九州大学学術情報リポジトリ
Kyushu University Institutional Repository

The Ratification of International Labour Conventions in the Asian - Pacific Region: Up To The Standard ?

ティム, デマイヤー
前九州大学法学部講師

https://doi.org/10.15017/2089

出版情報：法政研究. 64 (3), pp.31-100, 1998-01-21. 九州大学法政学会
バージョン：
権利関係：

ARTICLE

The Ratification of International Labour Conventions in the Asian - Pacific Region : Up To The Standard ?

Tim De Meyer(*)

"The ancient kings, who weighted matters very carefully before establishing ordinances, did not (write down) their system of punishments, fearing to awaken a litigious spirit among the people. But since all crimes cannot be prevented, they set up the barrier of righteousness (i-義), bound the people by administrative ordinances (cheng-制), treated them according to just usage (li-理), guarded them with good faith (hsin-信), and surrounded them with benevolence (jen-仁)... But when the people know that there are laws regulating punishments, they have no respectful fear of authority. A litigious spirit awakes, invoking the letter of the law, and trusting that evil actions will not fall under its provisions. Government becomes impossible...Sir, I have heard it said that a State has most laws when it is about to perish."(**)

INTRODUCTION

The progressive liberalization of world trade, the most recent phase of which was ushered in by the agreements concluding the Uruguay Round of Trade Negotiations, has revived calls for "internationally recognized labour standards." Reports of low or nonexistent labour standards in the South(1) have

(*) The present author served as an associate expert on international labour standards with the International Labour Organization in Bangkok from 1992 to 1994. He is greatly indebted to Ago Shinichi and Shauna Olney who provided vital comments on earlier drafts. The author remains, of course, entirely responsible for the approach taken and the conclusions drawn.

(**) Letter of Shu Hsiang to the prime minister of Cheng (now China), third century B.C., found in John Owen Haley, *Authority without Power - Law and the Japanese Paradox*, Oxford, Oxford University Press, 1991, 26. Chinese characters added, courtesy of Gu Jing, LL. M. Faculty of Law, Kyushu University, 1996-1997.

(1) These "reports" are at least partly supported by academic field research. *See* for an example relating to the Asian-Pacific region : David Kowalewski, *Transnational Corporations and Worker Compensation in Asia*, INTERNATIONAL STUDIES, 1996, 205 (reporting numerous instances of transnational corporations (a) keeping wages not only far below those paid in developed countries, but in many cases even below those paid by local firms and (b) extending symbolic rewards and promising fringe benefits which fail to materialize).

worried public opinion in the North that pressures on their labour markets are international in origin, fuelled by industrial relocation and "social dumping." Developing countries refute that industrialized countries are once again forging a protectionist trade weapon permitting them to unilaterally withdraw previously agreed upon trade concessions.[2] International organizations summoned to study the links between trade, foreign investment and employment have been careful to stress that rapidly growing foreign direct investment in developing countries has both positive and negative effects on host as well as home countries.[3] The European Union's latest economic report does not blame technological progress or globalization for stubbornly high unemployment rates, but magnanimously attributes the Union's inability to fully exploit the ensuing opportunities to the inflexibility of its labour market.[4]

In Marrakesh, where the World Trade Organization's Agreements were initialled, an open confrontation loomed between the United States and France on one side, and mainly Asian developing countries on the other side, over linking trade and workers' rights.[5] Since then, public concern for workers' freedom of association, forced labour and child labour has not failed to make headlines.[6] In the spring of 1995, the Governing Body of the International

---

[2] The following quote well describes the point : "Some are of the view that differences in the level of social protection constitute a form of social dumping to the detriment of more advanced countries, while others see any effort to remedy these differences at the world-wide level as nothing other than a disguised attempt at protectionism aimed at stripping the less advanced countries of their main comparative advantage which partly compensates for their disadvantage of lower productivity. The discussion at the [International Labour] Conference has helped us to realize that there is no point in continuing this debate because in different ways and on both sides it is based on false premises, in particular on the idea of equalizing social costs". *See* ILO, *Report of the Working Party on the Social Dimensions of the Liberalization of International Trade*, Governing Body Document No. GB. 261/WP/SLD/1, 261st Session, Geneva, November 1994, para. 21-22.

[3] *See* for instance UNCTAD, *Trade and Development Report*, United Nations, 1995, 127. *See* for more related reports : UNCTAD, *World Investment Report 1996*, United Nations, 1996 ; World Bank, *World Development Report 1995 - Workers in an integrating world*, Oxford, Oxford University Press, 1995 ; International Monetary Fund, *Foreign Direct Investment in the World Economy*, International Monetary Fund, 1995 ; OECD, *Foreign Direct Investment, Trade and Employment*, OECD, 1995 and OECD, *Trade Employment and Labour Standards*, OECD, 1996.

[4] European Commission, *1997 Annual Economic Report - Growth, employment and convergence on the road to EMU*, COM(97) 27 final, Brussels, 1997, Chapter 2.

[5] See *GATT : Multilateral Trade Negotiations Final Act embodying the results of the Uruguay Round of Trade Negotiations*, INTERNATIONAL LEGAL MATERIALS, Volume XXXIII, No. 5, September 1994, 1130, 1267 and 1270. This dispute eventually dwindled down to a phrase in the Chairman of the Trade Negotiations Committee of the Uruguay Round's closing statement, liked to a passage in the Ministerial Decision on the Establishment of the Preparatory Committee for the World Trade Organization, and a few hints in the preambles to the Agreement establishing the World Trade Organization and the Ministerial Decision of 14 April 1994 on Trade and Environment.

Labour Organization (ILO) opted to explore the social dimensions of trade liberalization rather than set up a normative framework for the operation of a "social clause". The WTO's Ministerial Conference in Singapore declared in December 1996 that the ILO "is the competent body to set and deal with these standards," and pledged support for its work in promoting them, while rejecting "the use of labour standards for protectionist purposes."[7]

Fears for a social "race to the bottom" caused by unchecked trade liberalization are not new at all, nor are the accusations of disguised protectionism. In fact countering social dumping partly underlies the establishment of the International Labour Organization. This article will not add another chapter to this debate, but will demonstrate that international labour Conventions, while undoubtedly helpful in substantiating the discussion, have never been designed to resolve it and lack, among other things, transparency and unqualified acceptance in the Asian-Pacific region. The reaction of ASEAN governments to proposals to establish a link between the international trading system and "internationally recognized labour standards," as well as the assessment of that reaction outside the governmental circuit is aptly captured in a Bangkok Post editorial from the time of the Marrakesh ceremony :

> "The Thai Government rightly argued that the WTO is not the proper forum for discussing labour rights ; the International Labour Organisation is, because it sets standards without threatening tradedistorting retaliation. Of course, since it underscored the point, the Government should therefore make sure it signs on to *all* ILO conventions and puts those conventions into practice. Those who are sincerely unhappy about abuse of workers' rights may be wrong to link the issue to trade, but their basic concern is right" (italics added).[8]

---

[6] Only two examples. In its 1995 annual survey, the International Confederation of Free Trade Unions (ICFTU) is reported to find that Asian workers' rights are being further eroded, prompting it to press even harder for labour standards in international trade agreements. *See Worker woes - Pro-union group slams Asian governments,* FAR EASTERN ECONOMIC REVIEW, July 6 1995. Almost simultaneously, the ICFTU and the International Textile, Garment and Leather Workers' Federation was reported to have urged the European Commission to apply new EU rules and exclude Pakistan from the EU's Generalized System of Preferences for failing to abolish child labour in its carpet industry. *See Rug bear - Child labour jeopardizes Pakistan' EU tariff perks,* FAR EASTERN ECONOMIC REVIEW, June 29 1995, p.61. For an overview of U.S. trade legislation related to workers' rights *see* Lance Compa, *Labor rights and labor standards in international trade,* LAW AND POLICY INTERNATIONAL BUSINESS, Vol.25, 1993, 165. For the debate on the social clause in the European Union *see* Paul Waer, *Social clauses in international trade,* JOURNAL OF WORLD TRADE, August 1996, 25.

[7] World Trade Organization, *Singapore Ministerial Declaration,* doc. WT/MIN(96)/DEC, 18 Dec. 1996, para. 4.

[8] *Labour rights and trade don't mix,* BANGKOK POST, 12 April 1994. Discussions with trade union leaders have revealed that workers' organizations in some Asian countries are

Experience proves that countries do not sign on "to all ILO Conventions". On the contrary, the Director-General of the International Labour Office has repeatedly considered the drop-off in the rate of ratification of international labour Conventions to be a global phenomenon.[9] This desk-study will explore the extent to which Asian-Pacific countries have *de facto* been prepared to ratify international labour Conventions and will formulate some hypotheses as to the findings. In an attempt to reach beyond the simple mathematics or how many Conventions a particular country has ratified, a "Ratifications statistics chart" has been prepared, approaching the ratification record of countries in the Asian-Pacific region from different angles. To correctly interpret the chart, however, the implications of "ratification" must first be examined. Therefore, three questions will be addressed first : (1) what does ratification mean, (2) why do (or should) countries ratify international labour Conventions and (3) is there a significant correlation between the number of ratifications and social development ?

RATIFICATION

What does ratification mean ?

Governments, and workers' and employers' organizations representing the great majority of the world population adopt international labour Conventions and international labour Recommendations at the annually held International Labour Conference after four years of intensive discussion.[10] It is generally

not opposed to a linkage of trade and workers' rights.

[9] ILO, *Defending values, promoting change - Social justice in a global economy : an ILO agenda,* Report of the Director - General to the 81st Session of the International Labour Conference, International Labour Office, Geneva, 1994, 43 ; ILO, *The ILO, standard setting and globalization,* Report of the Director - General to the 85th Session of the International Labour Conference, International Labour Office, Geneva, 1997, 49-50. For another perspective on the problems of ratification, *see* Héctor Bartolomei de la Cruz, Geraldo von Potobsky, and Lee Swepston, *The International Labor Organization - The International Standards System and Basic Human Rights,* Westview Press, Boulder, 1996, 62-63. The ratification statistics chart below bears out that the rate of ratification has been cautiously picking up again in the Asian-Pacific region as a whole since the beginning of the nineties, but remains problematic for the ASEAN subregion.

[10] The great majority of international labour Conventions are adopted following the double-discussion procedure. This procedure extends over four years and involves two discussions by the International Labour Conference in subsequent years. For details, *see* Héctor Bartolomei de la Cruz, Geraldo von Potobsky and Lee Swepston, *supra* note 9, at 37.

accepted nowadays that the Conventions are multilateral treaties creating international legal obligations between ILO member States as well as between a ratifying member State and the Organization. Recommendations, on the other hand, do not create such obligations. As such, Conventions must be set apart in three respects. First, they are different from "internationally recognized standards", "fair labour atandards" or "minimum workers' rights", all similar notions which function in domestic legal systems or are the subject matter of political debate, but are not part of international law. Secondly, Conventions are not mere draft national laws, as this would imply that do not create binding international obligations. Finally, Conventions do not merely constitute international legislations, as their obligations are not only created between the ratifying member State and the Organization.[11]

Ratification is the formal commitment of an ILO member State to apply the provisions of an international labour Convention in law and practice. Ratification of a Convention, not the adoption of it, triggers the legally binding force.[12] For this reason, Article 22 of the ILO Constitution lays down an obligation for each member State to report "on the measures which it has taken to give effect to the provisions of Conventions to which it is a party." The national authority competent to decide on whether or not to accept such commitment is identified according to domestic constitutional law and practice.[13] On the other hand, submission of the Conventions and Recommendations with a view to discussion (and possibly decision) by the legislature, as well as the communication of ratification to the ILO, is carried out by an institution vested with executive power, normally the government.[14] Only Conventions can be ratified, Recommendations cannot. Even after withdrawing from the Organization, States remain bound to implement the Conventions ratified, and to discharge obliga-

---

[11] For details regarding this distinction *see* Virginia A. Leary, *International Labour Conventions and National Law : The Effectiveness of Automatic Incorporation of Treaties in National Legal Systems*, The Hague : Martinus Nijhoff, 1982, 11-12 ; Héctor Bartolomei e. a., *supra* note 9, 21-24.

[12] N.Valticos, *Droit international du travail*, Traité de droit du travail (G.H. CAMERLYNCK dir.), Dalloz, Paris, 1983, 549.

[13] *See* ILO, *International Labour Conventions and Recommendations 1977-1995, Annex : Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, 1996, 435, para. 12.

[14] *See* ILO, *Handbook of procedures relating to international labour Conventions and Recommendations*, *supra* note 13, 437, para. 19. A complicating factor is that depending on the state, the decision to submit the ratification bill to the legislative authority may require the approval of, besides the labour department, the foreign affairs department or the department of justice.

tions relating to the supervision of such implementation.[15]

The legally binding force of the provisions of an international labour Convention does not automatically lead to its material enforcement. Non-observance of substantial obligations leads to persistent scrutiny by the supervisory bodies operating within the ILO, and gradually stepped up exposure in the international public forum. The emphasis thus placed on public pressure, persuasion and consensus-building does not strip Conventions of their legally binding force, but rather aligns this force with the pursuit of the United Nations' major purpose : the maintenance of international peace and security and the achievement of international cooperation.[16]

Governments, once they have submitted newly adopted international labour Conventions and Recommendations to their national legislative authorities with a statement on what action, if any, they propose, they have fully discharged their obligations under the ILO Constitution. There is no legal obligation to ratify any Convention, including those concerning freedom of association.[17] Pursuant to the ILO Constitution, member States are only required to report at regular intervals on the effect given to ratified Conventions and on the national state of the law and practice with regard to the matters covered by non-ratified Conventions and Recommendations.

---

[15] Nicolas Valticos and Gerald Von Potobsky, *International Labour Law,* Kluwer, Deventer, 1995, 34.

[16] Art. 1 (3) of the Charter of the United Nations cites as a purpose of the United Nations : "To achieve international cooperation in solving international problems of an ... social ... character, and in promoting and encouraging respect for human rights and for fundamental freedoms ..( )."

[17] The recognition of the principle of freedom of association was included in 1919 in the Preamble to the ILO Constitution as a condition of labour urgently requiring improvement and as a fundamental right and basic objective in Article 41 of the ILO Constitution. In 1944 Art. 41, without being abrogated, gave way to the Declaration of Philadelphia which became an Annex to the Constitution and is thus considered have been incorporated into the Constitution (*see* Héctor Bartolomei de la Cruz e.a., *supra* note 9, 5). It proclaims that "freedom of expression and of association are essential to sustained progress" (*Declaration concerning the aims and purpose of the International Organisation,* I (b)). These statements set freedom of association apart as a right deserving special protection within the mandate of the ILO, but do not conclusively answer the question whether ILO member States only by accepting the ILO Constitution are legally bound by all facets of the freedom of association of its workers and employers. Under a special complaints procedure on freedom of association, workers' and employers' organizations may complain against infringements, even if the infringing member States has ratified none of the Conventions on freedom of association, but the mandate of the Governing Body's Committee on Freedom of Association has been based on the Governing Body's power to carry out investigations (Art. 10 ILO Constitution) and the member States' obligation to report, as requested by the Governing Body, on the law and practice in regard to matters dealt with in unratified Conventions (Art. 19 (5) (e) ILO Constitution.) *See* Héctor Bartolomei de la Cruz e.a., *supra* note 9, 99-101.

This principle of *voluntary* ratification flows from the concept that Conventions are treaties, encompassing an element of individual agreement, and not legislative acts passed by an international parliament. It relates to the development-oriented (as opposed to trade-oriented) character of Conventions : Conventions will guide States if and when they seek to include social and human objectives in their development policies.[18] Conventions, particularly those comprehensively covering the subject matter (e.g.the complete eradication of child labour from all sectors of economic activity), incorporate flexibility (see below) so as to ensure their viability at every level of development. Asian-Pacific governments attach great importance to this principle. Even developing countries that have ratified the majority of basic human rights Conventions currently concur in resisting proposals to establish complaint procedures supervising compliance with the principles on forced labour and discrimination independent of ratification.[19] This inspires another question : why do (or should) countries ratify international labour Conventions ? Does it make sense, as the Thai editorial generously suggests, to expect ILO member States to ratify all international labour Conventions ?

Why do (or should) countries ratify international labour Conventions ?

Given the sometimes laborious political coordination that this seemingly simple act requires, each new ratification is a unique accomplishment. In practice, there are likely to be more different motivations than there are ratifications on record. In search of a comprehensive *rationale* to explain why coun-

[18] *See*, valticos and von Potobsky *infra* note 19 on the objectives of international labour Conventions.

[19] Not only China and Japan, but e.g. Pakistan (having ratified five out of six basic human rights Conventions) and India (having ratified forced labour and non-discrimination Conventions) reacted strongly the proposal to establish such special procedures, instead urging stepped-up promotion of ratification and technical assistance : "Each member State responded to a Convention adopted by the International Labour Conference according to its own perspectives and needs, and also in accordance with fast-changing political and economic requirements which were often peculiar to each member country. ... The ILO's supervisory mechanism could not be a substitute for the political wisdom of the government of a sovereign member State. ... The proposal to set up a supervisory procedure applicable to all member States, regardless of whether they had ratified a particular Convention or not, was unacceptable. It would also dilute the process of ratification." (Statement of the Government of India, ILO, *Second Report : International labour standards and human rights*, Governing Body Document No. GB. 268/8/2, 268th Session, Geneva, March 1997).

tries enter into long-term commitments, one must look into the question why international labour Conventions exist at all.[20] It appears then that the following arguments in support of ratification must prevail :

(a) Being decided upon by the highest legislative authority ratification creates the necessary political momentum to develop national legislation and policy with a view to making social progress.

(b) Ratification applies an international "safety lock." It puts domestic law and policy beyond the whims of day-to-day politics and thus protects against reversion to lower standards.

(c) Internationally recognized social policies assert a State's commitment to international peace and the welfare of its citizens. Successful social policies will induce emulation by other States to try and reach the same standard.[21]

(d) A ratifying State pledges to pursue equivalence of social legislation and costs with those of its trading partners and may thus facililate international trade. A double caveat must be mentioned. First, equivalence means comparative equality and thus is not the same as uniformity. Secondly, particularly the more recently adopted Conventions incorporate various degrees of flexibility (see below) permitting countries to gradually align national law and practice with the international standard using the technical assistance of the International Labour Organization. Ratification of such a Convention may, but does not have to envisage facilitating international trade. As such ratification does not guarantee that equivalence has been achieved. Thus, Conventions are ill-suited to serve as well-defined social clause benchmarks. Nor is it, therefore, advisable that a country ratify solely in order to ward off trade sanctions.

(e) A State that becomes a member of an international organisation may be expected to pursue the objectives set by it. If the organization has resolved to set positive rules of international law as a means of attaining these objectives, member States may be expected to submit to this international legal order.

The International Labour Organization pursues its objectives by a combination of normative and operative methods. In a creative bid to liberate standards from the ideological monopolization during the Cold War, the Governing Body in the early nineties reaffirmed the "synergy" between the normative and the operative pillars of ILO's mandate : scarce means of technical cooperation should as a matter of priority be used to facilitate the implementation of those

---

[20] Valticos von Potobsky (*supra* note 15, 20) identify the following objectives international labour standards since the ILO's inception : (1)to prevent international competition from exerting a downwards pressure on working conditions ; (2)to promote social justice as a peace consolidating factor and as a humanitarian concern ; (3)to incorporate the social and human objectives of economic development ; (4)to regulate questions relating to the international movement of workers and goods ; (5)to consolidate national labour legialation ; (6)to inspire national action (for which international labour standards are more suitable than comparative labour law).

[21] In a deregulatory atmosphere this emulation effect plays more to the detriment than to the benefit of ratification (*See* ILO, *Defending values, promoting change - Social justice in a global economy : an ILO agenda, Report of the Director-General to the 81st Session of the International Labour Conference*, International Labour Office, Geneva, 1994, 42).

international labour standards to which a member State has dedicated its efforts.[22] If consistently applied, such a policy could provide an extra impetus for ratification because it naturally enhances an essential function of international labour Conventions, sometimes called the blueprint-function : Conventions provide a certified road map guiding governments, workers and employers on their way to a common destination. This map lays out a number of alternative tracks and guarantees that on any of these tracks, road assistance is available. Yielding to the imperatives of the global economy and its implications for employment - as well as to the perception of the ILO mandate by other universal organizations and conferences, the ILO has shifted emphasis from the search for synergies across the board (i.e. pertaining to the whole range of Conventions) to the stepped-up promotion of a selection of fundamental international labour standards.[23] With regard to the impact of globalization on labour markets and labour standards the latest World Employment Report notes :

> "If exaggeration is unwarranted then so too is complacency. There has been a qualitative change in the global economic environment affecting workers across the world and this has *had* some impact. It is therefore important to think of the policy implications of these developments. ...[A] key imnlication is the need to supplement national employment and labour policies with cooperative action at the international level to safeguard basic labour standards in the face of growing globalization."[24]

There is a danger that a selective promotion further compromises the ratification of other international labour Conventions in which governments (and other constituents) take a justifiable interest.

Deciding upon ratification, ILO member States tend to assume one of two basic approaches. One could be labelled a rather introspective, static, normative approach, while the other one anticipates the shifts in social policy that proactive governance is going to bring about. The first appoach prevails in Asia, particularly in East Asia, as is borne out by this excerpt from a report by

---

[22] Much of the debate was consumed by the question of conditionality : should technical assistance be made dependent upon the observance of basic human rights, or should it unconditionally be used to bring about development which will help to ensure this observance ? No clear decision on this question was ultimately reached.

