

The ILO and PORTUGAL

100 years of History



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The ILO and Portugal 100 years of History

Bureau International Labour Office - Geneva: ILO, 2019

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Auhors: ALMEIDA, Carlos Castro; ANDRÉ, Helena; BÁRCIA, Paulo; CADETE, Joaquina Philimore; CAETANO, Maria Liseta; FELICIANO, Paulo; FERREIRA, António Casimiro; FERREIRA, Pedro Almeida; HENRIQUES, Marina Pessoa; LEITÃO, Maria Josefina; LIMA, Teresa Maneca; JERÓNIMO, Miguel Bandeira; JORDÃO, Albertina; PEREIRA, Irina Bettencourt; PINHEIRO, Vítor Moura; MONTEIRO, José Pedro; PACCETTI, Maria Teresa; RODRIGUES, Cristina; RODRIGUES, Henrique Nascimento; SILVA, Rui Gonçalves; THOMAS, Albert; TRONCHO, Mafalda.

ISBN: 9789220314937 (web pdf)

Also available in Portuguese, *OIT e Portugal 100 anos de História* ISBN 9789220314708 (print), ISBN 978220314715 (web pdf).

This publication was only possible with funding from the Government of Portugal through the Strategy and Planning Office of the Ministry of Labour, Solidarity and Social Security.

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Foreword

GUY RYDER - ILO Director-General

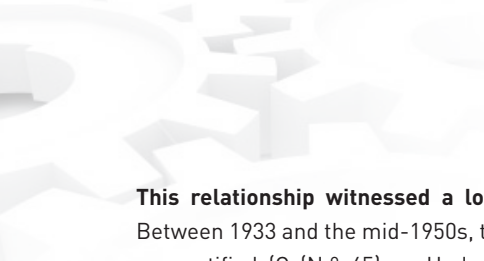
Portugal is one of the founding members of the ILO, and the relationship between both parties is very rich and deserves to be documented and kept for future reference. I thus praise this initiative by ILO-Lisbon and acknowledge the interest this relationship has raised among academia and social actors, allowing an important acquis to be now compiled in a single book.

The variety of angles and themes of the articles here gathered is also noteworthy, allowing for an integrated overview of a common history, marked by national and international political contexts. These explain the highs and the lows of our centenary relationship, that have led us to where we are now, a place of strong collaboration and shared values.

In fact, since 1974, Portugal has demonstrated a solid commitment towards ILO's principles and values and, in recent decades, towards the ILO's Decent Work Agenda, and now ranks amongst the top 20 of the ILO member States that have ratified a greater number of Conventions.

The path we have walked together can roughly be divided into five main historical moments.

A period of proximity following ILO's creation. It is interesting to note that the rule that defined a maximum of eight hours of daily work and 48 hours of weekly work was transposed into national legislation in 1919, although the Convention (N.º 1) was only ratified in 1928. It can be said that Portugal was a pioneer in terms of working time legislation and laws protecting women and children at work.



This relationship witnessed a long period of growing tension during the *Estado Novo*.

Between 1933 and the mid-1950s, the relationship was mainly formal and only one Convention was ratified (C (N.º 45) on Underground Work (Women)). From 1956 until the end of the 1960s, we noticed an attempt by Portugal to gain international validation by international organizations such as the ILO. The ratification of the Forced Labour Convention (N.º 29) and the Discrimination (Employment and Occupation) Convention (N.º 111) are an attempt in that regard. However, this was not sufficient to hide the growing divergences. Portugal was accused of violating rights at work and became the subject of ILO's first ever Commission of Inquiry concerning forced labour in its colonies (1961).

From 1974 and up to 1986, the year Portugal joined the European Economic Community (EEC), we witnessed a rapprochement between Portugal and the ILO. During that period, Portugal ratified 35 Conventions and several ILO technical missions were undertaken. Portugal was the first European country to request ILO's support in the design of a development programme. It also benefited from the ILO's International Programme for the Improvement of Working Conditions. That is probably why some of the articles now published refer to how that relationship has influenced socio-labour reforms, laws, policies and institutions and finally contributed to Portugal's accession to the EEC.

In 1987, Mário Soares became the first President of Portugal to address the International Labour Conference, with a promise that Portugal has kept until today: «Portugal, now restored to full democracy and a full member of the European Community, being a legally established State fundamentally concerned with social solidarity and justice, will always be a partner committed to the major objectives of the International Labour Organisation, which has contributed so much to improve conditions of work throughout the world and render them more humane».

After joining the EEC and until the mid-1990s, the ILO had less presence in the country. Nevertheless, six Conventions were ratified, including a fundamental one, the Minimum Age Convention (No. 138). An ILO-Portugal technical cooperation pilot project took place supported by the United Nations Development Programme – UNDP (1986-1990), with the aim of training youth to become development agents in migration areas. The project was developed in a decentralized way involving relevant actors at the national, regional and local levels. In 1992, Portugal held the first and, so far, only Presidency of the International Labour Conference, represented by its Government delegate, Nascimento Rodrigues.

In the last two and a half decades, there has been a qualitative leap in relations between Portugal and the ILO. It started in the second half of the 1990s with Portugal's full support of the Decent Work Agenda, and reinforced by Portuguese funding of technical cooperation projects in Portuguese-speaking African Countries (PALOP), as well as in Timor-Leste at a later stage. Portugal consistently counts among the top 15 bilateral donors of the ILO.

Much could be highlighted from our partnership in the last years, but I would like to underline three important moments. First, the relevance of the two statistical inquiries on child labour (1998 and 2001) that took place with the assistance of IPEC (ILO's International Programme on the Elimination of Child Labour). On the one hand because Portugal's experience in fighting child labour became an international reference and, on the other hand, because it gave us an important approach to this matter in the developed world.

The second and much symbolic moment is the opening, in 2003, of an ILO Office in Portugal as a result of the excellent relationship between the two parties.

Finally, I wish to highlight our joint work during the last crisis and throughout its recovery. The Oslo Declaration (April 2003) called upon the ILO to be more present in European countries most affected by the crisis. In this regard, we developed an important study «Tackling the Jobs Crisis in Portugal» and assured – at the request of the Government – technical assistance on youth unemployment (Youth Guarantee) and through sharing of labour legislation best practices in a number of fields (comparative analysis). During the recovery, we also had the opportunity to produce a new study – also at the request of the Portuguese Government and again in consultation with the social partners – on «Decent Work in Portugal 2008-18: From crisis to recovery». These studies were only possible because we have earned the country's trust throughout the years. More significantly, they proved the importance of the ILO's mission in the developed world and provided us with important insights.

The account of all this collaborative work, and more, is presented to us in detail in the following pages. I hope that all these reflexions contribute to further research and debate. Mostly I wish that the good results they testify, can be further reinforced and extend in the future this happy marriage, if I may say.

Two final words to the Portuguese constituents. Firstly, to express our gratitude for the support they have granted us in the last decades. I am convinced that our relationship has been and continues to be fruitful to all – to the benefit of workers, their families, enterprises and economy and the Portuguese society as a whole.

Finally, it is my belief that Portugal has been committed, even in the toughest of circumstances, to policies whose success are the result of partnership and dialogue, of properly addressing social justice issues while embracing openness to the global economy. That is why, Portugal's voice, example and values matter so much in the world. With this approach, we not only can address the uncertainties of present times but also can build, together, on our past achievements for the next 100 years.



Introductory Notes

MAFALDA TRONCHO - Director of the ILO Lisbon Office

The ILO centenary commemorations were a highly significant dimension of the 2015 International Labour Conference (ILC). ILO Director-General, Guy Ryder, presented his The Future of Work Centenary Initiative report, which anticipated the Organization's 100th anniversary and received extensive tripartite support. Through the Future of Work Initiative and six other Initiatives¹ the ILO would take the opportunity to reflect on the future, and prepare the Organization for the changes taking place in the world of work, in order to contribute to a fairer globalisation, more sustainable development, employment-generating growth and access to decent work.

From 2015 onwards, the ILO Lisbon Office focused its activities, in collaboration with its national tripartite constituents, other national partners and the CPLP (Community of Portuguese-speaking Countries), on the promotion, in Portuguese, of the debate around the seven Centenary Initiatives.

In addition to this forward-looking work of examining present and future challenges, the historical component was not forgotten – neither at the headquarters nor at the Lisbon Office. As a result, the Lisbon Office ends the centenary commemorations with two instruments for spreading historical information: the launch of the exhibition *ILO-Portugal: Dynamics of a Relationship*, the culmination of work undertaken for nearly decade, covering the 100-year relationship between Portugal and the ILO, and the publication of this book, *The ILO and Portugal: 100 years of History*, to which the following words refer.

¹ The End to Poverty Initiative, the Women at Work Initiative, the Green Initiative, the Standards Initiative, the Enterprises Initiative, and the Governance Initiative.



In 2004, the first Director of the ILO Lisbon Office, Carlos Castro Almeida, sowed the seed. ILO Lisbon embarked on the task of digitally compiling documentation relating to the participation of Portugal's tripartite delegations to the ILC, dating back to 1919. The concern for preserving historical documentation on the relationship between Portugal and the ILO was born, as this Office began to take its first steps.

The Project *ILO and Portugal – Dynamics of a Relationship* (which came to be known as Future Memory), energised by the Office's second Director, Paulo Bárcia, in 2005, definitively marked the decision to place the history of the 100-year-old relationship in the public arena. Working in close collaboration with the General Directorate of Employment and Labour Relations (DGERT) and the social partners, the project comprised three dimensions: i) information gathering and processing; ii) analytical study; iii) dissemination and awareness-raising.

As described in the project document, “[the] absence of in-depth studies in Portuguese on the ILO in general, and its importance in the configuration of Portugal's labour law and its labour relations system, reveals a gap between the Organization's role and significance and the research agendas of the country's scientific community.” The project also sought to spread a better understanding of the ILO, its mission, objectives, standards and instruments, among a wider audience, including key actors in the world of work and the Portuguese-speaking world.

A tripartite Monitoring Committee, chaired by Nascimento Rodrigues, was set up. It was responsible for overseeing the Project, defining priorities, validating contents and providing support with establishing contacts. António Casimiro Ferreira was coordinator of the research team.

The study was centred around two main lines of research. The first sought to evaluate the relationship pattern during the First Republic, the *Estado Novo*, post-25 April and European Integration periods. The second research line aimed to capture the developments of the labour relations system in Portugal and understand to what extent ILO standards impacted on Portuguese legislation.

This publication is largely indebted to the documental collection that resulted from the *ILO and Portugal – Dynamics of a Relationship* project. Some articles here have already been published (in original form or an updated version), others are still unpublished. The following are included in this publication: *The Consolidation of Labour Democracy in Portugal and the Role of the ILO*, by António Casimiro Ferreira; *Adjudication and Institutionalisation of the Portuguese System of Industrial Relations: the Soft Law of ILO Procedures for Complaints and Representations*, by António Casimiro Ferreira, Irina Pereira and Marina Pessoa Henriques; *The Symbolic Dimension of the ILO Framework in Portuguese Parliamentary Political Discourse*, by Marina Henriques, and *Technical Cooperation between Portugal and the ILO*, by Mafalda Troncho and Cristina Rodrigues.

This book is basically a compilation and includes other contributions. We selected several research papers that have been published over the years, which we felt help to present a comprehensive view of the different dimensions within the Portugal-ILO relationship. In some cases, we asked the authors to provide us with shorter versions or excerpts, on account of the length of the originals. In this respect, we would like to thank Miguel Bandeira Jerónimo, José Pedro Monteiro, Maria Josefina Leitão, Joaquina Cadete Phillimore and Rui Gonçalves da Silva for their efforts. Other articles, by Albert Thomas (the ILO's first Director-General), António Casimiro Ferreira, Cristina Rodrigues, Nascimento Rodrigues, Paulo Bárcia, Pedro Almeida Ferreira, Maria Teresa Paccetti, Maria Liseta Caetano, Teresa Maneca Lima and Albertina Jordão, are republished in full.

Also included are unpublished works by Paulo Feliciano, Vítor Moura Pinheiro and Helena André, which, for different reasons, we considered valuable for building the said comprehensive view. The first two authors give an account of a recent technical cooperation project which we think is important to highlight. The article by Helena André, *Work in the Future: Contextualizing the Relationship between Portugal and the ILO*, follows that of Nascimento Rodrigues, *Democracy, Tripartism and Social Concertation*. These two articles end this publication – two keen views on the context that marked the relationship between Portugal and the ILO, and the factors that will affect and help shape the relationship in the future.

Finally, we invited the ILO Director-General and Portuguese tripartite constituents to prepare, respectively, a preface and introductory notes. We believe that their present views on the journey depicted here, and/or on the future of the relationship, are invaluable testimonies for future memory. It was right to invite them to take part, as not only are they part of the ILO, but also their support to the Organization and to its Lisbon Office has been crucial to the pursuit of our mission. From the symbolic point of view, their participation also imparts a tripartite spirit to this publication.

To all the authors, editors and organisations involved in this initiative, I would like to extend our sincere gratitude. Your support has translated into an invaluable document that does not just tell, what we believe to be, a happy story. It also broadens our knowledge and understanding of the different historical periods examined, and, above all, we hope that it encourages more researchers to pursue the lines of analysis explored here.

We thank António Casimiro Ferreira for his commitment to the Future Memory project, and for agreeing to coordinate this publication. His enthusiasm, over the years, for the various areas of the mandate and for the history of the ILO, is contagious, and has contributed towards the objectives that presided over the initiatives referred to above: to motivate the research, disseminate our history, and take the ILO's message to a much wider audience.

I wish to finish by expressing my gratitude to all those who were part of the ILO Lisbon team, for their direct or indirect contributions to the construction of this publication, and a special thank you to Fernando Sousa Jr. for his editorial coordination.



Introductory Notes

ANTÓNIO CASIMIRO FERREIRA - Publication Coordinator

If, for a brief moment, in a “history of the future” exercise, we imagine what the world and the application and substantive experience of the principles of freedom, equality and social justice would be without the International Labour Organization (ILO), then we would be looking at global and national societies in which labour and its rights, and individual and collective human/labour rights, if they existed, would be something other than what we could strictly call democratic political-legal identity of labour, of labour law and, in a broader form, of economic and social rights.

This speculative exercise has the methodological purpose of highlighting the fundamental, I would even say, decisively critical contributions that the ILO has made, and continues to make, to what we now call fair globalisation, the decent work agenda and future of work, as a tryptic or hard core of a mandate conferred on the Organization by the social partners since 1919. This mandate spreads into many other realms of the world of work – combatting discrimination and poverty, safety and health at work, vocational training, social protection mechanisms and, equally important, monitoring the legality and enforcement of labour rights in the different member States.

The ILO is the organisation that best exemplifies, through its present and past action, and the promise of future work, the interpellation to all those who have a notion of decent work and its rights, for three main reasons. The first derives from the singularity of its institutionalisation process and internal organisation, characterised by tripartism and the affirmation of the social



dialogue model as the form of governance and decision-making. The second, for illustrating what is attested by its innumerable conventions, recommendations and exercise of its symbolic teachings, the struggles for recognition of rights in support of preserving the dignity of people, as workers exercising their citizenship rights. Thirdly, the ILO cannot be put in perspective without acknowledging that its programmatic action, expressed in the struggle for rights recognition, encounters one of the biggest obstacles to that recognition in the difficulty of implementing, and the ineffectiveness of the standards in the International Labour Code, and the document that emerged at the end of the Second World War, which Alain Supiot called the “Spirit of Philadelphia”.

Taking into account the above synoptic reflection on the ILO, it is important to emphasise that, on different analytical levels – global, regional, national and local – the intention was to organise the texts in this collection according to the heuristic principle of ascertaining in what way the ILO and Portugal established a relationship pattern marked by specific political and social scenarios and by issues crucial to the development of the industrial relations system and Portuguese labour law. If a metaphor could be used here, it would be that of the game of mirrors, although the portfolio of texts attests, above all, the impact of the International Labour Organization on Portuguese society. It is in this investigation into the effects that the International Labour Organization had on Portuguese society’s labour and legal dynamics, that the linkage between the different contributions compiled here should be found.

Aware of Portugal’s foundational tie to the ILO as a founder member, and the innumerable transformations that Portuguese society has undergone since then, it seemed appropriate to assemble a number of research works that, *grosso modo*, describe the relationship between Portugal and the ILO from the time of the First Republic and throughout the *Estado Novo*. So, the first part, entitled “Dialogues of History”, covers this recollection and includes, just to give three examples, the longitudinal analysis developed by Cristina Rodrigues in the first chapter, which delves into the ILO-Portugal relationship dynamic, the text by Miguel Bandeira Jerónimo and José Pedro Monteiro on forced labour during Portuguese colonialism, and Pedro Almeida Ferreira’s text on employment policies between 1960 and 1974.

The second part, entitled “From Democratic Consolidation to the Decent Work Agenda” is guided by the working hypothesis of the ILO’s importance in the consolidation of democracy and the development of a system of democratic industrial relations and labour law in post-25th April Portugal. The articles by António Casimiro Ferreira, Marina Pessoa Henriques and Irina Bettencourt, Rui Gonçalves da Silva and Paulo Bárcia illustrate this contribution in dimensions crucial to the Portuguese world of work, ranging from the reshaping of Portugal’s dispute resolution system, to the impact on Portuguese parliament’s legislative production, and to cooperation and participation in working groups and ILO operational programmes.

The third and final part was organised according to thematic areas in which, once again, the ILO's role was ever present. Included here are texts relating to *The ILO's International Maritime Law*, by Maria Teresa Paccetti and Maria Liseta Caetano, compensation for industrial accidents by Teresa Maneca Lima, women workers in a context of change, by Albertina Jordão, technical cooperation between the ILO and Portugal, by Mafalda Troncho and Cristina Rodrigues, the JADE programme, by Carlos Castro Almeida, combatting child labour, by Maria Josefina Leitão and Joaquina Cadete Phillimore, and the subject of technical assistance in youth unemployment, analysed by Paulo Feliciano and Vítor Moura Pinheiro. This publication ends with two final reflections by Henrique Nascimento Rodrigues and Helena André.

Lastly, a word about the selection of the texts to highlight the foundational article "Democracy, Tripartism and Social Concertation", written by Henrique Nascimento Rodrigues, which is fundamental for anyone researching the ILO and the Organization's role in further developing social dialogue as an integral manifestation of our democratic society.

As is the case of all reflective exercises, this one also reveals the imperfections of human activity, to which Tolentino de Mendonça refers. It was what we were able to produce, with scientific rigour, ethical balance and collaborative working, reflecting the International Labour Organization's way of being.



Introductory Notes

ANA MENDES GODINHO - Minister of Labour, Solidarity
and Social Security

First of all, I would like to commend the ILO Lisbon Office for its initiative to publish a book devoted to Portugal's relationship with the ILO, and to express my appreciation for being invited to write this introductory note.

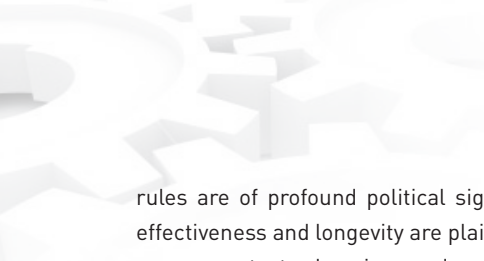
The International Labour Organization (ILO), founded in 1919 following the signing of the Treaty of Versailles, which marked the end of World War I, is one of the oldest international organisations and the oldest specialised agency of the United Nations.

It would not be possible to write an introductory note on Portugal's relationship with the ILO without emphasising how valid the objectives that led to its founding still are today.

I shall begin by recalling that the Preamble of the ILO Constitution states that universal and lasting peace can be established only if it is based upon social justice and the improvement of conditions of labour. These premises are as relevant today as they were 100 years ago, and strengthened the status of labour worldwide.

They were 100 years in which, together, we faced the challenges of peace, sustainability, solidarity, freedom, equality, human security and dignity, creation of opportunities and the guarantee of rights and social justice.

The foundations and principles underlying the ILO Constitution, and the Organization's operating



rules are of profound political significance, and clearly define its ideological principles. Its effectiveness and longevity are plainly linked to its multilateral and tripartite working between governments, trade unions and employers.

It is this organisational model that has made the ILO one of the most representative organisations in the world, and one that has most contributed to the development and consolidation of social dialogue.

I also recall the principles enshrined in the 1944 Declaration of Philadelphia, which arose out of an international human rights movement during World War II, and on which the International Labour Conference is still based today:

- Labour is not a commodity;
- Freedom of expression and of association are essential to sustained progress;
- Poverty anywhere constitutes a danger to prosperity everywhere;
- The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

The Declaration also states that it is the obligation of the ILO to further among the nations of the world programmes which will achieve full employment and the raising of standards of living; a minimum living wage to all employed; the effective recognition of the right of collective bargaining, and cooperation of management and labour; the extension of social security measures and comprehensive medical care; adequate protection for the life and health of workers, and provision for child welfare and maternity protection.

It is in this framework that the ILO emerges as an international institution devoted to labour that, through social dialogue, imposes legal rules that serve as references for labour relations, both internationally and in the domestic sphere of its members.

Among the ILO's powers and functions, through the International Labour Conference, I would highlight the adoption of International Conventions and Recommendations. Since these instruments have been reached through multinational tripartite negotiation, they constitute one of the most forceful tools for standardising rights. An example of this would be the role they have always played in combatting child labour.

The ILO's work has always been characterised by the ambition to fight for human rights and to create a more prosperous future, placing people at the centre of all its activity. One of the best

examples of this was the introduction of the concept of decent work, which became a global objective and is still one of the driving forces behind development and social progress. In fact, the Decent Work Agenda is so well structured that it can be applied internationally in different political, economic and social contexts.

The ILO has played a pivotal role throughout the world in the development of labour legislation and adoption of social policies that guarantee labour rights, social protection, combatting discrimination, gender equality promotion, consolidation of social dialogue, thereby strengthening respect for fundamental rights and equal opportunities.

Over the years, the ILO has directly and indirectly contributed to building societies that are more cohesive, more stable, fairer, more solidary and inclusive, more evolved, more democratic and more sustainable.

The award in 1969 of the Nobel Peace Prize reflected recognition of the excellence of the Organization's work.

And here in Portugal, how did the relationship with the ILO progress?

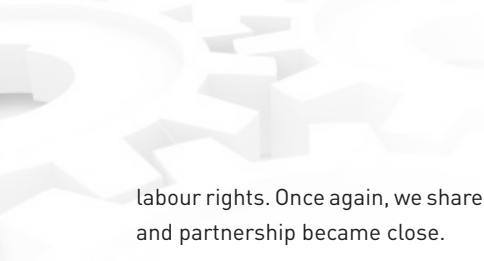
As one of the founder members, our ties with the ILO are also 100-years-old.

Nowadays, links between Portugal and the ILO are very close. I can say, without a shadow of a doubt, that our relationship and commitment are more solid now than ever before. Here, I must emphasise how much we owe to the recognition and prestige of the national social partners at that international organisation.

Allow me to recall that in 2016 the Ministry of Labour celebrated its centenary. The creation of the Ministry of Labour and Social Welfare in 1916 could currently be considered avant-garde and reformist. At that time, Portugal had the concern and clear-sightedness to create conditions that would improve access to better living and working conditions at, what was then, a highly sensitive moment internationally. Then, we were seen as pioneers of a movement that, with time, became stronger, for having transposed a series of ILO standards on social and workers' protection. Just between 1919 and 1932 we ratified 8 Conventions, including the Hours of Work (Industry) Convention, N.º1, which sets the maximum working hours at 8 per day and 48 per week.

However, during the *Estado Novo* period, identification with ILO principles and values was so shattered, and disengagement was so deep, to the extent that we were accused of violating fundamental labour rights.

The April 1974 revolution reopened Portugal's doors to the world and, naturally, to the ILO as well. The Organization supported us in the process of democratisation and strengthening



labour rights. Once again, we shared the same values, the same principles, and our relationship and partnership became close.

In 1982, we signed a General Agreement with the ILO, in which Portugal committed to finance technical cooperation programmes, in the sphere of social and labour initiatives, the beneficiaries of which would be the Portuguese-speaking African Countries (PALOP) and East Timor. Since then, Portugal and the International Training Centre in Turin, have entered into three further agreements: the Supplementary Agreement of 1993, the Social Protection Extension Agreement in 2009, and the Agreement with the Employment and Vocational Training Institute of Portugal (IEFP-IP) in 2010, updated in 2015.

However, support for Portuguese language presence in the ILO goes further. We finance interpretation at the yearly International Labour Conference, as well as the publication of a variety of documents in Portuguese.

In 2003, in light of the politico-institutional relations and ever closer partnership with the ILO, combined with the desire to boost the role of Portuguese language, Portugal entered into an Agreement whereby it supported the opening of an ILO office in Lisbon. The main objectives of the Office were, and still are, to reinforce cooperation in the sphere of technical cooperation and facilitate qualitative improvement in the expansion of the ILO's presence in the PALOP. It turned out to be a key partnership, which has intensified from year to year, both in relations with bodies and services under the Ministry of Labour, Solidarity and Social Security, and through the collaboration built up with the national social partners.

From the very outset, we expressly and unconditionally supported the Decent Work Agenda.

We have ratified 85 Conventions, including all fundamental and priority Conventions, and 1 Protocol. More recently, we ratified the Instrument of Amendment to the ILO Constitution. These are important regulating instruments of labour legislation that will continue to be essential in the future of work, especially in view of globalisation and the increasing forms of atypical employment.

In 2009, we sponsored the 8th Regional ILO Conference and, from the beginning, joined in preparations for the centenary celebrations. We took up the Director-General's challenge to generate reflection worldwide on the future of work and, in October 2016, organised an International Conference precisely on that theme – *The Future of Work*.

Every year, Portugal sends a tripartite delegation to the International Labour Conference and, in 2019, the Prime Minister attended the 108th Session.

The ILO, for its part, has paid particular attention to Portugal, and prepared valuable reports that have inspired the design of our labour legislation.

During the economic and financial crisis, the Organization played a decisive part by providing data and studies that deepened our knowledge of the Portuguese labour market, and contradicted preconceived, mistaken ideas about the need to allow more flexibility in our labour laws.

They have been 45 years of solid commitment, which we look back on with pride and a sense of duty, and which we shall continue to honour.

Together, we are under the obligation to ensure that, in the future, labour will always be labour with rights. This must be a fundamental underlying principle of an economy that seeks to be innovative and creative, that generates wealth and creates employment, and of a society that is fairer, more solidary and inclusive, which democratises labour and well-being and leaves no one behind. Now and in the future, the ILO can count on this Ministry, on my solid commitment, and on the strengthening of our relations.



Introductory Notes

EDUARDO DE OLIVEIRA E SOUSA - President of the
Confederation of Portuguese Farmers

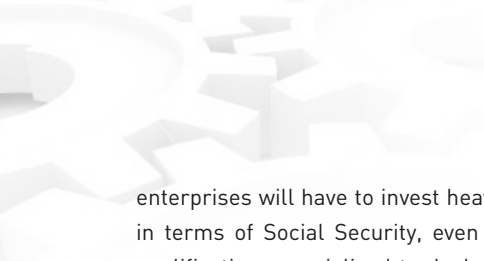
The relationship between the ILO and Portugal has been a long one, as has the ILO Lisbon Office's relationship with the Confederation of Portuguese Farmers (CAP).

In the year when the ILO commemorates its centenary, the 2019 International Labour Conference (ILC) adopted the Centenary Declaration for the Future of Work.

It seems appropriate, therefore, to consider here some of the issues that, in the coming years, will face the future of work and the work of the future.

The technological advances (artificial intelligence, automation and robotics) that we have been witnessing, and which farming has gradually been adopting, will certainly cause the disappearance of a number of jobs. At the same time, however, they will also stimulate the creation of many others. The new jobs will be more skilled, and more interesting from a personal and professional standpoint, insofar as repetitive, monotonous and heavy work will be done by machines or robots, leaving humans largely free of those tasks.

With the introduction of new technologies in agricultural production, and the increasing use of automation and robotisation, certain types of work will be eliminated. In principle, this should not pose problems in the farming industry, since the sector faces generalised shortage of agricultural workers, which it has to recruit abroad in order to meet the sector's growth needs. But there will be a downside: workers are going to be substituted by machines/robots, and



enterprises will have to invest heavily in new equipment. I also foresee the need for changes in terms of Social Security, even though recruitment of workers with technical skills and qualifications specialised to deal with the new devices and the increasing digitalisation and organisation of machinery will mean higher contributions to the social protection system. The majority of these professionals will be on higher earnings, which will help to offset the losses to Social Security caused by the elimination of some jobs.

The CAP is highly concerned about the future of work, insofar as it has responsibilities in terms of collective bargaining. In order to adjust occupational categories in the Collective Bargaining Agreement (CCT) to the realities of employment and to the introduction of new technologies, the CAP is currently engaged in a Support Study for the Definition of Skills for the Rural World, which will be part of a prospective analysis of skills/qualifications needs for the rural world, and will also be used in the critical review and updating of training references in the National Qualifications Catalogue, and for proposals for new training references that are found necessary, based on the mapping of skills resulting from the analysis carried out.

On the basis of this study, which is expected to be finished in 2020, the CAP will be able to proceed with updating occupational categories provided for in its CCTs, by researching, together with enterprises, the new skills and already-existing functions adapted to the digitalisation scenario, so that the needs of both enterprises and workers in agriculture may be addressed whenever a job is created or a worker is retrained.

The CAP also advocates heavy commitment to Lifelong Learning, in order to facilitate not only training and updating, but also retraining for workers whose jobs have been lost.

It is highly important that social partners, government (employment services or others) and education bodies, through the formalisation of a social contract, find ways in which workers can access fast and effective retraining courses, and advice from specialists who can guide them towards appropriate training for future jobs.

The advent of a green economy and climate change itself have boosted job creation. While it is true that transition to a carbon-neutral economy, as provided for in the Carbon Neutral Roadmap to 2050, can initially translate in job destruction, this can be offset by the creation of many others.

On this issue, and regarding Portugal specifically, "... the overall objective of the Roadmap to Carbon Neutrality is to technically support Portugal's commitment under the Paris Agreement to achieve a carbon neutral economy by 2050".

However, that commitment will only have practical effects if nations overall follow the same line and apply the required concrete measures. Meanwhile, the plans of European countries,

and other nations, including those most responsible for emissions globally, are not known. It is important to emphasise that the trajectory that Portugal has outlined could have very negative consequences for the country, if it is not accompanied by measures that are in line with the same objectives set at European and global levels.

On the other hand, the reduction of national greenhouse gases (GG) by the agriculture sector cannot be done at the expense of importing farm products from other countries, to the detriment of domestic production. In fact, the European Commission itself, in its Clean Planet for All document, published in November 2018, in support of the Commission Communication COM (2018) 773, warns about the need for member States to take measures to avoid agricultural production being moved to countries with lower climate ambition, leading to carbon leakage.

Finally, a word about demographics. Demographic changes throughout the world are going to have a huge impact on labour relations in the future. The Northern Hemisphere will struggle with a shortage of skilled workers to meet the needs of economic growth derived from increased productivity as a result of the digitalisation of the economy, and with heavy pressure on social security systems due to population ageing and reduced contributions. Meanwhile, the Southern Hemisphere, will be faced with large, young or very young unskilled populations, insufficient jobs to meet population increases, low productivity, and health and social security systems that do not meet people's needs, and high emigration rates.



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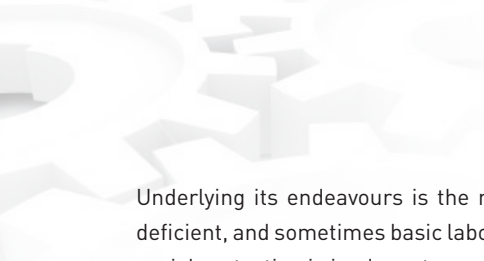
JÓÃO VIEIRA LOPES - President of the Portuguese
Commerce and Services Confederation (CCP)

Looking at the relationship between Portugal and the ILO is just like looking at our own evolution and its multiple aspects – political, economic, social, among other dimensions. The context helps to explain the times of greater or lesser adhesion to ILO standards. For example, even though Portugal was one of the founder members, it was only much later on (in 1928) that it ratified the first Convention, due to the political instability during the First Republic. Furthermore, the country's economic and social backwardness compared to other European countries, meant that ratified standards were less effectively applied.

The ILO's contribution to economic and social progress in Portugal and throughout the world is unquestionable.

Its input has varied over the years, according to the historical contexts, but it always brought added value for the improvement of working conditions and organisational performance, whether public or private, through its multidimensional work.

The work of the ILO has contributed decisively to greater justice globally, first and foremost on account of its labour standards – a normativity that, because it has been produced outside national contexts and spaces, has diverse results, especially in terms of the significant influence ILO fundamental principles have on the reflection on, and production of domestic legislation.



Underlying its endeavours is the recognition that in many countries working conditions are deficient, and sometimes basic labour rights are denied, decent work opportunities are lacking, social protection is inadequate, and even an absence of social dialogue systems or practices.

Since its founding, a century ago, the ILO has played a pivotal role in the improvement of living and working conditions, seeking social justice, and has introduced new concepts, such as Fundamental Principles and Rights at Work (Declaration adopted in 1998) and the decent work agenda (initiated in 1999). While, with the definition of fundamental rights at work the ILO sought to confer on them protection, similar to that given to human rights, the new concept of decent work launched a broad examination of the inherent issues, generating vigorous debate between employers' organisations and trade unions, and came to feature in decision-making on, and implementation of employment policies and measures to promote social cohesion generally.

Focusing its work around international labour standards, the objective has always been that of convergence between human rights and labour rights, in an attempt to rectify at international level that which has not been achieved at national level.

The CCP believes that, on this level, as well as on others, it is important that consideration is given to the wide diversity of societies and national (and even regional) cultures that exist in the world. Each country is a specific reality, made up of different characteristics – that are also linked to its history – which must be taken into account when defining global guidelines and their respective implementation. There will always be countries in which achieving the aspirations of an organisation like the ILO is more likely, and others where it is far more difficult, including for economic reasons.

Given this scenario of extensive plurality and diversity, we consider the ILO's work in terms of soft law highly useful, i.e. whilst the instruments are not compulsory, they have, nonetheless, contributed to greater justice globally. In our view, the ILO's strength also resides in this aspect, because it has enabled a more flexible approach that is better suited to national specificities and the different themes on the Organization's vast agenda.

In this connection, we have participated in the ILO's different intervention areas, including preparatory work for the International Labour Conferences held annually in Geneva, discussions on the respective regulatory instruments, and general discussions on topics concerning the improvement of labour market dynamics.

We have argued for changes to Portuguese labour legislation in light of ILO guidance, especially in relation to the ratification of Conventions that we believe reflect important aspects of labour law and the general functioning of the labour market. Such areas have included: social dialogue; collective bargaining; wages; working time; employment policy and tackling

unemployment (especially youth unemployment); unequal access to the labour market and gender discrimination; responses to concrete crisis situations; establishment of a minimum platform of social protection; reduction of occupational accidents and diseases, and others.

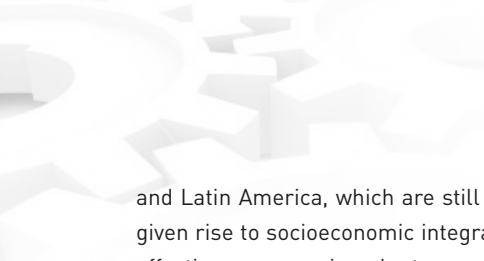
With regard to gender equality, it is important to point out that this objective was enshrined in the ILO Constitution and in standards adopted since then, particularly the Equal Remuneration Convention, 1951 (N.º 100) and the Discrimination (Employment and Occupation) Convention, 1958 (N.º 111). The ILO's commitment to eliminating discrimination was reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work and its 2008 Declaration on Social Justice for a Fair Globalisation, and is also promoted in other ways, such as ensuring gender equality is included in employment policies.

Another domain of the ILO's work that we believe to be highly important is that of technical support with the reforms. Portugal has already benefitted from such support. One example would be the work recently carried out in the area of Youth Employment, in which employers and trade unions actively collaborated, in coordination with the ILO Lisbon Office. With regard to the latter, working together with the ILO Lisbon Office has proven to be very beneficial, and, over the years, has covered many forms of input, teamwork and partnership. The opening of the Office in 2003 has been extremely useful and, through its subsequent work, has enabled the political actors to gain a better understanding of the Organization's importance where the institutionalisation of labour relations in Portugal is concerned.

In the course of our dealings with the Office, we have responded to requests and invitations addressed to us regarding a wide variety of topics on the ILO agenda. This has included participation in Discussion-Meetings, research studies (particularly on the question of the changing world of work in Portugal, which began in 2008 and is still ongoing, in view of the deep crisis that hit our country), in seminars, conferences, training initiatives (various schemes organised jointly with other relevant bodies), in simulated International Labour Conferences (organised for young students), in evaluation sessions with ILO specialists on various issues, in peer reviews, and in the reception of tripartite representatives from other countries, who have come to Portugal to discuss labour-related issues with us – a very wide range of interaction and sharing that has demonstrated the importance and value intrinsic to the tripartite system, and which hold more opportunities for future collaboration.

Tripartite collaboration is of major importance, in view of the fact that the ILO's agenda has evolved in terms of intervention in areas, which have, and will have, an increasing impact on the world of work.

We live, today, in a world in which all countries, organisations and workers are facing enormous challenges. One such challenge has to do with demographic aging. This is impacting on migratory movements, including those from countries in the Mediterranean basin, Africa, Asia



and Latin America, which are still on the lower rungs of development. These dynamics have given rise to socioeconomic integration problems, which need to be addressed with concrete, effective measures in order to ensure the full contribution that migrants can and ought to make for the good functioning of labour markets. We believe that very significant efforts have been made in Portugal in this area, and our country is even regarded, internationally, as an example of good practice. It is important that concerted action continues between the richer and developing countries, including in the sphere of technical cooperation and public development aid to the neediest countries, an area in which the ILO and EU have a major role to play.

We are living in a phase of history in which technological evolution is transforming, and will continue to transform, employment contexts, creating new demands entailing considerable challenges, but also creating new opportunities, in a scenario in which success will increasingly depend on interactive and integrated responses. The question of digitalisation and its impact on the world of work is now the order of the day, because it is very clear that this is an unstoppable dynamic. I would like, therefore, to say a few words on that subject which, in April 2019, was the theme for reflection and discussion at an event we jointly organised with the ILO Lisbon Office – “The Digital World: What New Consensuses?”.

We are constantly hearing, these days, that continual advances in robotics, artificial intelligence (AI) and machine learning are giving rise to a new era of automation, triggering a process in which machines perform the same, or even better, than humans in a number of work activities. There is a lot of talk that many occupations will disappear, making us believe that most jobs are at risk of extinction and that, as a result, high numbers of workers will be unemployed. I am not of this view.

According to OECD estimates, less than 10% of workers are in jobs that are at risk of being replaced by machines, and 25% are in jobs where a high percentage of tasks could be automated. I also believe that only a small percentage of tasks can be totally replaced by technology and that not all activities and duties in all jobs could be automated. In other words, more jobs will change than will be totally automated.

There are several scenarios for automation, some more pessimistic than others, and the time frames for its implementation vary, and are around 2050, with margins of error of 20 years – it will all depend on technical, economic and social factors.

In this context, it seems obvious to me that human labour will continue to be necessary. Certainly, technology will bring better performance in terms of productivity – and that is good news, as higher productivity means more wealth and better living and working conditions – but the potential will only be fully exploited if machines and humans work together.

It is important, therefore, to look to the future with optimism and determination. An area that the CCP has always regarded as fundamental, and which is more vital now than ever, is lifelong learning. It is essential to furnish people with the right skills for this increasingly digitalised world and globalisation context, and, particularly, to prepare workers to undertake more complex, less routine tasks, which are more demanding in terms of literacy, numeracy and problem-solving, and require greater autonomy and team-working ability to complement ITC skills.

The challenge facing all actors in the world of work – governments, trade unions and employers' associations – is, therefore, to join in reflection on action strategies, and to define and implement them, in a spirit of cooperation and complementarity. We must all make the most of the new employment opportunities that will arise.

To end, I would like to say that enterprises will also have to get behind motivating and preparing their workers for the new challenges on the horizon, from a perspective of responsibility shared between managers and workers, since there will be a growing tendency towards job flexibility, adaptation of duties, allocation of new tasks, more frequent transition between jobs, and the permanent pursuit of innovation.

The long-term impact on employment will certainly be far greater than the short-term consequences – so let us all make the most of time to prepare ourselves for the changes that are already underway, and which are not going to stop. It is up to us, all of us, to prepare the future of work for the digital world of tomorrow!



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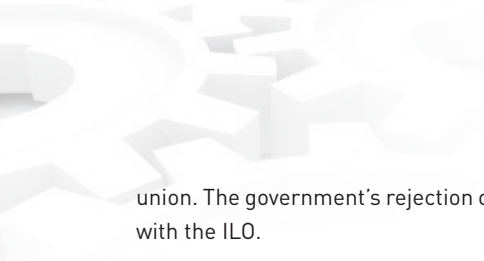
ARMÉNIO CARLOS- Secretary-General of the General Confederation of Portuguese Workers (CGTP-IN)

The relationship between Portugal and the ILO has not only been long (we are a founder member) but also complex, due to the historical framework in which it developed. Let us recall here just a few very different moments and events.

The first has to do with the fight against fascism and the colonial war, and the struggle for trade union rights. The CGTP-IN formed in 1970 in a context of intensifying opposition to the regime, with actions taken by service and other workers, mostly in the Lisbon region. At the time, rights to freedom of association and collective bargaining were exercised in a context in which the National Labour Statute proclaimed harmony between capital and labour.

The relationship with the ILO was tense. Although the regime had ratified the Right to Organise and Collective Bargaining Convention (N.º 98) in 1964, the pressure being brought to bear because of its violation of fundamental labour rights had not eased. In reality, these rights are not practicable in the absence of the right to strike and other trade union rights. The right to strike was only recognised after the April Revolution, and the ILO's Freedom of Association and Protection of the Right to Organise Convention (N.º 87) was ratified. The ILO always played a positive role in the weakening of the fascist regime.

Soon after its formation, the CGTP-IN challenged the government's appointment of the worker delegates to the ILO annual Conference, and demanded that its own delegates should be representatives. In May 1971, it nominated a delegation comprising António Mota, of the metalworkers' union, Ferreira Guedes, of the banking union, and José Pinela of the clerks'



union. The government's rejection of this delegation led to protests and the filing of a complaint with the ILO.

We also recall the ILO's position on the violation of the right to collective bargaining in Portugal in the early 1980s. The government at the time (AD, Democratic Alliance) sought, by issuing Extension Orders, to broaden the scope of collective agreements to cover workers who were not affiliated to the trade unions that were party to the agreement, i.e. to cover workers belonging to unions in the CGTP-IN with independent collective bargaining. These Orders would annihilate collective agreements that had been freely negotiated and entered into.

The first major conflict occurred in the textile industry, but the threat remained for any collective agreement, and undermined the right to collective bargaining for all workers. In October 1981, the CGTP-IN lodged a complaint with the ILO Committee on Freedom of Association (CFA). Although the CFA upheld that the right to bargain collectively should be safeguarded, the government persisted in violating trade union rights, which led to further complaints to the CFA. In late 1983, the Committee recalled *"the importance attached to the principle of non-infringement of the right to free collective bargaining of representative organisations"*, and expressed *"...the firm hope that protective measures will be introduced in the near future whereby it will be possible to prevent conflicting situations from occurring again."* This forceful position led the government to back down, although it did not revoke the Extension Orders already issued.

Finally, a word about the austerity policies introduced this decade by the Troika (EU, ECB, IMF) and the ILO's intervention at the time: not only did it denounce the impoverishing impact austerity policies would have on workers and the population, it also spoke out in defence of the Global Jobs Pact adopted in 2009.

We fully support this view, which is increasingly significant at a time when the upgrading of workers is indissociable from the future of work and development of society.



Introductory Notes

ANTÓNIO SARAIVA - President of the Confederation of Portuguese Business

In early 1919, as part of the Treaty of Versailles that put an end to World War I, the International Labour Organization (ILO) was born.

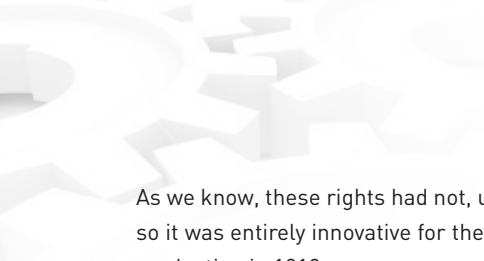
The ILO was founded as a body devoted to the extensive universe of labour, whose underlying principle, enshrined in its Constitution, was that social justice is a prerequisite for progress and universal, lasting peace.

The Confederation of Portuguese Business – CIP – is honoured to have the privilege, through these brief notes, of being part of the book *The ILO and Portugal: 100 years of History*, and congratulates the ILO Lisbon Office and the respective researchers for this notable initiative, launched in the framework of the centenary commemorations of the ILO, of which Portugal is a founder member.

The aim of this initiative is not only to promote the historical milestone reached in 2019, but also the relations between Portugal and the ILO over the past 100 years.

They were years of much history, marked by normative development on a huge scale and the subsequent evolution of the legal labour framework throughout the world.

The ILO, aware of the context in which it was founded and constituted as an agency specialised in socio-labour issues – in the wake of World War I – has been of pivotal importance in the global recognition of labour rights.



As we know, these rights had not, until then, been uniformly recognised throughout the world, so it was entirely innovative for the ILO constituents to embark on a long journey of normative production in 1919.

The CIP's overall assessment of ILO activities over the past 100 years is highly positive.

There are now 190 Conventions, 206 Recommendations and 6 Protocols, which are all fruit of solutions achieved and harmonised, as far as possible, on the basis of social dialogue.

From the CIP's viewpoint, given their impact and relevance, the adoption and implementation of the Conventions and Recommendations in the following fundamental areas deserve highlighting: Elimination of Forced Labour, Abolition of Child Labour, Freedom of Association and Collective Bargaining, Elimination of Discrimination in Employment and Occupation, and also Tripartite Consultation, Employment Promotion and Social Protection Policies, Vocational Training, Workplace Safety and Health, among others that, today, are unquestionably universal labour rights standards.

More recently, the ILO has shown signs of seeking new tendencies, in view of the pressing need to obtain the commitment of all its constituents on an increasingly broad range of issues.

In this "new" paradigm, two ILO Declarations are of maximum importance: the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*, which enshrined the core labour standards, and the 2008 *ILO Declaration on Social Justice for a Fair Globalisation*, which reaffirms the importance of promoting social dialogue and tripartism in today's globalised context.

At national level, over the past 100 years, ILO activity has made a huge impact on the domestic legal framework, which was basically shaped by the core labour standards, especially those relating to freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the elimination of child labour, and the elimination of discrimination in employment and occupation, all of which were enshrined in the ILO 1998 Declaration.

Until now, Portugal has ratified 84 Conventions, including the eight Fundamental Conventions, and 1 Protocol.

Since its own founding, the CIP has been involved in the evolution of the ILO, as the Organization worked not just at normative level, but also at the symbolic level, projecting an image of guarantor of international labour rights principles.

Back in 1970, and two years later, in 1972, before Portugal became a democratic rule of law state, the future Deputy Director-General of this Confederation – the much-remembered Dr.

Heitor Salgueiro – was a member of the Portuguese delegation to the 54th and 57th Sessions of the International Labour Conference (ILC).

After the April Revolution, however, the CIP has taken part every year in the ILC Sessions since 1975.

The CIP was also the first Portuguese employers' confederation to designate its President (i.e. me) to be the Employer Delegate to the ILC.

At the ILC, in addition to establishing workers' rights, the ILO has recognised the role of enterprises in the world of work, and the fact that decent work is only possible through the existence of enterprises, which are pivotal to job creation and to compliance with labour standards.

While work is held as the source of workers' livelihood and dignification, the ILO recognises that this can only occur when there are enterprises, which are crucial to employment creation and observation of workplace rights.

In this respect, the Organization has underlined the importance of preserving an environment that is conducive to enterprise development, where there is a climate of fair competition, promotion of labour productivity and competition, and, broadly speaking, economic growth.

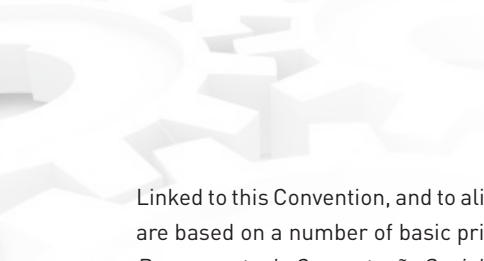
It is from this perspective that, ever since its inception, the ILO's main objectives have been to promote labour and labour rights, encourage decent work opportunities, widen the scope of social protection and strengthen social dialogue, in an environment favourable to healthy enterprise competition, competitiveness and productivity.

The ILO is still the only UN tripartite agency, bringing together the main stakeholders in the world of work, i.e. the representatives of workers, employers and governments, of its 187 member countries.

Developing labour regimes on the basis of a tripartite system, in which the three key players of the world of work establish, through more or less broad consensus, the regulation and monitoring of labour relations worldwide, is still the cornerstone of the legal labour normative process.

This, in the CIP's view, is the ILO's best legacy for the setting of labour standards at national level.

The tripartite system was, as we know, embraced nationally and, in this respect, Portugal ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (N.º 144) on 2 August 1980.



Linked to this Convention, and to alignment with the European Social Model, whose foundations are based on a number of basic principles, including respect for social dialogue, the *Conselho Permanente de Concertação Social* (Standing Council on Social Concertation) was set up in our country in 1984. It was replaced by the *Comissão Permanente de Concertação Social* (Standing Committee for Social Concertation), which, since 1992, has been operating within the *Conselho Económico e Social* (Economic and Social Council).

The Economic and Social Council comprised the government and social partners' representatives – trade unions and employers' organisations – and aimed to promote social dialogue and concertation for the purpose of facilitating agreement on incomes and prices policy. Its mandate was later broadened to include labour regulation.

The government is, therefore, the third party that, together with workers' and employers' representatives, and even in the relations established between them, seeks to legitimise the pursuit of the policies it wants to develop, on the basis of broad tripartite commitments.

The following premise, referred to in this book, encapsulates to perfection what has been said so far: *“Tripartism and social concertation are expressions of democracy itself, developing and enriching it through their participative component. (...) tripartism and concertation are nothing other than the transfer to social relations, of the principles of **freedom, pluralism and participation.**” (...).*¹

Now for a few words on a very current issue on the ILO's agenda – the future of work.

In a context marked by increasingly rapid changes, the engagement and efforts of the member States and Organization should, on a tripartite basis, focus on some objectives that the CIP believes are of crucial importance, namely: the promotion and pursuit of full productive employment, social dialogue and tripartism, economic development and social progress, and a new approach to issues such as digitalisation, new forms of employment and migratory flows.

It was, in fact, the ILO Director-General, Guy Ryder, who, at the Future of Work Conference, held to celebrate the centenary of the Ministry of Labour, said: *“We are facing a real revolution, where work no longer exists on a permanent basis and becomes a commercial transaction between those providing and those seeking a good or service, episodic and commercial. We are therefore forced to rethink our policy instruments, such as legislation, collective bargaining and tripartite dialogue.”*

The (r)evolution that has been occurring in this respect must, therefore, be addressed.

¹ Quotation from Nascimento Rodrigues' article “Democracy, Tripartism and Social Concertation”, in “ILO – Portugal: a relationship with history, a relationship with a future”.

Work no longer follows the same parameters as 100 years ago. The means and processes of production have changed. Thanks to technological innovations, which have contributed so much to the globalisation process, the other side of the planet is just a click away.

On the other hand, we must bear in mind that diversification of forms of recruitment is essential for a well-functioning labour market, especially in view of the variability and uncertainty with which needs arise and the vital importance of not missing out on commercial opportunities that may appear.

In the report of the Global Commission, entitled *Work for a Brighter Future*, which came out in January 2019, the ILO recognised new forms of work but, for the first time, did not attach any negative connotations to them, as it had been doing until then.

Similarly, a recent ILO report, *Small Matters: Global evidence on the contribution to employment by the self-employed, micro-enterprises and SMEs*, published in October 2019, revealed that small enterprises and self-employed workers are responsible for the majority of jobs in the world.

Specifically, the report states that “*7 out of 10 workers are self-employed or work in small enterprises*”, which proves that self-employment and micro and small enterprises have a far more important role in job creation than previously thought.

It is in this context, where changes in the world of work must go hand in hand with changes to the traditional notion of the individual employment contract, i.e. full-time and open-ended, that the “new world of work” and the Organization in which it is being discussed and regulated now have to fit in, not only in order to face up to the challenges ahead, but also to seize and make the most of all the opportunities that are being created.

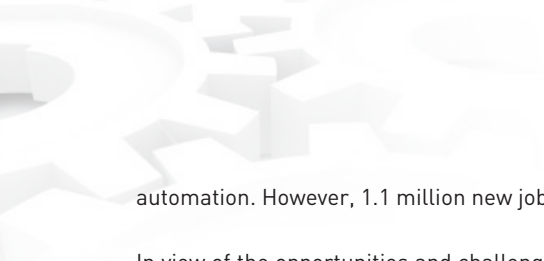
In spite of the immense challenges that will confront us, the CIP believes we must face the current revolution with optimism.

If we want a better future for all, we have to accept the use of new technologies, and avoid creating catastrophic scenarios and focusing merely on job losses.

Take, for example the benefits of robotics in dangerous or high burnout occupations.

It is worth remembering that in the three previous revolutions, there was much talk about job losses, but, in the event, employment grew.

In this regard, according to the study “*Automation and the future of employment in Portugal*”, undertaken by the CIP in partnership with the McKinsey Global Institute and the Nova School of Business and Economics, Portugal could lose 1.1 million jobs by 2030 as a direct result of



automation. However, 1.1 million new jobs could also be created.

In view of the opportunities and challenges, it is essential to design and implement measures framed within an agenda of global commitments involving governments, enterprises and workers, in the definition of strategies and policies.

We have to make the most of the present time to confidently, bravely and determinedly launch a real paradigm shift.

The ILO, whose mission and founding principles continue to prevail, even after 100 years, is the privileged space for the necessary decision-making that is hoped will shape the future of the world of work.

It makes sense, therefore, to maintain and revitalise the Organization, both for the present and for many more 100 years to come.



Introductory Notes

FRANCISCO CALHEIROS – President of the Portuguese
Tourism Confederation

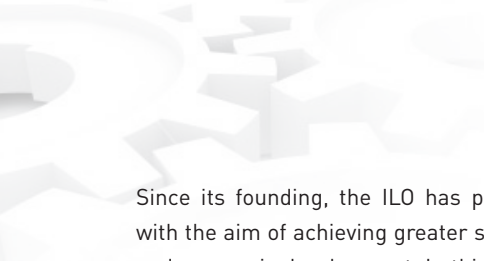
The technological advances we have witnessed, especially over the past few decades, have led to profound organisational changes, in terms of both production methods and labour relations. The digital revolution, particularly in the field of robotics and artificial intelligence, has invariably taken us to a new labour paradigm, which is based far more on technology and highly specialised human capital.

Many occupations have become obsolete and this tendency is likely to continue. The history of humanity is full of examples, but this should not frighten us. On the contrary, it should spur us on to take action, intelligently and rationally, and with reinforced social dialogue.

Ongoing dialogue between the economic agents and different political and social stakeholders is crucial to stimulate competitiveness and prosperity, fairness and social peace in today's societies.

A good example of this are the Nordic countries, where their stronger, more stable economies are the fruit of a solid tripartite social model between governments, employers and workers, who, together, negotiate, develop common strategies, reach consensuses, and resolve disputes.

Governments that genuinely believe in social dialogue seek compromise solutions before they make decisions on economic, labour and social policies that impact on citizens' lives.



Since its founding, the ILO has promoted cooperation between the tripartite constituents, with the aim of achieving greater social justice and a dialogue model that ensures well-being and economic development. In this challenge, the ILO has the full support of the Portuguese Tourism Confederation (CTP).

Created in 1995, the CTP's mission is to boost tourism and ensure internal unity among tourism economic agents, affiliating federations, trade unions, associations and enterprises. Since 2003, it has been a Social Partner member on the Standing Committee for Social Concertation, and the Economic and Social Council. It is also a member of the European Economic and Social Committee, EESC, and three European Commission Working Groups.

As a tripartite constituent and umbrella organisation for tourism employers' associations, the CTP has had a continuous, constructive relationship with the ILO, taking part every year in the International Labour Conference, and particularly with the ILO Office in Lisbon, contributing to defend the dignity and upgrading of labour.

Now and in the future, we want to strengthen these ties in support of a shared mission: to enable enterprises and citizens to play an active role in their respective societies and places of work and to achieve social and economic progress. Together, we will make it happen.

Congratulations ILO on your 100th anniversary.



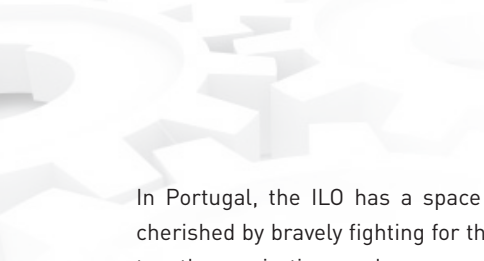
Introductory Notes

CARLOS SILVA - Secretary-General of the General Workers' Union (UGT)

On the occasion of centenary of the founding of the International Labour Organization, which we refer to as the ILO, the ILO Lisbon Office decided to publish a book to celebrate the event. UGT-Portugal wholeheartedly supports this initiative and is honoured to be associated with it.

All that could be said about the reasons leading to the creation of this forum of peace has already been the subject of theories, studies, theses and much reflection on the part of all political, social, economic and academic spheres. In our view, therefore, it is important to justify the utmost need for all the stakeholders that take part in and identify with tripartite partnership to defend its future continuity, ensuring that the debates that take place in its midst will continue to promote social peace and stability among nations, anchored in dialogue between the main actors of the world of work – governments, employers and workers.

The ILO is the little corner of the world where the architects of labour diplomacy meet in search of, often difficult to reach, consensus on standards and recommendations, which help to combat social dumping between States, through the improvement of working conditions and wages, collective bargaining, equal balance between social partners representing their employer and trade union associations, training, deepening the understanding of inequality situations, in which the pursuit of fairness and equality between men and women is still a daily, incessant struggle, eradication of child labour, the quest for better conditions for a fairer distribution of wealth, combatting the rampant poverty and hunger in the world, and support for the victims of eternal conflicts that generate bloody migrations and dramatic humanitarian crises.



In Portugal, the ILO has a space for celebrating global tripartism, which the UGT always cherished by bravely fighting for the constitution of social concertation as a factor that brings together aspirations and consensuses, and generates commitments and agreements between parties that often have conflicting interests.

The UGT will continue to do all it can to ensure that the triumph of tripartite social concertation will drive forward agreements at the negotiating table, where often, a step backwards is a strategy to go forward more rapidly. The Centre for Labour Relations, the Executive Board of the Institute for Employment and Vocational Training and the Standing Committee for Social Concertation are living, active witnesses of the tripartite identity the ILO signifies and defends.

Congratulations to the ILO and all its supporters and activists for their role in promoting peace, social justice and equality between men and women. UGT Portugal gives its solid backing to an ever-stronger, dynamic ILO, and is unequivocally by the side of this colossal institution in all its struggles and endeavours.

01

Part I - Dialogues in History The ILO and Portugal: out there, here inside ¹

CRISTINA RODRIGUES ²

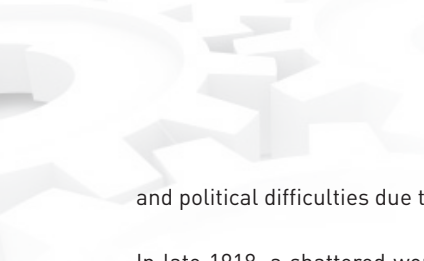
The Labour Inspectorate has been in existence in Portugal for one hundred years. It was in 1916 that this new inspection dimension was set up within the Labour Ministry, after various institutional experiences during the preceding century.

International influence on Portuguese working life then became a decisive factor in advancing domestic legislation. International conventions were integrated, laws on the protection of women and children at work were transposed, and standards on weekly rest were developed, even during the monarchy era. The winds of change blowing in from the outside carried with them new ideas and practices. The creation of the Labour Ministry was, in itself, a response to an international movement towards extending the scope of State law into the world of work (juridification). The process took on different forms, including the creation of state bodies designed to regulate this area. Portugal was not unaffected by this movement and, as was usual at that time, followed the example of France, which had set up its own Ministry ten years before, in 1906.

The year of 1916 also marked Portugal's entry into the Great War. The country was deeply involved in the conflict, in both Flanders and Africa. They were years of enormous economic

¹ This text was origaly published, in 2016, in *Trabalho, Economia e Sociedade: 100 anos de Inspeção do Trabalho em Portugal*, Edições Almedina: pp. 13 - 34.

² Researcher at the Institute of Contemporary History of the New University of Lisbon (Universidade Nova de Lisboa).



and political difficulties due to its involvement in the war and reasons beyond this.

In late 1918, a shattered world looked at itself in the mirror. The Great War had ended. The ruins concealed millions of dead and disabled, while the devastation had razed buildings, factories, and roads. The 20th Century had arrived, a little late on the calendar. The war marked the transition from one world to another that was rooted in political conflicts, and which had a backdrop of profound inequalities and the “social issue”, an expression that encapsulated all the tension associated with the difficult living and employment conditions endured by working people.

The war years were also years of revolutionary threats – the 1917 Bolshevik revolution and its multiple aftershocks – and extensive labour conflicts. By the end of the war, European and US trade unions were ready to take part, in collaboration with governments and employers, in a process to formulate international labour legislation. They proposed sending union delegates to the Peace Conference, and insisted that the Peace Treaty include a labour component. As a result, in January 1919, the Commission on International Labour Legislation was established. This Commission designed a framework for a permanent organisation that would address the issue of employment conditions. The Commission’s proposal was approved by the Peace Conference on 11 April 1919.

The Peace Treaty was signed in Versailles on 28 June 1919. Apart from the contracting parties’ political and economic obligations, Part XIII provided for commitments in relation to labour, and for the establishment of the International Labour Organization (ILO) and its Constitution. The Constitution contained, in addition to substantive principles such as the 8-hour working day, weekly rest, prohibition of child labour, the obligation of all States to implement an inspection service that must “include women, in order to ensure the application of laws and regulations for the protection workers”. In October that year, the first ILO Conference was held in Washington.

The choice of tripartite organisation – the ILO’s remarkable original feature – in which governments, trade unions and employers’ associations all have a seat and decision-making power, and which is responsible for defining international labour standards, is significant in that the reformist approach has taken precedence over the revolutionary route to resolving conflicts arising out of the “social issue”.

Drafting international labour standards on the basis of “obligatory” tripartite dialogue has been, since the outset, one of the ILO’s primary aims, through identifying areas of consensus around workers’ rights. As standards develop, they are disseminated to the member states. According to some authors, despite the ILO’s multiple forms of action, it is primarily a “standards-producing agency”.

International labour standards come in the form of conventions, which are binding on member countries that have ratified them, and recommendations. Many conventions are accompanied by a recommendation that provides guidance on how the convention should be implemented.

Over the almost 100 years of the ILO's existence, the International Labour Conference has adopted 189 conventions, 204 recommendations and 6 protocols. Their content and the subject matter they cover relating to labour/employment and social policy, depict a map of the consensus between the member countries that, at a given time, it was possible to reach. Member countries currently number 186.

The approach taken by each country towards the ILO's standards production – whether to ratify the conventions, when to do so, the time it takes to ratify, the conventions that cannot be ratified, the standards that penetrate in the juridical system regardless of the formal ratification process – reveals much about their political and socio-economic development. It is this exercise that will be approached here, in summarised form, from a dual perspective: on one hand, the conventions that outline working conditions and workers' rights and, on the other hand, a look at the ILO tools that regulate work inspection. The way in which Portugal reacted internally to international labour standards is also considered.

It should be noted that the Organization uses various classifications in which to group the conventions. The classifications used here will be the one that covers conventions in the areas of human rights and workplace rights, decent work, social protection, and employment and poverty, and the one that distinguishes fundamental, government and technical conventions (non-thematic classification, the criteria for which are the values focused by each instrument).

Being one of the ILO Founder Members, given that it had been a belligerent power during World War I, Portugal's history with the Organization has been long, and deeply marked by it. We can clearly distinguish four phases in the almost one-hundred-year-old relationship between the country and the ILO, based on the incorporation of international labour standards into the Portuguese labour law framework.

Times of proximity (1919-1933)

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 and in the first International Labour Conference in Washington in October and November 1919, as one of the ILO Founder Members. 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, even though it had not ratified the respective convention.

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 there are other forms of influence that do not entail formal acceptance, ratification is obviously an unequivocal sign of a country's adherence to ILO standards.

In 1928, there was ratification of conventions C001 (1919) and C014 (1921), on hours of work in industry and weekly rest in industry, respectively. In 1929, conventions C017, C018 and C019, all dating from 1925, were ratified. They dealt with, respectively, compensation in case of occupational accident, compensation in case of occupational disease, and equality of treatment between foreign and domestic workers in relation to accident compensation. In 1932, conventions C004 (1919) and C006 (1919) were ratified. These two conventions prohibited night work for women and young persons in industry, respectively.

During these times of proximity, however, many conventions were not ratified. There was the forced labour convention, for example, whose non-ratification reflected Portugal's rejection of international interference in its domestic affairs and its resistance to change from traditional production methods in Africa, which 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, 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*. Although this convention was, in fact, approved by all the ministers in 1931, the then Finance Minister, Dr. Oliveira Salazar, refused to sign because of the extra expenditure it would incur.

Likewise, the convention on hours of work in commerce and offices, 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 ratified, because it was considered 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 were inexistent.

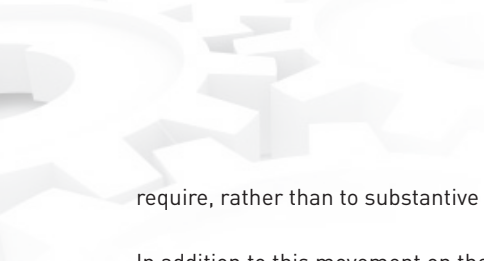
Lastly, in relation to employment and poverty, the unemployment convention was not ratified because there were no free public employment agencies. Neither was the convention on inspection of emigrants on board ship ratified, as there was apparently little public interest in this international instrument – sign of how behind Portuguese public organisation was in such matters.

