

ASIAN 2006
DECENT WORK
DECADE 2015

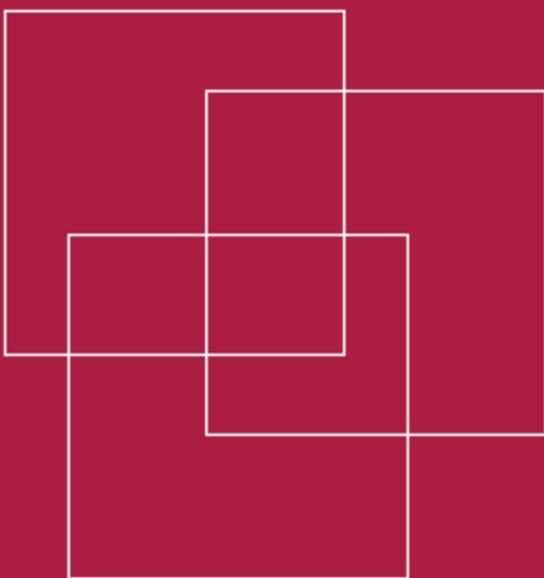


ILO/Japan
Multi-bilateral
Programme



International
Labour
Organization

Building better industrial relations in an integrating ASEAN



ASEAN-ILO/Japan Industrial Relations Project
Regional Office for Asia and the Pacific

Building better industrial relations in an integrating ASEAN

**ASEAN-ILO/Japan Industrial Relations Project
Regional Office for Asia and the Pacific**

Copyright © International Labour Organization 2012
First published 2012

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

Building better industrial relations in an integrating ASEAN / ASEAN-ILO/Japan Industrial Relations Project, ILO Regional Office for Asia and the Pacific. - Bangkok: ILO, 2012
ix, 34 p.

ISBN: 9789221259756; 9789221259763 (web pdf)

ILO Regional Office for Asia and the Pacific; ASEAN-ILO/Japan Industrial Relations Project

labour relations / social dialogue / labour dispute settlement / economic recession / decent work / ASEAN

13.06.1

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland, or ILO Regional Office for Asia and the Pacific, 11th Floor, United Nations Building, Rajdamnern Nok Avenue, Bangkok 10200, Thailand, or by email: BANGKOK@ilo.org. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns or www.ilo.org/asia

Printed in Thailand

Foreword

Better industrial relations in support of ASEAN community building

Industrial relations (IR), broadly defined as the rules and institutions governing relationships between employers and employees,¹ are crucial in both stabilizing and building economies and societies.

Effective industrial relations are critically important in a rapidly integrating “ASEAN Community” nurtured by the Association of Southeast Asian Nations (ASEAN), and a forward-looking industrial relations programme is an important component in building the ASEAN Community. The Blueprint of the ASEAN Socio-Cultural Community (ASCC) is unequivocal — ASEAN seeks to promote “sound industrial relations, industrial harmony, higher productivity and decent work”. This objective is very much in line with the ASEAN thrust to build an integrated but equitable regional economy (Blueprint of the ASEAN Economic Community [AEC]). It is also consistent with the declared ASEAN policy of promoting and protecting human rights (Blueprint of the ASEAN Political-Security Community [APSC]), which is now enshrined in the ASEAN Charter.²

ASEAN Labour Ministers’ Industrial Relations targets for 2010–2015

With ASEAN moving towards its 2015 target integration goal, the task of strengthening ASEAN’s IR programme has become doubly important. This is why the ASEAN Labour Ministers (ALM), at their May 2010 Labour Ministerial Meeting in Hanoi, approved a Work Programme 2010–2015 focusing on industrial relations. The ALM Meeting also adopted the ASEAN Guidelines on Good Industrial Relations Practices. IR programme priorities include the following:

- promotion of best practices in labour policy and laws;
- protection and promotion of labour rights, including migrant workers’ rights;
- capacity building in the enforcement of labour rights and labour laws;
- capacity building in workplace dispute resolution and administration of labour justice; and
- strengthening of tripartite cooperation.

¹ John Dunlop: *Industrial relations systems* (New York, Holt, 1958); Bruce Kaufman: *The global evolution of industrial relations: Events, ideas and the IIRA* (Geneva, ILO, 2004).

² The ASEAN Charter, which has transformed ASEAN into a rules-based organization, was adopted at the ASEAN Leaders’ Summit, Singapore, November 2007. The Charter was preceded by two years of broad and intensive regional and national consultations with civil society organizations (CSOs) and other ASEAN stakeholders. The Charter commits ASEAN to the “principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.

ASEAN-ILO/Japan Programme in support of ASEAN Industrial Relations capacity building

The ALM cited the ASEAN-ILO/Japan Industrial Relations Project as one source of support for its Work Programme 2010–15, especially in the area of capacity building in industrial relations.

ASEAN is already engaged in a productive IR capacity-building partnership with the International Labour Office (ILO), primarily through the ASEAN-ILO/Japan Industrial Relations Project. Supported by Japan's Ministry of Health, Labour and Welfare (MHLW), the IR Project organizes regional IR seminars, supplemented with select research studies, national workshops, and a web-based knowledge-sharing portal. On the recommendation of the Senior Labor Officials Meeting in 2008, the IR capacity-building partnership adopted the overarching theme of “Building better industrial relations toward ASEAN integration”.

The ASEAN-ILO/Japan Industrial Relations Project pursues the following objectives:

- promoting constructive IR among ASEAN countries;
- supporting the ASEAN Secretariat in building its capacity to disseminate IR knowledge and information among its members; and
- strengthening relations between ASEAN and the ILO Regional Office for Asia and the Pacific.

The foregoing objectives aim to strengthen tripartism and social dialogue, essential components of the regional integration process. One primary ASEAN-ILO/Japan Industrial Relations Project activity is the convening of IR regional seminars involving tripartite participants — representatives of Governments, employers' and trade union leaders from the individual ASEAN member countries. These tripartite participants share their IR experiences and insights, at the same time they enhance their own appreciation of the good IR practices needed to build industrial peace and harmony in ASEAN.

In 2009–10, the ASEAN-ILO/Japan Industrial Relations Project helped organize three regional IR seminar-workshops:

- Towards ASEAN Integration: Promoting Good Practices for Sound and Harmonious Industrial Relations (Bogor, February 2009);
- Emerging Industrial Relations Issues and Trends in the ASEAN Countries in Time of Financial and Economic Crisis (Kuala Lumpur, February 2010); and
- Legal Framework and Practice for Labour Dispute and Settlement (Manila, November 2010).

Each of these seminars involved ASEAN member-country tripartite participants. In a true community spirit of solidarity, participants freely shared their own country experiences, especially those of good IR practices and IR adjustments under difficult economic situations, including those that followed in the wake of the 2007–09 global financial crisis.

Japanese experts and tripartite representatives supplemented this information and experience sharing with Japan's own experience in strengthening its economy through sound IR practices, labour laws, and supporting institutions.

This publication, prepared by Rene E. Ofreneo, PhD. of the University of the Philippines, is a synthesis of the major IR issues, practices, research findings, and recommendations discussed in the three regional seminars/workshops.

Towards better industrial relations in support of community building

Members of the ASEAN-ILO Industrial Relations Team (IRT), in a recent assessment of the IR regional seminars/workshops and other ASEAN-ILO/Japan Industrial Relations Project activities, agreed that IR capacity building — realized mainly through the sharing of good IR practices and experiences by the tripartite participants from the ASEAN member countries and Japan — is the most significant contribution of the Project to the ASEAN Community. The ALM Work Programme, 2010–2015 supports this consensus.

It is thus appropriate that the next phase of the ASEAN-ILO/Japan Cooperation Programme should maintain the focus on IR capacity building, though at a higher level — meaning an intensified IR capacity-building programme as outlined by the ALM in the Work Programme, 2010–2015. This manual presents a summary of the three regional seminars under the ASEAN-ILO/Japan Industrial Relations Project, all of which focused on IR capacity building. The next manual will focus on a stronger IR system within an integrated ASEAN Community. In this context, the next phase of the ASEAN-ILO/Japan Industrial Relations Project has maintained the original guiding theme for this unique ASEAN-ILO/Japan partnership: “Building better industrial relations in support of ASEAN community building”.

A regime of good IR practices and institutions is crucial in building a productive, harmonious, and competitive ASEAN Community.

Thetis Mangahas
Officer in Charge (OIC)
ILO Regional Office
for Asia and the Pacific

Table of contents

	<i>pages</i>
Foreword	iii
Acronyms	ix
1. ASEAN-ILO/Japan Industrial Relations Project: General background	1
2. Developing good industrial relations practices: An ASEAN sharing	5
3. Deepening social dialogue in challenging times	11
4. Building a sound industrial relations legal framework	19
5. Promoting good industrial relations in ASEAN: The way forward	29
References	33

Acronyms

AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Services
AFTA-CEPT	ASEAN Free Trade Agreement/Common Effective Preferential Tariff
ALM	ASEAN Labour Ministers
APSC	ASEAN Political-Security Community
ASCC	Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
BLR	Bureau of Labor Relations (Philippines)
CB	Collective bargaining
CBA	Collective bargaining agreement
CPF	Central Provident Fund (Singapore)
CSO	Civil society organization
DOLE	Department of Labor and Employment
ECOP	Employers Confederation of the Philippines
GFC	Global financial crisis
HRD	Human resources development
IIRA	International Industrial Relations Association
IOE	International Organization of Employers
IR	Industrial Relations
IRT	ASEAN-ILO Industrial Relations Team
JSD	Japan Federation of Service and Distributive Workers' Unions
LAA	Labour Administration Agency (Lao PDR)
LAC	Labour Advisory Committee (Cambodia)
MHLW	Ministry of Health, Labour and Welfare (Japan)
MHR	Ministry of Human Resources (Malaysia)
MLT	Ministry of Labour (Thailand)
MOLISA	Ministry of Labour, Invalids and Social Affairs (Viet Nam)
MoMT	Ministry of Manpower and Transmigration (Cambodia)
MSALVY	Ministry of Social Affairs, Labour, Vocational Training and Youth (Cambodia)
NCMB	National Conciliation and Mediation Board (Philippines)
NIRC	National Industrial Relations Commission (Viet Nam)
NTUC	National Trades Union Congress (Singapore)
TIPC	Tripartite Industrial Peace Council (Philippines)
VCCI	Viet Nam Chamber of Commerce and Industry
VGCL	Vietnam General Confederation of Labour

1. ASEAN-ILO/Japan Industrial Relations Project: General background

Since 2002, the Japanese Ministry of Health, Labour and Welfare (MHLW) and the Association of South East Asian Nations (ASEAN) have shared information and experiences regarding industrial relations (IR) and human resources development (HRD). Related activities constitute part of a broader multi-bilateral programme that Japan has entered into with the International Labour Office (ILO) for the latter's Asia-Pacific developmental projects.