[23] *See* for instance *Promoting employment,* Report of the Director-General to the 82nd Session of the International Labour Conference, International Labour Office, Geneva, 1994.

[24] ILO, *World employment 1996/1997 : National policies in a global context, An ILO Report,* Geneva, International Labour Office, 1996, 6.

the (now defunct) Asian Advisory Committee :

> "While recognising the importance of ratification, a number of Governments pointed out that the possibility of complying with a Convention should be examined with the greatest care before ratification. ... The Government of New Zealand recommends that governments ... take corrective action on any points of non-conformity before proceeding to ratification, [adding] that the [International Labour] Office bears responsibility actively to discourage ratifications ... which ... are found not to comply in full with a particular Convention. [..] The careful assessment of compliance before ratification is an essential requirement not only to avoid subsequent problems of application but also to provide a sound basis for decision, taking full account of difficulties as well as possibilities of ratification."[25]

At the centre of the first perception are the legal obligations accruing from ratification and the short-to-medium-term effect ratification will have within the national boundaries. Ratification is seriously taken into consideration if and when national law and practice are in full conformity with the Convention, and the possibility of divergent views articulated by the ILO's supervisory bodies is "contained," that means limited to the absolute minimum. Ratification epitomizes the utopian conclusion of the social development process.

Such a static view ignores three aspects of Conventions. (1) Possibly to avoid unexpected interpretations of the flexibility margin, any flexibility[26] that Conventions have to offer is ignored altogether.[27] (2) It overstates the importance of legislation in implementing the Convention. (3) By focussing on a

---

[25] ILO, *Application of ILO Standards,* Report of the Director-General to the Tenth Asian Regional Conference (Jakarta - December 1985), International Labour Office, Geneva, 1985, 9.

[26] Flexibility does not mean a "pick-and-choose" application of Conventions in function of a particular country's perceived economic needs or stage of development, but an inherent characteristic of international labour Conventions, with the exception of basic human rights Conventions. Universality, the other basic characteristic of Conventions, would be unsustainable without flexibility. Whereas the earlier Conventions often aimed at the regulation of a particular subject matter (e.g. night work, minimum age) in specific sectors or for specific categories of workers, later Conventions favour the gradual widening of a Convention's application until the ultimate (and sometimes utopian) standard is reached. The static approach towards ratification fits in better with regulative Conventions and the proactive approach better with the more comprehensive Conventions. The ILO Constitution (article 19 (3)) itself acknowledges that the industrial conditions in the world are "substantially different" and that international labour standards should reflect these differences. *See* on the ambiguous use of the word flexibility : M.E. Ackerman : *Return to the source, reaffirm the principles,* VISIONS ON THE FUTURE OF SOCIAL JUSTICE : ESSAYS ON THE OCCASION OF THE ILO's 75TH ANNIVERSARY, Geneva, International Labour Office, 1994, 3.

[27] A paradox. On the one hand, developing countries, not in the least in the Asian-Pacific region, call for more flexibility in the standard-setting, arguing that particularly the older Conventions were adopted (1) for a basically homogeneous international Community and (2) without their participation. On the other hand, it will be seen further (1) that developing countries hardly make use of flexibility and (2) that Conventions adopted with their

static achievement it ignores the role that workers' and employers' organizations paly in continuously sustaining the achieved level of implementation. In reply to governments arguing, for instance, that non-conformity of national legislation constitutes a barrier to the ratification of Convention No. 156,[28] the Committee of Experts[29] considered :

> "[...] the Convention may be applied by a variety of means, consistent with national practice and national conditions. [...] Because societies undergo a *dynamic and permanent* process of evolution, equality will remain an elusive goal unless the measures taken to combat discrimination are adapted regularly to new problems and circumstances. it is for this reason that the Convention, like other equality instruments, requires *primarily* that a ratifying government be committed to taking *continuous* action towards eliminating discrimination in ways that are most appropriate to the individual circumstances of the State."[30] (emphasis added)

Upon which the Committee reiterated the considerable flexibility of Convention No. 156. Generally, flexibility operates in many different ways. One method is to include *flexibility devices* in Conventions. Flexibility devices are clauses allowing application of standards by stages, limiting them to specified sectors of activity, and/or excluding limited categories of workers whose coverage may pose special or substantial difficulties.[31] Flexibility devices embody the acknowledgement that developing member States can only gradually reach the position where they are fully able to assume the obligations of a Convention. One could say they represent the alternative routes on the road map. *Promotional Conventions*[32] implicitly recognize that the form and the effect of

---

participation have not attracted a higher number of ratifications. *See* International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4 A), 71st Session, 1985, 22-23 ; Héctor Bartolomei e.a., *supra* note 9, 43.

[28] Workers with Family Responsibilities Convention, 1981 (No. 156).

[29] The Committee of Experts on the Application of Conventions and Recommendations, a supervisory body reporting to the Governing Body of the International Labour Organization. •

[30] ILO, *Workers with family responsibilities,* General Survey by the Committee of Experts, Report III (part 4b) to the 80th Session of the International Labour Conference, Geneva, 1993, p.91, para. 251.

[31] Respective examples of the three categories of flexibility devices can be found in (1) Human Resources Development Convention, 1979 (No. 142), (2)Minimum Wage Fixing Convention, 1970 (No. 131), Minimum Age Convention, 1973 (No. 138) and C. Occupational Safety and Health Convention, 1981 (No. 155) and (3)Convention No. 138 and Convention No. 155. See Nicolas Valticos and Gerald Von Potobsky, *supra* note 15, 57-60. For a comprehensive list of flexibility devices, *see* ILO, *Handbook of procedures relating to international labour Conventions and Recommendations,* Geneva, 1995, para. 8. A second method is to reduce the substantive obligations of a Convention to the observance of a series of objectives and a few fundamental principles in pursuing these objectives ("promotional Conventions").

the action they seek to initiate will not be simultaneously the same everywhere, and may eventually not be identical everywhere. Indeed, the ideal outcome may even never be fully achieved. They encourage governments, workers, and employers to work out policies together. Legislation is only one element in such policy framework and not always a mandatory or central one.[33] Flexibility invites member States to take advantage of ratification while unremittingly refining their implementation. Reporting on ratified promotional Conventions may very well be seen as an interim evaluation, and the comments of the supervisory bodies as a periodical audit. Ratification of Conventions offering a high degree of flexibility may be the beginning, but can hardly be the conclusion of a never-ending process. Incompatibility of national legislation, assuming the government concerned makes an accurate assessment of the provisions of the Convention in this regard,[34] should not be seen as the end of the road, but rather as a roadblock to be gradually cleared. Frantically seeking to read the minds of present and futere supervisory bodies ignores their predominantly consensus-building mandate reflected in the absence of implacable enforcement.[35]

---

[32] For pedagogical purposes international labour Conventions can be classified in the following learning categories : basic human rights Conventions, promotional Conventions and technical (institutional/framework or regulative) Conventions (*see International Labour Standards and Development,* Trainer's Guide developed by the International Labour Office and ILO International Training Centre, 1992, part 2- p.20-37). Promotional or development-oriented instruments lay down policies and programmes of continuing action aimed at generally accepted and broadly defined objectives. A latitude of means, methods and time schedules may be used to achieve them (*see* ILO, *The role of the ILO in Technical Co-operation,* Report IV, 73rd Session of the International Labour conference, 1987, 63). Promotional Conventions tend to be accompanied by lengthy and detailed Recommendations, providing suggestions as to how to achieve the objectives laid down in the Convention. Judgement on the action taken by a member State relies on the intention and the forcefulness of the implementing measures, subject to the economic and social conditions in the country concerned (*see* ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4 A), 53rd Session of the International Labour Conference, 1969, 221).

[33] *See* on the obligation to implement ratified Conventions and the nature of the necessary implementing measures : Nicolas Valticos and Gerald von Potobsky, *supra* note 15, 274.

[34] There are cases in which governments, also from developed countries, invoked the incompatibility of national legislation to explain nonratification of a particular Convention and the Committee of Experts conversely avowed the compatibility of the national provisions referred to (*see* for an example : ILO, *Minimum Wages - Wage-fixing machinery, application and supervision,* General Survey by the Committee of Experts, Report III (Part 4B) to the 79th Session of the International Labour Conference, Geneva, 1992, 159, para. 413-414).

[35] An example on the fundamental difference between supervision and enforcement, as well as the relationship between supervision and promotion, is found in the current discussion on the establishment of a complaint procedure targeting forced labour practices in countries that have not ratified the relevant Conventions. Reportedly constituents were eventually persuaded to establish the (supervisory) special complaint procedure on freedom of association (see further) with the following argument. Measures ensuing from the procedure merely concern bringing the issues to the public attention. They have nothing in common with "jurisdictional" measures relating to specific obligations, but are a legitimate

Fear that flexibility widens the discretion of the supervisory bodies is sometimes quoted as a barrier to the ratification of Conventions.[36] It is true that the Committee has stated on several occasions that "its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries."[37] When the Asian Advisory Committee in 1983 discussed the "rigid and legalistic approach" of the Committee of Experts in 1983 extolled by some governments in the region, employers, workers and the governments of Australia, Japan, and New Zealand supported the principle of objective, impartial supervision. Moreover, governments must have taken note of a distinction that has to be made between two aspects of supervision, i.e. the mere recording of the extent of compliance or non-compliance with obligations, and the various degrees of exhortation used to rectify shortcomings in compliance.[38]

Of course, governmental concern with the legal implications of their commitments is justified. Dose it mean that workers' and employers' organizations, because they cannot be held legally accountable, can remain indifferent towards rarification ? The opposite appears to be true. At first glance, workers' organizations are the main, if not exclusive beneficiaries and proponents of ratification. At a superficial level, employers will mostly, though not always,[39] experience the regulatory aspects of implementing legislation as an encroachment on their freedom to trade and their management prerogative. However, productivity definitely benefits from effective social policies. Employers are also the first to benefit from longer-term social and political stability and business predictability, if it were only for the steadily growing amounts of

---

method of *promoting* the aims of the Organization. *See* ILO, *Report-of the Committee on Legal Issues and International Labour Standards,* Governing Body Document No. GB. 267/LILS/5, 267th Session Geneva, November 1996, para. 9.

[36] Victor-Yves Ghebali, *The International Labour Organization - A Case Study on the Evolution of U.N. Specialised Agencies,* INTERNATIONAL ORGANIZATION AND THE EVOLUTION OF WORLD SOCIETY - Vol. III, Roberto Ago and Nicolas Valticos (ed.), Martinus Nijhoff, 1989, 210.

[37] ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4A), 63rd Session, 1977, para. 31 and 73rd Session, 1987, para. 23.

[38] ILO, Report of the Director-General to the Tenth Asian Regional Conference, *supra* note 25, at 10-11.

[39] It is recalled that freedom of association is also guaranteed for employers' organizations and that infringements have been brought before the Committee on Freedom of Association.

foreign capital they procure on the international capital markets.

Because of the tripartite efforts that have gone into their conception, Conventions are guarantors of a well-balanced social policy. The ILO has a policy of not accepting a ratification with reservations precisely because ratifications being a prerogative of the governments, reservations would undermine the tripartite balance.[40] As such workers' and employers' organizations have every interest in promoting ratification. Moreover, a key obligation of many Conventions is the involvement of workers' and employers' organizations in the design, functioning, and review of a particular policy to secure their perspective. In the absence of ratification it is much easier for governments to devise social policies single-handedly. Thus, ratification amplifies the voice of workers' and employers' organizations. By virtue of Art.23 (2) of the ILO Constitution, governments must communicate their reports on ratified[41] Conventions to these organizations so that they can file their observations with the supervisory bodies. These organizations are particularly well-placed to deepen the supervisory bodies' understanding of local conditions and difficulties of a more structural than legal nature. The opportunities for involving these organizations are now increasingly exploited, but the figures suggest that much work is left to be done.[42]

Does this mean that the proactive approach is invariably correct and that the message is to forge ahead with ratifications, trusting that the momentum and mandatory tripartite dialogue it brings about will solve all future problems? Is there no such thing as a "premature ratification" anymore? Certainly there is.[43] They are particularly likely to occur in those countries which have not yet

---

[40] Héctor Bartolomei e.a., *supra* note 9, 50. In a sense flexibility clauses can be regarded as reservations for which provision has been made in the Convention itself and which the Conference has had the occasion to consider.

[41] This obligation also concerns the reports on unratified Conventions.

[42] In 1994 and 1995 the Committee of Experts each time noted the highest number of observations from workers' and employers' organizations ever received (*see :* ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4A), 81st Session, 1994, para. 105 and 82nd Session 1995, para. 78). These observations pertain to ratified Conventions and regular government reports on their implementation.

[43] Chike Okogwu (*Labour standards across countries with different levels of development,* INTERNATIONAL LABOUR STANDARDS AND ECONOMIC INTERDEPENDENCE - ESSAYS IN COMMEMORATION OF THE 75TH ANNIVERSARY OF THE INTERNATIONAL LABOUR ORGANIZATION AND THE 50TH ANNIVERSARY OF THE DECLARATION OF PHILADELPHIA, (ED.) W. Sengenberger and D. Campbell, International Institute for Labour Studies, Geneva, 1994, 150) comments on premature ratifications : "Premature ratifications have been variously described as "declarations of sympathy" with the principles of a Convention, "window-dressing" ratifications, "platonic"

developed more than an embryonic labour administration, where the institutional structure has been dismantled, for instance by a civil war or, indeed, in countries where workers' and employers' cannot freely organize to further and defend their interests.[44] It may be recalled that flexibility implies that the nature and the pace of the measures to be taken are to a certain extent left to the discretion of the member States. It does not imply absence of substantive requirements as to the nature of the objectives, nor absence of their legally binding force.

Is it reasonable to expect that ILO member States ratify the complete set of international labour Conventions ?

In practice, the International Labour Conference adds at least one international labour Convention a year to the International Labour Code. Governments, employers, and workers traditionally adopt these Conventions with a vast majority,[45] exhibiting little anguish at the creation of international law. Reluctance on behalf of governments grows, however, when it comes to commitments to implementat Conventions : the ratification average[46] currently stands at just under 37 Conventions with 181 Conventions adopted since 1919. In other words ILO member States have on average ratified just over 20% of all Conventions adopted. Particularly the more recently adopted Conventions appear to face real obstacles to ratification : Conventions adopted between 1981 and 1990 secured an average of just over 13 ratifications by the end of 1993, while the ratification rate of those adopted between 1988 and 1992 dropped to 6.5 at the end

---

ratifications and "bare" ratifications. They have an adverse effect not only on the good name of the countries concerned but also on the reputation of the whole system of ILO standards. No ratification at all may be better than a ratification which remains ineffective. The Committee of Experts ... in its Report (1931) alluded to premature ratifications as follows : "An adhesion which is not followed by concrete application is an ineffectual gesture, the only result of which is to perpetuate an illusion."

[44] For instance countries like Cambodia or Rwanda may not be expected to ratify international labour Conventions as a matter of absolute priority. Look, however, in the "Ratification statistics chart" further on for Cambodia under the heading "Ratifications considered" and one will see that at least on the surface the belief in the "momentum-effect" is not the privilego of Latin-American temperaments.

[45] Some of the more recently adopted Conventions (e.g. Prevention of Major Industrial Accidents Convention, 1993 (No. 173) and the Home Work Convention, 1996 (No. 177)) were adopted, however, by a narrower majority.

[46] The ratification average is average number of ratifications per member State, or the total number of ratifications for all ILO member States as at 1 August 1997 (6437) divided by the nember of ILO member States at that time (174).

of 1995.[47]

Some credit for these rather low averages must be granted. There are some technically sound reasons why the equation (the number of Conventions adopted x number of Member States=total number of ratifications) does not represent a reasonable target.

(a) Once a Convention has been revised and the revising Convention enters into force, the revised one is automatically closed for ratification.[48] ILO member States cannot ratify these revised Conventions anymore, though earlier ratifications remain binding.

(b) Some Conventions in the maritime field required a higher number of ratifications higher than the standard two to enter into force. Failing to meet this number, they lost their attraction over time, because a single ratification would remain meaningless.[49]

(c) Some sectoral Conventions are irrelevant for certain countries. Examples are maritime Conventions for landlocked countries, plantation worker Conventions for countries without plantations, indigenous peoples Conventions for countries where no such peoples live, or Conventions specifically addressing workers in non-metropolitan territories for countries that have never had colonies.[50]

(d) Federal states sometimes face particular complications. Usually the decision to ratify is taken by the federal legislature, while the great majority of subjects covered by Conventions come within the purview of state law. The law of each state must be brought in conformity with the Convention before the federal government can rest assured that it has fulfilled its obligations. Moreover, in some federal states, ratification entails automatic incorporation of the treaty in the national legal order and (automatic) supremacy of treaties over state constitutions and laws. In view of these significant consequences, federal states with well-developed state legislation are reluctant to ratify.[51]

---

[47] Compare to a ratification rate for new Conventions of around 20 in previous decades (*see* Report of the Director-General to the International Labour Conference, 1984, 10). Explanations for this drop-off partly relate to the nature of standards (*see* further), partly are standards-extrinsic. The latter category uncludes "excessive workload in parliaments, the limitations of federal States and ... Member States of the European Union, ... which until now has been a champion in this area" and "a reticence to make long-term international commitments [in the face of force] legislative reforms to be able to cope with international competition." (ILo, *The ILO, standard setting and globalization, supra* note 9, 49-51).

[48] Each international labour Convention contains some final provisions. One of these stipulates the effect of a revising Convention. Any subsequent Convention must then point out whether it effectively revises earlier Conventions on the same subject matter. The Minimum Age Convention, 1973 (No. 138) provides a good example of a Convention that only revised some of the earlier Convention on minimum age for employment.

[49] In this category fall for instance the Holidays with Pay (Sea) Convention, 1936 (No. 54), Hours of Work and Manning (Sea) Convention, 1936 (No. 57), Social Security Seafarers Convention (No. 70), Paid Vacation (Seafarers) Convention, 1946 (No. 72), Accommodation of Crews Convention, 1946 (No. 75), Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) and Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109).

[50] There is an extensive body of law (over 40 Conventions) establishing international labour standards for seafarers, fishermen and dock workers. Seven Conventions pursue the protection of indigenous and tribal peoples and at least four Conventions specifically relate to workers in non-metropolitan territories.

[51] This is the United State's main counterargument when confronted with its low number of international labour Conventions ratified. The United States has ratified 12 Conventions

(e) Gradually a broad consensus has emerged that the International Labour Code comprises some obsolete standards that undermine its credibility. Although careful to secure tripartite agreement prior to any adjustment and not to draw hasty conclusions, the ILO's Governing Body is currently reviewing at least a quarter of all international labour Conventions. In 1985 the ILO's Governing Body decided to leave dormant some Conventions "which do not correspond to present-day needs." Founding its authority on Article 22 of the ILO Costitution, the Governing Body would request no reports on these Conventions anymore.[52] These Conventions, however, remained open for ratification and the binding force for member States having ratified them remained unaltered.[53] The Governing Body recently decided to shelve these Conventions, except Convention No. 15.[54] Shelving entails "both leaving a Convention dormant and ceasing to publish it in the Office's documents, studies and research papers".[55] The same fate was reserved for Convention No. 60, a Convention that like many of the dormant ones, had been the subject of denunciations not accompanied by new ratifications.[56] Equally, the ILO's Governing Body identified five Conventions that have never entered into force[57] and decided to

---

as at 1 August 1997. Steve Charnovitz (*Promoting Higher Labor Standards*, 18:3 THE WASHINGTON QUARTERLY, 1995, 178) ascribes the "parochial" disinclination to ratify ILO Conventions to two other factors. (1)Ratified ILO Conventions could supersede federal and state labour laws if provisions of the Convention can be enforced in domestic courts. (2)Many Americans are reluctant to have U.S. policy reviewed by an international organization. It may be noted that, on the other hand, the United States has ratified more recently adopted Conventions. Undeniably, however, federal states such as Argentina and Mexico, featuring the same constitutional provisions on automatic incorporation, have ratified many more Conventions. *See* Virginia A.Leary, *supra* note 11, Chapter 4.

[52] *See* ILO, *Report of the Working Party on Policy regarding the Revision of Standards*, Governing Body Document No. GB. 265/LILS/5, 265th Session, Geneva, March 1996, para. 19. Some 20 Conventions are considered dormant : Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), Night Work (Bakeries) Convention, 1925 (No. 20), Inspection of Emigrants Convention, 1926 (No. 21). Protection against Accidents (Dockers) Convention, 1929 (No. 28), Fee-Charging Employment Agencies Convention, 1933 (No. 34), Old-Age Insurance (Industry, Etc.) Convention, 1933 (No. 35), Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), Invalidity Insurance (Industry, Etc.) Convention, 1933 (No. 37), Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), Survivors' Insurance Convention, 1933 (No. 39), Survivors' Insurance (Agriculture) Convention, 1933 (No. 40), Sheet-Glass Works Convention, 1934 (No. 43), Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), Reduction of Hours of Work (Glass-bottle Works) Convention, 1935 (No. 49), Recruiting of Indigenous Workers Convention, 1936 (No. 50), Contracs of Employment (Indigenous Workers) Convention, 1939 (No. 64), Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65), Hours of Rest and Rest Periods (Road Transport) Convention, 1939 (No. 67), Contracs of Employment (Indigenous Workers) Convention, 1947 (No. 86) and Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104).

