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**CONCILIATION OF LABOR STANDARDS DISPUTES:
A POTENTIAL FOR THE ILO**

**by
Prof. Arnold M. ZACK,
Faculty of the Labor and Worklife Program at Harvard Law School**

Before I discuss my concerns about the image and impact of the ILO in our globalized society, and some suggestions for making the ILO an even more active player in the new economic world, I would like to assert my dedication to this hallowed and long surviving institution.

I began doing some consulting and writing for the ILO in the 1960s and wrote the first Grievance Arbitration Manual in 1972. Since then, I have done a number of missions at the request of Alan Gladstone and his predecessors and successors and worked in Zimbabwe, Philippines, Greece, Swaziland, and Cambodia on various projects over the years. And more to the point of my present talk, it was then newly appointed Director General Somavia during his transitional visit to Cambridge, Mass. who asked me to flesh out my verbal suggestion for an ILO Swat Team to resolve disputes over international workplace fairness

I have always been a strong supporter of the work of the ILO and have considered it to be the guiding light for the rest of the world, both in establishing standards of workplace fairness, and, from my mediator's perspective, in demonstrating the benefits that society achieves by melding together the diverse interests of union, management and government. The Universal Declaration of Human Rights may have set forth standards, but the ILO has been the ongoing force in their implementation and expansion. No other institution has had such a universal workplace impact, as is abundantly demonstrated by your 1969 receipt of the Nobel Peace Prize.

Beyond the proclamations of workplace standards, the ILO following the initiatives of David Morse to enhance its programs of technical assistance, has also had its impact on national governments both in terms of their adoption of ILO Conventions and in their development of the machinery required to move toward the achievement of the ILO goals on the local and national level. Although the US has been certainly been delinquent in ratifying the Conventions (ratifying only two of the core eight) the Core Conventions continue to provide the basic precepts of what the US and other nations should be

reaching for in their national as well as international workplace goals. With respect to the drive to make the ILO conventions more universally acknowledged and accepted by member states, the development of the Declaration on Fundamental Principles and Rights has succeeded in corralling such wayward delinquents as the US to bring us to a truly universal declaration of workplace rights.

The world of this 21st century in which we now live is staggeringly different from that of 1919, 87 years ago. The national political structures with which the ILO then dealt and which it sought to mold into responsible structures for improving the lives of the workplace has been largely replaced by economic globalization. Now national boundaries, time zones, national laws, customs and practices all run together into what appears to be a universal workplace. The role of national governments in creating international political structures has given way to the establishment and hegemony of international economic structures. The new focus has shifted from protecting and proclaiming the rights of national and world citizenry to an environment where the drive for commerce, accumulation of wealth and power of economic institutions has driven governmental and political institutions into a supporting rather than leading role in our societies. As the ILO continues to make its wondrous contribution to labor relations around the world, that world is changing and with those changes come new opportunities and tools for the ILO to use in bringing the world to its ideals.

The WTO, the regional and World Banks, the creation of regional Free Trade Associations and the priority placed on investment and acquisition have reshaped the world. In doing so they have had an obviously detrimental impact on the prior perception of national governments being in best place to help their citizenry. Probably the most jolting evolution has been the role going beyond trade unions to one where other NGOs have usurped the role that we all thought was reserved to trade unions: exploring and revealing to the world the draconian impact of exploitative employers by their actions and governments by their inactions, on the role of workers in the globalizing economy. The ICFTU and national unions have continued to expose workplace injustice throughout the world, but it is the NGOs which have taken over the public platforms and in many countries become the most often heard voice in revealing evidence of workplace exploitation.