In 2008, the MHLW and ASEAN agreed to develop a more focused ASEAN-ILO/Japan Industrial Relations Project. The Project aims to build IR governance capacity among tripartite constituents in the ASEAN countries, especially among countries in transition towards more market-oriented policy regimes. The Project overarching theme expresses its overall goal: “Building better industrial relations towards ASEAN integration

The ASEAN-ILO/Japan Industrial Relations Project pursues the following objectives:

- promoting constructive industrial relations among the ASEAN countries;
- supporting the ASEAN Secretariat in building its capacity to disseminate IR knowledge and information among its members; and
- strengthening the relationship between ASEAN and the ILO Regional Office for Asia and the Pacific.

Managed jointly by the ILO Regional Office in Bangkok and the ASEAN Secretariat in Jakarta, the project revolves around the conduct of an annual IR regional seminar, supplemented by IR studies and select national workshops. Tripartite participants from the ASEAN countries and Japan are invited to participate in the regional seminar as “resource persons”, sharing with one another their IR insights, knowledge, and experiences.

1.1 Industrial relations in an integrating ASEAN

Industrial relations “rules” governing employer-employee relations in a market economy — labour laws, institutions, contracts, and practices — are of critical importance in ASEAN.³

The 10 ASEAN countries are at different levels of economic development and industrialization. Agrarian countries and late industrializers such as Lao People's Democratic Republic (Lao PDR) and Myanmar are found at one end of the spectrum, while at the other end stand countries such as Malaysia and Singapore, which have attained developed or nearly developed status, and which boast per capita incomes many times higher than those of the less developed ASEAN countries. Unsurprisingly, IR systems in different ASEAN

³ John Dunlop, in his seminal work *Industrial relations* (op. cit.), described “rule-making” by the tripartite actors (Governments, employers, workers/unions) as the core of industrial relations.

countries mirror their uneven and diverse economic development. Different historical traditions also help to explain this unevenness and diversity. The transition economies (Cambodia, Lao People's Democratic Republic, and Viet Nam), for example, grapple with the challenge of building IR institutions befitting a market-oriented economy. The remarkable diversity of IR institutions, processes, and practices is further reflected in diverse national experiences with IR legal frameworks, observance of freedom of association, conduct of collective bargaining, dispute settlement, rules on unionism and strikes, and tripartism.

At the same time, ASEAN is rapidly integrating as a single community (see the following box). The Association has targeted 2015 as the year of economic integration, as characterized by a free flow within the region of goods, capital, services, and skilled labour. This region-wide economic liberalization, aimed at spurring more foreign and domestic investment, requires fair and efficient IR systems to help stabilize labour markets, economies, and societies.

ASEAN community building: An overview

In 2003, ASEAN leaders signed the Bali Concord II, thereby declaring their collective vision of a unified ASEAN community — a regional “community of caring societies, committed to upholding cultural diversity and social harmony”.

This was a historic turn for an organization founded in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand, the five original signatories, partly to counter Communist influence in the region. Then, with the entry of Brunei, ASEAN 5 became ASEAN 6. In the 1990s, with Cambodia, Lao People's Democratic Republic, Myanmar, and Viet Nam (the CLMV) joining the Association, ASEAN 6 became ASEAN 10.

In the 1990s, ASEAN kept promoting the importance of regional economic integration — to be realized mainly through the ASEAN Free Trade Agreement/Common Effective Preferential Tariff (AFTA-CEPT) and the ASEAN Framework Agreement on Services (AFAS).

Today, ASEAN is aiming to achieve full integration or community-hood by 2015. This community-building effort is guided by the three pillars of integration – the ASEAN Economic Community (AEC), ASEAN Socio-Cultural Community (ASCC) and the ASEAN Political-Security Community (APSC). Full economic integration entails free flow of goods, services, capital, and skilled labour (AEC Blueprint). A socio-cultural community means “an ASEAN Community that is people-centred and socially responsible ... forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the peoples are enhanced” (ASCC Blueprint). A political-security community means ASEAN's “adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms as inscribed in the ASEAN Charter” (APSC Blueprint).

ASEAN has declared, however, that it is not in the business of integrating the region through economic liberalization measures alone. The Association seeks to build a more balanced and equitable regional economy⁴ and a community of “caring societies”.⁵ One pillar of community building, the ASEAN Socio-Cultural Community (ASCC), states that ASEAN is incorporating decent work principles, including those of safety and health in the workplace, within an ASEAN work culture.⁶

Also, the ASEAN Charter was approved during the November 2007 ASEAN Leaders’ Summit in Singapore. The Charter transforms the Association into a rules-based organization, which subscribes to the “principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.

1.2 Sharing of industrial relations practices and experiences

In the context of these ASEAN community-building efforts, the promotion of progressive or good IR practices has a major role to play. And this serves as the basic guideline for the ASEAN Secretariat and the ILO Regional Office, in designing, through a joint Industrial Relations Team (IRT) and Project Cooperation Committee, the ASEAN-ILO/Japan Industrial Relations Project regional seminars and other activities. The ASEAN-ILO/Japan Industrial Relations Project also follows closely the IR directions mapped out at the Senior Labour Officials’ Meeting (SLOM) and by the ASEAN Labour Ministers (ALM) in their annual and special meetings.

The 2008–10 first phase of the ASEAN-ILO/Japan Industrial Relations Project included the following regional seminars:

- Towards ASEAN Integration: Promoting Good Practices for Sound and Harmonious Industrial Relations (Bogor, February 2009), hosted by Indonesia’s Ministry of Manpower and Transmigration.
- Emerging Industrial Relations Issues and Trends in the ASEAN Countries in Time of Financial and Economic Crisis (Kuala Lumpur, February 2010), hosted by Malaysia’s Ministry of Human Resources.
- Legal Framework and Practice for Labour Dispute and Settlement (Manila, November 2010), hosted by the Philippines’ Department of Labor and Employment.

These seminars, each hosted by the assigned country’s labour ministry, were attended by high-level tripartite participants from the ASEAN countries, as well as by ILO IR experts, members of the ASEAN Secretariat, and Japanese tripartite representatives.

⁴ *ASEAN Economic Community Blueprint* (2007).

⁵ *Vientiane Action Programme* (2004).

⁶ *ASEAN Socio-Cultural Community Blueprint* (2007).

Observations regarding the regional seminars

- **Vivid demonstration of ASEAN community building in action.** The sharing by the tripartite participants of their own country IR experiences and lessons was productive and much appreciated by all concerned. Such sharing served as a benchmarking exercise for most of the participants, who in fact became the true resource people of the three seminars. Moreover, the sharing presented a vivid demonstration of ASEAN community building in action, with the tripartite participants — trade union leaders, employers, and government labour officials — freely sharing experiences and exchanging notes in an atmosphere of friendship, fraternity, and mutual concern.
- **Focus on industrial relations adjustments, together with good IR practices, in time of crisis.** The benchmarking tended to focus on different types of IR adjustments in time of crisis, as well as on good IR practices in labour-management relations. Given the adverse impact of the 2007–09 global financial crisis (GFC) on almost all the ASEAN countries, discussion of the adjustment issues was especially intense. The sharing of good IR practices was often integral to the discussion of IR adjustment issues, however, partly because such practices are often developed through social dialogue (either bipartite or tripartite) in the context of general efforts of forward-looking companies to be more productive and competitive.
- **General interest in comprehensive, ILO-consistent labour law frameworks.** Participants from all the ASEAN countries, particularly those from the transition economies, showed much interest in achieving a comprehensive, ILO-consistent labour law framework, particularly in the areas of unionism and dispute settlement.
- **Labour flexibility and “job churning” of special interest to trade union representatives.** Issues such as labour flexibility and “job churning”, raised by the trade union participants at almost every opportunity, appear to be widespread phenomena in nearly all the ASEAN countries.
- **Issues resist discussion in isolation from one another.** Despite the special theme announced for each seminar, those IR concerns outlined above were often raised for discussion in all of the seminars. This was unsurprising, given the intertwined nature of these issues, the impact of the GFC on the IR environment in ASEAN, and the challenge of a clearer IR framework for ASEAN member countries.

1.3 Structure of the ASEAN-ILO/Japan Industrial Relations synthesis report

This publication, a consolidation and synthesis of the results from the three regional seminars, follows a related thematic outline. The first part presents a general discussion of what constitutes a good IR practice. The second part focuses on the importance of social dialogue, during both stable and challenging or difficult times. The third part outlines the elements of a sound IR legal framework. The final part presents critical ASEAN IR issues and concerns based on the outcomes of the three regional seminars, the ALM Work Programme, 2010–2015, and the ILO Decent Work Agenda.

2. Developing good industrial relations practices: An ASEAN sharing

2.1 ASEAN guidelines for good industrial relations practices

In May 2010, ASEAN Labour Ministers made a historic decision in adopting the ASEAN Guidelines on Good Industrial Relations Practices.

The Guidelines were circulated (in draft form) and discussed in the first regional seminar, in Bogor. The participants urged ASEAN and the ILO to help strengthen the capacity of member countries to build good IR practice regimes as outlined in the Guidelines.

