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Briefing Paper
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PROTECTING WORKERS IN THE THIRD WORLD

As a growing number of developing countries undergo rapid industrialisation, increasing attention has been paid to working conditions and the rights of workers in the Third World. For over 65 years, labour conditions have been the concern of the International Labour Organisation (ILO), which has attempted to set universal standards for the labour sector through its International Labour Code. But developing countries have reservations about the ILO Code which they feel reflects the priorities and problems faced by the industrialised countries, and fails to address their particular development needs. Moreover, under recent attempts to make the Labour Code a basis for a 'social clause' in international trading arrangements, they now face the possibility of external sanctions from industrial countries if they fail to conform to selected standards.

This Briefing Paper will review the problems raised in applying ILO labour standards to developing countries, the steps that ILO has taken to maintain the Code's relevance and effectiveness, and recent developments in proposals for a 'social clause'.

ILO Labour Standards and the Developing Countries

The International Labour Code is enshrined in two main instruments: International Labour Conventions and Labour Recommendations. International Labour Conventions are designed to be ratified by member states, which thereby agree to implement their provisions effectively, usually through national legislation, but Labour Recommendations are standards intended as a guide for national action, frequently supplementing and amplifying the provisions of Conventions. ILO member states must report regularly about their implementation of ratified conventions, these reports being considered by the Committee of Experts in the Application of Conventions and Recommendations, and by the International Labour Conference, which meets annually. There is also a complaints procedure, which usually results in a Commission of Enquiry to resolve the matter.

In a constantly changing world environment it has always been difficult for the ILO to maintain an up-to-date labour code, but the emergence and membership of sovereign states in the Third World has presented a more serious challenge to the continuing role of labour standards. In a major review of the Code during the period 1974-80, the ILO's Governing Body identified approximately half of the conventions and recommendations as 'priority instruments'. Despite these efforts, many have expressed the view that the labour code has failed to address the most pressing problems of social and economic development. The Indian Government has recently called on the ILO to shift its emphasis away from standard setting towards other operational activities (especially in the employment and training fields), which would be a 'quicker means to achieving the aims and purposes of the ILO'.[1]

To some extent, the misgivings of ILO's developing-country membership are reflected in the ratification record. Although the average number of ratifications per state was 34 at the end of 1983, 60 ratifications were recorded per Western European country, while there were only 26 per African country and 20 per country in Asia and the Pacific. But these figures conceal some interesting detail. The USA, for example, has only ratified 7 conventions, while Mexico has ratified 65, and India 34. An examination of the human-rights Conventions (see Table and Box) indicates little significant difference between the developing and the developed countries. But the developing countries clearly lag behind in ratifying important conventions on employment and working conditions. Moreover, questions remain over how effectively the developing countries implement ratified standards as compared with the developed countries.

Three broad criticisms have been expressed concerning the application of ILO's Labour Code to the developing countries. First, much of it addresses issues that are not important enough to countries which place high priority on more rapid socio-economic development and the alleviation of poverty. According to this view, most ILO standards concern subjects which can only be properly dealt with when the 'war against want is won'. Second, even when standards are considered relevant to their priorities, many developing countries regard them as too ambitious, given their state of development. Clearly the ILO must strike a balance between setting the standard high enough so that it can be an agent of social and economic change, but not so high as to make it out of the foreseeable reach of most member countries. Third, there are practical difficulties faced by the developing countries in implementing the standards. They can ill afford the administrative machinery necessary to implement and supervise labour standards, especially when large numbers of small establishments are covered by the standard in question. Given these constraints, standards can only be applied to a section of the workforce, usually in the urban formal sector. They are likely therefore to increase disparities and create an elite workforce, which would increase, rather than decrease inequality and social injustice.

The Appropriateness of the Code

Few generalisations can be made about the relevance, realism and practicality of ILO's Labour Code. A growing number of countries that have experienced rapid industrialisation, have relatively large proportions of their

1. Government of India, *International Labour Standards: A Critical Review* Department of Labour, New Delhi 1984.

A Selection of ILO International Labour Conventions

Over the years, some 159 International Labour Conventions and 168 International Labour Recommendations have been adopted. These cover a wide range of prescriptions, from basic human rights to highly sector-specific topics. The following summarises the major concerns of some important ILO Conventions:

Freedom of Association for Trade Union Purposes

Convention **87** (1948) provides that 'workers and employers without distinction whatsoever, shall have the right to establish and . . . to join organisations of their own choosing without previous authorisation'. It explicitly provides guarantees for these organisations to function without interference from public authorities. The convention does not deal expressly with the right to strike, but in its interpretation, the Committee of Experts has considered a general prohibition of strikes to be a restriction on trade union activity, and contrary to the provisions of the convention. Convention **98** (1949), which supplements this standard, protects workers from anti-union discrimination and promotes collective bargaining through voluntary negotiation between management and labour.

