THE ILO AND THE IMPACT OF LABOR STANDARDS: WORKING ON THE GROUND AFTER AN ILO COMMISSION OF INQUIRY

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INTRODUCTION

The question of the impact of human rights standards is always difficult. The International Labour Organization (ILO) has some specific tools, and often different possibilities than do other parts of the international system, for increasing that impact. This Article discusses the ILO's innovative approaches to promoting the observance of labor standards internationally. It highlights how the ILO is a viable model for encouraging human rights in an era where human rights advocacy is all too often about ideas, not action. It focuses particularly on the impact of one of those tools: Commissions of Inquiry.

I. THE ILO AND INTERNATIONAL HUMAN RIGHTS

The standards adopted by the ILO since 1919 are in many respects the founding documents of international human rights law, and are an integral part of that law as it has developed since the United Nations was created nearly thirty years later. How are these standards reflected in international human rights law? When the League of Nations and the ILO were invented in the Treaty of Versailles in 1919, the idea of a conscious human rights agenda was specifically avoided. This was largely because to recognize, for example, the principle of racial equality would have called into question the colonial system then in place, and even President Wilson could not push the idea because the Senators from the U.S. South would have rejected the Treaty out of hand were this to be included.[1] Meanwhile, the ILO began to adopt labor standards, laying

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1. GERRY RODGERS, EDDY LEE, LEE SWEPSTON & JASMIEN VAN DAELE, THE ILO AND

the foundations for the human rights instruments that would be adopted when the United Nations was created in the aftermath of World War II.

By the time the Universal Declaration of Human Rights (UDHR) was adopted in 1948, the ILO had embarked on an exceptional period of human rights standard-setting, beginning with the Freedom of Association and Protection of the Right to Organize Convention (No. 87), adopted a few months before the UDHR, shortly to be followed by the adoption of the Protection of the Right to Organize and Collective Bargaining Convention (No. 98) in 1949. Between then and 1958, the ILO would adopt seminal instruments on equal remuneration for men and women for work of equal value (Convention No. 100), forced labor (Convention No. 105, supplementing the earlier Convention No. 29 of 1930), discrimination in employment and occupation (Convention No. 111), and indigenous and tribal populations (Convention No. 107).[2] There was already a solid body of ILO standards on child labor (which would be consolidated and revised by the Minimum Age Convention (No. 138) in 1973, and later supplemented in 1999 by the Worst Forms of Child Labor Convention (No. 182). The UDHR included several provisions on workers' rights as an important part of universal human rights, particularly in Article 23, which bears a certain family resemblance to the conditions contained in U.S. legislation[3] promoting labor rights through trade measures. Article 23 of the UDHR provides:

> (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> (2) Everyone, without any discrimination, has the right to equal pay for equal work.
>
> (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

THE QUEST FOR SOCIAL JUSTICE, 1919-2009, at 39 (2009); *see also* Pamela Bromley, Human Rights and the League of Nations: How Ideas About Human Rights Came to Be Included in the Charter and Work of the League of Nations (Mar. 20, 2008) (paper prepared for the annual meeting of the Western Political Science Association, San Diego, CA), *available at* http://www.allacademic.com/meta/p237945_index.html.

2. Of these eight Conventions, the United States has ratified the 1957 Abolition of Forced Labor Convention (No. 105) and the 1999 Worst Forms of Child Labor Convention (No. 182).

3. The U.S. Trade Act of 1972, 19 U.S.C. § 2462(b)(2) (2006), sets up the U.S. Generalized Sytem of Preferences (GSP) and sets forth the criteria that each country must satisfy before being designated a GSP beneficiary. A GSP beneficiary must have taken or be taking steps to afford internationally recognized worker rights, including (1) the right of association; (2) the right to organize and bargain collectively; (3) the right to freedom from compulsory labor; (4) to right to a minimum age for the employment of children; (5) the right to acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health; and (6) the right to a GSP beneficiary implementing any commitments it makes to eliminate the worst forms of child labor.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

In addition to the standards themselves, the ILO's supervision and promotion of the implementation of these standards has also been very effective. The ILO employs participative methods that go well beyond what most international organizations have attempted. These are based in the constitution of the ILO, as well as in the fact that the ILO is tripartite,[4] and does not rely on governments alone to make decisions or as sources of information. The ILO does not, of course, have enforcement powers–states do not, as a rule, accord such powers to international organizations–but for various reasons the ILO's supervision has obtained significant results.