As jobs move from the focus of responsible governments in the industrialized world to the developing world where governments too often have failed or refused to serve a comparable protective role, workplace conditions have deteriorated and have too often moved beyond public scrutiny. Globalization may be the driving force for capital accumulation and focus on maximized profits, but it has also been the driving force for the evolution of a new breed of international watch dogs, the NGOs. Save the Children, Greenpeace, Fair Labor Association, Amnesty International and others have also achieved an international standing and focus, if not respect, which has brought to light many of the workplace inequities that are the troubling consequence of capital's globalization. And not to be overlooked has been the role of the student and consumer groups which did so much to call attention to workplace abuse by their US campaign against the \$5 billion dollar college and university logo clothing business. That effort galvanized the role of the brands, particularly in the garment industry and brought us to

the new era of Codes of Conduct even if primarily developed to assuage the conscience of the brands, to thwart the NGOs, and to protect their market share.

Yet the evidence is lamentably clear. National governments in the developing world have not risen to the challenge of exposing and correcting the ills of globalizing enterprises operating within their borders. Too often they are disinterested, understaffed, and concerned more with retention of the new jobs within their borders than with challenging the newly arrived factories for their mistreatment of their employees. The high mobility of international capital and its factories and subcontracting workshops and their ability to flee to a more receptive and cooperative neighboring country seem to readily squelch any propensity national governments might have to protect their own citizens against workplace misuse. And too often the national union centers in developing countries are subjugated by their governments and deprived of the very rights the ILO seeks to enshrine and that their own governments, by endorsing ILO conventions have promised to protect. The role of the All Chinese Trade Union Federation and the exchanges between the Chinese government and the ILO in 2002 over the Core Eight conventions underscore the difficulty of relying on the textbook tripartitism of 1919 (the year that a quite different China joined the ILO) in the current world economy.

The ICFTU and national trade union centers in the industrialized world have not been able to wield pressure comparable to that of the employers and the brands to persuade the national governments to assist the national trade unions in developing countries to protect workplace rights. Thus the NGOs, capitalizing on their international notoriety and influence, and fundraising, often in cooperation with the trade unions from the industrialized nations, are increasingly perceived as the prime proponents for worker protection.

One can not deny, or minimize, the vital role that the ILO continues to play through its administration and tripartite accomplishments with national centers, and particularly through its programs for action in so many receptive countries around the world to enhance worker protections. Its success in attracting top level practitioners to assist in these efforts undertaking long term residence in often inhospitable locations, testifies to the high regard in which the ILO is so often held by enlightened national social partners. I don't seek to underestimate its contributions.

Rather my focus is on the failure of the ILO to get the credit it is due for all the good works it has accomplished since its creation, particularly in promulgating principled labor standards, that other institutions are cashing in on the ILO reputation and good works, in bypassing if not ignoring the ILO contributions and exploiting the future potential for this organization in our globalized society. Everywhere one looks, the Core Conventions are cited as the clarion call to good workplace conditions, but too often the listing of the goals doesn't even cite the ILO as their creator. Everywhere one goes to international conferences on labor standards, the work of the NGOs is extolled but scant reference is made to the ILO's role in creating and promulgating and encouraging adoption of those labor standards. Trade unions in industrialized countries, in large measure due to the adverse impact of globalization find themselves shrinking in numbers and influence, with

ever reduced resources to carry the battle abroad. If only the power and influence of trade unions matched their image as crafted by employers and other adversaries. The NGOs on the other hand have achieved a visibility and credibility that often exceeds their contributions. But the consuming public listens and with alliances such as SAI8000 and Fair Labor Association, NGOs are undertaking programs that one wishes were under the guidance of and reaping credit for the ILO. Lamentably, in the eyes of many, the ILO is no longer considered a visible player in a game which has shifted to the role of the brands, the factories, the NGOs and even unions from industrialized countries that have too often been the victims of the new international economy. A bright exception to this bleak overview is the work of the ILO in promoting fair labor standards in places such as in the garment sector in Cambodia. Ros Harvey and Hugo van Noord have established an ILO imprimatur in that country for their work in the Better Factories project and in the development of the Cambodian Arbitration Council. I have been privileged to work with them over the past two years, and while it is gratifying to see efforts to replicate the project in places like Guatemala, and elsewhere in the Multifibre countries, the sad fact remains that that exemplar effort is cited because it is unique instead of what should be a commonplace accomplishment throughout the developing world.

