

Portugal and the International Labour Organization (1933-1974)

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Summary

The growth in the social dimension of States, based on the value of solidarity and workers' social rights, is characteristic of western societies in the 20th Century and the concept of the Welfare State that shaped its development. During the Estado Novo (New State) period in Portugal (1933-1974), and despite the regime's political characteristics and the country's socio-economic backwardness, Portugal was not unaffected by this movement, which had at its base a process of juridification of labour issues and increased protection for workers.

So what was the nature of the relationship between Portugal and the International Labour Organization – ILO – up until 1974, given that the regime's ideological and political foundations were in direct collision with the principles of the ILO? And to what extent did the ILO influence the political and social dimensions of working life in the country? These are the questions that have guided this work, the findings of which maintain that the ILO's role, albeit variable and not always in evidence, was in fact considerable in the development of a socio-labour space in Portugal and in the emergence of foundations of the Welfare state.

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Over the course of the 20th century, the social dimension of the State in the more developed nations grew exponentially and gained a significance that placed it on a par with the civil and political dimensions. Founded on the value of solidarity and greater social and labour rights for citizens, it determined that this public space should be regulated by law, in an unprecedented process of juridification, which would be the cornerstone of the Welfare State. This movement also existed in Portugal, but the country's endemic socio-economic backwardness and the *Estado Novo*'s anti-democratic political regime meant that the process would be faltering, non-inclusive and, above all, very slow.

After the experience of the Republic (established in 1910), when a remarkable variety of social and labour rights were introduced into law but subsequently had little practical impact, the new regime (1933 onwards) projected a counter image of the Republic that had promised much more than it would deliver, and established a minimal nucleus of rights guaranteed by the 1933 Constitution, the National Labour Statute² and legislation passed in the four following years. The intention was to gradually add to the minimal nucleus of rights and allow greater numbers of workers to benefit from them, whenever conditions in the country permitted.

As a founding member of the ILO, Portugal transposed some conventions into its domestic legislation and formally ratified others during the pre-*Estado Novo* period. The way in which the new regime dealt with the patrimony of ILO standards – the ones it had inherited and those it gradually built up over the following decades – and how the regime accepted or rejected it in the national space, constituted the central nucleus of the research conducted³, the results of which are presented below.

Considering the ILO's four main thematic areas – human rights and workplace rights, decent work, social protection, and employment and poverty – we looked at which international conventions were adopted before 1974, year of transition to democracy, which ones were formally taken up by Portugal and the precise time when this occurred, the conventions that were not ratified, and the impact, in spite of the circumstances, that

² A para-constitutional document, inspired by the Italian *Carta del Lavoro*, the Statute became the regime's most authoritative reference text on labour law and social welfare.

³ The research led to a doctoral thesis in Sociology, submitted to the Faculty of Economics, Universidade de Coimbra, and defended before an Examining Board in March 2012. This article retrieves the findings of the work.

the conventions had on the domestic labour law framework during the *Estado Novo* period. By so doing, we endeavoured to shed light on the juridification of Portuguese society's socio-labour sphere and, from a legislative perspective, the country's path to the building of the Welfare State.

When telling the many stories that go to make up this History, we realised that the ILO's influence in Portugal has been considerable and cannot be described merely in terms of formal ratification processes because it developed along several different lines. Firstly, there was the dissemination of its ideas: the ILO's thinking and reflection embodied in international regulatory instruments have become key references for labour issues, and have spread and impacted on practices. Then, there was ratification: the time when an international standard was internalised and the way in which it occurred reveal much about the relationship between the two legal systems, as well as the social and political context of the country. Following ratification, the process of adjusting domestic regulations in line with international requirements and, after this, the real and effective implementation, are two further aspects considered. Lastly, we look at the unratified conventions, which often shed light on the paths that Portuguese socio-labour legislation was unable, for political reasons, to follow, or was not in a position to do so because of its social and economic circumstances.

The ILO's influence on Portuguese society during the *Estado Novo* was considerable but not continuous. To understand it we identify "times" and "spaces" that reflect the different phases in the Portugal-ILO relationship over the *Estado Novo* years, and reveal the development of the Law and the pursuit of the Welfare State, shaped in the light of international influence.

Times

1 – Times of proximity

The period between 1919 – the year of the ILO's founding – and 1933 was one of proximity between Portugal and the ILO. Portugal took part in the Peace Conference, as a belligerent country, and in the first International Labour Conference in Washington

in October and November 1919, as one of the ILO founding countries. In May 1919, it passed a number of laws on workers' protection, including the 8-hour working day, which largely emanated from the ILO's principles. Portugal also directly transposed ILO standards on the employment of women and young people into its domestic legislation.

In 1928, 1929 and 1932, Portugal's ratification efforts intensified: of the nineteen general conventions adopted by the ILO between 1919 and 1933, Portugal ratified seven during that period, at a rate that was never again achieved. By 1974, it had ratified 21 conventions, out of the 85 adopted by the ILO. While other forms of influence that do not entail formal acceptance were there, ratification is obviously an unequivocal sign of a country's adherence to ILO standards.