II. GENERAL ILO SUPERVISORY PROCESS

A brief description of the ILO's supervisory procedures is necessary to set the stage. Most of the supervisory process is based on regular reporting and supervision, as opposed to a complaints-based system–though complaints are also provided for. The ILO supervisory system relies on regular reporting by both governments and other stakeholders (i.e., workers' and employers' organizations). Where this regular supervision is not enough to secure compliance, then complaints can be lodged.

A. Reports by Ratifying States

The essential tool is provided for under Article 22 of the ILO Constitution, by which ratifying states send the ILO a regular report on how they are applying, in law and in practice, each Convention they have ratified. Reports are required every five years on most Conventions, but every two years on a group of twelve human rights and governance instruments.[5] In a procedure

4. "Tripartite" means that representatives of workers' and employers' organizations participate on an equal basis with governments in the ILO's governance structures, and that the ILO promotes social dialog on the national level on the same basis. The design does not always hold good at the national level, especially when trade unions are weak. However, in relation to the ILO and the complaints procedures discussed in this Article, weakness at the national level are often overcome by the fact that international workers' and employers' organizations are able to submit information to the ILO that national organizations may be too weak, or too intimidated, to forward. The tripartite system is the way the ILO has engaged with civil society from its creation in 1919. The special standing given to employers' and workers' organizations in the ILO means that other non-governmental organizations (NGOs) are not able to have the kind of access that they are increasingly having in the United Nations and other intergovernmental organizations, which is considered by some to be a weakness in the ILO system. On the other hand, of course, even the weakest trade unions and employers' organizations have a more substantial claim to being representative, and are far larger, than virtually any non-occupational NGO.

5. The Conventions on which reports are due every two years are those on freedom of association and collective bargaining (Nos. 87 and 98); forced labor (Nos. 29 and 105); child

unique in international law, copies of these reports must be sent to the most representative organizations of employers and workers in the country, who, under Article 23 of the ILO Constitution, have standing to submit comments and additional information on each report. These reports are reviewed by the Committee of Experts on the Application of Conventions and Recommendations, made up of twenty jurists from around the world–judges of the International Court of Justice, law professors, national judges, etc. The current chair is Professor Janice Bellace (Samuel Blank Professor and Professor of Legal Studies, Business Ethics and Management of the Wharton School, University of Pennsylvania). The Committee makes detailed comments on the application of the Conventions, which are published online and in book form.[6] This Committee handles well over 2000 government reports each year. The Committee's reports are then submitted to the International Labour Conference, where approximately twenty-five cases are discussed in public session each year.

B. Complaint Procedures

The ILO also has three complaint procedures. The first consists of "representations" under Article 24 of the ILO Constitution, which allows workers' and employers' organizations to complain about the application of ratified Conventions. These complaints are examined by a committee of the ILO Governing Body, composed of one worker, one employer, and one government representative. The second complaints procedure allows what are called "complaints" under Article 26, which give rise in most cases to a Commission of Inquiry, examined in more detail below. Commissions are composed of three independent persons of high esteem, appointed by the Director-General.

Finally, under an arrangement made in 1951 with the U.N. Economic and Social Council (ECOSOC), the Governing Body Committee on Freedom of Association may receive complaints of violations of the principle of freedom of association from organizations of employers and workers, even where the relevant ILO Conventions on freedom of association and collective bargaining rights have not been ratified. The Committee is composed of nine titular members—three each of government, employer, and worker representatives on

labor (Nos. 138 and 182); discrimination (Nos. 100 and 111); labor inspection (Nos. 81 and 129); tripartite consultation on international labor standards (No. 144); and employment policy (No. 122). The Governing Body of the ILO decided in November 2009 that this is to be adjusted to a 3-year/6-year rotation. The texts of these Conventions and detailed results of the supervisory process can be found on the ILO web site at http://www.ilo.org, under "Labor Standards."

6. Major differences from the U.N. "treaty body" system include that the proportion of reporting to the ILO is far higher—some 70% within a few months of on time—and the analyses are carried out in the ILO with significant technical assistance from the secretariat, guaranteeing higher technical consistency and accuracy.

the Governing Body, along with deputy members plus an independent chairperson.