[53] *See* for the difference between reporting and basic obligations ILO, *Report of the Committee on Legal Issues and International Labour Standards*, Governing Body Document No. GB. 258/6/19, 258th Session, Geneva, November 1992, Appendix I, 20.

[54] Minimum Age (Trimmers and Stokers Convention), 1921 (No. 15). It was decided that maritime Conventions would be examined separately.

[55] *Id.* at para. 19.

[56] Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60).

[57] *See* ILO, GB. 265/LILS/5, *supra* note 52, at para. 22 : Hours of Work (Coal Mines) Convention (No. 31), Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46), Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51), Reducation of Hours of Work (Textiles) Convention, 1937 (No. 61) and Migration for Employment Convention, 1939 (No. 66).

shelve them and to re-examine their status at a later stage with a view to their possible abrogation by the Conference at a later stage.[58] No further Conventions were shelved at subsequent sessions. Five Conventions were lined up for revision[59] and in some instances member States were invited to contemplate the ratification of a revised Convention, even after having ratified an earlier version.[60] The need to revise more Conventions will be examined in the future. Already at an earlier stage the Governing Body officially recognized that some Conventions deserve more promotional attention than other. In 1978 the Governing Body approved the so called "Ventejol-report".[61] It established three categories for the classification of existing Conventions and Recommendations : instruments to be promoted on a priority basis (described as "valid targets on a universal basis" and "a framework for [the ILO's] policies and programmes" -- Category 1), instruments to be revised (Category 2) and other instruments (described as instruments the promotion of which is not necessarily appropriate anymore for all countries -- Category 3).[62] The list was revised in 1987.[63] Conventions from these three Categories partly overlap with those referred to under the headings previously noted. According to the revised list some 100 international labour Conventions were classified as to be promoted on a priority basis (Category 1). As a result of the ongoing revision by the Governing Body this number is actually declining slightly.

(f) Recent years have seen the adoption of "maximalist" Conventions with "high Value-added" provisions which are already in force at the regional or at the national level. Conventions No. 171, 172, 173 and 175[64] are often quoted in this category, but also earlier Conventions like Convention No. 149 or Convention No. 151.[65] What is meant is that these Conventions, instead of confining themselves to protecting fundamental principles, attempt to cover their subject too exhaustively, thereby imposing excessive requirements. Having been inspired by developed models, these Conventions are at best marginally adapted to the needs of developing countries, particularly those with a large informal sector (e.g.India). The debate on the content, particularly the "added value" of standards, was revived by the Director-General in 1994.[66] Further deepening is to be expected in the

---

[58] *Id.* at 24. Abrogation implies putting an end to all the legal effects of a ratified Convention, meaning reporting obligations as well as the obligation to implement the Convention. After futher examination the Governing Body decided to submit to the 1997 Conference a constitutional amendment that would give the Conference the power to nullify simultaneously the obligations ensuing from a Convention and the Convention itself. *See* ILO, *Report of the Working Party on Policy regarding the Revision of Standards*, Governing Body Document No. GB. 267/LILS/4/1, 267th Session, Geneva, November 1996.

[59] Maternity Protection Convention, 1919 (No. 3), Night Work of Young Persons (Industry) Convention, 1919 (No. 6), Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), Night Work of Young Persons (Industry) Convention, 1948 (No. 90) and Maternity Protection Convention (Revised), 1952 (No. 103).

[60] For instance, ratifying the Safety and Health in Construction Convention, 1988 (No. 167) which will involve the immediate denunciation of Safety Provisions (Building) Convention, 1937 (No. 62).

[61] ILO, Final Report of the Working Party on International Labour Standards, *Official Bulletin (Special issue)*, Vol.LXII, 1979, Series A.

[62] Category 3 contains also the revised Conventions.

[63] ILO, Report of the Working Party on International Labour Standards, *Official Bulletin (Special issue)*, Vol. LXX, 1987, Series A.

[64] Night Work Convention, 1990 (No. 171), Working Conditions (Hotels Restaurants) Convention, 1990 (No. 172), Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) and Part-Time Work Convention, 1994 (No. 175).

[65] Nursing Personnel Convention, 1977 (No. 149) or Labour Relations (Public Service) Convention, 1978 (No. 151).

[66] ILO, *Defending values, promoting change, supra* note 9, 45. *See* also the subsequent submis-

aftermath of his latest report. The report notes a drop-off in the rate of ratification for more recent Conventions "with very few exceptions (Conventions Nos. 159 and 160)"[67] and attributes this to the low *"added value"* and the *fragmentation* of standards. Standards that do not match or contribute little to the perceived regulatory needs in the world of work, are not likely to be ratified. Standards that merely state noble principles but the impact of which is difficult to assess because they contain stipulations the application of which does not lend itself to being monitored should figure in Recommendations, not in Conventions. Conventions should be drafted in sufficiently specific terms to be able to give rise to rights and obligationn worthy of the name. As an example of such a Convention the report refers to the Employment Policy Convention (No. 122). Fragmentation and ill-targeted provisions are held accountable for the relatively low rate of ratification, in particular of occupational safety and health Conventions, occupational safety and health being the most densely standardized area of the world of work. The report postulates that these standards often deal with specific hazards, but overlap in approach and contain a number of similar or identical provisions, resulting in dilution of the impact of provisions that are common to all instruments. Further complications arise from an accumulation of protective provisions that on the one hand are often too general because they must fit into a Convention, and on the other hand cannot be updated regularly enough to reflect the state-of-the-art on a particular hazard. The report expounds the idea that Conventions exist to express the desired progress in terms of legally binding obligations, thus contributing towards a levelling of the conditions for international competition. This view bears the hallmark of the globalization era and appears difficult to reconcile with the view that the fundamental justification for the ILO's standard-setting lies in the intrinsic value of standards, guiding the evolution and transformation of social institutions resulting from an international tripartite exchange of experience.[68] According to the latter view Conventions remain useful because they continue to exert influence even if not ratified. It appears akin to the view set forth by the ILO's Workers' members that purpose of Conventions is not merely to reproduce existing national practice, but also to point the way to social progress.[69]

Add to this that governments are entitled to cast only half of the votes on the adoption of a Convention at the International Labour Conference and it becomes somewhat clearer why Conventions are adopted with overwhelming majorities but have a hard time garnering ratificatios. A government may consider that a "maximalist" Convention sets a laudable objective as a matter of principle, but does not justify the resources, financial and human, necessary for implementation within its jurisdiction. Undeniably, the majority of the Conventions remains relevant for all member States, although ratification may occasionally require the exploitation of flexibility to the fullest degree.

---

sion of the conclusions of the Conference discussion to the Governing Body : ILO, Governing Body Document No. GB. 261/LILS/3/1, Geneva, November 1994.

[67] ILO, *The ILO, standard setting and globalization, supra* note 9, 36.

[68] Héctor Bartolomei de la Cruz e.a., *supra* note 9, 25.

[69] Héctor Bartolomei de la Cruz e.a., *supra* note 9, 62.

Within this majority, the basic human rights or fundamental Conventions (see below) take a central position. The rights and principles embodied in these Conventions are considered vital for the "social partners to claim freely their fair share of the economic progress generated by the liberalization of trade."[70] Governments would be hard pressed to maintain that they are obsolete, maximalist, or irrelevant in the light of their characteristics and the consensus that still prevails concerning their viability.

In short, while member States for technical as well as policy reasons cannot be expected to ratify all Conventions adopted, the number of "feasible" ratifications must lie well above the current level.

Is there a significant correlation between the number of ratifications and social development ?

Does it make sense to say that the more Conventions a country has ratified, the better its workers are protected, the better their working conditions are, and the more social progress has advanced ? Arguably not. A more accurate statement is that the number, as well as the nature, of the Conventions a state has ratified is the best yardstick available to measure the *commitment* of a state to pursue social progress. First, the sheer number of ratifications cannot reflect the social progress achieved. If one accepts, as outlined above, that ratification is not necessarily the culmination of a process, then its number cannot reflect achievements and the record must be interpreted with the help of the supervisory comments. Secondly, a country that has ratified a great number of Conventions, but does not provide the guarantees enshrined in the basic human rights Conventions, actually undermines the sustainable implementation of the Conventions it has ratified. Thirdly, how does one measure social progress ? Developing a detailed methodology is beyond the scope of this paper, but a few observations may be fitting. Measuring the degree of observance of fundamental rights by using the appropriate Conventions as a check-list[71] is an attractive option, but entails

[70] ILO, *The ILO, standard setting and globalization, supra* note 9, 14.

[71] For instance with regard to freedom of association, one would investigate whether, or subject to which conditions, workers and employers are free to organize to protect their interests and can claim the right to strike, whether these organization can freely obtain legal personality, whether they are free to federate, free to collectively bargain at industry level, etc..

the risk of exclusively reflecting whether there is a *basis* for social progress. Further questions would have to be answered, such as the extent to which wages reflect the need of workers for a sustainable living, a safe working environment and a range of social security benefits. On the other hand, comprehensive measurement entails the risk of becoming value-dependent : a country that exhibits a high unemployment rate, but bestows generous benefits upon its unemployed citizens, is it socially further advanced than a country that has succeeded in providing near full employment, but at wage levels endowing an overall lower purchasing power ? Whatever the actual level of social development, it must be assumed that a higher number of ratifications signals increased protection against backsliding to a lower standard.

In fact, the impact of ILO standards on economic development and growth has not been sufficiently studied.[72] The ratification rate of developed countries, as borne out by the OECD average, is well above the rate of developed and developing countries together. "Rich" OECD members in the Asian-Pacific region have also ratified considerably more Conventions than other countries in the region. Concluding that more ratifications means more development is not supported by the available data for the Asian-Pacific region. A comparison of ratification records with the score of countries on several indexes may offer some perspective on this impact. In the Asian-Pacific region several developing countries that have ratified more Conventions score comparably lower on several indexes.

(1) UNDP's *human development index* integrates social factors in the development concept, and measured by that yardstick it is clear that a well-furnished ratification record does not invariably signal high social protection or an advanced stage of human development ; certainly not in the Asian-Pacific region.[73] The "Ratifications statistics chart" below reveals a considerably higher ratification average for South-Asian countries than for ASEAN[74] countries. Yet measured by the human development index

[72] *See* Steve Charnovitz, *Promoting Higher Labor Standards,* 18 : 3 THE WASHINGTON QUARTERLY, 1995, at 169 and his references to World Bank and OECD studies on the linkages between freedom of association and economic development.

[73] The Human Development Index measures a country's achievements in terms of life expectancy, educational attainment and adjusted real income. Not all aspects of development as represented by international labour Conventions are represented. *See* UNDP, *Human Development Report 1996,* Oxford, Oxford University Press and its website <http://www.undp.org/undp/news/hdr96ind.htm>.

[74] The Association of South-East Asian Nations (ASEAN) was founded by the Bangkok

South-Asian countries, with the notable exceptions of Sri Lanka on one side and Indochina on the other hand, rank well below their ASEAN neighbours.[75]

(2) IFAD (International Fund for Agricultural Development)[76] has developed a *relative welfare index* based on food security, poverty and coverage of basic needs (basically education and health). Of the 23 countries, Pakistan and Nepal topped the list as countries with the lowest welfare. Further rankings suggest that countries with an active ratification policy do not necessarily guarantee the highest welfare for their citizens and vice versa.[77]

(3) IFAD's *women's status index* takes into account health and family planning, education, relative earnings status, labour force participation and domestic condition. According to this index women's status is consistently higher in ASEAN than in South-Asia.[78]

The following explanations may shed some light on perceived discrepancies between the ratification record and the level of social progress.

(a) Many countries, particularly in South-Asia, have decided to stick to international labour commitments made by colonial authorities under circumstances different from those of independence.

(b) Some countries, like the Republic of Korea, have relatively recently joined the ILO and consequently started accumulating ratifications.

(c) Ratification reflects a commitment, but does not guarantee full implementation of a Convention.

(d) International labour Conventions target equivalence and not uniformity of social protection. Conventions are flexible. Thus, a country can ratify and implement many Conventions without its workers enjoying the same objective "development status" as their

---

Declaration in 1967. Its main *raison d'être,* security cooperation, became manifest with the adoption of the Treaty of Amity and Cooperation in 1976. Viet Nam joined the founding member States (Brunei Darussalam, Indonesia, Malaysia the Philippines, Singapore and Thailand) in 1995). Cambodia, Lao's Peoples Democratic Republic and Myanmar are slated to increase the membership to 10 countries in July 1997. Regional integration is expected to "deepen" with the establishment of an Asia Free-Trade Area by the year 2003. With the exception of Brunei all ASEAN members are ILO member States.

[75] Rankings in 1996 were : Singapore (34), Thailand (52), Malaysia (53), Sri Lanka (89), Philippines (95), Indonesia (102), Viet Nam (121), Myanmar (133), Pakistan (134), India (135), Lao's PDR (138), Bangladesh (143), Nepal (151) and Cambodia (156).

[76] IFAD, *The State of World Rural Poverty-A Profile of Asia,* Rome, 1995, 49-54.

[77] In order of increasing welfare : Philippines (5), Sri Lanka (7), Thailand (8), Viet Nam (9), Bangladesh (12), Lao's PDR (13), India (15), Myanmar (17) and Indonesia (18), Malaysia (20).

[78] *Id., 55-57.* The respective rankings : Pakistan (2), Bangladesh (3), Nepal (5), India (9), and Indonesia (14), Philippines (16), Viet Nam (18), Malaysia (20), Thailand (21) with only Sri Lanka at (19).

colleagues in more prosperous countries having ratified fewer Conventions.

(e) Countries may substantially give effect to international labour Conventions without ratifying them. This could be labelled a "hands-free" attitude, at least to the extent that this policy is intentional and systematic.

Governments in the Asian-Pacific region regularly argue that they give effect to Conventions, but do not see the need for ratification.[79] This argument hides some dangers. (1) Without ratification there is no guarantee and no way of scrutinizing that the balance between governments', workers' and employers' interests ensured by the tripartite adoption of Conventions is reflected in national law and practice, as there is no guarantee that a Convention is implemented in its entirety at all. For the same reason ratification with reservations is inadmissible unless a Convention explicitly provides otherwise.[80] (2) Not supported by ratification of the corresponding Conventions, social progress gained by the full implementation of a Convention is made contingent on the prevailing political mood. Efforts and invesments can be lost when backsliding occurs. (3) Credibility is tarnished if a country does not take itself and the international community seriously by deliberately foregoing the dialogue with and the support of the Organization it has chosen to join with a view to making social progress.

As indicated above, the anxiousness to enter into a constructive discussion with the supervisory bodies is consistent with stressing the normative dimension of Conventions : governments are reluctant to benefit from the spirit of a Convention until full compliance with the letter is secured. Many Asia-Pacific countries do not have the long-standing experience with the rule of law other ILO member States have and to this extent they are quite right to press for more technical assistance in translating the "algebra" of Conventions into daily legal practice. Such assistance is not likely to be forthcoming, however, if there is no prior sign of commitment, only because the ensuing exposure may hurt.[81] Reluctance to enter into dialogue is likely to be misinterpreted as

---

[79] Also the United States. *See* Steve Charnovitz, *supra,* note 51, at 178.

[80] *See* ILO, *Handbook of procedures relating to international labour Conventions and Recommendations, supra* note 13, 440, para.24.

[81] For an example of exposure : in 1987 the Conference Committee on the Application of Standards mentioned Pakistan in a special paragraph of its report for deficiencies in the application of not less than five Conventions (ILO, *Record of Proceedings of the 73rd Session of the International Labour Conference,* 24/15, para.96). *See* infra for particulars on supervision.

free-riding at a time when such dialogue is appreciated by an international community making efforts to liberalize trade with a view to raising standards of living, and, moreover, when adequate methods of proving commitment to commonly agreed upon social goals are not abundant. In search of a possible normative framework for the social dimension of the liberalization of world trade the ILO report on the social dimensions of international trade stated it this way : "It is of course practically self-evident that ratification of international labour Conventions, in particular those referred to as the basic Conventions, constitutes the most tangible proof of a country's determination to advance in the direction of social progress by undertaking, in a lasting if not irreversible manner, specific obligations in a given area. Progress in the number of essential ratifications should therefore continue to be encouraged."[82].

THE RATIFICATION CHART

The ratification statistics chart is divided into 15 columns, each of them highlighting a particular aspect of the relationship between the Asian-Pacific region and international labour Conventions. First the procedure for gathering and processing date will be explained. Paragraph numbers refer to the columns reading from left to right.

1. Twenty-five countries have been selected as constituting the Asian-Pacific region. *ILO member* States situated north (mainly former Soviet Union states) and west (also called West Asian countries) of the border formed by Mongolia, China, India, Pakistan and Iran are not covered, since they belong to different regions for the purpose of geographical administration by the ILO. Not all sovereign states or states claiming sovereignty and located in this region are listed, simply because for various reasons not all of them are member States of the ILO and, therefore, have not ratified international labour Conventions.[83] So called "non-metropolitan territories" have likewise been omitted since they are not in a position to autonomously adhere to Conventions.[84]
2. The International Labour Organization was established in 1919. Many states joined the ILO at a later stage, for instance after gaining independence. Other states have not continuously maintained membership of the ILO for the past 78 years.[85] This column

[82] ILO, *Report of the Working Party on the Social Dimensions of the Liberalization of International Trade*, Governing Body Document No. GB. 261/WP/SLD/1, 261st Session, Geneva, November 1994, para.64.
[83] For instance the Democratic People's Republic of Korea, the Republic of China (Taiwan), Tuvalu, Maldives etc.
[84] For instance Hong Kong (United Kingdom), Palau (United States).
[85] For instance Japan has not been a Member between 1940 and 1951, Viet Nam has not been a Member from 1976 to 1980 and from 1985 to 1992.

ILO Member	Accession	Number	<'69	69/75	75/80	'80's	'90's	Last	Highest	Basic Human Rights	Biennial	Sample	Ratification considered	*Comments pending*
1. Afghanistan	1934	15	8	2	5	–	–	1979	C.142	C.100, 105, 111	–	C.142	C.138	*Reporting*, C. 100, 105, 111
2. Australia	1919	57	26	15	2	3	11	1995	C.173	C.29, 87, 98, 105, 100, 111	C.81, 122, 144	C.131, 142, 159	C.108, 129, 141, 143, 151, 154	#1511, C.42, 98, 100, 106, 122
3. Bangladesh	1972	31	×	29	2	–	–	1979	C.149	C.29, 87, 98, 105, 111	C.81, 144	–	C.100, 138, 170-174	#1862, C.29, 59, *87*, 89, *98*, 105, 107, 111
4. Cambodia	1969	5	4	1	–	–	–	1971	C.122	C.29	–	–	C.87, 98, 100, 105, 131, 135	*Reporting*
5. China	1919	18	[35]	[2]	[ ]	15	3	1995	C.170	C.100	C.144	C.159	–	#1652, #1819, C.26
6. Fiji	1974	17	×	17	–	–	–	1974	C.108	C.29, 98, 105	–	–	C.17, 60, 63, 81, 87	C.84, *98*, 105
7. India	1919	37	30	–	4	–	3	1996	C.160	C.29, 100, 111	C.81, 144	–	C.87, 98, 122	#1468, #1514, #1517, #1591, #1651, #1817, #1840, #1854, #1890, C.1, 26, *29*, 81, 88, 89, 90, 100, 107, 111, 141, 144
8. Indonesia	1950	10	6	2	–	–	2	1992	C.144	C.29, 98, 100	C.144	–	C.122, 131, 135	#1756, #1773, C.*98*, 106
9. Islamic Republic of Iran	1919	11	6	5	–	–	–	1972	C.122	C.29, 100, 105, 111	C.122	–	na	C.*111*
10. Japan	1951	42	26	6	4	3	3	1995	C.159	C.29, 87, 98, 100	C.81, 122	C.131, 142, 159	–	#1897, C.29, *87*, 98, *100*, 147, 156
11. Republic of Korea	1991	4	×	×	×	×	4	1994	C.142	–	C.81, 122	C.142	C.29, 105, 111, 138	#1629, #1865
12. Lao PDR	1964	4	4	–	–	–	–	1964	C.29	C.29	–	–	C.87, 98, 100, 105, 111	*Reporting*
13. Malaysia	1957	11	8	3	–	–	–	1974	C.123	C.29, 98, (105)	C.81	–	–	#1552, C.11, 12, 17, *19*, 81, *97*, *98*
14. Mongolia	1968	9	–	6	1	1	1	1996	C.135	C.87, 98, 100, 111	C.122	–	C.29, 81, 105, 129, 138, 144, 155	C.87, *Reporting*
15. Myanmar	1948	21	21	–	–	–	–	1961	C.87	C.29, 87	–	–	–	#1752, C.17, *29*, 52, *87*, Art. 26(C.29)
16. Nepal	1966	7	–	2	1	1	3	1997	C.144	C.98, 100, 111	C.144	C.131, 138	C.1, 29, 138, 150	C.100, 111, *Reporting*
17. New Zealand	1919	56	45	–	4	7	–	1987	C.145	C.29, 100, 105, 111	C.81, 122, 144	–	C.155, 159, 160	#1698, C.17, 32, 42, *81*, *100*, 105, 111, 122
18. Pakistan	1947	32	29	1	–	–	2	1994	C.159	C.29, 87, 98, 105, 111	C.81, 144	C.159	C.100, 140, 168	#1696, #1726, #1771, #1903, C.22, *29*, 32, 59, 81, *87*, 96, 98, 105, *111*
19. Papua New Guinea	1976	19	×	×	19	–	–	1976	C.122	C.29, 98, 105	C.122	–	C.88, 144	C.98, 122, *Reporting*
20. Philippines	1948	26	18	–	3	–	5	1994	C.159	C.87, 98, 100, 105, 111	C.122, 144	C.159	C.138, 147, 150, 151, 155, 165	#1572, #1615, #1718, #1826, #1914, C.87, 88, 89, 90, 94, 100, 111
21. Singapore	1965	21	21	–	–	–	–	1965	C.105	C.29, 98, (105)	C.81	–	–	C.5, 29, 88, *98*
22. Solomon Islands	1984	14	×	×	×	14	–	1985	C.108	C.29	C.81	–	C.87, 97, 122, 144, 155	*Reporting*
23. Sri Lanka	1948	36	20	3	2	3	8	1995	C.160	C.29, 87, 98, 100	C.81, 144	C.131	–	C.29, 81, 98, 100, 115, 131, 135, 160
24. Thailand	1919	11	6	5	–	–	–	1969	C.127	C.29, 105	C.122	–	–	#1581, C.*29*, 105, 127
25. Viet Nam	1992	12	[15]	[7]	[ ]	[ ]	12	1995	C.155	–	C.81	C.155	C.100, 111, 138	–
TOTAL		526	278	97	47	47	57		C.180	C.29, 87, 98, 105, 100, 111	C.81, 122, 129, 144	C.131, 138, 142, 155, 159		
Average		21.04												

Ratification statistics chart 1 August 1997

lists the most recent date of *accession*.