So what can or should be done to bring the ILO to its rightful position in center stage in the theatre which it created?

I think we must respect the power of the participants and the magnitude of their commitment to their respective purposes, whether it be maximizing profits, avoiding consumer backlash, pursuing ideological triumphs for fundraising victories or avoiding confrontation which might lead to the flight of a significant local employer. The ILO has well handled the resolution of such confrontations throughout its history, bolstering national conciliation services in industrialized countries where national governments played a more powerful role in the tripartite structure. Unfortunately the national conciliation agencies in developing countries too often lack such credibility and expertise and independence to serve a comparable role of resolving workplace disputes in favor of fair labor standards in our new integrated international economy. And such national conciliation agencies, even if qualified, independent and credible are too often viewed as nationally biased and unacceptable to the new global players. The issues confronting the new players are not necessarily national issues; they are truly international global issues when dealing with institutions which move their units of production from country to country almost seemingly on whim. It would be a benefit to its constituencies, to its legacy and to society as a whole, if the ILO could find the way to be the peacemaker among the new bigger cast of contenders in its traditional arena. Tripartitism is no longer the controlling structure as new players crowd onto the stage. The ILO, in addition to its current cupboard of good deeds and programs, should, I believe, expand its mission to become the conciliator among the world's increased roster of workplace contenders,

Wouldn't it be glorious to have a facility within the ILO where disputants at a WTO or World Bank/IMF conference could turn for assistance in resolving their conflict or in avoiding their street violence? The ILO has for its lifetime encouraged adversaries to evolve dispute resolution procedures; shouldn't it be at the forefront of a conciliation

effort where other world bodies become adversaries or victims of protestors' aggression? Among international agencies, unlike at the national level there is no government conciliation service. The ILO should be it.

Wouldn't it be nice if the ILO could call on its own, or external, facilitators to avoid the conflicts that arise with its member states when it seeks to achieve full compliance with its purpose, as in the exchanges with the Chinese government over unionization in 2002?

Wouldn't it be helpful to have a procedure for bringing to the table the NGOs for their help and support when those institutions are potential partners in achieving ILO objectives? Wouldn't it be gratifying to be at the table when the social partners as in Guatemala or Salvador are meeting to help them develop a cohesive national labor standards Code to demonstrate national workplace fairness to the outside consumer world? Shouldn't the Cambodian experience become the norm?

Wouldn't it be a wonderful fulfillment of the ILO image and ideals if it could proclaim its availability to help resolve disputes arising under, or within, the ever expanding Codes of Conduct by providing conciliators and perhaps even arbitrators to resolve allegations of Company Code violation or workplace abuse when they are based on ILO norms?

I don't pretend to know the procedural or administrative route to these goals. I am an advocate for change, far more than I am a tour guide to get you there. But such an achievement should not be beyond reach. The benefits to the ILO from providing such services far outweigh any administrative obstacle that skeptics may raise to preclude working in such a direction.

A couple of years ago when apprised of the political difficulties of departing from the traditional tripartite framework of the ILO to venture into this conciliation arena, I entered discussions with the Permanent Court of Arbitration in The Hague. It was, and continues to be enthusiastic about cooperating with the ILO in serving as the administrator of such a program if the ILO determines that such a facility is better structured or more readily implemented outside the structure of the ILO than within. Indeed, an argument could be made that the ILO might prefer to have the conciliation managed, and conciliator designated by an outside institution to avoid charges that it is demonstrating bias in endeavoring to secure compliance with its Conventions.