It is worth pointing out, before examining in more detail the Commissions of Inquiry, that every stage of all of the ILO's supervisory procedures is published, on paper and/or online, except the internal deliberations of such bodies as the Committee of Experts and the Committee on Freedom of Association. While government reports are not published–as a logistical matter because of their high volume and the lack of resources to translate them into the ILO's working language–they are available for consultation at the annual sessions of the International Labour Conference; the relevant documentation received is also summarized in the supervisory results.

This information is published in part because it allows countries to have a public and open explanation of the gaps between their international obligations and their domestic policies, which is essential if non-governmental actors in the countries concerned are to be able to use this information to promote greater compliance. It also exposes nations to pressure from other international actors, both governments and international organizations, to improve the situation of workers in their countries. Indeed, among the ILO's founding principles, included in the preamble to its constitution, is the notion that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries," reflecting the common interest in improving labor standards worldwide and making the availability of information on these conditions essential.

III. SPECIAL ILO SUPERVISION PROCESS: COMMISSIONS OF INQUIRY

A. Commissions of Inquiry: Design

Among the ILO's tools, the Commission of Inquiry, set up on an ad hoc basis under Article 26 of the ILO Constitution, is the strongest measure among the organization's supervisory procedures. Generally it is the "end of the road," the ultimate procedure available, although the constitution allows for further steps which have recently been made use of on one occasion in the case of forced labor in Myanmar (outlined below). A Commission of Inquiry is resorted to when other avenues of supervision, pressure, and engagement have been inadequate.

It is a process unique to the ILO. Commissions usually come at the end of a process of supervision in which a country which has failed to observe a Convention it has ratified is subject to increasingly insistent pressure to come into compliance. Another country that has ratified the same Convention, delegates to the International Labour Conference, or the Governing Body of the

ILO itself, may then begin the process of "complaint."[7] At this stage, the ILO turns the matter over to a group of three eminent lawyers who have a nearly free hand to examine and prepare conclusions and recommendations. The first step they take once appointed is to meet to establish their methods of work–and while these usually follow a similar pattern, they are free to vary them in each case. At the end of their work, they adopt conclusions and recommendations, which are not submitted for approval, but are final. They become the established truth, and the ILO Governing Body takes note of them and follows them up.

The government concerned is requested to confirm that it accepts the recommendations. If it does not, it can either ask for a new Commission for a second opinion, or appeal the findings of the Commission to the International Court of Justice. None of the twelve governments examined by Commissions of Inquiry over the ILO's history have made use of these constitutional provisions, either to request a second investigation or to challenge the results. Most countries follow up a Commission report with measures to implement the findings—and in any case the findings are followed up by the ILO's ongoing supervision and by the International Labor Office. And they may be followed by stronger measures adopted by the ILO, which will be examined below.

B. Commissions of Inquiry: Application

1. Commissions of Inquiry: Application: Overview

The general rule is that countries accept the recommendations of the Commission of Inquiry, even if in practice they tend to do the minimum to implement them, at least in the immediate follow-up. A case in point is Myanmar (Burma), though even in this case there has been some (very slow) progress. This reclusive and isolated country apparently has seen little if any advantage to adopting improved practice, forming an exception to the worldwide trend of eliminating government-sponsored forced labor.[8] The whole range of measures available to the ILO under its supervisory procedures have been brought into play. The use of forced labor was remarked upon by the

7. For a fuller description of ILO procedures, see INT'L LABOUR ORG., RULES OF THE GAME: A BRIEF INTRODUCTION TO INTERNATIONAL LABOUR STANDARDS (rev. ed. 2009), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf.

8. This does not mean that the overall volume of all forms of forced labor has necessarily changed, as the emphasis has changed to trafficking in particular. *See* The Director-General, ILO, International Labour Conference, 98th Session, Geneva, Switz., June 3 – 19, 2009, *The Cost of Coercion: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf.

