and ratification dates can be found at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO>.
22. Ibid.
23. Reports of Australian Delegates on the 6th Session of the International Labour Conference (1924), report by Workers' delegate John Curtin, *Commonwealth Parliamentary Papers*, 2, 1925.
24. Ibid.
25. Ibid.
26. J. Curtin, "Soft Soap and the Voice of Racial Disaster," *Westralian Worker* (Perth) 18 February 1924.
27. J. Curtin, "The Basis of a World Policy," *Westralian Worker* (Perth) 17 August 1923.
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34. S. L. Wilson, "Liberating Asia," 84.
35. S. Paddle, "'For the China of the Future': Western Feminists, Colonization and International Citizenship in China in the Inter-War Years," *Australian Feminist Studies* 16, 36 (2001), 325–29.
36. S. L. Wilson, "Liberating Asia," 81.
37. Ibid., 84.
38. Paddle, "For the China of the Future," 326–27.
39. S. L. Wilson, "Liberating Asia," 80–85.
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42. *Mercury* (Hobart), 1 September 1921.

43. Report to the Prime Minister on the 3rd Session of the International Labour Conference, held October–November 1921, Papers presented to Parliament, *Commonwealth Parliamentary Papers*, 1922, vol. II, 1647.
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50. Bailey, "Australia and the International Labour Conventions," 290.
51. J. Martinez, "Plural Australia: Aboriginal and Asian Labour in Tropical White Australia, Darwin, 1911–40," PhD thesis, History and Politics Program, University of Wollongong, 2000, 168. My thanks to Julia for sending me a copy of her thesis and providing the reference that follows. Her work on northern Australia has been path-breaking.
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58. Quoted in R. de Costa, *A Higher Authority: Indigenous Transnationalism and Australia* (Sydney: University of New South Wales Press, 2006), 85.
59. *Ibid.*, 70–71.
60. *Ibid.*, 71.
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64. Paddle "For the China of the Future," 338; Paisley, *Glamour in the Pacific*, 58–59.

# 3

## Japan and the 1919 ILO Debates over Rights, Representation and Global Labour Standards

*Dorothy Sue Cobble*

In a crowded committee room in Washington, DC's Pan American Union building on a November Saturday in 1919, reporters leaned forward to catch every word of the angry exchange between Mrs Tanaka Taka<sup>1</sup> and Mr Mutō Sanji over whether Japan should ban night work for women in its textile industry. Japan was one of the "Big-Five" powers, along with the United States, Great Britain, France and Italy, at the recently concluded peace talks in Paris. Like some 40 other nations, it had sent a delegation, including Tanaka and Mutō, to Washington for the first meeting of the International Labour Organization (ILO), the new body charged by the Versailles Peace Treaty with formulating international labour standards.<sup>2</sup>

As the only Asian nation accorded the status of a global power by the West in 1919, Japan was in a delicate and somewhat paradoxical position. Due to the wartime demand for its exports and its imperial expansion into China and the Pacific, it had moved to the front ranks of nations in military and industrial might.<sup>3</sup> At the same time, despite being among the world's leading producers of silk and cotton, its economy was predominantly agricultural and its mills dependent on a labour force of rural farm girls, many between the ages of 10 and 16, working long hours late into the night.<sup>4</sup> At the Peace Conference in Paris that spring, Japan achieved some of its territorial ambitions, including its claims to China's Shandong Peninsula. But it lost its bid to insert in the League of Nations covenant a "racial equality" clause which, some thought, would help end discrimination against Japan and Japanese people in a global system dominated by Anglo-European nations.<sup>5</sup>

Now the question before the world was how Japan would navigate the unfolding Washington debates over international labour standards. Would Japan accede to the higher minimums being pushed by the Western powers or seek, along with Asian countries like China and India, “special” exemptions allowing lower standards?<sup>6</sup> And, if the latter, how would it reconcile its call for equality at the Paris peace talks with its pursuit of a “special” status at the Washington labour negotiations? Would the social unrest sweeping Japan, including the 1918 rice riots and the continuing large-scale strikes and “slow-downs” among shipyard, mine, and textile workers, affect deliberations in Washington?<sup>7</sup> Would the Japanese Government and business community make concessions in the face of mounting domestic pressure for improved working conditions and greater industrial and political democracy?<sup>8</sup>

The ILO’s unusual tripartite representational system, which included governmental as well as nongovernmental, or civil society delegates, added another layer of complexity to the situation. Each nation sent four voting delegates to the ILO’s annual International Labour Conference (ILC) session: two “Government” representatives and one each from “Employers” and “Workers.” To accompany the voting delegates, nations also selected nonvoting advisers, including “at least” one woman “when questions specially affecting women” were to be considered.<sup>9</sup>

Mutō, managing director of the Kanegafuchi Spinning Company – one of the largest spinning enterprises in the world and renowned for its paternalist employee welfare policies – spoke in Washington for Japan’s employers.<sup>10</sup> Tanaka, the sole female appointee in the large 60-person Japanese delegation, came as a nonvoting adviser, as did all of the 23 women sent by nations to the Conference. Although frequently referred to by the Japanese press as “Japan’s woman representative,” Tanaka’s official appointment was to advise Japan’s chief Government delegate, Kamada Eikichi, president of Keio University and member of the House of Peers.<sup>11</sup>

The tense stand-off between Mutō and Tanaka occurred at the 8 November meeting of the Commission on Women’s Employment as it formulated night work standards to recommend for a vote before the full ILC.<sup>12</sup> Mutō spoke first and urged the Commission to exempt Japan’s textile and mining industries from the 1906 Berne Convention banning women’s night work. In Japan, Mutō’s opposition to regulatory labour legislation and his defense of Japanese “affectionism” (*onjō shugi*), or family-like attention to employee needs, as the best solution to labour problems, was well known.<sup>13</sup> But on this occasion, faced with a Commission on which sat an unusually large number of women advisers

and labour delegates, he advanced a somewhat different defense: female operatives themselves desired night work.

Tanaka spoke next. Perhaps because of Tanaka's flawless English, Kamada had asked her to read his prepared statement on why the introduction of night work laws in Japan should be delayed. That, she faithfully did, at least for the first few minutes. Then, in a surprising defiance of norms and procedure, Tanaka pulled out her own notes, carefully hidden beneath Kamada's typed pages and, at a rapid-fire pace, delivered an impassioned speech about the harsh conditions for female operatives in the Japanese textile factories and the need for *immediate* abolition of night work.

Caught off guard, at first neither Mutō nor Kamada grasped what was transpiring. They sat, nodding approvingly as Tanaka pointed out the evils of long hours from a "social, economic, technical, and hygienic point of view" and the "misuse of women, physically and mentally, to swell the capitalist's purse."<sup>14</sup> Japanese employers, she announced, spoke of affectionate relations and of mutual obligation, but women textile workers were dying young. "The conference should ban night work for women in Japan and rescue the girl operatives from their present state of horror," she concluded. With that assertion ringing in their ears, many in the Japanese delegation jumped to their feet to have her stopped, only "to be informed that the essence of the whole conference was that speeches of that kind should not be stopped." Mutō and others loudly disavowed her report as the committee chair gavelled the meeting to a close.<sup>15</sup>

Mutō's reaction was the most virulent. Infuriated by her challenge to his personal credibility and authority and, as he said, her willingness to "expose" Japan's "disgraceful conditions" to the world, he tried first to discredit her by pointing to her years studying in the United States and her supposed lack of knowledge about Japan's textile industry. Then he played his gender trump card and questioned her right to speak and her judgment in doing so. To bolster this argument he could have cited Japan's own domestic laws, in force since 1890, expressly prohibiting women from organizing, attending, or speaking at political meetings, or joining political parties.<sup>16</sup> But instead, he drew on a more universal discourse of female bodily inferiority. He demanded "a committee of inquiry" into Tanaka's "mental condition" which, he announced triumphantly, was "deranged by her being in a family way."<sup>17</sup>

Tanaka, for her part, ignored the reference to her pregnancy, a fact well-publicized in Japan in the months leading up to the conference, and defended her decision to expose the shameful situation of women

textile workers. “Unrepentant,” in the opinion of the scribbling reporters, she replied “no less angrily” than Mutō. “I spoke,” she declared, about “the real condition of Japanese workers.” She might have added that she seized this particular moment to speak because, as Japan’s prominent daily *Asahi Shimbun* reported, she had been denied “the opportunity” to attend or speak at any other meeting at the conference.<sup>18</sup>

The turmoil provoked by this “outrageous happening” did not subside quickly. The question of who spoke for Japan and whether Japan should conform to the international labour standards being proposed in 1919 captured news headlines for the rest of the conference. Indeed, this “dramatic scandal” as well as other confrontations connected to the ILO’s first labour conference, as this chapter recounts, reverberated around the world in 1919 and deeply affected social and political reform in Japan as well as in other nations.<sup>19</sup>

Why study the 1919 ILO debates? Scholars who analyse the economic effects of global labour standards often disagree vehemently over who benefits from a specific labour standard or whether the overall push to raise and universalize labour standards is even desirable. This chapter does not engage this contentious and, at times, frustratingly abstract debate. Rather, I pursue a different set of concerns.

First, I pay as much attention to the ILO disputes over rights and representation as to disagreements over labour standards. As this chapter reveals, in 1919 some of the deepest global divides were over who sits at the table to negotiate international labour standards and whose voice and vote counts. The outcome of these debates over political and civil rights, brought to a boiling point at the first ILC session, arguably proved as consequential to the lives and living standards of workers in Asia and elsewhere as those debates over the specific provisions of international labour legislation.

Second, I am as concerned with debates *within* nations as *between* nations and regions. Scholars of internationalism and of cross-cultural exchange rightly point to “orientalist,” imperial, and racial presumptions of Anglo-European superiority as crucial obstacles to raising labour standards in Asia and other less-industrialized regions. Such ideologies undeniably structured encounters between Anglo-Europeans and Asians at the Washington ILC session and affected the positions Anglo-Europeans adopted on international labour legislation.

Yet Japan had its own imperial and racial presumptions in 1919 and found itself divided over whether it should be categorized along with other Asian nations as “special” or less developed. Indeed, some of the most contentious disputes in 1919 over raising labour standards were

not between “Western” nations and the rest but within the *same* nation. The fight over labour standards for Japanese workers, for example, was as much a struggle among groups *within* Japan as a contest *between* Japan and other nations or regions. Focusing on the ILO and its first conference, an arena of international policymaking unusual for its inclusion of non-Western nations and of civil society groups, reveals the centrality of fissures *within* nations in 1919 and suggests the need to move beyond East–West binaries. The notion of a united Asia confronting a united West is and was as much fiction as reality.

To explore these issues in more detail, this chapter offers the first scholarly account of the story of Tanaka Taka and her efforts to secure representation for Japanese women and workers at the Washington conference. It also reconstructs the parallel tale of Masumoto Uhei, Japan’s labour delegate to the ILC session, whose appointment led to widespread protests in Japan and a power struggle between labour and the Japanese state with lasting consequences. A study of Japan’s relationship to the early ILO and of the controversies swirling around its “woman” and its “labour” representative to the 1919 ILC session is long overdue. The literature on the ILO, as Jasmien Van Daele observes, remains “largely Euro-centric, as the ILO itself was.”<sup>20</sup> Yet, Japan and other Asian nations, including China, India, Persia and Siam, attended the 1919 ILC session, and Japan, like India, joined the ILO’s Governing Body in 1922 and played an active and prominent role in the ILO’s early years.<sup>21</sup> Moreover, as this chapter contends, both Japan’s “woman” representative, though excluded from voting privileges at the 1919 ILC session, as well as Japan’s “labour” delegate, influenced worldwide opinion about what global labour standards should be and who should have the right to determine those standards.

In the months preceding the ILO conference, a national debate erupted in Japan over who should represent Japanese workers and what role Japan’s largest trade union, the Yūaikai (Friendly Society), would have in the selection process. Suzuki Bunji, often called Wa-sei Gompers (Japan-made Gompers) by the Japanese press for his close ties with the American Federation of Labor and its president, Samuel Gompers, had founded the Yūaikai in 1912, and he remained its leader until his resignation in 1930. Imbued with the democratic reform spirit of the Taishō era (1912–26),<sup>22</sup> the Yūaikai, under Suzuki’s leadership, rejected both class warfare and employer paternalism. A student of Christian humanism and Western social work reform traditions, Suzuki organized Yūaikai with the help of the American Unitarian minister for whom he worked after graduating from Tokyo Imperial University. Suzuki eventually moved away from his early advocacy of labour-management

harmony: by 1919 he came to defend strikes and labour conflict as necessary and incorporated aspects of democratic socialism into his worldview. Still, he remained highly critical of revolutionary socialist theories such as anarcho-syndicalism and Bolshevism throughout his life.<sup>23</sup>

By the summer of 1919, the Yūaikai had grown from a small worker benefit and uplift society to a 30,000-member labour federation demanding trade union recognition and greater political and economic rights for workers.<sup>24</sup> Reorganized at its August 1919 convention as the Dai Nihon Rōdō Sōdōmei Yūaikai (The Greater Japan General Federation of Labor and Friendly Society), and in 1921 as the Sōdōmei, its founding declaration revealed a global consciousness and an embrace of ILO principles. “We workers declare to the world that the workers of Japan, with the League of Nations, will struggle like martyrs, in the spirit of the Labor Covenant, in order that peace, freedom, and equality may rule the earth.”<sup>25</sup> The Yūaikai document continued, echoing the common Western trade union dictum, “labor is not a commodity”: “Workers are people with personalities. They are not to be bought and sold.” The 1919 Yūaikai affirmed its support for the eight-hour day, prohibition of night work, equal pay for men and women, and universal suffrage.<sup>26</sup>

Suzuki knew the ILO charter intimately, having served as a government-appointed labour adviser to Japan’s negotiators in Paris.<sup>27</sup> He and the other Yūaikai leaders knew, for example, that ILC Employers’ and Workers’ delegates, according to the ILO Constitution, should be chosen “in agreement with the industrial organizations, if any exist, most representative of employers and workpeople.”<sup>28</sup> Not surprisingly, the Yūaikai nominated Suzuki for the ILO Workers’ delegate position with every expectation the government would honour its choice. Prime Minister Hara Kei and his cabinet, however, had other ideas.<sup>29</sup> Wary of giving too much legitimacy to independent worker organizations, the government orchestrated its own elaborate selection process in which the major trade unions, including the Yūaikai, were only minimally represented. The government’s marginalization of the trade unions occurred despite – or perhaps because of – the soaring numbers of union members and the massive “sit-down” strikes at the Kawasaki docks and elsewhere.<sup>30</sup>

Suzuki and a handful of other union leaders walked out in protest from the government-called meetings and declared the process illegitimate. Those who remained, an employer-dominated group in the eyes of the Yūaikai, agreed upon three possible nominees to represent Japanese workers after a week of wrangling. The first two on the list declined, in part because the Yūaikai threatened to call on Gompers and

other labour leaders around the world to challenge the labour delegate's credentials in Washington. But the third nominee, Masumoto Uhei, chief engineer of Toba Shipyard, accepted, enraging a large swath of the Japanese labour movement.<sup>31</sup>

One of the most dramatic labour gatherings to denounce Masumoto's appointment occurred the evening of 5 October in Tokyo's Meijiza Theatre. Masumoto had proclaimed himself "a most earnest friend of labor" and insisted he accepted the ILO appointment only after assurances from the government of his right to speak out in favour of worker rights. But his declarations did little to deflect the growing clamour against him.<sup>32</sup> Three thousand workers packed the theatre as thousands more milled about outside. Rapt silence greeted the Ashio miners' leader, "ghostly pallid," wearing the "toil stained garments of his trade," as he slowly made his way to the podium. "At last," he said, speaking in low, deep tones, "the time has come and I am called to crawl from the hole at Ashio as from the bottom of a well. Matsumoto's spirit may be stout, but his neck is slender. Does he know the effect of the explosion of dynamite?" The mine leader's speech concluded amidst great tumult as he vowed not to return to Ashio unless Masumoto's departure was prevented.<sup>33</sup>

Five days later, as threats on his life continued, Masumoto, under heavy police protection, made his way secretly, late at night, to the steamer waiting to carry the ILO delegates to Seattle. The next morning, furious crowds surrounded the Tokyo train station and surged onto the Yokohama docks, condemning Masumoto and railing against the government's labour policies. Wearing shrouds and black armbands, protesters held aloft Shinto, Buddhist and Christian funeral tablets and placards inscribed with "Bury Masumoto" and "Respect the Popular Will."<sup>34</sup> Labour's anger followed Masumoto across the Pacific. When the ship's head stoker threatened a slowdown in the middle of the ocean, Masumoto pledged his loyalty to workers once again, barely averting the disaster.<sup>35</sup>

Much less commented upon by historians, although covered by the newspapers of the time, was the parallel controversy among Yūaikai's women workers over Tanaka's appointment as the "woman adviser." Collective protest by Japanese women workers extend back to the textile strikes of the 1880s. In the Meiji era (1868–1912), such efforts did not result in permanent labour organizations.<sup>36</sup> Yūaikai did not explicitly bar women in its founding 1912 bylaws, but few joined initially. In 1916, however, with worker protest on the rise, women in textiles as well as in food-processing and other industries unionized. Yūaikai set up a separate

“women’s division” to provide a home for its new female recruits and to spur further organization. A year later, Yūaikai also changed its policies restricting women to “associate” membership and allowed women to come in as full voting members. By 1919, two thousand wage-earning women had signed up along with a small but influential group of college-educated women reformers.<sup>37</sup>

Nonetheless, the Government completely ignored the Yūaikai women’s division in the ILO selection process.<sup>38</sup> In late September, with the battle over the Workers’ delegates unresolved, the Government announced its appointment of “Mrs Tanaka” as an “advisor on feminine matters” assigned to Kamada, the lead Government delegate.<sup>39</sup> The Yūaikai women’s division immediately denounced the Government’s decision and pressed for the appointment of one of its members – if not as a Government adviser like Tanaka at least as a Workers’ adviser.<sup>40</sup>

As the labour men convened at the Meijiza Theatre, Yūaikai women held their own meeting and invited Tanaka. To the amazement of many she came, along with an estimated 1,500 others, men and women. From the podium, Yūaikai board member Yamanouchi Mina “spoke with great vehemence on the abolition of night work, the adoption of an eight hour day, and the rights of women” as did Kikue Hatsu, a Tōyō Muslin Company worker, who lectured with her sleeping baby strapped to her back.<sup>41</sup> The third speaker, however, directing her remarks to Tanaka, who was seated in the audience, objected to having a female adviser selected “from ladies who know labor only as onlookers.” She questioned Tanaka’s right to speak for women workers and insisted “None but a true labourer could understand the meaning of labor.”<sup>42</sup>

The chair of the meeting, Ichikawa Fusae, secretary of Yūaikai’s Women’s Division and Japan’s leading interwar suffragist, tried to quiet the hostile crowd as Tanaka ascended to the podium. This was no ordinary gathering. Not only were Yūaikai’s shopfloor women the featured speakers, but many of Japan’s most prominent women intellectuals and activists also attended. Behind Ichikawa, on the stage, sat Hiratsuka Raichō, infamous for her advocacy of women’s right to sexual and creative freedom and for founding the Bluestockings, a feminist literary society, in 1911; Itō Noe, an anarchist-leaning Bluestocking, who, in 1923, would be arrested and murdered while in police custody; and Oku Mumeo, who, after the Second World War, served in the House of Councillors and led the Japan Housewives Association.<sup>43</sup> After some initial heckling and laughter, Tanaka reminded the crowd of her long-time commitment to women’s labour reform and fervently promised to convey the demands of Yūaikai women – no night work, shorter hours,

and greater respect for wage-earning women – to the ILO Conference. Yet despite “speaking beautifully” and making an “unexpectedly positive impression,” one newspaper concluded, “she failed to get the support of the audience.”<sup>44</sup>

Although Yūaikai women remained distrustful of Tanaka’s commitment to their cause and some continued to attack her for not being a “real worker,” their anger, like that of their brother unionists, was fuelled primarily by the government’s refusal to acknowledge the right of their union to participate in the selection process. The heart of the dispute was not the background or beliefs of Masumoto and Tanaka but who – the trade unions or the government – had the right to select labour’s spokesperson.

Tellingly, Japanese workers judged trade union leader Suzuki an authentic spokesman even though he grew up in a prosperous household and was college-educated. Indeed, in some ways Masumoto was more of a “real” worker than Suzuki. Masumoto, like Suzuki, graduated from Tokyo Imperial University, but unlike Suzuki, Masumoto came from an impoverished background and had many years of experience as a manual labourer. For some 20 years he worked “as a hammerer” in shipyards in the United States, Britain, and Japan before moving into his supervisory position as chief engineer. Masumoto had longstanding sympathies with worker rights as well. Yūaikai was hardly pleased that a supervisor in a nonunion enterprise had emerged as the labour delegate, but its principal complaint was that Masumoto had been selected through a process that failed to acknowledge its legitimacy.<sup>45</sup>

Tanaka could not claim industrial work experience like Masumoto. Indeed, her background was one of privilege and wealth. Nevertheless, she brought to her task a passionate commitment to social and labour reform and considerable skills as an English speaker, social science researcher, and US-schooled cosmopolitan. Born Takanashi Taka in 1888, she grew up in a well-off household and graduated from Japan Woman’s College before securing her first job teaching English. In 1909, as a young single woman, she accompanied her great uncle, Shibusawa Eiichi – a highly influential Japanese entrepreneur and business leader – and his 50-person entourage on a three-month, multiple-city trade and friendship mission to America.<sup>46</sup> She stayed in the United States for the next nine years, perfecting her English in a Palo Alto, California, high school before earning a bachelor’s in English at Stanford University in 1917 and, a year later, a master’s in sociology from the University of Chicago.

Tanaka later credited an American evangelist who lectured at Stanford with opening her eyes to the plight of poor women and motivating her

to study social problems. Her master's thesis, completed in 1918, offered a social-psychological analysis of the forces subordinating Japanese women, which included, in her view, the late Meiji norms of female self-sacrifice, reticence, and obedience. She judged the actions of Japan's Bluestocking feminists extreme though understandable. But "no such ambivalence clouded [her] indictment of factory conditions," according to one biographer. Tanaka returned to Japan in 1918 and secured a faculty position at Japan Women's University where she taught sociology and social work from the applied perspective she had learned in graduate school.<sup>47</sup>

Tanaka's wealth and close association with Shibusawa did not win her friends among labour's left wing in 1919. Shibusawa, unlike many Japanese businessmen, believed in worker rights and trade union recognition and, at times, strongly backed Suzuki and the Yūaikai, but he remained suspect in labour circles for his membership in the government-sponsored Kyōchōkai (Harmonization Society). Some workers also still recalled with displeasure his chairmanship of the pre-war Government Commission that recommended the clause in the 1911 Factory Act allowing night work to continue.<sup>48</sup>

Still, other factors made Tanaka's appointment more palatable to labour. For one, she was the "woman adviser" to the Government delegate not, like Masumoto, Japan's Workers' delegate, and many expected, as did Tanaka, that a second woman would be appointed, most likely to advise the Workers' delegation.<sup>49</sup> Equally significant, after accepting the appointment, Tanaka immediately embarked on a tour of Japan's factories, visiting textile factories in Osaka, eating lunch at company cafeterias, and inspecting the living and working conditions of female operatives. One popular newspaper reported Tanaka telling her luncheon table: "I am to attend a meeting of workpeople to be held in America. As the meeting is to discuss means of increasing your happiness, you can tell me whatever you wish me to do at the meeting for your good."<sup>50</sup>

Tanaka's friendly ties with some of the college-educated women reformers in Yūaikai may have helped her too. Oku, for example, an activist and a serious student of democratic theory, was a friend of Tanaka's husband, Tanaka Ōdō, a leading philosophy professor at Waseda University and outspoken defender of civil liberties and worker rights, women's suffrage, and egalitarian marriage.<sup>51</sup> Takanashi and Ōdō married in February 1919 shortly after they met at a dinner honouring American pragmatist John Dewey, with whom Ōdō had studied in the 1890s. Oku visited the newlyweds frequently in the summer and fall of 1919.<sup>52</sup> Tanaka spent time as well with Ichikawa and Hiratsuka at a 1919

summer lecture series in Nagoya, an industrial centre where Ichikawa had worked as a teacher and journalist. Tanaka lectured on "Tasks for Social Progress" and joined the others in strategizing about how they could organize a cross-class women's movement dedicated both to women's political rights and to raising the living standards of women wage earners.<sup>53</sup>

Yet despite all Tanaka did and said, the outcry against her appointment persisted. When the Government failed to appoint a woman adviser to the labour delegation, Tanaka offered to bring Yamanouchi, the 17-year-old Yūaikai leader who had spoken so eloquently at the tumultuous meeting of the Women's Division, with her to Washington. But Yūaikai pressured Yamanouchi to refuse, which she did despite strenuous objections from Ichikawa who had arranged for Yamanouchi to stay in the United States and go to school. Tanaka then asked Ogata Setsu, a young woman once employed at Mutō's Kanegafuchi Spinning Company but without formal ties to the union, to accompany her to Washington and speak first hand of the lives of textile operators.<sup>54</sup>

The virulent and continuing protests of Japanese labour men and women against the Government's appointment of Tanaka and Masumoto, two representatives who repeatedly avowed their commitment to improving the lives of workers and speaking on behalf of workers in Washington, suggests just how strong among Japanese wage earners in 1919 was the desire for state recognition of collective bargaining and independent trade unionism.

## **On the world stage at the 1919 International Labour Conference**

Once in Washington, both Masumoto and Tanaka defended the political and economic rights of Japanese workers and rejected provisions in ILO Conventions allowing lower labour standards in Japan. Masumoto's 27 November speech to the ILC's full assembly protesting "special treatment" for Japan captured headlines across the globe. When the ILC's "Oriental Committee,"<sup>55</sup> with the approval of the three other Japanese delegates, recommended a "special" clause in the Hours of Work Convention (No. 1) allowing the nine-hour day in Japan, Masumoto objected in no uncertain terms. Special treatment "protects autocracy," not workers, he declared. Pointing to the Japanese flag, he asked his audience to imagine "the Island Empire of Japan" and the "millions of toilers unjustly treated." Japan's "autocracy," he continued, "is an enemy to social justice." He condemned the "police regulation" and

“objectionable laws” of his government that make it impossible for workers to organize freely.<sup>56</sup> To loud applause from the labour delegates, he declared: “If long hours are physically bad for European workers they are equally bad for Japanese.” Japan was not a tropical country, he argued, but a first-class power on the same level as the other great Western powers. The other Japanese delegates vehemently disagreed. As Kamada bluntly put it: “I have to deny the fact of everything our labour delegate has stated.”<sup>57</sup>

Despite winning the vote of every labour delegate at the ILC session except one, Masumoto lost his bid to treat Japan the same as other nations in the Hours of Work Convention (No. 1).<sup>58</sup> His message, however, carried far beyond the conference, reinforcing the agitation for improved working conditions and the right to organize and bargain already underway in Japan and elsewhere. As Arthur Morgan Young observed in 1921, Japanese labour had its say in Washington, despite government efforts to muzzle it, and the world listened.<sup>59</sup>

Yet Masumoto’s intervention into the eight-hour day debate was not the first public challenge at the ILC session to those defending Japan’s lower labour standards, employer paternalism and autocratic government. Tanaka’s startling speech on behalf of Japanese women textile workers had occurred earlier, during the second week of the session, on 8 November, and its consequences, domestic and international, were equally dramatic. After the heated words between Tanaka and Mutō at the Commission on Women’s Employment, the Japanese delegation was in an uproar. *The Japan Weekly Chronicle* wrote of “decidedly belligerent” exchanges between Japanese delegates at late-night dinners and continuing tensions at committee meetings. Tanaka’s assertions “are lies,” Mutō told the press after the initial blow up. She “has spent the last ten years of her life abroad and has little knowledge of Japanese factory life.”<sup>60</sup> Tanaka, who continued, by one account, “ably fighting the women’s night work question,” fainted at the next meeting of the Commission, falling from her chair to the floor, and spent the rest of the day recuperating. The meeting continued without her, with testimony from Mutō and Kamada defending night work in Japan’s textile sector.<sup>61</sup> A few days later, the Japanese Government publicly announced Tanaka’s dismissal from the delegation.

Confident in the truth of what she had said and the flimsiness of the grounds upon which her dismissal rested, Tanaka sought reinstatement. She turned for help to Mary Anderson, the Swedish-born American leader of the Boot and Shoe Workers Union, whom President Wilson would soon name as the first director of the US Women’s Bureau. Tanaka

first met Anderson at the recently adjourned International Congress of Working Women (ICWW), a ten-day conference that ended on 6 November, including over two hundred labour women from 19 nations who met to formulate their own set of global labour standards and demand greater female representation in ILO affairs.<sup>62</sup> Tanaka sought help, Anderson recalled in her memoirs, because she “had been put off the delegation and prohibited from going to any of the meetings.” The “excuse” they give, Tanaka reportedly told Anderson, is “that I am pregnant. I am, but I know it is just an excuse. I suppose it is because I exposed the working conditions of women in Japan.” Tanaka then asked Anderson to call on the Japanese delegation and explain that, in contrast to what they had alleged, Tanaka’s appearance in public as a pregnant woman did not violate American norms.<sup>63</sup>

Anderson, accompanied by wealthy American social reformer Margaret Dreier Robins, national president of the Women’s Trade Union League of America and chair of the ICWW, called on the Japanese delegation. The two American women explained American customs relating to pregnancy to the Japanese men and urged them to reinstate Tanaka. “Our pleading was successful,” Anderson wrote, “and about a day later Tanaka was back as an adviser.” Tanaka’s unwillingness to back down “broke the ice in the Japanese delegation,” Anderson judged, and spurred others like Masumoto to take a stronger stand for worker rights and Japanese adherence to international labour standards.<sup>64</sup>

Anderson may have exaggerated her role in securing Tanaka’s reinstatement, being herself unaware of the larger geopolitical context and the growing outcry in the press. As word of Tanaka’s speech and dismissal travelled to Japan, prominent newspapers took Tanaka’s side, praising her “moral courage” and her willingness to make “a stand for truth.” One even mocked Mutō for his lack of “manners and self-control.” By overreacting, it was Mutō who had made Japan look foolish in the eyes of the world. Moreover, how would it look if the Japanese Government shut down dissent at an international conference dedicated to reaching consensus through the expression of distinct viewpoints? The editors of the *Japan Weekly Chronicle* concluded that “the conduct of the Labour and Women’s delegates has done more to impress the Labour bodies in other countries with Japan’s capacity for equal terms with Western labour” than any official government pronouncement.<sup>65</sup>

In the end, Mutō retracted his call for an inquiry into Tanaka’s mental competence and even signified “his readiness to accept Japan’s eventual conformity” to the Berne Convention ban on night work.<sup>66</sup> He may have decided, as one account mused, “that the best way to avoid Japan’s

national disgrace from being publicized was to take away the reproach.” He also may have been influenced by Kamada’s efforts to mend the situation. For one, Kamada took steps to protect Mutō’s reputation, assuring him that what had transpired – Tanaka’s speech criticizing Japanese capitalists as well as the debate that followed – would *not* appear in the official report of the Commission on Women’s Employment. These assurances had their impact: there is no indication in any of the official ILO conference records of Tanaka’s speech or of the angry exchange it provoked.<sup>67</sup> Kamada also publicly disavowed Tanaka’s speech and reiterated his compromise position promising that Japan would move *gradually* toward ending night work. The compromise position, now backed by Mutō and Kamada, gained the approval of the full ILC assembly.

Thus, Tanaka, like Masumoto, did not achieve all she sought. Yet her willingness to expose the abysmal conditions of Japanese textile workers and her outspoken attack on employer paternalism – what one observer described as Tanaka knocking Japan’s “family fable” on its head – made a difference. Her call for a night work ban and for Japan’s acceptance of international labour norms emboldened those with similar views, including those representing labour at the conference. Her dismissal and reinstatement also helped shift Japanese opinion on global labour standards and move Mutō toward a compromise position. The need for stronger protective labour laws and for Japanese adherence to world standards, albeit gradually, had been accepted.

The Conventions adopted by the 1919 ILC in Washington, the *Japan Times and Mail* proclaimed, were the first set of “general agreements ever made between Occidental and Oriental representatives regarding labour standards.”<sup>68</sup> To achieve these breakthroughs, Japan, “more than any other country... accepted a number of big concessions” in the opinion of Oka, Japan’s conservative government delegate.<sup>69</sup> Yet the Japanese people “welcomed” these new ILO Conventions, Tanaka wrote in 1920, and even the employers, she noted, “came to understand the inevitability of the change.” The main criticism the returning Japanese delegation faced, she said, was from those (mainly labour), who objected to Japan entering “the circle of ‘special countries.’”<sup>70</sup> Japan ratified its first ILO Convention, No. 2 on Unemployment, in 1922, the same year Japan became a permanent member of the ILO’s Governing Body. Although Japan did not ratify either the Work Hours Convention (No. 1) or the Night Work (Women) Convention (No. 4), in 1923 Japan revised its Factory Act of 1911 and brought its maternity protections more in line with ILO Recommendations. In 1929, the clause prohibiting late night work for women and youth was finally enforced.<sup>71</sup>

After 1919, the Japanese ILO delegation moved away from asking for and accepting special treatment for Japan. Instead, by the 1930s, Japan pushed for more general labour conventions allowing each nation the option of “partial ratification.” The practice of granting special provisions for Asian countries died out soon thereafter.<sup>72</sup>

## **Barriers to raising the global floor**

Orientalist and Western imperialist presumptions undeniably marred encounters between Anglo-Europeans and Asians at early ILO gatherings, dividing people into hostile camps and affecting whether and what kind of labour standards delegates favoured. Yet gender as well as class ideologies were also crucial in legitimating and sustaining lower labour standards in Asia as well as elsewhere, and at times such allegiances transcended those based on race, nation or region.

As feminist historians have made clear, the social, political and legal disenfranchisement and devaluing of women undergirded industrial development.<sup>73</sup> Japan, like many other countries, historically relied on a gender ideology emphasizing patriarchal subservience and family duty to boost economic growth and global trade. By questioning on the world stage whether poor women should sacrifice their lives and youth for Japan’s industrial development, Tanaka challenged a central underpinning of her nation’s capitalist system.

Tanaka also proclaimed women’s right to political speech and participation, raising issues that resonated with women across the globe. In 1919, the majority of the countries around the world, including the United States, Japan, France, Italy and many others, denied women the right to vote. Not surprisingly, no nation sent a woman as a voting delegate to the 1919 ILC session and, although labour women gathered in protest in Washington and conveyed to the ILC a set of proposals from the ICWW reflecting their collective concerns, the assembled ILC delegates did not debate or vote on them.<sup>74</sup>

Still, as Tanaka’s story illustrates, the barriers to participation for some women were higher than for others. The Japanese Government removed Tanaka as an adviser after her public riff with Mutō. No other such indignity was visited upon any of the other 22 women advisers. Mutō’s use of Tanaka’s pregnancy to discredit her also points to the hurdles motherhood and family created for women’s political participation in 1919. International standards for maternity leave as well as income supports for pregnant women were central concerns at the ILC session, but how to ensure that pregnant women and mothers could participate fully in

that debate was not yet on the agenda. Being in “a family way” at the 1919 ILC session mattered. It heightened Tanaka’s marginalization and almost resulted in her complete exclusion.

Class hierarchies, too, impeded the emergence of equitable global labour standards in 1919. Worker voices were muted in 1919, and elitist antidemocratic ideologies prevented the full participation of workers in determining international labour standards. Japanese workers, men and women, were sidelined in the ILO selection process and, although Masumoto and Tanaka defended worker interests as they determined them, Japanese workers did not elect their own representatives in 1919. Their disenfranchisement in the ILO selection process paralleled their lack of political rights more generally. In 1917, only 3 per cent of the population had voting rights in Japan.<sup>75</sup>

Ensuring equal access to politics and voting rights for all peoples was not an explicit goal of the 1919 ILC. Nevertheless, questions of democracy and representation were inescapable and frequently engaged. The conference debates over these questions were just as important in raising labour standards worldwide as was the specific language that emerged from the Washington labour conventions.

### **Legacies of 1919: the local and the global**

A final concern of this chapter is how the 1919 ILO debates over rights and representation influenced the domestic, often state-centred movements to which many of its participants returned. After the Second World War, as Gerry Rodgers observes, the ILO became a “site for debate about decolonization and an important platform for independence movements.”<sup>76</sup> Similarly, after the First World War, the ILO served as a key site for debate about democracy and a source of inspiration for those seeking greater political and economic citizenship. The civil and political rights of workers and women were contested worldwide in 1919, and the ILO’s engagement with these issues strengthened movements on their behalf in the East as well as the West.

The ILO’s far-reaching effects on Japan’s labour movement have long been noted.<sup>77</sup> The ILO, Arthur Morgan Young concluded, “brought home to the Japanese workers, more forcibly than anything else could, the consciousness of their position and its inferiority to western workers.”<sup>78</sup> Why should Japanese workers be denied rights enjoyed by workers elsewhere? Yūaikai’s bitter conflict with the Japanese Government over the ILO Workers’ delegate served both to energize and radicalize the Japanese labour movement. As hopes for union recognition from the

state and for parliamentary labour reform waned, anarchist “direct action” theories and Bolshevism gained ground among workers. Left opposition to Suzuki’s leadership grew, but he remained at the helm as he too condemned capitalists and demanded full industrial and political citizenship for workers. In 1920 and 1921, the Japanese labour movement initiated a series of explosive strikes and protests. Led by Sōdōmei, thousands of shipyard strikers and others marched, demanding the right to organize and bargain.<sup>79</sup>

As labour protests swelled in the early 1920s, the Japanese Government repressed the most radical wing of the labour movement, arresting hundreds in violent clashes between police and strikers. The protests helped usher in a new, more liberal government in 1924, and Sōdōmei, still under Suzuki’s leadership, returned to a more moderate “realistic socialism” and, once again, endorsed suffrage and parliamentary reform. The Japanese Government amended its ILO selection process and appointed Suzuki as the Japanese labour representative to the ILC, a potent symbol of the new legitimacy of independent worker organizations. The Government also acknowledged the right of labour to organize and to peaceful protest, inaugurating a period of rapid union expansion that continued into the early 1930s. In 1925, Japan enacted the Universal Manhood Suffrage Act, enfranchising a majority of the male working classes.<sup>80</sup>

Business leaders gave less ground in 1920s Japan. They begrudgingly accepted the basic ILO principle of labour legislation but largely rejected Shibusawa’s call for recognizing the “constructive role” of unions, the “basic equality of management and labour,” and the “just rights” of each. Business maintained its commitment to top-down cooperative enterprise and continued to defend traditional ideals of paternalism, group cohesion and respect for hierarchy.<sup>81</sup>

Yet the ILO and the debates it provoked in 1919 did not affect just Japan’s labour movement, nor was it only worker rights that were at stake. The controversy over who should represent working women at the 1919 ILC session involved the leading Japanese women’s rights activists of the period and influenced the direction of the women’s movement at a pivotal moment in its history. Ichikawa left the Yūaikai soon after Tanaka returned from Washington, still smarting from her conflict with Suzuki and other male Yūaikai leaders over whether Yamanouchi would accompany her to Washington. As Ichikawa told Yamanouchi in early 1920, “I must work first for feminism and for gender equality before I work for a women’s labor movement.”<sup>82</sup> Soon after leaving Yūaikai, Ichikawa, along with Oku and Hiratsuka, started the Association of New Women

(Shin Fujin Kyōkai) to “attain our rights as women and mothers,” raise the social value of the domestic sphere and, as Ichikawa put it, ensure that “those who run the kitchens, namely the women,” also “participate in politics.”<sup>83</sup>

The association disbanded in 1922, shortly after it achieved one of its principal goals: the amendment of the 1900 Police Law to allow women the right to join, sponsor, and attend political meetings. Nevertheless, Japanese feminists continued their efforts on behalf of women’s rights. Ichikawa, for example, soon joined with others to organize the Women’s Suffrage League, the most influential interwar suffrage group in Japan. In 1924, while working for the ILO’s newly opened Tokyo office, she added her voice to the small but hardy global chorus calling for equal pay.<sup>84</sup>

Much to her regret, Tanaka was not able to contribute to the 1920s reform initiatives as she had hoped. Upon her return to Japan, she attended the founding meeting of the Association of New Women and was elected as one of the association’s ten officers.<sup>85</sup> In February, however, she gave birth to a child, a boy, who died after four months. By 1925, Tanaka had three more children, two of whom, like her firstborn, died in infancy.<sup>86</sup> These tragedies, combined with her duties caring for her daughter and an ailing and elderly husband, made it impossible for her to fulfil her dream of devoting herself to the wage-earning women of Japan. She later poignantly described her “agony at being immobilized” as “like the knight in the novel by [Sir Walter] Scott who lies wounded, hearing the battle nearby, and lamenting his own body can not rise.” She felt the “pain sharply,” she remembered, “each time women’s suffrage was discussed in the media or newspapers told of movements on behalf of women workers.” In Japanese historian Sharon Nolte’s view, it is all too easy to trivialize Tanaka as merely an “upper-class young lady traumatized by workers’ sufferings” or as a “self-abnegating wife of the scholar.” Rather, Nolte concludes, despite “the burdens” female subordination placed on her, Tanaka was “key” to improvements in women’s welfare and political rights in Taishō and Shōwa Japan.<sup>87</sup>

In the late 1920s, Japanese wage-earning women persisted in their efforts to change their working conditions. Women textile operators at Tōyō Muslin struck in 1927, for example, for the right to come and go from their dormitories without interference; in 1929 they protested again and successfully prevented wage cuts threatened by the employer as a response to the night work law taking effect. Yet despite such actions, the Women’s Section of the Sōdōmei remained small in the 1920s, even as the overall labour movement expanded. After the demise of the

Association of New Women in 1922, efforts by middle-class reformers to create a working women's movement in Japan languished. "State-sponsored" women's clubs thrived, attracting women of all classes, but working women's concerns remained peripheral to the broader Japanese women's movement.<sup>88</sup>

In Japan, as elsewhere, gender and class hierarchies contributed to the difficulties wage-earning women faced in organizing to improve their lives. The lack of organization among working women proved particularly "costly" in Japan in human and social terms, Sharon Siever concluded, "given the numbers of women involved and their overriding importance to the economy."<sup>89</sup> Indeed, failure to make the problems of wage-earning women central to the agenda of the Taishō and Shōwa reform movements lessened the power of these movements and their ability to advance the interests of the majority of Japan's citizens. After 1932, with the collapse of the constitutional monarchy following the assassination of the prime minister and the ascendancy of a militarized, repressive and nationalist Japan, reform movements faced an even more uphill battle. Suffrage for Japanese women workers, for example, would not be achieved until after the Second World War, in 1947.<sup>90</sup>

Sociologist Gay Seidman argued forcefully in her 2009 book, *Beyond the Boycott*, that international labour standards, or top-down labour regulations, have a limited impact on the conditions of most workers without what she called "trans-nationalism from below," or grassroots movements within nations to raise living and working standards.<sup>91</sup> Her point is well taken. Democracy internationally is only possible with democracy at the state and local level. But equally important, as this chapter has argued, effective and fair international labour standards are unlikely unless those doing the negotiating represent the full range of the world's peoples. In 1919, the ILO had not yet fully democratized, but the debate over whether women and workers would be accorded full rights and representation in industry, in the governments of nations, and on the global stage had been engaged.

## Notes

This article benefitted greatly from the advice of Kayo Denda, Sheldon Garon, Laura Hein, Dorothea Hoehltker, Jill M Jensen, Izumi Koide, Nelson Lichtenstein, Valerie Matsumoto, Michael Merrill, Barbara Molony, Holly Sanders and Susan Zimmermann. Dr Martin Heijdra, Chinese and East Asian Studies Bibliographer, Princeton University, provided indispensable and generous assistance with locating Japanese-language sources. Renée Berthon and Remo Becci offered expert guidance in the ILO archives. My greatest debts are to Yurika Tamura for superb

research assistance and translation of Japanese texts into English and to Yoshiko Uzawa for her encouragement in the initial stages of my research when I first visited Japan and for locating and sending me primary sources from Japan.

1. In accordance with Japanese custom, the family name precedes the personal name except where the individual is authoring an English-language text. Macrons are used sparingly.
2. T. W. Burkman, *Japan and the League of Nations* (Honolulu: University of Hawaii Press, 2008), 57–103; ILO, *Record of Proceedings*, International Labour Conference, 1st Session, Washington, 1919 [hereafter ILC, 1st Session (1919)], 5–10.
3. Burkman, *Japan and the League of Nations*, 1–28.
4. E. P. Tsurumi, *Factory Girls: Women in the Thread Mills of Meiji Japan* (Princeton: Princeton University Press, 1990); S. Sievers, *Flowers in Salt* (Stanford, CA: Stanford University Press, 1983), chapter 4; J. Hunter, *Women and the Labour Market in Japan's Industrializing Economy* (London: Routledge, 2003), 1–9. Japan's Factory Act of 1911 set a minimum age of ten for "light work" and 12 otherwise. It limited work to 12 hours a day for women and children under 15, but allowed night work and, when deemed necessary by employers, 14-hour days.
5. N. Shimazu, *Japan, Race and Equality: The Racial Equality Proposal of 1919* (London: Routledge, 1998); M. Lake and H. Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008), 284–305.
6. Article 19 of the ILO Charter allowed the modification of labour standards for countries "in which climatic conditions, imperfect development of industrial organization or other special circumstances make industrial conditions substantially different." H. J. W. Hetherington, *International Labor Legislation* (London: Methuen & Co., 1920), appendix.
7. On the 1918 rice riots and other upheavals in Japan in this period, A. M. Young, *The Socialist and Labor Movement in Japan* (Kobe, Japan: 1921, Reprint, Washington, DC: University Publications of America, 1979), 16–38; A. Gordon, *Labor and Imperial Democracy in Prewar Japan* (Berkeley: University of California Press, 1991), part 1.
8. On the wartime surge of labour movements in the West, G. Eley, *Forging Democracy: The History of the Left in Europe, 1850–2000* (New York: Oxford University Press, 2002); on Japan's rising worker movements, among others, Gordon, *Labor and Imperial Democracy in Prewar Japan*, 92–109; S. S. Large, *The Rise of Labor in Japan: The Yūaikai, 1912–1919* (Tokyo: Sophia University Press, 1972); I. F. Ayusawa, *A History of Labor in Modern Japan* (Honolulu: East-West Center Press, 1966).
9. Hetherington, *International Labour Legislation*, appendix; C. R. Lubin and A. Winslow, *Social Justice for Women: The International Labor Organization and Women* (Durham, NC: Duke University Press, 1990), 20–24.
10. Anon., *The Kanegafuchi Spinning Company Limited: Its Constitution, How It Cares for Its Employees and Workers* (Osaka, Japan: Sanseisha Ltd, October 1919); B. K. Marshall, *Capitalism and Nationalism in Prewar Japan: The Ideology of the Business Elite, 1868–1941* (Stanford: Stanford University Press, 1967), 62.

11. "Japan at the Labor Conference," *The New York Times* [hereafter NYT], 9 November 1919. For a list of delegates and advisers attending the first International Labour Conference, *ILC*, 1st Session (1919), 5–10.
12. In reconstructing this event, I draw from "The International Labor Conference," *The Japan Weekly Chronicle* [hereafter JWC], 27 November 1919, 831–33; "Tanaka daikien [Great Flame Tanaka]," *Asahi Shimbun* [hereafter AS], 20 November 1919, 2; A. M. Allen, *Sophy Sanger: A Pioneer in Internationalism* (Glasgow: University Press, 1958), 152; S. Nolte, *Liberalism in Modern Japan: Ishibashi Tanzan and His Teachers, 1905–1960* (Berkeley: University of California Press, 1987), 122–23; and K. Hesselgren Diary, "Washington Konferensen 1919" [Washington Conference 1919], Kerstin Hesselgren Papers, 1872–1962, Collection L-55, File 61, Kungliga Biblioteket, National Library of Sweden, Stockholm, Sweden. I am grateful to Karin Carlsson for translating Hesselgren's diary from Swedish into English. All translations from the Japanese into English are by Yurika Tamura except where otherwise noted.
13. "International Labor Conference," *JWC*, 18 September 1919, 463; Marshall, *Capitalism and Nationalism in Prewar Japan*, 62, 82–84.
14. Allen, *Sophy Sanger*, 152; Young, *The Socialist and Labor Movement in Japan*, 93.
15. "International Labor Conference," *JWC*, 27 November 1919, 831–33.
16. Sievers, *Flowers in Salt*, 52; S. H. Nolte and S. A. Hastings, "The Meiji State's Policy toward Women, 1890–1910," in G. L. Bernstein, ed., *Recreating Japanese Women, 1600–1945* (Berkeley: University of California Press, 1991), 151–74.
17. "Japan and the Labour Question," *JWC*, 27 November 1919, 797–98, 831.
18. "Japan and the Labour Question"; "Great Flame Tanaka."
19. "Great Flame Tanaka"; "Ōdōshi no shashin to naranda kagaminomae no Takako san," [Takako in the picture] *AS*, 9 December 1919, 5.
20. J. Van Daele, "Writing ILO Histories: A State of the Art," in Van Daele et al., eds., *ILO Histories: Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century* (Bern: Peter Lang, 2010), 18.
21. F. G. Wilson, "The Pacific and the ILO," *Pacific Affairs*, 5, no.6 (June 1932), 497–511; A. Ali, "Fifty Years of the ILO and Asia," *International Labour Review*, 99, no.3 (1969), 347–61.
22. After the end of the Tokugawa Shogunate (1600–1868), Japanese historical eras reflect reign names – Meiji (1868–1912), Taishō (1912–26), and Shōwa (1926–89) – assigned by and corresponding to the ruling emperors.
23. R. A. Scalapino, *The Early Japanese Labor Movement: Labor and Politics in a Developing Society* (Berkeley: University of California, 1983), 38–77; Ayusawa, *A History of Labor in Modern Japan*, 98–99.
24. On Yūaikai and Sōdōmei, among others, Gordon, *Labor and Imperial Democracy*, 92–109, part 2; Scalapino, *The Early Japanese Labor Movement*, chapters 2–4; Large, *The Rise of Labor in Japan*, chapters 4, 9; S. S. Large, *Organized Workers and Socialist Politics in Interwar Japan* (Cambridge: Cambridge University Press, 1981), chapter 1; and Young, *The Socialist and the Labor Movement in Japan*, 16–50.
25. Large, *The Rise of Labor in Japan*, 182.
26. Large, *Organized Workers and Socialist Politics in Interwar Japan*, 55–58.

27. Ayusawa, *A History of Labor in Modern Japan*, 120–24; Burkman, *Japan and the League of Nations*, 87–91.
28. Hetherington, *International Labour Legislation*, appendix.
29. In 1919, Japan was a constitutional monarchy with a bicameral legislature called the Diet. In *Labor and Imperial Democracy*, A. Gordon traces the increasing power of Japanese political parties after 1905 and characterizes the Japanese political system from 1918 to 1932 as an “imperial democracy.”
30. Gordon, *Labor and Imperial Democracy*, 127–29; Young, *The Socialist and Labor Movement in Japan*, 55–58; Large, *The Rise of Labor in Japan*, 186–89.
31. “Election of Laborers’ Delegate Causes Excitement in Japan,” *NYT*, 9 November 1919; Young, *The Socialist and Labor Movement in Japan*, 55–60; *Japan Times and Mail* [hereafter *JTM*], 12 September 1919; “The International Labor Conference,” *JWC*, 11 September 1919, 18 September 1919, 2 October 1919, and 16 October 1919; “Japan’s Labour Conference,” *JWC*, 25 September 1919, 496.
32. “Labour Holds Anti-Masumoto Meeting at Meijiza Theatre,” *JTM*, 7 October 1919; “International Labour Conference,” *JWC*, 2 October 1919.
33. “Labour Holds Anti-Masumoto Meeting at Meijiza Theatre.” See also *JTM*, 22 September 1919; “Japan’s Labour Conference”; “The Awakening of Japanese Labour,” *JWC*, 2 October 1919, 510 and 9 October 1919, 541–42.
34. Young, *The Socialist and Labor Movement in Japan*, 58–60; “Yūaikai Warned by Police,” *JTM*, 10 October 1919, 1; “Labour Delegates Left Yesterday,” *JTM*, 11 October 1919; “Japanese Labor Ferment,” *NYT*, 14 October 1919, 6; *JWC*, 9 October 1919 and 16 October 1919, 589.
35. *JWC*, 27 November 1919, 822; “Nihon rōdōkaini shinkigen o kakusura [Opening a new era]” *AS*, 11 October 1919.
36. Sievers, *Flowers in Salt*, 50–52; 79–83; S. Garon, *Molding Japanese Minds: The State in Everyday Life* (Princeton: Princeton University Press, 1997), 12–18; S. E. Marsland, *The Birth of the Japanese Labor Movement: Takano Fusataro and the Rōdō Kumiai Kiseikai* (Honolulu: University of Hawaii Press, 1989), 31–32; S. Buckley, *Broken Silence: Voices of Japanese Feminism* (Berkeley, CA: University of California Press, 1997), 306–08; Tsurumi, *Factory Girls*, introduction.
37. Young, *The Socialist and Labor Movement in Japan*, 88–91; Gordon, *Labor and Imperial Democracy*, 92–109.
38. Young, *The Socialist and Labor Movement in Japan*, 91–93.
39. “Mrs. Tanaka to be woman advisor,” *JTM*, 27 September 1919; “Mrs. Tanaka, Inouye to Join Labor Delegation,” *JTM*, 30 September 1919.
40. Young, *The Socialist and Labor Movement in Japan*, 92.
41. “Labour Holds Anti-Masumoto Meeting at Meijiza Theatre.”
42. “Awakening of Japanese Women,” *JWC*, 16 October 1919; “Yūaikai hujinbu taikai ni mezametaru jokō [Worker’s union Yūaikai women’s meeting],” *AS*, 6 October 1919.
43. On Ichikawa, B. Molony, “Ichikawa Fusae and Japan’s Prewar Women’s Suffrage Movement,” in H. Tomida and G. Daniels, eds., *Women in Japanese History* (London: Global Oriental, 2005), 57–92; on Hiratsuka, Sievers, *Flowers in Salt*, chapter 8; on Oku, R. P. Loftus, *Telling Lives: Women’s Self-Writing in Japan* (Honolulu: University of Hawai’i Press, 2004), chapter 2; and A. Tokuzo, *The Rise of the Feminist Movement in Japan* (Tokyo: Keio University Press, 1999), 204, 212–19.

44. "Labour Holds Anti-Masumoto Meeting at Meijiza Theatre;" Nolte, *Liberalism in Modern Japan*, 122–23; Tokuzo, *The Rise of the Feminist Movement in Japan*, 115–18.
45. On Masumoto, "The Representation of Japanese Labour," *JWC*, 2 October 1919, 510 and 9 October 1919, 542–42, 551.
46. On Shibusawa and the 1909 mission to the United States, [www.shibusawa.or.jp](http://www.shibusawa.or.jp) (accessed 20 August 2012).
47. T. Tanaka, *Tōyō* [Blossoming Season] (Tokyo: Yoa, 1943); T. Takashi, "The Change in the Status of Women under the Modern Conditions of Japanese Life," M.A. thesis, Social Work, University of Chicago, 1918; M. Ichiyama, *Noda no rekishi* [History of Noda] (Tokyo: Ron, 1979), 266–69; Nolte, *Liberalism in Modern Japan*, 90–94, 118–28.
48. Large, *The Rise of Labor in Japan*, 172–73; Ayusawa, *A History of Labor in Modern Japan*, 107–10.
49. "Seihu gawano rōdō komon toshite Tanaka fujin tsuini shōdaku [At last Tanaka accepts the position of government-appointed adviser]," *Yomiuri Shimbun* [hereafter YS], 29 September 1919, 5.
50. "The Women's Representative," *JWC*, 16 October 1919.
51. On Tanaka Ōdō's philosophy and his role in the Taishō democracy movement, S. H. Nolte, "Industrial Democracy for Japan: Tanaka Ōdō and John Dewey," *Journal of the History of Ideas*, 45, no.2 (April–June 1984), 277–94.
52. Oku Mumeo, *Nobi aka akato: Oku Mumeo jiden* [Wild Fire Burning Fiercely: An Autobiography] (Tokyo: Monesu Shuppan, 1988), 38; Tokuzo, *The Rise of the Feminist Movement in Japan*, 101; Loftus, *Telling Lives*, chapter 2; Nolte, *Liberalism in Modern Japan*, 118–23.
53. Molony, "Ichikawa Fusae and Japan's Prewar Women's Suffrage Movement," 57–63; O. Miyake and H. Tomida, "Shin Fujin Kyōkai (the Association of New Women) and the Women Who Aimed to Change Society," in Tomida and Daniels, eds., *Women in Japanese History*, 232–57, quote, 234; Tokuzo, *The Rise of the Feminist Movement in Japan*, 115–16; H. Watanabe, "Feminismus und Sozialismus in Japan," in I. Leirer et al., eds., *Sozialistische Frauen-internationale und Feminismus* (Berlin: Verlag und Versandbuchhandlung Europäische Perspektiven, 1984), 103–04. I thank Tobias Schulze-Cleven for translating German to English.
54. "Massakini kicho surunowa Tanaka fujin ka [Mrs. Tanaka Taka first to come back]," YS, 29 November 1919, 4. Yamanouchi Mina, *Jiden: Jūnisai no bōseki jokō kara no shōgai* [Autobiography of Yamanouchi Mina: Path after Becoming a 12-Year-Old Woman Textile Worker] (Tokyo: Shinjuku Shōbō, Shōwa 50, 1975), 57–66.
55. The ILC's Committee to consider labour standard exemptions was quickly dubbed the "Oriental Committee" since only Asian nations were thought in need of such exceptions.
56. ILC, 1st Session (1919), 158–59; "Masumoto Asks for 8 Hour Day," *JTM*, 3 December 1919.
57. ILC, 1st Session (1919), 159–60; "Japanese Discord," *JTM*, 2 December 1919; "Masumoto Asks for 8 Hour Day"; "Delegate Attacks Japan's Labor Law," *NYT*, 28 November 1919, 8; "The International Labour Conference," *JWC*, 27 November 1919, 831–32.
58. Hetherington, *The International Labour Legislation*, 14–15.