The preamble to the Guidelines has this to say:

“Whereas in the time of globalization, growing economic integration, and a rapidly changing and highly competitive business environment, establishing good industrial relations practices is a progressive and essential step to enhance the competitiveness of ASEAN and make it a choice destination of global investments and businesses;

“Whereas one of the important principles in the ASEAN Charter is respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

“Whereas industrial relations practice is developed through tripartite cooperation and requires constant improvement and adjustment, it generally adheres to and is consistent with internationally recognized principles, obligations and standards including the fundamental principles and rights at work and the need to maintain the link between social progress and economic growth;

The ASEAN Ministers of Labour lay down and adopt the following set of guidelines on sound and good industrial relations practices for the guidance and benefit of all ASEAN members in their continuing quest for harmonious and productive industrial relations based on social justice, as a cornerstone of quality workplaces and economic success, that should be expected and promoted by ASEAN member countries.

2.2 Definitions: Good industrial relations practices and decent work

What are good Industrial Relations practices?

Core Conventions. In the Bogor seminar, the ILO circulated a number of documents defining and illustrating good IR practices. One such document is the Fundamental Principles and Rights at Work, a historic declaration by the International Labour Conference (86th Session, 1998) reaffirming the central importance of universal compliance with the core labour Conventions dealing with freedom of association, collective bargaining, non-discrimination at work, prohibition of forced labour, and elimination of child labour:

Forced Labour, 1930 (No. 29);

Freedom of Association and Protection of the Right to Organize, 1948 (No. 87);

Right to Organize and Collective Bargaining, 1949 (No. 98);
Equal remuneration, 1951 (No. 100);
Abolition of Forced Labour, 1957 (No. 105);
Discrimination in Employment and Occupation, No. 111 (1958);
Minimum Age Convention, 1973 (No. 138); and
Elimination of the Worst Forms of Child Labour, 1999 (No. 182).

Good IR practices should not be interpreted in a minimalist way, however — for example, as compliance with the above core labour Conventions alone. ILO member States can adopt other labour Conventions for the development of their IR policy regimes and to strengthen their respective national labour markets. The ILO Convention on Tripartite Consultation, 1976 (No. 144), promoting tripartite governance in IR through social dialogue to attain social justice, is one notable example.

Decent work. In short, good IR practices mean going beyond the minimum, through the continuous improvement of IR institutions, to promote “decent work”. Decent work, as defined by the ILO, means work undertaken in conditions of freedom, equity, dignity, and security. This means employment policies should comply with the core labour Conventions. They should also strive for an economic environment that creates opportunities for employment that is productive, delivers a fair income, provides security in the workplace, guarantees freedom for people to express their concerns, and ensures equality at work.

Necessarily, decent work entails strengthening institutions of collective bargaining, labour-management consultation, and dispute settlement at the plant, industry, and national levels through bipartite and tripartite social dialogue and cooperation. Voluntary bipartite agreements and codes of conduct promoted by big domestic corporations and transnational firms are also part of good IR practices, so long as these agreements and codes do not substitute for compliance with the basic core labour standards.

2.3 Enabling national laws

ILO and Japanese IR experts pointed out that compliance with the above Conventions also means establishing the enabling national laws, rules, and norms that can ensure effective observance of these instruments. At a minimum, this means their ratification by ILO member States. Non-ratification, however, does not exempt a member State from the duty or obligation to uphold a core international standard.

As mentioned earlier, a regime of good IR practices requires a country to ratify core and other important ILO Conventions, as well as to develop a full range of good IR practices. What are these good IR practices? The Bogor seminar concluded a good regime should include practices that serve the following ends:

- reflecting the “needs, cultures and practices” of a country;
- promoting “social dialogue”, with a full sharing of relevant information in advance;
- starting at the enterprise level through better communication between the concerned parties;

- encouraging compliance with national laws, agreements and core ILO standards;
- protecting workers' rights and interests in times of corporate restructuring;
- instilling in contractors and subcontractors the duty to comply with labour standards, especially standards on workers' rights and health and safety;
- institutionalizing training and re-training in good IR practices, social dialogue, ILO standards, and labour laws and regulations; and
- promoting cooperation with the ILO in the conduct of the above activities, including documentation of good IR practices and outcomes.

2.4 Key elements of a stable industrial relations system as Identified by the ASEAN

The ASEAN Guidelines on Good Industrial Relations Practices outline key elements of an ideal or stable IR system. These are strikingly similar to those discussed in the Bogor seminar, and include the following:

- **A sound legal framework** must take into account national economic and social conditions specific to each country, while guaranteeing the basic rights of employers to manage their business and of workers to just and decent working conditions.
- **Fundamental rights of employers and workers** is an essential element of the legal framework that recognizes the basic rights of both parties — the right of employers to manage their business reasonably, and the right of workers to enjoy basic universal rights such as freedom of association and the right to collective bargaining.
- **Genuine bipartite cooperation and collaboration** lead to both higher enterprise productivity and better working conditions. Effective bipartite cooperation entails the following:
 - ⊗ **building mutual trust and respect**, which means frank and meaningful dialogue and consultation between the parties on mutually beneficial approaches to work relations;
 - ⊗ **“best practices” in work relations**; and
 - ⊗ **good faith** in negotiations and collective bargaining.
- **Tripartite partnership and social dialogue** are essential in developing national competitiveness and harmonious industrial relations. A key guideline, in successful tripartite partnership, is a focus on mutuality of purpose and benefits based on a tripartite vision (on the part of Governments, employers, and workers) and formulation of a common understanding of shared IR concerns and responsibilities.
- **Effective labour dispute settlement** is integral in the development of any sound industrial relations system. This means the establishment of effective mechanisms for conciliation, mediation, arbitration, and adjudication that are fair, affordable, and acceptable to all the parties.

2.5 Key “learnings” on good industrial relations practices and the role of social dialogue

The Bogor seminar and its two companion IR seminars discussed good IR practices at length, including the central role of social dialogue in IR processes.

All three IR seminars also acknowledged the diversity of cultures, legal systems, and IR systems among ASEAN member countries. At the same time, however, they recognized that basic labour rights should be respected, and that ASEAN countries face common IR challenges.

It was agreed that social dialogue can occur at different levels:

- bipartite dialogue, where union and management negotiate an agreement regarding the terms and conditions of employment, i.e. a collective bargaining agreement (CBA);
- tripartite dialogue, where the three IR actors meet to formulate new laws, e.g. health and safety rules at the work place; and
- regional-level dialogue, where different stakeholders, including civil society organizations, come together to discuss common concerns, e.g. impacts of climate change on livelihoods.

In brief, social dialogue can take place at the enterprise, industry, national, and ASEAN levels.

Other key “learnings” from the three seminars, as articulated by the participants, include the following:

- Sound IR practices, especially social dialogue, help society survive economic downturns such as those triggered by the GFC. Social dialogue allows the tripartite social partners to discuss ways of minimizing job and business losses, speeding economic recovery, and reducing industrial conflicts. As we discuss in more detail in the following section (“Deepening social dialogue in challenging times”), virtually all ASEAN countries used extensive social dialogue to forge a broad tripartite social consensus on measures to cushion society from the adverse GFC impacts on industry and employment. There are also micro-level examples of how constructive social dialogue helped companies and trade unions apply difficult measures aimed at saving jobs and business, including across-the-board wage cuts at Yazaki-Torres (the Philippines) in 2006 in order to maintain company viability and preserve existing jobs. Similarly, at Thai Yazaki Electric, in 2007, the firm and the union negotiated a consensus on various cost-saving measures, including water and electricity cutbacks and voluntary early retirement.
- Sound IR practices or positive industrial relations require instituting such institutional IR support as appropriate laws, rules, and procedures, including enabling laws on unionism, collective bargaining, tripartism, and dispute settlement.
- Social dialogue lies at the heart of positive industrial relations. For such dialogue to work, however, there should be mutual trust and confidence plus open and honest communication between the parties, including the advanced sharing of relevant information. Social dialogue should be promoted at the firm, industry, and national levels. Social dialogue can be bipartite, tripartite, or multipartite, depending on the nature of the issues being addressed. The general principle is that social dialogue should involve, as much as possible, all stakeholders in a given IR issue.

- Positive IR also requires capacity building in employment relationships such as dispute settlement (e.g. skills in conciliation, mediation, arbitration), collective bargaining (CB)/social dialogue (e.g. building trust or opening lines of communication), and the enactment of needed laws (e.g. benchmarking with legal regimes of other countries). The ILO can be of greatest help to the tripartite partners in ASEAN in the area of capacity building.
- Building a regime of good IR practices at the firm, industry, and national levels requires benchmarking at home and beyond national boundaries. Good IR practices can cover the whole gamut of employment relationships — from recruitment to deployment, from training to compensation, from union recognition to collective bargaining, from handling of grievances to litigation of labour disputes.
- Positive IR helps to smooth industry and national adjustments in meeting the challenges posed by global economic crisis and the reality of a changing ASEAN economy brought about by varied economic integration programmes such as AFTA-CEPT and AFAS. With regard to this finding, the Bogor seminar cited the following key recommendations from the Asia-Pacific ILO/Asian Development Bank (ADB)/UN seminar on the global economic crisis (Manila, 18–20 February 2009):
 - ⊗ development of comprehensive and coherent stimulus packages — involving all sectors, including the labour and finance ministries — to sustain growth and jobs in a given country;
 - ⊗ strengthening the role of social dialogue and collective bargaining to assist employers and workers in resolving such difficult issues as flexible hours, wage and benefit adjustments, temporary lay-offs, and separation packages;
 - ⊗ maximizing efforts by all concerned to preserve quality jobs;
 - ⊗ launching speedily effective job-creating, labour-intensive projects to help retrenched and distressed workers;
 - ⊗ strengthening support measures for small and medium enterprises (SME), which account for the bulk of the employed in every country;
 - ⊗ targeting government social assistance or protection for the most vulnerable; and
 - ⊗ negotiating with international creditor institutions for the relaxation of tight fiscal conditions for heavily indebted countries.

3. Deepening social dialogue in challenging times

All three industrial relations seminars were conducted in the wake of the 2007–09 GFC. Thus, even though the Kuala Lumpur seminar was the one designated to discuss IR adjustments in crisis periods, the other two (Bogor and Manila), in addition to addressing IR challenges in an integrating ASEAN, also touched on GFC issues.

