
The ILO to the Rescue?

We renew our commitment to the observance of internationally recognized labor standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards and we affirm our support for its work in promoting them.

—World Trade Organization, Singapore Ministerial Communiqué, 1996

To deflect demands for a social clause, globalization enthusiasts, LDC governments, and the world trading community have proposed that an international agency other than the World Trade Organization (WTO) deal with global labor standards—the International Labor Organization, or ILO. Until the battle over standards erupted in the 1990s, neither trade specialists nor labor economists paid much attention to the ILO. Even today, most reasonably informed people have little idea what the letters I-L-O stand for.

The ILO is the Methuselah of international institutions. It was created in 1919 and is the only League of Nations institution to survive World War II. It is also the only international organization that is not purely intergovernmental in its governance structure. Unions and employer-group representatives are part of each country's delegation and have the same right to vote as government representatives at Governing Body meetings and at the International Labor Conference, where delegates make policy in plenary sessions (for the details of the ILO's structure, see box 5.1). As of the end of 2002, the ILO's membership included government, worker, and employer representatives from 175 countries.

Historically, the ILO's major activity was to negotiate and promulgate conventions on labor standards that member governments could ratify. By

Box 5.1 ILO institutional structure and supervisory mechanisms

The ILO, founded in 1919, is a tripartite organization with 175 member states and 700 voting delegates, because each state delegation has two government representatives and one each representing employers and workers. In theory, the worker and employer delegates vote independently and are not bound by their government's position. Delegates gather annually at the International Labor Conference, where new conventions may be adopted and implementation of existing conventions is reviewed.

The *Governing Body* is the ILO's executive body, with responsibility for developing policy, electing the director general, overseeing the International Labor Office (see below) work program, and responding to complaints about inadequate implementation of the ILO's conventions. The Governing Body has 28 government members, with 10 of those slots "permanently held by states of chief industrial importance" (currently Brazil, China, France, Germany, India, Italy, Japan, Russia, the United Kingdom, and the United States) and the others elected every three years at the annual conference. The 14 employer and 14 worker members are elected by the employer and worker delegates, respectively.

The *International Labor Office*, headed by the director general, is the ILO secretariat, with headquarters in Geneva and branch offices around the world. The International Labor Office provides advisory services (e.g., on how to create or reform laws for social protection), carries out research projects, and conducts technical cooperation programs.

The *Committee of Experts on the Application of Conventions and Recommendations* (CEACR) reviews and comments on the routine reports submitted by members regarding the application of conventions they have ratified (Article 22) or efforts to ratify other conventions and the status of law and practices in those areas (Article 19).

The *Conference Committee on the Application of Standards* is a tripartite body formed at each International Labor Conference that reviews the CEACR report, selects a subset of problem cases identified in that report, and invites the government delegates from the countries involved to discuss them in open session.

The *Committee on Freedom of Association* deals with complaints alleging violations by a member state of this fundamental right. Because it is regarded as a constitutional obligation of membership, complaints about freedom of association violations can be brought against any member state, regardless of whether it has ratified Convention 87.

Sources: "About the ILO," www.ilo.org/public/english/about/index.htm and "International Labor Standards: How Are They Enforced?" at www.ilo.org (click on "International Labor Standards" on the homepage and then on "FAQs").

2002, the ILO had developed 184 conventions determining international standards for various aspects of work and employment. Some of the standards dealt with fundamental rights of workers, but most were narrow and technical, on issues of importance only to labor, management, or regulators in specific sectors, for instance, shipping or communications.

From 1977 to 1980, the United States withdrew from the ILO, seeing it as overly politicized, ineffective, and unwilling to distinguish between genuine unions and government-run sham organizations in the old Soviet bloc. Like other UN organizations, the ILO was also infected by the political poisons emanating from the Middle East conflict.

The ILO's institutional weaknesses aside, a simple comparison of its budget with those of the World Bank and IMF shows its relative status. In 2000–01, the ILO had a budget of \$467 million, of which 25 percent came from the United States. This compares with the Bank's and IMF's hundreds of billions of dollars in lending authority.

Thanks to the debate over labor standards and globalization, however, the ILO has recently received more attention, political support, and resources than ever before. The organization has responded with new initiatives and a tougher attitude toward countries that violate standards (Charnovitz 2000). In 1998, the ILO approved a Declaration on Fundamental Principles and Rights at Work, which provided a consensus definition of the four core labor standards that have become the centerpiece of the global standards movement.