Freedom from Forced Labour

Convention **29** (1930) provided for the abolition of forced labour for economic purposes in countries under colonial administration. A later Convention, number **105** (1957) calls for the immediate and complete abolition of forced or compulsory labour for political purposes, as a method of mobilising labour and using labour for economic development, and as a means of labour discipline.

Freedom from Discrimination

Convention **111** (1958) provides protection against any discrimination, exclusion or preference on the grounds of race, sex and political opinion, 'which has the effect of nullifying or impairing equality of treatment'. Individual countries are left a fairly wide margin of discretion in adopting methods to combat such discrimination.

Employment Policy

The Employment Policy Convention, number **122** (1964) obliges each ratifying state to declare and pursue as a major goal an active policy to provide full, productive and freely chosen employment. The Convention provides that workers' and employers' organisation should be consulted in the framing of the policy. Although the Convention guidelines are couched in general terms, Recommendations **122** and **169** amplify them in further detail. The standards do not require governments to achieve full employment within any time period, but rather to pursue a policy to promote it.

Equal Remuneration

Convention **100** (1951), which is concerned with the equal remuneration for men and women for work of equal value, requires ratifying states to promote the principle of equality through legislation, collective agreements and wage fixing machinery. The Convention also advocates systems of objective appraisal of work performed, in order to deal with the problem of comparing different types of work. Although ratified by 96 states, the convention has received a mixed reception, mainly on the grounds that most governments do not interfere directly in private sector wage-determination.

Minimum Age of Employment

Between 1919 and 1949 ten conventions were adopted to fix the minimum age of admission to employment at 14 years initially, and later at 15. In 1973 Convention **138** consolidated these instruments. It provided that ratifying states should ensure the effective abolition of child labour and specify the minimum age of employment, which should not be less than the age of completion of compulsory schooling, and in any case, not lesss than 15 years (14 as an initial step for developing countries). For any type of employment which might jeopardize health, safety or morals of young people, a higher age of 18 years is laid down.

Minimum Wage Fixing Machinery

The obligation to provide machinery to establish minimum wages was introduced in Convention **26** (1928), which applies only to manufacturing and commercial sectors, including home-working trades where wages may be exceptionally low. Convention **131** (1970) sets out the requirements for minimum-wage fixing machinery more flexibly, in that the coverage of the convention is to be determined by national 'competent authorities'. In their first reports on its application, countries must state which groups are not covered, and the reasons for exclusion. The principles governing the determination of minimum wages are given, but the convention does not specify minimum wage levels.

Occupational Health and Safety

About a third of ILO Conventions are concerned with hygiene and safety at work, many of which deal with specific risks (such as protection against white phosphorous, occupational cancer and radiation) and with certain activities (for example, construction workers and dock workers). Convention **119** (1963) deals with the risk caused by inadequately guarded machinery, which is of more general application to member-countries. It applies to all power-driven machinery, prohibiting the use, hire and sale of any machine with inadequate guards. More recently, Convention **148** (1977) has been adopted to protect workers in all occupations against the hazards of air pollution, noise and vibration. The convention specifies the measures to be taken to protect workers from these risks.

working population in industry. For these newly industrialising countries, ILO standards are becoming more relevant. ILO standards relating to *basic human rights* are generally regarded as universal in application, regardless of level of development. Yet many complaints lodged through ILO procedures deal with violations of these rights, especially the freedom of association for trade union purposes. Several developing countries (e.g. Brazil, Chile, Malaysia, Pakistan and Singapore) have placed restrictions on trade union activity which, to varying degrees, violate the freedom of association in practice. In some, trade unions are repressed and their leaders imprisoned. ILO is faced with a growing list of complaints over violations of freedom of association, which it views with some apprehension. Similarly, ILO standards on *conditions of work*, and *health and safety aspects*, are held to be applicable regardless of the level of development. Recent tragedies in Bhopal (India) and Mexico have highlighted the need for increased vigilance, especially in the developing countries. ILO's recent World Labour Report notes that while use of known toxic substances (such as carbon disulphide and asbestos) has declined in the developed countries, their use has increased in the developing countries. Not surprisingly, the Report shows that the rate of fatal accidents in industry is several times higher in developing countries than in developed countries, where it is declining. Yet, some developing-country governments have expressed the view that 'too strict a requirement imposed on occupational health and safety measures may not encourage inflow of capital especially from trans-continental corporations'.[2]

Another group of ILO standards present more difficulties to the developing countries, because their

2. Statement by representative of Ministry of Labour and Manpower, Government of Malaysia, reported in ILO/ARPLA, *Developing Countries and ILO Standards*, Bangkok, April 1983.

implementation is more closely related to the level of overall development, and the underlying socio-economic structure. Included in this group are standards relating to hours of work, minimum wages, child and female labour, night work and social security. While these issues arouse concern among workers' organisations, especially in the developed countries, legislative changes in the developing countries are unlikely to be effective, in the absence of complementary socio-economic development.