As Donald Tambunan, Phd. of the ASEAN Secretariat, remarked in the Bogor and Kuala Lumpur seminars, industrial relations play a critical role in mitigating the impact of global economic crisis, primarily through social dialogue and tripartism. He also emphasized that IR has acquired special importance with the adoption of the ASEAN Charter, which declares the Association’s adherence to “the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”. In this context, ASEAN is keen to build a people-centred community through a virtuous circle of sound IR practices, higher productivity, safe and healthy work conditions, and decent work in ASEAN.

For his part, Bill Salter, Director for the ILO Decent Work Team for East and South Asia and the Pacific, shared the ILO response to the crisis, which was mainly “developing and achieving broad consensus on a Global Jobs Pact”. The Global Jobs Pact proposes a range of crisis-response measures that countries can adapt to their specific needs and situation. The Pact urges measures to retain jobs, sustain enterprises, and accelerate employment creation and jobs recovery along with the development of social protection systems for the most vulnerable. The Pact also calls for the establishment of a “stronger, more globally consistent supervisory and regulatory framework for the financial sector, so that it serves the real economy, promotes sustainable enterprises and decent work and better protects the savings and pensions of people”. Furthermore, it urges cooperation to promote “efficient and well-regulated trade and markets that benefit all” and to avoid protectionism. It further urges a shift to a low-carbon, environmentally friendly economy that would help accelerate a jobs recovery. The Pact urges Governments to consider options such as public infrastructure investment, special employment programmes, broadening of social protection, and minimum wages.

3.1 Social dialogue as good industrial relations practice

The tripartite participants in the Bogor, Kuala Lumpur, and Manila industrial relations seminars agreed on the importance of social dialogue in building a country’s regime of good IR practices. Social dialogue, undertaken in a bipartite or tripartite manner, is in itself considered a good IR practice.

In fact, John Dunlop, in his pioneering book,⁷ singled out rule-making based on the interaction among the IR tripartite actors (governments, employers, and workers/unions) as the heart of modern industrial relations. The outcome of such rule-making varies across nations and industries, depending on the level of industrial development, the history and traditions, and the political economy of a given country. But in crisis periods, social dialogue, be this at the bipartite company level or tripartite national level, soothes frayed nerves and produces mutually acceptable solutions. Bitter or not, such solutions nevertheless help

⁷ Op. cit.: Industrial relations.

bind the parties together in their common struggle for the survival and eventual expansion of businesses and jobs. For example, there can be a joint resolution where employers minimize layoffs and unions maximize work cooperation while the economy is going through a difficult period, as happened in 2009 in the wake of the GFC.

3.2 ASEAN experiences: Building a culture of dialogue and good industrial relations practices

The three seminars provided occasions for a productive sharing of country experiences regarding national development, including the development of cultures of social dialogue and regimes of good IR practices. There follows a brief summary of these experiences.

Cambodia

A system of conciliation-mediation system has been developed in Cambodia's evolving market economy. This is supplemented by the institutionalization of a tripartite, yet independent, Arbitration Council that settles disputes unresolved at the enterprise level.

Cambodia still faces difficult IR challenges, however, especially with respect to the practice of collective bargaining, which is relatively new in the country. Cambodia's Labour Law was enacted only in 1997, yet this country has already ratified all the core labour Conventions (since 1999).

With the help of the ILO and other international institutions such as the International Organization of Employers (IOE), Cambodia's Ministry of Social Affairs, Labour, Vocational Training and Youth (MSALVY) has been conducting capacity training on collective bargaining for employers and unions.

Indonesia

Since the 1997–98 Asian financial crisis, Indonesia has made great advances in strengthening its industrial democracy. In 1998, in one sweeping move, it ratified all the ILO core Conventions listed in the 1998 Declaration on the Fundamental Principles and Rights at Work (freedom of association, collective bargaining, non-discrimination, non-use of forced labour, and elimination of extreme forms of child labour). Subsequently, it has made efforts to have its national labour laws conform with these Conventions. Three enabling laws have been adopted: Act No. 21 on Trade Unions, Act No. 13 on Manpower, and Act No. 2 on Industrial Relations Dispute Settlement. Social dialogue has also been intensified.

Indonesia has tripartite (from the municipal level to the national) and bipartite (enterprise and industry levels) IR committees. However, the Government gives preference to the bipartite approach or consultation in the settlement of labour disputes. In fact, disputes cannot be settled at the level of the labour court if there is no proof of consultation involving mediators or conciliators at the lower or enterprise level. According to Myra Hanartini of the Ministry of Manpower and Transmigration (MoMT), the most effective way to settle labour disputes is in face-to-face dialogue, which means no third party intervening between the workers and management. However, the Government is trying to develop approaches to handling conflict-ridden employee termination cases, promoting job preservation, and enhancing the capacity of conciliators-mediators to conduct themselves successfully in varied conflict situations.

Lao People's Democratic Republic

Lao People's Democratic Republic, primarily agrarian, is one of the ASEAN transition countries moving towards a more market-oriented economic environment. Nonetheless, it has made efforts to develop its IR system.

Lao People's Democratic Republic has enacted three new labour laws: the Labour Law (amendment) of 2006 and the Law on Lao Trade Union Federation of 2007. The first emphasizes the bipartite resolution of disputes through employer-employee consultation or negotiation before the disputes are elevated to the Labour Administration Agency (LAA). Where disputes remain unsettled by the LAA, they are submitted to the tripartite Labour Dispute Resolution Committee.

In 2010, Lao People's Democratic Republic ratified ILO Convention No. 144 on tripartite consultation, and has duly established a national tripartite committee.

Malaysia

To minimize the GFC's adverse impact on employment, Malaysia allocated part of the country's economic stimulus packages for varied training and placement programmes (e.g. "Train and Place" and "Train and Retain" programmes) for the benefit of displaced and unemployed workers. Malaysia's Ministry of Human Resources (MHR) also reported that the country continues to observe the general guidelines inscribed in the 1975 Code of Conduct for Industrial Harmony governing redundancy/retrenchment due to economic crisis:

- early warning of impending retrenchment;
- retraining and placement assistance;
- consultations with worker representatives;
- voluntary retrenchment and retirement;
- a last-in-first-out policy; and
- working closely with concerned government agencies in the search for alternative jobs.

Although this Code has not been legislated, it has a persuasive moral influence on the concerned parties, and the provisions of the Code are even used by the Industrial Court in making awards.

The Malaysian industrial relations system emphasizes institutions of collective bargaining, workplace cooperation, and harmonious employer-union relationships in the resolution of industrial conflicts and in maintaining industrial peace. Aside from applying these bipartite mechanisms for social dialogue, Malaysia has been conducting tripartite social dialogue and consultations at the industry and national levels.

Philippines

The Philippines has a long tradition of tripartite social dialogue, which has helped to stabilize the industrial relations system in both good and bad times over the last three decades. According to Rene Soriano of the Employers Confederation of the Philippines (ECOP), social dialogue helped cool the strike fever which hit

the Philippines in the mid-1980s “in the aftermath of the debt crisis and political turmoil” leading to the 1986 EDSA Revolt. In 1998, ECOP initiated the tripartite Social Accord for Industrial Peace and Harmony as a way of mitigating the adverse impact of the Asian financial crisis. Among the provisions stipulated in the Accord is the employers’ commitment to exercise utmost restraint in the termination of workers, and the workers’ commitment to use the right to strike only as a last resort.

In the wake of the GFC, the Department of Labor and Employment (DOLE) initiated tripartite consultations to fortify social partnership and develop innovative measures to minimize job and business dislocations. The latter include the policy on a “flexible work arrangement” (compressing the work week without reducing work hours) and the expansion of social protection programmes such as a conditional cash transfer for the poor.

Meanwhile, the ILO Decent Work Programme promoting freedom, equity, security, and dignity at work is being propagated in the Philippines at the national, regional, provincial, municipal, and industry levels. Case studies are also available that illuminate IR transformation — how legalistic and adversarial processes of collective bargaining in a number of companies have become more cooperative and productive through good-faith bargaining, trust, and improved communication between the parties. Because labour-management consultation and trust-building practices were fully in place, one negotiation involving union and management in a large wire-harness factory (Yazaki Torres) took a record time of just three hours to conclude a collective bargaining agreement (CBA).

Singapore

Singapore has a well-established tripartite system. Proactive and progressive IR measures have steadied the country in downturn periods, among these the 1997–98 Asian financial crisis, the September 2001 attack on the New York Trade Towers in the United States, the 2003 SARS outbreak combined with the Iraq war, and the GFC. The Singapore Government was quick to lend a supporting hand to companies adversely affected by the GFC. In 2008–09, it allocated an extra S\$2.3 billion in loans to help about 124,000 large and small local firms ride out the economic slump.

The National Trades Union Congress (NTUC), however, shared an interesting experience in the seminars. To save jobs, the NTUC had been helping companies cut costs without laying off workers and assisting workers with “up-skilling, re-skilling” so they could be readily redeployed. The NTUC also creatively supported flexible work arrangements, so that both companies and workers could maintain businesses and jobs. This was in sharp contrast to the experience in other countries, where flexibilization had become a dirty word for unions because it was being used to justify company layoffs.

Another interesting sharing was the bold tripartite programme to address working conditions and employability among low-wage contract workers. Headed by the Secretary of the Ministry of Manpower (SMM), the Tripartite Committee of the Central Provident Fund (CPF)⁸ and Work-Related Benefits for Low-Wage Workers has produced an advisory on “responsible outsourcing practices”, advocating the close monitoring of labour standards enforcement and the development of appropriate training and job redesign programmes for contract workers.

⁸ The CPF is the premier social security institution in Singapore.

Thailand

Thailand was the first Southeast Asian country to be hit by the 1997–98 Asian financial crisis, which triggered waves of business closures, job losses, and industrial strife.

In 1998, in response to this crisis, the tripartite social partners developed Practical Guidelines for the Promotion of Industrial Relations in Economic Crisis. The guidelines advise employers and employees to save businesses and jobs by intensifying the use of the bipartite system of joint consultation and cooperation in cost savings. The guidelines also recommend job-placement assistance for laid-off workers and skill development for the unemployed.