Regarding labour inspection, the ILO did not approve any convention in the early years. The fact that the ILO Constitution stipulated the requirement for each country to organise an inspection service, as previously mentioned, the adoption of a convention seems to have become unnecessary. The ILO did, however, give guidelines on the matter through recommendations. As early as 1919, recommendation R005 specified the need for each member country to organise an effective inspection system for workshops and, furthermore, a public service specifically tasked with protecting workers' health, which would be linked to the BIT.³

In 1923 the International Labour Conference published recommendation R020 that gave guidelines on the subject. The extensive and detailed text gave concrete instructions on how the services should be organised. The inspection services were considered to be highly important for supervising compliance with legal standards on labour and workers' protection in each country. The recommendation addressed the object of inspection, type of functions and powers of the inspection, how the inspection should be organised (personnel organisation, titles and training of inspectors, inspection types and methods, cooperation of employers and workers) and inspectors' reports. We do not have information on how this recommendation was received in Portugal, but it is true to say that, by 1920, the inspection service was already in operation, albeit probably in a less up-to-date and rigorous manner than that stipulated in recommendation R020.

In the period between 1919 and 1933, which covered the Republic and military dictatorship and ended with the institution of the *Estado Novo*, 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 was far greater. With the exception of the forced labour convention, 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

³ The BIT (*Bureau Internacional do Trabalho*) is the ILO's technical secretariat.



require, rather than to substantive differences of opinion on content.

In addition to this movement on the conventions, Portuguese representatives 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 founder member was 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 those early years, when the relationship with the ILO was favourable, Portugal's economic and social situation was, in fact, far from 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.

Times of closure (1933-1956)

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, C045 (1935) that restricted underground work for women. This convention 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.

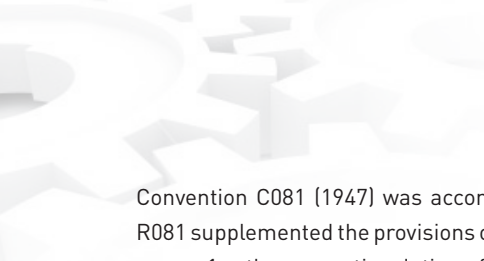
In addition to these concrete motives for Portugal distancing itself from the ILO, there was a deep-seated, political and ideological mind-set that opposed the organization's principles and practices, defended the autonomy of the Portuguese State and the pursuit of its historical goals, both within the 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 Portugal's isolation and lack of positive responses from the 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.

Let us take a look at how the ILO advanced on the question of labour inspection at that time. In May 1944, the Declaration of Philadelphia, which was incorporated in the ILO Constitution in 1946, broadened and deepened the Organization's objectives. While recognising the need for effective compliance with workers' protection standards, it is true to say that the new text did not expressly mention the indispensable need to create labour inspection services.

This concern would be addressed the following year with the approval of C081 (1947), which called for the establishment of labour inspection systems in industry and commerce, and whose purpose would be a) to secure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of young persons, and other connected matters, b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions, and c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

In 1947, labour inspection in Portugal was the responsibility of the *Instituto Nacional do Trabalho e da Previdência* (INTP, National Labour and Welfare Institute), an authority founded in 1933. In 1939, a service specifically charged with labour supervision was set up within the INTP. With the restructuring of the INTP in 1948, the corporative regime's inspection model was set and gained greater autonomy. Inspection was now organised and led by a chief inspector. Notwithstanding some small changes, this system remained in force until the fall of the regime. The existence of this service meant that C081 could have been ratified. However, because the service did not extend to the overseas territories, Portugal was prevented from adhering to the international standard. This remained the case until 1962, since it was only in 1961 that labour inspection services were set up outside metropolitan Portugal.



Convention C081 (1947) was accompanied by two recommendations adopted the same year. R081 supplemented the provisions of the labour inspection convention, addressing the following areas: 1 – the preventive duties of labour inspectorates; 2 – collaboration of employers and workers with regard to health and safety; 3 – labour disputes; 4 – annual reports on inspection. The second recommendation, R082, which dealt with labour inspection in mines and transport undertakings, was introduced because these two sectors could be exempted from the application of the convention by national laws.

Times of convergence (1956-1974)

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, which the regime would oppose in an effort to adapt to the transitions occurring in the international system.

The regime's efforts entailed a proactive rather than merely defensive response on both the domestic and external fronts. Attempts at economic modernisation in the metropolis through development plans, a new phase of industrialisation, 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 focus placed on that dimension of the Nation, 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 organisations, 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 International Labour Conference forum, whose membership was ever-growing with the birth of new countries.

Thus, in the space of a decade and a half, Portugal ratified seven conventions on human rights and workplace rights, three on the quality of work, one on social protection and two on employment and poverty. The greater 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. Further ratifications followed. C029 (1930) was ratified in 1956, even before the country's domestic legislation would allow for it, given that it was only in 1962, when the Rural Labour Code was passed, that all forms of administrative measures and coercion over African workers were abolished. C105 (1957), also on the abolition of forced labour, was ratified in 1959, along with C111 (1958), on discrimination in employment and occupation. In 1960, C104 (1955) on the abolition of penal sanctions (indigenous workers) and C107 (1957) on indigenous and tribal populations, were ratified. In 1964, Portugal ratified C098 (1949) on the right to organise and collective bargaining, while in 1967 it ratified C100 (1951) on equal remuneration.

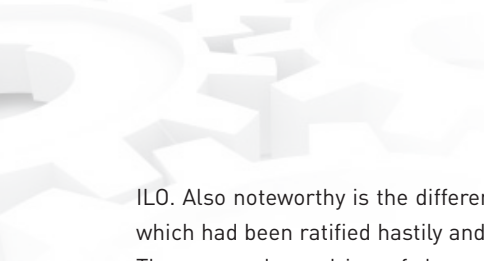
During this period, Portugal ratified a significant number of existing conventions relating to human rights and workplace rights. Nonetheless, C087 (1948) on freedom of association was not ratified as it conflicted with the essence of the regime, based on single trade unions. It would eventually be ratified after 25th April.

Also significant is the reduced number of ratified conventions concerning quality of employment, social protection and employment and poverty. 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.

The sequence of ratifications was as follows: in 1959, C026 (1928) on minimum wage-fixing machinery; in 1960, C106 (1957) on weekly rest in commerce and offices; in 1964, C089 (1948) on women's night work. Also in 1960, in the realm of social protection, C012 (1921) on accident compensation for agricultural workers was ratified. Lastly, C081 (1947) on labour inspection and C088 (1948) on the public employment service were ratified in 1962 and 1972 respectively.

During this time, the ILO adopted C129 (1969) on labour inspection in agriculture, which Portugal would only ratify in 1981. This convention was supplemented by recommendation R133 (1969).

A common thread to all the ratifications of conventions on social matters is the fact that domestic legislation that would make them viable already existed. These were ratifications undertaken at time when it was important for Portugal to garner 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 pressure from the ILO on the issue of child labour, by 1974 Portugal had only ratified the convention on night work of young persons in industry, C006 (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. C003 (1919) and 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 workers or twenty salaried employees (which excluded the great majority of national enterprises), and for only a limited number of days, dependent 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 with 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 C102 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 metropolitan 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 launch of the ILO Commission of Enquiry into forced labour in Africa, triggered by a complaint from Ghana, and also because ratifying the labour inspection convention, C081 (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 an 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.

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 C087 (1948) on freedom of association, 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 (1952) on minimum standards of social security, 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 founder 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 its specialised agency, the 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.

Times of collaboration (1974 – 2015)

The foundation of the democratic regime and improvement in the country's socio-economic conditions, particularly as a result of joining the then European Economic Community (EEC), brought Portugal closer to the more developed European countries. Conditions were ripe for an unprecedented drive for ratifications, and the time lapse between adoption by the ILO and transposition to domestic law lessened.

Prior to joining the EEC, however, there was also a sizeable number of ratifications of ILO conventions. It was a way for the Portuguese government to show that the country met the criteria for membership, given the umbilical link between ILO standards and community regulatory instruments.

The first ratifications had deep political significance and would only have been possible in a democratic setting. They were C135 (1971) on workers' representatives, C087 (1948) on freedom of association and protection of the right to organise (one of the ILO's Fundamental Conventions), and C011 (1921) on the right of association in agriculture. The two latter conventions were ratified in 1977.

Portugal adhered to all of eight of the ILO's Fundamental Conventions, which fall within the Human Rights and Workplace Rights thematic categories. Five had been ratified under the previous regime, C087 was ratified in 1977, in line with widespread demands from the world of work⁴, C138 (1973), which sets the minimum age for admission to employment at 16 years, was ratified in 1998, and C182 (1999) on the worst forms of child labour, was ratified in 2000.

As for the Governance conventions, seen by the ILO as priorities in view of their implications, in 1962 Portugal adhered to C081 (1947) on labour inspection, as mentioned above. The others in this group were ratified in the 1980s. In 1981, C122 (1964) on employment policy, and C144 (1976) on tripartite consultation on international labour standards, were both ratified. In 1983, C129 (1969) on labour inspection in agriculture, was ratified, thus extending the labour inspectorate's authority to the rural world.

During the 1980s, there were extensive ratifications of the Technical conventions, which address working conditions, social protection, occupational health and safety, etc. In an interesting "recovery" of lost time, twenty-nine conventions were ratified, of which seventeen were generic and twelve dealt with specific categories of workers (seafarers, nurses, public servants). Eight generic conventions were ratified in the 1990s. Since the turn of the century, there have been seven more ratifications, also all generic. The last ratification, in June 2015, was C189 (2011)

⁴ The demand for "total trade union freedom", and "ratification of ILO C087", appeared in the Manifesto published on 27 April 1974, along with other political and economic demands. Its publication marked the first public appearance of the *Intersindical*.

on the subject of domestic work. It will enter into force in July 2016.

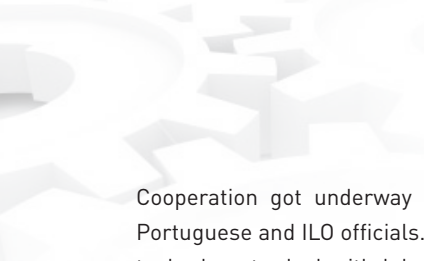
Having ratified the eight Fundamental and four Governance conventions, and seventy-one of the Technical conventions in force, Portugal currently (December 2015) ranks 19th among ILO members in terms of embracing international labour standards. This is a remarkable achievement for a country that, for decades, whether for political or socio-economic reasons, was unable to adhere to international benchmarks.

On the question of labour inspection, in the past forty years, which corresponds to Portugal's democratic period, the ILO approved Protocol P081 [1995], which broadened the scope of the labour inspection convention, C081 [1947], to include the non-commercial services sector, i.e. all services not within the industrial or commercial sectors. It also adopted two further conventions that were relevant for labour inspection: C150 [1978], on Labour Administration (role, functions and organisation), accompanied by recommendation R158 [1978], and C155 [1981] on safety and health and the working environment, accompanied by recommendation R164 [1981]. These two conventions were ratified by Portugal in 1981 and 1985 respectively.

We have given a necessarily brief overview of the relationship between Portugal and the ILO in the context of international labour standards. There were different phases during this almost one-hundred-year old relationship. The backdrop formed by ILO standards was often far in the distance, and depicted a future that, for political reasons and socio-economic backwardness, was unachievable for Portugal. At other times, the standards enshrining social rights and improved working conditions proved to be an incentive to the country's socio-labour development. In recent decades, as a result of the transition to democracy and the country's progress, Portugal has been able to adhere to international standards and comply with their respective obligations.

By approaching this relationship from a labour inspection perspective, several aspects had to be considered: how working conditions evolved in the light of the international standards, the working conditions that were themselves the subject of inspection, looking at labour inspection as a service and function, and labour inspection itself being focused by international standards.

We cannot end without referring to the ILO's technical support work in our country. In fact, apart from the influence of the standards, and especially in the early post-revolution years, there were a series of missions, programmes and projects that brought the Organization's services to our country, and thus contributed to the development of various social areas, including the labour inspection dimension. The importance of the ILO Office in Lisbon, founded in 2002, as a development platform for Portugal and the other Portuguese-speaking countries, should also be emphasised.



Cooperation got underway straight after 25th April, with an exchange of visits between Portuguese and ILO officials. In 1975 and 1976 several labour-related frameworking missions took place to deal with labour administration and standards creation issues. In connection with the preparations for the June 1976 World Employment Conference in Geneva, a round table was held in Portugal. Moderated by various ILO specialists, it brought together social partners and authorities, and resulted in confirmation that Portugal would receive a global employment strategy mission. In October that year, the Portuguese government and the ILO entered into an agreement on technical cooperation for devising a medium-term (1977-1980) development plan that would focus on employment and basic needs. The visit of ILO Director General Francis Blanchard in December 1976 further encouraged cooperation, and forms of future collaboration were determined.

In November 1976 the ILO launched the International Programme for the Improvement of Working Conditions and Environment – PIACT. Portugal was visited in October 1977 in connection with this new programme. In 1980, the Portuguese government requested a mission to identify the country's needs in the sphere of the PIACT. Over the next few years, there was intense involvement of the parties, and in May 1984 the country report was published by the Ministry of Labour and Social Security. The report was significant in that it analysed Portuguese society and the country's socio-labour deficiencies, and put forward ideas and recommendations on a number of areas: a national policy on improvement of working conditions and environment; social dialogue and collaboration; prevention of occupational hazards; expansion of social protection; working times; structural aspects of Labour Administration (namely, labour inspection); labour statistics; training and research, and specific measures for employers' and workers' organisations.

In December 1976, the Portuguese government and UNDP entered into an agreement on assistance from the Programme. Starting in 1977, for several subsequent years, the UNDP financed technical cooperation projects, which were executed by the ILO. The projects mainly focused on employment and vocational training, management training (for leadership), cooperative development, and hotel and tourism training.

In addition to these missions within plans and projects, a number of other missions took place during the 1970s and 1980s, prior to Portugal's membership of the EEC, concerning a variety of areas, including the organisation of labour administration, labour inspection (1976-77), labour law, and vocational training.

During the 1990s, technical cooperation was marked by the provision of methodological support in the implementation of two statistical surveys on child labour (1998 and 2001). These surveys enabled better tailoring of interventions designed to combat child labour, and helped towards lowering the number of working minors, reducing the worst forms of child labour, increasing the number of minors attending school, and cutting school drop-out rates.

After this very brief, non-exhaustive overview of cooperation between Portugal and the ILO during the democratic period, mention must be made of the opening of the ILO Office in Lisbon. Following an official proposal from the Portuguese government in July 2001, the Office was inaugurated in May 2003, with Carlos Castro as its first Director. Acting as a facilitator of initiatives, the Office provides key linkage between the ILO's technical services and Portuguese partners, acting mainly through partnerships.

The Office collaborates in an extensive number of partnerships, including public bodies, e.g. universities and services connected with labour administration, as well as many other tripartite partnerships. It takes part in numerous activities promoted by other entities and, with other partners, has itself organised major conferences on topics to do with labour and working people.

The ILO Lisbon Office is also an interface with other Portuguese-speaking countries. This area of work falls into four categories: institutional relations with the CPLP⁵; promoting Portuguese language within the ILO; services providing support to ILO headquarters' structures and on the ground, and promoting technical cooperation, training and other initiatives involving the PALOP⁶ group or the CPLP itself. The vast range of activities, partnerships and projects undertaken by the ILO Lisbon Office demonstrate the pivotal role it plays for the Portuguese-speaking world.

In the year in which we commemorate the centenary of the institutionalisation of labour inspection services in Portugal, recognition must be given to the role played by the International Labour Organisation throughout those one-hundred years of Portuguese working life. It contributed directly to the advancement of workers' rights, and the improvement of living and working conditions and social protection of the Portuguese people. It also contributed extensively, in a variety of ways, to the development of labour inspection services, which are responsible for ensuring compliance with the legal framework that regulates labour in Portugal.

5 *Comunidade dos Países de Língua Portuguesa* (Community of Portuguese-Speaking Countries)

6 *Países Africanos de Língua Oficial Portuguesa* (Portuguese-speaking African countries)

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⁷ An exhaustive bibliography may be found in the reference RODRIGUES, Cristina (2013).

02

Part I - Dialogues in History Forced labour during Portuguese colonialism: beyond the empire's frontiers (1919-1962) ¹

MIGUEL BANDEIRA JERÓNIMO ²

JOSÉ PEDRO MONTEIRO ²

In recent years, works seeking to remember the historical role played by international organisations over the past 150 years have multiplied. It has been an historiographic tendency (or various, insofar as they approach a plurality of objects and subjects of examination, epistemological, methodological and theoretical apparatuses) that, with the consolidation and institutionalisation of globalisation, particularly after the 1970s, has endeavoured to look at the past century and confront it with different narratives enclosed within the narrow historical confines of the nation state. Given the record of nationalist violence in the 19th and 20th centuries, a politically motivated reaction to readings of history that did not have the nation state as the main point of reference is only reasonable.

However, it has also been a disciplinary inflection that resulted from confrontation with multiple historiographical sources and from the reappraisal of circulation, confrontation, competition and emulation processes that trespassed beyond national (or imperial) borders. For years, the then prevalent methodological nationalism (which, even today, has various supporters) impeded consideration of the way in which 20th century history was woven by networks and circuits of interaction that escaped the narrow confines of a mere national or

¹ The present text was prepared by the authors as requested by ILO Lisbon, as a summary of their article of 2014, *O império do trabalho. Portugal, as dinâmicas do internacionalismo e os mundos coloniais*, publicado in Miguel Bandeira Jerónimo e António Costa Pinto [org.], *Portugal e o fim do Colonialismo. Dimensões internacionais*. Lisboa: Edições 70, 15-54, pp. 15-54.

² Researchers at the *Centre for Social Studies*, University of Coimbra



international history. After all, it was not just with globalisation that different historical players, from states to intellectuals, from philanthropic associations to political movements, engaged in projects which they believed required a cooperation that went beyond state intervention, in order to resolve certain problems. In fact, various studies undertaken in recent decades fully demonstrate that the different national histories themselves are incomplete, if they ignore the way in which players outside the nation shaped, conditioned and constrained it.³

Among the diverse historiographical lines of research that enabled a reassessment of more recent history, one has stood out. It is that which looks at how empires, the dominant political organisation for most of the past 150 years, and commonly understood as maximum expressions of authoritarian power, came to have their conduct repeatedly debated and conditioned by international and transnational regulatory bodies and organisations. In fact, it is difficult to think about the historical constitution of the new 19th Century European imperialism without reference to its trans-imperial dimension. The formulation of the programmes of the different “civilizing missions” had as much national input as ideological, juridical, “scientific” exchanges between the imperial powers, based on a common ground of racial hierarchisation and, at the same time, proclaimed socio-cultural advancement and economic extraction. The very terms of occupation were, from the late 19th Century onwards, embedded in an international order that was then guided by the multiplication of international conferences, such as those of Berlin (1884-1885) and Brussels (1889-1890).

Now, however, the history of modern European imperialism would be part of, and followed that which may be described as a growing internationalisation that marked the entire 20th Century. This process took a decisive step forward with the de facto institutionalisation of a new international structure that sought to regulate war and peace, among other issues, i.e. the founding of the League of Nations (LoN) in 1919, following the Treaty of Versailles, which had brought the war to an end.⁴

Portuguese colonialism was, in its own right, part of that history. However, among the multiple topics that marked the relationship between the Portuguese empire and international bodies, one in particular became highly significant and protracted. It was what, at the time, was referred to as “indigenous” labour and, particularly, the multiplicity of legal aspects and social

³ For some examples, see: A. G. Hopkins, ed., *Globalization in World History* (New York: Norton, 2002); Mark Mazower, *Governing the World: the History of an Idea* (London: Penguin Press, 2012); Glenda Sluga and Patricia Clavin, eds. *Internationalisms: a twentieth century history* (Cambridge: Cambridge University Press, 2017). Also, in Portuguese: Miguel Bandeira Jerónimo e José Pedro Monteiro, “A imaginação e concretização do ‘global’: ideias, trajetórias e legados” (prefácio) in Mark Mazower, *Governar o Mundo. História de uma ideia: de 1815 aos nossos dias* (Lisboa: Edições 70, 2017), pp. 11-24.

⁴ For various possible examples, see: Susan Pedersen, *Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015); Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008); Miguel Bandeira Jerónimo and José Pedro Monteiro, eds. *Internationalism, imperialism and the formation of the contemporary world* (Basingstoke: Palgrave, 2017).

practices that often made it comparable to coercive methods of labour extraction.

The empire's reorientation towards Africa, after the loss of dominance over Brazilian lands, and the legal abolition of slavery in the last quarter of the 19th Century, triggered intense debate on how to ensure that African limbs would continue to labour now that, in theory, they could no longer be used on private individuals' properties. This concern was shared by former slave masters, by governors and, doubtlessly, by those who intended to participate in the new Portuguese colonial occupation and exploitation process.

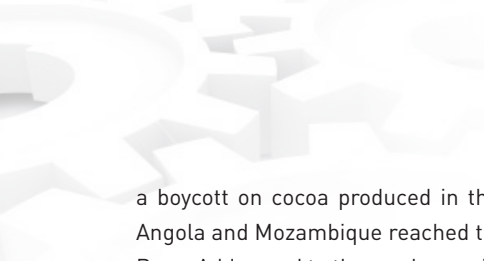
Mendes Leal and many others upheld that "obligatory labour" was not "slavery", to the disappointment of some who, at the dawn of the new century, even proposed the reintroduction of slavery. In spite of possible dissent and disagreement, the formal abolition of slavery in Portugal, between 1875 and 1878, in fact gave rise to the legalisation of various types of forced labour that were applied in the colonies.⁵ This was not an exclusively Portuguese practice. All European colonial powers legitimised, one way or another, the coercive extraction of human resources in Africa and elsewhere. In Portugal's case, however, forced labour became an exceptionally focal issue. What is more, labour, rather than education and Christianisation, was from the outset held as the main element in the task of civilising indigenous populations.⁶

Aggravated by the scarcity of economic resources and shortcomings of the administrative occupation of the territories recognised as Portuguese, the importance of "indigenous" labour in the empire's ideology soon produced effects: the first indigenous labour regulation, drawn up by Antonio Enes, was published in 1899. It authorised forced labour for both public and private sector purposes, and allowed for corporal punishment and many other disciplinary measures.

Reactions to this state of affairs were quick to follow. Reports began to surface, often from abroad, affirming that slavery had been replaced by a production method that was similar in all but name to slavery. Two examples of condemnation at that time are Henry Nevinson's assertions in his book *A Modern Slavery*, and the writings of John and Alice Harris, members of the Anti-Slavery and Aborigines Protection Society. During the first decade of the 20th century, the Cocoa Slave scandal in the São Tomé e Príncipe archipelago caught the spotlight of international criticism. The plantations, where thousands of forcibly transported Angolans and Mozambicans lived with no sanitary conditions whatsoever, and no guarantee they would ever be repatriated back to their homelands, were savagely denounced by British philanthropists. Among them were Joseph Burt and William Cadbury (the famous chocolatier). They launched

⁵ See Miguel Bandeira Jerónimo e José Pedro Monteiro, eds., *O direito sobre si mesmo. 150 anos da abolição da escravatura no império colonial português* (Lisboa: Assembleia da República, Coleção "Imagens e Documentos", 2019), catalog from an exhibition inaugurated at the Assembly of the Portuguese Republic.

⁶ See Miguel Bandeira Jerónimo, *Livros Brancos, Almas Negras: a "missão civilizadora" do colonialismo português (1870-1930)* (Lisboa: Imprensa de Ciências Sociais, 2009).



a boycott on cocoa produced in the islands. Later, in 1925, similar accusations concerning Angola and Mozambique reached the League of Nations via a report by US sociologist Edward Ross. Addressed to the newly appointed Temporary Commission on Slavery, the denunciations generated extensive international controversy. It was a critical period in the metropolis, and this added conflict caused even more internal turmoil. The claims were countered by the usual “foreign envy” response.⁷

Portugal and international standards on forced labour

The Ross case can only be understood if seen within a broader sphere of historical analysis. The new League of Nations’ system was set up within a geopolitical order in which imperial formations continued to be principle components. The idea that parts of the world were still incapable of governing themselves under the “strenuous” world conditions was still largely disputed. On the other hand, the question of slavery was, from the outset, deeply entangled in the legitimising strategies of governance of parts of the world by distant tutelary metropolises. The occupation of Africa had taken place under the pretence of slavery eradication, i.e., the justification for European dominance had centred on the need to eradicate the vestiges of slavery in so-called “backward” societies – ironically, just two decades (in some cases less) after the European colonial powers themselves had done in their own imperial spaces.

It is not surprising, therefore, that slavery became one of the issues that attracted most attention in the League of Nations. It led to the launch of a considerable number of bodies dedicated to combating and regulating slavery. The imperialist states that consolidated their presence in vast territories now needed to differentiate the idea of slavery from other types of forced labour, similar to slavery. This distinction also operated at institutional level. While the League of Nations sponsored initiatives that led to the first international convention on slavery in 1926, the International Labour Organization was responsible for so-called “indigenous labour” issues, and set up the Committee of Experts on Native Labour to address the subject.⁸

The work of the Committee led to the adoption of the early ILO conventions on colonial territories, the first of which was the Forced Labour Convention, C029, adopted in 1930. Thus, the colonial roots of the first international regulation on the subject are irrefutable. In the space of 9 years, a further three conventions were produced, embodying what would become known as the ILO Native Labour Code, which focused on contract labour, recruitment and abolition of

⁷ Jerónimo, *Livros Brancos*; Catherine Higgs, *Chocolate Islands: Cocoa, Slavery and Colonial Africa* (Athens: Ohio University Press, 2012).

⁸ Suzanne Miers, *Slavery in the Twentieth-Century: The Evolution of a Global Problem* (Walnut Creek: Altamira Press, 2003); Daniel Maul, “The International Labour Organization and the Struggle against forced labour”, *Labor History*, vol. 48, nº 4, (2007), pp. 477-500.

penal sanctions for breach of contract. The conventions, however, aimed to limit and regulate forced labour, rather than to abolish it immediately.

In view of the historical antecedents linking Portugal to forced labour (or to slavery, since juridical and institutional distinctions were a lot more difficult to differentiate in colonial daily life), the empire regarded these international initiatives with apprehension. The Count of Penha Garcia, for example, warned of “dangerous internationalisms”. Others, such as Freire de Andrade, feared the internationalisation of the colonial question, particularly insofar as labour issues were concerned. The prohibition of forced labour for private sector purposes was considered inappropriate. However, resistance to internationalisation did not mean alienation from what was happening in Geneva and other more remote places. In fact, the new Native Labour Code of 1928 cannot be understood historically without considering these developments. Substituting the previous 1914 regulation, the Native Labour Code now prohibited forced labour for private purposes and, for example, affirmed that the “duty” to work was no longer a “legal” duty but just a “moral” one.

There was no indication that conditions on the ground in the Portuguese territories had improved. This was particularly true of the living conditions and repatriation of the so-called *serviçais* in São Tomé e Príncipe. It was, however, a sign of a growing realisation of the importance of the role of organisations like the ILO in the conditioning of European colonial empires’ politics. In Geneva, concerted efforts by Portugal, Belgium and France, to create a colonial entente to block the ILO’s intrusive incursions were underway. In fact, for a number of years, the only colonial empire to ratify C029 was Great Britain.⁹

The winds of change

World War II had seismic effects on the destinies of the European colonial empires. If in Asia that change rapidly precipitated several independences, on the African continent it led to major changes in colonial social and political relations. Some of these were, in fact, already in the making during the inter-war period, but it would be after 1945 that their impact would reach an unprecedented level. Particularly in the West African colonies (French and British), the eruption of social and political conflicts forced the respective imperial and colonial administrations to devise ways of overcoming what had become an unsteady situation. Traditional management of traditional empires, organised around the tenet that colonies should be self-sufficient, was

⁹ See Miguel Bandeira Jerónimo and José Pedro Monteiro, “‘Das dificuldades de levar o indígena a trabalhar’: o ‘sistema’ de trabalho nativo no império colonial português”, in Miguel Bandeira Jerónimo, org., *O Império Colonial em Questão: poderes, saberes, instituições* (Lisboa: Edições 70, 2012), pp. 159-196; idem, “O império do trabalho: Portugal, as dinâmicas do internacionalismo e os mundos coloniais” in Miguel Bandeira Jerónimo and António Costa Pinto, orgs., *Portugal e o Fim do Colonialismo: dimensões internacionais* (Lisboa: Edições 70, 2014) e ainda Cristina Rodrigues, *Portugal e a Organização Internacional do Trabalho (1933-1974)* (Porto: Afrontamento, 2013).

now found to be ineffective in dealing with the new social, political and economic state of affairs.

In addition to the transformations in the different colonial territories, which were largely due to the war effort or even to military occupation by third parties, internationally, colonialism as a system of government was increasingly coming under threat. The emergence of the United States and the Soviet Union as victors of the war in 1945 called into question the future of the European empires. The new organisation dealing with security and peace, the United Nations, threatened to intensify scrutiny of the colonial realities, whether through tutelage mechanisms or colonial inspection. The constitution of new sovereign states as a result of the war, such as India and Indonesia, predicted that international organisations could hardly go back to being merely group of representatives from the various imperial powers.

These events and processes continued to impact on the International Labour Organization, especially its relationship with what then became known as the “non-metropolitan territories”. The inter-war conventions, mainly aimed at ensuring a modicum of labour freedom in the colonies, were followed by new conventions that largely focused on achieving greater proximity between the metropolitan social practices and policies (that were meant to be universal) and those of the colonial worlds. In addition to insisting on the definitive abolition of all forms of forced labour, the ILO proceeded to draft five new “social policy in non-metropolitan territories” conventions. These were intended, above all, to reformulate the colonial relationship, subordinating the dynamics of economic exploitation to the development and well-being of the native populations. They provided for the organisation of trade unions, autonomous labour inspectorates, collective bargaining mechanisms, and other aspects.¹⁰

It should be noted that these normative changes accompanied, and fed into, imperial dynamics, especially in the French and British empires, which adopted “development” as the byword in their overseas projects. In fact, these years saw a substantial rise in investment in social, health, and education services, in largescale infrastructures, and in the reinvention of social relations that, albeit marked by an explosion of social conflict, acquired new participatory and social dialogue instruments. For example, in 1946 the new French Union legally condemned old systems: all forms of forced labour were, again, prohibited, and the old *indigénat* system was abolished.

At this time, the Portuguese empire was still the only European colonial empire that had not ratified any of the ILO’s inter-war conventions on colonial territories. Its most flagrant non-ratification was the 1930 convention on forced labour. As to be expected, the ILO’s new

10 See Frederick Cooper, *Decolonization and African Society: The Labor Question in British and French Africa* (New York: Cambridge University Press, 1996); Daniel Maul, Human Rights, *Development and Decolonization* (New York: Palgrave MacMillan, 2012); for the Portuguese case, see José Pedro Monteiro, *Portugal e a Questão do Trabalho Forçado: um império sob escrutínio* (Lisboa: Edições 70, 2018) and Miguel Bandeira Jerónimo and José Pedro Monteiro, “Colonial labour internationalized: Portugal and the decolonization momentum”, *International History Review* (ahead of print, 2019).

conventions were received with alarm. For José D'Almada, a colonial specialist, well-versed in the proceedings of the old League of Nations, it was an attack, directed against the colonial regime, which sought to place the whole of Africa under international supervision. For other officials in the Ministry of Colonies, to introduce the concept of non-discrimination in the international system of colonial social relations was, at best, idealistic and, at worst, a deceitful maneuver. It was clear to all of them that the "indigenous" worker did not respond to the impulses of a modern (i.e. "western") worker, and understood neither the moral of work nor any contractual logic, among other tropes. They were not alone: colonial specialists and future political figures, like Joaquim da Silva Cunha and Adriano Moreira, joined in the condemnation of the new ILO policies as attempts to universalise what was particular and "special", i.e. the diminished nature of the African worker.¹¹

The censure that the ILO's new programmes and standards were singled out for doubtlessly stemmed from the conservative, racialised ideology that permeated throughout the imperial state's structures. However, it was also a logical consequence of acknowledgement of the colonies' social realities. The rise in prices of raw materials during the post-war years, and the growing influx of European colonisers to the colonies from the 1940s onwards had put pressure on the autochthonous labour force. Reports of large-scale administrative authorities' intervention in labour recruitment in Angola and Mozambique were widespread. "Compulsory labour", "facilitated labour", "contract labour" were among the many categories of legal and illegal labour that attested to the prevalence of coercive methods of labour extraction in the Portuguese empire. The Portuguese authorities were not unaware of what was going on, and neither were the many who, on the outside, had learned about the social realities in the Portuguese colonies. While the second half of the 1940s was a relatively calm period, except for the Henrique Galvão case, condemnation of the labour system in Portugal's colonies grew exponentially from the early 1950s. This was partly due to the work undertaken between 1951 and 1953 by the UN Ecosoc-ILO *ad hoc* Committee on Forced Labour, which received documentation from the Anti-Slavery Society, the World Federation of Trade Unions and other sources. The Committee repeatedly requested information from the Portuguese government, but it was usually to no avail. Its final report was particularly critical of the empire. Not only did its legislation authorise various kinds of forced labour, but the practices seemed to indicate potentially more serious conditions. Censure was not limited to official reports. Journalists, like British born Basil Davidson, and trade unionists, like Roy Garrison from the US, regularly published powerful condemnations of the empire's labour practices, and relayed their publications to bodies and organisations like the ILO.

Even though the Portuguese government rejected all accusations, repeating the old argument that they were the result of foreign malevolence and envy, they were, in fact, having an effect on the regular functioning of the political-administrative structure. The censure and accusations

¹¹ Jerónimo e Monteiro, "O império do trabalho"

gave rise to imperial self-scrutiny movements that sought to refute them, but which also perfected the imperial informational order.

On the other hand, international criticism, especially from the *ad hoc* Committee, increasingly highlighted Portugal's isolation in relation to the international standards that regulated forced labour. As the years passed, the Portuguese empire's refusal to ratify the convention on forced labour became increasingly notorious and uncomfortable. The imperial and colonial administrators and political decision-makers believed that non-ratification was placing the Portuguese state in an embarrassing situation. However, as figures like José D'Almada recalled, ratifying the convention would open the floodgates to international inspection and monitoring, and the consequences would be unpredictable. Especially if conditions on the ground did not change (and there was nothing to indicate that they would), the critical potential of ratification would be enormous. For years, the fear of "dangerous internationalisms" would prevail.

Decolonisation and forced labour

The situation would only change in 1956 when the Portuguese state finally ratified convention C029 of 1930. The motives behind this ratification doubtlessly had to do with the long-standing condemnation – escalating dangerously over the years – of its forced labour practices. Portugal's reasons cannot be fully understood, however, without taking into account the changes occurring in the other European empires. These were on the fast track to decolonisation, which would happen during the following decade. At a time when independence seemed to be the political horizon for so many African colonies, Portugal's resistance to ratifying a convention that regulated the forced labour issue, only heightened the anachronistic effect of Portugal's colonial situation.

Another contributory factor had to do with Portugal becoming a member of the UN in 1955. Until then, the Soviet Union had used its veto power to block Portuguese entry to the eminent international system. However, from the moment it joined, the colonial issue was high up on the agenda in all discussions involving the country. The fact that the Portuguese state refused to provide statistical and technical information to the UN (as provided for under Article 73 of the UN Charter) on its colonial territories became particularly contentious. It based its refusal on the argument that it did not possess non-autonomous territories, i.e. colonies, and that all the components within the empire, which was no longer an empire, were integral parts of the national territory.¹²

12 See Fernando Martins, "A política externa do Estado Novo, o Ultramar e a ONU: uma doutrina histórico-jurídica [1955- 1968]", *Penélope*, nº18, (1998), pp. 189- 206; Aurora Almada Santos, *A Organização das Nações Unidas e a Questão Colonial Portuguesa* (Lisboa: Instituto de Defesa Nacional, 2017).

In view of this imperial unity thesis, the idea of systematic inequality based on a racial criterium had to be energetically confronted. In short, the debate around the juridical and political nature of the colonies had to be conceptually dissociated from the material, social and cultural attainments of their inhabitants. Only thus can the relationship between the Portuguese empire and ILO during this period be understood.

The ratification of the forced labour convention was the result of an eminently political and diplomatic calculation. As Franco Nogueira stated, the dividends to be gained by the gesture had been evident. It was precisely taking into account this political calculation that, in the years that followed, the Portuguese empire, which, until then, had never ratified any convention that had colonial implications, proceeded to ratify a number of them: the abolition of forced labour convention (created in 1957), the penal sanctions (indigenous workers) convention, the non-discrimination convention, and the indigenous and tribal populations convention.

Integration with the ILO framework of standards relating to colonial social policies became an important expedient insofar as it mitigated the pressures on Portugal. Pressure would, however, mount in the years to come. As Franco Nogueira himself maintained, ratification alone did not resolve the social issue. Although Portugal opted to increase international integration, there was blatant absence of real reform. Moreover, there continued to be substantial dissonance between the thinking of the imperial administration and the spirit of the international standards. For example, in an exchange of correspondence between the minister Raúl Ventura and Robert Gavin of the ILO's Non-Metropolitan Territories Division, following the ratification of convention C029 in 1956, Ventura suggested that the "moral duty of work" should be substituted by the obligation to perform socially useful work, and that this should be applied in colonial labour law. Thus, coercion imposed on the "native" would acquire a "modern" look, but it would persist nonetheless. For Gavin, however, what the Portuguese authorities regarded as palatable was capable of destroying all the good that had been achieved with the ratification, i.e. the political effect.¹³

Meanwhile, the reports arriving until the start of the colonial war in Angola were very clear: forced labour was widespread in vast regions of Angola and Mozambique. It was the principle cause of social unrest and, crucially, the main root of political agitation. Between 1959 and 1961, a long time since the ratification, the focus on the forced labour issue highlighted the limitations on Portugal's adhesion to the international standards.

This was a risky strategy. First and foremost was the possibility of an international inquiry being launched, given that the Portuguese state had, of its own free will, endorsed instruments that bound it to certain obligations. It was a scenario that would soon become a reality. Following the revolt in Baixa do Cassange and the attacks in Luanda in February 1961, the Portuguese

¹³ Monteiro, *Portugal e a Questão do Trabalho Forçado*.



colonial issue attracted international public attention like never before. That same month, the Liberian government announced its intention to raise the human rights situation in Angola for discussion at the UN Security Council. The debate was held in March 1961, coinciding with the uprisings in northern Angola.

At around that time, the government of Ghana lodged the very first official complaint against another state with the ILO. It claimed that the Portuguese government was not securing effective observance of several provisions it had endorsed in 1959 on ratifying convention C105 on the abolition of forced labour. In reality, Portugal's ratification had been merely a diplomatic manoeuvre intended to mislead international bodies and public opinion about the true social realities in its colonies.¹⁴

Ghana's complaint led to the launch of Commission of Inquiry, comprising three international specialists. They were given access to a vast array of information, dating back to the 19th Century, on Portuguese colonial labour policy, local regulations, and statistics and minutes from ILO, League of Nations and UN discussions. The government of Ghana presented witnesses, who were mostly foreign missionaries. Organisations such as the International Human Rights League, the Anti-Slavery Society, the American Committee on Africa, and the Baptist Missionary Society were allowed to put forward documentary evidence and local witnesses. An imperial configuration coming under international scrutiny was, indeed, unprecedented.

However, all this was only possible because Portugal had acquiesced in the whole process. At about the same time, at the UN, the Portuguese government refused to cooperate with inspection bodies, and denied authorisation for them to visit the colonies. However, a visit by the ILO to Angola and Mozambique was allowed, and various colonial officials (administrators of the indigenous services and public works) and private sector leaders (from companies such as Sena Sugar and Cassequel) were allowed to testify before the Commission.

The Commission's findings eventually exonerated the Portuguese government from Ghana's main accusation, namely, the idea that its ratification of the convention had been merely a masquerade. However, the restrictions placed on the process are worth pointing out: the Commission's mandate was quite narrow; any evidence of non-observance could only date from after 23 November 1960; the duration of the visit was very limited, and everything points to the fact that the authoritarian Portuguese state had provided for any unfavourable considerations or situations to be "controlled".

Most importantly, however, was the fact that the Commission's verdict would not have been

¹⁴ For Ghana's complaint, see Oksana Wolfson, Lisa Tortell and Catarina Pimenta, "Colonialism, forced labour and the International Labour Organization: Portugal and the first ILO Commission of Inquiry", *ILO Century Project*; José Pedro Monteiro, *Portugal, a Organização Internacional do Trabalho e o Problema do Trabalho Nativo: a queixa do Estado do Gana* [Lisboa: Tese de Mestrado – FCSH/UNL, 2012].

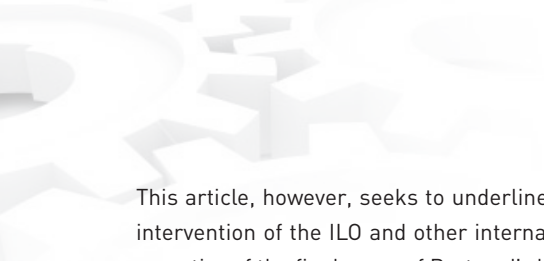
possible had it not been for the appreciable reform process that was then underway. This was due to many factors, especially the start of the war. The reforms very closely addressed the Organization's principle concerns relating to Portuguese colonial imperialism. In May 1961, the authorities' participation in recruitment was suspended, the regime of obligatory crops (especially cotton) was abolished, and the legal framework for the establishment of independent colonial labour inspectorates was put in place. In September 1961, the Statute of Indigenous Populations, the *indigenato*, (in force since 1926, largely unchanged) was revoked. Finally, in April 1962, the new Rural Labour Code was promulgated, abolishing all legal forms of forced labour and, in theory, removing ethnic and racial distinctions in labour legislation. It should be emphasised that this progress was not directly linked to the Ghanaian complaint process. Local dynamics, like the outbreak of war in Angola, were key factors in the changes taking place. The same may be said of international processes in progress in bodies such as the UN. But given the historical prominence of the forced labour issue, and the special relationship that the empire had been building with the ILO, the latter has to be given serious consideration for both the timing and the terms of the reform process.

Conclusion

One of the immediate consequences of Ghana's complaint was to have led the Portuguese government to acknowledge that the Committee of Experts on the Application of Conventions and Recommendations did have authority to appraise the progress of labour policies in the empire. The potential benefits of its African subjects seeing an international organisation endorse its imperial social policies were obvious. Portugal's relatively positive appreciation of the ILO was to go even further: in August 1961, the government lodged a similar complaint against Liberia. It was not only a case of retaliation, but also an important symbolic act, aimed at producing an unfavourable comparison with the social conditions in an independent African state.

In the years that followed, the interaction between the Portuguese government and the ILO on colonial matters continued, in contrast with, for example, relations with World Health Organisation. The accusations about forced labour did not cease, and neither did the efforts of ILO officials and specialists, especially in areas such as private recruitment and public employment policies. In the late 1960s, it would be the Portuguese government, feeling harassed, that requested "direct contacts" in relation to the forced labour issue. These eventually led to a new inspection, headed by Pierre Juvigny.

The history of that period, i.e. the post-war years, which discusses the colonial dimension in the relationship between the Portuguese state and the ILO, still requires more in-depth analysis, extending more profoundly into the colonial labour policies and realities of that period.



This article, however, seeks to underline the need, in view of previous history, to recover the intervention of the ILO and other international and transnational players, if a more complete narrative of the final years of Portugal's late colonialism is to be attained.¹⁵

¹⁵ Jerónimo and Monteiro, "Colonial labour internationalized: Portugal and the decolonization momentum".

03

Part I - Dialogues in History Albert Thomas visits Portugal, 1925 ¹

ALBERT THOMAS ²

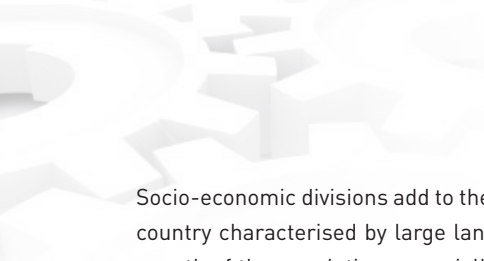
Albert Thomas em Portugal, 1925

On his return in 1925 from a long journey to Latin America, Albert Thomas spends three days in Portugal.³ The country, which is still a colonial power that controls vast territories in Africa, is torn apart by political, economic and social crises. The First Portuguese Republic, established in 1910, is living on borrowed time. Its main support, the Republican movement, is weakened by internal dissent and the Democratic Party, which represents the centre-left wing of this movement, has difficulty obtaining a parliamentary majority. The Socialist Party and the Communist Party still occupy a marginal position. There were 45 governments between 1911 and 1926. There are many opponents of the Republic, especially on the right (conservatives, monarchists and military). They are united in the common rejection of the republican regime's anti-clericalism. The Republic is weakened by three attempts to establish a dictatorship. The third one, in 1926, will be successful.

¹ The present text was originally published in 2015 in "À la rencontre de L'Europe au travail: Récits de voyages d'Albert Thomas (1920-1932), Dorothea Hoehntker e Sandrine Kott (Dir.), Publications de la Sorbonne/Bureau International du Travail: pp. 273 - 285.

² First ILO Director-General.

³ It seems that Albert Thomas' stay in Portugal had not been planned. Albert Thomas intended to disembark anonymously in Europe and travel immediately to Paris. He asked the director of the ILO office in Paris, Mr. Roques, to verify the administrative formalities necessary to return to France without further problems. But Roques took the initiative to inform several people and he personally welcomed the Director of the ILO in Lisbon.



Socio-economic divisions add to the political instability. Portugal in the 1920s is an agricultural country characterised by large landowners and insufficient agricultural production given the growth of the population, especially in the urban centres. Bread shortages play an important role in the social upheavals that occur during and after the First World War, in which Portugal fights alongside the Allies. Industry and commerce develop slowly during the First Republic. Exports are restricted to cork, canned food, wood and wine. A small group of industry workers, small traders, low-level civil servants but also agricultural workers begin to join forces and frequently go on strike to draw attention to their miserable living conditions.

The First Republic recognises the right to strike, adopts a law on occupational accidents and establishes the weekly rest day. Industrial workers, although few in number, start to organize. In the emerging trade union movement, the revolutionary-anarchist current triumphs over socialist-reformist forces. After the war, the Portuguese labour movement, in a context of extreme political and social instability, reaches many goals. Thus, in 1919, the government introduces mandatory social security and adopts the eight-hour work day which, however, is not applied systematically. In the same year, the General Confederation of Labour (CGT) is created, which supports the uprising of the workers. The CGT is the only representative of the Portuguese labour force. Because of its anarchist orientation, the CGT joins in 1922 the International Workingmen's Association in Berlin⁴. Soon after, internal controversies arise and membership starts to decline. In 1924, the communist affiliated trade unions leave the Confederation⁵.

The economic crisis, characterised by unbridled speculation and hyperinflation, reinforces political instability and socio-economic tensions. The devaluation of the escudo (Portuguese currency) in 1924 curbs the inflation. But while the economy starts to stabilize, a large part of the population has already lost confidence in the Republic. Political parties and governments are heavily discredited. The climate is marked by numerous strikes. Violent acts, perpetrated by anarchist groups, worry not only the middle class but also fractions of the working class who move closer to anti-republican, pro-Catholic, ultranationalist and sometimes fascist forces. The latter become more important, inspired by Mussolini in Italy and Rivera in Spain. Violent acts against trade unionists multiply. In March and April of 1925, the government puts down two military revolts of monarchists and right-wing nationalists. President Teixeira Gomes⁶ resigns in December 1925. His successor cannot save the Republic. In May 1926, after a military

⁴ The International Workingmen's Association, founded in 1922, had an anarcho-syndicalist orientation. It refused to be associated with any political party, whether communist or social-democrat.

⁵ ILO, *Freedom of Association*, vol. IV: Italy, Spain, Portugal, Greece, Kingdom of Serbs, Croats and Slovenes, Bulgaria, Rumania, Geneva, ILO, 1928, p. 285-304, available at http://www.ilo.org/public/libdoc/ilo/ILO-SR/ILO-SR_A28_fren_vol.4.pdf.

⁶ Manuel Teixeira Gomes (1860-1941), member of the Liberal Republican Party, President of the Republic of Portugal from 1923 until his resignation in 1925. He was also a delegate of the League of Nations and vice-chairman of its General Assembly in 1922.

putsch, anti-republican forces seize power, abolish democracy and establish the *Estado Novo*. One year later, the CGT is dissolved.

As a founding member of the ILO, Portugal sends full delegations to the first sessions of the International Labour Conference in 1919 and 1920. However, in subsequent years, the country is represented only by one government delegate⁷. Committed to class struggle, the CGT is hostile towards the ILO and refuses to attend the Conference. Albert Thomas has to face the same refusal from the employers, who are organised in the Portuguese Employers' Confederation. Another problem he brings up with his Portuguese counterparts is the country's delay in ratifying international labour standards. In fact, in the mid-1920s Portugal has not yet ratified any ILO Convention. It only does so in 1928, under the dictatorship⁸

[Arquivos do BIT, CAT/1/25/13/1]

The Director's Visit to Portugal

[2-4] September 1925. We arrived in Lisbon on Wednesday night, 2 September. Besides our Portuguese correspondent or, rather, our sub-correspondent recruited by Fabra Ribas [Fabra i Ribas]⁹, Álvaro Neves¹⁰ [...], and the ambassador of France¹¹, some Portuguese friends and some journalists awaited us at the landing stage. The former President of the Portuguese Republic, Magalhães Lima¹², was there with some comrades.

3 September [1925]. In the morning, with the help of Mr. Pralon, the ambassador of France, and Mr. Neves, I collected some information on the political situation.

First, information on the situation of the workers movement. The General Confederation of Labour is not communist, it is anarcho-syndicalist and linked to the Berlin International. The

7 The delegations would remain incomplete until 1927.

8 In 1928, Portugal ratified its first two ILO conventions: Hours of Work (Industry) Convention, 1919 (N.º 1) and the Weekly Rest (Industry) Convention, 1921 (N.º 14).

9 Antoni Fabra i Ribas, the ILO correspondent in Spain from 1921 to 1939. Catalan socialist journalist. He also directed the Spanish edition of the International Labour Review. In 1925 he accompanied Albert Thomas on his trip to South America. He founded the National Federation of Cooperatives in 1928 and was a member of the executive committee of the UGT from 1922 to 1928.

10 Álvaro Neves (?), local "sub-correspondent" and assistant of Fabra Ribas.

11 Eugène Pralon (?), French ambassador in Lisbon.

12 Sebastião de Magalhães Lima (1850-1928), republican politician, founder of the Republican magazine "O Século" (The Century) and the Portuguese League of Human Rights, in 1921. Albert Thomas made a mistake here because Magalhães Lima was never President of Portugal, although he unsuccessfully ran for president on three different occasions. He was a man of culture, a friend of Anatole France and Victor Hugo. He had extensive international experience, but, in fact, he had no political support in Portugal.

seamen and port workers are, however, dissidents and have aligned with Moscow¹³. [...]

In political terms, and despite all the changes of Ministries, it is the radicals, the party of Afonso Costa¹⁴, which more or less controls the government. However, at this time, Costa faces some difficulties due to the split of his party into several opposing factions. Elections should take place in the very near future. It seems they won't much change the situation [...]. There is also talk about the next presidential election. The current president¹⁵ would consider leaving office, perhaps even before his term has ended. Old Magalhães Lima may be a potential candidate.

The most important problems on the agenda, I am told, are the economic problems.

The escudo has been stabilized, but nothing has been done from an economic point of view. [...] The stabilization of the escudo should have resulted in a decrease in the nominal costs of living. However, neither wages, for example, nor prices have changed. The result was rather considerable difficulties for exports. The only thing that could still be exported is port wine, but it is produced everywhere.

The consequence is that employers attempt to reduce remuneration, increase working hours while paying the same wages and, since workers' organisations can resist, there will be, according to what different sources have told me, an attempt by some employers to hit workers' organisations. According to the complaints that have reached me since early this morning, terrorist organisations are being set up in Portugal to beat and kill unionized workers. On the other hand, we have several workers deported to Portuguese Guinea, having all their individual guarantees violated.

At this moment, another major problem for Portugal is the issue of the colonies. We fear a very strong German attack against the colonies¹⁶. On the one hand, they would tend to demonstrate [Geneva Slavery Commission¹⁷] that the Portuguese are unable to govern their colonies and

13 Reference to the Red Trade Union International, founded during a conference held in Moscow in 1921, on the eve of the 3rd Congress of the Communist International.

14 Afonso Costa (1871-1937), politician and leader of the Democratic Party. He was at the origin of major reforms, namely the Civil Code and the separation of Church and State. Several times Minister and three times Prime Minister, Afonso Costa refused to accept another mandate after the war. He represented Portugal at the Paris Conference and signed the Treaty of Versailles. His biographers describe him as a brilliant but also controversial personality.

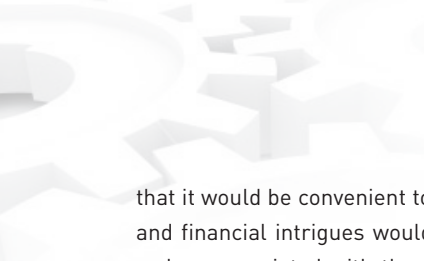
15 Manuel Teixeira Gomes.

16 The aim of imperial Germany's colonial policy was to create a colonial empire in Central Africa, including Angola, a Portuguese colony at the time. It was primarily because Portugal wanted to defend its colonies against German claims that it abandoned its neutrality during the First World War.

17 Reference to the Temporary Committee on Slavery, appointed by the Council of the League of Nations in June 1924. Portugal was criticized for tolerating forced labour and for not carrying out a civilizing mission in its African colonies. In 1925, an American sociologist, Edward A. Ross, conducted for this Committee an inquiry into the working conditions in Mozambique and Angola. In his conclusions, he associated working conditions in Angola with slavery. See Oliveira Santos, F. M., Reply to the accusations addressed to the League of Nations by Mr. Edward A. Ross against the Portuguese in Angola, Lisbon, Sociedade de Geografia de Lisboa, 1930.



Fig. 20. Mosaics of work scenes in Lisbon, 1918 [source: Dorothea Hoehtker]



that it would be convenient to pass them on to another power. On the other hand, commercial and financial intrigues would start, in particular the Amsterdamsche Bank¹⁸, which is more or less associated with the Soviets, would acquire all the railways business of Angola, and German ammunition would arrive [in the country]. There would have been a riot in Angola on 14 July.

In fact, as I was convinced a few moments later, during another conversation with Magalhães Lima, there is deep concern in Portugal with this matter. It must be said that from a general, from a civilizational point of view it is worrisome that important countries, which are of interest for human production in general, are left to an incompetent ruling metropolis. I have taken the freedom to suggest to my Portuguese friends, while respecting their rights to absolute sovereignty, to say spontaneously: "We submit ourselves to the control of the Mandates Commission¹⁹. We are willing to follow all the reform efforts pursued by other countries." In my opinion, this would hugely benefit international action and, at the same time, be a sure guarantee for this country.

I received a visit from the employers in the morning. I must admit that I had a feeling of hostility and mistrust because of the attitude they had adopted, according to what I had been told. I have somewhat tried to have their admission that they were in a fighting spirit, but there was absolutely nothing that would have allowed me to guess their true intentions. The delegation was composed of three members representing the Portuguese Industrial Association. [...]

They stated that they belonged mainly to the Southern Association, but there were also representatives of the Northern Association. When we discussed the issue of full representation at the Conference and the appointment of the employers' delegate, they explained to me that the two associations had to agree on the name of an employers' representative to indicate to the Government.

We talked about the economic situation. In reality, they are totally against the eight-hour work day. According to them, it would be hard to maintain it, given the work load. [...] At one point, one of them, Mr. Taveira²⁰, representative of the cotton industry, who attended the recent International Cotton Manufacturers' Congress in Vienna, claims that it would be possible to have a ten hour work day, as overtime, on a regular basis, throughout the year.

I explain how strange it is that the Portuguese employers represented in Washington have accepted the Convention and now claim such an interpretation. I was then told that they claim

18 Amsterdamsche Bank, a Dutch bank founded in 1871 by German banks for German investments abroad, particularly in the Amsterdam diamond market.

19 Reference to the Mandates Commission, a supervisory body in charge of the territories under the mandate of the League of Nations, which carried out referendums in disputed territories.

20 Unidentified person.

the ten-hour work day because, in fact, people are currently not working more than three days per week because of the crisis. I explain that under these conditions, we really cannot criticize the employers. And we finally reach an agreement.

I definitely got the impression that the eight-hour work day was only given lip service and will not be achieved. The employers never spoke of their intention to subdue the working class. But for me there was little doubt that behind their phrases of understanding and when they tell me that they always want conciliation, they were rather in a hostile mode.

A little later, I had the opportunity to speak with Portuguese friends about the general situation. Wouldn't these worries about the economy lead in the end to some kind of reactionary political action?

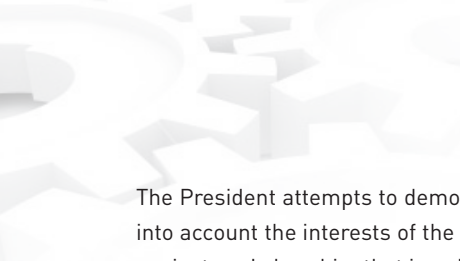
To say the truth, it seems that all the Portuguese agree that a restoration of the monarchy is a hypothesis that can be totally excluded. As soon as the monarchists lift their heads, people are unanimously against them. Even the communists join the bloc of parties defending the Republic. But, because of the parliament's divisions and lack of power, fascist ideas, ideas of a military dictatorship and others become more popular. In short, what we find in Portugal, as elsewhere, is a profound political crisis. The problem is to know to what extent political institutions will respond to economic and social needs. [...]

At 3:00 pm I meet the President of the Republic, Teixeira Gomes. He has been the ambassador of Portugal in London. He has also been a delegate in Geneva.

I explain to him the reason for my stop in Lisbon. Can Portugal not ratify a certain number of Conventions? Besides, is it impossible to send a full delegation?

The President shows an astonishing subtlety explaining and justifying the absence of any international action. I really find amusing how much he uses his intelligence to justify his country's total lack of action. It is always the same argument: the idea of producing more by extending the working day and keeping daily wages at the same rates. He also apologizes for the parliamentary difficulties.

After having refuted some of the usual arguments, I urge him to reflect on the support that small countries get from their participation in international life. In Portugal, the tendency is to constantly complain about the limiting conditions in which the bigger countries keep the small ones. It is the complaint against the dominance of England or even of France. The large nations curtail the rights of the little ones. My thesis, on the contrary, is that if small nations act within the League of Nations, they will find the necessary guarantees for their freedom and will gain more authority. It is in the interest of the small nations, more than of others, to fulfil all their obligations towards the International Labour Organisation.



The President attempts to demonstrate that I am contradicting myself when I ask him to take into account the interests of the workers and to state, on the other hand, that the workers are against us. I show him that in politics we should not be bothered by contradictions, but that we must, on the contrary, try to determine how to initiate action. If the working class is hostile, it is necessary to bring it closer to us. There is only one mean: appointing a delegate in favour of the Office. If he is chosen outside the Confederation, I am sure that the Confederation will complain and this will push them to participate. Referring to the telegram sent by the Office, I explain the situation concerning the ratifications. But in Portugal, there is not even a notion of the basic obligation Portugal has assumed under article 405²¹. I had to remind [the president] that this is a formal obligation.

We leave the Presidential Palace, which is filled with souvenirs of the colonial period. Truly solemn and imposing with its large entrance hall decorated with dark blue curtains with shiny hatchments. Later we visit the Church and the Cloister of the Jerónimos Monastery, in the Manuelino style²², with motifs evoking all the maritime memories, the abundance of colonial flora, the remembrance of the ocean, the bows of the ships and the hemp ropes. We bow before the tombs of Vasco da Gama and Camões²³. We spend a few moments in the Cloister where some state wards play and shout. We take a quick tour of the Belém Tower and continue our visits.

Visit to the Minister of Foreign Affairs, Vasco Borges²⁴. Quick courtesy visit. We will meet him again in the evening, over dinner.

Then a visit to the President of the Council of Ministers: Domingos Leite Pereira²⁵. He is still a young man, fervent, who we find in the middle of the rubble in a Ministry which is being transformed. Its antechamber is filled with election agents, representatives of associations. We feel like in an antechamber somewhere in South America. During the day there will be a Council of Ministers meeting that will still last for several hours. It seems that the Council has been in a permanent meeting for about three days. And this reminds us of the endless blathering in countries where the governments are paralyzed. He does show however some contempt for the antechamber, some curiosity about positive things and the discussion, even though a bit heated, is in a way interesting and fruitful.

21 Article 405 of the Treaty of Versailles stipulates the procedures for ratifying ILO legal instruments.

22 Architectural style of the 16th century, named after King D. Manuel, which is centred on the person of the king. The Jerónimos Monastery in Belém is an example of this style.

23 Vasco da Gama (about 1460-1525), Portuguese sailor and explorer; Luís Vaz de Camões (1524-1580), renowned writer and poet. Both are considered national heroes in Portugal.

24 Vasco Borges (1882-1942), jurist and politician, several times minister. He was minister of Foreign Affairs from 1925 up to the military coup in 1926. He subsequently supported the *Estado Novo*.

25 Domingos Leite Pereira (1882-1956), journalist and politician, member of the Democratic Party and Prime Minister of Portugal in 1919, 1920 and 1925.

I take up again the two questions: the issue of full representation and the issue of ratification. The main argument against the full delegation is the financial argument: "We are at our limit, we cannot send four people." [...]

And I return to the theme of the small states. In today's modern life they can only have some security if they fully participate in the activity of the League of Nations. I once again talk to the President about the status of ratifications. We agree that I will write to him before the end of the year, especially before 2 December, the date set for the start of the parliamentary work. I will provide a report on the status of ratifications in Portugal, ask him to introduce the necessary bills and request the Parliament to vote on them.

Conclusion on a lively conversation:

1. The President shall defend the idea of full representation²⁶ in the Council of Ministers, and against the Minister of Finance; [...]

I return to the hotel and give some interviews, in particular to "O Século"²⁷.

Next, I meet with Manuel da Silva Campos²⁸, Secretary-General of the Confederation of Labour. Neves did us a real favour in getting him to meet me. I believe that it made a big impression in the Portuguese political milieu that the Secretary of this anarchist Confederation paid us a visit.

During the conversation, I presented the usual argument. I'm not asking for anything. I do not think you can change your attitude. But we are all men of common sense, we all seek the truth. We should all agree about scientific matters. I refer to the Soviets as a proof. The Soviets have with us scientific relations²⁹. No objection in this matter: Silva Campos agrees.

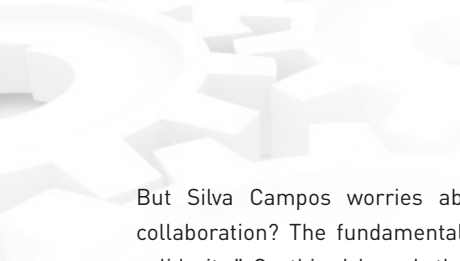
He then reminds me of the Confederation's position regarding participation in the International Labour Conferences. In 1919, the Congress of the Confederation refused to send delegates; in 1922, this decision was confirmed. This year, on 23, 24 and 25 September, there should be a congress of the organisation. The issue will be on top of the agenda. The attitude may change: some federations seem to be more willing to accept collaboration with the ILO [International Labour Office].

26 Full Portuguese delegation at the International Labour Conference.

27 "The Century" in English, an important Portuguese daily newspaper between 1880 and 1978, founded by the republican Sebastião de Magalhães Lima

28 Manuel da Silva Campos (1892-1952), Portuguese trade unionist and from 1923 to 1928 Secretary-General of the General Confederation of Labour (CGT).

29 Albert Thomas visited Russia during the First World War. As director of the ILO, he tried to establish relations with the USSR, which would only become a member of the ILO in 1934. Despite the USSR's strong hostility towards the ILO, Albert Thomas tried to gather as much information as possible about the new political and economic system implemented in the 1920s. He visited the USSR in 1928, on his trip to Asia.



But Silva Campos worries about the fundamental objection: “Wouldn’t this be class collaboration? The fundamental principle of our organisation is the rejection of any class solidarity.” On this, I launch the theoretical discussion: first, the ILO [International Labour Office] is an achievement of the working class, positions are clear. Are you going to ignore them? Far from class collaboration, Governments are obliged to appoint representatives of the strongest organisations. Secondly, the right of the working class delegate is undivided: his vote is totally free. Thirdly, the Conventions represent, to a certain extent, collective agreements. They represent the opposing forces at a given moment. This is so true that they are subject to a review every ten years. Fourthly, the freedom to take any stand in relation to a Convention remains intact. As soon as the delegates have returned to their countries, after adoption of the Convention, they can freely take a stand against the Convention. Hence where is here the class collaboration?

My argument makes a strong impression on the Secretary. I add that the scientific collaboration that we have already established with them, as well as the publication of our communiqués in the newspaper “A Batalha”³⁰ also facilitate dialogue and mutual understanding.

The conversation ends and I express my desire to make a return visit that evening, or the next day, to the headquarters of the Confederation. He is particularly flattered by this offer which he did not expect.

In the evening, we have dinner at the French Mission, with Pralon’s closest collaborators. [...]

I take up the issue of the day with the Minister of Foreign Affairs. The need for a full delegation; the impossibility of continuing with Bartolomeu Ferreira³¹ as the sole representative of Portugal at our conferences; the need to have representatives of employers and workers; the obligation established by the Peace Treaty and the need to proceed with ratifications. I also mention the progress I made with the Confederation of Labour. At its heart, the Portuguese Government greatly desires the full participation of workers and the efforts I deploy in this matter encounter enthusiastic interest among the Ministers.

The conclusion is that this trip was absolutely insufficient, I must insist on the development of our work. The Minister wants me to come back in December and stay a few days in order to do more³². [...]

30 “The Battle” in English, a CGT newspaper, considered the second national newspaper. The visit of Albert Thomas was the subject of several articles published on the front page, criticizing the director of the ILO for having stayed in the most luxurious hotel in Lisbon, the Hotel Avenida Palace. The newspaper was banned in 1927 following the military coup.

31 António Maria Bartolomeu Ferreira (1863-1944), Government representative of Portugal to the League of Nations, delegate to the International Labour Conference from 1921 to 1925 and president of the Portuguese delegation in 1925 and 1926. Special Envoy and Plenipotentiary Minister in Berne between 1916 and 1928.

32 Albert Thomas did not return to Portugal.

I believe that the Portuguese Government would greatly appreciate if I tried to convince the trade unionists to accept participation.

We talked a little bit about the political situation. We talked about the negative impact that the rumour of revolution had on European opinion. In fact, Ministers consider that there are only small incidents and they make commitments as if their policy would continue and their Ministry was strong. [...]

In the evening, we sat for a few moments at Club Meyer, whose windows overlook a public garden, a sort of family Luna Park that reminds one of the Tivoli in Copenhagen. Then we went home.

On 4 September [1925], in the morning, it was decided that before my departure I would visit the Ministry of Labour and the CGT.

But no Portuguese official gets up before 11 am, and no one goes to the Ministry before 1 pm. It was literally impossible to visit the Ministry of Labour.