The ILO followed this declaration by approving a new convention calling for immediate action against the "worst forms" of child labor. It developed programs to ensure that reductions in child labor did not leave families worse off. In 1999, for the first time in its history, the ILO imposed penalties on a member state, in this case Burma for allowing forced labor. In 2002, it established a World Commission on the Social Dimensions of Globalization to explore ways to make economic globalization more inclusive.¹

What tools does the ILO have to improve labor standards around the world? Will the countries that supported the ILO in lieu of the WTO to deal with labor standards work to strengthen the organization, or is their support just rhetoric? Will the United States continue to help the ILO become an active agent of change or return to an earlier stance of neglect or hostility? Can the ILO transform itself from the 90-pound weakling of UN agencies into an effective guardian of labor standards around the world?

The ILO's Tools

In 1999, the ILO elected Juan Somavia, previously Chile's permanent representative at the United Nations, to be its director general. Somavia grasped the opportunity offered by the labor standards debate to reinvigorate

1. The commission is cochaired by the presidents of Finland and Tanzania and made up of 19 prominent individuals from all regions of the world and from government, academia, the business community, and the labor movement.

the ILO. With a team of ILO officials, he visited institutions around the world to gather ideas on what an activist ILO could do.

At Harvard University, Richard Freeman offered a radical scheme: The ILO's director general and its other leading officials should identify a horrid violation of labor standards somewhere in the world, go to that factory or workplace, protest, and get arrested or attacked by the company's guards or police. This would put Somavia and the ILO on the front pages of newspapers and television screens around the world and give the organization instant credibility as the guardian of labor standards. People would say, The ILO? Oh yes, the part of the United Nations that stands up for workers' rights. Then whenever the ILO spoke out on standards issues in the future, the global community would pay attention.

Though the director general and his staff did not follow this far-out advice, they did shake up the ILO and strengthen its presence in the global economy. In response to the criticism that the costs of globalization and the burdens of financial crises and structural adjustment fall largely on the poor while the benefits go largely to the wealthy, the ILO developed a four-part strategy to improve the well-being of workers around the world. Under the heading "Decent Work," it promotes the four core labor standards and the need for job creation; supports the development and improvement of social safety nets; and calls for social dialogue among management, labor, and government. And in response to widespread concerns about child labor, the ILO also expanded its International Program on the Elimination of Child Labor (IPEC).

In addition to setting standards, the ILO has three tools for improving working conditions (Elliott 2000b). It supervises compliance with global labor conventions and publicizes violations of standards to shame countries into improving matters. It gives technical assistance to labor ministries and other agencies, unions, and employers' groups to improve the implementation of labor standards. And it can punish countries that do not comply with their commitments through an enforcement mechanism that, until the 1990s, the organization had rarely used. In response to activist campaigns for global labor standards and the desire of the trade community to divert attention from the WTO on these issues, the ILO has strengthened all three of these tools.

Supervising and Publicizing Country Performance

The ILO has extensive mechanisms for supervising the application of its labor conventions. Article 22 of the ILO Constitution requires member governments to routinely report on how they apply the conventions they have ratified.² Article 19 requires members to report periodically on why

2. To reduce the burden on member governments, the ILO now asks countries to report on each core convention they have ratified every 2 years and on other ratified

they have not ratified particular conventions and what they are doing to achieve the goals of those conventions. The Committee of Experts on the Application of Conventions and Recommendations, composed of 20 independent members, reviews these reports and prepares its own report to the International Labor Conference. When the committee detects a problem in implementing a convention, it makes an “individual observation” that draws attention to discrepancies between convention obligations and the law or practice in particular countries.

The annual International Labor Conference provides a public venue for directing attention to the success or failure of countries in complying with international standards. At that meeting, the ILO’s Conference Committee on the Application of Standards reviews the experts’ report, selects 20 or so of the most serious problems identified there, and invites governments to respond to them in public session. The Conference Committee then prepares its own report to the full Conference, highlighting areas of both progress and inadequate compliance. A separate section of the report lists cases in which there is a “continued failure to implement” or includes “special paragraphs” directing attention to the worst cases. A press release highlights these cases with the aim of shaming the violator into making reforms.