3. The third column lists the *number* of international labour Conventions a member State has ratified as of 1 August 1997.[86] The number of international labour Conventions adopted by the International Labour Conference at that time stood at 181. As explained before, it does not follow that 181 is the maximum number of Conventions a single member State can ratify at this point in time. Some country-specific comments must be made here. (a) Malaysia has ratified 11 international labour Conventions.[87] Peninsular Malaysia, Sabah and Sarawak each hold an additional ratification record for their own territories. In other words in each of these three territories the Conventions of the national record as well as these of the relevant territorial one apply.[88] They concern mostly early Conventions and Conventions designed for non-metropolitan territories and are of little importance for this analysis. (b) *Viet Nam* recently confirmed its obligations previously undertaken under 11[89] international labour Conventions. At least until recently, doubts surrounded its position regarding the ratification of some Conventions registered in 1953 (before independence) and the ratification of some Conventions registered in respect of the territory of the former Republic of South Viet-Nam. The total of 22 Conventions, therefore, has bee noted between square brackets in the table.[90] (c) *China* has not considered itself bound by the ratification of 23 Conventions registered at the time when the Republic of China (Taiwan) represented China in the ILO.[91] These Conventions are included in the "37" mentioned between square brackets.[92]
4. Coulumns 4 to 8 specify the periond in which states have registered their ratifications, thus mapping the pace of ratification : *before 1969, between 1969 and 1975, between 1975 and 1980*, the *eighties* and the *nineties*. Bangladesh, Fiji, the Republic of Korea, Papua New Guinea, the Solomon Islands, and Viet Nam only became members of the ILO after

---

[86] For detailed information see *Lists of Ratifications by Convention and by country*, annually published by the ILO as Report III (Part 5) to the International Labour Conference and reflecting the position at 31 December of the previous year.

[87] A basic human rights Convention, the Abolition of Forced Labour Convention, 1957 (No. 105), was denounced in 1991 after 25 years of dialogue between the Malaysian government and the ILO's supervisory bodies.

[88] The number of ratifications registered respectively stands at 5, 5 and 9. All in all 22 separate international labour Conventions are involved. This somewhat peculiar situation is inherited from colonial rule.

[89] Only the ratification of the Occupational Safety and Health Convention, 1981 (No. 155) is entirely "unprecedented".

[90] Viet Nam's position not to be bound by the ratifications registered by the former Republic of South Viet-Nam could be an application of the "Moving Treaty-Frontiers" rule, described in the 1974 International Law Commission Report dealing with the problem of state succession in respect of treaties (*see* Louis Henkin e.a., *International Law - Cases and Materials*, American Casebook Series, 3rd edition, West Publishing Co., St. Paul (Minn.), 1993, 535). Until 1995 ILO documents (*see Lists of Ratifications by Convention and by country*, Report III (Part 5) to the International Labour Conference, 82nd Session, 1995, p. 281) stated that Viet Nam had not yet clarified its position regarding those of the [22] ratifications that are not covered by the 12 "new" ratifications. More recent documents appear to consider all 12 ratifications as new (*see Lists of Ratifications by Convention and by country*, Report III (Part 5) to the International Labour Conference, 83rd Session, 1996, p.287). The "22" mentioned between square brackets have, therefore, not been included in the corresponding total, whereas the 12 have been included. *See further* on the question of state succession Nicolas Valticos, *The Asian States and International Labour Conventions*, ESSAYS IN HONOUR OF WANG TIEYA (R. St. J. Macdonald, ed.), Chapter 54, 863.

[91] The ILO Governing Body decided to recognize the Government of the People's Republic of China as the representative Government of China on 16 November 1971.

[92] Regarding the inclusion in the total, the same reasoning has been followed as for Viet Nam (see above).

1970.

5. A member State's ratification policy does not only emerge from the number of Conventions its has ratified, but also from the ratification momentum which it maintains. Member States may have quietly discontinued ratifying for a considerable number of years and still brandish a well-furnished ratification record. Stalling ratifications can signal passing political dissent, but it may also betoken a more fundemental discontent with the ILO's standard-setting activity. Two questions need to be asked to examine the evolution of the ratification record : (a) in which year has a member State ratified an international labour Convention for the *last* time ; (b) of all Conventions a member State has ratified, which one bears the *highest* serial number, account taken of the fact that the Private Employment Agencies Convention, 1997 (No. 181), is the last ratifiable Convention ?
6. *Basic human rights* Conventions constitute the very core of the International Labour Code.[93] They enshrine within the mandate of the Organization human rights principles which are universally recognized in other United Nations instruments.[94] Six Conventions traditionally occupy a central position within this category : Convention No. 87 and Convention No. 98 (on freedom of association), Convention No. 29 and Convention No. 105 (on forced labour) and Convention No. 100 and Convention No. 111 (on discrimination).[95] Each of these Conventions rank amongst the most widely ratified international labour Conventions.[96] Since the World Summit for Social Development, the significance of this set of Conventions (supplemented by the Minimum Age Convention Convention (No. 138)) has only increased.[97] The Conventions are considered the most prominent part of what

---

[93] The body of law made up of international labour Conventions and Recommendations is often referred to as the International Labour Code (see for instance *International Labour Standards and Development*, Trainer's Guide developed by the International Labour Office and ILO International Training Centre, 1992, part 2-7). *See further* on the exact meaning of the notion "Code" in this context : Nicolas Valticos and Gerald von Potobsky, *supra* note 15, 52.

[94] More in particular the Universal Declaration of Human Rights (1948), the International Convenant on Economic, Social and Cultural Rights (1966) and the International Convenant and Protocol on Civil and Political Rights (1966). Freedom of association and expression, freedom from forced labour and equal opportunities in the world of work are defended both as the quintessence of *individual* human dignity and as characteristics of an economically productive *society* which is stable enough to withstand the temptation of looking for "solutions" in expansionism.

[95] Feedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention (No. 111). Two further observations : (1) Technically speaking the Workers' Representatives Convention, 1971 (No. 135), Rural Workers' Organizations Convention, 1975 (No. 141), Labour Relations (Public Service) Convention, 1978 (No. 151) and Workers with Family Responsibilities Convention, 1981 (No. 156) are also classified under the "basic human rights" heading but they are of a narrower scope ; perhaps for this reason, with the exception of Convention No. 141, they have barely been ratified in the Asian-Pacific region. (2) ILO documents occasionally label child labour as a fundamental rights issue, specifically targetting then the exploitative conditions under which it is exacted. However, since the relevant instruments also deal with more neutral issues, such as the admission of young people to employment in general and its correlation with compulsory education, these instruments are classified under a different heading.

[96] The situation as at 1 August 1997 : Convention No. 87-120 ; Convention No. 98-134 ; Convention No. 29-144 ; Convention No. 105-127 ; Convention No. 100-132 ; Convention No. 111-127. Currently only the Labour Inspection Convention, 1947 (No. 81) and Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) with respectively 120 and 117 ratifications have managed to secure a comparable number of ratifications.

[97] As noted above, in the wake of the March 1995 World Summit for Social Development

could become a "minimum programme" to be achieved by each ILO member State in the face of globalization.[98] In Asia, the Eleventh Asian Regional Conference featured a separate Resolution on the Promotion of Freedom of Association in Asia. The Regional Conference *inter alia* requested the Governing Body of the International Labour Office "to call on governments of those member States in the Asian region which have not yet done so to ratify and apply fully IOL Conventions Nos. 87, 98, and 141".[99]

7. The priority status which the ILO's tripartite Governing Body attaches to particular Conventions can also be discerned from the frequency with which it requires member States to submit reports on the implementation of ratified Conventions. In 1993 the Governing Body adjusted the periodicity of reporting in the following way[100] : once the law and pratice following ratification have been outlined in detailed "first reports", *biennial* detailed reports are automatically requested on "ten Conventions regarded as priority ones"[101] : the basic human rights Conventions mentioned above complemented with Convention No. 81, Convention No. 122, Convention No. 129 and Convention No. 144.[102] The periodic reporting cycle for all other Conventions has been brought from four to five years (unless, of course, the Committee of Experts requests an earlier report on particular problems of application).

8. The 13th column reports on the ratification "performance" of Asian-Pacific countries with regard to a *sample* of five international labour Conventions : Convention No. 131, Convention No. 138, Convention No. 155 and Convention No. 159.[103] These Conventions were selected for the purpose of this paper on the basis of the following criteria. (1) They have all been adopted by the International Labour Conference between 1970 and 1983. Some of them revised earlier instruments. This implies, firstly, that it would be particularly bold to label them obsolete and secondly that governments have at least had 12 years to ratify them. (2) Some Asian-Pacific governments have regularly chided Conventions and their interpretation by the ILO's supervisory bodies for their professed rigidity, as an attempt to "straitjacket" development. Each one of the sample instruments, with the arguable exception of Convention No. 159, takes "flexibility" to its limits : by using

---

(Copenhagen) the ILO has been centring its efforts around employment-related questions and the promotion of seven fundamental ILO Conventions as they are now more commonly called (see ILO, *Report on the World Summit for Social Development*, Governing Body document 262/4, 262nd Session, March-April 1995, para. 10, 17 and 32). For early results of these promotional efforts, *see* ILO, *Standard-setting policy : Ratification and promotion of the ILO's fundamental standards*, Governing Body Documents Nos. GB. 264/LILS/5 and GB. 264/LILS/5 (Add.), 264th Session, Geneva, November 1995.

[98] ILO, *The ILO, standard setting and globalization, supra* note 9, 24.

[99] Eleventh Asian Regional Conference of the International Labour Organization (Bangkok, 26 November-2 December 1991), *Conclusions and Resolutions adopted*, Resolution on the Promotion of Freedom of Association in Asia, (2).

[100] *See* ILO, GB. 258/6/19, *supra* note 53, Appendix I.

[101] *Id.*, 18.

[102] Labour Inspection Convention, 1947 (No. 81), Employment Policy Convention, 1964 (No. 122), Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Interestingly, it was suggested under the impulse of *inter alia* some member States from the European Union to replace Convention No. 122 with Convention No. 138 (Minimum Age Convention, 1973).

[103] Minimum Wage Fixing Convention, 1970 (No. 131), Minimum Age Convention, 1973 (No. 138), Human Resources Development Convention, 1975 (No. 142), Occupational Sefety and Health Convention, 1981 (No. 155) and Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). At 1 August 1997, the number of ratifications worldwide stood at 41 (Convention No. 131), 55 (Convention, No. 138), 58 (Convention, No. 142), 28 (Convention No. 155) and 59 (Convention No. 159).

"flexibility devices" (Convention No. 131, Convention No. 138, Convention No. 142 and Convention No. 155), by hardly providing more than a framework for dealing with the subject matter at issue (Convention No. 131, Convention No. 159) or by cloaking themselves in a "promotional" hull (Convention No. 142, Convention No. 155). (3) As long ago as 1977, the Eighth Asian Regional Conference urged the ratification of a core of Conventions as being of "special importance, for the balanced social and economic development of Asian countries".[104] Among the 18 Conventions selected were Convention No. 131 and Convention No. 138, Convention No. 142 and Convention No. 155 were both central to the topics of special concern to the region discussed at the Eleventh Asian Regional Conference in 1991, i.e. structural adjustment and the improvement of occupational safety and health.[105] Vocational rehabilitation was the central topic of discussion at the Tenth Asian Regional Conference, which took place in Jakarta in 1985.

Minimum Wage Fixing Convention, 1970 (No. 131)

In spite of high economic growth, hundreds of millions of people continue to live below the poverty threshold in the Asian-Pacific region alone, and evidence of a self-induced beneficial effect of overall growth on thier situation, often called the trickle-down effect, is at best unconvincing.[106] Paragraph 1 of the Recommendation accompanying Covention No. 131 describes minimum wage fixing as one element in a policy designed to overcome poverty.[107]

---

[104] Convention No. 29, Convention No. 105, Convention No. 87, Convention No. 98, Convention No. 135, Convention No. 141, Convention No. 100, Convention No. 111, Convention No. 122, Convention No. 95, Convention No. 131, Convention No. 138, Convention No. 102, Convention No. 121, Convention No. 81, Convention No. 129 and Convention No. 144. The latest follow-up report can be found in ILO, *Application of ILO Standards*, Report of the Director-General to the Tenth Asian Regional Conference (Jakarta - December 1985), International Labour Office, Geneva, 1985, 19. The Report of the Director-General to the latest Regional Conference did not contain such a follow-up report, focusing the attention rather on basic human rights Conventions and the Conventions selected by the Governing Body as to be promoted as a matter of priority (*see* ILO, *Report of the Director-General to the Eleventh Asian Regional Conference (Bangkok - November-December 1991)*, International Labour Office, Geneva, 1991, 151).

[105] ILO, *Report of the Director-General to the Eleventh Asian Regional Conference*, Chapter I (Growth and structural adjustment) and Chapter II (Improving occupational safety and health).

[106] See P. Todaro, *Economic Development*, Longman Publishing, New York, 1994, 145-147, citing figures from : World Bank, *Implementing the World Bank's Strategy to Reduce Poverty - Progress and Challenges*, World Bank, Washington, 1993, 5. In 1992, 768 million people were living below the poverty line in Asia (in all countries except Japan) and in South Asia the number of poor people increased between 1985 and 1990 from 532 to 562 million. The Asian economies overall performance in the battle against poverty in the '70's and '80's has been hailed. Nevertheless, in 1985, 51% of the population of South Asia still qualified as poor, against an average for all developing countries of 33% (*See* ILO, *Report of the Director-General to the Eleventh Asian Regional Conference, supra* note 104, 19).

[107] Minimum Wage Fixing Recommendation with Special Reference to Developing Countries, 1970 (No. 135). The Recommendation has been adopted as a supplement to Convention No. 131. Earlier on the International Labour Conference had adopted Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) and Minimum Wage-Fixing Machinery

Economists equally recognize a minimum wage policy as a tool of income redistribution, if correctly applied.[108] With regard to possible adverse effects on employment the Committee of Experts advocated caution but specified also :

> "[Such adverse effects] may result not so much from the obligations imposed by the Conventions to fix minimum wages or to establish minimum wage-fixing machinery as from the actual amount of the minimum wage which is determined not by the Conventions themselves but by agreement between the parties or by decision of the competent authority in consultation with the parties concerned."[109]

Convention No. 131 has the potential to dispel fears that minimum wages jeopardize developing countries' comparative advantage in having lower wage costs[110] : the Convention's substantial scope does not reach beyond (1) ensuring

(Agriculture) Convention (No. 99). The first expressly aimed at doing away with "exceptionally low wages" in manufacture and commerce, *inter alia* as an element of unfair competition at the national and international level (see ILO, *Minimum Wages - Wage-fixing machinery, application and supervision*, General Survey by the Committee of Experts, Report III (Part 4B) to the 79th Session of the International Labour Conference, Geneva, 1992, p.16, para. 59-59). Convention No. 26 has acquired 100 ratifications as of 1 August 1997, 10 of which are in the Asian-Pacific region. Convention No. 131 was adopted after an ILO Meeting of Experts had identified the need for an instrument that at the same time could offer effective social protection and a strategy for economic development in light of the characteristics of developing countries (massive poverty, income inequality, and the indequacy of average incomes) : *Id*, para. 68.

[108] *See* for instance *The minimum-wage debate*, THE ECONOMIST, September 10th 1994, 86 and a review of some economic studies *Minimum wage, maximum fuss*, THE ECONOMIST, April 8th 1995.

[109] *See* ILO, *General Survey, supra* note 107, 163, para. 431. In more general terms, the Committee of Experts noted from the ILO World Employment Report that "the deregulation of the labour market has not had the expected effect on the volume of employment and threatens social cohesion in a manner that is not conducive to economic growth" (ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), 82nd Session, 1995, para. 64).

[110] In 1994 Malaysia's Prime Minister, Dr. Mahathir bin Mohamad, for instance reportedly told a meeting of a group of 15 developing countries in New Delhi that minimum-wage regulations should be opposed at all costs by developing countries, since they would take away the only advantage they had - a lower labour cost. In one go, he reportedly characterized any attempt to impose minimum wages as yet another restriction on developing countries, after regulations on democracy, the environment, and human rights (see *The Straits Times* (Singapore), 29 March 1994 and *The Nation* (Thailand), 31 March 1994). Rearticulating these views on the occasion of the ILO's 75th Anniversary he did not shun controversial statements : "The demands of unions and workers in the developed countries for better working conditions, higher pay and more industrial unrest in the newly industrializing countries will remove this sole competitive edge" (Dr. Mahathir bin Mohamad, *Worker's rights in the developing countries*, VISIONS ON THE FUTURE OF SOCIAL JUSTICE : ESSAYS ON THE OCCASION OF THE ILO'S 75TH ANNIVERSARY, Geneva, International Labour Office, 1994, 176). Such rhetoric does not do justice to international labour standards. Firstly, international labour standards, including those laid down in Convention No. 131, are adopted by workers, employers, and governments from all over the world. Secondly, the Director-General of the International Labour Office has repeatedly underscored Dr. Mahathir's position about "comparative advantage," while denouncing its consolidation as a political strategy : "while it is perfectly natural for some countries to capitalize on legitimate comparative advantages such as lower wages or a lower cost of living

the involvement of workers' and employers' organizations in the minimum wage fixing machinery, (2)securing legal status and appropriate enforcement[111] of minimum wage regulations and last but not least (3)stressing the need of striking a balance between the needs of workers and the requirements of a country's economic development. Art. 1 (3)of the Convention provides for a progressive coverage of different groups of wage earners.

Minimum Age Convention, 1973 (No. 138)

The ILO estimates that worldwide 120 million children between 5 and 14 years old are working. This figure doubles if those for whom work is a secondary activity are included. Of these, 61% are found in Asia.[112] Except for South-East Asia, where basic education has spread, figures are rising.[113] Child labour is an insult to human dignity and, even from the most reckless producer's point of view, economic nonsense in any other than the immediate term. Labour compromises a child's health, development as a mature person, and future employment opportunities. Yet even the most exploitative manifestations (such as child slavery in agriculture, domestic help, the sex industry, the carpet and textile industries, quarrying and brick making), mostly prevalent in

(legitimate in the sense that they are not artificially maintained), there is no reason for these countries not to endeavour to provide a minimum level of protection against the most basic contingencies, in proportion to local costs, and to the extent that such protection can be financed out of the additional wealth generated by the growth of trade" (*Defending values, promoting change - Social justice in a global economy : an ILO agenda*, Report of the Director-General to the 81st Session of the International Labour Conference, International Labour Office, Geneva, 1994, p.60). Summarized : "While *having* low wages because of under development is legitimate, strategies to gain competitive advantage by *suppressing* wages and labour standards are not" (R., Marshall, *The importance of international labour standards in a more competitive global economy*, in : INTERNATIONAL LABOUR STANDARDS AND ECONOMIC INTERDEPENDENCE - ESSAYS IN COMMEMORATION OF THE 75TH ANNIVERSARY OF THE INTERNATIONAL LABOUR ORGANIZATION AND THE 50TH ANNIVERSARY OF THE DECLARATION OF PHILADELPHIA, Werser Sengenberger and D. Campbell, International Institute for Labour Studies, Geneva, 1994, p.71). In Singapore, WTO Ministers agreed that the comparative advantage, particularly of low-wage developing countries, should not be called into question (*See* World Trade Organization, *Singapore Ministerial Declaration*, doc. No. WT/MIN (96)/DEC, 18 December 1996, para. 4).

[111] One might expect this requirement to be problematic, but it does not show from the ratification record : Convention No. 81 is one of the Conventions with the highest number of ratifications.

[112] ILO, *Child labour : Targeting the intolerable*, Report VI (1)to the International Labour Conference, 86th Session, 1998, Geneva, International Labour Office, 1996, 7.

[113] *See* ILO, *Child Labour*, Report of the Governing Body Committee on Employment and Social Policy, Governing Body Document No. GB. 264/ESP/1, 264th Session, Geneva, November 1995, 7-17 and ILO, *Child labour persists around the world, Press release*, 10 June 1996.