59. Young, *The Socialist and Labor Movement in Japan*, 62.
60. "The International Labour Conference," 831–32.
61. *Ibid.*, 832.
62. D. S. Cobble, "U.S. Labor Women's Internationalism in the World War I Era," *Revue Francaise d' Etudes Americaines*, 122, no.4 (2009), 44–57; U. Wikander, "Demands on the ILO by Internationally Organized Women in 1919," in Van Daele et al., eds., *ILO Histories*, 67–89; D.S. Cobble, "A Higher 'Standard of Life' for the World: U.S. Women's Reform Internationalism and the Legacies of 1919," *Journal of American History* 100, no.4 (March 2014), 1052–85.
63. Anderson, *Women at Work*, 128–29.
64. *Ibid.*
65. "Japan and the Labour Question," *JWC*, 27 November 1919, 797–98.
66. *Ibid.*
67. Oddly, unlike the other Commissions at the first session of the ILC, there are no minutes from the Commission on Women's Employment in the ILO archives in Geneva. These minutes have been missing for at least fifty years and may not have been preserved initially.
68. "First Labour Pact Reached," *JTM*, 25 November 1919.
69. "Japan Makes Concessions in Labor Conference," *JTM*, 8 December 1919, 5; 11 December 1919, 906.
70. Tanaka Taka letter, 12 November 1920, published in *ICWW Bulletin* 8, 25 January 1921, Box 72, File 4, Van Kleeck Papers, Smith College, Northampton, Massachusetts, USA.
71. Ayusawa, *A History of Labor in Modern Japan*, 194–95, [www.ilo.org](http://www.ilo.org) (accessed 20 August 2012); B. Molony, "Equality versus Difference: The Japanese Debate over 'Motherhood Protection', 1915–50," in J. Hunter, ed., *Japanese Women Working* (London: Routledge, 1993), 122–48.
72. Wilson, "The Pacific and the ILO," 504–05; Ali, "Fifty Years of the ILO and Asia," 354.
73. For example, C. Stansell, "The Origins of the Sweatshop," in M. Frisch and D. Walkowitz, eds., *Working-Class America* (Urbana: University of Illinois Press, 1983), 78–103.
74. ILC, 1st Session (1919), 1–300; ILO Delegates' Official Guide (Washington, DC, 29 October 1919).
75. Garon, *The State and Labor in Modern Japan*, 48.
76. G. Rodgers, "India, the ILO and the Quest for Social Justice since 1919," *Economic and Political Weekly*, XLVI, no.10 (5 March 2011), 45–52.
77. For example, Ayusawa, *A History of Labor in Modern Japan*, viii. Ali ["Fifty Years of the ILO and Asia," 356] extends the claim beyond Japan, noting the "influence of ILO standards on legislation in Asia is far more marked than it is on that of Europe."
78. Young, *The Socialist and Labor Movement in Japan*, 48.
79. Gordon, *Labor and Imperial Democracy*, 123–234; Large, *The Rise of Labor in Japan*, chapter 9.
80. Garon, *The State and Labor in Modern Japan*, chapters 2 and 3; Scalapino, *The Early Japanese Labor Movement*, chapter 5.
81. Garon, *The State and Labor in Modern Japan*, 52; Marshall, *Capitalism and Nationalism in Prewar Japan*, 83.
82. Yamanouchi Mina, *Jiden [Autobiography]*, 66.

83. Miyake and Tomida, "*Shin Fujin Kyōkai* (the Association of New Women) and the Women Who Aimed to Change Society," 232–57; Molony, "Ichikawa Fusae and Japan's Prewar Women's Suffrage Movement," 62–63; Loftus, *Telling Lives*, chapter 2.
84. Tachi, "Women's Suffrage and the State," 21–24; B. Molony, "Women's Rights, Feminism, and Suffragism in Japan, 1870–1925," in Karen Offen, ed., *Globalizing Feminisms before 1945* (London: Routledge, 2010), 53–56; Molony, "Equality versus Difference."
85. Tokuza, *The Rise of the Feminist Movement in Japan*, 115–18.
86. Nolte, *Liberalism in Modern Japan*, 126.
87. Tanaka, *Tōyō* [Blossoming Season], 261–62. Only in 1932, after her husband's death, did Tanaka return to public affairs, taking a job as the director of a marriage bureau and writing for women's magazines. For quote, Nolte, *Liberalism in Modern Japan*, 337–38.
88. Gordon, *Labor and Imperial Democracy*, 220–30; S. Garon, *Molding Japanese Minds: The State in Everyday Life* (Princeton: Princeton University Press, 1997), 236.
89. Sievers, *Flowers in Salt*, 194.
90. K. Tachi, "Women's Suffrage and the State: Gender and Politics in Pre-War Japan," in Vera Mackie, ed., *Feminism and the State in Modern Japan* (Melbourne: Monash University, 1995), 16–30. On 12 December 1945, the date commemorated as women's suffrage day in Japan, women gained the vote for House of Representatives. They did not gain the vote for House of Councilors until 1947.
91. G. Seidman, *Beyond the Boycott: Labor Rights, Human Rights, and Transnational Activism* (New York: Russell Sage, 2009), chapter 6.

## **Part II**

# **The Dilemmas of Development**

# 4

## Negotiating a World Trade and Employment Charter: The United States, the ILO and the Collapse of the ITO Ideal

*Jill M Jensen*

Speaking at the United Nations Conference on Trade and Employment in Havana, Cuba, late in 1947, the International Labour Organization's (ILO) Duncan Christie Tait, a specialist on employment and migration, highlighted the potential for "mutual undertakings" between the ILO and the proposed International Trade Organization (ITO). Tait, as an observer, had joined delegates from 56 nations and representatives from other United Nations agencies in the Cuban capital for the founding of this new intergovernmental entity focused on commercial policy and trade. Indeed, ILO and ITO statements of purpose acknowledge significant commonalities in the economic realm, such as support for policies of full employment, rising standards of living and increased economic development, all linked concertedly to international trade. Tait, along with colleagues in the International Labour Office, was convinced his agency had a role to play alongside the ITO in facilitating world economic cooperation in these regards. Commercial activity, they assumed at the time, would increasingly extend beyond the trade routes of the yet industrialized North Atlantic, out across the Pacific Rim, from the Americas to the "Asiatics," and on to the "Near and Middle East."<sup>1</sup> In all of these regions, international trade could help ameliorate poverty and low standards of living and mitigate the chances of mass unemployment through the maximization of production and incomes. "If the ITO is effectively established as a result of this Conference, the... ILO, representing employers and workers as well as governments will, I am sure, be among the first to offer its congratulations to a new specialized agency

and to offer its assistance in the immense task to which you have set at your hands," Tait assured.<sup>2</sup>

Tait was one individual in a wider movement of international civil servants, economists and trade and development specialists offering concerned attention to employment problems on a global scale, as described in this chapter. Formulating a novel approach for collaboration on international measures to support full and productive employment in the post-war era, their ideas were incorporated into the ITO, slated to become "a pact between nations" on the rules of behaviour for commercial exchange.<sup>3</sup> The aim of full employment had been affirmed in the ILO's 1944 Declaration of Philadelphia and, again, in the 1945 Charter of the United Nations. Full and productive employment also stood as a stated objective for the ITO. Yet significant disagreements emerged over the meaning, and the value, of full employment, along with which measures boded best for its obtainment in different national environments. At that time, it was not particularly clear how "increased and sustained" job prospects could be realized, nor how the ITO or the ILO would contribute. So as discussions got underway in late 1947, a whole range of uncertainties remained concerning the emerging multinational trading system and whether ILO labour standards, economic development prospects for underdeveloped nations and employment "for all" would become embedded goals.

Specialists in the United States, in particular, had reason to be concerned over the outcome of ITO deliberations. The Second World War had propelled the nation into the prominent place as world supplier of manufactured goods and foodstuffs, but there was true danger this position might become substantially downgraded in the post-war era. Forecasts for readjustments predicted a recoup of production capabilities around the globe and a dip in US exports. Only an expanding volume of international commercial activity would sustain the markets for US goods in the long run, researchers proposed, and with this in mind "free trade" seemed the best bet for the future. According to US-based ITO architects, global trade liberalization could create jobs for Americans while also benefitting investors abroad; and, in order to keep the American economy functioning at a high level, it was necessary to increase imports as well as maintain exports. "Our prosperity," according to Percy Bidwell of the Council on Foreign Relations, "will spill over into other countries through the channels of international trade."<sup>4</sup> Bidwell's vision, along with comparable understandings by William Clayton, the primary US negotiator, meant that such "mutual undertakings" might well be in the making.

Vexing questions confronted the Havana delegates, among them to what extent trade advantages and access to markets would go primarily to the industrial core of the North Atlantic, or if these might reach further – North to South and West to East, across the Pacific Rim to newly independent nations such as India, or aspiring ones like Australia. How inclusive, in the end, were the expectations concerning the harmonization of commercial policies and employment taken as a whole in the UN community? Would the United States as a world economic power exert its strength as a free trade hegemon, or allow other nations the opportunity to channel US economic influence to their own benefit, as Bidwell and others imagined? In brief, would the new trade regime as overseen by the United Nations provide a space for underdeveloped nations like Mexico, Colombia, India, China and Australia to use tariffs, quantitative restrictions, and other trade barriers to shelter their industry, albeit temporarily, and maintain stability in a world where the economies of the North were still far more productive and efficient?

During months of deliberation, the heat in Havana surged through the meeting rooms of the Capitola Building as delegates vented a range of conflicting desires and ideas on how to best set the rules for a world trade charter. They did so, on the whole, aiming to reduce barriers, but with diverse perspectives on the methods and techniques that could achieve this goal. US negotiators claimed that if the ITO scheme proved successful in eliminating “impediments” in the trade/employment nexus all nations could benefit. For Will Clayton, chairman of the US team, markets themselves were the key and thus “the potential for eventual industrialization rested on the premise of free trade.”<sup>5</sup> Clayton was an influential figure at a crucial moment in the formation of US foreign economic policy. A Texas cotton merchant with international holdings, he was a staunch advocate of trade liberalization.<sup>6</sup> Working closely with Secretary of State George Marshall, he also may well have been the single most important architect of what became known as the Marshall Plan – or European Recovery Program – which eventually poured \$16 billion into the reconstruction of Western Europe. Even before the Havana conference, Clayton had penned a vital memo on what would become Marshall Aid, fearful that ITO tariff-lowering negotiations could fail due to the economic plight of European nations.<sup>7</sup>

However, nationalists from developing countries had travelled to Havana with concrete suggestions on stiffening ITO’s employment and economic development provisions, which they considered as important as aims to liberalize trade. Led by Mexico and Australia, two of the most vocal and active members in what might be called a fair trade standards

group, representatives from Latin American republics, India, New Zealand, Iraq, Ceylon and Lebanon (among others) all sought to fill the trade charter with substantive guarantees, linking market liberalization to the real potential for viable jobs in weak economies, and to couple that with the establishment and maintenance of ILO labour standards. In fact, special working groups laboured furtively, reviewing hundreds of amendments during prolonged deliberations on these topics.<sup>8</sup> The result was a direct victory for Tait and the ILO, inserted through a fair labour standards clause and an entire section linking economic development and reconstruction in ITO's Final Act, known thereafter as the Havana Charter.<sup>9</sup> US negotiators at the site of the debates in Cuba agreed to offer such compromises to gain needed support for the ITO itself, a decision that would evoke intense criticism back home.

The Havana Charter did offer a rhetorical endorsement of free trade, but the final agreement contained loopholes and escape clauses that its signatory nations might use to avoid a dangerous race to the bottom in terms of jobs, wages and the capacity of each regime to chart its own developmental future. Discussions centred on striking a balance between the expansion of international trade and the need of individual nations to moderate foreign investments, employ mixed regulation, protect national labour forces and promote economic growth. Importantly, as an agency associated with the Bretton Woods institutions, the ITO would also provide a connection between trade rules, international financial regulation and new "world bank" lending power.<sup>10</sup>

Nevertheless, a battle raged between "the West" and what might be called "the rest": the underdeveloped nations of the South and East. Strategists such as Tait who envisioned an international full employment system encompassing a combination of trade liberalization and limited trade protections, considered it expedient to maintain strong national economies in the post-war era. They therefore argued the need for an international system that could bend in troubled times, rather than one which assumed that the weaker national economies would simply conform to a free trade framework. A British effort to protect its empire and shelter its industries through a system of imperial preference seemed to offer a model for more protectionist economic policies. But with the United States coming out ideologically against imperialism, economic nationalism and the pre-war Commonwealth trading bloc, any preference system remained a hard sell. Amid high levels of contention, ITO negotiators endorsed a set of rights – as opposed to a set of clear definitions – for the people involved: to good jobs, adequate living

standards and decent levels of income – a position that at the time stood with an ideal of “freedom from want.”<sup>11</sup>

Despite these efforts and these victories, if victories they would remain, the world trade charter had but a short life. Its eclipse came quickly in 1950 when the chance for survival of the ITO as a UN-affiliated organization dissolved, leaving only one component of its drafting in the wake, one aiming solely at the reduction of tariffs – the General Agreement on Tariffs and Trade (GATT). Lack of support for the ITO signalled the breakdown of efforts to firmly link ILO-style employment regulation to the new trade regime that was emerging in the West. International full employment, via a combination of private enterprise and public planning on the national level, and transnational cooperation to limit restrictions on international exchange, had served as an integral component of the ITO approach. With the trade organization’s collapse, these ambitions were essentially lost to history. Had the ITO survived, it would have provided the framework for the construction of a post-war trading system in which labour and employment policies were coordinated with development programs, fiscal stability in individual nations and the regulation of foreign investment. Here was an ideal tying commercial action to international labour standards – the essence of the social clause that remains so contentious today between the ILO and other international trade and financial institutions.

### **Early ITO outlines, 1942–45**

US officials in Havana claimed to support the aim of international full employment, yet key policy-makers back home maintained that liberalized trade was the most important component for job prospects on a worldwide scale. Free traders clashed with Keynesian employment experts and, as the debate over the ITO expanded, US federal legislators chimed in as well. Many of these elected officials were not ready to budge an inch on what they assumed to be the relinquishment of US economic sovereignty. As well, a large group of politicians would not go so far as to say free trade was even a desirable thing, and fell back on traditional protectionist inclinations. Thus, American economic internationalism would be a hard fight. The debate back home was premised essentially on conflicting views about how to stimulate employment and commercial activity, but also on the usefulness of multilateralism itself. To understand the policy prescriptions at stake, it is important to reflect back on the ideological origins of the ITO approach.

Beginning with the New Deal and continuing into the Second World War, economic planners in the United States prioritized full employment at home and abroad. To accomplish this, they sought to link economic and social improvement through a comprehensive set of rules for trade-related issues. The first US sketches for the ITO, coming from the US Department of State, represented an amalgam of several predictions for national policy, yet primarily relating to the economic problems of the 1930s. One of these centred on then Secretary of State Cordell Hull's vision of reciprocal trade agreements (RTAs) between the United States and other nations, and another on the notion of economic security for workers. Like Clayton, Hull was a free trade/low tariff Southerner closely linked to the cotton trade.

Reciprocal trade agreements allowed for the reduction of tariffs on a bilateral basis, to be administered by the US executive branch (a distinct advantage within the US political system, given intense legislative disagreements over tariff policy).<sup>12</sup> In the 1930s, Hull and other advocates of a liberalized trade regime argued that cartels and trading blocs had helped precipitate the First World War and the rise of authoritarianism in Europe two decades later. More free trade could instead serve as the path to democracy, prosperity and long-term peace. Indeed, RTA tariff reduction policies seemed a complement to the more domestically based focus of the Roosevelt administration's New Deal, and these eventually came to be considered the international component of economic recovery.<sup>13</sup>

The New Deal was unusual in that it married a commitment to an internationally liberalized trade regime with an equally determined effort to regulate and even protect commerce at home, while also, – for the first time in US history, – sustaining a broad set of government-mandated labour standards. Once Hull and his backers succeeded in convincing Americans that reciprocal trade could actually help workers within the country find jobs *and* could lower the price of goods, the partnership between free trade abroad and domestic economic recovery became more politically palatable. But this required support from liberal promoters. In a series of articles Mordecai Ezekiel, a progressive economist at the Department of Agriculture and a staunch New Deal advocate of state planning, stepped in to popularize reciprocal trade arrangements, noting that “high tariffs mean that many articles will be produced in this country at high prices which could be imported from other countries at much lower prices.” He added that “monopolies develop behind tariff walls,” therefore touching on an important detail regarding the future ITO plan, one meant to constrain the power of cartels.<sup>14</sup> Ezekiel, credited with designing the New Deal's Agricultural Adjustment Administration,

served as director of its planning division. His advocacy of free trade via agricultural economics helped to connect the two sides of Roosevelt's sometimes-haphazard New Deal: national and international. Like many US policy-makers with international interests, in the years following the Second World War, Ezekiel went on to serve in the United Nations, in this case as Deputy Director-General of the UN Food and Agricultural Organization (FAO).<sup>15</sup> He would soon become known for his advocacy of "food aid" in relation to economic development.<sup>16</sup>

Reciprocal trade agreements in the interwar period transferred ideologically into wartime lend-lease, or mutual aid, agreements. These advocated the expansion, by appropriate measures of employment and production that, according to the Anglo-American Mutual Aid Agreement, was described as setting "the material foundations of the liberty and welfare of all peoples."<sup>17</sup> If filled with the airs of grand pronouncements, these projects revolved around the ideal of shared prosperity.

As might be assumed, however, post-war formulas as they developed throughout the war could hardly be described as fully benevolent. Ideas underpinning this shared prosperity were entirely cognizant of future US economic growth and international influence. These aims were often expressed as a newly assumed US "leadership" in the world that emerged in the early war years (even before the country had joined in the fighting). Meanwhile, the importance of positive labour relations for war production made studies on transnational employment and manpower vitally important to the US Department of State. Leo Pasvolsky, acting as a State Department director of special research on post-war economic matters, closely followed internationally focused League of Nations and ILO reports issued during the war. These included suggestions for international social security and employment linked to trade and issues of commercial policy.<sup>18</sup> Echoing sentiments strongly endorsed by the Roosevelt administration, especially that wing led by Henry Wallace, then director of the powerful Board of Economic Warfare, Pasvolsky outlined US aims "to create, domestically and internationally, economic conditions which would make possible a progressive movement toward an efficient utilization of the human and material resources of the world ... adequate to insure the greatest possible measure of full and stable employment accompanied by rising standards of living everywhere."<sup>19</sup> Thus, in a nutshell, Pasvolsky summarized the two calculations in the US post-war development interpretation: the better utilization of resources and stable employment leading to augmented incomes. With the full support of Hull, he hoped that the United States might be able to tap

into potential profits by selling its abundance of food, cotton and manufactured goods around the globe.<sup>20</sup>

As early as 1940, a core staff from the International Labour Office had crossed the Atlantic in somewhat challenging wartime circumstances, settling in at McGill University in Montreal, and almost immediately focusing attention on “post-war problems.” Concurrently, a group from the League’s Economic, Financial, and Transit Department relocated to Princeton University’s Institute of Advanced Studies, continuing research and writing on international economic and trade topics with funding from the Rockefeller Foundation.<sup>21</sup> ILO expertise on social and employment matters melded with the League’s “economic intelligence services,” which stipulated details on the best outlines for international trade, world production and future balance of payments.<sup>22</sup>

Taking advantage of both the statistics and the insights provided by ILO labour economists and other League specialists, the vision for the ITO initially emerged through a US imagery of what the technical arms of a new, invigorated international institution (ultimately the United Nations) might be able to accomplish. US technocrats worked out plans to connect trade liberalization, tariff reductions and international economic cooperation so to simultaneously increase employment and purchasing power. Solid proposals for an intergovernmental institution began after the 1942 creation of the Trade Agreements Committee. Department of State officials worked with others in the federal government to develop a US blueprint, which came in the form of a 1945 report, “Proposals for Expansion of World Trade and Employment.”<sup>23</sup> Rather bombastically, according to its US promoters, the ITO would become “an instrument by means of which we focus our influence upon the course of world economic policies in a manner hitherto impossible.”<sup>24</sup> Yet American planners knew they were not alone with their propositions.

That same year, League economists released their own report on the topic, titled “Commercial Policy in the Post-War World,” which insisted “that the central object of freer trade policies is not simply to increase the international exchange of goods, but also to overcome unemployment, under-employment, and poverty.”<sup>25</sup> Researchers submitted both reports to the Economic and Social Council (ECOSOC) of the United Nations. With this move, debates over the ITO entered into a phase of international consultation, with US officials noting that a UN conference relating to trade and employment should take place no later than the summer of 1946.<sup>26</sup> Clayton and others would soon realize the contentious nature of State Department proposals as they came under review by transnational experts.<sup>27</sup>

## **International full employment aims, 1945–46**

At the conclusion of the war progressive internationalists within former Allied countries came out strongly in favour of bolstering trade, but only while linked to the maintenance of fair labour standards. Their advocacy, accompanied by a platform demanding democratic participation in the world system, was often compelled by the recent memory of how Axis trading blocs had served to undergird German and Japanese imperialism. Nazi Germany's statist control of a pan-European economy even before war broke out, likewise Japan's Greater East Asia Co-prosperity Sphere, seemed just the kind of dangerous, militarized protectionism that liberal, free trade internationalists sought to forever abolish. The end of these "economic nationalisms" heralded an opportunity to avoid "constantly higher barriers," according to Benjamin A. Cohen, the Chilean diplomat who served as the executive secretariat of the preparatory commission of the United Nations.<sup>28</sup> But to move in the direction of freer trade, nations had to first overcome the problems surrounding financial imbalances and threats to domestic production that could lead to mass unemployment.

League and ILO publications on overcoming the negative effects of economic depression, released periodically since the 1930s, had elaborated on the value of government intervention in the form of public works and social welfare support.<sup>29</sup> Tait, the head of the ILO's Employment and Migration Section, and an expert on British unemployment insurance, had come to Montreal and undertaken studies on unemployment, migration for work and public investment in multiple countries.<sup>30</sup> After the war, lingering New Dealers continued to scrutinize and borrow from ILO studies on national planning and international collaboration on employment-creation measures.<sup>31</sup> Keynesians such as Alvin Hansen and economists coming also from the side of maintaining robust consumer income, such as John H. G. Pierson, worked on theories of full employment within US policymaking circles.<sup>32</sup> But it was Secretary of Commerce Henry Wallace, who in 1945 popularized the idea, stressing to the American people "one basic fact – that just as mass unemployment means huge dollar costs to the debt of the nation," the country through wise government policy could find ways to avoid it.<sup>33</sup> Wallace and his supporters extended this potential to other countries, "establishing himself," wrote historian Charles Maier, "as the spokesman for a messianic liberalism of abundance."<sup>34</sup> Several government officials in power in the United States also agreed.<sup>35</sup> To improve the outlook for jobs in the coming years, globally minded strategists

proposed a combination of labour standards, economic advancement and social security via workers' pension systems, public health care and social insurance.<sup>36</sup>

To bolster the outlook for jobs in the coming years, Tait and his colleagues in the ILO also set to work on a plan to foster international public works projects, an effort that had also begun in the 1930s.<sup>37</sup> The assertive pronouncements of the ILO's Declaration of Philadelphia indeed offered bold recommendations on the scope of the future ILO, even in the economic realm, and included the commitment to full employment on an international scale. Shortly thereafter, a 1946 ILO study, "Public Investment and Full Employment," elaborated on potential timing of countercyclical public investment in the interest of "offsetting fluctuations in private employment," contending that countries with strong or expanding export markets would be well-served by encouraging public investment within foreign countries to stimulate demand.<sup>38</sup> Its authors reiterated an International Labour Office proposal for combining national planning with international cooperation through use of the ILO International Development Works Committee. The final section of the study, called "the Task Ahead," offered case studies and future recommendations for Australia, Belgium, Canada, Sweden, Switzerland, the United Kingdom and the United States – reflecting the North American/Western European scope of ILO officials – but also a list of what were called "Capital-Scarcity Countries." Here, India and Latin America received focused attention as ILO officials charted industrialization plans, including methods to "raise the efficiency and productivity (and consequently the standard of living) of the workers," guidance for new enterprises and ways in which to "restrain harmful competition."<sup>39</sup>

The ILO's 1946 volume was compiled by economist Benjamin Higgins in cooperation with Tait, and this partnership reflected collaboration between experts well-versed in transnational reform efforts. Higgins, a Canadian academic who had studied under economist Alvin Hansen, had gone to work for the US Government during the New Deal. With a PhD in economics from the University of Minnesota and a master's in public administration from Harvard, Higgins was hired by the US Federal Works Administration and served as economic consultant of the Public Work Reserve. The Reserve, created in 1941, was initially slated to oversee the coordination of public investment plans and their funding systems at the conclusion of the war.<sup>40</sup> In 1942, Higgins moved to McGill University in Montreal and began consultation with the International Labour Office, working with Tait in its Employment Section. Perhaps not surprisingly, given such

background, the report offered an expansive definition for a worker-centred version of full employment:

Full employment exists when every adult who wants employment can obtain it at current wage rates and working hours; when working hours are no shorter than the workers themselves (collectively) prefer at current wage rates; when wage rates are not so low as to constitute exploitation of workers; and when a worker who loses his job through contraction of his employer's scale of operations can find new employment (subject to the above conditions) within a short period, not exceeding (say) three months. Because of frictions, these definitions would be compatible with actual unemployment of 3 to 4 per cent, of the labour force.<sup>41</sup>

The 3–4 per cent “frictional unemployment” fit with most other analysts, but notions of tying in fair wages above exploitation was unique among economists. In time, Higgins became a known economic-development specialist and served as adviser to national governments, including Australia, Greece, Indonesia, Malaysia and the Philippines. He also worked with both UNESCO and the World Bank in the post-war years.<sup>42</sup>

Back at the United Nations in 1946, the Economic and Employment Commission, formed within the ECOSOC, began work with the draft for the ITO. At its first meeting in February that year, the Council announced plans to organize the UN Conference on Trade and Employment so as to lay its institutional foundations. In theory, the newly proposed ITO would address issues relating to standards of living for workers through policies for sustained employment and economic progress.<sup>43</sup> Yet even that early, Tait expressed disappointment as ILO proposals began to be brushed to the side in the flurry of UN activity. US State Department officials held the bulk of the senior positions in the ECOSOC in its early years but their strategies were still controversial. Until almost 1946 the future of the ILO itself still rested on shaky ground.<sup>44</sup> As plans for the satellite of specialized agencies evolved, a variety of new institutional approaches meant that the ILO maintained, according to Tait, “no real control on outcomes” relating to international employment programs, but instead could only offer its insights to other UN bodies. In a personal letter, Tait had earlier expressed scepticism that the “ILO [was being] left out in the cold as far as full employment is concerned.”<sup>45</sup>

At the Bretton Woods Conference in July of 1944, where ideas for the ITO were for the first time being discussed in an international conference setting, full employment received focused attention. There, US

Secretary of the Treasury Henry Morgenthau attested, “no government of the people will again tolerate prolonged or wide-spread unemployment.” The revival of international trade remained for him and others, “indispensable if full employment [were] to be achieved in a peaceful world and with standards of living which [would] permit the realization of man’s reasonable hopes.”<sup>46</sup>

Given the common aims between the ITO and the ILO, John Winant, ILO Director when the war broke out and a Republican Party progressive New Dealer, was soon involved in discussion. Winant had left the ILO in 1941 to serve as US ambassador to Britain. In early 1946, he returned stateside and sat as the US delegate on the ITO Preparatory Committee during its first meetings. For Winant, always an idealist, the ITO seemed a “door to future progress,” as it contained the promise to coordinate trade action in support of robust employment levels. However, he warned of the dangers of trade policies that might counter these efforts if end results included dislocations and vast levels of unemployment in particular regions of the world.<sup>47</sup> Even as Winant offered his first assessments on the ITO, State Department officials expressed their suspicion that its US-initiated formula was becoming substantially modified in the United Nations. Thus, free trade hardliners in the department advocating the reduction of as many trade barriers as possible suggested a protocol that might stand apart from a trade charter itself, “in which each country participating... would agree to reduce individual import tariffs... in accordance with a schedule setting forth and describing the various products on which that country would grant tariff concessions and agreed maximum rate of duty for each project.” The idea for the GATT had emerged.<sup>48</sup> GATT, created as a singular measure within the ITO, eventually resulted in tariff-lowering agreements that cut duties by billions of dollars each year through successive “trade rounds,” doing so for five decades to come.

Beyond tariffs, UN representatives from other nations, including Australia and several Latin American republics, argued that the ITO must provide for the allowance of protective measures in certain situations. During bilateral discussions, an Australian representative complained about the use of “abstract phrases” regarding economic progress and development, contending concrete promises would instead be required to deal with employment, development and concerns over the trade in primary product commodities. In addition, soon after the establishment of the peacetime United Nations, Colombia submitted a resolution calling for special consideration vis-à-vis countries “whose manufacturing industry is still in its initial stages of development,” with an aim to “securing diversification

of production and access of workers to higher salary levels." In turn, Ecuador presented another resolution, requesting that the future conference on trade and employment study the problems of equitable adjustments of commodity prices in the international market.<sup>49</sup> A whole new set of policies might be needed to allow national governments to find the rudimentary US proposals politically practicable. Vocal opponents of the free trade position tended to come from Latin America, where import substitution industrialization (ISI) had been popular since the 1930s, but also from the United Kingdom, where efforts to construct a Sterling bloc and to keep imperial trade preferences remained important. The debate over preferences versus free trade was particularly vital for nations anxious for protections to bolster domestic development. Yet US diplomats held to a simple vision, a sort of RTA writ large: bilateral reciprocal trade, as the United States had managed it, extended to the multilateral realm. US drafts therefore still offered only generalized expressions "to promote by appropriate means the industrialization of young economies."<sup>50</sup>

The main US position embraced the idea that prosperity would naturally flow from trade liberalization. Clair Wilcox, chairman for the US delegation to ITO negotiations in London in 1946, opened the meeting with this statement:

If those who must now borrow are eventually to repay, if currencies are permanently to be stabilized, if workers on farms and factories are to enjoy the highest levels of real income, if standards of nutrition and health are to be raised, if cultural interchange is to bear fruit in daily life, the world must be freed in large measure of the barriers that now obstruct the flow of goods and services. If political and economic order is to be rebuilt, we must provide, in our world charter, the solid foundation upon which the superstructure of international cooperation is to stand.<sup>51</sup>

As a result of the differences of opinion, though, debate over the ITO moved forward slowly. After deliberation in London, and a return to New York for further consultation, a preparatory ITO meeting opened in Geneva in early 1947. As negotiations dragged on, it became clear that many trade specialists took a dismissive stance on the trade/labour standards link. They, with Clayton in the lead, held to a rather crude pattern, outlining the assumed chain of events that trussed together increased production, high consumption and burgeoning employment opportunities. Employment, following this increasingly dominant US

logic, was expected to emerge naturally on an international scale from tariff reductions and greater access to markets.

Having come this far, all was not well with the European potential to take part in this antiprotectionist, free trade formula proposed by the United States. British diplomats, formerly key to the liberal internationalist agenda, now faced an acute currency convertibility crisis that cut deep into British dollar reserves. A 1945 US loan to Britain had been brokered (also with Clayton's help) with a commitment from the recipient to enter into negotiations for the reduction of tariffs overall, but also of trade barriers and other commercial policy discriminations.<sup>52</sup> Thus, through this financial loan agreement, Britain was committed to helping found the ITO.<sup>53</sup> Still, in Geneva, British delegates, out of necessity expressed concern about the obligations outlined in the emerging ITO Charter, and Clayton, travelling back to Washington midway through the meetings, set his sights on a way to alleviate any danger. The Marshall Plan, or European Recovery Program (ERP), would prove a remedy, not only in rebuilding Europe against the Communist enemy, but also in opening the door to an American-style trade regime. Yet in important ways this, along with GATT, made the ITO far less essential.

Following the US directive, representatives from 23 nations in Geneva focused efforts on a widespread tariff-reduction scheme. It took six months to produce the first General Agreement of Tariffs and Trade (GATT). Negotiations included a complicated process by which nations offered lists of acceptable tariff concessions on a bilateral basis and then the group as a whole worked to expand these multilaterally. The ITO would come into being in two steps, with this first work on tariffs completed by the late summer of 1947, followed by a conference in Havana on general principles with the intent of signing the ITO Charter itself. Delegates finalized GATT in August, along with a Geneva draft of the charter, which they rushed off to Havana almost as soon as the ink had dried.

### **Havana promises and Havana disappointments, 1947–48**

Dozens of countries, represented by a multitude of experts with a wide range of expectations, met in Cuba's capital between November 1947 and March 1948 and pounded out the ITO Charter. With it, nations "pledge[d] themselves, individually and collectively, to promote national and international action designed to...insure growing incomes and demand...and to facilitate, through the promotion of mutual understanding, consultation, and co-operation, the solution of problems

relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy." But complications caused by changing circumstances in 1947 and 1948 confused matters to the detriment of both ITO and ILO ambitions. Had the ITO been pushed through in 1946, as State Department officials had hoped, public opinion in support of the ITO/ILO nexus for trade and labour standards may have received much greater support, in the United States and elsewhere. But by 1947–48, the United States began back-peddalling.

The country increasingly embraced a new set of strategic priorities internationally, stemming from the emerging Cold War, but also in light of changing economic forecasts as a post-war depression, even a slump, failed to materialize. Despite a wave of post-war strikes, commercial activity spiked in 1946 and continued to mount in 1947.<sup>54</sup> Private US commercial enterprise, therefore, landed on its feet. True, with full onset of the Cold War, US policy-makers came to structure all foreign economic initiatives in terms of a contest with Soviet Union, but reconstruction in Europe through the ERP fit into this perception. Deeper concerns, however, simmered below the surface, targeting government overexpansion and creeping socialism. The United States still prescribed "free trade" and the lauded "free enterprise" for Western Europe, yet the ERP helped rebuild and sustain industries and boost working-class living standards in that region only, essentially cutting markets off to a degree. Meanwhile, for Latin America, most of the old British Empire and what might have been an emerging Asia, the US was merely advocating free trade alone, at least until 1950, when modest programme of technical assistance known as Point Four was mobilized. It would take the spectre of communism in Latin America, a product of the 1959 Cuban Revolution, to initiate President Kennedy's 1961 Alliance for Progress, which became the largest aid program the United States had offered to the developing world to that point.<sup>55</sup>

US policies toward Latin America, for example, took a turn for the worse in 1948. With no comparable aid program yet for the Americas, animosities spiked. Mexican officials, in particular, had fully expected to be engaged as partners in post-war international trade planning, but now they found themselves left out in terms of post-war reconstruction.<sup>56</sup> Street demonstrations, led by factions arguing for trade protections, erupted in Mexico City. The situation was so dire that the nation's main negotiator, Finance Minister Ramón Beteta Quintana, left Havana to speak out publicly against unreasonable protectionist pressures advocated by some Mexican officials. Beteta was manoeuvring a fine

line between the views of the Americans and those of his own national economists. An alarmist industrialist petition of the time claimed, "If in the coming Havana Conference the Clayton plan triumphs and free trade becomes the inflexible standard of international commerce, all of our desires and hopes for economic development and industrial growth will be frustrated and Mexico will be chained forever to a semi-colonial economy."<sup>57</sup> The reaction to such rhetoric was thus intense.

It became apparent that the end goal of higher standards of living for all through the ITO held little weight without commitment to appropriate means to accomplish this. To a large extent, the determined action of Latin American republics, with Mexico in the lead, ensured details on social progress and economic development would be inserted in the text of the Havana Charter. Latin American republics had in fact been busy formulating propositions for connecting trade, development and the expansion of employment within their struggling nations. Political leaders from the southern hemisphere had also been pressing the United Nations to support the right of all nations, even those without industrialized economies, to have a say in the emerging system of global governance.

In Havana, the Mexicans came across especially firmly, knowing well what was at stake at home regarding a nationalistic, protectionist surge, although India, China and members of the Arab League lent their support. Within negotiations, however, it became clear that the United States and Britain sought to control the dialogue and divide growth and development from conversations about trade as best they could. Not ready to accept this separation without a struggle, Mexico's Beteta was ready to fight in the name of those trade protections, if and when these would be necessary for industrialization. Clayton personally confronted Beteta, voicing his opposition to "the regulation of capital" taking place in Mexico.<sup>58</sup> In truth, the government of Mexico had been experimenting with import substitution development through selective imports licensing, coupled with tax exemptions for investors and direct government investment in key industries such as oil and railroads. With these early formulas in place, from outside of Mexico the national choice to embrace ISI and state-vested property rights may have appeared to logically progress toward protectionism in the post-war years. Still, following the Second World War, Mexico was in the process of deciding how and when open trade and liberal internationalism might serve as a benefit for its own economic stabilization and future growth. Access to foreign investment and Western-made capital goods for future production seemed essential, and Mexican officials solicited resources to secure such goods from both the United States and the United Nations. But as time wore

on, the options for international help for domestic industrialization diminished. Outward-looking liberals found common ground with inward-looking protectionists through a nationalist vision of Mexican modernization, with each side fighting against what they interpreted as a heightened US interventionism.<sup>59</sup> But the die was not fully cast as Mexico and other nations wrestled for leverage in the ITO.

India and Australia were also calling for flexibility on fiscal and monetary policies, and even for quantitative restrictions that could, if only temporarily, adversely influence open trade relationships. Australia, for one, maintained high work standards and, as a result, had produced a strongly protectionist labour movement. But 60 per cent of Australian exports rested on two commodities – wool and wheat – which made the country at risk with commodity price fluctuations. India, at the time intent on developing its productive capacity and its mineral industry, had proven incredibly sensitive to continued British meddling in its now formally independent economic affairs. Yet independence and the accompanying partition of Pakistan had caused political, social and economic disruptions. To its disadvantage as well, India's industry functioned with worn-out machinery, and transporting goods was incredibly difficult. Finally, talk of democracy and independence had stimulated a wave of labour disputes, so instability seemed the order of the day.<sup>60</sup> Supporting Australia and India in their own struggles, Beteta focused on the potential for overcoming trade imbalances in light of jobs and other social-justice issues.<sup>61</sup>

Mexico offered a comprehensive set of amendments calling for greater access to credit, detailed employment programs and development projects.<sup>62</sup> In addition to specific amendments on Charter articles, Beteta also proposed commitment to workers' rights established by the ILO and pressed for constructive cooperation between the future ITO and the ILO.<sup>63</sup> Starting in 1936 and throughout the war, the ILO organized a series of regional meetings in Latin America, where attendees debated the Organization's post-war ambitions.<sup>64</sup> At the latest of these, held in Mexico City only a year ago, in 1947, the ILO had come out in support of a process of industrialization for Latin American nations as "indispensable" for "higher standards of living, economic independence for all member nations, and improved economic equilibrium."<sup>65</sup> In Havana, Beteta thus reiterated the ILO's post-war aim to support the social welfare of people in the region. In his view, the ITO could serve as an institutional venue for a fair code in the realm of trade, much like the ILO functioned in terms of an international code of labour standards.<sup>66</sup> Bolstering this assumption, the Chilean, Benjamin Cohen, now assistant secretary

general to the United Nations situated the work of the ITO in terms of a “code of conduct” to guide nations and their commercial ambitions, but for the broader common welfare.<sup>67</sup> “The world is weary, perplexed, and still haunted by fear,” Cohen stated in his opening remarks to the delegations. The challenge remained to draft a document that could satisfy the needs of diverse nations, both in economy and polity, and at different stages of economic development.<sup>68</sup>

Tait was in Havana representing the ILO along with Dr José Enrique Sandoval of the Cuban Government, and the men together kept ILO officials back in Geneva informed. The South American countries were “in an aggressive mood,” Tait confirmed. Argentina was energetically attempting to rally criticism for the entire Charter, joined periodically by Uruguay. Diego Luis Molinari, Argentina’s official representative, offered his suggestions for innumerable changes to the Geneva draft.<sup>69</sup> South American delegates spoke often of mutual ill feelings in regard to the Marshall Plan, and Luis Molinari mounted a full-scale attack on what he called Marshall’s form of “capitalistic imperialism.” The Argentine called instead for international attention to a Perón Plan, “los derechos del trabajador,” for credits for the equivalent of US\$5 billion to the world’s needy nations.<sup>70</sup> The influence of Perón’s Argentina was of course the exemplar of what US representatives were hoping to avoid, coming from a protectionist nation with a strong, authoritarian ruler, yet advocating the rights of workers to high standards of living, which they did enjoy. Argentina, according to Tait, nevertheless served as *l’enfant terrible* at the conference.

Not prepared to follow Luis Molinari quite so far in his criticism, Tait forged an alliance with Beteta as head of the Committee on Economic Development. In consultation with ILO officials, Tait noted that it was the aim of Mexico and its allies to see that the ITO would become a main body in reference to international development, with the inclusion of labour standards and aims to maintain fair wages as part of its fabric.<sup>71</sup> Working together, the Mexican delegation seconded Tait’s request, calling upon the ITO to support the ILO’s Declaration of Philadelphia in promoting economic and social advancement for less-developed regions, and assuring stability in prices of primary products in conjunction with high volumes of international trade.<sup>72</sup> Indeed, the final text of the Havana Charter stipulated that “measures must take into account the rights of workers under all international declarations,” and this was based on an amendment sponsored by Mexico in support of the ILO.<sup>73</sup> Provisions on labour standards, economic development and employment thus remained applicable to both agencies, and they were

called upon to work in cooperation with one another and “consult on matters of common interest.”<sup>74</sup>

But ILO officials were also concerned the ITO might attempt to set in place an entirely alternate set of procedures for negotiating labour standards and for investigating complaints against noncompliance. The division of tasks would need to be worked out carefully. Would there be multiple sets of standards in the end, or would the ITO adopt those of the ILO?<sup>75</sup> Given the recent activity in Geneva, when the ILO position seemed to stand as a hindrance to free trade Americans, there was reason to suspect that the ITO might actually challenge the ILO. But, despite the fact that the relationship between the two institutions would most likely not be without friction, both parties in Havana seemed obligated to emphasize the benefits of collaboration.<sup>76</sup>

Sensing the importance of ITO measures for his nation, Sardar H. S. Malik, head of the Indian delegation, noted in his closing remarks: “India today stands at the threshold of her destiny. With the enormous natural resources...we are committed to a programme of rapid economic development in the immediate future which indeed is essential if we are to achieve anything approaching decent standards of living for our vast population. [This] can only be carried out if we have freedom of action.”<sup>77</sup> India, along with Mexico and nearly every other nation that had gathered in Cuba (though not Argentina), signed the Havana Charter, but soon after decided not to participate in GATT since the trade conditions it defined were seen increasingly as a threat. The world trade charter had in part legitimized the aspirations of developing regions seeking post-war economic stabilization, offering status to all independent nations by allowing them a voice in corroborating long-term economic strategies. The conference itself had stimulated hope for the future and for a right to participate in international economic matters on some sort of equal terms. Smaller nations could not give up now.

Beteta, for one, emerged from the debates convinced that important omissions with the ITO still compromised the idea of “harmonious growth” via UN action. Back at home, he continued to argue that the ITO needed to adopt a more comprehensive strategy in growth, employment, and development in countries still without strong industrial sectors.<sup>78</sup> Yet by now Mexico was turning decisively toward trade protectionism. President Miguel Alemán’s experimentation with moderate trade controls, initially in the form of licensing requirements for luxury goods (with still only 1 per cent of imports subject), in 1947 eventually gave way to a more decisive political agenda embracing state-led industrial development and protectionism. By 1948, import and export

controls became increasingly a part of Alemán's ISI program, described as a defense against US economic penetration.<sup>79</sup> In this regard, the ITO could not save even its "full and free trade" among nations.

Other less-developed countries remained critical of the ITO, too, but they outright opposed GATT, which soon stood as the only mechanism for international trade regulation before ratification of the Charter took place. In Latin America, Brazil and Cuba became the only countries to sign on as "contracting parties" in GATT in 1948. For most, GATT was no good substitute for the ITO. Important to other poor nations, the ITO also offered rules for regulating restrictive business practices, aimed against private international monopolies in the 1940s, yet perhaps would have been applicable to a more current form of global corporation had such a mechanism survived. The Havana Charter contained outlines for facilitating regulatory modifications "to prevent or alleviate the serious economic difficulties which may arise when adjustments between production and consumption cannot be effected by normal market forces alone." None of these provisions by themselves could ensure the avoidance of poverty and unemployment within developing nations as the ILO had set out as a main goal in the post-war years, yet taken together they provided some outlet of relief for stressed economies, and thus for workers themselves.

Meanwhile, in the United States, many internationally oriented business groups seemed outraged by the loopholes that had been inserted into ITO directives. Other critics complained that the institution restricted the nation's ability to set its own rules of trade. The matters were so contentious in the months after the Havana meetings that the United States pulled back from its earlier support. Losing strong public backing for former New Deal policies, President Truman's opponents on the right argued that pursuit of national full employment was counterproductive to growth, and conservative lobbies in the country continued to pump money into extensive campaigns against government interference in the nation's economic life.<sup>80</sup> Escaping a post-war depression, factions in the United States increasingly came to consider the goal of full employment on an international scale a folly.

Although US negotiators in Havana had been willing to talk about flexible approaches to international trade (to a degree), the movement in support of the ITO weakened. Even in 1949, as Truman hesitantly submitted the Havana Charter to the US Congress for approval, the momentum towards the realization of the ITO was grinding to a halt.<sup>81</sup> Only one country, in the end, ratified the ITO Charter – Liberia. That same year, 1949, the ECOSOC commissioned a study on international measures for full employment. The subsequent *Report by the United Nations*

*Experts on National and International Measures for Full Employment* repeated much of what had been vocalized in Havana and through the ILO, but there was yet no mechanism to set this in place. Written by economists from the United States, Great Britain and Australia, these UN-affiliated authors emphasized the fact that full employment remained a primary condition for the realization of economic and social progress and stood as part of the "rights of man."<sup>82</sup> Their report referred to economic stabilization programs, including budgetary adjustments and taxation reform policies. It recommended both national and international public work programs (advocated by the ILO) during times of economic downturn "so that workers in export industries could be absorbed into remunerative employment while remaining available once export demands again increased." Again, they noted that full employment could not be anticipated except in the context of an "expanding world economy of which the economic development of underdeveloped countries would form the most important element."<sup>83</sup> But with the ITO languishing there was no way to coordinate trade and employment programs to this degree.

"Then, at the end of 1950, [the ITO] project was quietly dropped, and the American public, like the rest of the world, barely noticed its fall," wrote William Diebold Jr of the Council on Foreign Relations in 1952.<sup>84</sup> The ITO's temporary shell, known officially as the Interim Commission for the International Trade Organization (ICITO), released a statement noting, "As a result of the lack of acceptances of the Havana Charter, it became evident by the end of 1950 that the attempt to establish an International Trade Organization would be postponed indefinitely."<sup>85</sup> What had been called the Geneva option, offering countries that had signed the provisional application of GATT the opportunity to use it instead of the Havana Charter as a guideline for trade negotiation, became the international norm. In fact, it served as the only possible approach to international trade rule-making. But GATT never developed into anything more than a tariff commission, and its practitioners were quick to point out that it was not a real international institution in the sense of involving a stable membership or administrative structure. This haziness as to what GATT was, beyond periodic trade rounds on tariff-reduction, meant there were weak connections to other UN bodies, particularly the ILO in terms of the social clause. GATT also remained limited in the sense of which nations took part in these trade rounds and was controversial to even those involved. There was little motivation for developing nations to join, as it dealt mostly with industrialized goods. In the mean time, the battle over full employment and social policy links to trade faded from widespread attention.

What would have happened in terms of development and the maintenance of labour standards and sustainable employment in the global South had the ITO come into being? Formally approved by the ILO in December of 1948, a proposed interagency agreement between the ILO and the ITO stated a desire to “avoid severe economic fluctuations and to promote economic and social advancement in less developed regions of the world,” while also promoting “a high and steady volume of international trade.”<sup>86</sup> In addition to this overarching aim, the agreement described institutional cooperation and consultation regarding the objectives of the Havana Charter, outlining a process of review by the ILO in trade cases relating to labour standards and a place for the ILO in discussions on international commodity agreements – a point many trade specialists still adamantly fought against. In the end there would be no mutual interactions of these types, and GATT, despite petitions from several nations, chose to avoid the regulation of primary commodity prices, leaving these subject to vast volatility as the years passed. What the ITO ideal had proposed was a comprehensive consideration of trade, development, employment, work standards and security, along with myriad other domestic policies. What the world got was the GATT, which for years to come failed to address the needs of many workers and the goals of developing countries.

## Notes

1. Tait highlighted the important contributions the ILO was making to development and industrial training, through the Regional Conference in Mexico City in April 1946 and the Asian Regional Conference in New Delhi in 1947. Only days later, a regional meeting for the “Near and Middle East” would open in Istanbul. All three of these meetings focused on international economic cooperation and ILO programs “advocating new and bold measures in the field of monetary policy, credit, international trade and public works,” according to R. Islam, *International Economic Cooperation and the United Nations* (Groningen: J. B. Wolters, 1958), 82.
2. “Speech by Mr D. Christie Tait, Representative of the International Labour Organization,” 21 November 1947, Press Release ITO 3.
3. See, H. Feis, “The Geneva Proposals for an International Trade Charter,” *International Organization*, 2, no.1 (February 1948), 39–52.
4. P. Bidwell, “The Expansion of International Trade,” in *The United States in a Multinational Economy* (New York: Council on Foreign Relations, 1945), 147.
5. “The Reminiscences of William Lockhart Clayton,” published in 1962 by the Oral History Research Office, Columbia University (<http://library.columbia.edu/indiv/ccoh.html>), 4–5.
6. He was a cofounder of the cotton trading giant, Anderson, Clayton and Company, based in Houston, Texas.

7. J. Gimbel, *The Origins of the Marshall Plan* (Stanford, CA: Stanford University Press, 1976), 13.
8. According to Tait, writing to ILO Director Edward Phelan, 13 December 1947, Z 6/1/3/1, ILO Archives, Geneva (hereafter ILOA). See also W. Diebold Jr in "The End of the I.T.O.," *Essays in International Finance* No. 16, October 1952, box 5, RG 43, Records of International Conference, Commissions, and Expositions, National Archives and Records Administration, College Park, MD, USA (hereafter RG 43, NARA II). For submissions of vital amendments, see United Conference on Trade and Employment, "Draft Charter, Mexico: Proposed Amendments," E/CONF.2/11/Add.3, 3 December 1947.
9. Formally, the Final Act of the United Nations Conference on Trade and Employment for an International Trade Organization, Havana, 1947 (online).
10. The ITO was meant to become one of three founding Bretton Woods institutions alongside the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD).
11. R. Toye, "The International Trade Organization," in A. Narlikar, M. Daunton, and R. M. Stern, eds., *The Oxford Handbook on The World Trade Organization* (New York: Oxford University Press, 2012), 93.
12. Cordell Hull served as US Secretary of State from March 1933 through November 1944.
13. S. M. Nystrom, *Free Trade and the New Deal: The United States and the International Economy of the 1930s* (graduate thesis, Iowa State University Department of History, 2010), 129.
14. Quotes are taken from an editorial by Ezekiel in *Consumer's Guide*, 1, no.12 (28 February 1934), 2; Nystrom also described a formative presentation by Ezekiel, titled "Who Benefits from High Tariffs?" offered during discussion at the Land Utilization Conference of June 1934. See Nystrom, *Free Trade and the New Deal*, 137.
15. See M. Ezekiel, *Towards World Prosperity, through Industrial and Agricultural Development and Expansion* (New York: Harper & Brothers, 1947).
16. M. Ezekiel, "Apparent Results in Using Surplus Food for Financing Economic Development," *Journal of Farm Economics*, 40, no.4 (November 1958), 915–23.
17. Article VII, Anglo-American Mutual Aid Agreement, 28 February 1942.
18. "Memorandum for the Secretary [of State, Cordell Hull], 30 November 1943," box 7, Papers of Leo Pasvolksy, Manuscript Room, Library of Congress, Washington, DC (hereafter Pasvolksy Papers).
19. L. Pasvolksy, "The Problem of Economic Peace after the War: Address by Leo Pasvolksy Delivered in Delaware, Ohio, March 2, 1943," *Department of State Bulletin*, 6, no.141 (7 March 1942), 210.
20. "Comparison of a Possible Plan for a General International Organization," 20 April 1944, box 5, Pasvolksy Papers. Pasvolksy went on to serve on the US Delegation to the Dumbarton Oaks Conference in 1944, the founding conference of the UN in San Francisco in 1945, and the UN General Assembly and Security Council in 1946.
21. The Institute for Advanced Study, Princeton University, *Bulletin* No. 12, 1945–1946 (October 1946), 4–5.

22. C. K. Nichols, "The Statistical Work of the League of Nations in Economic, Financial and Related Fields," *Journal of the American Statistical Association*, 37, no.219 (September, 1942), 336.
23. Department of State, "Proposals for Expansion of World Trade and Employment," Publication 2411, Commercial Policy Series 79 (Washington, DC, 1945).
24. William L. Clayton to Philip D. Reed, Chairman of the Board of Directors of General Electric Company, 25 September 1948, box 6, RG 43, NARA II.
25. League of Nations, "Commercial Policy in the Post-War World: Review by Vera Anstey," reprinted in *Economica*, 13, no.52 (November 1946), 314.
26. US Department of State, "Proposal for the Expansion of World Trade and Employment," foreword by Secretary of State James F. Byrnes, iii.
27. For an early version of Clayton's plans, see, "Summary of the Interim Report of the Special Committee on Relaxation of Trade Barriers," 8 December 1943, box 366, Edward Stettinius Jr Papers, Albert and Shirley Small Collection, University of Virginia, Charlottesville, VA. Document courtesy of Dr Mats Ingulstad, Norwegian University of Science and Technology.
28. Cohen rose to become a well-respected diplomat and served as the first Assistant Secretary General to the United Nations in charge of the Department of Public Information. He was later named Undersecretary of the United Nations. His comments are taken from, "Speech by Mr Benjamin Cohen, Assistant Secretary-General of the United Nations, at the opening of the United Nations Conference on Trade and Employment, Havana," United Nations Department of Public Information, Press Release, ITO/1, 21 November 1947.
29. For an excellent assessment of ILO research on economics, particularly on full employment, see A. M. Endres and G. A. Fleming, *International Organizations and the Analysis of Economic Policy* (Cambridge, UK: Cambridge University Press, 2002), 227–34.
30. These followed D. C. Tait and H. Fuss, "Unemployment Benefits and Measures for Occupying the Unemployed in Great Britain," *ILR*, 27, no.5 (1933), 595–619 and D. C. Tait, "Migration and Settlement in Australia, New Zealand, and Canada," *ILR*, 30, no.4 (1934), 34–65. For a description of how the writing of Tait and others at the ILO had earlier contributed to widespread acceptance of Keynesianism, see R. Mamudi, "A Survey of the Great Depression as Recorded in the *International Labour Review*, 1931–1939," International Labour Office, Employment Sector, Economic and Labour Market Analysis Department, Employment working paper no.42 (Geneva: ILO, 2009).
31. International Labour Office studies received attention from economic advisors to Roosevelt, including New Dealers Alvin Hansen and Isador Lubin. It was Lubin who pressed for the inclusion of the ILO in the Bretton Woods monetary conference in 1944. See Lubin to Frances Perkins on the topic, 29 May 1944, box 49, Papers of Isador Lubin, Franklin Roosevelt Library, Hyde Park, NY (hereafter Lubin Papers).
32. Their policy prescriptions are delineated in A. Hansen, *Economic Policy and Full Employment* (New York: McGraw Hill, 1947) and J. H. G. Pierson, *Full Employment and Free Enterprise* (Washington, DC: American Council on Public Affairs, 1947).
33. H. A. Wallace, *Sixty Million Jobs* (New York: Simon and Schuster, 1945), 75.

34. C. S. Maier, "The Politics of Productivity: Foundations of American International Economic Policy after World War II," *International Organization*, 31, no.4 (Autumn 1977), 612.
35. As detailed in D. C. Tait, "Veteran Re-employment Plans of Our Allies," *Annals AAPSS*, 238 (March 1945), 103–11.
36. See D. C. Tait, "Development Works and Full Employment," *ILR*, 54, no.5 (1946), 309–20.
37. *Ibid.*
38. International Labour Office, *Public Investment and Full Employment* (Montreal: ILO, 1946), i, 4.
39. *Ibid.*, 278, 287.
40. B. Higgins, "The United States Public Work Reserve an Experiment in the Co-ordination of Public Investment Planning," *ILR*, 50, no.5 (1944), 581–602.
41. International Labour Office, *Public Investment and Full Employment*, 346.
42. Higgins's book on development economics, published in 1959, became a classic in the field. See B. Higgins, *Economic Development: Principles, Problems, and Policies* (New York: W. W. Norton, 1959).
43. Article 55 of the United Nations Charter (1945).
44. The ILO became problematic for US planners due to Joseph Stalin's adamant disfavour, essentially relating to any lasting feature of the League, but especially the ILO. By late 1945, with the hardening of East-West rivalries, the United States once again offered direct support to the ILO. As evidence of the uncertainty, ILO Director Edward Phelan contacted legal counsel Wilfred Jenks after release of a US statement on the ITO and its relationship to the ILO and other UN agencies. "[This] indicates United States policy definitely contemplates continuation of ILO," Phelan noted on 8 December 1945. "American Proposals for an International Trade Organization to deal with World Trade and Employment," 1945, Z 6/1/3, International Labour Organization's archives in Geneva (hereafter ILOA).
45. Tait to Pierre Waelbroeck, 23 November 1943, quoted in Endres and Fleming, *International Organizations and the Analysis of Economic Policy*, 214.
46. "Closing address by Secretary of the Treasury Henry Morgenthau, 22 July 1944," reprinted in *Pillars of Peace: Documents Pertaining To American Interest in Establishing A Lasting World Peace* (Carlisle Barracks, PA: Army Information School, May 1946), 33.
47. "Winant Warns UNO on Dictatorships," *New York Times*, 12 February 1946, p. 5.
48. US Department of State, "United States Interest in International Economic Collaboration for the Expansion of World Trade and Employment," in *Foreign Relations of the United States* (FRUS), 1946, General, The United Nations, 1281–82.
49. "Notes on Transcript of Record of Informal Consultation between US and Australian Representatives on US Draft of ITO Charter," 30 August to 3 September 1946, box 6, RG 43, NARA II.
50. *Ibid.*
51. W. Diebold, "End of the I.T.O.," 4.
52. US Department of State, "Anglo American Commercial and Financial Agreements," Department of State Publication 2349, Commercial Policy Series 80, December 1945, p. 1, box 26, Clayton Papers.