The ILO disseminates much of the information generated by its supervisory mechanisms on its Web site (www.ilo.org). ILOLEX, a searchable database, contains the ILO Constitution, all the conventions and recommendations, ratifications, Committee of Experts and Conference Committee reports, information on complaints under Articles 24 and 26 (see below), and more. In important functional areas, including the promotion of international labor standards, child labor, and occupational safety and health, the agency has created In Focus programs that pull together key information on the problem and on ILO programs to address it. The ILO has done a great deal in recent years to make its Web site more user-friendly but the sheer volume of information can overwhelm potential users, such as the media, nongovernmental organizations (NGOs), unions, and business groups in particular countries.

ILO officials believe that the increased transparency brought by increased attention and new technologies has had an effect on compliance. In a report assessing the impact of the specialized Committee on Freedom of Association, the ILO concludes that countries are

finding it increasingly unacceptable that their failings and non-compliance with their international obligations are discussed in public, particularly at a time when new means of communication are making it possible for information to be disseminated more effectively than ever before. (Gravel, Duplessis, and Gernigon 2001)

conventions over a 5-year cycle, rather than every year, as was originally required when the number of members and of conventions was far smaller.

The most important addition to the reporting and information toolbox, however, came in 1998 when the International Labor Conference approved the Declaration on Fundamental Principles and Rights at Work defining the four core labor standards. The follow-up mechanism for implementing the declaration requires member countries that have not ratified one or more of the eight conventions associated with these principles to report annually on what they are doing to promote the conventions and encourages employers' and workers' groups to comment on the national submissions. In addition, the Conference requires the director general to prepare a global report summarizing how each core standard is being implemented around the world.

The ILO appoints independent expert advisers to write an introduction to the compilation of country reports, to point out strengths and weaknesses in them, and to recommend how to make the reports more useful. In combination with the Article 22 reports the ILO requests from the signatories to conventions, this reporting mechanism means that *every* ILO member is obligated to report routinely on efforts to promote fundamental workers' rights.³ But the ILO cannot force countries to fulfill their reporting obligations. In 2002, roughly a third of the required reports were not sent to the ILO, and 10 countries had not reported at all under the follow-up, mostly the poorest or weakest. Moreover, most country reports are more bureaucratic than informative and are filled with detailed discussions of legal provisions rather than with information on the actual implementation of standards.

The director general's global reports have more of an impact. They are succinct and easy to read. They summarize the key problems in implementing the core standards and identify countries with problems. The reports are prepared in a four-year cycle beginning with freedom of association (2000), forced labor (2001), child labor (2002), and discrimination (2003).

The purpose of the ILO supervisory mechanisms is to direct a spotlight on labor standards and improve compliance. One way to judge the potential power of these reports is that several countries tried to water down the declaration and to stop the director general from "naming names." In 1998, delegates from some of the LDCs that had argued that labor standards should be kept in the ILO and out of the WTO either left Geneva early or abstained from the vote on the declaration and follow-up mechanism, nearly denying it the quorum needed to gain approval. The countries of the delegates who abstained are listed in box 5.2. Some, such as Burma, have subsequently been identified as serious violators of labor standards.

3. An unfortunate discrepancy has been created, however, because the country reports under the Declaration follow-up are published on the ILO Web site while the Article 22 reports are kept on file at ILO headquarters, largely inaccessible to the public.

Box 5.2 Government delegates abstaining from the vote on the ILO Declaration on Fundamental Principles and Rights at Work

An E and/or W in parentheses indicates that the employer or worker delegate, respectively, also abstained:

Bahrain	Pakistan
Burma (E, W)	Peru
Egypt (W)	Qatar (E)
Indonesia	Saudi Arabia
Kuwait (E, W)	Singapore
Lebanon	Sudan
Malaysia	Syria (E, W)
Mauritania	United Arab Emirates
Mexico	Vietnam (E, W)
Oman	

When the June 2000 International Labor Conference discussed the first global report, many of these countries criticized Director General Somavia for pointing to violations of freedom of association in Bahrain, Equatorial Guinea, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, where worker organizations were either prohibited or so restricted as to be meaningless.⁴ The report also highlighted the denial of the right to organize in countries with legislatively imposed official unions, such as in China, Cuba, Iraq, Sudan, Syria, and Vietnam.