Committee of Experts in 1964. A representation was filed under Article 24, and examined without result. A complaint was then filed by a number of worker delegates to the International Labour Conference, alleging violation of the 1930 Forced Labor Convention (No. 29),[9] and a Commission of Inquiry was established. It was not allowed to enter the country, but did hold extensive hearings in the surrounding areas and in Geneva. The Commission published its report in 1998, but the government still showed no signs of compliance. In 2000, the Conference decided on additional measures to secure compliance, using Article 33 of the constitution for the first time in ILO history. The measures decided upon, when the government would not take the actions the Commission had decided were needed to eliminate forced labor, were indicated in a resolution adopted by the International Labour Conference, and have been the basis of action ever since. They include regular discussion of the performance of Myanmar in ILO fora, periodic reports to ILO governing organs including the Conference and the Governing Body, and recommendations to other ILO stakeholders not to undermine the ILO's efforts to end forced labor in Myanmar.[10]

Commissions of Inquiry have been set up roughly once each decade, on average, though recently the pace has somewhat accelerated: Myanmar (Burma) in 1997; Belarus in 2003, and Zimbabwe in 2009. They are reserved in practice for the most serious allegations of violations of the fundamental Conventions: Nos. 87 and 98 (freedom of association and the right to collective bargaining), Nos. 29 and 105 (forced labor), and No. 111 (nondiscrimination). No Article 26 complaints have been filed under Convention Nos. 138 and 182 (the core labor standards on child labor), probably because of the availability in most countries of the ILO's International Programme on the Elimination of Child Labor (IPEC) programme for the elimination of child labor.[11]

2. Commissions of Inquiry: Application: Access

There are various conditions that should be met to allow Commissions of Inquiry to be most effective, including agreement of the country concerned to

9. Official Bulletin, ILO, Forced Labour in Myanmar, Vol. LXXXI, Series B, Special Supplement (1998), *available at* http://www.ilo.org/public/libdoc/ilo/P/09604/09604(1998-81-serie-B-special-suppl).pdf.

10. International Labour Conference, 88th Session, Geneva, Switz., May 30 – June 15, 2000, *Provisional Record 6-4 H*.

11. IPEC is the ILO's largest technical assistance program, and operates in some ninety countries. Under it, countries adopt time-bound programs for the elimination of child labor, focusing at a first stage on the worst forms of child labor. In terms of the present Article, this "pressure valve" is capable of relieving the kind of abuses that generate complaints in the more political areas of freedom of association, forced labor and discrimination. As concerns the larger subject of this Symposium, this also demonstrates the effectiveness of a combined approach of assistance, pressure, and enlightened self-interest that can promote the implementation of labor standards even in the most difficult subjects.

take part in the investigation and to implement the results once achieved. Access to the country is one of the most crucial requirements for a Commission to carry out its task fully. In Poland in the 1980s, and in Myanmar (Burma), this was denied. Belarus allowed broad access in 2004. A similar procedure in South Africa shortly before the end of apartheid was accepted by the government of the time as a way to design important parts of the post-apartheid architecture, and the ILO was given very wide access.[12] For the Commission of Inquiry currently under way, Zimbabwe has indicated that it accepts the first visit of the Commission, which was taking place at the same time as this conference.[13]

The ongoing process in Zimbabwe is unique in that between the time the Commission of Inquiry was established and the start of its work, a new "inclusive" government was put into place. The composition of this government includes, for instance, the Labor Minister who comes from the trade unions, which have been the subject of harassment, while other Ministers represent the previous regime.[14] A process of "reconciliation and healing" has been introduced in a context which is still characterized by continuing dominance of some parts of the earlier power structures, and by outright economic collapse. In this context, one of the roles of an ILO Commission of Inquiry may well be to contribute to the post-crisis recovery, examining the past essentially in order to help avoid the recurrence of conflict and violence, and laying down guidance for the future. This would not be the first case in which a Commission of Inquiry is oriented more towards the future than towards a technical examination of past compliance with a particular Convention.

12. This actually took place as a Fact-Finding and Conciliation Commission (FFCC), which closely resembles a Commission of Inquiry but can be used for non-Member States as South Africa was at the time. The FFCC is used only for freedom of association cases, and can be convened even when the country concerned has not ratified the relevant Conventions, but only when the country concerned agrees. Article 26 complaints giving rise to Commissions of Inquiry are not subject to agreement.

13 Very brief information of an essentially procedural nature on the progress of this Commission of Inquiry is available. *See* The Director-General, ILO, *First Supplementary Report: Observance by Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Developments Since the Establishment of the Commission of Inquiry*, ILO Doc. GB.306/17/1 (Sept. 30, 2009), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_114379.pdf. More information will be made available as the procedure progresses.

14. As this Article goes in to final editing, there have been other developments and the consolidated government structure is in some difficulty. Of course, the way in which the government will implement the recommendations the Commission of Inquiry will eventually make will depend on the political situation in the country. It continues to be precarious and unpredictable. But the Commission was able to carry out its work during its visit (in particular interviewing witnesses) without interference—and with the necessary cooperation from the government.