Asia,[114] prove extremely hard to eliminate in the short or medium term. Child labour is commonly explained as a partly supply-driven phenomenon induced by poverty, population pressure, an inadequate education infrastructure and absence of social security.

Convention No. 138 aims for the effective abolition of child labour, but allows the degree of legal stringency to be adjusted as to keep pace with the development of other supportive policies advocated by the Minimum Age Recommendation.[115] The Convention has never been "intended as a static instrument prescribing a fixed minumum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives."[116] The Convention displays the whole catalogue of flexibility clauses[117] to finally focus on a few main lines : (1) involvement of workers' and employers' organizations in policy-design and implementation to alleviate the burden of government supervision ; (2) minimal normative action with regard to setting various minimum ages (depending on the type of work) for admission to employment, stimulating achievements that can extended as the economy develops and labour administration grows more effective ; and (3) children should be kept away from specifically defined hazardous occupations. The ILO's successful International Programme on the Elimination of Child Labour has made ratification of Convention No. 138 one its objectives.[118]

---

[114] "Bonding" of children (India, Pakistan and Bangladesh) and forced work under slave-like conditions (Thailand) are examined by the ILO supervisory bodies under the Forced Labour Convention, 1930 (No. 29). Convention No. 29, however, was originally not designed to tackle this kind of problem and, therefore, can offer little more than a *post factum* condemnation of particular conditions under which child labour is exacted, rather than straightforwardly guiding remedial action of child labour.

[115] Minimum Age Recommendation, 1973 (No. 146).

[116] ILO, *Child labour : targeting the intolerable, supra* note 116, 24.

[117] It may be recalled that flexibility does not impair the legally binding force of a Convention. Conversely, a flexibility device that permits the temporary disapplication of a Convention in a certain sector after the required tripartite consultation provides an opportunity to gain experience from the application of the Convention in stronger economic sectors, amplified by the advantages of ratification and dialogue with the supervisory bodies.

[118] IPEC is a multiannual and multiregional programme aimed at assisting ILO constituents as well as universities, media and non-governmental organizations active in the field of eradicating child labour. Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines and Thailand are the participating countries in the Asian-Pacific region. Ratification of Convention No. 138 is only one objective of this high-profile Programme and IPEC actually shares the view that Convention No. 138 features some shortcomings which need to be redressed by a new Convention. IPEC spent more than 70% of its 1994-1995 budget on programmes targeting hazardous work and considers *inter alia* that Convention No. 138 does not specify what priority should be given to measures geared to preventing children from working in hazardous conditions that are contrary to their basic human rights (IPEC,

Human Resources Development Convention, 1979 (No. 142)

In 1991 the ILO's Director-General idenified the following reasons for the need for Asian economies to focus on human resources development in the course of structural adjustment :

> "First, human resource development policies, when targeted at the poor, enhance the only productive asset which they possess and thereby make it easier for them to earn a decent wage. Second, the shortage of trained workers is a major constraining factor in many Asian economies. Third, to be in a position to absorb the new technologies that are emerging, it is necessary to invest in an educated and trained workforce capable of absorbing these technologies."[119]

Judging from recent World Bank publications, investment in human capital has become a priority in its leding policies.[120] This is generally viewed as a shift from the deregulative free market policies which have dominated the rhetoric (and capital flows) for at least the last decades. Recommendation No. 150 as a framework instrument bears witness to a broad vision of human resources development,[121] but, of course, ratification concerns only the Convention. Article 1, para. 2 (b) of the Convention provides that vocational guidance and vocational training programmes "shall take due account of the stage and level of economic, social and cultural development." Being a promotional Convention it is furthermore confined to little more than marking the objective (improve the ability of the individual to understand and influence the working and social environment, taking account of the level of development) and some mandatory general principles (such at tripartite consultation and equality with regard to human resources development opportunities).

Children and work, Newsletter No. 2, International Labour Office, November 1996, 5-6).

[119] ILO, *Report of the Director-General to the Eleventh Asian Regional Conference, supra* note 104, 24. The 1991 Asian Regional Conference stressed the need for occupational skills with a view to introduction and adoption of new technology and concluded that "this should be done within the framework of the Human Resources Development Convention, 1975 (No. 142)," (*See* Eleventh Asian Regional Conference of the International Labour Organization (Bangkok, 26 November-2 December 1991), *Conclusions and Resolutions adopted*, para. 13).

[120] *See* for instance World Bank, *World Development Report 1995 - Workers in an integrating world*, Oxford University Press, Oxford, 1995, and the editorial in the World Bank's publication magazine *Update*.

[121] The "Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources" is one of longest instruments in the International Labour Code, and functions as Convention No. 142's policy manual.

Occupational Safety and Health Convention, 1981 (No. 155)

ILO statistics on work-related deaths in the Asian manufacturing sector have been portrayed in respectable magazines from the "West" as well as the "East" as a token of the toll rapid economic growth in the Asian-Pacific region has taken.[122] The references made to government reports indicate that authorities are aware of the significance of the situation.[123] Occupational safety and health hazards in Asia have been mapped : mushrooming small and medium-sized enterprise with poor working conditions as a result of fast industrialization, a high rate of serious and fatal accidents in construction and mining as a result of a lack of skills among workers, unsafe practices in the use of agro-chemicals, high injury levels in tropical wood harvesting and widely broadcasted indusrtial disasters (such as the fire at the Kader Internationsl Toy factory outside Bangkok in 1993). Not surprisingly, occupational safety and health standards are consistently cited by the proponents of the "social clause" as benchmarks following on the heels of basic human rights standards.[124] The immediate link between this category of standards and improved product quality and productivity secures a more readily favourable reception in employers' circles. On the other hand technicality and a hardly predictable cost profile are likely to limit ratification prospects.

In 1996 the Committee of Experts noted the growing attention member States paid to issues of safety and health. Seven out of 17 Conventions adopted since 1985, and nearly one-third of total ratifications registered since the begin-

---

[122] *See* for instance *Social engineers*, FAR, EASTERN ECONOMIC REVIEW, 14 April 1994, 57 ; *War of the Worlds - a survey of the global economy*, THE ECONOMIST, October 1st 1994, 35. Compiling updated and comparable figures for the Asian-Pacific region appears to pose a problem in itself. A few figures relating to 1994 from the ILO's annual compendium may give an idea. In the Philippines three times as many fatal injuries were reported as in Japan. The number of compensated (fatal) injuries per 1,000 persons insured - and, of course, this does not give an indication of the number of persons actually insured - amounted to 0.066 in Italy, 0.192 in Thailand and 0.370 in the Republic of Korea. Reported (fatal) injuries per 1,000 persons employed measured 0.120 in Singapore, 0.109 in Hong Kong, 0.096 in Hungary and 0.057 in Poland. *See* ILO, *Yearbook of Labour Statistics*, 1996, International Labour Office, Geneva, 982-991.

[123] One article cites a Thai government study reportedly showing that industrial accidents are rising at a rate of 20-30% per year, while industry is expanding at an annual rate of only 12-15% annually (found in *All fall down*, FAR EASTERN ECONOMIC REVIEW, 20 July 1995, 65).

[124] See for instance (in Dutch translation) Robert B. Reich, *Internationale basisarbeidsnormen tegen uitbuiting*, TALENT (a special section of the Flemish magazines *De Financieel Ekonomische Tijd*, 25 juni 1994, *Trends*, 27 juni 1994 en *Knack*, 29 juni 1994) and Neil Kearney in a letter to the FAR EASTERN ECONOMIC REVIEW, 10 March 1994.

ning of the nineties, were devoted to this subject.[125]

The already cited Eleventh Asian Regional Conference stated : "The principles contained in international labour standards, in particular the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, should be applied and serve as the basis for updating legislation and for sustained action at both national and enterprise levels".[126] Convention No. 155 is the most allround, policy-oriented and, again, flexible Convention in its category,[127] complemented not only by a Recommendation but also by numerous codes of practice tailored to different levels of development.

Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159)

Countries which have lived through devastating wars in a not too distant past, such as Cambodia or Viet Nam, shelter appalling numbers of disabled people.[128] The ILO claims : "Production benefits of rehabilitation, those benefits which add to the national output, have been demonstrated in countries representing the three main economic structures in the world : developed market economies, centrally planned economies, and developing country economies." At the World Summit for Social Development, governments were invited to "strongly consider ratification and full implementation of ILO Conventions' in ... areas ... relating to the employmetn rights of ... disabled ... people".[129] But how can rehabilitation be tackled, particularly when resources are tight ? Convention No. 159 attempts to provide some answers. Convention No. 159 and Recommendation No. 168[130] are typical examples of a Convention and a Recommendation operating in tandem : Convention No. 159 outlines the broad

---

[125] *See* International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), 83rd Session, 1996, 19.

[126] *See* ILO, *Report of the Director-General to the Eleventh Asian Regional Conference, supra* note 104, 189, para. 8.

[127] The Government of India explicitly praised the Convention for its flexibility during the preparatory stages of Convention 170 (Chemicals Convention, 1990) : ILO, *Safety in the use of chemicals at work*, Replies received and commentaries, Report V (2A) to the 77th Session of the International Labour Conference, Geneva, 1990, 18.

[128] About 7 million people or roughly 10% of the population in Viet Nam alone.

[129] ILO, *Report on the World Summit for Social Development*, Governing Body Doc. No. GB. 262/4, 262nd Session, March 1995, para. 17.

[130] Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).

action plan, Recommendation 168 adds the checklist. The Convention does not feature specific flexibility clauses, but a promotional tone echoes in each Article of the Convention.

9. Column no. 14 should be read with some scepticism. Each year government representatives are requested to submit a report to an Asian-Pacific Symposium on standards-related topics in which it is indicated which international labour Conventions have a good prospect for ratification.[131] Some governments remain elusive on the question, others list the same Convention (S) in consecutive years or shift from one set to another often without any ratification ever emerging. When these statements are sufficiently explicit and supported by information from other sources,[132] or simply are concerned with basic human rithts Conventions, they are listed in this coulumn. They should not be considered to reflect much more than intentions at departmental level. The label "na" stands for "not available" and indicates that any source of information is lacking. A dash menas that according to the sources available either there are no *ratifications considered* or these considerations are not made public.

10. The ILO supervisory bodies monitor the extent to which national law and practice give effect to international labour standards. There are roughly three categories of supervision[133]: (1) the regular supervision, substantiated by the Committee of Experts, (2) the constitutional representations and complaints procedures and (3) the special complaints procedure for infringements of trade union rights over which the Governing Body Committee on Freedom of Association exerts jurisdiction.

The numbers in column 15 following "C." refer to international labour Conventions with regard to which observations of the Committee of Experts are *pending*.[134] They are taken from the 1994, 1995, 1996 and 1997 Reports of the Committee of Experts, inasfar as they have not been listed in the 1995, 1996, or 1997 Reports as a case of progress.[135]

---

[131] These Symposia have been organized since 1986 to prepare ILO constituents, in particular governments, for forthcoming International Labour Conferences. Country reports are compiled and published by the International Labour Office every year.

[132] For instance formal or informal requests for ILO technical advice from the government, communications on the occasion of the activities intended to commemorate the ILO's 75th Anniversary (one of the initiatives proposed by the Organization was precisely to ratify one international labour Convention ; this elicited countries once more to list prospective ratifications, mostly with limited results). In the wake of the World Summit for Social Development the ILO started circulating questionnaires on the ratification and information concerning the seven fundamental ILO Conventions. ILO member States were asked whether they considered ratifying them ; if so, when this might take place ; and if not, to indicate the reasons preventing ratification of each of them. Results are regularly updated (*See* for instance ILO, *Reports of the Committee on Legal Issues and International Labour Standards*, Governing Body Doc. No. GB. 268/8/2, 268th Session, March 1997, Appendix III).

[133] *See* for more details : ILO, *Handbook of procedures relating to International Labour Conventions and Recommendations, supra* note 13, para. 52. Héctor Bartolomei e.a., *supra* note 9, 65.

[134] "Observations" are comments published in the Committee's report. In the Handbook (*Id.* at 20) they are somewhat sternly described as being "used for more serious or long-standing cases of failure in implementing obligations." The Committee also addresses (unpublished) direct requests to governments relating to "matters of secondary importance or technical questions, or [seeking] clarification on points on which the available information is insufficient to permit a full assessment of the effect given to international standards".

[135] A case of progress is a case in which the Committee of Experts "notes with satisfaction"

Reporting on ratified Conventions by governments is sometimes irregular due to various reasons (specific mention is made in the report of countries for which this is a recurring problem) and the effect these shortcomings can have on supervision is a chronic concern of the supervisory bodies.[136] Add to this a different supervision frequency for newly ratified Conventions and for different categories of Conventions and it should be clear why this coulumn does not claim absolute completeness. Application of the Conventions printed in *bold italic* have been discussed in the standing Conference Committee on the Application of Standards. If in addition they are underlined it means they have been the subject of a special paragraph in the Committee's report.[137] The numbers preceded by "#" refer to the serial number of the case pending before the Governing Body Committee on Freedom of Association. Although the Committee's recommendations are founded upon the law, its mandate is not a jurisdictional one. Therefore, "pending" in the present context means that the Committee is in the process of formulating its recommendations, or upon publishing its recommendations, and continues to exert a degree of scrutiny. The cases referred to are thus mentioned in the Committee's 297th through 306th Reports and are listed here, even when the legislative aspects have been drawn to the attention of the Committee of Experts (if the member State concerned has ratified Convention No. 87 or Convention No. 98).[138]

ANALYSIS OF THE RATIFICATION STATISTICS CHART

General

The Asian-Pacific region represents nearly three fifths of the world's population and 14% of the ILO member States.[139] With 526 ratifications on a total of 6437 it signs up for 8.2% of the worldwide number of ratifications.[140] The

that the law and practice have been brought into conformity with the Convention.

[136] *See* for instance the discussion in the Conference Committee on the application of standards : ILO, *Record of Proceedings of the 82nd Session of the International Labour Conference, 1995*, para. 56-61.

[137] A special paragraph constitutes the highest degree of public exrosure and is thus considered the highest "sanction" in the supervisory system.

[138] ILO, *297th Report of the Committee on Freedom of Association*, Governing Body document 262/7/1, 262nd Session, March-April 1995 ; ILO, *299th Report of the Committee on Freedom of Association*, Governing Body document 263/3, 263rd Session, June 1995 ; ILO, *301st Report of the Committee on Freedom of Association*, Governing Body document 264/42, 264th Session, November 1995 ; ILO, *302nd Report of the Committee on Freedom of Association*, Governing Body document 265/6/1, 265th Session, March 1996 ; ILO, *304th Report of the Committee on Freedom of Association*, Governing Body document 266/5, 266th Session, June 1996 ; ILO, *305th Report of the Committee on Freedom of Association*, Governing Body document 267/7, 267th Session, November 1996 ; ILO, *306th Report of the Committee on Freedom of Association*, Governing Body document 268/6, 268th Session, March 1997 ; ILO, *307th Report of the Committee on Freedom of Association*, Governing Body document 269/4, 269th Session, June 1997.

[139] The ILO counted 174 member States at 1 August 1997.

[140] These rather low percentages should be interpreted taking into account that in recent years, mainly due to the break-up of the Soviet Union and Yugoslavia the number of member States, as well as the number of ratifications has considerably risen.

average of 21 Conventions ratified per member State is well below the world's average of nearly 37. This situation is not new nor has it changed profoundly over the last 20 years. Including the chart figures between square brackets, the regional average amounted to 17 in 1969, the year in which the International Labour Organization was granted the Peace Nobel Price. On the eve of 1975 the figure had risen to just over 20. Eleven years later, this time discounting the square-bracketed figures, the average was still 20, compared with a global average of 34. At that time Europe accounted for an average of 57 Conventions, Western Europe for 60 Conventions, the Americas for 38, and Africa for 26.[141]

Total number of Conventions

An analysis of the total number of ratified Conventions reveals distinctive categories drawn along historical, regional and developmental lines. Each of the members of the Organization for Economic Development and Cooperation (OEDE) in the region (Japan, Australia, and New Zealand) more than doubles the regional average, although they are well below the OECD average of around 66.[142] If OECD entrant South-Korea endeavours to equal this figure it will need to close a gap of more than 61 ratifications. This high OECD deviation from the average hides the fact that 14 countries do not match the regional average. All former colonies in South Asia account for more than 30 ratifications. At the other end of the spectrum are the Pacific States. They do not attain the regional average, but still outstrip ASEAN, reaching a subregional average of just over 13. Low-scoring Nepal, Lao's PDR, and Cambodia are not necessarily exceptional ILO Members. For instance, Qatar and Namibia are no recent entrants to the ILO, but have ratified fewer Conventions. Botswana had ratified only two Conventions until June 1997, when it added nine Conventions to the record, four of which are basic human rights Conventions.

One mathematically distinguishable trend justifies some optimism. Whereas the ratification pace was rather slow in the period '75-'80 (Papua New Guinea's accession accounts for more than a third of the total for that period)

---

[141] K.M. Tripathi, *International labour standards - Papers on some selected Topics*, ILO Regional Office for Asia and the Pacific, Bangkok, 1986, paper no. 3, 1.

[142] The Organization for Economic Cooperation and Development counted 29 members on 1 August 1997 : the 15 European Union member States, Norway, Iceland, Switzerland, Turkey, Poland, Hungary, Czech Republic, United States, Canada, Mexico, Japan, Australia, New Zealand, and the Republic of Korea.

and particularly during the eighties (China's and the Solomon Ialands' are not substantially new ratifications but absorb 60% of all ratifications during that period), the nineties seem more promising. In half as much time, the eighties' total has been surpassed without the same massive support of the new entrants, South-Korea and Viet Nam. India, Indonesia, Pakistan, and the Philippines each ratified more than on Convention after more than 10 years of inactivity. ASEAN countries, in particular, did not register one single ratification during the eighties. Judging from the ratifications considered, there may be more to come with some well-calibrated assistance fro, the International Labour Office. Australia and Sri Lanka continue ratifying at a steady pace. Afghanistan and Cambodia may be expected to need more time to stabilize their institutional framework and Nepal will always have to cope with its geographical constraints.[143] The Pacific member States put their good intentions on record year after year (see "ratifications considered") without translating them into more ratifications.

Latest year of ratification

The column featuring the latest year of ratification shows that nearly half of the countries have not ratified an international labour Convention in the last ten years. It is symptomatic that none of the Pacific members has been able to improve its record after accession to the ILO. Only Singapore is in the same position.

ASEAN countries stand out. In inverted order : Malaysia has not ratified a single international labour Convention since 1974, Thailand since 1969, Singapore since its independence from Malaysia in 1965, Lao's PDR since 1964, and Myanmar since 1961. In more than 20 years none of these five countries have bothered to bolster social policies with the ratification of one single Convention. ASEAN countries have ratified other UN treaties partly overlapping with international labour Conventions, but, meaningfully, without the same supervisory procedures applying. For instance, all ASEAN member States have

[143] Some creative thinking is required to solve particular problems. Regarding the implementation of some international labour Conventions (note for instance that Nepal has ratified Convention No. 131) one cannot help wondering how to set up a functioning labour inspection system in a country of 18 million people where a one-way seven-hour walk to reach a construction site is not uncommon.

ratified the Convention on the Rights of the Child, instructing parties to protect children from economic exploitation and from hazardous of harmful work.[144] In the case of Thailand the existing "vast gap between laws, policies and practices" apparently has not hampered ratification of the Convention. Viet Nam, which has not ratified any of the Conventions on freedom of association, is a party to the International Convenant on Economic, Social and Cultural Rights and is, therefore, bound to guarantee freedom of association, explicitly including the right to strike.[145]

The fact that international labour Conventions are upheld by a supervisory system that is not exclusively controlled by governments is one important explanation for the general reluctance to ratify. The ideologically coloured controversy on human rights between predominantly East Asia countries on the one hand, and the United States and Europe on the other hand, offers a more specific explanation with regard to basic human rights Conventions. Indeed, East Asian countries-Malaysia, China and Singapore up front-will hardly let an occasion go by without warning against the universality or indiscriminately universal application of any instrument carrying a human rights label[146], or agains "pet Western definitions of "freedom" and "democracy."[147] Government circles within these countries perceive in the universal application a Western attempt to force upon them individualistic "rights" concepts which they

---

[144] *See* Art. 32 of Convention on the Rights of the Child was adopted by the United Nations General Assembly on 20 November 1989 (28 I.L.M. 1456 (1989)) and on 13 December 1996 only four ILO member States, none in the Asian-Pacific region, had not ratified the Convention.

[145] *See* Art. 8 of the Covenant. The Covenant was adopted by the United Nations General Assembly on 16 December 1966 and has been ratified in ASEAN by the Philippines and Viet Nam. Countries ratifying the Covenant can make reservations with regard to the application of specific Articles. As noted above, they do not have this option when ratifying international labour Conventions. The author was not in a position to verify whether Viet Nam has made a reservation with regard to Art. 8 of the Covenant.

[146] The distinction between universality and indiscriminately universal application is subtle and coined by Asian governments keen to ward off any interference in what they see as domestic affairs. It is best articulated in para. 8 of the "Bangkok Declaration" (Declaration adopted by the Ministers and Representatives of Asian States in the contex of preparations for the World Conference on Human Rights in Vienna) : " ... while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds".

[147] Bilhari Kausikan, *Asia's different standard*, FOREIGN POLICY 92, 1993, 40.