Somavia rejected the criticism, noting that “it is difficult to see how the [International Labor] Office can do credible reporting unless countries are identified and facts are stated.”⁵ In fact, naming names helped shift the policies of some Middle Eastern countries. Saudi Arabia announced in 2001 that it would permit the formation of worker committees, and Bahrain decided to allow trade unions. These countries, along with Oman, Qatar, and the United Arab Emirates, also asked the ILO to provide technical assistance to help them make further progress.⁶

To avoid conflict with its members, the ILO has shied away from clearly prioritizing the violations or putting countries in categories by degree of violation. But there is nothing to prevent other organizations from using

4. The Gulf countries protested being singled out in the report and, privately, some ILO officials concede that the report should have been more sensitive to the particular problems of these countries, which are in an unusual position with respect to freedom of association because a huge proportion of their workforce consists of foreign workers.

5. “Reply by the Director-General to the Discussion of his Report,” Provisional Record 25, International Labour Conference, 88th Session, Geneva, 2000.

6. ILO, “Decent Work in Asia,” August 2001.

the ILO data in this way. In 1996 and in 2000, the OECD used ILO data and other documents to put about 70 countries into four categories based on their respect for the right to freedom of association. And a committee appointed by the US National Research Council has been studying ways to use ILO and other data to develop indicators of how countries are faring with labor standards.

In sum, with routine ILO reporting, the declaration follow-up mechanism, and efforts by other public and private organizations, such as the OECD, the International Confederation of Free Trade Unions, and corporations, the world now has much more information about labor standards than in the past.

Technical Assistance

Some LDCs lack the funding and knowledge to improve labor standards. Ministries of labor and other organizations seeking to raise standards are often weak bureaucracies unable to accomplish goals, such as reducing child labor or improving occupational health and safety. In such situations, even modest ILO technical assistance can help them accomplish their goals.

For decades, ILO technical assistance programs received only modest funding from wealthier member states, and the agency had a limited presence in LDCs. In the late 1990s, however, many countries, including the United States, responded to activist demands that the world community do more to improve labor standards by increasing their funding for ILO programs. US contributions, exclusive of assessed dues and money for child labor, went from zero in 1998 to \$20 million in 2000 for technical assistance to promote the 1998 declaration.⁷ As a result, overall spending on technical cooperation increased from an average of just above \$90 million a year in 1998–2000 to \$122 million in 2001 (International Labor Office 2002, 1).

Much of the increased money went to IPEC. From its launch in 1992, with a donation from Germany and 6 participating countries, IPEC has grown to 70 participating countries and 25 donor governments. In the space of 2 years (2000–01 to 2002–03), allocations for the child labor program increased from \$64 million to \$119 million (IPEC 2002b).

US contributions to IPEC were \$3 million in 1998 and increased to \$45 million by fiscal 2000. Canada, France, the Netherlands, and the United Kingdom also more than doubled their contributions in the late 1990s. Among the largest recipients of IPEC assistance in 2002–03 were Bangladesh (\$11 million), India (\$15 million), and Pakistan (\$3 million). Central American countries received another \$10 million (IPEC 2002a).

7. *ILO Focus*, Summer-Fall 1998, 14; Winter-Spring 1999, 12; Spring 2000, 7; and Spring 2002, www.us.ilo.org (various dates).

Having been bolstered by the increase in funding and political support, the ILO began to attack problems of raising labor standards more creatively than before. It worked with government, industry, and NGOs to address child labor in South Asia and West Africa (see chapter 6). And in 2001, it worked with El Salvador, Nepal, and Tanzania to develop new “time-bound” programs to eliminate the worst forms of child labor that take a systemic countrywide approach to identifying problems and finding holistic solutions to eliminate the problem. The ILO also worked with Cambodia and the US government to monitor conditions in Cambodia’s garment sector, while training labor ministry inspectors, employers, and workers to enforce laws and settle disputes themselves.

Looking at the effect of some of these programs, IPEC reports that during the period 2000–01 it provided more than 300,000 “units of service” to children, more than double the number in the previous biennium. The beneficiaries include nearly 40,000 children removed from work or rescued; more than 50,000 children helped by ensuring safer working conditions or shorter hours; about 80,000 children provided with basic education or vocational or skills training; and more than 50,000 children mainstreamed into the formal education system.⁸

Although the number of children benefiting from these services is small in a world with about 250 million child workers (8 million of whom the ILO estimates are engaged in the unconditionally “worst forms” of child labor), it is a fruitful beginning. Overall, the assistance given these children cost less than \$200 per “unit of service” provided, but much of this was start-up costs, suggesting that the marginal cost of aiding the children is less.⁹