In the few cases in which governments do impede physical access, this prevents a full analysis based on on-the-spot evaluations and discussions with the parties, but does not preclude the hearings with witnesses, interviews and, gaining other relevant information. Without access, this has to be done by the Commission outside of the country. It does not compromise the results and their importance–in some ways it may in fact lend credence and urgency to a Commission's findings if the government concerned is sufficiently nervous not to accept an objective and constructive examination of a problem. While recommendations may not be acted upon immediately, they play an important role for subsequent developments. Regarding Poland, the recommendations of the Commission of Inquiry were utilized in Warsaw in the late 1980s as the agenda for the round table discussions on democratization. In Myanmar, the recommendations of the Commission of Inquiry continue to form the objectives of ILO action in the country, which has made gradual inroads into the predominance of forced labor as a means of economic development and social repression.

3. Commissions of Inquiry: Application: Political Considerations

As Commissions of Inquiry deal with the most serious cases, they are by their very nature political. Commissions of Inquiry are usually convened in cases where serious problems with labor rights are part of the overall political situation. These are: forced labor in Myanmar, which is part of the system and has been carried over from the colonial times; ethnic discrimination in Czechoslovakia and Romania; freedom of association in Belarus, where the traditional trade unions were taken over by the administration; and the denial of freedom of association rights of trade unions to function freely in Zimbabwe. The close relationship between freedom of association and political freedom has been described by the ILO Committee on Freedom of Association, which said that

> the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights . . . . [T]he absence of these civil liberties removes all meaning from the concept of trade union rights.[15]

It has also said that "[a] free trade union movement can develop only under a regime which guarantees fundamental rights . . . ."[16]

It would be easy to conclude from the above that a solution to these serious issues is possible only with political change—even if political change does not

15. INT'L LABOUR ORG., FREEDOM OF ASSOCIATION: DIGEST OF DECISIONS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION OF THE GOVERNING BODY OF THE ILO ¶ 31 (5th rev. ed. 2006).

16. *Id.* ¶ 37.

in itself guarantee improvement. But then the ILO would be in the business of regime change, and would have precious little to do if the regime refuses to change.[17]

The basis of engagement with the government would also be problematic, as the ILO would have to seek cooperation with it specifically in order to try to get rid of it. This would not be a very promising starting-point for engagement. In fact, the nature of labor questions—with the application of standards being also a technical and legal one, and resolutely kept as such by the ILO's supervisory and governance bodies—keeps the ILO just below the political radar screen. The approach taken is technical rather than political, which lowers resistance to the ILO's investigations and suggestions. The ILO can achieve certain results if it is able to gain respect from the government for its technically-focused support and really engage with the government. If the ILO did begin to question the democratic credentials of a government where a Commission of Inquiry is operating, it would have to pose the same question in many other countries where the situation is not bad enough to merit a Commission of Inquiry. It takes the government as a given–a fact of life–and tries to change, often little by little, the government's behavior towards its citizens and, above all, workers, employers, and their organizations.

This can give rise to a delicate balancing act: how to deal with a government without "legitimizing" it when the government wants to discuss only "soft" issues, such as social dialog, and avoid the "hard" ones, such as freedom of association or forced labor.[18]

Sometimes the ILO's counterparts recognize this situation openly. For instance, in Myanmar, whatever the Ministry of Labor can decide for itself can be achieved relatively expediently. When they have to go higher up, then the ILO tends to get stuck. This highlights a particular characteristic of the ILO's human rights action, which often approaches such issues as technical problems that result from the obligation of countries to take action to apply ratified Conventions. If they can be resolved without raising the political stakes by describing them as serious violations of human rights, their solution is usually easier.

In many countries, the ministries and ministers of labor are not really keen on maintaining a high level of tension. They are also in a difficult position, and

17. Because Commissions are convened in time of great political crisis, they do fairly often precede regime change, but in most of these cases this means that the ILO lays down a design for important parts of the resolution of the crisis either in the continuing political configuration or in the government that follows.