During these times of proximity, however, many conventions were not ratified. There was the Forced Labour Convention (C29, 1930), for example, whose non-ratification reflects the rejection of international interference in the country's domestic affairs and resistance to change from traditional production methods in Africa, that were based on precarious employment and negligible labour rights for the indigenous workers. Neither did Portugal ratify the three conventions concerning the minimum age for admission to employment, and set the working age limit at 14 years old, allegedly to prevent any idle time between school leaving and starting work, but which in reality concealed the generalised practice of child labour due to economic reasons. During that period, there were in fact still large areas in which child labour was the norm, especially in agriculture, domestic service, and family work, which were outside the reach of the law and the control of public authorities.

On the question of quality of employment, the Maternity Protection Convention (C3, 1919), which provided for 12-weeks maternity leave with entitlement to cash benefits and medical care, was not ratified because the minimum legal and practical conditions required to give such support to working mothers were lacking. This situation did not change until the end of the *Estado Novo*. Likewise, the Hours of Work (Commerce and Offices) Convention (C30, 1930), which provided for an 8-hour working day and 48-hour working week, was not transposed, despite the fact that, theoretically, these hours were in accordance with domestic legislation. The reality, however, was far removed from what was stipulated by law. Neither was the Minimum Wage Fixing Convention

(C26, 1928) ratified, because it was considered to be an issue to be decided by each member state.

With regard to social protection, the conventions concerning compensation for occupational diseases were not ratified because, although legislation had provided for such compensation ever since 1919, in reality, mechanisms for compensating workers incapacitated by occupational diseases did not exist.

Lastly, in relation to employment and poverty, the Unemployment Convention (C2, 1919) was not ratified because there were no free public employment agencies, and neither was the Inspection of Emigrants Convention (C21, 1926) ratified, as there was apparently little public interest in this international instrument – sign of how behind Portuguese public organisation was in such matters.

In the period between 1919 and 1933 we believe there was proximity between Portugal and the ILO: seven conventions were ratified, which was possible because their provisions were in line with already existing domestic legislation. The number of instruments not ratified during that time is far greater. With the exception of the Forced Labour Convention (C29, 1930), which was not ratified for clearly political and ideological reasons, non-ratification of the other conventions was due to the absence of the socio-economic conditions that their implementation would require, rather than to substantive differences of opinion on content.

In addition to this progress and movement on the conventions, Portuguese representatives⁴ were taking part in the Organization's activities, and the attitude adopted throughout the dealings between the Portuguese administration and Geneva is noteworthy. Portugal's responsibility as a founding member is frequently mentioned, and served to stimulate the ratification of conventions. Albert Thomas, the first and charismatic Director-General of the ILO, visited Portugal and addressed the national authorities personally, encouraging their participation and thanking them for their efforts.

In spite of all the good intentions during these early years, when the relationship with the ILO was favourable, Portugal's economic and social situation was, in fact, far from

⁴ Tripartite representation which, at national level, gives the delegations added legitimacy in the eyes of workers and employers.

that of the developed countries of Europe which were then references for international standards, and this was the underlying reason for the paucity of ratifications by Portugal.

2 – Times of indifference

The year 1933 marked the start of the closure of the country to the outside world and a period in which it distanced itself from ILO principles and standards. Although Portugal continued to submit regular reports on the ratified conventions, and kept up its participation in the conferences, thus ensuring a "normal" formal relationship was maintained, between 1933 and 1956 it only ratified one convention in 1937 – the Underground Work (Women) Convention (C45, 1935), which had limited practical application given the sector's insignificance in Portugal, and the social make-up of its workforce.

Throughout these years, from the beginning of the *Estado Novo* in 1933 until 1956 – the year of Portugal's first post-war ratification – the ILO significantly expanded its *corpus*, during what would be a golden age for standards production. It is on this vast foundation of references concerning socio-labour rights that, increasingly after the end of World War II, welfare states would be shaped.

Throughout this long period, Portugal did not ratify any conventions apart from the one on women's underground work. There are several reasons for this. First and foremost, there was the country's social and economic underdevelopment, which prevented any improvement in workers' living standards. Then there were political reasons, such as those connected with trade union freedom and discrimination on grounds of political views. Lastly, there were motives that had to do with the overseas issues, such as forced labour and working conditions of "indigenous" peoples.

In addition to these concrete motives for Portugal distancing itself from the ILO, there was a deep-seated, political and ideological mind-set that opposed the organization's principles and practices, defended the autonomy of the Portuguese State and the pursuit of its historical goals, both within the mother country and overseas, without any international interference whatsoever.