To maintain or increase these levels of support, the ILO must demonstrate to donors and recipients that it spends the money wisely. This, in turn, requires that it become more transparent and undertake more systematic evaluations of its technical assistance. At the 2001 International Labor Conference, US employer delegate Ed Potter asked the organization to list all the countries acting to correct problems and the countries requesting technical assistance, and to provide more information on the assistance given those countries and criteria for assessing the impact of the assistance (International Labor Conference, 89th Session, Provisional Record 1). Behind this request was a concern that much ILO technical support involves seminars on freedom of association or collective bargaining, where it is difficult to assess success. At the least, the agency

8. These “units of service” appear not to correspond one-to-one with individual children because some might have been both withdrawn from work and enrolled in training. The IPEC report also implies, without being specific, that higher-value services may be worth more than one “unit” (IPEC 2002b).

9. This is calculated by dividing \$56 million in actual expenditures by the estimated 300,000 service units.

could ask whether participants found the seminars useful and what could be done to make them better.

More broadly, the ILO could do more with its Web site to report organized information about technical cooperation. Its Technical Cooperation Committee regularly reports to the ILO Governing Body, but information on particular programs can be difficult to find. The ILO would also benefit from creating an office to independently evaluate its programs, as the World Bank and IMF have done in recent years in response to pressure for more transparency.¹⁰

Enforcement of Conventions and Standards

The most frequent complaint about the ILO is that it lacks enforcement power—that it is the proverbial toothless tiger. Article 33 of its Constitution gives it broad authority to take action against countries that are not in compliance with the obligations of membership. Until 2000, however, it had never invoked that provision. It encouraged compliance through the supervisory and technical assistance systems described above rather than seeking to sanction countries that violated standards.

The ILO has two ad hoc mechanisms to promote compliance with labor standards that focus attention on possible violations and that could eventually lead to Article 33 sanctions. The first, Article 24 of the ILO Charter, gives any worker or employer organization around the world the right to file a complaint alleging that a member government is not complying with a convention it has ratified or that a country has violated freedom of association (regardless of whether it ratified the relevant conventions). If these complaints are not resolved through informal consultation, the Governing Body can refer the “representation” to the Committee on Freedom of Association or appoint an ad hoc committee of its members, consisting of representatives of governments, workers, and employers. These committees analyze the situation, ask the government to respond, and make recommendations on what the government can do to comply.

If the problem remains unresolved, official delegates to the ILO can file a complaint under Article 26. Governments can raise complaints against another country only if they have also ratified the convention in question. This provision constrains the US government because it has ratified just 13 conventions and only 2 core conventions—Conventions 105 on the abolition of forced labor and 182 on the worst forms of child labor. But the US Council for International Business, representing US employers, and the AFL-CIO, representing American labor, can bring a complaint regardless of US ratification status. And as with representations, Article

10. For information on the IMF's Independent Evaluation Office, see www.imf.org/external/np/ieo/index.htm; and for the World Bank's Operations Evaluation Department, see www.worldbank.org/oed/.

26 complaints regarding freedom of association can be brought against governments that have not ratified either Convention 87 or 98.

Upon receiving a complaint under Article 26, the ILO Governing Body tries to resolve the problem informally. It can seek the member country's permission to send a Direct Contacts Mission to discuss the problem. If that leads nowhere, the ILO can appoint a Commission of Inquiry to investigate the charges. The commission reports its findings and recommends how the country can bring its laws and practices into compliance with the relevant convention. The target of the complaint can appeal the commission's finding to the International Court of Justice. If the commission's findings stand, the ILO will ask the country to report what it has done to implement the commission's recommendations.

Up to this point, ILO procedures are similar to those standards advocates propose for a WTO "social clause." But many advocates believe that the similarities end there, with the ILO having no power to enforce its findings. In fact, Article 33 of the ILO Constitution provides that, if a satisfactory resolution is not forthcoming, "the Governing Body may recommend that the Conference take such action as it may deem wise and expedient to secure compliance therewith."¹¹

Until 1946, Article 33 provided that members could take "measures of an economic character" against another member that refused to come into compliance with the recommendations of a Commission of Inquiry.¹² A constitutional review undertaken after World War II broadened Article 33 to "leave the Governing Body discretion to adapt its action to the circumstances of the particular case." However, the amended language does not exclude the possibility of economic, or any other, sanctions.¹³

The ILO has rarely used its enforcement process, in part because the founding countries never intended this to be a major tool for improving labor standards. Article 26 was

artfully devised in order to avoid the imposition of penalties, except in the last resort, when a State has flagrantly and persistently refused to carry out its obligations under a Convention. It can hardly be doubted that it will seldom, if ever, be necessary to bring these powers into operation.¹⁴

11. International Labor Office, "Measures, Including Action Under Article 33 of the Constitution . . . to Secure Compliance by the Government of Myanmar. . .," GB.276/6, 276th Session of the Governing Body, Geneva, November 1999.