[148] *See* for instance an anthology by the long-serving former Prime Minister of Singapore, widely respected in East Asia as the standardbearer of neo-Confucianism, which is the doctrine often referred to as underlying the revival of Asian value-consciousness : Lee Kuan Yew, *East Asia comes into its own - The end of a long era of deference to the West*, THE JAPAN TIMES, 12 February 1995. For the official Chinese position on human rights

contend are now weakening the West itself.[148] Conversely they advocate to balance individual rights with a more communitarian right to development.[149] Professed "Asian values" such as family bondage, social harmony, or deference to authority are to be given priority over personal autonomy.[150] Opponents, also from within the region, have suggested that the "Asian values" theme and the regional aversion for human rights or at least some of its related notions are rooted in authoritarian rule forcing political stability upon the region.[151] This thesis is rather confirmed than challenged by certain government circles,[152] but also that the notions of community and State are not interchangeable.[153] Security concerns in Japan and ASEAN certainly account for the government-sponsored channelling of the labour movement in company-based rather than trade-based unions. This straitjacketing has, however, not prevented economic growth, thus strengthening the belief of some Asian governments in a distinct Asian way of wealth-sharing and achieving economic growth without sacrificing

---

see Information Office of the State Council, *Human rights in China*, Beijing, 1991, excerpted in Henry Steiner and Philip Alston, *International Human Rights in Context - Law, Politics, Morals*, Clarendon Press, Oxford, 1996, 233.

[149] It should be noted that, apart from the political discussion, "soft law" on the right to development has been adopted. The right to development is laid down in a United Nations Declaration adopted by General Assembly Resolution 41/128 of 4 December 1986. It encompasses the right of "every human person and all peoples" to enjoy economic, social cultural and political development (Art. 1), but with the human person as the central subject, active participant and beneficiary of development (Art. 2).

[150] For an academic discussion on the universality of human rithts and the particularism of Asian values, *see* the four articles in Part I (Conceptual Perspectives) of HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC, *ed. by* James T.H. Tang, Pinter, London and New York, 1995, 13-67.

[151] *See* National University of Singapore professor Simon Tay, *In search for human rights, Asians mustn't ape or demonize West*, JAPAN TIMES, 25 August 1995 and the prompt reply one week later from Harvard's Human Rights Program Director John Tobin, *Exposing the 'dirty secret' of Asian values*. *See* for a dissident view on "Asian values" from within the region : Thio Li-ann, *Human rights and Asian Values : At the Periphery of ASEAN-EU Relations ?* PERSPECTIVES ON ASEAN-EU RELATIONS UNDER THE NEW ASIA-EUROPE PARTNERSHIP, Conference at Chulalongkorn University, 13 February 1997 (expressing the view that the "Asian school" affords a holistic perspective on what is needed to vindicate human dignity, but that due to exclusive articulation by the government certain human rights have been denied or neglected in the name of economic growth). For a brief discussion of authoritarian rule and chances for achieving liberal democracy *see* Erik Paul, *The Future of ASEAN : A Geopolitical Perspective*, GLOBAL, GEOPOLITICAL CHANGE AND THE ASIA-PACIFIC - A REGIONAL PERSPECTIVE, Dennis Rumley e.a. (ed.) Avebury, 1996, 235-239 (believing Thailand has the best prospects to achieve a liberal democracy).

[152] *See* Bilhari Kausikan, *supra* note 147, 38 : genocide, murder, torture, or slavery are clear infringements of human standards of behaviour (and thus belong to the core of international law), but detention without trial, curbs on press freedom and draconian laws to break the power of entrenched interests are necessary implements of "exercising authority in heterogeneous, unevenly modernized, and imperfectly integrated societies with large rural populations and shallow Western-style civic traditions."

[153] *See* further on this point Yash Gai, *Human Rights and Governance : The Asia Debate*, Australian Year Book of International Law, 1994, 17.

social cohesion. A World Bank report distinguished the Asian growth strategy as follows :

> "These wealth-sharing measures have differed from the typical redistributive approach of most developing economies. Instead of granting direct income transfers or subsidizing specific commodities (for exmple, food of fuel), HPAE (high-performance Asian economies *ed.*) leaders have favoured mechanisms that increase opportunities for upward mobility. The frequent result is that individuals and families, provided the opportunity and convinced that efforts will be rewarded, study more, work harder, and save more."[154]

Thirdly, a list of "imperfections" in the Organization's standard-setting activities is cited as unconducive to more ratifications : (1) excessively burdensome reporting requirements ; (2) complexity of instruments ; (3) legalistic interpretation by the supervisory bodies with insufficient consideration of national conditions ; (4) the elevated pace of standard-setting ; and (5) a long overdue update of the International Labour Code. Governmments claim to use Conventions as a source of inspiration, but question their universal viability (in spite of the fact that solid majorities have adopted them) and thus prefer to apply them autonomously.[155]

The arguments have been, or will be, dealt with elsewhere in this article, but two observations may be fitting at this stage. (1) The great majority of international labour Conventions do not carry a human rights label, do not directly confer rights upon individuals and, indeed, expressly require implementation according to the level of development. Their ratification should, consequently, not be adversely affected by any debate on the universality of human rights. (2) Monopolization by government of defining national particularities while implementing international labour Conventions goes against the tripartite character of the International Labour Organization and, more particularly is strongly discouraged in Recommendation No. 152.[156] Conventions are flexible so that

---

[154] World Bank, *The East Asian Miracle - Economic Growth and Public Policy*, Oxford University Press, Oxford, 1993, 270.

[155] *See* the report submitted on behalf of the Malaysian government, *Report on the ILO Asian-Pacific Symposium on Standards-Related Topics (Beijing, China, 30 March-2 April 1993)*, ILO/ROAP, Bangkok, 1993, 81. Symptomatic is for instance Malaysia's statement on the ratification prospects for Convention No. 100 : "Malaysia has stated that the principle of the Convention is applied in law and practice, but makes no comment on the ratification prospects" (*see* ILO, GB. 264/LILS/5. *supra* note 97, para. 34).

[156] *See* para. 5 (c) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

national law and practice can reflect national particularities, while complying with the standard. However, Conventions firmly reject a governmental privilege in defining particulars. They will always make flexibility conditional upon the involvement of workers' and employers' organizations.

Ratification of recently adopted Conventions

Ten member States have not considered it suitable to ratify any Convention adopted in the course of last 25 years. A further three member States have ratified only one Convention adopted in the same period of time. About a third of the member States have not ratified any Conventions adopted in the course of the last 30 years. Lao's PDR's ratification record is a respectable 65 years old (no ratification of a Convention adopted since 1930) and all ILO standard-setting efforts since 1948 seem lost on Myanmar.

Ironically, the results of this column call for an expeditious update of the ratification record of some countries, especially those in ASEAN. Admittedly, international labour Conventions do not entirely lose their effectiveness only because they are not ratified and, even if ratified, proper implementation is not guaranteed. Nonetheless, these results raise some questions as to the rhetoric of some member State governments. (1) How credible is a country, not ranking among the least developed, sustaining that "some" international labour Conventions are outdated if it has not ratified any one of the seventy most recently adopted Conventions (Singapore) ? (2) Is it not untenable to implicitly declare irrelevant, if not only 166 Conventions, then all Conventions adopted in the course of the last 30 years, mainly because a government is irked by the fact that implementation is not entirely left to its own discretion (Malaysia) ? (3) How serious can one take a country claiming that the protection of workers' rights does not belong to the World Trade Organization but to the International Labour Organization, when for more than 25 years it has refused to endorse the standard-setting action of this Organization with a single ratification (Thailand) ? Imperfections in the ILO's standard-setting activities provide no exhaustive explanation. The complaints are not new, the need for improvement has been acknowledged and, as shown above, the system is being overhauled.[157]

[157] The difficulty with "maximalist" Conventions, the need for revision and even the usefulness of more "soft law" were discussed on the occasion of the ILO's 50th Anniversary (*See* ILO,

The ratification figures rather suggest an outright rejection of Conventions by these governments (for reasons mentioned in the previous paragraph) rather than discomfort with imperfections.

The complexity of instruments must be contemplated as an important cause of the reluctance to ratify. Two features, rather than the contents, render the International Labour Code challengings to the less conceptually-oriented Asian mind : a high degree of abstraction and sequential proliferation. The Code and its composition breathe an unshakable belief in the objectivity of analytical reasoning, in the power of the concept to shape reality, and in the relentless, incremental refinement of the paradigm through dialectic dabate. The result is ever more - and more abstract - instruments. Such argument could easily lead to undermining the universality of human rights and the validity of the rule-of-law. These paragraphs do not aim to add another chapter to the complicated and politically sensitive debate on universality hinted at above. The position taken here starts from the assumption that the principles set forth in the Declaration of Philadelphia, as further elaborated upon in international labour Conventions, are universal, as borne out by the Declaration itself. However, it cannot be assumed that formal instruments such as international labour Conventions can be as readily grasped and implemented in East Asian societies as in, say, European societies, because a formal legal system has never been as prevalent in shaping East Asian societies.[158] China and indirectly most other

---

Defending values, promoting change - Social justice in a global economy : an ILO agenda, supra note 9, at Chapter 3). The adjustment of the reporting procedures by the Governing Body is an implicit recognition of the burden that the reporting obligation puts on national labour administrations. It is sufficient to read the most recent Governing Body documents referred to in this paper to realize the work that is being undertaken to correct these imprerfections.

[158] Culture does not only imply government-controlled processes but the evolving set of rules, customs and beliefs any society lives by. The universality of human rights means that equal rights are assigned to every human being for the sole reason that he is a human being (*See* the discussion in M. Freeman, *Human rights : Asia and the West*, in HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC, *ed.* James T. H. Tang, Pinter, 1995, 17). Problematic for Asian cultures appears to be rather the (lack of) process whereby universality is established, i.e. the fact that it is decreed rather than acquired. An empirical management study comparing value systems for creating wealth in capitalist cultures all over the world (*See* Charles Hampden-Turner and Fons Trompenaars, *The Seven Cultures of Capitalism*, Piatkus, London, 1994) convincingly illustrates, from a business perspective, the different ways of reaching universal insights. The study, in this case contrasting Japan with other capitalist societies "suggests that while Americans and Northwestern Europeans like to state universal truths and rules, and then require that particular situations and human relationships submit to those universals and be guided by them, the Japanese reverse these priorities. For them, the particular relationships of *honne*, a spirit of intimacy between persons, is the moral cement of society, and to the extent that such relationships are trusting, harmonious and aesthetic, rules of

East Asian societies have been shaped to a great extent by Confucianism, the premises of which by nature do not correspond well with universality, the supremacy of a formal legal system and complementary objective legal reasoning.[159] Japan for instance started a massive importation of European legislation only when it decided to shift from a feudal to an industrial society in the 19th century. While it cannot be said that universal rights or the rule-of-law are not viable in these societies, the domestic legitimacy of these principles appears to rest on gradual acquisition from more experienced societies through their direct engagement and practical illustration. The understanding of the International Labour Code in the Asian-Pacific region, however diverse, would greatly benefit from such support. Nurturing interpersonal relationships and a demonstrated understanding of particular situations do not necessarily implore an abdication from universality or indulging in cultural relativism. But it may prove to be more instrumental in East Asian cultures than the flat presentation of a petrified blueprint for social justice, however well-formulated universally adopted. Universality matters because of the commonality of the human condition, because human dignity, as is the human person, is indivisible and because it is believed that world peace is dependent upon it. The ILO has been commended for taking an integrated approach to human rights, balancing civil and political rights with economic, social, and cultural rights, and at the same time proving that it is possible to define and supervise the implementation of the latter category of rights.[160] This seems to justify an additional investment in their promotion. To translate the abstractions of the International Labour

---

wider generality can be derived from them" (*Id*, at 105). From this inductive particularism flows for instance that the harmony-building of rituals and ceremonies is preferred over the more detached legal harnessing of the self-seeking individual or interest group. Similarly, the emphasis a society puts on the development of law and its enforcement is equivalent to its supply drive and disposition to analyze and codify, rather than its eagerness to respond to a particular demand and disposition to integrate particulars.

[159] Ronald P. Peerenboom, *What is wrong with Chinese rights ? : Towards a Theory of Rights with Chinese Characteristics*, HARVARD HUMAN RIGHTS JOURNAL 6, 1993, 46. Peerenboom lists the following key features of Confucianism : rejection of abstract, universal dogmas and ethical principles ; attention to the particular historical context of the parties : attempt to find and build on common ground in order to realize a solution amenable to all parties ; belief in multiple possible resolutions to social and political conflicts ; focus on persuasion and rejection of force (footnote 76). Importantly, he identifies Confucianism as a major impediment to a workable system of rights in China, demonstrating, however, the distortions in the picture of the harmonious Confucian society and the fact that some East Asian governments happen not to live up to self-selected standards.

[160] Virginia A. Leary, *Lessons from the Experience of the International Labour Organisation*, in THE UNITED NATIONS AND HUMAN RIGHTS - A CRITICAL APPRAISAL, edited by Philip Alston, Clarendon Press, Oxford, 1992, 590 and 617.

Code into the particularities of everyday Asian social life, the ILO should be closer to its Asian constituents than to its constituents elsewhere in the world that are more familiar with the abstractions of the law (for instance through colonization). The universal code is valuable, but the real work starts with detailed explanations.

To illustrate the argument about abstractions, consider the reference, earlier on, to the division of Conventions into learning categories : basic human rights, promotional, framework, regulative Conventions, and Conventions for specific categories of workers. The latter two categories are the most specific and detailed in providing for protection of workers by member States and most often require legislative action. The former three categories are considerably more abstract and leave discretion to governments as to the type of action to be taken. Not less than 70% of the ratifications by Asian-Pacific countries registered since 1981 fall in the latter categories in spite of the considerable scope for discretion residing in the former three categories. Only 5 out of 19 Conventions ratified by ASEAN countries during the same period come under the former categories. Considered from a different angle, 9 out of the 19 ASEAN ratifications in the same period concerned a Convention adopted befoer 1950, i.e. without their participation.

These simple figures may offer a different perspective on the dismal ratification record. By maintaining a low-profile in the region the ILO allows the legitimacy of universality to be questioned and the ratification debate to be monopolized by government which, be it for reasons of stability, competitiveness, or simply political convenience, brush aside any autonomous impetus from workers' or employers' organizations. As constituents are taught to cope with more complex instruments, ratifications of such instruments are more likely to follow.

Meanwhile, complacency of Asian-Pacific member States with the present situation, and protracted hesitation or outright refusal to step-up ratification efforts will raise wornes within the international community as to the commitment of this region to the plight of its working population.

Finally, a comparison with the ratification record of African countries makes it clear that a low ratification performance does not automatically result from underdevelopment. In terms of economic development Africa lags for

behind East Asia, still its ratification average exceeds 27. Only 16 member States, that is less than a third, have not ratified any Convention adopted in the course of the last 25 years.

Basic human rights

In quantitative terms, the regional basic human rights ratification record is again rather disappointing : 40% of the countries have not ratified more than 2 Conventions ; 16 not more than 3. Only Australia has ratified all Conventions in this category. The ILO's Director-General termed the campaign he launched in 1995 in the wake of the 1995 World Summit for Sacial Development aimed at having more fundamental rights Conventions ratified a "fairly encouraging success."[161] Arguably, this does not aptly desribe the progress made in the Asian-Pacific region, where only the ratifications of Convention No. 87 by Sri Lanka and Convention No. 98 by Nepal were registered since then.

Forced labour. As elsewhere in the world *Convention No. 29* is by far the most widely ratified Convention. Six countries have not ratified Convention No. 29 : Afghanistan, China, Mongolia, Nepal, the Philippines and Viet Nam. Specific reasons have not been reported, but to a lesser or greater extent they are likely to be found amongst the following requiremints of the Convention, as interpreted *de facto* by the Committee of Experts :[162]

(1) Prison labour can be exacted, but only as a consequence of a conviction in a court of law. Even in such case, hiring of prison labour to private undertakings is not permitted, even not if those undertakings operate workshops inside prisons or are engaged in the execution of public works.
(2) Bonded labour is labour exacted from people under slave-like conditions to make them repay thier own, their parents' or their ancestors' debt. This practice, still prevalent in South-Asia, is to be abolished within the shortest possible time by countries ratifying Convention No. 29.
(3) Legal provisions establishing a duty to work as a counterweight to the right to work and enforced by sanctions are at variance with Convention No. 29's obligation not to exact work under the menace of any penalty.
(4) The performance of minor communal services can be exacted form the members of a

[161] ILO, *The ILO, standard setting and globalization, supra* note 9, 14.
[162] ILO, *Abolition of Forced Lebour, General Survey by the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4B) to the 65th Session ot the International Labour Conference, 1979.

community in their own direct interest. The exception deviates from the general prohibition of forced labour and cannot be extended to exact the performance of general public and services (e.g.construction of railways or dikes).

Looking for clues explaining why *Convention No. 105* has fetched considerably less ratifications, the history of application and eventual denunciation of the Convention by Malaysia in 1990 is most instructive.[163] For more than 25 years the supervisory dialogue centred on :

(1) various legal provisions, *inter alia* of the Internal Security Act, 1960, granting administrative authorities discretionary powers to make orders imposing restrictions or prohibitions on the exercise of the rights of expression and political activities. Contraventions of these restrictions or prohibitions are punishable with imprisonment involving an obligation to perform labour. Articlel 1 (c) of Convention No. 105 prohibits the use of any form of forced labour "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system".
(2) merchant shipping ordinances impose penalties involving compulsory labour on seamen for various breaches of discipline. The relevant provisions infringe Article 1 (c) of the Convention.
(3) the Industrial Relations Act, 1967, according to which the competent Minister may impose compulsory arbitration in respect of any trade dispute if he is satisfied that it is expedient to do so, thereby rendering any strike (not only one involving essential services) illegal and punishable with imprisonment involving an obligation to work. This infringes Article 1 (d) of the Convention.[164]

Freedom of association. *Convention No. 87* has been ratified by over 65% of all ILO member States, but remains the least ratified in Asia with a mere 32% of the Asian-Pacific countries on record. This contrasts sharply with the solemn declarations for instance at the latest Regional Conference. In ASEAN only the Philippines and Myanmar have ratified Convention No. 87.[165]

Convention No. 98 on the other hand comparatively scores much higher.

[163] Singapore earlier denounced Convention No. 105 after a very similar debate, while Thailand has not denounced the Convention but is involved in an identical debate regarding provisions in the Anti-Communist Activities Act, 1952, Labour Relations Act, 1975, State Enterprise Labour Relations Act and Criminal Code.
[164] *See*, for instance, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A) to the 71st Session of the International Labour Conference, 1985, 266.
[165] The application of Convention No. 87 by Myanmar is a cause of special concern : since 1981 its case had been discussed 9 times in the Standing Conference Committee on the Application of Standards and on at least five occasions (1982, 1983, 1993, 1995 and 1996) it has been highlighted in a special paragraph in the General Report of the Conference Committee.

One reason may be that whereas Convention No. 87 proclaims a broad principle that has the potential of concentrating power outside the governmental circuits (i.e.the right of workers to form or join unions of their own choosing to defend their rights), Convention No. 98 is more confined to the protection of trade unionists and securing the right for trade unions to exercise their main historical function, i.e.collective bargaining.[166] The main difficulty preventing ratification of Convention No. 87 stated by Malaysia is illustrative : "..it would enable the formation of general unions which might be led by persons having nothing to do with the activities or interests represented by the unions and pursuing political or even subversive aims."[167] In the same report Singapore struck a more implicit yet not less decisive tone : "the national industrial relations system emphasizes consultation and the amicable resolution of industrial disputes through conciliation and arbitration."[168]

This brings us to a second reason, namely the particular evolution of economic development in newly industrializing economies. Governments have played a central role in the shaping of export-led/investment-led industrialization, keeping the clout of trade unions firmly in check with regulations to establish a peaceful industrial climate through the settlement of disputes and corresponding limitations on the right to strike and control of labour unions, either directly or by encouraging close employers--workers relations (e.g. by favouring enterprise unions over industrial unions).[169] In Singapore, for instance, the National Trade Union Congress, closely linked to the ruling People's Action Party is the workers' negotiating agent, but also an important provider of goods and services.

The sometimes specific application of such restictions in so-called export processing zones betoken their developmental inspiration. Pending observations of the Committee of Experts on the application of both Conventions in

---

[166] The argument that "opposition to trade unions is in the first place opposition to an opposition" is echoed in the Resolution concerning trade union rights and their relation to civil liberties which the International Labour Conference adopted in 1970. *See* on the legal application of this Resolution : Nicolas Valticos and Gerald von Potobsky, *supra* note 15, para. 121-123.

[167] ILO, *Freedom of association and collective bargaining*, General Survey by the Committee of Experts, Report III (Part 4b) to the 81st Session of the International Labour Conference, Geneva, 1994, p.130, para. 295.

[168] *Id.*, at para. 304.

[169] The Labor Code of the Philippines Provides a good illustration of the kind of policy referred to. *See* ILO, *Report of the Committee of Experts on the Applications of Conventions and Recommendations*, Report III (Part 4A), 85th Session, 1997, 192 (the Philippines is the only ASEAN country (bar Myanmar) to have ratified Convention No. 87).

export processing zones in Bangladesh and Pakistan[170] prove that the occasional occurrence of higher wages or fringe benefits cannot be considered to make up for the lack of the sustainable development caused by the restrictions.

All countries, except for Australia which was a "case of progress" in 1995,[171] had comments pending on the implementation of Convention No. 87, Regional discomfort with Convention No. 87 clearly reaches beyond the ratification stage.