53. Australia, according to Clayton, had offered its “forcible protests” in relation to the British agreement, knowing well this meant an end to preferential treatment through the Commonwealth trading bloc. Clayton to Secretary of the Treasury, Fred Vinson, 4 November 1945, box 26, Clayton Papers.
54. R. Higgs, *Depression, War, and Cold War Studies in Political Economy* (New York: Oxford University Press, 2006), 106.
55. For a description of the program, see L. R. Scheman, “Concept and Creativity,” in L. R. Scheman, ed., *The Alliance for Progress: A Retrospective* (New York: Praeger, 1988).
56. S. R. Niblo, *War, Diplomacy, and Development: The United States and Mexico, 1938–1954* (Wilmington, DE: SR Books, 1995), 262.
57. *Ibid.*, 209. The Clayton Plan broadly called for the elimination of all trade barriers, in this case between Mexico and the United States, and industrialists feared it would be implemented through the Havana negotiations.
58. Niblo, *War, Diplomacy, and Development*, 210.
59. S. M. Gauss, “The Politics of Economic Nationalism in Post-revolutionary Mexico,” *History Compass*, 4, no.3 (2006), 571.
60. According to a 1948 US Department of Commerce report, “World Trade and Development in Selected Countries.”
61. Beteta to Mexican President Miguel Alemán, 29 November 1947, MAV 433/216, AGN, México.
62. As explained in a series of correspondence between Mexican officials and President Alemán between December 1947 and February 1948, MAV 433/216, AGN, México.
63. United Conference on Trade and Employment, “Draft Charter, Mexico: Proposed Amendments,” E/CONF.2/11/Add.3, 3 December 1947.
64. Jill M Jensen, “From Geneva to the Americas: The International Labor Organization and Inter-American Social Security Standards, 1936–1948,” *International Labor and Working Class History*, 80 (September 2011), 215–240.
65. “Resolutions of the ILO in reference to industrialization and inflation adopted in Mexico City, April, 1946,” box 139, Lubin Papers.
66. United Nations Conference on Trade and Employment “First Committee: Employment and Economic Activity,” 8 December 1947, R 151617/ITO 1000–3, ILOA.
67. “Speech by Mr. Benjamin Cohen, Assistant Secretary-General of the United Nations, at the opening of the United Nations Conference on Trade and Employment, Havana,” United Nations Department of Public Information, Press Release, ITO/1, 21 November 1947.
68. *Ibid.*
69. M. Hart, *Also Present at the Creation: Dana Wilgress and the United Nations Conference on Trade and Employment at Havana* (Ottawa: Centre for Trade Policy and Law, 1995).
70. United Nations News and Media Archive, “Argentina’s Representative to United Nations Trade Conference in Havana Announces ‘Peron Plan,’” <http://www.unmultimedia.org>, accessed 28 October 2012.
71. Tait to Phelan, 16 December 1947, Z 6/1/3/1, ILOA.
72. *Ibid.*
73. Chapter 2 (on Employment and Economic Activity), Article 7 (Fair Labor Standards), *United Nations Conference on Trade and Employment, Held at*

*Havana, Cuba, from November 1947 to March 1948, Final Act and Documents* (Wellington: Department of External Affairs, 1948), 11.

74. Minute Sheet, ILO-ITO Joint Committees discussion, Registry File 151608, ITO-3, ILOA.
75. Series of internal ILO minute sheets, approved by Phelan [ND, late 1947/early 1948], R 151608/ITO 3, ILOA.
76. Conference document, E/CONF.2/6.1/7 in R151617/ITO 100-3, ILOA.
77. "Speech to be Delivered by Sardar H.S. Malik, Leader of the Indian Delegation, at the Final Plenary Session," United Nations Department of Public Information, Press Release, ITO/178, 19 March 1948.
78. Beteta to President Alemán 5 February 1948, MAV 433/216, AGN, México.
79. This paragraph draws substantially on S. M. Gauss, *Made in Mexico: Regions, Nation, and the State in the Rise of Mexican Industrialism, 1920s-1940s* (University Park, PA: The Pennsylvania State University Press, 2011), 196-97.
80. Truman describes this fight during a 1952 speech, "Address at the Armory in Manchester, New Hampshire, October 16, 1952," included in the *Public Papers of the Presidents of the United States, Harry S. Truman, 1952-53* (Washington, DC: GPO, 1966), 294.
81. S. Aaronson, *Trade and the American Dream*, 119-28.
82. "National and International Measures for Full Employment: A Report by a Group of Experts Appointed by the Secretary-General of the United Nations Department of Economic Affairs, Lake Success, New-York, December 1949," p. 2. The report was reprinted in *Annals of the Collective Economy*, 21, no.3 (1950), 169-220.
83. *Ibid.*, 7.
84. Diebold, "The End of the I.T.O.," 2. Diebold had only recently left the US Department of State's Commercial Policy Division.
85. Reprinted in ICITO, *The International Trade Organization and the General Agreement on Tariffs and Trade* (Interim Commission (International Trade Organization), 1958), 502.
86. "Proposed Agreement between the International Labour Organization and the International Trade Organization," International Trade Organization, ITO/3/1, ILOA.

# 5

## The ILO, Asia and the Beginnings of Technical Assistance, 1945–60

*Daniel Roger Maul*

In early 1950, ILO Director-General David Morse addressed the Organization's first regular Asian Regional Conference (ARC) in Nuwara Eliya (Sri Lanka, then Ceylon): "The cry of misery that rises from throats of the millions of people of Asia" had been heard in Geneva, he assured his audience. Self-critical about the ILO's past activities, he promised that from now on the Organization would turn its face toward the problems of Asia.<sup>1</sup> What lent credibility to Morse's words at this point in time was that he could refer to one of the major programmatic shifts in the ILO's history that had taken place under his leadership a year earlier in 1949, when the Organization had embarked on a programme of technical assistance in areas like vocational training or the raising of productivity, tailored to the needs of the "developing" countries.<sup>2</sup>

This chapter discusses the "Asian" origins of the ILO's technical assistance programme (TAP). Motivated by the looming Cold War and the nation-building imperatives generated by decolonization in Asia, this ILO initiative reoriented the Organization well beyond its rather narrow pre-war focus on standard setting for workers in the industrialized nations of the West. The chapter will further demonstrate how Asia<sup>3</sup> became a laboratory for the specific "integrated approach to development" promoted by the ILO from the very beginning of its operational activities, in which standard-setting and technical assistance were propagated as being "two sides of the same coin." It was mostly in Asia where this concept would be put to the test and adjusted accordingly.

The ILO's shift toward an emphasis on technical assistance and Asian economic development clearly sprang from the rapidly shifting international political environment of the late 1940s. In this context the American David Morse, who took over the office of Director-General of

the ILO in late 1948, played a central role. He was an internationalist and a New Dealer-turned-Cold War liberal, who saw the Organization's new focus on development both as a chance to win new "clients" in the form of postcolonial states and as a means of enabling the ILO, on the side of the West, to play an important role in the global fight against communism, particularly in Asia.

Born in 1907, Morse had devoted almost the whole of his professional life to the problems of labour and social policy, first in the United States and then at the international level. As a young Harvard-trained lawyer he had entered government service during the early New Deal years, become an expert on labour law, and served first as a regional attorney for the National Labor Relations Board in the crucial New York metropolitan area, and then, after the war, as general counsel for the Board at its Washington headquarters. In these posts Morse helped facilitate the dramatic expansion and institutional security of American trade unionism. During the Second World War he served in the US military where, as head of various departments occupied with labour affairs, he was responsible for drafting the plans for the re-democratization of labour relations in Germany and Italy. Like many other liberal New Dealers, Morse's domestic and wartime experiences informed his later activities in the global arena. The time he spent in the occupation forces in Europe confirmed his internationalist convictions and his belief that the United States must play an active and positive role beyond its borders once the war was over. As Assistant Secretary of Labor for International Affairs in the Truman administration, a post he held from 1946 to 1948, Morse had a chance to put this conviction into concrete action. His duties included securing the support of the American Federation of Labor and the Congress of Industrial Organizations, the two American trade union federations, as well as their European counterparts, for the implementation of the Marshall Plan. Indeed, Morse was ultimately one of the most important early advocates for extending the reindustrialization policies at the heart of the Marshall Plan to the world beyond Europe. He saw in the Plan an effective means of shaping the domestic policies of the "developing countries" in such a way – basically by raising the productivity of their economies – as to render them immune to the rise of communism. By the time this idea took concrete shape in 1949, in the form of Truman's "Point IV Program," Morse was already heading the ILO, and the idea that he might be able to make effective use of the new position to gather support for these policies on an international level was undoubtedly one of the main reasons why the US Government had pushed for his appointment. Thus, the new approach

Morse would bring to the ILO in the late 1940s was very much an extension of the work he had begun as a key figure in the US Government's post-war effort to redevelop European industry and secure the allegiance of that region's working class.<sup>4</sup>

To be sure, neither the idea of development aid nor the concept of technical assistance was entirely new to the ILO when Morse became Director-General. The term "development" had first been used in the 1944 ILO Declaration of Philadelphia, which proclaimed the ILO's intention to dedicate itself to finding measures "to promote the economic and social advancement of the less developed regions of the world."<sup>5</sup> After the end of the war, Latin American and Asian countries began with increasing frequency to voice demands that the ILO transform its new mandate into concrete action, while most of the European Governments and union representatives – including the majority of ILO officials, who were all fearful of a departure from the ILO's "classical" standard-setting activities – treated these demands with a good deal of apprehension. At this time, the ILO had adopted about 100 international labour standards. Most of these standards in areas such as labour protection and basic social security were tailored to the needs of workers in the industrialized countries of the West. Fears were widespread that any shift away toward technical services would result in an ultimate devaluation of international labour standards and, thus, unhampered competition by cheap labour from the developing countries.

The significance of Morse's appointment to the demands of developing countries in this regard was that they now had a clear advocate who immediately began the process of breaking down reservations and removing barriers. He was helped by the fact that the ILO was not alone in its forays into technical assistance. US-led plans for a coordinated approach to development by the whole United Nations system had existed in the General Assembly and in the UN Economic and Social Council (ECOSOC) since 1946. In March 1949, ECOSOC passed a resolution put forward by the United States calling upon the Secretary-General to come up with a coordinated programme for the provision of technical assistance to underdeveloped nations, which came into existence a year later and provided the ILO with sources of funding for its new activities.<sup>6</sup>

The constitutional basis for moving into the field of technical assistance was already there, so the ILO did not have to start its activities from scratch. Article IV of the Declaration of Philadelphia had indeed given the ILO a mandate of a kind, however vague, to play a part in

the development efforts of its members. It stated that the ILO should become involved in measures “to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade.”<sup>7</sup> Nevertheless, when Morse took up his office in 1948, the Organization’s operational profile had barely changed. The ILO at its core was still the standard-setting institution it was founded as in 1919. Wherever it had been offering “technical assistance” up to this point, this help had consisted mainly of sending individuals or small teams of advisers to support governments in the introduction of labour legislation and social security programmes. Such missions had first been sent to Greece and Romania in 1930. Later, ILO experts advised government officials in China, Egypt and Morocco on issues like protection in the workplace, the setting up of labour administrations and the creation of agricultural and handicraft cooperatives. During the war, which placed restrictions on what the ILO could do in the field of standard setting, this type of practical help increased. The Organization was particularly active in the Americas (Bolivia, Canada, Chile, Costa Rica, Haiti, Mexico and Venezuela), helping with the preparation and expansion of social security systems, but it also played a certain role in Britain, where ILO experts provided some assistance in formulating the Beveridge Plan, and in Algeria where they helped the provisional French Government to draw up similar packages of measures. After Philadelphia, this kind of work simply continued, without any significant changes being made in the Office’s coordination of such activities, and without any major budgetary restructuring. In no sense, then, were the first missions after the war to be seen as any kind of new beginning.<sup>8</sup>

It was thus no coincidence that when technical assistance started, its immediate point of departure lay in Europe, where a couple of technical programmes were already under way in order to support reconstruction – mostly in the area of “manpower.” The latter was the heading under which the ILO already had made some efforts to attain a role as an international focus point for all matters of employment policy, vocational training and the control of labour migration during the post-1945 years.<sup>9</sup> Morse convinced the Governing Body as early as 1948 that the work that had been started in this area must be consolidated into a single large-scale programme – which the ILO should develop on its own initiative – rather than solely responding, as it had done previously, to the requests of individual governments.<sup>10</sup>

It has also to be emphasized that the term “technical assistance” did not yet possess the clear “development” connotation it was to attain from the 1950s onwards. It was, however, a term that had been used from the interwar years onwards to describe mainly “American-style” techniques of long-term aid without any geographical specification.<sup>11</sup> Part of the initial uneasiness within the ILO about technical assistance, both among representatives of the labour unions and among European Governments, was related to its European implications. Many trade union representatives voiced their concern that technical assistance, because of its connection to the European Recovery Program (ERP), could cause the ILO to fall under the control of the United States and not few of them were also concerned about what they felt was an over-emphasis on productivity in contrast to employment-intensive politics enshrined in the Marshall Plan.<sup>12</sup>

On the other hand, the meaning of the term technical assistance had already started to shift significantly within international discussion toward a closer connection to development aid even before and decisively after the announcement of Truman’s Point IV Program in 1949.<sup>13</sup> It was no doubt this programme that gave Morse’s plans their major impetus. The programme was based less on the idea of direct financial assistance than on the promise to provide the underdeveloped regions of the world with technological resources and expert know-how to help them increase productivity. As in the Marshall Plan, productivity, which US politicians saw as the “key to prosperity and peace,” was still at the centre of the American concept of development. And the key to increased production lay in a “wider and more vigorous application of modern scientific and technical knowledge.” This was exactly where Morse’s TAP came in – particularly as, elsewhere in the speech, Truman had expressly proposed the UN system as a channel for the distribution of such technical support.

This was the somewhat multilayered background against which Morse described the manpower programme to the International Labour Conference (ILC) in 1949 as the experimentation field and “laboratory” of technical assistance,<sup>14</sup> which could be used as a concrete starting point for the launch of the ILO’s operational agenda in a much more comprehensive way than before. His long-term goal was for the ILO to develop a general programme of technical assistance for every area within its sphere of responsibility and to reach out to the world beyond Europe.<sup>15</sup>

Within a short period of time, Morse’s drive to transform the ILO into an operational organization providing technical assistance in “underdeveloped areas” of the world had changed the face of the ILO profoundly.

Even though ILO projects, due to underfunding, initially tended to be small, isolated, selective and short-term, technical assistance slowly but surely changed the way the ILO operated. Whereas in 1948 only 20 per cent of the ILO's budget had been earmarked for activities other than standard setting, just ten years later technical assistance accounted for around 80 per cent of the funds.<sup>16</sup> At the same time, new sorts of professional expertise, social scientists, economists and others, began to populate the ILO's staff. During its first years of technical assistance activities the ILO was involved mainly in fields such as vocational training and productivity issues, gradually extending the scope of its programmes as time went on. The ILO would typically help to open up a school for vocational training and, for example in Burma, advise the Department of Social Services on maintaining it and train local teaching and administration staff.

Responding largely to the specific demands of Asian countries, the main aim of technical assistance in its first decade was to promote rapid industrialization. This industrial bias arose out of the original Manpower Programme, which had put the focus on industrial training in those years when the needs of war-torn Europe were paramount. In contrast, the agricultural sector was more or less ignored. Training in that sector lay within the competence of other executive organs of the UN's Expanded Program of Technical Assistance (EPTA) such as the UN Educational and Scientific Organization (UNESCO) and Food and Agriculture Organization (FAO), which pointed the ILO toward its own specific area of responsibility.<sup>17</sup> Surely the industrial focus also had its roots in prevailing thinking on development policy at the time – both in the desires and ideas of the potential recipients of technical assistance and in the basic assumptions about the best way to economic progress on the part of the ILO-based architects of the technical assistance programmes. For most first-generation development theorists such as W. Arthur Lewis the solution to the problems of underdeveloped societies lay in industrialization. In the “dualistic” development thinking of Lewis and his contemporaries, underdeveloped societies were divided into two clearly distinct sectors. The central dynamic of development was a movement from the “traditional” sector to the “modern” or industrial sector. Only the latter could lead to productivity and growth and thus to an improvement in the standard of living. A country could be said to be “developed” when the modern sector had soaked up the all cheap labour from the traditional sector.<sup>18</sup> It was upon these basic assumptions that the ideas of a new generation of economists who joined the Office once the TAP was under way were based.<sup>19</sup> The technical assistance programme's focus

on manpower fitted perfectly into this vision. It was generally accepted that, by training workers, the ILO was making available a key tool that represented the quickest route to industrialization and increased productivity. "Manpower is wealth" was how David Morse summarized the significance of the ILO's contribution. In order for a country to generate wealth "there must be production, in order to have production, people must be trained, people must be taught, in order to be taught people must be educated along certain lines and the net result of all of this is wealth. More production, more wealth."<sup>20</sup>

Technical assistance expanded significantly at the end of the 1950s. The ILO was among the international agencies benefiting most from the unprecedented increase in multilateral aid that was triggered by the increasing strategic value attached by Western donor countries to development assistance against the backdrop of an increasingly globalizing Cold War. The ILO was able to secure a healthy share of the takings when the United Nations reorganized its allocation of funds at the end of the 1950s. In 1959, on the initiative of the developing countries, the UN Special Fund for Economic Development (SUNFED) was launched, which a few years later would flow into the United Nations Development Programme (UNDP). Having access to SUNFED/UNDP money marked both a qualitative and quantitative milestone for ILO technical assistance. Not only did the new sources provide more funding than had been provided by the EPTA, but SUNFED/UNDP also financed longer-term projects of three to five years' duration and therefore allowed the ILO to play more of a role in the planning processes of the developing countries.

Coinciding with the first wave of decolonization after the end of the Second World War, Asian countries occupied a special position among the main beneficiaries of ILO projects during the 1950s.<sup>21</sup> Asia was at the centre of the debates accompanying the programmatic changes in the ILO's work. It was mainly from this part of the world that the ILO in the years following the Second World War had faced increasing criticism that it continued to focus predominantly on the problems of the industrialized countries in Europe and America. What the Asian countries wanted and demanded with increasing insistence was for the Organization to concentrate its future work on helping them to build up their national economies. The undisputed doyen of this group was the newly independent India. India's size, its economic potential and the confidence of its government, which intended to establish the country as the leading power in Asia, brought immediate pressure on the Organization to change. India's position was exceptional

in that by the time it obtained independence, it already had long experience of the workings of the ILO. Since the 1930s, that country had established itself as the respected voice of the colonial world within the international arena.<sup>22</sup> What the newly independent India wanted was to shift the focus of the Organization's work to the wishes and problems of the Asian continent.

India intended to "decolonize" the ILO, and it was in a good position to do so. Nowhere else in the colonial world were conditions so favourable toward a policy of "national economic development," a concept that had found its institutional expression in India well before it was established in other parts of the colonial world. As early as 1938, before the first British Colonial Welfare and Development Act had come into being, the Congress Party had set up a national planning committee to lay down the cornerstones of national development after independence. In addition, British efforts during the war to effectively turn the Indian economy over to the Allied war effort had given Indian politicians a range of planning tools that they could now use in putting their development ideas into practice. Once independence was achieved, India took over the institutions of "colonial development" in the firm belief it would be able to turn them into instruments of "national development."<sup>23</sup> All these factors made the country a leading voice for all those countries that gained their independence from colonial rule at the end of the 1940s or were about to enter into the decisive period of their own process of decolonization and thus to prepare their own transfer from colonial economies to economies characterized by "underdevelopment."

For Nehru as for many leaders of national liberation movements, shedding the role of primary producer was synonymous with escaping from colonial economic dependencies. To be sure, India's demand that the ILO adjust its programme of work to meet the needs of the non-European countries was part and parcel of a wider claim for representation within, and regionalization of, the system of international organizations, which clearly showed a European and North American face. At the end of the 1940s, with independence accomplished, debates on the proper representation of Asia within the ILO gained momentum. At the same time attacks against the colonial power's continued policy to keep representatives from their remaining colonial territories outside of the Organization increased in strength. But they became secondary issues in the face of the major importance all parties involved attached to the question of development.

What countries such as Burma, India and Indonesia were essentially asking for in the ILO was, thus, assistance in overcoming

underdevelopment. Their main criticism of the ILO was that it continued to focus predominantly on the problems of the industrialized countries in Europe and North America. What the Asian countries wanted, however, was for the Organization to concentrate its future work on helping them to build up their national economies, supporting their efforts toward industrialization (and, to a lesser degree during the initial phase, to directing more attention to the rural areas in which the majority of their populations earned their living). When Nehru addressed the ILO's first "preparatory" Asian Regional Conference in Delhi in 1947, his speech was entirely dedicated to issues of development and of the assistance he expected to receive toward it from the world community in general and the ILO in particular.<sup>24</sup> As the Asian continent had been neglected for too long, it was now the responsibility of the entire world to help Asia. It was high time that Europe saw Asian problems as akin to those of the rest of the globe. The hunger and suffering tormenting Europe as a consequence of war must not, insisted Nehru, obscure the fact that these miseries were normality in large parts of Asia. Above all, the world community had to help to change the economic conditions at the root of the "trail of blood, sweat and tears" running through the continent. For Nehru, this was not a question "of rich and powerful countries being generous," but rather one of whether existing interdependencies in the new postcolonial world would be recognized.<sup>25</sup> On this most of the speakers that followed him were unanimous. According to the independent Asian states, the ILO needed first and foremost to deliver practical help, to provide technical expertise and to advise the new nations in a variety of areas which combined methods for increasing productivity with establishment of social security and occupational health and safety laws.<sup>26</sup>

Asian demands for the ILO to change the focus of its programme of work did initially not arouse much enthusiasm in the members of the ILO present at the Conference. Discussions held on the fringes made it clear that the majority feared that extending the ILO's activities into the practical sphere would entail entirely unrealistic budgetary and personnel increases. In some respects, the Asian Conference took place on the threshold between two phases in the history of the International Labour Organization. At the end of 1947 the Office was still undecided on how to approach the challenges that were looming. After David Morse had taken over in September of 1948, however, the ILO immediately began to signal the change in direction to the potential recipients of technical assistance. Discussions in the course of 1949 with various ILO correspondents, and with representatives of Latin American and Asian countries in particular, gave the new Director-General an idea of

the extent of existing need and pointed to the huge potential for success of a technical assistance programme tailored to the needs of underdeveloped nations.<sup>27</sup> The necessity for urgent action was further confirmed for Morse by events in the Far East when the Chinese Communists emerged victorious from the civil war that had been raging since the end of Japanese dominance. Since the nationalist guerrillas fighting the colonial powers in Indochina and Malaya were also inspired to some extent by communist ideas, and a similar conflict was brewing in Korea. China's fall to the communists had the added effect of fanning the flames of these disputes.<sup>28</sup> Morse and his closest collaborators felt it was high time to arm Asian societies against the "communist temptation" using socioeconomic means.

This was the concrete backdrop against which Morse offered, at the International Labour Conference in 1949, to transform the ILO into a service agency catering to the specific demands of "underdeveloped nations." He declared that the Organization had understood there was an enormous demand for industrialization, increased production and an improvement in the standard of living of wide swathes of the world's population, and he promised that the ILO would organize a knowledge transfer which would help underdeveloped societies to modernize. He emphasized the Organization's will to change by promising a far-reaching reorganization of the budget and of Office staffing structures as well as the overdue regionalization of the Organization.<sup>29</sup> Morse's promises were welcomed by most of the Asian representatives (as they were by Latin American countries and the small number of African members of the ILO). They were particularly well received at the first regular Regional Conference for Asia, which took part at the turn of the year in Nuwara Eliya, Ceylon, and at the meeting of the Governing Body in Mysore, India, which preceded it.<sup>30</sup> In his report to the Regional Conference "The ILO and Asia," the Director-General declared Asia to be the new focus for ILO activities.<sup>31</sup> A Ceylonian workers' representative spoke for the majority of the continent's envoys when he praised the ILO's change of direction, saying that for the first time in its history, the ILO was standing by its responsibilities in the face of the suffering of millions in Asia. He also assured the Director-General that "we in Asia would be only too pleased to respond to his call for co-operation, since we now feel that the ILO has at last realized its duties to this so far neglected continent."<sup>32</sup> The voices that had criticized the ILO's eurocentrism so vehemently at the Delhi Conference only two years earlier had quietened significantly. The fact that India's influential representatives seemed to be so pleased about the new Director-General's response to their demands was

particularly encouraging with regard to the chances of success of the operational change in the ILO agenda. India's employment secretary, Shri Shamal Lall, assured Morse that "the entire Asian region eagerly looks forward to the operational activities of the ILO."<sup>33</sup>

Moreover, no criticism was raised about the connection between the TAP and the objectives of US foreign policy (quite obviously personified even for neutral observers by David Morse, himself). Nor could they do so about the role of the TAP in the battle of ideologies, despite the fact that these were aspects which participants in the Conference could hardly overlook in the light of the speech made by the US Government representative, Arnold Zempel, which drew a direct line of cause and effect between Truman's Point IV Program and the TAP.<sup>34</sup> The Soviet Union joined the ILO only in 1954, one year after Stalin had died. However, as the Soviet Union was not present in Ceylon, and as countries such as India, Burma and Indonesia which were determined to remain neutral in the struggle of the systems did not comment, the issue was only raised by those governments that were well within the Western camp anyway. They welcomed the TAP as a means of containing the advance of communism through Asia. The workers' representative of the British Crown Colony Hong Kong, for example, told the meeting it was the duty of Asian countries "under the technical leadership of the ILO to prove to the Chinese and to the people in other Asian countries that democracy can offer a much more effective solution to the problem of poverty."<sup>35</sup> He agreed with the members of many of the other delegations that Asia's poverty was "the hotbed of communism" and that only by reducing it could a long-term victory in the fight against communism be secured. A Philippine representative called upon the industrialised nations of the West to "pour their resources into this part of their world," thus obtaining a security that "no force of arms can conquer."<sup>36</sup> In this way, the potential recipients exploited the programme's anti-communist thrust for their own ends, using their expressions of support for its political aims to make intensified demands on the donor countries.

Right from the beginning, the International Labour Office went to great lengths to convey the message that the TAP was intended to do more than just provide support in the context of a wider economic project. The Office promoted its activities as measures taken at the beginning of a process of modernization, the core element of which was the growth achieved through increased productivity and industrialization. At the same time it repeatedly claimed that it was in this context that the ILO's "classic" standard-setting work could have an important role

to play. As early as 1948–49 David Morse offered a vision of an integrated approach to development in which technical assistance and ILO standards were reconciled, had a catalytic effect on each other and worked hand in hand toward the modernization of societies. Technical assistance would make it possible to create the economic and institutional conditions necessary for standards to be applied. Development aid was thus to be seen as assistance with the enforcement of ILO standards, and the standards themselves elevated to the target and yardstick of development. From a different perspective, international labour standards were not just a goal, but a method of development, with the claim that they helped to ease the side-effects of the modernization process and paved the way for – to use a more recent term – sustainable development.

Morse's oft-repeated assurances that, despite – or precisely because of – its move toward technical assistance, the ILO would remain true to its old standard-setting activities were not solely or even primarily placatory formulas directed at worried members. They were based on the firm conviction that, in the prevailing ideological climate, the ILO had a key role to play in the organization of the social change that increased efforts toward economic development outside Europe would bring. In Morse's eyes, the ILO was on the front line of a global conflict between democratic and totalitarian forces. "Change and revolution are sweeping the world today," he wrote in a memorandum to Office heads of divisions late in 1950. The Organization was caught up in a "struggle for the hearts and minds of men and women the world over, on the outcome of which will depend peace or war and the survival ... of civilisation or its destruction." The development efforts of many governments, which the Organization was supporting through the TAP, would shake traditional social structures and undermine "the basis of society hitherto widely accepted." Morse identified the uncertainty and fear which the speed of this transition to modernity could cause as the greatest danger faced by the democratic camp in tackling the communist challenge.<sup>37</sup>

Most obvious were the links that could be drawn between the ILO's integrated approach to development in the 1950s and the postulates of modernization theory, with which it shared both basic premises and historical origins in early decolonization as well as the confrontation with communism.<sup>38</sup> David Morse and his collaborators equated the history of social progress in the twentieth century, which they believed developing countries should take as a model and example, with the success first and foremost of the liberal democratic model. In his interpretation of the past, the starting points of progress were the creation of interventionist welfare states within a basic capitalist order and the

simultaneous existence of free democratic institutions which made the organization and articulation of social interests possible. It was necessary to underline, wrote Morse in a 1950 memorandum to his colleagues at the Office, that the real success story of the industrialized nations had been written primarily "by an enthusiastic and progressively minded people," and "in order to make the picture complete, emphasis should be laid on the fact that these achievements have in large measure taken place within the general framework of free democratic institutions."<sup>39</sup> If one accepted the premise that Europe's and North America's past was being repeated in the transition from the traditional to the modern observed in developing countries, the ILO really did hold, in the set of standards laid down in the International Labour Code, and in the values of the Constitution and the Declaration of Philadelphia, a powerful range of tools for the promotion of democratic modernization. These standards and values could be interpreted as a set of answers which the liberal democracies of Europe and North America had found to the political and economic crises, linked to the development of their own capitalist orders, of the nineteenth and twentieth centuries.

The assumption that the past of the industrialized nations was being repeated in developing countries was a recurrent theme in the statements made by the Office in the 1950s. There is no clearer example of this than Morse's answer to the question posed by an Indian journalist at one of the later Asian Regional Conferences as to whether labour relations in India should, in principle, be treated differently from those in Western industrial nations: "There is nothing peculiar to this region.... Asia and India are going through a process of economic expansion and development that western countries were going through long ago, when as a result of this process a new class arises, new problems are created. These problems are new in Asia but old problems in other countries."<sup>40</sup>

The ILO's task in this situation was to use the words of Morse's close collaborator, Assistant Director-General Jef Rens, to help developing countries "to move the ILO way."<sup>41</sup>

The ways in which the Office went about promoting the "ILO way" of development were fairly indirect. The Organization provided information, advice and practical support in areas of direct significance for the implementation of international labour standards. ILO experts helped with matters of occupational health and safety. They provided advice on how "healthy" labour relations could be organized and on the creation of workers' and employers' unions, and provided manuals dealing with how to write standard employment contracts or formulate reasonable wage policies. Morse stressed that it was precisely this type of activity

that would promote “adjustment to the new forms of society which are gradually emerging in the developing countries.” People who left their traditional environments “to live and work in a new industrial society” needed orientation, and this in turn required both the appropriate social policies and the appropriate social institutions to help them deal with the problems with which they were confronted.<sup>42</sup>

Notwithstanding all the applause Morse earned for leading the ILO toward technical assistance, the application to Asia of an integrated approach to development did not remain unchallenged. It met resistance from different quarters, of which the colonial powers, who still had a strong foot in Asia, were the most stubborn. In principle the ILO’s development concept was postcolonial: in the theory behind the TAP, no distinction was made between colonial and independent states. The TAP was a universalistic offer directed at underdeveloped areas in general, regardless of their current or past political status. The remaining colonies were included in the intellectual concept from the beginning. At the suggestion of the Director-General, the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) had been looking at this issue since 1949. According to the report of the UN observer, the Committee, which numbered several members with colonial experience among its ranks,<sup>43</sup> held the view that “international programmes of technical assistance in connection with Mr Truman’s fourth point are of particular importance for non-metropolitan territories – or NMTs – (the terminus technicus for ‘colonies’ used at the time within the UN system).” The general tenor was that it was the duty of international institutions to take particular care of NMTs, precisely because they were not represented directly. This gave international organizations a particular responsibility for their progress, especially in the light of the fact that, over and over again, the reports by the colonial powers cited “backward conditions” to explain why Conventions had not been applied. It was precisely these conditions “which could only be overcome by international technical assistance.”<sup>44</sup>

The problem faced by the ILO was, however, that such reports had virtually no practical consequences. As the colonial powers categorically refused to accept the offer of technical assistance on behalf of their territories, the ILO’s universalism remained theoretical. One consequence of this attitude was felt as early as the Asian Regional Conference in New Delhi in 1950. The ostentatious declarations from the French, Dutch and British representatives on the value of the TAP for development in Asia, and their promise to provide material support for the programme contrasted starkly with their refusal to make use of it in their own colonial

territories.<sup>45</sup> Critics assumed, rightly, that the colonial powers' inhibitions about taking advantage of the TAP sprang from the exposure to external eyes that it would entail, and above all from the "double standards" which continued to exist with regard to social policy and the enforcement of ILO standards, as India's Government representative Reddy pointed out.<sup>46</sup> Despite the criticism, however, the attitude of the metropolises remained unchanged throughout most of the 1950s. The colonial powers viewed technical assistance delivered by international organizations as one means among others of securing prestige in Asia and of maintaining a level of influence there after the end of colonial rule (although bilateral assistance was always preferable in their eyes),<sup>47</sup> but they did not see any necessity to open their remaining territories to this kind of assistance. France (in later days not least through EEC institutions) and Britain had their own development programmes working within their remaining territories, which included technical assistance schemes of different sizes and kinds that exceeded everything the ILO had to offer. This in turn gave them arguments to shield their territories from any unwelcome "internationalization" to the very last day of their colonial rule.

The colonial powers were, however, not the sole source of resistance to the integrated approach to development the ILO propagated. Independent countries in Asia, too, the actual addressees the ILO had in mind, were all too often reluctant to embrace the ILO's ideas wholeheartedly. Again, Nehru somehow set the tone even before the integrated approach was formulated when he addressed the ARC in Delhi in 1947. Through its standard-setting activities, Nehru recognized, the ILO could contribute to injecting social justice into a forced process of industrialisation. These activities from the "classic" catalogue of ILO work, in his view, were useful. Nehru on the other hand branded the ILO's catalogue of Conventions an expression of its eurocentrism and its fixation on the industrialized nations. Although he endorsed the idea of universally valid standards and promised that India "shall try to abide by the decisions of the International Labour Conferences to the utmost of our ability," he did call for more flexibility in interpreting them.<sup>48</sup>

Three years later in Nuwara Eliya, several speakers emphasized the need for "regional" conventions that were more closely tailored to the "real" situation in Asian countries, and for the opportunity to modify existing Conventions so as to adapt them to local conditions. The Conference eventually adopted a programme of action for the International Labour Conference (ILC), which expressed the hope that future Asian Regional Conferences and studies carried out by the Office would work toward ensuring that as many Asian nations as possible would sign Conventions

“in their present or a properly modified form.”<sup>49</sup> Behind the rhetoric, many of the governments at the ARCs throughout the 1950s shared the view summarized by a Ceylon Government representative, who stated that no one could expect the countries of Asia “to implement social standards in the evolution of which they have been denied the opportunity to effective expression of their views.”<sup>50</sup> Some demanded that the ILO first make efforts to increase technical assistance to the developing countries in order to create the conditions under which the implementation of social standards would be possible. Others proposed that regional norms should be drafted that would better correspond to the situation on the ground in the less-industrialized areas of the world, inasmuch as they allowed for lower standards both in terms of wage levels and social security.<sup>51</sup> This latter suggestion, however, was something the ILO wanted to avoid at all costs. In the view of its officials, regional standards would spell the beginning of the end of universal standards. At the ARC in Tokyo in 1953, Deputy Director-General Jef Rens confirmed that the goal of all members must remain to apply ILO norms in their entirety and without restriction, but he signalled that the ILO was willing to make concessions in other ways to the problems faced by the developing countries. Sessions of the ILC would, in the future, attempt “without sacrificing the concept of universal standards to render our international instruments somewhat more flexible, with a view to their progressive adoption by countries at various stages of development.”<sup>52</sup> It was a compromise that was greeted with a good deal of scepticism, in particular by American and Western European Trade Union representatives, who quite rightly pointed to the fact that the ILO was de facto allowing for inroads into one of its basic assumptions and part of its *raison d'être*: The definition of minimum standards applicable to all ILO members in order to avoid a “race to the bottom”; in other words, allowing low social standards to be used as a competitive advantage. For former colonials the picture was, however, a completely different one. From their perspective the maintenance of a one-size-fits-all approach in standard setting came close to a continuation of the colonial situation, which effectively had shielded the metropolitan economy against any potentially threatening competition from the periphery.<sup>53</sup>

Every now and then the debate gained new strength. Problems of a more fundamental nature appeared during the discussion on basic human rights standards such as the Forced Labour Convention of 1957. The hesitation with which some Asian countries approached the discussion of the Forced Labour Convention which aimed to outlaw all forms of coercion for “developmental purposes” may also have

stemmed from their fear of drawing the attention of the ILO standards compliance machinery to themselves. In the Conference Committee, the Indian Government delegate had suggested adding to the paragraphs that banned forced labour for development purposes the stipulation, "as a normal method of mobilising and using labour." Asked to explain this, he had noted that many governments whose countries were at an early stage of the development process had no other choice, in an emergency, than to resort to the limited use of compulsory labour for economic purposes, and that they might, as a result, have problems ratifying the new Convention.<sup>54</sup> In the heat of the East-West conflict, this initiative had hardly received a second glance, and had been voted overwhelmingly off the table; but it provided a glimpse of the conflicts that would arise in the future.<sup>55</sup> It clearly resonated in 1962 in the heated debates that followed the publication of a report by the ILO Committee of Experts. The Committee accused a few newly independent countries from Africa, Asia and the Caribbean of having set up new forms of forced labour in the cloth of compulsory youth labour services performed either under the auspices of the military or within separate institutions created for the purpose. At the core of the debate that would occupy the ILO for the whole of the 1960s lay the question as to whether the wording of this Convention was in accordance with the needs of countries which felt that acting under an economic state of emergency was comparable to a war situation.<sup>56</sup>

Another disputed field concerned the standards on freedom of association (Conventions No. 87 and No. 98 of, respectively, 1948 and 1949 dealt with the issue predominantly with a view on the freedom of trade unions to organize and to bargain collectively). Released in 1956, an ILO Report on the global situation regarding the two Conventions (The McNair report) dealt extensively with the status of freedom of association in Asia and found widespread "restrictions and limitations" in the legislation concerning this freedom, "which would afford opportunities of domination and control to a government desirous of using them."<sup>57</sup>

This served only to confirm what the ILO had been experiencing since the beginning of the 1950s. Asia was the test case. The reports which the Director-General drew up as a basis for discussion at the Asian Regional Conference always emphasized at length the significance the ILO attached to the principle of free and democratic industrial relations.<sup>58</sup> The reality which the Asian trade union movements faced was, however, difficult to reconcile with the avowals of the governments toward these reports. First of all, against the backdrop of the Cold War many governments were firmly opposed to the idea of politically active trade unions.

Not everything could be explained out of a real or perceived communist threat. Many governments seemed to fear the oppositional potential of the trade unions in a general sense, which made even noncommunist unions in a number of countries the target of their hostility.<sup>59</sup> Second, many Asian governments were becoming increasingly sceptical about whether the concept of freedom of association in the form enshrined in the ILO norms was compatible with the demands of the national development effort, and they tended to subject the trade unions (and sometimes the employers' associations, too) to tight state control. Almost everywhere in Asia, the state was determined to have the last word when it came to the regulation of industrial relations. The most common argument against allowing organized social-interest groups to develop freely was that countries with a weak economic basis, and whose aim was to increase productivity as rapidly as possible, needed everyone to pull in the same direction, namely that of national development. The idea that the trade union movement needed to be subordinated to national (economic) development interests recurred in varying guises at all Conference sessions over the next few years. Delegates tended ever more frequently to draw a line between the national good and the good of the workers – in practice, this meant that in many places mechanisms of mandatory state arbitration were established, and strikes and lock-outs forbidden by law. Against this background government-controlled labour movements began to dominate the scene in most East Asian countries from Burma to Indonesia.

ILO officials were concerned about this trend toward complete state control over labour relations and decided to put the issue of industrial relations on the agenda of the Asian Regional Conference for its 1957 meeting in the Indian capital, New Delhi. In a report published in advance of the gathering, the Office stressed once again, for the benefit of the Asian governments how important it considered free labour relations to be for the development process.<sup>60</sup> The development argument put forward by the governments was, clearly, however closely connected to considerations of domestic and security policy,<sup>61</sup> which was going to make it doubly hard for the ILO to anchor its concept of labour relations in Asia. Deputy Director-General Rens returned from an extensive visit to many countries in the region overwhelmed and dismayed by their problems, but even more by the open hostility of the reception he had been given by a number of governments. Not even in those countries that were still positively disposed toward the ILO had the concept of freedom of association taken root to the extent previously hoped, Rens noted with regret.<sup>62</sup>

Despite all difficulties, the ILO judged the Asian TAP a major political success. Already in its first assessment of the programme in 1954, the Office deemed the provision of technical assistance to underdeveloped regions to be a permanent task of the ILO from then on.<sup>63</sup> The TAP had increased loyalty to the Organization enormously, especially among developing countries. Representatives from Asian governments both at sessions of the International Labour Conference, such as in regional meetings, were generous in their praise for the new direction the Organization had taken under Morse. This no doubt had also much to do with the fact that, from the start, the ILO formulated its integrated approach as a more or less unreserved offer and did not, at any time, make help under the TAP conditional on the acceptance or application of international labour standards. The developing countries also welcomed the TAP because it reflected the fact that the ILO was finally becoming an organization with a truly global profile. There was a better geographical balance of Office staff now, and the recruitment campaign it had been forced to run as part of the TAP had increased its level of development-related knowledge significantly in comparison to before the war. As a result of its new functions the ILO had initiated a process that would lead to an enormous expansion, both in terms of budget and of personnel. During Morse's term in office, from 1948 to 1970, the International Labour Office grew from a staff of 600 to over 3,000, while the budget increased from US\$4 million to roughly US\$60 million. The ILO also enjoyed a much increased presence on the ground, and not just as a result of the deployment of experts: the early manpower activities had allowed it to gain an institutional foothold on almost every continent. In order to be effective in extending the programme to Asia, Morse set up a field office in Bangalore, India, in the summer of 1949 from where all the vocational training activities for Asia were coordinated.<sup>64</sup> Once established, the field offices soon took on lives of their own. They helped to support and coordinate all the TAP activities in a particular region and served as information points to which the Geneva headquarters could turn for intelligence on their progress.

While the ILO thus was able to convince Asian governments of the value of its technical activities in the development effort and to expand the institutional basis from which it hoped to promote and implement its specific concepts of modernization, it had much less success in winning them over to its ideas of an integrated approach to development. In many Asian countries the idea of combining technical assistance and standards in one universalistic (liberal-democratic) model of progress, informed as it was both by the ILO's traditions and the position it had

taken at the beginning of the Cold War under Morse's leadership, met with reservation and sometimes resistance. It clashed with the former's claim that implementing some of the ILO's standards was actually a barrier to development. In the test case of freedom of association, for instance, many governments argued that underdevelopment warranted the deployment of all societal forces under strong governmental leadership and thus implied more-authoritarian models of development.

On almost all of these issues the differences got even more pronounced in the following decade. Against the backdrop of accelerating decolonization in Africa, which eventually brought developing countries into the majority among the ILO's membership, the Organization faced once again the challenge to reconcile both the conflicting demands of different groups of its constituents and its two major areas of activity. The lessons learned in Asia during the first decade in which the ILO worked as an agency of technical assistance to developing countries led once again to very pragmatic solutions: What had started as an approach to integrate technical assistance and standard setting in a comprehensive all-encompassing approach ended with the ILO showing different faces to different constituents. Asia became one of the major battlefields from which the ILO, during the UN's "first development decade" (started in 1961), began to engage prominently in the design of new poverty-centred strategies of development. While these efforts, which eventually mounded in the launching of the so-called World Employment Programme in 1969, were innovative in many ways (including the "discovery" of the informal sector), labour norms, except for passing references to the ILO "core" human rights standards, played only a negligible part in it, if at all.

## Notes

1. Morse's speech to the Asian Regional Conference (ARC) in Nuwara Eliya (Ceylon), in ARC II (1950), *Record of Proceedings* (RoP), 153.
2. On the ILO's Technical Assistance Programmes see: G. Rodgers, E. Lee, L. Swepston, and J. Van Daele, *The ILO and the Quest for Social Justice* (Geneva and Ithaca, NY: ILO and Cornell University Press, 2009), 171–205; in various contributions in J. Van Daele, M. Rodríguez García, G. van Goethem, and M. van der Linden (Hg.), *ILO Histories: Essays on the International Labour Organization and its Impact on the World During the Twentieth Century* (Bern: Peter Lang, 2010); from the older literature, A. Alcock, *History of the International Labour Organization* (London: Macmillan, 1970), 209–51; V.-Y. Ghebali, *The International Labour Organization: A Case Study on the Evolution of UN Specialized Agencies* (Dordrecht: Nijhoff, 1989), 242–67; G. A. Johnston, *The International Labour Organisation* (London: Europa Publication, 1970), 114–29.

3. The use of the term “Asia” in this article pragmatically follows the ILO’s own regional definition. It is more or less identical with the term “Far East” used by the UN at the time and includes South, South-East and East Asian countries as well as Australia, New Zealand, and the Pacific Islands region.
4. All biographical information is taken out of the author’s own research, for a biography on David Morse, in the US National Archives and the David A. Morse Papers, Seeley G. Mudd Rare Manuscript Library, Princeton (DAMP), and in the ILO archives in Geneva (ILOA).
5. ILO, The Declaration of Philadelphia, Section IV (Montreal, 1944).
6. ECOSOC, Resolution no.180/VIII, 3 April 1949: Technical Assistance for Economic Development.
7. ILO, The Declaration of Philadelphia, Section IV.
8. Johnston, *International Labour Organization*, 115.
9. The European Recovery Programme (ERP) was announced just days before the 1947 ILC session, which passed a resolution expressing the Organization’s support of it. ILC 30 (1948), RoP, 590.
10. Governing Body (GB) 107 (1948), RoP, 20–22.
11. D. Ekbladh, *The Great American Mission: Modernization and the Construction of an American World Order* (Princeton, NJ: Princeton University Press, 2010).
12. On these conflicts, see A. Carew, *Labour Under the Marshall Plan: The Politics of Productivity and the Marketing of Management Science* (Manchester: Manchester University Press, 1987); seen from American Labour’s perspective, see N. Lichtenstein, *Walter Reuther: The Most Dangerous Man in Detroit* (Champaign, IL: University of Illinois Press, 1997), 327–46.
13. For a short overview of the changing meaning of the term, see the article by M. Kimura in A. Iriye and P. Y. Saunier, eds., *The Palgrave Dictionary of Transnational History* (Basingstoke: Palgrave Macmillan, 2009), 988–90.
14. International Labour Conference (ILC) 32 (1949), RoP, 259.
15. Morse, memorandum “Technical Assistance to Underdeveloped Areas” 1 April 1949, ILOA-MF Z 6/1/7: Technical Assistance to Underdeveloped Areas (Pt. 4 of President Truman’s Speech).
16. See, for a summary: ILO, The Role of the ILO in the Promotion of Economic Expansion, Geneva 1961. For a long time, the only exception to the generally small-scale way that the ILO operated was the Andean (Indian) Programme (AIP), which was actually a “joint venture” between various different UN agencies, but with the ILO – and Assistant Director-General Jef Rens in particular – as the driving force behind it. This project represented a concerted effort to improve the socio-economic conditions of the indigenous populations of the Andean highlands. The ILO carried out one of its largest vocational training projects there, helping to set up cooperatives of producers and consumers, dealing with preliminary social security measures, and providing advice on the creation of trade unions. On the Andean Indian Programme, see Alcock, *History of the ILO*, 251–53.
17. Gheballi, *The ILO*, 243–51.
18. On the first generation of development economics, see H. W. Arndt, *Economic Development: The History of an Idea* (Chicago and London: University of Chicago Press, 1987), 49–87.

19. R. W. Cox: "ILO: Limited Monarchy," in R. W. Cox and H. K. Jacobson, eds., *The Anatomy of Influence: Decision Making in International Organizations* (New Haven and London: Yale University Press, 1973), 115.
20. Morse's statement from 16 December 1953, in DAMP, B 9, F 19, Jef Rens, 1948-53, 1955-59.
21. Roughly 30 per cent of the funds earmarked for technical assistance projects in the 1950s went to Asian countries, followed by Latin America and the Middle East with 25 per cent each, Alcock, *History of the ILO*, 243.
22. India had been represented in the ILO from 1919 onwards with its own delegations, which – although their members were chosen by the British Colonial Office – gave the country a unique status among all other colonial territories.
23. See, for example, S. Bose: "Instruments and Idioms of Colonial and National Development. India's Historical Experience in Comparative Perspective," in F. Cooper and R. Packard, eds., *International Development and the Social Sciences: Essays on the History and Politics of Knowledge* (Berkeley, Los Angeles and London: University of California Press, 1997), 45-64 at 47.
24. Asian Regional Conference (ARC) 1 (1947), RoP, 1-6.
25. Ibid.
26. ARC 1, RoP.
27. See, for example, Morse's discussions with the High Commissioner for Ceylon in the British capital, Corea, with the ILO correspondent P. P. Pillai in Delhi, and with the Chinese Foreign Minister Wang Shi Chie. Memorandum by Morse, 30 September 1948, in DAMP, B 1, F 19, Mr Pillai; memorandum by Morse, 23 October 1948, in DAMP, B 1, F 20, Wang Shi Chie.
28. The mood of Morse and his supporters in the Office is reflected in a letter to the Director-General at the beginning of 1949 from his Indian deputy, Raghunath Rao, in the communist-besieged city of Shanghai. The city reminded Rao of France in May 1940. Commenting on the seemingly unstoppable advance of anti-democratic forces, he predicted darkly that "night may descend on parts of Asia," which served further to convince him of the importance of the ILO's work in the region." Rao to Morse, 4 February 1949, in ILOA MF Z 1/1/1/18, Correspondence with Mr Rao.
29. ILC, 32nd Session (1949), Geneva, Report I, Report of the Director-General, 3.
30. See Morse's notes on discussions with the Indian Prime Minister Jawaharlal Nehru, at the Mysore meeting of the Governing Body in December 1949, in DAMP, B 23, F 3, Mission to India.
31. "The ILO and Asia" in ARC 2 (1950), RoP, Report I, Report of the Director-General, 137-53.
32. ARC 2 (1950), RoP, 81.
33. Ibid., 135.
34. Ibid., 85.
35. ARC 2 (1950), RoP, 55.
36. Ibid., 115.
37. Memorandum by Morse, "Memorandum of the Report of the Director-General to the 34th Session of the International Labour Conference," 14 October 1950, in ILOA MF Z 8/1/14, Meetings with chiefs of divisions.

38. On the genesis of modernization theory, see N. Gilman: *The Mandarins of the Future: Modernization theory in Cold War America* (Baltimore and London: Johns Hopkins University Press, 2003); M. E. Latham, *Modernization as Ideology: American Social Science and "Nation Building" in the Kennedy Era* (Chapel Hill, NC: University of North Carolina Press, 2000). On the more practical application, see Ekbladh, *The Great American Mission*.
39. *Ibid.*
40. Minutes of a press conference held by Morse in New Delhi, 12 November 1957, in ILOA MF Z 10/3/11, Fourth Asian Regional Conference, 1956–57.
41. Rens to Morse, 29 December 1953, in DAMP, B 9, F 19, Jef Rens, 1948–53, 1955–59.
42. Memorandum by Morse, "Memorandum of the Report of the Director-General to the 34th Session of the International Labour Conference," 14 October 1950, in ILOA MF Z 8/1/14, Meetings with chiefs of divisions.
43. Including, for example, Paul Tschoffen, former Belgian Colonial Minister; Baron Frederick van Asbeck, Professor of International Law and Comparative Constitutional Law in Non-Metropolitan Territories at Leiden University, former member of the Mandate Commission and a minister in the Government of the Dutch East Indies; and Sir Atul Chatterjee, former High Commissioner for India in London and one of the first non-European speakers of the Governing Body of the ILO in the 1930s.
44. Wilfrid Benson (UN), "Report on Mission to Specialized Agencies 23/3–9/4/1949," in United Nations Archives, New York City (UNA), RAG 2/77/2, Department of Political Affairs, Trusteeship and Colonial Territories, Specialized Agencies, 1946–56.
45. See the addresses of the government representatives of Great Britain, France and the Netherlands, in ARC 2 (1950), RoP, 13–16, 47, 58.
46. *Ibid.*, 66.
47. A few years later, the Dutch Ambassador to the UN, Schurmann, remarked in a discussion with Jef Rens that the Netherlands' contributions to technical assistance after the end of colonial rule had always partly been an attempt "to keep a foot in the underdeveloped world": Rens to Morse, 28 March 1958, in DAMP, B 9, F 19, Jef Rens, 1948–53, 1955–59.
48. ARC 1 (1947), RoP, 3.
49. *Ibid.*
50. ARC 2 (1950), RoP, 28.
51. The Laotian Government representative said that although his country embraced the standards in principle, it had reservations about their actual implementation. India's Minister for Labour and Employment, Lall, remarked that regional standards might be the only way forward if the ILO stopped taking Asia's particular circumstances into account in its standard setting. *Ibid.*, 23, 47.
52. The Committee of Experts, too, had previously looked extensively at the issue of the difficulties involved in implementing ILO norms in the light of the economic and social situation in Asian countries: ARC 3 (1953), RoP, 129.
53. For a general discussion of labour standards in their relationship to the international division of labour from an economic historian's point of view, see M. Huberman, *Odd Couple. International Trade and Labor Standards in History*

- (New Haven and London: Yale University Press, 2012); for a more concrete discussion of the underlying conflicts see L. Fink, *Sweatshops at Sea: Merchant Seamen in the World's First Globalized Industry, from 1812 to the Present* (Chapel Hill, NC: University of North Carolina Press, 2010), 145–70.
54. ILC, 40th Session (1957), RoP, Appendix VII, Forced labour, 709.
  55. For the debate see Maul, *Human Rights, Development and Decolonization*, 264–68.
  56. ILC, 46th Session (1962), RoP, Report III: Report of the Committee of Experts on the Application of Conventions and Recommendations, 687.
  57. ILO Official Bulletin (OB) (1956), 39, no.9, para. 343.
  58. ARC 2 (1950), Report I, Report of the Director-General, 62–85; ARC 3 (1953), Report I, Report of the Director-General, 53–60; ARC 4 (1957), Report I, Report of the Director-General, 58–61.
  59. See the contributions of international trade union representatives, ARC 3 (1953), RoP, 73, 79.
  60. ARC 4 (1957), Report IV, Labour–management relations.
  61. All the representatives of international trade union federations, regardless of political orientation, made this connection. See the comments of WFTU, ICFTU and IFCTU delegates, ARC 4 (1957), RoP, 92, 94, 104.
  62. Rens described his encounters with government officials in Burma and (South) Vietnam as “the hardest and most unfriendly experiences” of his entire ILO career to date. Rens to Morse, 9 November 1959, in ILOA MF Z 1/1/1/16, Mission of Mr Rens to Asia, 1959.
  63. See ILO, *Technical Assistance*, Geneva 1954.
  64. By 1952 two other field offices had been set up, one in 1950 in São Paulo for Latin America and the other in 1952 in Istanbul for the Middle and Near East. In 1959, after long and stiff resistance by the colonial powers, an African field office opened 1959 in Lagos, Nigeria.

# 6

## Difference's Other: The ILO and "Women in Developing Countries"

*Eileen Boris*

In 1977, speaking at the Asian Regional United Nations Seminar on Participation of Women in Political, Economic, and Social Development, Mrs Arakitti Jatarupamaya from the International Labour Organization's (ILO) Bangkok Office reaffirmed her agency's commitment to women workers. "The ILO believes that the problems and the interests of women are generally indistinguishable from those of men and they should be dealt with in the same manner and within the same framework of policy," she announced. But given "changing trends in economic and social development, programmes have been intensified to help women attain better training and equal opportunity and treatment in employment."<sup>1</sup> This hybrid conception of the woman worker – the same as men but targeted for compensatory or additional treatment – reflected a long-standing position of the ILO recalibrated for the UN Decade for Women but also updated for a world where the challenges of global inequality stood at the centre of debates over the meaning of development, in which women and men from newly independent states across the globe demanded action.

In the 1944 Declaration of Philadelphia, the ILO reconfirmed that "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." Simultaneously, it called for special protections for women workers to safeguard maternity, health and welfare.<sup>2</sup> This portrait of the woman worker was compatible with the insistence, held by labour feminists since its founding, that women workers, because of their very status as women, required protective legislation so they might combine wage earning with caregiving and fully participate in the economy.<sup>3</sup> Conventions and resolutions from 1919 into the 1960s

on maternity, night work, underground mines, hazardous substances and family responsibilities embedded conceptions of female distinction, even as other international Conventions would push equal pay and nondiscrimination. Some staff members and delegates, especially from Scandinavia, promoted discourses and programmes that emphasized equal treatment with men. To be sure, distinctions among women called for particular measures to be directed toward married women, mothers, young women, old women and women in agriculture. But institutionally, the ILO usually spoke in universalistic tones, reflecting the dominant industrialized Western construction of the woman worker as a special kind of worker, a difference added to a category assumed to be male by the very lack of a qualifying adjective.

Among all the tropes of the woman worker, "women in developing countries" became difference's other: a special category within the distinction. These women had intensified problems due to their social and spatial location, a casualty of underdevelopment and traditional society. Such women exemplified what feminist transnational theorist Chandra Mohanty has named "third world [women's] difference." According to dominant paradigms, they were focused on survival, while women in the industrialized nations worried about discrimination, equality and professional advancement (as if they, too, did not have to contend with "survival.") They remained tied to the household economy, while women in Europe, the United States and, later, urban Asia and Latin America juggled home and work in offices and factories. They required modernization and saving from custom, while the West focused on liberation. Compared to their oppression, Western women had obtained an elevated status. However, this portrait of woman from "developing countries" was a product not only of feminists from the International Labour Office (the Office), the United States and Western Europe. Men – and some women – from the "developing" world also underscored her plight and bemoaned her problems.<sup>4</sup> As Mohanty reminds us, the use of "presuppositions or implicit principles" and not some inherent Western identity generates an "ethnocentric universalism" through assuming women in developing countries as a category outside of "a global economic and political framework."<sup>5</sup>

This essay addresses the ILO construction of "women in developing countries" during the height of efforts that associated development with modernization, that is, during the years following the Second World War through the mid-1970s, the period of the United Nations' First and Second Decades of Development. Under former New Dealer David Morse, who became ILO Director-General in 1948, technical assistance

took precedence over standard setting, and newly independent nations sought manpower, infrastructure and large-scale industrialization. Mainstream development thinking focused on technological and infrastructural change, such as hydroelectrical projects and up-to-date financial systems, directing efforts toward sectors dominated by men. Technical assistance promoted urbanization, agricultural mechanization, vocational training and governmental administrative capacity. Enconced in the family, engaged in subsistence and reproductive activities, women represented both a drag on productionist goals and underutilized labour power. However, ILO actions never were singular. The Director-General pursued modernization along with other UN agencies; ILO modernizers assumed that training would lead to permanent labour market participation by women, even if in the mid-1950s “this has not...been the regular pattern of evolution in most economically less advanced countries, at least in the early stages of industrialization.” But some sections within the ILO promoted cooperatives and small-scale industry, even if only as transitional schemes for developing nations.<sup>6</sup>

Though ILO reports usually specify the local circumstances of underdevelopment, that very term is suspect without further contextualization. As diplomatic documents, pronouncements of the annual International Labour Conference (ILC) session embodied flexibility to meet the situation of each nation and its employment policies, and were usually drafted in generic terms. Looking back from the twenty-first century, we can see that those speaking of “women in developing countries” wrestled with reproductive labour outside of the market economy. Women’s unpaid family work stood apart from the productionist enterprise so central to what would emerge as neo-liberal directions in development. The feminist project of development would commodify such family labour through self-employment, an outcome of the collective efforts of grassroots activists who sought better working conditions for rural women from the global South that created its own vulnerabilities.<sup>7</sup>

This chapter historicizes the construction of the category “women in developing countries.” Through archival sources, it brings into conversation three strands of scholarship: institutional histories of the ILO, feminist literature on women in development (WID) (and the closely related gender in development (GID)), and transnational feminist critique. The chapter recognizes the tension between universalism and particularism that historian Daniel Maul has found in the ILO’s engagement with human rights, development and decolonization, but highlights the gendered contours of knowledge production.<sup>8</sup> It provides one contextual and institutional framework for WID, a mode of analysis that would integrate

the productive and reproductive labours of women into capitalist accumulation, and GID, a form of thought that shifts from a focus on women to social relations between the sexes.<sup>9</sup> Finally, this history seeks to advance the decolonizing project of transnational feminist critique by deconstructing the very terms by which we label and classify – as well as the labour standards constructed through such understandings.<sup>10</sup>

Committed to raising living standards as well as defending worker rights and the right to social security, the ILO offered more than an echo of market globalization. It represented the human face of capitalism, one that, true to its social democratic roots, focused on social justice through decent work. Increasingly dependent on funds from donor nations, its technical assistance was never robust enough and, in the 1980s, without consensus between workers, employers and governments, it lacked the ability to confront structural adjustment through alternative economic studies alone.<sup>11</sup> At its best, the ILO has served as a norm-setting, not merely a norm-reflecting, forum, an arena for struggle between nations and between worker and employer organizations over conditions of work. Nonetheless, it has had to tread carefully – individual nations invited its consultation and funded its operations – so it has sought to balance diverse national circumstances with international norms.