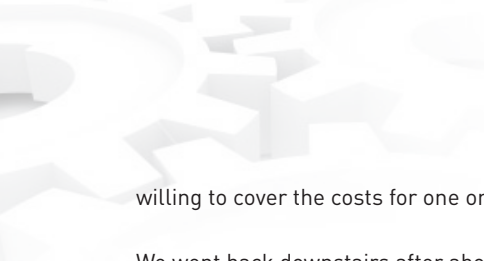
But I was able to visit the CGT, and it was a very interesting visit.

The CGT is housed in an old rundown aristocratic palace. We climbed a monumental staircase. The chapel of the aristocratic mansion still exists. They have created a kind of attic to be able to use the full height. The painters' trade union has its office in front of the mansion. There are onions and vegetables hanging on the walls. Washing is hung out to dry. Nevertheless, several very clean offices have been installed in the house: the administration office of "A Batalha"; the office of the Confederation; the office of the local employment service; a classroom, because several workers are illiterate and therefore a primary school has been set up in the Confederation; the print shop of "A Batalha"; a small library of the Party or of the Organisation, extremely poorly stocked, unfortunately!, which has mostly anarchist literature (By library I mean the small publishing house and the bookstore).

The comrades who welcome me have the young and somewhat rough look of communist or anarchist organisations, somewhat sloppy, but nevertheless, serious, eager to learn, and polite in the discussion. Once the ice is broken, the conversation becomes extremely cordial and useful.

I return to the arguments of the day before about class solidarity and class struggle, false social peace, and so on. I explain how the most representative Organisation of workers in Portugal should claim its role in the Conference. I express my hope that the next Congress will change the attitude of the Confederation. [...]

I also suggest that, in order to allow the Portuguese CGT to get to know the Office, I would be



willing to cover the costs for one or two delegates travelling to Geneva.

We went back downstairs after about an hour of discussion. Perfect cordiality.

At the bottom of the stairs, a lamb is grazing in the yard. I wonder whether the lamb symbolizes the pacifism and goodness of the communists.

At the station, when we are just about to board the train, I meet Magalhães Lima, who has accompanied us on all visits and has always manifested a truly warm friendship. He seems to encounter much respect in all services of the public administration because of his idealism and honesty. There are also some representatives of the Ministry of Foreign Affairs and the Ministry of Labour. [...]

The last observation of Magalhães Lima before my departure: “The few hours you spent in Lisbon,” he tells me, “had a profound impact. You have really been able to draw attention to the ILO. When you come back, your work will certainly be fruitful and you will succeed. But to do so, you have to find the best strategy to use with our country. If you expect results from purely official procedures by approaching ministers with official letters, you will get nothing. On the other hand, if you approach personally the men who are here - pointing to his collaborators-, if you talk to the friends you can find in Parliament or in the Administrations, then I have no doubt about your success.” I think it is a fairly accurate assessment of the situation. In all countries of Latin disorganisation, both European and American, the best method to follow is that of personal relationship. With this anarchy in Parliament and the Administrations, individual action is more easily successful than in our own countries. I had already called this earlier, in Russia, the possibility of benefitting from anarchy. This is especially true for Latin countries.

04

Part I - Dialogues in History Antonio Augusto Gomes d' Almendra - The ILO's first Portuguese official ¹

CRISTINA RODRIGUES ²

Introduction

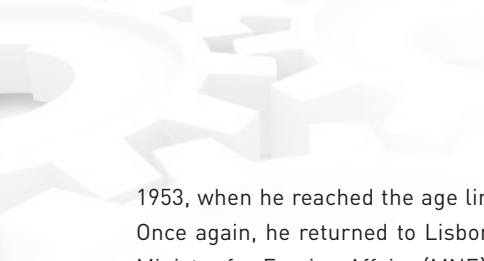
I first met António Gomes Almendra while carrying out research into the relationship between Portugal and the ILO³. We started to meet in 2008, or perhaps early in 2009, and, after that, our paths crossed many times. At the Diplomatic Historical Archive, the Ministry of Labour, or the ILO's archives in Geneva, amongst the files and documentation, there would be António Almendra waiting for me, often to illuminate my path and clarify the many doubts I had.

In August 1930, aged 37, he joined the ILO as the Organization's first Portuguese official. He had, however, attended the 1925 and 1926 International Labour Conferences while working as a diplomat for the Portuguese State. From 1930 to 1942, he held various positions in Geneva. The BIT (Bureau International du Travail, the permanent secretariat of the ILO, based in Geneva) transferred to Montreal due to the outbreak of World War II, and he was forced to leave Geneva. He returned to Lisbon in October 1942, where he worked as the ILO's correspondent until 1947, when he went back to work in Geneva. His contract ended in April

¹ The present text was originally published in 2019, in "Economia e história: estudos em homenagem a José Maria Brandão de Brito, Alice Cunha, Cristina Rodrigues, Ivo Veiga" (Org.), pp.321-337.

² Researcher at the Institute of Contemporary History of the New University of Lisbon. (Universidade Nova de Lisboa).

³ This research was the basis of a PhD thesis, finalised in 2012, and published in Rodrigues, C. (2013). *Portugal e a OIT - 1933- 1974*. Porto: Afrontamento.



1953, when he reached the age limit of 60 years, but it was extended until the end of 1954. Once again, he returned to Lisbon. No longer an ILO official, he went back to work at the Ministry for Foreign Affairs (MNE). He was appointed the BIT correspondent, and held this post until 1963, when he reached 70 years old⁴.

While in different conditions and posts, António Almendra was closely linked to the ILO for almost four decades. It was a lengthy period, during which he actively took part and intervened in building the relationship between his country and the Organization, a relationship that, over the years, went through some very different phases – proximity, until the establishment of the *Estado Novo*, indifference, until the mid-1950s, and *rapprochement*, from 1956 onwards.

This text is divided into three parts, of unequal importance. In the first, we briefly present what we know about his origins, schooling and professional career⁵.

The second part, covering his functions at the ILO between 1930 and 1954 as an employee of the Organization, and his work as correspondent in Lisbon between 1955 and 1963, takes a look at some of his writings and the way in which they convey his questionings about, and contributions to Portugal's image at the ILO and to the relationship that built up over those decades.

Lastly, there is a note about the importance of António Almendra in that relationship, from the broader perspective of the value of knowledge communities – and within these, the corpus of officials from international organisations – to the international circulation of ideas and the construction of common denominators for development.

Personal details and educational and professional background

António Augusto Gomes d'Almendra was born on 25 April 1893 in Mogadouro, district of Bragança. He was the son of António Augusto Gomes d'Almendra and Júlia Amélia Pereira Gomes d'Almendra. He never married, and died in Estoril on 29 September 1974 at the age of 81 years.

He went to secondary school in Porto, and later sat the entrance exam for the Naval School at Lisbon Polytechnical College (later the Science Faculty of Lisbon University), but decided

⁴ Information retrieved from the ILO employee record (process 2507) for António Almendra. It contains biographical details, qualifications and previous employments, work at the ILO and other information. The record refers only to his employment with the ILO, and makes no reference to his last 10 years of work as Lisbon correspondent (1955-1963) since, at that time, he was no longer attached to the Organization.

⁵ We mainly use information gathered from his ILO employee record, and from his employee dossier at the Diplomatic Archives (Arquivo Histórico Diplomático), File S3 E16 P5 33732.

not to follow a military career for personal reasons. He then left for Berlin, where he studied at the city's Politechnic College (Charlottenburg) for four semesters. When the Great War broke out, he had to leave Germany and travelled to Switzerland, studying at the University of Zurich for six semesters. From Zurich he moved to Bern, to study a further six semesters at the Chemical Institute and Faculty of Philosophy I. It was at this University that he graduated in Sciences, finished a PhD in Chemistry, and was awarded a Certificate in Political Economy Studies⁶.

Career in the Ministry for Foreign Affairs (MNE)

His first post in the MNE was that of Special Attaché to the Portuguese Legation in Bern, where he served between 30 December 1920 and 30 August 1930. The appointment did not mean entry to the diplomatic career, which would only happen at the end of that period.

During those ten years, he was Secretary to the Portuguese delegations to League of Nations' assemblies (from 1921 to 1929), Portugal's delegate to the Conference on Customs Formalities in 1923, and Portugal's delegate to the International Red Cross Conference. He also took part in various delegations to the International Labour Conference. He participated in the work of the Portuguese-German Arbitral Tribunal, set up after the Peace Treaty, and conducted in Berlin, Frankfurt, Paris, Lisbon and Lausanne.

In 1930 he sat public entrance examinations in Lisbon, as a result of which he was appointed Third Secretary of the MNE's Legation, and thus embarked on a career in diplomacy⁷. He rose to Second Secretary in 1934, First Secretary in 1947, and to Legation Counsellor in 1952. After each of these appointments, he was seconded in the interests of the service, as he was working at the ILO⁸.

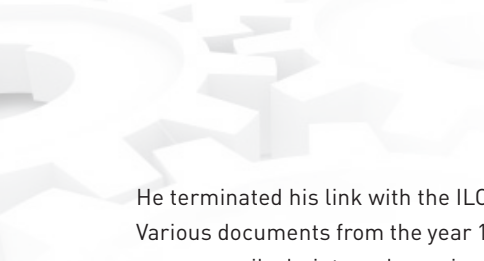
A word about the last competitive examination he sat for at the MNE on 1 July 1950, for promotion to Legation Counsellor or Consul-General. As part of his presentation he submitted a monograph entitled "The obligations of colonial powers in the Charter of the United Nations", which will not be dealt with in this text, but does deserve a careful reading, insofar as it assembles ideas and reflections of the United Nations that would be decisive in later years in the relationship between Portugal and its overseas territories⁹.

⁶ Information retrieved from the ILO's personal employee record (P. 2507), and especially from the letter of 02.12.1933 in which António Almendra applied for promotion to section member – ILO Archive Geneva.

⁷ Decree Law of 1.09.1930, he took office on 06.09.1930. Cf. António Almendra's individual Record at the MNE.

⁸ Exact dates of the decrees relating to promotion and taking office are in the aforementioned individual record at the MNE.

⁹ AHD/ MNE – File S3 E25 P7 34414.



He terminated his link with the ILO on 31 December 1954, but continued to work at the MNE. Various documents from the year 1955 deal with his future position within the ministry. There was no available internal opening and, because he was then 63-years-old, he could not be placed in an external post. He was seconded in the interests of the service and appointed ILO correspondent in Lisbon, a job he carried out until he reached the age of 70.

Career at the ILO

After passing a competitive examination in Lisbon in May 1930, he was appointed a category B (copywriter) Section Member, in the Relations Division, National Informants Service, and began working in Geneva in August that year¹⁰. He transferred to the General Information Service, where he worked as a copywriter for three years¹¹. From there he was posted to the Special Problems Section, where he also worked as a copywriter for three years¹².

In June 1940, because of the outbreak of war, the ILO's services left Geneva and moved to Montreal. António Almendra stayed in Geneva until 5 October 1942, when he left for Lisbon and worked there as the BIT's correspondent in Portugal until the end of 1946.

He resumed work in Geneva on 1 January 1947, joining the Non-metropolitan Territories Division as a grade II Section Member. On 1 January 1951 he was promoted to grade I Section Member.

When he reached 60 (in April 1953), his contract with the ILO came to an end. It was extended, however, until the end of 1954. As already mentioned, the last years of his professional life were spent as ILO correspondent in Lisbon, although no longer in a contractual relationship with the Organization.

Steps along the way

Over the decades, António Almendra was a key linchpin in the relationship between Portugal and the ILO. Whether out of a sense of professional duty or for believing that, being Portuguese in the Organization, it was his duty to build bridges with his country, he ensured that there was a two-way flow of information and knowledge sharing. He facilitated contacts,

¹⁰ He undertook this work in Geneva between 28.08.1930 and 27.07.1933. The first year was a trial period, so he officially joined the Organization on 28.08.1931.

¹¹ From 28.08.1933 to 28.08.1936.

¹² From 28.08.1936 to 28.08.1939.

supported the Portuguese delegations on their visits to Geneva, especially for International Labour Conferences¹³, and looked out for Portugal's interests at the ILO. When he was in Portugal on assignment, during WWII and the later years as ILO correspondent, he continued to pursue this dual mission and possibly even intensified his efforts: at the ILO Almendra was Portugal, while, in Portugal, he was the face of the ILO and defender of its interests.

We have chosen some moments and texts that illustrate this role or, rather, the various roles played by António Almendra.

1932 – What is happening in Portugal?

In the early years as an ILO official Almendra worked in the National Informants' Department. It was during this time that he produced a report¹⁴, dated 10 August 1932, on the situation in Portugal. It was entitled "1) The political situation since the advent of the dictatorial regime 2) Extracts from the report that preceded the new Constitution project – text of the articles of said project relating to the moral and economic Corporations and to the economic and social Order":

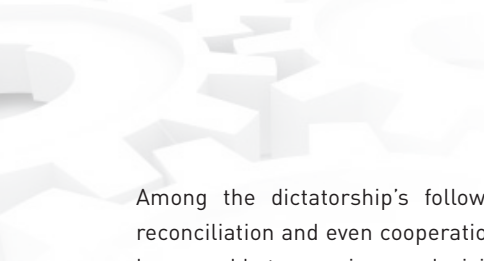
"On 28 May 1926, a significant segment of the army, quickly joined by the remainder of the army (with few exceptions), embarked on a successful military coup, without a shot being fired. The principles on which the coup's leaders based their policy are those which appear in the Statute of the National Union, a political organisation that they set up after the coup in order to garner support from the different sectors of the population. Here are the main points: (...) ¹⁵.

One outcome of the advent of the dictatorial regime was the dissolution of the political parties, whose core leaders are now abroad. On two occasions, the opponents of the dictatorship tried in vain to overthrow the Government. The outcome of these revolutionary efforts for hundreds of people involved in anti-regime activities was deportation to the colonies and other countries. It should be said that, tired of the political quarreling, public opinion received the military regime with a degree of approval. It is equally true that the leaders of the main political parties were incapable of reaching agreement on a joint action plan against the dictatorship. The latter, with the indisputable support of the vast majority of the army and navy, and in spite of some unpopularity, now has, in my opinion, sufficient strength to suppress any revolutionary movements that might surface.

13 By way of example, see the content of the note signed by Marcelo Caetano, who headed the Portuguese delegation to the International Labour Conference in 1947: "It is proposed that the Government express its gratitude to Dr. António Gomes Almendra for his active, dedicated and impartial participation in the work of the Delegation, for which he effectively served as Secretary." Document dated 14.08.1947, File S3 E16 P5 33732, AHD.

14 ILO Archive, Geneva. Dossiers des directeurs généraux. Portugal – notes on political, economic and social situation. 1932. Dossier XR 51. The document transcribed is dated 10.08.1932.

15 Transcript of the main points of the National Union Statute have been omitted here.



Among the dictatorship's followers, there are many who are currently in favour of reconciliation and even cooperation with the parties. They form a group that, until now, has been unable to exercise any decisive influence on the politics that began in 1926. The recent ministerial crisis, in the wake of which President Carmona handed over the presidency to former Finance Minister Oliveira Salazar, is proof of this. Salazar is, in fact, the man in charge, the real dictator, and the mainstay of the present regime thanks to the personal prestige he acquired through his financial policy, that was outstanding on all levels.

Straightening out Portugal's finances is a truly admirable achievement. In this respect, I believe it useful to make a few comments, even though examination of this problem is not exactly the aim of this note (...) ¹⁶.

In addition to its work on the country's finances, the Government's attentions are, in the main, focused on: road building; developing the railway network; improving and extending telephone and telegraph networks, and the recently created radio services; developing hydraulic energy; upgrading numerous ports with modern equipment; opening 2000 schools and reorganising the education system; decentralising State power in favour of local authorities and private sector initiatives; undertaking in-depth examination of the different colonial problems, and the physical and moral protection of the natives, an early result of which has been the Colonial Statute, the balancing of colonial budgets, and many other administrative measures. Here, there should be mention of the Minister for the Colonies' current visit to the African possessions, the purpose of which is to study, on the ground, the needs of the overseas provinces.

With regard to foreign policy, in recent years Portugal has developed relations with most nations, and has signed and ratified various agreements on friendship, trade, arbitration, extradition, etc. with them.

Concerning the League of Nations, Portugal's cooperation with this body of understanding and peace is particularly important and goes from strength to strength. Under the auspices of the League of Nations, Portugal has signed 63 conventions, 42 of which were followed up by ratification. Of the 63 conventions, 48 have been signed since 1926 and, of these, 26 have been ratified.

In relation to the conventions adopted by the International Labour Conference, it is important to note that, since the implantation of the dictatorial regime, eight of our conventions have been ratified by Portugal, and everything points to the fact that there are three more ratifications in the pipeline. Salazar is especially interested in social issues, and I believe we

¹⁶ The author's reading of Portugal's chronic deficit problem, and the measures taken by Salazar while Minister of Finance, have been omitted. This part of the text ends with the transcript of the findings of the report that accompanied the 1932-1933 State Budget, which had a surplus of 1673 contos.

can count on his good will in that area. Evidence of his commitment to protecting workers were his efforts to bring into force Decree N.º 20 984 of 7 March. This law introduced a benefits system for the unemployed.

The Portuguese press, now focusing less on political issues (censorship is there for a purpose!), and more on social and economic problems, welcomes the Bureau's publications, for which we should congratulate ourselves.

General Domingos de Oliveira, prime minister of the Dictatorship Government for more than two and a half years, has just tendered his resignation. The President of the Republic, General Carmona, entrusted the formation of the new government to Oliveira Salazar. This is the first time, since the advent of the 28 May movement, that the government is headed by a civilian. Only the ministries for War and for the Navy were assigned to military officers. Oliveira Salazar retained the previous government's ministers for the Colonies and Education, and kept his own job as Minister of Finance. The portfolio for Foreign Affairs was given to career diplomat César de Sousa Mendes, minister of Portugal in Stockholm. I am unfamiliar with the latter's thinking on issues of interest to the BIT. In that respect, I must express my regret at the departure of Mr. Branco¹⁷ who, in spite of having some reservations about the Bureau's work on indigenous labour and a few criticisms of Mr. di Palma Castiglione when he visited Portugal, on many occasions expressed his empathy towards our Organization, and promised me his support for setting up a National Section of the International Association for Social Progress. On that subject, it will be back to square one, especially since Mr. Vasconcelos¹⁸, who was fully briefed on the matter, will only be able to deal with it when he returns to Lisbon, after the next League of Nations' Assembly.

In his statements, Oliveira Salazar asserted he will pursue previous governments' political directives, which are the cornerstones of the Constitution project we are attempting to embark upon.

The previous government's Interior Minister called the country's civil governors to a meeting. He outlined the bases of the *Estado Novo* that the dictatorship intends to form, and delivered the following statements on the working classes: "The *Estado Novo* will consider the proletariat as being one of the main classes that has most interest in the Nation's stability and prosperity. In the belief that this constitutes one of the State's most pressing duties, it will ensure that workers have the living conditions and progress that justice demands, compatible with the Nation's economic needs. The consolidation of Portugal through order, production and well-being means that the proletariat must be attracted to a social ideal of

17 Fernando Augusto Branco, several times Foreign Affairs Minister, the last being between 22 March and 11 June 1932.

18 Augusto de Vasconcelos, politician and diplomat, worked at the League of Nations.



indispensable cooperation and solidarity, which is properly understood and far removed from revolutionary ideas, into which political agitators wish to hurl the country, thus damaging the Fatherland and their own interests.

The crisis and ruins of the present make it difficult to achieve a better corporative organisation of the working classes and the desirable social reforms. We will, however, examine these issues and are committed to finding possible solutions”.

Following this text on Portugal's political situation, António Almendra transcribed the report that served as the introduction to the proposed new Constitution, as well as some of the more significant articles on the project, emphasising that it had been put forward for public discussion and that, if there were any alterations, the ILO would be informed.

Curiously, at the time the above text was written, there was an ILO correspondent, Álvaro Neves, based in Portugal. He used to send information to Geneva via the Madrid correspondent, Fabra Ribas. During our research in Portugal, we found no references to this correspondent. However, in the archives in Geneva, several documents confirmed that he did exist, at least between mid-1931 and 1934. He stopped working with the ILO in April 1934 due to the Organization's budget restrictions and because he held two jobs – the correspondent was also a civil servant. Furthermore, since António Almendra was a BIT employee, reporting on what was happening in Portugal, the correspondent's role was redundant.

1937 – A change of role for António Almendra

Once there was no longer a Lisbon correspondent after 1934, it was Almendra, based in Geneva, who took on the function. He acknowledged this himself in a letter addressed to Luís Esteves Fernandes, who was in charge of Portuguese Affairs at the League of Nations, when Almendra transferred to the service dealing with indigenous labour issues:

“[...] This change means a substantially heavier workload, as I will continue to keep the different departments up-to-date on the progress of the *Estado Novo's* financial, economic and social policies, so that it is made known via the International Labour Office's publications and studies, whose worldwide distribution is an important propaganda factor. As I have been doing until now, I shall take advantage of the opportunity offered to me here and continue informing and providing documentation to the numerous official and non-official bodies, such as senior officials, teachers and political writers from different countries, who contact this Office or me with a view to understanding the legal aspects and progress of the corporative

regime in Portugal”¹⁹.

This long letter, only partially reproduced here, ends with a request for help with a problem: for a year, the MNE had not paid Almendra the allowance due to him, and this was causing him some inconvenience. It should be noted that, in addition to Almendra’s individual case, there were several other similar situations involving the MNE, and evidence of financial difficulties, which he would endure over the course of his public life, due to delays and bureaucracy at the MNE.

World War II

Despite Switzerland’s neutrality, the fact that the ILO’s headquarters were situated at the heart of Europe, facing a dramatic war scenario, led the Organization’s leadership to relocate its services to Montreal, Canada, in June 1940. Almendra, expressing reluctance to leave Geneva, only left for Lisbon two years later, in October 1942.

In a letter dated 16 April 1942, addressed to the Director, about having to return to Lisbon, not only for budgetary reasons but also because it was thought he could be of more service to the ILO from there, Almendra reacted by stating that his departure might be wrongly interpreted by the Portuguese government, insofar as the country maintained a permanent Office in Geneva, which worked as a link to both the League of Nations’ Secretariat and the BIT (ILO), and it was the only country to keep their representation open.

He went on to say:

“While it is true that President Salazar has sometimes not held back with objective criticism of certain discussions and methods used in Geneva, and of the ‘diplomacy in general assembly, where the League of Nations was a living consummate example of dishonour’, in one of his speeches he also stated the following, which clearly shows his commitment to the principle of international cooperation [...].

I think it would be wise to bear in mind the sentiment of international solidarity referred to by Salazar (...) and to avoid drawing attention to the current crisis, and the BIT’s delicate situation with my installation in Lisbon. I think that could provoke an adverse reaction [...].

Regarding the services I could provide to the BIT from Lisbon, as a provider of national information, I must stress that they would not be any better than those I can provide from Geneva, given how easy it is to receive here both Portuguese and Spanish documentation,

¹⁹ AHD/MNE, file S3 E16 P5 33732. Letter from Geneva dated 8 October 1937.

and given the assistance I am often called upon to provide here (...)”²⁰.

Months later, however, in October, Almendra left for Lisbon. Presumably unaware of the fact that he had left, in November the ILO Director-General, Edward Phélan, wrote from Canada via the British Consulate in Geneva, a message to H. Gallois, who had remained in Geneva, instructing Almendra to leave for Lisbon and, as soon as possible, to provide an alternative contact, and detailing the nature of the work he would be undertaking. He also recognises the splendid work done by all in Geneva²¹.

From the moment he arrived in Lisbon, Almendra got down to the hard task of strengthening relations with the Portuguese authorities. Letters exchanged over the next four years (1942-1946) between Almendra and Gallois in Geneva reveal the difficulties of wartime: the anguish surrounding visas required for travel to the US, and Almendra’s efforts with the Portuguese authorities as he tried to help friends and colleagues in Geneva to flee from persecution and war; the anxiety caused by absence of news of other friends, and the meetings and missed meetings with those who passed through Lisbon; the enormous difficulties with the postal service and the misunderstandings about the sending of letters and publications; the complications with money transfers. Nonetheless, it is surprising to see that, in spite of all the difficulties, the ILO continued to function and publish, and its employees’ endeavours to “normalise” life in such an adverse context were nothing but outstanding²². We do not know whether Almendra provided any information about Portugal during those four years since none has been located in the Lisbon and Geneva archives.

In November 1946, while still in Lisbon, Almendra wrote a long letter/report²³ to the BIT Director-General. Once again, he updates him on events in Portugal: new legislation, relevant appointments, the forthcoming ratification of at least twenty conventions²⁴, the allocation of funds to the National Labour and Welfare Institute (INTP) for gathering and subsequent transmission of information to the ILO. It should be pointed out here that, at that time, there was no ministry dealing with social and labour issues, so it was through the all-powerful INTP that all communications from Portugal to the ILO, and vice-versa, were channelled, as well as guidelines and/or standards coming from abroad.

Besides this information flow, Almendra was curious about the return to Geneva of the services and personnel, and the news from Gallois about the relocation to the “Sécheron

20 ILO Archive, Geneva. Personal employee record (P. 2507). Letter dated 16.04.1942.

21 ILO Archive, Geneva. Personal employee record (P. 2507). Letter dated 14.11.1942 to H. Gallois.

22 ILO Archive, Geneva. Personal employee record (P. 2507). The letters referred to are in this dossier.

23 ILO Archive, Geneva. Personal employee record (P. 2507). The letters dated 23.11.1946.

24 This was clearly over-optimism. Only in 1952 were six conventions ratified, all to do with maritime labour. It would be 1956 before Portugal ratified the first fundamental convention.

hive". Things were slowly getting back to normal²⁵.

The time as ILO correspondent in Lisbon

Apart from the World War II period, when he was in Lisbon in the service of the ILO, Almendra basically lived and worked in Geneva. He returned to Lisbon in 1955, once his employment with the ILO had terminated. He would work in Lisbon until he reached 70 (in 1963) as the Organization's correspondent in Portugal. He produced an extensive amount of documentation, covering a wide variety of aspects of Portuguese life²⁶.

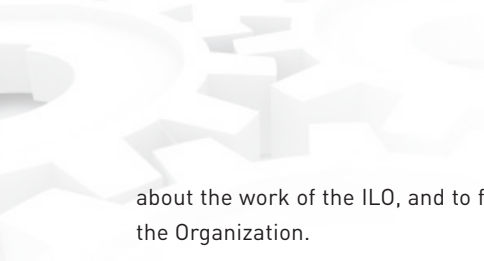
In these reports we find descriptions of his activities as correspondent, updates on the political situation, accounts of what the press and public opinion were saying about ILO-related topics, news of relevant books, and expectations regarding Portugal's ratification of conventions. As it is not possible to mention every one of the areas he covered, following is a brief overview of events he referred to in the first reports he sent from Lisbon in late 1955 and early 1956:

- Meetings were underway between the Minister for Corporations and Welfare and trade union representatives, to study social order issues;
- The 4th Session of the Committee of Experts on Social Policy in Non-Metropolitan Territories had been held in Dakar in December 1955, and the Deputy Director-General of the BIT, Mr. Jenks had delivered a speech there. Almendra circulated news of the event and the speech among the Overseas and Justice Ministers, the Secretary-General of the Foreign Affairs Ministry, high-ranking officials at the Ministry for Corporations and Social Welfare, university staff, company directors, and journalists. This exposure led to Mr. Jenks' speech being published in the press, and gave rise to discussion of the respective topics.
- He reported on the publication of a study entitled *25 Anos de Administração Pública* (25 years of Public Administration), and F.C.C. Egerton's book, *Angola without Prejudice*²⁷, in which the author rejected accusations made by Basil Davidson in various published articles about Portuguese colonialism.
- He reported on various meetings with governors and high-ranking officials, aimed to inform

25 ILO Archive, Geneva. Personal employee record, and also C51- 1 – National correspondent: Portugal general correspondence.

26 ILO Archive, Geneva. C51- 1 – National correspondent: Portugal, general correspondence. This set of documents alone merits research.

27 An important figure in promoting the *Estado Novo's* external image.



about the work of the ILO, and to find ways to improve cooperation between the country and the Organization.

- He recounted that the Portuguese Government could not provide him with an office, and complained about the bureaucracy entailed in renting an apartment that would be centrally located and large enough to serve as an ILO correspondent's office.

- While expressing many reservations on the matter, he reported on the possible forthcoming ratification of the forced labor convention, C029.

- He referred to the visit of President Craveiro Lopes to London, and that of Foreign Minister Paulo Cunha to the US.

- He mentioned the start of the Mozambique Legislative Council's work, underlining its political importance.

- He reported on an exhibition of ILO informative material, held at the headquarters of the FNAT – *Federação Nacional para a Alegria no Trabalho* (National Federation for Happiness at Work).

Through the eyes of António Almendra, we see the ascent through the regime of the then young Professor Adriano Moreira; the organisation and development of the prevention of occupational accidents and diseases campaign; the institution of Corporations; the studies on and preparations for the law on Social Welfare reorganisation; the changes in the law on women's work; the preparations for the new Labour Tribunals statute; the preparations for and holding of the African Consultative Commission in Luanda in 1959; the progress made on ratification of ILO conventions, and the pressure for ratification brought to bear on Lisbon by the correspondent, and the Portuguese government's positions on the African territories and labour issues in those domains.

A high point in the years as ILO correspondent was the mission to Portugal of Director-General David Morse, between 31 January and 3 February 1960. Almendra made careful preparations for his stay and it was considered a great success. Prior to the visit, he wrote an exhaustive report on Portugal, providing geographical, historical, and political elements, and also covering foreign policy, social and labour issues, overseas territories, and giving a detailed account of the relationship between Portugal and the ILO, with particular reference to the adoption of international labour standards²⁸.

Another noteworthy occasion, which inevitably would have caused tension in the Portugal-

28 ILO Archives, Geneva, File Z3 51/1 – Director-General's mission to Portugal, Feb 1960.

ILO relationship, was the ILO Commission of Inquiry into the existence of forced labour in Portugal's overseas territories. The Commission was set up in June 1961, following an official complaint lodged by Ghana²⁹. Almendra was also at the centre of these events. In a letter from Wilfred Jenks to David Morse, ILO Deputy Director and Director-General respectively, on the subject of the Commission's missions to the African territories, the Lisbon correspondent was referred to as a key player in the ILO's link to the Portuguese government, who had been asked to intervene in several domains³⁰.

Thus, we have before us a depiction of Portuguese society during the years when international pressure intensified and the regime endeavoured to renew itself, not only in terms of its relationship with the overseas territories, but also internally, making headway towards modernisation. Almendra was an advantaged spectator and raconteur, but he was also an active player in the relationship with the ILO, by virtue of receiving and transmitting information in both directions, by pressuring for decisions, and establishing and facilitating contacts, thanks to his relations at the highest levels, both within Portugal and in Geneva.

In spite of the regime making some progress, in which the ILO's influence, to an extent embodied in Almendra, was decisive, the fact is that this diplomat acknowledged to being a solid defender of the *Estado Novo*, who believed in its evolutionary potential – of which the progress being made was evidence –, and supporter of Oliveira Salazar. This is exemplified by the way in which he reported back on Salazar's statements at the IV Congress of the National Union, on the 30th anniversary of the 1956 National Revolution, and at the time of the 1957 legislative elections, and the way he emphasised the "perfect freedom of information and expression" that the regime's followers and adversaries enjoyed, and the way he described the results:

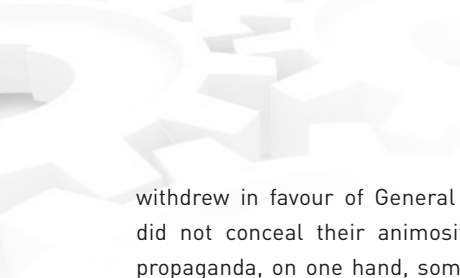
"This circumstance enables us, however, to draw relevant conclusions about the political importance of the elections. In fact, in spite of all the opposition's propaganda and the number of abstentionists on both sides, for ideological or other reasons, we should emphasise that out of one million, three-hundred thousand electors, more than two-thirds voted for the Government".

Furthermore, after the 1958 presidential elections, when Américo Tomás was elected, he wrote:

"This important political event, which will not affect relations between Portugal and the ILO, was preceded by an intense election campaign, during which a second opposition candidate

29 Oksana W., Tortell, L. e Pimenta, C. (s/d). *Colonialism, forced labour and the International Labour Organization: Portugal and the first Commission of Inquiry*. Published online in the ILO Centenary project. See also: Monteiro, J. P. (2018). *Portugal e a Questão do Trabalho Forçado*. Lisboa: Edições 70.

30 ILO Archives, Geneva, File Z11/12/3, letter dated 22.12.1961.



withdrew in favour of General Humberto Delgado. The corporative regime's opponents did not conceal their animosity towards the current Government, spreading, in their propaganda, on one hand, sometimes fallacious arguments about foreign policy and the economic and social achievements of the last 30 years, and, on the other hand, criticisms aimed at modifying the structure of the State or tending to point out the advantages of press freedom (of which they benefitted during the election campaign) and of the organisation of political parties that is practically non-existent in Portugal”.

The examples could go on. Over the following years, Almendra reported on and forwarded Salazar's speeches to Geneva. While he advocated the urgency and importance of ratifying ILO conventions, namely those that would be specifically applicable in Africa, and the social benefits that would be gained thereby, it is clear from the way he writes that Almendra adhered to and upheld the Portuguese Government's perspective, i.e. that the overseas territories constituted integral parts of the Nation, and that decolonisation did not come into question since the territories were not, in fact, colonies.

António Almendra was 70-years-old on 25 April 1963. On 1 May, he stopped working and was replaced by Sebastião Lorena. In the letter he addressed to the Head of the External Services Division in Geneva, he referred to the interest that “for many years” had connected him with the work of the ILO. He went on to say: “I truly hope that the excellent relations between the BIT and Portugal, towards which I am happy to have made a modest contribution, will develop and become even closer, in line with the interests of our Organization”³¹. The reply he received was equally emotional, emphasising the value of their mutual cooperation and the fact that it had been so long-lasting³². It really had been a lifetime.

Conclusion

We have followed António Almendra's footsteps, observing a life that was intimately linked to the ILO for four decades. As the first Portuguese official to work at the Organization, he always acknowledged – as was expected he would – that he was Portugal's spokesman in Geneva, but, at the same time, the ILO's representative in Portugal, regardless of the different positions and conditions he took on. His personal rapport with the national elite, as well as with the ILO leadership, greatly facilitated his double mission.

Interpreter and defender of the *Estado Novo*, he advocated the interests of his country at the ILO, especially in relation to colonial issues. At the same time, he was a tireless proponent

31 ILO Archives, Geneva, Personal record, letter dated 03.05.1963.

32 *Idem*, letter dated 09.05.1963.

of Portugal's ratification of international labour standards, a process that would have a significant impact on the country's external image, and which would bring noticeable political and socio-economic changes, not just to the metropolis, as it was then called, but also to the overseas territories.

Portugal's slow appropriation of ILO reference standards corresponds to a process of juridicisation of domestic social and labour spaces, in which the emergence of the Social State is anchored. The Social State was born in the post-war era and, in Portugal, appeared in the 1960s and was eventually achieved in the post-25 April period³³. The leading role in this process was played by the political decision-makers. The high-ranking representatives of the respective supervisory bodies, and the politicians who went to Geneva to attend the International Labour Conferences, were the most visible actors in the process. However, there was a whole host of supremely important technical preparatory work done behind the scenes by technical staff of the national bodies who worked in liaison with ILO specialists and professionals in counterpart bodies from other countries, constituting what Sandrine Kott described as a social "epistemic community", underlining the importance of such networks in the internationalisation of social policies and in the dissemination of the ILO's patrimony³⁴.

The production of standards, models that can be replicated, and fine-tuning guidelines by the ILO are a reflection of political consensuses, based on the possibility of establishing labour rights and respective benefits in the practical order³⁵. Behind this political dimension, lies a vast dialogue of technicians, both internal and external, at vertical and horizontal levels, who also consensualise the conceptual dimension, at both thought and language levels, and the operational dimension of social policies, that will expand and affect each specific country.

António Almendra played a very active role in this process, as part of the community of technicians who shared knowledge and facilitated the reaching of consensus and adoption of international standards and guidelines in Portugal. He was, in fact, a "double agent", representing the ILO in Portugal, and, on so many occasions, being Portugal's voice at the ILO.

33 Ewald, F. (1986). *L'État Providence*. Paris: Bernard Grasset.

34 Kott, S. (2008). Une communauté épistémique du social? Experts de l'OIT et internationalisation des politiques sociales dans l'entre-deux-guerres. *Genèses*, 71 (2), pp. 26–46.

35 Bonvin, Jean-Michel (1998). *L'Organisation Internationale du Travail: Étude sur une agence productrice de normes*. Paris: Presses Universitaires de France.

05

Part I - Dialogues in History Portugal, the ILO and Employment Policies between 1960 and 1974 ¹

PEDRO ALMEIDA FERREIRA²

Abstract

This research aims to reflect on the importance of standards produced by the International Labour Organization (ILO) in the definition of employment policies in metropolitan and overseas Portugal, between 1960 and 1974. It also serves a wider purpose, that of doctoral research on productive restructuring and changes in the labour market in Portugal, between the 1950s and 1980s³.

The inclusion of colonial territories in this analysis is a complex exercise, subject to serious limitations. African labour cannot be considered in the study because Portuguese policy in Africa was far from being recognised by the international community. Furthermore, most efforts to change the situation were through legislation and planning. As a result, the sources and historiographical analyses are not abundant. Thus, the focus will be on the settlers and the perspective will necessarily be more from analysis of legal documents and an attempt to understand the colonies' place in decision-making on policies, which were always more related to the metropolitan domain.

1 The present text was originally published in 2016, in "100 Anos da Organização Internacional do Trabalho: O Centenário do Ministério do Trabalho: A Institucionalização da Regulação Laboral", Cadernos Sociedade e Trabalho, XVIII, pp. 97-110.

2 PhD student at the Institute of Social Sciences of the University of Lisbon. This article is republished posthumously.

3 *Trabalho Rural em Portugal: mobilidade geográfica e profissional* (c.1950-1980) [Rural Labour in Portugal: geographical and professional mobility], doctoral thesis supervised by Prof. Dr Dulce Freire and Prof. Dr Cristina Rodrigues.

1. A time of convergence

As a result of a new economic and social reality in the metropolis, the relationship between Portugal and the ILO intensified between 1960 and 1974, leading to a process of modernisation of the country's productive structure that began in the early 1950s and which gave rise to consistently high GDP levels of growth and convergence with the more developed economies. The particularity of this growth, paralleled in various European countries in the post-Second World War period, was that it had been generated under the auspices of an authoritarian, colonialist and interventionist regime that conditioned private initiative and the functioning of the markets. However, we are looking at a time when the extent of openness towards the outside was in contrast with that of the first three decades of the *Estado Novo*⁴. Joining EFTA in 1959, the IBRD and IMF in 1960, GATT in 1962, and the preferential agreement with the EEC in 1972 brought Portugal closer to Europe's western democracies⁵. This tendency was further reinforced when the III Development Plan (1968-73) came into force. The emphasis was then placed on the normal workings of competition and the market, on corporate concentration, on a policy of exportation and attracting foreign investment, and called upon entrepreneurial dynamism to execute a new industrial policy⁶, which would permit a more rapid increase in domestic product, more equitable distribution of profits, and the gradual rectification of regional development imbalances.

During this period, the Portuguese economy's main growth tool was capital accumulation, which was achieved by substituting manpower by machinery, thereby driving up productivity in all sectors. This led to a transformation of the labour market and a change in the structure of employment.⁷

In 1950, Portugal had a predominantly agricultural economic structure, with a subordinate industrial activity. Until the 1980s, it rapidly progressed towards outsourcing and higher levels of social well-being. This evolution, which happened in the space of a generation, was achieved through a labour force of rural origin, poor and unqualified, with inadequate psychological and occupational preparation for industrial work, and which had a strong propensity for emigration due to prevailing chronic underemployment. At the same time, modernisation of the Portuguese economic structure was realised in the context of extensive growth disparities

4 This has been necessary since mid-1950s, even within the National Union. AA.VV, IV Congresso da União Nacional: Ano XXX da revolução Nacional - Conclusões Gerais (Lisboa: União Nacional, 1956).

5 AMARAL, Luciano, "O processo económico", em *A busca da democracia (1960-2000)*, ed. José Luís Cardoso, vol. 5, *História Contemporânea de Portugal (1808-2010)* (Madrid; Carnaxide: Fundación Mapfre; Objectiva, 2015), pp. 81-112.

6 MARTINS, Rogério, *Caminho de país novo* (Lisboa: Gris, 1970). He was Secretary of State for Industry between 1969 and 1972.

7 AMARAL, "O processo económico"; LAINS, Pedro, "Agriculture and Economic Development in Portugal, 1870-1973", in *Agriculture and Economic Development in Europe since 1870*, ed. Pedro Lains e Vicente Pinilla (London; New York: Routledge, 2009), pp. 333-52.

between the country's different regions, so encouraging the geographical and occupational mobility of thousands of workers was essential. It meant intensifying the rural exodus that had started in the 1950s and even fitting in some of the population that was heading towards emigration. This entailed measures relating to labour market planning, and putting in place public bodies that would upgrade these workers and an appropriate legislative framework. Portuguese participation in international organisations, particularly the ILO, was vital to the importation of public policies that would help to address these challenges.

2. Portugal and the ILO

Portugal was one of the signatories to the Treaty of Versailles that, in 1919, created the ILO. The Preamble of the ILO Constitution refers to ensuring social justice by improving conditions of labour as the only way to establish universal and lasting peace⁸. This principle is restated in the Declaration of Philadelphia, signed in 1944, which was annexed to the ILO Constitution in 1946. Its Keynesian-inspired preventive logic, that assumes the objective of full employment and protection of workers, was innovative. It was a consequence of the post-war, a new time when priority was given to expanding production capacity and when the benefits of state intervention in terms of macroeconomic policies were recognised and economic theory based on self-regulation of the markets mistrusted⁹.

The planning of the economic policies included the forecasting, allocation and development of resources, i.e., the mobility of the labour force, as referred to in the Declaration of Philadelphia, III (c): "the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement."¹⁰ This end, subordinated to a view aligned with the path of the main European industrial powers – that also reflected, for example, the existence of colonies – it anticipated some of the measures that would be proposed a few years later by the ILO, which, for the more developed countries, aimed to improve and expand their employment services and policies, and in the case of developing countries, sought the creation of structures that would respond to the constant and rapid changes caused by economic expansion, and that would boost their populations' levels of consumption.

8 *Ministério do Trabalho e da Solidariedade Social* of Portugal, ILO fundamental documents (Lisboa: Gabinete para a Cooperação, Ministério do Trabalho e da Solidariedade Social de Portugal, 2007).

9 RODRIGUES, Cristina, *Portugal e a Organização Internacional do Trabalho (1933-1974)* (Porto: Edições Afrontamento, 2013); Américo Ramos dos Santos, "Política económica e política de emprego: o modelo dos anos 50-60", *Análise Social* XV, n.º 59 (1979): pp. 611-53.

10 Portugal, *ILO fundamental documents*.

2.1. Employment Service Convention N.º 88

The Employment Service Convention N.º. 88 was adopted in 1948 at the 31st Session of the International Labour Conference, held in San Francisco. Given its far-reaching potential, it was seen to be of universal value¹¹. Its purpose was to achieve full employment through a free public employment service that, in cooperation with other public and private bodies concerned, would contribute to the development of productive resources by way of the best possible organisation of the labour market. The employment service was to comprise a network of local and regional offices under the direction of a national authority, supported by advisory committees of employers and workers, in a system of social dialogue¹². At the same Session, and by way of supplementing the Convention, a Recommendation was also adopted. It provided member states with guidance on how to implement the system, and emphasised, among other aspects, the importance of facilitating the mobility of labour, in an active policy for the labour force¹³.

These instruments gave rise to technical and political reflection in Portugal during the 1960s, and the standard was eventually ratified in 1972¹⁴. It entered into force on 23 June 1973, less than a year before the revolution. Although the process had taken more than two decades, it was significant in that it was the first and only ratification by the *Estado Novo* in the area of employment. This in itself deserves careful analysis, especially since it had a bearing on the colonial territories.

The first report, sent in 1974 by the Portuguese government, on the measures for implementing the provisions of Convention N.º. 88, referred to three legislative initiatives that were fundamental to ratification¹⁵: the creation of the *Serviço Nacional de Emprego* (National Employment Service), SNE, in 1965¹⁶; the creation of the advisory committees in 1970¹⁷, and the extension of the employment service to the overseas territories in 1971¹⁸. A detailed examination of the background to this process, based on meticulous archival research work, is given by Cristina Rodrigues in her doctoral thesis, which I am interested in examining further¹⁹.

11 BRAGANÇA, Nuno (1964), “O serviço de emprego na política de mão-de-obra.”, *Análise Social* II, n. 6: pp. 214-36.

12 Convention N.º. 88 on the organisation of employment services, 1948.

13 Recommendation N.º. 83 on the organisation of employment services, 1948.

14 Decree Law 174/72, of 24 May.

15 MESS/DAOIT/ILO Archive – File on Convention N.º 88 – reports.

16 Decree Law 46.731, of 9 December.

17 Decree 530, of 7 November.

18 Decree 324/71, of 27 July.

19 RODRIGUES, *Portugal e a Organização Internacional do Trabalho (1933-1974)*.

From the beginning of the *Estado Novo*, employment issues were, to some extent, placed within a legal framework. The 1933 Constitution enshrined people's right to work and to choose their occupation, and the National Labour Statute established the guarantee of a decent wage²⁰. However, these principles almost always came into being through reactive logic. The most well-known example of this was the Unemployment Commissariat (*Comissariado de Desemprego*). Set up in 1932²¹, within the Ministry for Public Works, its purpose was to tackle the severe unemployment problem in the context of the 1929 crisis. The Decree Law itself stated that it was "not meant to create a new permanent form of labour use. It concentrates half a dozen attempts to alleviate the present crisis [...] [and will be] transitory in nature"²². It was a programme based on small to medium public works initiatives that responded to the need for creating or modernising the country's infrastructures, and that followed the "better to give work than hand-outs" maxim, repeatedly quoted by Minister Duarte Pacheco²³.

Although the problem of unemployment was a common denominator to the Unemployment Commissariat and ILO Convention N.º 88, their objectives were not the same. This, however, had not been clear to the National Welfare Institute (Instituto Nacional de Previdência), which issued two contradictory statements on the subject in 1949²⁴. There are no archival records of any subsequent procedures designed to clarify the matter. Consequently, the ratification seems to have had another outcome of the country's political and economic situation in the 1960s and 1970s, other than the result of a prior social concern, which is in line with the first two Development Plans (1953-58; 1959-64). In this respect, it was the interim Development Plan (1965-67) that first showed State concern about employment policy. This change arose out of the need to organise a labour market that would successfully achieve the productive restructuring process and respond to new economic challenges.

Mário Murteira maintains that the concern underlying the creation of the SNE in 1965 was not the unemployment context, but rather the shortage of manpower caused by emigration²⁵. Mobilisation for war would have been another contributory factor. Murteira, along with a growing community of researchers and technicians, working in institutions such as the Labour Development Fund's Studies Office, the Centre for Social Studies, and the Social Research Office, played a key role at that time in circulating ideas and models relating to employment

20 Constitution of the Portuguese Republic, Art. 8, N.º 7. *Diário do Governo* N.º 43/1933, 1.º suplemento, Série I de 22 de fevereiro de 1933; Estatuto do Trabalho Nacional, *Diário do Governo*, N.º 217/1933, Série I de 23 de setembro.

21 Decree 21.699, of 19 September.

22 *Ibid.*

23 SILVA, Eduardo Ferreira (1948), *Quinze anos de actividade (1932-1947)*, Comissariado de Desemprego, Lisboa.

24 This situation is presented by RODRIGUES, *Portugal e a Organização Internacional do Trabalho (1933-1974)* Foi reencontrada em MSES/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service.

25 MURTEIRA, Mário (1966), "A criação do Serviço Nacional de Emprego", *Análise Social* IV, n.º 13, pp. 112-16.

and, therefore, in awareness-raising among the elite who were running the State²⁶. In fact, the question of implementation of international models was fundamental at that time. There is no evidence that Portugal benefitted from ILO technical assistance in the launch of the SNE, but it did receive support from the OECD, not only in drafting the law but also for the opening of the first employment agency in Lisbon²⁷. The OECD was another international organisation, and approved a recommendation on the subject in 1961²⁸. Like the ILO, the OECD regarded employment policy as an instrument for economic growth, albeit with little autonomy in relation to economic policy. In a market economy system, from a neoclassical perspective, employment policy, together with fiscal and monetary policies, was seen as one of the solutions for remedying the imbalances created by private initiative²⁹.

The SNE began functioning in 1967 and, four years later, was providing coverage throughout the metropolis through 33 centres, distributed between ten regional divisions³⁰. Despite the network's rapid growth, it had difficulty in establishing itself because several public services persisted in advertising its services only through the official government gazette. This gave rise to protest by the SNE³¹. Furthermore, at first it was unable "to extend (its work) to reach the professional activities' sectors, which made the Portuguese government believe, initially, that the criteria for ratifying the convention had still not been met³². No reference was made to the inexistence of the service in the colonies. Although Portugal had been one of the last countries in western Europe to establish a public employment service³³, there were several nations at that time finding it hard to meet all the requirements of Convention N.º 88 and Recommendation N.º. 83. Some of the reasons they gave were similar to the issues that Portugal was probably facing during the process, namely insufficient specialised technical

26 RODRIGUES, Maria João; LIMA, Marínus Pires de (1987), *"Trabalho, emprego e transformações sociais: trajetórias e dilemas das ciências sociais em Portugal"*, *Análise Social* XXIII, n.º 95, pp. 119-49.

27 MURTEIRA, *"A criação do Serviço Nacional de Emprego"*.

28 BRAGANÇA, *"O serviço de emprego na política de mão-de-obra"*; BRANQUINHO, Isilda Nunes, *"Crescimento Económico e Política de Emprego"* (1965), *Análise Social* III, n.º 11, pp. 361-68; OCDE, *"OCDE - A Política de Mão-de-Obra, instrumento do Crescimento"* (1965), *Análise Social* III, n.º 11, pp. 369-74.

29 BRANQUINHO, *"Crescimento Económico e Política de Emprego"*; SANTOS, *"Política económica e política de emprego: o modelo dos anos 50-60"*.

30 MSESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19, Report on Convention N.º 122, 1971.

31 AHD/MU/GM/GNP/RNP/0368/06317 – Case no. A-3-10, SNE.

32 MSESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19, Report on Convention N.º 88, 1967.

33 MURTEIRA, *"A criação do Serviço Nacional de Emprego"*; Iran, Syria, Lebanon, Egypt, India, Turkey, Iraq, China and Japan, for example, also started their processes earlier. BRAGANÇA, *"O serviço de emprego na política de mão-de-obra"*.

personnel³⁴, the need to reorganise existing institutions, lack of funding, adapting domestic legislation, and the inexistence or under-capacity of the social security system³⁵. According to a 1954 OECD questionnaire, cited by Nuno Bragança³⁶, that reported levels of compliance with the organisation's recommendations – which were similar to those of the ILO – by the date of the report's release, only Belgium and the UK had managed to fulfil all the recommended standards, while Austria, Federal Republic of Germany, and the Netherlands had observed all but one, thus illustrating the complexity of the process.

A moment that seems to have been decisive for Portugal's ratification of the convention was the participation, as technical adviser to the Portuguese delegation, of SNE Director Luís Morales in the 56th Session of the International Labour Conference, held in Geneva in 1971, where he personally took up government representation in the commission of the World Employment Programme³⁷. This initiative was seen as highly politically significant and was used to speed up the process³⁸. Launched in 1969, its objectives were: to reverse the tendency of constant masses of peasants and slum dwellers who continued to live on the margins of development, to increase (...) and, to provide them with the skills needed to access productive work; to accelerate rural development, industrialisation processes and international trade³⁹. Despite the initiative being aimed mainly at developing countries, some recently decolonised and in the process of joining the ILO, it could also have been applied, in practice, to Portugal and its colonies.

From 1970 onwards, the SNE Regional Advisory Committees were operational. These were a requirement of the Convention, in line with the ILO's tripartite spirit. The intention was to involve the private sector, namely the guilds, and trade unions, as well as public administration departments, and thereby enable the SNE not only to work more effectively by better tailoring its services to needs, but also to proceed to the necessary extension of the network⁴⁰.

34 Although there is no evidence in the SMESS archive, everything points to the fact that recruitment of sufficient numbers of skilled personnel could not have been an easy task, as referred to by *Ibid*.

35 MSESS/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service. Report of the Committee of Experts, 53rd Session of the ILC, 1969.

36 BRAGANÇA, “*O serviço de emprego na política de mão-de-obra*”.

37 MSESS/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service. Report from the SNE Director on the 56th Session of the ILC, 1971.

38 MSESS/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service. Letter from the *Ministério das Corporações e Previdência Social*, submitting the matter for the *Ministério de Ultramar*'s consideration, 7.4.1972.

39 RODRIGUES, *Portugal e a Organização Internacional do Trabalho (1933-1974)*, p. 368.

40 MSESS/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service. Letter from the *Ministério das Corporações e Previdência Social* (SRI) submitting the matter for the Foreign Ministry's consideration, 5.5.1972.

2.1.1. Extension of the National Employment Service to colonial territory

Concern relating to the need for an employment policy in the colonies existed ever since at least 1961⁴¹, with the creation of the Institute for Labour, Welfare and Social Action (Instituto do Trabalho, Previdência e Ação Social). A department was set up within the Institute to examine and resolve employment issues relating to manpower supply and demand, placement services, migratory movements and foreigners working in the provinces and nationals working abroad. Privileged relations were established between Cape Verde and São Tomé e Príncipe, and various placement centres were installed in Angola, which worked as pilot experiments for the SNE. These centres would respond to the failure of the trade unions' placement agencies that had been operating in the colonies since at least 1948, and whose purpose had been to forecast labour market needs⁴².

Reports of settlers' unemployment and the lack of decent jobs were recurring topics in the press during the 1960s. In 1964, in the major city of Beira, it was "hard to find a job compatible with the skills acquired during years of study in secondary school or technical college (...) a job in which young people can (...) find ways of achieving the projects they had imagined"⁴³. At the same time, in the town of Caála, province of Huambo in Angola's interior region, the Junta Autónoma das Estradas (Autonomous Road Authority) downsized its workforce, laying off "46 workers and employees, of various categories and functions, and more than 100 specialised native workers"⁴⁴. In all the provinces, "the heads of families struggle with sometimes insuperable difficulties just to get bread on the table for the family"⁴⁵. Some of them became street vendors, others refused to pay for their purchases in shops, many became dependent on raffles and help from social assistance⁴⁶. Those who were able, emigrated to other African countries, such as South Africa and Sudan⁴⁷. Every day, newspapers would receive requests for help or complaints relating to "leave due", "unpaid overtime", and "abusive dismissals"⁴⁸. The idea that there was no future for unskilled labour and that companies were backing "fast track training courses" was widely held, even though it was known that such training was limited and

41 Decree Law 44.111, of 21 December.

42 MU/GM/GNP/SR105-T16 – *A Tribuna*, Lourenço Marques, 21 February 1964.

43 MU/GM/GNP/SR105-T16 – *Diário de Moçambique*, Lourenço Marques, 18 April 1964.

44 MU/GM/GNP/SR105-T16 – *Planalto*, Nova Lisboa, 17 April 1964.

45 MU/GM/GNP/SR105-T16 – *Diário de Luanda*, Luanda, 8 February 1964.

46 MU/GM/GNP/SR105-T16 – *Notícias*, Lourenço Marques, 23 January 1964; *Notícias*, Lourenço Marques, 29 January 1965; *Notícias*, Lourenço Marques, 23 August 1966.

47 MU/GM/GNP/SR105-T18 – *A Tribuna*, Lourenço Marques, 20 January 1964; *Diário de Moçambique*, Beira, 11 December 1964.

48 MU/GM/GNP/SR105-T16 – *A Tribuna*, Lourenço Marques, 16 April 1964; *Diário*, Moçambique, 24 April 1966.

prevented “freedom of choice in employment in case of unemployment”⁴⁹.

This scenario would have been an important consideration in the choice of Luanda as the venue for the IV Colóquio Nacional do Trabalho, da Organização Corporativa e da Segurança Social, held between 18 and 23 August 1966. The event was attended by Gonçalves de Proença, Minister for Corporations, who arrived with about 1000 “excursionists”, including public administration officials and technicians, folkloric groups and television crews⁵⁰. The colloquium was chaired by the Angolan Governor-General, and attended by delegates from all the colonies⁵¹. In this context, unsurprisingly, the employment service was extended to Angola and Mozambique in 1971⁵². Economic growth had been faster in these two colonies, and there had also been expansion in railroad and education structures⁵³. The existence of services of this type in commercial cities in other colonial empires, at least since the late 1920s, was fairly common, as the cases of Saigon and Hanoi (Indochina), Bandung, Jakarta, and Surabaya (Dutch East Indies) illustrate⁵⁴.

The aim of Decree 324/71 of 27 July was to structure the supply of labour in Portugal’s colonial territories, and it replaced the dispersed legislation relating to workers in commerce, industry and services. Special legislation defined the system and coordination procedures with trade unions’ placement agencies and other public services or autonomous bodies⁵⁵. For rural and equivalent workers, the 1962 Rural Labour Code⁵⁶ had already established “a public, free placement service”⁵⁷. The Code, together with the labour inspectorate, was to safeguard emigrants to countries such as South Africa and Rhodesia, and observe the work carried out by private recruitment services, which could not operate without respective licences and permits, and which had to deal with issues such as the transport of workers and their travel expenses⁵⁸. One consequence of the new law was the extinction of private recruitment services within the following five years. It also resulted in the establishment of other infrastructures,

49 MU/GM/GNP/SR105-T16 – *A Tribuna*, Lourenço Marques, 20 June 1966.

50 MU/GM/GNP/SR105-T16 – *Jornal*, Benguela, 11 June 1966; *Jornal*, Benguela, 18 August 1966.

51 MU/GM/GNP/SR105-T16 – Illegible title, 13 August 1966.

52 Decree 324/71, of 27 July.

53 *Ibid.*

54 BRAGANÇA, “*O serviço de emprego na política de mão-de-obra*” The author gives no further details about these cases and provides no reference that would enable further information gathering.

55 MESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19. Report on Convention N.º 122, 1971.

56 Decree 44.309, of 27 April.

57 MESS/DAOIT/ILO Archive – File on Convention N.º 88 – regarding the organisation of the employment service. Reply from the *Ministério de Ultramar* to letter from the *Ministério das Corporações e Previdência Social*, 22.4.1972.

58 MESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19, Report on Convention N.º. 122, 1971.

namely Vocational Training Centres, which could deliver types of learning not provided by schools – such as learning for young people, fast track training for adults, further training and vocational retraining courses. The SNE in the colonies mirrored the organisation's structure in the metropolis⁵⁹.

Extending the SNE to the colonies was the result of Portugal's compliance with Convention N.º 88, but it also served the interests of the Ministry for Overseas that, supported by Juntas de Povoamento (Settlement Councils), was resolved to launch new colonisation initiatives. The SNE's work in the colonies was seen by the administration as an initiative for the settlers, and it fitted in with a renewed concern about emigration. In 1970, the Secretariado Nacional da Emigração (National Secretariat for Emigration) replaced the Junta da Emigração (Board of Emigration)⁶⁰. Its main concerns were the creation of settlement conditions in the country and the regulation and channeling of the existing populational dynamics, now framed within the context of national employment policy, and collaboration between the ministries for Corporations and Social Welfare, Interior, and Overseas. The new emigration service and employment service cooperated actively not only to set the departures into the legal framework and lessen migratory propensity, but also to encourage the return of emigrants to the metropolis or to the colonies. The delegations of the Emigration Service were, therefore, an informal platform of the SNE in countries such as France, Luxembourg, Federal Republic of Germany, Venezuela and Canada⁶¹.

The SNE network, originally restricted to Angola and Mozambique, was later extended to the other colonial territories. In 1971, the SNE director stated: "[...] in view of the results of a recent mission by our Services and the National Secretariat for Emigration to Cape Verde, it is likely that such services will shortly arrive there too"⁶². With the publication of Decree 241/73 of 6 April 1973, SNE coverage was extended to all the overseas territories, at least normatively.

2.2. The creation of an employment policy: an unfinished project completed

The 1960s were decisive for the ILO and for Portugal in terms of promoting policies for full employment. This was, in fact, a global trend being followed by numerous international organisations and countries. Full employment called not only for organisation of the labour

59 AHD/MU/GM/GNP/RRI/0721/00515-004 – *Diário de Notícias*, Lisbon, 24 May 1972.

60 Decree Law 402/70, of 22 August.

61 SANTOS, Vanda, *O discurso oficial do Estado sobre a emigração dos anos 60 a 80 e imigração dos anos 90 à actualidade* (Lisboa: Alto-Comissariado para a Imigração e Minorias Étnicas, 2004).

62 MESS/DAOIT/ILO Archive – File on Convention N.º 88 – on organisation of the employment service. Report of the SNE on the 56th Session of the ILC, 1971.

market, but also everything that was upstream: the education system, availability of housing, access routes, transportation, etc. Furthermore, employment had to be generated not only in numbers but also in quality, in line with a strategy designed to respond to the conjunctural tendencies in the different branches of the economy. The skills of the active population needed to be adaptable to constant technical developments.

In 1964, at the 48th Session of the International Labour Conference, the members of the ILO took a major step forward towards international standardisation of employment policy, with the proposal and adoption of Recommendation (R122) and Convention N.º 122. It was the first initiative that considered employment policy in articulation with economic policy, without subordination of the former, as had been the case in previous decades.

The standard sought to integrate various ILO initiatives – such as the 1948 Employment Service Convention and Recommendation, the 1958 Discrimination (Employment & Occupation) Recommendation and Convention, and the 1962 Vocational Training Recommendation – with a view to promoting full, productive and freely chosen employment. Free choice of employment and protection against unemployment were universalisms shared by the Declaration of Philadelphia and the Universal Declaration of Human Rights, and this was the opportunity to re-establish them. The ILO was in the run-up to the launch of the World Employment Programme, which, although not achieving its full potential, did mobilise the whole organization, in terms of not only resources, but also membership participation⁶³.

As previously mentioned, major changes were occurring in Portugal during the 1960s, not only in terms of reshaping the productive structure, but also the circulation of new ideas. For example, the intellectual and political elite were operating with new principles influenced by Keynesianism, whose impact was particularly felt in relation to planning⁶⁴.

Despite the national and international contexts being very favourable, Portugal only ratified Convention N.º 122 in 1980⁶⁵. One of the reasons for the delay was the revolutionary process that had erupted in Portugal between 1974 and 1976. Up until the 25 April 1974 military coup, the *Estado Novo* had taken serious steps towards considering ratification. This conclusion may be reached by analysing the reports presented to the ILO under Article 19. In 1967, the Portuguese government had already acknowledged: “one of the objectives pursued by the Public Administration is full employment, which it intends to achieve through measures that

63 COX, Robert W. (1977), “Labor and Hegemony”, *International Organization* 31, N.º 3, pp. 385-424.

64 BASTIEN, Carlos (2012), “*Corporativismo e Keynesianismo no Estado Novo*”, in *Corporativismo, fascismos, Estado Novo*, ed. Fernando Rosas e Álvaro Garrido, Almedina, pp. 121-39, Coimbra.

65 Decree N.º 54/80, of 31 July 1980.

are gradually being taken”⁶⁶. In 1971, the government presented a lengthy and detailed report on the planning and execution of initiatives relating to employment policy during the 1960s. Emphasis was on the transformational potential of the III Plano de Fomento (III Development Plan), which included concerns and measures relating to: labour market equilibrium and resolution of unemployment problems, by broadening the means of action available to the SNE; orientation of the migratory movement; creation of a support system for returning emigrant workers; development of fast track vocational training for adults and learning for young people; development of forms of worker participation, namely in restructuring and consolidating trade unions; promoting employee relations training, definition of personnel management guidelines and the formation of mixed bodies, and the organisation of the SNE Advisory Committees to mobilise the interests of employers and workers⁶⁷.

The same report by the Portuguese government also referred to sectoral and transversal measures that it believed were key to employment policy: the Unemployment Commissariat’s public works programmes; benefits for collective dismissal due to reasons of a technological nature linked to industry and services, and the creation of a series of new bodies such as the SNE⁶⁸ and National Secretariat for Emigration⁶⁹, but also the Fundo de Desenvolvimento da Mão-de-Obra (Labour Development Fund)⁷⁰, the Serviço de Formação Profissional (Vocational Training Service)⁷¹ and the Instituto de Formação Profissional Acelerada (Fast Track Vocational Training Institute)⁷², among others. A highly important characteristic of this process was that many of these initiatives had been developed by tripartite committees, working locally, regionally and nationally, and, at government level, the planning had been undertaken by inter-ministerial committees, thus enabling the coordination of employment and development policy with economic and social policy, in an integrated and holistic action, from a continuous improvement perspective. The coordinated participation of all these stakeholders was, if not original in Portugal, then at least very rare, and some of the measures referred to were considered by Portuguese technicians to be vanguardist⁷³.

Until 25 April, the expectation had been that the demand for full employment would be

66 MSESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19, Report on Convention N.º 122, 1967.

67 MSESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19, Report on Convention N.º 122, 1971.

68 Decree Law 46.731, of 9 December 1965.

69 Decree Law 402/70. Directly answerable to the Presidency of the Council, and indication of its importance.

70 Decree Law 44.506, of 10 August 1962.

71 Decree Law 48.275, of 14 March 1969.

72 Decree Law 49.409, of 19 November 1969.

73 MORALES, Luís (1974), “Política de Emprego - sua formulação e instrumentalização - algumas notas”, em Emprego e Desenvolvimento, 1.a Jornadas de Emprego, Fundo de Desenvolvimento da Mão-de-Obra, Lisboa.

extended and consolidated with the entry into force of the IV Development Plan, scheduled to start in 1974. For the Portuguese government, full employment had become a key development objective, at least in terms of planning⁷⁴.

3. Conclusion

For decades, the *Estado Novo* was regarded as an immobilist structure insofar as its social and employment policies were concerned. This view was the fruit of political discourses of the time, but also of the proliferation of a methodological nationalism that conditioned the interpretation of historical facts and separated the analysis of such an important subject as the relationship between States and international organisations from the History of Labour. This research shows that the public policies relating to employment in the final decades of the regime were in part subsidiary to the contribution of institutions such as the ILO, which promoted models and ideas that disseminated a specific type of labour and production relations. Only thus, can the enormous continuity in terms of the policies and institutions that ensued in Portugal throughout the 1980s be understood, between what had been the last years of the *Estado Novo* and the new democratic regime.