But, the unfavourable climate for the ratification of Convention No. 87 is not altogether irreversible. A number of cases currently examined by the ILO's Committee on Freedom of Association prove that there is a determination of workers in several countries to pursue the right to form or join organizations of their own choosing.[172]

Twelve countries have ratified neither Convention No. 87 nor Convention No. 98. Prominent among those countries is for instance India, which has on the other hand ratified Convention No. 141, guaranteeing the freedom of association for rural workers.[173] The kind of reasons repeatedly stated by the Indian government are representative of the problems experienced by many other countries : (a) an absence of legislation governing recognition of trade unions, (b) the coverage of supervisory and managerial employees and (c) application in principle of the Conventions to civil servants who are governed by Government Servants Conduct Rules.[174] Faithful intentions are regularly formulated at the level of labour administration, occasionally with the support of workers' and employers' organizations. For instance, a National Tripartite Seminar held in early 1992 recommended ratification of both Conventions.[175] The

---

[170] ILO, *Report of the Committee of Experts on the Applications of Conventions and Recommendations,* Report III (Part 4A), 85th Session, 1997, 149 (Bangladesh) and 185 (Pakistan).

[171] ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations* Report III (Part 4A), 82nd Session, 1995, para. 103.

[172] *See* for the countries that have not ratified Convention No. 87 e.g. Case No. 1865 (Republic of korea -- legitimation of trade unions representing teachers, automobile workers, subway workers, etc.), Case No. 1817 (India -- right of public servants to join organizations of their own choosing), Case Ne. 1581 (Thailand -- legitimation of state enterprise unions), Case No. 1773 (Indonesia -- refusal of labour) registration without recommendation from the only registered national trade union centre).

[173] Rural Workers' Organizations Convention, 1975 (No. 141).

[174] *See* for instance the report submitted on behalf of the Indian government, *Report on the ILO Asian-Pacific Symposium on Standards-Related Topics (Beijing, China, 30 March -- 2 April 1993), supra* note 153, at 66 - 67 or more detailed ILO, *International Labour Standards -- Report of National Tripartite Seminar,* National Labour Institute, New Delhi, 1993, Annexure 10, 94.

[175] ILO, *Report of National Tripartite Seminar, ibid,* 22-23.

political will to enact new legislation or to modify existing legislation is, however, impeded by a confrontational and deregulatory predisposition. As to the confrontational stance, only recently a representative of the Indian Government declared :

> "The rights of association of civil servants and of employees performing managerial, administrative and supervisory work, are not in conformity with the Conventions, which the Government states are largely influenced by western concepts."[176]

Secondly, India is currently deregulating a protected and largely agriculture-based economy with a vast informal sector. High labour standards (such as job security) for a relatively small and well-protected industrial sector brought about under the influence of the trade unions have been blamed for sluggish economic development and poverty aggravation in the informal sector.[177] A promotional strategy for both Conventions must take these concerns into account.

Equal treatment. A similar picture emerges with regard to the ratification of Convention No. 100 and Convention No. 111 : 11 countries have ratified neither. Within ASEAN the Philippines has ratified both. Indonesia has ratified only Convention No. 100.

Convention No. 100 has been ratified by 11 countries spread evenly across the region. The principle of equal pay between men and women for work of equal value is a matter of human dignity (and therefore a human right), but has also economic ramifications. Central to the promotion of Convention No. 100 is raising awareness of the positive impact implementation of this Convention has on inter-household equalities of income and consumption distribution, and the mitigating of labour shortages in fast-growing economies, particularly where equal pay is promoted via the overall promotion of equal access to employment, as envisaged by Recommendation No 100. The general status of women and men in employment and society,[178] as can be seen also from the prevailing employment of women as a low-skilled workforce does not encourage ratification, at least not in as far as countries disregard the promotional aspect of the

---

[176] ILO, GB. 264/LILS/5, *supra* note 97, at para. 26.

[177] *See* the summary of some studies in Roger Plant, *Labour Standards and Structural Adjustment,* Geneva, International Labour Office, 1994, 83-84.

[178] *See* on the considerable differences in the status of women with respect to men between the different Asian subregions IFAD's womens' status index, *supra* note 78.

Convention. The share of women as productive low-wage workers in manufacturing employment in export-processing zones often exceeds 80%. This lead an ILO report to state that "rapid industrialization pushing these countries to newly industrialized and newly industrializing status was as much female-led as export-led."[179] In Malaysia, for instance, women are reported to make up about 90% of assembly line workers in the electronics industry and 70% of the employment in the textiles industry. Although they obtain similar pay for similar work, an overall wage gap exists because only few women perform better paid jobs.[180] Still Malaysia reported that there are no difficulties in applying Convention No. 100 and no obstacles to ratification, but without result.[181]

A common misapprehension of the inflationary pressures resulting from implementing the Convention is another cause. Convention No. 100 is promotional in the sense that where the government is not in a position to exert direct or indirect influence on the level of wages, it only has to promote, not ensure, the application of the Convention.[182] Thus Sri Lanka was not justified in arguing that the principle of equal remuneration cannot be implemented in all sectors, and therefore cannot ratify the Convention.[183] Convention No. 100 aims to guarantee the rights of women workers receiving remuneration from their employer arising out of their employment. Protection of female home-workers is the subject of Convention No. 177[184] and union rights in the context of contract labour will be regulated in the near future.[185]

Convention No. 111 aims to eliminate discrimination in employment and occupation, on grounds of race, colour, sex, religion, political opinion, social origin or national extraction. The position of ethnic minorities in states that

---

[179] Lin Leam Lim, *The employment of women and children in Asia and the Pacific : an ILO perspective,* September 1993, (unpublished).
[180] U.S.Department of Labor, *Foreign Labor Trends (Malaysia), 1992-1993*, 1994, 4-5.
[181] ILO, *Equal remuneration,* General Survey by the Committee of Experts, Report III (Part 4b) to the 72nd Session of the International Labour Conference, Geneva, 1986, 5, para. 8.
[182] ILO, *Equal Remuneration, supra* note 181, 13, para. 24.
[183] ILO, *Equal Remuneration, supra* note 181, 5 and 166-167. More specifically, Sri Lanka operates wages boards for fixing wages in different trades. In a number of trades the principle could allegedly not be implemented, because of a "tendency for employers to engage male workers as their output is much higher and slso as they are capable of longer periods of work." (*Id.*, 167, footnote 2). The Committee reacted to this typocal misunderstanding stating that wage differentiation according to output is not prohibited, Provided, of course, that output differentiation can be objectively established.
[184] Home Work Convention, 1996 (No. 177).
[185] An international labour Convention on contract labour is slated for adoption in 1999.

find it difficult to maintain, or in some cases establish their authority, traditional job segregation on the basis of sex, and ideological or religious preferences, may make countries shy away from ratifying Convention No. 111. Although political will is most certainly a prerequisite for the implementation of this fundamental Convention, its immediate requirements should not be overstated. The Committee of Experts has remarkably held that the Convention is "sufficiently flexible"[186] and "partially of a promotional nature" in holding that only two concrete measures are immediately required upon ratification : the establishment of a national policy pursuing the elimination of discrimination, and the repeal of any legislation or regulation inconsistent with the policy.[187] The need to adopt or further improve national legislation (Sri Lanka, China) or the existence of discrimination in wages paid to women and men in certain sectors (Sri Lanka) have often been cited as an impediment to ratification.[188] The Malaysian government stated in 1988 that it "had no immediate plan to ratify the Convention but would continue to review its labour law and practice as far as possible to be in line with ... the Convention ...."[189] Malaysia probably referred to its *bumiputera* policy of promoting the employment of the Malay population when it reported that although"contrary to the spirit of the Convention, [it] has found it necessary to intervene in the employment market to correct imbalances in employment levels which have failed to reflect the racial composition of the country."[190] The Committee replied that special protection or assistance measures adopted for ethnic groups which have been subjected to discrimination in the past are not deemed to be discrimination according to Art.2 of the Convention.[191] Japan cited the need "to give consideration to the harmony between domestic law (guaranteeing employers' freedom to contract *ed.*) and the Convention"[192] as an impediment to ratification. Japan might fear that

[186] ILO, *Equality in Employment and Occupation,* General Survey by the Committee of Experts, Report III (Part 4b) to the 83rd Session of the International Labour Conference, Geneva, 1996, 53.
[187] *Id.*, at 54.
[188] ILO, *Equality in employment and occupation,* General Survey by the Committee of Experts, Report III (Part 4B) to the 75th Session of the International Labour Conference, Geneva, 1988, p.11, para. 13.
[189] *Id.*,
[190] *Id.*, at 52.
[191] *Id.*, 54.
[192] Part of the problem Japan is facing in implementing Convention No. 100 is caused by the scant opportunities Japanese women have to accumulate seniority and follow the same career paths as their male colleagues. The Japanese government takes the position that this is an aspect for consideration under Convention No. 111, not Convention No. 100.

ratification of Convention No. 111 is going to exacerbate the supervisory comments it is encountering under Convention No. 100. Actually, the opposite might be true. The Equal Employment Opportunity Law (1985) requires employers to "endeavour" to give equal opportunity and treatment to women with regard to recruitment and hiring, and job assignment and promotion and prohibits discrimination against women with regard to education and training, employees' fringe benefits and mandatory retirement and dismissal.[193] This legislation, at least on the Experts' interpretation above, would probably qualify for a start, while enhanced education and training opportunities for women are anyhow indispensable in promoting the principle of equal pay for work of equal value.[194]

In conclusion, countries like Pakistan, India, and Japan[195] prove that it is possible to ratify Conventions, experience tenacious problems of application and still command respect by not shying away from dialogue. Although a professed source of inspiration, basic human rights Conventions fail to shape in particular the law and practice of ASEAN countries to such an extent that ratification ensues. This is disconcerting to the extent that the international community interprets it as a lack if commitment to a "minimum programme" underpinning economic globalization as well as sustainable development. Basic human rights Conventions are said not to warrant flexibility, but supervisory comments with regard to Convention No. 100 and Convention No. 111 intimate a milder view. However, provided that abundant misunderstandings on the extent of fiexibility or emphasis on promotion can be cleared, it is not all sure that it will support further ratifications : flexibility may be seen as hollowing out the substance of standards, while widening the margin of appreciation by the Committee of Experts. The next step then is questioning whether the Committee of Experts is sufficiently equipped to assess the full range of development constraints.[196]

---

[193] Art. 7-11 of Law No. 113 of July 1,1972, as amended by Law No. 45 of June, 1,1985.

[194] ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), 85th Session, 1997, 252.

[195] Japan has outstanding comments of a reasonable magnitude in every of the three basic human rights domains, more specifically with regard to the application of Convention No. 29, Convention No. 87 and Convention No. 100. *See* ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), 85th Session, 1997, p.82, 175 and 251. India has an impressive list of comments pending on all levels (*see* ratifications chart).

[196] In fact the supervisory bodies do not need to assess the full range of development constraints in implementing for instance a promotional Convention, since methods are left to the discretion of member States. But it does not help ratification if the implementing

Conventions for biennial reporing

Turning to the Conventions, which in addition to the basic human rights Conventions have been selected for reporting every two years, only Australia and New Zealand have ratified three out of these four Conventions. It is striking that not a single country has ratified **Convention No. 129**, compared to a global ratification figure of 32. The constraints that Convention No. 129 poses, have been summarized by the Committee of Experts as follows :

> "The shortage of financial, human and material resources [confines labour inspection systems mainly to urban areas and] prevents them from overcoming the enormous difficulties of supervising a large number of agricultural undertakings (often small ones) whose remote geographical positions in relation to the inspection offices entail long journeys".[197]

The vast populations in still predominantly agriculture-based economies,[198] and in some cases the sizes of the countries (China, India and Indonesia) are aggravating factors. While the financial and capacity-building implications of setting up a labour-inspection system are often cited as major difficulties to ratifying other Conventions, such as Convention No. 155, Convention No. 131 or Convention No. 138,[199] it is remarkable to see that **Convention No. 81** is one of the three most widely ratified Conventions in the Asian-Pacific region, and that it has attracted ratifications as recently as 1985, 1992, and 1994.[200] The record shows that Asian-Pacific countries take to heart the message that "labour legislation without inspection is an essay in ethics rather than a binding social discipline."[201] At the same time, it opens some room for ratification of the sampled Conventions discussed below, particularly in view of the fact that only

---

country is convinced that the objectives and the fundamental principles, the observance of which fall within the jurisdiction of the supervisory bodies, outlaw too many preferred methods.

[197] ILO, *Labour Inspection,* General Survey by the Committee of Experts, Report III (Part 4B) to the 7lst Session of the International Labour Conference, Geneva, 1985, p.164, para. 330.

[198] In Indonesia, which is after all considered an emerging economy, the agricultural labour force amounts to approximately 50 million people.

[199] A typical example is India, that has also ratified Convention No. 81. During the 1995 Conference Committee discussion on "Ratifications and denunciations" the "Government member of India noted that inability to ratify did not meam a government did not intend to deal with the concerns of a Convention : the problem was often one of enforcement ; " (ILO, *Record of Proceedings of the 82nd Session of the International Labour Conference, 1995, 24/20,* para. 54).

[200] Only preceded by Convention No. 29 (18 ratifications), Convention No. 19 (16 ratifications) and Convention No. 98 (13 ratifications).

[201] ILO, *Labour Inspection,* General Survey, *supra* note 197, para. 332, p.165.

in two cases comments from the Committee of Experts are pending. A favourable characteristic of the Conventions -- and a point which is often misunderstood -- is that none of the Conventions mandate duplication of inspection systems to deal with separate matters such as health and safety, minimum age or minimun wages.

In comparison, Convention No. 144 (10 ratifications) and Convention No. 122 (9 ratifications) have rather disappointing records, notwithstanding their central position within the ILO's mandate and the absence of extensive overhead requirements, "hard" commitments, or the inevitable adoption of new legislation. *Convention No. 144* mandates the operation of procedures for effective consultation on standards-related matters (such as reporting on ratified Conventions) between the ILO's national constituents. The ratifying member State is free to determine the nature and form of procedures, meaning, for instance, that it is not required to establish a special body and that the procedures may even be operated simply by written communications.[202] Equally, the scope of consultation can be extended beyond social policy issues covered by international labour standards. Six ratifications occurring in the last five years bear witness to a strong potential for further ratifications. Ratifications in ASEAN only by the Philippines and Indonesia intimate a sceptical reception of the Convention in countries with tightly controlled industrial relations patterns. However, while tripartite consultations are meaningless unless it is ensured that the participating representatives of workers and employers can freely determine their positions, supervisory comments on the application of Convention No. 87 and 98 have no bearing on the scope for ratification of Convention No. 144.[203] Phrased in more straightforward terms, a country may harbour a degree of freedom of association not satisfying the requirements of Convention No. 87 and 98, but still have sufficiently free and representative workers' and employers' organizations to operate the procedures envisaged by Convention No. 144. A government-imposed decentralization of labour relations machinery may affect the autonomy of workers' organizations to a degree as to constitute a problem of application under Convention No. 87, but still grant these organizations sufficient

[202] An aspect misunderstood by Thailand : ILO, *Tripartite Consultation (International Labour Standards*, General Survey by the Committee of Experts, Report III (Part 4B) to the 68th Session of the International Labour Conference, Geneva, 1982, 48, para. 190.
[203] *Id.*, 16-17, para. 51-54.

independence so as to create a meaningful tripartite discussion. At the same time, tripartite cooperation should not too readily be identified with a redistributive type of economic policy. An ILO report recently noted a general pattern of tripartite discussion shifting emphasis from a rigid system targeted at the redistribution of the fruits of growth by emphasizing full employment and the provision of welfare benefits, to job creation through maintaining or restoring enterprise competitiveness.[204]

A member State ratifying *Convention No. 122* commits itself to steering all its policies in the direction of full, productive, and freely chosen employment, thereby involving workers' and employers' organizations. Important for the Asian-Pacific region is to understand what ratification entails in terms of obligations, whether these obligations are compatible with ongoing structural adjustment, and whether it mandates extensive labour market regulation. The ILO's World Employment Report reaffirmed the objective of full employment, including for developing countries, with the understanding that the objective should not be defined only in terms of providing in the short or medium-term employment for all who seek it. Rather, the Convention should be a point of reference for formulating policies with a view to raising both the volume and quality of employment, while ensuring that economic growth is equitable and poverty-reducing.[205] This is compatible with a move towards an open market-oriented economy, provided that phased implementation of the reforms allow the creation of new competitive jobs to keep up with the destruction of uncompetitive jobs, supplemented by redistributive reforms designed to strengthen the capacity of the poor (e.g. land reform measures).[206] There is equally no need to undertake extensive deregulation of labour markets, although the need for reform of certain aspects may be identified after a case-by-case examination. Key aspects of labour market regulation such as those relating to employment security, maternity protection, social security programmes, and non-wage labour costs are not by definition distortionary.[207] The case of minimum wages in developing countries provides one example (see further). Another study found

---

[204] ILO, *Tripartite consultation at the national level on economic and social policy,* Report VI to the 83rd Session of the International Labour Conference, 1996, Geneva, 25.
[205] ILO, *World Employment Report 1996/97 : National policies in a global context,* Geneva, International Labour Office, 1996, 203.
[206] *Id.*, at 207.
[207] *Id.*, at 185.

that high levels of social security contributions were associated with higher, not lower, total employment growth.

Needless to say that employment policy is not to be held in isolation, but should be overarching, pervading other domains, such as fiscal, monetary, trade and investment policy. Employment policy has come within the World Bank's orbit.[208] The ILO has been invited by the World Summit for Social Development to become a "centre of excellence" on employment matters. Suggestions as to how to endeavour full, productive, and freely chosen employment are made availabe in abundance by two Recommendations.[209] The relatively low number of ratifications that Convention No. 122 has managed to muster could, of course, also be interpreted as a confirmation of a paradox hinted at earlier : some Asian governments are not keen on flexible or promotional Conventions because they leave them with too many political options, the legal assessment of which they feel is hard to anticipate.

Sampled Conventions

This paradox also casts its shadow over the ratification results of the selected sample. Convention No. 159 is the most subject specific, the least flexible or promotional, and still it is more widely ratified than Convention No. 131 and Convention No. 142, garnering at least one ratification in every corner of the region. Convention No. 138's first real ratification is still eagerly awaited and Convention No. 155's first ratification in the region has recently celebrated its first anniversary. Let us consider the Conventions separately.

Convention No. 131

Its modest ratification record may be tempered by the fact that 10 countries have ratified the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). Three of them subsequently have ratified Convention No. 131[210] and the Philippines having ratified the Minimum Wage-Fixing Machinery (Agriculture)

[208] *See* World Bank, *World Development Report 1995 : Workers in an integrating world,* Oxford, Oxford University Press, 1995.
[209] Employment Policy Recommendation, 1964 (No. 122) and Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).
[210] Convention No. 131 did not revise Convention No. 26.

Convention, 1951 (No. 99) but not Convention No. 26 nor Convention No. 131. This brings the total number of countries in the region that have ratified any Convention relating to minimum wage fixing machinery to 12. It remains somewhat strange that more countries have ratified Convention No. 26 than Convention No. 131, in spite of the fact that the latter is more general, more development-oriented and more inspired by the need for *affordable* social protection. Of course, Convention No. 26 has had more time to accumulate ratifications.

One reason for modesty could be that countries having established minimum wage-fixing machinery along the lines of Convention No. 26 think the main work has been accomplished and feel no need to take on additional commitments. It can not be excluded, however, that countries feel uncomfortable with the broad description of the criteria which must be taken into consideration for the establishment of minimum wages "so far as is possible and appropriate in relation to national practices and conditions".[211] Perhaps Convention No. 131 is considered so vague that it is seen as not constituting any standerd at all.[212] Conversely, the instrument might be mistaken for a burdensome instrument, imposing all kinds of regulatory requirements. Ratifying this instrument would go against the deregulatory tide.[213] Here Asian-Pacific countries should at least consider the conclusions of the World Employment Report. According to this Report, distortionary minimum wage interventions are far from the norm in developing countries :

(1) the level of the legal minimum wage as a percentage of the average wage is relatively low in the developing countries for which data are available (Thailand scored the highest with just over 75%) ;

---

[211] This is an element of flexibilty in Article 3 of the Convention. For instance in the case of India, which has ratified Convention No. 26 but not Convention No. 131, the Ministry of Labour seemed to fear that the Minimum Wages Act, 1984, could fall short of Article 3 in that it did not prescribe any rigid criteria for the fixation of wages, although in practice the Article 3 criteria were generally taken into consideration (see *Report of National Tripartite Seminar,* New Delhi, *supra* note 174, at Annexure 10, p.124).

[212] *See* Steve Charnovitz, *supra* note 51, al 168 : "Contrary to popular perception, there are no international labour standards regarding minimum wages or wage adequacy". I presume the author intended to defy political comments warning against *internationally fixed* minimum wage levels.

[213] Charnovitz (*supra,* note 212, at 174-175) identifies addressing overregulation as the number one priority in making the ILO more effective.

(2) the level of real minimum wages has dropped considerably in recent decades ;
(3) compliance with minimum wages is far from universal ;
(4) *inter alia* by conducting a "flexible" enforcement policy countries rarely set minimum wages that cut seriously into employment.[214]

Moreover, experience proves that deregulation of the wage-fixing machinery does not automatically lead to lower wages. The export-led industrialization process in Singapore and the Republic of Korea has seen a deliberate hike in order to shift away from a labour-based comparative advantage and to allow greater capital substitution.[215] Even in such successful economies, minimum wages remain an instrument of protection for the more vulnerable groups and the establishment of minimum-wage fixing machinery an instrument of social stability not to be left to the whims of daily politics.