Nonetheless, in spite of this independent and detached stance on the part of the Portuguese State, which persisted until the mid-1950s, the formal links with the ILO continued, in the form of reporting back on its compliance with ratified conventions and sending delegations to the Conferences – occasions that were exploited to exalt Portugal's social and labour policies before the plenary. The ILO was relatively indifferent to the lack of positive responses from the Portuguese regime, probably because, at the time, weightier issues were taking precedence, such as the deep ideological and political splits that gave rise to World War II, the conflict itself, and the post-war reconstruction efforts.

3 – Times of convergence

After the long 1933 to mid-1950s period, during which the regularity of Portugal-ILO interaction concealed increasing divergence and division, the time for closer convergence arrived. While the regime had continued, the world had changed profoundly in the aftermath of WWII, and this led to the isolation of Portugal's *Estado Novo* on several fronts.

In an effort to adapt to the transitions in the international system, the regime put into action a proactive rather than defensive response on both the domestic and external fronts. Attempts at economic modernisation in the metropolis through development plans, a new phase of industrialization, investment in training professionals, ministerial restructuring that brought in new leaders and new ideas to politics, reforms in social and labour legislation, heavy investment in development of its overseas territories and the nation's focus on them, were all vectors of the regime's strategy to modernise.

From then on, to continue to be inward-looking would mean for the regime to see itself mirrored in the exterior and in the international organisations that it sought to be part of, in an unceasing quest for legitimacy, in a world that was becoming more and more hostile as democracies spread and the decolonisation movement became relentless. In contrast to other situations in which Portugal had to use a multiplicity of strategies in order to be accepted by international organizations, with the ILO it had the advantage of being a founder and active member. In fact, in order to garner greater credibility in the

ILO forum, it just had to replace its silence and lethargy of the past twenty years with a more dynamic approach that would give the country a new image. It was during this phase, which began in 1956 with the ratification of the Abolition of Forced Labour Convention, and lasted until 1974, that the ILO would play a decisive role in changing Portugal's image.

From 1956 onwards, further ratifications followed. Some conventions, such as those concerned with labour in Africa, were of high political value and therefore needed to be ratified, because of the "good effect" they would have in Geneva. Ratification of other conventions did not pose a problem, and so Portugal went ahead with them for the purpose of boosting its image in the ILO forum, whose membership was ever-growing with the birth of new countries

Thus, in the space of a decade and a half, Portugal ratified 13 conventions: seven on human rights and labour rights, three concerning the quality of work, one on social protection and two on employment and poverty. The larger number of political value conventions is significant, bearing in mind that the goal was to achieve external legitimacy for the regime's autocratic nature and for its continuity on the basis of the idea of empire and existence of overseas colonies/provinces. Also significant is the reduced number of ratified conventions concerning quality of employment and social protection: at a time when Portugal was seeking to impress the ILO, the impossibility of transposing standards of this kind exposed the paucity of workers' rights, in a labour environment based on fragile socio-economic conditions.

At this time, the ILO's conventional activity reduced considerably. The baseline standards had been set decades previously and it was on these that Portugal was projecting itself, adhering to those it considered viable and leaving aside those that were at odds with the political essence of the *Estado Novo*, such as C87, the Freedom of Association and Protection of the Right to Organise Convention (1948), and many other conventions that would have meant improvements to workers' living standards which the country was not prepared to commit to, such as C102, the Social Security (Minimum Standards) Convention (1952), and the minimum age conventions.

The particularities of the Portuguese regime's political and colonial activities came under close scrutiny by the ILO. The Organization's composition began to change as

decolonisation processes advanced and new member states appeared, and a strong socialist and anti-liberal geopolitical bloc emerged that modified the ILO's vision, traditionally based on the European founding countries' perspective.

Ratification of a convention alone was no longer a guarantee of harmonious relations with the ILO. The Organization had begun to carefully check whether domestic legislation was in compliance with international commitments, and even whether practices on the ground were in accordance with internal statutory standards. Contrary to what had happened during the early decades, when its existence had scarcely been noticed, the Committee of Experts on the Application of Conventions and Recommendations began working incessantly to examine ratified conventions and, in the process, making observations and direct requests. The alleged breach by Portugal of its standards-related obligations in connection with forced labour led the Government of Ghana to lodge a complaint. This led to the holding of the first Commission of Enquiry in the history of the ILO. Furthermore, complaints against Portugal lodged with the ILO Trade Union Freedom Committee from 1961 onwards gave rise to five drawn-out cases which called the regime into question.

There were various facets to the final phase of the relationship between Portugal and the ILO in the *Estado Novo*. On one hand, it was a period of convergence in terms of standards, with a significant drive in ratifications. On the other hand, it exposed the political and ideological differences between *Estado Novo* and ILO values and the impossibility of consensus on some crucial areas. Furthermore, the ILO's control had begun to be more rigorous, forcing the regime to observe its obligations and at the same time revealing Portugal's progressive isolation in a changing world. Political issues apart, it is possible that the singular persistence of an authoritarian regime, in possession of extensive overseas territories of indisputable geo-strategic value, would have been an appetising target for international interests, and that this might have dramatised even more Portugal's condemnation in bodies such as the UN and ILO.