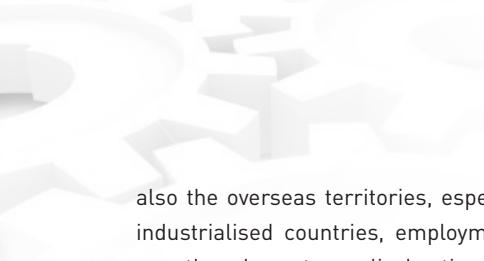
Portugal had not only been “proudly alone” during that period, but also took advantage of the opportunity to play an active role in the international arena, even demanding the right to take its place in the management of its structures. Between 1951 and 1960, the Portuguese government was part of the ILO’s Governing Body, either as a titular or deputy member. The same happened with a Portuguese employers’ delegate between 1945 and 1963. Portuguese technicians were appointed to technical and experts’ committees, in 1955, technical assistance missions were requested, the ILO Office opened in Lisbon, and discussion sessions and commemorative publications were requested⁷⁵.

It could be argued that Portugal fell behind what was the front line of states that adopted and ratified employment policies promoted by international organisations, such as the ILO, and that this seems to have been due more to the empire “problem” than to lack of political strategy or awareness. However, whenever possible, as was seen in the case of Convention N.º 88, the most relevant provinces, Angola and Mozambique, were included. Surprisingly, no reference at all was made to the Asian colonies.

Clearly, economic issues took precedence over social issues, both in the metropolis and

74 MSESS/DAOIT/ILO Archive – Non-ratified Conventions File – reports written under Article 19 Report on Convention No. 122, 1971.

75 These events are part of an unpublished chronology written by the ILO Lisbon Office. Document by courtesy of Cristina Rodrigues.



also the overseas territories, especially from the planning perspective. Just as in the more industrialised countries, employment policy was always closer to being an instrument of growth and counter cyclical action in order to promote the labour market. It was necessary to respond to the framework of economic modernisation and industrial reorganisation that had been timidly forming since the mid-1940s, in the wake of engineers like Ferreira Dias⁷⁶. It is not surprising, therefore, how quickly laws were passed during the period in review, laws that aimed to introduce measures that would transform the labour market and the promotion of workers' occupational and geographical mobility, in the metropolis and in the colonies. This situation was the result of an increasingly rapid economic, intellectual and political integration in relation to capitalism and to the western world. Consequently, legions of workers became proletarianised, in a scenario of low wages due to increased external demand. These alterations fuelled changes that would be felt a few years later. The regime would be a different one, but the essence of the State would remain the same.

76 Under Secretary of State for Trade and Industry between 1940 and 1944.



06

Part II - From the consolidation of democracy to the decent work agenda

The consolidation of labour democracy in Portugal and the role of the ILO ¹

ANTÓNIO CASIMIRO FERREIRA²

Introduction

This chapter examines how the ILO contributed to the consolidation of the Portuguese labour relations system and labour law in the post-1974 period, in accordance with international labour governance tendencies and workplace human rights.

The increasing importance of globalisation processes in the world of work has meant greater protagonism for the leading transnational agency in the socio-labour domain, the ILO. The joint acceptance of the solution based on the States' autonomy appears to have contributed to a national level socio-labour policy, with the growing influence of external factors on national labour legal systems being the most visible result of the internationalisation of the world of work (Ferreira, 2002).

In the analysis presented here, the sociology of law approach, whose predominant characteristic is interdisciplinarity (Arnaud e Dulce, 1996), is used in order to contribute to a critical observation of the influence of the ILO's legal-normative system according to the relationship between its fundamental principles and the challenges facing today's world of work.

¹ The present text belongs to the collection of the Project "Memória Futura".

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From the sociology of law³ perspective, the influence of the Organization's legal-political reference pattern is assessed, as a movement resistant to the social exclusion associated with neoliberal globalisation, in accordance with the sociology of emergencies advocated by Boaventura de Sousa Santos (2006), developing an analysis anchored in the labour governance and workplace human rights paradigm defended by the ILO.

The ILO's legal-political system is examined from the viewpoint of the law as an instrument of legitimation⁴, that is, the symbolic dimension of the political function of the law (Hespanha, 2007: 232), following the critical legal studies⁵ movement, given its use as a political intervention tool in the socio-labour sphere.

On the other hand, the concept of soft law⁶, in spite of lacking an unequivocal meaning, refers to normative assertions formulated as abstract principles and to non-binding resolutions of international organisations. In this sense, the ILO labour governance paradigm is classified as soft law, given the absence of characteristics such as obligation, uniformity, or justiciability.

With respect to the ILO's action model based on soft law mechanisms, some authors believe that this is the Organization's strength, not its weakness, and consider it more appropriate than an inflexible method that does not take into account national specificities (Salazar-Xirinachs, 2004). So, despite the lack of an unequivocal view of the concept of soft law, its defenders question the value, pertinence and suitability of traditional forms of hard law in the broad context of national diversities and the range of issues currently facing the international agenda (Trubek, *et al.*, 2005).

1. The ILO's labour governance paradigm

The concept of governance has been used, especially over the past decade, in different contexts, as may be seen from the vast literature on the various dimensions and meanings of this notion⁷.

3 A discipline that has been consolidating different technical frameworks and methodological instruments adjusted to the study of relations between law and society.

4 The concept of legitimation is used because of its comprehensiveness. In this respect, the Weberian expression of N. Luhmann, "legitimation through procedure" is recalled (Ferrari, 1989).

5 Namely, those of the Frankfurt School and the critical legal Studies developed in the USA from the 1970 onwards (Arnaud e Dulce, 1996).

6 It appeared in the 1970s and, from the outset, has been interpreted and used in different ways and in multiple contexts.

7 A good overview may be found in Rodríguez-Garavito (2005). Since it is basically an Anglo-Saxon analytical and political current, here are some of the names it has been called: responsive regulation (Ayres & Braithwaite, 1992), post-regulatory law (Teubner, 1986), soft laws (Snyder, 1994; Trubek & Mosher, 2003), democratic experimentalism (Dorf & Sabel, 1998; Unger, 1998), collaborative governance (Freeman, 1997), outsourced regulation (O'Rourke, 2003), or simply governance (MacNeil, Sargent & Swan, 2000; Nie & Donahue, 2000).

Notwithstanding the many differences of opinion among authors, common to all is the idea of new forms of global regulation based on articulation between non-State actors, especially civil society, drawing attention to the inequalities of power in the governance domain as political problems, and maintaining that the solution entails involvement of legal mobilisation as part of a broader type of political mobilisation (Santos, 2006: 384-399).

The interaction and interdependence between the different labour governance actors (Scott & Trubek, 2002; Arnaud, 2003) are closely linked to the notion of spaces of legality, Boaventura de Sousa Santos (2002), forming a relationship pattern based on the way in which different legal orders interpenetrate. Three scales of legality are identified: global law, state law and local law. The global law considered here refers to the political mobilisation of international human rights or international conventions on humanitarian interventions in situations of extreme social exclusion.

In this respect, labour normativity reveals the interaction between the local, national and global legal spaces and the structural, State, supra-State, infra-State spaces (Ferreira, 2005). This is a pluralist conception that accentuates the fact that there are different social actors (State, courts, labour administration, trade unions, employers' associations, etc.) producing and applying labour normativity at various socio-legal levels and spaces, such as the International Labour Organization (ILO), European Union (EU), social concertation, collective bargaining, etc.

The study of labour governance, which includes such dimensions as labour market regulation and institutions, rights and protection, social dialogue, social responsibility and quality of work, should, therefore, take into account the different actors in the labour relations system, such as international organisations, European institutions, governments and social partners. From among the international organisations, the ILO stands out for its contribution to global labour regulation, by actively promoting forms of negotiation and dialogue and enabling the development of the present labour relations governance model based on the principles of tripartism, social dialogue and labour democracy.

The question of international standards focuses both scientific debate and political mobilisation, especially with regard to the effective application of international labour standards, i.e., the definition of essential rights applicable to workers throughout the world. In this respect, the centrality of the ILO in labour governance and promotion of human rights at work is justified by the need for legal standards to be globally recognised and effectively accepted in order to guarantee rights for workers (Santos & Jenson, 2000: 20-21).

The legal mobilisation of the ILO's international law carries with it the function of legitimisation of its fundamental principles, emphasising its political character and going beyond the State (Ferrari, 1989), since the national State's time-space is losing its influence due to the growing importance of the global times-spaces (Santos, 2002).



Structuring its action around international labour standards and on the convergence between human rights and labour rights, the ILO takes on a cosmopolitan attitude (Santos, 2002), insofar as it seeks to recuperate globally that which, in terms of labour rights, was lost nationally. In this respect, the ILO's definition of core labour rights stands out, with a view to conceding those rights a protection similar to that afforded to human rights. In legal-political terms, the concept of different generations of human rights is embodied in the idea that the first generation (civil rights) takes precedence over the second (political rights) and that both prevail over the third (social rights and economic rights).

Since its founding in 1919, the ILO has played a crucial role in raising the standard of living and working conditions in an overall framework of pursuing social justice. By way of example, in 1998 the Organization introduced core labour standards and in 1999, at the International Labour Conference, ILO Director-General, Juan Somavia, introduced the concept of decent work, which became extensively debated and ultimately considered an exemplar in the world of work, particularly in the sphere of employment policy and social cohesion.

Analysis of the ILO's role in the context of the institutionalisation of the labour relations system and Portuguese Labour Law in the post-1974 period is structured around a dual analytical perspective. First, its importance at global level, through its decent work agenda, core labour standards and the social dimension of globalisation. Second, its contribution to the shaping of labour relations, social protection and national labour administration systems.

The influence of the ILO, as an international reference framework, in the modernisation of the Portuguese labour relations system and labour law, can be seen in four key aspects: (1) the incorporation of exogenous standards in domestic law, an example of which is the adoption of Recommendations⁸; (2) the possibility of appeal to supra-national bodies as a method of dispute settlement, as is the case of the complaints⁹ filed with the ILO against a national State:

⁸ With regard to the regular control system, the contribution to the consolidation of the labour governance paradigm in Portugal, namely in the democratic transition and consolidation phases and, later, after joining the EU, centred around mechanisms relating to adoption and submission of Conventions and Recommendations, being mindful of the fact that the Organization's governance paradigm is guided by characteristics based on flexible instruments called soft law.

⁹ Regarding special control mechanisms, transnational solutions for labour disputes are increasingly complementary to national systems, especially in today's context of globalisation and transnationalisation of labour relations in which States are facing growing challenges. Attention should be paid to the role played by the ILO as a transnational labour relations regulation agency through its complaints and representations procedures, framed in the ILO's traditional operating system (Aliston & Heenan, 2005) law-based (Blanpain, 2004), devoted to the monitoring and supervision of international labour standards enforcement. It is admissible that they replicate, at transnational level, the adjudication approach in dispute settlement, i.e., the special supervisory system is seen as a transnational appeal body for labour disputes generated in the national arena. In the case of democratic countries, such as Portugal, where there has already been a strong endogenisation of international labour standards, far beyond the fundamental and priority conventions, the formulation of complaints and their referral to special control bodies maintains the adversarial logic of the national social partners. The "exhaustion" of the system of conflict resolution and social dialogue at national level finds a functional equivalent in the special control mechanisms, with their mobilisation being strongly linked to the tradition and pattern of national industrial relations systems.

(3) technical support with reforms, and (4) production and dissemination of guiding benchmarks for national systems. It was decided, in this case, to focus on the latter, analysing the influence of the ILO reference framework on Portuguese parliamentary political debate.

To assess the ILO's influence, a model was used to analyse the creation of an international legal-labour culture, capable of guiding and establishing reference frameworks for producing labour normativity, taking into account the parliamentary references to the ILO's fundamental principles.

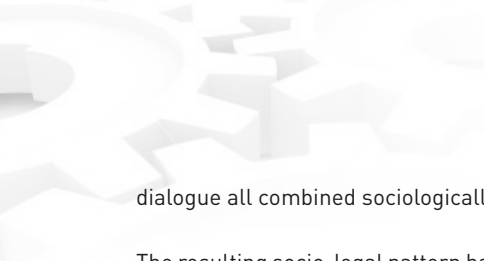
The role played by the ILO should be seen as a form of "rebalancing" the relationship between State and civil society in the context of the labour relations system in the post-25th April period, particularly insofar as it was a question of repositioning the State's role in social arbitration, and reducing its formal intervention. In the context of the normalisation period, marked by the principles of the 1976 Constitution and the subsequent electoral processes, the need for legal-labour references to give shape to the reforms to be introduced in the labour dispute resolution system were identified in the political discourse (Ferreira, 2005). Parliamentary debates, which reflect the prevailing social situation, are a good indicator of the ILO's general principles merging with the national labour relations system.

In the wake of 1974, Portuguese society went through a period of intense political, economic and social transformations. The world of work was particularly affected by the democratic transition and consolidation processes. Considering Portugal only joined the EU in 1986, the ILO's input of guidance and reference frameworks to the country's labour relations system was vitally important, and permitted, among other things, legitimisation of the need for less State intervention in the labour relations system (Ferreira, 2005: 142-148).

Thus, with regard to the ILO's part in labour relations governance and promotion of labour human rights, consideration should be given to the changes that took place in terms of the reconfiguration of labour, namely, the reduction of State intervention in labour disputes and the increasing influence of the transnational sphere, which had repercussions on the repositioning of the centrality of the ILO in the world of work.

In western countries, the process of institutionalisation and juridification of labour relations is driven by the type of relationship in the world of work between State and civil society, while the importance of welfare states must be underlined in the consolidation of the necessary requirements for defining the respective paradigmatic models of the labour relations systems and labour law.

The institutionalisation of the labour relations system in post-1974 Portugal is marked by the way in which State and civil society, the juridification process and extent of ineffective labour standards, the concrete regulation of working conditions in enterprises, and the role of social



dialogue all combined sociologically.

The resulting socio-legal pattern has four characterising features: (1) the centrality of the State as a player in the labour relations system, evidenced by its capacity to act in a socio-labour reality marked by the formalism of standards and the persistent ineffectiveness of, and discrepancy between legal frameworks and social practices; (2) the frailty of civil society revealed in the weaknesses of social dialogue; (3) the juridification of the labour relations system (labour law is one of the branches of law in which the regulation of social relations is most concretised); (4) the semantic and rhetorical dimensions of the labour relations system, which result from the noncoincidence of the role played by the associative principles of regulation and social dialogue, from a formal point of view, in the establishment of working conditions and effective practices that reveal the inexistence of a socio-labour culture of negotiation and an imbalance of power among the social partners. Hence, the importance given by the State to the creation of social partners willing to negotiate in the framework of what Boaventura de Sousa Santos (1993) refers to as activities of the heterogeneous State (Ferreira, 2002).

In the realm of labour interests, generally speaking, the State managed to combine, until the end of the 1970s, a “parallel State” activity approach with a statist principle of labour dispute resolution. Since then, embarking on a process of transition to a new mode of social regulation, the State changed its pattern of activity. Without losing the characteristics of a parallel State, or ceasing its statist intervention, it began to conjugate these characteristics with the heterogeneous State activity approach, introducing principles of contractual regulation and appealing to social dialogue (Ferreira, 2005).

When the State’s centrality in labour relations regulation, inherited from corporativism, was confronted with the processes of democratic transition and consolidation, it became clear there was a need to rethink the functions and roles of the State in labour relations.

State interventionism in labour declined from 1979 onwards. The formal reduction of State influence over the national labour relations system is linked to the principles of social dialogue¹⁰. The institutionalisation of labour by the State, without direct correspondence to relationship practices among the social partners, paved the way for the politicisation of the outcomes of negotiations. In this way, the formal spaces of negotiation reproduced the effects of the unequal distribution of power and social resources within society, in a process oriented by the selective guidance policies determined by the State.

Generally speaking, the influences of transnational space, initially associated with ILO intervention and, later, that which resulted from EU membership, were intended, almost

¹⁰ Although capital and labour were not in a position to enter into a bilateral, self-sustaining relationship, with the corresponding elimination of the State’s role, in the late 1970s there was an attempt to institutionalise a system of regulation and dispute resolution associable with those at the heart of the capitalist system (Ferreira, 2005)

exclusively, to diminish the weight of State intervention in the labour relations system, suggesting greater participation of civil society in that area. Considering that EU membership only occurred in 1986, and taking into account the community principle of subsidiarity and the lack of harmonisation between the different national labour dispute resolution systems, the ILO's contribution to orienting and providing reference frameworks for the Portuguese dispute resolution system was highly valuable [Ferreira, 2005].

2. ILO: action and strategic priorities

The motives behind the creation of the ILO in 1919 were mainly threefold. Firstly, there was the humanitarian rationale that sought to improve working conditions that caused injustice, misery and hardship for many people. Secondly, there were the political grounds. Without fair working conditions, workers could cause major social unrest – injustice engenders such discontent that peace and universal harmony may be jeopardised. Thirdly, there was the economic motivation, stemming from the fact that any social reform, because of its inevitable consequences, would place the industry or the respective country at a relative competitive disadvantage.

So, the creation of the ILO represented transition to a more humane, social approach to labour issues, and a “scientific movement” for workers’ protection, gaining knowledge in order to improve working conditions and the employee-employer relationship, through far-reaching reforms combined with awareness-raising and publicity, adoption of international conventions and recommendations, and technical training programmes.

From its founding in 1919, the ILO has impacted on the international community, pressuring governments worldwide to adopt higher labour standards and embrace progressive approaches to labour issues. The Organization's main activity is to draw up international labour Conventions and Recommendations, which then need to be ratified by two-thirds of the votes from the delegates attending the annual International Labour Conference. The ILO's work and the ratification of its Recommendations and Conventions on child labour, freedom of association, equal opportunities and other issues, such as workers' rights, make it possible for industrial relations to successfully adopt these measures. In other words, the ILO put working conditions and workplace human rights on the world's agenda, actively promoting the adoption of better conditions and rights for workers, technical assistance, research, etc. (Kaufman, 2004: 549).

The main aim of the ILO's programme is the achievement of new, improved labour standards through the application of Conventions and Recommendations, which always have underlying economic theories and demonstrate that industrial relations and the ILO share common objectives, such as setting benchmarks for socially acceptable working conditions and protecting workers from the effects of market competition.



The ILO developed new strategies and programmes to drive forward its mission to promote its intellectual, political and economic issues. One such strategy had to do with identifying labour standards that already existed in the Conventions and Recommendations which could generate consensus among all countries, regardless of their economic and industrial development. This led to the adoption, in 1998, of the ILO Declaration on Fundamental Principles and Rights at Work and the establishment in 2002 of the World Commission on the Social Dimension of Globalisation.

With regards the Declaration on fundamental principles, there are four main points: freedom of association and recognition of the right to collective bargaining, the elimination of all forms of forced labour, the eradication of child labour and abolition of discrimination in employment. Furthermore, its linkage to the Universal Declaration of Human Rights means that core labour standards are not liable to exceptions, thus affording it greater moral weight among the social actors, overriding national differences between political and social systems.

The notion of decent work was also a step forward in the ILO's new strategy. It was advanced by Juan Somavia, who considered the Declaration on Fundamental Principles and Rights at Work alone was insufficient to fulfil the ILO's mission "to improve the situation of human beings in the world of work" (ILO, 1999: 3). The goal was "to promote opportunities for women and men to obtain decent and productive work", as the world economy was moving further and further away from achieving that objective. The Decent Work Agenda is original because, firstly, rather than approaching rights at work and job creation as two separate things, it combines them, with the argument that decent work is a fundamental right. Secondly, the ILO uses the decent work theme to reorganise its activities around a more balanced and integrated set of programmes, focused on four strategic areas: principles and rights at work, employment and wages, social protection and social dialogue.

The legislative output of international labour standards, from the perspective of their internalisation by ILO member States, follows certain criteria defined both by the ILO Constitution and by other national or international normative sources. The incorporation of these standards in domestic law occurs in a political-legislative framework of procedural rules and social practices that support the characterisation of this phenomenon in Portuguese society.

International labour standards are legal instruments drawn up by the ILO's tripartite constituents (governments, employers and workers), and come in two forms. Firstly, there are the Conventions and Recommendations. The former are international legally-binding treaties, subject to ratification by ILO member States. They set out the fundamental principles to be applied by those who have ratified them. Recommendations are non-binding guidelines, which may be associated with a particular Convention, complementing it with guidance on how it should be applied, or they can be independent of Conventions. In the latter case, we

have Resolutions and Conclusions from various ILO organs, the most important being those adopted by the International Labour Conference. They deal with basic principles as well as more technical aspects.

Since 1919, 185 Conventions and 195 Recommendations have been adopted. Some of them address the four fundamental principles and rights at work, enshrined in the ILO's 1998 Declaration: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour, and (4) the elimination of discrimination in respect of employment and occupation. Conventions dealing with these rights and principles are among the eight so-called Fundamental Conventions. Once a member State ratifies a Convention, it is obliged to adapt its domestic legislation accordingly. However, before ratification, certain procedures have to be gone through that, on average take about two years, and involve ILO organs, national governments and employers' and workers' organisations. The process basically comprises three phases: adoption, submission and ratification.

Considering the adoption, submission, ratification triptych, the articulation resulting from the production process and application of the international labour standards and the production/internalisation of national standards becomes clear. From the perspective of the application of the standards and supervision of its effectiveness, the so-called regular supervisory mechanism is a good indicator of recourse to tripartism as a methodology for monitoring and evaluating the impact of international labour standards on social relations and on concrete social practices in the labour sphere.

The norms work as guidelines or standards, orienting the action of the subjects-actors. From this perspective, they constitute a normative model, on which ILO member countries should base their action in the respective area. Membership of the ILO system presupposes gradual harmonisation with that commitment. Supervision of the application of the standards indicates the set of mechanisms that the ILO has at its disposal to ensure that the behaviour of member States complies with the model established by the Organization – a model considered “acceptable” and “exemplary” in labour law. The supervision process is institutionalised through mechanisms provided for in the ILO Constitution and competent organs.

Considering that the fundamental aim of law is to secure justice, the broader, more comprehensive use of such an instrument should make it more effective in the pursuit of that objective. However, this does not mean that the more international conventions are adopted, and the greater number of situations they address or higher number of States that ratify them, will necessarily lead to more justice and greater well-being for the international community.

Nevertheless, the standards presuppose the possibility of non-compliance with the established rules. In this respect, complaints were filed with the ILO against Portugal between 1919 and



2007, for failure to apply Conventions. Complaint procedures may be initiated both by ILO member countries and professional organisations.

Appeals lodged by national social actors to the ILO complaints and representations system are relevant, insofar as the changes and tensions arising out of industrial relations gain expression and voice with this means of recourse to an outside body. In this way, the role of the ILO's special supervisory procedures becomes an indicator of international adjudication of labour human rights, that is, of the complaints against national States, within the Organization's law-based action and subjected to the monitoring and supervision of the effectiveness of international labour standards. The hypothesis is considered of the ILO complaints and representations system being an indicator of the ineffectiveness of labour human rights in Portugal, and means of appeal to access labour justice, i.e. the special supervision system is analysed as a transnational dispute resolution body for disputes generated at national level.

In fact, contrary to the majority of cases selected for this comparative analysis (Western world countries) in which institutionalisation of industrial relations systems occurred in the post-war period, and found sustainability in the context of expanding welfare states and blossoming labour and social citizenship rights, the Portuguese labour relations system was subject to the dynamics of the democratic transition and consolidation processes, and to the re-institutionalisation of the system itself.

3. The impact of the decent work agenda on Portugal

The view upheld here is that decent work combines with a human rights rationale, based on the vulnerability of human nature and the precariousness of the pertinent institutions (Turner, 2006). The universalism of decent work and its affiliation with the patrimony of human rights has the virtue of leading to a reflection involving, simultaneously, the dimensions of both labour and social protection mechanisms.

By joining in the rich, problematic tradition of human rights, the concept is open to pertinent debates about the adjudication of economic, social and cultural rights, the legal pluralism of present forms of labour relations governance, the conceptions of risk and economic and social insecurity.

Achieving decent work objectives must be at the centre of global, national and local strategies aimed at economic and social progress. The multiple dimensions of decent work and the way in which they interrelate underlie the analytical framework concerning the interdependence of labour rights, employment, social security and social dialogue (Ghai, 2006: 23).

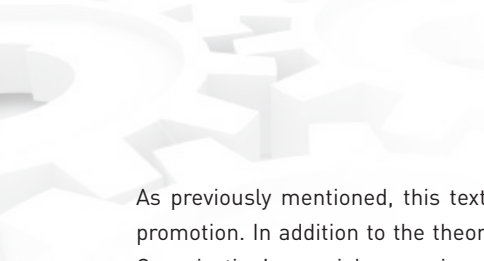
The four dimensions of decent work – rights at work, social protection, promoting jobs and social dialogue – are reciprocally influential, with the aim of maximising the synergies between each of the elements, involving institutional policies and options that allow for the constraints and strains of labour relations to be overcome (Ferreira, 2008).

The defence of labour human rights through the notion of decent work has been championed by the ILO and its decent work agenda, grounded in the social matrix tradition of Europe and North America, based on the idea of international labour legislation, developed since the early 19th Century in response to the concerns raised by the so-called social question. The universalism of the ILO's international vocation and its concern about labour human rights are found in the Preamble to the ILO's 1919 Constitution, and have been developed over the course of different historical moments.

The ILO's universalist vocation was still present in the 1990s, and crucial to the development of the human rights paradigm, namely at the 1992 World Conference on Human Rights in Vienna, and at the 1995 UN World Summit for Social Development on women's rights. In June 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work, in response to the concerns raised by the international community about globalisation and the social consequences of trade liberalisation. ILO member States reaffirmed their commitment to respect, promote and realise, in good faith, the principles of freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation (Blanchard, 2004; Hansenne, 1999).

In 1999, the concept of decent work and the labour human rights associated with it were presented by Juan Somavia at the International Labour Conference. The notion sums up the aspirations of mankind with regards labour relations and sets out social and normative objectives: opportunities to have a productive job with fair pay, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom to express their concerns, organisation and participation in decisions that affect their lives, equal opportunities and treatment for all women and men. Concern with the social dimension is also present in the decent work connection with the Millennium Goals and in the Report of the World Commission on the Social Dimension of Globalization, *A Fair Globalization*.

The idea of decent work also appears in a positive light in overcoming the Fordist/post-Fordist dichotomy or flexibility/rigidity of labour standards and relations insofar as it conveys an inclusive concept, incorporating precarious and marginal work, gender and discrimination issues, non-standard employment and the informal economy, without disregarding the structured sector of the economy and regular employment, thus constituting a good basis for rediscussing the presuppositions of the political and legal systems on labour.



As previously mentioned, this text centres around the ILO's model of labour human rights promotion. In addition to the theoretical discussion developed here, there is reference to the Organization's special supervisory system (complaints and representations) to reveal the ineffectiveness of labour human rights in Portugal.

Having a considerable mission to fulfil in terms of achieving decent work and protection for workers and their families, the ILO has at its disposal two fundamental legal instruments: the Conventions and the complaints and representations system. The former are obligatory once a State has ratified them. However, they do not come into immediate effect in States' legal frameworks, as there is always a chance that the approved texts are not ratified, in other words, the Conventions are not directly compulsory.

In connection with its role as a transnational labour dispute regulation agency, the ILO has the complaints and representations procedures, its Committees of Inquiry, the Freedom of Association Committee, and the enforcement mechanisms relating to core labour standards. Present in all of these are the social partners, which means that the ILO's activity, as a form of labour dispute resolution, is directly related to the associative principle and that of social dialogue.

In the sphere of special supervision to ensure compliance with ILO standards, this type of procedure aims to address the complaints and representations filed by employers' and workers' organisations, and by governments, in relation to non-compliance with conventions ratified by a member country¹¹.

In the case of democratic countries like Portugal, where international labour standards had already been strongly assimilated, far beyond the fundamental and priority conventions, the lodging of a complaint and its referral to the special supervisory bodies maintain the adversarial approach of the national social partners. The "exhaustion" of the national dispute resolution system and of social dialogue at national level has an adjudicative functional equivalent in the special supervisory mechanisms, and their mobilisation is strongly linked to the tradition and patterns of the national labour relations systems.

Appealing to the ILO system of complaints and representations is analysed in this article

¹¹ This procedure is regulated by Articles 26 and 34 of the ILO Constitution, under which a complaint against a member State that does not secure the observance of a Convention it has ratified, may be filed by another country that has ratified the same Convention. Complaints may also be filed by a delegate to the Conference, or by the Governing Body itself. Once the Governing Body receives the complaint, it may appoint a Committee of Enquiry, consisting of three independent members, which will undertake an in-depth analysis of the complaint in order to make recommendations regarding measures to be taken to resolve the problems in question. If a country refuses to comply with the recommendations, the Governing Body may take the measures provided for in the ILO Constitution, according to which "In the event of any Member failing to carry out, within the time specified, the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith".

considering three of its functions: the political function resulting from the effect of mediation between State and labour civil society, the instrumental function related to dispute resolution, and the symbolic function associated with setting social expectations. Furthermore, the predicates of soft law associated with this mechanism and their consequent results are considered.

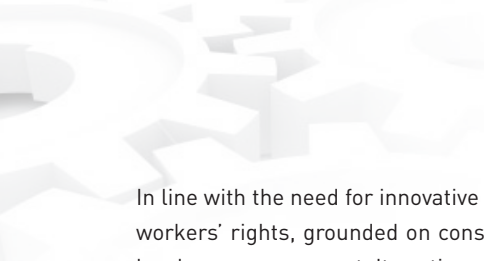
Moments of intense social crisis and conflict in a country may also help trigger appeals to the special supervisory mechanisms. The Portuguese case is a good example of the importance of ILO decisions in the adjudication of labour disputes. Their functions are threefold: (1) the symbolic function of establishing the “judicial meaning” of the applicable standards to the respective case and its subsequent extension or (re)use as a negotiating resource in other similar disputes; (2) an instrumental function, since it offers a solution to the dispute as an appeal body; (3) a political function of recognition of the boundaries and limits of social partners’ action (State included), i.e., as a regulating counter-power of the power imbalance of the parties.

It is to be concluded, therefore, that the evolution of the Portuguese labour relations system was extensively influenced by the ILO’s labour governance model, which is clear from the dual perspective of the legitimising effect on parliamentary discourse based on its standards and the political-legal mobilisation for use of the complaints and representations system, revealing the ineffectiveness of labour human rights in Portugal and illustrating the reshaping of the relationship between the State and labour civil society, namely the decreased influence of State intervention alongside a higher participation of civil society in this sphere.

Endnotes

From the dual standpoint of the consolidation of the labour governance model and international adjudication of labour human rights, the ILO contributed to stabilising the industrial relations system in Portugal, especially through incorporation of its normative principles into national legislation. The incorporation process varied over time, according to the changes happening in the world of work and the different phases of democratic transition and consolidation, in a global governance scenario in which the regulatory power of national States was diminishing.

With regard to the evolution of labour relations in Portugal, the action of the ILO as an international agency promoting and defending workers’ rights becomes clear. The Organization made a powerful contribution to the development of the current labour governance model, particularly in terms of changes to Portugal’s world of work, namely, the reduction of State intervention in labour disputes and the growing influence of transnational space, resulting in a (re)centrality of ILO intervention in the work world.

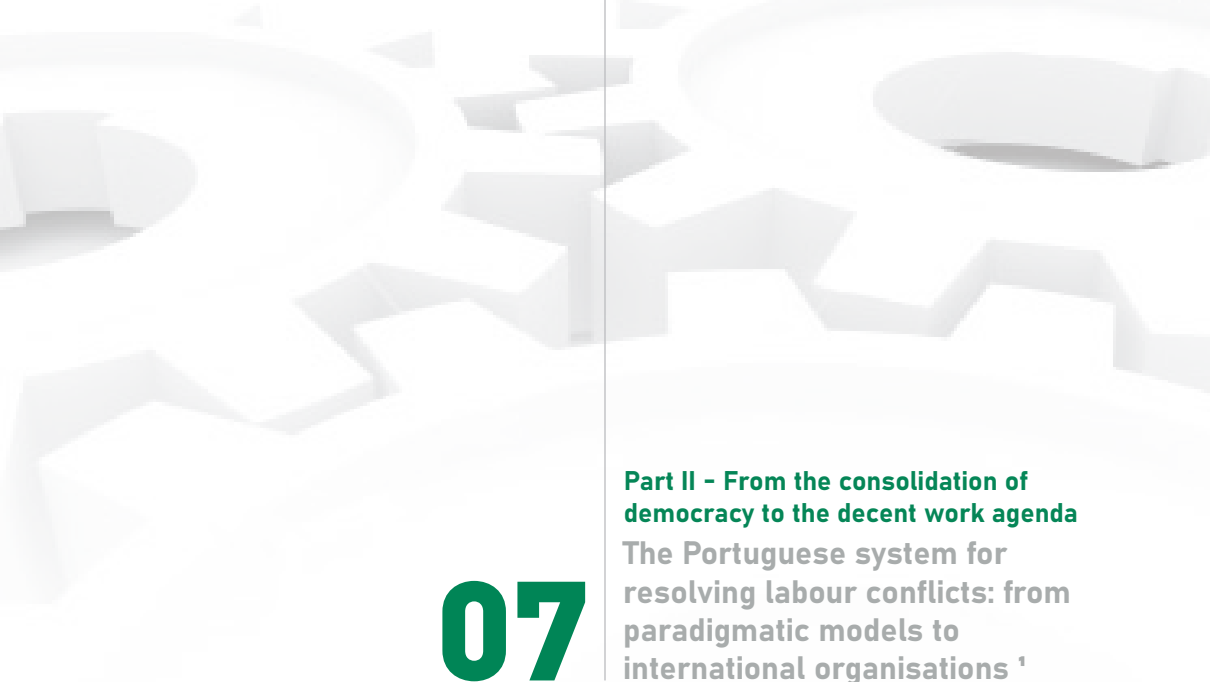


In line with the need for innovative political mobilisation in terms of the symbolic expansion of workers' rights, grounded on considerations of human dignity, the potential of the ILO's soft law becomes apparent. Its action, even if it is not of a judicial nature, is based on instruments that are effective because of their symbolic dimension, in other words, both the references in parliamentary discourse and the appeals to the complaints and representations system are legitimised by the symbolic use of the reference framework built upon the ILO's fundamental principles.

This kind of approach based on soft law mechanisms is the Organization's strength as it is more appropriate than inflexible approaches that do not take national specificities into account. Thus, paradoxically, these soft law instruments have similar, or even greater potential than hard law, given the ILO's standing and the high esteem in which its normative framework is held by public opinion.

Analysis of parliamentary discourse appears to reveal considerable mobilisation of the symbolic legitimation afforded by the ILO, in accordance with its values and guiding principles, and defence of labour human rights within the labour governance model. At the same time, key issues of concern to the ILO, such as child labour, health and safety at work, and gender discrimination, also feature prominently in the discourse, in addition to the "classical" topics and the different subject areas connected with the new challenges facing labour relations. Also noteworthy is the fact that the tendencies uncovered by analysing the parliamentary debates are corroborated by observation of the complaints against Portugal, insofar as the underlying themes concurred.

It is to be concluded, therefore, that the evolution of the Portuguese labour relations system was extensively influenced by the ILO's labour governance model, which is clear from the dual perspective of the legitimation effect of the discourse based on its standards and of the political-legal mobilisation for use of the complaints and representations system, which, ultimately, illustrates the reshaping in Portugal of the relationship between the State and labour civil society, namely decreased influence of State intervention and greater participation of civil society in this sphere.



07

Part II - From the consolidation of democracy to the decent work agenda

The Portuguese system for resolving labour conflicts: from paradigmatic models to international organisations ¹

ANTÓNIO CASIMIRO FERREIRA²

1. Introduction

Despite diverse labour and sociolegal traditions, patterns and cultures, and differing paces of change in national societies, the juridification process of labour relations and the institutionalisation of modern industrial relations systems were soon global phenomena.

As with other global phenomena, their matrix is local, in this case associated with industrialisation-related phenomena and modifications to the “production space” (Santos, 1995) which occurred in developed capitalist societies. We are dealing with models of industrial relations and labour law developed with reference to the Western societal context, constituting what Santos (1995) refers to as “globalised localism”. The incidence of this model globally is evident in, for example, the post-colonial legacies left by the francophone and anglophone traditions in areas such the organisation of industrial relations systems and labour legal cultures.

On the other hand, industrial relations and labour law are domains in which, from early on, normative and institutional processes of internationalisation and worldization are

¹ The present text was originally published in 2002, in “A Teia global: Movimentos Sociais e Instituições”, José Manuel Pureza e António Casimiro Ferreira [org.], Capítulo 4, Edições Afrontamento, pp. 103-123.

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recognised, and are therefore areas of an “old globalisation”³.

The increasing importance of globalisation processes in the world of work has given transnational sociolabour agencies a more influential role. Cooperative interaction between the International Labour Organization (ILO) and the European Union (EU) has intensified. Their joint acceptance of the “autonomy of ILO member states” and “EU principle of subsidiarity” appears to contribute to a sociolabour policy that is, in many respects, convergent. The most visible result of internationalisation and Europeanisation of the world of work may be found in the growing influence of external factors on domestic legal labour frameworks and systems. Although efforts are made to take into account the diversity of national situations and each country’s possibilities and preferences, the existence of normativity produced outside national contexts and spaces, albeit influenced by them, manifests itself in different ways. This is clear from the influence of ILO standards and conventions and EU social law, a good indicator of which is, for example, national rhythms of adoption, ratification and transposition of international standards⁴.

Reference is made to the attempts to create a European industrial relations system, the introduction of new spaces for Community social dialogue that have contributed to *denationalising* collective bargaining and, in particular, to European social policy in respect of efforts to build a European social model⁵.

Reflection on the importance of exogenous factors is one of the elements considered by comparative analysis, namely, the question of whether “convergence” or “continuing differentiation” is the key characteristic of industrial relations systems in Western European countries (Ferner and Hyman, 1998: XI). The complex interaction observed between transnational trends, normally seen as defending the “convergence” theses and the continuation of historical patterns and specific national institutions supporting arguments to the contrary, make discussion of this issue difficult. Recent research has underscored the importance of domestic institutions’ capacity to respond to and resist the impact and pressures of transnational institutional “destruction”/“creation” processes⁶.

These analyses are set against the standard and uniforming diagnosis of the convergence

3 For the early beginnings of trade unionism and drafting of international labour standards, see Costa, 1997 and 1998, and Veiga, 1994: 34 ff.

4 The different national rhythms or speeds of adjustment to the European social model have been analysed by Crouch (1996), among others. The same rationale may be applied to the rhythm of ratification of ILO conventions with all that this implies in terms of monitoring their application.

5 Regarding social law generally and labour law in particular, and in addition to the Treaties of Rome (1957) and Brussels (1975), the Treaty of Accession of Portugal and Spain to the European Community (1985) and the Single European Act (1986), the importance of the publication of the Community Charter of the Fundamental Social Rights of Workers, adopted by the European Council on 14 December 1989, and the Maastricht Protocol on Social Policy (1991) must be emphasised. In this respect, see Veiga (1994: 72 e 77). For an analysis of the results of the Charter’s implementation, see Social Europe, no. 1/92 and no. 1/90.

6 See the arguments of Ferner and Hyman (1998), Visser (1996), among others.

theses supported by the hypothesis of regulation theory⁷, that the transition from the Fordist accumulation regime to the post-Fordist regime led to the consequent adapted transformation of world of work institutions, thus allowing for convergence between the transformations of industrial relations systems and the post-Fordist model.

The purpose of this text is to extend the discussion of the theses of convergence or differentiation between the systems of industrial relations and labour law, to the specific domain of industrial dispute resolution systems.

It is accepted that the way in which industrial relations systems have been affected by globalisation phenomena varies according to the impact and pressure of exogenous elements and local responses that are generated through a dialectical process of globalisation/localisation and localisation/globalisation (Santos, 1995). The question is to what extent “high intensity globalisation” processes, to which the “production space” has been subjected, are felt in the specific domain of standards and institutions, where traditionally the practices of labour dispute resolution and composition occur.

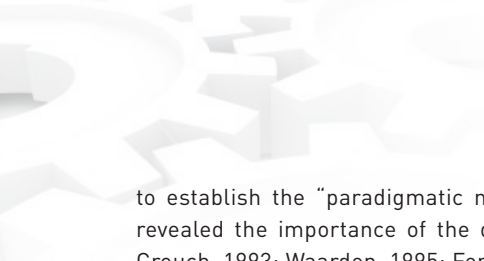
Two questions are addressed here: firstly, whether or not the ILO’s and EU’s impact on member states’ industrial relations systems have contributed to the harmonisation of dispute resolution systems, and secondly, to what extent the influences of exogenous factors were felt in the reform processes and institutional creation of dispute resolution instruments in Portugal after 1974.

2. Labour dispute resolution systems: from the diversity rule to attempts at harmonisation

In most Western countries, the juridification of industrial relations and institutionalisation of industrial relations systems are two parallel, interrelated tendencies. Ideally, their development is driven by the type of relationship established in the world of work between the State and civil society. In this respect, the post-war era and creation of welfare states were decisive to the consolidation of economic, social, political and legal requirements necessary for defining the so-called paradigmatic models of industrial relations systems and labour law.

Whilst “stylised” and synchronised analyses of the world of work enable identification of characteristics and regularities common to western industrial relations systems in order

⁷ Clearly, it is not a matter of questioning the contributions of regulation theory to the sociological analysis of industrial relations, but rather the reductionism underlying the arguments that deterministically uphold the strong bond between the transition of regulation models and the general transformation of industrial relations systems. It may also be said that S. Simitis’ theory of juridification of industrial relations leads to a unidimensional and monocausal reading of labour relations, shared with regulation theory. Authors such as Otto Kahn-Freund (1977) and Clarke Wedderburn (1987: 66) are among those who relativise the importance of the industrialisation phenomenon in the juridification process, thus contradicting S. Simitis’ hypothesis.



to establish the “paradigmatic model”, comparative analyses, on the other hand, have revealed the importance of the diversity and singularity of each of these systems (see Crouch, 1993; Waarden, 1995; Ferner and Hyman, 1998).

National specificities become very apparent when we compare the different national labour dispute resolution models (see Blanpain, 1995). The role of states in industrial relations regulation remains largely intact, while the value of their intervention in maintaining “social peace” and the rule of law is apparent.

In fact, national states continue to play a pivotal role in the creation and implementation of forms of labour dispute management⁸. The state’s mediation and social arbitration function in disputes between social partners is still one of its basic functions, providing normative and institutional frameworks, based on principles of direct state intervention, neo-corporatism, or self-regulation. There is a close relationship, therefore, between the principles and models of sociopolitical regulation, and the methods of labour dispute resolution and composition.

It is worth emphasising here that states such as the British, French and German, normally referred to as archetypes of a certain type of state intervention in the labour domain (neo-corporatist, statist and liberal pluralist, respectively) generate comparable industrial dispute resolution models.

Thus, in the case of Germany, the individual and collective dispute resolution system is legislatively regulated in great detail, although priority is given to that which the parties determine voluntarily. The centrality of labour tribunals, which are tripartite in structure, and the arbitration mechanisms associated with the “democracy at work” model, are the main characteristics of the system. The French system bears the marks of state interventionism, notwithstanding recognition of the existence of multiple “alternative forms of dispute resolution” and the existence of *conseils des Prud’hommes*. The involvement of the Labour Inspectorate and the possibility that any tribunal may be called upon to intervene in a conflict relating to social or labour legislation, are two defining features of the system. In contrast to Germany and France, priority in Great Britain is given to voluntary procedures set up between the parties in labour dispute settlements. The principles of state non-intervention and voluntarism on the part of the parties find reflection in conciliation and arbitration bodies such as ACAS (Advisory, Conciliation and Arbitration Service) and CAS (Conciliation and Arbitration Service) and in informal or formal resolution procedures (grievance procedures).

In addition to the characteristics associated with each of the three ideal types of state intervention in labour and the respective industrial dispute resolution systems they give rise to, it must be said that a wide variety of systems exist in different countries.

⁸ According to Waarden (1995: 109 ss.), state intervention falls into five categories: regulation; support; mediation and arbitration; provision of collective services; employer.

In fact, although recognising elements that are common to different systems is possible, models and solutions are extremely diverse. We find countries that combine “alternative forms” of industrial dispute resolution with legal intervention, countries in which legal intervention takes the form of ordinary jurisdiction, and countries in which legal intervention is carried out through labour or industrial tribunals.

The diversity of industrial dispute resolution models and systems found in different countries is, in itself, an indicator of the lack of convergence among dispute resolution systems. Thus, and in contrast to what happens in other labour domains, we detect a lack of harmonisation and standardisation in the procedural rules on industrial dispute resolution. These rules, together with those governing collective bargaining and participatory forms, are part of the hard core that constitutes the Network or Web Rules of industrial relations systems (Dunlop, 1993; Caire, 1987: 378). This diversity is the rule, even if we consider just the countries that are member states of both the EU and the ILO.

One factor that helps maintain the diversity of national solutions for dispute composition has to do with EU and ILO guidelines, which are relatively restrained on the subject, leaving member states with plenty of room for manoeuvre⁹.

However, recent signs of a rethinking of the approach to the issue may be found in transnational agencies’ activities. This is how we interpret the inclusion of industrial dispute resolution in ILO activities in a way that calls into question the declared dispute/ways to resolve it dichotomy, replacing the latter with topics such as dispute prevention.

Another area of ILO influence are the guidelines and principles. However, this intervention is limited due to national specificities: “International labour standards regarding the regulation of labour conflicts have a general character and reflect the diversity of existing national systems” (cf. ILO, 1999), and this is clear from the wording of conventions and recommendations on the subject¹⁰.

In the late 1990s, however, the subject of industrial dispute resolution was again brought into focus following the preparatory meetings for the 2001 ILO Conference. The draft agenda addressed changes to be introduced in labour dispute resolution instruments, and reflected tensions and differences among the ILO Governing Body’s members. One of the most apparent differences had to do with alterations to labour legislation on dispute

⁹ Regarding the creation of supranational dispute resolution structures specifically, the ILO has played an important role through the “jurisprudence” resulting from the work of the Committee on Freedom of Association. The same may be said of the possibility of recourse to the EU Court of Justice.

¹⁰ According to the ILO, the following are the respective instruments and standards: Convention N.º 87 on Freedom of Association and Protection of the Right to Organise [1948]; Convention N.º 98 on the Right to Organise and Collective Bargaining [1949]; Convention N.º 151 on Labour Relations (Public Service) [1978]; Convention N.º 154 on Collective Bargaining [1981]; Recommendation N.º 130 on Examination of Grievances [1967]; Recommendation N.º 91 on Collective Agreements [1951]; Recommendation N.º 92 on Voluntary Conciliation and Arbitration [1951]; Recommendation N.º 159 on Labour Relations (Public Service) [1978], and Recommendation N.º 163 on Collective Bargaining [1981].



prevention, reduction and effective resolution. The “divergence of views among members of the Governing Body was on whether the subject was appropriate for general discussion or for standard-setting” (ILO, 1998).

Although the Governing Body decided to keep the issue on the agenda for general discussion at the 2001 Conference, there was clearly a lack of consensus among its members. The contradictory character of the debate is evident from the positions taken by member states. Thirteen member states subscribed to the proposal of submitting the subject for general discussion. Among the governments that supported standard-setting, a matter considered “particularly sensitive”, Austria proposed the adoption of a recommendation and Australia advocated a preliminary general discussion before adopting any standards (ILO, 1997). Germany expressed serious reservations, without detailing them, about the inclusion of the question on the Conference agenda.

A central concern in the discussions was the need for reforms in labour law and procedures and the introduction and strengthening of systems and mechanisms, which would ensure easy accessibility, efficiency, fairness and the trust and confidence of the parties (cf. ILO, 1999). In one of its last Working Papers (March, 1999), the Governing Body highlighted the new trends in dispute prevention and resolution, applying innovative approaches, techniques and models of bargaining and joint problem-solving approaches, and active and creative measures and programmes to promote greater workplace cooperation in lieu of confrontation.

The 2001 International Labour Conference discussed the topics of Promoting Cooperatives and Social Security, leaving aside the issue of Industrial Disputes and their Settlement, which would resurface in the preparations for the 2002 Conference.

Also, in the framework of the EU, social dialogue, democracy at work, direct and indirect participation in the workplace, cooperation and partnership were issues that tended to replace the subject of labour conflict.

The EU established some labour standards relevant to this theme, which are contained in the European Social Charter and Community Charter of Fundamental Social Rights, recently incorporated into the Maastricht Treaty and, later, into the 1997 Treaty of Amsterdam. In contrast to what has occurred in other domains, however, the forms of composition of industrial disputes did not undergo a Community law harmonisation process.

The European Social Charter identifies principles directly related to industrial relations in general and, therefore, to dispute resolution methods. Such are, for example, the standards on freedom of association and collective bargaining, and right to information and consultation and participation.

In the wake of the proliferation of strikes in the 1960s and 1970s, the European Commission undertook extensive research. The findings called attention to the fact that worker

participation in decision-making in enterprises and institutions could be a way to stabilise dispute situations. The findings also suggested the procedures on dispute composition were excessively rigid and needed to be reformed, in order to flexibilise and facilitate conciliation, arbitration and mediation.

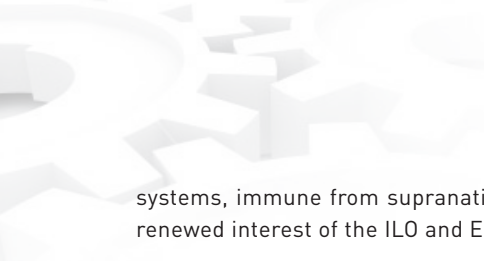
While modern European democratic societies observe the right of workers to take industrial action as a fundamental right, it is also true that it is regarded as a “necessary evil”. In this respect, it is worth quoting from the European Commission’s Green Paper on Employee Participation and Company Structure in the European Communities: “But industrial confrontation is also wasteful, and if it occurs too often in a society, every member of that society is the poorer, including those who are employees.” (1976:24).

Generally speaking, the subject of industrial dispute resolution in the EU should be approached in the context of the priority given to the areas of participation and social dialogue. The inter-departmental working group set up in the European Commission has acknowledged the contribution of participation to stabilising labour disputes and promoting consensus. More recently, the European Trade Union Confederation’s IX Congress emphasised the need to strengthen decentralised social dialogue, as a methodology for regulating industrial relations. The Green Paper, *Partnership for a New Organisation of Work* (Commission of the European Communities, 1997) and final report on *Transformation of Labour and Future of Labour Law in Europe* (1999) are two documents that corroborate the trend previously mentioned.

In view of the arguments put forward above, it appears that, in spite of intense pressure from globalisation, which has marked the transformations in the world of work, its impact on industrial dispute resolution systems is still hardly noticeable from the point of view of institutional transformation reforms and processes. We do find signs, especially in the debates about the content of the 2002 ILO Conference agenda, that some changes could occur in the near future. In terms of the EU, it is likely that the growing interest in the creation of a Europe-wide industrial relations system, the emergence of Community collective bargaining, the formation of enterprise councils, and the further development of forms of social dialogue, participation and partnership, will contribute to Community harmonisation and convergence in this domain. However, achieving this goal does not appear easy, given the implications for the relationship between the national states and social partners. It is still too early to proclaim the end of the role of national states in European industrial relations systems in the area of labour dispute resolution.

3. The portuguese industrial dispute resolution system: From the transition to exogenous influences

The first part of this article addresses two ideas about systems and forms of industrial dispute resolution: (1) the persisting pattern of diversified national dispute resolution



systems, immune from supranational trends towards uniformisation, and (2) the gradual renewed interest of the ILO and EU in the subject as a topic for the global labour agenda.

Now our analysis will focus on the Portuguese industrial dispute resolution system in order to identify post-1974 exogenous influences. This is a particularly important issue considering the transformations that emerged as a result of the transition to and consolidation of democracy in Portugal, and their impact on the country's industrial relations system.

In contrast to most of the situations previously described, in which industrial relations systems were institutionalised during the post-war era, and were sustainable in contexts of expanding welfare states and spreading social citizenship rights, the Portuguese industrial relations system was exposed to the 25 April 1974 historical short-circuit. During the democratic transition and consolidation processes, the state had to adapt its role to new political, social, economic and juridical conditions. The heavy weight of the state and relatively non-existent presence of civil society in the search for industrial relations regulation solutions and instruments have been prominent characteristics of Portugal's labour dispute resolution system.

Legitimation of the options nationally and the efforts to stabilise industrial relations regulation policies made external influences more visible. From this standpoint, the influence of the ILO on the Portuguese industrial relations system is largely attributable to national sociohistorical circumstances.

The ILO provided regulatory guidance and policy legitimation on industrial dispute resolution issues, facilitating the transition from the industrial relations model inherited from the *Estado Novo* to the democratic model. The Organization also made it possible to legitimise the view that the State's presence in the industrial relations system needed to be cut back, and called attention to the excessive weight of administrative instruments in dispute resolution, while underlining the importance of creating forms of tripartite intervention in dispute settlements.

In Portugal, the particularities of the articulation between state and civil society in industrial relations, and the consequences of the democratic transition and consolidation processes, facilitated the development of a dispute regulation and settlement system whose regulatory and institutional origins are basically due to the state. The ILO's role should, therefore, be regarded as an attempt to "rebalance" the state-civil society relationship in the context of the industrial dispute resolution system.

In a short period of time, "the corporative Portuguese state transitioned to socialism, Fordist regulation, a welfare state, and even neoliberal regulation" (Santos, 1993: 41)¹¹, making recognition of the importance of forms of labour dispute resolution for the

¹¹ See also Maria João Rodrigues (1992).

transition to and/or consolidation of the modes of social regulation carried out by the State almost a truism.

Labour normativity, the industrial relations system and, particularly, the labour dispute resolutions system, express the different regulatory logics to which we have just referred. The contradictions and vicissitudes of the various political and social regulatory regimes that passed through Portuguese society were deposited in them. Labour normativity evolved in a manner that was indexed to the dominant modes of political-social regulation, and became a social-legal corpus of heterogeneous standards that often contradict each other. The normative and symbolic structure of labour normativity and the social practices that produce it also express the different “class compromises” of Portuguese society, so the strength or weakness of associativism and, above all, of the trade union movement, have had very real consequences for the production and application of labour normativity.

The integration of the labour dispute in institutional peaceful dispute resolution mechanisms, operating in formalistic and legalistic terms (Stoleroff, 1988: 149) is not the result of a mature and tendentiously balanced relationship between capital and labour, and this prevented an effective institutionalisation of disputes (Santos, 1988: 26). The relative deficit of class practices and absence of an autonomous tradition of bargaining between capital and labour (Santos 1988, 1993) triggered a process of juridification and intervention in industrial relations by the state.

From an evolutionary point of view, it should be said that the “unstable stabilisation” process associated with the reconstitution of the state after the 1974-1975 revolutionary crisis, gave rise to significant alterations in the correlation of the social forces, curtailment of distributive policies and reduced economic benefits and social rights. In the late 1970s, the consequences of the economic policies previously followed and the signing in 1978 of the first stabilisation programme with the International Monetary Fund (FMI) resulted in pressure for deregulation and flexibilisation of the labour market, which, in turn, caused deterioration of the wage ratio¹². There was clearly a contradiction between the legal frameworks that still offered broad protection to workers and the social practices which violated them. The notion of parallel state seeks to incorporate this “political confirmation of a disjunction or discrepancy in the mode of social regulation, in terms of which the laws and institutions of the Fordist regulation mode do not correspond in practice a Fordist wage ratio” (Santos, 1993: 32).

The relationship between capital and labour reproduced political and social instability factors. On one hand, capital was too weak to impose a rejection of Fordist legislation, but strong enough to prevent it from being effectively put into practice, while, on the other hand, workers were strong enough to prevent the rejection of those laws, but too weak to enforce their application (cf. Santos, 1993: 332). Nonetheless, juridical and institutional labour regulation was being modified in order to adjust to the changes occurring in the

¹² For analysis of the Portuguese economy in the period considered, see Reis (1992: 148 ss.).



political and economic environments.

In a context marked by discrepancies between legal frameworks and social practices, and by the impasse or stalemate in the capital-labour relationship, the state continued to play a central role in the industrial dispute resolution system. Examples of administrative intervention may be found in collective bargaining, conciliation processes, and setting of working conditions.

Let us take a look at collective bargaining. At that time, it was in a state of paralysis, largely due to the fact that the trade unions (Intersindical) were loath to make concessions to employers, and preferred direct government intervention in industrial relations (cf. Barreto, 1992: 469). The incapacity of capital and labour to self-regulate their relationship unleashed a torrent of political demand for the state to do so. Examples of this are the attempts to resolve many disputes through conciliation¹³, the abundant issue of ministerial orders on labour regulation, and the high proportion of arbitration and mandatory mediation in individual disputes.

The 1974-1975 period was marked by extensive administrative intervention in the setting of working conditions, which gave rise to the passing of numerous PRTs, which were ministerial orders relating to labour regulation (*portaria de regulamentação do trabalho*). PRTs were often employed simply to substitute negotiations between the parties. Working conditions in many activity sectors had been regulated in this way year after year. In addition to being used as a way to settle disputes, other factors explain the high number of PRTs passed at that time. They were used to deal with grey areas in collective bargaining, especially in the farming industry, and partial PRTs were issued relating to specific areas in which no agreement had been reached. Furthermore, PRTs were sometimes used when agreements had been signed by trade unions and employers' associations, and the latter had subsequently disbanded, or did not fulfil the legal criteria for representation, making the conventional bargaining method unviable. Although not all PRTs had to do with labour dispute settlement, they were still resorted to well beyond the revolutionary period, thus reflecting a pattern of state behaviour up until 1979, characterised by direct intervention in the composition of industrial disputes.

The stabilisation process in Portugal, marked by the formation of the first constitutional government and adoption of the 1976 Constitution, as well as legislation restricting the use of PRTs¹⁴, meant a significant reduction in administrative intervention in setting working conditions. After 1979, PRTs were hardly ever used in the industrial relations system

¹³ An issue repeatedly referred to by trade unionists and labour administration technicians interviewed by us.

¹⁴ Cf. Decree Law 164/A-76, of 28 February and Decree Law 887/76, of 29 December.

context, except for during the ninth constitutional government¹⁵. Since then, the few that have been issued were only to serve the purpose of addressing grey areas in negotiations, and were not the result of dispute situations. It would be wrong, however, to suppose that the new institutional and legislative direction towards relieving the state of the onus of more or less coercive intervention was followed by a loss of the latter's centrality. In fact, the reduction of ministerial orders on labour regulation was followed by a substantial increase in the number of ministerial extension orders (PEs)¹⁶.

This tendency was "apparently the expression of a policy to disengage, and to better harness the results obtained through negotiation" (Fernandes, 1991: 195). Since it was not the case of a real loss of state centrality, it seems more correct to speak in terms of a qualitative change in the intervention of the state, which was structurally relocated. In fact, the figures show that administrative intervention in collective regulation did not fall after 1979 and, in 1985 and 1986, was even greater than in 1979 and 1980. However, the logic of administrative intervention from 1979 onwards was very different to that which had characterised the previous period¹⁷.

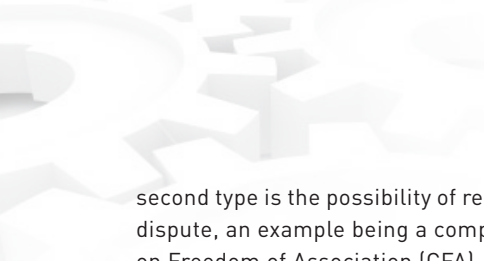
All the figures we have mentioned above lead to the understanding of the importance that recourse to ILO principles and guidelines had on Portugal's industrial dispute resolution system, above all, when it was a case of repositioning the state's role in its social arbitration function in order to lessen its intervention in the settlement of labour disputes.

To assess the ILO's influence, we used a social-legal model that recognises two basic forms of influence: direct and indirect. There are two types of direct intervention. First, there is intervention associated with the incorporation of exogenous standards into domestic law, an example being the ratification of (ILO) conventions and recommendations. The

15 In 1979, 19 PRTs were issued as a form of dispute resolution, 11 in 1980, 5 in 1981 and 3 in 1982. In 1984, during the IX Government, 8 PRTs were issued. Of these, 5 derived from a dispute situation, and 3 addressed grey areas. In 1985, out of the 14 PRTs issued, 7 were the result of dispute situations, while the remaining 7 dealt with grey areas in the negotiations.

16 In 1979, 99 PEs were issued, 113 in 1980, and 164 in 1981.

17 Although PRTs and PEs are both a result of the juridification of the capital-labour relationship, the practice of extending agreements reflects a contractual principle, as it extends the outcome of negotiations already held. However, the apparent non-interventionism of the extension mechanism can in reality give expression to greater state interventionism. The choice of one or other intervention type has sociological consequences, which go beyond the political-administrative choice between a more liberalising or more statist view of the state's role in regulating the capital-labour relationship. While ostensibly the function of PEs is to capitalise on the outcomes of social partners' bargaining, revealing an intention of non-State intervention, their underlying function is to maintain state intervention, changing the mode of regulation by actively promoting the social partners disposed to negotiate and developing contractual practices. This issue is problematic in view of the rivalry between the two main central trade unions, which had no rules on the social partners' representativity, as it is known that, in certain activity sectors, CGTP unions hardly ever or only partially reach agreement with the representatives of capital, while agreement with UGT unions tends to be a quicker process on account of their more modern, reconciliatory approach and neo-corporative strategy. Furthermore, "PEs do not have to relate to conventions or agreements between the most representative unions and associations, and neither do they presuppose agreement on their part" (Lucena e Gaspar, 1992: 178). Additionally, from the unions' viewpoint, the publication of PEs is a slow process (which can be prejudicial to the workers concerned) and sometimes suspicions are raised surrounding the choice of the contracts being extended.



second type is the possibility of recourse to supranational bodies to achieve settlement to a dispute, an example being a complaint against a government filed with the ILO Committee on Freedom of Association (CFA).

There are also two forms of indirect intervention. The first is found in the establishment of an international legal labour culture, able to provide guidance and reference frameworks for producing domestic normativity. The second type of indirect intervention is the preparation of studies and appraisals of national societies.

In this analysis, we examine the first and second types of indirect influences. i.e. reference frameworks for producing labour normativity and studies and appraisals of the Portuguese industrial relations system, and also the second type of direct influence, i.e. complaints lodged with the CFA against the Portuguese government.

In the political discourse of the normalisation period, marked by the principles of the 1976 Constitution and development of the electoral processes that followed, it is possible to detect there was a need to find legal labour references that would help shape the reforms being introduced in the labour dispute resolution system. Being contracts presented to society, the constitutional governments' programmes are good indicators of the change in direction considered.

The analysis of references made to industrial dispute resolution during the programme of the 2nd Constitutional Government (Mario Soares, 1978) found mentions of the ILO in connection with the Conciliation and Arbitration Committees. Emphasis was placed on need for the Committees' conciliatory work to proceed "in accordance with the Constitution and the tripartite principle always advocated by the ILO". Furthermore, the programme of the 3rd Constitutional Government (Nobre da Costa, 1978) referred to the need to "review the legal regime of collective labour relations, in line with the ILO's principles on the matter."

Similarly, the programme of the 4th Constitutional Government (Mota Pinto, 1979) highlighted the need to revise fundamental industrial relations laws "in a framework coherent with constitutional principles and with the standards enshrined in the ILO's instruments".

On the subject of "collective labour dispute resolution mechanisms", it was recommended that these should preferably be oriented towards "dispute prevention and technical support for the social partners, in accordance with the principles outlined in ILO Convention N.º 98"¹⁸.

During the 6th Constitutional Government (Sá Carneiro, 1980), in an effort to promote social partners' autonomy, the need for "administrative disintervention" was stressed, "either

¹⁸ The Right to Organise and Collective Bargaining Convention, 1949, was adopted at the 32nd Session of the ILO, and came into force on 18.07.1951. It was ratified by Portugal on 01.07.1964.

through institutionalising methods of tripartite participation, in line with that advocated in various ILO instruments, or by its own willingness to enter into dialogue with the social partners on the basis of consensus that consolidates genuine participatory democracy.”

At the same time as ILO principles were being included in government programmes, the Organization was asked to carry out studies on Portugal’s industrial relations system, which could then be used as a basis for concrete proposals presented to governments.

Examples of resulting initiatives are: the study on Employment and Basic Needs in Portugal (1979), the ILO Consultative Mission that responded to a request for technical assistance with the review of labour legislation (1979), and the *Rapport au Gouvernement du Portugal sur les travaux de la mission multidisciplinaire du PIACT* (1985).

The request to the ILO for technical assistance preceded the publication of Decree Law 519/79, which introduced extensive changes to collective industrial relations. The new Decree law referred to instruments defined in Decree Law 164-A/76 for regulating collective industrial relations – collective agreements, arbitration decisions and ministerial orders. The first observation made by the ILO mission was about the high number of ministerial orders used to resolve collective disputes, in contrast to the small number of voluntary arbitrations used. The expert’s view was that the Government’s role as the final arbitrator of collective disputes should cease, and that good progress in negotiations could even be hindered when just one of the partners was able to resort to a third party with authority to impose a settlement.

So that the new legislation would ensure better application of Convention N.º 98, the expert suggested that all the new collective dispute settlement processes should be designed not only to support collective negotiation, but also as methods of settling disputes.

Furthermore, the BIT (Bureau International du Travail)¹⁹ considered that the fundamental problem facing the Portuguese government in choosing a new regulation system was deciding between a self-regulation system, with the help of conciliation, mediation and arbitration services, and establishing a mechanism for recourse to an independent arbitration body.

It was recognised that the collective relations system ought to go through a transition period because “the tradition of State involvement in social and dispute processes is too ingrained, and labour and enterprise organisations’ preparation for using independent mechanisms exclusively is still too incipient for effectively dealing with a radical reversal of the system through legislation”²⁰.

¹⁹ *Idem*.

²⁰ See “Memorando e Projectos de diploma sobre o regime das relações colectivas de trabalho”, Boletim do Trabalho e Emprego, Revisão de Legislação do Trabalho e Emprego, Separata 1, Lisboa, 11 de Junho de 1979.



The expert also had various comments to make on the arbitration bodies, about strengthening conciliation, the need to negotiate in good faith, and on the slowness of the labour tribunals. A tangible outcome of the BIT mission was a set of draft industrial relations decrees. Particularly important were those concerning the possible creation of a National Mediation and Arbitration Service and Conciliation and Arbitration Committees, for collective and individual dispute settlement, measures which have so far never been implemented in any systematic and coherent way.

Although none of these proposals were taken up, Decree Law 519/79, which altered the collective industrial relations regime, introduced profound liberalising changes (Fernandes, 1984), and juridically reduced statism and forms of labour dispute settlement by the state.

The PIACT's 1987 multidisciplinary mission report to the Portuguese government also included guidelines and recommendations. One recommendation, relating to the conciliation function, was the transformation of the conciliatory committees, then under the General Directorate of Collective Labour Relations, into a college for conciliators who would be given special technical training and have full autonomy guaranteed by law. This suggestion was never acted upon²¹.

Examination of the documents appears to suggest that there was recurrent consideration of ILO guidance, even though it did not translate into immediate legislative measures and reforms. That being said, ILO guidance supporting non-state intervention in industrial dispute resolution did play a significant role.