### **Asian difference, handicraft offerings**

Concepts of female difference informed ILO policy even before the arrival of “women in developing countries” as a solidified, though never quite unitary, category that pervaded resolutions, technical assistance and research.<sup>12</sup> In the 1950s, ILO staff recognized the operation of multiple standpoints grounded in region, culture and social circumstance when it came to the woman worker in Asia. Some lamented, “problems... peculiar to the East,” highlighting the plight of young Hindu widows “forced to depend upon their own resources for obtaining a livelihood.” Without job opportunities, these widows would end as street beggars.<sup>13</sup> Such “Orientalist” portraits contrasted with the understanding of other ILO spokespeople who asserted that women activists in the global South had other priorities than feminists in the global North; “the urgency of concrete problems and needs seems to give these matters heavy precedence over more theoretical considerations of women’s rights,” a prominent consultant observed. In this regard, the organized women of Asia seemed preferable to “the acid and pugnacious strain of ‘women’s rights’” of parts of the women’s movement “of the West,” a reference to the National Women’s Party

and similar groups that sought to block ILO protective conventions for women because they treated women differently from men.<sup>14</sup>

For the most part, dominant perceptions of women outside of the West circulated within the ILO Office. When first investigating the employment of Asian women in 1953, the ILO planned to send its findings to governments, regional meetings and women's nongovernmental organizations (NGOs) – such as the All-India Women's Conference, All-Pakistan Women's Association and the All-Ceylon Women's Association. But Assistant Director-General Mr R. Rao asked the Women and Young Workers' Division "to make sure that the tone of the article is politically satisfactory and tactful." He confessed, "I am myself a little disturbed by certain very candid statements which Mme Brunn [the author] has made which I think sound a little western in approach." And, indeed, the published article prefaced its compilation of statistics and laws with a declaration: "The religious and social traditions of the Asian countries together with their social structure are most disadvantageous to women, and serve to keep them in a situation in all respects inferior to that of men." Brunn proceeded to label the conditions of their home labours as "primitive," "arduous and lengthy," and their practitioners, "ignorant and unskilled." It was not just that Rao felt the need to defend the progress of the region against such formulations, though he argued, "political discrimination against women as such has not been a marked characteristic of recent development in Asian countries." Rather, Rao asserted a prevailing approach to development that, even when taking account of women as he did, denied that it reified female difference. The sexes, he believed, were equally in need of employment, but his larger claim – "the problem is mainly that of economic development generally" – was one that delegates from emerging nations would continue to assert into the 1960s as a rationale to ignore issues the ILO associated with women, such as problems combining family responsibilities with wage work, because the pressing issue, they claimed, was to employ men.<sup>15</sup>

What supposedly distinguished women in the region was the embeddedness of their labour within households in contrast with women in the West. Such a perception cast women going out to work as an act that by definition separated them from the family without recognizing that considerations of the household economy spurred the activities of those in the global North as well. Employer members on the Asian Advisory Committee in 1952 held onto such a dichotomy when making regional comparisons. Unlike women in the "West," itself an essentialist category in these discussions, the employers asserted, Asian women "were not

isolated units but part of their respective families," and thus no practical reason in employers' minds existed for the ILO to conduct special studies on these women workers or take up the question of protective labour legislation, the subject of an extensive ILO report prepared for Advisory Committee deliberations. But employers generally agreed with government and worker representatives that vocational training would enhance the productivity of women. Seeking to allay the concerns of employers and governments alike, the ILO explained that it did not "propose the extension of the employment of women" because women already had entered Asian labour forces. Instead, it believed that vocational training of women and girls as part of its Technical Assistance Programme (TAP) would help "not only in diverting female labour to occupations for which they were most suited but in solving the general problem of unemployment in Asian countries."<sup>16</sup>

This understanding – women as part of the whole and women as a special case – justified the mission of the Women's and Young Workers Section. Thus, its chief, Mildred Fairchild, framed her arguments for helping Asian nations address women's employment "not simply in the interests of the women but in order to deal with the total manpower and social welfare question of these countries ... of which, I think, the practices now prevalent with respect to the employment of women are vital." For this prominent member of a transnational labour feminist network, the former chair of the Department of Social Economy at Bryn Mawr College in the United States, the labour standards of women, their health and welfare, were central, especially "from the demographic point of view of every country." Her linkage of women's employment, national health and demography anticipated future initiatives in which feminists inside the ILO and related agencies tried to empower local women through family planning and found funding from those who promoted population reduction as a central development strategy, a seizing of the means of reproduction.<sup>17</sup>

Questions of suitability indeed were fraught, full of cultural assumptions. Asian countries banned women from occupations deemed unsafe for them. The ILO suggested that states could restructure work to take account of culture and issues arising from it, such as "the floating garments which many women wear [that] can easily involve them in accidents."<sup>18</sup> The hazard of women's dress on the job hardly was a new concern. European nations and the United States long had pointed to the danger of dress in offering restrictions on women's wage work or in requiring women to accommodate attire to the workplace, as with the use of hairnets and putting on pants when producing armaments during

the Second World War.<sup>19</sup> Early ILO Conventions on underground mines and hazardous substances embedded related cultural concerns over “safety” and the woman’s proper place.

For cultural and social reasons, handicraft emerged as the sector most appropriate for women in Asia and other developing areas. Planners and promoters sought to build upon existing structures. ILO research in the early 1950s discovered that women “represent a considerable part of the productive capacity of the labour force in handicrafts,” though estimating numbers in this mostly informal sector was daunting. They were 85 per cent of handweavers in Thailand. In Ceylon (Sri Lanka), after service, handicraft employed the most women; they dominated all branches except metalwork. In Burma (Myanmar), women were nearly all the hand spinners and handweavers. Half of all Japanese peasant households, including women, engaged in handicrafts, such as mat weaving and textiles. Indian women wove silk, wool, cotton and other materials. Throughout the region, urban as well as rural workers undertook pottery, lace making and basketry. But the conditions of work were abysmal: long hours, hazardous materials, cramped quarters and economic exploitation from middlemen.<sup>20</sup>

Because crafts production occurred in the household, such work posed no challenge to *purdah* or other cultural or religious practices that secluded women from contact with nonfamily. This hidden quality, as Maria Mies later would argue in an ILO-supported study, allowed for the obfuscation of women’s labour as housework, what she named *housewifization*, and thus the denial of their status as a worker.<sup>21</sup> Indeed, the ILO’s own reports on “Development of Opportunities for Women in Handicraft and Cottage Industries” reinforced this perception by referring to women as engaged in handicraft during “spare” time or “leisure hours,” underscoring women’s status as supplemental family earners or as unpaid workers in family-based cottage industries, usually on a part-time basis.<sup>22</sup> These women emerged from ILO reports as disabled compared to other workers: they were weighted down by childcare and housework, social customs (i.e., *purdah*), illiteracy and limited education, and low status in the community. Thus, in a telling classification of reproductive labour, the ILO recommended “specific measures to mitigate their handicaps.”<sup>23</sup>

The promotion of handicraft occurred in a context in which tripartite ILO committees called for exploring “handicrafts and small-scale industries ...for combating underemployment in Asia.”<sup>24</sup> UN agencies also asked for documentation on women and part-time labour, with the Pakistani Representative to the UN Commission on the Status of Women (CSW) in 1953 introducing a resolution requesting the ILO

to study women's work in handicraft and seasonal agriculture "in the economically underdeveloped countries to the world."<sup>25</sup> The ILO divided its reports between women and part-time work (in industrial countries) and women and handicraft/cottage industries (in underdeveloped ones), another indication of the conceptualization of women in the global South as different.<sup>26</sup>

For men, handicraft loomed as an alternative development trajectory that offered a solution to underemployment through a "small is beautiful," Gandhi-inspired philosophy. Even before the Second World War, the Preparatory Subcommittee on Handicraftsmen concluded that "through the medium of artisan workers the I.L.O. would be able to understand and influence the labour conditions of a large number of workers and to deal with social questions which had escaped investigation, statistical treatment and regulation."<sup>27</sup> In the 1950s, the Cooperation and Handicrafts Division of the ILO targeted men as the proprietors of small-scale and cottage industries, the latter being where women laboured as unrecognized family members. In these discussions, women's work often became subsumed in plans for the development of rural villages. It became hard for the ILO to report precisely on female participation because most data did not break out that way. The ILO's 1950 Asian Technical Conference on Cooperation in Karachi, for example, advised, "an appropriate place should be assigned to handicraft and cottage industries," but such recommendations faced an uphill battle as those nations concentrated on industrial and infrastructure modernization.<sup>28</sup>

The phrase "handicraft and cottage industries" belied their separation. Experts made distinctions between small-scale industries, handicraft and cottage industry. The lesser status of home industries associated with women comes through in this post-Second World War development approach to the legacy of colonialism and imperialism. As one expert put it, small-scale industries capable of adapting modern methods of manufacture, which could increase productivity and thus reduce costs, organized around full-time labour in distinct workshops, could advance "the economic development of Asian countries." The results had to appeal to local consumers in price and style. But cottage industries were "of such less importance than small-scale industries." Still, to the extent that they could "provide a source of income for women, who from the conditions of rural life are compelled to work at home," he concluded, "they are not without their advantages."<sup>29</sup>

Handicraft brought perils in an industrializing world. Handloom weaving, for example, left many rural Indian families in "hardship"

because of lack of local markets and restrictions on export. As the Director of the Asian Field Office in Bangalore noted, "While women's opportunities for gainful work can be improved through the development of handicrafts and the organization of co-operatives in this field, unless there is coordinated action from a central source, there is a danger of such activity being harmful rather than gainful."<sup>30</sup> Training did not always match markets. ILO investigators lamented instruction of schoolgirls in embroidery, lacemaking and other decorative crafts that failed to prepare them for producing items for local use. They thus applauded efforts of local women's groups, like the All-Pakistan Women's Association and the Muslim Industrial Home in Karachi, to offer training in better techniques for female-dominated trades. They sought to improve what was already happening by sending technical advisers and experts to survey country needs and improve design, upgrade techniques, enhance marketing, and develop sources of credit.<sup>31</sup> Despite much talk about and some action on enhancing methods of production and quality of goods, despite efforts to establish cooperative marketing, handicraft as a mode of production could not escape association with backwardness and inefficiency, fit work for women, who were marked by their gender as unproductive labourers.

As part of these initiatives, Frieda Miller, the Director of the US Women's Bureau under Harry Truman and a trusted consultant to the ILO, found herself on a mission to seven Asian countries in 1955 to study women's employment with the instruction to put "[s]pecial emphasis ... on the development of opportunities for women in handicrafts and cottage industries and on the distribution of the female labour force in industrial home work."<sup>32</sup> Though a long-time critic of industrial homework, and one who fought for its legislative prohibition in the United States,<sup>33</sup> Miller was more open to home-based industry under the right conditions in Asia – that is, as long as the safeguarding of labour standards took place – probably because many governments promoted decentralization of production, and cottage industries supplemented the seasonal nature of agricultural economies. However, the "subsidiary role" of women as family workers in handicraft bothered her, since "the higher, more esoteric and rewarding skills are carried on almost exclusively by men to whom the economic rewards go alone." With women barred from the best training, she found "training for earning" programmes distressing because they lacked "any examination of the saleability of articles" made from inferior materials, without inadequate skills, and without "beauty or utility" to gain "a place in any market."<sup>34</sup> Indeed, conditions of women's labour reflected the evils

of home industry: "exploitation, over-long hours of work, health and safety hazards, as well as reduced earnings," all intensified from the home's standing outside of the labour law.<sup>35</sup>

Homework's dangers pervaded most discussions of handicraft. Scattered in "private" homes, unregulated and unorganized, and performed by women (often joined by their children) without other options for income and who find it "convenient" to work from home, such labour was ripe for abuse. ILO staff worried how to protect handicraft workers "against exploitation by middlemen and against sweated conditions of industrial homework."<sup>36</sup> They would eliminate the middleman by developing local supplies of raw material and alternative sources of credit, especially through cooperatives. They further advised bringing such work under national laws, despite being "easily evaded."<sup>37</sup> They were not alone. In 1956, for example, Pakistani and United States' delegates to the CSW asked the ILO "to give special attention to methods found useful to organize on a sound basis handicrafts and cottage industries products, and to avoid the evils of industrial home work."<sup>38</sup>

*Conditions of Women's Work in Seven Asian Countries*, Miller's report to the governments of Ceylon, India, Indonesia, Japan, Pakistan, the Philippines and Thailand, astutely documented the region's small industrial and even smaller professional sectors as well as the dominant agricultural one. It recognized national variations and differences between urban-rural locations and among social classes. Amid generally low living standards, Miller observed, women crowded into unskilled work and concentrated in agriculture, earning far less than men. These rural dwellers lacked adequate water, tools and other necessities to perform household labour without "physical hardship," and faced the "constant threat of famine." More married women worked than in the West, a situation that she judged made their lack of maternity protection especially harmful. They rolled cigarettes by hand, wove yarn of variable quality on handlooms and generally laboured in decrepit buildings "in small-scale industries which lie outside the scope of labour legislation."<sup>39</sup> Law thus stopped at where they could make a difference: women were to be protected from heavy loads, but not if they were unskilled construction workers and other casual labourers who truly could benefit from such controls, because such sectors stood outside of the labour law. Even when covered, exemptions, as with needlework in the Philippines, excluded them from equal pay, while cultural attitudes, as in Japan, impeded enforcement of laws for those who continued in the formal labour force after marriage. Thus, she argued for extending labour standards to

industrial homework, small-scale industry and agriculture – sectors in which women toiled.<sup>40</sup>

Miller recommended enterprises that women could engage in along with agriculture, modelled after the best practices found in the region. These home-based industries included food preservation projects “which would produce luxury goods for a world market” with local raw materials, like cashew nut production in Travancore-Cochin; home economics projects, like a residential training centre in Indonesia where girls learned to improve family diets through harvesting local produce, animals, and fish; and handicrafts training focused on making quality goods and marketing them.<sup>41</sup> “A large part of the activity surveyed falls outside the area of activity in which I.L.O. T.A. [Technical Assistance] projects would normally be considered, e.g., health programmes,” but she pushed for action in these areas because they would generate jobs for women, as would social welfare projects. She did not focus on questions of reproductive labour, though the burden of the household pervaded her findings.<sup>42</sup>

The ILO responded slowly. By the time Miller’s report appeared in 1958, “the time-gap between your mission and the publication of the findings made it difficult to strike while the iron was hot and that a good deal of the interest stimulated by your mission dissipated,” reported ILO Deputy-Director Jef Rens a year later. The ILO itself claimed it could not commit finances to follow up with a special regional meeting on women workers; it could only have its Asian Field Office incorporate the issue during individual country visits. The possibility for a broader definition of technical assistance, one that would address social conditions as well as employment projects, was not out of the question. But government action to improve the conditions of women at work was “one of relative priorities,” as it was for the ILO itself.<sup>43</sup>

The concern with researching “opportunities for women in small industries” remained. In 1963, yet another study was to consider enhancing what then was known as “women power” on very much the same lines as Miller’s report: production and marketing systems, training, cooperative organization, improvement of working conditions, enforcement of laws, and participation of voluntary organizations, government, employers and organized labour in promoting such labour.<sup>44</sup> By then, the question of “women in developing countries” had entered a larger discussion of “Women in a Changing World,” and the ILO had committed itself to legal equality and “nondiscrimination” through passage of Convention No. 111, though it still clung to protection of what it considered women’s biological vulnerability.

## Integrating women into development

At its November 1962 session, the Governing Body of the ILO decided to place for the first time the overall conditions of women workers worldwide onto the agenda of the ILC session for 1964. Reaffirming that “the problems of women workers are indistinguishable from those of men” but that women face additional challenges from maternity, motherhood, and their “social status,” it called for “an instrument” to address the balancing of employment with family responsibilities as part of a general consideration of the economic and social changes in the woman’s place. Attention to reproductive labour, ILO officials assumed, was necessary to bring women most efficiently into the labour market. The Governing Body justified its agenda by referring to a claim by the United Nations Special Fund “that the status of women was a sure indication of the level of a country’s national development,” hardly a new truism but one that took on added urgency as nations sought to tap womanpower to solve various labour shortages and promote economic growth. “Women workers in developing countries” emerged as a special problem within the overall question of the woman worker. It represented a response to UN resolutions on development and the advancement of women within such programmes, a designation embraced by delegates from “developing” countries who sought to speak for women workers, and a category that delegates from the global North could deploy to distinguish their situation from that of the global South.<sup>45</sup>

*Women Workers in a Changing World*, compiled for delegate deliberations, reinforced the portrait of women from the global South as distinct. “Problems of Women Workers in the Developing Countries” stood as a separate section, apart from “The Present Situation and Trend,” “Employment of Women with Families Responsibilities,” and “Administrative Arrangements for Handling Questions relating to Women Workers.” But the report vacillated between universalism and the particularism that long marked ILO engagement with the nonmale, nonindustrial and nonmetropole. Women’s employment was on the upsurge worldwide, it concluded, but while the “force of tradition and conservatism” impeded women everywhere, the nature of those cultural impediments differed, as did the contours of economic life.<sup>46</sup>

The section devoted to developing countries emphasized an overall inability to provide social supports that coexisted with the new “urgency” toward “the development of human resources” and the integration of women into national development. Some recommendations for “women in developing countries” paralleled those offered to

women in industrialized regions, like promotion of equal opportunity, equal remuneration, nondiscrimination and expansion of job possibilities through training and fair treatment. Others accommodated to cultural expectations and existing sexual divisions of labour, as in the call "to develop suitable forms of vocational guidance, counseling and employment service assistance, adapted to the particular needs of girls and women in the country concerned and to the cultural pattern and designed to encourage them to make the most of their occupational abilities." If women in Europe and North America faced barriers, those in Africa, Asia and Latin America had even higher hurdles: their "needs and problems" were "vast and urgent."<sup>47</sup>

Following very much the lines of the Office report, the 1964 International Labour Conference cast "women in developing countries" as a special type of female worker, one who suffered from "particularly unsatisfactory conditions," as the Workers' Group Vice-Chairman Rosa Weber from Austria stressed.<sup>48</sup> The ILC passed without opposition a separate resolution on "The Economic and Social Advancement of Women in Developing Countries." Introduced by governments in the global South themselves (Algeria, India, Iraq, Libya, Mexico, Nigeria, the Philippines, Sierra Leone, Tunisia, the United Arab Republic and Venezuela), this resolution called upon "developing countries... to give special priority in their national plans to assisting women to integrate themselves into the national economic life." It suggested a strategy of gender integration, which became the hallmark of WID, asking for full inclusion in social security programmes and nondiscrimination in employment, while maintaining a customary sexual division of labour. When it came to the other resolutions of the Committee, some European delegates questioned occupational segregation by sex as undermining gender equality. But the resolution on women in developing countries alone joined a call on advancing women's status through eliminating cultural and social barriers with maintenance of appropriate work for women, trying to accommodate those societies with separation of the sexes. The ILO's own technical focus on income generation for rural women – its response to the resolution's call to improve "agricultural, cottage industries and marketing" – highlighted actions for women, overshadowing the integration perspective by pinpointing special needs. It included a cautionary approach to reproductive labour, foreshadowing later efforts to improve women's unpaid family labour through modern technology, and limited social supports like childcare, but mostly through turning household labour into a source for income.<sup>49</sup>

The lack of opposition to this resolution buried divergent standpoints. The United States, explained labour feminist and government adviser Esther Peterson, advocated part-time work, fully under labour standards, as a realistic "utilization" of female labour power that allowed for the balance of carework and labour-market participation. But worker delegates from Europe and Latin America particularly felt that approval of such a measure would provide employers an excuse to replace full-time workers, the majority of whom were men (though this predominance, so taken for granted, was not uttered). So did an adviser to the Indian Government, Mr M. Dube. He asked, "How can we raise our standards regarding part-time employment when millions of people in the developing countries cannot find employment on any basis?" The persistence of underemployment and unemployment for men as well as women pervaded his stance. Dube described all the results of their deliberations "to be rather unrealistic as far as the developing countries are concerned. They seem to have been drawn up in the context of the conditions prevailing in highly industrialized countries where most people live in urban or semi-urban communities, the economics of which are characterized by labour shortage and where educational, child care and housing facilities, etc., are well developed."<sup>50</sup> What transnational feminist critics now label "third-world difference" turned into an explanation for lack of the existence of worker and employer organizations to substitute for or relieve the family labour of rural women. In contrast, Mrs Nelson-Cole, the Government adviser from Nigeria, declared, "I am a wife, mother, and a gainfully employed person and I do believe that man is the head of the house. However, I also believe that woman is the heart and that the one cannot function without the other... giving woman the rights she asks for does not mean she will suddenly turn into an Amazon warrior." Rather rights signal "that she is an integral part of a world labour force receiving her just reward with dignity."<sup>51</sup>

At the same time, women in developing countries offered a reference point for those delegates opposing a recommendation on workers with family responsibilities. Assuming industrializing nations to be in transition from "a patriarchal, static society," the Government delegate from Cyprus urged that women's entry into the workforce occur "without too much disruption of the traditional family structures and without detriment to a woman's responsibilities and duties vis-à-vis her family and her children." A male worker delegate from Italy expressed such sentiments more strongly: "In this developing world, development certainly should not mean the dissolution of the family." Against women's right to work he posited the rights of families to women's labour and argued

“for preparing and adopting efficient measures to lessen the economic necessity requiring women to seek work outside their homes.” Though “the social emancipation” of women was a worthwhile goal, morality and social necessity should propel them to improve ILO instruments “with a view to defending the family in a developing world.” The ILO’s continuing emphasis on handicraft and cottage industry, which allowed women to remain at home while contributing to the family economy, responded to such attitudes among member States.<sup>52</sup>

The discussion on family responsibilities in 1965, when the ILC passed a nonbinding resolution urging governments to aid women in this regard, exemplified the intermingling of women’s status with questions of global inequality, which would become commonplace in the 1970s when the UN system confronted South African apartheid and Palestinian dispossession with intensified urgency. A Kenyan Workers’ delegate, for one example, used the occasion to repudiate racism and colonialism. “Women workers, mostly in developing nations, need great help,” he admitted. “There are laws that were enacted before and these laws have become very poisonous to our women. I know of a law in a certain country which says that a woman must earn less than a man, but if a white woman is employed together with an African black man, the white woman gets more and the black man gets less. This is happening in Portugal, South Africa and other places.... We refuse to accept this and we shall fight against it.”<sup>53</sup>

By the late 1960s, with the UN Second Decade of Development, the ILO focused on improving the sustainability of rural workers through the World Employment Programme (WEP). The project set in motion a long-term policy advocating the provision of “basic needs,” making women – as “mothers, household managers, and very often also productive workers in the economy” – a preferred group for meeting this goal. It recognized the centrality of women’s reproductive labour for sustaining daily life.<sup>54</sup>

By then, a new global feminism had brought equality discourses to the forefront of UN formulations. At the 1973 Jogyakarta seminar, for example, the ILO emphasized its commitment to “equality of opportunity which means non-discrimination in educational, training and employment policy and practice” and promoted equal pay and comparable worth, though it continued to speak of “social protection of women in relation to their maternity function.” Efforts “to assist women with family responsibilities” appeared as “progressive social action.”<sup>55</sup> This same combination of equality and difference, what we might call equality through the recognition of difference, ran through the ILO’s

Declaration and plan of action promulgated as part of the International Women's Year right before the Mexico City Conference in June 1975. The ILO Declaration on Equality of Opportunity and Treatment for Women Workers finessed this dichotomy by naming as unacceptable restrictions on equality, but then qualifying what counted as restrictive: "Positive special treatment during a transitional period aimed at effective equality between the sexes shall not be regarded as discriminatory."<sup>56</sup>

Again the ILO constructed "women in developing countries" as a distinct category. Though discrimination existed everywhere, delegates insisted, many industrialized nations accepted women's employment out of the home and sought to address work and family balance for both men and women. But, as Mrs Diallo-Touré, a Government adviser from Senegal and the reporter of the Committee on Equality for Women Workers, explained at the 1975 ILC, "In the less developed countries, the position is different because of their economic, sociological, demographic and other problems." Reflecting the relational analysis deployed by representatives from former colonies, she warned:

We should not overlook the fact that these countries are dependent on the foreign world, that they are not very industrialized and that agriculture is predominant. This is why a very large number of women are chiefly engaged in family activities, that is to say, in farming, home work, small industry or a family business... Illiteracy, lack of education facilities... helps to keep women in an inferior position where they are particularly exposed to the risk of exploitation.<sup>57</sup>

While the new ILO Declaration would serve as a charter for women everywhere, she invited "developing countries... to make special efforts to ensure that women, particularly in rural areas, are accorded an equitable share of all resources available for development and are closely associated, with development planning and implementation."<sup>58</sup>

The Group of 77, the UN's "nonaligned nations" from the global South, took advantage of these discussions to assert their critique of the existing world order. As Mexican Government adviser, Mrs Esponda de Torres, explained, unemployment, underemployment and exclusion from social benefits were made and are not natural. She announced, "The women workers of the Third World are fully aware of the fact that their opportunities and sources of employment cannot be opened up to them while systems of exploitation exist which limit their possibilities." Members of the drafting committee from Central African Republic, India, Niger, Nigeria and Senegal underlined deteriorating conditions

in agricultural regions, which stemmed from “the introduction of the market economy, which had a damaging effect on women’s traditional status without providing them with opportunities for education, training or employment.” To the chagrin of the United States, Canada, Great Britain and Employers’ delegates, the ILC adopted a preamble clause to the International Women’s Year declaration that asserted redistribution of the world’s wealth as a precondition for improving women’s lives. Reflecting the position of the nonaligned nations embraced by the Soviet Union and its allies, the resolution declared that “establishment of a new social and economic order ... will contribute towards ensuring better employment, conditions of work and life for women, especially in developing countries.”<sup>59</sup>

The same tensions played out in Mexico City at the 1975 World Conference of the International Women’s Year. There the president of Mexico questioned the efficacy of asking “to recognize solemnly that all women have an equal right to education and employment if these requirements cannot be satisfied in most parts of the world.” Instead, he asserted, “to speak of equality of rights and opportunities for women is to speak of equality of responsibilities in the task of overcoming hunger, ignorance and ill health, and eliminating the ever present threat to the political, economic and cultural independence of nations.” Such official decrees subsumed women into the overall class or nationalist project. A similar conflict in emphasis between women’s rights, including abortion and sexual self-determination and economic justice, including support of mothers, pervaded the parallel NGO “Tribune” meeting. Despite clashes over a range of geopolitical issues, this meeting also embraced a development ethos, stressing employment of individuals rather than social welfare.<sup>60</sup>

Following Mexico City, the ILO again stressed integrating women into the development process through vocational guidance and training “opportunities,” employment and self-employment, and self-organization into cooperatives and trade unions.<sup>61</sup> This inclusion strategy, shared with feminists leading UN efforts, not only encompassed allocating equal resources for women and accounting for women in national development plans, but having women participate in decision-making processes. Presence through participation long constituted a goal of US women when it came to the United Nations and its related agencies. Liberal and development-oriented women’s groups stressed equality, opportunity, training and antidiscrimination. Similarly, the ILO at the World Employment Conference in 1976 proposed for developing nations that “special emphasis should be placed on promoting

the status, education, development and employment of women and on integrating women into the economic and civic life of the country." It also included the call for better working conditions. But here "third world difference" emerged when the recommendation ended with the relief of women's work burden and drudgery, giving attention to reproductive labour to facilitate this integration.<sup>62</sup>

## Conclusion

"Women in Developing Countries" moved from the margin to the centre of ILO deliberations during the last third of the twentieth century. In the 1950s, many within the ILO Office promoted handicraft and cottage industries as "a means of raising women's social and economic status ...and of promoting their fuller participation in the social life of the community."<sup>63</sup> A decade later, "Women in Developing Countries" gained its own section in the landmark 1964 discussion on "Women in a Changing World." Soon such women appeared as central to ILO efforts to promote "basic needs" as a strategy for improving the world's workforce. The self-employment of "women in developing countries" became a key mechanism to end poverty after the 1976 World Employment Conference.

The Programme on Rural Women of the Rural Employment Branch of the Office emerged as the incubator of the most significant feminist scholarship on this and related questions. Retaining discourses of development, by the late 1970s the ILO moved from generalized portraits of "women in developing countries" to encouraging proposals to situate "women in the context of third world underdevelopment," as one consultant suggested, "in terms of class formation and the development of capitalism" from both "feminist-patriarchal" and "feminist-class" perspectives on subordination and sexism.<sup>64</sup> It mounted small-scale demonstration projects with country-level partners, funded by foundations and northern European donor nations. As Rounaq Jahan, the Bangladeshi political scientist who in 1986 headed the Programme on Rural Women, told the Indian ministry of labour, the "objective... is to support innovative projects for rural women and facilitate global cross-fertilization of ideas."<sup>65</sup> The focus on handicraft morphed into home-based labour, through investigations into "the New Putting Out System" and support of grassroots groups, notably the Self-Employed Women's Association (SEWA) of Gujarat.<sup>66</sup> A decade later, home-based workers won Convention No. 177, led by SEWA, other organizations of homeworkers, and their ILO advocates. It was the first time that the ILO

stretched its understanding of employment standards to informal-sector women.<sup>67</sup>

By the end of the century, amid growing worldwide inequality, the ILO had found a new mission: fair globalization amid decent work. In this context, workers too long left out of the formal sector and its labour rights asserted their voices for social recognition. No longer designated as “women in developing countries,” home-based labourers were leading the agenda for global justice.

## Notes

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2. International Labour Office, *Declaration of Philadelphia* (Montreal: ILO, 1944), online.
3. D. S. Cobble, “A Higher ‘Standard of Life’ for the World: U.S. Labor Women’s Reform Internationalism and the Legacies of 1919,” *The Journal of American History*, 100 (2014), 1052–85.
4. C. T. Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses,” in C. T. Mohanty et al., eds., *Third World Women and the Politics of Feminism* (Bloomington, IN: Indiana University Press, 1991), 51–80.
5. *Ibid.*, 72.
6. G. Rist, *A History of Development: From Western Origins to Global Faith* (London: Zed Books, 2001); D. R. Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–1970* (Basingstoke, UK and Geneva: Palgrave Macmillan and ILO, 2012); “Development of Opportunities for Women in Handicrafts and Cottage Industries,” ILO Draft for the IX Session of the Commission on the Status of Women, 28, ESC 77–78.
7. Here I am indebted to J. Olcutt, “The Battle within the Home: Development Strategies, Second-Wave Feminism, and the Commodification of Caring Labors at the Mexico City International Women’s Year Conference, 1975,” in L. Fink, ed., *Workers across the Americas: The Transnational Turn in Labour History* (New York: Oxford University Press, 2011), 194–214.
8. Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–70* (Basingstoke, UK and Geneva: Palgrave Macmillan and ILO, 2012)
9. For a summary of these differences, N. Kabeler, *Reversed Realities: Gender Hierarchies in Development Thought* (New York: Verso Press, 1994).
10. M. J. Alexander and C. Mohanty, “Cartographies of Knowledge and Power: Transnational Feminism as Radica Praxis,” in A. L. Swarr and R. Nagar, eds., *Critical Transnational Feminist Praxis* (Albany, NY: SUNY Press, 2010), 24.
11. G. Rodgers, E. Lee, L. Swepston, and J. Van Daele, *The ILO and the Quest for Social Justice, 1919–2009* (Geneva and Ithaca, NY: ILO and Cornell University Press, 2009), 195–204.

12. In this piece, I cannot go into the divisions within the ILO. To treat it as a unitary agency obscures contestations within departments as well as the various functions of its parts. Instead, I concentrate on the overall direction at the time.
13. Minute Sheet: Mary Erulkar to Miss Fairchild, 21/7/50, in FO 158-1200, 06/1950-12/150; Mildred Fairchild, "Report of ILO – Current Activities and Plans," Not for Publication, c.1952, 3, in WN 1-1-61, Jacket 1.
14. ILO, *Report to the Governments of Ceylon, India, Indonesia, Japan, Pakistan, the Philippines and Thailand on Conditions of Women's Work in Seven Asian Countries* (Geneva: ILO, 1958), 13.
15. The study of Asian women appeared as "Women's Employment in Asian Countries," *International Labour Review*, 68 (1953), 303-18, quote at 304; Minute Sheet WN29: Mr Rao to Miss Fairchild, 2/7/1953, Rao to Fairchild, 22/7/53, WN 2/7 11/52 to 06/63; Sixth Item on the Agenda, *Women Workers in a Changing World* Report VI (1) 48th Session of the ILC 1964, (Geneva: International Labour Office, 1963), for example, 4 (Cyprus), 15 (India).
16. "Appendix: Report of the Asian Advisory Committee," 4th Session of the ILC, Geneva, 17-18 November 1952, 5, in WN 2/7 11/52 to 06/63.
17. Memo, Fairchild to Richard M. Lyman, 18 May 1953; Fairchild to The Correspondent of the ILO. in Tokyo, 20 May 1953, both in WN 2/7 11/52 to 06/63.
18. ILO, Asian Advisory Committee, "Special Protective Legislation Affecting Women and Its Relation to Women's Employment in Asian Countries," AAC/IV/D.5, 24, in WN 2/7 11/52 to 06/63.
19. For example, E. Boris, "Desirable Dress: Rosies, Sky Girls, and the Politics of Appearance," *ILWCH*, 69, no.1 (Spring, 2006), 123-42.
20. "Special Protective Legislation Affecting Women and Its Relation to Women's Employment in Asian Countries," 4-6; "Development of Opportunities for Women in Handicrafts and Cottage Industries," 9th Session of the ILC, 13-20.
21. M. Mies, *The Lace Makers of Narsapur: Indian Housewives Produce for the World Market* (London: Zed Books for the ILO, 1982).
22. Outline, "Development of Opportunities for Women in Handicrafts and Cottage Industries," 3, c. 1955, ESC 77-78. (Proposal: ILOA, ILO Draft "Development of Opportunities for Women in Handicrafts and Cottage Industries," 1955).
23. *Ibid.*, 29.
24. "Appendix: Report of the Asian Advisory Committee," 10.
25. Memo from: The Chief of the Women's and Young Workers' Division, Geneva to: Director of the Asia Cooperative Field Mission in Lahore, 15 June 1953, in WN 2/7 11/52 to 06/63.
26. Minute to Mr Lamming, Mme Figueroa from P. V. K. Ayyar, 21.10.54, ESC 77-78; "Development of Opportunities for Women in Handicrafts and Cottage Industries," 1-2.
27. ILO, Management Development Branch, Human Resources Department, "I.L.O. Activities Relating to the Development of Small-Scale and Handicraft Industries," Information Paper No. 1 Prepared for Technical Cooperation Experts Serving under the ILO Small Industry Programme (Geneva, September 1965), 1, New York Liaison Office 1-2-14-1, Jacket 1.

28. Speech by Mr Luis Alvarado, 16 December 1952, in DADG 13-6-13-1, November–December 1952; *ILO Cooperative Information*, No. 2, 28th 1951, 9, in DADG 13-6-13-2, January 1951 to December 1952.
29. “Small-Scale Industries and Their Importance for Combating Underemployment in Asia,” 12, 17.
30. Memo from: Richard M. Lyman, Director of the Asian Field Office, Bangalore to the Chief of the Field Services Division, Geneva, “Information on women’s employment in Asia,” 6 May 1953, 2, in WN 2/7 11/52 to 06/63.
31. Special Protective Legislation Affecting Women and Its Relation to Women’s Employment in Asian Countries,” 16–17; “Development of Opportunities for Women in Handicrafts and Cottage Industries,” for the 9th Session of the ILC, passim; “Opportunities for Women in Handicrafts and Cottage Industries Progress Report Prepared by the International Labour Office,” for the 10th Session of the ILC, passim, ESC 77–78.
32. “ILO Expanded Technical Assistance Programme Job Description and Details Relevant to the Appointment of Experts,” in Frieda Miller, ILO Personnel File P 7353 1955–57, Jacket 1.
33. E. Boris, *Home to Work: Motherhood and the Politics of Industrial Homework in the United States* (New York: Cambridge University Press, 1994), 247–52.
34. *Conditions of Women’s Work in Seven Asian Countries*, 4; “Confidential” memo on trip, 4–5, Box 9, folder 192, Miller Papers, A-37, Schlesinger Library.
35. *Conditions of Women’s Work in Seven Asian Countries*, 36–37. For an earlier study, “Reports and Inquiries: Conditions of Employment of Women Workers in Asia,” *International Labour Review*, 70 (1954), 542–56.
36. Outline (see above notes 6, 23), “Development of Opportunities for Women in Handicrafts and Cottage Industries,” 1.
37. “Opportunities for Women in Handicrafts and Cottage Industries Progress Report prepared by the International Labour Office,” for the 10th Session of the ILC, 2–4.
38. “Note for the Governing Body, 135th Session of the ILC, 10th Session of the UN Commission on the Status of Women,” 7, ESC 1004-11-10. The ILO objected that such a resolution to the ECOSOC encroached on its competency; it represented a continual problem with the UN CSW over who would hold the portfolio on women’s economic rights.
39. *Conditions of Women’s Work in Seven Asian Countries*, 7–12.
40. “Special Protective Legislation Affecting Women and Its Relation to Women’s Employment in Asian Countries,” 4–6; *Conditions of Women’s Work in Seven Asian Countries*, 7, 37–39, 48.
41. “Confidential” memo on trip, 2–6.
42. *Conditions of Women’s Work in Seven Asian Countries*, 35; “Confidential” memo on trip, 1–2.
43. Jef Rens to Frieda, 9 February 1959, Box 8, folder 212, Miller Papers.
44. Minutes: Elizabeth Johnstone to Dr Ammar, 1.4.63; “Women in Small-Scale Industries: A Plan of Study,” 1, WN 8–5, “Women in Small Industries” Study by Dr T. K. Djang.
45. International Labour Conference, 48th Session, 1964, Sixth Item on the Agenda, *Women Workers in a Changing World* Report VI (1) (Geneva: ILO, 1963), 1–2, 107. On UN efforts, Arvonne S. Fraser, “Becoming Human:

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46. ILO, *Women Workers in a Changing World* Report, VI, no.1 (1963), 107–10.
  47. *Ibid.*
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## **Part III**

# **The Human Rights Revolution**

# 7

## Homeworkers Organizing for Recognition and Rights: Can International Standards Assist Them?

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Homework is a very old form of work that is an ongoing work arrangement under current global production network/systems.<sup>1</sup> Homeworkers can be found in most countries, often producing traditional handicrafts, such as embroidery and weavings. To survive, and due to limited work opportunities, homeworkers are forced to constantly shift between income activities and have become increasingly dependent on national or global production networks.<sup>2</sup> Homeworkers are predominantly women who work from home either for a direct employer or intermediary, or who make and sell products directly or on an order basis. The decentralization of the production process provides companies with the opportunity to reduce costs and risk by eliminating production sites and, more importantly, by subcontracting work to small workshops they are able to outsource the work to homeworkers as “informal” labour. Women’s overrepresentation in informal work is arguably the principal factor explaining the labelling of informal workers as “unorganizable.”

This chapter challenges the historic determination that informal workers are “unorganizable,” by discussing various grass roots and labour initiatives that directly facilitate the organizing of homeworkers. Specifically, we examine the adoption and important role of the International Labour Organization (ILO) Home Work Convention, 1996 (No. 177), as an international standard that has enabled homeworker organizing by acknowledging and defining homeworkers and by offering a critical institutional validation that makes possible further lobbying for homeworkers. International efforts to strengthen labour standards

have brought to light a variety of complex problems and relationships. Principal among these are outdated conceptions of work and of employment which in the context of globalization and neo-liberalism, encouraged the growth of precarious and informal work.

We examine and illustrate these issues in our considerations of homework and discussion of a homemaker-dedicated organizing approach known as “mapping,” developed to organize homeworkers, as well as the organizations and groupings involved in such work. Homeworker mapping, and indeed Convention No. 177, evolved through the collaborations of various groups. Hence, we also discuss key homework organizations, highlighting their roles and dynamics in using Convention No. 177 and developing the mapping approach to organizing.

Our focus is on the period following the adoption of the Convention No. 177 in 1996. After a brief outline of the processes leading to the Convention’s adoption, we concentrate on its impact, specifically the way it has been used as a form of institutional recognition of homeworkers and its adaptation by the homemaker movement in organizing strategies. Exploring the ILO definition of homework can enhance knowledge and understanding among civil society organizations, countries, international institutions and academic scholars. We ask some key questions in this regard: Does Convention No. 177 contribute to the recognition and visibility of homeworkers at the national level? How does it make homeworkers more visible in corporate supply chains? And how does it improve homeworkers’ capacity to access rights and protection and to collectively organize?

Our discussion of homemaker organizing (mapping) is grounded in the instance of India, where over 90 per cent of the workforce is working informally. Providing specific details and characterizations of homeworkers and their organizations contributes to our understanding of work and workers outside of the traditional labour context, and explicitly reveals the contributions of marginalized women workers. Further, discussing the methods used for homemaker recognition and inclusion in civil society organizations such as unions, labour rights groups, and nongovernment organizations (NGOs) has the potential to inform strategies and policy concerning homeworkers. By linking Convention No. 177 to specific instances of homemaker organizing and women’s homework organizations, we hope to contribute to debates and knowledge about women’s grassroots organizing as an exciting area that offers new perspectives for understanding collective action.<sup>3</sup>

## **The Home Work Convention, 1996 (No. 177)**

The adoption of Convention No. 177 came about as a result of organizing and lobbying efforts beginning in the early 1970s with new forms of women worker organization and feminist research on issues relating to women's work. In India, the Self-Employed Women's Association (SEWA) had begun a long struggle for recognition of informal women workers as workers, including homeworkers, while in Europe in the same period there were examples of the organizing of homeworkers by the women's movement and trade unions. Examples include STIBTTA, the union of workers of embroidery, tapestry and craftwork in Madeira, Portugal, and in the United Kingdom, the West Yorkshire homeworking group and the National Group on Homework.<sup>4</sup> These grassroots initiatives inspired others in the 1980s and, importantly, were supported by the ILO in both India and South-East Asia, as well as other parts of the world.<sup>5</sup>

Alliances between homeworker organizations and trade unions, particularly the International Union of Food Workers and the International Textile, Garment and Leather Workers Federation, led to recognition of homeworkers as workers within the trade union movement, and in turn to demands on the ILO to put the drafting of a Convention (ultimately Convention No. 177) on the agenda of its annual Conference. While there had been extensive bilateral and regional exchanges between homeworkers' organizations, mainly in Asia and Europe, the need for international lobbying for a homework Convention led to the founding of the international network, HomeNet International, in 1994. In 1995 and 1996, HomeNet worked closely with the trade unions in the preparatory work and during the conference period itself. While only two homeworker organizers were present at the discussions as official delegates from trade unions (Canada and Portugal), campaigning by homeworker organizations had an impact on trade union and government delegations such that they took an active part in the proceedings with the support of the Dutch trade union federation, FNV, while regions of the world where there had been no organizing at the grassroots level largely remained silent.

The final adoption of Convention No. 177 marked the culmination of numerous studies, lobbying and much practical work on the ground with homeworkers in many different parts of the world. The text of Convention No. 177 brought together much of the knowledge about how traditional employment law could be adapted for homeworkers. At the

same time, Convention No. 177 and its accompanying Recommendation No. 184 began to address issues other than legal solutions, such as the need for national policies and for a wide range of practical projects to support homeworkers. A major weakness of Convention No. 177 was the fact that it was largely modelled on an outdated model of the employment relationship and thus did not specifically mention or include self-employed workers, although the concept of economic dependence is included, thereby opening the door for other definitions and legislation. Concurrent with the standard-setting process, homeworker groups used the opportunity presented by the debates to strengthen links with unions and with women in unions, as well as to develop new links between homeworker groups in Asia, Africa, Europe, Latin America and North America to form the beginnings of a transnational movement.<sup>6</sup>

Informal employment workers are commonly referred to as the “unorganized workforce” and share increasingly similar characteristics, regardless of geographical location. A new conceptualization of informal work, developed alongside the ILO’s Decent Work Agenda, is encapsulated in the notion of an informal employment continuum. The continuum acknowledges that workers are located across a range of employment, economic and enterprise activities. At the formal end, conditions are relatively regulated, and there are benefits and protections in place. At the other extreme, there are the common features of low pay as well as unsafe, irregular, and insecure work with little or no recognition of worker status and little or no legal protection. Homework is firmly situated at the extreme informal end of such a continuum.<sup>7</sup> Recent trends observable in both developed and developing economies under neo-liberal globalization include an overall decline in work security, social protection, labour standards and public utilities and services. They highlight and reinforce the interdependencies across the formal and informal employment continuum. The interconnectedness of formal and informal employment has been noted by researchers in discussions about globalization and the internationalization of production as suggesting a blurring of the boundaries between formal and informal divisions of labour.<sup>8</sup>

Despite conceptual advances, in practice homework remains largely invisible in supply chains, with corporations often reluctant to acknowledge the existence of homework in these chains. The invisibility of homeworkers in supply chains can be attributed to various factors: the location of homework in the private sphere of the home; gender issues, particularly homeworkers’ responsibility for production and reproduction; and the power asymmetries between homeworkers

and employers, who are keen to capture the “value” of homework without paying the real costs.<sup>9</sup> Coupled with homeworker invisibility, the often dire conditions of homework raise questions about whether and how homeworkers’ can build the capacity to engage in and influence the debates and practices surrounding their working conditions. Related questions involve employers and the concept of corporate social responsibility (CSR), notably how CSR can be applied to informal work and what CSR strategies might improve visibility and recognition of informal workers.

The questions above, and future practical advances for homeworkers, are linked to Convention No. 177. Since 1996, ten countries have ratified the Convention: Albania, Argentina, Belgium, Bosnia and Herzegovina, Bulgaria, Finland, Ireland, the Netherlands, Tajikistan and the former Yugoslav Republic of Macedonia. These Governments have mainly adopted the approach of amending existing employment law to apply to, or in some way include, dependent homeworkers. The term “dependent” has been linked to the type of relationship to an employer, but this mainly refers to those being paid at piece rates in supply chains. There has been little progress in designing new laws to cover a broad range of homeworkers, including those who are self-employed or who undertake multiple forms of informal work. Some of these issues have been taken up by the ILO in discussions on the employment relationship as well as resolutions on informal work in general connected to the Decent Work Agenda, which was adopted by the ILO and taken up by other international bodies.<sup>10</sup>

According to the Federation of HomeWorkers Worldwide (FHWW), ratification has not directly led to significant improvements. However, the gains made by the adoption of Convention No. 177 have been much greater than its ratification by just a few countries. Certain homeworker organizations have been able to use the Convention to highlight homeworker issues and to argue for the equal treatment of homeworkers in relation to other workers in terms of rights and entitlements. In countries where ratification is unlikely to occur, homeworker organizations have adopted the Convention as a benchmark and springboard for homeworkers to develop their knowledge and to articulate their demands, leading to campaigns for legal rights. For example, in Turkey groups conducted a series of workshops in different regions using Convention No. 177 as the starting point of discussions for homeworkers to develop their demands. In Bulgaria, homeworker organizations ensured that they were visible by becoming involved in negotiations with the government about new homeworker laws.<sup>11</sup>

The Argentinean group, La Alameda, has been utilizing national homeworker garment industry laws that have existed since the 1940s, and through its vigilance has resisted pressure from textile employers and government to reduce employers' legal obligations, thus keeping and kept such laws alive. Similarly, in Australia homeworker organizations and the textile union were successful in securing, at the national and state levels, homeworker-specific legislation to protect garment homeworkers, even if considerable challenges remain for homeworkers to access such protections. In Madeira, Portugal, the embroidery union successfully gained recognition for homeworkers, which has led to them being recognized as workers and thus entitled to social security benefits.

In most parts of the world, there remains a dual struggle for homeworkers: first, gaining recognition and, second, securing and implementing legal rights and protections. Convention No. 177 opens the space for this recognition and offers a possibility for homeworkers to incorporate the standard into local demands for legal rights as workers.<sup>12</sup> However, due to the many obstacles faced by homeworkers in various national and sociopolitical contexts, including marginalization and invisibility, the path to gaining any rights is difficult and dependent upon collective strategies facilitated by homeworker advocacy groups.

### **Homeworker advocacy groups and Convention No. 177**

One of the earliest homeworker advocacy groups was HomeNet. It formed in 1994 with the primary goal of securing an international convention on homework. The union of homeworker groups from Asia Pacific, Africa, Canada and Europe strengthened transnational linkages and enabled coordinated lobbying across government and union delegations. Such interactions contributed to a working relationship with key parties to voice homeworkers' need for recognition, visibility, and protection. HomeNet continued with the strategy that had begun over the period leading up to the adoption of Convention No. 177, bringing together groups and individuals linked to homework, but by 2001 the organization faced internal difficulties and was later dissolved. HomeWorkers Worldwide (HWW), based in the United Kingdom, was established to support HomeNet's and homework global organizing initiatives. HWW supported international organizing work through the mapping project, discussed later in this chapter. Subsequently, FHWW emerged from the mapping project to become the international homeworkers movement (IHM). HWW is a member organization of FHWW, and supports the organizing and meeting activities of FHWW. This

has led to extensive documentation, mainly through a newsletter and internal documents, about successful strategies and organizing initiatives in various countries. These efforts have influenced how groups develop policy at the national level and, ultimately, how they have begun to use Convention No. 177.

Homework advocacy groups are using the Convention in education and training sessions for homeworker leaders, in advocacy work with local authorities, including governments, as a way of encouraging the latter to see the issue in a broader and international context. Rather than narrowing their approach to lobbying for country ratification, homework organizations have used the Convention as an educational tool to maximize outcomes in regard to organizing, policy and legal reform matters in their respective countries. This shift has been reflected in the policy of the FHWW: as ratification of Convention No. 177 became a lower priority, the emphasis shifted to mounting campaigns to increase visibility of homework in global supply chains, to recognize homeworkers' rights as workers, and to improve social protection. For example, in 2008, FHWW initiated an international campaign, *Who Foots the Bill*, focusing on leather footwear homeworkers as part of a global campaign for social protection and for the recognition of homeworkers as workers. This marked a change of strategy, indicating a greater focus on labour rights in homework campaigns.<sup>13</sup>

The complexities of homework have raised questions about recognizing the extent of women's social participation in societies: How are women's economic contributions recognised? How can their identities as workers be strengthened to include a sense of entitlement? How can their status as workers and employees be recognized by governments and employers? These work-related aspects are intrinsic to women's role in society and to the circumstances of their economic position that intersect with class, gender and race. Similarly, it is crucial that specific strategies are developed to identify the ways women homeworkers can address these complex layers of disadvantage. These relate to how homework is positioned in relation to trends in capital, the linkages between national and global factors, and the potential institutional responses to address homeworkers' needs.

An emerging and growing area of theory (and practice) that elucidates our understanding of homework and its organization comes from empirical work in researcher and activist collaborations and the documentation of women's organizing experiences carried out by transnational women's networks.<sup>14</sup> The case presented here is constructed using data from International Mapping Project (IMP), conducted during the

period 2000–04. In addition, we make use of data from FHWW meetings during the period 2004–09. This data consists of reports and meeting notes, survey results and documentation of activities, as well as specific reports from Tamil Nadu, India. The IMP was initiated by HomeNet and later extended and supported by HWW and FHWW. A key aim was to develop successful models for organizing, including systematic documentation and evaluation of the organizing approach. New organizing work was accomplished under the project in previously untapped areas of Asia, Eastern Europe and Latin America.<sup>15</sup>

The term “mapping” was used as shorthand for a process of action research, involving homeworkers themselves, in horizontal and vertical mapping. The general approach was agreed at the outset of the programme in an international meeting, and results were discussed at a meeting held at the end of the pilot year. Materials were produced centrally as mapping tools, including survey forms, photo-packs, newsletters, and leaflets to be translated and adapted for local use. Regional networks and coordination were established in Latin America, Eastern Europe and India and Nepal, through which more regular exchanges and visits were organized to compare each other’s experiences and work. Horizontal mapping was used to identify homeworkers and the work they were doing, and to take initial steps towards organizing. Vertical mapping was done to understand the chains of subcontracting or marketing to understand better how homeworkers could work together for change.

The data resulted from an action-research methodology developed specifically by homeworker organizations, using researchers and trained homeworkers and a common framework for data collection, training and organizing. An action-research method enhanced the capacity of participant homework groups to intervene in and respond to issues, and to participate in developing methodological tools. This methodology, integrating research and practice, fits with the notion of conducting research in an ethical manner that is inclusive of participants and intends to effect beneficial change for them.<sup>16</sup> Participants in the IMP and members of FHWW established the parameters for the data collection, training and organizing methods, which are described in detail in the following section.

### **Homeworker mapping to organize: a case study of mapping in India**

This section analyses a specific instance of homework organizing in India, based on the methods used in the IMP detailed above. The case features the Rural Education and Development Foundation (READ), a

nongovernmental organization (NGO) based in Pudukkottai, Tamil Nadu, India, and describes READ's mapping activities.

ADITHI, an Indian NGO specializing in fair trade and economic opportunity for women,<sup>17</sup> serving as the mapping coordinator in the region, identified READ as a group that was interested in organizing homeworkers. ADITHI had extensive experience in organizing the poorest homeworkers and other women, and this experience helped READ to develop its work. READ, established in 1996, already had extensive contacts with women in the poor, rural area of Pudukkottai, and the contact with ADITHI facilitated new engagement with homeworkers in this region of India. The key mapping strategies used in Tamil Nadu to engage with homeworkers are discussed below. These include research teams and training, contact with homeworkers, meetings, exchanges and formation of homeworker organizations, followed by building alliances, most importantly with a formal trade union.

In Tamil Nadu, READ initially conducted a three-month mapping pilot that identified ten types of homework and documented the economic, social, and work conditions of homeworkers. Following this initial work, they met with the regional coordinator to evaluate their work, their future plans and work processes. The research team consisted of the director of READ, a local organizer, 2 women homeworkers, and 11 women fieldworkers. The research teams conducted mapping work across hundreds of villages and, as the work progressed, were able to include more homeworkers as contact increased. The main focus was on homeworkers in three sectors: garments, flower garlands (flower-joining), and the grinding and polishing of artificial diamonds.

## **Contact with homeworkers**

READ's initial work focused on carrying out surveys with garment homeworkers in 720 villages who were doing a range of work for large companies, retailers or local traders, or selling directly at local markets. This was organized through their team of field workers, who went to the villages, explained the aim of the mapping, and talked to the women there about their work. The organizers gradually involved more women in the process, carrying out surveys and discussing wider issues with the women about their lives and work.

One organizer noted:

We ask the women to analyse their own situation[s] and how they can get out of them. Because the women are very poor, they do not believe

that they can get out of them. The most important thing is that they analyse their situation. The benefits of this are that more and more women are joining the movement. Some women leave because they feel that they cannot change their situation, but the others stay and through the training realise that they can change their situation.<sup>18</sup>

The meetings were a means for homeworkers to come together to discuss common issues, identify their needs and establish their own groups. In addition, the meetings contributed to building new contacts and assisting the women to take on additional roles in the mapping process. Meetings also led homeworkers to having exposure to new information, training and opportunities to engage in dialogue with government officials and regional and international homework groups. Meetings commonly occurred at the village level, where women were encouraged to analyse their collective situation and begin the process to identify collective solutions. READ also hosted regional and international meetings, which they encouraged homeworkers to attend. At these meetings, the homeworkers could discuss issues affecting them and hear from homeworker groups in other countries.

In one regional meeting in Pudukkottai, Tamil Nadu, groups of flower, gemstone and garment homeworkers met for three days with others from the same sector, then all came together for a fourth day. For the sector-specific meetings, they invited intermediaries, government officials and, in the case of the flower-joiners, farmers, to attend.<sup>19</sup> This gave them a broader picture of problems and possible solutions. Local government politicians and officials were also invited to attend to increase their awareness of the issues. Homeworkers and their representatives were able to use this meeting to expose officials to a variety of practical and policy solutions. These comments from a flower worker demonstrate the homeworkers' views.

Here in Pudukkottai, 684 surveys have been done and already 20 self-help groups have been set up. The flower workers now have a voice and are no longer invisible. In other places, organizing work is also starting and people want to make links with each other and develop common demands.<sup>20</sup>

The government officials from the Agricultural Department present at the meeting offered to provide technical help. Home-based workers also wanted to work together to grow flowers and do their own marketing. Although it was recognized that there were many problems to face,

there was a sense that women had begun to collectively recognize their rights, as women and as workers, and to find ways to work together for change. Officials from the Centre for Indian Trade Unions (CITU), one of the national trade union federations in India, also participated in the meeting, including members of their women's committee, who contributed to the sense of recognition and importance of homeworkers.

### **Training, exchanges and the formation of groups**

Across the mapping project in general, a range of training programmes were organized: (a) for the initial mapping team, (b) for homeworkers and local organizers involved in the work and (c) to develop leadership skills as the new groups and organizations were set up. Another aim of the training programmes was to provide processes for organizers and homeworkers to develop strategies, with homeworkers increasingly taking a lead role.

In Tamil Nadu, organizing took the form of self-help groups (SHGs), formed in the villages with 15–20 members each, evolving later into the Pasumai Federation with an executive committee of ten homeworker members. The SHG is a relatively flexible form of organization, formed initially around savings and loans, enabling the women to free themselves from the moneylenders, often the intermediaries supplying their homework. The groups also formed the basis for training on a range of issues, including the Convention No. 177 and women's rights. As the groups developed, the women grew more confident of their collective strength and worked together on economic issues (e.g., buying raw materials, common marketing, fixing prices) as well as broader community issues such as elimination of child labour and caste discrimination, domestic violence, dowry payments, or issues relating to access to housing or water. Through the Pasumai Federation, the women were linked to the regional network in India and Nepal and the international network, to which they elected representatives to FHWW.

Involvement in the mapping and organizing activities led the SHGs to explore various avenues for improving the life and work of homeworkers. The strategies applied included legal protection, community–union alliances, collective economic benefits to improve homeworkers' lives, campaigns to inform policy, and international solidarity. These activities, including outcomes and key issues, are summarized in Table 7.1.