The ILO was, therefore, a mirror in which Portugal saw itself reflected. However, the image sent back did not always coincide with the image Portugal had of itself or with what it wanted to show the outside world.

Spaces

We have moved through times, marking the pace of Portugal-ILO relations up until 1974. We shall now address the virtual space created by legal standards in employment and labour relations, with reference to the links between the Portuguese legal system and the ILO.

In Portugal, between 1933 and 1974, a progressive but not continuous process of juridification of socio-labour related matters took place. Areas that had previously been left to the autonomy and discretion of the interested parties – which, in the case of labour relations, typically meant the employers – became the subject of legal provision, that defined a growing nucleus of workers' rights and increased the weight of the law in social regulation. This process happened simultaneously with the growth, albeit still incipient, of the functions of the State – more law, more State, shaping a different society.

The process of juridification of social life, inseparable from the emergence of the welfare state, materialised in accordance with each country's own historical specificities. The international framework, in its multiple dimensions, and each country's susceptibility to its influence, also determine the outcomes of the juridification of social life. In the socio-labour dimension, given the goals it pursues and its "standards-producing agency" character, the ILO played an important role in this process, which varied from country to country according to their respective characteristics and history.

In Portugal, the *Estado Novo's* project, in its corporatist and social dimensions, regarded itself as an original solution that suited the country's idiosyncrasies, reclaiming its past traditions dating back to the Middle Ages, which liberalism would have put an end to. The 1933 Constitution and texts that complemented it enshrined social and labour rights, which legislation adopted in the three following years would develop, albeit negligibly, in a framework intended to be original. In the speeches of the Portuguese representatives at the International Labour Conferences we find reference to the specificity of the Portuguese situation and the solutions that had been adopted, in a kind of closure and "immunity" from outside influences.

If, during the first half of the regime, the idea of a national labour law space, independent of the outside world and developing slowly and endogenously, was

defendable, after 1956, political circumstances make securing external legitimacy among international bodies necessary. From then on, the ILO's influence stopped being subliminal through the circulation of socio-labour related ideas and started to have a direct impact on Portugal's juridical space, through ratification initiatives and subsequent control procedures.

The growth of social and labour law in Portugal that characterised the entire *Estado Novo* period, which gathered speed during the late 1950s and 1960s because of, and ahead of the ILO, corresponded with the generalised movement occurring in other western countries. However, the regime's authoritarian character, the absence of democracy and relatively poor social and economic development, held back the juridification process and its capacity as a regulatory infrastructure for the institution of a welfare state, and this distanced Portugal from the more advanced European countries.

Whether at international or national level, the socio-labour juridical space, which is a virtual space, takes the form of standards, which may be of a political or social nature. On the assumption that the ILO's influence was exerted in different forms, depending on the circumstances, our central reference will be the construction of the socio-labour space in Portugal.

1 – The political dimension⁵

No convention in this area was ratified until 1956. The issues covered by ILO conventions concerning forced labour, discrimination in employment and freedom of association and collective bargaining all encroached upon the identity of the *Estado Novo*, and there was no chance of them being formally accepted.

The abolition of forced labour in Africa, awaited for by the ILO since 1930, was regarded by the colonising powers, Portugal included, as the international community's interference in their internal affairs. In the debates held at the time the convention was adopted, Portugal's representatives argued that Portuguese legislation was more progressive than the international ruling – this was not true. The impossibility of ratifying the convention legally was never acknowledged, and Portugal hid behind the

⁵ In this point, we look at discrimination in employment, freedom of association and collective bargaining, and forced labour, included under the thematic area of human rights and labour rights, considered by the ILO as Fundamental Rights. Child labour will be dealt with in the following point on the social dimension of the legal space.

shield of national sovereignty over the colonies so as to escape from having to adhere to the standard. This position, which was maintained until the 1950s, was also adopted in relation to the conventions on discrimination in employment, whose provisions also applied to the recruitment of workers in non-metropolitan territories.

The long years of being cut off from external influence on colonial issues was interrupted in 1956. It is noteworthy that, at this time, not only was Portugal determined to have representation in the main international *fora*, but also that from within the regime itself a new generation was emerging out of the Social Christian area that began to rehearse change. The need for external legitimacy was so pressing that Portugal went ahead and ratified the Forced Labour Convention (C29, 1930) before bringing its domestic legislation into line with the international requirements. It only did so years later – ratification occurred in 1956 but it was only in 1962, when the Rural Labour Code (*Código de Trabalho Rural*) was passed, that all forms of administrative measures and coercion used against African workers were abolished. The same is true regarding the Abolition of Penal Sanctions (Indigenous Workers) Convention (C104, 1955) and the Indigenous and Tribal Populations Convention (C107, 1957), which were both ratified in 1960, and the Discrimination (Employment and Occupation) Convention (C111, 1958), ratified in 1959, before national legislation had been adapted accordingly.