With regard to direct intervention in the form of the possibility of recourse to the ILO as a way of settling national labour disputes, the processes presented to the ILO Committee on Freedom of Association (CFA) must be referred to. Among the Organization's supervisory systems, and apart from the general mechanisms applicable to all the international labour conventions, there are special procedures for the protection of the standards and principles on freedom of association. The purpose of the CFA is to carry out preliminary examinations of complaints of violations of freedom of association. Consent from the respective governments to examine complaints is not required.

Leaving aside the CFA's working methods and criteria, we should emphasise the effect the Committee had on Portugal's industrial relations system after 1974. In the context of the democratic society, the principle of freedom of association is fully legally enshrined, both in terms of the Constitution and ordinary legislation. For this reason, the complaints filed against the Portuguese government are of paradigmatic value²².

21 More recently, criticism of the obligatory arbitration mechanism provided for by Decree Law 209/92, was levelled by the Commission for Freedom of Association and Collective Bargaining, 1994, on the basis that the legislation permitting one of the parties in the dispute or a public body to unilaterally impose recourse to obligatory arbitration was not constructive to the collective bargaining process.

22 We should remember that, prior to 1974, only two complaints were filed against Portugal for violation of trade union rights.

If we consider the period between 1981 (when the first complaint since 25 April 1974 was filed) and 1998, we find that 22 complaints were lodged with the BIT for violation of freedom of association rights. According to Campos (1994), these complaints fell into three categories, namely, collective bargaining in the public administration, state interference in collective bargaining, and the right to freely set up trade unions.

It should be noted that, in the context of our analysis, 13 of the 22 complaints were filed between 1981 and 1986. There are various reasons why most of the complaints were lodged during that five-year period. It was a time of economic crisis that seriously impacted the employment system, and there were other contributory phenomena, such as EEC membership (1985), the second FMI stabilisation programme (1983/84), the start of the industrial reconversion processes, and changes resulting from the introduction of new technologies. In addition to these factors, which weakened workers' ability to claim rights, trade union pluralism and rivalry between the CGTP-IN and UGT increased. All these elements support the hypothesis that the complaints filed with the ILO worked like a labour dispute 'safety valve' at a time of instability in the industrial relations system when the role of state regulation was in question.

Recourse to the ILO was an important legitimising factor of the political options followed for the world of work, especially in the 1970s and 1980s. Regardless of whether the government was left or right wing, the option in terms of labour dispute resolution was clear: to substitute direct state intervention in labour regulation for regulatory principles based on tripartite participation or self-regulation. However, analyses we carried out on the Portuguese labour dispute resolution system at other times (Ferreira, 1993, 1994, 1998) revealed that the preponderance of the state and weakness of civil society both persisted.

At present, from the normative and institutional standpoint, the forms of Portuguese labour dispute resolution follow the same pattern as the main global trends, referred to in the first part of this text, with one exception – the Public Prosecutor in Portugal can take on the role of legal representative of workers and/or their families (*patrocínio oficioso*)²³.

In this respect, we really do have what we can identify as a plural and diversified labour dispute resolution system in which legal solutions, alternative forms of formal and informal dispute settlement, and the possibility of state intervention, etc. are recognised.

Nonetheless, the Portuguese industrial dispute resolution system is a weak and blocked system with substantial discrepancies between legal possibilities and social practices. As it is weak, it is more exposed to exogenous pressures, the role of the state, the domestic economic situation, and to de facto forces. As it is a blocked system, it impedes internal organisation and coordination, promotes the ineffectiveness of labour rights and allows for free riding. This is disturbing, especially since forms industrial dispute resolution make up the hard core of the industrial relations systems and are fundamental components in

23 In fact, according to a 1990 comparative study on labour jurisdictions, Portugal is the only EU country in which there is provision for the Public Prosecutor to become the legal representative of workers and their families.

making industrial relations more democratic and civil.

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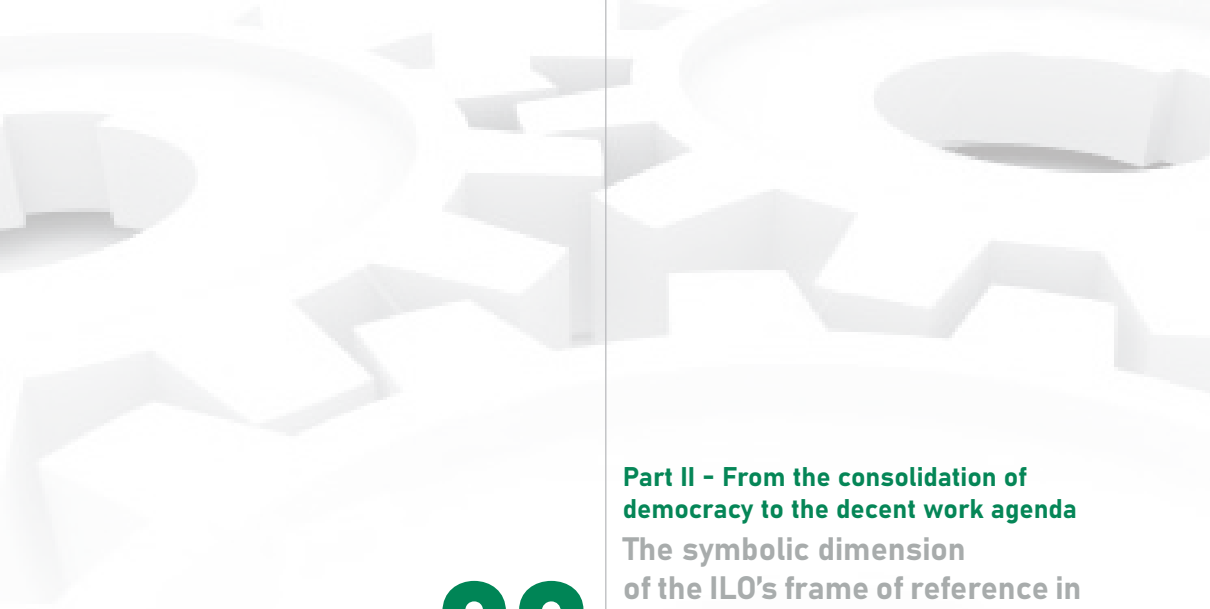
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08

Part II - From the consolidation of democracy to the decent work agenda

The symbolic dimension of the ILO's frame of reference in political and parliamentary speeches in Portugal ¹

MARINA PESSOA HENRIQUES ²

Abstract

This article discusses the ILO's contribution to achieving greater global justice, in the current context of economic crisis, unemployment and decent work deficits, analysing the political and legal representations of the ILO in its interaction with the parliamentary political sphere in Portugal, in order to identify the legitimising effect, nationally, of the ILO's normative framework on labour policy. The influence of international labour normativity manifests itself in several dimensions, as is clear from the capacity of the ILO's fundamental principles to infiltrate, of which the allusions to the ILO in parliamentary debates are indicators. Thus, we propose a qualitative interpretation of the quantitative results obtained, based on the analysis of the most discussed topics, according to the historical context in which they occurred.

¹ The present text was originally published in 2016, in "100 Anos da Organização Internacional do Trabalho. O Centenário do Ministério do Trabalho: A Institucionalização da Regulação Laboral", Cadernos Sociedade e Trabalho, XVIII, pp. 15-28.

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Introduction³

The centenary of the International Labour Organization (ILO) in 2019 provides a unique opportunity to reflect on the future of work by examining the world of work as it is today, where decent work deficits are clearly in evidence, namely the denial of labour rights, lack of quality job opportunities, inadequate social protection and absence of social dialogue. This reality is apparent in global employment figures. They show that more than 26 million people in Europe, and over 200 million people across the world are jobless; 839 million workers earn less than 2 dollars a day (ILO, 2014b); 2.3 million workers die each year as a result of industrial accidents and occupational diseases (ILO, 2014a); 21 million are victims of forced labour (ILO, 2013a), and 168 million children are victims of child labour (ILO, 2013b).

This article looks at the ILO's role in the institutionalisation of labour regulation in Portugal, the influence of its normativity and the impact capacity of the fundamental principles and rights enshrined in the ILO Constitution. Among other reasons, this focus is justified by the Organization's growing protagonism throughout the denationalisation of labour reforms and labour law (Ferreira, 2012: 77-78), considering that the conjugated acceptance of the solution based on the autonomy of States appears to have contributed to a social-labour policy at national level, the most visible result of the internationalisation of the world of work being the increasing influence of external factors on labour legal systems.

The influence of ILO labour standards in Portugal is considered, using references to the ILO made in speeches in the Assembly of the Republic (AR) during parliamentary debates as indicators, in the belief that these debates reflect the social situation at the time, and are good indicators of the interpenetration of the ILO's general principles in the domestic labour relations system and of the dynamics of the relationship between the ILO and Portugal.

It is an exploratory analysis centred on the political and legal representations of the ILO in its interaction with the parliamentary political sphere, and the question of to what extent the ILO labour governance paradigm is felt at national level, as a legitimising effect where parliamentary discourse is concerned. The methodological operationalisation followed favoured a quantitative and qualitative approach to the analysis of the content of the debates (between 1976 and 2013) in which the ILO was referred to, tracing the main topics and the social actors involved, according to the context of the respective moments in history.

The article is structured around two main points. Firstly, the influence of the ILO's political and

³ This is the text of a paper presented at the "Ministry of Labour Centenary: The Institutionalisation of Labour Regulation", a conference jointly organised by the *Faculdade de Ciências Sociais e Humanas da Universidade Nova de Lisboa* (FCSH-UNL) and the ILO Lisbon Office, which took place at the FCSH-UNL in May 2016. A fuller updated version will be included in the doctoral thesis I am currently working on, on the subject of the ILO's role in the transnationalisation of labour regulation in Portugal (financed by the *Fundação para a Ciência e a Tecnologia* - SFRH/BD/82521/2011).

legal reference pattern is briefly discussed, from a legal sociology perspective, a discipline that has been consolidating different theoretical frameworks and methodological instruments adjusted to the study of the relationships between the law and society. Secondly, references to the ILO during parliamentary debates are taken as the main indicator, considering the hypothesis that they give form to a situation of symbolic use of the law, because of their role as a political legitimising mechanism of the labour rights in question, constituting an indicator of the ILO's importance in the institutionalisation of labour regulation in Portugal.

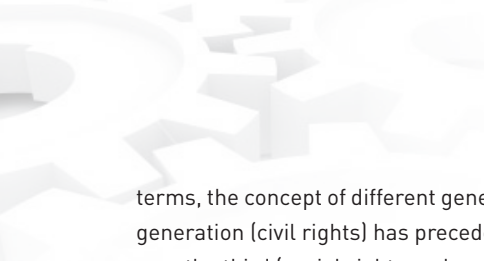
1. The ILO and institutionalisation of labour regulation in Portugal: from soft law to the decent work agenda

This analysis of the ILO's impact on the institutionalisation of labour regulation in Portugal and the symbolic dimension of its reference framework in parliamentary debates has prioritised the legal sociology perspective, the predominant characteristic of which is interdisciplinarity (Arnaud & Dulce, 1966), in an attempt to contribute to a critical observation of the influence of the ILO's regulatory legal system, in accordance with the relationship between its fundamental principles and the challenges faced by today's world of work. Reference is made to the ILO's political and legal system as a legitimising instrument⁴, i.e. attention is drawn to the symbolic dimension of the political function of the law (Hespanha, 2007: 232), given its utilisation as a political instrument for intervention in the social and labour sphere.

Since its founding in 1919, the ILO's social justice agenda has played a crucial role in advancing living and working conditions. In 1998, for example, the Organization introduced the core labour standards, and at the 1999 International Labour Conference, ILO Director General, Juan Somavia, launched the concept of decent work. The Decent Work Agenda has been widely debated and is regarded to be a reference in the world of work, especially where employment policies and social cohesion are concerned.

The centrality of the ILO in labour governance and promotion of labour human rights is justified by the need for legal norms to be globally recognised and effectively accepted in order to guarantee workers' rights (Santos & Jenson, 2000: 20-21). Structuring its action around international labour patterns and on the convergence between human rights and labour rights, the ILO assumes a cosmopolitan character, insofar as it seeks to recover at global level that which, in terms of labour rights, has been lost at national level. Thus, the ILO's definition of fundamental labour rights stands out, as it seeks to confer on them protection similar to that which human rights enjoy. In this respect, it should be remembered that, in political and legal

⁴ The concept of legitimisation is used because of its comprehensive character, and is reminiscent of N. Luhmann's Weberian expression "legitimation through procedure" (Ferrari, 1989).



terms, the concept of different generations of human rights is enclosed in the idea that the first generation (civil rights) has precedence over the second (political rights), and that both prevail over the third (social rights and economic rights).

The ILO's International Labour Code constitutes an expression of the institutionalist political and legal perspective, whose objective is to achieve greater global justice and, in the absence of characteristics such as obligation, uniformity, or justiciability, it is classified as soft law⁵. In relation to the ILO's action paradigm based on soft law mechanisms, some authors believe that this is the Organization's strength rather than a weakness, considering it more appropriate than an inflexible approach lacking ponderation of national specificities (Salazar-Xirinachs, 2004). Despite the inexistence of a univocal understanding of the concept of soft law, its defenders question the usefulness, pertinence and suitability of the traditional forms of hard law in the broad context of national diversities and the various issues with which the international agenda is confronted (Trubek *et al*, 2005).

Also in relation to the symbolic dimension of the ILO's reference framework, recourse to the ILO's general principles through references during parliamentary debates becomes a valuable argument at national level that, while not being judicial or even para-judicial in nature, finds a primary effective tool in *the power of embarrassment*⁶ (Pureza, 2007), in other words, it becomes a legitimising mechanism through the symbolic use of the law (Bourdieu, 1989).

The influence of the ILO as an international reference framework in the modernisation of the Portuguese labour relations system and labour law is recognised in four key areas: (1) the incorporation in domestic law of exogenous standards, for example, the ratification of standards and adoption of recommendations⁷; (2) the possibility of recourse to supranational

5 In spite of its meaning not being univocal, this concept is used here to refer to normative statements formulated as abstract principles and to the non-binding guidelines of international organisations.

6 The most important normative and conceptual transformative dynamic of the international order that occurred in the 20th Century – the emergence of international protection of human rights – was based on recognition by a global community that went beyond relationships between States. This dynamic unfolded in three complementary vectors: a normative vector, meaning international legal texts covering all spheres of human dignity, containing the different generations of human rights; a procedural vector, materialised in the gradual improvement of international systems for monitoring compliance with treaty-established human rights standards; an institutional vector, comprising the international system of human rights protection, including several monitoring and supervisory structures, with a mandate that, although not judicial in nature or even para-judicial, uses *the power of embarrassment* as its primary effective instrument (Pureza, 2007: 78). The recent creation of the Human Rights Committee as a key UN body is symbolic of the recognition of the work undertaken by such institutions as pillars of humanity, to which the dynamic articulation established by them with human rights NGOs at varying levels of intervention is certainly not unrelated.

7 With regard to the regular control system, the contribution to the consolidation of the labour governance paradigm in Portugal, namely during the transition and democratic consolidation phases, and then after EU membership, centres on the mechanisms for adoption and submission of conventions and recommendations, emphasising the fact that the Organization's governance paradigm is associated with characteristics based on flexible instruments, referred to as soft law.

bodies in cases of conflict resolution, such as the complaints⁸ filed with the ILO against a State; (3) technical assistance with the reform process, and (4) the production and dissemination of guiding principles for national systems. In this case, a transversal approach to these dimensions was adopted, using an analytical model of an international legal labour culture, with capacity for guidance and establishment of reference frameworks for the production of labour normativity, taking into account the parliamentary references to the ILO.

2. The ILO in Portugal's parliamentary political discourse

With a view to examining the influence of the ILO in the institutionalisation of labour regulation in Portugal, following is an analytical model in which the main indicator is reference made to the ILO in parliamentary debates between 1976 and 2013, and parliamentarian's interventions relating to the ILO are scrutinised by analysing the issues most discussed in speeches in parliament, on the basis of extensive empirical research into the debates during that period.

References made to the ILO by national political figures are relevant insofar as the transformations and tensions emerging from the labour relations system in Portugal find normative and relational guidance in this transnational regulation agency. Furthermore, by analysing the allusions to the ILO in parliament we can observe a vital space for political struggle in the world of work, and gain insight into the field of political dynamics when labour issues are raised.

The methodological operationalisation of this analysis consisted of, firstly, researching the expressions "International Labour Organization" and "ILO" in the Official Gazettes of the

⁸ Where special control mechanisms are concerned, transnational solutions for labour conflicts have an increasing complementary role to national systems, especially in today's context of globalisation and transnationalisation of industrial relations, in which national States face increasing challenges. We focus on the ILO's role as an agency of transnational labour conflict regulation, through the complaints and representations system, within the framework of the ILO's traditional system of functioning (Alston, 2005) of legal base (Blanpain, 2004), linked to the monitoring and supervision of the effectiveness of international labour standards. It is accepted that they replicate, at transnational level, the adjudication approach in dispute resolution, i.e. the special supervisory system may be seen as a transnational "board of appeal" for national labour disputes. In democratic countries like Portugal, where international labour standards have already been extensively assimilated, far beyond the fundamental and priority conventions, the lodging of a complaint and its referral to supervisory bodies maintains the adversarial approach of the national social partners. The "exhaustion" of the national conflict resolution system and of social dialogue has an adjudicative functional equivalent in the special supervisory mechanisms, their mobilisation being closely linked to the tradition and pattern of national labour relations systems.

Assembly of the Republic – Series I⁹, from 1976 to 2013, i.e. from Legislature I (the first session of which was held on 3 June 1976) to Legislature XII (up to the end of 2013). As a result of the research, reference to the ILO was found in 364 Official Gazettes. Given the massive amount of information, it was decided to exclude from the study the mentions of the ILO in the Gazettes of Series II¹⁰, and to include just a graphic illustration of the total number (Series I and II) of debates in which there are references to the ILO. The research identified a total of 1263 Gazettes in which references to the ILO appear.

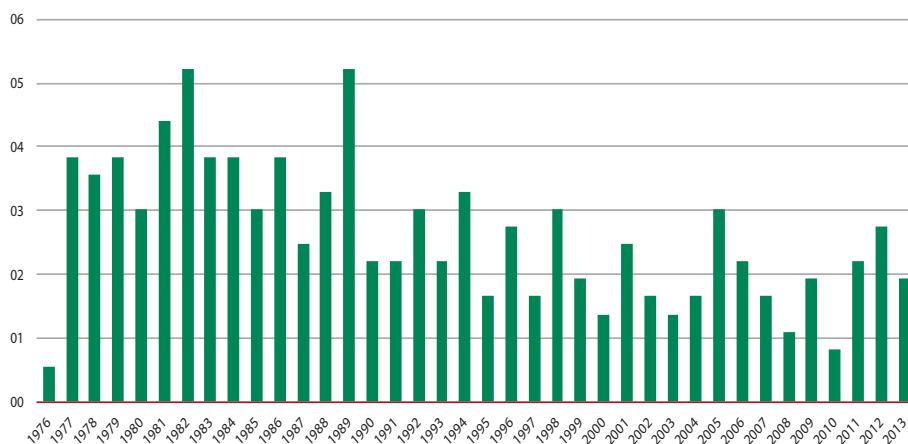
Following this initial research, the methodology consisted of identifying the subject matter debated (in the summary on the first page of each Gazette), then locating the reference to the ILO, and lastly constructing the analysis grid. Since the objective was to develop analysis that was both quantitative and qualitative, the number of interventions and Gazettes in which the ILO was mentioned was ascertained, and particular attention was given to the topics being discussed when the Organization was referred to. Other dimensions were also considered, including the subject matters that were most debated, according to the historical context in which they occurred. It is a chronological and thematic analytical approach, used to understand the evolution of the number of debates in which the ILO was mentioned and the topics debated in those sessions.

9 Series I of the Official Gazette contains a full accurate report on each plenary session. According to Assembly Resolution N.º 35/2007 of 20 August, Gazette Series I reports on: *a/* opening and closing times, the names of the President, Secretaries and Deputies present at the beginning of the meeting, those who entered later, those absent due to parliamentary work, and those who failed to attend; *b/* a full transcript of all statements and interventions by the President, commission members, Deputies, members of the government and other participants in the meeting; *c/* the incidents that occurred; *d/* documents for future meetings. The written explanations of voting sent to the commission are included in the Gazette and referenced. Series I of the Gazette contains a summary outlining agenda items, naming the speakers, giving voting results, and other matters that the President seems should be included therein.

10 Series II of the Official Gazette, which comprises five sub-series and respective supplements, includes: *a/* texts of decrees, resolutions and deliberations of the Plenary, Permanent Commission, commission members, and Leaders Conference, constitutional review projects, legislative projects and proposals, resolution and referendum projects and proposals, deliberation projects, parliamentary commission reports and draft or final texts, as well as other reports the parliamentary commissions have been requested to write, the President's convocations, messages from the President, the Government's programme and motions to reject, censure and support the Government's programme; *b/* texts of the votes, appeals, parliamentary enquiries and requests for appraisal of decree-laws, written questions to the government, and the requests referred to in points *d/* and *e/* of Constitution Article 156, as well as the respective responses, which may be partially reproduced when the Committee deems appropriate on account of their length, the texts and reports of the requests to be published by law and those which the competent parliamentary commission wishes to publish; *c/* the reports of parliamentary commissions' activities, as well as those of the Assembly's delegations, the minutes of the parliamentary commissions and parliamentary hearings, when their publication has been decided, and documents relating the Deputy's mandate and to parliamentary groups; *d/* the interventions by deputies when they represent the Assembly at international organisations, namely, the Interparliamentary Union, Parliamentary Assemblies of the Council of Europe, the North Atlantic Treaty Organisation, the Western European Union, the Organisation for Security and Cooperation in Europe, and the Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU, when they appear in full in the respective records, as well as those of the Assembly delegations, and the documents relating to the constitution and composition of the parliamentary friendship groups; *e/* the President's and Vice-Presidents' dispatches, the budget and Assembly accounts, activity reports of the Assembly and Due Diligence, the deliberations, recommendations, opinions and reports from independent bodies working with the Assembly, documents relating to Assembly staff and other documents that, under the law or regulations, must be published, as well as others whose publication has been ordered by the President.

The following graph shows the percentage evolution of the number of Gazettes (Series I) that contain reference to the ILO, by year, between 1976 and 2013.

Graph 1 References to the ILO in the Official Gazettes of the Assembly of the Republic – Series I, by year (%)



Source: Official Gazettes of the Assembly of the Republic

Despite the fluctuations, three periods relating to references to the ILO in parliamentary debates are identifiable. After Legislature I (1976 to 1980), when the ILO was extensively mentioned, the tendency for a high number of ILO references continued during the 1980s, albeit with some variations. The prevailing economic conditions, namely, the financial crisis, the political context in relation to neoliberalism, illustrated, for example, by various privatisations, the problem of unpaid salaries, the country's membership of the EU, the institutionalisation of social dialogue, the reshaping of the existing industrial relations model, the relatively offensive measures taken against workers and trade unions, and the recognition of public servants' right to negotiate and take part in decisions concerning their working conditions, were just some of the challenges facing Portugal at the time, which would explain the high number of references to the ILO in parliamentary debates.

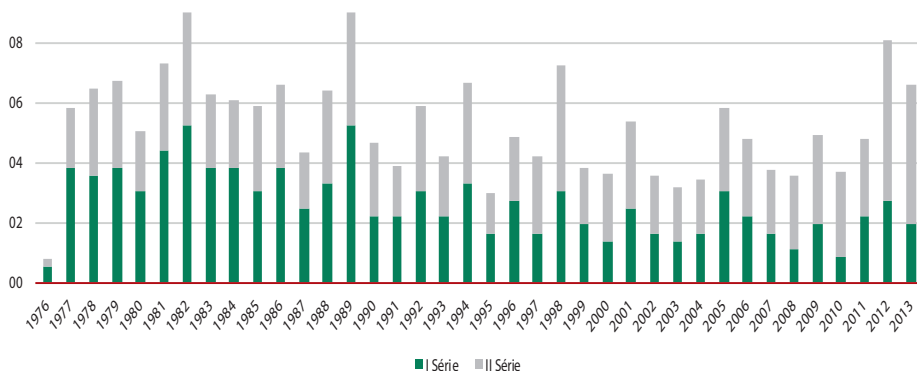
After this period, during the 1990s and early on in the 2000s, there was an overall decrease, which would appear connected to Portugal's entry to the EU in 1986, and the subsequent impact of Community social legislation and implementation of the European Employment Strategy (1997). Since then, in the context of deregulation and flexibilisation of labour law and labour relations, recourse to the ILO reference framework became instrumental to preserving labour rights in the face of the destructuring tendencies confronting them.

More recently, especially after 2005 (but except for 2008 and 2010), a new increasing tendency

can be seen, explicable by the fact that many of the references were in connection with the complaints and representations filed with the ILO against Portugal¹¹, and the opening of the ILO Office in Lisbon in 2003. The work of the Office created greater awareness among politicians of its important role in the institutionalisation of labour relations in Portugal.

As previously mentioned, due to the large number of Official Gazettes containing references to the ILO, it was impossible to examine Series II in detail. However, the following graph shows the evolution of the total number (Series I and II) of parliamentary debates in which reference is made to the ILO between 1976 and 2013. By illustrating the total numbers, the graph is crucial to the reflection being proposed.

Graph 2 References to the ILO in Assembly of the Republic Gazettes – Series I and II, by year (%)

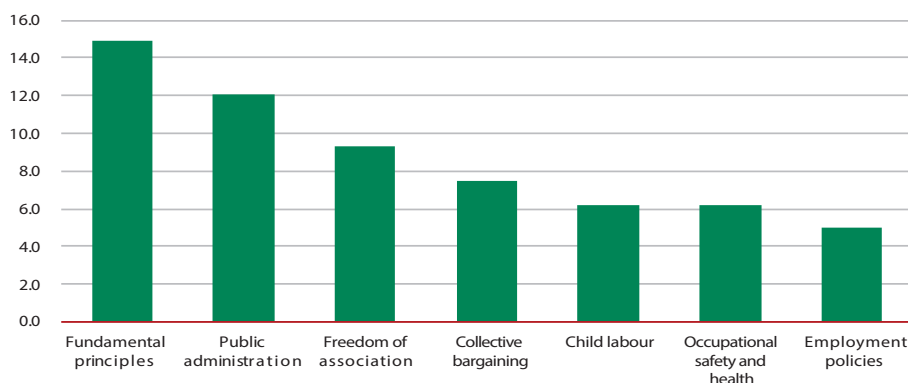


Source: Assembly of the Republic Official Gazettes.

11 The most recent complaints and representations filed against Portugal (between 2009 and 2013) were the following: in 2009, the *Confederação Geral dos Trabalhadores Portugueses* (CGTP-IN) lodged a complaint against the Portuguese government in relation to freedom of association and the right to organise and collective bargaining (Conventions N.ºs 87 and 98). The adoption of legal provisions prejudicial to the exercise of the right to collective bargaining had originated the complaint, which was related to restrictions on collective bargaining in a postal and telecommunications services company. In 2011, the *Associação Sindical dos Profissionais da Polícia* – ASPP/PSP (police association) filed a complaint against the government for violations of fundamental rights and workplace health and safety conditions. In 2013, the *Sindicato dos Inspectores do Trabalho* (SIT) (labour inspectors' union) filed a complaint against the government under Article 24 of the ILO Constitution, alleging infringement of fundamental rights and workplace health and safety conditions. Again in 2013, the *Sindicato dos Estivadores* (dockers' union) filed against the Portuguese government on issues of fundamental rights and workplace safety. A complaint filed in 2014 (outside the time period being studied but, nonetheless, worth mentioning) by the *Sindicato dos Trabalhadores da Função Pública* (public administration workers' union) reported unemployed people being recruited to work in the Public Administration on the basis of "employment-integration contracts". The union considered the work regime to be exploitative and demanded the workers be integrated as employees in the services in which they were working.

The following graph shows the data on the subject matter that was most referred to when the ILO was mentioned in the parliamentary debates, as recorded in the Assembly of the Republic Gazettes – Series I. It gives the percentage distribution of the main topics referred to according to the ILO's political-normative reference framework.

Graph 3 Main topics associated to references to the ILO in the Assembly of the Republic Gazettes – Series I (%)



Source: Official Gazettes of the Assembly of the Republic (1976-2013).

Extensive analysis of the most referred to topics in the parliamentary debates when the ILO was mentioned, and the historical context in which they occurred, enabled identification in the political discourse, during the normalisation period marked by the beginnings of the 1976 Constitution and the subsequent electoral processes, of the need for legal and labour points of reference that would structure the reforms being introduced in the labour dispute resolution system at the time.

Graph 3 shows that the ILO's fundamental principles are clearly the subject area most referred to, i.e. the Organization generally, but with standards and its reference framework's symbolic dimension predominating. In addition to references to the ILO in terms of values, freedom of



association¹² and collective bargaining are recurrent topics in the Assembly debates. References to the public administration are also frequent, explicable by the fact that the Portuguese state is a major employer, among other factors.

As is known, freedom of association and collective bargaining are fundamental principles of the ILO¹³. Following the adoption of Convention N.º 87 (freedom of association and protection of the right to organise) and Convention N.º 98 (right to organise and collective bargaining), the ILO has sought to ensure member states' compliance with these conventions, regardless of whether they have ratified the standards.

Thus, since freedom of association is one of the main pillars for achievement of ILO objectives, in addition to the conventions on trade union rights (11, 87, 98, 141, 151, 154), there are numerous recommendations and resolutions that feature the independence of the trade union movement and the relationship between trade union rights and essential public freedoms to exercise those rights (1970)¹⁴.

Issues such as child labour, occupational safety and health, and discrimination against women also deserve mention, given the substantial number of references to them. References to the ILO in connection with emerging themes linked to the new challenges facing labour relations, such as genetic discrimination at the workplace, also feature prominently.

12 In references to the ILO, "freedom of association" was found to be the subject that was most referred to during the AR debates. The occurrences may be grouped as follows: (1) Obstacles to acquiring rights to union organisation and activity, namely the rights to collective bargaining, form trade unions, and carry out trade union activity in the workplace; (2) Obstacles to trade union activity – discrimination based on trade union membership, constraints on trade union meetings in the workplace; (3) Obstacles to collective bargaining/instruments of collective labour regulation (IRCT) – in the context of public employees' pay negotiations, when the government halts negotiations, rejects supplementary negotiations, or does not meet deadlines; when the government passes decrees that nullify existing IRTC, or fails to publish negotiated agreements, (4) Absence of negotiation: in the context of public administration, relating to the implementation of decrees, especially those regulating careers and pay scales, and, in the sphere of public enterprises, implementation of non-negotiated salary reviews; (5) Criticism of the dispute resolution mechanism in the definition of working conditions: condemnation of lack of decree laws regulating collective bargaining in the public service, and not anticipating a credible and peaceful dispute resolution in this sector.

13 The recognition of the labour conflict as a human right, as reflected in Article 23 of the Universal Declaration of Human Rights, wherein the right to form trade unions for the protection of workers' interests is enshrined, and, more recently, the identification of freedom of association, to set up trade unions and engage in collective bargaining as fundamental workers' rights, included among the core labour standards, illustrate the normative importance of the global space for the constitution of national labour relations systems.

14 Regarding the forms of direct ILO intervention in national labour dispute resolution, the Committee on Freedom of Association (CFA) procedures should be mentioned. Among the Organization's supervisory systems, and apart from the general mechanisms applicable to all the international labour conventions, there are special procedures for the protection of the standards and principles on freedom of association. The purpose of the CFA is to carry out preliminary examinations of complaints of violations of freedom of association. Consent from the respective governments to examine complaints is not required. Leaving aside the CFA's working methods and criteria, we should emphasise the effect the Committee had on Portugal's labour relations system after 1974. In the context of democratic society, the principle of freedom of association is fully legally enshrined, both in terms of the Constitution and ordinary legislation, so the complaints filed against the Portuguese government are of paradigmatic value. However, it should be remembered that prior to 1974, two complaints were filed against Portugal for violation of trade union rights.

Reference to certain topics during the speeches is an important indicator of the representations of the political agents on socio-labour issues, in addition to their priorities in their political strategies given the limitations imposed by the politically appropriate interventions at a given time.

As for the themes most referred to when alluding to the ILO by speakers in parliamentary debates, the reference to the fundamental principles of the ILO stands out, that is, the allusion to the ILO is mostly of a generic nature predominating the normativity and symbolic dimension of its reference framework. In addition to the references to the ILO in terms of fundamental principles, public administration (which is explained, among other factors, by the prevalence of the Portuguese State as a large employer), freedom of association, collective bargaining, child labour, OSH, employment policies, wages and working time are recurrent themes in the debates of the Regional Assembly.

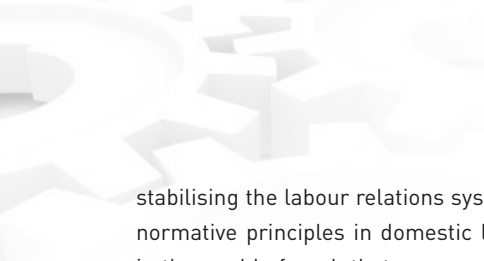
The analysis undertaken also enabled the identification of the tendency to invoke the potential of the ILO's soft law, taking into account its action, based on instruments that are effective because of their symbolic dimension, that is, the references to the ILO are often made through the symbolic use of the reference framework of its fundamental principles. On the other hand, just as in the case of the complaints and representations filed with the ILO against Portugal, its importance also resides in the symbolic function associated with the shaming effect on the State, in line with the idea of the power of embarrassment mentioned above.

Final considerations

As the ILO approaches its centenary year, this article has sought to examine the institutionalisation of labour regulation in Portugal, intersecting its evolution with the external influence of the Organization, using parliamentary debates as the indicator of the socio-legal pattern of labour relations in Portugal.

The symbolic dimension of the political functions of the law constituted the analytical framework used to identify the political-legal representations of the Organization in its interaction with parliamentary discursive activity. The conclusions point to the identification of the legitimising effect, at national level, of the ILO's legal-normative guidelines on labour policy issues. On the other hand, the semantic and rhetorical dimensions became clear, which resulted from the lack of coincidence between the role of regulatory principles and social dialogue and effective practices that reveal the inexistence of a socio-labour culture of negotiation and an imbalance of power between the social partners.

The references to the ILO in parliamentary debates illustrate the ILO's contribution towards



stabilising the labour relations system in Portugal, especially through the incorporation of its normative principles in domestic legislation, which varied according to the transformations in the world of work that were associated with the different phases of democratic transition and consolidation. The work of the ILO, as an international agency promoting and protecting workers' rights, has clearly made a significant contribution to the elaboration of the current model of labour governance. This is particularly true in terms the transformations that have taken place in the reconfiguration of Portugal's world of work and the growing influence of the transnational space, which has led to the (re)centrality of ILO intervention.

In addition to the extensive mobilisation of the symbolic legitimization conferred by the ILO revealed in the parliamentary debates, in connection with the Organization's values and benchmarks, other labour human rights integral to the labour governance paradigm that are key ILO concerns, such as child labour, occupational safety and health, and gender discrimination, also feature prominently, as do references to the "classical" themes and other issues emerging in the context of new challenges facing labour relations.

At a time when broad reflection is called for on the future of work and the role of the ILO as it enters its second centenary serving social justice, the issues raised in this article will be highly pertinent. It is hoped this will contribute to the debate, and stimulate and enrich reflection and discussion.

In this context, it is essential that the impact of the crisis and responses to it, as well as other important global trends and transitions that have shaped the world of work since 2008, are given consideration. In line with the need for innovative political mobilization in terms of symbolic expansion of workers' rights, and taking into account human dignity considerations, the potential of the ILO's soft law appears to stand out. Although soft law instruments do not have a legal nature, it is their symbolic dimension that makes them effective, conveying a legitimization mechanism through the symbolic use of the reference framework based on the ILO's fundamental principles, as was illustrated in the analysis of the parliamentary political discourse.

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09

Part II - From the consolidation of democracy to the decent work agenda

Adjudicating and institutionalizing the Portuguese labour relations system: the soft law of the complaints and grievances system of the International Labour Organization ¹

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Abstract

The conflict is a basic structural and integral element of both labour relations and labour law. The transnational solutions for labour conflicts have an increasing complementary role to national systems, mainly in the today's context of globalisation and transnationalisation of industrial relations. For this purpose, the International Labour Organization (ILO), an agency of transnational labour conflicts regulation and a supervising entity of core labour standards enforcement, has implemented supervisory mechanisms either special (complaints and representations) or regular (regular supervisory system). Drawing on the documentary analysis of all the complaints and representations procedures, we intend to clarify the relationship between Portugal and ILO, particularly after 1974. The use of this mechanism reveals emerging social tensions within industrial relations systems, as well as it shows the international projection of the conflicts of interest and expresses the demand for transnational solutions of national socio-legal conflicts. In the Portuguese case, the post 1974 period demonstrates

¹ Article published by ILO's Century Project in 22 may 2015, and available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_370577.pdf

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several particularities, as its system of labour relations has been subject to the dynamics of the processes of democratic transition and consolidation, as well as to the re-institutionalisation of the system itself. Focusing on the special supervisory mechanisms we intend to understand ILO's role in these dynamic of transformation and consolidation of the Portuguese system of industrial relations.

Introduction

The international labour standards are a set of guidelines or standards outlining the conduct of the labour market actors and a regulatory model in which ILO member states should inscribe their policies and orientations within its area of competence. The decision of affiliation to the ILO system requires progressive harmonisation with this compromise.

The international labour standards (expressed in conventions and recommendations) are aligned with a Constitution wich has been formally adopted upon ILO's institution⁵. The preamble of the Constitution defends the fact that the non "adoption of humane conditions of work is an obstacle in the way of other nations which desire to improve the conditions in their own countries" (OIT, 2007a: 5). The supervision of the standards enforcement is part of the mechanisms created by ILO to ensure Member States compliance with the model set up by the Organization: a legislation defending and promoting decent work grounded on basic criteria of labour law⁶. This supervision has been institutionalised through the mechanisms foreseen in ILO Constitution and its competent bodies.

Alongside the regular supervisory system, ILO has developed a system of complaints and representations, working as an appeal body for alleged conventions infringement. The mechanisms of complaints and representations have slightly diferent implications (which shall be futher addressed) and may be both put forward either by the governments of ILO's State members or by employers and workers' organizations. The present analysis is made within that context. Therefore, we have done the inventory and analysis of the complaints and representations procedures concerning Portugal, in the period between 1919 and 2007, based on alleged conventions infringement. As described below, we have focused our analysis in the years between 1960 and 2007, as the special supervisory system – even though it is broadly

5 The Constitution of the International Labour Organization has been adopted in 1919. It has been later amended in 1922, 1934 and 1945. Today's version dates from 20 April 1948. It was written by the Commission on International Labour Legislation composed by representatives of nine countries, including workers and employers' delegates; it is chaired by the President of the American Federation of Labor (AFL). The Constitution has an annex, the Declaration of Philadelphia, adopted in 1944 where all the fundamental principles of the Organization are enshrined.

6 In 1969, on the occasion of its 50th anniversary, the International Labour Organization was awarded the Nobel Peace Prize, and the President of the Nobel Committee had stated that ILO was "one of the few institutional creations human race could be proud of" (cf. Quadros, 2009).

previewd in ILO Constitution – has been only formally instituted from the fifties onwards of the XX century. Along with this formal question, the Portuguese political context between the thirties and the end of the sixties was an inhibitor factor of the freedom of openness of the country to the outside, and of the development of a fair and free system of industrial relations (grounded on the ILO principles), which limited the possibilities of regulation of conflicts at the international level as well as ILO influence as an agent of normative production.

The use by the national social actors of the ILO system of complaints and representations is relevant to the configuration of the Portuguese system of industrial relations, considering that the changes and tensions emerging from labour relations gain expression and voice within these mechanisms. In fact, and opposite to the majority of the cases selected to this comparative analysis (western world countries) in which the institutionalisation of the system of industrial relations occurred in the post-war period and found its sustainability within the context of welfare states expansion and of labour and social citizenship rights extension, the Portuguese system of labour relations was subject to the dynamics of the processes of democratic transition and consolidation, as well as to the re-institutionalisation of the system itself.

ILO system of complaints and representations is analysed in this article based on three functions: (1) political function as a result of the mediation State/labour civil society, (2) instrumental/procedural function referring to the regulation of conflicts and (3) symbolic function related to the setting/expression of social expectations. The *soft law* characteristics associated to this mechanism as well as its results shall be also considered.

Following a qualitative and intensive research approach we have done, at an early stage, a documentary and content analysis of all the complaints and representations procedures. For the purpose, we have built up and applied a guide for each and every one of the cases and have used the following sources of information⁷: the complaints/representations procedures filed in Ministry of Labour and Social Solidarity archives⁸; the yearly Official Bulletins of *Bureau International du Travail* (BIT) (1960 to 2005); and the ILO website⁹.

Based on the application of such guide it became possible to create analysis grids for each complaint/representation procedure as well as to quantify the procedures by subject, by ILO's recommendation and by Portuguese governments.

7 The guide involved the following indicators: Subjects; Dates; File numbers; Classification; Scope; Complaint's object; ILO Final Decision (conclusions and recommendations); Procedure Length; Pratical Effects; Complaints running simultaneously in other international fora; Other relevant information.

8 Comprise all documents exchanged about the subject between the syndicates and ILO, the syndicates and the Portuguese government and between the Portuguese government and ILO.

9 Consulted between 2005 and 2008, the period of our research project that resulted in the present paper.

1. Transnational space and the labour conflict regulation

The “conflict” has been historically present in labour market being a basic and integral element of both labour relations and labour law (Kahn-Freund, 1977; Barbash, 1984; Caire, 1991; Lyon-Caen, 1972; Ewald, 1985), a structural factor which has since early led the systems of industrial relations and labour law to include it as part of the socio-legal forms of regulation, attentive to the particularities of the working world, and which the national systems for the regulation of conflicts and of access to labour law and justice have emerged from.

The recognition of the labour conflict as a human right at the international level is enshrined in the Universal Declaration of Human Rights (UDHR) adopted in 1948, particularly in article 23 whereby the right to form and join trade unions for the protection of the workers’ interests is granted.

The right of freedom of association, to form and join trade unions, to conduct collective bargaining as an integral part of the workers’ fundamental rights are also listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, in the Universal Declaration of Civil and Political Rights (1966), as well as in the revised European Social Charter (1996). These legal instruments demonstrate the society’s commitment to the defence of basic public freedoms and the individual rights deemed as fundamental to the free use of union rights. Such commitment defence is visible in the ILO Constitution and in the International Labour Code.

The role of the conflict in labour relations structuring is, nevertheless, as relevant as the one recognised to the different modalities of bargaining and of social dialogue. Such matters, in a broad sense, have been a constant feature of the history of industrial relations and labour law and have therefore contributed to the development and institutionalisation of the different models of labour conflicts regulation. The process of juridification of labour relations underlines the diversity of the situations where principles like collective autonomy, self-regulation, association, State intervention and legal pluralism point out.

At the international level, transnational regulation pacts and agencies with a labour focus have converged in a common guiding line with regard to the forms of labour conflicts settling, grounded on three main ideas: promotion of social dialogue as well as self-regulation; increment of the alternative dispute resolution (RAL); and development of prevention mechanisms.

A human rights approach envisaged to the resolution of conflicts emerging from its implementation leads to the analysis of the compliance procedures structure. The transnational solutions for the regulation of labour conflicts have an increasing complementary role to national systems, mainly in the today’s context of globalisation and transnationalisation of labour relations whereby national states show growing difficulties in handling with this kind

of conflicts.

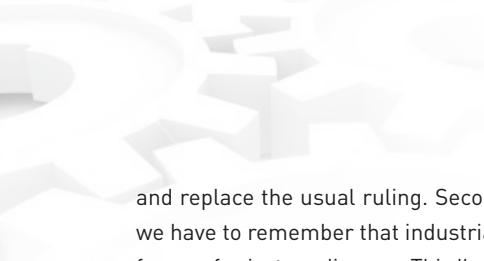
In the post II World War period the national systems of industrial relations operated within a context that could be called of “national autonomy internationally built up”, which worked partially because the autonomy of national economic areas were protected by an international legal regime (Ruggie, 1983). The main elements of this international regime were the *Bretton Woods System* and ILO. However, this autonomy did not just result from the international legal regimes but also from the national and international economic and political environment. On the one hand, “the international efforts to improve the industrial relations were concentrated on establishing rules and procedures to enhance the effectiveness of the national systems; on the other hand, ILO role was to draw up and approve international treaties aimed at setting up standards that would be enacted and enforced at the national level” (Langille, 1998; Leary, 1996), i.e., ILO had no effective power in the enforcement of international standards.

The post war system was characterised for a set of changes which had an impact, under the aegis of globalisation, at the economic, political and social levels. Facing a global economy with its inherent risks it was necessary to understand the deep technological changes, the changes related to the establishment of new economic parameters, the political changes, those happening in the capital markets, and those substantiated in a different way the State started to be looked at in terms of relevance to the economy and subsequently the changes in labour relations.

Supported by the deepening of the existing academic literature it can be stated that this transnational vision of the industrial relations does indeed exist (Hassel, 2008; Haworth and Huges, 2003; Trubek *et al.*, 2005). Such vision rejects the idea that the possibilities of regulation are limited to the choice between the national and the global, and representations that it is possible to create more complex procedures whereby the several normative areas intertwine at different levels as well as across borders, developing standards, local practices, national legislation, supranational forums and international law in the ultimate interest of the workers and their rights’ effective protection.

It is though proposed a more solid perspective of this vision of the industrial relations whereby labour interaction is reinforced, as well as the management and the role of the State in the setting of operational standards (Dunlop, 1993); the perspective of legal pluralism enhancing the need of understanding how different overlapping standards may affect several semi-autonomous social fields (Arthurs, 1996); the perspective of the international regime (Krasner, 1983).

Firstly, one cannot give up over national systems as they remain the basis of industrial relations. However, to become fully effective they should be supported either by transnational actors’ involvement at the national level, and by truly transnational standards that may alter



and replace the usual ruling. Secondly, one cannot fully trust in public action, in other words we have to remember that industrial relations “systems” were partially built up upon different forms of private ordinance. Thirdly, one cannot look for just one type of normative sources; the functioning of the transnational regime of industrial relations can only be built up weaving a net of different public and private normative sources at the different levels. Finally, it is important to be aware about transnational actors and advocacy networks, because they play an important role in the mobilisation of rules belonging to different systems so as to create a stabilising web that surpasses the national”.

In what refers to the constituent elements of the regime of regulation of labour conflicts, whenever looked at from the transnational point of view, we must stand out the interaction between the different principles of regulation and the non-judicial forms for the regulation of conflicts, the biggest number of transnational instruments of regulation. From a transnational point of view, labour conflicts only seldom arrive to international courts. Naturally that the informal ways to regulate conflicts, along with the market principle, are one of the main ways of regulation of labour conflicts, namely via dissuasion and suppressed demand (Ferreira, 2005: 200-214).

Although traditionally “international labour standards regarding the regulation of labour conflicts have a general character and reflect the diversity of the existing national systems” (ILO, 1999), the subject has acquired, in the end of the nineties, a greater visibility as a consequence of the preparatory meetings of ILO Conference planned for 2001 by the Governing Body. The agenda for the reforms to be carried out in the instruments of regulation of labour conflicts reflects the differences of opinion held between the members of the Governing Body. One of the most prominent tensions was whether the intervention should assume the form of a general discussion or of a normative initiative” (ILO, 1998).

Though the Governing Body has decided to maintain this item in 2001 Conference agenda and to submit it to a general discussion, this shows the lack of consensus between the members. The contradictory character of this debate has been proven by the position adopted by Member States in the course of the consultations held: thirteen Member States agreed with the proposal of submitting the subject to a general discussion; out of the Governments defending a normative initiative, a subject deemed as “particularly sensitive”, Austria has suggested the adoption of a recommendation and Australia advocated for a preliminary general discussion followed by the adoption of standards (ILO, 1997); Germany raised serious reservations, though without explaining them, to the inclusion of such matter in the agenda of the Conference (Ferreira, 2005: 200-214).

Despite the differences regarding procedures and methods to be implemented it is clear the concern with the need for a legal reform in what refers to labour conflicts, whereby the systems and mechanisms ensuring accessibility, efficiency, equity and parties confidence should be

reinforced (cf. ILO, 1999). In one of its working papers (March, 1999), the Governing Body dealt with the new trends in the field of prevention and resolution of labour conflicts. The text stands out the appearance of new strategies and of innovative techniques and models on bargaining, regulation of conflicts and joint solution to the problems, materialised in the adoption of active and creative measures and programs aimed at motivating the parties to leave an attitude of confrontation and adopt one of conciliation, team work and cooperation.

Grounded on the principle of association and social dialogue, ILO proposals on the labour conflicts resolution enhance the need for developing tools and forms of preventive law and for reforming traditional mechanisms of regulation of labour conflicts. Regarding the new trends on labour conflicts prevention and resolution, different bargaining techniques have been pointed out on a basis of win/win, interests' reciprocity or amicable conflicts' resolution. Underlining the need to strengthen the systems and mechanisms granting accessibility, efficiency, equity and parties confidence, the suggestion is to replace the traditional paradigm of conflicts' regulation (acting only after the situation of open conflict is declared) by preventive models enhancing cooperation between social partners.

Besides the defence of preventive law and always having in mind the current context of globalisation and transition of many countries towards open market-oriented economies, the proposal for reforming the classical methods of conflict regulation – collective bargaining; conciliation; mediation; arbitration; and court decisions – aims at allowing their adaptation to the new demands of labour market. For instance, one of the limitations levelled at courts is their insufficient knowledge of the working world, the high litigation costs, the excessively adversarial character of their decisions, the lack of sense of compromise, their capacity to take good legal decisions but inability for dealing with the real problems at stake which may endanger the future relations of the parties, and finally the difficulty in accessing courts (Vd. Ferreira, 2005). Such limitations led to proposals for carrying out in-depth studies related to the functioning of labour courts and similar bodies in order to make them more accessible and to improve the confidence in their performance.

Regarding ILO's role – as an agency of transnational labour conflicts regulation – it must be stood out the existence of different representations and complaints' proceedings, the setting up of committees of inquiry, the action of the Committee on Freedom of Association, and the implementation of *core labour standards* mechanisms. Present in all of these modalities are the social partners; wherefore, ILO's action – a way of regulation of labour conflicts – has a

direct link to the principle of association and social dialogue¹⁰.

2. ILO supervisory system

In this chapter dedicated to the analysis of ILO supervisory bodies we emphasise the “options” (Aliston and Heenan, 2005) and the “aspects” (Blanpain, 2004) used by ILO in the creation, enforcement and supervising of international labour standards. The follow-up and supervising of international labour standards’ effectiveness through the bodies of the supervisory system – Committee on Freedom of Association, Committee of Inquiry and Fact-Finding and Conciliation Commission on Freedom of Association – are part of “ILO’s traditional system of functioning (Aliston and Heenan, 2005: 238-240) of legal base (Blanpain, 2004: 10), being possible to admit that they replicate at the transnational level the adjudication and intervention approach by a third party typical of the national regulatory systems of labour conflicts. To that extent, the supervisory bodies may be seen as a transnational “board of appeal” for labour conflicts arising at the national level. The creation of such procedures was, at the time, innovative both at the international and national levels (Sussekund, 2000).

After 1989, with the end of the Cold War and the acceleration of globalisation forces, ILO has become more attentive to the effective compliance of fundamental labour rights, expressed on matters like abolition of forced labour and child labour, freedom of association and collective bargaining, discrimination in labour and occupation, promotion of decent employment and fair globalisation¹¹. Within this context, it has been adopted in 1998 the Declaration on Fundamental Principles and Rights at Work (ILO, 1998b). ILO conventions on such core matters set up the minimum thresholds upon which the States must organise their legal framework and translate those rulings in the construction of a more decent and fair society¹². As stated by Jean-Claude Javillier during the 2004 International Forum on Human and Social Rights, “to implement is not just to ratify but to further give life to standards, to incorporate, to get appropriated of those

10 The activity of the European Court of Human Rights at the labour level must also be mentioned: important decisions have been taken on matters like rights related to workers movement, discrimination between men and women, sexual discrimination and length of the proceedings before national courts. Notwithstanding the fact that this is not a streamlined way of dealing with labour matters because of the procedural limitations of the European Court of Human Rights, its decisions must be mentioned because of their innovative character and their potential for future solutions. At the formal non-judicial level and in what refers to the violation of the European Charter rights in labour matters, particularly referring to child labour, working time and discrimination, it must be stood out the possibility of a complaint being initiated by syndicates, NGOs or workers before the European Commission (Ferreira, 2005: 200-214).

11 The 8 core conventions: Convention N.º 87 – Convention on Freedom of Association and Protection of the Right to Organise; Convention N.º 98 – Convention on the right to organize and collective bargaining; Convention N.º 29 – On Forced Labour; Convention N.º 105 – On the Abolition of Forced Labour; Convention N.º 138 – On the Minimum Age for Admission to Employment; Convention N.º 182 – On the Worst Forms of Child Labour; Convention N.º 100 – On Equal Remuneration; Convention N.º 111 – On Discrimination in Labour and Occupation. Alongside, there are still 4 more priority conventions: Convention N.º 81 – On Labour Inspection; Convention N.º 129 – On Labour Inspection in Agriculture; Convention N.º 144 – On Tripartite Consultation; Convention N.º 122 – On Employment Policy. Cf. ILO

12 In 2004, ILO role in the promotion of strategies for a fair globalisation was reinforced by the *Report of the World Commission on the Social Dimension of Globalisation* (ILO, 2005).

standards in the national field” (Javillier, 2004: 142)¹³.

In the case of democratic countries like Portugal, where international labour standards had been already strongly assimilated, far beyond the fundamental and primary conventions, the lodging of a complaint and its referral to the supervisory bodies maintains the adversarial approach of the national social partners. The “exhaustion” of the national regulatory system of labour conflicts and of social dialogue has an adjudicative functional equivalent in the supervisory mechanisms, being their mobilisation strongly linked to the tradition and patterns of the national systems of labour relations. Moments of greater social crisis and conflict at the national level may also induce the search for supervisory mechanisms.

The Portuguese case is a good example of the relevance of ILO’s decisions in the adjudication of labour conflicts, which have, as mentioned above, a triple function: (1) the symbolic function of establishing the “judicial meaning” of the applicable standards to the relevant case and its further extension or (re)use as a bargaining resource in other similar conflicts; (2) an instrumental function since it offers a solution to the conflict as an appeal body; and (3) a political function of recognition of the boundaries and limits of social partners’ action (State included), i.e., as a regulating counter-power of the power imbalance of the parties.

Within the special supervisory system of ILO standards compliance (conventions and recommendations), we stand out the representations and complaints procedures initiated by employers’ and workers’ organizations and by Governments for non-compliance with conventions ratified by a member State. We shall analyse some of the characteristics of the specific supervisory bodies which are: the Committee on Freedom of Association; the Committee of Inquiry and the Fact-Finding and Conciliation Commission on Freedom of Association¹⁴.

The *Committee on Freedom of Association* (C.F.A.) was created in the fifties in a context of special procedures establishment. If the grounds of a complaint or of a representation is union rights infringement the case may be handled by this committee. The arguments may be attended regardless the ratification of the relevant conventions thereof, since ILO Constitution establishes the principle of freedom of association and the union rights as fundamental. This Committee is comprised of an independent president and of 3 full members and 3 substitutes on each of its groups – governmental, employers and workers. Their meetings are annually held in March, May and November, being their reports published in BIT Official Bulletin. Since its

13 The mechanism of Regular Supervision is not under analysis in this paper. Yet it is relevant to point out some data on the impact of its activity. A survey made between 1964 and 2004 reveals more than 2.300 cases of progresses in the enforcement of ratified Conventions. More than 150 countries have taken tangible measures for the harmonisation of their socio-legal framework with ILO recommendations (cf. ILO, 2007b).

14 For a more detailed insight of the supervisory mechanisms, see *Handbook of Procedures relating to International Labour Conventions and Recommendations* (2010), in http://ilo.org/global/standards/information-resources-and-publications/publications/WCMS_192621/lang--en/index.htm



creation, CFA has already analysed more than 2300 cases. More than sixty countries spread all over the five continents have taken measures based on CFA recommendations, and registered a positive evolution in terms of freedom of association over the past years (ILO, 2007b).

The *Fact-Finding and Conciliation Commission on Freedom of Association* may also appreciate complaints and representations that are the Committee on Freedom of Association's responsibility. The cases are sent to this Commission by the Governing Body. This Commission has been created in 1950 upon agreement of the United Nations Economic and Social Council, and comprises 9 independent persons (appointed by the Governing Body). As a principle, this Commission cannot examine any case without the prior consent of the relevant government. This rule comprises no exception unless the government has ratified the conventions on freedom of association. A report shall be produced with recommendations. The Governing Body may ask the governments to comply with the recommendations and to be informed about the measures adopted.

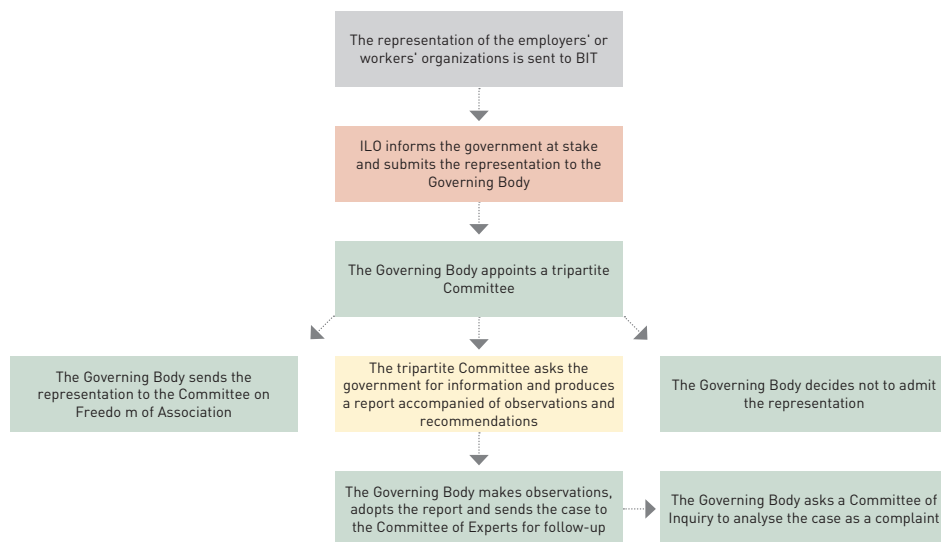
The *Committee of Inquiry* has been created by the Governing Body for those cases where governments do not give a satisfactory reply to the complaints and representations. This is the responsible body for the appreciation of complaints introduced between governments that are ILO members. This Commission is composed of independent persons. It is the highest investigative body within ILO and it is usually set up whenever a member State is accused of serious and recurrent violations and refuses to apply a solution. Until March 2005, 11 inquiry commissions had been put in place, followed up by final reports about the cases (cf. *Normlex, Complaints/Commissions of Inquiry Art. 26*, ILO).

Besides these three special supervisory bodies, the complaints and representations procedures they are not exactly coincident. The representations procedure is provided for by articles 24 and 25 of ILO Constitution. The employers' or workers' organizations are given the right to lodge a complaint in BIT Governing Body¹⁵, "based on the fact that one of the Members did not ensure in a satisfactory way the execution of a convention to which the same Member has joined", being subsequently possible "that the Governing Body transmits it to the Government at stake and invites the same Government to provide the due information on the subject". (ILO *Constitution*, art. 24). It is afterwards possible to set up a tripartite committee composed of 3 members belonging to the Governing Body which shall analyse the representation and reply of the Government thereto. A report shall be then produced and submitted to the Governing Body. This report shall detail the legal aspects and the practices thereof; the information provided shall be assessed and recommendations shall be made. The representations procedure is confidential and the Governing Body may decide to: a) file without further action; b) adopt the complaints procedure; or c) publicise the representation and its reply (if there is any).

¹⁵ A representation may be submitted by employers' and workers' organizations, whether national or international, as per article 24 of ILO Constitution. Individuals may present a representation directly to ILO but may as well transmit the information to their employers' or workers' organization.

Whenever the case is not filed without further action, the Constitution ensures that if the relevant government does not send “any declaration within a reasonable time, or if the declaration sent does not seem satisfactory to the Governing Body, the latter shall be entitled to publicise the representation and, if applicable, the answer provided” (ILO *Constitution*, art. 25)¹⁶. Namely, if the representation results from non-compliance with conventions 87 and 98 (on the matter of Right to Organise), normally the Committee on Freedom of Association shall be the responsible body to analyse it. We shall enclose below the diagram of the representations’ procedure¹⁷.

Figure 1 – Representation Procedure



Source: ILO

The complaints procedure is regulated in articles 26 to 34 of ILO Constitution, upon which a complaint may be brought against a member State for non-compliance with a ratified convention, by another country that has ratified that same convention. It may also be introduced by a delegate to the Conference or by the Governing Body itself.

After receiving the complaint the Governing Body may nominate a Committee of Inquiry composed by three independent members for an in-depth analysis thereof, so as to be possible to make recommendations on the measures to be taken in order to solve the problems at stake. If a country refuses to take the recommendations into account, the Governing Body may take

¹⁶ We stress that the publication is an act of pressure and moral sanction against the envisaged member-State to make it take the measures according ILO principles.

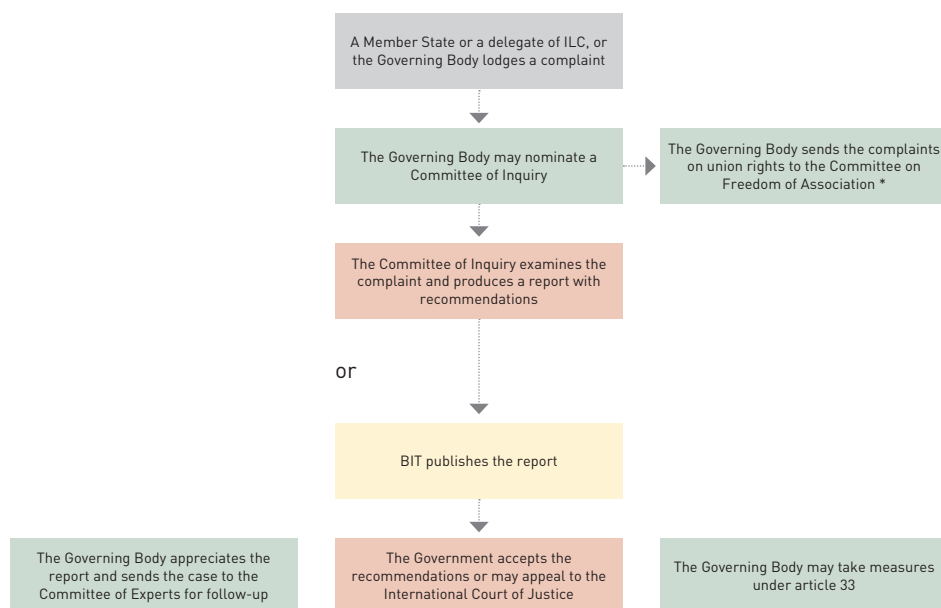
¹⁷ Adapted from the *Rules of the Game*, ILO (2007b: 81).

the measures foreseen in ILO Constitution, whereby “in case of any Member not complying, in the deadline stipulated, with the recommendations made either in the Committee of Inquiry report or in decision of the International Court of Justice, as the case may be, the Governing Body may address the Conference a recommendation with the measure that it may find suitable to ensure the implementation of such recommendations” (art.33, ILO *Constitution*).

Article 33 measures had been used, for the first time in ILO’s history, in 2000 (ILO, 2007b). In this case, the Governing Body has asked the International Labour Conference to take the suitable measures to compel Myanmar to stop using forced labour. A complaint has been lodged in 1996, under article 26 of the Constitution for violation of convention 29 (Forced Labour, 1930), and the appointed Committee of Inquiry has confirmed a broad and systematic use of forced labour.

For better understanding of the formal differences between complaints and representations, we shall enclose below the diagram of the complaints procedure¹⁸.

Figure 2 – Complaint Procedure



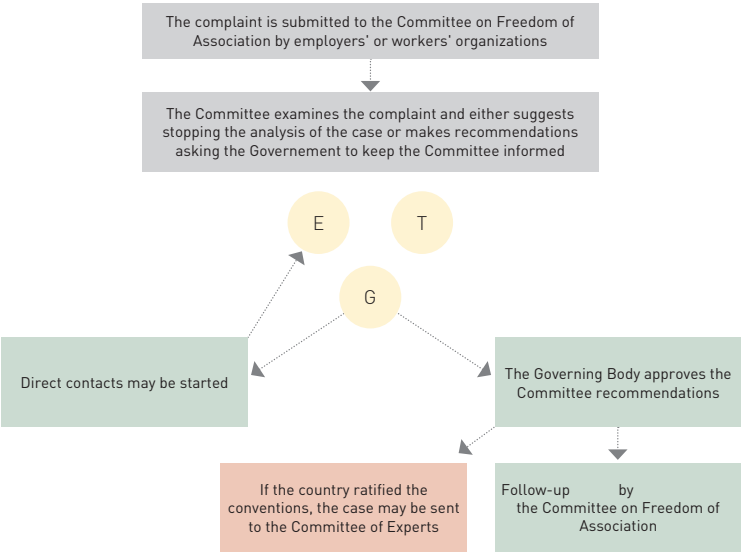
Source: ILO

¹⁸ Adapted from the Rules of the Game (ILO, 2007b: 83-85)

Regarding complaints related to freedom of association, it is important to recall that freedom of association and collective bargaining are ILO's founding principles. Upon adoption of conventions 87 (Freedom of Association and Protection of the Right to Organise) and 98 (right to organise and right to bargain collectively), ILO has established that these principles should be subject to another supervisory procedure in order to guarantee they would be enforced even by those countries that did not ratify the conventions. To do so, the Committee on Freedom of Association has been created in 1951 with the mission of analysing complaints against violations of freedom of association principles even when the State at stake had not ratified the conventions. The complaints are initiated by employers' or workers' organizations against a member State.

As earlier said, the Committee on Freedom of Association is set up by the Governing Body. It is composed of an independent president, three employers' representatives and three workers' representatives. If the complaint is admissible (valid in formal terms), the dialogue is started with the relevant government. If CFA concludes for the existence of an infringement of the standards or the principles of freedom of association, a report shall be produced and submitted to the Governing Body with the recommendations on how to solve the case. The government is invited to take CFA's recommendations into account and implement them. If the country at stake has ratified the conventions the Committee of Experts shall take care of the legal aspects. CFA may as well opt to propose a procedure of direct contacts with the relevant government, namely with the governmental representatives and the social partners. To summarise the complaints formal procedure, we shall enclose below the correspondent diagram¹⁹.

Figure 3 – Complaint procedure for freedom of association matters



Source: ILO

¹⁹ Adapted from the Rules of the Game (ILO, 2007b: 83-85).