Through this process, and with the support of READ, the homeworkers began to make demands for their recognition as workers and for legal

*Table 7.1* Outcomes from mapping and key issues

Recognition as workers and legal protection	Successfully integrated homeworkers are recognized as workers under existing legislation – the Tamil Nadu Welfare Board.
Community – union alliances	Formation of an alliance with the union federation (CITU) to support activities such as training and legislation.
Collective economic benefits to improve homeworkers' lives	Establishment of a strong organization base. Formation of self-help groups and the homeworker federation of self help groups. Self-help groups provided access to savings and loans, training and access to government insurance and other schemes.
Organizing to define homeworkers' demands and inform campaigns and policy	Participation in local, regional and international meetings. Homeworkers' platform of local, national and international demands. Vertical mapping of supply chains in footwear, jewellery, flower garlands and garments sectors. Informed international campaign on footwear and contributed to policy development through meeting participation.
International solidarity	Participation in local, regional and international meetings. Participation and support for the FHWW. Homeworker members elected to FHWW international committee.
Key issues	Strategies lacked sufficient attention on training women leaders who could lead their organization independently of support from the NGO. The NGO director was still holding all the reins politically, with his allies in the trade union, while women were delegated to handle the savings and loans on the side. It became evident from a field visit in 2011 that collective structures, organizing activities and the women's participation and leadership had not been sustained. The reluctance of the NGO leadership to foster independence and allow the women to take the lead led to a decline in collective organization. The remaining Pasumai leader's focus shifted solely to income-generation for a few, and organizing at the village level ceased.  The NGO's work with footwear homeworkers initially expanded, but homeworkers were asked repeatedly to provide and collect information while not receiving sufficient support, including capacity building to generate. The work in Chennai and Ambur among footwear homeworkers identified needs but also showed limitations in the NGO's capacity to empower the women themselves or to address broader power inequalities within the supply chain.

*Source:* Case data, 1994–2009; field visits, 2011 and 2013.

and social protection. One avenue was through membership on the Manual Workers Welfare Board. This state government institution was a means by which informal workers in the “unorganized sector” could gain limited recognition and rights, notably social security benefits. The Welfare Board operates on a sectorial basis, with garment workers having been previously recognized. The gemstone workers gained recognition through membership with the unorganized sector Welfare Board, with the support of CITU.<sup>21</sup> The importance of this mechanism is that it is a way for workers without an identifiable employer, or those working through intermediaries and subcontractors, to gain recognition and a limited amount of protection. Workers pay a membership fee and can in turn claim certain benefits for children’s education and marriage and for accident and disability insurance.

CITU was an important ally to the SHGs because of its potential strength in lobbying and advocacy at both state and national levels. Some trade unions in India have recognized the need to include informal workers in their organization. In Pudukkottai, as elsewhere, they were happy to support the SHGs of homeworkers once they recognized the numbers involved and the importance of this form of employment. In addition to attending meetings and state-level advocacy, mainly through the Manual Workers’ Welfare Board, CITU provided trainers for SHGs on women’s rights, among other issues.

Homeworker involvement in the SHGs and the Pasumai Federation served as a process of empowerment, if conducted along participatory lines, that allows women to participate and analyse their own situations. The homeworker meetings throughout the mapping project and subsequently have asserted the need for collective organizing and bargaining through the established homework federations. The SHGs are a means to achieve this in the early stages of organizing in India, and clearly women workers value the importance of the structures that support their struggle for improved income, access to markets and legal protection. A longer-term aim is to set up a new trade union for unorganized women workers.

In Pudukkottai, homeworkers adopted a platform of demands that were both general and specific to the needs of homeworkers. The platform addressed issues and proposals targeted to the Government of Tamil Nadu and its departments. It called on the Government of Tamil Nadu to lobby the central Government to ratify Convention No. 177 and, in the interim, to adopt a policy on home-based work. It further requested that the Government of Tamil Nadu recognize the vast workforce of women homeworkers in the state and to establish the separate

Welfare Board for Home-based Workers based on the existing Manual Workers Welfare Board model. The platform made demands on institutions such as banks and unions. It urged the State Bank of India to maintain its policy of loans for self-help groups; it asserted the rights of Dalits and linked these with policies of technical support for activities to be developed by the SHGs. It encouraged trade unions to extend their organizing and advocacy work to include informal workers, particularly homeworkers. Further, it emphasized the importance of organizations facilitating income-generating or savings projects.<sup>22</sup>

The mapping in Pudukkottai led READ to begin vertical mapping work in footwear supply chains, where tens of thousands of homeworkers were estimated to be producing leather footwear for the export market to certain European countries, North America and parts of Asia Pacific region and the Middle East. The supply chains were mapped through information collected from homeworkers. The vertical mapping demonstrated that there were women working day and night for approximately 100 rupees a day (US\$2) whose products ended up in transnational brands.

The mapping work in Pudukkottai was important in developing a model of organizing that had the potential to be sustainable and replicated elsewhere. Two key components of this were the setting up of SHGs and the alliance built with a formal trade union, CITU, through the lobbying of the Manual Workers Welfare Board. However, this was undermined by a number of different factors that led to a decrease in organizing after the end of the project. First, two of the sectors – garments and gem polishing – were in decline, within the general context of decline in agriculture in the region and consequent out-migration from the area. Second, the NGO did not in practice succeed in training women to take up true leadership positions, and the SHGs concentrated only on financial affairs and were not able to maintain a political perspective on homeworking in a more general way (see Table 7.1). Nonetheless, the strategies developed in the project are evidence of a model that can be built upon and strengthened.

## Conclusions

The Tamil Nadu case in India shows the organizing of women homeworkers using the methods of the International Mapping Project. It illustrates how an emphasis on organizing can contribute to increased documentation and visibility of homework, and how organizing can achieve improvements in work conditions and increase the collective voice of homeworkers. This case shows how homeworkers may be

empowered to make demands regarding their broader economic and social conditions.

READ developed its own way of organizing, yet regional coordinator group ADITHI supported and informed READ's growth, as did the activities, experiences, and developments in the IMP. Key learning from the mapping experiences across all countries indicates the importance of documenting innovative organizing approaches; of ensuring the participation of homeworkers across all the activities, including developing their own organizations; of supporting local groups through exchanges; and of improving and maintaining links to regional groups and to the international homework movement.

The homeworkers in Tamil Nadu established local structures, participated in regional and international homework organizational structures and worked in close alliance with union federations or local unions. The Tamil Nadu case highlights the effects of collective organization in regard to homeworkers' capacity to identify and formulate demands to government, financial institutions, unions and other organizations. However, it also shows the fragility of informal worker organizing and the challenges for sustaining such approaches. This further demonstrates the importance of homeworkers' participation and leadership in policy formation and implementation, and of support for independence from cooperating NGOs.

The mapping approach in India demonstrates that when support mechanisms are in place, such as those provided by ADITHI and READ, homeworkers are more likely to form new organizations and to develop the skills needed to sustain ongoing organizing. Thus, existing organizations with experience in training and organizing workers, such as unions and NGO labour organizations, can provide critical aid to the emergence of new homeworker groups. These organizations and their resources can provide homeworkers with training to build their identification as workers. They can also help homeworkers to identify their group needs as well as the structure or type of organization that will best meet their needs in a given national context. This process is similar to traditional grassroots organizing that has occurred historically, in which groups of workers join together to improve their work conditions and income. What distinguishes the organizing process for many homeworker groups is that they have successfully organized and, therefore, defied the common perception that they are unorganizable.

Successful organizing can contribute benefits to individual women, but also, importantly, to broader political agendas with the potential

to achieve broader benefits. Relevant participatory strategies that were used to involve homeworkers and group organizing eventually led to homeworkers defining their common demands and interests. Their interests were identified as a result of homeworkers being first empowered to participate and influence the policies at the local level, and later to inform the policy and strategies of the international homeworker movement, the FHWW. Homeworkers' demands were conceptualized to enable women to become agents of change and make choices that could lead to improving their identity as workers and keep formulating their own demands. The case suggests that the nature of the organization that is built (i.e., relevant, inclusive), and the ways of building collectivism (i.e., supportive, participatory) contribute to homeworker activism and organization building. Challenges to the approach are the degree of commitment and support required to ensure homeworkers are empowered to fulfil leadership positions, and the difficulties of establishing a stable organization among a workforce that is by its nature unstable and precarious.

The IHM, embodied in the FHWW, developed effective strategies to promote and facilitate homeworker collective organizing among homeworkers. The IHM utilized a range of methods to support organizing, such as regional and international meetings and exchanges, the documentation of homework and collective organizing experiences and policy developments at the local level, to support and encourage other groups to adopt similar activities. A significant contribution by HomeNet International and, later, Homeworkers Worldwide and the Federation of HomeWorkers Worldwide has been to document and distribute examples of successful organizing through the newsletter, publications and website. The IHM demonstrates feminist influences in the development and conduct of the international mapping project. The FHWW functions as a transnational informal network that emphasises the importance of empowering women homeworkers in the process of national and international collectivization. Similarly, attention to the development of class-consciousness within a labour-rights focus, and sensitivity towards race and ethnicity are present through the promotion of indigenous and minority women in various country locations and in FHWW documentation materials. READ and Pasumai successfully nominated homeworker representatives to the FHWW international council, thereby prioritizing links from the local homeworker situation to those globally. Unfortunately, as READ's capacity to support collective strategies of homeworkers declined, so did the homeworkers' ability to participate in broader organizational roles, such as those in FHWW.

The activities of the IHM, together with the Tamil Nadu case discussed here, suggest some answers to our questions about the impact of the Convention No. 177 vis-à-vis the recognition and visibility of homeworkers and their capacity to collectivize. Convention No. 177 has contributed to an increased awareness of homework and, importantly, opened the door to a broader understanding of informal employment. Although the ratification rates remains low and have not brought about any substantial benefit to local homeworkers in the countries which have ratified, the Indian case shows that homeworkers are using the Convention as a benchmark for the development of homeworker demands around legal rights and recognition.

Convention No. 177 remains a significant international standard that provides homework groups with a point of entry to discuss and translate its provisions into national law: indicating to homeworkers that they are recognized at the global level (via the definition of a homeworker as worker) is a powerful symbol that supports their struggle for visibility, recognition and rights at the local level. Subsequent discussions at the ILO about decent work, and fair globalization have further contributed to the integration of informal women workers' rights and identified emergent ways to achieve legal and social protection. To be sure, documentation of homeworker initiatives focusing on collective organizing and legal and social protection may contribute to furthering this discussion.

The notion of who is a worker remains a critical question. Such definitions do matter to the poorest women workers and, as shown in the Tamil Nadu case, collective organizing strategies can lead them to use the local welfare board legislation to achieve recognition as workers. This in turn allows them to access social benefits and reduce economic insecurity, thereby, improving their economic and social well-being. Homeworkers recognize that the means to improve their income and working conditions are important, but the collective strategies to organize themselves are essential to gain recognition and be able to increase their participation in civil society, to assert their voices and, influence and participate in debates that affect their lives.

Collective organizing was needed to demonstrate that the reality of homework does not always fit the traditional definition of employment, or employment laws. This has also been highlighted in work focusing on global supply chains. Recognition of homeworkers in global supply chains remains a significant oversight, making homeworker activism an ongoing necessity. However, employment law definitions of who is a worker constitute a considerable barrier towards informal workers' capacity to organize through traditional trade union structures.

The Tamil Nadu case offers some evidence that new forms of worker organization can exist outside of a formal trade union focus, and that organization may genuinely inform future collective strategies in unions and labour groups. Further, such extensions of labour organizing amongst informal women workers may aid in our understanding of new forms of social-movement unionism. Critical to the analysis and promotion of new labour organizing is the lack of recognition by unions, researchers, multilateral institutions and industrial relations systems. Emerging labour groups may not be registered as unions, but they are genuine worker organizations and worthy of recognition and support.

In conclusion, organizing homeworkers involves tackling multiple layers of discrimination and oppression that takes various forms in different countries. The situating of poor women workers within all geographic economies positions them to understand their work context in relation to gender, class and race alongside other issues relevant to their local context. Further, IHM activism and the characteristics of the Indian homeworker raise important issues about homeworker representation in the ILO under the current tripartite model, and the current emphasis on individual solutions through development strategies. Although we describe a successful organizing approach, in the short term, there are many challenges for fledgling homework organizations to access resources for organizing and for training, and to be able to document and share this important work. Homeworkers have common interests – for instance, the collective struggle of poor women is a common defining interest. What is critical is how these common interests are conceptualized so that women are agents of change, and are empowered to make choices and decisions that could lead to improving their identity as workers. This may then contribute to women workers formulating their own demands, to the types of organizations they participate in, and to the methods of building collective strategies. Indeed, the ILO in recent years has become more cognizant of the importance of the informal sector, if only because informality challenges the traditional underlying standard employment model.

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# 8

## The Global Domestic: Mapping Decent Work in International Dialogues

*Jennifer Fish and Jennifer Turner*

The 2010 and 2011 sessions of the International Labour Conference (ILC) in Geneva marked a poignant moment for domestic worker organizations and human rights advocates because they placed “Decent Work for Domestic Workers” at the centre of their tripartite dialogue. For the first time, the possibility of establishing a global set of standards for domestic labour materialized through the inclusion of this topic as one of two standard-setting agenda items within the 99th and 100th annual Conferences<sup>1</sup> of the International Labour Organization (ILO). At her 2010 opening statement at the ILC, Tanzanian activist Vicky Kanyoka proclaimed, “We have been waiting for this moment for a very long time.” The ILO last held preliminary discussions on the particularities of the household labour sector in 1948, followed by a second call for standard-setting action in 1965. Forty-five years later, a network of over 30 domestic workers from Africa, Asia, South America, North America and the Middle East joined global union leaders and gender and labour rights advocates to campaign for a Convention and supplemental Recommendations to protect the rights of domestic workers worldwide. The ILC 100th Session marked a global human rights victory when the ILO passed the first set of international standards for domestic work with a nearly unanimous vote of support from governments. The Domestic Workers Convention, 2011 (No. 189) has since become a celebrated labour and human rights victory, with ratification by 15 countries.<sup>2</sup>

The participation of the aligned International Domestic Workers Network (IDWN) made the establishment of this Convention unique because it infused an activist presence within the halls of the United Nations. These ILC discussions on a convention for domestic workers

sparked new forms of collective organizing as grassroots strategies met the formal international institutional and tripartite ILO procedures for the formation of policy. The elevation of the plight for fair household labour standards from national governments to international institutions has subsequently generated a series of labour, human rights and gender campaigns that construct a symbolic global figure of domestic workers in international dialogues. This chapter paints a picture of the “Decent Work for Domestic Workers” discussions that took place during the 2010 and 2011 meetings of the ILC.<sup>3</sup> The discourse and imagery that emerged surrounding domestic work in these proceedings reveal a wider collective interpretation of the social constructions of gender, race, nation and class within this global sector of women’s labour. Analyses point to vivid connections between the state and international spheres that emerge surrounding efforts to protect the “most vulnerable”<sup>4</sup> portion of the population, namely women domestic workers. These reflections on ILC negotiations of Convention No. 189, are intended to generate expanded scholar-activist dialogue on the intersections of class-based, racialized, nationalized and gendered subjectivities, as they are taken up in an emerging global branding of the plight of domestic workers worldwide.

### **Setting the context for “Decent Work for Domestic Workers”**

K. Chang and L. H. M. Ling posit that a “regime of labor intimacy” underpins the wider emphasis on capitalism central to the economic and technical growth of globalization.<sup>5</sup> From this perspective, in order for capital to transcend boundaries, people must also flow across borders to support these existing complex systems of interconnection. As S. Sassen points out, this increase in human flows has taken form through the measurable growth of service labour across the global economy.<sup>6</sup> Accordingly, the informal economy has seen escalating rates of women’s employment in the domestic work sector. International institutions, however, have not met these realities with standards of protection for the new global labour force. The ILO’s Domestic Workers Convention, however, symbolizes a pivotal moment when the ILO directly addressed this gap between international standards and the realities of the existing global circumstances.<sup>7</sup>

The underlying complexities of this pragmatic goal to produce measurable labour standards stem from core ideological assumptions about the devalued nature of domestic labour, employment that takes place in the private sphere and is associated with “women’s work.”<sup>8</sup> This division

between public and private labour has been central to feminist critiques of women's marginalization within the household.<sup>9</sup> In their opening commentary on the case of domestic work worldwide, representatives of the government of Brazil echoed this point, as they problematized the gender inequalities within this sector: "Because it is carried out in the home, domestic work is seen as part of the work carried out by women traditionally, and not remunerated. Therefore, domestic workers have been excluded from the main labor standards."<sup>10</sup> This statement went on to suggest that traditional constructions of women's work would need to be disrupted in order to assure fair working standards for this sector.

S. Ally expands this public/private analysis by demonstrating how domestic workers are often constructed as "vulnerable" at the state level through the establishment of legislative protections that reinforce notions of poor and disempowered women employed in this sector.<sup>11</sup> Ally suggests that domestic workers themselves at times participate in this construction of vulnerability. At a global scale, the "Decent Work for Domestic Workers" campaign similarly plays upon such notions of gendered vulnerability in efforts to promote international protections for the large number of "victims" left behind in globalization's massive expansion. By applying Ally's theory of vulnerability to the international scale, the plight of domestic workers, as taken up by a more expansive transnational NGO machinery within the Convention campaign, has branded a global domestic image, which relies upon notions of domestic workers as victims of the larger migrant-labour system. During the ILC discussions, domestic worker organizations reproduced such imagery in order to convey a unified position. This Convention process within the ILO allows us to examine the intersections of such social constructions surrounding domestic labour, the movement to develop global gender rights standards and the role of international institutions in protecting those considered among "the poorest of the poor."

The ILO estimates there are approximately 56 million domestic workers worldwide, whereas other organizations place the world total closer to 100 million. Women and girls comprise 75–90 per cent of this sector, which represents the largest occupation for young women worldwide.<sup>12</sup> In developing countries, domestic workers serve a major sector of what has been called since the 1970s, the "informal economy." Overall estimates suggest that 90 per cent of the sector is comprised of women from the global South.<sup>13</sup> The salary remittances domestic workers provide allow the global economy to function, while forming key trade relations between sending and receiving countries. As feminist international relations scholars point out, the state participates in positioning domestic

workers as key commodity exchanges between countries and regions, thereby reinforcing critical bilateral economic relations based upon the value of women's household labour.<sup>14</sup> Throughout the ILC discussions on Convention No. 189, these demographics and transnational trade patterns reinforced the constructions of poor women of colour from the developing world as the "typical third world woman" domestic worker.

Within the global configuration of this distinct form of labour, differences in race, class, nationality and citizenship status continuously reproduce unequal power relations between women in the household labour space. The existing global economy draws sharper divisions, according to those who can hire the labour of women with lesser class and racial privilege and those who cannot. This, in turn, reproduces fundamental inequalities of capitalist social relations. Ironically, in this existing migrant transnational economy, domestic workers must negotiate power and mobility within a system that severely limits their individual and collective agency.

In the existing context of globalization, these social inequalities are exaggerated when power differences are determined by citizenship. (Migrant workers are especially vulnerable to exploitation, as they fear deportation if they report any employer abuse.) In many ways, contemporary domestic work reflects a form of slavery in terms of the harsh conditions that domestic workers face, including abuse, violence, threats, denial of freedom and exploitative working conditions. In many countries, children are trafficked to perform household work and women are rerouted to sex work under the guise of domestic labour. The potential for social inequality to manifest in exploitative practices increases with the transnational trade of domestic workers. Without access to citizenship rights, state policies and labour laws surrounding domestic work are inaccessible to migrants. Within this larger context of global restructuring, international standards are critical, both for setting norms of practice and for the applied implementation of protection for workers, regardless of citizenship.

### **Putting domestic labour on the ILO agenda**

The ILO visited consideration of domestic work initially in 1948 and then again in 1965. Yet in both cases, larger political concerns of the ILO within the UN system, coupled with prevailing considerations of women's work at the time, limited the realization of any formal measure. E. Boris synthesizes key explanations for this outcome in her historical analysis of domestic work within the ILO.<sup>15</sup> First, she points

to structural issues that constrained the ILO's capacity to produce meaningful outcomes that would protect domestic workers. Given the tripartite representational structure, neither domestic workers nor employers of domestic workers, both unorganized, could be represented in the ILO decision-making process. Thus, without direct representation from workers themselves or from employers, the domestic labour sector could not hold ground within the ILO's strong allegiance to the tripartite structure. This left consideration of the sector to the influence of women "experts," labour feminists, representatives of government bureaus and the international women's organizations of middle class women who pushed the ILO to consider domestic workers.<sup>16</sup>

During this same period, strong overarching assumptions about gender and domestic work prevailed in ways that led the ILO to place a lower priority on any coordinated response to this sector. Many male leaders of the ILO "did not take household employment seriously because they associated the labour with the organization of domestic life – and the unpaid housewife."<sup>17</sup> Furthermore, women employed in households were considered "one in the family" and largely unorganizable as a sector, thereby dissuading attempts at formalization and collective organization. In many of the public records of these discussions in the late 1940s, a general assumption that the domestic work sector was not relevant to the global arena prevailed. Some leaders even suggested that because of its unique location in the private household, domestic work would not likely become a source of international competition.<sup>18</sup>

Another consideration of the "forgotten" and "underprotected" sector of domestic labour emerged in 1965, yet fizzled out relatively quickly. Rather than take on the case of domestic work through a Convention, the ILO advised training and various approaches to standardization. Yet, it called on the "public conscience" to govern regulation, within a wider social and political context that increased the public's recognition of the informal economy. Even so, domestic workers themselves did not secure a foothold within the formalized ILO system, nor were representatives of wider employer bodies invested in this sector. As a result, it took nearly 30 years, a coordinated activist-labour campaign and a shift to a much larger recognition of informal labour and migration within the global economy for the ILO to take on the subject of domestic work again, this time as a formal agenda item putting forth a new Convention.

The placement of domestic labour on the ILO agenda as a specific sector under consideration for the most comprehensive labour protection marks a bold move within the organization and a celebrated victory for the labour, gender and human rights struggle. The historical

circumstances of domestic labour's invisibility, coupled with its placement in the private household and informal economy, led many to ask how the ILO came to consider this sector for an international convention. We identify four key factors that allowed domestic labour to "get to the table" of the ILO: (1) an established climate for "decent work" and "fair globalization" within the ILO; (2) the mobilization of a transnational network of domestic workers; (3) organizational advocacy from key players within the system; and (4) the strategic activism and alignment of civil society organizations within the ILO tripartite standard-setting process.

The 2008 ILO Governing Body decided to place "Decent Work for Domestic Workers" on the 2010 agenda as an "attempt to bring the traditionally excluded group of domestic workers within the labor market formality." According to the "Briefing Note for Worker Delegates" prepared by the International Trade Union Confederation (ITUC), "This decision followed calls by the International trade union movement and received the unanimous support of the Workers' Group of the ILO Governing Body, which saw the decision to place the item on the Conference's agenda as an historic one bringing the ILO 'back to basics' by developing standards to effectively protect vulnerable categories of workers."<sup>19</sup> These efforts to establish standards and social protections for one of the largest sectors of the informal global economy suggest an increased recognition of the growing demand and importance of domestic work across geographic locations. Furthermore, they manifest the larger ideological emphasis on "decent work" and "fair globalization" central to the leadership of Director-General Juan Somavia from 1999 to 2012.

This consideration of a domestic work Convention expanded the capacity of the ILO by stretching the reach of its participation processes, as well as the scope of policy coverage, to the informal economy. Underpinning the formal ILO procedures is an organizational value that suggests, "human rights documents allow for a common language to talk across boundaries."<sup>20</sup> The emphasis on social dialogue within the ILO allows for a formalized structure to deal with such boundaries of difference in ideology, geography and social location. By engaging in social dialogue processes at the annual ILC session, Government, Employer and Worker representatives jointly shape international policies and programmes through their participation in a negotiated public dialogue, informed by substantive research and the input of advisory bodies. The larger shifts in the ILO's emphasis on decent work paved the way for domestic workers to participate in the standard-setting process through the support of key professional organizations that are allies.

Domestic worker organizations influenced the initial gathering of data for the tripartite discussion by informing governments of the most relevant data and national work conditions. Within the organizational procedures for consideration of a Convention, the domestic work agenda item followed the standard ILO double-discussion process, which affords two years of public negotiations on topics proposed for a Convention or Recommendation.<sup>21</sup> After the Governing Body placed domestic work on the agenda for the annual conference in 2008, the International Labour Office (the Office) prepared a law and practice research report and distributed it to all constituents, along with a questionnaire.<sup>22</sup> The ILO's Conditions of Work and Employment Programme solicited comments from the 183 ILO member States, which resulted in 103 responses, 46 of which involved consultation with workers' and employers' organizations.<sup>23</sup> In these formative responses, domestic worker organizations offered some of the most relevant and current data on the lived realities for this sector of the informal economy. These data informed the second ILO document, the report *Decent Work for Domestic Workers*, which included "Proposed Conclusions for the establishment of both a Convention and a set of Recommendations on global standards for this sector."<sup>24</sup> Additionally, data from these reports informed the tripartite discussions in ways that represented the inclusion of domestic workers' voices, even when they were not represented in the formal tripartite delegations.

The 2010 and 2011 International Labour Conferences saw the largest participation of "actual workers" in the standard-setting process. Unlike any former tripartite dialogue, those who would be most impacted by the outcomes of the process were present in the room – creating tangible pressure – as well as the most active and aligned collection of nongovernmental and civil society organizations in the history of the ILO. According to lead analysts in the ILO structure, the level of interaction of rank-and-file workers within the negotiation process had not been seen previously, even though former standard-setting conferences had taken place for a variety of other labour sectors such as maritime workers and home-based workers. As one policy expert conveyed, "It is so helpful to see for whom you are working." Although the formal procedures of the ILO reinforce traditional power relations, the 2010 and 2011 ILC sessions also provide a vital opportunity to examine new forms of collective agency within this historically masculine UN agency. The International Domestic Worker Network (IDWN), in partnership with global unions, and civil society organizations, collectively actualized the opportunity for workers to take part in the negotiations on the

standard-setting instruments that would directly impact their ability to realize international protections. This convergence of the formal role of the ILO, its guiding principles, and the collective influence of the IDWN frames our analyses to follow.

## **The formation of the IDWN**

The ability to gain access and influence within the ILO stemmed from the international alignment of domestic workers as a result of the support of key advocacy and professional gender and labour rights organizations. In 2006, 60 domestic worker leaders from trade unions, networks and support organizations took part in an international conference in Amsterdam: “Respect and Rights: Protection for Domestic Workers!” The meeting sought to align national domestic worker organizations in order to advocate as a united front for domestic worker rights within the ILO. Subsequently, a steering committee of domestic workers was formed in 2008, the same year the ILO announced that it would schedule “Decent Work for Domestic Workers” as an agenda item for 2010. If the delegates decided to move forward, the ILC would take up the issue for final action in 2011.

With the concrete goal of building a global movement, advocates formed the International Domestic Workers Network in 2009, which comprises a steering committee, a group of seven advisers from six global regions and a technical support team. The ILO process provided the first tangible organizational campaign, as the network materialized its overarching mission to promote a “strong democratic domestic workers’ organization to protect domestic workers’ rights” and “change power relations in society, to promote gender equality and human rights for the benefits of domestic workers.”<sup>25</sup> The IDWN built its organizational strength and capacity through the ILO Domestic Workers Convention campaign and a wider global campaign to promote awareness among governments. The formative organizational structure relied upon regional representatives and an executive body to establish consistent communication between the two annual ILCs, develop training and campaign resource material and continue to educate members on strategies for influencing the ILO system. All formal meetings and correspondence of the IDWN included Spanish/English language interpretation to assure communication across linguistic lines. As a united face of domestic workers, these procedural measures captured a wider motivation to recognize diversity while aligning across geographic, racial and ethnic differences.

## Strength in allies

The IDWN's formation and continued strength stems largely from two key support organizations representing the complementary labour and gender rights dimensions of domestic workers' fight for protection. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) union became the first global union to represent the rights of domestic workers in the informal economy. From a research and policy advocacy position, the Women in Informal Employment: Globalizing and Organizing (WIEGO) network based at Harvard University, supported the alignment of domestic worker organizations as a vital sector within its focus on the informal economy. These two distinct organizational support systems strengthened the capacity for domestic workers to organize internationally and provided entrée to obtaining ILO and NGO observer status within the 2010 and 2011 annual conferences. WIEGO and the IUF gained 2 of the 35 places available to observer civil society/nongovernmental organizational representatives, opening access for IDWN members to every aspect of the ILC process of policy formation.<sup>26</sup>

The alignment with two powerful organizations with a historical presence of participation within the ILO afforded an important political dimension that elevated the status of the IDWN. Given Juan Somavia's investment in the principles of fair globalization and decent work, the ILO climate fostered the integration of domestic workers within the process of creating labour standards. Through the use of key personal ties in this distinct Convention process, WIEGO leaders capitalized on the receptivity to domestic workers' input and organized a personal meeting of the IDWN with Director-General Somavia during the opening of the 2010 conference. At this meeting, Somavia personally greeted each member of the network and received the organizational "Platform of Demands"<sup>27</sup> for the protection of domestic workers in the form of a Convention. While maintaining his formal commitment to tripartitism, Somavia demonstrated a welcoming and encouraging response to the larger goals of the IDWN. Throughout this dialogue, IDWN members discussed the importance of expanding awareness of domestic worker rights beyond the ILO to a global movement that would utilize an international Convention for a larger campaign for labour and gender justice. Somavia recognized the potential for international instruments to motivate large-scale social change movements. As the first formal IDWN interaction with the ILO hierarchy, this meeting served as a vital source of motivation for the organization and tangible recognition



*Figure 8.1* Members of the IDWN with ILO Director-General Juan Somavia  
*Source:* Photo by Jennifer N Fish.

of the legitimacy of domestic workers' participation in the Convention process. Figure 8.1 depicts a historical moment for the IDWN and the ILO in terms of the integration of domestic workers and civil society organizations in the tripartite process.

From a strategic perspective, WIEGO and IUF afforded domestic workers an alternative means of access to the formal Workers' delegations, which would have depended upon national unions' willingness to appoint a domestic worker to one of the few positions within Government delegations. Since so many national unions had failed to recognize domestic worker unions as viable affiliates, their capacity to speak on behalf of this sector remained severely limited and heavily laden in male-dominated union politics. Therefore, the entrée provided by WIEGO and the IUF allowed an alternative and strategic channel by which domestic workers' voices and interests would be present at each step of the negotiations, even though they did not carry an official Workers' delegation badge and did not have voting rights. As evidence of the success of this organizing strategy, however, by the second-year meetings in 2011, some IDWN members also obtained formal seats as voting members of the Workers' delegations from their respective countries. The first domestic worker to gain voting rights, Shirley Pryce, president of the Jamaican Household Workers Association, took the floor of the ILO and stated, "I am a former domestic worker, and there cannot be many of us who have spoken from this podium. I feel very proud." The evident IDWN backing of these formal moments allowed the wider domestic worker cause to find expression through key representatives. Furthermore, the collective

presence of a wider IDWN network – made possible through these allied organizational processes – provided a consistent domestic worker presence that mandated a sense of accountability among policy-makers.

A series of related NGOs also gained access to the ILC meetings through this civil society observer role. The potential domestic work convention motivated the participation of a much wider collection of organizations, such as Human Rights Watch, Migrant Forum in Asia and Hand in Hand Domestic Employers Association. The structural backing of WIEGO and the IUF provided the means to organize a wider network of civil society representatives in strong support of this Convention. During both the 2010 and 2011 ILC sessions, the presence of an aligned front of domestic worker unions, human rights organizations, migrant education groups, women’s rights advocates and faith-based parties tipped the balance of power in support of the Convention. This wider mobilization strategy drew upon a history of social movement organizing and strategic activism central to all members of the IDWN. The NGO observers also bolstered the strength of the labour group through their supportive presence. For government representatives, they provided tangible information, background research, testimonials and strategies to persuade other delegates to support the Convention. By utilizing access to this international institution, these allied networks assured that those who would be most impacted by this Convention were undeniably present in visual, rhetorical and political forms throughout the deliberations.

With the context of domestic work within the global economy and the factors that led to its inclusion in the ILO established, we turn our analyses to a closer interpretation of negotiations surrounding the attainment of Convention No. 189.

### **“Social legislation” for domestic worker rights**

Universal and lasting peace can be established only if it is based on social justice.

ILO Constitution, 1919

For nearly a century the ILO has seen the advancement of labor rights and standards as the key to social integration and a peaceful world. This perspective was put forward with particular force at the 2010 ILC session, where the inclusion of domestic workers within the world of labour proved a hallmark of the high-level discourse. Doris Leuthard, president of the Swiss Confederation, emphasized the importance of fair globalization, arguing: “It is the ILO that acts

as the world's 'social legislator' and guarantor of workers' rights."<sup>28</sup>. In pursuing these rights within the domestic labour sector, Director-General Somavia opened his statements at the 2010 conference by associating the "Decent Work for Domestic Workers" agenda with a unique and expansive moment in ILO history. "We are also starting a discussion on a new standard on domestic workers that addresses the situation of a large and important, though 'invisible' and very vulnerable, category of workers, mainly women, throughout the world. I strongly believe that society as a whole will benefit from this historic initiative, which has attracted worldwide interest."<sup>29</sup> Somavia's assessment of the domestic work agenda item as a "historic moment" became a guiding reference within the subsequent dialogue throughout the 99th and 100th Sessions of the ILC. Furthermore, the ILO's "social legislator" role informed critical conversations that associated a moral responsibility with the protection of those deemed "most vulnerable" in society – namely domestic workers.

This guiding principle of social responsibility for vulnerable workers informed the debates from the respective tripartite Government, Employer and Worker members of the ILC delegations. The parameters of protection, however, divided workers who sought the binding terms of a Convention from employers who recognized the particular needs of this sector, yet advocated for domestic worker rights in the form of nonbinding Recommendations. The 84 Government members fell on various sides of this central divide. Table 8.1 summarizes the outcome of member States' and stakeholder organizations' initial responses to the ILO questionnaire prior to the 2010 meetings.

As these data suggest, employers resisted the binding nature of a convention. Instead they preferred a set of guiding Recommendations

*Table 8.1 Summary of ILO presentation corresponding to the Decent Work for Domestic Workers, Report IV (2)*

Global	Convention	Recommendation	Convention supplemented by a recommendation	Convention comprising binding and nonbinding provisions
Governments	6	31	42	11
Employers	0	15	2	0
Workers	7	4	115	6
Total	13	50	159	17

that would be subject to each country's particular situation. This table also illustrates the predominant support for the more comprehensive nature of a Convention among workers and governments in the initial data-gathering phase of the agenda process. The vast majority of these groups advocated for a Convention supplemented by Recommendations in order to assure the widest protection for domestic workers.

As we examine the 2010–11 ILC dialogues, the process of discussing an international instrument became intertwined with the notion of protecting those most vulnerable in the global world of work. This discourse reflected underlying ideological frameworks about the value of gender, race and class-based labour. In the 2010 tripartite meetings, for example, Government, Employers and Workers' delegates continually referred to domestic workers as an "ignorant" and "poor" category of labour in need of "special protections." Because this sector uniquely performs work in the private household, employers argued that a Convention could not be enforced in practice. Domestic workers and the labour constituents in the ILO used this same perspective to call for the even greater need to assure that standards of protection for such vulnerable sectors be established from the largest international labour institution. A prevailing tension between treating domestic workers as workers and creating such special protections for the distinct nature of this work echoes Eileen Boris's concept of the hybrid woman domestic worker. She suggests that domestic workers are worthy of the protections afforded workers in the "formal economy" and at the same time are in need of special protections because of their distinct vulnerability in the household labour context.<sup>30</sup> To explore the range of ideological frameworks at play in discussions of domestic labour, let us turn to analyses of the predominant arguments put forth by the Employers' and Workers' constituent groups, where these two central chords of standard labour and the need for special protections repeatedly emerge.

## **The tripartite constituents**

### **Employers**

The Employers' group utilized two predominant arguments to support their position against a domestic worker Convention. First, they emphasized that a Convention would be rendered meaningless because its binding nature would limit member States' abilities to ratify such a standard-setting instrument. In his opening remarks, Mr K. Rahman (Employer, Bangladesh) and Vice-chairperson of the Committee on

Domestic Workers, stated, "I remind governments that they must support and uphold this Convention." Rather than the "one size fits all" binding legal instrument of a Convention, Mr Rahman emphasized that "flexibility is essential" and thereby expressed employers' preference to support a set of recommendations for this "special category" of workers. By building a case on the lack of enforceability of an international Convention, Mr Rahman suggested that the ILO would lose credibility as a result of the creation of idealistic instruments that lacked tangible implementation measures. In later public statements during the negotiations, he suggested that some governments present in the ILC would not ratify a Convention despite their public position regarding the negotiations.

From this vantage point, the Employers' group resisted the politicized nature of domestic labour, specifically as it played out in the physical presence of the network of domestic workers and support organizations within the ILC negotiations. In their closing remarks, the Employers' group deemed the presence of observers as "disruptive" to the task at hand and counter to the function of the tripartite process. Similarly, the Employers' group objected to the use of personal narratives conveyed by domestic worker representatives as a means to elucidate the material realities of daily labour circumstances. Rather, in their assessment, "hard cases make bad law." These perspectives illustrated an important aspect of the composition of the employer constituent group within the ILO tripartite membership body. Rather than actual private-sector employers, this group was represented by legal advisers, who emphasized the procedural dimensions of the processes central to the ILO standing orders. Therefore, the class struggle between workers and employers is somewhat removed as workers negotiate with representatives of employers within the tripartite process. Ironically, however, many of these Employers' group representatives also employed domestic workers in their own personal households. Thus, workers' appeal for rights utilized this *entrée* to build a case by asking representatives to "think of the workers in your households" when voting on the instrument.

The Employers' second main position built upon a guiding perspective that increasing regulations for domestic workers would also elevate the vulnerability of the existing workforce and thereby expand the informal economy. From this perspective, heightened informality of labour leads to decreased risks for workers. As Mr Rahman posited in efforts to uphold this position in the public negotiations, "regulatory measures ignoring ground level realities can cause further movement to informal labor." Employers felt that the special circumstances of domestic work merited

recognition and protection, yet they resisted the actualization of such protections through a binding, legal Convention. The predominant position of employers reflected a desire to gather more information on domestic work worldwide and postpone consideration of a Convention.

### **Workers**

Counter to the position of employers, led by Ms H. Jacob (a woman Worker member, Singapore, and Vice-chairperson for the Committee on Domestic Workers) built the case for the adoption of a Convention on domestic work by personalizing the labour sector, reminding participants that the discussions centred on “someone’s mother, daughter, wife, [or] sister.” In contextualizing the case of domestic workers, she pointed to four main considerations that are particular to this sector: (1) the majority composition of women and girls who work in private households; (2) the feminization of poverty that takes places in the devalued nature of this work; (3) the current context that denies decent work and national labour protections for this sector; and (4) the barriers faced by domestic workers to organize collectively in many national contexts. In efforts to highlight the extreme abuses within this sector, the worker case continually emphasized issues of exploitation, physical and emotional violence and sexual harassment. Within this appeal for recognition of the particular case of domestic labour, the Workers’ group repeatedly referenced notions of “these poor and vulnerable women” to construct imagery that evoked empathy for a collectively imagined global domestic worker. While effective at the level of negotiations to lobby government support for the Convention, such constructions further reify a disempowered notion of women employed in this sector, which countered the presence of the domestic worker members of the IDWN present within the negotiations. Yet the worker delegation frequently referenced this imagery of vulnerability and powerlessness as a strategic tool in bringing emotion into the tripartite processes. From the start of the public commentary on their position, the Workers’ Chairperson welcomed the integration of “passionate views” throughout the negotiations as a means to assure the protection of the “poorest of the poor.”

As a parallel strategy, the Workers’ group called upon the role of the ILO as a social legislator to suggest that “moral and ethical” considerations must be examined in order to question the “contemporary forms of slavery” that continue to exist through domestic labour. According to the discourse of the Workers’ group, domestic labour serves as a measure of our core and “floor” human value system. In other words, the treatment

of those deemed most vulnerable in society reflects overarching social value systems more accurately than any other indicator. Calling upon the consciousness of members of the tripartite committee on domestic labour, the Workers' group reminded participants that they were elected as representatives of those who "toil every day" in isolated household work environments. This use of morality posed a fundamental notion that the passing of a Convention to protect domestic workers was the "right thing to do" because of a "need to set right a historic oversight." These arguments repeatedly drew upon an underlying conception of the institution of domestic work as a microcosm of global inequality.

While recognizing the importance of balance in negotiating the needs of all parties, the Workers' group warned against outcomes that would be so general that they lacked meaningful protections. And although the Employers' group emphasized the need to assure country-specific standards, Ms Yacob drew upon an underpinning universality surrounding the structure of domestic work, stating she felt "heartened by the way the issues transcend industrial and developing nations." To build their case, Ms Yacob repeatedly referenced a lack of national standards of protection for domestic workers in most states. Even though the assurance of protections would be difficult to establish in the private household, the Workers' group continually relied upon notions of social justice and the "right" path in assuring protection through international standards developed for this particular labour sector. Whereas the Employers' group resisted the establishment of universal standards in order to respect national contexts, the Workers' group's perspective reinforced a guiding position that key areas of social protection should not be left to market forces. Rather, international bodies serve as the conduit for the establishment of social and labour policies. From this perspective, the ILC held an even greater responsibility to serve in this standard-setting capacity. Given the construction of the "Decent Work for Domestic Workers" agenda, the ILO assumed a position of responsibility for assuring the protection of women deemed the "poorest of the poor" as a result of their marginalized positions in the informal global economy.

### **Governments**

Government representatives were key decision-makers in this process. Each ILO member State has two Government representatives, along with one delegate for the Workers' group and one for the Employers' group, all of whom enjoy voting rights. Throughout the 2010 ILC session, the role of governments provided a lens into the possibility of eventually

passing a Convention on domestic labour, when the Employers' chairperson called Point 2 in the opening "Form of the instruments" of the Proposed Conclusions to a vote. This critical point determined the eventual trajectory of the international standard-setting process as taking the form of either a Convention or a set of Recommendations. Points 1 and 2 read:

1. The International Labour Conference should adopt standards concerning decent work for domestic workers.
2. These standards should take the form of a Convention supplemented by a Recommendation.

While Point 1 resulted in a rather swift adoption process, indicating widely shared perspectives on the merit of adopting international standards for domestic labour, Point 2 generated a conflict between the Workers' orientation to seek international instruments and the Employers' resistance to the binding legal nature of a Convention. When called to a vote, of the Government representatives of 108 member States, 62 opposed an amendment that would have changed Point 2 to state that standards should take the form of Recommendations rather than a Convention. Fourteen member States voted in favour of the amendment, 4 abstained from the vote and 33 were absent.<sup>31</sup>

Not only did this barometer of respective government positions identify effective lobbying avenues for both Employers' and Workers' constituents, it also reflected a predominant pattern of member States' alignment in both geographic and ideological blocs. The Arab States' position against a Convention, for example, demonstrated a shared political perspective within a world region that draws heavily upon the importation of domestic workers from Asia. Members of the European Union expressed similar shared concerns that a protective Convention would increase migration – a topic of vital contemporary importance within this continent. Furthermore, power structures at play in the larger geopolitical sphere became evident in the persuasive capacities of particular member States' relative positions within the ILC negotiations. Australia and the United States, for example, aligned in supporting a Convention that made a substantive impact on the outcome of amendments discussed in relation to the Proposed Conclusions. As these examples suggest, the public forums of the International Labour Organization's tripartite procedures provide a lens into wider global political relations and positions on governments' and international institutions' appropriate roles in addressing concerns of the informal

economy, gender inequality and forced migration within the context of globalization.

In some instances, the ILO public process demonstrated interesting relationships between the national and international spheres. In the case of the “Decent Work for Domestic Workers” agenda, four countries emerged as the strongest voices in support of a Convention: Australia, Brazil, South Africa and the United States. Through their public statements, we see how particular national contexts provided vital sources of evidence for the consideration of international standards for domestic workers. Most notably, South Africa was held up as an exemplary model of the successes of the establishment of national labour legislation and social security policies designed to protect the “most vulnerable” sector of workers in the country’s post-1994 national context. In addition to this national record of legislative inclusion of domestic workers, leaders of the national union in South Africa took part in key aspects of policy formation and went on to serve as leaders of the first formal global network of domestic workers. In doing so, domestic workers’ voices found their way into the formal ILC proceedings, even when they did not have voting and public speaking rights. The resultant integration of domestic workers flavoured the Convention discussions with a persuasive history of class struggle and a model for collective activism in the building of national legislation.

### **International Domestic Workers Network: the fourth constituent**

The strength of the integration of the domestic workers’ network within the NGO observer role formed an unofficial “fourth constituent” at the ILC meetings. Domestic worker unions, nonunion worker organizations, NGOs, civil society representatives and human rights organizations assured that domestic worker representatives could take part in the establishment of standards to protect their own rights. Yet the fact that the 99th Session of the ILC marked the first occasion where domestic workers accessed the Organization’s inner negotiation processes says a great deal about the extent to which the formal and restrictive pillars of this historic institution have met the realities of women on the ground through direct engagement with such workers. While public statements by key leaders invited domestic worker participation, for IDWN representatives, negotiating the physical space, learning institutional procedures, and gaining access to meaningful platforms for public voice illustrated complexities that parallel undercurrent struggles

involving gender, race, and class-power asymmetries. Those with knowledge, ease of access, and familiarity with the ILO's physical and institutional structures represented class-privileged populations. Furthermore, although gender equity within the ILO is improving, male delegates still hold disproportionate representation in all of the tripartite constituencies. This final section explores these layers of complexity, while celebrating the monumental achievements that resulted from the collective alignment of union leaders, activists, academics and human rights advocates in their shared contributions to the "Decent Work for Domestic Workers" ILO agenda.

### **Aligning the ILO with activists**

In his opening remarks, Sir Leroy Trotman, Chairperson of the Workers' group, stated that domestic workers were "present in the room," which he felt would afford a certain "reality on the ground" within the discussions to follow. Similarly, Raquel Gonzales, secretary of the Workers' group, in her first statements on the public floor, conveyed: "We are happy that there will be representatives from the domestic workers to bring their experience. I think it will be a very lively dynamic." Domestic workers echoed sentiments of extreme happiness, pride and celebration in reflecting upon their engagement with the ILO process. According to members of the IDWN leadership, the extended participation of domestic worker leaders was "right, just and long overdue." The presence of this symbolic fourth constituent within the highly rule-driven UN agency represents substantive civil society and domestic worker organizational efforts to establish a network and gain access to the negotiation process.

Based upon the preparatory workshop meetings of the IDWN, in strategizing for their presence within the ILC negotiations, representatives established a shared goal of demonstrating that domestic workers face similar oppression within their daily labour experiences, regardless of the diversity of their work situations across geographic regions. Accordingly, representatives of IDWN aligned their messages within the formal venues that provided space for the contributions of domestic workers. In the opening statements, the Workers' group meetings, the Bureau for Gender Equality meeting, and the closing statements, domestic worker voices continually echoed three main points: (1) the historical nature of the institution of domestic worker; (2) the continued exclusion of this sector from national laws; and (3) an appeal to adopt a Convention that would be ratified by all member States.

Members of the IDWN also generated a collective voice within the ILC beyond the limitations of the prescribed formal channels

for (often pre-approved) public statements. In doing so, domestic workers infused a strong emotional appeal, as their presence undeniably represented a strong historical class struggle and a pressing contemporary need for human rights protections within the existing global economy. Drawing upon a wider shared identity in the labour movement, IDWN members often broke into song immediately after formal meetings were called to conclusion. “Domestic workers, *need a Convention*, domestic workers, *need a Convention*, domestic workers in the ILO.” This infusion of song, dance, and physical gestures of solidarity assured that employers and governments could not ignore the presence of domestic workers, whose lives would be most impacted by the outcome of the conference negotiations. Similarly, workers made their presence felt in the form of T-shirt messages, shared buttons and campaign colours. In this sense, the bodies of domestic workers became rhetorical tools to strengthen the position of labour within the ILO’s formal physical spaces.

These demonstrations of collective agency embedded in the organizational cultures of unions and the women’s movement also led to moments of sanctioning when the presence of observers compromised allegiance to rules and procedures of discourse at the heart of the ILO. When the first vote results revealed majority support for a Convention, seating arrangements among Employers, Workers and Government seating (designed to reinforce the tripartite process) demonstrated that the cheering and physical applause emerged from one side of the chamber, thereby identifying a breakdown in the rules of order among Workers and observers. This led to strict reminders that such behaviour would not be tolerated, as stated in the procedural rules for social dialogue. In a later public speech, IDWN leader Myrtle Witbooi asked members of the tripartite committee to “excuse us for our enthusiasm” and apologized for any interruption to the ILC processes as a result of the demonstration of emotions on the part of domestic workers, “who have been waiting a very long time for this moment!” This shared experience among domestic workers captured the challenges of adapting a fusion of labour union strategies as tools to motivate change within a formal UN agency. Using a pragmatic activist approach established in partnership with WIEGO and the IUF, however, IDWN leaders found spaces to assert their collective expression and draw from the tools of mobilization that had strengthened their own capacities as activists and leaders. In doing so, domestic workers formed creative and adaptive paths to utilize their “struggle credentials” as a distinct rhetorical and emotional device to advocate for ILO policy change.

## A victory for domestic workers

On 16 June 2011, at the close of the 100th Session of the ILC, Convention 189 won near unanimous support. When the session leaders announced the final votes of 434 in favour, 8 opposed and 42 abstentions, the UN General Assembly Hall broke out in cheers, applause and exuberant responses from IDWN. Immediately, the activist presence took over the room. IDWN leaders dropped an enormous banner reading “C189 Congratulations. Now the Domestic Work for Governments. Ratify. Implement.” While such procedural disruptions are normally addressed immediately by security, in this instance, the chamber’s cheering and celebration continued over an extended period of time, as the institutional procedures seemed to loosen to allow space for the actual voices of this fourth constituent. As the business of the day carried on inside the chambers, domestic workers moved outside the General Assembly entrance and began singing and chanting, “Up Up Domestic Workers, Down, Down with Slavery.” Soon after, Juan Somavia joined the IDWN gathering to offer his congratulations on behalf of the ILO. Hester Stephens, president of the South African Domestic Service and Allied Workers Union, reflected on this “historic moment” by declaring, “I feel like today, the 16th of June, 2011, that freedom at last came for domestic workers around the world.” This victory commemorated years of struggle for the attainment of domestic workers’ rights.

The ILO’s recognition of the centrality of domestic workers in the global economy and the need to assure protections inspired a much larger public relations movement beyond the attainment of an international Convention. In her immediate reflections on the passing of Convention No. 189, Manuela Tomei, former Director of the ILO’s Conditions of Work and Employment Programme and spearhead figure behind the internal standard-setting procedures, stated, “This is just the beginning of a much longer battle.”<sup>32</sup> Efforts to actualize Convention No. 189 since its formal adoption have focused upon national ratification and review of existing domestic work legislation in efforts to align more closely with these global standards. Brazil, for example, revised its constitution to meet the standards of Convention No. 189. This constitutional amendment passed unanimously in the Brazilian Senate in March 2013 and now assures 16 new rights for domestic workers.<sup>33</sup> Meanwhile, in the United States, the National Domestic Workers Alliance has utilized Convention No. 189 to realize significant protections and pushed for several state-level Bill of Rights. These efforts connect the international standard-setting process to

global and national movements that concretize the Convention in ways that are accessible to local movements.

After the passing of Convention No. 189, the ILO coordination of ratification and national capacity training and monitoring efforts has been decentralized. To date, the Organization does not maintain a central coordinating office to focus on the ratification of the Convention or its continued integration in national legislations. Key leaders within the Organization, who took part in the crafting of Convention No. 189, remain tasked with partial oversight, along with their larger responsibilities to other organizational efforts and more current projects. Central to this recent post-Convention No. 189 adoption, in 2012, the Organization prepared for a new Director-General and leadership framework, as Juan Somavia retired from the ILO. This transitional period created some uncertainty as to where the initial movements to integrate informal workers in ILO protections would be placed in the new leadership's priorities. Since this executive transition, organizational efforts on the topic of domestic work within the ILO have focused on analyses of social security protections and some national training efforts. In a personal interview, one key figure within the ILO suggested that this uncertain direction in the Organization's efforts to maintain focus on the goals of the Convention may be attributed to funding. As he suggested, although the Convention process generated much momentum with the ILO, "this momentum does not carry forward in funding afterwards." This leaves the work of assuring the realization of Convention 189 primarily in the hands of national unions, civil society organizations and global union partners.

## **Conclusion**

Luc Demaret, at the time ILO specialist in worker activities and a central leader in getting the domestic worker agenda item on the table of the ILO, claimed that Convention No. 189 reflected "A little step for the ILO, a big step for humanity." By exploring the dynamics that surfaced in the tripartite negotiations of Convention No. 189, we have illustrated in this chapter the symbolic position of domestic labour within the larger ILO context of promoting human rights through "decent work" and "fair globalization." Domestic workers' presence as voices of those most impacted by the policies of the ILO provides an example of the effective integration of civil society within the existing tripartite structure. Through domestic workers' alignment with NGOs, policy networks and global unions, we see how activists strategically used wider constructions of vulnerability

as a platform to demand rights and protections from a traditionally exclusive global institution. Furthermore, this revolutionary integration of the most active presence of “actual workers” in the policy-setting process required that the ILO shift its processes and consider the role and parameters of this fourth observer party. The support of key professional NGO and policy organizations allowed domestic workers to pave the way for a much more active and influential civil society role within the ILO.

In addition to the procedural expansion that took place through Convention No. 189, the ILO’s integration of domestic workers showed how the Organization informed a movement to develop expanded protections for “precarious workers” in the informal economy. These shifts represent a movement that draws international institutions more closely to the realities of the global economy and its massive reliance on informal labour. As the ILO continues to stretch its policies and consideration of sectors that fall outside of the original constructions of the work relationship, as defined during the Organization’s origins in the early twentieth century, the Domestic Workers Convention serves as a pivotal instructive model. By using the civil society point of access, the direct experiences of workers are present throughout the tripartite conversations. Furthermore, the very notion of getting to the ILO and its point of access in Geneva motivates a more coordinated effort within wider worker and human rights movements. These movements help the ILO align itself with global commitment to informal workers’ rights. In this sense, the ILO process serves as a vital moral boost to reenergize labour and justice movements. For some, this outcome may have greater impact than the actual legal instrument that emerges in the form of a Convention.

As we see in the Convention No. 189 process, the meaning of formative policy work also hinges upon states’ willingness to ratify such international laws. Without national backing, conventions run the risk of being seen as “only on paper,” and the ILO becomes an organization far removed from the day-to-day lives of workers. Given this potential distance in the scales of impact between domestic workers “on the ground” and the most macro systems of global governance, assuring ILO involvement in national processes of assessment, training and integration is vital. This will require a more coordinated effort to focus on precarious work within the ILO, along with additional resources to support the follow-up of Convention No. 189 beyond its passing at the level of the formal vote.

As Ernestina Ochoa, Peruvian representative to the IDWN, professed immediately upon the adoption of Convention No. 189, “What we are

requesting is that all countries ratify and that this be applied in our countries. This is an historic event. It is what society owed to us. It is not free. It is what society owed to us for all of the injustices that were committed during decades to us, the domestic workers." The extent to which the outcome of the "Decent Work for Domestic Workers" agenda is brought into civil society discourse across geographic and social divides will be the most meaningful interpretation of this global movement.

## Notes

1. Technical committees within the ILC deal with conference agenda items set two years prior. In the 2010 ILC meeting, the "Decent Work for Domestic Workers" topic comprised the only new agenda item in the first year of discussion. Second discussions were held among members of the technical committees on the establishment of a recommendation for dealing with HIV/AIDS in the workplace.
2. As of August 2014, the order of ratification of Convention 189 is as follows: Uruguay, Philippines, Mauritius, Nicaragua, Paraguay, Bolivia, Italy, South Africa, Germany, Argentina, Columbia, Costa Rica, Ecuador, Guyana, and Switzerland.
3. We draw from direct observational data collected from the 2010 and 2011 ILC meetings in Geneva, Switzerland, interviews with members of the International Domestic Workers Network and key informants within the ILO. We thank members of the Women in Informal Employment: Globalizing and Organizing (WIEGO) network, the International Union of Food Workers (IUF) and the International Trade Union Confederation (ITUC) for affording observational access to the ILC meetings. Our profound appreciation extends to the members of the International Domestic Workers Network, whose lives and commitments to social justice are at the centre of this human rights victory.
4. Shireen Ally discusses the state's use of vulnerability in South Africa as a guiding paradigm that reinforced structures of power in the post-apartheid, rights-centred democracy. See S. Ally, *From Servants to Workers: South African Domestic Workers and the Democratic State* (Ithaca, NY: Cornell University Press, 2009).
5. K. Chang and L. H. M. Ling, "Globalization and Its Intimate Other: Filipina Domestic Workers in Hong Kong," in M. Marchand and A. S. Runyan, eds., *Gender and Global Restructuring: Sightings, Sites and Resistances* (London: Routledge, 2002).
6. S. Sassen, *Globalization and Its Discontents* (New York: The New Press, 1998).
7. See the text of ILO Convention No.189 (online).
8. For in-depth analyses of the Institution of Domestic Labour and the Global Economy, see R. S. Parreñas, *Servants of Globalization: Women, Migration and Domestic Work* (Stanford, CA: Stanford University Press, 2001); G. Chang, *Disposable Domestics. Immigrant Women in the Global Economy* (Cambridge, MA: South End Press, 2000); and P. Hondagneau-Sotelo, *Doméstica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence* (Berkeley, CA: University of California Press, 2001).