The ratification of the forced labour conventions had other repercussions for the metropolis, namely in terms of prison work and politically motivated imprisonment. Here too, Portugal's domestic legislation and everyday practices were gradually changed as a result of continuous heavy pressure from the ILO in the years that followed formal ratification of the standards.

The impossibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention (C87, 1948) was, until 1974, accepted as being contrary to the regime's identity, based on the single trade unions. Nonetheless, this did not prevent the ratification in 1964 of the Right to Organise and Collective Bargaining Convention (C98, 1949), following intense pressure exerted on Portugal by the ILO. This ratification was only possible, however, because it was based playing with the words of the international and domestic rules: where it read "protection of trade union freedom", the Portuguese authorities read "freedom to belong or to not belong to the single trade union", ignoring the dependency this convention on Convention 87. Being such a

sensitive issue, the ILO's response was severe, and it questioned several areas in which the absence of trade union freedom and government interference in union activities were notorious⁶.

All issues relating to the political dimension of the labour law system are of central importance in the Portugal-ILO relationship. Their importance justified the ratification effort because of the benefits it would bring to Portugal's image. The risks of verification that domestic regulations had not been duly adapted, or that there was no real correspondence with the national legal framework, were taken in the name of external legitimacy, and there is evidence that those responsible for the process were aware of it.

The discrepancy between the times of ratification and when the standards were actually mainstreamed into legislation, tended to diminish as time passed and as international pressure mounted. However, there were also discrepancies between what was established in the regulatory framework and what the reality was in practice on the ground. This hiatus was less visible but nonetheless significant in a regime of entrenched verbosity, appearing to believe in the powerful force of the law while ignoring the chasm between reality and the splendid framework of legal rules.

The conviction in the harmony between the legal country and the real country is a constant theme in all the Portuguese political leaders' addresses to the international labour conferences and in the reports sent to the ILO: problems seem to disappear with the adoption of legal standards, and the reality immediately adapts to them. This belief of the official discourse in a fictive country based on the law would be one aspect of the efforts to legitimise Portugal in the eyes of the world, in times of great adversity in the international arena.

The Portuguese labour regulatory space, in the framework of the fundamental rights and, therefore, in its political dimension, began to develop from the mid-1950s onwards through the influence of the ILO. The country's open attitude towards the international standards was part of its broader quest for external legitimisation in a context of growing international isolation. Its acceptance, through ratification, of ILO conventions

⁶ In spite of the reforms to trade union and collective bargaining legislation under the Marcelo Caetano government (1968-1974) to test a new model of institutional workforce representation that would be more in line with the times.

on political issues became a banner waved at home and abroad, but these ratifications often had merely symbolic value and meant a commitment for some time in the future, since the reality on the ground was still a long way from the responsibilities Portugal had signed up to.

2 – The social dimension⁷

With regard to the social dimension of the labour law framework we find that, before 1933, there were three main drives towards ratification of ILO conventions that marked the emerging corporative project: whilst the process was viable thanks to the existence of legislation passed during the Republic that made it possible, the fact is that the conventions were adhered to during the military dictatorship that preceded the *Estado Novo*.

Between 1934 and 1937, in accordance with the Constitution and the National Labour Statute, socio-labour legislation was passed that would remain in force until the end of the 1960s, and which enshrined the minimal nucleus of labour rights provided for in the ILO conventions ratified by Portugal. This legislation defined a nucleus of rights – very limited, narrow in scope as most workers were excluded, and often merely theoretical with no practical expression whatsoever –, but it was nonetheless a cornerstone of the *Estado Novo*'s social policy.

The fact that these laws remained in force for 35 years reveals one facet of the *Estado Novo* – its staying power (*saber durar*) – while concealing another, that of internal change beneath the apparent permanence. By the end of the 1960s, life for Portuguese workers had little in common with life in 1933, except for the outdated standards framework. Their living standards had improved thanks to intervention by the authorities, collective bargaining, policies implemented by some employers, market forces, and also as a result of international pressure.

In the programme of the *Estado Novo*, which saw itself as a harmonious society, the working rules of labour relations would emerge from the collective bargaining process, in the form of contracts and collective labour agreements, and the state would only intervene to correct any imbalances. The laws would define a lesser common

⁷ Under this point, we look at the issues included in the themes Employment Quality, Social Protection, Employment and Poverty, and also Child Labour which, according to ILO criteria, falls under the Human Rights category.

denominator concerning labour rights, and it was up to collective regulation to expand that framework. We know that the scope of collective bargaining was diminutive, although it did gradually increase, especially during the 1960s, but the argument that the legal rules were not enough to elucidate Portugal's labour system was used repeatedly at the ILO.