3. Comparative analysis of complaints and representations

For a comparative analysis and in order to frame the Portuguese case within the international context, we have done an assessment of all complaints and representations addressed by EU countries (15) to ILO, in the period between 1974 and 2007²⁰. To better understand their percentage in the total of the cases, we have done a survey to the period prior 1974 (Table 1). Within the cases dealt with there were only complaints and representations regarding freedom of association and representations concerning conventions on Freedom of Association (C.87; C.98)²¹, which have been submitted to the Governing Body's considerations²².

Table 1 – Complaints and Representations, European Union (15)²³

Countries	Period 1974-2007	Cases 1974-2007	Period 1919-2007	Cases 1919-2007
1. Spain ES	1974- 2002	51	1952-2002	216
2. Greece GR	1974-2003	45	1951-2003	161
3. Portugal PT	1980-2005	25	1961-2005	34
4. United Kingdom UK	1976-2004	23	1951-2004	178
5. Denmark DK	1985-2005	17	1958-2005	18
6. France FR	1974-2002	10	1951-2002	73
7. Belgium BE	1974-2003	6	1954-2003	17
8. Germany DE	1984-1994	4	1954-1994	15
9. Italy IT	1975; 1979	2	1951-1979	9
10. Sweden SE	1994;2001	2	1969-2001	3
11. Holland NL	1988	1	1951-1988	7
12. Ireland IE	1986	1	1965-1986	3
13. Luxembourg LU	1998	1	1969; 1998	2
14. Austria AT	-	-	1954-1963	3
15. Finland FI	-	-	1963	1

20 Source: "LibSynd, Databases of the Committee on Freedom of Association", International Labour Organization: <http://www.ilo.org/public/english/standards/norm/index.htm>

21 ILO has five more conventions (non fundamental) on freedom of association: C.11 (Rights of Association and Combination of Agricultural Workers), C. 84 (Right of Association [Non-Metropolitan Territories, 1947]; C.135 (Workers' Representatives, 1971); C.151 (Labour Relations (Public Service), 1978); C.154 (Collective Bargaining, 1981). Whereas the principle of freedom of association is a key stepping stone for the prosecution of ILO objectives, enshrined ever since its foundation, beyond the conventions on freedom of association there are several relevant recommendations and resolutions, out of which it is worth mentioning the one concerning the independence of the trade union movement (1952) and the one concerning concerning trade union rights and their relation to civil freedoms (1970).

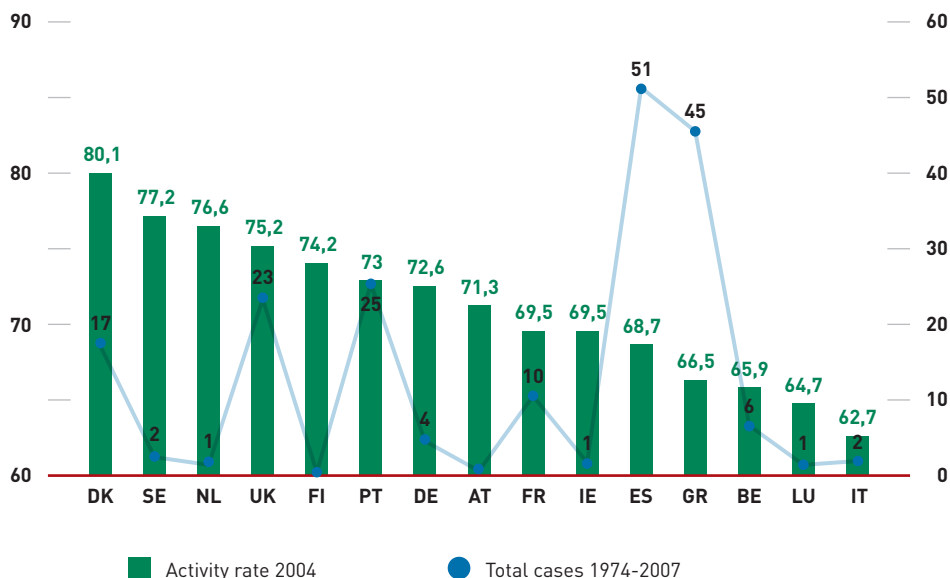
22 It has been excluded the complaints between countries and the representations related to conventions other than 87 and 98. Even within the subject of freedom of association, not all representations can be found in our databases as only those submitted to the Governing Body's consideration had been published. For instance, in the Portuguese case, only two representations had been included in that database, even if there were many more related to freedom of association that haven't been published and can only be found whenever studying DGERT/MTSS archived files.

23 The periods accounted for in each country correspond to the dates of the first and last cases.

Source: Own calculations based on ILO

For the purpose of this comparative analysis, we shall present the results of some of the crossed statistical data concerning complaints and representations. In the following graph it can be seen the total number of complaints and representations recorded between 1974 and 2007 and the activity rates of EU-15 countries recorded in 2004.

Graph 1 – Activity rate (2004) and number of complaints and representations (1974- 2007)



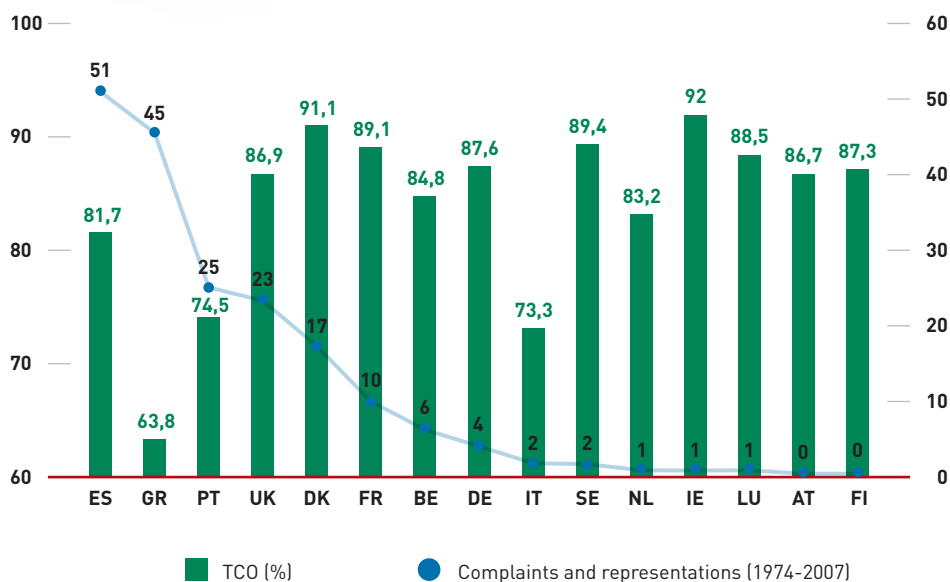
Source: Own calculations based on ILO and DGERT/MTSS; Eurostat

Out of the countries showing higher number of complaints and representations in the period under review, the following stand out: Spain (51), Greece (45), Portugal (25), United Kingdom (23), Denmark (17) and France (10). As it can be seen in the graph, the six mentioned countries registered figures equal or higher than 10, i.e., out of the EU15 countries, six recorded ten or more complaints and representations between 1974 and 2007.

If we cross this results with the activity rates recorded in 2004 in the same countries, we come to the conclusion that the highest activity rates do not necessarily correspond to the highest number of complaints and representations. See, for this purpose, the examples of Sweden, Holland and Finland with high activity rates and low number of complaints and representations.

A similar analysis has been done to the percentage of employed workers (TCO) recorded in 2005 and to the number of complaints and representations occurred between 1974 and 2007 in the EU-15 countries.

Graph 2 – Complaints and representations (1974-2007) and % AR (2005)



Source: Own calculations based on ILO and DGERT/MTSS; Eurostat

Looking at the countries with the highest number of complaints and representations (Spain, Greece, Portugal, United Kingdom, Denmark and France) it is possible to conclude that these countries recorded very different activity rates in 2005. United Kingdom and France, for instance, show that diversity. Countries with activity rates above 85% recorded a very diverse number of complaints and representations: 23 for United Kingdom and 10 for France. The most paradoxical case is probably Greece with the lowest activity rate of the EU15 countries (63.6%) and the second highest number of complaints and representations (45).

The influence of exogenous factors over the national regulatory system of labour conflicts reflects both on the creation of guiding normative references and on direct intervention in the conflicts' resolution. Opposite to the majority of the cases where the institutionalisation of labour relations systems occurred in the post-war period and found its sustainability within the context of welfare states expansion and of labour and social citizenship rights extension, the Portuguese system of industrial relations was subject to the historic "short-circuit" of the 25th of April. The State centrality in the regulation of employment relationship, inherited from

the corporatism, if faced in line with the processes of democratic transition and consolidation, made clear the need for reviewing the functions and roles of the State in social arbitration of labour conflicts.

Generally speaking, the influences emerging from the transnational space, namely those deriving from ILO's interventions and from the process towards integration into the EU, almost exclusively aimed at reducing the weight of state intervention in labour conflicts, suggesting a bigger participation of the civil society in socio-labour conflicts resolution.

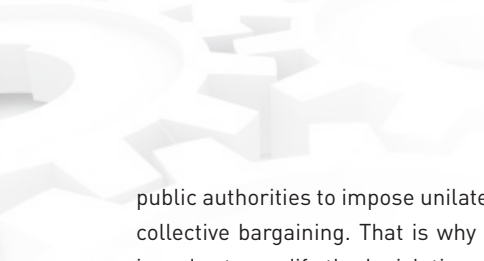
In the 80s, ILO has decreased its normative activity on matters of freedom of association. In return, it has intensified the effort to promote and supervise the conventions enforcement. On the other hand, the world political alterations occurred after the fall of the Berlin Wall and the generalisation of the market economy triggered the evolution of several countries' legislation and a substantial rise in the number of Member States and of ratifications of core conventions regarding freedom of association [87 and 98].

In the Portuguese case, a relatively young democracy, ILO's relevance in the guidance and supply of reference frameworks to the Portuguese regulatory system of labour conflicts acquired added significance with EU integration in 1986 and the adherence to the communitarian principle of subsidiarity, particularly facing the situation of lack of harmonisation of the different national systems of labour conflicts.

The intervention of that organization towards labour conflicts resolution is recognisable at the levels of normative orientation and political legitimisation, smoothing the transition from the model of labour relations inherited from "*Estado Novo*" (New State) to the democratic model of labour relations. This allowed, among others, legitimating the need for reducing State presence in the system of labour relations, standing out the excessive weight of administrative mechanisms in the regulation of conflicts and highlighting the importance of implementing forms of conflicts' regulation on a tripartite basis.

Therefore, ILO's relevance must be seen as a way to "rebalance" the relationship State/civil society within the context of regulation of labour conflicts, in the post "25 of April", in particular where the role of the State in its function of social arbitration was being repositioned to the extent that it was endeavoured to reduce its intervention in the regulation of conflicts (Ferreira, 2002 and 2005).

It must be mentioned, in line with Ferreira (2002; 2005), the criticism levelled by ILO at the mechanism of mandatory arbitration provided for by Decree-law 209/92 and created by "Comissão de Liberdade Sindical e Negociação Colectiva" in 1994; such criticism had its origin in a complaint initiated in ILO by CGTP. At ILO's advice, the point at issue in this kind of arbitration was that the mentioned legislation allowed one of the parties in conflict and the



public authorities to impose unilaterally the use of mandatory arbitration, which did not favour collective bargaining. That is why the Portuguese Government was asked to take measures in order to modify the legislation concerning mandatory arbitration “so that it complies with Convention nr 98 and the parties may not decide otherwise, other than jointly refer to mandatory arbitration” (ILO/Observation, 1999).

Relatively to the forms of direct intervention, which means the possibility of referring to ILO in an attempt to find a solution for a national labour dispute, it has to be mentioned the procedures brought before the Committee on Freedom of Association. Within the supervisory systems of this organization, and irrespective of the general mechanisms applicable to all labour international conventions, there are special proceedings foreseen for the protection of standards and principles of freedom of association. The Committee on Freedom of Association’s role is to do the preliminary examination of the complaints brought against the violation of union rights, which does not depend on the governments’ consent.

Maria de Fátima Falcão de Campos (1994) has developed a pioneering work analysing the complaints brought against Portuguese Government before ILO’s body responsible for supervising the principles on freedom of association – Committee on Freedom of Association. It started with the description of the international legal sources on freedom of association, namely ILO’s conventions - the founding texts on the matter - and the specific supervisory system for social rights. Portuguese internal law on freedom of association was also examined as well as the complaints brought against Portuguese Government before the Committee on Freedom of Association. Based on this complaints analysis and its economic and social context, she tried to give in-depth explanation of the reasons therefor. Finally, the fundamental principles of the Committee on Freedom of Association’s decisions had been also analysed.

The present analysis updates and develops the work already started by Campos (1994) focused on the relation established between Portugal and ILO. The next chapter shall be dedicated to a more thorough analysis of the Portuguese case.

4. Portugal and ILO’s supervisory system

Before 1974, due to a repressive political and economic context, the actors’ conflicting interests never really managed to get a concerted response, not at the legal level or at the practical level. With the rise of “*Estado Novo*” the right to strike or to impose lock-outs has been banned as well as the right to form and operate employers and workers’ organizations. The only organizations admitted were the corporative type and under state supervision (Rodrigues, 2012). Such environment projected Portugal to the international stage in what refers to infringements of fundamental labour principles. Indeed, the restrictions on freedom of association represent

restrictions to ILO functioning itself as a tripartite organization (Sussekind, 2000) justifying the special attention given by ILO's supervisory bodies to these cases. Despite complaints and conflicts, during that period Portugal did not refrain its normative production in accordance with ILO conventions. Besides being one of ILO founding members, between the Military Dictatorship and the institution of "*Estado Novo*", Portugal has ratified 7 ILO conventions, showing the community some interest (at least theoretically) in giving its contribution to the construction of an international labour law²⁴, seeking this way some legitimacy within the foreign community (Torgal, 2009). Yet, as Rodrigues (2012) noticed, at least until 1960 the "socio-labour juridification path, although timid and vague (...) has been done by Portuguese society, having the State had a role in the normative production" (p.110).

Within this context, the appeal towards ILO for the resolution of domestic socio-legal disputes was limited, and the cases of non-compliance with international standards were mostly denounced by external actors: for instance, international trade union organizations²⁵ or other countries. Between 1961 and 1971 Portugal registered a high number of complaints and representations (9). Yet, the majority of them has been filed by ILO without further action, whether because they lacked legal justification or because with the change of the political circumstances in 1974, most of the reasons for dispute had disappeared.

Because of the forced labour maintained in the Portuguese colonies of Angola, Mozambique and Guinea-Bissau Portugal has been, for several years, at the center of the international criticism. Only after II World War Portugal started ratifying the conventions on forced labour; the eldest, N.º 29 (1930), was ratified only in 1956. Convention N.º105 (1957) was ratified just after its adoption in 1959. Nonetheless, the first Committee of Inquiry ever in ILO history dates from June 1961, and it was set up subsequent to a complaint brought against Portugal by the Republic of Ghana on forced labour matters, which triggered greater vigilance from ILO to Portugal²⁶. Ghana was an ILO member State, which has, likewise Portugal, ratified the convention on progressive abolition of forced labour (this case shall be better detailed further on).

24 In 1928, conventions 1 and 14 [Hours of Work (Industry) and Weekly Rest (Industry)]; in 1929, conventions 17, 18 and 19 (Workmen's Compensation (Accidents), Workmen's Compensation (Occupational Diseases) and Equality of Treatment (Accident Compensation)); and in 1932, conventions 4 and 6 (Night Work (Women) and Night Work of Young Persons (Industry)). Cf. Rodrigues (2012).

25 For instance, by the World Federation of Trade Unions (WFTU), former trade union confederation with strong presence in Asia, Latin America and Africa.

26 For more information on this subject see *Colonialism, forced labour and the International Labour Organization: Portugal and the first Commission of Inquiry*, from Oksana Wolfson, Lisa Tortell and Catarina Pimenta (s/d). See also the joint paper from Jerónimo, Miguel Bandeira and Monteiro, José Pedro (2014), "*O império do trabalho. Portugal, as dinâmicas do internacionalismo e os mundos coloniais*", in Jerónimo, Miguel Bandeira e Pinto, António Costa (eds.) *Portugal e o fim do Colonialismo. Dimensões internacionais*, Edições 70, Lisboa: pp. 15-54.

In what concerns trade union matters, it is only after 1969 that it is possible to notice some changes in Portuguese trade union law, which resulted, to a great extent, from the ratification of convention N.º 98 and the community pressure subsequent to that period of complaints and representations. As noticed by Rodrigues (2012), “apart from the internal context, and the economic and social evolution triggering the changes, this is one of the areas where ILO influence was most felt” (p.143)²⁷.

After 1974, Portugal started developing a more favourable political context for the protection of labour citizenship rights as per ILO principles of freedom of expression and association, democratic participation inside the companies and the covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (Ferreira 2009). In this process of anchorage of a young democracy and of greater freedom of participation (and of protest) ILO, being an international instance for the regulation of labour conflicts, appeared as a closer partner to national actors. Portugal became a reference in terms of labour law and social policy reforms (Quadros 2009). Alongside these reforms and a closer proximity to ILO, the social unrest in Portugal also had an impact in the increase of complaints and representations brought against Portuguese governments. ILO became more present as a soft ruler for national conflicts. See as below the summarised discrimination of the overall figures relative to all complaints and representations submitted to ILO (Table 2).

Table 2 - Complaints and representations between 1960 and 2007, Portugal²⁸

Total	Type of procedure	Actors	Cases filed without further action	
Total procedures: 53	Representations: 20	Trade union organizations: 20	3	Total: 7
	Complaints: 33	Between countries: 1 (Portugal; Ghana)	-	
		Trade union organizations: 32	4	

Source: Own calculations based on ILO; DGERT/MTSS

27 There are other international cases of complaints and representations brought before ILO which had a clear impact in the changes later occurred at the national level. It is, for instance, Poland’s case in the eighties: the trade union Solidarnosc managed to bring together the people’s protests and to get enough power to overthrow the Government of Jaruzelski, after a complaint put forward before ILO (Pache 2014, p.5228).

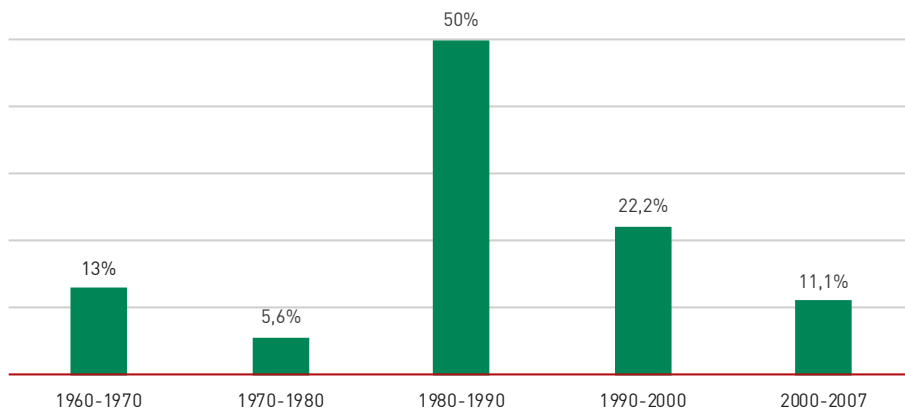
28 It hasn’t been here included the only complaint Portugal has put forward against a country, Liberia, on the 31st of August 1961 for non-compliance with convention N.º 29 on Forced Labour. We haven’t included it because the table refers to complaints brought against the Portuguese Governments for ILO conventions’ violations.

As mentioned before, after 1974 ILO's influence – particularly through the Committee on Freedom of Association – in the Portuguese system of labour relations was reinforced. Within the framework of a democratic society the principle of freedom of association got legal recognition both at the constitutional and the ordinary legislation levels. That is why the complaints brought against Portuguese government had a paradigmatic value. If we consider the period between 1981 – the date of the first complaint lodged after the 25th of April 1974 – and 1998, we realise that there had been 22 complaints communicated to ILO about the violation of union rights.

The period between 1974 and 2007, the one of social-democrat governments in power (Graphs 3 and 4) recorded the largest number of complaints and representations. There are several reasons explaining such concentration in a period of eight years of the majority of the existing complaints. This happened in aftermath of an economic crisis with strong repercussions in the employment system, and this was the time of Portugal's integration into the EEC (1985), of IMF's second programme of stabilization (1983/84), and the starting period of the industrial renewal process as well as of changes deriving from the introduction of the new technologies (Campos, 1994). The fairly neoliberal political context, illustrated, for instance, by several privatisations, the issues with wage arrears, the institutionalisation of social dialogue, the reconfiguration of the industrial relations' pattern, the relatively offensive measures against workers and syndicates and the recognition of the civil servants' right to bargaining and taking part in the definition of their working conditions, are some of the constraints lived at the time in Portugal (vd. Stoleroff 1988 and 1992).

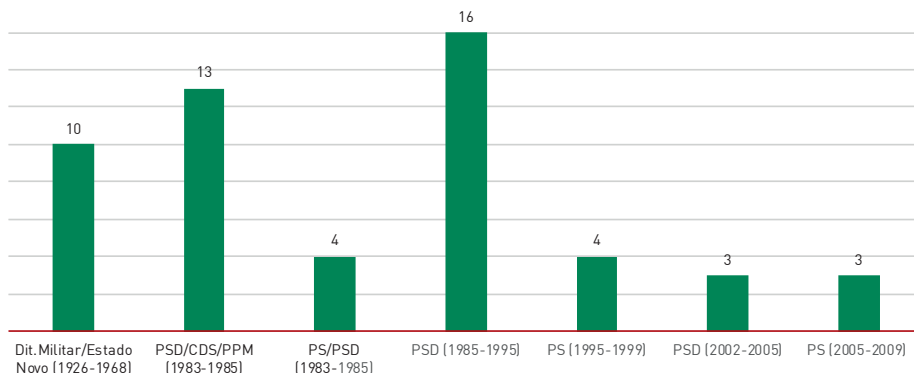
Beyond these weakening factors of the workers' representation action, the union pluralism has been reinforced as well as the competition between CGTP-IN and UGT. All these elements contributed to the hypothesis that the complaints brought before ILO have worked as a "safety valve" of labour conflicts in a period characterized by great instability in the system of labour relations, whereby the State's regulating role was being questioned along with the reinforcement of the pluralist character of the intermediation system of interests on the workers' side (Ferreira, 2005).

Table 3 – Distribution of complaints and representations by decades, Portugal (n=53)



Source: Own calculations based on ILO; DGERT/MTSS

Table 4 – Distribution of the overall number of complaints and representations by governments, Portugal²⁹ (n=53)

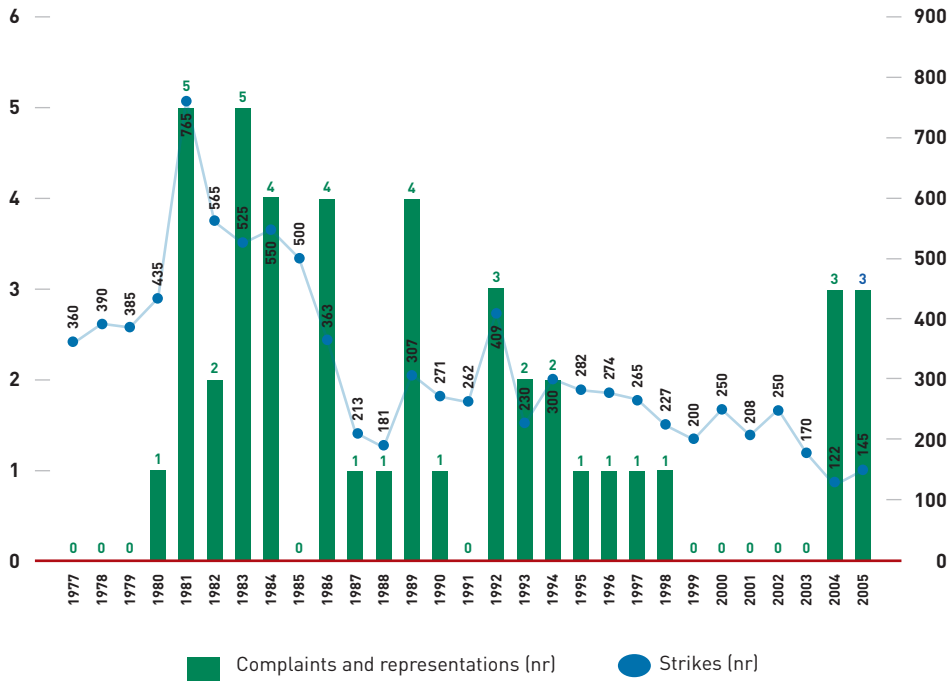


Source: Own calculations based on ILO; DGERT/MTSS; Government's official website

We have considered the hypothesis that there could be a trend in the relation between the volume of complaints and representations to ILO and the number of strikes, as they are both indicators of social breakdowns and tensions in Portugal. The following graph shows the evolution of the number of complaints and representations recorded between 1977 and 2005, crosschecking the data collected during the same period concerning strikes occurred in Portugal (Graph 5).

²⁹ By political parties in power.

Table 5 – Complaints/Representations and Strikes (1977-2005), Portugal



Source: Own calculations based on ILO; DGERT/MTSS

The graph shows that in some years the tendency in terms of complaints, representations and strikes tended to converge. The highest convergence trend occurred in 1981, accounting for the largest number of complaints, representations and strikes (6 complaints and representations and 765 strikes). After a general decreasing tendency between 1982 and 1988, it is noticeable a slight increase between 1989 and 1992; 1992 recorded a peak in terms of complaints and representations converging with a large number of strikes. Finally, for the period between 1992 and 2005, it is clear the general decreasing trend. However, during 2004 and 2005 there was a slight rise in the number of complaints and representations.

Regarding the complaints and representations' subjects, all cases concerned fundamental rights³⁰, with the exception of one where no mention to a particular convention has been made (and has thus been excluded) and another one which related exclusively to employment policy, a priority and complementary matter, though not fundamental. The cases concerning Freedom

³⁰ We recall that the matters deemed as Fundamental Rights are: Forced Labour; Freedom on Association; Discrimination and Inequality; Child Labour: International Labour Organization Classification.

of Association represented the majority (87%) of the universe of procedures³¹ (Table 3).

Table 3 - Complaints and representations by subject (1960-2007)

Subjects	N.º of cases
Exclusively on Freedom of Association	47
On Freedom of Association and also on other matters ³²	3
Exclusively on Forced Labour	1
Exclusively on Discrimination	1
Exclusively on Employment Policy	1

Source: Own calculations based on ILO; DGERT/MTSS

As explained above, the representations and complaints have relatively different proceedings, namely in what refers to competent bodies, following-up, to subjects and its seriousness, and to the actors' legitimacy to bring cases before ILO. Hence, we have opted to make an autonomous qualitative treatment of the cases.

Representations

As already mentioned, the representations procedure is provided for by articles 24 and 25 of ILO Constitution³³. The 'employers' or 'workers' organizations are given the right to submit a complaint to BIT Governing Body whenever the Government does not comply with the conventions. In the period under analysis (until 2007), the 20 representations recorded distribute between the eighties and the nineties. There was a representation dating 2004 that was eventually treated by ILO as

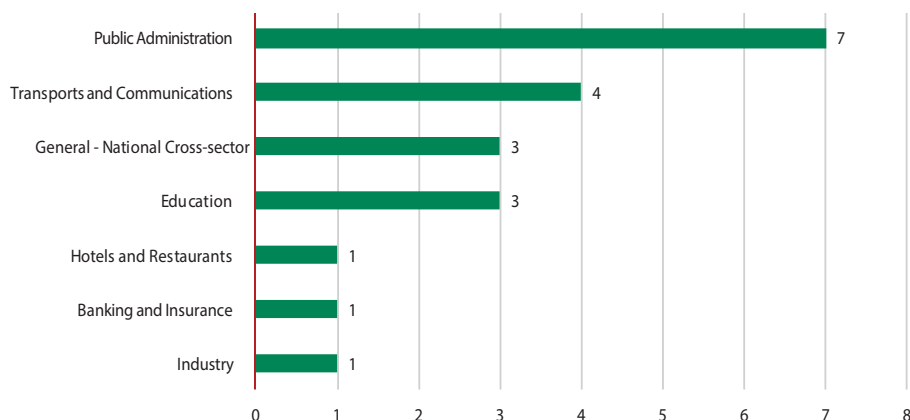
31 The cases filed with no further action had been also included. It was considered that 53 was the total number of complaints and representations' procedures.

32 Matters like: General Working Conditions (wages, paid holidays), Discrimination, Forced Labour, Labour Inspection.

33 All cases are addressed to BIT as complaints. With regard to the procedures, the fact that allegations thereof refer to union rights that does not mean the case shall be directly sent to the Committee on Freedom of Association (CFA). Internally, and depending on what is at stake, BIT shall discuss if the case should be or not appreciated by that supervisory body. Another caveat relates to the discrepancy between the number of representations available online and the number of representations mentioned in this paper. The explanation for that is that only representations further submitted to the consideration of the Governing Body are made available online. The remaining had to be consulted in DGERT/MTSS' archives.

a complaint³⁴. In what refers to the economic sector and the structure of the trade union actors addressing representations to ILO, the most relevant were the trade unions from the Transport and Telecommunications sectors (through the air and sea transport syndicates) and those representing Civil Servants. It was mainly individual trade unions – professional or category – submitting cases to ILO. Graph 6 summarizes this data.

Graph 6 - Number of representations by trade union sector, 1960-2007, Portugal (n=20)



Source: Own calculations based on ILO; DGERT/MTSS

The representations addressed to ILO may concern the violation of any convention, whether with respect of fundamental rights or of other matters. In the Portuguese case, the representations addressing fundamental rights refer to subjects like “freedom of association”, “forced labour” and “discrimination in labour and occupation”. “Working conditions” (in particular, pay issues), “employment” and “Labour administration” (via Labour Inspection) were also addressed by trade unions for non compliance. The most prominent of the representations’ subjects was “freedom of association”, accounting for more than half of the representations. The allegations made in cases

³⁴ For updating purposes, even though beyond the period under analysis, it has to be mentioned that between 2007 and March 2015, ILO has recorded 4 more representations: 1) terminated since 2013, on convention N.º 155 (*Occupational Safety and Health and the Working Environment, 1981*) and submitted by ASPP/PSP (Associação Sindical dos Profissionais da Polícia); 2) pending since 2013, on conventions N.º 81 (*Labour Inspection, 1947*), N.º 129 (*Labour Inspection in Agriculture, 1969*) and N.º 155 (*Occupational Safety and Health and the Working Environment, 1981*), submitted by SIT (Sindicato dos Inspectores do Trabalho); 3) pending since 2013, on convention N.º 137 (*Social Repercussions of New Methods of Cargo Handling in Docks, 1973*), submitted by several labour organizations related to stowage; and 4) pending since 2014, on conventions N.º 29 (*Forced Labour, 1930*) and N.º 111 (*Discrimination in Respect of Employment and Occupation, 1958*), submitted by FNSTFPS (Federação Nacional dos Sindicatos dos Trabalhadores em Funções Públicas e Sociais). Cf. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50010:0:NO::P50010_ARTICLE_NO:24

concerning Freedom of Association may be subdivided according to the following subjects³⁵.

1) Obstacles to the assignment of rights to organise and act in trade unions: representations dated 1981 and submitted by trade union organizations representationing for the right to collective bargaining, to join trade unions and to exercise trade union activity in the workplace (vd. cases of “*Sindicato dos Trabalhadores da Aviação e Aeroportos*”, SITAVA/1981; and of “*Sindicato Livre dos Trabalhadores da Indústria de Bordados, Tapeçarias e Têxteis da Madeira*”, SLTIBTTM/1981);

2) Obstacles to trade union action: in these cases the allegations were based either on labour “discrimination”, grounded on trade union belonging, or in a hindrance to union meeting at the workplace (cases of “*Federação dos Sindicatos da Hotelaria e Turismo*”, FESHOT/1989; and of “*Sindicato dos Trabalhadores do Município de Lisboa*”, STML/1997);

3) Obstacles to collective bargaining/IRCT(Instrumentos de Regulamentação Colectiva do Trabalho): there were two types of allegations: a) within the context of civil servants’ wages negotiations, as Government did not enter into dialogue with social partners either because it unilaterally interrupted the negotiations, rejected further negotiations or did not comply with agreed deadlines (for instance, the case of “*Sindicato dos Quadros Técnicos do Estado*”, STE/2004); b) whenever the Government published diplomas extinguishing existing IRTC or did not publish negotiated agreements (the case, for instance, of “*Confederação Geral dos Trabalhadores-Intersindical*”, CGTP-IN/1988);

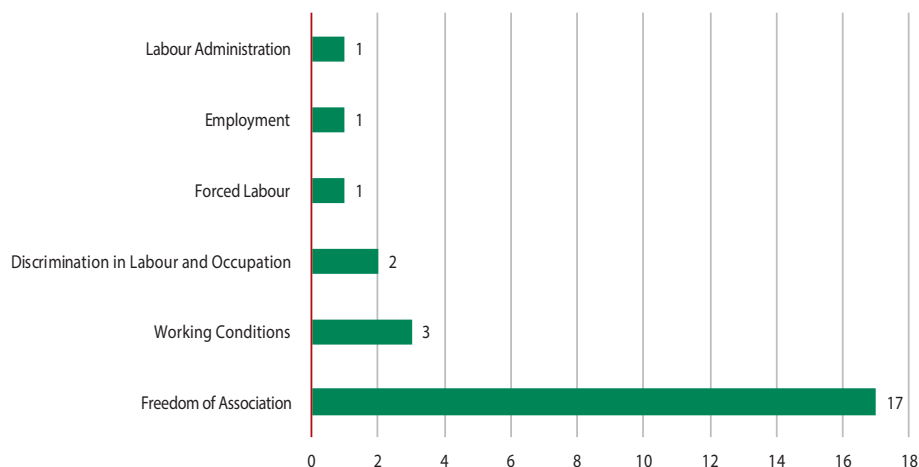
4) Absence of bargaining within public sector: on the one hand, when allegations related to lack of bargaining, within Public Administration, for the adoption of legislation, in particular, governing careers and retributive systems (the case, for instance, of “*Federação Nacional dos Professores*”, FENPROF/1989); on the other hand, and within public undertakings, whenever allegations related to the implementation of wage reviews without previous bargaining and agreement (for instance, the case of “*Confederação Geral dos Trabalhadores-Intersindical*”, CGTP-IN/1988);

5) Criticism levelled at the regulatory mechanism for conflicts regarding the setting of working conditions: whenever the allegations condemned the absence of legal mechanisms governing collective bargaining in Public Administration, and the fact that they did not provide for peaceful and credible means for the regulation of labour conflicts in that sector (the cases of “*Sindicato dos Quadros Técnicos do Estado*”, STE/1990 e STE/1995).

The data thereof is summarised in the following graph (Graph 7).

³⁵ These categories may also be used in the analysis of complaints made on freedom of association matters. These categories had been created upon analysis of the allegations content presented by trade unions. As per Campos’ proposal (1994) the complaints on freedom of association may be grouped into three categories: collective bargaining within public service; State’s interference in collective bargaining; freedom of association right.

Graph 7 – Number of representations by subject, 1960-2007, Portugal³⁶



Source: Own calculations based on ILO; DGERT/MTSS

After the representation is sent to ILO, it starts the exchange of requests for clarification and supply of supplementary information, and the professional organizations wait for its appreciation. In the Portuguese case, and during the period between 1960 and 2007³⁷, the representations' appreciation was either of the following types³⁸: 1) immediate filing without further action, for non-compliance with the requirements of admissibility; 2) positive assessment to the Government; 3) positive assessment to the trade union organization³⁹.

Filing with no further action (1) was largely motivated for formal reasons (in the light of ILO Constitution) whether for illegitimacy of the actors or on the vagueness of the arguments put forward. Positive assessment to the Government (2) occurred, for instance, in the following situations: in 1984 when “Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional”, subsequent to a problem of non-payment of wages and of wage arrears, pleaded

³⁶ Since there are representations concerning more than one subject, the overall number of representations does not account for the whole of the 20 representations.

³⁷ The following-up of the representations – if not treated as complaints – is done on a regular basis. At the time of our research (between 2005 and 2008) there was no record of a clear representations' outcome. Excluding the cases where no record of its follow-up was found – whether in DGERT/MTSS archives, in BIT Official Bulletins or in the reports of the Committee of Experts – we realised that the Committee of Experts intervenes in some cases, and does it simultaneously with the Committee on Freedom of Association in cases of union rights infringement. Currently the following-up reports already appear organised and categorized within ILO databases. Vd. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50010:0::NO::P50010_ARTICLE_NO:24

³⁸ Cf. Processos de Queixas e Reclamações, DGERT/MTSS archives; BIT Official Bulletins, ILO.

³⁹ It is deemed as “positive” to the Government the appreciation that does not include any recommendation to the Government, and finds the arguments of the complaining organization not sustainable. The reverse means a “positive” appreciation to the organization bringing the case under analysis.

that the conventions on forced labour had been infringed (case CGTP-IN de 1984). After exchanging reports and obtaining information from the parties concerned the Committee of Experts concluded for the absence of forced labour in Portugal under ILO conventions on the matter (cf. DGERT/MTSS procedures); and on freedom of association matters, when the Committee of Experts confirmed the existence of collective bargaining and the lack of request for supplementary negotiation by Federação Nacional de Professores (FENPROF case, 1989), and found the allegations that the Portuguese Government has infringed the standards on social conciliation not sustainable (cf. DGERT/MTSS procedures). Positive assessment to the trade union organization (3) occurred, for instance, on freedom of association matters when the Committee of Experts and the Committee on Freedom of Association insisted with the Portuguese Government to ensure negotiated collective conventions would enter into force within a reasonable period (Confederação Geral dos Trabalhadores – Intersindical/CGTP-IN, 1988); another example on the same matter was when the Committee reminded the Government, during a process of collective bargaining, of the duty to reply to the requests for supplementary negotiations as representation by a public sector union (*Sindicato dos Quadros Técnicos do Estado/STE*, de 1990).

Complaints between Member-States: Republic of Ghana and Liberia

Recalling, the complaints procedure is provided for by articles 26 to 34 of ILO Constitution. According to these provisions a complaint may be brought against a Member State for non-compliance with a ratified convention by another country that has ratified that same convention. It may also be introduced by a delegate to the Conference or by the Governing Body itself. ILO Constitution also foresees the possibility of professional organizations (employers' or workers') submitting complaints to the Committee on Freedom of Association for the Government's non-compliance with the conventions on Freedom of Association (87 and 98).

As earlier said, during the political regime of Military Dictatorship and of “*Estado Novo*” (New State), Portugal has been often denounced by ILO for systematic violation of the conventions on Freedom of Association and Forced Labour. During this period, the violations concerning the freedom of association matter were lodged by international trade union organizations and the cases had been filed without further action, whether for formal reasons or because the political context has changed, i.e., with the transition to a democratic regime some of the reasons for dispute had disappeared⁴⁰.

Concerning forced labour, Portugal has been denounced in February 1961 by the government

40 Between 1955 and 1959, ILO has applied several condemnatory resolutions to Portugal, South Africa and Israel. Cf. Processos de Queixas e Reclamações, DGERT/MTSS' archives; BIT Official Bulletins, ILO.

from the Republic of Ghana for maintaining forced labour in the Overseas Provinces of Angola, Mozambique and Guinea-Bissau, violating convention N.º 105. ILO concluded that Portugal was not complying with all the obligations imposed by the convention on the abolition of forced labour since the date it had entered into force in this country (1960). At the time, the seriousness of the situation and of the infringements, justified creating, for the first time in ILO' history, a Committee of Inquiry to follow the case. As of 1963, upon the setting-up of a committee to follow the issue of South-african apartheid, the debates in the International Labour Conferences of the ILO became quite political around the "colonial" question. That year ILO expressly reproached of all forms of colonialism (Gheballi, 1987). In 1965, ILO publicly adopted a resolution condemning the maintenance of forced labour in Portuguese colonies, particularly Angola⁴¹. In 1966 the Committee published a special report recognising that Portugal has introduced some alterations in its legislation towards harmonisation with forced labour convention. A parallel problem to the one of forced labour, according to ILO, was that the situation created by Portugal in its colonies threatened peace and safety in Africa. ILO considered that Portuguese Government was applying trade union legislation in Angola, Mozambique and Guinea-Bissau that clearly infringed conventions 87 and 98 of ILO. Therefore, and at the beginning of the seventies, ILO adopted another condemnatory resolution on the situation of freedom of association⁴². Several recommendations had been made towards the revision of labour legislation in force in the territories of Angola, Mozambique and Guinea, as well as several direct contacts to ensure that the Government would also guarantee the proper functioning of the labour inspection services⁴³.

On the 31st of October 1961, eight months after Ghana' s complaint, Portugal brought a complaint against Liberia Government, for maintaining in force legislation imposing forced labour, 29 years after its ratification of the convention on Forced Labour. Likewise, it was set up a Committee of Inquiry to assess the case. After analysing it the Committee has found that the government of Liberia was not complying with the regular reporting on the implementation of forced labour convention⁴⁴. It has been recommended a legislation update, the adequate incorporation of the ratified international labour conventions, and its publication. It has drawn the attention for the adoption of appropriate measures within the fields of labour inspection, labour policy and labour relations.

41 Cf. "Résolution condamnant le gouvernement du Portugal en raison de la politique de travail forcé pratiquée par ce gouvernement dans les territoires qu' il administre soumise par la Commission des résolutions (adoptée le 23 Juin 1965)", *Compte Rendu des Travaux*, 49^{ème} session, Genève, 1965, p. 732.

42 Cf. "Résolution concernant la politique d' oppression coloniale, de discrimination raciale et de violation des droits syndicaux par le Portugal en Angola, au Mozambique et en Guinée-Bissau", *Compte Rendu des Travaux*, 57^{ème} session, Genève, 1972, pp.686-687.

43 Cf. BIT Official Bulletin, 1960; and L'exercice des libertés civiles et des droits syndicaux en Angola, Mozambique et Guinée-Bissau, BIT, 1973.

44 BIT Official Bulletin, 1961.

It seems strange that Portugal has brought a complaint against another country even though it was not entirely complying with the same convention. Indeed, at the start of 1961, Liberia, which enjoyed the statute of first African colony to become independent – has already submitted to the UN a motion against Portugal, condemning its behaviour in the African colonies. The fact that during the same year Portugal has featured two complaints to ILO (one as a target and the other as complainant) was not a coincidence. As stated by Jerónimo and Monteiro [2014], “the option for Liberia was facilitated by two elements: firstly, to accuse Ghana could create problems inside the organization and be seen as a reprisal, (...); secondly, Liberia’s record, in terms of forced labour and beyond the events occurred in the early thirties leading to the setting-up of a committee of inquiry by the League of Nations, was an appealing one, because of the non compliance, during the majority of the 50s, with the reporting obligations to ILO in accordance with Convention 29” (pp.44-5). It is to be stressed, in this context, that the resort to ILO as a strategy of “diplomatic diversion” between countries reinforces, once again, the symbolic dimension of the conflicts at the international level.

Complaints on Freedom of Association matters

Freedom of association and collective bargaining are ILO’s founding principles. After the adoption of convention N.º 87 (Freedom of Association and Protection of the Right to Organize) and of convention N.º 98 (Right to Organize and to Collective Bargaining), ILO has focused on its enforcement by Member States, regardless their ratification thereof. The complaints for non-compliance with these conventions may be started by ‘employers’ or ‘workers’ organizations against a member State. In the Portuguese case all complaints had been brought against Portuguese government by workers’ organizations⁴⁵. The procedures had been followed by the Committee on Freedom of Association (CFA), the responsible body for analyzing the complaints concerning the violation of freedom of association principles. The Fact-Finding and Conciliation Commission on Freedom of Association may also handle with complaints on this matter. In the Portuguese case, there are no records of such Commission’s intervention in the analysis of cases.

The analysis to the economic sector and to the structure of the trade union organizations that have addressed complaints to ILO between 1960-2007, allow us to conclude that, likewise in representations, it is the sector of Transports and Telecommunications (through air, sea and road transport, and telecommunications syndicates) and those of Public Administration/ Defence, mainly via its trade unions structures, that took part in the processes of collective

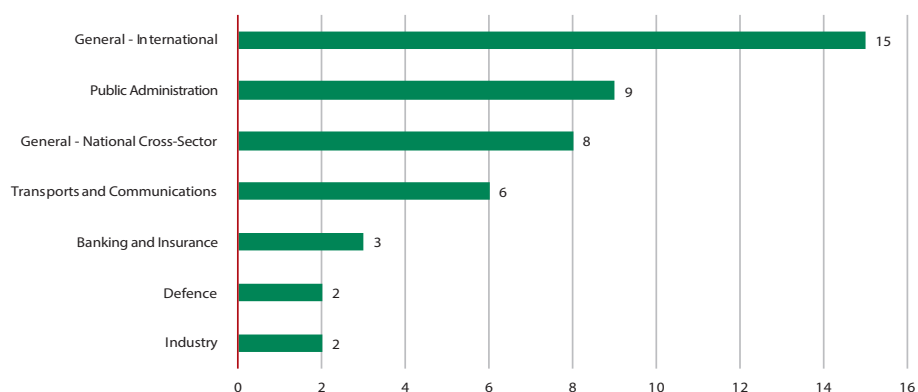
45 For updating and beyond the period under analysis in this paper, it is to be mentioned that between 2007 and March 2015, ILO recorded 2 more complaints: 1) case N.º 2729 lodged in 2009 by CGTP-IN; and 2) case N.º 3072, lodged in 2014 also by CGTP-IN. Cf. http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:1054471875888359:::P20060_REPORT_TYPE:A

bargaining.

It also stands out, at the national cross-sector level, that Confederação Geral dos Trabalhadores Portugueses (CGTP-IN) has taken a stance for several times during the eighties. During the sixties and early seventies it stands out the strong complaint brought by international trade union organizations against the compelling trade union situation lived in Portugal as Portuguese syndicates could not do it.

The following graph shows the main characterising elements of the organizations receiving complaints on freedom of association matters⁴⁶.

Graph 8 – Number of complaints on freedom of association matters by trade union sector, 1960-2007, Portugal



Source: Own calculations based on ILO; DGERT/MTSS

After analyzing the allegations produced by trade union organizations it is possible to subdivide them in six fundamental topics⁴⁷: (1) obstacles to the acquisition of the right to organize and act in trade unions; (2) obstacles to trade union action; (3) obstacles to collective bargaining/IRCT; (4) absence of bargaining; (5) issues with trade union representativeness; (6) criticism levelled at the mechanism of disputes settlement (Graph 9). In all cases, the Government has been accused of non-compliance with the conventions, whether by taking a direct action by Labour Inspection ineffectiveness. Within each category it is still possible to regroup the topics.

⁴⁶ The number of cases corresponds to the number of complaints lodged in BIT by trade union organizations in those sectors. There are cases that are lodged by more than one trade union organization, thus here the whole of the cases does not exactly corresponds to the total number of complaints concerning freedom of association.

⁴⁷ The categories had been created upon analysis of trade union organizations' allegations made in each case. Some cases belong simultaneously to two categories. Cf. Processos de Queixas e Reclamações, arquivos da DGERT/MTSS.

Relatively to the obstacles to the acquisition of the right to organize and act in trade unions, the allegations were of two kinds: (a) those presented by international trade union organizations condemning the Portuguese political regime for hindering trade union organization and action (for instance, cases 266/1961 by “*Confederação Internacional dos Sindicatos Livres/CISL*”; 654/1970 by “*Confederação Internacional dos Sindicatos Livres/CISL*”, “*Federação Sindical Mundial/FSM*”, “*Confederação Mundial do Trabalho/CMT*”; 666/1971 also by CISL, FSM, CMT)⁴⁸; (b) allegations made by syndicates wanting to get formal legal recognition but facing Government’s refusal to register and publish their statutes, preventing therefore their functioning and legal existence (cases 1256/1984 by “*Comissão para a Constituição de uma Associação Sindical da Polícia de Segurança Pública/CCASPSP*”; and 1279/1984 by “*Sindicato dos Trabalhadores dos Estabelecimentos Fabris das Forças Armadas/STEFFA*”);

Regarding obstacles to trade union action (2), there were three kinds of allegations: (a) those referring to strike situations whereby the Government imposed minimum services and disciplinary proceedings, replaced the strikers in their functions and arrested the union leaders using Public Security Police (PSP) (for instance, case 1042/1981, by “*Federação Nacional dos Sindicatos da Função Pública/FNSFP*”); (b) allegations concerning situations of labour discrimination on a basis of trade union belonging, whereby whether the union leaders were prevented from returning to their workplace, or trade unions members were prevented from being recruited to work. In these cases the Government has been accused for Labour Inspection services’ ineffectiveness (for instance, case 1045/1981 from “*Confederação Geral dos Trabalhadores-Intersindical/CGTP-IN*”); (c) allegations referring to other kind of obstacles, such as participation in trade union meetings (for instance, when the entrance in Portugal of foreign union leaders has been restricted in case 966/1980, by *Federação Sindical Mundial/FSM*) and when some employers retained union fees (for instance, case 1303/1984, by “*Confederação Geral dos Trabalhadores- Intersindical/CGTP-IN*”).

As for the obstacles to collective bargaining/IRCT (3), there were two kinds of allegations: (a) those concerning to the Government’s negotiation attitude in the bargaining of the wages for civil servants. In particular, it is to be noted the (allegedly) unilateral termination of the negotiations, the unilateral wage setting and the Government’s denial of supplementary negotiations (for instance, case 1365/1986 by “*Frente Comum dos Sindicatos da Função Pública/FC*” and “*Frente Sindical da Administração Pública/FESAP*”); (b) allegations concerning the elimination or restriction of the existing collective bargaining instruments (in insurance sector, case 1370/1986, by “*Sindicato dos Trabalhadores de Seguros do Sul e Ilhas/STSSI*”).

With regard to the absence of bargaining (4) there were two kinds of allegations: (a) those referring to Government’s direct action, after for instance unilaterally setting up the level of minimum services in case of strike, or after approving diplomas which defined, allegedly without social dialogue, wages

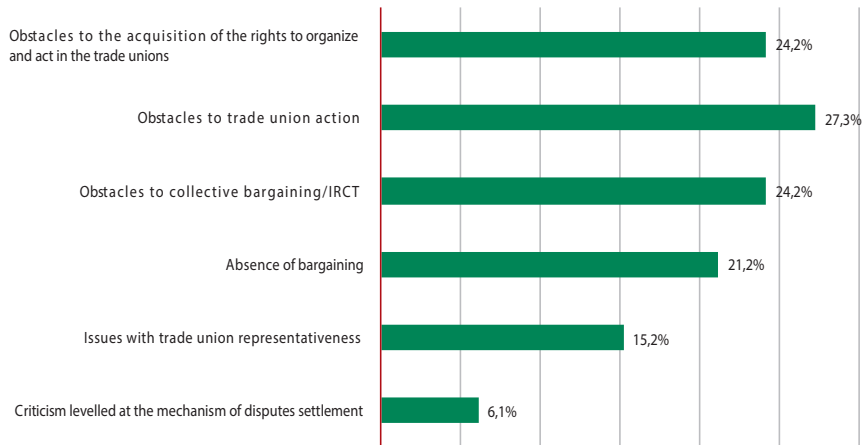
48 For the Portuguese case and out of all complaints and representations, the lengthiest procedures were cases N.º 266 (took about 10 years), N.º 654 and N.º 666 (both took around 5 years). After analyzing the length of the procedures one can say that in average they were taking between 5 to 8 months (upon issuing of the final report).

and other matters (for instance the policemen's assessment system: case 2325/200, by "Associação Sindical dos Profissionais da Polícia/ASPP-PSP"); (b) or, once again, because of Labour Inspection ineffectiveness, in those cases whereby public undertakings adopted diplomas setting up, without social conciliation, the regime of their employees' working conditions (working time, non negotiated renewal of Works Agreement, etc. See case 1424/1987, by "*Sindicato Nacional do Pessoal de Voo da Aviação Civil/ SNPVAC*", whereby an air company established a higher flying time than the one provided for in the Works Agreement).

The issues of union representativeness (5) referred to cases that can be split into two sets of topics: (a) the absence of representatives of the complaining union organization within the bargaining process of collective labour agreements (where organizations considered as minority are present. See, for instance, case 1174/1983, from "*Confederação Geral dos Trabalhadores-Intersindical/CGTP-IN*"); (b) the absence of the complaining union organization in the Social Conciliation bodies or in the tripartite Commissions created by the Government (See, for instance, case 2334/2004, by "*União dos Sindicatos Independentes/USI*"). This type of cases strengthened the divergences between CGTP and UGT (the two main trade union organizations in Portugal) as well as the divergences between these and the independent organizations).

Finally, in the topic of the criticism levelled at the mechanism of disputes settlement (6) situations occurred whereby trade union organizations expressly representationed improvements in Portuguese legislation so as to protect the resort to supplementary negotiations in Public Administration (see case 1315/1984 by "*Federação Nacional dos Sindicatos da Função Pública/FNSFP*") and to ensure greater harmonisation with convention 151 (see case 1694/1993, by "*Sindicato dos Quadros Técnicos do Estado/STE*" and "*Frente Sindical da Administração Pública/FESAP*").

Graph 9 - Percentage (%) of the topics in terms of complaints on Freedom of Association, 1960-2007

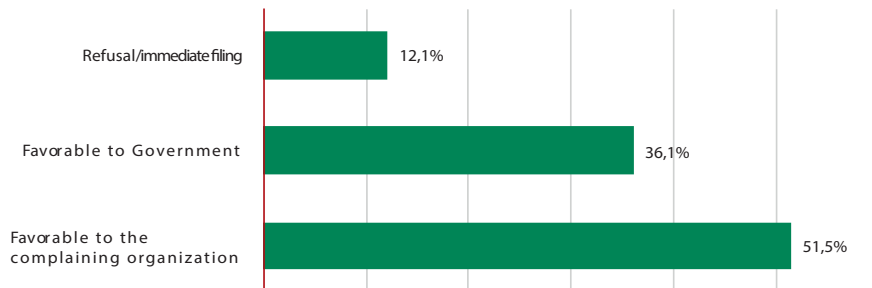


Source: Own calculations based on ILO; DGERT/MTSS

After the complaint is sent to ILO and if the Governing Body finds the case should be analyzed by the Committee on Freedom of Association, the professional organizations must wait for its appreciation. In the Portuguese case, likewise with representations, the appreciation of the complaints brought before BIT in the period under analysis was either of the following ties: 1) immediate filing without further action, for non-compliance with the requirements of admissibility; 2) positive assessment to the Government; 3) positive assessment to the trade union organization.

Graph 10 summarizes the information in terms of complaints outcome on freedom of association matters analyzed by the Committee on Freedom of Association (CFA). Each value refers to the percentage of cases having any of the mentioned outcomes.

Graph 10 - CFA's final appreciation concerning complaints on freedom of association matters, 1960-2007, Portugal (% , n=33)



Source: Own calculations based on ILO; DGERT/MTSS

ILO ruled “in favor” of the Government (and against the complaining organization) in cases, for instance, where the Committee considered that the allegations referred to internal administrative and legal matters, with no direct impact on the right to freely associate of the complaining union organization (see case 1497/1989 from the “*Sindicato dos Profissionais da Banca dos Casinos/SPBC*”); where the Committee considered that it was not an infringement of union rights at stake, but other matters beyond its competence (like the sovereign right of a country to stop the entrance of foreigners in its territory (see case 966/1980 from “*Federação Sindical Mundial/FSM*”); or when the Committee noted that according Portuguese legislation, the police workers did not enjoy from the right to form trade unions and, as such, could not appreciate the complaint which is provided for by the law of each country (see case 1256/1983 from “*Comissão para a Constituição de uma Associação Sindical da Polícia de Segurança Pública/CCASPSP*”).

In those cases where ILO ruled “in favour” of the complaining organization (and against the Government), situations occurred like, for instance, when the Committee regretted the unilateral setting up of the rises in civil servants wages and reproached the detention of trade union leaders (see case 1942/198 from “*Federação Nacional dos Sindicatos da Função Pública/FNSFP*”); when recommended the Government to adjust legislation so as to allow the right to freely and collectively bargain in fields like “working time” (see case 1370/1986, by “*Sindicato dos Trabalhadores de Seguros do Sul Ilhas/STSSI*”); when it drew the attention for the possible abuse of workers requisitions in strike situations recommending that these requisitions should only happen in case of severe crisis and for the maintenance of essential services and that trade union organizations should also be part of the definition of such minimal services (see case 1486/1989 by “*Confederação Geral dos Trabalhadores-Intersindical/CGTP*” and “*Sindicato dos Trabalhadores dos Transportes Ferroviários e Conexos/SITRA*”); and when the Committee

asked the Government to establish (with prior consultation to workers and employers) precise and objective criteria to evaluate the representativeness and independence of trade union organizations that should become participating members of social conciliation bodies. In this case, ILO expressly asked that the legislation should be changed and omitted the reference to the organizations legitimised to be part of such bodies (see case 2334/2004, from “*União dos Sindicatos Independentes/USI*”).

Immediate filling of the cases: demand refused

According to standards, the cases sent to BIT, after a first analysis and sorting may be filed without further action for non-compliance with the requirements of admissibility. Out of a total of 53 cases, 7 had been filed (around 14% of the cases), 4 of which before 1974. The admissibility requirements of complaints and representations as defined by ILO are as follows: (a) the representation must be put forward, in written, in BIT; (b) it must be put forward by an employers or a workers’ organization; (c) it must expressly mention article 24 of ILO Constitution; (d) it must involve a member of the organization; (e) it must concern a convention ratified by the country at stake (or not, if it is on a matter of union rights); (f) it must indicate the specific aspect of the convention the country was not in compliance with, within the limits of its jurisdiction⁴⁹. Subsequent to the formal analysis of the case, the Secretariat (BIT) shall produce a report with its preliminary appreciation and shall send the Governing Body its advice on the admissibility of the representation in formal terms. Only afterwards shall be possible to do the analysis of the representation’s substance.

With regard to the complaints for freedom of association violation, as per the proceeding in place, the allegations shall be admitted if they are made by: (a) a national organization with a direct interest on the subject; (b) international employers or workers’ organizations with an advisory status within ILO; (c) other international employers or workers’ organizations whose allegations report to matters affecting directly the affiliated organizations.

Only under these conditions may ILO pursue with the complaints and representations put forward. In Portugal, the cases filed without further action were “refused” based on such reasons. From the actors’ point of view, two situations have occurred: (a) the complaining trade union organizations did not enjoy from advisory status within ILO and had not affiliates in our country; (b) the fact that a company was unable to make a representation against a syndicate. From the point of view of the substance of the allegations, the cases had been filed either because they were not grounded in any ILO convention in particular, or for the vagueness of the arguments (cf. *Processos de Queixas e Reclamações*, DGERT/MTSS’ archives).

⁴⁹ Cf. article 2 of the Regulation relative to the proceedings to be followed in the examination of the representations under articles 24 and 25 of ILO Constitution.

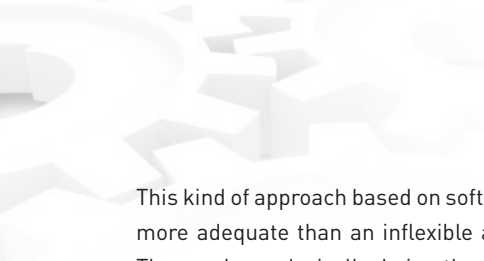
From our point of view, we note that the underlying reasons of these filings, to be joined to those 36% of cases where ILO has ruled in favour of governments as well as to the great number of complaints/representations Portugal has within the context of European Union, they contribute to reinforce, first of all, the “adversarial” dynamic of the (re)institutionalisation process of the Portuguese system of labour relations. Secondly, the fact that ILO has ruled in favour of trade union organizations in more than 50% of the cases, reinforces the role of this organization within civil society and its effective contribution to the application of labour key principles at the national level. Finally and regardless the outcome of the cases or the basis of the allegations, we have noticed that the special supervisory mechanism has, in either situation, a relevant symbolic dimension. It is not without reason that it is seen as a pioneering system which influenced other international bodies to create similar mechanisms (Sussekind, 2007).

As we have seen, ILO supervisory mechanisms have a regulatory and morally sanctioning nature, even though their enforcement powers are not as those of a judicial authority. The fact that a country becomes member of ILO’s community, demonstrates a commitment (always renewed) with the fundamental labour principles and with the values of social justice and decent work. To be the target of a complaint or a representation is both a national and international embarrassment – mainly because of media exposure – which triggers pressure actions, moral sanction and technical monitoring of the socio-legal problems at stake. Upon analysis of the procedures outcome, as well as of ILO supervisory annual reports and of the samples used in our investigation, we have realised that some of the recommendations were effectively transposed to the national systems. Apart from that, and fundamentally, ILO special supervisory system is a clear example of the “symbolic use of law” (Carlomagno, 2011), with a constructive and tangible impact in labour market.

Endnotes

Based on the theoretical premises of the ways of labour law making and the system of regulation of labour conflicts, in this chapter we have clarified their implementation using Portuguese society as the unity of analysis.

According to the needs of an innovative political mobilization for the symbolic extension of the workers’ rights, grounded on considerations of human dignity, one can realize the potential of ILO’s soft law (regulatory law). Its action, even if it is not of a judicial nature, bases in instruments that become effective because of its symbolic dimension, which means that the use of the system of complaints and representations is legitimized by the symbolic application of the reference framework built upon ILO’s fundamental principles. The recommendations made to the organizations and governments, the following-up of the alterations requested through reports and direct contacts, as well as the publication of the cases are examples of regulation in the national socio-legal sphere.



This kind of approach based on soft law mechanisms is the Organization strength as it is clearly more adequate than an inflexible approach that does not consider the national specificities. Thus and paradoxically, being these ILO's instruments of the soft law type, they have similar potential, if not higher, than the hard law's, particularly if we consider the acquired status and the dissemination of ILO's normative framework among public opinion as for labour human rights.

All said, it is to be concluded that the evolution of the Portuguese system of labour relations was widely influenced by ILO's governance model, which becomes clearer by the political and legal mobilisation for the use of the complaints and representations system; this ultimately illustrates the reconfiguration in Portugal of the relation between the State and the labour civil society, namely the decrease of the influence of the State's intervention alongside a higher participation of the civil society in this domain.

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10

Part II - From the consolidation of democracy to the decent work agenda

Portugal/ILO partnership: Portuguese contributions to ILO operational programmes ¹

PAULO BÁRCIA ²

Ever since the democratic regime was established, Portugal's commitment to the International Labour Organization (ILO) has been solid. Over the past twenty years, Portugal's financing of ILO operational programmes for Portuguese-speaking African Countries (PALOP) and Timor-Leste has meant a new qualitative leap in the partnership. The financing agreements received fresh impetus when the ILO Lisbon Office opened in 2003.

Introduction

Portugal is a founder member of the ILO, created in 1919 in the scope of the Treaty of Versailles. The history of Portuguese involvement in the ILO is, therefore, a century old, and has been rich in events. These will, no doubt, be fully analysed in other articles published during the ILO centenary commemorations in 2019.

More recently, since the establishment of democracy in April 1974, Portugal's commitment to the

¹ This article was originally published, in 2019, in the IEPF Journal, *Dirigir & Formar*, no. 23 (Jul-Sept). It is a summary of a brochure published in 2016, under the responsibility of the ILO Office in Lisbon and launched within the framework of the International Labour Conference, entitled "The Partnership between Portugal and the ILO: a successful venture".

² Former director of ILO-Lisbon Office and former Director of the Office of the Director General (Chief of Staff).



ILO has been solid, and clearly expressed in their shared vision of the Decent Work Agenda goals in the era of globalisation. The has evolved in several dimensions, and given rise to a wide variety of joint activities, which have been recorded in successive reports and publications.

This article focuses exclusively on one particular dimension that has developed quite recently and, possibly for that reason, is less familiar to the national public: Portugal's voluntary contributions in aid of ILO operational programmes. This process began officially in 1982 with the signing of a General Cooperation Agreement, but only began to gain impetus in the late 1990s.

For those unfamiliar with the workings of specialised UN agencies, it is worth pointing out that there are two ways in which member states contribute to the UN budget:

- through **obligatory** payments by all member states to finance the Organisation's regular budget, calculated on the basis of a table harmonised with that of the UN;
- through **voluntary** contributions from "bilateral donors"³ to finance campaigns and programmes with well-defined aims and frameworks.

In Portugal's case, obligatory contributions⁴ are paid out of the Foreign Affairs Ministry's budget, while voluntary payments are financed by the Ministry that oversees labour affairs (MT), and the Institute for Employment and Vocational Training (IEFP), which is overseen by the MT. For the past fifteen years the total amount of contributions, both obligatory and voluntary, ranged between 2 and 4 million Euros per year. On average, about half the yearly total went to voluntary contributions.

What were the targets of ILO interventions financed by Portugal? They can be divided into two main categories:

- **technical cooperation programmes**, in ILO mandate areas, destined for Portuguese-speaking African countries (PALOP) and Timor-Leste, which are included in national development aid policy;
- initiatives whose strategic objective is **to promote the use of Portuguese language in international organisations**, namely, in the ILO.

³ To which are also added multilateral donors (notably UN Funds themselves), Foundations and other public and private contributions.

⁴ Currently 0,474% of the ILO's Regular Budget.

Technical Cooperation from the ILO financed by Portugal

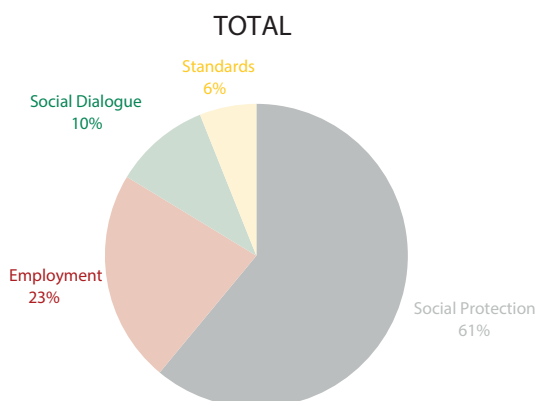
The General Cooperation Agreement between Portugal and the ILO was signed in 1982, but it was only in the late 1990s that a real portfolio of programmes began to emerge. At that time, the political will of the parties involved was assisted, on the Portuguese side, by the restructuring of the area dealing with cooperation within the MT and, on the ILO's side, by the significant concentration of Portuguese specialists and Portuguese speakers in one of the ILO's main offices in Africa (Dakar, Senegal).

These projects, albeit with different objectives, shared a common profile: (i) they targeted all or some of the PALOP and, later, Timor-Leste; (ii) they were the result of partnerships with the beneficiary institutions in those countries; (iii) they concentrated on a limited number of areas, in which the ILO is a renowned reference, and (iv) they involved mainly Lusophone specialists and/or Portuguese speakers.