9. For initial analyses of this public/private division, see C. Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).
10. Jennifer N Fish, ILC Field notes, 2010.
11. S. Ally, *From Servants to Workers: South African Domestic Workers and the Democratic State* (Ithaca, NY: Cornell University Press, 2009).
12. For the most comprehensive and contemporary global data available on domestic work worldwide, see ILO, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva: ILO, 2013) (online) (accessed 15 April 2013).
13. ILO 2010, *Decent Work for Domestic Workers*, Report IV (2).
14. C. Chin, *In Service and Servitude: Foreign Female Domestic Workers and the Malaysian Modernity Project* (New York: Columbia University Press, 1998).
15. Eileen Boris, "Women's ILO: Transnational Networks, Working Conditions and Gender Equality," Workshop, ILO Century Project, Geneva, Switzerland, December 2012.
16. E. Boris and J. Fish, "'Slaves No More': Making Global Labor Standards for Domestic Workers," *Feminist Studies*, 40, no.2, 411–43, 422.
17. *Ibid.*
18. Boris, "Women's ILO".
19. ITUC, "Briefing Note for Worker Delegates," internal document, 2010.
20. Jennifer N Fish, interview with ILO staff member, 14 June 2010.
21. Conventions are binding treaties. Countries are invited to ratify a Convention and to integrate its stipulations in their national laws. Recommendations are nonbinding instruments intended to provide guidelines for governments and social partners on the implementation of national labour and social policies. Conventions and Recommendations for the same topics are often adopted simultaneously.
22. ILC 2010, *Decent Work for Domestic Workers*, Report IV (1).
23. *Ibid.*, Report IV (2).
24. These processes of constituent input, instrument revisions and public dialogue culminate in the adoption of a standard-setting instrument on "decent work" only if a 2/3 majority is met on the final vote.
25. "Who We Are," *International Domestic Workers' NetWork*, <http://www.idwn.info/content/who-we-are>, 23 August 2012.
26. Most global unions and international organizations are considered NGOs in the ILO structure. Therefore, their access to the ILC discussions is limited to observer status. This means that delegates may take part in conversations among the Worker's groups on particular subcommittees. All formal tripartite discussions, however, limit verbal participation to government representatives from the 183 member States and one representative from both the Employer's and Worker's groups.
27. International Domestic Workers NetWork, "Platform of Demands," <http://www.idwn.info/publication/platform-demands>, 1 June 2010.
28. ILC 2010, Provisional Record No. 7, *Address by Her Excellency Doris Leuthard, President of the Swiss Federation*, 2 June 2010 (online).
29. ILO Provisional Record No. 6, *Title*, 3 June 2010 (online).
30. Eileen Boris posits the notion of domestic workers as hybrid workers because of this dual plight for recognition as workers and consideration as a special category. For further discussion of this concept, see E. Boris and J. Klein,

*Caring for America, Home Health Workers in the Shadow of the Welfare State* (New York: Oxford University Press, 2012).

31. As "Provisional Record 12 of the Fourth item on the agenda: Decent work for domestic workers" states: "The results were as follows: For the amendment: Bahrain, Bangladesh, India, Indonesia, Islamic Republic of Iran, Kuwait, Malaysia, New Zealand, Oman, Panama, Qatar, Saudi Arabia, Singapore, and United Arab Emirates. The members of the Employers group also voted for the amendment. Against the amendment were: Argentina, Australia, Austria, Barbados, Belgium, Botswana, Brazil, Burkina Faso, Chad, Chile, China, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Honduras, Hungary, Italy, Kenya, Lebanon, Lesotho, Maldives, Mali, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Peru, Philippines, Portugal, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, United Kingdom, United States, Uruguay, Vanuatu, Bolivarian Republic of Venezuela and Zimbabwe. The members of the Workers' group also voted against the amendment. The Government members of the following countries abstained from the vote: Congo, Estonia, Israel and Japan," ILC 2010, *Decent Work for Domestic Workers*, Report IV (2).
32. *C189: Conventional Wisdom*, directed by Jennifer N Fish, Rachel Crockett and Robin Ormiston (Norfolk: Sisi Sojourner Productions, 2012), DVD.
33. "A New Constitutional Amendment Takes Place in Brazil," <http://www.idwn.info/news/new-constitutional-amendment-takes-effect-brazil-april-2>.

# 9

## The Limits of Human Rights for Labour Rights: A Retrospective Look at the Case of Chile

*César F Rosado Marzán*

### **Introduction: 40 years of hindsight**

This chapter argues that recent efforts to reframe global labour rights as a species of human rights may seriously limit the capacity to rebuild trade unions and generate effective labour laws if not complemented by parallel attempts to equalize asymmetrical relationships between workers and employers inherent in contemporary capitalism. I argue that the limitations inherent in a human rights framework are manifest despite the fact that for certain issues, such as those pertaining to the civil and political rights of labour leaders and ordinary workers, a human rights frame may be very useful in generating popular support for union activists who are victimized by repressive regimes. I build my argument from the case of Chile, where a great international campaign, which the ILO was part of, against violations of human rights by the brutal dictatorship of General Augusto Pinochet proved effective in saving many lives and releasing others from prison, but where, as detailed below, the campaign could not help to reestablish strong legal and institutional support for trade unionism and collective bargaining.

Rather, and in an ironic twist of events, the dictatorship responded to the international campaign by reforming the country's labour laws in a neo-liberal fashion that easily fit within the mould of that same international movement for civil and political human rights targeting the Pinochet regime. Under a new set of neo-liberal labour laws, the military would no longer formally repress labour leaders and ordinary workers attempting to organize and act collectively. However, neither would the state help workers build collective power to match that of capital, which is the *raison d'être* of labour law. Workers in the private sector could organize, but only if they were willing to face substantial opposition

from employers, including failure to reach a collective bargaining contract and dismissal from their jobs. The Chilean story is therefore important as a case study that may well shed light on the degree to which the advancement or restoration of labour rights is but imperfectly realized in a world in which a human rights framework has achieved such widespread moral and political validity.

### **The contemporary turn towards human rights**

Labour rights have been considered part of the international human rights system since the International Labour Organization (ILO) was founded in 1919, when the international community enshrined the notion that “labour should not be regarded merely as a commodity.”<sup>1</sup> By human rights we mean those rights that individuals have by the sole fact that they are human beings.<sup>2</sup> Labour rights, on the other hand, are ascribed to persons because of their status as workers,<sup>3</sup> a class that is understood as subordinated and dependent in employment relations. Other international instruments that have also formally catalogued labour rights as human rights include the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the ILO “core Conventions” that promulgate the rights of freedom of association and collective bargaining (Nos. 87 and 98), and that prohibit forced labour (Nos. 29 and 105), child labour (Nos. 138 and 182), and discrimination in employment (Nos. 100 and 111).

However, the ILO did not develop an explicit human rights orientation to labour rights in its first decades.<sup>4</sup> Rather, the ILO was primarily concerned with promulgating technical Conventions and Recommendations that sought to bind member States to particular practices, such as an eight-hour day.<sup>5</sup> Conventions produce binding legal obligations once ratified by the member States, while Recommendations provide guidance. The ILO was involved in these more technical aspects of labour rights promulgation because it did not distinguish between labour standards and human rights. Rather, the ILO at the time viewed all Conventions as mechanisms for ensuring dignity and social justice.<sup>6</sup>

However, the horrors of the Second World War pushed the ILO to underscore its human rights mission by promulgating its 1944 Declaration of Philadelphia, which was annexed to its Constitution two years later. The 1944 Declaration of Philadelphia redefined and expanded the ILO’s aims, purposes, and principles, including that labour is not a commodity, expressed the need to promote freedom of expression and association, and stated that “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.”<sup>7</sup>

Despite the 1944 Declaration, the ensuing Cold War and the lack of consensus between the West and the communist bloc countries over the ways to best move forward with the principles of the ILO, it was not until the 1990s, with the Organization’s adoption in 1998 of the Fundamental Declaration on Principles and Rights at Work and its Follow-up (1998 Declaration),<sup>8</sup> that the ILO more squarely took a human rights approach to labour rights.<sup>9</sup> While the turn was facilitated by the end of the Cold War, it was predominantly motivated by an international consensus in a number of fora, most notably the World Trade Organization (WTO), to refer the issue of labour rights in the global economy to the ILO. The WTO threw that ball to the ILO because the trade organization refused to entertain demands from labour activists to include labour rights in its global trade governance policies. In response, the ILO promulgated the 1998 Declaration, which is in itself nonbinding, but which identified eight core labour standards falling into four fundamental categories of rights and principals – freedom of association, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation – all of which are understood to be international human rights.<sup>10</sup>

This human rights turn has not been without salutatory impact within the ILO world. For example, nonratifying member States now report to the ILO their progress in achieving core labour standards. In this manner, the ILO survived an irrelevancy problem through the core labour standards program. Prior to the 1998 Declaration, the ILO found it increasingly difficult to expand labour rights globally as a result of low ratification rates of Conventions and their constant breach. Moreover, the core labour standards strategy of the ILO helps member States to achieve universally accepted core labour standards and promote conditions of social justice. Indeed, more member States have ratified Conventions after the promulgation of the 1998 Declaration.<sup>11</sup>

But while the promises of advancing substantive labour rights through a human rights program seem great, some knowledgeable observers are sceptical of the core labour standards project. For example, international human rights scholar Philip Alston has argued that the 1998 Declaration, emphasizing an aspirational set of core labour rights, lends itself to advocacy via “soft promotional techniques” rather than to

the more precise and legally binding ILO enforcement mechanisms. Not unexpectedly, many multinational corporations have found this more decentralized and voluntary conception of the international labour rights regime more to their liking; likewise with the United States, which has itself failed to ratify several of the ILO's most important labour standards.<sup>12</sup>

The human rights turn has also been complicated by disciplinary, professional and doctrinal differences between human rights and labour rights advocacy. As Professor Virginia Leary observes, labour rights and human rights "run on tracks that are sometimes parallel and rarely meet."<sup>13</sup> The main difference is that while labour rights activists have focused on remedies for workers' unequal bargaining relationship with private employers, human rights organizations, particularly in the United States, concentrate mostly on civil and political rights abuses perpetuated by the state against individuals. These abuses of and political rights normally targeted by human rights organizations include torture, imprisonment of political prisoners and free speech.<sup>14</sup>

Another of the salient conceptual differences between these rights perspectives is that human rights centre on individual rights, while labour rights centre on both individual and collective rights.<sup>15</sup> Labour rights normally include incentives for the construction of a collective actor – the labour union – acknowledging the public goods nature of labour unions' collective bargaining agreements.<sup>16</sup> Labour law traditionally supports collective action, such as by limiting employers' capacities to fire striking workers.<sup>17</sup> As the legal scholar Kevin Kolben has already argued, when labour rights are couched in terms of individual rights, such as merely the personal right to join a union, without more, labour rights remain significantly limited.<sup>18</sup> The law must recognize group differences and inequalities to protect the weaker party, workers, from private reprisals by private employers. However, as Kolben explains, "[t]he international human rights movement is not fundamentally committed to examining and questioning fundamental economic relationships in society, nor is it committed to direct action as a method – or workplace democracy as a goal – to the same extent as the labor movement."<sup>19</sup> Human rights and labour rights therefore do not sit totally comfortably next to each other.

In the case of Chile, we will see that human rights and labour rights advocacy "met" after the 1973 military coup that deposed the democratically elected government of the Unidad Popular (UP). Then, the military dictatorship aimed its guns, literally and figuratively, directly at labour unions because they had been a central pillar of the socialist

government that the military had deposed. Repression was widespread and brutal. The ILO investigated the case and drafted a report on the situation that focused on the executions and detentions of the regime, disseminating a worldwide view that the Pinochet regime was a pariah human rights abuser. However, once the regime stopped the *de jure* repressive policies and gave individuals the right to join a union, but without significantly protecting workers against employer reprisals, labour activists found it increasingly more difficult to cement freedom of association in Chile.

### The military destroys workers' collective power

On 11 September 1973 the Chilean military led a coup against the constitutional government of Salvador Allende Gossens and his political coalition, the UP. Days after the coup, the government banned political parties and put the state in the hands of a military junta headed by General Augusto Pinochet, the head of the armed forces of Chile. The dictatorship banned labour union activities and persecuted union leaders. As early as 17 September 1973 the regime rescinded the legal personhood of the Central Única de Trabajadores (CUT), the most important labour federation in the country. On 18 September 1973, the regime issued Bando No. 36, enabling employers to dismiss workers who fell within the categories of "extremists, saboteurs, delinquents, or persons known simply as mere activists or agitators." It also left most collective agreements without legal effect.<sup>20</sup>

In November of the same year the regime expropriated the CUT's assets, giving the final, material blow to the organization. Other decrees were issued dissolving particular labour unions. The regime's rationale for the dissolution of labour unions was that these organizations were dominated by external, "Marxist," interests. From September of 1973 through October of 1974, the regime also took control of the labour courts by establishing them as special tribunals or commissions presided over by a labour judge, a representative of the military, an officer of the *Carabineros* (state police) and a labour inspector. This panel of professional and political judges effectively undermined judicial independence. Such tribunals were in the first and last instance adjudication bodies, and their decisions could only be reviewed by the Supreme Court through the very limited *recurso de queja*.<sup>21</sup> In 1973, the regime also issued decrees that stated that all government employees except those of the judicial branch and the comptroller were to be considered merely interim employees until terminated or reconfirmed in their posts.<sup>22</sup>

In December of 1973, the regime passed another decree, Decreto Ley No. 198, which stated that union leaders must abstain from any activity of a political character in the exercise of their office. Further decrees also banned union elections, amounting to what historian Peter Winn called “a union gerontocracy,” since the most senior employees were to be appointed union leaders when union posts were left vacant.<sup>23</sup> Unions could also only meet for informational purposes and for the internal operation of the organization. Such meetings had to take place outside work hours. Before meetings took place, the state police also had to be informed.<sup>24</sup>

In addition to formal decrees and other laws that banned collective bargaining and workers’ organizations, the military regime also started a campaign to physically eliminate or jail union activists. As Winn estimated, the Pinochet regime was responsible for at least 3,000 dead and more than 100,000 tortured victims, many of them workers and union activists. As Peter Winn recounts:

In many factories, military intelligence interrogated the workers one by one, pressing them to inform on their coworkers, and especially on their leaders. The most militant activists disappeared, some to early graves or torture chambers, others to exile or the underground resistance.... In the state of terror of those first months, worker leaders and activists were among those most persecuted and treated most brutally by the military.<sup>25</sup>

The Pinochet dictatorship was out to destroy the Chilean labour movement and its most active cadre.

### **A human rights frame against the pariah regime**

Shortly after the coup, labour advocates in Chile and abroad began to file complaints with the ILO after they found, as one might expect, that the dictatorship’s administrative and judicial institutions were unresponsive to their grievances. These complaints made to the ILO alleged violations of civil liberties and labour rights, including the dissolution of the CUT and other labour organizations; the death, execution, detainment and disappearance of labour union officials; and the dismissal or forced resignation of labour union officials from their jobs and elected posts, among other claims.<sup>26</sup>

Chile had been a member of the ILO since 1919, so these complaints, after having been reviewed by the ILO, were forwarded to the government

of Chile for a response. The ILO determined that it could investigate alleged violations of principles of freedom of association contained in Conventions Nos. 87 and 98 as long as the member State consented to the investigation, as Chile had not ratified the two Conventions at the time.<sup>27</sup> This conclusion by the ILO was thereafter crucial because it established the principle, recognized today, that certain labour rights, including freedom of association and effective collective bargaining, are fundamental and binding on every member State.<sup>28</sup>

Thereafter, and with the consent of the regime, the ILO's Governing Body named a Fact-Finding and Conciliation Commission, which visited the country from 28 November through 19 December 1974.<sup>29</sup> The president of the Commission was José Luis Bustamante, former president of the International Court of Justice and former president of Peru. The second member was Jacques Ducoux from France, a Councillor State, former member of the Fact-Finding and Conciliation Commission on Freedom of Association, which considered the case of Greece in 1966, and member of the Commission of Inquiry, which looked into Greek conditions in the dictatorial years of 1969 and 1970. Finally, a British national, H. S. Kirkclady, was the third member of the Commission. He was an emeritus professor of law at Cambridge and member of the ILO Committee of Experts on the Application of Conventions and Recommendations.<sup>30</sup>

In the report, the fact finders stated that the regime did not deny that it dissolved the CUT and liquidated its assets. In its defense, the regime argued that the CUT had become a political instrument of the prior UP Government, distorting its legitimate role as representative of workers' interests. The regime stated that the CUT had established close ties with the political parties of the UP Government and had goals to implant Marxism-Leninism in Chile. As the ILO report stated,

In explaining the reasons for the dissolution, the Government says, in brief, that the CUT was a political and not a trade union organisation. Its intention was to bring about a Marxist-Leninist regime in Chile. Its executive committee had been fraudulently elected and it was dependent on the State as the employer. It had links with the Popular Unity parties and certain CUT leaders had in fact held portfolios in the People's Unity Government. Before 11 September 1973 the more important organisations had ceased to be trade union bodies and had become political instruments intent on the violent overthrow of existing institutions in the service of the parties committed to those ends. The Government, in support of this statement, sent a

copy of the rules of various agricultural trade unions set up in 1972, to show that such bodies had been obedient tools of party policy. The Government also referred to the fact that certain trade unions had been part of para-military organisations and pressure groups called “cordones industriales.” It also referred to the promotion of artificial collective disputes to enable the Government to take firms over and to the use, for party political ends, of money allocated by law to the training of peasant trade unionists.<sup>31</sup>

All of this, among other similar concerns, the regime argued, made the CUT inimical to workers’ interests and justified its dissolution.

The Commission was not persuaded. First, it decided that even if the CUT had been subverted, this was an issue for the workers themselves to decide and resolve, not the state through administrative fiat. Second, the Commission did not find that the CUT’s participation in politics was inimical to legitimate trade union goals. To the contrary, it stated that:

[G]enerally speaking, the fact that trade union organizations engage in certain activities of a political nature or maintain relations with political parties is not incompatible with the principles of freedom of association. The absolute prohibition of such activities or relations would be not only contrary to these principles but unrealistic in practice.<sup>32</sup>

Finally, the Commission concluded that to the extent a trade union organization exceeded its legitimate participation in politics leading to its corruption as *bona fide* labour organization, it was for the pertinent judicial authorities of the country to decide and not for the executive power. Hence, the Commission concluded that that the dissolution of the CUT was not in conformity with international principles of freedom of association.<sup>33</sup>

The Commission also determined that the death of trade unionists in Chile shortly after the 1973 coup came as a result of their trade union activities. The regime had responded to those allegations claiming that such deaths, if they occurred, happened as a result of unionists’ involvement in criminal acts, including armed confrontation with the public order, or because they were extremists.<sup>34</sup>

The Commission was not persuaded by the military regime’s responses. Before reaching its conclusion, the Commission had given the regime a nonexhaustive list of 110 persons allegedly killed or executed by the

regime and asked it to provide information about them, including the circumstances surrounding their deaths or execution. Of the 110 persons on the list, the regime confirmed 33 dead – 9 died as a result of clashes with the armed forces, 10 had been executed and 14 died while attempting to escape or under similar circumstances. Of the other 77 names, the regime confirmed that 11 were under detention or had been deported, and 22 were at liberty either in Chile or had left the country. The regime could not provide any information about the other 50 names.<sup>35</sup>

The Commission decided that those deaths and executions could not be excused because the unionists had been tried by military courts without adequate safeguards, and without rights to appeal, and that the state-of-war procedures and penalties were applied to their cases retroactively, for actions that occurred prior to 11 September 1973. Others died as a result of torture during their detention, a subject that the Commission noted it could not “pass over in silence.”<sup>36</sup> Therefore, the Commission decided that the government failed to sustain its response that the deaths took place for reasons other than because of trade union activities. Even considering the state of disorder after the coup, the Commission declared that:

[A]ll these circumstances show that the safeguards required to ensure respect for human rights in relation to personal safety were severely impaired, with all the irreparable consequences that have resulted from this situation in the case of an appreciable number of trade union officials.<sup>37</sup>

Similar conclusions were reached regarding the detention of union officials, given the lack of adequate safeguards.<sup>38</sup>

The Commission was especially concerned with the disappearance of some union leaders, “in some cases without trace.”<sup>39</sup> To make matters worse, the *recurso de amparo* (*habeas corpus*) proceedings filed on behalf of the detained were almost universally rejected by the Supreme Court. The Supreme Court sustained, scandalously for almost all legal observers, that the plaintiffs were not officially listed by the regime as being in custody, a legal requirement for it to hear a *recurso de amparo*.<sup>40</sup>

Similarly, the ILO Commission also determined that the dismissals and resignations of many trade union officials resulted from their trade union activities and not for other, legitimate, purposes. In many cases, some employers terminated workers vengefully, in retaliation for activism that occurred prior to the 11 September coup. The Commission

was especially concerned about the creation of special labour tribunals and special commissions that included armed forces, police and other regime authorities as adjudicators, alongside the legitimate labour judges, which destroyed judicial independence.<sup>41</sup>

The Commission could not determine how many of the 35,000 trade union posts throughout the country had been usurped by government-installed representatives without the consent of the workers, but it did determine that the figure was much higher than stated by the regime. The regime asserted that 75 per cent of all posts were filled by the same persons that had them prior to 11 September 1973, but the Commission estimated, based on information that it collected, that it was likely that up to 50 per cent of all trade union posts became vacant after the coup and were not filled by leaders chosen by the workers.<sup>42</sup>

The report made headlines, notably in *The New York Times*, which reported that the ILO Commission had decided that labour rights in Chile were “seriously impaired” by the military junta.<sup>43</sup> Another article published shortly thereafter stated:

The commission reported as “established fact” that many Chilean trade union officials had been summarily executed or had died as a result of torture or in “other circumstances” following the military revolt that overthrew President Salvador Allende Gossens in September, 1973.<sup>44</sup>

The US press cited Chile as a prime case of human rights abuse.

The ILO Commission came to the firm conclusion that the Pinochet regime had violated the right of freedom of association and should reverse its policies and actions. The report provided a number of detailed Recommendations to the regime to reinstate union rights in the country, including collective bargaining and the right to strike.<sup>45</sup> However, the Commission emphasized that the most important way that the regime could restore these labour rights would be by giving priority to the release or trial of the trade unionists detained, using procedures that provided judicial and civil safeguards regarding defense and impartial treatment of those the regime accused of criminal or illegal political activity. These ILO Recommendations were based on a prioritization of civil and political human rights safeguards, such as those pertaining to individual life and liberty, which the Commission understood were essential to “restore the climate of normalcy which is one of the main conditions for the effective exercise of trade union rights and for the development of the whole country for the years ahead.”<sup>46</sup>

## The military is isolated

The regime first responded to the ILO report and other pressures in a timid and even clumsy fashion. Perhaps grudgingly, it provided a space for moderate union leaders to represent their views to the government. These labour leaders were mostly Christian Democrats who had been at odds with Communist and Socialist labour leaders during the years of the UP Government. Christian Democrat labour leaders could now consult with the government and represent worker interests in newly created Tripartite Committees. Just months before the ILO sent its Commission to Chile, the dictatorship instituted such committees, first with a consultative function and then with semi-legislative authority. The regime determined that statutory minimum wages and working conditions were mere floors. The Committees could set wages and working conditions above those established by statute.<sup>47</sup> However, as one well-respected scholar noted, Tripartite Committees did not provide for collective bargaining because the administrative authorities always defined the wages and terms and conditions of employment, giving the committees an "authoritarian character."<sup>48</sup>

Although such illusory reforms gave some unionists an institutional space to voice grievances against the regime, few of them were appeased. Even moderate labour leaders, including the Christian Democrats, began to publicly condemn the regime.<sup>49</sup> Although strikes were effectively banned, internal opposition to the regime became manifest through nontraditional forms of industrial activity. In 1977, a wave of worker absenteeism crippled production at the large El Teniente copper mine, a key source of Chilean export revenue. Miners in other parts of the country refused to eat in company cafeterias; and since these facilities were the only places where miners could find a meal, this boycott amounted to a hunger strike.<sup>50</sup> Then on 1 May 1978, labour unions staged their first united May Day demonstration.<sup>51</sup>

By 1978 the Chilean military regime was becoming increasingly isolated. Mainstream media outlets with mass appeal in the United States published numerous articles on political prisoners, the practice of torture and the absence of democracy in Chile.<sup>52</sup> For example, on 4 December 1977, *The New York Times* published an article by Juan de Onis reporting the detention of seven labour leaders for merely criticizing the regime's economic policies.<sup>53</sup> The US press published reports that showed a remorseful, cornered, and grudging dictator. It mentioned that Pinochet had made public statements decrying the labour leaders as spokesmen for the international campaigns against Chile, that labour

leaders were “more into politics than anything,” that labour leaders were in collusion with outlawed political parties and that Pinochet had no patience for labour leaders who brought him indiscipline.<sup>54</sup> The article also reminded readers of the mass executions and detentions that had occurred in Chile after the coup of 1973.<sup>55</sup>

Importantly, the same article by de Onis also mentioned that Chilean dissidents had found allies in the American labour movement. *The New York Times* mentioned that those American allies were pondering “[A] strong reaction... which according to analysts here might be tempted to apply shipping and cargo handling boycotts to Chilean goods” as a means of sustaining the embattled independent unions.<sup>56</sup>

Notwithstanding the Cold War and the Pinochet regime’s anticommunism, American trade unions were now beginning to stand behind the Chilean labour movement. According to *The New York Times*, on 10 August 1978, George Meany, president of the AFL-CIO, advised the president of the United States that unless “the Chilean Government moves substantially towards observance of basic rights demanded by workers and the people of Chile, it must face grave international consequences.”<sup>57</sup>

Calls for a labour boycott began to reverberate from Washington to Santiago. By mid-November of 1978, the Catholic Church became more assertive in its quest to improve the human rights conditions of the country, organizing a public gathering on the subject and calling for the Chilean Supreme Court to investigate 651 cases of missing individuals.<sup>58</sup> Meanwhile, the new administration of President Jimmy Carter was also giving more importance to human rights issues. The White House invited Chilean opposition leaders to Washington and condemned Chile internationally for human rights violations. Very significantly, the international labour movement, including the AFL-CIO, called for a boycott of Chilean goods in 1979.<sup>59</sup>

As a result of its treatment of labour leaders and ordinary workers, the world had decided that Chile was an international human rights violator. The Chilean military was cornered. However, Pinochet still had his own hand to play, this time echoing the language of economics, not guns.

### **The “Chicago Boys” rescue the military with neo-liberal labour law**

Given the international pressure, the regime had to change, but not before it cleaned the house. Pinochet ordered the army to surround air force bases and force the resignation of General Gustavo Leigh, the

Air Force Commander who advocated for more traditionally corporatist policies and who opposed market reforms. Pinochet consolidated power and then backed the “Chicago Boys,” Chilean neo-liberal economists educated in the United States by figures such as Milton Friedman and Arnold Harberger to implement drastic and, at the time, novel market-focused policies in response to both economic and political challenges faced by the regime.<sup>60</sup> Pinochet’s Labour and Mining minister, who would reform the labour laws, was 30-year-old Harvard-educated economist José Piñera.<sup>61</sup>

According to Piñera, the general called him in 1978 to help the military regime clean up its international image. However, the young economist wanted to contribute more than mere window dressing to the regime. To that end he developed what later became known as the *Plan Laboral*, a sweeping labour law reform that couched labour rights mostly as individual rights of workers. Piñera wanted to neutralize political critics of the regime and establish legal norms that would create free markets for the country. Finally, the *Plan Laboral* had to give a hard blow to “communism” as a political force.<sup>62</sup>

Pinochet called Piñera in 1978 when Chile was facing the double threat of embargo and war. Pinochet was deeply troubled because the country was on the brink of war with Argentina, a potential disaster in the dictator’s view. But that was not everything that worried Pinochet. According to Piñera:

The union boycott against Chilean commerce with the rest of America was an imminent fact. The measure, driven by the powerful union, the North American AFL-CIO, was announced after the meeting of the ORIT (Inter-American Regional Organization of Labor), celebrated in Lima a few weeks before. With that decision, the campaign of disinformation and pressures carried out by a group of politicized Chilean union leaders to tie the arms of the government through the solidarity of world-wide trade unionism finally prevailed. The President was infuriated with the maneuver...and he considered it treason. The boycott would begin on 8 January 1979 and, therefore, there were fifteen days...to fix the problem.<sup>63</sup>

### **Thus, the origins of the *Plan Laboral***

However, for the ambitious Piñera, the *Plan Laboral* was not simply a propaganda campaign to save the regime from the boycott – it was a “labour revolution.” According to the young free-market economist, the

previous Chilean labour law was shaped by a “Marxist” vision of class struggle that obstructed the productive capacity of the country. Chile had to get rid of such a vision of industrial relations to regain economic prosperity. In his memoirs, Piñera indicated that:

In a free market economy, competition is established not between the employers on the one hand and all the workers, on the other, [but] between the employers....New labor legislation would prevent the pretensions of the Marxist scheme of class struggle by [eliminating] divisions between the top and the bottom.<sup>64</sup>

Thus, the *Plan Laboral* needed to create a new frame for labour rights. Employer–employee cooperation would prevail to better facilitate competition between individual firms. Capitalist competition between such entities would henceforth be the only legitimate form of economic struggle.

Along with Piñera’s goal to create an economic and social model that facilitated capitalist competition was the political goal “to destroy Communism.”<sup>65</sup> Essentially, this meant eliminating all collectivism from the labour law, especially any form of compulsory union membership or payment of union service fees, and dramatically limiting the right to strike. As Piñera remembered:

Pure repression was by itself not only immoral but also inefficient in the fight against Communism....Communism not only survived in the unions. There, it also flourished and expanded. Favored by effective instruments of struggle – strikes [and] “voluntary dues for the strike fund”<sup>66</sup>...and by the involuntary endorsement of a captive mass, manipulated, dragged like a herd to the causes of the CP through obligatory unionism.

To the logic of Communism we had to propose not the logic of repression but the logic of liberty. Liberty had to be the true detonator of the bureaucratic union apparatus in which Communism was based.<sup>67</sup>

Here, Piñera was reframing labour rights as a species of individualism. Henceforth, class solidarity would be illegal; workers would advance their interests in tandem with those of the employer for which they worked.

The new labour laws for Chile included significant continuity with a number of policies of the pre-1973 era, including a preference for plant-level bargaining and the restrictive regulation of labour organizations,

collective bargaining and the right to strike. However, the *Plan Laboral* also had important differences from pre-coup labour law, as it deregulated individual employment relations while also creating innumerable rules that made it difficult for workers to organize and strike.

Among the important characteristics of *Plan Laboral's* collective labour law rules were that plant-based labour unions would be voluntary in character. Collective contracts would not be truly collective because they would only bind union members, unless otherwise unilaterally dictated by the employer. Being purely voluntary, labour organizations could not require from nonmembers membership or service fees, nor the extension of collective bargaining agreements to nonmembers of the union, as in other industrial relations systems.<sup>68</sup> These rules remain on the books today.

While plant-level or employer-level bargaining is not per se a violation of international labour norms, plant-level bargaining is generally associated with low levels of union organization.<sup>69</sup> According to the prestigious Diego Portales University human rights report, in 2011 a mere 5.9 per cent of the Chilean workforce was covered by a collective instrument of any kind, the lowest of any country in the Organisation for Economic Co-operation and Development (OECD) with the exception of the Republic of Korea. The average rate of collective bargaining coverage in OECD area countries was 60 per cent.<sup>70</sup>

The same Diego Portales report, citing a 2009 report by the OECD, of which Chile is a member, blames low union density and collective bargaining coverage for the conflictive industrial relations that prevailed in Chile.<sup>71</sup> Riot police, tear gas and violence prevailed when Chilean workers took to the streets or struck. To provide just one recent example of such conflictive relationships, in 2009, almost 20 years after the military dictatorship ended, the government used air force troop transport planes to carry riot police and armoured vehicles to the Collahuasi mine in the north of Chile to quell a strike by subcontracted employees requesting equal treatment at the mine. Even the mine manager acknowledged that he did not expect the situation to escalate to such levels and blamed "lack of dialogue with the contracted workers" for the violent escalation.<sup>72</sup> Contracted workers in Chile, because they are not direct employees of the main employer (the mine), are legally barred from collective bargaining with that primary employer. As a result of this incident, the mine decided to voluntarily change its industrial relations procedures to include subcontracted workers in collective bargaining.<sup>73</sup> However, the problem of unequal treatment of subcontracted workers remains in Chile and there is little evidence

that the Collahuasi changes have been sustained or have been significantly diffused to other mines.

Moreover, the *Plan Laboral* enabled a plurality of groups to be legitimate bargaining agents; formal labour unions and more informal, so-called bargaining committees, could bargain for the workers concurrently.<sup>74</sup> Procedural and substantive bargaining rules were (and continue to be) strict if workers want to legally compel the employer to bargain. Therefore, in Chile a workplace may be regulated by a number of collective instruments negotiated by a plurality of bargaining agents, covering workers with identical occupations, functions and jobs, all of which fares ill for effective collective bargaining.

The yearly report of the human rights situation in Chile published by the Diego Portales Law School has also reported that the equal standing given to bargaining committees and labour unions by the Chilean labour law violates the ILO's freedom of association principles.<sup>75</sup> Bargaining committees can weaken labour organizations and may be used by employers to subvert collective bargaining. As the ILO has further stated:

The Collective Agreements Recommendation, 1951 (No. 91), emphasizes the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists.<sup>76</sup>

In other words, informal bargaining committees or other groups of workers can have standing to bargain with the employer only in the absence of a formal labour union organization. The equal standing that Chilean labour law gives to both groups is, therefore, a violation of ILO norms because it weakens unions and collective bargaining. In fact, the dictatorship of Pinochet instituted such a rule to weaken labour organizations.<sup>77</sup>

Moreover, the *Plan Laboral* essentially destroyed the strike by limiting it very narrowly to the collective bargaining context. Workers could (and still can) only strike after turning down management's final offer and must begin their strike within three days after turning down that offer. Moreover, strikes could not persist beyond 60 days.<sup>78</sup> Striking past 60 days was considered a voluntary resignation, in which case the employer could legally terminate the strikers' employment. Moreover, the employer could hire replacement workers from day one of the strike.<sup>79</sup> As the Diego Portales human rights report states, Chile's strike rules

[C]an be catalogued as one of the most interventionist in the continental legal tradition. The model shows hostility against workers' self organization [*auto tutela*], and in this manner distances itself from those systems that prioritize the collective autonomy of the actors.<sup>80</sup>

Strike rules in Chile are so restrictive that they even endanger the lives of workers at the workplace. To take just one example, let us recall the 33 miners who were trapped inside a mine in San José, Chile, in 2010 as a result of a mine collapse.<sup>81</sup> The union and the management of the firm knew that the mine was unsafe because large chunks of the mine's ceiling collapsed weeks before accident. As a result of that initial accident, the labour inspectorate of the country determined that the mine was unsafe but, instead of closing the mine, it merely fined it the equivalent of US\$6,000.<sup>82</sup> Political obstacles made it impossible for the labour inspectorate to close the mine.<sup>83</sup> If the union had called for a strike to protect the safety of workers and compel the employer to fix the structural problems known to exist in the mine, the strike would have been illegal and workers could have been fired.<sup>84</sup>

On numerous occasions the ILO has found that Chile's contemporary strike rules, first established by the *Plan Laboral*, are clearly in violation of ILO principles of freedom of association and effective collective bargaining. The ILO has called for Chile to reform its labour laws so that workers can strike over issues far broader than those that they can strike over today.<sup>85</sup>

The ILO has also found that the strike replacement rules violate international norms. In a 2009 decision,<sup>86</sup> the Committee on Freedom of Association recalled that on numerous occasions it has found that section 381 of the Labour Code of Chile, which codifies strike replacement rules, is not in compliance with Convention No. 87 regarding Freedom of Association and Protection of the Right to Organize. It advised the country to make the necessary legislative changes to bring its labour law in compliance with ILO norms.<sup>87</sup> However, these rules remain on the law books.

The labour policies inscribed by the *Plan Laboral* can be interpreted as a neo-liberal labour law aiming to support a labour market, not to protect workers' rights, and to politically undermine unions. The *Plan Laboral* attempted to reconfigure industrial relations in order to reestablish the ideological tenet that labour is a commodity, different from that established by the labour laws prior to 1973. In this manner, the *Plan Laboral* transformed the frame for labour rights in Chile from one based on protecting workers – weaker parties in a bargaining relationship – to one

of individual rights. Workers would no longer be physically repressed by the state for their union activities.<sup>88</sup> They could voluntarily form union organizations. However, the state would not protect collective actions, namely the right to strike, among others. Collective action would have its price, and workers would learn that. The market would impose discipline.

Against the neo-liberal frame, where individual liberty and life would presumably be respected, the human rights frame, substantively centred on civil and political rights violations, no longer resonated with the same intensity. The regime changed the terms of the public debate and forced the various movement actors to shift gears. While the ILO remained critical of the regime, as did many other labour, human rights and political groups, the AFL-CIO simply called off the boycott. While the established historical record remains vague on the issue of why the AFL-CIO desisted on its plan to boycott Chilean goods, according to Chilean political scientists Barrera and Valenzuela, the reasons for the American backtrack on the boycott were likely related to the fact that Piñera argued to the Americans that the *Plan Laboral* dealt with many of the AFL-CIO's most pressing concerns.<sup>89</sup> Piñera suggested that the new Chilean labour laws had "many points in common with that which exists in the southern United States, where 'right-to-work' laws are common."<sup>90</sup> While the AFL-CIO has always opposed right-to-work rules, where unions must represent workers who refuse to pay union service fees, right-to-work rules had never been couched as fundamental human rights violations that deserved international condemnation and boycotts. Against a law that apparently mirrored its American counterpart, the human rights frame limited continued wide, international support against the Chilean regime even as Chilean labour rights were sharply diminished by the Chicago Boys.

### **The resilience of the neo-liberal labour laws**

After the restoration of democracy in Chile in 1990, the country has been involved in public discussions to reform the *Plan Laboral*, due not insignificantly to international pressure for Chile to rid itself of the Pinochet legacy. Significant reforms were made regarding individual employment laws, such as the amplification of dismissal protections and the legalization of labour union centrals, albeit without bargaining authority.<sup>91</sup> Several governments of the period also institutionalized a number of important poverty-alleviation programs.<sup>92</sup> However, the core of the collective labour law regulations put in place by the *Plan Laboral*

remains on the books even though the ILO and many other knowledgeable institutions and individuals continue to criticize Chilean labour law for violating international norms.<sup>93</sup>

Supporters of the existing law point out that Chile has Latin America's best-functioning economy and changing the labour law could be detrimental to additional growth and development. For example, in terms of gross national income (GNI), Chile boasted a per capita figure of US\$9,396 in 2008, surpassed by no other country in the Southern Cone and exceeded only slightly by Mexico, the Latin American leader.<sup>94</sup> Such has been the success of the Chilean economy that in 2010 Chile was admitted to the exclusive ranks of the OECD.<sup>95</sup> From a historical and comparative perspective, the economic numbers also look good: while in 1975 Chile's income per person was 25 per cent of the US total, in 2006 it climbed to 40 per cent. These figures contrast with those of its Latin American peers, who in 1975 had an average of 24 per cent of the income per capita of the United States. By 2006 that figure had declined to 19 per cent.<sup>96</sup> The average rate of economic growth in the country from 1990 to 1998 was an impressive 7.7 per cent per year. Since the Asian crisis of the late 1990s, the figure has still been remarkable, at about 4.5 per cent.<sup>97</sup>

Therefore, the Chilean business classes, the political Right, its various think tanks, and the media have taken strong stances against labour law reform, arguing that any change would damage the efficiency and economic competitiveness of the Latin American "jaguar." In fact, a significant group within the moderate Christian Democrats favours job creation and freedom to hire and fire over traditional labour rights, such as employment security, which in their view adds excessive rigidity to the labour market.<sup>98</sup> The *Plan Laboral* has kept a following, at least among members of the political class.

On the left, critics of the labour law *status quo* argue that even if the Chilean economy is strong, income inequality remains a huge problem. Even Sebastián Edwards, a prominent Chilean economist and former chief economist for the Latin America and Caribbean Region of the World Bank and supporter of Chilean economic policies, agrees that inequality has been slow to improve.<sup>99</sup> In 1996, the World Bank recognized Chile as one of the most unequal countries on the globe.<sup>100</sup> Indeed, Chile changed from the second most equal country in the region in 1972 to the second most unequal in 2002. In the twenty-first century the top decile enjoys monthly incomes totalling US\$8,000, while the bottom decile barely survives on US\$250 per month. Real wages have remained stagnant during the post-Pinochet era, even as employer profits and productivity have grown rapidly.<sup>101</sup> The human rights campaign could

not stop the neo-liberal train wreck, and, to an unintended extent, even enabled it.

### **Conclusion: the persistent need of equality frames**

The Chilean case supports the proposition advanced already by legal scholars such as Virginia Leary and Kevin Kolben that human rights and labour rights do not always sit comfortably next to each other; human rights frames can carry a movement forward, but not all of the way. Here, I further argue that human rights frames may even send labour rights toward an unintended and tragic neo-liberal path. Even if the ILO and other knowledgeable labour rights organizations with clear and unambiguous views on freedom of association remain critical of member States that are in breach of international standards, as occurred in the case of Chile, public opinion, needed to further compel the scofflaws to change, may wane because it was not sufficiently mobilized on the grounds of social equality, the essence of labour rights. As the public loses sight of the human rights pariah that is no longer killing, imprisoning, detaining and harassing labour activists and ordinary workers, the state may reform its labour laws in a neo-liberal fashion. Workers will no longer be killed, imprisoned, exiled or harassed by the state, but may still be fired by employers and left jobless when they organize unions and lead picket lines.

The Chilean case bodes ill for labour rights. If the Chilean human rights pariah regime was able to rehabilitate its image while effectively undermining freedom of association rights, industrial democracies such as the United States should prove to be even more challenging targets for activists and reformers who fail to insist on the need to remedy inequalities through law. On the other hand, authoritarian regimes such as China may have their work cut out for them. Like Pinochet's Chile, they can respond to international criticism by formally advancing individual rights, while continuing to disregard claims regarding the effective guarantee of freedom of association. On the somewhat bright side, the Chilean case shows that there are politically effective ways to get an authoritarian regime to soften its grip on labour activists and ordinary workers, even if freedom of association rights continue to be effectively held at bay. However, the role of those who favour the rebirth and revitalization of such once-repressed labour movements is not, principally, to be general human rights advocates, but rather to enable workers to build collective power as their principal source of rights. In this manner, the Chilean case compels us to pause and rethink human rights framing strategies for the future.

## Notes

The author thanks the participants of the faculty workshop of the IIT–Chicago Kent College of Law for their collective comments made to this paper. The author particularly thanks Kathy Baker, Felice Batlan, Carolina Banks, Lance Compa, Sergio Gamonal, Kevin Kolben, Nelson Lichtenstein, Marty Malin, Margaret Power, Lee Swepston and three anonymous reviewers for comments made to previous drafts of this chapter. Mistakes and omissions remain the sole responsibility of the author. Address all inquiries to crosado@kentlaw.edu.

1. ILO Constitution, 1919 (online). Part XIII, Article 427 of the Treaty of Versailles, in *Official Bulletin*, vol. 1. (Geneva: ILO, 1923), 324. Article 427 has been replaced by the Philadelphia Declaration which states that “labour is not a commodity”.
2. K. Kolben, “Labor Rights as Human Rights?” *Virginia Journal of International Law*, 50 (2010), 449–84, 453.
3. Kolben 2010, 453.
4. B. Creighton. “The Future of Labour Law: Is There a Role for International Labour Standards?” in C. Barnard, S. Deakin, and G. S. Morris, eds., *The Future of Labour Law* (Oxford: Hart Publishing, 2004), 253–74.
5. R. Blanpain et al., *The Global Workplace: International and Comparative Employment Law Cases and Materials*, 2nd edn. (New York: Kluwer Law & Business, 2012), 65.
6. J. R. Bellace, “Achieving Social Justice: The Nexus between the ILO’s Fundamental Rights and Decent Work,” *Employee Rights and Employee Policy Journal*, 15 (2011), 5–28, 11.
7. ILO, *Declaration of Philadelphia*, 1944 (online); Bellace 2011, 11; Blanpain et al. 2012, 66–67.
8. ILO, *Declaration on Fundamental Principles and Rights at Work*, 1998 (online).
9. Blanpain et al. 2012, 66–67.
10. B. Langille, “Core Labour Rights – The True Story (Reply to Alston),” *European Journal of International Law*, 16 (2005), 409–37, 420–21.
11. Langille 2005, 420–27.
12. P. Alston, “Core Labour Standards and the Transformation of the International Labour Rights Regime,” *European Journal of International Law*, 15 (2004), 457–521, and see especially 458–59 and 519–21.
13. V. Leary, “The Paradox of Workers’ Rights as Human Rights,” in L. Compa and S. F. Diamond, eds., *Human Rights, Labor Rights and International Trade* (Philadelphia: University of Pennsylvania Press, 1992), 22–47, 22.
14. Leary 1992, 22.
15. Kolben 2010, 470–71.
16. See generally M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard, 1968).
17. Kolben 2010, 462–63.
18. Kolben 2010, 483–84.
19. Kolben, “Labor Rights as Human Rights,” 484.
20. P. Irrureta, “Regulación de la Libertad Sindical entre 1973 y 1990,” in E. Lira and H. Rojas, eds., *Libertad sindical y Derechos Humanos: Análisis de los informes de Comité de Libertad Sindical de la OIT (1973–90)* (Santiago: LOM Ediciones, 2009), 29–42.

21. As a political scientist, Lisa Hilbink describes, the *recurso de queja* under Chilean law permits a party to seek review of a lower court's decision at the Supreme Court when there is "grave mistake or abuse" (*faltas o abuso grave*) in lower proceedings. Generally, the Supreme Court of Chile did not have (and continued to lack) ordinary review authority of labour court decisions. Therefore, the review capacity of the Supreme Court under the *recurso de queja* comes through a back alley, from the *disciplinary powers* that the Supreme Court *ministros* (justices) have over lower court judges. Important to underline, the extraordinary *recurso de queja* was the roundabout way that the employer bar sought review of labour court decisions shortly after labour courts were instituted in the country in the 1920s. Naturally, lower court judges greatly feared *recurso de queja* review as it may have led to both reversal of their decision and disciplinary sanctions against them. L. Hilbink, *Judges Beyond Politics and Dictatorship: Lessons from Chile* (New York: Cambridge University Press, 2007), 65–66.
22. Irrureta, "Regulación de la Libertad Sindical entre 1973 y 1990," 29–38.
23. P. Winn, "The Pinochet Era," in P. Winn, ed., *Victims of the Chilean Miracle: Workers and Neoliberalism in the Pinochet Era, 1973–2002* (Durham, NC, and London: Duke University Press, 2004), 14–70, 22.
24. Irrureta 2009, 35.
25. Winn 2004, 22.
26. H. Rojas, "Las Quejas ante el Comité de Libertad Sindical de la OIT durante el régimen militar," in E. Lira and H. Rojas, eds., *Libertad sindical y Derechos Humanos: Análisis de los informes de Comité de Libertad Sindical de la OIT (1973–90)* (Santiago: LOM Ediciones, 2009), 53–104, 53.
27. ILO, *Report of The Fact Finding and Conciliation Commission on Freedom of Association Concerning the Case of Chile*, Governing Body 196th Session of the International Labour Conference (ILC), Geneva, May 1975, 1, 30, 108.
28. GB May 1974, *Report of The Fact Finding and Conciliation Commission*, 108.
29. GB May 1975, *Report of The Fact Finding and Conciliation Commission On Freedom of Association Concerning The Case Of Chile*, 1–2.
30. *Ibid.*, 7.
31. *Ibid.*, 51.
32. *Ibid.*, 110.
33. *Ibid.*, 111.
34. *Ibid.*, 67.
35. *Ibid.*, 113.
36. *Ibid.*
37. *Ibid.*
38. *Ibid.*, 114.
39. *Ibid.*
40. *Ibid.*, 144. Historically, and particularly during the Pinochet dictatorship, the Supreme Court of Chile denied the vast majority of *recurso de amparo* (*habeas corpus*) complaints on the grounds that during a constitutional state of exception, as the dictatorship declared after 1973, the Supreme Court lacked authority to question the government's motives for a given detention or to evaluate the facts upon which it was ordered. Hilbink, *Judges*, 67. Among various reasons to deny all but 30 of about 9,000 such complaints, was that "if no decree ordering an individual's arrest could be proven to have

- been issued, judges ruled that the person must not have been detained, and denied the *amparo* on the grounds that the writ had been filed on insufficient evidence or with the intention of causing concern or alarm. Hilbink, *Judges*, 117 (internal citations omitted).
41. GB May 1975, *Report of The Fact Finding and Conciliation Commission*, 112–13.
  42. *Ibid.*, 116.
  43. *The New York Times*, “Labor Agency Says Chile Violated Rights of Unionists,” 1 March 1975.
  44. *The New York Times*, “Labor Unit’s Report Criticized by Chile,” 1 June 1975.
  45. GB May 1975, *Report of The Fact Finding and Conciliation Commission*, 118–21.
  46. *Ibid.*, 121.
  47. M. Barrera and S. J. Valenzuela “The Development of Labor Movement Opposition to the Military Regime,” in J. S. Valenzuela and A. Valenzuela, eds., *Military Rule in Chile: Dictatorship and Oppositions* (Baltimore: Johns Hopkins University Press, 1986), 230–69, 236–40.
  48. E. Caamaño Rojo and J. Luis Ugarte Cataldo, *Negociación Colectiva y Libertad Sindical: Un Enfoque Crítico* (Santiago: Legal Publishing, 2008), 25, citing F. Walker Errázuriz, *Derecho de las Relaciones Laborales* (Santiago: editorial Universitaria, 2003), 586.
  49. Berrera and Valenzuela 1986, 248–49.
  50. *Ibid.*, 249.
  51. Winn 2004, 24.
  52. M. Power, “The U.S. Movement in Solidarity with Chile in the 1970s,” *Latin American Perspectives*, Issue 169, 36, no.6 (2009), 46–66, 51.
  53. J. de Onis, “Chile Acts to Punish Seven Dissident Labor Leaders,” *The New York Times*, 4 December 1977.
  54. Onis 1977.
  55. *Ibid.*
  56. Onis, “Chile Acts.”
  57. J. de Onis, “Citing Repressive Policies in Chile, A.F.L.-C.I.O. May Join in Boycott,” *New York Times*, 20 November 1978.
  58. J. de Onis, “Chile under Mounting Pressure from Church on Human Rights,” *New York Times*, 15 November 1978.
  59. Berrera and Valenzuela 1986, 249.
  60. Winn 2004, 24–27.
  61. J. Piñera, *La Revolución Laboral en Chile*, 1990, 5 (translation by author). Available at [http://www.josepinera.com/jp/revolucion\\_laboral.pdf](http://www.josepinera.com/jp/revolucion_laboral.pdf).
  62. Piñera 1990, 43.
  63. *Ibid.*, 5.
  64. *Ibid.*, 66.
  65. *Ibid.*, 43.
  66. The quotations are from the original Spanish text and signal Piñera’s sarcasm, as he felt that strike dues were all but voluntary.
  67. Piñera 2010, 43.
  68. Winn 2004, 33.
  69. B. Western, *Between Class and Market: Postwar Unionization in the Capitalist Democracies* (Princeton, NJ: Princeton University Press, 1997), 50–65.

70. Centro de Derechos Humanos, Universidad Diego Portales, Informe Anual de Derechos Humanos, *El Modelo de Trabajo en Chile y los Derechos de los Trabajadores*, (2010), 393, available at <http://www.derechoshumanos.udp.cl/informe-anual-sobre-derechos-humanos-en-chile-2010>.
71. Centro de Derechos Humanos 2010, Informe Anual, 393.
72. *Ibid.*, 383.
73. *Ibid.*
74. *Ibid.*, 396–97.
75. *Ibid.*, 383.
76. ILO, *Freedom of Association, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5th (revised) edn. (Geneva: ILO, 2006), para. 944.
77. Centro de Derechos Humanos 2010, Informe Anual, 397.
78. The 60-day time limit to strike was thereafter eliminated once democracy was restored in the country.
79. Centro de Derechos Humanos 2010, Informe Anual, 399.
80. *Ibid.*, 397.
81. See C. F. Rosado Marzán, “Punishment and Work Law Compliance: Lessons from Chile,” *Hofstra Labor and Employment Law Journal*, 29 (2012), 343–405, 394–99.
82. Rosado Marzán, “Punishment,” 394–99.
83. *Ibid.*
84. Centro de Derechos Humanos 2010, Informe Anual, 381.
85. International Labour Conference, 101st Session, 2012, *Report III – Information and Reports on the Application of Conventions and Recommendations* (Geneva: ILO, 2012), 104–07. ilo.org document site.
86. ILO, Committee of Freedom of Association, *Definitive Report – Report No. 360, case No. 2770 (Chile)*, 2011. Available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2912313](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2912313).
87. Committee of Freedom of Association, *Definitive Report – Report No. 360*, 371, 376.
88. We should stress that the *Plan Laboral* may have ended *formal* repressive policies against trade unionists, but it is still important to note that the regime continued being a military dictatorship until 1989 and, until then, continued brutal repression. In fact, complaints filed with the ILO after 1979 included those denouncing the 1982 assassination of Tucapel Jimenez, a prestigious union leader of the *Agrupación Nacional de Empleados Fiscales*, shortly after a large national strike. Another one denounced the 1985 assassinations of Manuel Guerrero, a union leader, and José Manuel Parada, a functionary of the *Vicaría de la Solidaridad*, the Catholic charity that represented human rights victims and filed most complaints against Chile in the ILO. The same cases also complained about the assassination of others in 1984, 1986, and 1987. In fact, Juan Espinoza a labour leader, was killed in 1987 after authorities tried to burn him and his family alive. Rojas, “Las Quejas,” 83–84. Therefore, the labour boycott was removed from the table in 1978 only after merely *de jure* labour policies were changed by the regime. Savage *de facto* repression continued unabated.
89. Berrera and Valenzuela 1986, 253.
90. Berrera and Valenzuela, “The Development of Labor Movement,” 253.

91. V. Frank, "Politics without Policy: The Failure of Social Concertation in Democratic Chile, 1990–2000," in P. Winn, ed., *Victims of the Chilean Miracle: Workers and Neoliberalism in the Pinochet Era, 1973–2002* (Durham, NC, and London: Duke University Press, 2004), 71–124, 74–80.
92. R. Sandbrook, M. Richard, M. Edelman, P. Heller, and J. Teichman, *Social Democracy in the Global Periphery: Origins, Challenges, Prospects* (Cambridge: Cambridge University Press, 2007), 147–76.
93. C. Rojo and U. Cataldo 2008, 25; I. Rojas Miño, "La Experiencia Histórica de la Negociación Colectiva en Chile," in Dirección del Trabajo, ed., *Negociación Colectiva en Chile: Debilidad de un Derecho Imprescindible* (Santiago: Dirección del Trabajo, 2010), 73–108, 91; S. Gamonal Contreras, *Trabajo y Derecho* (Legal Publishing: Santiago, 2010), 106–55.
94. However, some Caribbean nations boast much larger GNI numbers, such as The Bahamas, with US\$22,906.60, Trinidad and Tobago, with US\$16,538.30, Puerto Rico, with US\$15,629.60, and St Kitts with US\$10,961.40. However, these Caribbean countries are much smaller than Chile and do not really provide adequate comparisons. Moreover, Puerto Rico is not even an independent nation, but a US territory, which also makes it difficult to compare with Chile doing business. Measuring Business Regulations, available at <http://www.doingbusiness.org/data/exploreconomies/economycharacteristics>.
95. OECD *Accession: OECD Welcomes Chile, Estonia, Israel and Slovenia*, 27 May 2010, available at <http://www.oecd.org>.
96. S. Edwards, *Left Behind: Latin America and the False Promise of Populism* (Chicago and London: University of Chicago Press, 2010), 110–11.
97. Edwards 2010, 114.
98. V. Frank, "Politics without Policy," 97.
99. Edwards 2010.
100. H. Fazio. *Mapa actual de la extrema riqueza en Chile* (Santiago: LOM-Arcis: 1997): 7.
101. Winn 2004, 49–60.

## **Part IV**

# **Success and Failure in the New Asian Economy**

# 10

## Legal Protection of the Right to Old-Age Insurance for Migrant Workers from Rural Areas in China

*Changzheng Zhou*

By the end of 2009, more than 149 million migrant workers from rural areas worked in cities and towns in China.<sup>1</sup> Most of their jobs fall into the so-called 3 Ds category, which means “dirty, dangerous and demeaning” employment. Their wages are very low and many have no pension scheme. According to a survey conducted by the Legal Aid Programme for Migrant Workers at Nanjing University in the summer of 2009, only 39.3 per cent of migrant workers in the Yangtze delta region possessed any kind of pension, and about 31.5 per cent had no social insurance at all.<sup>2</sup> However, the first generation of migrant workers, those who began to work in cities in the early 1980s, are approaching or have reached the compulsory retirement age, which is 60 for male workers and 50 for female workers. If these workers continue to live in cities after their retirement, their right to pensions becomes a serious social problem, an issue that has drawn significant attention in the media.<sup>3</sup>

The pension scheme system was established in accordance with the Regulation on Labour Insurance of the People’s Republic of China, promulgated in 1951. The Regulation provided that all firms would contribute 3 per cent of workers’ payroll to an old-age insurance fund. Workers, however, were not obliged to pay any premium for these schemes. Workers might get a pension that was equivalent to 50–70 per cent of their wages when they reached retirement age.

The 1951 pension scheme system was abolished by the Financial Ministry during the Cultural Revolution of 1969. In 1978, China resumed its pension system and promulgated two rules on the retirement schemes, for both workers and officials.<sup>4</sup> However, the new system

failed to set aside a dedicated fund, instead requiring employers to pay pensions to their retired workers directly. Because many state-owned companies had millions of retired workers, their burden was very heavy under such an arrangement. They complained that they were not able to compete with competitors in the private sector because those companies had no responsibility for retired workers who had accrued their pensions under the previous regime.

In 1993, the Central Government declared its intention to develop a market economy in China. Proposals included the ambition that the playing field should be levelled and state-owned companies should not bear the heavy pension burden any longer. The Labour Law of 1994 that followed thus provided for the development of a social security system that included retirement and pension benefits. The Labour Law did not distinguish migrant workers and urban workers, and migrant workers were entitled to social insurance as a right by the law. To make this possible, both employers and workers were asked to contribute to old-age insurance schemes to guarantee workers' entitlement to pension benefits after their retirement. The employer's contribution was set at no more than 20 per cent of the total payroll of employees, whereas employees' contributions were set at 8 per cent of their wages.

In addition to this general framework, the right to a pension needed enforcement by the government and legal redress by the courts of law if employers did not contribute social insurance premiums for migrant workers. Unfortunately, the Labour Law did not provide a legal redress mechanism against this kind of violation. If workers did not receive any pension benefits from old-age insurance schemes due to their employer's violations, what kind of damages could they claim? To be more specific, could the worker ask a court to issue a writ to the employer that orders the payment of overdue premiums as soon as possible? Or, could workers only claim damage for loss in their pension benefits?

Current laws in China actually do not give clear answers to such questions. Different provinces use different approaches. Some provinces include pension programs for migrant workers in urban workers' pension schemes. Adding to the complication, some provinces or municipalities have established special pension schemes for migrant workers that typically have "low contribution, low benefits." In terms of enforcement, some courts of law have refused to take any lawsuits asking for premium contribution, but have instead only accepted lawsuits that deal with compensation. As a result, migrant workers' right to pensions are both localized in the administration process – and therefore scattershot – and marginalized in the judicial process.

As the saying goes, where there is a right, there is a remedy. Yet, if migrant workers cannot get a proper remedy when their right to a pension is violated by employers, their right is not a real right. Therefore, this chapter will explore both the context of Chinese legislation on migrant workers' right to pensions and the implementation of this legislation by local governments and courts.

The first part of this chapter attempts to define migrant workers' right to old-age insurance in the context of the reform of the Chinese social insurance system since the 1990s. The second part compares different approaches by courts of law in different provinces and analyses possible legal redress migrant workers may claim when their pension right is violated. Finally, the last part discusses principles, offers suggestions and addresses the importance of developing a universal old-age insurance system for all workers in the country, much in line with International Labour Organization (ILO) standards.