The modernity of the generation of social and labour laws of the late 1960s formally succeeded the early laws of the *Estado Novo* with highly positive results, but in practice it came up against a country that had evolved economically and socially beyond the legislative framework then in place, and which was prepared to embrace them.

In terms of the formal relationship with the ILO over this long period that had begun in 1933, there was a first ratification in 1937 of the Underground Work (Women) Convention (C45, 1935). More than twenty years went by before the ratification of three further conventions concerning employment quality: in 1959, the Minimum Wage-Fixing Machinery Convention (C26, 1928); in 1960, the Weekly Rest (Commerce and Offices) Convention (C106, 1957); in 1964, the Night Work (Women) Convention (C89, 1948). In 1960, in the sphere of social protection, the Workmen's Compensation (Agriculture) Convention (C12, 1921) was also ratified. Lastly, the Labour Inspection Convention (C81, 1947) and the Employment Service Convention (C88, 1948) were ratified in 1962 and 1972 respectively.

A common thread to all the ratifications of conventions on social matters is the fact that the domestic legislation that would make them viable them already existed. These were ratifications undertaken at time when it was important for Portugal to get recognition and support at the ILO. Also noteworthy is the difference between these and conventions in the political sphere, which had been ratified hastily and before domestic legislation had been adapted accordingly. These served as a driver of change in the Portuguese reality, first in respect of standards and then later in practice.

Despite the pressure from the ILO on the issue of child labour, by 1974 Portugal had only ratified the Night Work of Young Persons (Industry) Convention (C6, 1919) back in 1932. None of the minimum age for admission to employment conventions had been ratified. In 1919, the ILO had set the limit at 14 years old, and raised it in 1937 to 15 years. In Portugal, although in reality there was even earlier entry to the labour market,

the statutory minimum working age was 12 years old, and this remained unchanged throughout the *Estado Novo* years. It only changed after 1970, when new legislation raised the limit to 14 years old. This coincided with a broader movement in Portuguese society concerned with children's rights issues, namely raising the statutory minimum compulsory education to six years and the minimum school leaving age to 14 years. These changes were introduced in 1964. Only in 1970 would Portugal be in a position to ratify the ILO's 1919 convention, but since the latter had been revised in 1937 and the new age limit was now 15 years, matching the international standard was still impossible, in spite of the fact that more than thirty years had passed since its adoption.

With regard to women's work, the conventions limiting underground work and night work were ratified. However, those which provided for maternity protection, i.e. Maternity Protection Convention (C3, 1919) and Maternity Protection Convention (Revised) (C103, 1952), were not and could not be ratified in view of existing Portuguese law. In fact, the 12-week maternity leave provided for by the ILO since 1919 would not be reflected in Portuguese legislation until 1974. Women's entitlement to 30-days leave and to receive one-third of salary, if she had provided good and effective service (which depended on the employer's assessment) for more than one year, was provided for in legislation passed in 1934. It was altered in 1963 to 60-days leave, in the form of maternity insurance, and even then not all women were entitled to it.

On the question of health and safety at work, no convention could be ratified. Regarding the medical examination for adolescents prior to starting work, Portuguese labour law never enforced this, even though a law had been in force since 1948 providing for medical attention for all young persons at work. The new labour regulatory frameworks of the late 1960s, containing rules on the employment of young persons, still did not provide for this medical examination. As far as the conventions on working conditions relating to health and safety are concerned, there was no domestic legislation covering these areas. However, between the 1936 occupational accident and illness compensation legislation that contained broad health and safety rules, and the law that revoked it in 1965 (only in force in 1971), enormous progress had been achieved. The new law went far beyond the logic of compensation and included prevention and professional reintegration objectives.

In respect of paid annual leave there was also no ratification. However, from the 1937 legislation that provided for the granting of annual leave only by enterprises with more than six or twenty employees (depending on the nature of the work, which excluded the great majority of national enterprises), and for only a limited number of days, dependant upon the number of years each employee had worked and on the employer's assessment of their work, to the 1969 legislation, a huge step forward had been made. The new legislation set an obligatory minimum duration for annual leave that increased according to length of service, regardless of the worker's job and the size of the enterprise. Annual leave became a mandatory basic workers' entitlement rather than a privilege. Nonetheless, as usual, Portugal fell short of the international references and consequently there was no ratification in this area.

Working hours and weekly rest were the issues on which there was most ratification, which took place not too long after being adopted by the ILO. However, the convention that extended the 8-hour working day to commerce and offices was never ratified, even though domestic law would have permitted doing so. This was due to a systematic non-compliance with statutory working hours. The 8-hour working day had been legally enshrined back in 1919, and subsequently confirmed in the *Estado Novo's* legislation, so domestic law was in accordance with the commitments entered into. In this case, the ILO's intervention occurred downstream, from the late 1950s onwards, with the Committee of Experts verifying compliance with the standards on the ground in the metropolis, but especially their extension to the overseas territories.