During the 2007 GFC, the Thai Government acted quickly, with the Ministry of Labour (MLT) taking a lead role, by calling on the private sector to temper any retrenchment programmes and by activating training and other assistance programmes for displaced workers. The MLT also helped to set up a Committee on the Policy to Relieve the Problem of Employment Termination Resulting from the Economic Crisis, with the Prime Minister chairing a committee comprising tripartite representatives. The Committee and the MLT came up with a national agenda providing for a “3-3 programme” of three reductions and three increases. The three reductions were the following:

- in terminations, thereby strengthening liquidity among affected enterprises and employability of displaced workers);
- in labour mobility, encouraging workers to stay in the provinces; and
- in living costs, by means of reducing utilities and transport costs.

The three increases referred to the following:

- in programmes promoting increased employment for displaced workers;
- in job opportunities through alternative occupations; and
- in labour skills, through various training programmes.

Thailand’s basic labour law is the Labour Relations Act of 1975, which recognizes and protects the rights of both employers and employees to form trade unions or associations. The Act also provides for a dispute settlement procedure, as well as encouraging bipartism at the plant or company level, specifically in the formation of a consultative employees’ committee to deal with working conditions, occupational safety and health, and environment.

Viet Nam

Viet Nam had seen a steady increase in strikes, culminating in the labour disputes of 2007 and 2008. Most of these strikes revolved around issues of wages and benefits, poor working conditions, and failure of employers to fulfil compensation commitments to the employees. The problem was further complicated by the undeveloped laws regarding strikes and by the undeveloped state of unionism and collective bargaining in the strike-hit private industrial parks. The situation was exacerbated with the onset of the GFC, which badly affected many export-oriented enterprises in Viet Nam.

The Government responded in a balanced and forward-looking way to the “strike fever”. The Ministry of Labour, Invalids and Social Affairs (MOLISA) formed special task forces to settle “illegal strikes”. The assigned conciliator-negotiators were instructed to respect the legal rights of both sides. Through these task forces, MOLISA tried to settle the disputes by encouraging direct negotiation between the parties (usually management and the “non-unionized” striking workers) on the spot, i.e. there in the place or company where the dispute had occurred.

In addressing the economic crisis spawned by the GFC, the Government adopted a stimulus package that included a tax reduction programme for affected enterprises and assistance to laid-off workers, while providing lending assistance to distressed corporations so they could meet their obligations to the workers. The Government also transformed the crisis into an opportunity by strengthening positive industrial relations in the following ways:

- convening national tripartite consultations on measures to mitigate adverse impacts of the crisis;
- encouraging the development of bipartite consultative or dialogue systems in enterprises;
- enhancing the capacity of provinces to settle industrial disputes; and
- building enterprise capacity in understanding of industrial relations.

With respect to the last measure, the Viet Nam Chamber of Commerce and Industry (VCCI) has been gathering and popularizing among the employers positive ideas on good employment relationship and compliance with labour laws and employment regulations. MOLISA has also been conducting continuous dialogues with both the VCCI and the Viet Nam Confederation of Labour (VGCL) on directions in needed labour law reforms or amendments to the Labour Code.

3.3 Sharing Japan’s industrial relations experiences and initiatives

Japanese representatives, under the auspices of Japan’s MHLW, shared that country’s good IR practices, including new IR initiatives in response to the changing global economy.

Japan experienced tumultuous industrial relations during the high-speed growth decades of their post-war era. Yet the Japanese tripartite social partners found a way of stabilizing IR in the 1960s and 1970s, with Japan emerging as a global model for industrial peace and productivity. Jobs had also been relatively stable until the 1980s.

As with the rest of the world, however, the Japanese labour market has been affected by globalization, while economic growth in Japan since the 1990s has been sluggish. Consequently, traditional Japanese IR practices of lifetime employment, seniority-based pay, and enterprise-based unionism have been eroded. These are gradually being replaced by management policies favouring performance-based wage system, increased hiring of non-regular workers, and management focus on stockholder rights instead of employee welfare.

One major change in the labour market is the increase in “non-standard” or “non-regular” employment,⁹ which shot up 20 per cent in 1990, and rose to 33.9 per cent by 2008. Paralleling this rise in non-regular employment is the rise in the number of individual labour disputes, which stands in sharp contrast to the downtrend in collective labour disputes.

Nevertheless, positive IR developments and new good IR practices are emerging. Seminar participants from Japan, including Japanese labour experts and representatives from the MHLW, employers, and trade unions, shared the following significant developments:

- **New legislative initiatives** to secure fair treatment for part-time workers, including, in 2007, the Japanese Diet-approved Amendment to Part-Time Workers Act, providing for just terms or conditions of work for part-time employees, and encouraging employers to accept more part-timers as regulars. Another related protective law for “non-regulars” is the Amendment to the Minimum Wages Act, also passed in 2007, which aims to making minimum wages serve as safety nets, covering the workers’ minimum living standards. The Diet is also discussing possible amendment to the Worker Dispatching Act to curb abuses associated with labour dispatching.
- **Positive responses from some enterprises** to the above legislative reform initiatives were reported, to the extent that those enterprises had even erased the distinction between fixed-term (part-timers and contract employees) and non-fixed or regular employees.
- **The renewal of social dialogue**, where the formulation and implementation of the above reforms had been the subject of tripartite deliberations and dialogue. Also reported was a significant increase in the number of enterprises conducting labour-management consultation (LMC) at the plant level on various employment and personnel issues, including enterprise production and management plans and policies.
- **The first Japanese and Asian “global framework agreement”** had been adopted. This agreement involves the Takashimaya Corp., which has branches in Singapore and other Asian countries, and the Takashimaya union, which is affiliated with the Japan Federation of Service and Distributive Workers’ Unions (JSD).

Global framework agreements are common in Europe because Europe observes a social directive supporting the formation of the European Works Council and the forging of framework agreements with companies operating in two or more European countries. But Asia has no EU-type social directive, which makes the Takashimaya employer-union framework agreement initiative all the more significant. The agreement was signed in Geneva, and witnessed by ILO Director-General Juan Somavia.

- Unions in Japan such as the JSD had been expanding membership through their efforts to organize the “non-standard” employees. At the same time, companies such as Takashimaya were demonstrating their maturity by recognizing the rights of non-regular workers to form unions and to receive social and labour protection.

⁹ Non-regular workers include short-time workers, part-time workers, and “dispatched” workers (those deployed by labour-dispatching agencies).

3.4 Great advances, but more capacity building needed

As the foregoing suggests, ASEAN member countries have made great advances in developing and promoting a regime of good IR practices and in institutionalizing social dialogue. Much more remains to be done, however, both among individual countries and at the ASEAN Community level, if the ALM vision — of a system of good IR practices that can serve “as a cornerstone of quality workplaces and economic success” — is to be fully realized.

One challenge is that of strengthening the capacity of ASEAN countries to comply with ILO Conventions included in the ASEAN-ILO/Japan Industrial Relations Project - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), Labour Inspection Convention, 1947 (No. 81), Labour Administration Convention, 1978 (No. 150), Minimum Wage Fixing Convention, 1970 (No. 131). As the following table shows, some ASEAN countries have yet to ratify all of these Conventions.

Country	C87	C98	C144	C81	C150	C131
Brunei Darussalam						
Cambodia	Yes	Yes			Yes	
Indonesia	Yes	Yes	Yes	Yes		
Lao People’s Democratic Republic			Yes			
Malaysia		Yes	Yes	Yes		
Myanmar	Yes					
Philippines	Yes	Yes	Yes			
Singapore		Yes	Yes	Yes		
Thailand						
Viet Nam			Yes	Yes		

Source: ILO Compilation.

4. Building a sound industrial relations legal framework

The first item in the ASEAN Guidelines on Good Industrial Relations Practices is the development of a “favourable legal framework”. By definition, a legal framework as the body of laws according recognition of the basic rights of the tripartite social partners in an industrial democracy, those of workers and employers in particular. The legal framework defines the conditions upon which those rights can be exercised, institutionalizes a system of enforcement procedures and mechanisms, and provides for remedies when rights are violated or when conflicts or misunderstandings develop.

The ASEAN Guidelines, in exhorting countries to strengthen and develop their respective legal frameworks for industrial relations, also emphasize that each framework should take into account national economic and social conditions. As discussed in the Bogor seminar, there is no-one-size-fits-all model framework. For historical and economic reasons, moreover, the level of development of such frameworks in the different ASEAN countries will be naturally uneven. As pointed out in Section 1 (above) the transition economies of Cambodia and Lao People’s Democratic Republic have adopted relatively new labour laws. Meanwhile, some ASEAN countries have labour laws influenced by their colonial experiences (e.g. the American influence in the Philippines, and Great Britain’s, in Malaysia).

In general, however, the Guidelines say that each framework must “guarantee and protect the basic rights and requirements of employers to manage their business and to grow and that of the workers to just working conditions, stable employment, minimum standards, a safe and healthy working environment and to express their views as well as participate in decision-making that have significant implications for themselves or their workplace”. The Guidelines also recommend that labour laws should be “clear, reasonable, practical and effectively and evenly implemented”.

4.1 Urgent industrial relations concerns in some ASEAN countries

“Trigger points” for labour law reform. The formal focus of the Manila seminar was the Legal Framework and Practice in Dispute Settlement. The participants identified critical issues or observations that should motivate ASEAN countries to institute labour law reform or amendments in their respective national IR legal frameworks. Such stimuli included the following:

- unclear labour laws and/or inadequate provision of applicable law;
- rising individual labour disputes due to dismissals, disciplinary measures, unpaid wages, or separation/retirement benefits;
- unfair dismissals and other violations of labour standards;
- rise of precarious employment or short-term labour hiring;
- lack of common understanding of laws and their implementation; and
- delays in the process of union recognition and dispute settlement due to deficiencies in the law.

DOLE Undersecretary Hans Caddac, summarizing the foregoing during the IRT Meeting of 12 May 2011, described these IR concerns as “trigger points” for labour law reform.

As it happens, most ASEAN countries participating in the ASEAN-ILO/Japan Industrial Relations Project seminars are reviewing and/or amending their respective labour laws, especially laws dealing with dispute settlement. All have been moving to strengthen social dialogue mechanisms and integrate these within their respective dispute-settlement systems.