Last month under the aegis of President Clinton's Global Fairness Initiative we held discussions in Guatemala City where I suggested utilizing conciliation to help bring together the national partners in a national code of fair labor standards for all Guatemalan factories. At that session I proposed to the brands that were present, the introduction of a grievance procedure, with resort to conciliators or even arbitrators to resolve challenges to Code adherence by the brand or the factory or subcontractor suppliers. With discussions focusing on other countries within CAFTA undertaking comparable national codes, we discussed the prospect of developing a CAFTA wide corps of conciliators drawing the best conciliators from the national ministries, bringing in regional private conciliators and perhaps even training local language conciliators for labor standards

disagreements. Disputants in one country might prefer the services of a conciliator from a neighboring country without national or other ties to the adversaries. The Permanent Court of Arbitration with its regional office in Costa Rica is interested in administering such a program, but we all voiced the hope that the ILO would spearhead or at least join in the effort,

This is not a simple undertaking, but it is one worth attempting. Aside from administrative and political hurdles there are obvious financial impediments as well. I have had some experience with my work in Cambodia and elsewhere in recruiting experienced private US mediators who are willing to work pro bono in Africa, Asia, and Latin America. These are experienced mediators who are fluent in French and Spanish who are eager to provide their expertise to resolve these critical disputes abroad. But such an operation can not be run solely with volunteers. The Labor and Worklife Program at Harvard Law School where I teach ADR convened a meeting on this topic in the fall of 2003 with funding from the Open Society Institute. We have not pursued the issue of expanded funding but this might be a program with appeal to a foundation for its support in its administration and training. The Freidrich Ebert Institute and the Carnegie Endowment have already indicated their endorsement of this use of conciliation to resolve labor standards disputes. Funding might come from a tax on foreign currency transactions as proposed by Nobel Laureate James Tobin, or from subsidies from international funding organizations such as WTO, the world or regional banks or the UN itself. The February 21, 2006 decision of the International Finance Corporation of the World Bank Group to adopt new performance standards including at least four of the 8 core conventions might open a source of funding for such a mediation role. There seems to be no shortage of will to protect intellectual property rights in the global society, it would be appealing to see some support for protecting workplace human rights at the same scale. For CAFTA countries, at least there is the prospect of funding from CAFTA funds. But the costs can not be dismissed as insignificant. Since our session in Guatemala, I have been approached by one of the alliances developing Codes of Conduct to help them integrate a grievance procedure with access to conciliators in the event the brands and protestors are unsuccessful in resolving their disputes. While it would be preferable to have conciliators with external funding serve in the role, the brands themselves are willing to provide the funding for such an undertaking.

With substantial funding, it might even become possible to institutionalize the entire monitoring process to assure an independence of monitoring taking it out of the hands of the brands. They are obviously viewed by some as having a vested interest against enforcing Conventions such as 87 and 98 which, after all, would open the brands, factories and subcontractors to prospects of unionization and collective bargaining. One could envision a more efficient and more independent monitoring agency, on an industry or national basis, perhaps offering world wide certification to those brands and factories which it deemed in compliance with the Core conventions. On a more limited basis an independent agency could provide conciliators to resolve lingering disputes among the brands, factories and unions and NGOs which remain unresolved by their internal dispute resolution mechanisms, and perhaps by securing agreement of the adversaries, even offering arbitration of such conflicts.

The ILO has for its lifetime been the real home of ADR. I suggest that developing an accessible conciliation service on its own, or at least participating in an external conciliation effort, would be consistent with its purpose and history. Furthermore it would be an historic and significant undertaking to enhance its prestige as the prime mover, not merely in proclaiming standards, but more meaningfully, help in achieving workplace cooperation and harmony. Such a global or even regional effort would fill a troubling vacuum since conciliation has not been widely understood as the preferred vehicle for bringing resolution to work place disputes. And those workplace disputes too often arise simply from one party's refusal to acknowledge or commit to compliance with ILO's norms. Unfortunately confrontation has become the norm. What better way to get back into the game in a highly visible manner than to hold itself available to help bring compliance with its conventions to the new workplaces of our globalized economy. It would help the national social partners overcome conflict within member countries and it would certainly help to serve the international needs for which this institution was initially created. The marvel that has been able to get the nations of the world to agree on social partner dialogue, to agree on workplace fairness standards, and then adapt to the foot dragging of countries to shape the Declaration of Fundamental Rights, and to survive ideological challenges to tripartitism, should be able to craft another device to meet the changing needs of the global workplace. The path is there; let's go down it. No, rather, let's go up it. It is, after all, the road to the top.