Only one of the five conventions on the minimum wage was ratified, 31 years after its adoption. Portugal's domestic legislation permitted the minimum wage fixing system established by the convention. The delay in ratifying this standard and the difficulties surrounding the ratification of the others were less to do with legal wording and more about the conventions' underlying ideology: the democratic egalitarian principle of workers' participation directly clashed with national practice, whereby listening to the views of the stakeholders was seen as a formality without no resulting consequences.

In the area of social protection, the ILO had even less formal influence. Apart from the conventions ratified in 1929 on compensation for occupational accidents and diseases, and the compensation in agriculture convention in 1960, no other convention concerning social security was ratified. There was no ratification of any convention

covering sickness, old age, invalidity or death, nor was the Social Security (Minimum Standards) Convention (C102, 1952) ratified. On the question of migrant workers, only the convention concerning equality of treatment for national and foreign workers as regards compensation for accidents was ratified in 1929.

This limited number of ratifications, in what was a key domain for the construction of welfare states, calls for a careful reading. Although somewhat belatedly, Portugal did progress from a social welfare scheme based on its 1935 corporative legislation to a social security dynamic that resulted from reforms carried out in 1962. The effects of the reforms, while slow in being implemented and still not reaching all the working population, did spread during the 1960s, enabling the country to head in the same direction as more developed European countries and towards a Welfare state. If it were not for the fact that extending the benefits to its overseas territories was impossible, which had been acknowledged in its reports to the ILO, Portugal would have been able to ratify Convention 102 as continental Portugal, especially since adherence to this standard did not necessarily mean committing to all the provisions, as it provided for partial ratification.

Of the conventions that regulate the administration and inspection of labour and the employment area, the conventions concerning labour inspection and the organisation of the employment service were ratified, after a delay of 15 and 24 years respectively, while 8 further conventions were not ratified. The existence of a Labour Inspectorate in Portugal since 1948 would have permitted ratification of the respective convention had it not been for the fact that the service did not exist in its overseas territories. The service was extended to the overseas territories in 1961, in the context of considerable internal upheaval over the setting up the ILO Commission of Enquiry into forced labour in Africa, triggered by a complaint from Ghana, and also because ratifying the Labour Inspection Convention (C81, 1947) would be "useful" to the defence of Portugal's interests.

Adherence to the convention on the organisation of the employment service would only be possible after July 1971, when the public employment service was set up in the overseas territories. In continental Portugal the infrastructures for a public employment and vocational training service were only put in place during the 1960s, making ratification of the convention viable.

While underlining the idea that the labour reality in Portugal was not static during the years in which legislation remained unchanged, and that there was evolution that permitted transition to modern labour law frameworks in the 1960s, it should also be pointed out that the changes that occurred were limited in scope, and impeded the ratification of international standards, which would have entailed the adoption of general and abstract domestic standards covering the global universe of Portuguese workers.

In the social domain, therefore, the regulatory space developed in between the few international conventions that it was possible to ratify and those that, because of Portuguese law, it was not possible to ratify (which were in far greater number and scope). Although the non-ratification of standards that were now international reference framework illustrates the slow pace of progress in juridification of Portugal's socio-labour sphere, it conceals more than it illuminates, because non-adherence to the standards did not mean that advances were not being made, but rather that the slowness prevented Portugal from catching up to ILO level.

Endnotes

Criss-crossing times and spaces – the former real, the latter metaphoric – we have characterised the relationship between Portugal and the ILO during the long *Estado Novo* era, and the ILO's influence in the socio-labour component of the nation's life.

This process was part of the wider movement to develop the juridical field within the social field, which characterised western societies and paved the way for the emergence of the welfare state. In Portugal's case, the adoption of social and labour legislation began at the end of the Monarchy (1910), and rapidly developed during the years of the Republic (1910-1926), even though many of the standards had no practical application whatsoever. The *Estado Novo* opposed this “artificial legislation” and the demoliberal project that was the ideological basis of the republican period, and established a minimal nucleus of labour rights.

The minimal nucleus of rights was maintained in written law, without any visible changes, for more than thirty years. Despite this apparent immutability, however,

working conditions for the Portuguese did change over time, and their rights increased with the introduction of regulatory schemes, and policymakers' and employers' decisions in response to market dynamics. The new generation of laws passed in the 1960s addressed many of the solutions that were enshrined in practice, modernising the socio-labour juridical system and narrowing the enormous chasm that still separated them from those of Europe's developed nations.

Directly or indirectly, whether through formal recognition mechanisms or the circulation of ideas about work and its regulation, the ILO was very present in the shaping of Portugal's labour law framework, especially during the phase that immediately preceded the establishment of the *Estado Novo* and from the late 1950s to the fall of the regime. However, the *Estado Novo*'s idiosyncratic character, which was in essence anti-democratic, combined with the economic developmental backwardness of Portuguese society, restricted international influence on domestic juridical space.