4.2 ILO technical assistance

The Supplemental Notes on the ASEAN Guidelines and the ALM’s Work Programme, 2010–2015 cite the importance of ILO technical cooperation in developing the relevant legal frameworks. The ILO is that United Nations body responsible for drawing up and overseeing international labour standards. The ILO assists member States in setting up these standards and strengthening national capacity to meet those standards. And this is precisely the spirit that animates the ASEAN-ILO/Japan Industrial Relations cooperation project.

In this light, the ILO and Japanese IR experts in the three seminars raised the following points for discussion.

Decent work campaign

Technical assistance and ILO other programmes are being conducted under the overarching theme of “Decent work for all”. Coincidentally, ASEAN, through the ASEAN Charter and its Community Blueprints, has adopted decent work promotion as an integral part of its community building efforts.

The ILO global DWA campaign¹⁰ calls for:

- observance of rights at work;
- creation of better jobs for women and men;
- extension of social protection for all; and
- promotion of social dialogue among the tripartite social actors.

Central to this campaign is the observance of internationally recognized core labour rights, in particular the right of every worker to form or join a union for the purpose of concluding a collective agreement governing the terms and conditions of work. The 1998 International Labour Conference reaffirmed, through the Declaration on the Fundamental Principles and Rights at Work, the duty of ILO member States to respect the global core labour rights:

- prohibition of forced labour;
- freedom of association;

¹⁰ For more on the ILO decent work campaign, visit http://www.oit.org/global/About_the_ILO/Mainpillars/WhatisDecentWork/lang.

- right to collective bargaining;
- non-discrimination at work; and
- elimination of child labour.

As mentioned in Section 1 (above) these international core labour rights are covered by the following international Conventions:

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98),
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

FOA and CB Conventions

Among the core Conventions listed above, the ILO accords extra importance to Conventions No. 87 and No. 98. These go to the heart of democratic industrial relations — social dialogue leading to rule-making at the enterprise and industry levels. Yet only three ASEAN countries have ratified both Conventions, while four have ratified neither. It was observed that, in general across the Asia-Pacific region, these Conventions have had a low ratification rate.

The three seminars also cited the potentials of collective bargaining as a means of promoting smooth, win-win adjustments to crisis situations and competition-driven corporate restructuring. Several countries shared notable case studies related to win-win bargaining.

ILO source materials

In reviewing its legal framework, a member country can take advantage of the information and materials regarding the application of labour standards assembled by the ILO. The ILO provides end-users with online access by way of such channels as NORMLEX, a database of international labour standards and reports from ILO supervisory mechanisms. It also records country ratification of Conventions.

The ILO also provides useful toolkits, including the Toolkit for mainstreaming employment and decent work (Geneva, 2007), which describes the different labour standards and how development agencies such as government bodies and donor agencies can apply standards in development and employment planning. Another valuable resource is a toolkit jointly produced with the ADB: Core labour standards handbook (Manila, ADB and ILO, 2006).

4.3 Analysing strengths and weaknesses in labour law systems

Hierarchies of labour law. In formulating labour-law reform agendas in light of the above, one must also bear in mind that every country has a hierarchy of labour laws:

- The highest law is usually the national Constitution. This may include a general statement recognizing basic labour and employer rights or that country's adherence to the general principles regarding human and labour rights laid down by the UN System.
- These rights become fleshed out in specific labour laws, recognizing each of the rights and defining the parameters or conditions by which each of these rights can be enjoyed by the workers or employers or both.
- Supporting laws are then developed, legislation in support of labour law enforcement — e.g. laws creating or establishing a labour inspection system.
- Finally, when disputes or misunderstandings arise, there are laws giving the aggrieved parties opportunity to seek redress and laws addressing the procedure and settlement of disputes.

ASEAN Guidelines. For their part, the ASEAN Guidelines focus on what should be addressed by a national legal framework or labour law system:

- recognition of basic rights, especially freedom of association and collective bargaining;
- capacity building for compliance with labour standards;
- effective dispute settlement system; and
- tripartite partnership and social dialogue.

Hence, assessing the strengths and weaknesses of a country's legal framework means asking the following questions:

- Are laws that recognize the basic rights fully in place?
- Have the laws on enforcement (e.g. inspection and monitoring compliance) and capacity building been established?
- Are effective laws in place to provide procedures and mechanisms for the settlement of disputes?
- Are there laws promoting and strengthening social dialogue and tripartism?

In short, what is needed is a comprehensive and detailed analysis/review of the labour law system — not of just one particular labour law — in determining the strengths and weaknesses of the overall legal framework. For example, one may have a law recognizing the collective bargaining right of unionized workers, but lack a law requiring the other party to sit down when all the legal requirements for union formation have been satisfied by the workers. Should the bargaining process break down, there ought to be a law to help the parties to resume talks, or to bring the deadlock to a third party or to an arbitration body for resolution. Should one party opt to go on strike or lock out the business, there ought to be a law stipulating the legal parameters of how they can exercise this right without causing unnecessary damage to themselves and to

society. Finally, if the bargaining dispute remains unresolved, there should be an accepted way by which the labour authority or labour court can come in and resolve the matter.

4.4 Country experiences in legal framework development

Tripartite participants in the three regional seminars shared lively exchanges of views and experiences regarding the directions of labour law reform in their respective countries. Singapore was cited as one country with a comprehensive and effective labour law system. Some countries were reportedly reviewing their labour law systems, while others were still in the process of building their systems. There follow brief snapshots of IR concerns and labour law developments among participating ASEAN countries.

Cambodia

Cambodia adopted an open market economy only as recently as the mid-1990s. This was accompanied, in 1997, by the enactment of Cambodia's Labour Law. National laws are deemed consistent with international norms or ILO Conventions. Freedom of association is fully guaranteed in law.

The CBA system is a relatively new concept in Cambodia, however, and — given the different interpretations by concerned parties of what a CBA should be, of what the attitudes of the parties to the process should be, and of how it should be concluded — difficulties have arisen in promoting CBA as an IR institution. Cambodia also confronts the problem of union multiplicity, meaning an enterprise can have as many trade unions as there are claiming to represent the workers in that enterprise. One issue is thus how to determine the most representative organization which can represent the workers in the CBA process. To address this problem, the Government issued labour law Prakas 305.

The MLVT, with the help of the ILO, has instituted a conciliation-mediation system to resolve disputes at the enterprise level. If a dispute remains unresolved, it can then be elevated to the tripartite Arbitration Council.¹¹ If disputes are not settled at the Council level, they are then passed on to the court system. Cambodia also has a tripartite Labour Advisory Committee (LAC), which makes policy recommendations on minimum wages, collective bargaining, and other IR issues.

In 1999, Cambodia ratified ILO Conventions No. 87 and No. 98. These Conventions require member States to protect against acts of discrimination against unions and interference in workers and employers organizations, while promoting the development of voluntary collective bargaining. However, some unions in Cambodia claim that anti-union acts of discrimination, e.g. dismissal or demotion of union members, are still prevalent. They also claim that the institution of collective bargaining remains underdeveloped, as reflected in the small number of registered CBAs. On the other hand, employers have to contend with union multiplicity at the enterprise level, and have expressed deep anxiety over the large number of strikes that cause instability in production. Additionally, they complain that a number of strikes have not followed legally prescribed procedures. Clearly, trust building among all concerned parties is in order, supplemented by the enactment of labour laws that better detail procedures for union formation and collective bargaining.

¹¹ The Arbitration Council was established in 2002. The Council is tripartite in nature, with members selected from the Government, employers, and unions. The Council is considered an independent body, however, meaning its members must make decisions based on the merits of each case.

Indonesia

At the turn of the millennium, in the wake of the krisis moneter that led to the collapse of the Suharto regime, Indonesia experienced a dramatic transformation of its IR and labour law system. In 1998, as part of this, Indonesia ratified all the core Conventions in one bold move.

Some old laws have been retained. For example, Act Number 22 (1957) prescribed that every problem and dispute should be settled peacefully through bipartite negotiations, and resolutions reached in such negotiations could be formulated as mutual agreements. Employers or trade unions that failed to resolve their disputes in a bipartite manner could seek the assistance of a government mediator to help them reach a compromise agreement, or they appeal to arbitration. If the employer and the trade union did not agree with the recommended solutions, they could present a dispute for settlement by the Regional Committee for the Industrial Relations Disputes Settlement and/or the Central Committee for Industrial Disputes Settlement.

There have also been changes in the labour law system, however. Act No. 22 (1957) regarding the Settlement of Industrial Relations Disputes and Act No. 12 (1964) regarding Termination of Employment in a Private Company (getting prior approval of the labour authority) were deemed no longer relevant to the new national situation. In the spirit of reformasi, Indonesia enacted three major laws related to industrial relations and disputes settlement:

- Act No. 21 (2000) on Trade Unions;
- Act No. 13 (2003) on Manpower; and
- Act No. 2 (2004) on Industrial Relations Disputes Settlement.

Act No. 21 (2000) on Trade Unions specifies that all workers have the opportunity to establish or join any organization that they choose to. Act No. 13 (2003) on Manpower, Chapter 11, is devoted wholly to IR, fleshing out the rights of both trade unions and employers' organizations, encouraging bipartite and tripartite cooperation, and recognizing the rights of workers to push for a collective labour agreement, to conduct strikes (lockouts for the employers) under certain conditions, and to have access to a just system of dispute settlement. Act No. 2 (2004) specifies a fixed duration for each phase of the settlement procedure. It also emphasizes the importance of settlement through bipartite negotiations.

Lao People's Democratic Republic

The Lao People's Democratic Republic is a land-locked country. It is primarily agrarian, with 80 per cent of the labour force in agriculture. Its leading industries are hydro power and mining. Tourism is fast growing in importance.

From 1975 to 1989, Lao People's Democratic Republic did not have a Constitution. The 1990 Constitution, explicitly permitting private enterprise and foreign investment, signalled the country's transition to an open market economy.

Given the political and economic background, one can readily appreciate the efforts of the Government to develop a rules-based IR system. As mentioned in Section 1 (above), it enacted the Labour Law (amendment) in 2006 and the Law on Lao Trade Union Federation in 2007. The first emphasizes the bipartite resolution

of disputes through employer-employee consultation or negotiation before the disputes are elevated to the Labour Administration Agency (LAA). If the disputes are not settled by the LAA, then they are submitted to a tripartite Labour Dispute Resolution Committee. In 2010, the Lao People's Democratic Republic ratified ILO Convention No. 144 on tripartite consultation, and has duly established a national tripartite committee.