## **The legislation and policy on retirement-age migrant workers in China**

Millions in the labour force have migrated to Chinese cities since the 1970s due to the gap in incomes between rural and urban areas. This great migration has contributed cheap labour to the rapid economic development of the past 30 years. The traditional social protection system, historically provided by family, was, however, dismantled by the migration. Migrant workers often cannot support their parents who stay at home, but also the children of these workers cannot support themselves. For these migrant workers, capitalist of industrialization has changed aging into a new social risk, which cannot be solved without a socialized old-age insurance system. The right to old-age insurance benefits is, in its essence, a human right. The mission of old-age insurance should be "security for everyone."<sup>5</sup>

Since its inception in 1919, the ILO has been dedicated to setting international standards in social protection. Among the first six international Conventions it adopted in 1919, two related to social protection: the Unemployment Convention (No. 2) and the Maternity Protection Convention (No. 3). Later, in 1927, the ILO adopted the Sickness Insurance (Industry) Convention (No. 24) and the Sickness Insurance (Agriculture) Convention (No. 25), and in 1933, the Old-Age Insurance (Industry, etc.) Convention (No. 35) and the Old-Age Insurance (Agriculture) Convention (No. 36). The primary protocol on the topic of social insurance, the ILO Social Security (Minimum Standards)

Convention 1952 (No. 102), is in essence an amalgam of all other social protection Conventions that came before it, requiring the ILO member States that ratified it to establish at least three types of social security schemes, yet noting that old-age insurance should be given priority in building a national social security system.<sup>6</sup>

China has received a great deal of technical assistance from the ILO in the area of social protection over the past 20 years, although it has not yet ratified Convention No. 102. In the early 1990s, the ILO and the Ministry of Labour and Social Security of the People's Republic of China sponsored a research project on social insurance legislation in China. In 2001, the ILO and the Ministry of Labour and Social Security signed a memorandum of understanding which set out agreed-upon policy priorities for future cooperation within each of the four strategic objectives of the ILO's Decent Work agenda: employment, social protection, social dialogue, and rights at work.<sup>7</sup> Social protection is therefore one of the agreed-upon policy priorities.

However, ILO Conventions did not readily deal with domestic migrants within countries. Since 1919, it has instead tried to protect "the interests of workers employed in countries other than their own"<sup>8</sup> and developed, to date, specific international standards for the governance of labour migration and protection of migrant workers. It adopted two Conventions, in 1949 and 1975. Yet, internal labour migration has long gone unnoticed and/or been treated as an entirely domestic problem. Therefore, China must make more applicable domestic laws internally in order to have "security for everyone." The Constitution of China provides that all citizens of the People's Republic of China (PRC) have the right to material assistance from the state and society in case of aging, sickness or loss of the ability to work. The state should meanwhile develop those social insurance, social assistance and medical services businesses necessary for citizens to enjoy these rights.<sup>9</sup> Article 44 also declares that the state and society should provide proper pension security for every citizen of the PRC and that every citizen is entitled to this as a right. In accordance with the Constitution, the Chinese Government developed the Aging Society Agenda in 2006, which promises that every elderly person in China will have means of subsistence, medical services, learning programmes, entertainment and so on.<sup>10</sup> Since then, China has promulgated more than 200 relevant laws, regulations, implementation rules and policies, such as the Protection Act for Elderly Person's Rights and Benefits. All these laws and regulations provide a solid foundation for the social protection system for elderly persons in China.

Elderly migrant workers, as a special part of the aging population, should be protected in the same way as their counterparts in cities. In fact, pension rights for migrant workers have been clearly provided both in law and policies. The Labour Act of 1995 stipulates that every labourer is entitled to social insurance and welfare. The law lays out a system that requires both employers and workers to enrol in the social insurance scheme.<sup>11</sup> According to the Labour Act, there are five types of compulsory social insurance schemes. These include old-age insurance, medical insurance, industrial accident insurance, unemployment insurance and maternity insurance.<sup>12</sup> It is worth noting that the Labour Act does not treat urban workers and migrant workers differently. They are entitled to the same right to social insurance because both are considered “labourers” in the Labour Act. The State Council, the highest organ of state administration, promulgated the Provisional Regulation on the Collection and Payment of Social Insurance Premium in 1999.<sup>13</sup> It provides that all kinds of enterprises in urban areas and their staff and workers should contribute to basic old-age insurance schemes.<sup>14</sup> The term “staff and workers” included within does not distinguish between urban workers and migrant workers. So, it is very clear that as long as an employer establishes an employment relationship with a worker, regardless of whether the worker is an urban worker or a migrant, the employer should enrol him or her in a number of social insurance schemes and contribute premiums accordingly.

Social insurance plans are independently run by local governments in China. From 1998, in order to relieve the payment pressure on pension funds, many provinces and municipalities began to expand the coverage of old-age insurance schemes. Many provincial governments issued notices to lower governments to emphasize that all workers, including migrant workers from rural areas, should be enrolled in social insurance schemes and should contribute premiums at specified amounts.<sup>15</sup> These documents also testify, from a perspective of implementation of law, that migrant workers are entitled to the same right to old-age insurance, as well as the same duties to contribute to premiums.

However, the Central Government has paid more attention to the issues and demands of urban workers than to those of migrant workers when establishing old-age insurance policies. This means the needs of migrant workers have actually been ignored for many years. As a result, local governments had to create policies that had supplementary rules on pension schemes for migrant workers, leading to the localization of such programs. There are many types of pension systems for migrant workers in the country, and three of them are very typical and influential.

The first type is the Shenzhen model in which migrant workers may enrol in the same pension scheme as local workers. If the total contribution record of worker and employer adds up to 15 years, migrant workers are entitled to the same old-age insurance benefits as local workers.<sup>16</sup> As this model is very consistent with the Labour Law, most provinces have adopted it, though they have differed in minor ways in their contribution rates, qualifications for pension and other aspects.

The second model is the Beijing model, which establishes a separate pension system for migrant workers. Both the contribution base and the standard of benefits are very low. And workers will get all benefits on a lump-sum basis.<sup>17</sup> Although this model reflects some characteristics of the old-age insurance system for urban workers, such as establishment of individual accounts and mutual contribution by employers and workers, the standards of contribution and benefits are obviously discriminatory against migrant workers.

The third most prevalent model is the comprehensive insurance system of Shanghai. This system includes old-age subsidies, industrial accident insurance and medical care insurance. Migrant workers may get an old-age subsidy policy if they have made continuous contributions for one year. When they have reached their retirement age, they may apply for an overall payment in cash for old-age subsidy at any branch office of China Life Insurance Corporation throughout the country.<sup>18</sup> The city of Chengdu follows the Shanghai model and has a similar comprehensive insurance system for migrant workers. Strictly speaking, comprehensive insurance is not real social insurance, but a kind of commercial life insurance because it is characterized by an annual clearance and a lump-sum payment after retirement. One can hardly find any characteristic of social mutual assistance in this old-age subsidy scheme.

In addition to the three models described above, there is also a "provident fund model," which is a "dual low model" (low contribution, low benefits), used in the cities of Suzhou and Hangzhou,<sup>19</sup> and in various other forms throughout China. Although grouped into these basic patterns, it is almost impossible to enumerate all the models in the country.

Along with the localization of old-age insurance systems for migrant workers, there is another problem: it is difficult to transfer insurance relationships from one city to another. National basic old-age benefits are inaccessible for migrant workers. Therefore, the majority of migrant workers rationally choose to exit old-age insurance schemes. Before 2010, almost every city in the country allowed migrant workers to apply to refund their social insurance contributions. Still, only the personal

contribution in their personal account could be refunded, not the joint contribution of their employers.

Labour-importing provinces benefited greatly from this arrangement. According to statistics, the basic old-age insurance fund of Guangdong Province earned a "profit" of up to 72.7 billion renminbi (RMB) from 2002 to 2007. By the end of 2008, the surplus of the Guangdong social insurance fund was nearly 200 billion RMB, which accounted for 20 per cent of the national surplus, while the insured people of Guangdong Province only accounted for 12.25 per cent of the whole country.<sup>20</sup> Thus, under this arrangement of refunding social insurance contributions, the old-age insurance system turned from compulsory to voluntary, and migrant workers' right to old-age insurance was materially bought out by labour-importing provinces in the guise of "free choice."

Because old-age insurance is not yet portable, neither employers nor migrant workers want to enrol. The coverage of migrant workers was only 15 per cent throughout the entire country in 2005, according to a research report on migrant workers released by the Labour and Social Security Ministry. In the best areas, such as Guangdong Province and Dalian City, coverage was near 20 per cent. Therefore, as a conclusion, the report put forward a road map suggesting that the government gradually solve the old-age insurance problem for migrant workers in five to ten years.<sup>21</sup>

The report of the Labour and Social Security Ministry was accepted by the State Council. In March 2006, the State Council released its report, *Guideline on the Solution of Issues of Migrant Workers from Rural Areas*, which has as its intention "to insist on the principle of classified instruction and steady advancement, to give priority to industrial injury insurance and serious disease insurance, [and] to gradually solve the old-age insurance issues." Since old-age insurance is the core social insurance issue for migrant workers, and portability is the key to solving the problem relating to this issue for these workers, the Guideline also made a request of government departments, asking them "to enhance the study of old-age insurance schemes for migrant workers featuring low contribution rates, wide coverage, portability, and interchangeability with the current old-age insurance system." Although the Guideline was a milestone in addressing some of the challenges facing migrant workers, it did not clarify whether these workers enjoy the right to old-age insurance. The expression "gradually solving the old-age insurance issues" in the Guideline, moreover, was even worse, because it gave the impression that migrant workers do not have a vested right to old-age insurance at all and that the problem amounts to only a policy issue.

The Labour Contract Law of 2007 mainly dealt with the formation, implementation and dismissal issues of employment contracts; however, it also provided that the "State shall adopt measures to initiate and improve the social insurance system so that social insurance relationships may be transferred and renewed across the country."<sup>22</sup> This meant that the transference and renewal of old-age insurance for migrant workers had been developed from State Council policy to become national law. Therefore, all governments, whether central, provincial or local, had the positive duty to adopt measures that were more aggressive so that old-age insurance might be portable as soon as possible.

For the implementation of the Labour Contract Law and the Guideline on the Solution of Issues of Migrant Workers from Rural Areas, the Ministry of Human Resources and Social Security released two draft rules on old-age insurance for public input in February of 2009. One was the draft Provisional Rules on the Transfer and Renewal of Basic Old-Age Insurance Schemes for Workers of Urban Enterprises. The other was the abstract of the draft Rules on the Enrolment of Basic Old-Age Insurance for Migrant Workers. These two draft rules are supplementary to one another, but their focus is different. The former focuses on the transfer and renewal of old-age insurance schemes for workers at urban enterprises, while the latter is aimed mainly at resolving the contribution criteria and the transfer and renewal issues for migrant workers from rural areas.

The draft rule for migrant workers has been the subject of public concern. With some local experience, the rule plans to build up a specialized old-age insurance system for migrant workers, which will feature a "low contribution rate, low benefit standard." Thus the contribution rate of employers will be lowered from 20 per cent to 12 per cent, and the personal contribution rate will drop from 8 per cent to as low as 4 per cent. The rule has been criticized by the public at large for its obvious feature of "identity law," as it will be very hard for courts of law to identify who is a migrant.<sup>23</sup> Furthermore critics say, it will deepen the fragmentation of the social insurance system.

After some revisions, the State Council published the Provisional Measures on the Transfer and Renewal of Basic Old-age Insurance Schemes for Workers at Urban Enterprises, applying it to both urban and migrant workers. The new rule came into force on 1 January 2010.<sup>24</sup> This means that the draft measures on migrant workers had been denied by the State Council. The government was no longer considering building up a special old-age insurance system for migrant workers alone, but chose instead to continue to accommodate them in the same old-age

insurance system as workers from urban areas. Instead of allowing migrant workers to withdraw from old-age insurance schemes, as was the case before 1 January 2010, the new rule promises that their old-age insurance schemes can be transferred between different provinces. Undoubtedly this shows definitive progress. But, the new rule states that the precondition of transprovincial transfer is the initial establishment of provincial old-age insurance funds, which is still far from a reality. Even within the same city, old-age insurance schemes of different working groups are not transferrable. There are still many kinds of old-age insurance plans, such as “urban social insurance schemes,” “social insurance schemes for workers at towns,” “comprehensive insurance schemes,” “social insurance schemes for villagers” and “social insurance schemes for civil servants” and so forth. Since most provinces have not established a unified old-age insurance fund at the province level, it is still not realistic to transfer old-age insurance schemes across provinces.<sup>25</sup> Moreover, since many migrant workers will not choose to live in cities after their retirement, it is more practical for them to transfer their old-age insurance schemes to their hometowns and reconnect with “the New Social Old-age Insurance Schemes in Rural Areas.” However, related policies and measures are still not available yet.<sup>26</sup>

### **Judicial redress for migrant workers on their right to a pension**

The parties of a labour dispute must go to a labour dispute arbitration committee, even without an arbitration agreement, according to Chinese labour law. If the parties cannot accept the arbitration decision, they may only file their case at a primary court in the lower level. If they still refuse to accept the first court’s decision, they may appeal to the middle level court. The decision of the middle level court is a final decision.

Due to the influence of localization on the old-age insurance system for migrant workers, the scope of case screening, approaches of legal redress and applicable laws are quite different in different courts of law. The Supreme Court delivered a guideline in 2001 that provides that claims by retired workers on pensions for medical expenses, industrial accident compensation and other social insurance benefits should be filed if a worker’s former employer has not enrolled in any social insurance plans. These kinds of disputes fall into the scope of “labour disputes,” in Article 2 of the Labour Law and, thus, the people’s courts of law should file such cases.<sup>27</sup> Obviously, the guideline divides pension

disputes into two categories: enrolled cases and non-enrolled cases. If an employer has not enrolled in any social insurance contribution plan as a whole, his former migrant worker employee may file a labour dispute against his former employer in a court of law. However, if the employer has enrolled in social insurance plans, or the migrant worker has not reached retirement age, the workers' claim to a pension should be filed at a Social Insurance Agency, not in a court of law.<sup>28</sup> Since the announcement of these guidelines, many courts of law began to decline all social insurance claims, as these were slated to be dealt with by the labour and the social insurance administration.

Yet, there is a loophole in the 2001 guidelines from the Supreme Court. Although an employer may have enrolled in social insurance plans as a whole, this does not mean that all the employees have enrolled in social insurance plans. If the employer does not enrol some workers in social insurance plans, this violates the law the same as would those employers who do not enrol in social insurance plans at all. The difference lies in the extent of the violation, but not in the essence of violation itself. Why is it, however, that these workers cannot file these cases in courts of law? It is obviously unreasonable. If courts ask these claimants to complain to the social insurance administration, the right of these workers to legal redress has been materially deprived. Therefore, courts should affirmatively hear social insurance cases. They should not close the door to certain claimants under the current circumstances in China.<sup>29</sup> In practice, some local courts have made interpretations to compensate for the damage caused to workers by the loophole. For example, courts in the Province of Jiangsu will accept those cases in which an employee without a written contract requests an employer to contribute to the social insurance premium if the employer has failed to enrol employees in social insurance schemes as a whole.<sup>30</sup>

The People's Congress promulgated the Labour Dispute Mediation and Arbitration Act (LDMAA) in December 2007. Article 2 of this act provides that a dispute over social insurance falls into the scope of a labour dispute. According to the interpretation made by the chief of the Legal Affairs Committee of the People's Congress, "a dispute over social insurance" mainly refers to those disputes that have arisen out of employers' failure to contribute to social insurance premiums for workers in accordance with laws and regulations.<sup>31</sup> However, many higher courts later made quite different interpretations regarding disputes over social insurance contribution, not as labour disputes but as violations of social insurance law. It is the responsibility of the social insurance administration to deal with these complaints.

The High Court of Jiangsu Province issued a guideline on the application of the LDMAA in October 2008. According to its outlines, if a worker claims a compensation for loss in social insurance benefits in old-age insurance, medical insurance, industrial accident insurance, unemployment insurance or maternity insurance due to the employer's failure to contribute to the worker's social insurance premiums, the claim is a labour dispute and should be filed by the Labour Dispute Arbitration Committee.<sup>32</sup> Additionally, if the worker requests recontribution only, but not payment for his loss of benefits, the Labour Dispute Arbitration Committee should not accept the case. As labour arbitration is a foregoing procedure before a lawsuit, the courts will not accept this case either.

Beijing courts use similar approaches to the Jiangsu courts. They will not file disputes for social insurance contribution, while claims for loss compensation may be filed.<sup>33</sup> In contrast to Jiangsu, Beijing courts and the city's Labour Dispute Arbitration Committee have offered a specific formula to calculate loss in the old-age insurance of migrant workers. According to the formula, courts will not reckon the loss of migrant workers on the basis of the national standard of basic old-age insurance benefits, but "on the basis of amount of overdue contributions."<sup>34</sup> Obviously, the amount of compensation is quite low.

In Guangdong Province, courts of law have refused to file a dispute over the contribution of social insurance premiums, according to the opinion of Guangdong High Court since 2004.<sup>35</sup> Because "social insurance disputes" fall into the category of labour disputes according to Article 2 of the LDMAA, as noted, Guangdong High Court delivered a new opinion in August 2008. It stipulated that courts shall accept a dispute as a "labour dispute" if the plaintiff makes a claim for benefits of industrial accident, unemployment, maternity or medical treatment and compensation due to the employer's failure to contribute to his or her social insurance premium.<sup>36</sup> It is obvious by these specifications that the court will refuse to file a case for compensation of old-age insurance. If neither the premium contribution case nor the loss compensation claim may be filed by courts, a migrant worker will have no legal redress in cases in which the employer failed to contribute for him/her.

Many courts made the same type of mistake as the Guangdong High Court in approaching an interpretation of Article 2 of LDMAA. The essence of the approach is using the model of private law to redress public law abuses such as a social insurance dispute. First, a social insurance dispute is a public law dispute,<sup>37</sup> while compensation for loss is a kind of redress made within private law, mainly applicable for torts and breach

of contract between individuals. If an employer failed to contribute to social insurance premiums for his employees, not only the employees but also the social insurance fund will suffer from the employer's violation of the law. Although private law compensation may work for the employees' losses, it fails to make up for the loss to the social insurance fund. Thus, the best redress for social insurance disputes is a writ for recontribution of the social insurance premium, not compensation for losses to employees. Only if the premium may not be recontributed, or the employee suffered a loss after the employer's recontribution, may courts consider ordering the employer to compensate the employee's loss. Second, it is impossible to calculate the actual loss of old-age insurance because old-age insurance benefits will vary due to such factors as retirement age, regional difference, number of contribution years, actual survival years, and inflation. Moreover, old-age insurance is characterized by generation solidarity, annual adjustment and financial subsidy. Thus, the actual loss to an employee will be much more than the overdue premium if the employer failed to contribute for him/her. Therefore, it is impossible for private law compensation to make up for the loss of old-age insurance to workers. Finally, civil compensation is not an efficient way to deter violation by employers because usually relatively few workers will file a lawsuit against an employer due to litigation costs and other limitations. The employer may still benefit by frequent violations, even if he or she loses specific cases.

Frankly speaking, there is neither theoretical nor operational difficulty for courts in filing recontribution cases. Theoretically, courts did not (and do not) take the place of social insurance agencies. The judgment will only confirm that an employer is liable to recontribute for an employee, but leave the exact amount to the social insurance agency. This kind of lawsuit may be categorized as a rights confirmation lawsuit. The court does not actually exert the administrative power of levying a social insurance premium, so the judgment does not overlap with the levy power of the social insurance agency. In practice, courts in Shanghai, Soochow, Xi'an, and other cities have accepted social insurance recontribution cases for many years. Furthermore, these courts express the opinion that the time limit in civil cases shall not be applicable in recontribution cases.<sup>38</sup> Thus, these courts will file recontribution cases for migrant workers if their employers failed to contribute for them. They also investigate the facts in accordance with their jurisdiction and, at the same time, safeguard the workers' legal rights to old-age insurance. It remains unclear whether refusal to file or filing this kind of case as a tort case will, to some extent, deprive the workers of their

right to judicial redress and harm the development of old-age insurance legislation.

### **Principles and approaches in solving the old-age insurance problem of migrant workers**

Without a nationally harmonized old-age insurance system, migrant workers can never fully realize their right to a pension. In addition, providing old-age insurance to migrant workers has become the greatest difficulty in establishing harmonized old-age insurance system across the country. In Western countries, the power to legislate old-age insurance is primarily exerted by legislatures alone. In China, however, legislative power was authorized to the State Council based on the push for reform of state-owned enterprises, among other reasons.<sup>39</sup> It was impossible for state-owned enterprises to compete with private enterprises if they could not dismiss their redundant employees. Because China had no social insurance systems in the early 1990s, dismissed workers could not get any social insurance benefits whatsoever. To meet the demand for reform of state-owned enterprises, the State Council decided to begin a process to reform the old-age insurance system. This reform would remove the heavy burden on state-owned enterprises to pay pensions to their retired former employees. The decision allowed some variations in practice at the local level so as to adapt to the specific demands of different provinces.<sup>40</sup> However, varied old-age insurance practices hindered the free movement of the labour force. So, in March 1995, the State Council issued a new ordinance to unify the basic old-age insurance system, which shall comprise “unified mechanism, unified criteria, unified administration and unified fund.” This description clearly announces the ambition of the State Council in pursuit of a unified old-age insurance system.<sup>41</sup> However, the new ordinance allowed local governments to choose between two sets of implementation approaches to be approved by provincial governments. These two sets of implementation approaches conflicted, obviously, with the pursuit of a unified system. Two years later, in 1997, the State Council realized this error in the system and issued another ordinance. It abolished the dual approaches and required local government to establish a “unified basic old-age insurance system for staff and workers in enterprises.” It also provided the span of contribution rates for both employers and employees, qualifying terms and contents of employees’ benefits under old-age insurance.<sup>42</sup> The 1997 ordinance of the State Council established the fundamental framework for Chinese old-age insurance. Yet, it failed to unify the

old-age insurance system throughout the country. Provincial governments were still authorized to fix the contribution rates, benefits levels and other important factors. Reform of the old-age insurance system in China has been complicated, and the route to reform has zigzagged due to the special historical background that led to reform. Localization of the old-age insurance system also developed to its current stage out of China's unique history.

The Provision on Registration of Basic Old-Age Insurance for Migrant Workers (Draft for Comments) of 2009 made by the Human Resource and Social Security Ministry was a positive attempt to solve old-age insurance problems for migrant workers. Even so, it did not unify the old-age insurance system but, rather, split one system into two systems – one for urban workers and another for migrant workers, which materially constituted some types of discrimination against them. At the same time, the provision set a lower contribution rate for migrant workers, which meant that the current old-age insurance system was not applicable to them. Even though the provision did not express such an understanding directly, courts and companies could each deny the old-age insurance right of migrant workers. The courts might argue that migrant workers' right to old-age insurance did not exist until the provision went into effect. Therefore, workers could lose their right to file a lawsuit against their employers for compensation in social insurance benefits.

The National People's Congress passed the Social Insurance Act on 28 October 2010. The law went into effect on 1 January 2011. The law confirmed the principle that migrant workers shall join the unified old-age insurance scheme and authorized the State Council to make specific stipulations on the transfer of the basic old-age insurance relationship between different regions. The law did not, however, require provincial governments to abolish current nonstandard practices. Therefore, no province announced that the same policy could be applied to migrant workers as well as to urban workers. That is to say, no important progress has been made in promotion of migrant workers' right to old-age insurance in the new law.

The variation of judicial policy on the acceptable scope of old-age insurance disputes reflects the fact that a comprehensive Chinese old-age insurance system has not taken shape. Both governments and courts seem to keep vacillating between the national Labour Law and local policies. Although the Central Government has endeavoured to develop a unified old-age insurance system throughout country since it decided to reform the old system in 1991, the State Council allowed

local governments to make specific rules on implementation and, thus, the compulsory insurance became voluntary insurance, even commercial insurance. As a result, old-age insurance has remained far from the reach of migrant workers.

In conclusion, the key to old-age insurance for migrant workers in China is to establish a unified old-age insurance system and, to do so, China might turn to the ILO. The Chinese Government is aiming to complete universal social insurance coverage registration by the end of 2017 and will use the Internet to do this. This goal of reforming the system should not be doubted. The unified old-age insurance system is to be founded on the No. 26 Ordinance of 1997 of the State Council and strengthened by principles as elaborated in the ILO's Equality of Treatment (Social Security) Convention, 1962 (No. 118) and Maintenance of Social Security Rights Convention, 1982 (No. 157). To be more specific, migrant workers shall have old-age insurance schemes that feature a mixed model with both personal accounts and a public fund. They shall be entitled to monthly old-age benefits after retirement. The level of benefits will be adjusted annually in accordance with economic development. As of 2016, China has not ratified any of the ILO Conventions on social security. If it is to do so in the future, the government must provide better legal protection to migrant workers regarding old-age insurance benefits. After all, in the words of the State Council, migrant workers from rural areas "have become an important component of the industrial labour force already."<sup>43</sup>

## Notes

1. The statistical number comes from a survey report by the National Bureau of Statistics in 2009. See the Information Newspaper of China, 22 January 2010. In an article, "migrant workers" referred to domestic migrant workers in China.
2. In July 2009, sponsored by Najing University Legal Aid Program for Migrant Workers, undergraduate students of Nanjing University Law School carried out a questionnaire survey in Shanghai, Soochow, Wenzhou, Hangzhou, Wuxi and Changzhou. They interviewed more than 600 migrant workers and collected data about their social protection. The survey findings were first published at the Conference on the Enforcement of Labour Law in the context of Financial Crisis in July 2009 in Kunshan City, Jiangsu Province.
3. On 12 October 2009, the Economic Half An Hour Program of CCTV reported that a female migrant worker, Yi Chengfang, could not get a pension in Guangzhou because she had not contributed to the scheme for 15 years. This programme stirred up a series of discussions that took place on public media. See the website of CCTV at <http://city.cctv.com/html/yangshijujiao/070204ee16af3c42e4589e38f12d51b9.html> (visited on 6 February 2010).

4. The first rule is Guo Wu Yuan Guan Yu Gong Ren, the Interim Rule on Pension Schemes for Retired and Resigned Workers.
5. Article 9 of *The United Nation Covenant on Economic, Social and Cultural Rights* (1966) provides that member states admit that everyone has the right to social security, including social insurance. The People's Congress of China ratified this UN Convention in 2001.
6. The ILO clarified basic minimum standards for national systems surrounding nine branches of social security, and ratification required member states to offer proof of competency in three of these branches. They included medical care, sickness benefit, unemployment benefit, employment injury benefit, family allowances, maternity care allowances, invalidity pensions and survivor's pensions.
7. ILO, *Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008 (online).
8. ILO Constitution, 1919, Preamble (online).
9. Article 45 of Constitution of PRC, adopted by the People's Congress in 1982.
10. State Council, *The Development of Old Age Work in China*, White paper, December 2006.
11. *Labour Contract Act of the People's Republic of China*, 2008–7, Article 72.
12. *Ibid.*, 2007, Article 73.
13. *Constitution of the People's Republic of China*, 1982, Article 85.
14. *Social Insurance Fee Contribution Regulation*, 2010, Article 3.
15. Examples of this kind may be found in government documents of Tianjin City, Zhejiang Province and Jiangsu Province.
16. Shenzhen Special Economic Area, *Regulation on Social Old Age Insurance for Staff and Workers in Enterprises*, October 1998. The Regulation is applicable for all staff and workers, including migrant workers.
17. Beijing Labour and Social Security Bureau, *Interim Rule on Old Age Insurance for Migrant Workers of Beijing*, August 2001.
18. Shanghai Municipal Government, *Interim Rule on Comprehensive Insurance Scheme for Migrant Workers*, April 2002. This rule used "old age allowance" but not "old age insurance" in the text because the payment is too low for living.
19. The Dual Low Model means "low contribution and low benefits." According to local rules of Hangzhou City, the contribution rate is 14 per cent for employers and 5 per cent for migrant workers.
20. B. Zheng, "The Harm of Fragmented Social Security System and Its Dynamics in China," *Lanzhou Social Science*, no.3 (2009), 51.
21. Labour and Social Security Ministry, Chapter 5 of *Research Report on Working Conditions of Migrant Workers*. See the website <http://lss.chinawuxi.gov.cn/zwgk/fzgh/gzyj/930524.shtml>.
22. *Labour Contract Act of the People's Republic of China*, Article 9.
23. B. Zheng, "The Harm of Fragmented Social Security System and Its Dynamics in China," 51.
24. *The Provisional Measures on the Transfer and Renewal of Basic Old-Age Insurance Schemes for Workers at Urban Enterprises*, Article 2.

25. By the end of 2006, only 13 provinces or municipal cities had established a provincial fund. Premium Wen Jiabao urged to establish provincial fund all over the country by the end of 2009.
26. *The Provisional Measures on the Transfer and Renewal of Basic Old-age Insurance Schemes for Workers at Urban Enterprises*, second paragraph of Article 9.
27. The Supreme Court, Interpretation on Applicable Laws in the Trial of Labour Disputes, No. 14, 2001, Article 1.
28. Y. Han, *Labour Dispute Judicial Interpretation, Selections of Judicial Interpretations by the Supreme Court*, People's Court Press, 23–24.
29. “Current circumstances in China” means that local governments usually prefer to protect the benefits of employers rather than the rights of workers. Courts of law are regarded as a better solution for redress of complaints by most workers.
30. High Court of Jiangsu Province, Opinions on Trial of Labour Dispute Cases, February 2004, Article 3.
31. C. Xin, ed., *Understanding Labour Dispute Mediation and Arbitration Act of the People's Republic of China*, Press of Law, February 2008, 7.
32. Courts and Labour Dispute Arbitration Agencies support the recontribution claim for a limited period. That is, the period for recontribution can only start from 1 February 2004. See the Guideline on the Trial and Arbitration of Labour Dispute Case by Nanjing People's Court and Labour Dispute Arbitration Committee, August 2008, Article 21.
33. The First Civil Law Section of Beijing High Court and Labour Dispute Arbitration Committee of Beijing, *The Memorandum of The Workshop on Application of Law for Labour Dispute Cases*, July 2009, third paragraph of Article 1.
34. *Ibid.*, Article 36.
35. *The First Civil Law Section of The High Court of Guangdong Province*, No. 2, Reply of 2004. This law argued that it was the social insurance agency's duty to levy social insurance fees. Courts could not file any dispute for recontribution of social insurance fee.
36. *The Guideline on the Implementation of Labour Dispute Mediation and Arbitration Act and Labour Contract Act*, jointly reviewed by the High Court of Guangdong Province and Labour Dispute Arbitration Committee of Guangdong Province, August 2008, Article 2.
37. Y. Cheng and B. Darimont, “The Social Security Dispute Settlement System in Germany, a China Social Security,” no.3 (2004), 24.
38. A judgment issued by Beilin People's Court of Xi'an City in 2009 supported the claim of the plaintiff for recontribution of his social insurance fee, which had been overdue since 1996. Similarly, the No. 7 Judgment of 2004 retrial cases of Pudong Court in Shanghai also supported plaintiff's recontribution claim. The judge pointed out that “the employer's liability shall not pass away although the Plaintiff filed his case after 60 days legal period.”
39. The 6th Session of The People's Congress authorized the State Council to make necessary amendments on the retirement system for both civil servants and staff and workers on 2 September 1983.
40. The State Council, *The Decision on the Reform of Old Age Insurance System for Staff and Workers in Enterprises*, 26 June 1991.

41. The State Council, *The Ordinance on Further Reform of Old Age Insurance for Staff and Workers in Enterprises*, 1 March 1995.
42. The State Council, *The Decision on Establishing Unified Basic Old Age Insurance System for Staff and Workers in Enterprises*, No. 26 Ordinance, 1997.
43. The State Council, *Some Opinions on Settlement of Problems of Migrant Workers from Rural Areas*, 27 March 2006.

# 11

## Freedom of Association: A Comparison of Chinese and US Approaches to ILO Standards

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### Introduction

Freedom of association has long been viewed as the most basic of labour rights.<sup>1</sup> This is because it represents the ability of working people to work for the improvement of their status themselves. Accordingly, it has had a unique status at the International Labour Organization (ILO). Economist Kimberly Elliott points out its special status within the ILO supervisory system:

Because it is regarded as a fundamental constitutional obligation of all members, however, complaints regarding violations of freedom of association may be brought against any member government, regardless of convention ratification status, and referred to the Committee on Freedom of Association for review.<sup>2</sup>

The fundamental principle of freedom of association corresponds to two ILO Conventions, which now belong to the eight so-called core Conventions as defined by the ILO Declaration on Fundamental Principles and Rights at Work from 1998. The first is the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).<sup>3</sup> It has been ratified to date by 153 countries, but neither by China nor the United States.

The second is the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).<sup>4</sup> It has been ratified to date by 164 nations, with neither China nor the United States among them.

Convention No. 87 includes the right of both employees and employers to join organizations of their own choosing and creation, subject only to the rules of those organizations, without prior authorization from any public authority. Those organizations are entitled to draw up their own constitutions and rules, and public authorities should not be able to dissolve or suspend them. They also are entitled to affiliate with national confederations and international bodies as they choose.

In exercising their rights under this Convention, workers and employers are obliged to “respect the law of the land,” but that law shall not be interpreted so as to impair the rights included in the Convention. The Convention is to apply to any organization designed to protect the rights of workers or employers, regardless of what it calls itself.<sup>5</sup>

Convention No. 98 requires that workers be free from antiunion discrimination, and it prohibits workers’ or employers’ organizations from interfering in the establishment or functioning of each other. It specifically limits attempts by employers or employer organizations to dominate or control labour unions. It also requires that measures be taken to “promote and encourage” the determination of working conditions by voluntary collective bargaining. The convention specifically excludes “public servants engaged in the administration of the state,” from coverage.<sup>6</sup>

While most ILO member States have ratified these Conventions, the Organization itself has expressed concern that a number of very large countries have not done this – in particular Brazil, China, India, the Islamic Republic of Iran and the United States – with over half of the overall labour force of ILO member States. Because China and the United States are now the two largest economies in the world, their failure to ratify constitutes a large and ongoing threat to the world mission of the ILO.<sup>7</sup>

The purpose of this chapter is to examine how China and the United States have approached ILO standards dealing with freedom of association and collective bargaining. While these two nations have often criticized the other’s compliance with international labour standards, we shall see that both have records of adoption and compliance that are uneven at best.<sup>8</sup>

## **China and the ILO<sup>9</sup>**

China has had an uneasy relationship with the ILO since its inception. As one of its founding members, the country joined the ILO in 1919, under the Nationalist Kuomintang (KMT) Government of the Republic of China (ROC). This government adopted a number of Conventions in the

interwar years and, in 1934, was elected a member of the ILO Governing Body.<sup>10</sup> However, there is little evidence that these Conventions had any significant impact on employment practices within the country. During this period of KMT rule, working-class strife was widespread and state repression increasingly brutal, as in the suppression of the 1927 strike wave that had mobilized thousands of workers in Shanghai and elsewhere.<sup>11</sup>

Since 1949, the changing relationship of the People's Republic of China (PRC) to the ILO has reflected the rise and fall of Maoist ideology and statecraft. In the early years of the PRC, the government did not seem to regard itself as bound by ILO Conventions it had not ratified. The new communist regime certainly did not refer to the ILO in formulating its domestic labour and social laws, most of which dated from a flurry of post-liberation legal activity in the early 1950s. China's participation in the ILO remained passive and limited to receiving fairly small-scale technical assistance, because in the Maoist view, the United Nations and its agencies functioned in the same spirit and style as any "capitalist parliamentary regime." Hence, China would need to deal with those Geneva-and New York-based agencies with much caution.<sup>12</sup>

The PRC did not show any real interest in the ILO until 1971, when the country gained admission to the United Nations over Taiwan, which had been favoured since 1949, and the PRC was restored to its legitimate position with full membership in all the UN agencies, including the ILO. However, China declared itself a "non-active member" of that international organization. That is, it did not participate in ILO activities until 1983. This was perhaps unavoidable, as the country hardly possessed free employers' and workers' organizations on which ILO membership and participation in its International Labour Conference (ILC) is based. The All-China Federation of Trades Unions (ACFTU) is, and has been, under the strict control of the Communist Party.

In 1983, however, when a new Chinese leadership sought to make an opening to the West as part of its market industrialization program, the country formally resumed its activities in the ILO and sent its first post-1949 delegation to the International Labour Conference.<sup>13</sup> Since then, China has gradually increased its activities at the ILO and has extended its relationship with the organization as its economy has increasingly integrated into the global trading system. In the following 20 years or so, the Chinese delegates tended to emphasize their status as a developing country, reiterating at various meetings and conferences that they "firmly stand by the side of the trade unions of the developing countries" and stressed that the ILO "should take into consideration the

differences of the political situation and the economic development of the Third World countries.”<sup>14</sup> However, with the remarkable growth of manufacturing infrastructure in coastal China, such enthusiasm to identify itself with the “Third World” countries has declined in recent years. China now regards the ILO as an important international forum for the pursuit of its national interests.

### **Chinese ratification (or not) of ILO Conventions**

The ROC Government ratified 14 ILO Conventions during the two decades, 1930–49.<sup>15</sup> Many of these Conventions concerned dock workers and seafarers, a reflection of the fact that labour issues in the world maritime industry have always drawn particular attention from the ILO. More important to our examination here, the Right of Association (Agriculture) Convention, 1921 (No. 11), ratified in 1934 by the ROC Government, noted that agricultural workers had the same right to freedom of association as the industrial workers, although there has been little indication that such a right had ever been protected in practice under the KMT regime.

In 1984, shortly after China sent its first delegation to participate in the ILC, the government approved the adoption of all 14 ILO Conventions that had been ratified by the ROC Government before 1949.<sup>16</sup> Five years later, in 1989, Guan Jinghe, a senior Chinese official, explicitly laid down the limits of China’s adherence to ILO standards, claiming that the Conventions would not be applied in China because knowledge of them was restricted to a small number of officials.<sup>17</sup> There is no doubt that statements of this nature clearly reflected China’s position in the late 1980s, around the time of the Tiananmen Square incident, when the government rejected demands of demonstrators for democracy and then sent in the army to crack down when workers mounted their own protests.

However, as the memory of Tiananmen has faded and the economy has boomed, the situation has changed in a dramatic fashion. In the first 40 years of the People’s Republic, China did not ratify any ILO Conventions, but it ratified 11 in the two decades 1988–2007, bringing the number of China’s total ratifications to 25, out of 189 ILO Conventions adopted to date.

China has ratified half of the eight so-called core labour standards: Conventions 100 and 111, which encompass the nondiscrimination obligation, and Conventions 138 and 182, regarding the elimination of child labour. However, it has not ratified to date the two Conventions dealing with freedom of association and the right to collective bargaining,

nor the two Forced Labour Conventions (No. 29 and No. 105, adopted in 1930 and 1957).<sup>18</sup> To understand the rationale behind China's position, one major issue remains at the centre of the discussion and debate: China's reservation when ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2001. The reservation concerns, in particular, Article 8 in the ICESCR, which notes:

The States Parties to the present Covenant undertake to ensure the right of everyone to form trade unions of his choice.... No restrictions may be placed on the exercise of this right other than those prescribed by law.<sup>19</sup>

The "law" here refers to the domestic law. Taking this advantage, China announced its reservation: "(R)egarding Article 8 in the ICESCR, China will follow the relevant clauses in its domestic legislation including the PRC Constitution, the PRC Trade Union Law and the PRC Labor Law,"<sup>20</sup> hence effectively blocking the country's adoption of ILO Conventions Nos. 87 and 98.

It is worth noting that in 1990 China ratified the ILO's Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Since then, the system has become widely established in China and is often referred to as "collective bargaining" by the government and the ACFTU. However, China's tripartite consultation system differs from that advocated by the ILO due to its lack of neutrality and independent workers' representation, its poor legal enforcement of consultation outcomes and restricted responsibilities. The institutionalization of tripartism in China reflects the country's overall approach to market reform. It is characterized by experimentalism, gradualism, dynamism and a gradual softening of party domination. However, such tripartite consultation, even with severe limitations, may well represent a first, transitional step toward more genuine collective bargaining throughout Chinese industry, which bolsters the autonomy and representational capacity of the social partners.<sup>21</sup>

## **Chinese labour law and freedom of association**

In his reply to the discussion of his report to the ILC in 2000 on progress in the implementation of the core labour rights, ILO Director-General Juan Samovia named a number of specific countries he found to be deficient with regard to freedom of association. He listed China among a group of countries that have "legislatively imposed monopolies" on

worker representation and thus deny their workers full enjoyment of freedom of association.<sup>22</sup>

In the case of China, this refers to the role of the All-China Federation of Trade Unions and its subsidiary organizations. By law, “the Chinese trade unions are mass organizations of the Chinese working class under the leadership of the Communist Party of China,” and “they serve as a bridge and link between the Party and workers and an important social pillar of the state power and represent the interests of the trade union members and workers.”<sup>23</sup> Here, “Chinese trade unions” refers to the ACFTU, the only union organization recognized by the government for Chinese workers to join. As of September 2006, the ACFTU claimed to have nearly 170 million members.<sup>24</sup>

By law, establishing a workplace trade union is “surprisingly easy” in contemporary China.<sup>25</sup> Article 10 of the Chinese Trade Union Law stipulates, “A basic-level trade union committee shall be set up in an enterprise, an institution or a government department with a membership of twenty-five or more; where the membership is less than twenty-five, a basic-level trade union committee may be separately set up.”<sup>26</sup> However, the new union committee has to register with the district trade union, thus curbing the independence of the shop floor union.<sup>27</sup>

After China ratified ICESCR in 2001, the Trade Union Law was revised and amended to legalize work stoppages and slowdowns. Some commentators thought this empowered workers and “increased the independence of trade unions.”<sup>28</sup> However, the fundamental problem remains: the absence of the right to organize into independent trade unions effectively denies workers the right to freedom of association.<sup>29</sup> Indeed, Chinese workers have to struggle very hard when attempting to organize independent trade unions. The official method of union branch building at the enterprise level involves collaboration with management and allows management to have a say in picking the “right” person to chair the union. Lack of independence is therefore self-evident. There are cases of workers setting up union branches without following the conventional official policy, but these organizations are quickly subordinated to the official trade union apparatus. In Anita Chan’s study of unionization among Wal-Mart employees in China, she found that after the company rejected an AFCTU request to establish branches throughout all its stores, militant workers took matters into their own hands and set up their own genuinely independent store-level union committees. This alarmed both Wal-Mart management and the AFCTU, and they quickly reached an overall agreement “organizing” scores

of Wal-Mart stores throughout China, but with all the branch unions and shop committees now firmly under the ACFTU control and hence vulnerable to management manipulation.<sup>30</sup>

Although genuine freedom of association is clearly limited in contemporary China, the late 1980s and the early 1990s witnessed the promulgation of a series of laws that did enhance worker rights in response to the new economic landscape. Shaped in part by the ACFTU, these new statutes include the Enterprise Law (1988), the Trade Union Law (1992) and the Labour Law (1994).<sup>31</sup>

The Labour Law is comprehensive and covers many principles of labour relations. For instance, it establishes the status of trade unions taking part in labour issues and sets out a clearly prescribed process for the handling of labour disputes. Specifically, this law clarified that the ACFTU was to act as an advocate for worker interests. Nonetheless, it has been reported that this legislation led to a rapid increase of workers' demonstrations and strikes shortly after its adoption. A research team in Jiangsu, for example, after one month's investigation in 2008, found, "(M)any enterprises do not follow the rules set by the Labor Law... Many workers take radical steps such as slow-downs and strikes, hence have seriously interrupted the normal production and operation of the enterprises."<sup>32</sup> Of course, as Anita Chan and other critics have pointed out, the ACFTU remains a poor vehicle for the representation of worker grievances. Its officers are chosen not by its members but rather by the political leadership of the Communist Party. Moreover, the Labour Law does not grant workers the right to strike, nor has this legislation put China in conformity with ILO definitions of basic freedom of association principles.<sup>33</sup>

The year 2007 was notable as "a landmark year for labour legislation in China."<sup>34</sup> In this year, the National People's Congress passed three major new labour laws: the Labour Contract Law (always referred to as the "New Labour Law" in the country), the Employment Promotion Law and the Law on Mediation and Arbitration of Labour Disputes.

The Labour Contract Law was intended in particular to protect migrant workers recruited from the rural areas, who for many years have been recognized as the backbone of China's workforce. There are an estimated 130–150 million migrant workers employed in cities across China, about 57–60 per cent of the 230 million workers overall.<sup>35</sup> These workers suffer from widespread and institutionalised discrimination based on their rural household registration (*hukou*); they work long hours in often dangerous conditions for low pay; and they are usually the first to be laid off during

times of economic difficulty. The majority of these workers did not have a contract with their employers and had little option but to accept whatever terms and conditions employers imposed. They are at the bottom of the factory hierarchy and most vulnerable to abuses and exploitation. This "New Labour Law" was designed to remedy these deficiencies and plug the loophole exposed in the "old" Labour Law of 1994.

The Labour Contract Law confirms that all individual workers have the right to negotiate their own written employment contracts with their employers, specifying terms, conditions, and benefits. It enhances specific individual rights by establishing a statutory probationary period for a fixed-term contract, improving health and safety regulations, requiring redundancy payments to be made after the termination of a contract and generally making it more difficult for employers to terminate contracts, especially those of long serving workers.

This law provoked an outcry from domestic and foreign employers' organizations. They claimed the legislation would drive up costs and make doing business in China more difficult. The US Chamber of Commerce in Shanghai bluntly opined that the law "could have negative impact on the investment environment in China." The European Union Chamber of Commerce argued in its submission to the National People's Congress (NPC) that "the rigid provisions of the draft law will restrict employer flexibility, and ultimately will increase costs for Chinese producers." It warned: "Any increase in production costs could force foreign companies to review new investments or question whether to continue operations in China."<sup>36</sup> While one of the authors of this chapter was conducting field research on labour issues in the shipping industry in the summer of 2008, she heard many complaints from employers, manning agencies, and shipping companies about the "negative impact" of the New Labour Law on labour costs, indicating a concern about the increased difficulty in "exporting Chinese seafarers."

The Labour Contract Law took effect on 1 January 2008, against a strong wave of employer resistance. The legislation primarily targets domestic companies that do not have labour contracts and that generally failed to comply with China's old laws. For Chinese workers, especially the millions of migrant workers, this is undoubtedly a major step forward. Although it does little for the collective capacity of workers to organize, this legislation does provide a path for individual lawsuits, which have indeed exploded in the industrial districts.

The year 2007 also saw five other labour-related laws and regulations issued by the State Council and its affiliated departments.<sup>37</sup> Such a "wave"

of labour legislation in one year was unprecedented. It reflected the government's determination, in the context of rapidly increasing labour unrest, to create a comprehensive legislative framework that could help mitigate labour conflicts and better protect the legal rights of individual workers. This legislative approach has made individual workers much more aware of their rights and interests.<sup>38</sup> However, the fundamental problem is still there: the New Labour Law does not have provisions addressing the right to freedom of association and the right to strike.

The problem is particularly marked in a period when employers in China are themselves increasingly militant and well organized, having joined forces in a range of organizations, associations, societies and clubs. In the late 1990s, for example, employers formed the China Enterprise Confederation (CEC), the China Enterprises Directors Association (CEDA) and the China Private Enterprise Directors Association (CPEDA). These government-backed organizations provide strong forums for Chinese employers to come together to share experiences, to form business and political networks, and to have their voices heard in policy-making processes. Toward the end of the first decade of the twenty-first century, the children of these businesspersons began to share or take over the ownership and/or management of these enterprises and became employers themselves. These second-generation employers have been quick to form their own organizations. Indeed, elite clubs like the Young Employers Association (YEA) and the Second Generation Entrepreneurs Association (SGEA) have become "trendy," attracting a large number of young men and women whose parents are members of CEC, CEDA and other elite groups.<sup>39</sup> Employers therefore enjoy considerable freedom of association in a multitude of venues, while workers can legally join but one hierarchically structured trade union organization.<sup>40</sup>

In general, Chinese unions have no legal authority to strike. The right to strike first appeared in the Article 28 of the 1975 Constitution and remained in the 1978 Constitution, but it was removed in the 1982 Constitution.<sup>41</sup> The rationale for the removal was noted by Qiaomu Hu, a senior Party official in charge of drafting of the 1982 charter: "(A)s workers and the state share the same interest, strikes do not benefit the interest of Chinese people. There is therefore no need to keep the freedom to strike in our Constitution."<sup>42</sup> However, in 1983, the ACFTU altered its own constitution to permit "work stoppages" and "slow-downs" in certain circumstances over health and safety issues, although the word "strike" was not mentioned. The Trade Union Law in 1992 confirmed this right. Thus, strikes do take place in China, tens of thousands in some years, but they have no legitimacy in the eye of the law

and thus provoke firings, confrontations with the police, and other forms of repression.

By law, collective bargaining is permitted in China, although “collective consultation” is used when referring to the process. The legislative foundations were first laid down in the 1992 Trade Union Law, and the 1994 Labour Law provided more detailed specification of the character of the “collective contracts.”<sup>43</sup> In 2007, the Labour Contract Law stipulated that it is the employer’s responsibility to sign a collective labour contract with the employees’ representative within an enterprise. The ACFTU has been active in promoting the collective labour contract and sees it as an extension of the system of “democratic participation in management” and the principal means of regulating labour relations in the market economy.<sup>44</sup> However, even officially recognized unions are weak at all levels, there is a serious lack of workers’ participation in the process of “collective consultation” and “collective bargaining” of the sort recognized by the ILO is absent in practice.<sup>45</sup>

The ILO has continued to criticize the freedom of association situation in China with regard to both the legal monopoly of the ACFTU and government influence on that body.<sup>46</sup> The ILO has long held concerns that China has not expressed its intention regarding ratification of Conventions Nos. 87 and 98. In 2003, for instance, the ILO reiterated its earlier request to the Chinese Government to “examine the possibility of a direct contacts mission to the country to promote the full implementation of freedom of association.”<sup>47</sup> More recently, the Chinese Government has reported that, while it has not ratified Conventions Nos. 87 and 98, it has attempted to include protection of the principles of freedom of association in its recent labour legislation. The ILO has commended this but has also requested more information about the specific content of the legislation.<sup>48</sup>

### **The United States and the ILO**

The United States has had a long and complicated relationship with the ILO, but it has played an important role throughout the ILO’s history. In many ways, that relationship has been as difficult as that between the ILO and China. The United States was already a key player in the founding of the ILO. The most iconic figure in US trade union history, Samuel Gompers, was present at Versailles for the negotiation of the treaty and played a significant role in creating the tripartite structure for the ILO by chairing the committee that drafted the ILO Constitution.<sup>49</sup> However, like the work of President Wilson on the creation of the organization with which the ILO was affiliated, the League of Nations, Gompers’s work was

not always appreciated in his home country in the way he had hoped. Indeed, the very fact that the ILO was associated with the League of Nations was itself politically problematic in the United States since the US Congress never ratified the Versailles Treaty nor joined the League.

The United States finally became a member of the ILO in 1934 with strong support from President Roosevelt and his Secretary of Labor, Frances Perkins.<sup>50</sup> However, the US ratification rate for ILO Conventions was for many years one of the lowest. Well into the post-Second World War era, the United States had ratified only a handful of Conventions (ratifying none between 1953 and 1988) and most of those were relatively technical and, until 1988, all dealt with seafaring (the issue that over the years has occupied more ILO attention than any other set of occupations or industries).<sup>51</sup> As of 2013, the United States has ratified only 14 Conventions, a total well below that of most member States and fewer even than China.<sup>52</sup> A common argument against ratification was that ILO Conventions were in conflict with federal and state labour laws and would require substantial change.

This has led to some ironic situations. The US Government was fond of criticizing other nations during the Cold War for their failure to recognize the right to organize free trade unions and engage in collective bargaining, but had not itself ratified the basic Conventions by which the international community recognized those rights. Some of these nations responded that, given that record, the United States was in no position to criticize.<sup>53</sup> For example, in August 1981, when a union of air traffic controllers went on strike, President Ronald Reagan played a direct and forceful role in the firing of more than 9,000 government workers and seeing to the destruction of their union. But just a few months later in the spring of 1982, Reagan criticized the imposition of martial law in Poland the previous December and, in particular, the banning of Solidarity, the first noncommunist trade union in Poland. Reagan remarked that, "By outlawing Solidarity, a free trade organization to which an overwhelming majority of Polish workers and farmers belong, they have made it clear that they never had any intention of restoring one of the most elemental human rights – the right to belong to a free trade union."<sup>54</sup> The Polish Government of the day dismissed such American criticism as utter hypocrisy and cited the air traffic controllers' incident.

In addition, at various moments during the 1960s and 1970s the United States, which provided the largest budget appropriation to support ILO activities, withheld its payments largely because the political leadership in Washington disagreed with ILO policies, in particular with regard to

the role of Communist countries and their trade unions in the organization.<sup>55</sup> The United States took the position that the delegations of such countries were not genuinely representative of the interests of employers and workers as required by the ILO's unique tripartite form of representation. As late as 1977, the United States actually withdrew from the ILO over these issues as well as concerns over resolutions condemning Israel and admitting the PLO in the form of an observer, returning in 1980 after negotiating a settlement that involved making up most of the delinquent payments and agreeing that the organization would focus less on political issues.<sup>56</sup> With the end of the Cold War, these issues have caused less friction. In any case, it seems clear that domestic political considerations loomed at least as large as objections to the actions of the ILO in the United States' ultimate decision to withdraw.<sup>57</sup>

Late in the post-war period, the United States began to feel that the hypocrisy of its position was causing it international embarrassment. Gradually, the United States began to look at ILO Conventions with an eye toward improving its ratification record. Since 1988, the United States has adopted two more core Conventions, the Abolition of Forced Labour Convention, 1957 (No. 105) in 1991 and the Worst Forms of Child Labor Convention, 1999 (No. 182) in the year of its adoption. But of the other seven Conventions ratified by the US, most, as noted, have been technical in nature, such as the Labour Statistics Convention, 1985 (No. 160), which calls for the uniform calibration of labour statistics on a worldwide basis.

The United States was a supporter of the concept of core labour standards that emerged at the ILO in the mid-1990s, in a context of widespread criticism of the ILO standard-setting machinery. "It helped bring the concept into existence," observed Harvard labour economist Richard Freeman.<sup>58</sup> The United States strongly supported the recognition of these core rights in 1998 and increased its financial contributions to the ILO for technical assistance in implementing the ILO Declaration on Fundamental Principles and Rights at Work, which was adopted the same year.<sup>59</sup> It has continued to support the concept vigorously and to play an active role in monitoring compliance in a variety of countries. Still the United States has failed to adopt the two Conventions that relate to freedom of association.<sup>60</sup> While labour and liberal political groups in the United States have supported the ratification of the core labour standards, legally that ratification requires approval of the Senate. The structure of that legislative body enables a determined minority to delay or even completely thwart majority action. Moreover, the influence of

business interests (which have staunchly opposed ratification) has been strong enough to prevent even formal consideration of the Conventions on freedom of association in the Senate much less their ratification through Congress.

Compared to other ILO member States, the United States, by adopting just two core Conventions, is the same category as small countries such as Brunei Darussalam and the Cook Islands, which only joined in 2015.<sup>61</sup> In addition, the US Government has been formally precluded from making certain kinds of complaints at the ILO because on most issues a country can only file a formal complaint against another if both have adopted the convention in question.<sup>62</sup>

While the United States has ratified only two core Conventions, it has not been shy about arguing that others should comply with those standards. The language with which the United States presses this point clearly reflects the 1998 ILO Declaration on Fundamental Principles and Rights at work. For example, the United States offered Cambodia trade concessions if it would make the working conditions of its textile and apparel sector comply with local laws and with the core standards, and it has sought other trade agreements with similar acknowledgement of those standards.<sup>63</sup> The United States similarly supported ILO action against Myanmar because of allegations of the use of forced labour there. That resolution actually included penalties, unusual by ILO standards, that a number of other countries, including Cuba, Colombia, Mexico, and Venezuela, sought unsuccessfully to delete.<sup>64</sup>

### **US labour law and freedom of association**

In various reports to the ILO and responses to complaints about its record on freedom of association, “the United States...has taken the position that its labor law and practices are generally in conformance with the Conventions.”<sup>65</sup> The ILO has not always agreed and has issued reports expressing concern about this issue and listed the United States among those nations whose legal incompatibilities with Convention Nos. 87 and 98 continue to pose “major challenges.”<sup>66</sup> Indeed, there have been a number of formal complaints against the US compliance with freedom of association made over the years to the Committee on Freedom of Association, and it is largely in response to those complaints that the ILO has, after investigation, expressed its concerns.<sup>67</sup>

One sense in which US labour law is clearly consistent with the principle of freedom of association is that a worker (or nonworker for that matter) is generally free to join any trade union that will admit her or

him. Unions are not typically banned for ideological or political reasons, although for a brief period in the early post-Second World War era their officers were required to file noncommunist affidavits, a requirement eventually overturned by the courts.

However, some unions can be precluded from representing employees on what one might call ideological grounds. The National Labor Relations Act applies only to the private sector (employers and employees outside of government). Thus, most government employees in the United States, both state and federal, who are covered by a variety of other statutes and regulations, are legally prohibited from striking, and the unions of such workers can lose their representation rights if they strike. In some jurisdictions, unions are precluded from representing government employees if those unions even advocate the right to strike, a kind of ideological test.

Employees of the federal government are regulated in their unionization and bargaining rights by federal law. This currently means the principal instrument of regulation is the Federal Labor Relations Act of 1978. That act provides most federal employees with the right to unionize and to engage in collective bargaining, albeit with severe limits on the topics that they can negotiate: wages and economic benefits are among the excluded topics. Other federal government employees, including many in the recently formed Department of Homeland Security, have been denied even these limited rights to collective bargaining. These limitations apply to government employees, such as clerks and labourers, whose tasks might seem to exclude them from "administration of the state." The ILO has noted this issue with concern in its reports, although its recognition of this issue is generally phrased in extremely diplomatic terms.<sup>68</sup>

The employees of state and local governments are regulated in their unionization and bargaining rights by state law. Until the 1960s, most had been precluded from unionizing. In 1959, Wisconsin became the first state to grant state and local employees explicit rights to unionize and engage in collective bargaining. Most states in the North and along the Pacific Coast followed over the next 20 years. However, a significant minority of states, most in the South and mountain West, have not granted government employees any unionization or bargaining rights, and some of the states that have done so have limited those rights to small numbers of occupations (e.g., in the state of Tennessee, only teachers among public employees have the right to unionize and engage in collective bargaining). After 2010, several states, including Indiana, Ohio, Tennessee and Wisconsin dramatically reduced the bargaining

rights of their public employees. The majority of states, like the federal government, prevented their public employees from striking. Once again, this would seem to include government employees whose jobs are not related to the "administration of the state."