Working in partnership with the ILO constituents at national level – governments, and also social partners – continuous monitoring and independent assessment were, and continue to be, part of the philosophy behind all the programmes. The complementarity between the ILO specialists' international experience and the Portuguese experts' technical skills was, whenever possible, promoted and facilitated by the oversight of the Joint Commission, set up in September 1998.

Considering the 1998 to 2017 period, it is clear that all four strategic ILO objectives – employment, standards, social protection and social dialogue – were focused, but it was on social protection that more than 50% of the resources provided by Portugal were concentrated.

Technical cooperation programmes financed by Portugal by strategic objective (1998/2017)



First generation projects

During the initial phase, the following technical cooperation projects financed by Portugal and carried out by the ILO are worth outlining:

- **PRODIAL** (Promotion of Social Dialogue in the PALOP), launched in 1997 and lasted until 2006, aimed to improve tripartite social dialogue in the PALOP in a context of economic change and national reconstruction. It made a significant contribution to the creation and strengthening of the economic and social councils (namely in Angola, Cape Verde and São Tomé and Príncipe) and to the dynamic of tripartite consultation practices.
- **PREP** (Regional Programme for Employment Promotion in the PALOP, 1999/2001), contributed to capability-building in design/implementation/assessment of national employment policies and programmes. It inherited the foundations of another project financed by Portugal in the early 1990s, designed to support the implementation of employment market information systems in Lusophone Africa.
- **PROSOCIAL** (Project for the Development of Social Protection in the PALOP, 1999/2006), consisted of an initial phase of assisting with the production of national social security policies, followed by the reform of the respective management bodies, and a third phase of strengthening the various national legal and institutional frameworks.
- **TIMOR-LESTE** (Promotion of Employment in Timor-Leste by developing vocational training and employment systems). The ILO was the first specialised UN agency that Timor-Leste joined after it had won its independence. Portuguese funding enabled the ILO to do pioneering work on the ground, especially by assisting the new Secretary of State for Employment and Vocational Training, and in the launch of income-generating programmes. The enriching experience developed and, with additional funding, the ILO's portfolio in Timor-Leste is now one of its largest programmes worldwide.

STEP/Portugal

The Strategies and Tools against Social Exclusion and Poverty programme (STEP) became one of the ILO's major global programmes and a key instrument in the Global Campaign on Social Security and Coverage for All. It had two main components: an innovative approach to fighting social exclusion, and the extension of social protection to the excluded. Its work culminated with the adoption of the **Social Protection Floors Recommendation, 2012 (N.º 202)**, which would later be included on the 2030 Agenda for Sustainable Development, adopted by the UN in 2015.

Portugal played the lead role in the programme with the financing of STEP/Portugal. Starting in late 1999, Phase I focused on the fight against social exclusion. From 2009 onwards, Phase II addressed assistance to improve management of the contributory schemes and extend social protection to include non-contributory groups. STEP/Portugal proved to be a catalyst for interventions of other donors. Mozambique, in particular, was a successful experience that was widely used to illustrate, internationally, how a social protection floor can be developed.

From the beginning, the project consisted of a considerable number of knowledge production and sharing activities. Two electronic platforms, still operational today, were developed – the CIPS (Information Centre on Social Protection) and CIARIS (Centre for Learning and Resources on Social Inclusion). Continuity of the CIPS has also been supported by the Community of Portuguese Language Countries (CPLP).

Action/Portugal

When the STEP/Portugal activities came to an end, the respective PALOP partners expressed their satisfaction with the programme's impact, and three governments (Cape Verde, Guinea-Bissau and Mozambique) did so formally. There had to be some form of continuity, especially since the topic was to feature prominently in the Sustainable Development Objectives.

Capitalising on the successes of STEP/Portugal, in August 2015 ACTION/Portugal – Reinforcing Social Protection in the PALOP and Timor-Leste was proposed, and launched by the end of that year. The aim of the programme, which was to last for 40 months and is still running, was to extend the coverage of social protection systems in the six Lusophone countries.

The programme is structured along four main strands of action: (i) assistance to national institutions with the design, implementation and assessment of social protection programmes in order to put in place National Social Protection Floors; (ii) efficiency and skills reinforcement of national administration in their management of global and integrated systems; (iii) promotion of access by the PALOP and Timor-Leste to information, practices and educational resources available regionally and internationally, in order to support the spread of social protection systems, and (iv) promotion and exchange of good practice in Social Protection Floors within the CPLP.



Agreement between the IEFP and the ILO International Training Centre ITC/ILO) in Turin

The ITC/ILO in Turin opened in 1964, and is the world's foremost provider of training in labour-related issues. Over the years, its training offer has expanded, both quantitatively (a yearly average of 500 courses and 14000 trainees since the start of this decade) and qualitatively, and it has taken up new subject areas and new languages.

Despite a solid offer in Portuguese language, partnerships with national institutions were limited, until 2009, to just one training project in 1993-94 for vocational training personnel in the PALOP.

Another step forward was taken in 2009 when the STEP/Portugal training component was transferred to the ITC/ILO. This resulted in 1054 trainees receiving training in their own countries between 2009 and 2013.

Synergy increased in December 2010, when the ITC/ILO and IEFP entered into an agreement, which included a fixed contribution to the Centre's regular budget and a voluntary contribution towards training programmes for PALOP and Timor-Leste personnel. The programme started in 2013 and was renewed in 2015 in areas such as youth employment, entrepreneurship, trainer training, vocational training management and local development.

An impact study covering both agreements was carried out in June 2015 and the result was highly positive. Since 2010, the Centre has provided a yearly average of 58 activities in Portuguese for about 1600 trainees, using its various sources of funding.

Furthermore, Portugal now has observer member status on the ITC/ILO Board, and the Centre's website is available in Portuguese. The opening of the "Portugal Room" in the Centre's Europe Pavilion is symbolic of the importance of this close collaboration.

Associate experts programme

Portuguese support for the **Associate Experts Programme**, launched in 1999, may also be included in the universe of technical cooperation. Young Portuguese graduates are recruited to join ILO operational activities for an average period of three years, thereby gaining relevant international and multilateral experience. The Programme has already involved ten young people, half of whom continued to work for the ILO itself, either in Geneva or in one of the Organizations various offices, especially in the African region.

Strengthening the interface with portuguese language within the ILO

Portuguese as a working language in the life of the ILO

Until the mid-1990s, ILO documentation was only sporadically translated into Portuguese. Moreover, the Lusophone tripartite delegates' ability to join in important debates and conferences taking place in the Organization was often limited on account of the language barrier.

Since Portuguese is not an official UN language, it was decided that a voluntary approach could be a solution and, from the late 1990s onwards, this is what transpired. Various factors contributed to the positive outcome of the challenge:

- a first protocol on translations, signed in 1994, between the Portuguese government and the ILO;
- the creation of the CPLP and opening of its Executive Secretariat in Lisbon in 1996;
- a new generation of ILO technical cooperation programmes specifically aimed at Lusophone countries, encouraged by the MT's cooperation;
- an emerging training offer in Portuguese language at the ITC/ILO in Turin;
- the agreement on the use of Portuguese as a working language at the ILO's annual Conference. It was signed in 2000, the year when the Conference's guest of honour was Portuguese President Jorge Sampaio. The agreement is still in force.
- the opening of an ILO Office in Lisbon, operational since 2003.

However, it was mainly from 2005 onwards, following a renewed protocol signed in Geneva, that ILO publications in Portuguese began to gain ground and critical mass. With earmarked funding from the MT⁵, about 130 documents have been published and compiled in a catalogue that is now in its seventh edition.

Apart from being a clearly strategic plan on Portugal's part, this dynamic has been reinforcing the ILO's presence in the Portuguese-speaking world, while, at the same time, promoting increasing participation of Lusophone governments and social partners in the Organization's activities.

⁵ Of what is now the Cabinet of Studies and Planning (GEP).

Office in Lisbon: An interface with portuguese partners and the executive secretariat CPLP

Fifteen or so years ago, a high-level ILO mission set off to Portugal to assess the conditions for opening an ILO Office in Lisbon. The mission returned, enthusiastic about the national consensus, both political and tripartite, on the proposed project.

Negotiations went on through various governments and different political majorities. The idea, introduced when Minister Ferro Rodrigues was in office, was later developed by Paulo Pedroso and, eventually, endorsed by Bagão Félix on 8 July 2002.

First and foremost, the aim was to reinforce the Organization's presence in the world of work in Portugal. It was also meant to stimulate synergies between the ILO and the Portuguese language. All this was based on an operating model involving on a small structure with limited shared fixed costs. The Portuguese contribution would, basically, cover the costs of the Office premises and national staff, recruited from the public administration.

The Office, which opened in May 2003, has been forcefully pursuing both of the above strategic plans. Here are a few of its achievements:

- Exponential growth in the number of initiatives and programmes organised by the ILO in Portugal, in conjunction with practically all the national partners and bodies in the world of work.
- Emergence of a new generation of programmes with the CPLP and its Executive Secretariat.
- Reinforced protagonism of Portuguese language in the ILO.
- Increased numbers of Portuguese officials in the Organization.
- Increase in the number of ILO reference works in Portuguese, from just a few publications to an actual catalogue that now constitutes a basic library.

Conclusions

The consolidated partnership between Portugal and the ILO finds expression in different dimensions: political-diplomatic complicity, the close relationship with government and social partners, Portuguese participation in the life of the Organization globally, the conferences organised by the ILO in Portugal, invitations to BIT⁶ specialists to take part in Portuguese initiatives, the growing number of high-ranking Portuguese officials in political and technical positions within the ILO.

In this respect, a further dimension should be considered – the voluntary financing of ILO operational activities by Portugal – which has increased over the past two decades. This is both the cause and effect of the consolidation of the partnership.

It should be noted that, in spite of naturally occurring highs and lows, different political options and varying financial contexts, Portugal's voluntary contribution to the ILO is a commitment that has never been broken since the late 1990s.

The overall assessment of these technical cooperation programmes is marked by the relevancy and impact, and recognition of the beneficiary institutions. The projection of Portuguese language within the ILO is now a reality⁷.

A successful venture.

⁶ The ILO (International Labour Office) is the secretariat of the ILO.

⁷ Comparable to no other specialised UN agency.



11

Part II - From the consolidation of democracy to the decent work agenda

Centenary of the International Labour Organization: The Participation of the Autonomous Region of Madeira in the Context of the *Delegação Portuguesa*¹

RUI GONÇALVES DA SILVA²

Abstract

In the centenary of the ILO, this article seeks to give a historical and circumstantial outline of the work of this key specialised international United Nations' agency devoted to labour issues, through crises and challenges, and its highly commendable and decisive contribution to the improvement of working conditions, based on values of humanity, dignity, fairness and social justice.

Furthermore, we comment on the participation, since 1979, of the Autonomous Region of Madeira in Portugal's delegation to the ILO's annual International Labour Conference (ILC), which made it possible to assert the Region's reality and specificities, and facilitated knowledge gathering and gaining values in international labour legislation, social dialogue and tripartism.

1 A broader version of the present text was published in the *Islenha Journal* No. 64 (Jan.- Jun.: 2019, pp. 123-160) under the title "Centenary of the International Labour Organization (ILO): Origin, Creation, Present and Future. The Participation of the Autonomous Region of Madeira in the Context of the Portuguese Delegation".

2 Former Regional Director of Labour of the Autonomous Region of Madeira (from 1981 to 2016).

The Autonomous Region of Madeira and the ILO

Given the ILO's standing in the world of work as a preeminent structure and organisation and point of reference, from the outset of autonomy the Region was keen to take part in the work of the Organization, regarding it as a source of knowledge and a means of affirmation, which, at a time when regional services were being consolidated, was vital.

For this reason, we describe here how that objective was achieved, and the experience gained from the pioneering and innovative yearly participation in the annual ILC since 1979 – before the Autonomous Region of the Azores began taking part in 1980 – as part of the Portuguese Government's Delegation. The Region's delegates were usually the labour sector's regional authority Secretary and the Director, as a technical adviser.

Integration was not easy, but it represented a conquest and assertion of regional autonomy that had been consolidating over time. It expressed the political and social reality of our country and observed the ILO's constitutional rules.

The Region's participation in the Conference sessions – and other preparatory procedures that express Portugal's position – is mainly a result of its endeavours for recognition and affirmation, arising from the autonomous competencies and rights inherent to its statute. Among other objectives, the importance of the Region's presence as a full member of the Portuguese governmental delegation to the annual Conference, lies in being in a position to express the Region's interests and conditions and to take up appropriate positions, particularly when matters that directly affect the Region are concerned. This was the case, for example, in the drafting of standards relating to home working and the hotel industry, the accompaniment of the legal regime for embroidery homeworkers, and, in fact, all issues that could have an impact on regional labour policy.

With the enshrinement of regional autonomy in the 1976 Constitution, each Autonomous Region assumed responsibility for implementing its own programme, seeking the improvement, development and advancement of its people, and took on all the competencies in the management of all intervention areas in the respective territorial spaces, observing the national legal framework and with legislative changes tailored to the specific regional reality, as is the case of the labour sector, which is the responsibility of the regional bodies and services.

Although the Portuguese State is defined in the Constitution as a unitary state, it nonetheless respects, in its structure and organisation, the principles of regional autonomy and democratic decentralisation.

While the Portuguese unitary state entails a single constitutional order, a sole constituent

power, it does not preclude the existence of regional entities, with advanced and evolved forms of autonomy, whose only material and substantial boundaries are State sovereignty, national interest, and political unity.

The Autonomous Regions fall within this legal framework, constituting institutionalised decision-making entities and nuclei, specialised in accordance with regional interests, and with their own government and legislative power, limited by constitutional principles and by the general laws of the Republic, and also having the regulatory power of the general laws emanating from the sovereign bodies, acting and executing their policy in the sphere of their competencies and specificities.

With regard to the negotiation of international Treaties and Agreements, “Autonomous Regions are authorised to take part in the negotiation of international treaties and agreements on issues that directly affect them, and to reap the benefits derived therefrom”, in accordance with the principle that the government of the Republic is responsible for conducting foreign policy.

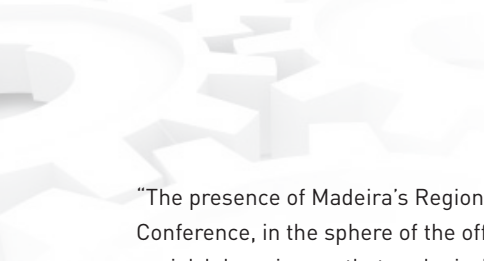
In addition to the competencies conferred by constitutional and ordinary law, the Autonomous Region of Madeira’s participation in ILC sessions is regulated by a specific Protocol, dated 25 May 1981, drawn up between the Region and the Government of the Republic, by those responsible for labour issues. The Protocol sets out the guiding principles of the Region’s participation, namely:

“Whenever the items to be discussed at the International Labour Conference, or at other international meetings organised by the BIT or similar international bodies, have an exclusive or predominant bearing on the social-labour relations of the Autonomous Region of Madeira, the Ministry of Labour commits to undertake prior consultation with the Regional Secretariat for Labour of Madeira on the official position to be taken, as well as to make appropriate efforts to ensure the actual participation of the Regional Secretariat in said conferences or meetings, as part of the Portuguese delegation.”

Furthermore, the Protocol goes on to state:

“Whenever the social-labour issues to be discussed at the conferences or meetings do not fall under the above category, the Ministry of Labour will consider the possibility of officials from the Regional Secretariat for Labour attending, in the overall context of the priorities and advantages of participation by the range of Portuguese public administration services that are most directly concerned in dealing with such issues.”

Regional government representation, through the Regional Secretary for Labour is also provided for in the Protocol:



“The presence of Madeira’s Regional Secretary for Labour at the ILO International Labour Conference, in the sphere of the official Portuguese representation, is opportune when social-labour issues that exclusively or predominantly have a bearing on the Autonomous Region of Madeira are being dealt with, and may equally occur whenever social-labour topics of general interest to the whole country are being discussed.”

More recently, on 1 June 2005, a Collaboration Protocol was celebrated between the Regional Secretariat for Human Resources (at the time responsible for Labour issues) and the ILO Lisbon Office. The Protocol states: “Since the institutionalisation of autonomy and the creation of the respective regional services in the area of Labour, the Autonomous Region of Madeira has closely followed the work of the ILO, with clear interest and recognition. Since 1979, it has been part of the Portuguese delegation attending the yearly Conference, and has also adopted in its regional labour programme the strategic and guiding principles of the Organization, namely in terms of tripartism, social dialogue, decent work, and its social dimension.”

Among other aspects, the Protocol provides for:

- Access by regional departments dealing with labour issues, namely the Regional Directorate for Labour, to information and documentation produced by the ILO, as well as access to its databases.
- Access by regional departments dealing with Labour issues, namely the Regional Directorate for Labour, to ILO initiatives, including full information about each action and its normative production.
- Support with documentation and information for preparations for and participation in ILCs as part of the Portuguese delegation, as provided for in the respective Protocol.

The ILO Constitution and framing of the Autonomous Regions

The Autonomous Regions is not, as such, explicitly provided for in the ILO Constitution, since it falls within the reality of each respective country. However, the broad representativeness of each member state is contemplated, in line with their own political and organisational structure.

Article 1 (2) of the Constitution states that membership of the ILO is reserved to States that are members of the United Nations, and States that have been accepted as members of the Organization by a qualified majority vote of delegates at the General Conference.

Article 35 (3) of the ILO Constitution considers the issue of “non-metropolitan territories”, legally framing within this category the situation of colonies, protectorates and other tutelary systems that are under the authority of a State that is responsible, as an ILO member, for their international relations.

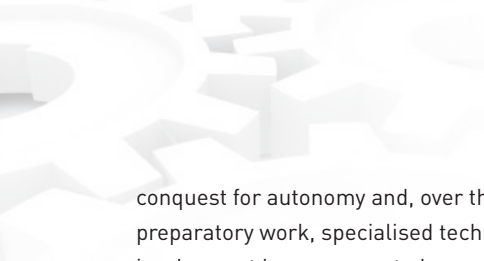
Portugal’s Autonomous Regions are more recent realities. They have their own statutes and wide-ranging competencies. Whilst integrated in the national whole, from the unitary state perspective, they have their own administrative regimes, derived from their autonomous competencies.

Since representation at the ILO is assumed by State members (even in federal systems) as they are subjects of public international law, they are responsible for appointing their representatives, but this appointment must always reflect the internal institutional reality of each member State, which, in Portugal’s case, means including representation of its autonomous regions.

In view of the fact that tripartism is a key characteristic of the ILO and cornerstone of its effectiveness, based on the practice of involving representatives of governments (who must respect full representation of the political system in their country), and employers and workers (who must also broadly represent the respective social partners and existing organisations, in accordance with their representativity), these principles must also apply to Autonomous Regions’ full representation, since they are responsible for defining each Region’s labour policies, with implications derived from the central government’s international obligations. Participation of representatives from the regional governments of the Autonomous Regions in the national governmental delegation is, therefore, fully legitimate, and has occurred since 1979. Two representatives usually join the delegation – the Regional Secretary for Labour and the Regional Director for Labour, as technical adviser. Representation of employers and workers should also observe said principles, and this has happened in the case of national and regional employers, but not where workers’ representation is concerned.

With regard to social partners’ representation, there has been an agreement of understanding among the national employers whereby a representative from Madeira and from the Azores is included in the delegation in alternate years. In respect of workers’ representation, only representatives from Madeira have been included in the delegation. This occurred on two occasions, when the subject of home work was being discussed (at the 82nd Session, 1995, and the 83rd Session, 1996, when the Home Work Convention, C177, was adopted) and a representative from the *Sindicato da Indústria de Bordados da Madeira* (embroidery workers’ union) attended.

The participation of the Autonomous Region of Madeira in the annual ILC represents a



conquest for autonomy and, over the years, through the contributions it has made to reports, preparatory work, specialised technical committees in the national delegation, etc., its involvement has represented consolidation and affirmation of autonomy in the sphere of labour, and an invaluable experience and valorisation both nationally and internationally.

In practical terms, the Region has adhered to the aims, values and principles of the ILO, and social dialogue, tripartism and social justice are values that have impacted on the Region's labour policies. Furthermore, Madeira has fully aligned itself with the Organization in terms of ILO initiatives, organising, for example, regional commemorations of the World Day for Safety and Health at Work, World Day against Child Labour, World Day for Decent Work, and exhibitions to celebrate the 75th and 90th anniversaries of the ILO.

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12

Part III - Labour areas and the role of the ILO

International Maritime Law ¹

MARIA TERESA PANCETTI ²

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The particular features of work carried out at sea were recognised early on by the ILO, and the Organization introduced special sessions at the International Labour Conference dedicated to maritime labour.

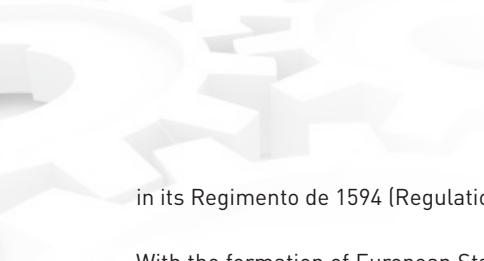
The medium in which this type of work takes place, its inherent dangers, twenty-four hours a day in a very limited space, far from the oversight of the authorities, docking in different countries with different respective legislations, often with crews of different nationalities, plus the difficulty, in the absence of agreements, of protecting merchant shipping activity from international competition, all have an enormous impact on working life on board, and contribute significantly to characteristics that are not found in work on land.

In the Middle Ages, this work was regulated by a set of common laws based on the “customs of the sea”, which applied to all seafarers and established their duties as well as their rights. Examples of these are the Laws of Oleron, applicable to countries on the western coast of Europe, and the Book of the Consulate of the Sea, which became a sort of international code of maritime law for Mediterranean countries. Portugal was later influenced by this code, namely

¹ The presente text, of 2012, belongs to the collection of the Project “Memória Futura”, and is available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/genericdocument/wcms_664851.pdf.

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in its Regimento de 1594 (Regulations of 1594).

With the formation of European States, the end to the unity of the law of the sea and the need to coordinate courts' decisions, diverse national maritime codes began to emerge, providing greater practical guarantees for both seafarers and shipowners, especially in terms of working conditions.

In Portugal, although some XIV Century legal documents are known about, from the reigns of D. Afonso IV and D. Fernando, it was in the XVII Century that the first codification work appeared with the 3rd Regimento of the Casa das Índias (thought to be dated 1630).

The 2nd Session of the International Labour Conference, held in Genova in 1920, was devoted exclusively to maritime labour. Its main aim of the Conference was to find out how some of the conventions and recommendations, which had been adopted the previous year in Washington at the 1st International Labour Conference, could be applied to these workers.

As a result, except for the convention limiting the duration of work on board, conventions were adopted on: the minimum age for entry to maritime employment, unemployment indemnity in case of shipwreck, and placement of seamen. Furthermore, a recommendation on unemployment insurance for seamen was adopted.

In addition to technical issues connected with the approval of standards, the session also addressed the possibility of establishing an international seamen's statute that would provide some standardization to their working conditions. The outcome was a resolution recommending that the statute should be drafted gradually by adopting standards on matters of particular interest to seafarers. The provisions of the statute should then be transposed into domestic law by those States that had a navy.

In order to carry out the surveys required for drafting the statute, the Joint Maritime Commission was set up in 1920. This is a bipartite body comprising representatives of shipowners and seafarers in equal number, and in which the Employer and Worker Groups of the Organization's Governing Body are also represented for the purpose of maintaining a link between the Commission members and rest of the Organization. The Commission is chaired by the Governing Body Chair.

The Joint Maritime Commission was to play a key role in seafaring activity, insofar as all maritime-related issues to be discussed at Conference must be submitted to the Commission beforehand for assessment. Additionally, the Commission enabled work on maritime issues to continue during sometimes long intervals between the Conference's maritime sessions. It gained such a level of expertise that the Governing Body regularly consulted with it on technical maritime questions.

It was, therefore, the Commission's responsibility to decide on the matters that should be regulated through the adoption of conventions and recommendations. These would be crucial elements for a framework of maritime labour rules, which would eventually become the International Maritime Statute. The Commission ensured that the matters chosen were included on the agendas of the special conferences.

However, from the outset, the Conferences' Maritime Sessions were faced with the issue of representation of the maritime interests.

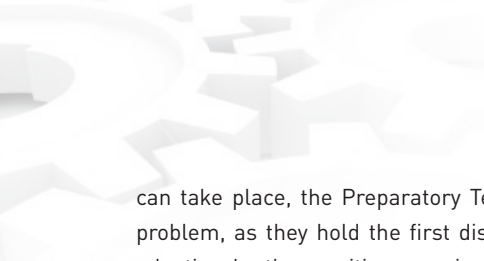
The fact that, in the early years, the yearly Conference and the Maritime Sessions took place consecutively, led countries, even the seafaring nations, to send the same delegates to both sessions for financial reasons. So, the delegates' level of expertise in maritime issues was debatable. The solution was to hold the annual Conferences and Maritime Sessions at different times, which made it possible to limit participation to actual stakeholders.

Another, more complex, issue had to do with the composition of the non-governmental delegations to the Maritime Sessions, and, more specifically, with the procedure to be followed by governments for appointing representatives of employers and workers with strong professional organisations of shipowners and seafarers, i.e. whether these organisations ought to be contacted directly or the central organisations, informing them that the session would be dealing exclusively with maritime issues.

As a result of the disagreement between the Governing Body and the maritime sector's professional organisations over the interpretation of Article 3, paragraph 5 of the ILO Constitution⁴, regarding the appointment of the non-governmental representatives, since 1935, the Conference's Maritime Sessions have been preceded by Preparatory Technical Maritime Conferences. These are tripartite in composition, and merely consultative, but as they are not confined by the General Conference's conditions relating to composition, the Governing Body is able to convene only those countries with an interest in maritime issues, and these can, therefore, include in their respective delegations direct representatives of the sector's representative professional organisations and, in an advisory capacity, the members of the Joint Maritime Commission who were not part of their own country's delegation, thus ensuring the necessary authority for the debate of the issues in question. A tripartite delegation from the Governing Body also takes part in order to be, once again, the link between maritime interests and the Organization.

Furthermore, given that since 1926 ILO standards are adopted through a double discussion process, i.e., two sessions of the International Labour Conference are required before adoption

4 "The Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries".



can take place, the Preparatory Technical Maritime Conferences also had to deal with that problem, as they hold the first discussion of maritime standards before the discussion and adoption by the maritime session of the General Conference, which is the only body with legislative power.

Of the total number of ILO conventions and recommendations adopted so far, 41 conventions (33 of which are still in force), 29 recommendations, and one Protocol are devoted to maritime labour, and deal with matters relating to training and access to employment, general working conditions, safety, health and well-being, social security, competence certificates, and labour inspection.

The following conventions deserve special attention, either because of their relevance or the impact they had at the time:

Convention N.º 147 – the Merchant Shipping (Minimum Standards) Convention, 1976

Adopted in 1976 by the 62nd Maritime Session of the International Labour Conference, this Convention was, together with Recommendation N.º 155, a reference for maritime labour and, at the time, provided a response to the aftermath in the sector of the recession caused by the 1973 oil crisis. The crisis had triggered a drop in international trade and, consequently, led to a fall in world demand for sea transportation. This, together with technological developments, resulted in a widespread reduction in seafaring jobs.

The Convention particularly addressed a problem that had begun to take on alarming proportions: the shift from the registration of ships from traditionally seafaring nations to the practice of flags of convenience from countries that had neither ratified maritime conventions, nor had collective recruitment systems, and therefore providing below standard working conditions and protection. This was a step backwards in terms of the guarantees achieved until then by the seafarers, and also an undermining of the ILO's work to improve working conditions and life on board ship.

Apart from being unfair competition, the substandard state of some vessels not only put seafarers' safety at risk, but were also a hazard to navigation.

By embodying in a single instrument the basic minimum standards that countries should apply on board ships registered in their territories, Convention N.º 147 made it possible for States, by ratifying just one convention, to become automatically obliged to introduce legislation or collective regulation and enforce compliance thereof, on matters contemplated in a number of other, previously adopted, maritime conventions (a number which Recommendation

N.º 155 increased), regardless of whether States had ratified these. These other conventions are appended to Convention N.º 147, and address areas such as freedom of association and collective bargaining, hygiene, health and well-being, repatriation, social security and access to employment.

Another particularity of Convention N.º 147 is that it makes States' ratification dependent upon their adherence to the international instruments of the International Maritime Organization (IMO), namely its conventions relating to safety of life at sea, load lines and prevention of collisions at sea.

One of the most significant consequences of this Convention was the 1982 signing, by a number of European countries (later joined by Canada) of the Paris Memorandum of Understanding on Port State Control. It addressed the application of measures to enable compliance with Article 4 of Convention N.º 147, namely, the harmonisation of port State control inspections of merchant ships registered abroad.

The meeting that adopted this instrument also adopted a Resolution requesting the Joint Maritime Commission to periodically examine the list of Conventions in the Annex to Convention N.º 147, in order to check the need for revision.

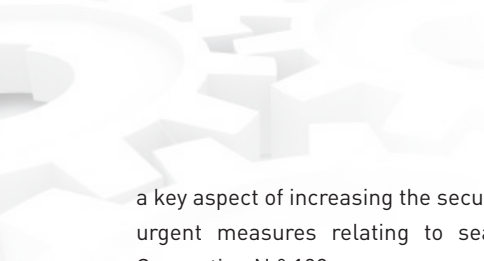
The 84th Maritime Session of the Conference in 1996 adopted a Protocol containing a Supplementary Appendix, which extended the number of Conventions covered by Convention N.º 147. Ratification of the Protocol entailed obligatory acceptance of two further maritime Conventions referred to in Part A of the Protocol's Supplementary Appendix, while the Conventions in Part B were of facultative acceptance.

Convention N.º 185 – Seafarers' Identity Documents Convention, 2003

Convention N.º 185, which revises Convention N.º 108, the Seafarers' Identity Documents Convention, 1958, establishes, in the wake of 11 September 2001 and given possibility that ships and port facilities could be used for terrorist acts, a more rigorous identification system than previously provided for.

The urgency of enhancing maritime safety worldwide led to the subject's inclusion, as a priority issue, on the agenda of a regular International Labour Conference session in 2003.

Furthermore, following the 11 September 2001 attacks and the adoption, the same year, of IMO Resolution A.924(22) on preventative security measures, the Diplomatic Conference on Maritime Security was held in 2002 for the purpose of reviewing the standards of other international organisations involved in land, air and sea transportation. The ILO was assigned



a key aspect of increasing the security of ships and port facilities, namely, the task of adopting urgent measures relating to seafarers' identification documents, in the framework of Convention N.º 108.

By establishing a reliable common international identification system, using biometric techniques, which protects maritime workers from terrorist acts, the new Convention not only safeguarded seafarers' freedom of movement, their general well-being, and their professional activities, but also facilitated international trade.

Maritime Labour Convention, 2006

The Maritime Labour Convention, 2006, (MLC) was adopted at the 94th Session of the International Labour Conference, held on 23 February 2006⁵.

For the maritime sector, this is an extremely important instrument to the extent that it revised and consolidated almost all the existing instruments (Conventions and Recommendations) relating to maritime work, which had been adopted by the ILO since 1920⁶.

The MLC 2006 seeks to guarantee decent conditions of work in the maritime sector, defining seafarers' rights and, at the same time, aims to promote conditions for fair competition among shipowners, thereby contributing to the stabilisation of the shipping industry, in the context of global competition.

It provides a set of minimum standards for practically every aspect of seafarers' conditions of work, basically covering the same issues as the instruments it revised, but updating them whenever necessary, and addressing new areas, namely with regard to safety and health.

The Convention is structured in an entirely different way to other ILO conventions. It comprises fundamental provisions – the Articles and Regulations – and a Code consisting of Parts A and B. The Articles set out core rights and principles and basic obligations. The Regulations and Part A of the Code comprise provisions that are mandatory. Part B of the Code contains non-mandatory guidelines which are not mandatory.

The Regulations and Code are organised under five Titles:

⁵ It was adopted with 314 votes in favour, none against, and 4 abstentions.

⁶ It did not revise Conventions 108 and 185, on Seafarers' Identification Documents as they had already been revised recently. Neither did it revise Conventions 15 and 71 – Minimum Age (Trimmers and Stokers), and Seafarers' Pensions, respectively, which were out of date.

Title I: Minimum requirements for seafarers to work on a ship.

Title II: Conditions of employment.

Title III: Accommodation, recreational facilities, food and catering.

Title IV: Health protection, medical care, welfare and social security protection.

Title V: Compliance and enforcement.

The scope of application of the Convention not only applies to seafarers, regardless of nationality, who work on ships that fly the flag of States that ratified the Convention, but also to seafarers who work on ships registered in non-ratifying countries, when these ships are the subject of inspection by any port State that has ratified it. This is in accordance with the port State control mechanism⁷ and with the principle of not receiving more favourable treatment⁸. It should be noted that the term “seafarer” used in the Convention not only applies to the ship’s crew members, but also to all those working on board, in whatever capacity.

The Convention will enter into force twelve months after registering at least 30 ratifications of ILO member States, representing over 33 per cent of the world gross tonnage of ships. This will occur on 20 August next year.

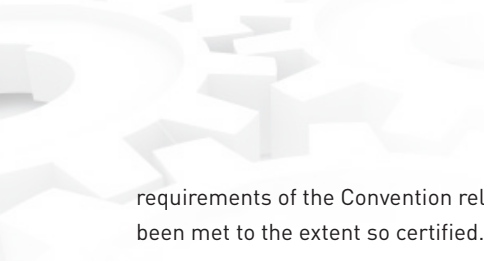
Once the MLC enters into force, all the conventions embodied in it will be closed to ratification, and these will only remain in force in the member States that ratified them before the Maritime Labour Convention came into force, and which do not ratify the latter.

In this way, ships from countries that have ratified the Convention and which provide decent working and social conditions for seafarers will have, in return, protection against unfair competition from ships that do not comply with the standards.

Ships from countries that have ratified the Convention will also benefit from a certification system that will dispense them from inspection by the port State, thus avoiding sometimes long delays in foreign ports. The Convention obliges member States that have ratified it to require ships that fly their flag to carry a maritime labour certificate, complemented by a declaration of maritime labour compliance, as evidence that the ship has been duly inspected and that the

⁷ Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection (...) for the purpose of reviewing compliance with the requirements of this Convention (including seafarers’ rights) relating to the working and living conditions of seafarers on the ship (...)” (Regulation 5.2.1 of the Convention).

⁸ “Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.” (Art.V, 7, of the Convention).



requirements of the Convention relating to working and living conditions of the seafarers have been met to the extent so certified.

So as to ensure ratification and application by the highest possible number of member States, the Convention sought to combine the firmness of its principles on the rights of seafarers with flexibility in the application of its more technical standards, leaving the States that ratified it plenty of room for manoeuvre in terms of ways in which it could be transposed to domestic legislation. This flexibility is found in different aspects, including, for example, the principle of joint equivalence, which exists in other ILO conventions and also adopted by this Convention, which allows each member State to commit to taking into account the overall general aim of the instrument, while not demanding absolute conformity between the Convention's principles and domestic standards.

Among the various innovations introduced by the MLC, there is the procedure for updating the Convention. In addition to the overall revision of the Convention, referred to in its Article XIV, which must adhere to the framework of Article 19 of the ILO Constitution for the adoption of Conventions, Parts A and B of the Code may be amended, unless expressly provided otherwise in the MLC, through a fast procedure of simplified amendment and tacit approval, described in Article XV.

The MLC is, therefore, meant to be a universally applicable instrument, which, once in force, will be the fourth pillar of international maritime industry regulation, complementing core conventions of the International Maritime Organization – the International Convention for the Safety of Life at Sea (SOLAS), the Convention on Standards of Training, Certification and Watchkeeping (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL).

As in the case of the MLC, the entry into force of a significant number of maritime conventions depends, not on the overall number of ratifications, as happens with the other conventions, but on the number of ratifications by the most important countries from a maritime point of view. For years, our country was included among such nations and had ratified 15 of those conventions, 12 of which are still in force. However, as the weight of our maritime sector diminished, the pace of ratifications slowed down, and since ratifying Convention N.º 147, in 1983, Portugal has not ratified any other maritime convention.

Meanwhile, with the adoption of the MLC, and with a view to its ratification, and given the diversity and complexity of the issues addressed, an Inter-ministerial Working Group has been set up to deal with the domestic legislative changes required for adopting its provisions. As previously mentioned, once in force, the ships of States that have not ratified the MLC will be liable for inspection by any port State that has ratified it. This means that, even if a State does not ratify the MLC, it would still have to adhere to the Convention's provisions.

Furthermore, at European Union level, not only did the Council authorise the ratification of the MLC provisions relating to matters within its own mandate (those regarding the coordination of the social security systems), but, in view of the major contribution the Convention makes to the maritime sector internationally, it also decided to advise EU Members to adopt the measures necessary in order to ratify the MLC as quickly as possible⁹.

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⁹ Council Decision 2007/431, of 7 June.



13

Part III - Labour areas and the role of the ILO

The reparation of accidents at work in Portugal and the influences of the ILO social protection model ¹

TERESA MANECA LIMA ²

Introdução

Occupational accidents are a traumatic, incapacitating social phenomenon and a manifestation of the violence and social vulnerability to which workers are exposed. According to estimates from the International Labour Organization (ILO), workplace accidents cause more fatalities than armed conflicts, natural catastrophes or pandemics, and more than 250 million such accidents happen every year throughout the world (ILO, 2005).

In the case of Portuguese society, although in recent decades there has been a drop in total numbers of accidents at work, which is said to be a result of investment in occupational hazard prevention policies and of the fall in numbers of workers and industrial production, due to the economic crisis that began in 2008, in 2012 there were approximately 194,000 accidents, 175 of which were fatal. This is a monthly average of 12 workers (Gabinete de Estratégia e Estudos, GEE, 2014). Considering the characteristics of the Portuguese economy, these numbers are still staggering and have consequences for both enterprises, in terms of lost working hours and productivity (Jovanovic *et al.*, 2004: 326), and for the injured workers and their families, in terms of loss of earnings and suffering.

¹ The present text was originally published, in 2019, in *A Organização Internacional do Trabalho no Direito do Trabalho Português: Reflexos e limitações de um paradigma sociojurídico*, Capítulo VI, Edições Almedina: pp. 151-178.

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The reality of work-related accidents and the experience for workers and their families entail the need for protection and compensation for damages arising from accidents. The first piece of legislation on occupational accidents passed in Portugal, Law N.º 83, of 24 July 1913³, stipulated that employers should financially compensate workers for the damages suffered, regardless of the cause of the accident (or “disaster”, as the Law refers to it). In 1919, Decree N.º 5637, of 10 May⁴, established the first obligatory social insurance system for occupational accidents and extended guarantees and protection for occupational diseases. Over the years, labour legislation evolved, reflecting legal discussions around the concept of liability and risk theories, and was further developed by ratification of ILO Recommendations and Conventions, culminating in the current legal regime for compensation of occupational accidents and diseases – Law N.º 98/2009, of 4 September⁵ – which now includes occupational rehabilitation and reintegration.

With regard to the ILO Conventions, namely the Workmen’s Compensation (Accidents) Convention (N.º 17), and the Equality of Treatment (Accident Compensation) Convention (N.º 19), both adopted in 1925, and ratified by Portugal in 1929, it was only in 1936, when Law N.º 1942, of 27 July⁶ was published, that they were echoed in Portuguese legislation, and extended and improved the compensation system. In addition to these two Conventions, Portugal also ratified the Workmen’s Compensation (Agriculture) Convention, 1921 (N.º 12)⁷.

Given the appalling reality of occupational accidents and their consequences, this aim of this chapter is to outline the evolution of the work-related accident compensation regime, showing how it was anchored in European legislation and the principles advocated by the ILO, while, at the same time, maintaining the particularities that marked its creation. Furthermore, this reflection is intended to take the issue of work accident compensation into the realm of public discussion, framed in the broader notion of social protection advocated by both the ILO and the Constitution of the Portuguese Republic.

1. Occupational accidents: from the social phenomenon to the legal phenomenon

As a social and legal phenomenon, the concept of occupational accident first emerged with the advent of industrial society and the increasing use of machinery, which, given the

3 Available at: <https://dre.pt/application/file/590381>

4 Available at: <https://dre.pt/application/file/271556>

5 Available at: <https://dre.pt/application/file/489343>

6 Available at: <https://dre.pt/application/file/360200>

7 For the text of the conventions ratified by Portugal: http://www.ilo.org/public/portugue/region/eurpro/lisbon/html/portugal_convencoes_numero_pt.htm

unpreparedness of workers and enterprises themselves for industrialisation, resulted in an exponential increase in the number of work-related accidents (Leitão, 2001: 537). According to some analyses, the introduction of machinery led to profound changes in employment, reducing man to a mere means or tool of the production system, with no regard for his true significance and value (Nascimento, 2001) and jeopardising his health and safety.

Although references to health and disease in connection with work date back to Greek and Roman civilisations, the arrival of the industrial revolution put the issue under a new spotlight. Work accidents, which were often attributed to bad luck, destiny, or misfortune, due to a worker's carelessness, fault, negligence or recklessness, came to be associated with workplace environment and conditions.

Since the 19th Century, the concept of occupational accident has been changing, as labour itself has evolved, resulting in variety of definitions and interpretations. For example, the World Health Organisation (WHO) regards an accident to be "an unpremeditated event resulting in recognisable damage", or "an occurrence in a sequence of events which usually produces unintended injury, death or property damage" (Chiavenato, 1999).

Of all the definitions to be found in the socio-legal literature on labour, the most comprehensive is that of Heinrich (1931), who defines an accident as "an unplanned and uncontrolled event in which the action or reaction of an object, substance, person or radiation results in personal injury or the probability thereof" which "interrupts or interferes with the orderly progress of the activity", causing the loss of time and/or injury to workers and damage to property. In fact, eight decades later, Heinrich's concept has remained practically unaltered. An occupational accident is, therefore, understood to mean an event that occurs while undertaking work for an enterprise or employer that causes physical injury or functional disorder, which results in death, or permanent or temporary loss of capacity to work (Evangelinos e Marchetti, 2003). In line with the approach adopted by Boaventura de Sousa Santos *et al.* (2010), an occupational accident also entails:

such high levels of anxiety and uncertainty about the present and future that the injured party's horizon of expectations lowers. As a result, he is ready to tolerate and support great social and economic costs that ensure a minimum of protection in view of his vulnerable condition [Santos *et al.*, 2010: 103-104].

Considering the social consequences that result from a work accident, it is understandable why workers' accident protection refers to the historical origins of labour law (Ramalho, 2010). Thus, in view of the inability of Civil Codes to address issues relating to labour relations, workers' movements called for a specific, distinct space for labour concerns. According to Héctor Barbagelata,

Not only did Civil Law ignore the worker individually considered, and his real situation in relation to the business owner, but it was also unaware of the solidarity between workers, and their organisations, and the actions they carried out. It did not take into account the collective nature of labour relations, or safeguard against that which, from an economic point of view, was hidden under supposedly "free contracts" [Barbagelata, 1996: 16].



Furthermore, as António Casimiro Ferreira recalls, it was acts of civil disobedience that “brought about the formation of Labour Law and led to State intervention in labour relations through this ‘new law’ in a line of legal rationalisation of labour disputes” (Ferreira, 2003: 155). By seeking to reconcile, or at least articulate, the principles of the community, market, society and solidarity, with a founding paradigm of the group rather than of the individual, incorporating legal standards and principles to regulate labour relations (Xavier, 2005:23), labour law, understood as social law, was built up on the basis of very stable and highly safe concepts (Cabral, 1999). The main objectives of this stability were to guarantee minimally acceptable working and living conditions and offset the inequalities between worker and employer. As Alain Supiot said: “in an employment relationship, the employee, unlike the employer, is not risking his patrimony, he is risking life and limb” (1994:68). In this way, it appears that, in addition to at least partially redressing fundamental inequalities (Alemán Páez, 2002), labour law became marked by the imperative of safety at work. In the view of Alain Supiot (2004), safety at work, physical safety, became a key element of labour law. This position is shared by Laurent Vogel (2006) who upheld that workplace health became an overriding concern in the process of setting labour law.

The consolidation of labour law, as a structured and autonomous system, occurred in the 20th Century after the founding of the ILO in 1919, a body that works to promote social justice and respect for human rights throughout the world. However, the German Constitution of 1919, known as the Weimar Constitution, was the leading framework for labour law and economic and social rights, since “by affirming the basic rights and obligations of the Germans, it was guided by a more social spirit” (Melo, 2007:80). As the International Labour Office (BIT, 2011) recalled, Germany was the first country to adopt a social insurance system, thereby establishing the right to a social benefit available to all workers. This recognition led to greater State intervention, in terms of legislating and implementing public policies for the protection of working people.

The protection of injured workers not only marked the birth of labour law, but also helped to drive forward the development of a security and social protection mechanism, which progressed after World War II and consolidated social security as a human right. In fact, in most European countries, work-related accidents were the first contingency covered by social security, i.e. occupational accident insurance was the first form of social security.

In view of Portugal’s relatively late industrialisation process, the country’s labour law is described as being “young law”. In fact, it was only in the late 19th Century that labour protection legislation began to emerge. The first law, in this respect, was passed in 1891, and regulated the work of children and women in industry, as well as hygiene and safety in workshops (Amado, 2009). Later, standards on working time and workplace health and safety conditions were introduced. It was only from the 1930s onwards, with the 1933 Constitution, and during the *Estado Novo*, that labour law became more significance. At that time, a proper

labour legal framework, independent of the common legal framework, began to be set up, and labour tribunals were created and installed (Rato, 1998). However, it was only in the late 1960s and early 1970s that the first law on employment contracts appear, which improved legislation on occupational accidents and diseases.

Looking at the Portuguese context, it may be concluded that the issue of work-related accidents signalled the birth and development of labour law, following theoretical and legal tendencies existing in the European context.

2. Legal regulation of occupational accidents: history and evolution

Concern about work accidents gave rise, on one hand, to the introduction of standards on workplace safety, hygiene and health for the purpose of accident prevention and, on the other hand, to the definition of a model of compensation for damages resulting from work accidents (Lemos, 2011).

German legislation was the first to address the problem of occupational accidents by implementing, in 1884, work accident insurance and developing the first social insurance laws. Social insurance was, however, designed to secure some political stability in the newly-created nation (Rogers *et al.*, 2009). In spite of the underlying political objective, during the 19th Century this legislation spread to other European countries such as, for example, Austria (1888), France (1893), England (1897) and Italy (1898).

The need for special regulations on work accidents was a result of the fact that victims could only receive compensation if they could prove employer culpability. The difficulties facing employees in establishing blame led to a change in the system (Alegre, 2001). Meanwhile, the social consequences of World War I accelerated the development of social insurance because there was increased demand for pension, health, housing and rehabilitation support (Rogers *et al.*, 2009: 141), and also contributed to the evolution of the work accident compensation model.

At international level, the founding of the ILO in 1919 also reinforced the growth of social protection. Although, during the Organization's early years, concrete output relating to social insurance had been imprecise and indecisive (ILO, 1926), the international context of economic and monetary crises in the wake of World War I led the ILO to prioritise the regulation of working conditions and working time over social protection (Rogers *et al.*, 2009: 142). Accordingly, the early Conventions and Recommendations were mainly the product of immediate social circumstances rather than a long-term social protection policy. In fact, it was only in 1925, with the crisis that social insurance systems were facing throughout Europe, that the ILO mapped out a social protection strategy, which included employment injury protection.



Advances in the work accidents system were accompanied, therefore, by both a changing notion of social protection and social security systems, and evolution in the notion of liability. This duality is referred to by some authors as an example of the might of the law in the case of work accidents (Ribeiro, 2006). Meanwhile, the industrialisation process and growing social concern about working conditions, consolidated this evolution by transferring civil liability, based on individual rights and market freedom to social security (Ewald, 1986).

Regarded as an unfinished process (Alegre, 2006), the development of the work accident compensation system was marked by four phases, which correspond to four risk theories. The first phase, was marked out by the so-called theory of Aquilian liability:

Characterized by only providing for work-related accidents when these were due to the fault or negligence of the employer, the burden of proving fault resting with the injured party. In Portugal, the directive contained in Article 2398 of the 1867 Civil Code is what gave this solution legal coverage (Alegre, 2006: 10).

In this phase, considering the notion of employers' civil liability, employees faced difficulties in legally proving the existence of an occupational accident. Thus, the legal system not only did not repair the consequences of the accident, but also aggravated the social and living conditions of employee. Around 1870, various arguments against this model appeared, claiming that it was a form of social injustice (Hesse, 1998) and maintaining that in the employment contract there was the idea, albeit implicit, of the employer's obligation and responsibility for security, so that any physical injury would, therefore, constitute a contractual liability, unless the injury was attributable to the victim. The consistency of this argument led to the development of the theory of contractual responsibility. This theory established that it was the employer's responsibility "to prove that they were not liable for the accident. If unable to do so, then they would be responsible for it" (Alegre, 2006: 11). In practice, however, injured parties continued to sustain accidents, without compensation, for which employers managed to avoid liability.

In Portugal, the theory of contractual responsibility was never legally enshrined and, from the outset, gave rise to negative reactions, insofar as grave social problems associated with the occurrence of a workplace accident persisted. After necessary discussion of the concept of liability, as Carlos Alegre (2006) states, the understanding was reached that whomsoever benefitted from the employee's activity should also be responsible for the respective inherent risks. In view of the criticism, in both the European context and in Portugal, the theory of occupational risk emerged, contemplating the notion of objective responsibility. In the words of Marina Lemos, "in this phase, it was understood that whoever benefitted from a worker's labour should also be responsible for the risks inherent therein (Lemos, 2011: 16). With this idea, a cause and effect relationship exists between the accident and the employment activity, liability for which, and obligation to compensate for damage incurred, rests with employers, given that they derive profits from the activity. In Portugal's case, the legal basis for this doctrine was Law N.º 83, of 24 July 1913, followed by Decree N.º 5637, of 10 April 1919.

The occupational risk theory evolved and gave rise to the economic risk theory or authority theory, based on the idea of not a strictly job-related risk, but rather a more general risk connected with the broader notion of the employer's authority. Consequently, aspects not directly linked to the actual work activity came to be included in workplace accident liability, for example, in itinere accidents, insofar as "responsibility should lie with whomsoever gave instructions and was in charge of the work and not whoever carries them out" (Braga, 1947: 184-185). In Portugal's case, the spirit of this theory is embodied in Law N.º 1942, of 27 July 1936, and continues to be so in current law. Lastly, it should be pointed out that this economic risk theory falls within a broader theory – that of objective responsibility.

2.1. Regulation of occupational accidents in Portugal: brief evolution

In the Portuguese legal framework, workplace accidents were addressed early on, both from a perspective of prevention and introduction of workplace health and safety standards, as well as with specific reference to compensation. Regulation of occupational accidents dates back to pre-*Estado Novo* times, coinciding with the first initiatives to set up a welfare state, and seeking to respond to the total absence of social protection for the working class. As a result, in 1913 the first piece of legislation that specifically addressed workplace accident liability was introduced – Law N.º 83, of 24 July, regulated by Decrees N.º 182, of 18 October and N.º 183 of 24 October, which considered the employer liable for compensation (Ramalho, 2010). Although it was thought to be progressive and reflect the advances being made in the European context, insofar as it embodied a wider notion of the workplace accident and the possibility of liability being transferred to insurers, the coverage of this law was still limited: it only addressed certain industrial activities and accidents caused by machinery and, also, the number of authorised insurance companies was small (Rodrigues, 2008).

Protection for injured workers was generalised during the First Republic, with the publication, in 1919, of legislation introducing obligatory social insurance for illness, workplace accidents, and invalidity, old age and survivor's pensions, and Portugal joined the doctrinal movement on social policy that had flourished throughout Europe since the late 19th Century (Cardoso e Rocha, 2007). Based on the occupational risk theory, this new model extended protection to include occupational disease, since Decree N.º 5636, of 7 May, recognised as being mandatory "obligatory social insurance for disease, applicable to individuals of both genders, who work in any occupation in the areas of human activity recognised as being decent and honest by customary law and sanctioned by current legislation". In the concrete case of workplace accidents, Decree N.º 5637, of 10 April, made social insurance against work accidents obligatory, and provided for the set-up of occupational accident tribunals, with a view to ensuring that employees and their families obtained the appropriate compensation due. Furthermore, some years earlier,



in 1916, the Ministry of Labour had been set up (Law N.º 494, of 16 March⁸), which, with the passing of legislation on insurance, was able to create an innovative social protection system. Notwithstanding the differences between the Portuguese model and those of other European countries, the influence of the latter is clear.

The principle underlying obligatory social insurance against work “disasters” (as they were originally called) was that of the employer’s responsibility for risks incurred by the employee by reason of his/her work. Decree N.º 5637, of 10 April contained, and still contains, a typology of pensions and indemnities to be paid in case of a workplace accident, calculated according to the gravity of the accident, the worker’s salary, and the size of their family. This insurance was administered and run by employers’ mutual societies or by insurance companies, both national and foreign, while the State was responsible for overseeing the management of the insurance.

Although a difficult period from the social and political point of view, this was a time when much progress was made in terms of workers’ rights, in line with European concerns about working conditions (Rodrigues, 2008). For its part, the ILO, created in 1919, sought to promote health and safety at work and the regulation of industrial labour, and gave fresh impetus to the social protection movement in support of victims of workplace accidents.

During the *Estado Novo* period, in view of the failure of obligatory social insurance, the respective legislation was reviewed. Nonetheless, protection against the classical social risks only came into effect with laws passed in 1933 and 1936, a half a century after Bismarck. In spite of the long delay, Portugal became part of the broad movement of State intervention in the social sphere through social insurance (Carreira, 1996). The legislation published during the 1930s transposed a new approach to risk and liability to the Portuguese legal system, thus enshrining the theory of economic or authority risk. In this respect, the National Labour Statute, Decree Law N.º 23048, of 23 September 1933⁹, enshrined the principle of employers’ liability in relation to the protection of work accident victims. In 1936, Law N.º 1942, of 27 July, updated the 1919 system and instituted the principle of protection for victims of occupational accidents and made it mandatory for employers to contribute financially to ensure the employee or respective trade union the means to give coverage to occupational risk.

In the sphere of this new law, enterprises employing more than five workers were obliged to transfer their liability to an insurance body or prove to the Insurance Inspectorate that it was economically capable of assuming the risk itself. In the case of smaller undertakings, the employer was responsible, but could transfer liability to an insurance provider. In spite of broadening the scope of its coverage by including protection against occupational diseases, this system merely replicated the previous system. Furthermore, the fact that insurance was

⁸ Available at: <https://dre.pt/application/file/609531>

⁹ Available at: <https://dre.pt/application/file/330533>

not compulsory for enterprises with five or less workers, meant that the employer's response to eventual risks was dependent upon their economic capacity and their willingness. This legal regime, bar a few adjustments, remained in force for more than thirty years.

In 1965, Law N.º 2127, of 3 August¹⁰ was published. It entered into force in 1971, when it was regulated by Decree Law N.º 360/71, of 21 August¹¹. Called the *Lei de Bases dos Acidentes de Trabalho* (Basic Law on Work Accidents), it is seen as the first law that defines and establishes a work accident compensation system in Portugal, based on the principle of employer's liability, with obligatory transfer of risk coverage to insurance companies, thus consolidating the theory of economic or authority risk. The main new feature of the law was that it broadened the concept of liability and the sphere of work accidents, by including in itinere accidents. Under the new law, those entitled to compensation were employees with an employment contract, or equivalent, in any activity, profit-making or otherwise, including apprentices and novices, which signified a very considerable amplification.

During the 1980s, with the Social Security Law – Law N.º 28/84, of 14 August¹² – there was an attempt to introduce some changes to occupational accident protection, preventing it from becoming part of the general social security system, which “would mean the transfer of employer liability with private insurance to state social security” (Alegre, 2006: 7). The outdated, 30-year-old legislation and emergence of a new social protection philosophy prompted its revision and subsequent substitution by Law N.º 100/97, of 13 September¹³, regulated by Decree Law N.º 143/99, of 30 April¹⁴ and by Decree N.º 248/99, of 2 July¹⁵. The publication of this new law coincided with the revision of the Constitution of the Portuguese Republic (CRP), whose Article 59 would then provide for “assistance and fair compensation to victims of workplace accidents or occupational disease”. Apart from workers' rights, Article 59 also enshrines a constitutional obligation on public authorities to budget for and oversee workplace health and safety conditions (Canotilho e Moreira, 1993: 320).

Even though this new legal framework reproduced, almost entirely, the text of the previous law, it sought to address the changes in the Portuguese socio-labour reality, the development of supplementary legislation in the sphere of labour relations, jurisprudence and international conventions on health and safety at work. Article 1, N.º 1 stated that “workers employed by others, and their families, are entitled to compensation for damages resulting from occupational

¹⁰ Available at: <https://dre.pt/application/file/292636>

¹¹ Available at: <https://dre.pt/application/file/635154>

¹² Available at: <https://dre.pt/application/file/382359>

¹³ Available at: <https://dre.pt/application/file/648786>

¹⁴ Available at: <https://dre.pt/application/file/332518>

¹⁵ Available at: <https://dre.pt/application/file/372738>

accidents and vocational diseases”. However, only “workers employed by others in any capacity, whether profit-making or otherwise” (Art. 2, N.º 1) were covered, while independent workers were obliged to take out insurance that guaranteed the compensation provided for by this law (Decree Law N.º 159/99, of 11 May)¹⁶

Its regulation and subsequent entry into force happened almost two years after Decree Law N.º 143/99, of 30 April. The aim of this Decree Law, as stated in its preamble, was to pursue the thinking underlying Law N.º 100/97, i.e. to improve the protection system and payments for work accident victims, and guarantee the balance between employers and the insurance sector, the former being obliged to transfer responsibility for damages compensation. However, this law seems to have forgotten the attempt made in 1984, when the Social Security Law was published, to keep work accident compensation in the private system.

Law N.º 99/2003, of 27 August¹⁷ was published, in the 21st Century, approving the Labour Code, in which a chapter was devoted to Workplace Accidents. It introduced a few changes regarding work accidents, namely Article 8, h) enshrined workers’ safety, hygiene and health. However, it was not until 1 January 2010 that these proposed alterations came into effect, with the introduction of Law N.º 98/2009, of 4 September¹⁸. This new law, which only applied to accidents that occurred after it entered into force, finally introduced the subjects of vocational rehabilitation and reintegration.

2.2. The current Portuguese occupational accident compensation model

Entitlement to assistance and fair compensation for occupational accidents in Portugal are, first and foremost, enshrined in Article 59 of the CRP. Furthermore, Law N.º 98/2009, of 4 September, defines the concept of occupational accident and regulates compensation for occupational accidents and diseases.

Occupational accident is taken to mean “that which occurs in the workplace and during working time and directly causes physical injury, functional impairment or disease that results in reduced capacity to work, earning capacity or death” (Art. 8, Law N.º 98/2009). Workers employed by others, in any professional capacity, regardless of whether it is profit-making or not, are entitled to compensation. In the case of workers employed by others, the right to compensation includes those with an employment contract or equivalent, and also covers novices, apprentices, interns and other vocational training situations, and workers who are

¹⁶ Available at: <https://dre.pt/application/file/331516>

¹⁷ Available at: <https://dre.pt/application/file/632814>

¹⁸ Available at: <https://dre.pt/application/file/489343>

presumed to be economically dependent upon the person to whom they provide services. Independent workers are responsible for compensation, as described in Decree Law N.º 159/99, of 11 May, and referred to above.

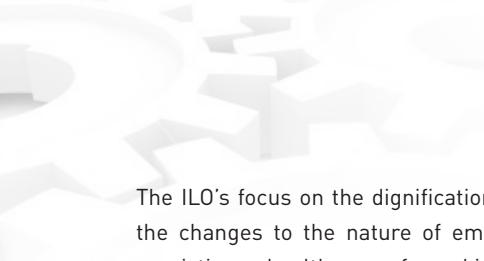
Occupational accident compensation entails the transfer of liability to an insurance carrier authorised to provide accident insurance, but it is the employer's duty to take out accident insurance for all their employees, regardless of their employment relationship (Art. 79, Law N.º 98/2009), since occupational accidents do not fall within the social security system. It should also be noted that, in accordance with the principle of equal treatment, under Article 5 of Law 98/2009, foreign workers are entitled to the same rights as nationals.

According to some perspectives, this new model presents a broader concept of occupational accident that goes beyond merely compensating for physical injury, reinforcing the responsibility of enterprises in terms of prevention, rehabilitation and reintegration of workers, and ensuring they adjust to the job after the work accident (Ramalho, 2010). This is, in fact, the innovative character of the new legal framework – making employers responsible for: work accident victims' vocational integration, their adaptation to the job, and making adjustments to the workplace to ensure accessibility, whenever the degree of incapacity prevents them from carrying out tasks performed prior to the accident, and for vocational training to enable the incapacitated employee to continue to work with new duties, and for trauma counselling for the worker's family. These are huge advances provided for under the present work accident compensation system.

Although it does not alter the sense of compensation in Portugal, Law no. 98/2009 seeks to perfect the concept of accident, recognises the accident victim's family's entitlement to counselling support, and strengthens the guarantees of vocational rehabilitation and reintegration for the victim, seeking to improve the protection of workers and their families. A decade later, we may say that we are witness to an altogether new level in workers' safety, at least in the realm of vocational rehabilitation and reintegration.

3. Regulation of working conditions and occupational accidents: the influence of the ILO

Since its founding in 1919, the ILO has played a crucial role in raising the standard of living and working conditions, in an overall framework of pursuing and promoting social justice. By way of example, the Organization introduced core labour standards in 1998, and the concept of decent work in 1999. The issue of decent work has been widely debated and is regarded as an exemplar throughout the world, especially in the sphere of employment policy and social cohesion.



The ILO's focus on the dignification of work, is particularly pertinent in present times, given the changes to the nature of employment, its growing precariousness and flexibility, and persisting unhealthy, unsafe working conditions. The ILO has helped to modernise its member States' labour relations systems and labour law. Through the incorporation and ratification of Conventions and Recommendations, its monitoring of the effectiveness of the Conventions' standards, its technical support for reform processes, and promotion of minimum standards, the ILO has influenced national labour legislation and ensured the protection of workers.

In the specific case of Portugal, in addition to these essential aspects, the ILO reference framework has also impacted on some key State and civil society institutions, namely, on parliamentary activity and the work of the Labour and Social Security Committee, and on the definition of social policy. As stated by some legal professionals:

With regards social policies, the ILO introduced three new generations (...) namely, gender, workplace health and safety, and workplace organisation and cohesion policies. They are really innovative and very important (Ent. 6).

These social policies reflect the adoption of the respective Conventions and are the matrix of social protection and workers' rights. The Conventions and Recommendations also influenced Portuguese labour law.

Our labour law is heavily influenced by the ILO, particularly by the Conventions. Portugal is one of the countries that has most readily ratified the Conventions, especially after the revolution (...) Portuguese law has been enormously shaped by the ILO and the Conventions and Recommendations (Ent. 7).

On the question of occupational accidents and working conditions, the ILO's influence first stemmed from the ratification of Convention N.º 12 and Convention N.º 17, both on the subject of work accident compensation, resulting in the early incorporation of the concept of social protection, and to an ongoing dialogue with the Committee of Experts, which, through its observations and requests for clarification, helped to ensure that the social protection afforded to Portuguese workers was guided by the dignity at work principle advocated by the ILO.

3.1. The ILO concepts of protection and social security

In the context of the ILO, occupational accident compensation, molded by social protection, has contributed to broadening the concept of social protection, including policies on working conditions and workplace health and safety. Although the understanding of social protection is thought to be fairly comprehensive, the ILO's main focus has always centred on the domain of social security, regarding it a "social shield" against economic insecurity and hardship through the redistribution of income, and a cornerstone of social justice (ILO, 2009: 140).

The social security model developed by the ILO was always closely related to the history of

capitalism, industrial societies, and the development of the social state, i.e. to awareness of the need for legislation that would protect workers. This gave rise to a new social function of the state, related to recognition that incapacity to earn a living was a public responsibility, and also the choice of how to protect themselves against social risks was not solely left to workers themselves. The state was considered to be responsible for providing a minimum level of social protection.

Work accident compensation falls within the ILO's notion of social security, and covers all measures providing benefits to secure protection against "lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member" (ILO, 2011: 9). As stated in the Preamble to the 1919 ILO Constitution, the Organization's objective is the improvement of working conditions, including through "(...) the prevention of unemployment, (...) the protection of the worker against sickness, disease and injury arising out of his employment, (...)" (ILO, 2007: 5).

In this dimension of social security, we can identify three moments that characterise ILO standards. In the first, which marks the period between the two world wars, the standards sought to establish obligatory social security systems in crucial areas: maternity, work-related accidents, sickness. However, as referred to by Cristina Rodrigues:

The obligatory social insurance defended by the ILO in the interwar period, whose format covered risks provided for in already approved Conventions, was not its own creation – it was modelled on the German system, founded by Bismarck, with the respective changes undergone since then. The experience, the work and the contacts of the officials in the ILO social insurance section explain the hegemony of the German model in the Organization. On the other hand, the ILO favoured this model as it emphasised the importance of workers and solidarity among them, and the intervention of social partners in the management of the system, which harmonised with the ILO's tripartite structure and underlying philosophy of responsibility shared among the social partners (Rodrigues, 2012: 386).

In the second moment, which coincided with the end of World War II, there was an attempt to create a modern social security area, with the adoption of a more all-embracing conception. This new vision defended a single social security system, so as to cover all contingencies and extend coverage to all workers. With the May 1944 Declaration of Philadelphia, the dimension of social security was clearly contemplated, insofar as the extension of social security measures designed to ensure a basic income for all in need of protection, and full medical care, came to be ILO objectives. However, it was only in the 1950s that this vision consolidated, as a result of the adoption of the Social Security (Minimum Standards) Convention, N.º 102, which sets out minimum standards for social security, and brought about a third moment. In the words of Cristina Rodrigues:

This concept entails the definition of a series of minimum standards, applicable worldwide, to cover nine eventualities: the need for medical care, sickness, unemployment, old-age, employment injury, invalidity, survivors' and family allowance (family benefit and maternity grant) (idem: 388).

3.2. ILO Conventions – N.º 12, N.º 17 and N.º 19 – and occupational accident compensation

Bearing in mind that protection of workers' lives and health was an almost natural priority for the work of the ILO at the outset of the 20th Century, it is not surprising that the first Conventions adopted, in the 1920s, had to do with regulation of working conditions and work-related accidents. With regard to accident compensation, the ILO's three main mechanisms relating to the protection of workers' lives and health were: the Workmen's Compensation (Agriculture) Convention, 1921 (N.º 12), the Workmen's Compensation (Accidents) Convention, 1925 (N.º 17), and the Equality of Treatment (Accident Compensation) Convention, 1925 (N.º 19).