12. International Labor Office, *Reports I and II and Constitutional Questions*, 29th Session of the International Labor Conference, 1946.

13. International Labor Office, *Reports I and II and Constitutional Questions*, 29th Session of the International Labor Conference, 1946. Also see International Labor Office, "Measures, Including Action Under Article 33 of the Constitution . . . to Secure Compliance by the Government of Myanmar. . .," GB.276/6, 276th Session of the Governing Body, Geneva, November 1999.

14. International Labor Office, *Reports I and II and Constitutional Questions*, 29th Session of the International Labor Conference, 1946, 4.

Between 1919 and 1960, there was only one Article 26 complaint. Since then, there has been an average of six complaints a decade. Throughout its history, the ILO has appointed only nine Commissions of Inquiry.¹⁵ And despite weak implementation of the commissions' recommendations in some cases, the ILO never took the next step, invoking Article 33 of its Constitution—until 2000.¹⁶

The Burma Case

The ILO finally invoked Article 33 against Burma over a long-standing problem with forced labor. The problem grew worse after a military junta seized power in 1988 and initiated a massive infrastructure-building campaign to attract tourists and foreign investment. After years of comment by the Committee of Experts, worker delegates filed an Article 26 complaint against Burma in 1996. In March 1997, the ILO appointed a Commission of Inquiry. The commission completed its report in 1998 and called on the Burmese government to bring its laws and practice into compliance with Convention 29 by May 1999.

In June 1999, not having received a constructive response from Burma, the International Labor Conference approved a resolution that condemned Burma's refusal to comply with the Commission of Inquiry's recommendations, prohibited technical assistance except as necessary to implement the recommendations, and banned Burma from most meetings.¹⁷ It also requested that the Governing Body consider whether further action under Article 33 might be justified.

Even these modest penalties attracted opposition from some LDCs. Cuba, seconded by Colombia, Mexico, and Venezuela, sought to separate the part of the resolution condemning Burma's noncompliance from

15. All but three of the complaints since 1960 addressed alleged violations of one of the four fundamental rights, usually freedom of association or forced labor. See "International Labor Standards: How Are They Enforced?" on the International Labor Standards sections of the ILO Web site at www.ilo.org.

16. One assessment finds that most governments accept the findings of commission reports. Poland, however, refused to cooperate with the Commission of Inquiry appointed to investigate a freedom of association complaint raised in the early 1980s, when the government was trying to break the Solidarity union movement. Germany also rejected the finding by a commission that it unfairly discriminated against public employees for political (anticommunist) reasons. In other cases, governments nominally accepted the conclusions of a commission but remedial actions often have been inadequate. See Romano (1996).

17. At the time of the resolution, Myanmar was not receiving any technical assistance and had received a total of only \$1.5 million from 1991 through 1996. The ban on meetings is also more about symbolism than substance, because no member that is not in arrears on its dues can be barred from constitutionally authorized Governing Body and International Labor Conference meetings.

the portion imposing penalties. But a voice vote defeated this motion.¹⁸ In March 2000, when Burma had still done nothing to remedy the forced labor situation, the Governing Body formally invoked Article 33 and recommended that the June 2000 International Labor Conference take action. It suggested that the conference call on member states “to review their relationship with the Government of Myanmar (Burma) and to take appropriate measures to ensure that Myanmar ‘cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour.’” It also recommended that the ILO call on other international organizations to consider whether their activities “could have the effect of directly or indirectly abetting the practice of forced or compulsory labour.”