The ILO served, in different ways depending on the member nation, as an international framework and reference. Its legality created spaces for interlegality with the member countries, although we cannot speak of genuine interlegality because there must be a willingness on the part of the state to adopt international standards. Considering that the expansion of the juridical field constituted a regulatory infrastructure for the welfare state, the ILO was at the heart of the process throughout the entire time span we are concerned with. Over this long period, the ILO itself evolved, juggling and managing the array of national interests present within it, and the successive international tensions between regimes and liberal, authoritarian, and socialist-leaning ideologies, between industrial and agrarian societies, between colonising and colonised countries.

The growth of the socio-labour juridical space in Portugal during the *Estado Novo* period came about slowly and unequally, accompanying the developed European countries from afar. In spite of being restricted by a State founded on the idea of national autonomy, independence and non-interference from third countries or international organisations, and even though limited by the regime's non-democratic authoritarian nature and the country's social and economic backwardness, the juridical space we are talking about evolved a great deal, especially during the 1960s.

The ILO's influence on the juridification of Portuguese social life was significant, although not always evident because it often took the form of disseminating its ideas rather than formal standard adoption mechanisms. In a political dimension, the Portuguese regime's quest for external legitimacy led to the formal acceptance of many ILO standards, in spite of the fact that they could not be implemented straightaway – this process in itself would serve as a driver for internal change. In a social dimension, the limited rate of ratification reveals Portugal's inability to keep up with European standards, but does not disclose the evolution going on internally that, in many respects, was the result of ILO values, principles and standards having been absorbed.

Rather than qualifying the outcomes of the juridification process, we should emphasise that during the *Estado Novo*, especially towards the end of the regime, a series of social and labour rights were granted that preceded certain civil and political rights that would only be established in 1974 with the advent of democracy. This was occurring at the same time as the State was growing, revealing the biunivocal link between the two processes: a slower process of the law's regulatory expansion and of rights corresponded with the slower evolution of the State, or the delay in the State's assumption of more responsibilities determined a postponement of standards.

In spite of the slowness of change in the juridical system and development of the State's functions, there was in fact a drive in Portugal, which we refer to as "in search of the social state", to use the regime's own expression. The "social state", an expression coined by Marcelo Caetano during the regime's later years, which never had constitutional significance, meant an advance in the continuity of the State and corporative Republic which had been envisaged in the founding texts of the *Estado Novo* in 1933, a new reading in light of the modernisation of the regime in pursuit of a sort of legitimacy that would ensure its permanence.

With reference to the expression "social state", the scope of the words seems to go far beyond the reality. The same would be true of the expression "corporative Republic", which the 1933 Constitution enshrined: Marcelo Caetano's disillusionment with corporatism and the fact that on several occasions he referred to the Portuguese state as "corporative in intent but not in content", reveal the gap between the *Estado Novo*'s social project and its practical realisation.

The modernisation process of the 1960s, the rhetorical dimension of which was considerable, was largely due to the Marcelo Caetano period, although it had its origins in the last years of the Salazar government. It was based on improving workers' rights and their social protection. In this respect, the importance of the 1962 reform of the welfare system and the substantive changes it brought to social protection in the years that followed should be emphasised. In addition to the laws concerning established rights, the modernisation of the regulatory framework itself is worth mentioning – the new generation of statutes in the late 1960s introduced a juridical-technical logic that was modern and comparable to what was happening in developed European countries, discarding once and for all the archaic regulatory infrastructure.

The road to juridifying the socio-labour sphere and the timid steps taken towards a welfare state in Portugal followed behind a more advanced Europe, but were very late in starting because of the country's socioeconomic structural backwardness and constraints connected with the nature of the political regime in power until 1974. In this respect, it is significant that, with transition to democracy, there has been unprecedented development in social and labour law. Freedom of association (previously outlawed), unemployment benefit (provided for by law since the 1930s but without practical application), and minimum wage fixing for the first time in Portuguese labour history, were, along with the strengthening and improvement of many other rights previously provided for, just some of the milestones reached through enlarging the regulatory framework.

In 1974, year of the revolution, the growth of labour rights based on normative development was in full swing in Portugal, at what was still an early stage of instituting a welfare state. The process suddenly speeded up with the regime change. Once again, the delay marked a discrepancy with the rest of Europe: a long process had begun in the 1970s among the developed countries. It was a process of de-juridification, of going back to a lesser degree of legal regulation and finding new forms of regulation that were more flexible, plural, alternative and informal, which reversed the tendency for an overflow of law regulation in favour of deregulation, and coincided with the start of the crisis in the welfare state.

In the case of Portugal, the process of expanding state law was still clearly on the rise, allowing the social structures of the State to grow. It would be several years before the

trend towards deregulation and the crisis in the welfare state that had been sweeping through the more developed European countries since the 1970s would make its appearance in Portugal.