In remaining faithful to the philosophy of its founders who maintained the universality of standards, the ILO has resisted proposals to 'regionalise' the code, but has so far not succeeded in deriving a satisfactory and practical definition of basic standards which would be applicable to all countries. Differences in national conditions and levels of development have instead been taken into account by the inclusion of 'flexibility' devices built into various standards in the Labour Code. These include the possibility of ratifying conventions in part or in stages, limitations on the scope of application of a convention, and 'escalator' clauses, permitting a gradual increase in the level of protection. Given these flexibility arrangements, the ILO maintains that, 'by and large, the ratification record indicates that the existing conventions are neither beyond the reach of the developing countries nor devoid of interest for the more advanced countries'.[3] However relatively few countries have taken advantage of these arrangements and concern has been expressed at recent International Labour Conferences that flexibility will undermine the role of standards as obligation creating instruments, and as stimuli to improving working conditions.

Labour Standards — a Clause in Trade Liberalisation?

One of the prominent objectives of adopting international labour standards at the beginning of the century was to establish a basis for *fair international trade* between states. Put simply, if each state were obliged to provide the same degree of labour protection, no single trading partner could gain a competitive edge through offering sub-standard wages and conditions to its workforce. At the beginning of the 1970s, this issue was raised again, mainly in relation to North-South trade. Several proposals were made to link trade liberalisation in manufactured goods from the developing countries, to their ratification and observance of selected ILO labour conventions. These proposals gained momentum as a result of the economic recession, the increase in protectionism in the North and the rapid growth in manufactured exports from the so-called newly industrialised countries (NICs) — mainly Taiwan, South Korea, Singapore, Hong Kong, Mexico and Brazil.

Some proposals, which have come mainly from organised labour in the US, Canada and Nordic countries, as well as international labour institutions (the International Confederation of Free Trade Unions and the International Metal Workers Federation) entail the inclusion of 'social clauses' (based on selected ILO Labour Standards) in Article XIX of the *GATT Treaty*. This article defines cases under which import restrictions can be permitted. Thus, under the proposed arrangement, an importing country could impose restrictions on manufactures from an exporter if the selected labour conventions were not observed in the exporting country. In 1978, the EEC Commission considered a similar social clause proposal, but in the event this was not incorporated in the Second Lomé Convention in 1979 nor in the recently signed Lomé III.

Labour conditions also figure strongly in discussions on the Generalised System of Preferences (GSP), first introduced through the United Nations Conference on Trade and Development (UNCTAD) in 1964 (the first GSP being implemented in 1970). Under the GSP, developing countries are accorded preferential access to developed-country markets. A 'social clause' would make labour rights one of the conditions of a developing country being granted trade preferences. Most proposals do not explicitly

3. ILO, *The Impact of International Labour Conventions and Recommendations* Geneva 1976.

The Ratification Record of Selected ILO Labour Conventions in Selected Member Countries

	Human Rights				*Employment*			*Wages/Working Conditions*			*Sub-total*	*Total Ratification of All Conventions*
Convention No.	87	98	105	111	100	138	122	131	119	148		
Developed Countries												
Canada (1919)	R	—	R	R	—	—	R	—	—	—	4	26
France (1919)	R	R	R	R	R	—	R	R	—	—	7	107
Germany (FR) (1919)	R	R	R	R	R	R	R	—	—	—	7	66
Japan (1919)	R	R	—	—	R	—	—	R	R	—	5	37
UK (1919)	R	R	R	—	R	—	R	—	—	R	6	77
USA (1934)	—	—	—	—	—	—	—	—	—	—	0	7
USSR (1934)	R	R	—	R	R	R	R	—	R	—	7	43
Developing Countries												
Brazil (1919)	—	R	R	R	R	—	R	R	—	R	7	57
India (1919)	—	—	—	R	R	—	—	—	—	—	2	34
Indonesia (1950)	—	R	—	—	R	—	—	—	—	—	2	8
Kenya (1964)	R	R	R	—	—	—	—	R	—	—	4	42
Liberia (1919)	R	R	R	R	—	—	—	—	—	—	4	20
Malaysia (1957)	—	R	R	—	—	—	—	—	R	—	3	11
Mexico (1931)	R	—	R	R	R	—	—	R	—	—	5	65
Nigeria (1960)	R	R	R	—	R	—	—	—	—	—	4	28
Pakistan (1947)	R	—	R	R	—	—	—	—	—	—	3	30
Philippines (1948)	R	R	R	R	R	—	R	—	—	—	6	21
Singapore (1965)	—	R	*	—	—	—	—	—	—	—	1	21
Sri Lanka (1948)	—	R	—	—	—	—	—	R	—	—	2	27
Thailand (1919)	—	—	R	—	—	—	R	—	—	—	2	11