In May, the Burmese regime stopped denying that forced labor had occurred, and it invited the ILO to send a technical mission to discuss the problem. The regime admitted that forced labor had been a problem in the past but insisted it was no longer a problem and that Article 33 action was unnecessary. The technical mission, however, noted that the country had taken no concrete action to implement the Commission of Inquiry’s recommendations. On May 27, just before the conference opened, the Burmese labor minister wrote to the director general, claiming that the country had taken steps against forced labor and would “take into consideration appropriate measures . . . to ensure the prevention of such occurrences in the future.”¹⁹

Burma’s East Asian neighbors seized on the apparent concessions and argued that the organization should delay a decision on Article 33 action and monitor the situation for another year. The workers’ group at the International Labor Conference argued for immediate action. The employers’ group proposed a compromise that called for conference approval of the measures proposed by the Governing Body but also for a delay in implementation until November 30, 2000, to test Burma’s promise of more action. In October, Burma again tried to head off action by promising to change its laws, policies, and practices to end forced labor. But the ILO deemed this insufficient, and the Governing Body voted 52 to 4 to allow the June resolution to take effect, with only China, India, Malaysia, and Russia dissenting.²⁰

By the spring of 2002, the Burmese regime had issued executive orders to bring its practices into compliance with Convention 29, but it still refused to amend the underlying law permitting forced labor. Bizarrely,

18. *ILO Focus*, Summer-Fall/Winter 1999, at www.us.ilo.org/news/focus/999/index.htm/ (May 9, 2003).

19. “Report of the ILO Technical Cooperation Mission to Myanmar,” Provisional Record 8, International Labour Conference, 88th Session, Geneva, 2000.

20. *Washington Post*, November 17, 2000, Associated Press report.

the military argued that because it had not been democratically elected, it could not change the law. Despite ample evidence of continuing forced labor in many areas, particularly those in close proximity to military camps or facilities, the government also prosecuted no one for violations of the new orders.²¹

Later that year, Burma again headed off stronger action by agreeing to accept a permanent ILO liaison officer to oversee implementation of the forced labor ban. Unions, NGOs, and many others concerned with forced-labor in Burma remained frustrated that the problem continued. Yet as of the end of 2002, no government, international organization, or workers' or employers' group had informed the ILO that it had taken any action against Burma under the Article 33 resolution.²²

The slow and tortuous response to Burmese intransigence underscores the unwillingness of the ILO membership to punish miscreants, even when the country in question is a small, poor, isolated one whose violations are egregious and well documented. The Article 33 resolution did not directly impose sanctions. It called on member governments and other UN organizations to take appropriate action, which for the most part they ignored.

In this respect, however, the ILO's authority does not differ much from that of the WTO, which also authorizes member governments to take action to remedy violations and does not directly impose them itself. Only the UN Security Council can *require* member governments to impose sanctions against another country. But countries have a greater incentive to enforce WTO rules than ILO ones. The complaining country in WTO disputes expects that its traded goods sector will benefit from improved compliance with WTO rules, whereas the main beneficiaries of compliance with ILO standards are primarily workers in the countries charged with noncompliance.

The ILO removed explicit reference to economic measures from its Constitution in 1946 for fear that newly independent LDCs would not join it if they could be threatened with economic sanctions. In addition, advanced countries felt economic sanctions had a limited ability to change behavior because progress would require a genuine commitment to change by domestic actors. The ILO viewed poor labor standards as primarily a problem of national law enforcement and favored international action to develop national capacity to implement labor standards.

The evidence from chapter 4 supports the skepticism that economic sanctions are a powerful tool for enforcing standards, particularly against large, powerful countries or on major problems such as the absence of

21. The report of the high-level team is available on the ILO Web site at www.ilo.org/public/english/standards/relm/gb/docs/gb282/pdf/gb-4ax.pdf (May 9, 2003).

22. Under pressure from a Burma-focused human rights campaign, however, a number of apparel manufacturers and retailers announced they would no longer produce in or import clothing from Burma.

freedom of association in nondemocratic countries. The lack of freedom of association in China provides a test of the ability of the ILO, and of the world community more generally, to improve labor rights in an economically important country through pressure and engagement without sanctions. China's arrests of workers seeking to form independent unions may generate reports but are unlikely to produce threats of Article 33 punishment. The \$64,000 question is whether the combination of a spotlight on China's abuses and technical assistance in areas where China seeks to improve worker rights can raise other labor standards in the absence of genuine freedom of association. We return to this question in chapter 6.

The Role of the United States

The ILO's ability to deliver improvements in labor standards around the world depends greatly on the attitude and behavior of the United States. Americans, including American Federation of Labor President Samuel Gompers, helped create the ILO following World War I. But the US Senate's refusal to ratify the Versailles Treaty led the United States to postpone joining the ILO until 1934. The United States became increasingly frustrated by the politicization of the organization during the Cold War and withdrew again in the 1970s. It rejoined in 1980 and sharply increased its funding in the late 1990s, but there is already evidence that American enthusiasm is fading once again.