The Ministry of Labour and Social Welfare (MLSW) has been active in promoting tripartism and social dialogue, and in developing programmes such as health and safety for the benefit of workers. Above all, it is trying to develop a programme to further develop the institution of collective bargaining.

Malaysia

Malaysia has a relatively mature IR system. The IR legal framework of Malaysia is based primarily on three principal legislations -- the Industrial Relations Act 1967 (IRA), the Trade Union Act 1959, and the Employment Act 1955/Labour Ordinance Sarawak/Sabah.

IRA seeks to promote and maintain industrial harmony, regulate relations between employers and workers and their trade unions, and prevent and settle any differences or disputes arising from the relationships. Accordingly, the objective of IRA is "to achieve social justice on the basis of collective bargaining, conciliation and arbitration".

The institution of collective bargaining is recognized as well as regulated under the IRA. The right to bargain is accorded to duly-recognized trade union. There are timelines to be followed for the commencement of bargaining, whereby once an invitation has been made and the invitation has been refused or not been accepted within 14 days, or where no collective bargaining has commenced within 30 days from the date of the receipt of the reply notifying such acceptance of such invitation, then the party making the invitation may proceed with the next course of action. In the matter of industrial disputes, if there is no positive outcome from the negotiation and conciliation process, then the matter is referred to the industrial court for arbitration. The CBA can cover all issues relating to 1) terms of employment such as wages, hours of work, and fringe benefits; 2) conditions of work such as physical conditions under which a workman works, including matters of his safety and physical comfort; and 3) relationships between the parties on matters such as discipline, lay-offs and retrenchment. However, this wide scope of collective bargaining is limited by Section 13(3) of the IRA, which states that the trade union cannot raise any bargaining demand concerning the recruitment, transfer or promotion of any workman, his retrenchment by reason of redundancy or reorganization, his dismissal and reinstatement and assignment or allocation of his duties and tasks.

Malaysia can lay claim that it has enjoyed that it has enjoyed industrial harmony thus far due to its existing IR system, which promotes collective bargaining, settlement of disputes through conciliation-mediation and the Industrial Court (award system), and provides for a programme of workplace cooperation, employer-union cordial relationship and tripartite consultation and dialogue. The statistics with regards to strikes and picketing over the past year lends credence to this statement, in thus far that there has not been any strikes at all reported in 2011 and only 8 pickets in the same year.

All the endeavours mentioned above are made to ensure that industrial harmony is retained in the country. Emphasis is given to the tripartite consultations, which ensures the views of each sector are sought before any changes are made to the industrial laws. There is also constant engagement with employers and trade unions whereby matters such as trade union recognitions, collective bargaining process, and the Productivity

Linked Wage System as well as trade disputes settlements, are discussed. A Code of Conduct for Industrial Harmony, adopted in 1975, has served as a guide for the IR actors.

Philippines

The Philippines administers a well-structured industrial relations policy, as reflected in its Labor Code, promulgated in 1974. The 1987 Constitution refers to industrial relations as a shared responsibility of the IR actors.

The Constitution and the Labor Code also promote collective bargaining and “voluntary modes” of dispute settlement, including conciliation-mediation, preventive mediation, and voluntary arbitration. These voluntary modes of dispute settlement are coordinated by the National Conciliation and Mediation Board (NCMB). Unfair labour practices and other disputes, especially those emanating from the unorganized sector, are handled by the National Labor Relations Commission (NLRC). Unfair labour practices refer to disputes arising from non-recognition of unions or interference by employers in union formation.

Tripartism is well developed under the Labor Code, and is coordinated by the Bureau of Labor Relations (BLR). At the national level, a Tripartite Industrial Peace Council (TIPC) is convened from time to time to address key labour issues and needed labour policies. Several bodies dealing with such matters as social security, dispute settlement, and skills development have tripartite governing boards. Tripartism also helped the country weather the strike wave of 1983–87 and the political turmoil resulting from the ouster of the Marcos regime in 1986.

The tripartite social partners also recognize the need to amend certain features of the Labor Code, which may no longer be suitable to the requirements of a rapidly changing global economic environment. The problem is that no consensus exists regarding directions for reform. The unions and employers, for example, are dramatically opposed to one another on the issue of job contracting, an issue that has been a subject of IR debates for nearly four decades. And while collective bargaining is fully institutionalized in the Philippines, with laws supporting it enacted as far back as the early 1950s, some actors have managed to reduce collective bargaining to a legalistic and adversarial process, causing unnecessary delays, expense, and animosities for all parties.

The executive and legislative branches of the Government, however, continue to make efforts to introduce reforms to the Labor Code. DOLE has also introduced a “single-entry approach”, or a 30-day mandatory conciliation-mediation services for all disputes, to encourage conciliation-mediation, and speed settlement procedures, clearing the numerous pending NLRC cases.

Singapore

Singapore has a comprehensive legal framework on industrial relations and dispute settlement. This framework is guided by two major labour laws: the Employment Act, and the Industrial Relations Act of 1968.

The Employment Act defines minimum standards for employment, including those regarding the payment of wages, hours of work, overtime, and work leaves. The Industrial Relations Act, covers the whole gamut of industrial relations, from union formation to collective bargaining and dispute settlement. This law spells out procedures for union recognition, collective bargaining, and dispute settlement. For example, a union

can bargain only if it is duly registered and recognized by the employer. Then, once the union is able to conclude a CBA, the agreement has to be submitted to the Industrial Arbitration Court for certification.

The Industrial Arbitration Court is tripartite in composition. In determining a trade dispute, the Court has to evaluate not only the interests of the people immediately concerned but also the “interest of the community as a whole and in particular the condition of the economy of Singapore”. This means the Court must be guided, when it comes to wage issues, by the recommendations of the Singapore National Wages Council.

As mentioned in Section 1 (above), Singapore has a well-developed system and tradition of tripartite social dialogue.

Thailand

Thailand’s Ministry of Labour and Social Welfare (MLSW) was established only in 1993. The country’s first labour law was the Labour Act of 1956, the main purpose of which was to promote cooperation and understanding between employers and employees. In 1965, a Labour Disputes Settlement Act was enacted in response to a wave of strikes and disputes that hit the country in the mid-1960s. This law provided procedures for the filing, negotiation, and conciliation/eventual settlement of labour demands.

In 1975, the different policies and rules dealing with employer-employee relations were consolidated under the Labour Relations Act. This Act recognizes and protects the rights of both employers and employees to form trade unions or associations, provides for a procedure for dispute settlement, and encourages bipartism at the plant or company level. The procedure for dispute settlement spells out the role of a Conciliator Officer, who is mandated to settle disputes within five days. If there is no settlement, the dispute goes to a Labour Dispute Arbitrator or panel of Dispute Arbitrators.

Viet Nam

In 1995, Viet Nam adopted a labour code as part of its overall programme of adjusting, under its “doi moi” policy, to the realities of a market-oriented economy.

Viet Nam applies a continuing programme of reviewing its IR policies and of amending its Labor Code, especially after it was hit by “strike fever” in 2007 and 2008. In 2007, in fact, it set up a National Industrial Relations Commission (NIRC) to strengthen MOLISA’s capacity to assess the IR situation and formulate appropriate IR policies, including changes or amendments in the Labor Code. In fact, the Labor Code has already undergone amendments (in 2002, 2006 and 2007) – primarily for the purpose of mainly to rationalize the administration of various labour programmes and to clarify such regulations as those on union formation. In its ongoing review of the Labor Code, MOLISA has conducted intensive consultations and dialogue with the employers’ associations and with the Viet Nam General Confederation of Labor (VGCL).

One area of reform being looked into by MOLISA and the other members of the tripartite system is how best to strengthen the institution of collective bargaining — especially at the enterprise level in the new private-sector industrial parks or zones. Many CBAs, reportedly, only reflect what the law already provides. A deepening of the CBA process will require stronger unions at the company level capable of carrying out bargaining with some degree of autonomy from the national center and employers prepared to engage in good-faith bargaining over labour demands that are higher than what the minimum labour standards already provide.

Another area of reform being considered is an improved system of dispute settlement, e.g. in the handling of wildcat strikes and other industrial disputes.

4.5 Labour law changes in Japan

As reported in Section 1 (above), the Japanese labour market is undergoing dramatic changes, with “non-regular” or “non-standard” employees now accounting for one-third of the total employed. With its decade-long economic crisis and with industry shrinking, a perceptible decline has been observed in unionism. Some erosion is also evident of traditional IR concepts associated with the Japanese IR/HRM system — *nenko* or seniority-based pay and lifetime employment. However, the culture of consultation and dialogue, at the firm level, remains alive in many enterprises. This explains why the number of union strikes has remained very low in Japan, even though there is a perceptible increase in the number of individual disputes.

In the 1960s and 1970s, at the height of the Japanese economic miracle following the post-war industrial turbulence, Japan succeeded in developing a stable IR system supported by a sound legal framework. The Japanese Labour Law is fairly comprehensive, covering individual employment concerns, collective employer-employee relations (largely union-management relations), and conditions in the labour market. In general, workers enjoy legal protection, particularly in relation to their employment contracts. Article 28 of the Japanese Constitution guarantees the right of workers to organize a trade union and engage in collective bargaining, even to strike. Employers are prohibited from unfair labour practices such as union busting or interference in union formation. In case of disputes, a tripartite Labour Commission provides conciliation, mediation, and arbitration services.

But what really provided stability to the national IR system in the 1970s, apart from Japan’s successful post-war growth, was an institutionalized culture of dialogue developed by the IR partners, and operationalized mainly through mechanisms such as labour-management consultation councils and quality circles. Side by side with this is the development of a culture of sharing the fruits of increased productivity, with employers sharing part of the productivity gains with the employees. And productivity did not come with a stiff price for workers in terms of work-force reduction, as has happened in many countries. Instead, Japan even saw the emergence of the concept of lifetime employment.

As mentioned earlier, however, some of these practices have been gradually eroded under globalization, and non-regular employment has grown significantly.