18. This does not imply that the general supervisory machinery of the ILO goes soft on a question in order to stimulate engagement. The Committee of Experts and the Conference Committee continue to highlight both progress and failure to apply ratified Conventions on an objective basis. Nor does it modify the findings of a Commission. This observation applies instead to the terms on which the kind of direct discussion implied by a Commission of Inquiry is engaged.

working with the ILO can be quite an interesting prospect for them, offering outside support for resolving problems which may not have received a high degree of attention internally until an international organization takes an interest in a way that risks more public discussion. Some of the approaches and methods the ILO has used in Myanmar and Belarus may be illustrative of the ways in which Commissions of Inquiry can make progress.

In Myanmar, although the Commission itself had been denied entry, dialog with the government led to visits by ILO officials after the publication of the recommendations of the Commission of Inquiry. In 2001, a high-level team spent three weeks traveling around the country, even using an airplane it had rented to visit some of the more remote areas where forced labor tended to be most prevalent. This team recommended an ILO presence in the country, which became a reality the following year through an understanding on placing an ILO Liaison Officer in Yangon. Due to the presence of this Liaison Officer, an informal complaint-type arrangement involving the Liaison Officer already began functioning in 2004, and the mechanism was made official and systematic in the Supplementary Understanding of February 2007 between the ILO and the government. This makes the ILO the only international human rights organization with a permanent presence in the country, working under a restricted but important mandate. In addition to advising the government on legislation and practice regarding the prohibition of forced labor, the Liaison Officer has intervened in a number of cases on other rights subjects within the ILO's mandate. At one stage, this even resulted in Myanmar's Supreme Court quashing nine death sentences, as one of the condemned had communicated with the ILO, which in retrospect was determined to be the legal right of any citizen of Myanmar.

The role of the Liaison Officer continues to evolve. Since 2007, he receives confidential complaints on incidents of forced labor, confers with the alleged victims or their representatives, and in clear cases of forced labor, forwards the matter to the authorities. About half of the cases have been settled satisfactorily. In addition, the mechanism allows people to come and discuss issues with the ILO without fear of reprisals. In the weeks before this Symposium, through the contacts the ILO has, it got five labor activists freed from detention. This is not a bad result in a country with one of the most closed and harsh systems in the world.

4. Commissions of Inquiry: Application: Outcomes

Has the situation in Myanmar gotten better through ILO action? At least for now, the political situation has, in fact, gotten worse, as was witnessed by the crackdown on the activity led by the monks in late 2007, and the recent trial of Aung San Suu Kyi. But if an impartial analysis were made now, it would probably show that the use of forced labor has diminished, at least to some extent. This should be true in particular for its worst cases, which has been

forced portering and other use of labor by the military in the zones of ethnic conflict, as cease-fires have significantly diminished these areas of conflict.

The ILO presence in and of itself has made a difference too, in many cases. In some instances, the military has quickly released children from the army once it heard that the parents of the children were submitting complaints to the ILO. In other cases, the presence of the ILO has made a difference because it is able to communicate with local citizens on human rights violations and has facilitated the communication of crucial information to the responsible bodies both in the country and in the U.N. human rights structures. This reflects the ILO approach that human rights issues are handled from the Liaison Office with a technical rather than a political focus.

Whatever the true record is today, it is clear that once Myanmar democratizes itself, there is enough of a basis to ensure that the government will be able to adopt policies to end the use of forced and compulsory labor; and the ILO's credibility is such that it will be in a position to help.

In Belarus, the complaint alleged the systematic subjugation of unions to state control through a variety of means designed to eliminate any form of independent trade unionism in the country, and the Commission found these allegations to be merited. Since the report was filed, the government has, over a period of time, accepted the ILO as a partner in discussions on legislation and practice on trade union rights. Through this, the ILO has at least been able to stop a deterioration of the situation to a point where the independent trade union groups might have disappeared altogether.

One of the recommendations of the 2004 Commission of Inquiry was to ensure that the independent trade unions had one seat (out of eleven) in the tripartite National Council on Labor Issues. This became the only instance where groups critical of the government were formally and legally represented.

Recently, the ILO has facilitated a tripartite agreement on dealing with the key recommendations of the Commission of Inquiry: registration of trade unions and addressing outstanding complaints of dismissals of trade union activists. This agreement should also allow future situations to be dealt with as they arise, thus aiming at solving country-level problems that earlier would have been brought to the supervisory mechanism of the ILO.

Of course, in the case of Belarus, the fact that the European Union has withdrawn the GSP benefits because of the violations of the freedom of association Conventions has played a considerable role. There has been a change in the policy of the government vis-à-vis the ILO since the suspension of the GSP in June 2007. The recent discussion has directly or indirectly been almost entirely about the conditions in which the European Union could restore the trade preferences for Belarus.