When the United States initially joined the ILO in the midst of the Great Depression, some politicians and labor advocates favored membership as a way around the Supreme Court's hostility to national regulation of labor markets. They believed an international treaty might override Supreme Court opposition to infringing states' rights in this area. Support for using the president's treaty power to strengthen federal regulation of labor markets faded once the Supreme Court upheld the Fair Labor Standards Act and other New Deal legislation. Instead, political concerns about international rules overriding state and local laws have prevented US ratification of most ILO conventions.²³

After World War II, the ILO was incorporated into the UN system, where it became bogged down in Cold War and, later, Middle East antagonisms. The decision by the Soviet Union to rejoin the ILO (after having left in 1940) sparked a vigorous debate on the meaning of the ILO's

23. The United States has ratified 14 conventions (12 of which remain in force), half of them since 1988, and only two core conventions—105 on the abolition of forced labor and 182 on elimination of the worst forms of child labor. Half the conventions ratified relate to maritime issues (including the two that are no longer in force), which are regulated by the federal government, and the others are fairly narrow or technical.

tripartite structure. Labor and employer delegates are supposed to be free to vote as they please, regardless of the position of their government's delegates. But the ILO allowed the Soviet bloc countries to join and to send labor and employer delegates that followed their government's dictates, despite AFL-CIO President George Meany's strong opposition (Lorenz 2001, 126, 167–73, 194). Parts of the US business community, which had supported the ILO as "revolution insurance" in the aftermaths of the two world wars, also turned hostile to the organization. Postwar prosperity made revolution seem remote, and some US business leaders worried that the ILO's decision to expand standard setting beyond technical issues to such core principles as freedom of association might threaten their interests.²⁴

In 1975, when the International Labor Conference voted to seat a Palestinian delegate while harshly criticizing Israel, Meany convinced US President Gerald Ford to announce that the United States would withdraw. This decision took effect in 1977 and reduced the ILO budget by a quarter. In response, the ILO sought to reestablish its credibility by condemning labor practices in Czechoslovakia (1978) and the Soviet Union (1979). President Jimmy Carter decided to rejoin in early 1980, and his successor, Ronald Reagan, turned to the ILO as a tool for helping workers in communist countries form free unions thereby undermining state control. In 1982, with strong backing from the United States, ILO conference delegates voted to initiate an Article 26 complaint against Poland for its treatment of the Solidarity trade union. That and strong support for black unions fighting apartheid in South Africa revived the ILO's credibility in the 1980s.

But the ILO did not move to the center of the globalization and labor standards debate until globalization enthusiasts seized upon it as a means to keep trade and labor issues separate. Bill Clinton's administration looked upon the ILO as a way to address US domestic union pressures on labor standards as it pushed free trade agreements. In its last few years in office, the Clinton administration sharply increased financial support for ILO initiatives. Being less concerned with the views of unions, George W. Bush's administration proposed sharp cuts in funding for the ILO and for promotion of labor standards in each of his first three years in office. But Congress maintained the appropriation for international labor standards at near-peak levels, at least in fiscal 2002 and 2003 (*ILO Focus*, spring 2002). At the Doha meeting of WTO ministers in November 2001 (held in relatively isolated Qatar to protect ministers against terrorists and to make it difficult for protesters and NGOs to converge in large numbers), the US Trade Representative gave tepid support to a European

24. ILO members approved Convention 87 on freedom of association in 1948, 98 on collective bargaining in 1949, 100 on equal remuneration in 1951, 105 on the abolition of forced labor in 1957, and 111 on nondiscrimination in employment in 1958.

Union proposal to encourage WTO participation in ILO discussions on the “social dimensions of globalization.”

Thus strong US support for the ILO during Clinton’s second term may prove to be a short-run blip in US-ILO relations. It reflected Clinton’s desire to give something to labor and protesters in domestic politics as much as any fundamental commitment to the ILO’s goals. The Bush administration’s efforts to give something to labor took a very different turn: tariffs in the steel industry and support for construction of an Alaska oil pipeline. Following the successful launch of a new round of trade negotiations in November 2001 and congressional approval of “trade promotion authority” in 2002, the Bush administration’s incentives to pay attention to the ILO faded further. Without US support and pressure to be more aggressive, the ILO’s burst of activism also may fade.