Countries which have not ratified any relevant Convention keep referring to economic and social difficulties or inadequate labour ispection as disincentives for ratification.[216] Pakistan argued that its inadequate labour inspection did not permit ratification of Convention No. 131, while it has been bound by Convention No. 81 for a long time.[217]

Convention No. 138

A similar phenomenon can be observed here. On 30 May 1997 Nepal became the first country in the list to ratify the Minimum Age Convention, declaring 14 years to be the minimum age for admission to employment in Nepal. Afghanistan, and Mongolia are on record as having taken steps towards ratification, however without any concrete results.[218] Convention No. 138's poor

[214] ILO, *World Employment Report 1996/97 National policies in a global context,* Geneva, International Labour Office, 1996, 183-185.
[215] ILO, *Report of the Director-General to the Eleventh Regional Conference, supra* note 104, 28.
[216] ILO, *Labour Inspection,* General Survey, *supra* note 197, at 159, para. 411.
[217] Id., at 158, para. 405. Pakistan has ratified Convention No. 81 on 10 October 1953.
[218] According to Article 2, (1) of the Convention registration of the ratification requires a declaration specifying the minimum age that will be applicable. This declaration is still awaited from Afghanistan. Afghanistan communicated its decision to ratify already in 1979. Mongolia appears under the heading "Formal ratification process already initiated or shortly to be initiated" (*See* ILO, GB. 268/8/2, *supra* note 132, Appendix III, 4). The Philippines reportedly made a "firm commitment" to ratify. *See* GB. 268/ESP/4. In comparison, Convention No. 138 has been ratified by 52 member States and in March 1997

ratification record is put in a different perspective, realizing that 6 countries have ratified Convention No. 5, 6 others have ratified the revising Convention No. 59, and of the five that have ratified Convention No. 123, three have ratified neither Convention No. 5 nor Convention No. 59.[219] Although this does not amount to a situation as if 13 countries had ratified Convention No. 138, it means that the law and practice of these countries have already been shaped by international labour standards. Convention No. 138, deferential to the accomplishments of the earlier instruments, has deviated from the normal practice and has stipulated special conditions to have older instruments closed for ratification.[220] The following paragraphs offer possible explanations why governments in the region, in spite of repeated invitations, have not wanted to exploit the flexibility provided by Convention No. 138.

(1) Convention No. 138 is both more comprehensive and more flexible than its precedents and consequently may have reached such a degree of complexity that the Convention has become unfathomable to most governments.[221] Convention No. 138 covers the employment of young persons in *all* occupations, whereas each of the other instruments target sectoral occupations (e.g. industry or underground work). To balance its comprehensive character, Convention No. 138 provides much more flexibility than the earlier Conventions. It may tolerate practices that under a strict interpretation are ruled out under some of the earlier Conventions.[222] Also, the list of minimum sectors

---

the process of ratification was reported to be underway in at least 21 countries. *See*, ILO, GB. 268/8/2, *supra* note 132, Appendix III. "Formal ratification process already initiated or shortly to be initiated" is the heading under which 21 countries are listed.

[219] Minimum Age (Indusry) Convention, 1919 (No. 5), Minimum Age (Indusry) Convention (Revised), 1937 (No. 59), Minimum Age (Underground Work) Convention, 1965 (No. 123). Minimum Age (Agriculture) Convention, 1921 (No. 10) with 5 ratifications adds no other countries to the list and Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33) and Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60) have, with respectively 0 and 1 ratification, remained unsuccessful in the region. For a complete list of Conventions dealing with minimum age for admission to employment, see ILO ,*Minimum Age,* General Survey by the Committee of Experts, Report III (Part 4B) to the 67th Session of the International Labour Conference, Geneva, 1981, Appendix III. For a less detailed, but updated list of ratifications (taking account of e.g. dormant Conventions) *see* ILO, *Child labour : Targeting the intolerable, supra* note 112, 29.

[220] Of the five Conventions mentioned earlier only Convention No. 33 is closed for ratification and this as a consequence of entry into force of Convention No. 60, not Convention No. 138. See Article 10 of Conventions No. 138 or, in less technical language, *Minimum Age,* General Survey, *supra* note 219, 14, para. 48.

[221] Unfathomable at least in this sense that many gorvernments are under an impressin Convention No. 138 decrees the immediate abolition of all child labour.

[222] A case in point is the application of Convention No. 5 by Singapore (*See* ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4A), 80th Session, 1993, 57). Its Employment (Amendment) Act, 1975 allows the

in which the Convention should apply includes only seven sectors. It is with the intention to meet the practical difficulties of law enforcement, raher than an acknowledged absence of possible exploitation that family and small-scale holdings are explicitly not included in the list. This means that the Convention applies to this sector unless excluded after tripartite consultation. These inverted rules do not make it an Convention to apply. Moreover, even the application to minimum sectors may prove problematic in some countries.[223] Exploiting the flexibility offered is a complex undertaking. The setting of various minimum ages is one example, the application to family undertakings and apprentices is another one. Those eager to extricate a rather fundamental definition of, for instance, "light work," must examine earlier instruments.[224] Most importantly perhaps, it is a Convention with little political appeal because of its determined strategy to completely eradicate child labour, albeit on a non-specified term. It is highly probable that in view of the magnitude of the child labour problem, it praises itself "out of the Asian market" as overambitious. Asian-Pacific governments already complained that the Convention does not meet their needs.[225] Even Australia and New Zealand recently deplored "the lack of flexibility in the Convention's requirement of a statutory minimum age for admission into employment," in fact identifying a general prescription of employment under the age of 13 as the major hurdle.[226]

(2) The issues of minimum age for admission to employment and exploitation of child labour are too diverse to be adequately dealt with in one Convention. The United Kingdom government described the Convention as ineffective in dealing with the exploitation of child labour because it was not explicit enough

---

engagement of children below 14 years of age as apprentices in industrial undertakings. Convention No. 5 only permits an exception for work done in technical schools, not for apprenticeship. Convention No. 138 authorizes light work for apprentices of at least 12 years old under certain conditions (*See* ILO, *Minimum Age,* Geneal Survey, *supra* note 219, 17).

[223] For instance India identified electricity, ges, water and sanitary services as a problem secter (*See, Report of National Tripartite Seminar,* New Delhi, *supra* note 174, at 129).

[224] Examples can be found in the Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41).

[225] Observation of a Government member at the 1995 International Labour Conference. The same member simultaneously called for a new promotional Convention and an instrument more directly concerned with the exploitation of child labour (*See,* ILO, *Record of Proceedings of the 82nd Session of the International Labour Conference,* 1995, 24/17, para, 42).

[226] ILO, GB, 264/LILS/5, *supra* note 96, para. 40 and 42.

in defining a human right.[227] It is apparently in the context of this and the previous argument that the dicision to adopt a new Convention aimed at eradicating the most intolerable forms of child labour must be seen. It has been stressed that Convention No. 138 will remain a "key instrument of a coherent strategy against child labour"[228] and that the "new standard setting was not to imply that existing child labour Conventions would be weakened."[229] Rather it was felt necessary, even with other imternationl instruments in mind, that "a new ILO instrument specifically aimed at preventing and stopping the worst forms of child labour could enhance national and international action, bring the weight of the ILO's supervisory machinery to bear on compliance, and ensure fuller integration of the priorities of [IPEC] in ILO standards."[230] Several Asian-Pacific governments pledged their support, although the Malaysian government cautioned already that "raising existing standards ... would ultimately be counterproductive for ratification."[231] This statement summarizes the drawbacks of seeking the "solution"[232] in international Conventions : whether the new Convention will be more effective than for instance the Convention on the Rights of the Child greatly depends on the number of ratifications it can attract. In the absence of such ratifications, the chances are that the Convention will simply constitute, because of its focus on the "intolerable" -- intolerable for whom, one may respectfully inquire -- a more wieldy instrument in assessing the appropriateness of unilateral trade restrictions. It should be recalled that in the wake of the Copenhagen World Summit on Social Development, Convention No. 138 was in practice upgraded to "basic human rights" status. The ILO's Governing Body in its decision to place the item on the agenda of the Conference for standard-setting, provided some interesting reasons for the "renewed interest in international fora" in child labour :[233]

---

[227] ILO, GB, 264/LILS/5, *supra* note 96, para. 40 and 42.
[228] ILO, *Child labour : Targeting the intolerable, supra* note 112, 28.
[229] ILO, Governing Body Doc. No. GB. 268/ESP/4, 268th Session, March 1997, 3.
[230] *Ibidem.*
[231] *See* ILO, Governing Body Doc. No. GB. 268/10, 268th Session, March 1997, 7. The Governments of India, Malaysia, Japan and China all supported the proposal for a new Convention.
[232] *See* Timothy Glutt, *Changing the Approach to Ending Child Labor : An International Solution to an International Problem,* VANDERBILT JOURNAL OF TRANSNATIONAL LAW, Vol. 28, 1995, 1203 (arguing that although the prohibition of child labour is part of contemporary customary international law, enforcement requires a more precise articulation of prohibited practices and, something the Convention on the Rights of the Child is lacking, for instance effective enforcement provisions).

(a) The exploitation of working children may have become more serious and could well continue to escalate.
(b) There is a strong concern that some countries might gain a comparative advantage in international trade over those that are more strict about applying universally accepted standards.
(c) There is a stronger commitment among the public than in the past.

These motivations make the observance of the new Convention an ideal criterion to make the implementation of trade liberalization agreements conditional upon.

(3) Child labour indeed remains a politically sensitive topic with a strong potential to make incursions into the area of international trade.[234] Governments may be afraid that the ratification and subsequent supervision of the application of a comprehensive instrument will lead to misconceptions of occurrence and pervasiveness of child labour.

(4) Dropping child labour figures in South-East Asia may strengthen governments in their conviction that they can manage without ratifying Convention No. 138 (and related international supervision) and all blessings will come from further national economic development. Consolidation is forfeited.

(5) The occasionally heard argument of inadequate means for enforcement of implementing legislation is again at odds with Convention No. 81's outstanding ratification record.

Convention No. 142

Most countries in the region should be less afraid than some African countries that ratification of Convention No. 142 is irrelevant because, owing to lack of sufficient investment, people might only be trained for unemployment.[235]

---

[233] ILO, Governing Body No. GB. 264/ESP/1,264th Session Novermber 1995, para. 2.
[234] For instance, the Commission of the European Union Proposed for the frist time to link GSP preference to the application of Convention No. 87, Convention No. 98 and Convention No. 138 by offering incentive preferencee. This proposal was postponed by the Council to 1998 at the earliest. However, practising forced labour in non-compliance with Convention No. 29 or Convention No. 105 was qualified as a disloyal trade practice (see COM (94) 337 of 7 September 1994 and Article 9 of Council Regulation applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products orginating in developing countries, 3281/94 *Official Journal* (1994) L 348/1.
[235] Reportedly the standpoint of Chad (see ILO, *Human Resources Development Vocational guidance and training, Paid educational leave,* General Survey by the Committee of Experts, Report III (Part 4B) to the 78th Session of the International Labour Conference, Geneva, 1991, p.165, para. 462).

Still only one country out of six has ratified Convention No. 142 and this time it cannot be attributed to a preference for older Conventions, since all previously adopted instruments were Recommendations.[236]

In the Committee of Experts' *General Survey* the Philippines was reported as recalling "that at several ILO seminars held there Convention No. 142 was constantly mentioned as having good prospects for ratification, as the national human resources development programme was patterned on the standards laid down in the standards laid down in the Convention."[237] It shows how capricious good intentions are when it comes to making even flexible commitments.

China articulated a common misunderstanding by reportedly considering "that shortcomings in its vocational guidance system prevent it from envisaging ratification of the Convention at this stage."[238] Much of the ILO's ongoing technical assistance projects in China are nonetheless in the field of vocational training. China clearly not being the only country to overlook the promotional nature of Convention No. 142, the Committee took some space out in the report to lecture on flexibility and promotionality, and explicitly recalled in its final remarks that "becoming a party to this type of Convention does not imply that all of the prescribed objectives have already been achieved or must be achieved in the near future, but involves a commitment to implement them gradually by adopting appropriate policies, attitudes and measures."[239] Enacting legislation is not a *conditio sine qua non* to comly with Convention No. 142, although existing legislation should not be at variance with it either. Again, it is a feature of promotional Conventions that they should be ratified while or even before a country plans employment-related policies, since what matters in these policies is not the final result -- simply because an employment policy or a human resources policy never ends -- but the orientation of the process.

It is indeed in the field of orientation that the concrete obligations of a promotional Convention reside. A human resources policy which is up to the international standard is one which enhances the learning and thus productive capacity of the population, broadening the choice of employment, allowing for labour mobility and ensuring equal access in respect of employment. It includes

[236] For an overview *Id.*, at para 6-12.
[237] *Id.*, at para. 465.
[238] *Id.*, at para. 467.
[239] *Id.*, at para. 484.

the distribution of comprehensive information to children as well as to adults, so as to assist them in making an informed decision on the most suitable training. Such alignment has to be incorporated from the beginning, but not inevitably as a matter of legislation.

All Asian economies are reportedly investing in training for high technology, requiring a good general education, permanent monitoring of the supply-demand balance and the provision of retraining and upgrading opportunities for the active population to keep up with innovations. In view of the different national approaches as to the extent of the training (skill requirements or research and development) provided, the provider of the training (government or employer) and the financing (local or external funding), governments perhaps wonder what difference a ratification makes. The answer is simple : the Convention does not dictate a particular approach, but imposes an obligation to make the development achieved by whichever approach sustainable in the interest of the country and the international community. For instance, a training policy that cannot solve a mismatch between the skills required and the people trained will conjure up other imbalances (e.g. large-scale import of services) and eventually serve nobody.

Convention No. 155

China and Viet Nam may have broken a spell. By respectively ratifying Convention No. 170 and Convention No. 155 they have become the first countries in the region to adhere to any Convention relating to occupational safety and health adopted in the last 20 years. Even for older Conventions the record is appalling : with the exception of two straightforward Conventions on the protection of dock workers, none of the numerous Conventions in this field mustered more than three ratifications and the record of not less than eight Conventions has remained empty.

There is no relevant *General Survey* of the Committee of Experts to enlighten us here, but it is unlikely that it would have taught us anything different from the above. "In view of the wide coverage of the Convention, it is proposed not to ratify the Convention"[240] was the Indian point of view, in spite of the

[240] *Report of National Tripartite Seminar, supra* note 174, 163.

government's praise for Convention No. 155's flexibility. The Ministry of Labur appeared to give a narrow interpretation to Article 1 of Convention No. 155 that permits "exclusion only of limited branches of economic activity where special problems of a substantial nature arise"[241] and estimated that since construction, forestry, agriculture, and the large informal sector are yet to be covered by statutory protection, Convention No. 155 could not be ratified. The enforcement machinery required by the Convention would equally pose problems. Rather the opposite would be surprising-one may respectfully wonder if Viet Nam has nicely sorted out all these problems. How is India ever going to know whether its performance in some sectors is up to the benchmark to such an extent that its experience is useful in sectors which are indeed not yet covered but someday will have to be ?[242] Admittedly, the challenge of covering a large informal sector in a country of close to 900 million people is a gigantic one, but has any tripartite meeting ever explored whether economic sectors where subcontracting to informal undertakings is widespread can temporarily be excluded from the application of the Convention under the conditions imposed by it ?[243]

Concerned by the extremely poor ratification record in this field, the ILO launched a regional project in 1992, mainly built around three recently adopted Conventions : Convention No. 155, Convention No. 170, and Convention No. 167.[244] Part of the project was a series of workshops where government, worker, and employer participants were, after a short introduction of the Convention and basic standards terminology, invited to study one of the Conventions and establish an action plan by tripartite agreement. Although the workshops were focused on implementation rather than on ratification, of Convention No. 155 by Viet Nam seems to be the first tangible result of this exercise. The Indonesian national workshop revealed another perceived impediment to ratification : an employer participant, herein supported by a worker, stated that it would be impossible to implement any occupational safety and

---

[241] *Id.*, at 164.

[242] Elsewhere India emphasized the "evolutionary process inherent" in fundamental ILO Conventions such as Convention No. 29 and Convention No. 100 (*See* ILO, Governing Body Doc No. GB. 265/8/2, 265th Session March-April 1996, para. 32).

[243] Quite naturally, if none of the flexibility clauses are exploited, the Convention in principle is applicable for instance to every small undertaking to which work is subcontracted and, of coures, the Committee of Experts is aware that precisely in these undertakings exposure to health risks is the highes (*See* for instance the observation on the application of Convention No. 155 by Mexico, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part 4A), 83rd Session, 1996, 383).

[244] Safely and Health in Construction Convention, 1988 (No. 167).

health policy without prior effort to further the workers' general education.

The poor ratification record is all the more strange because many countries do have occupational safety and health policies, as is borne out in the Directer-General's 1991 report to the Asian Regional Conference. Hypothetically, two theses are broached : (1)Governments do not feel comfortable to exploit the flexibility in negotiations with workers' and employers' organizations -- understandably it is politically somewhat awkward for a government to state that it wants to ratify Convention No. 155, while trying to convince workers' organizations to consent to the temporary exclusion of important categories of workers. (2)The improvement of occupational safety and health is associated with detailed codes of practice, rather than with a Convention of a more general nature. Again this is understandable, but it should be realized that, just as in the case of Convention No. 142, the general framework and its consolidation by ratification are necessary to ensure sustainability of any progress achieved. (3) Only a superficial examination of the observations by the Committee of Experts on the application of Convention No. 155 in its most recent reports reveals a strong tendency for workers' organizations to attract international attention to particular instances of health protection found wanting. It reveals also that the governments concerned have neglected exploiting the flexibility of the Convention. One may consider this not to be conducive to further ratifications, but it is clear that barring workers' organizations from using this avenue (or their right of representation under Article 24 of the ILO Constitution) will aggravate rather than soothe justified claims. (4)In his most recent Report, the ILO Director-General, as noted above, offered two explanations for the relatively low number of ratifications gathered by occupational safety and health Conventions : fragmentation of the subject matter into too many particular instruments, resulting in the dilution of the impact of common provisions and the accumulation of rapidly outdated details. Both characteristics do not apply to Convention No. 155.

CONCLUSIONS

1. Ratification of international labour Conventions by Asian-Pacific countries is hardly up to any standard, particularly in East Asia. Some elements of

criticism on the standard-setting activities of the ILO are justified (and have been acknowledged), and to some extent a delay is perfectly understandable, but the overall conclusion must be that the record leaves a lot to be desired. Ratification of international labour Conventions is the only available yardstick for the commitment of these to improve the fate of its working population : ratification consolidates progress made, and provides an incentive to continue efforts in those areas identified by the supervisory bodies, occasionally upon notification by workers' and employers' organizations, as having substandard conditions. The consistent abstention from ratification for a considerable number of years by some countries, particularly in ASEAN, fuels fear that these countries are, perhaps inadvertently endorsing selective development. Successes in curbing unemployment or reising wages do not counter this conclusion.

2. Greater flexibility has not been exploited, has not lead to more ratifications in the Asian-Pacific region and, paradoxically, may even have had a dissuasive effect. Flexibility preserves universality, but widens the gap between standards and practice in two ways : by opening up more options, and by delivering (and requiring) more abstract thinking. Labour administrations, which ultimately have to deal with the implementation, are traditionally not the most well-equipped and qualified departments. They may need answers instead of questions ; guidance instead of options. In a sense it is the same argument as the one behind relaxing the pace of standard-setting : invest less in the production, and more in the promotion of international labour standards. Interpretations by distant supervisory bodies and an imperfect mastery of concepts forces member States into a legalistic position. Flexibility is not a thing of the past, but of the future. It needs to be exploited in a permanent tripartite dialogue between fully conversant constituents. Whether this dialogue will be harmonious or adversarial is up to the partners to decide according to their own culture, but it cannot be replaced by a government monologue.

3. Abiding by deregulative fatalism is tantamount to undermining social stability, world peace, and consequently about eveything the world community has consistently pledged to believe in for at least the last fifty years. If the ratification of international labour Conventions matters, the ILO must not

cease to say so and ensure that it is understood in a wide enough circle. At least regarding the fundamental Conventions there are signs that the ILO is taking on a sharper profile.

4. Customized technical assistance must be intensified. It is here that the synergy between international labour standards and technical cooperation becomes meaningful : universal validity needs to be demonstrated in the local context upon which the relevance of ratifications will prove itself. It would appear that differents kinds of assistance are needed depending on the subregion : North-East Asia requires an intensified legislative dialogue, whereas South-East Asia needs a shift away from political controversies with governments to a democratic debate with a wide range of participants. South Asia which for historical reasons has probably the best linguistic and conceptual grasp of the theory needs more logistical support. Indochina and the Pacific need a combination of all of these. More needs to be done, for instance in terms of translation, to make international labour standards useful tools for workers' organizations.

5. Commitment may be expected to come from all sides. If governments can grab the global footlight, declare that the ILO and not the WTO is the appropriate forum to enhance workers' rights, they should by all means do a better job than ratifying a meagre 8% of all international labour Conventions, ignoring a quarter century of standard-setting, and paying mainly lip-service to the ratification of basic human rights Conventions.