See Box for the Convention topic. Year in parenthesis gives date of joining ILO.
*Convention previously ratified but since denounced.

include wage levels in the labour clause, an important exception being the labour rights defined under new US trade legislation (see below). By excluding wages, proponents of the social clause sanction the continuation of a competitive advantage based on abundant, low-cost labour in the developing countries.

Arguments for a social clause are usually expressed in terms of international worker solidarity or as a basis for establishing fair and free international trade. But there are legitimate doubts about the real motives underlying the social clause proposal. If the standards selected effectively exclude certain countries from domestic markets, the social clause argument may be considered simply as a form of domestic protection. For this reason the developing countries have vehemently opposed the proposal, regarding it as a thinly disguised protective measure. Moreover, they object strongly to multilateral arrangements which seriously impinge on matters of internal concern in a sovereign state. They also point to an element of arbitrariness in the selection of ILO conventions for inclusion in this social clause. Many ILO conventions have not been ratified by the industrial countries, and it is doubtful that such conventions would find a place in a social clause (for example, ILO conventions on migrant labour).

Moreover, doubts have been expressed over the practicality of introducing the social clause, requiring co-ordination between multilateral agencies (GATT and ILO for instance) and complex monitoring systems to determine whether or not labour conditions and wages are sub-standard. The strength of opposition from the developing countries to the social clause has effectively meant that no such proposal has been taken up either in GATT or in Lomé III.

The US Social Clause

The situation is quite different, however, with regard to the inclusion of labour-related social clauses in the implementation of the GSP. In the United States, a social clause has been adopted in its recent renewal of the GSP. The Trade and Tariff Act of 1984 has made a number of changes in the GSP programme, which in the US has been in existence since 1974. Under the new act, each beneficiary developing country must be seen to 'take steps to afford internationally recognised worker rights'. If not, the US administration may serve notice that trade preferences will be withdrawn from that country in January 1987. The law specifies five areas of worker rights which it requires beneficiary countries to respect — the right of association, the right to organise and bargain collectively, prohibition of forced labour, minimum age of employment and conditions of work (including acceptable wages and hours of work). But it is not yet clear how these criteria will be defined in practice, given the complexities involved in monitoring these conditions. The US labour movement (particularly the American Federation of Labor and Congress of Industrial Organizations) has proposed that the ILO Labour Conventions should be the basis of defining workers' rights, but this would not be altogether consistent for the US, which has itself ratified only seven conventions, all concerned with maritime workers.

Similarly, the EEC Commission is presently considering several changes in the implementation of its GSP to cover the remainder of the decade. Among the proposals being pressed by the EEC Economic and Social Committee is a social clause, making preferences dependent on minimum social standards and human rights. It remains to be seen whether these pressures from within the community will overcome the concern over the negative responses of the EEC's developing-country trading partners, who will inevitably interpret the change as a move towards protectionism.

Conclusion

Whilst there are countries which consider ILO standards to be unrealistic in relation to the conditions they face, there has been a genuine effort by ILO to bring the Code up-to-date and to make it more relevant to developing countries. Judging from the ratification record, developing countries have been catching up, since they have been responsible for two thirds of the ratifications recorded over the last decade. However, there are serious doubts over the effectiveness of the process of ratification and supervision in developing countries which do not possess the required administrative machinery to secure their full impact. It may be that social clauses in North-South trade in manufactures will provide an impetus to improve the ratification record and its impact. On their part, however, the developing countries will surely interpret these clauses as 'protectionism with a human rights face'. Matters are not helped by the continuing poor ratification record of some developed countries, and by signs of a retreat from some of the ILO precepts, including the general decline in union membership and power in the US and Western Europe and the UK proposal to denounce its ratification of the minimum wage convention. It is unlikely that ILO labour standards can have a noticeable impact in the foreseeable future on those workers in developing countries most in need of protection and improved welfare. The majority of the poor live and work outside formal, organised economic activity, and to all intents and purposes, outside the domain of labour law, be it national or international.

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