There are a number of situations where a Commission of Inquiry has been discussed, but where responses are sought through engagement in order to avoid a Commission. Commissions of Inquiry have been proposed–but not agreed to by the ILO's governance structures–in quite politically charged

situations in Colombia and Venezuela. In the late 1990s, there was a decision to establish a Commission for Nigeria, where the leader of the national trade union body was in jail. But when the strongman, Sami Abacha, died, the situation changed, and the Commission did not go into action. Another example is Colombia, where a 2006 tripartite agreement had aimed at setting the framework for better cooperation. Although no discussion took place on a Commission of Inquiry in Georgia in 2008, an agreement between the Labor Minister and the heads of the employers' and workers' organizations helped to prepare the way to deal with a problematic labor code, and also to secure that the country could be accorded the E.U.'s enhanced trade preferences.

In the Islamic Republic of Iran in 2004, the ILO facilitated the negotiation of a tripartite agreement on how to move towards respect for the freedom of association Conventions, building on earlier technical assistance by the ILO to address discrimination. The relevant Conventions have not been ratified, but the assistance was still based on them to set the stage for eventual ratification. Since then, the process has been interrupted for political reasons, but the framework remains valid. Iran has recently accepted a direct contacts mission from the ILO which will take place later this year.

C. Commissions of Inquiry: Lessons

1. Commissions of Inquiry: Lessons: Importance of Engagement

There are several lessons that can be learned from the experience of ILO Commissions of Inquiry. First of all, engagement works even in the most difficult situations. It can be pursued in situations of conflict, and where trade unions or other independent civil society organizations do not exist or are weak. Where trade unions do exist, a key question is how to expand genuine tripartite cooperation. The aim is to create space, and then expand the space, for genuine workers' (and employers') organizations to exist and claim rights for their members.

In Myanmar, the space is created through the citizens' and their representatives' right to complain about the use of forced labor and forced recruitment of minors in the military. In Belarus, the space is aimed at making sure that independent trade unions continue to exist and function. Sometimes this may sound like waiting for a better day. Maybe, but the perfect world is always slow in coming. And when the better day comes, the recommendations of the ILO can be an important part of the solution. This was the case in Poland. The same was true for South Africa, although there the ILO's unique involvement went much further than a Commission of Inquiry. It can, and likely will, work in due time in Myanmar and Belarus, too.

2. Commissions of Inquiry: Lessons: Dealing with Uncooperative Governments

The question arises of how much the process depends on the cooperation of the offenders: can the ILO Commissions of Inquiry and other procedures have a positive effect if the government is reluctant, or even obstructive? Obviously, solutions are more easily found and implemented if governments cooperate and accept that the ILO is trying improve a situation rather than engage in recriminations—which is indeed one reason that even reluctant governments cooperate more easily with the ILO than with human rights advocates who follow an exclusive "violations" approach. Myanmar is but one instance of a case in which a government resisted complying with ILO standards but gradually (very gradually sometimes) made changes in the direction the ILO wanted. At the height of the Cold War, for instance, the Soviet Union slowly removed restrictions on mobility of labor that the ILO characterized as forced labor. The resistance by the government of Colombia to establishing a Commission of Inquiry has been balanced by a slow but steady stream of measures to improve protection of interdependent trade unions. Other instances abound where the ILO's careful attention to detail, non-accusatory style, and solid legal analysis made it difficult to resist improvements in the situation.

There is perhaps a larger lesson to be learned. In almost all cases, governments recognize the merits of applying labor standards, even the most politically charged ones, as part of the path towards development and democracy. In the majority of cases this is achieved through the process of adoption of standards, ratification and supervision, and where necessary, ILO assistance to help overcome gaps in capacity or understanding. But sometimes governments balk for internal political reasons. They may perceive independent trade unions to be incompatible with an authoritative style of government. Discrimination on the basis of ethnicity may be deeply ingrained as a part of the political culture. The imposition of forced labor may be allowed as a sop to interest groups who hold authority in a repressive society. But when the spotlight of international attention is turned on these situations, for instance through the establishment of a Commission of Inquiry, patient negotiation, offers of help, and continual pressure may raise the cost of persistent violation to the point where the virtues of reform become irresistible. The unique methods deployed by the ILO in such cases almost always add the needed additional push to begin movement and achieve results.