Addressing the concerns of these non-regular workers has become an important concern among the IR actors. This led to the legislation of the Part-Time Workers Act of 2007, which strengthens protection for non-regulars and encourages the transfer of part-timers to regular positions. Another relevant law was the Amendment of the Minimum Wage Act, which made it responsive to the minimum requirements of low-paid workers, and there is an ongoing review of the Worker Dispatching Act.

Meanwhile, some unions have made efforts to organize the non-regulars, as we have seen in Section 3 (above), gaining acceptance from some employers. In the meantime, industry and unions continue to talk to one another, while the Government continues to promote tripartite social dialogue regarding worker concerns in a globalizing Japan.

5. Promoting good industrial relations in ASEAN: The way forward

5.1 Good industrial relations practices and social ASEAN

Most ASEAN countries have been investing in good industrial relations practices and in the development of their respective IR legal frameworks. In general, efforts have gone beyond meeting the minimum requirements of the core ILO Conventions, particularly the conventions on freedom of association and collective bargaining. The “beyond” means more dialogue and consultations between the social partners, especially during crisis periods, and increasing the capacity both to provide protection to workers and to enhance productivity. This is what the three Regional Seminars have revealed.

A good industrial relations system practices social dialogue intensively, consistently, and continuously.

The three regional seminars provided forums for the productive sharing of country experiences on a tripartite basis. One especially valuable outcome was showing the way tripartism can contribute to preserving and strengthening both jobs and businesses, as fully exemplified in the case of Singapore. A good IR system is one that practices social dialogue intensively, consistently, and continuously. Seminar participants described how distressed companies in Malaysia, the Philippines, Thailand, and Viet Nam were able to overcome the GFC-induced economic downturn in Asia on the strength of labour-management partnerships made possible by a culture of dialogue.

Mutual trust and acceptance of the rules of industrial democracy. Of course, such partnerships and dialogue are not possible unless they are preceded by efforts to build mutual trust and confidence among the concerned parties, and accept the rules of industrial democracy.

In a way, IR-building efforts in the ASEAN countries are directly related to ASEAN community building. For how can one have an ASEAN Community of caring and sharing societies without social dialogue and social partnership among the people?

5.2 Some industrial relations concerns

For most ASEAN countries, developing a sound legal framework and building a regime of good IR practices remains a work in progress. Even the more developed countries need to continually review and nourish the system — especially given the rapid economic and labour-market changes being experienced, not only by individual ASEAN countries, but by the integrating regional entity that is ASEAN as a whole.

Capacity building. Seminar participants referred again and again to the task of capacity building in all areas, among these labour administration, labour law formulation, skills negotiation, and dispute settlement. And the ASEAN-ILO/Japan Industrial Relations Project is prepared to serve as a partner in this campaign.

Other urgent challenges remain, however. The seminars discussions revealed that some ASEAN countries need assistance in the following areas:

- filling gaps in their legal systems (e.g. where no enabling laws exist for certain rights);

- strengthening or clarifying procedures in collective bargaining or dispute settlement; and
- improving or correcting weaknesses in labour administration with respect to such matters as inspection, compliance monitoring, and enforcement.

The trade union participants, meanwhile, repeatedly raised the problem of growing “flexibilization” in employment, which is making it harder and harder for unions to form and for workers to get legal protection. Japan and Singapore have advocated positive approaches to the non-regular or casual workers. But given the realities of globalizing and integrating labour markets, how may this problem — which has divided IR actors in countries such as Indonesia and the Philippines — be addressed in a win-win manner?

Clearly, much remains to be done.

5.3 ASEAN Labour Ministers’ Programme, 2010–2015

In 2010, the ASEAN Labour Ministers (ALM) made a historic decision in approving the ASEAN Guidelines (this document now needs popularizing, including follow-up workshops and seminars).

ALM made another historic decision in approving the Work Programme, 2010–2015, which overwhelmingly focuses on strengthening industrial relations both in the region and in the individual ASEAN countries, calling for the development of activities around the following themes:

- promotion of best practices in labour policy and laws;
- protection and promotion of labour rights, including migrant workers’ rights;
- capacity building in the enforcement of labour rights and labour laws;
- capacity building in workplace dispute resolution and administration of labour justice; and
- strengthening of tripartite cooperation.

5.4 Strategizing the next three-year ASEAN-ILO/Japan Industrial Relations partnership

The ILO Regional Office in Bangkok has warmly welcomed the ALM’s IR focus and Work Programme, 2010–2015. Concerning proposed topics for the next three regional seminars, however, the following are considered as high priorities:

- **Promoting social, economic, and labour policy coherence.** This is crucial for an ASEAN that seeks to transform itself into a cohesive and inclusive community. One way of achieving this is by mainstreaming the ILO Decent Work Agenda (DWA) as an integral part of the social and economic policy regimes being pursued by the ASEAN Governments. The DWA is also consistent with the UN MDGs, which seek to reduce mass poverty by half before 2015, and which promote social dialogue and social partnership as critical in stabilizing society and growing the economy.

- **Fixing minimum wages without tears.** In many countries in the region, the minimum wage laws, institutions, and rules are under review, and will come under increasingly deeper scrutiny in the coming years. China, the economic leader in the Asia-Pacific, has already enacted a series of minimum wage adjustments (mostly upward) in the different provinces. The problem is that minimum wage fixing and legislation often generate conflicts and divisions among the tripartite social partners. In some countries, a call for minimum wage adjustment is a call for renewal of such conflicts and divisions. How can minimum wage fixing be accomplished in a professional and harmonious manner?
- **Balancing worker demand for more security with employer demand for more flexibility.** This presents a difficult policy challenge almost everywhere. Are there good practices and alternative policy approaches that can help meet the requirements of both sides in a fair and balanced way? How should employment contracts be treated? How should labour laws respond to these seemingly conflicting demands?

Common ILO-ASEAN interest. Given its global network of IR expertise and its contacts with Governments and workers' and employers' organizations worldwide, the ILO has a unique advantage in the area of industrial relations. Drawing on those resources, the ILO Regional Office for Asia and the Pacific is building an IR knowledge base for ASEAN, as well as developing manuals and training programmes on good IR practices at the enterprise level. The aim is to multiply the sharing of IR knowledge, good practices, and data both within and among ASEAN countries, and outside the region.

To conclude, the ILO and the ASEAN share a common interest in building better industrial relations in an integrating ASEAN. One is waging a war for decent work, the other is building a caring and sharing regional community.

References

Key materials

ASEAN-ILO/Japan Industrial Relations Project. 2010. *Report of the First Regional Seminar on Industrial Relations in the ASEAN Region* (Jakarta, ASEAN Secretariat).

———. 2010. *Report of the Second Regional Seminar on Industrial Relations in the ASEAN Region* (Bangkok, ILO).

“Third Regional Seminar on Industrial Relations: Legal Framework and Practice for Labour Dispute and Settlement”. 2010. Unpublished papers and powerpoint presentations (Manila, November 2010).

Other materials

ASEAN. 2009. *ASEAN Political-Security Community Blueprint* (Jakarta, ASEAN Secretariat).

———. 2009. *ASEAN Socio-Cultural Community Blueprint* (Jakarta).

———. 2008. *ASEAN Economic Community Blueprint* (Jakarta).

———. 2007. *The ASEAN Charter* (Jakarta).

———. 2007. *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* (Jakarta).

———. 2004. *Vientiane Action Programme* (Jakarta).

ASEAN Labour Ministers (ALM). 2010. *ASEAN Labour Ministers’ Work Programme, 2010–2015*. (Jakarta, ASEAN Secretariat).

Asian Development Bank (ADB); International Labour Organization (ILO). 2006. *Core labour standards handbook* (Manila).

Dunlop, J. 1958. *Industrial relations systems* (New York, Holt).

International Labour Office (ILO). 2009. *Recovering from the crisis: A global jobs pact*, International Labour Conference, 98th Session, Geneva, 2009 (Geneva).

ILO Regional Office for Asia and the Pacific. 2008. *Labour and social trends in ASEAN 2008* (Bangkok).

International Labour Office. 2007. *Toolkit for mainstreaming employment and decent work* (Geneva).

Kaufman, B. 2004. *The global evolution of industrial relations: Events, ideas and the IIRA* (Geneva, ILO).

Ministry of Labour, Invalids and Social Affairs (MOLISA). 2010. *A comparative study on labour laws of ASEAN nations* (Hanoi).

Somavia, J. 2010. *Building a sustainable future with decent work in Asia and the Pacific* (Geneva, ILO).

Trebilcock, Anne (ed.). 2005. *Labour and employment implications of the ASEAN Free Trade Agreement* (Bangkok, ILO).

World Commission on the Social Dimension of Globalization. 2004. *A fair globalization: Creating opportunities for all* (Geneva, ILO).

Online references

Association of Southeast Asian Nations (ASEAN). Available at: <http://www.asean.org> [2 July 2012]

International Labour Organization. Decent Work Agenda. Available at: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm> [2 July 2012].

This volume contains the integrated report of the First, Second, and Third Regional Seminar on Industrial Relations in the ASEAN Region, under the ASEAN-ILO/Japan Industrial Relations Project. The themes of the seminars covered are:

- Towards ASEAN Integration: Promoting Good Practices for Sound and Harmonious Industrial Relations, Bogor, February 2009;
- Emerging industrial relations issues and trends in the ASEAN countries in time of financial and economic crisis, Kuala Lumpur, February 2010;
- Legal framework and practice for labour dispute and settlement, Manila, November 2010

The regional seminar on industrial relations is one of the project's main activities organized under the overarching theme "Building better industrial relations towards ASEAN Integration". It is held annually. The project spreads over a three-year period. The project seeks to promote constructive industrial relations among ASEAN countries based on uniformity of basic norms and good practices, social partnership, tripartism and social dialogue.

ILO Regional Office for Asia and the Pacific

United Nations Building
Rajdamnern Nok Avenue
Bangkok 10200, Thailand
Tel.: +662 288 1234
Fax: +662 288 3062
Email: BANGKOK@ilo.org
www.ilo.org/asia

DECENT WORK

A better world starts here

ISBN: 9789221259756