In addition, since 1947, employees in the private sector who are deemed to be managerial have no protected right to unionize. Agricultural workers and household domestic workers have been excluded from coverage under the National Labor Relations Act (NLRA) since its inception in 1935.<sup>69</sup> In addition, decisions of the National Labor Relations Board (NLRB) and the courts have excluded undocumented migrants and university teaching assistants from coverage under labour law. The ILO has cited all of these exclusions as violating the principle of freedom of association.<sup>70</sup>

The largest group of employees in the United States, employees of private companies, is mostly covered by the NLRA. This grants them the right to unionize and engage in what the act calls "concerted activities" and the right to strike. However, in terms of the way these legal rights are administered and supported, some of them are problematic from the point of view of the ILO approach to freedom of association. In particular, private sector employers have legally protected rights to hold mandatory antiunion meetings on work time and to use those meetings to try to discourage unionization. With regard to other issues, such as harassing or firing union supporters or threatening dire consequences if employees vote to unionize, the law bans such activities in principle, but enforcement is so inadequate and hypertechnical that such behaviour is common.<sup>71</sup>

While under the NLRA employees have the right to join a union of their choosing, they do not generally have the right to have that union represent them for purposes of collective bargaining. Only a union supported by a majority of employees (usually measured by an election conducted by the National Labor Relations Board) is entitled to represent the employees. If the majority of employees choose a particular union to represent them, it must represent them all, including any who do not join the union or who would prefer not to be so represented.

The process by which the will of the majority is determined has been subject to substantial criticism. Amendments to the law in 1947 gave employers wide latitude to play an active role in those elections and to oppose unionization aggressively. Even when employers step over the line by threatening or firing employees, the act contains no penalties but instead typically orders the employer to cease such illegal actions. In

some cases, the NLRB may order a new election. But, the employer has substantial scope for legal action to delay any election or resist complying with the outcome of any such election that the union might win. A union may choose to demonstrate to the employer that the majority of employees support it by methods other than election (e.g., collecting cards that say this from a majority of employees) but the employer is typically not obliged to accept such a demonstration and may insist on an election. These provisions provide employers with time and scope to carry on aggressive antiunion election campaigns.

Subversion of the election process by the employer has become widespread. Most employers, when faced with a union organizing drive, now hire consulting firms to help them oppose unionization. Those consulting firms constitute a growth industry in the United States and often have a substantial financial stake in preventing unionization. There is evidence that illegal tactics such as the termination of union supporters or questioning employees about their union sympathies are widespread. The ILO itself has argued that such a legal situation violates the requirements of Convention No. 98 by allowing the employer to play a significant role in the organization of the union, a *de facto* violation of the freedom of association.

In principle, employees in the private sector have a legally protected right to strike, a right that the ILO has always viewed as a necessary corollary of freedom of association.<sup>72</sup> However, the courts have held that an employee who exercises that right can be replaced permanently by her/his employer.<sup>73</sup> Since the 1981 episode in which the federal government dismissed the striking air traffic controllers, such replacement of private sector employees has become a routine part of employer strategy. At the very least, employers routinely threaten replacement when faced with a strike. This and other restrictions on the ability of employees to take self-help action have been subject to ILO criticism.<sup>74</sup>

It is therefore difficult to conclude that most US employees have genuine freedom of association. Many cannot choose a union if they want it, have it represent them in negotiations with their employers, and withhold their labour from the employer if those negotiations do not produce a satisfactory result. It is particularly ironic that the legislative amendments that went so far to produce these results were passed in 1947, just as US occupying forces in Germany and Japan were insisting that a strong free trade union movement protected by legislation was a necessary bulwark against the return of fascism and militarism, but also, especially in Germany, communism. It is also clear that government

employees in the United States have even more limited rights, and that those rights do not fully comply with ILO standards on freedom of association.

US employers have been outspoken in their resistance to American ratification of ILO Convention Nos. 87 and 98. The United States Council for International Business, the group that selects employer representatives from the United States to the ILO, particularly objects to the possibility of reducing the American protections for “employer free speech.” This is a legal provision that allows employers to propagandize and intimidate employees who might consider voting for a union in a union election. US employers also seek to preserve the principle of exclusive jurisdiction, which means that unless a majority of the employees choose one particular union, the employer will not have to deal with any union. Employers also object to many other possible consequences of ratification, including potential ILO challenges to limitations on the right to strike and challenges to the exclusion of so-called managerial employees from unionization rights.<sup>75</sup> Employers have therefore helped to create a process in which the Conventions that cover core labour standards cannot be submitted to the Senate for action, since they clearly would require changes in federal or state labour law. At least that is how the employers interpret the ground rules, although the rules do not say precisely that.<sup>76</sup>

It is clear that constitutional issues that limit the authority of the federal government make ratification of and compliance with some of the core labour standards, including those on freedom of association, problematic. However, this is not the same as saying that they are impossible. When the public relations benefits are greater and the issues less fraught (e.g., with child labour and forced labour), the United States finds a way to overcome its constitutional and legal problems to ratify the Conventions. However, the US commitment to the principles underlying the ILO core labour standards has often taken a back seat to domestic political considerations and more general foreign policy concerns.

The United States has sometimes taken unilateral action (e.g., threatening trade sanctions) against countries that fail to comply with ILO rulings. However, “the shoe is on the other foot” when it comes to issues of US compliance with freedom of association standards.<sup>77</sup> According to industrial relations scholar James Gross, “it defies labor history to claim that the freedom of association has been respected even generally in this country for anything but brief periods of time.”<sup>78</sup> Indeed, the United States has admitted, writes Gross, “that there are aspects of this system

that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances."<sup>79</sup> This is a dramatic understatement at best.

## Comparisons and conclusions

The protection and advancement of freedom of association – here especially the right of workers to form unions and negotiate with their employers – has been central to the ILO mission since its founding during the worldwide era of labour turbulence in 1919. Indeed, the ILO reaffirmed this principle when, in its 1998 Declaration, the Organization committed to promote fundamental principles and rights at work.<sup>80</sup> All ILO member States are obliged to respect and promote these core labour rights, regardless of whether they have adopted the related Conventions. The ILC adopted the Declaration that year by a vote of 273 to 0, although 43 nations abstained on the final ballot.<sup>81</sup>

As discussed in detail in this chapter, there are some similarities between the records of China and the United States that may be small but are interesting nonetheless. One is that most of the Conventions ratified by both nations prior to 1988 relate to seafaring, indicating an apparently shared appreciation of the global nature of the world shipping industry, hence of the need for global governance.

Another similarity is that both nations refrained from the ratification of ILO Conventions for almost all of the Cold War period and that both resumed the adoption of Conventions in 1988. The reasons for the long periods of inaction and the almost simultaneous resumption of action are quite different in the two cases, but are not unrelated to the world political and economic environment at the time, and which we could not develop further in the framework of this chapter. Whatever the reasons, this record puts both nations in a relatively small group of ILO member States that have adopted neither of the basic freedom of association Conventions.<sup>82</sup> While China has remained ambiguous in terms of its reported intentions with regard to these two basic Conventions, the United States has indicated that it has no prospect of ratifying them.<sup>83</sup> This contrasts with the 138 member States that have ratified all eight of the core Conventions to date.

A third similarity is, not surprising, that also in practice neither nation is fully compliant with the principle of freedom of association as the ILO has defined it. Historically, the United States has been quite critical of the human rights record of the post-revolutionary Chinese Government.

For example, in summarizing the Chinese record for 2011, the US State Department asserted that “CCP policy and government regulations require that all professional, social, and economic organizations officially register with, and be approved by, the government. In practice these regulations prevented the formation of truly autonomous political, human rights, religious, spiritual, labor, and other organizations that the government believed might challenge its authority.” Its regular reports on these issues have included substantial criticism of China’s record with regard to ILO standards in general and freedom of association in particular. In retaliation, China has fought back, in a similar format, with an annual report on the human rights record in the United States since 1999. Criticism covers a wide range of issues, including the low rate of unionization and the lack of the right to organize, the basic rights long promoted by the ILO.<sup>84</sup> Its summary of the 2011 situation is typical in tone: “The United States’ tarnished human rights record has left it in no state – whether on a moral, political or legal basis – to act as the world’s ‘human rights justice.’”<sup>85</sup> The criticisms each has made of the other have substantial validity.

In China, freedom of association and the right to strike remain sensitive in official discussion and debate, although freedom of association has actually been included in the Chinese Constitution as a basic right for all citizens. Demands for these basic labour and human rights are clearly demonstrated at the grass-roots level, even in government-controlled spaces like “People’s Network.”<sup>86</sup> Workers’ organizations appear in various forms, although understandably always in disguise and operating underground. The development of labour legislation in China since the late 1980s has certainly helped strengthen Chinese workers’ awareness of their rights and interests. The sharp increase of workers’ resistance and demands for improved wage rates and other conditions well illustrate this point.

The recent industrial scandals involving a series of suicides by workers at Foxconn in Shengzhen highlight the helplessness and vulnerability of workers as individuals, hence the urgent need for genuine organizational support and representation. Foxconn is a Taiwanese company and the largest private employer in China, and it manufactures for a number of the best-known brands in the West, including Apple. While suicides have declined at Foxconn since 2010, they have not stopped and reports of underpayment of overtime and long hours, among other abuses, continue. Apple has brought in the US-based labour group the Fair Labor Association to conduct audits of working conditions. The

pressure of bad publicity has forced the company to make a number of changes, including an announcement in February 2013 of its intention to hold democratic union elections every five years.<sup>87</sup>

Under pressure, the government has openly called for employers to pay workers “decent wages”; employers, in turn, have started moving their factories further inland, where labour is even cheaper.<sup>88</sup> However, ratification of the remaining ILO core labour Conventions, including freedom of association, does not seem to be on the reform agenda. This is another similarity with the United States where ratification of the core Conventions on freedom of association seems unlikely at any time in the near future.

Alternatively, the United States is relatively strong in allowing workers to choose among alternative unions and allowing those organizations to act independently. However, it does not make unionization available to all workers so that employees can play a role in workplace governance. The union density in the United States, particularly in the private sector, has declined in dramatic fashion to less than 12 per cent overall. Some of this reflects growing employer opposition to unions in the United States, and an employer attitude that sees unionization as very far from a fundamental human right. Indeed, American employers typically refer to unions not as agents of the interests of their employees but rather as outside entities with interests sharply different from those of their employees.

The ultimate similarity between the two countries with regard to the freedom of association standard is that the commitment of both governments has routinely taken second place to domestic political or economic concerns or to broader foreign policy goals. At the same time, they have both been willing to overlook violations of fundamental labour rights when those violations have been committed by allies or by nations that were being courted for other purposes. Thus the US, during the Cold War, was willing to overlook violations by authoritarian but anticommunist regimes, for example in Latin America, while China was willing to overlook violations by socialist countries.

The US commitment to freedom of association may suffer from the fact that both private and public employers in that country have a history of opposition to unions and have fundamentally rejected the notion that workers have any basic right to unionize. Those employers have a major influence on government policies and thus have helped prevent the adoption of policies that would do more to guarantee such rights. The Chinese commitment to freedom of association may suffer from a fear that independent unions may be a source of political opposition to

the regime and, more recently, may discourage foreign investment and rapid economic growth. For very different reasons, the United States and China have acknowledged the right of workers to freedom of association more completely in rhetoric than in practice.

This suggests a weak and inconsistent commitment at best to fundamental labour rights in both nations. While there are important differences, and there have been vigorous debates over whose violations are more egregious, until each nation comes to view fundamental labour rights as basic human rights that need to be defended in all circumstances, the workers in both countries will be denied the full range of rights to which they should be entitled.

## Notes

1. Other international organizations and treaties have also recognized “freedom of association” as a human right. See J. A. Gross, “A Long Overdue Beginning: The Promotion of Workers’ Rights as Human Rights,” 1–22; and Lance Compa, “Workers’ Freedom of Association in the United States: The Gap between Ideals and Practice,” 23–52. Both in J. Gross, ed., *Workers’ Rights as Human Rights* (Ithaca, NY: Cornell University Press, 2003).
2. K. A. Elliott, “The ILO and Enforcement of Core Labor Standards,” *International Economics Policy Briefs*, Institute for International Economics, Number 00–6, July 2000, 2.
3. See ILO, NORMLEX, Information System on International labour Standards (online).
4. *Ibid.*
5. Freedom of Association and Protection of the Right to Organise Convention, 1948 (online) (No. 87).
6. Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (online).
7. International Labour Conference, 97th Session, 2008, *Freedom of Association in Practice: Lessons Learned*, Report of the Director-General, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B) (Geneva: ILO, 2008), 6.
8. L. Swepston, “Closing the Gap between International Law and U.S. Labour Law,” in J. A. Gross, ed., *Workers’ Rights as Human Rights* (Ithaca, NY: ILR Press, 2003), notes that while most countries have ratified most of the core Conventions, China and the United States are “the two big exceptions.” 76
9. In the UN, China was first represented by the Republic of China (ROC) (1919–71) and then by the People’s Republic of China (PRC) since 1971 when the latter was “restored” to its legitimate position with full membership in all the UN agencies including the ILO. In this chapter, the ROC was specified when the ILO Conventions adopted before 1949 are referred to in the discussion. Otherwise, China and the PRC have been used as synonyms in the paper, especially in discussion on the Conventions adopted since 1971 and other relevant issues.

10. ACFTU (All China Federation of Trade Unions), 1997, "Chinese Trade Unions and the ILO," <http://www.acftu.org.cn/template/10002/file.jsp?cid=71&aid=393> (accessed 9 June 2010).
11. See also the account of Trotskyist writer Harold Isaacs, who witnessed the events: H. Isaacs, Chapter X, "The Coup of April 12, 1927," in *Tragedy of the Chinese Revolution* (London: Secker & Warburg, 1938, reprint Haymarket Books, 2010).
12. Human Rights in China, *China and the ILO: Formalistic Cooperation Masks Rejection of Key Labour Rights, 2010*; Z. Zhang, C. Xu, and C. Wang, "Never Leave and Never Abandon: A Review of the History of the UN Agencies in China," *South China Weekends*, 26 September 2009; <http://www.infzm.com/content/34200> (accessed 30 March 2013) (in Chinese).
13. ACFTU, *Chinese Trade Unions and International Labour Organization*, 1997 <http://www.acftu.org.cn/template/10002/file.jsp?cid=71&aid=393> (accessed 16 June 2010).
14. Ibid.
15. Y. Li *International Labour Standards* (Beijing: China Workers Press, 2002), 301–02.
16. Li 2002, 301.
17. Human Rights in China, 2010, (online).
18. China's ratification record can be found here: NORMLEX Information System (online).
19. Office of UN's High Commission for Human Rights, International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with Article 27 (online).
20. *The People's Daily*, 1 March 2001, cited in F. Tongwing, *Economic Globalisation and the Modification and Practice of China's Trade Union Law*, paper presented to Forum on Industrial Relations and Labour Policies in a Globalised World, Beijing, 9–11 January 2002.
21. J. Shen and J. Benson, "Tripartite Consultation in China: A First Step towards Collective Bargaining?" *International Labour Review*, 147, no.2–3 (2008), 231–48; S. Shao and C. Zhu, "Tripartite Consultation: An Emergent Form of Governance Shaping Employment Relations in China," *Industrial Relations Journal*, 42, no.4 (2011), 358–74.
22. Elliott, 2000, 3.
23. ACFTU, *Constitution of the Chinese Trade Unions*, 2008, <http://english.acftu.org/template/10002/file.jsp?cid=48&aid=469> (accessed 29 June 2010).
24. This total includes 61,778 men and women (36.4 per cent of the total), and 40,978 migrant workers (24.1 per cent of the total) and the union membership rate is 73.6 per cent of the entire workforce in the country (see more in ACFTU, 2007, "A Brief Introduction of the All-China Federation of Trade Unions," <http://english.acftu.org/template/10002/file.jsp?cid=63&aid=156>).
25. A. Chan, "Realities and Possibilities for Chinese Trade Unionism," in C. Phelan, ed., *The Future of Organising Labour: Global Perspectives* (Oxford et al.: Peter Lang, 2006), 275–304.
26. "Trade Union Law of the People's Republic of China," *China Labour Bulletin*, <http://www.clb.org.hk/en/node/7031> (accessed 29 June 2010).

27. Chan 2006, 275–304.
28. D. Fitzpatrick and M. Anderson, ed., *Seafarers Rights* (Oxford: Oxford University Press, 2005), 261.
29. Chan 2006, 275–304.
30. A. Chan, “Unionizing Chinese Walmart Stores,” in A. Chan, ed., *Walmart in China* (Ithaca, NY: Cornell University Press, 2011), 199–216.
31. Chan 2006, 275–304.
32. P. He, “New Labour Law Led to More Strikes,” *Boxun News*, 2008, <http://www.peacehall.com/news/gb/pubvp/2008/11/200811110431.shtml> (accessed 3 April 2013).
33. There is a rich body of scholarship in this field; see for example, M. Warner and Ng Sek-Hong, “Collective Contracts in Chinese Enterprises: A New Brand of Collective Bargaining under Market Socialism,” *British Journal of Industrial Relations*, 37, no.2 (June 1999), 295–314; S. Clarke, Ch.-H. Lee, and Q. Li, “Collective Consultation and Industrial Relations in China,” *British Journal of Industrial Relations*, 42, no.2 (June 2004), 235–54.
34. “Going It Alone: The Workers’ Movement in China (2007–2009),” *China Labor Bulletin* 2009, [http://www.china-labour.org.hk/en/files/share/File/research\\_reports/workers\\_movement\\_07-08\\_print\\_final.pdf](http://www.china-labour.org.hk/en/files/share/File/research_reports/workers_movement_07-08_print_final.pdf) (accessed 9 June 2010).
35. According to one report recently posted at the ACFTU’s website, young migrant workers between the ages of 16 and 30 number about 100 million, making up nearly two-thirds of China’s estimated 150 million migrant labourers and nearly half of the country’s 230 million workers, cited in T. Tran, “Young Chinese Workers More Demanding Generation More Willing to File Complaints, Less Fearful of Retaliation,” *Associated Press*, 22 June 2010, [http://www.msnbc.msn.com/id/37857583/ns/business-world\\_business/](http://www.msnbc.msn.com/id/37857583/ns/business-world_business/) (accessed 2 July 2010).
36. L. Zhang and H. Chan, “In Reaction to Draft Labor Contract Law, Foreign Investors Threaten to Withdraw from China,” *21st Century Business Herald (People.com.cn)*, from 11 May 2006, cited in *China Labor Bulletin*, 2009, 10.
37. These five legislations include the Decree on Employment of Persons with Disabilities (State Council, 25 February 2007), the Ordinance on Workers’ Paid Annual Leave (State Council, 14 December 2007), the Ordinance on Implementation of the Labour Contract Law (State Council, 18 September 2008), the Circular concerning further Development of a Sound Set of Minimum Wage Thresholds (Ministry of Labour and Social Security, 12 June 2007), and the Regulations on Employment Services and Employment Management (Ministry of Labour and Social Security, 5 November 2007, cited in *China Labor Bulletin*, 2009).
38. *Ibid.*
39. S. Xu, “Seeking Their Own Organisations,” *Relay*, Hoxun Business School, 2012, <http://bschool.hexun.com/2012-12-27/149552490.html> (accessed 3 April 2013).
40. Until 1993, Chinese workers did not have the legal right not to join the ACFTU. This has changed since 1993 when the “new” Trade Union Law was introduced. Most workers, however, have chosen to join the union, perhaps partially because of the social welfare functions it provides.

41. H. Yan, "An Analysis of the Right to Strike and Recommendations for Regulation," *China National Labor, Social Security and Law*, 2009, <http://www.cnllsllaw.com/list.asp?unid=5798> (accessed 29 June 2010).
42. Q. Hu, "Notes on the Amendments of the Constitution by HU Qiaomu, Secretary General in Charge of Constitution Amendment, 12 April 1982," cited in Z. Cheng "HU Qiaomu's Six Contributions to the Amendment of the Constitution 1982," 2011, <http://www.21ccom.net/> (accessed 3 April 2013).
43. Warner and Sek-Hong 1999, 295–314.
44. S. Clarke, C. H. Lee, and Q. Li 2004, 235–54.
45. D. Han, "Collective Bargaining and the New Labor Contract Law," *China Labor Bulletin*, 2008, <http://www.clb.org.hk/en/node/100210> (accessed 16 June 2010). Also see, Chan, 2006.
46. ILO, *Review of Annual Reports under the Follow-up to the ILO Declaration of Fundamental Principles and Rights at Work*, Governing Body 301st Session, Geneva, March 2008, 12.
47. International Labour Conference 97th Session 2008, "Freedom of Association in Practice: Lessons Learned," Report of the Director-General: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B) (Geneva: ILO, 2008) (online); ILO, Latest Report of ILO Committee on Freedom of Association Belarus, China, Colombia, Venezuela, others ILO Press release, 28 March 2003 (online).
48. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 11–12, 24.
49. T. Linsenmayer, "US Ends ILO Moratorium by Ratifying Two Conventions," *Monthly Labor Review*, 111, n.6 (June 1988), 53.
50. G. B. Ostrower, "The American Decision to Join the International Labour Organization," *Labor History*, 16, n.4 (1975), 495–503.
51. Linsenmaye, 1988, 52.
52. See note 3.
53. Linsenmayer, 1988, 53; A. G. Freeman, "ILO Labor Standards and US Compliance," *Perspectives on Work*, 3, no.1 (1999), 28–31, 29.
54. R. Reagan, Radio Address to the Nation on Solidarity and United States Relations With Poland, 9 October 1982 <http://www.presidency.ucsb.edu/ws/?pid=43110> (accessed 27 March 2013).
55. Ostrower 1975, 503.
56. Y. Beigbeder, "The United States Withdrawal from the International Labor Organization," *Relations Industrielles/Industrial Relations*, 34, n.2 (1979), 223–40.
57. Beigbeder 1979, 235.
58. Freeman 1999, 31.
59. Elliott 2000, 1–2.
60. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration of Fundamental Principles and Rights at Work*, 11.
61. See the ILO's regularly updated web page "Ratification of Fundamental Conventions and Protocols by Country" (online).
62. Swepston 2003, 72. Organizations of employers or workers can also file complaints.
63. Elliott 2000, 4, "Freedom of Association in Practice: Lessons Learned," International Labour Conference, 2008, 39–40. Indeed the United States has

- been inserting human rights concerns into its international trade policies since at least 1990. See Potter, "A Pragmatic Assessment from the Employers' Perspective," in Gross (2003), 126.
64. Elliott 2000, 6.
  65. Compa, "Workers' Freedom of Association in the United States: The Gap between Ideals and Practice," in J. Gross, ed., *Workers Rights and Human Rights* (Ithaca, NY: Cornell University Press, 2003), 29.
  66. Gross, 13, ILO Governing Body, 15–30 March 2012, Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 8.
  67. Freeman 1999, 29 and Compa 2003, 28–29.
  68. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 35, 44.
  69. Compa 2003, 32.
  70. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 35, International Labour Conference, 92nd Session, 2004, *Organizing for Social Justice*, Report of the Director-General, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B) (Geneva: ILO, 2004), 42–43.
  71. Compa 2003, 32–34.
  72. ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition (Geneva: ILO, 2006), 109 (online). See also Compa 2003, 31.
  73. Compa 2003, 44. Technically the employee can be replaced but not be fired. However in practice this is often a formal distinction debated by lawyers and academics that has little significance for affected employees.
  74. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 40.
  75. United States Council for International Business, Issue Analysis. US Ratification of ILO Core Labor Standards, April 2007, [http://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](http://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf).
  76. United States Council for International Business, "U.S. Ratification of ILO Core Labor Standards."
  77. Freeman 1999, 29.
  78. Gross 2003, 6.
  79. Gross 2003, 6.
  80. P. Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime," *European Journal of International Law*, 16, no.3 (2005), 458, fn.1.
  81. G. F. Anthony, "ILO Standards and U.S. Compliance," *Perspectives on Work*, 3, part 1 (1999), 30.
  82. That group as of July 2015 consisted of Afghanistan, Bahrain, Brunei Duressalam, China, Cook Islands, India, Islamic Republic of Iran, Republic of Korea, Laos, Marshall Islands, Oman, Palau, Qatar, Saudi Arabia, Thailand, Tuvalu, United Arab Emirates, United States and Viet Nam.
  83. GB March 2008, *Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 11.

84. Chinese State Department News Office, *The Rights Reports in the United States*, various years, all available online with the latest at: <http://world.people.com.cn/GB/1029/42354/11133115.html> (accessed 2 July 2010), US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011.
85. "China Hits Back on U.S. Human Rights," CNN.com, 26 May 2012, <http://www.cnn.com/2012/05/25/world/asia/china-us-human-rights>.
86. See *People's Network*, <http://bbs1.people.com.cn/postDetail.do?view=2&pageNo=1&treeView=1&id=99677879&boardId=1> (accessed 1 July 2010).
87. K. Hille and R. Jacob, "Foxconn Plans China Union Vote," *Financial Times*, 3 February 2013.
88. In 2010, the Chinese media reported that Foxconn decided to move three quarters of its production line, involving 300,000 workers, from the seaport city of Shenzhen to Henan, China's most populated inland city with a GDP lower than most other provinces. See, for example, "Foxconn Building Factories in Henan with a Recruitment of 300,000 Workers," *Beijing Youth Daily*, 30 June 2010.

# 12

## The ILO and the Corporate Social Responsibility Regime in East and South Asia

*Nelson Lichtenstein*

As the International Labour Organization (ILO) approaches its 100th anniversary, it is apparent that, while its core mission remains much the same as in 1919, the global economy in which it functions is one that is far different from that which emerged during the decades right after the First World War. It may seem a truism that the advocacy of decent work, the maintenance of adequate labour standards and the assurance of workers' collective bargaining rights have always been at the forefront of ILO concern. Certainly, the rhetoric of its leaders and the text of scores of conventions attest to the century-long importance of such norms. But, as several of the contributors to this volume have shown, such standard-setting ideals have sometimes been subordinated, either to the national and racial interests of the most consequential powers during the 1920s and 1930s, or in the early post-Second World War era, to an overwhelming fixation on economic development in a "Third World" where an effort to increase labour standards seemed but a recipe for trade deficits, capital flight and high levels of unemployment.

Such concerns remain important, but while poverty is endemic throughout the working population of many nations bordering on the Pacific Ocean, rapid industrialization based on a booming export sector now characterizes many regions in Mexico and Central America, in East Asia (and notably coastal China), and in India and Bangladesh. These new workshops of the world, China especially, seem in the midst of a new industrial revolution in which rapid economic growth has rendered questions of "underdevelopment" rather anachronistic, even as social and economic inequality has surged throughout an international system of trade and commerce that renders the collective capacity of workers to bargain over their status tenuous at best.

“Globalization” is the word that is usually offered to explain the difficulties faced by a newly minted proletariat as well as by institutions such as the ILO that seek to do something about it. When that organization was founded, and for many decades afterward, the ILO predicated much of its work on two phenomena, both nearly existential in their character. The first was an international system of strong States, which had the capacity to ratify conventions and enforce the regulations and arrangements inherent in ILO-sponsored agreements as well as other instances of social and economic regulation. This was a world of “thick” States, which have long provided a venue where the rights of workers and of citizens coincide most efficaciously when trade unions, collective bargaining procedures, labour standards and welfare regulations are contained within and bounded by sovereign States that exercise their power in a robust, intrusive and self-contained fashion. These were the kind of “thick” States that were most prevalent, for good or evil, during the middle years of the twentieth century, an era when the relative importance of global trade reached a nadir in comparison not only with our own century but with nineteenth-century commerce as well.

Such powerful States which promised to double in number with decolonization in Africa and Asia and the rise of nationalist regimes in Latin America and the Middle East, presumed the existence of a business sector that was grounded in and sustained by a particular kind of national polity. Likewise, virtually all labour movements were bounded by and dependent upon the citizenship rights its members held in a particular country. In the world envisioned by those who led or identified with the ILO at mid-century, a stable rights-bearing workforce, if at all possible organized into a set of independent trade unions, confronted a set of employers who were themselves clearly rooted within the nation-state itself. The ILO was therefore structured around a tripartite corporatism, in which labour, management and the State functioned as essential pillars, not only in terms of debate and promulgation of periodic conventions, but even more importantly in terms of implementation of those labour standards, either through state action or some species of firm or industry-centred collective bargaining. Of course, this was just a schematic blueprint: the ILO devoted a huge amount of energy to the promulgation of Conventions designed to protect those whose work lives hardly conformed to this vision: sailors and agricultural workers, women engaged in domestic labour or handicrafts, migrants and those without citizenship. But whatever its actual relationship to economic and political reality, the tripartite model was the twentieth century template, even more so in times of war and economic crisis.<sup>1</sup>

But this system is collapsing because tripartism today and for the past few decades seems such a poor schema upon which to envision a practical reform of the new global order. First, as a locus for working-class demands, protections and civic participation, the modern State may well be undergoing a dramatic “thinning” process as transnational corporations become increasingly detached from and subversive of the traditional exercise of state regulatory power. Although institutions such as the World Trade Organization (WTO) are hardly world governments, the effort to insure a free and secure flow of private capital, international trade and intellectual property necessarily circumscribes the power of the traditional nation-state, especially among those economies heavily dependent on export-led growth.<sup>2</sup>

Indeed, the rise of a system of buyer-driven global supply chains, with their multilayered set of factories, vendors, and transport links, has created a world system in which legal ownership of the forces of production has been divorced from operational control. Neither Wal-Mart, Nike, Gap, nor Apple own any factories in China, Vietnam, or Bangladesh, but their vendors in those Asian nations are kept on an exceedingly short leash as the brands and retailers based in Bentonville, Portland, San Francisco, and Cupertino play a decisive role in determining the design, price, production schedule and labour regime under which their products are manufactured. Thus the global economy has been transformed during the past several years from one in which large manufacturers were dominant, to one in which transnational retailers, brands, and other service sector enterprises prevail.<sup>3</sup>

This shift has generated a system in which accountability for labour conditions is legally diffused, and knowledge of the actual producers is far from transparent. Economist and US Labor Department official David Weil calls this the “fissured workplace.” He was referencing the dramatic proliferation of new forms of employment in the US, including franchising, sub-contracting, temp agencies, and the new “sharing economy” made possible by the apps that flow out of Silicon Valley. From the workers’ point of view this disappearance and distancing of the boss makes negotiation or even protest over the conditions of work exceedingly difficult.<sup>4</sup> The globally dispersed and opaque system of production that exists today means that if workers fight for their rights in one factory or even one country, the brand that buys and controls the output might well shift its production to a friendlier or cheaper one, sometimes in another country. Production is readily moved around the globe, from Taiwan (China) to the mainland, from coastal China to inland provinces, from East Asia to Bangladesh. Thus does this global

system devalue, constrain, and “thin” the nation-state and render institutions like the ILO marginal to the new world of supply chains, subcontracting and hypermobile capital.<sup>5</sup>

In place of the tripartite negotiations leading to new or enhanced labour standards, normally encoded in the labour laws and social provisions of a nation-state, this new system of retail-driven supply chains has generated a highly privatized, business-oriented regime that has generated a series of corporate codes that are usually denominated as “corporate social responsibility” (CSR). Beginning in the early 1990s, when scandals involving child labour, miserable working conditions, and industrial accidents in supply factories embarrassed companies like Nike, Wal-Mart, K-Mart and Walt Disney, an increasing number of corporations formulated their own codes of conduct or joined business associations that had promulgated a code covering an entire industry, such as the Fair Labor Association, which focused on the garment industry. By the second decade of the twenty-first century there were hundreds of codes and virtually every major company contained a CSR department that was sometimes entitled “corporate sustainability,” in recognition of the large emphasis, CSR also put on the minimization of the carbon footprint and the reduction of other kinds of waste in the supply chain.<sup>6</sup>

Although these CSR initiatives were not formally negotiated, they were the product of a new kind of tripartite negotiation, but with stakeholders far different from those envisioned by the ILO in the years after 1919. The most powerful partner by far was the brand or retailer that stood at the apogee of the supply chain, which was the object of the CSR standards and reforms. Companies like Nike, Apple, Gap and Target wrote the codes, paid for their administration, used them to rate, reward, and punish vendors and transport companies, and revised them when they failed or proved inadequate. The codes were designed to protect the reputation of the brand and, thus, many corporate social responsibility offices have been housed under the public relations function of these corporations.<sup>7</sup>

The second stakeholder, whose visibility and voice probably overshadowed its actual power, came out of the burgeoning universe of nongovernmental organizations (NGOs) that have become such important players in the construction and monitoring of the CSR regime. NGOs have a long history as institutions that prick the conscience of the world and in the process ameliorate key features of modern capitalism. The first was probably the British Anti-Slavery Society which proved instrumental in the abolition of slavery throughout the world’s greatest

nineteenth-century empire; influential also was the US-based National Consumer's League, which in the early twentieth century campaigned to end child labour and sweatshop conditions in the garment trades. Today, there are literally thousands whose concerns and campaigns range from protecting whales in the Pacific to the eradication of tropical diseases in Africa.<sup>8</sup> Others, like United Students Against Sweatshops, Workers Rights Consortium and the Hong Kong-based Students and Scholars Against Corporate Misbehaviour (SACOM), seek to end abuses in the Asian and Central American factories that put inexpensive garments and athletic shoes on discount store shelves and consumer electronics on the desk of every student and white collar worker in the First World. NGO leverage arises from the very phenomenon that has so greatly strengthened the power of the twenty-first century retailers: the brand identity so vital to companies that have outsourced their manufacturing capability and turned themselves into little more than design and marketing houses.<sup>9</sup>

Thus, when in the mid-1990s Vietnam Labor Watch, United Students Against Sweatshops and other NGOs accused Nike of violating minimum wage, child labour, and overtime laws in its Chinese, Indonesian and Vietnamese factories, the company initially disclaimed responsibility for conditions of work in these vendor facilities to which it had but an episodic, contractual relationship. However, it soon became apparent that Nike was highly vulnerable to the sentiment of consumers, especially the millions of students and young people who were becoming aware of and influenced by campaigns to tarnish the footwear company's image and erode brand loyalty. Protests took place at store openings, sports media questioned Nike spokesperson Michael Jordan and, most significantly, sales softened to the extent that the company began a round of layoffs. CEO Phil Knight finally conceded the point in a 1998 speech, "The Nike product has become synonymous with slave wages, forced overtime, and arbitrary abuse. I truly believe the American consumer doesn't want to buy products made under abusive conditions." To restore consumer confidence, Knight ordered Nike to raise the minimum wage of all its workers, sometimes above that legally mandated in host countries, limited hours to 60 per week, revealed for the first time the names and addresses of every vendor in its worldwide supply chain, and established a system of monitoring to be conducted by a third party, the Fair Labor Association, which it helped found and fund.<sup>10</sup> While Nike's CSR effort could not resolve all or even the most important workplace issues – in April 2014 at least 10,000 workers struck Yue Yuen Industrial, one of Nike's giant vendors in South China<sup>11</sup> – many labour-oriented NGOs agreed that by the twenty-first century Nike was probably one of

the better companies when it came to implementation of an effective CSR program.

The third element in this new tripartite ensemble are the contract manufacturers themselves, sometimes including the local business associations representing the firms in a particular country engaged in the same industry. While in some cases an association of these firms can be politically powerful – the Bangladesh Garment Manufacturers Association is a notable example – they generally exist in a structurally weak context when it comes to a negotiation with the brand or retailer that contracts with them for product. Their “negotiating” posture is therefore often one of prevarication, subterfuge and dissimulation when it comes to adherence to the codes of conduct promulgated by the firms with which they maintain a commercial relationship. Inspectors and monitors are often bribed or fed false information, workers are threatened if they expose violations of the code and subcontracting to workshops not covered by the CSR codes is rife and often in violation of their legal obligation to the brand or retailer that has contracted for the work.<sup>12</sup>

Such pathologies have many sources: a culture of corruption and lawlessness among the entrepreneurial class in many developing nations, contempt for an unskilled, nonunion workforce that is often rural in character, and a failure of good governance within many nations that lack democratic accountability. But even more important are the endemic, systemic pressures generated by the rationality of the global supply chains in which these contract manufacturers have such little organizational or market power. The retailers and brands that command the supply chains of the world seek the lowest price, the most rapid fulfilment of the production schedule and the highest quality possible at the contract price. All this puts enormous pressure on the manufacturers, who squeeze their workers and subcontractors to fulfil the demands generated by the logic of the supply-chain production and distribution regime. Should rising labour cost engender prices higher than their rivals, across town or across the continent, the entrepreneur managers will soon find their workrooms silent as contracts are diverted to the lower-price producer. To these contractors, CSR is therefore a mandate that is imposed from without, and normally without proper compensation, hence the endemic resistance to and subversion of the corporate codes of conduct and those on-site inspectors and monitors who are tasked with its enforcement.<sup>13</sup>

Two pillars of the ILO’s twentieth-century governing regime are notably missing from the new tripartism outlined above. The first is the State. In those Pacific Rim countries where contract manufacturing is so

prevalent, government, both on a national and local level, can still play an important role. The ILO, as well as virtually all corporate codes of conduct, requires that factory managers adhere to existing labour laws and wage and hour regulations. Moreover, all of these nations are ILO member States and participate in the ILO discussions that formulate those Conventions and operating procedures that have a bearing on labour standards in these polities. The problem is that enforcement of such labour standards, either national or international, is extraordinarily weak because many of these States are either one-party regimes, highly decentralized, or simply lack the administrative capacity to enforce a uniform set of standards. The Chinese State is certainly a strong one when infrastructure and development issues are at stake, but in this vast country local authorities, who are often joint partners with export-oriented industries, are reluctant to enforce such labour laws and thereby put their province, company or industry at a competitive disadvantage.

The second missing pillar is the labour movement. In East Asia, Bangladesh and in parts of Latin America a volatile working class is emerging. In China, there are thousands of strikes, demonstrations, and other protests each month, most centred in the coastal industrial districts where millions of newly proletarianized peasants have created a combustible social mix not unlike that of Lancashire during the Chartist era or Lowell and the Lower East Side during the decades when turn-of-the-twentieth-century Socialists and Wobblies were active. But, in most cases, these workers have few institutions that can effectively represent them, certainly not in terms of the kind of trade unionism that the founders of the ILO saw as both an alternative to Bolshevism and as a potent and responsible negotiating partner with management and the State in the mid-twentieth century years. In China, the massive working-class impulse is but imperfectly and sometimes negatively represented by the All-China Federation of Trade Unions, whose first loyalty lies with the party State. Many other countries such as Mexico and Vietnam also have state- or party-sponsored trade union federations that have been hostile to a genuine voice for workers in the contract-manufacturing sector. Equally prevalent is outright repression, now or in the past, which has weakened the trade unions and emasculated their capacity to function as a tripartite stakeholder.<sup>14</sup>

To some degree, the labour-oriented NGOs have sought to strengthen independent trade unions, or in some instances substitute themselves for the workers' voice that has not yet been effectively organized. But laudable as those efforts might be, there can be no substitute for independent and authentic unionism when new legislation is written,

implemented or enforced. The failure of the monitoring and inspection regime under CSR is largely a function of the absence of a union presence on the shop floor because only when workers are protected by such an institution can they feel free enough to speak up and point out CSR transgressions without fear of reprisal. And finally, as contributors to this volume have pointed out, neither of the two most important industrial nations on the planet have adopted those ILO Conventions, Nos. 87 and 98, ensuring freedom of association. The fact that neither China nor the United States has made this commitment fatally weakens the prospects for a revival of trade unionism in the twenty-first century.<sup>15</sup>

The ILO has had an ambiguous relationship to the new tripartism, as embodied in the CSR regime. A 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, amended in 2000 and 2006, calls on global corporations themselves to take the initiative in their adherence to the most far-reaching ILO labour standards, but it is notably silent on the most important way in which the key multinational companies exert their social and economic influence: through the set of buyer-driven supply chains that squeeze both contract vendors and their workers.<sup>16</sup> Early in the twenty-first century, the ILO began an internal discussion of the posture it should take toward CSR. An ILO subcommittee on multinational enterprises proved sceptical in 2006, arguing that “CSR cannot substitute for the role of government”; indeed that “CSR commitments represent little more than declaratory statements of intent ... introducing a multiplicity of demands and unnecessary costs in supply chains with little return to suppliers in terms of market expansion, or to workers in terms of an improvement in working conditions.”<sup>17</sup>

Nevertheless, the ILO could hardly ignore the CSR phenomenon, which in many industries and countries seemed the only game in town. In 2009, the ILO therefore established a “Helpdesk for Business on International Labour Standards” designed to advise companies seeking information on how to make their supply chains and CSR operations conform more closely to the international labour standards promulgated by the ILO. Although the Helpdesk has no operational responsibilities, hundreds of companies and other organizations have made use of its technical expertise and accumulated understanding of international labour laws and standards. That background has generated an institutional scepticism when it comes to the corporate social responsibility idea. Because workers themselves are but third-party beneficiaries of the CSR process, with no standing to bring a legal claim against the company for any failure to live up to its commitments, the CSR

approach is “paternalistic,” averred Helpdesk director Emily Sims in a 2013 consideration of the ILO’s work in this corporate-centred universe. “Workers must depend on management’s goodwill for their rights to be respected,” she asserted. And since the ILO had concluded that CSR audits and inspections were often corrupt and unreliable, that corporate commitment too often generated but a “distorted picture of what is really going on in a company’s operations”; indeed, it “is basically non-existent beyond the first-tier supplier.”<sup>18</sup> Still, Sims and other ILO officials recognized that “Workers’ rights cannot wait for better legal protections and adequate labour inspection.” Inadequate and self-serving as they might be, all CSR codes of conduct call upon supply firms to actually obey existing national laws, even when routinely unenforced. Thus for Sims, “CSR can help build a business culture of respect for the rule of law.” This would lead to “a shift in national practice through demonstrating the feasibility of companies operating in a more responsible manner, which can then be reflected in national law, leading to advances in the legal protections provided by hard law.”<sup>19</sup>

ILO efforts to align the CSR regime with the historic mission of the international organization can be found in two high-profile Asian initiatives. The first emerged early in the twenty-first century in Cambodia, where the ILO was heavily engaged with the Better Factories Cambodia initiative; the second began in 2013 in the wake of the tragedy at the Rana Plaza garment factory in Bangladesh, where some 1,132 souls perished when the eight-story building collapsed. Immediately afterward, an unprecedented set of true negotiations – perhaps even tripartite in character – began between key global retailers, sophisticated NGOs and the Bangladesh garment industry.

Few nations had a more tumultuous or devastating experience than Cambodia in the decades of war, mass murder, occupation and economic catastrophe endured by the kingdom during the 1960s, 1970s and 1980s. By the time a semblance of authoritarian stability returned toward the end of the twentieth century, the country was one of the poorest in the world, with few resources other than cheap labour and the goodwill – perhaps derived from equal measures of guilt and humanitarian sympathy – of the United States and other Western nations. This was the context for the American decision to link preferable textile quotas to the enhancement of Cambodian labour standards as negotiated in a three-year compact, the US–Cambodia Textile and Apparel Trade Agreement (UCTA), signed late in 1999.<sup>20</sup>

Because of the weakness of the Cambodian Government and that nation’s desperate need for export markets, the United States had

enormous leverage when prodded by reformist NGOs to make of Cambodia and its nascent garment industry a showcase for modernization and social reform. Indeed, as controversy swirled about the creation of a new and powerful World Trade Organization, exemplified by the demonstrations and clashes that disrupted the 1999 Seattle meeting of that group, a reform of Cambodian apparel industry labour conditions provided an opportunity for the Clinton administration to prove that a well-constructed set of trade agreements could reduce poverty abroad and play a beneficial role in the development process. Under the UCTA, the US Department of State, assisted by Commerce and Labor, would determine each year whether working conditions in the Cambodian textile and garment sector “substantially comply” with a set of labour standards based on ILO criteria. If the Cambodian apparel industry did in fact measure up, then that nation’s annual textile quota for the US market would increase from 14 to 18 per cent, a considerable incentive to good behaviour since three-quarters of Cambodia’s textile and garment exports were destined for the US market in the first decade of the twenty-first century. Not unexpectedly, the European Union reached a similar agreement with the Cambodian Government, with firms like Swedish-based H&M sourcing much new product there.<sup>21</sup>

This trade initiative seemed an enormous success in its first few years of operation. To determine conditions in Cambodian factories, ILO staff in 2001 began to monitor working conditions in scores of workplaces through a program that became known as Better Factories Cambodia (BFC). These surveys were more probing and accurate than those generated by the usual sort of CSR inspection. Based on the survey, the BFC generated a “synthesis report” that identified and made public specific problems at named factories and firms, assessed progress in ameliorating those shortcomings, and then summarized for an international audience wage and working conditions data for the entire Cambodian textile and garment industry. This represented a clear break from the usual Corporate Social Responsibility regime, because the dozen or so BFC inspectors were paid by an independent entity and because of the initial transparency characteristic of the synthesis reports. For six years, the US Government relied on BFC’s monitoring and reporting to decide semi-annually whether to increase the import quota for Cambodian apparel. And at the same time, apparel brands used BFC’s reporting as a primary tool for monitoring their Cambodian vendors’ compliance with their own codes of conduct. The Royal Cambodian Government, which retained the responsibility to enforce Cambodian labour laws and standards, restricted the availability of export licenses to factories that registered with the program, and on

occasion, it actually denied a company an export license for product manufactured under substandard conditions.

Results were impressive. Employment in the garment industry tripled from 79,000 in 1998 to about 270,000 in 2004. Although wages remained among the lowest in the industrial world – in part because of the labour-intensive, cut-and-sew character of the Cambodian apparel industry – labour unions were registered in nearly 500 factories, and the synthesis reports showed improved working conditions in key areas, including the eradication of child labour and an end to extreme overtime work. Backed and prodded by the ILO and the United States, a tripartite governance structure, composed of Cambodian unions, the Garment Manufacturers Association of Cambodia (GMAC) and the government, seemed in sight. The BFC itself was guided by a Project Advisory Committee, comprised of representatives from the government, the garment manufacturers and elements of the trade union movement.<sup>22</sup> Thus, Cambodia's reputation as a nation striving to advance labour standards in a world in which globalization often meant a frantic quest for cheap and exploitable labour gave apparel manufactured there a distinct competitive advantage. Nike and Disney decided to resume sourcing from Cambodian factories monitored by the BFC, despite having pulled out of the country in the 1990s when they cited labour rights concerns as one reason for their departure. As World Bank president Robert Zoellick put it on a 2007 visit to Phnom Penh, "Cambodia can develop an international brand for socially responsible production, resource development and tourism. That reputation would help Cambodia to sustain high growth and overcome poverty in the face of tough global completion."<sup>23</sup>

Unfortunately, this industrial governance structure was built upon a trade pact that was about to collapse. The UCTA ended in 2005 along with the world Multi-Fiber Arrangement (MFA), of which that US–Cambodian trade agreement had been a *de facto* part. From this point on, the ILO's Better Factories Cambodia project would be deprived of crucial leverage, because the end of the MFA meant the end of the US garment and textile quotas behind which Cambodian industry had been so effectively, if briefly, sheltered. The impact on BFC and on working conditions in Cambodia would take a few years to become evident, but they were largely subversive of what the ILO had sought to engender. When the US Government ended its direct financial support to BFC, upwards of 80 per cent at its peak, the ILO was forced to sustain its inspection and reporting regime by relying to a far greater degree upon both the GMAC as well as those global buyers, including Gap, Levi Strauss, Nike, Wal-Mart, and Disney, which alone contributed more

than a million dollars to the programme. Not unexpectedly, the monitoring regime became less efficacious and transparent: it began to take on some of the characteristics of the firm-sponsored CSR inspections.<sup>24</sup> For example, the ILO stopped reporting on and publically identifying those individual garment factories it found noncompliant in the years after 2005, a practice that was only resumed nine years later after Stanford University researchers issued a scathing report faulting the erosion of the ILO inspection regime.<sup>25</sup>

Indeed, since 2010 ILO synthesis reports have tracked a deterioration of working conditions in Cambodian garment factories. A 2013 report said that its assessment of 152 garment and three footwear factories “demonstrates that improvements are not being made in many areas including fire safety, child labour, and worker safety and health.”<sup>26</sup> Both the ILO and the Stanford researchers found that in scores of factories overtime was increasingly involuntary, governmental wage standards had been violated, heat prostration was a growing problem, and that factory owners penalized those workers who sought to form unions and press grievances. Employment has grown more precarious, in part because many firms have shifted most of their workforce to temporary status or “fixed duration contracts,” thereby offering employers greater leverage to demand nonvoluntary overtime or discourage union organizing. Subcontracting to smaller factories that are outside of the BFC monitoring program has also become rife.<sup>27</sup>

Not unexpectedly, labour militancy and governmental repression have dramatically eroded the nation’s reputation as a stable and progressive site for apparel manufacture. In January 2014, hundreds of factories were shut down in a violent, disruptive mass strike, during which the military and security forces opened fire, killing four workers and injuring many more. Twenty-one union leaders were jailed for weeks without trial.<sup>28</sup> The idea that Cambodia’s once unique path toward export industrialization might have rendered that nation exempt from the downward wage and working condition pressures generated throughout the global apparel industry seems to have ended. As Ken Loo, secretary-general of the GMAC, put it shortly after the wage strikes of 2014, “We’ve been saying all along ... the higher the wage is set, the more factories will have to close.”<sup>29</sup>

The ILO experiment in Cambodia fell far short of expectations for two reasons. First, the tripartism embodied in Better Factories Cambodia was always a tenuous arrangement, far too dependent upon the carrot and stick implicit in US manipulation of its import quota from that small nation. Once this leverage dissipated, the overwhelming power

of the GMAC became manifest, often in tandem with a government that had grown increasingly authoritarian by the second decade of the twenty-first century. Meanwhile, the power of the workers was far more apparent than real. The Cambodian trade union movement appeared more vigorous than in other East Asian nations. It was not controlled by the government, and it often enrolled a majority of workers in key manufacturing facilities. But with more than a dozen trade union federations claiming to represent Cambodian textile and garment workers, the labour movement rarely spoke with one voice, nor did it have the organizational strength to actually engage in what Western observers would recognize as collective bargaining.<sup>30</sup> This governance structure, and the weak position of worker representatives therein, helps explain BFC's reluctance to take a public position on key labour rights issues, lest it lead to a showdown with its own governance body.<sup>31</sup>

But even more important, the BFC project was never designed to enlist the big multinational brands and retailers as full-fledged partners in a tripartite system of governance. Instead, BFC directed its energies inward, toward resolution of conflicts and amelioration of working conditions in the vendor factories without putting pressure on those North Atlantic entities which actually controlled the supply chains that placed the orders with Cambodian manufacturers and determined the prices, and hence the wages and working conditions, under which hundreds of thousands would labour. Buyers engaged in but two activities: first, since the phase-out of the import quota system in 2005, the BFC's role changed to resemble more closely that of most other factory auditing bodies; providing confidential factory monitoring reports to factory owners and, on a for-pay basis, to international buyers (the reports cost \$750, a real bargain compared with a proprietary, CSR inspection of such a factory).<sup>32</sup> And, second, the brands and retailers participated in an annual buyers' forum, where they met with BFC staff and trade union representatives. But this was not the kind of tripartite engagement long advocated by the ILO. The Cambodian Government was not present in any formal sense, nor were the local manufacturers, and for the brands, participation was entirely voluntary.<sup>33</sup> Thus, even at the height of BFC effectiveness in the early twenty-first century, no venue or mechanism existed whereby supply chain power and financial resources might be enlisted to raise labour standards and ameliorate working conditions within the Cambodian textile and apparel industry.

Bangladesh was just as poor and nearly as dependent upon apparel exports as Cambodia. During the first decade of the twenty-first century, Bangladesh apparel-industry wages were little more than half those of

India, Pakistan, Cambodia and Vietnam. Such rock-bottom wages lured many of the largest buyers to source product in the country, making Bangladesh the second largest garment exporter after China.<sup>34</sup> But Bangladesh had also achieved dubious recognition for a series of workplace calamities reminiscent of the most satanic nineteenth-century factories and mills. Illegal and shoddy construction, corrupt and inadequate government oversight and state repression of a weakly organized labour movement proved a deadly combination. Even before the collapse of the Rana Plaza garment factory complex near Dhaka in April 2013, the death toll from Bangladesh factory fires had risen to more than 700 over the previous decade. As recently as November 2012, a devastating fire killed 112 people at the Tarzreen garment factory, which had been churning out goods for Wal-Mart and other Western brands and retailers.<sup>35</sup>

Rana Plaza shocked the world, generating the moral and political will that finally propelled scores of North American and European brands and retailers to agree to a new sort of tripartite governance body. The May 2013 Accord on Fire and Building Safety, signed by more than 150 global firms, by the powerful Bangladesh Garment Manufacturers Association, and by two international union federations, IndustriALL and UNI, as well as the ILO, put a measure of legal and administrative backbone into the reform effort that sought to make those who controlled the retail-dominated supply chains responsible parties in any effort designed to mitigate unsafe factories in Bangladesh.<sup>36</sup> Pushed forward by NGOs such as the college- and university-based Workers Rights Consortium and the European Clean Cloths Campaign, the Fire and Safety Accord was the product of a multiyear series of negotiations that only reached resolution in the immediate wake of the Rana Plaza tragedy. Like Better Factories Cambodia in its early twenty-first century heyday, the Accord did away with individual CSR codes of conduct: in Bangladesh they had proven utterly ineffective, little more than public relations. Indeed the vast majority of fires, as well as the Rana Plaza collapse, had taken place in a factory recently inspected and approved under a CSR code of conduct. In the place of these proprietary CSR programs, the Accord created a well-funded inspection regime that hired dozens of international experts and hundreds of local inspectors to determine the building integrity and safety procedures at some 1,800 factories that sourced export apparel for the brands and retailers who signed onto the Accord.<sup>37</sup>

There are three ways in which the Accord breaks new ground. First, the Accord regulates the buying practices of apparel brands and retailers. It requires them to make a multiyear commitment to supplier factories, a major deviation from the industry's footloose norm, and it requires that

factories continue to pay workers their normal wages during any period when they are idled due to safety repairs. In many cases this requirement has been met when signatory brands and retailers find alternate employment in their other supplier factories for any worker who loses his or her job due to a factory closure.<sup>38</sup> Meanwhile, the brands and retailers that have signed on to the Accord are also required to help pay for factory safety upgrades if the Bangladesh factories cannot cover the costs themselves. Article 22 of the Accord includes such options as joint investments, loans, accessing donor or government support, offering business incentives and paying for renovations directly.<sup>39</sup> This generates something close to an “investment” by the top of the supply chain in the bottom.

Second, the Accord calls for workers’ representatives to be empowered participants, with a steering committee chaired by an ILO official and composed equally of union representatives and officials from participating companies. Unions receive inspection reports at the same time as factory managers and are empowered to share results with employed workers. And at every factory where unions have any membership, at least one of the Accord’s signatory unions is authorized to participate in the development of the remediation plan.<sup>40</sup> As in Cambodia, the Bangladeshi unions are weak and disorganized, but the Accord strengthens their hand, not just by offering them a formal role in tripartite governance, but also by ensuring that employment will be more continuous in Accord factories and that the cost of remediation will not fall upon the workers alone.

Third, and quite unique in recent supply-chain history, the Accord mandates that all signatories sign legally binding contracts, creating a potential financial liability on the part of both the Bangladesh contract manufacturers and the global buyers when reconstruction or mitigation of a factory plant becomes warranted.<sup>41</sup> Unlike CSR programs, which can be altered or abolished at any time, the Accord has created a set of legally binding contractual obligations, whose enforcement, should consultation and ILO arbitration fail, can take place in the court of the home country of the signatory party against whom enforcement is sought. This is important because of the corruption, politicization and systematic employer bias of so many judicial systems in Bangladesh and many other Asian apparel-manufacturing countries.<sup>42</sup>

Significantly, the new legal obligations inherent in the Accord generated resistance from those American retailers, including Gap, Wal-Mart and at least 15 other companies that source product in Bangladesh. They refused to sign the Accord and instead established a rival Alliance for

Bangladesh Worker Safety.<sup>43</sup> Unlike the Accord, the Alliance does not require its signatories to cover the costs of factory remediation should other alternatives prove unworkable. Nor does the Alliance provide any role for Bangladesh unions or international labour bodies in its governance structure: it is composed of signatory brands and retailers on the one hand, and local factory managers and owners on the other. This is consistent with the inadequate CSR approach, which marginalizes workers' voices in favour of a corporate-funded and controlled partnership between brands, retailers and factory owners. The most important difference between the Accord and the Alliance, however, is that the American-dominated group, which accounts for about a quarter of all Bangladesh apparel exports, resists legal accountability and tripartite governance. To Wal-Mart the Accord "introduces requirements, including governance and dispute resolution mechanisms, on supply chain matters that are appropriately left to retailers, suppliers and government."<sup>44</sup> A week later an official for the National Retail Federation put it even more pointedly, "The liability issue is of great concern, at least on this side of the Atlantic. For US corporations, there is a fear that someone will try to impose liability and responsibility if something goes awry in the global supply chain."<sup>45</sup> Precisely. "The Accord has teeth that the Alliance simply does not have," argued Rob Wayss, the first head of Accord operations in Bangladesh. "The Alliance is a modified version of the monitoring and auditing and corporate social responsibility that have been employer-led and executed and not rigorous enough."<sup>46</sup>

The Bangladesh Accord on Fire and Building Safety is, therefore, of potentially far-reaching import. It represents a step toward the moral, legal and financial reintegration of a set of supply chains that today constitute the essence of our neo-liberal globalization. It encourages and legitimizes the role of workers and their unions in one small but vital aspect of industry governance. The principles inherent in the Accord should, therefore, spread not only to those low-wage or unsafe enterprises of the global South that fill big-box shelves, but also to the increasingly fissured workplaces of the United States and Europe, where a Rube Goldberg set of franchises, subcontractors, temporary work agencies and supply chains have enabled many companies to shed responsibility from those whose work is absolutely and directly functional to their success, thereby enabling these masters of the global supply chain to degrade wage standards and generate employment insecurity from an increasingly precarious slice of the working class.

The Bangladesh experiment alone cannot revive ILO tripartism of the sort that flourished in the mid-twentieth century. But it does point the way

toward the kind of arrangement in which a new set of labour standards can be negotiated and advanced by the key stakeholders. First, the brands and retailers controlling the great supply chains must assume responsibility for the conditions of work among the many millions whose labour they effectively control and compensate, regardless of the nationality or identity of the ostensible employer. Second, the State has to take a far more active regulatory role, but in any new tripartite schema, this “State” will include not only weak sovereignties like Bangladesh and Cambodia, but also international organizations such as the World Trade Organization and the ILO as well as Western nations whose trade pacts and import quotas can serve as a powerful system of penalties and rewards sustaining labour standard agreements in or among nations otherwise too weak to take on such enforcement actions by themselves.

And of course, any new tripartite system of industrial governance requires a strong labour movement that can freely function both in the factories and in the polity. Even the most active and well-meaning NGO cannot substitute itself for the voice and vision of an organized working class. ILO progressives understood this well in 1919, and it remains just as true in our own day.

## Notes

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