Conventions N.º 17¹⁹ and N.º 19²⁰ were transposed to domestic legislation in 1929, and obliged Portugal to provide the same treatment in respect of compensation for work-related accident victims or their dependents. The regulations applied to workmen, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private, and guaranteed equality of treatment for national and foreign workers as regards compensation for accidents. They set out the rules for payment of compensation for incapacity and other entitlements due to the victim, including medical aid, surgical and pharmaceutical aid, and additional compensation to victims that need the constant help of another person. The employer or insurance institution was responsible for covering the cost of medical aid. However, member States were responsible for deciding on exceptions and areas not covered by the Conventions, as well as for measures of supervision and review as deemed necessary. The exceptional precepts contained in national legislation were to address the particular circumstances of each country, taking into account, however, that after ratification, they should be complied with.

Convention N.º 17 did not apply to agriculture as the International Labour Conference, at its 3rd Session, had already adopted the Workmen's Compensation (Agriculture) Convention, 1921 (N.º 12). This Convention was only transposed to Portuguese law in 1960, by Decree Law N.º 42 874, of 15 March 1960²¹, and was not included among the Conventions ratified during the First Republic. In this respect, some authors recall that when Conventions N.º 17 and N.º 19 were ratified, Portugal already had a work-related accident compensation system, in force since the passing of Law N.º 83 of 24 July 1913. This law did not differentiate between activity sectors, so work accidents in agriculture were, therefore, covered (Rodrigues, 2012). Likewise, Decree N.º 5637, of 10 April 1919, maintains the coverage of work accidents by obligatory social insurance. However, this did not stop requests for further clarifications being made to the Portuguese State, both throughout the *Estado Novo* period and after 1974, regarding the

19 Text of the ratification available at: <https://dre.pt/application/file/355047>

20 Text of the ratification available at: <https://dre.pt/application/file/355049>

21 Available at: <https://dre.pt/application/file/282274>

Portuguese model's compliance with the respective Conventions.

4. From the ILO compensation model to Portuguese legislation: a permanent dialogue

The relationship between Portugal and the ILO on the issue of work-related accident compensation can clearly be seen in an analysis of the observations and direct requests made by the ILO Committee of Experts to the Portuguese State. It is, therefore, important to understand how this relationship became an exemplar for the reforms in labour law and protection of injured workers.

4.1. Dialogue and observations: 1919-1974

As already mentioned, ratification of Conventions N.º 17 and N.º 19 occurred in what various authors believe to have been quite a rapid process, as “there were less than four years between adoption and ratification” (Rodrigues, 2012: 395). This is explained by the fact that national legislation on the matter already existed. Both Law N.º 83, of 24 July 1913 and Decree N.º 5637, of 19 May 1919 provided for work-related accident compensation and the obligatoriness of insurance, so there was no need to alter the regulations in order to comply with the Conventions.

The publication of the 1933 and 1936 legislation brought a new legal framework to occupational accident compensation by including “all workers employed by others”. Although there is no reference to the additional compensation to victims that need the help of another person, it coincided with the other standards in the Conventions. While the Committee of Experts considered that Portuguese legislation was in line with the Conventions, namely Convention N.º 17, various observations (in 1947, 1948, 1949, 1959 and 1960) were made about the fact that Portugal's legislation did not provide for additional compensation to victims that need the constant help of another person (Rodrigues, 2012). We also find observations and requests for clarification on the question of it not being mandatory for enterprises employing less than five workers to transfer liability for work accident compensation to insurance institutions. Finally, the non-applicability of the general compensation system to public servants was also the subject of observations from the Committee of Experts, in 1949, 1950 and 1951.

Under Law N.º 2127, of 3 August 1965, regulated in 1971 by Decree Law N.º 360/71, of 21 August, workers employed by others, with an employment contract or equivalent, in any activity, whether profit-making or otherwise, including apprentices, were entitled to work-related accident compensation. Although this new law had not substantially changed the others, it did specify the amounts of additional compensation, including in relation to the constant help of

another person, and clarifies on the question of transferring liability to insurance institutions, making this obligatory, unless the economic capacity of employers was recognised as being sufficient to meet the respective occupational risks. As we can see, the new law addressed the observations previously made by the Committee of Experts, and brought the Portuguese occupational accident compensation system more in line with the terms referred to in the Conventions, especially Convention N.º 17. However, it still did not address the equality of treatment between foreign and national workers in respect of accident compensation.

Even before Law N.º 2127, of 3 August 1965 was published, in 1960 Portugal had ratified the Workmen's Compensation (Agriculture) Convention, 1921 (N.º 12), through its Decree Law N.º 42874, of 15 March. This Convention determined the extension of legal benefits to salaried employees in agriculture. Since the 1936 legislation did not differentiate between workers in different sectors, it was already in line with the Convention ratified.

4.2. Dialogue and observations: 1975-2012

The work accident compensation model adopted during the *Estado Novo* continued in force after the 1974 revolution. It only changed with the publication of Law N.º 100/97, of 13 September, regulated by Decree Law N.º 143/99, of 30 April and Decree Law N.º 248/99, of 2 July. During that time, the Committee of Experts issued several observations and direct requests.

During the 1980s, with the 1965 system still in force, in its observations to the Portuguese government the Committee of Experts pointed out the fact that legislation was still not totally in conformity with the Equality of Treatment (Accident Compensation) Convention, N.º 19, (1984²² and 1988²³). Another issue raised by the Committee during that decade was the integration of the work accident compensation system in the social security system.

The Social Security (Minimum Standards) Convention, 1952 (N.º 102) established protection of victims of work-related accidents as one of the pillars of social security. Although Portugal ratified this Convention in 1992, this did not lead to the work accident compensation system being incorporated in social security. It is not surprising, therefore, that the Committee of Experts' observations on Convention N.º 17 throughout the 1990s dealt with the integration of occupational accident in the social security system (1990²⁴, 1995²⁵, 1999). However, the

22 *International Labour Conference 70th Session (1984), Report 3 (Part I, II and III) — Summary of Reports*. ILO, Geneva.

23 Disponível em: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2554219

24 Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2087357

25 Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2141604

Portuguese government maintained that the Workmen's Compensation (Accidents) Convention, N.º 17, did not require for work accidents to be integrated in social security, arguing that there was no obligation in Convention for this to occur.

During the 1990s, the amounts of compensation were also discussed, with workers' representatives calling into question the methods used for calculating compensation. Their allegations were based on the text of Convention N.º 17, the aim of which was also to ensure that victims and their dependents were entitled to amounts of compensation that would enable them to live with a minimum of dignity. According to the Committee of Experts, there was still a depreciation of the value of the life of these victims, when compared with compensation awarded for other types of accident, namely road accidents. On this issue, the Portuguese government referred them to the 1991 social concertation agreement on workplace safety, hygiene and health, which provided for a revision of the calculation of work accident (and occupational diseases) compensation.

In 1996, the Commission of Experts welcomed the adoption of Law N.º 22/92, of 14 August, which altered Base III and Base XIX of Law N.º 2127, of 3 August 1965, establishing equal entitlements for foreign workers injured in work accidents, and dependents' entitlement to a survivor's pension in the case of death²⁶. Finally, Portugal's legislation complied with Convention N.º 19. Then, in 1999, Decree Law N.º 143/99 of 30 April was published, regulating Law N.º 100/07 of 13 September. The Committee noted the updating of the country's work accident compensation system, but continued to observe that the victims' protection system still remained part of a private system²⁷.

At the turn of the millennium and during the first decade of the 21st Century (2000-2010) the number of observations and direct requests from the Committee diminished. It only made one direct request in 2006, regarding the application of Convention N.º 17, based on comments made on the government's report and on the communications between the latter and the trade unions on the adoption of the Labour Code in 2003. As already mentioned, Law N.º 99/2003 of 27 August, which approved the Labour Code, contained a chapter on occupational accidents, but it still awaited regulation. In view of the delay, the Committee of Experts asked to be informed about the new Code. Given the trade unions' allegations concerning the high number of work accidents in Portugal and the frequent failure of employers to comply with accident insurance, especially where subcontracting was involved, the Committee also requested statistical data on indemnity payouts²⁸. Nonetheless, it made no comment on the fact that the compensation system in Portugal was still a private protection model. In relation to the passing of Law N.º

26 Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2154378

27 Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2183774

28 Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2263178



98/2009, the Committee of Experts finally, in 2012, welcomed the innovative character of the new compensation model that included workers' vocational rehabilitation and reintegration. However, taking into account arguments put forward by workers' representatives, the Committee requested additional clarification of how the measures were being implemented. It also requested details regarding the amounts of compensation and the remission of pensions, but there was no mention of the fact that the compensation system had still not been made part of social security²⁹.

The issue of incorporating the work-related accident compensation system in social security, which marked the debates during the 1980s and 1990s, seemed to have been abandoned, and it never did happen in Portugal, even with the ratification of Convention N.º 102. This seems to be justified by the fact that, in the Portuguese context, and according to domestic legislation, work accident compensation had always been regarded a question of employer responsibility rather than a risk that falls within the scope of the social security schemes. This reasoning seems to have been accepted by the ILO, given the absence of further clarification requests over the past decade.

Analysis of the Committee of Experts' observations and direct requests on the question of occupational accident compensation – Conventions N.º 12, N.º 17 and N.º 19 – revealed that, albeit continuous, the dialogue and relationship between the ILO and Portugal were more intense during the 1990s. This might be explained by the fact that, during that time, Portugal's work accident regulation system dated back to 1965, but also by the paradigm shift in the approach to occupational accidents. As has been illustrated by some studies, combining damages compensation with preventive activity around the causes of accidents has shown that it is possible to reduce the costs structure at social and economic levels, thus establishing an institutional framework that is more centred on the prevention paradigm (Roxo, 2003:22).

The change in the approach to occupational hazards and work-related accidents moved risk prevention to centre stage in terms of priorities, rather than the financial compensation. In this respect, after the ILO's adoption of the Occupational Safety and Health Convention, 1981 (N.º 155), there was a turnaround in the recognition of the need for a new approach to occupational risks, which consolidated at the start of the 21st Century, and which appears to have consigned work-related damages and respective compensation almost to oblivion.

²⁹ Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3081624 and http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084447

Final considerations

Occupational accident protection dates back to the early 20th Century and, due to the evolution of the social State that accompanied the industrial revolution, underwent different changes, culminating in a more universal model that seeks to cover the largest number of workplace hazards and include the most diverse categories of workers.

Given the big difference between the employer's and employee's position, wherein the latter risks not just his patrimony but his very life and limb, labour law has emerged anchored in the protection of the safety and health of workers and in the regulation of working conditions, contributing to help transform workers' social protection into one of the fundamental principles of the rule of law.

Over the past one hundred years, the legal framework for occupational accident compensation, as a specific legal issue, has undergone an evolution that is believed to be unfinished. The current model of damages compensation for work accidents was influenced by the ILO. From its very beginnings, the Organization was concerned with the impact of employment on the lives of workers and their families, and sought to promote greater social protection for them, through its Conventions in the late 1920s, which impacted on national legal frameworks.

In the case of the Portuguese model, the ILO's influence was less a result of the adoption of its Conventions, given that, before their ratification, the country's domestic legislation already contemplated workers' social protection and accident compensation, and more due to continuous dialogue and the sharing of values. In fact, the solidness of the relationship between Portugal and the ILO, notably during the 1990s, illustrates the way in which the evolution of Portugal's legislative framework reflected the ILO's ideology, consolidating a common approach to workers' social protection.

In spite of all the legal progress and the fact that it complies with ILO Conventions (N.º 12, N.º 17 and N.º 19), occupational accident protection in Portugal is still ensured by the transfer of employers' civil liability to private insurance institutions, through private insurance contracts. This issue, which was the subject of dialogue and observations from the ILO to the Portuguese government until the mid-1990s, now appears to have been dropped, or there has been tacit acceptance that the question of employer liability for work accidents is not a risk that fits in with Portugal's social security schemes. It does appear, however, that this ideology of privatising injured workers' social protection contravenes various international instruments, namely the European Code of Social Security and ILO Convention N.º 102, transposed to domestic law in 1992.

With the publication of Law N.º 98/2009 of 4 September, the new work accident compensation model, although considered comprehensive and innovative insofar as it introduced occupational

rehabilitation and retraining, was not able to create opportunities for public discussion on the private nature of compensation, which continues to remain outside the social security system, contrary to the practice in most other European countries, such as Austria, France, Germany, Italy, Spain and the UK. The absence of this issue in recent debates and dialogues with the ILO seems to be justified by the adoption and compliance monitoring of standards that are more focused on safety management, from an integrated prevention perspective, which has relegated the compensation perspective to a secondary level of importance. This paradigm shift was also felt in the internal (parliamentary) debates during the 1990s.

Our legislation fully complies with constitutional, community and ILO requirements and, for this reason, priority should focus on examining change in behaviours (Rui Salvada, PSD, 27.10.92)³⁰

While not ignoring the positive evolution of Portugal's occupational accident compensation model and the way in which the relationship with the ILO contributed to further developing a new conception of social protection, we may conclude that in the concrete case of work accident compensation, the reforms in terms of labour law and social policy still do not appear to share the ideal and social dimension advocated by the ILO.

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30 Available at: <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1l6sl2n6-0139&type=texto&q=n%C3%ADvel%20da%20fiscaliza%C3%A7%C3%A3o&sm=p>

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14

Part III - Labour areas and the role of the ILO

The position of working women in a changing world.

A Portuguese journalist at the International Labour Conference ¹

ALBERTINA JORDÃO ²

Women workers in a changing world. A Portuguese journalist at the International Labour Conference

Abstract

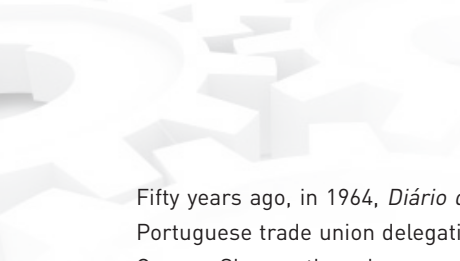
This article is part of a broader research project underway on the relationship between Portugal and the International Labour Organization. The project looks at Portuguese women's participation in the tripartite delegations to the annual International Labour Conference (ILC). This article relates to the participation of the first Portuguese woman in the trade union delegation to the 1964 ILC. It was a time when trade unions in Portugal were not free, and international pressure on the country was growing. One of the items on the 1964 ILC agenda was Women Workers in a Changing World. The main issues debated there are discussed here.

Keywords

International Labour Conference; tripartism; women workers; Portugal and the International Labour Organization

¹ The present article was originally published, in 2014, in the work *ex aequo* - Revista da Associação Portuguesa de Estudo sobre as Mulheres, n.º 30, Edições Afrontamento, pp. 69-78, see: <https://exaequo.apem-estudos.org/revista/numero-30-2014>.

² Master in Women's Studies. She is a member of the ILO-Lisbon team from December 2005 to December 2016 and from September 2018 to the present date.



Fifty years ago, in 1964, *Diário de Notícias* journalist Alda Mafra, was part of the 6-member Portuguese trade union delegation to the 48th International Labour Conference (ILC), held in Geneva. She was the only woman in that delegation, and had been nominated by the *Corporação da Imprensa e Artes Gráficas*³ to attend, as an adviser, in one of the Specialised Committees of the 48th ILC, which was to discuss the subject of “Women workers in a changing world”.

Her participation is particularly interesting for several reasons. In the history of Portuguese women in ILC delegations, Alda Mafra was the first to be a member of a trade union delegation⁴. She was 32 years old, and probably one of the youngest Portuguese women ever to take part in the international labour rights forum, between 1951⁵ and 1974.

At a time when a woman still needed to get her husband’s permission to apply for a passport in order to leave Portugal (the law on this changed in 1969), very few people had that privilege, especially since there was tight surveillance of all nationals’ relations with foreigners. They were times of dictatorship and censorship. Newspapers were censored – every sentence and photograph to be published was closely scrutinised by the Censor (César, 2001).

Portugal’s external image at that time was negative, so the regime sought to gain international goodwill through various initiatives. It had always believed it preferable to join international organisations rather than stay outside them, even though it could not always align its domestic policies with the commitments it entered into. Portugal’s participation in the International Labour Organization (ILO), since its founding in 1919, is, precisely, an example of this. The longest period in that relationship covered the dictatorship years.

Studies on the Portugal-ILO relationship are still in their early stages. However, two research works by Cristina Rodrigues, which have already been published, are worth mentioning: “*Trabalhar em Portugal, 1919-1933*” and “*Portugal e a Organização Internacional do Trabalho 1933-1974*” – her Masters and Doctoral theses, respectively.

Joining the ILO means that member States must abide by “the rules of the game”. One of the rules is to incorporate the principles enshrined in its Conventions in domestic law, preferably through ratification.

Another rule is participation of States’ tripartite delegations (representatives of governments, employers’ organisations, and trade union organisations) in the annual Conference. Tripartism

3 The *Corporação da Imprensa e Artes Gráficas* was instituted by Decree Law 42523 of 23 September 1959, under Law 2086 of 22 August 1956, and comprised the federations or unions of national guilds and unions and other corporative bodies representing employers’ and workers of that activity sector.

4 This article is part of a broader research project that the author is conducting on the subject of Portuguese delegations to the International Labour Conference, in the framework of Portugal-ILO relations.

5 The year when the first Portuguese woman was a member of a Portuguese delegation to the ILC.

is, in fact, one of the cornerstones of both the constitution and functioning of the ILO. Tripartite representation was always one of the conditions for States' participation, but the Organization instituted another, much less respected, rule – that of women's representation, as delegates or advisers at every ILC: "The attention of governments is therefore drawn to the fact that women are equally eligible with men for appointment as delegates or advisers to the Conference, irrespective of the nature of the items on the agenda, and that Article 3, paragraph 2 of the Constitution of the Organization provides that, when questions specially affecting women are on the agenda, one at least of the advisers should be a woman." (ILO, 1965: XVII).

The sixth item on the agenda of the 1964 48th ILC was "women's position in a changing world", as Alda Mafra refers to it in her report⁶. It is clear from her report that she was particularly interested in the way the conferences, especially the specialised committees, functioned. Furthermore, she sought to dismiss any idea that a committee devoted to women would deal with stereotypical gender-related interests, such as literary or cultural subjects. This is what the journalist said about the ILO Conference she attended: "Apparently, for those unfamiliar with the characteristics and the scope of such important meetings, the title itself suggests a more or less interesting talk ... and little more. However, this is far from the truth."

Alda Mafra refers to two reports that served as the basis for discussion in the committee meeting she attended. The first was a 1963 report from the Bureau International du Travail⁷ (BIT) on women's employment in a changing world. This four-part report was quite detailed, and contained the findings of a research project carried out by the BIT.

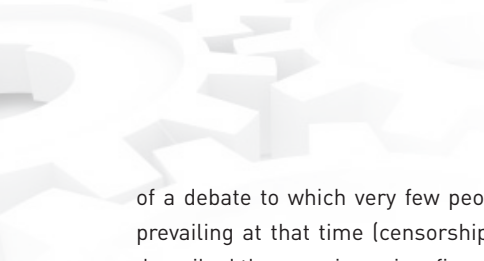
The first part described the situation of women's employment worldwide, and included trends and statistics. The second part looked at the employment of women with family responsibilities. The third part was devoted to problems facing women workers in developing countries, and the fourth part focused on national level institutions and mechanisms dealing with issues relating to women workers. The report also included the text of a questionnaire that had been sent to member States, which enquired about the situation of women workers in their country, and the type of instrument that ought to be adopted, i.e., a Convention, a Convention supplemented by a Recommendation, or an independent Recommendation.

The second report discussed at the 1964 48th ILC included member States' responses to the questionnaire. This served to gather the views of the tripartite delegations' members on the type of standard to adopt, i.e. a Recommendation or Convention.

By participating as an adviser to the trade union delegation at the 48th ILC, journalist Alda Mafra who, during the 1960s, wrote chronicles of the city of Lisbon, benefitted from being part

⁶ Report made available by the *Sindicato dos Jornalistas* (journalists' trade union)

⁷ The BIT is the ILO's secretariat.



of a debate to which very few people, at that time, could have access. With the restrictions prevailing at that time (censorship and absence of freedom of opinion and association) she described the experience in a five-page report.

The descriptive and didactic way in which Alda Mafra describes the workings of the ILC and the Specialised Committee she attended, should be pointed out. Her report provides an objective depiction of the proceedings she observed, and reflects an important theme that the political regime of the time underestimated, or did not wish to understand – the evolution of women's role in society.

With regard to the tripartite delegations from other countries, the Portuguese technical adviser seems to have been sensitive to the diversity of “personal” positions expressed at the Committee meeting, which, in her opinion, reflected the issue's development in accordance with the level of industrialisation in the respective countries. Her description motivated us to read the Minutes of the Committee's meeting on “women workers in a changing world”.

The purpose of consulting the Minutes was twofold: firstly, to identify the arguments and issues that Alda Mafra seems to have been most interested in, or, at least, those she wanted to describe in her report and, secondly, to identify areas that had been omitted, particularly the ones having a direct bearing on working women, such as, maternity in employment – a matter close to the Organization's heart and the subject of one of the first Conventions, the Maternity Protection Convention, 1919 (N.º 3).

Representatives of governments, employers' organisations and trade unions from 65 countries took part in the Committee. Portugal was represented by two members, one from the governmental delegation and one from the trade union delegation – the only two women in the Portuguese delegation.

The diversity of countries from every corner of the world was reflected in the positions that participants took up publicly, in some cases, regardless of their group (governmental, employers or trade union). Despite the broad range of countries, given that there were tripartite representatives of developing countries (to use the terminology of the time⁸) as well as industrialised countries, the proceedings concluded with the adoption of four Resolutions on women workers, which reflected the “degree of social and economic development” of countries worldwide. The Resolutions adopted were: Women Workers in a Changing World; The Economic and Social Advancement of Women in Developing Countries; Part-Time Employment, and Maternity Protection. It was also decided to place on the agenda for the following year, further discussion leading to a decision and voting on a draft Recommendation on the Employment of

⁸ Whenever possible, the terminology of the time has been used so as to avoid possible anachronisms arising from the use present day ideas whose meaning may have been different in another historical context.

Women with Family Responsibilities. According to Carol Lubin and Anne Winslow (1990), with the adoption of this Recommendation the ILO took the first, albeit timid, steps towards helping women to overcome the obstacles they face in working outside their homes.

The Committee's Minutes reveal which topics were the most hotly debated, and which countries were most actively involved in the discussions. High on the list of topics were the "irreplaceable" role of the woman in the family, the prioritisation of male employment, and part-time employment as the best solution to reconciling family responsibilities with outside employment. The Cypriot government delegate went as far as to state that it was a serious error to promote outside employment for women, especially those with family responsibilities, when many countries did not have, or had not created, sufficient jobs for men.

Some delegates expressed the view that the proposals were unrealistic for the majority of developing countries, while other delegates, from industrialised countries, believed that the promotion of women's employment should not eclipse the "moral and material integrity of the family". Other delegates, especially those from the Socialist Bloc, upheld that the issue ought not to be dealt with in isolation from the discussion of, for example, Employment Policy, which was the focus of a different specialised committee.

The Minutes described diverse situations during the 16 sittings of the Committee on Working Women, which were due not only to countries' different stages of economic and social development, but also to their political "panorama".

The representative of the Bulgarian employers' organisations emphasised the important role of women in her country and their equal status with men. On the issue of maternity protection, she pointed out the 120 days leave on full pay, the reduction of two working hours each day during the child's first eight months of life, and mothers' entitlement to request a further six months of unpaid leave, while retaining all other rights, in Bulgaria. Maternity leave in Portugal was 30 days. It ratified the Maternity Protection Convention, 1952 (N.º 103) 30 years later, in 1982.

Furthermore, on the question of maternity protection, the position taken by the adviser to the Austrian trade union group was progressive, for that time, insofar as she upheld that maternity protection was a societal obligation, and that it ought not be a motive for discrimination against women, because that would signify discrimination against the social function women serve for the good of society as a whole.

The Italian trade union representative's view was very different. He emphasised the importance of the family as the central natural core of society, and that promoting women's outside employment should never result in the breakup of the family. Warning of the risks of family disintegration, he concluded that neither male nor female workers were merely technical tools



in economic and social development, but rather human beings with responsibilities to society's progress and morality based on the family unit. He was, therefore, in favour of the ILO adopting a Resolution that would, above all, defend the family in the developing world.

From these examples, it is clear that the debates held from 17 June to 9 July 1964 among the tripartite representatives from 65 countries and various international organisations, and the positions that became apparent in both the Committee and the Plenary Session, reflected attitudinal changes in many countries, especially in industrialised nations, towards the growing participation of women in the world of work.

In Portugal, this issue was only raised in very restricted environments, mainly the universities. The country's censorship and closed society limited the understanding and problematisation of what was, or ought to have been, the role of women in a changing world.

In the 1960s, one of the consequences of the wave of predominantly male emigration and the colonial wars (which began in 1961) was the high influx of women into the world of work. The need to fill jobs that had previously been held by men, and the development of services and higher educational attainment among girls, led to a movement of incorporating women into paid employment outside the home. The statistics support this scenario.

In 1967, the Associação Académica da Faculdade de Direito de Lisboa (Lisbon Law School's Academic Association) organised a symposium on Women in Contemporary Society. Participants included intellectuals from various areas of knowledge, men and women⁹, who advocated equal opportunities and strongly opposed the inferior and unequal status (in law and in practice) imposed upon women. Maria de Lourdes Lima dos Santos was one of the personalities who spoke at the symposium, addressing "the problems of women's integration in social life". In her opinion, participation of individuals, women and men

could be hindered, to a greater or lesser extent, by clashes arising from the imbalance between the survival of traditional models and the introduction of new life styles. If, in the case of women, their own feminine condition hampered integration in modern society, it should not be forgotten that this was no more than one of the many maladjustments characteristic of rapid modification, which have repercussions for all members of society (various authors, 1967:60).

She went on to say that "the transformations that have occurred as a result of the industrialisation of societies, with impacts on the family, employment and collective life, have created new demands which women, hampered by images of a residual past, are not able to satisfy" (various authors, 1967:60).

This was the issue that orientated the proceedings of the Committee on Working Women in

⁹ To name but a few, in addition to the aforementioned Maria de Lourdes Lima dos Santos, Elina Guimarães, Palma Carlos, Sérgio Ribeiro and Sophia de Mello Breyner Andersen participated, among others.

1964, in the world labour forum.

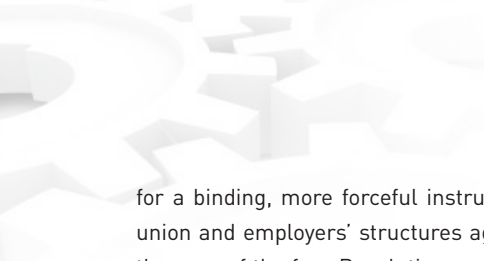
A country's level of development was an argument used extensively by governments to justify how much priority would be given to creating conditions for women to work outside the home, and reconciling their work-family responsibilities.

The Portuguese Government's standpoint is referred to in its reply to the questionnaire. Its approach was one of caution, in relation to legislative changes that could have an impact on the country's economy (an argument used practically throughout the country's relationship with the Organization). "The superior interests of the nation's economy" was, for example, one of the expressions used by the Portuguese Government. However, it also supported the safeguard of the family structure, based on a clear sexual division of responsibilities, where the man was head of the family and the breadwinner, and responsibility for all domestic duties and childcare fell to the woman. If married women worked outside the home, their income was to be regarded as supplementary, and never in competition with men's income.

According to the 1960 Census, quoted by Sérgio Ribeiro at the Symposium mentioned above, "about 80% of the active working population" were men, while "about 20% of the active working population" were women. The activity rate for women was higher in the 12 to 24 years old age range, and began to diminish after 25 years old, probably due to family-related reasons (marriage and maternity). It is not surprising, therefore, that, in its reply to the ILO questionnaire, the Portuguese Government gave little importance to the creation of support structures, given that married woman at home did would not require that kind of services.

In short, Alda Mafra's attendance at the 48th ILC will be recorded as the first Portuguese woman to be a member of a trade union organisations' delegation and one of the very few women to be included in a Portuguese delegation before the establishment of the democratic regime (25 April 1974). Daughter of journalist Aprígio Mafra, who had been appointed to the *Câmara Corporativa* (Corporative Council), the technical adviser produced a report on her experience in a tripartite conference, which, according to ILO records, was likely to have been the only one she attended. Her impressions enable us to understand what most interested her and what she wanted to highlight.

The 1964 discussion had been scheduled in 1962 by the ILO Governing Body. The Organization's member States' delegations to the 48th ILC were tasked with addressing, among other issues, the question of working women in a changing world. This subject initiated a new approach by the Organization to the question of equality for women at work. While maternity protection had always been part of the ILO's history, from its very beginnings, it would only be later that other matters, connected with the creation of conditions for real participation in employment of women with family responsibilities, would be the focus of examination and normative instruments. In the event, the subject did not, in fact, manage to obtain the necessary unanimity



for a binding, more forceful instrument, like a Convention. In 1964, governments, and trade union and employers' structures agreed to the adoption of more flexible instruments, as was the case of the four Resolutions approved, and in 1965 adopted a Recommendation. This way, governments were less committed.

By 1964, Portugal had ratified three of the nine Conventions on women workers that had, until then, been adopted. In 1931, it ratified the Night Work (Women) Convention, 1919 (N.º 4). In 1937, it ratified the Underground Work (Women) Convention, 1935 (N.º 45), and in 1959, it ratified the Discrimination (Employment and Occupation) Convention, 1958 (N.º 111). Bearing in mind that deciding on ratification and the process itself were always protracted and difficult in Portugal, its speedy ratification of both Convention N.º 45 (two years after its adoption) and Convention N.º 111 (a year after approval at the ILC), is somewhat surprising. In the case of the latter Convention, there's no doubt that Portugal was keen to demonstrate to the international community the "non-existence of racial discrimination throughout its territories". The Convention prohibits discrimination on the basis of various factors, apart from gender. In this case, it was racial discrimination. One argument used to support the fast-tracking of this ratification was the "major political effects" it would have for Portugal's image, in the context of international organisations. External pressure on the political regime gave rise to juridical change, so the law reflected what was happening in society (Rodrigues, 2013).

The Portuguese trade union delegation's legitimacy was called into question at the 48th ILC. Furthermore, the country was again condemned by some nations for its political oppression of African peoples.

The motion put forward against Portugal was reported by the *Diário de Notícias* on the last day of the 48th ILC proceedings in Geneva. The Portuguese Government's representatives once again managed to successfully fight their corner, and the motion was rejected. In contrast, there was no mention whatsoever in the Portuguese press of the adoption of the four Resolutions on women workers, nor of the adoption of the key Employment Policy Convention, Article 1 of which states:

there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. (Our underlining.)

In this article we describe what may be called the episodic participation of Portuguese women in the country's tripartite delegations to the International Labour Conference. Between 1951 and 1974, less than two dozen women were included in the delegations. More than 90% of those who did attend, did so as advisers or secretaries for the governmental delegation. Very little is known about them – who they were, in which specialised committees they took part, and what influence they had on their organisations. That research is yet to be undertaken. Consulting the ILO's historical archive, other national archives, the press, and interviewing some of the protagonists

in the events, would be a stimulating challenge for research into the role of Portuguese women in international relations and, in this case, in one of the oldest agencies of the United Nations' system.

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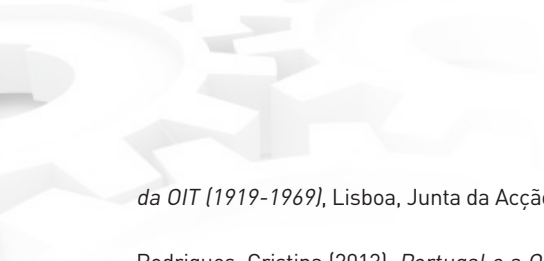
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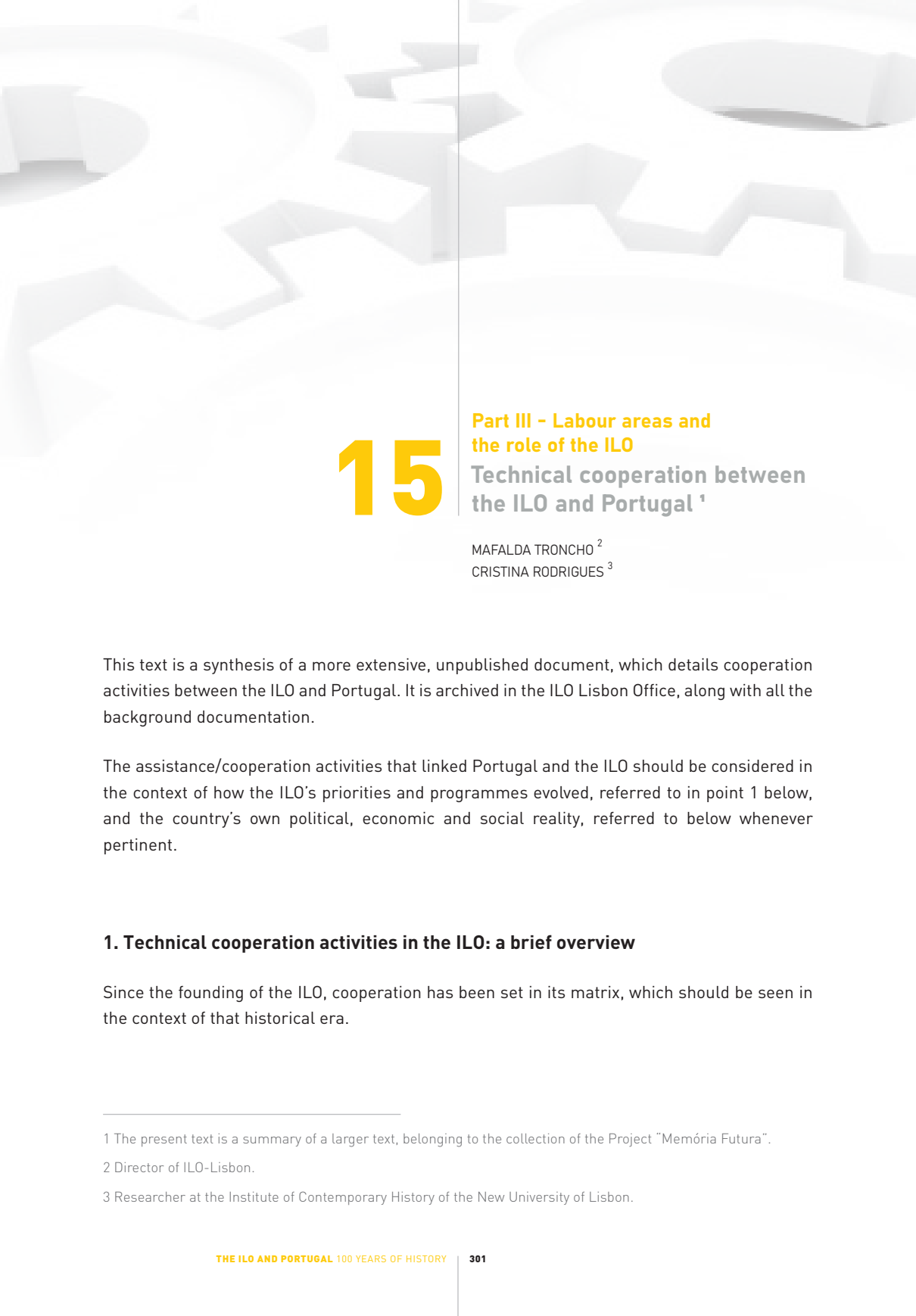
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15

Part III - Labour areas and the role of the ILO

Technical cooperation between the ILO and Portugal ¹

MAFALDA TRONCHO ²
CRISTINA RODRIGUES ³

This text is a synthesis of a more extensive, unpublished document, which details cooperation activities between the ILO and Portugal. It is archived in the ILO Lisbon Office, along with all the background documentation.

The assistance/cooperation activities that linked Portugal and the ILO should be considered in the context of how the ILO's priorities and programmes evolved, referred to in point 1 below, and the country's own political, economic and social reality, referred to below whenever pertinent.

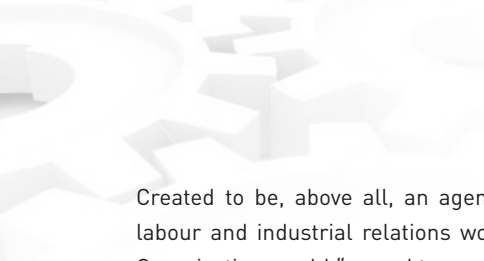
1. Technical cooperation activities in the ILO: a brief overview

Since the founding of the ILO, cooperation has been set in its matrix, which should be seen in the context of that historical era.

¹ The present text is a summary of a larger text, belonging to the collection of the Project "Memória Futura".

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Created to be, above all, an agency devoted to producing standards⁴ intended to regulate labour and industrial relations worldwide, from the outset its Constitution upheld that the Organization would “accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection⁵.” The Organization’s work was not confined to producing standards, although that was its main focus.

From the start, its technical analysis and publication of information received from all over the world transformed the ILO into a knowledge-sharing forum for labour issues, and it soon became a privileged interlocutor for member States, in a variety of labour and social protection domains. In the wake of the grave economic crisis of 1929, various countries turned to the ILO for technical assistance and, as a result, missions were sent throughout the world⁶.

In spite of all the constraints, World War II did not interrupt the ILO’s missions which, at that time, went mainly to the American continent, and dealt mostly with social security⁷.

With the Declaration of Philadelphia (1944), which relaunched the ILO and opened the doors to the sphere of the future UN as a specialised agency, the Organization gained greater latitude. By considering that “poverty anywhere constitutes a danger to prosperity everywhere”, and recognising that “the fuller and broader utilization of the world’s productive resources”, technical cooperation programmes became part of the Organization’s matrix⁸.

On the other hand, the Declaration of Philadelphia brought the Organization closer to the ground. “...the ILO will switch from theory to practice (...). It is the ILO’s action on the ground, connecting the Organization with its constituents: it is technical cooperation⁹.”

4 Bonvin, Jean Michel (1998), *L’organisation Internationale Du Travail - Etude Sur Une Agence Productrice De Normes*, Paris, PUF.

5 Article 10, No. 2, point (b) of the ILO Constitution.

6 In the area of social protection (social insurance, unemployment insurance) missions were carried out in Canada, Ecuador, USA and Venezuela, and, in Europe, in Greece, Romania and Turkey. Missions dealing with other issues (such as labour inspection, organisation of Labour Ministries, working conditions, occupational diseases and accidents, cooperative organisation labour law and industrial relations, and migration and colonialism, also took place). Cf. Asistencia Técnica, Conferencia Internacional del Trabajo, trigésima séptima reunión, OIT, Ginebra, 1954, p. 4.

7 Asistencia Técnica, Conf. Internacional del Trabajo, trigésima séptima reunión, OIT, Ginebra, 1954, p. 5.

8 The International Labour Organisation Since the War, *International Labour Review*, Vol. LXVII, January-June 1953, George Allen & Unwin Ltd., Geneva, 1953, pp. 111-112.

9 ALMEIDA, Luís Tomé, A actividade da OIT no domínio da cooperação técnica, Textos em homenagem à OIT, CES, Lisboa, 1994, pp. 242.

The Employment Commission¹⁰ (1944), the Manpower Programme¹¹ (1948), the Special Migration Programme¹² (1950), assistance programmes for the OECD, the Council of Europe, the European Coal and Steel Community, and the Intergovernmental Committee for European Migration¹³, came into being successively. In 1950, the ILO decided to take part in the UN's Expanded Programme of Technical Assistance (EPTA), in which its operational activities would grow significantly, and be financed¹⁴. Later, in the framework of the Special UN Fund for Economic Development (SUNFED), which the ILO joined in 1959, the Organization's operational activity was given fresh impetus¹⁵.

In line with the UN, which declared the 1960s the UN Decade for Development, which aimed at global development and led to the creation of the UN Development Programme (UNDP), the ILO refocused its activities. The notion of technical assistance would be substituted by technical cooperation¹⁶, and these operations increased substantially.

Anchored in different ILO Resolutions, which were based on the premise that the overriding objective of economic and social policies should be full, freely chosen productive employment, the World Employment Programme¹⁷ was launched in 1969 (when the Organization

10 ILO, *Minutes of the 93rd Session of the Governing Body*, Philadelphia, 13-14 May, 1994, Inland Press Limited, Montreal, Canada, p.24-26.

11 The International Labour Organisation Since the War, *International Labour Review*, Vol. LXVII, January-June 1953, George Allen & Unwin Ltd, Geneva, 1953, pp. 140-141.

12 ILO Special Migration Programme - 31 December 1951, in http://www.ilo.org/public/libdoc/ilo/1951/51B09_87_engl.pdf

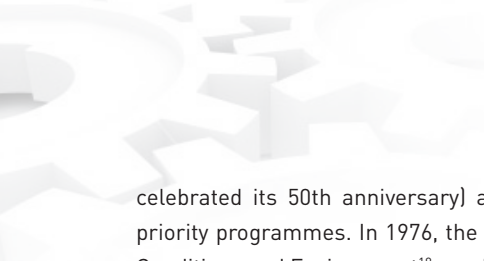
13 Asistencia Técnica, Conferencia Internacional del Trabajo, trigésima séptima reunión, OIT, Ginebra, 1954, p. 7.

14 EPTA was funded by voluntary contributions, 40% of which were from the United States. See ABOUGHANEM, André, *Étude sur les relations entre les normes internationales du travail et la coopération technique*, BIT, Genève, 1985, p. 15.

15 TOYE, John and TOYE, Richard, From Multilateralism to Modernisation: US Strategy on Trade, Finance and Development in the United Nations, 1945-63, Forum for Development Studies (n° 1-2005), June 2005. Consulted in: http://www.unhistory.org/reviews/FDS_Toye.pdf , and also La OIT y la Cooperación Técnica, CIT, Quincuagésima Primera Reunión, Informe VIII (Parte I), OIT, Ginebra, 1967, p. 19.

16 In the words of David Morse, ILO Director-General: "I would like to see this notion of technical assistance replaced by the broader and more accurate one of technical co-operation. Let me explain what we mean. The I.L.O. when it sends experts to Africa—or to any part of the world as a matter of fact—does not, through these experts, attempt to transplant into a developing country some technique, technological process or institution which has been devised in the different conditions of an industrialised country. We do not do this; this would be wrong; it just would not work; and if we tried to do this our operations would fail. Our aim, and I would like to make this clear, is for I.L.O. experts to work with people of the country concerned so that the knowledge of the people, their customs and their desires which only a national can fully possess can, together with the expert's experience in technical matters, create something essentially new, something which is the right thing for the country. Our philosophy of operations is that a new technology and new ways of doing things have to be devised by co-operation between experts and nationals." In *Première Conférence Régionale Africaine*, Compte Rendu des Travaux, Lagos, Décembre 1960, BIT, Genève, 1961, p. 262.

17 This is the purpose of the World Employment Programme, which is designed to alert public opinion of the threat that unemployment poses to social peace, and to combine the energies and resources of all international organisations with the ILO and member States in a joint attack on unemployment and subemployment." In BLANCHARD, Francis (Deputy Director-General), The ILO and technical co-operation, Talk to the staff, 20 January 1970, International Labour Office, Geneva, 1970, p. 7.



celebrated its 50th anniversary) and became, over the following decade, one of the ILO's priority programmes. In 1976, the International Programme for the Improvement of Working Conditions and Environment¹⁸ was launched. It encouraged member States to adopt measures and programmes designed to improve working conditions, while taking into account the specificities of each country.

Throughout the 1970s and 1980s, Employment and Training became extremely important areas in ILO cooperation initiatives, which maintained its goal of supporting economic development in developing countries. Sector-related activities, such as support for the cooperative, tourism and hospitality sectors, also featured prominently in the Organization's work.

The economic recession, in the wake of the two oil crises (1973-74 and 1979-80), and the fallout for the international financial system, led the IMF and World Bank to impose, on many countries, structural reforms leading to renegotiation of their debts. Structural Adjustment Programmes (SAPs) emerged. Almost all the support from those institutions, and Washington Consensus economic policies, were to have an impact on cooperation policies.

So, from the mid-eighties onwards, the ILO put in place different measures in an effort to understand and give coherence to the relationship between structural adjustment policies and employment policies. It was time to refocus the Organization's technical cooperation objectives. These initiatives increased substantially during this time, and came to be based on greater diversification of financing sources, the strengthening of tripartism, and the determination that cooperation should contribute more towards the dissemination and application of international labour standards that, after all, were historically the Organization's core mission. It is interesting to note the resistance to dissemination from the then "protagonists of structural adjustment"¹⁹.

In the 1990s, the ILO set three overarching objectives: employment promotion, human resources development and eradication of poverty. The Organization hoped that these objectives would be contemplated in the growth, stabilisation and structural adjustment

18 Programme International pour l'Amélioration des Conditions et du Milieu de Travail (PIACT), BIT, Genève, janvier 1979, pp. 1, 2.

19 "Some protagonists of structural adjustment policies argue that international labour standards contribute to labour market rigidity and therefore hamper the process of structural adjustment and future employment growth, whereas others express concern that an important element of structural adjustment policies has been to reduce worker protection in order to launch a development process based on purely economic objectives. (...) In order to contribute to the policy debate on this issue, the ILO carried out an overall analysis, based on a number of country studies, a review of the available literature, and interviews with officials of the international financial institutions. The findings of this analytical work are that many ILO standards can be of relevance in guiding current processes of labour law reform. Although the ILO's standards may not address all the issues involved, they can be instrumental in achieving a balance between excessive state regulation and an arbitrary removal of existing guarantees. It has also become apparent that in many cases national labour legislation can be adapted to changing circumstances taking account of existing international labour standards.", in Conferencia Internacional del Trabajo, 81ª reunión, 1994, Memoria del Director General, Parte II: Actividades de la OIT, 1992-93, OIT, Ginebra, p. 38.

policies and programmes²⁰. With regard to technical cooperation, the ILO pointed out the increasing complexity of development related areas, and the need to pay more attention to social matters, which took on far greater significance as the structural adjustment policies and their consequences began to have an impact²¹.

Also in the 1990s, and in line with UN guidance²², the ILO adopted its Active Partnership Policy, which aimed to bring the Organization closer to its tripartite constituency in member States, and enhance the coherence, speed and quality of the technical services provided to them²³, through the creation of Global Programmes, such as the STEP project (Strategies and Tools Against Social Exclusion and Poverty), and WOMENEMP (Programme for more and better jobs for women), both launched in 1998.

During the negotiations that culminated in the creation of the World Trade Organisation (WTO) in 1994, the issue of the “social clause” was widely debated. The aim was to limit States’ access to the advantages of international trade liberalisation, if certain minimum social rights were not guaranteed, thus preventing social dumping. However, at the same time, there was fear that this clause could be a cloaked form of protectionism. It should be said that the WTO itself recognises the ILO as the competent international body on social and labour rights and the right place for discussion of the matters²⁴.

In 1995, the World Summit for Social Development, held in Copenhagen, defined a set of standards that should form the social basis of the globalisation process: freedom of association, eradication of child labour and forced labour, promotion of equality, and elimination of discrimination. These would be enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 at the 86th International Labour Conference. All member States, even if they have not ratified the Conventions in question, have an obligation to fulfil the principles concerning the fundamental rights. At that time, the ILO embarked on extensive

20 International Labour Conference, 75th session, 1988, Supplement to the Report of the Director-General: Documents of the 239th (February-March 1988), Session of the Governing Body, ILO medium-term Plan and Report on programme implementation 1986-87, ILO, Geneva, p. 11.

21 HAYAMI, Yujiro, From de Washington Consensus to the Post-Washington Consensus: Retrospect and Prospect, Asian Development Review, vol. 20, n° 2, Asian Development Bank, 2003, p. 42.

22 International Labour Conference, 87^a session, 1999, report VI, The role of the ILO in technical cooperation, ILO, Geneva, p.2.

23 International Labour Conference, 87^a session, 1999, report VI, The role of the ILO in technical cooperation, ILO, Geneva, p.2.

24 The Ministerial Declaration adopted at the WTO Ministerial Conference, held in Singapore in 1996, states: “We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration”.

decentralisation of its activities and resources.

The Declaration of Fundamental Principles and Rights at Work would later be integrated into what would become the ILO's main agenda, adopted at the 1999 International Labour Conference: to pursue decent work for all²⁵. This became the overriding aim of ILO technical cooperation, in a context acutely marked by globalisation. At that time, the ILO set up the World Commission on the Social Dimension of Globalisation, which would later conclude that the Agenda was pivotal to achieving a fair and inclusive globalisation²⁶.

In a "post-Washington Consensus" context, in which poverty reduction was identified as "an immediate objective of development assistance rather than a consequence of the economic growth the assistance is designed to stimulate"²⁷, in 2000 the UN General Assembly adopted the Millennium Declaration and its Millennium Development Goals (MDGs).

At the 2005 World Summit of the UN General Assembly, Heads of State and Government from more than 150 countries recognised the potential of the Decent Work Agenda in the pursuance of the Millennium Development Goals²⁸.

This context repositioned the ILO towards the challenges posed by globalisation, and influenced its technical cooperation in the 21st Century, focusing it on the Organization's commitment towards reducing poverty, achieving a fair globalisation, and improved opportunities, so that men and women can have access to decent work. These efforts on the ground are based on the ILO's strategic objectives, allied to interaction with local social partners and governments, and attentive to each country's diverse characteristics: promotion of fundamental standards principles at work, employment and decent pay, social protection for all, and tripartism and social dialogue. The Decent Work Country Programmes (DWCPs) were established, which are still the main vehicle for delivery of ILO support to its member States.

25 "Decent work thus offers a way of combining employment, rights, social protection and social dialogue in development strategies. The difficulties faced by the traditional structural adjustment policies of the Bretton Woods institutions lie in part in their failure to incorporate these goals, and poverty reduction strategies will not succeed unless the same goals are built into them. At present, the Poverty Reduction Strategy Papers produced under the auspices of those institutions do not frontally address these issues. Reducing the decent work deficit is the quality road to poverty reduction and to greater legitimacy of the global economy. (...) development cooperation policies should incorporate all the strategic objectives of decent work into their core activities.", in BIT, Rapport du Directeur Général, Réduire le Déficit de Travail Décent – un défi mondial, Conférence Internationale du Travail, 89^a session, 2001, p. 12.

26 ILO, Report of the Director-General on the World Commission on the Social Dimension of the Globalization, International Labour Conference, 92nd session, 2004, p.3.

27 Cf. HAYAMI, Yujiro, From de Washington Consensus to the Post-Washington Consensus: Retrospect and Prospect, Asian Development Review, vol. 20, n° 2, Asian Development Bank, 2003, p. 57.

28 "We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals. (...)". 2005 World Summit Outcome, point no. 47.

With the adoption of the 2030 Agenda and the Sustainable Development Goals (SDGs), decent work is now a universal commitment. At the September 2015 UN Summit, the international community adopted 17 SDGs, number 8 of which is “Decent Work and Economic Growth”. The “promotion of inclusive, sustainable economic growth and full employment, productive employment and decent work for all” is, therefore, a global objective.

ILO technical cooperation is currently part of a global effort towards achieving the 2030 Agenda.

Under the leadership of UN Secretary General, António Guterres, the reform of the UN was given fresh impetus towards achieving greater coherence, coordination and effectiveness of the efforts of all its agencies, funds and programmes on the ground. ILO technical cooperation, integrated in the UNDAF²⁹ since 1997, will continue to evolve in this wider sphere.

In the ILO’s centenary year, its tripartite constituents adopted the Centenary Declaration for the Future of Work, in which they called for development cooperation efforts to be consistent with the ILO’s mandate, and for these efforts to be reinforced in order to ensure a human-centred approach to the future of work.

This brief overview of the ILO’s cooperation activities is intended to frame the Organization’s cooperation work in Portugal.

2. The first phase of cooperation between the ILO and Portugal

As a founder member of the ILO, Portugal went through a long period of being distanced from, and indifferent towards the ILO. This was during the first decades of the Salazar government. In the post-war years, democratisation and decolonisation processes worldwide resulted in the Portuguese State becoming gradually isolated. In its pursuit of acceptance in international fora, Portugal sought a rapprochement with the ILO, through the ratification of Conventions³⁰.

In the framework of technical assistance, the first reference we found dates back to 1948, with a BIT (*Bureau International du Travail*) mission to Portugal for the purpose of examining the work of *Federações de Caixas de Previdência* (social welfare institutions)³¹. There is very little

29 UNDAF – United Nations Development Assistance Framework - “is a strategic framework for the operational activities of the UN system at the national level. It was launched in 1997. It exemplifies a country-driven, collaborative and coherent response by the UN system to the development challenges facing the country. The UNDAF outlines the key development objectives and strategies for cooperation between governments, UN agencies and its partners”. In United Nations reform and the International Labour Organization: Questions and Answers, ILO, 2009, pp. 1 e 2.

30 Rodrigues, Cristina (2013). Portugal e a Organização Internacional do Trabalho – 1933-1974. Porto, Afrontamento.

31 Mission carried out by the BIT Actuarial Adviser, Antonin Zelenka.

official documentation on this mission³².

However, research difficulties were offset, in this case, by the existence of a report by the ILO Director-General on his visit to Portugal (31 January – 4 February 1960) in which he gives an overview of technical assistance to Portugal³³.

The Portuguese government requested technical assistance with the setting up of a rehabilitation training and employment programme for the blind. The mission, which took place between October 1960 and February 1962 in Portugal³⁴, provided the Ministry of Health with policy advice and assistance, as well as practical support with the creation of a pilot centre, training of technicians, and design of vocational training and employment programmes for the blind³⁵.

The possibility of providing assistance in the then Portuguese overseas territories was discussed when the 1st Session of the ILO African Advisory Committee met in Luanda, from 30 November to 11 December 1959. On that occasion, the Portuguese authorities suggested that the Director of the African Field Office visit Lisbon for an exchange of views, which shows how extremely careful the regime was in dealing with this issue³⁶. No cooperation initiatives in those territories are known to have materialised as a result.

Later, in the framework of the *Instituto Nacional de Investigação Industrial*, created in 1959, a BIT assistance programme³⁷ in connection with vocational training began in October 1963. It was initially planned to last for one year but, following a request for prolongation, it continued until 1966. During this period, Portugal is known to have requested short technical assistance missions from the BIT, with the *Fundo de Desenvolvimento da Mão-de-Obra* (Manpower Development Fund), in the areas of employment, vocational training and labour statistics.

32 Only two references to the mission were found: one in the MTSSS/DGERT archive and the other in the ILO archive in Geneva. For further information, see the document filed at the ILO Lisbon Office.

33 *Background Brief Portugal and David Morse's Mission to Portugal Report*, 1960, pp. 25-27, Princeton University, Mudd Manuscript Library.

34 The mission was carried out by J. Albert Asenjo.

35 J. Asenjo, Report of the Mission to the Portuguese Government on vocational rehabilitation and employment of the Blind, Regular Technical Assistance Programme, BIT, Geneva, 1963, pp. 20-21.

36 Correspondence about the possibility of the BIT carrying out operational activities in Angola and Mozambique may be found in the IHD-Foreign Affairs Ministry. The Portuguese authorities' resistance to the idea is clear. In one letter (addressed to the Director-General of Economic and Consular Affairs, dated September 1960), the Director of the Political Affairs Office of the Ministry for Overseas, refers to the dangers of such initiatives: "a training course for workers (...) is not advisable at present as they would certainly discuss trade union problems, and trade unionism in Africa entails excessively political aspects."; "Furthermore, the project on Administration and working conditions could raise delicate problems, given that many of the current African leaders are not aware of the conditions prevailing in neighbouring territories and, for political motives, are led to examine issues relating to prison labour, forced labour, discriminatory practices in employment and occupation, etc."

37 Mission led by experts Jean Claude Azerad and Georges Feyguine.

In November 1964, the *Ministério das Corporações e Previdência Social* (Ministry for Corporations and Social Welfare) expressed interest in receiving technical assistance from the BIT in various areas, such as occupational analysis and classification, minimum wage fixing, employment policy, unemployment, and on many other issues in the realms of labour, employment and vocational training³⁸. It is not known if this request was ever followed up.

From 10 to 23 October 1965 a specialist³⁹ from the BIT came to Portugal on a fact-finding mission to look at the methods used to recruit and select Portuguese workers for the ECSC's coal and steel industries. The ILO had been commissioned by the ECSC to undertake a study on Migrant Recruitment and Working Conditions⁴⁰.

With regard to operational activities, until 1962, Portugal rejected technical assistance that was financed by the EPTA or Special Fund on grounds that these Programmes were destined to support developing countries. From 1962 onwards, however, Portugal did benefit from these funds, as the boatswain training process illustrates.

No other references to technical cooperation between 1965 and 1974 were found in the archives of the DGERT/MTSSS and IHD-MNE. However, we cannot conclude that none occurred. Following Ghana's complaint against Portugal in 1961, and the Resolutions of the 49th Session of the ILC in 1965, on measures to be taken by Portugal for breaching the forced labour Conventions in its colonies (here, only concerning Angola), the Portugal-ILO relationship entered into a different phase in which Portugal's priorities were linked to the colonial issue.

Although Portugal had not, for a number of reasons (one being the country's political context up until transition to democracy), benefitted from many ILO operational activities, the few instances found reflect the typology of funds and programmes that, during the period under review, were becoming part of the Organization's technical cooperation dynamic.

3. Post-25th April and the period prior to EEC membership

After many years of tension between Portugal and the ILO, caused by the colonial issues and the regime's autocratic nature, the 25th April 1974 opened the doors to a new phase in the relationship between the Organization and the country that was one of its founder members. Suddenly, it was possible to ratify a series of Conventions, such as the emblematic Freedom

38 IHD-MNE Archive. Letter of 02.11.1964 addressed to the Director-General of Foreign Affairs, from the Head of Office, Ministry for Corporations and Social Welfare.

39 The only reference found regarding the identity of the specialist was his first name, Friedrich.

40 IHD-MNE Archive – Exchange of correspondence between April 1965 and January 1966.



of Association and Protection of the Right to Organise Convention (N.º 87). The social changes that took place permitted the ratification of other Conventions on economic and social issues.

The country was changing, and falling into step with the more developed European nations. Ratifying ILO Conventions became a mirror in which democratic Portugal saw itself, projecting its image towards Europe, at a time when membership of the then EEC was a collective dream that was believed would bring the much longed-for development to the country and its people.

Up until Portugal joined the EEC in 1986, in addition to the significant number of convention ratifications, ILO missions to the country took place at a pace never seen before, nor after that time⁴¹.

The ILO Director-General, Francis Blanchard, visited Portugal in December 1976. In his memorandum on the visit, he describes the cooperation activities carried out in the country in the post-Revolution period:

“This cooperation began after 25th April 1974 with exchanges of visits between Portuguese and BIT officials. For example, Portuguese officials spent periods in Geneva training in areas such as application of international labour standards and cooperative development. In July 1975, a BIT official⁴² was invited to Portugal for the purpose of working with the Portuguese authorities to identify areas in which cooperation would be appropriate. This mission was followed by occasional cooperation initiatives relating to labour administration, labour inspection, vocational training, employment and cooperatives. Although these had been mainly short duration initiatives, they were the start of a dialogue between Portuguese specialists and international officials in these respective domains. At the time of the Director-General’s visit, Portugal’s highest authorities expressed their desire not only to see the cooperation continue, but to increase it, so as to really contribute to solving the problems facing the country in applying its economic and social development policy. It was agreed, therefore, that the actions already started in the fields of employment and labour inspection should continue, the dialogue on labour administration and cooperatives should be kept up, and consultations on collective relations, vocational training and training of senior officials should commence without delay. The purpose of the consultations on training was to draw up an action plan for subsequent submission to outside sources of financing.

Up until then, most of the actions undertaken had been financed either directly by the Portuguese government, or by the ILO’s Regular Budget. The rising scale of the cooperation work required recourse to a wider range of sources. In this respect, the Director-General agreed to inform the UN Programme Administrator of the outcomes of meetings with the Portuguese government, so that they could be taken into account in the preparation of country programming, which would soon be finalised between the UNDP and the Portuguese authorities. Although the UNDP appeared to be the most appropriate source of financing (...) it was agreed that the BIT would act as a mediator, with the prior agreement of the Portuguese government, with other potential sources of finance”⁴³

There are records of two missions to Portugal in 1974. The first would have been a preliminary

41 There were various missions, and there is detailed information on many of them in the ILO Lisbon Office’s archive. We include a summary of it in this article, taking into account space limitations.

42 René Kirsbaum.

43 Memorandum “ Programme de coopération technique entre le Portugal et le BIT “. Cf. Letter to the Ministry of Labour from BIT Director-General, Francis Blanchard, dated 14 January 1977. Source: DGERT/MTSSS.

visit to Ministry of Labour departments, carried out in July that year⁴⁴. The BIT department⁴⁵ involved was that of planning and employment, which suggests cooperation in that sphere. This was one of the ILO's major intervention areas at that time. The second visit took place in late October that year. This time it was from the Employment Policy Department⁴⁶. It was a fact-finding mission to gather information on reorganising and modernising the national employment system. However, it was also connected with the preparation of a joint ILO/UNESCO/UNDP project in Brazil.

The following year, between 6 and 18 July 1975, a further ILO mission to Portugal took place⁴⁷. Its purpose was "to examine, at the request of the Minister of Labour (José Costa Martins), together with all the stakeholders, the areas of activity in which help from the BIT would be desirable, and to draw up a plan of interventions according to the priorities identified⁴⁸." After analyses carried out by the BIT, and its subsequent proposals put forward and negotiated with the Portuguese authorities, the following were agreed to be priority areas: labour administration, economic development strategy, cooperatives, training courses, emigration, and prevention of occupational hazards.

After this mission, the Minister for Foreign Affairs, Mário Ruivo, requested⁴⁹ a visit from a senior BIT official specialised in Labour Administration, to examine the following problems: organisation and running of public institutions dealing with the design, implementation and supervision of employment policy; decentralisation and democratisation of the labour administration, involving effective participation of workers from different fields (labour inspection, employment service, etc.), and staff vocational and upgrading training needs. In the sphere of social issues, the BIT could also examine the fundamental lines of social policy in relation to the principles of workers' participation and decentralisation, and, with regard to public administration, analyse the system of collective relations that would best suit the country's new structures.

Furthermore, on the question of Portugal's economic policy strategy, the government requested a further mission from the World Employment Plan, which would include specialists in global development policy and strategy, agrarian reform and employment, and investment project evaluation based on employment criteria. This mission took place in February 1976. The Head of the BIT Labour Department⁵⁰ visited Portugal on a short fact-finding mission, and met with

44 DGERT/MTSSS archive. There is very little information about this visit.

45 This preliminary visit was carried out by Head of Department, Louis Emmerij.

46 Carried out by the expert William H. Mason.

47 René Kirszbaum was the visiting specialist.

48 Mission Report by René Kirszbaum, p. 1. Source: DGERT/MTSSS Documentation Archive.

49 Letter of 25.08.1975. Source: DGERT/MTSSS.

50 Michel Wallin.



a wide range of stakeholders, including social partners and Minister of Labour, Captain Tomaz Rosa. After the mission, he would have sent the Minister of Labour an analysis of the proposed regulations for working hours⁵¹.

Following these initial missions in the years immediately after the Revolution, there were other missions to Portugal, summarised below, the criterion for which was that they should mesh with the ILO's programmes and sources of finance, namely the World Employment Plan, the International Programme for the Improvement of Working Conditions and Environment, and the UNDP.

With regard to the World Employment Plan, despite intense expressions of interest and even negotiations, it did not materialise. In fact, after the initial visit (from Louis Emmerij) in March 1976, a round table discussion was held to prepare for the World Employment Conference in June that year, and to finalise any technical cooperation agreements. This was an important meeting, attended by ILO specialists, senior political figures from various ministries, and social partners' representatives, and chaired by the then Secretary of State for Employment, Tito de Morais. A wide range of employment and development policy related issues was discussed. One outcome of the meeting was reassertion of the request previously made to the BIT for Portugal to receive a global employment strategy mission.

The agreement between the BIT and Portuguese government on technical cooperation for drafting a medium-term development plan for the 1977-1980 period, incorporating objectives for employment and basic needs, was signed in October 1976⁵². Portugal was the first European country to request support from the BIT for a plan of this kind. However, although preparatory work went ahead, the plan was not adopted in 1977. In December that year, the government lost the vote of confidence which was intended to grant it full authority to negotiate with the IMF. In October 1978, the third constitutional government put a new medium-term plan before parliament, but its objectives went beyond those of satisfying basic needs.

In the framework of the Programme for the Improvement of Working Conditions and Environment (PIACT), Portugal requested technical cooperation plans to be arranged. A first mission⁵³ took place in October 1977 in Lisbon for the purpose of organising a seminar on the improvement of working conditions and environment⁵⁴.

In December 1980, Portugal requested a mission that would identify the country's needs in the realm of the PIACT, and achieve: a coordinated definition and guarantee of implementation of a

51 DGERT- MTSSS Archive. This document was not found.

52 Memorandum "Programme de coopération technique entre le Portugal et le BIT. Cf. Letter to the Minister of Labour from BIT Director-General, Francis Blanchard, dated 14 January 1977. Source: DGERT/MTSS.

53 N. Gavrilescu, Head of the ILO Occupational Safety and Health Department carried out this mission.

54 It was not possible to determine whether this seminar actually came to be held.

global national policy on the improvement of working conditions and environment; an analysis of the Portuguese labour administration's structures vis-à-vis the requirements entailed, namely occupational health and safety departments and labour inspectorate; an analysis of existing resources and deficits in labour statistics, and the development of information and training measures for the necessary technical support and supervision⁵⁵. After much preparatory work, and the drafting of a preliminary report, the multidisciplinary mission took place in October and November 1984, and involved meetings with senior government officials, social partners, and a wide range of enterprises. At the end of the mission, the government was presented with suggestions and recommendations (which may be consulted in the Report⁵⁶) covering various areas: national policy on improvement of working conditions and environment; consultation and participation; prevention of occupational hazards; extension of social protection; working time; structural aspects of labour administration (namely, labour inspection); labour statistics; training and research; specific measures directed at employers' and workers' organisations.

Finally, in December 1976, an agreement on assistance from the UNDP to the Portuguese government was reached⁵⁷. From the following year onwards, there were various technical cooperation projects, financed by the UNDP and executed by the ILO, covering four areas: employment and vocational training; management training; cooperative development, and hospitality and tourism training.

Through a series of field visits⁵⁸, the ILO Regional Office for Europe monitored the progress of the UNDP-financed projects. The report of one such mission (in November 1983) states that the projects then under scrutiny⁵⁹ were designed to support the government in its preparations for transition to the EEC, and also to contribute to the establishment of bilateral technical cooperation initiatives between Portugal and Lusophone African countries. Once Portugal joined the EEC, two further missions to the country took place.

Two projects in the area of employment and vocational training are worth mentioning. The first, which ran from 1977 to 1981, focused on technical cooperation with vocational training, in order to organise, develop and enhance vocational training in Portugal in readiness for the country's entry to the EEC. The second UNDP-financed project, executed by the ILO, began in 1982. Its aim was to assist national authorities with setting up the Institute for Employment and Vocational Training (IEFP). The project suffered various setbacks. Its first years of existence (the IEFP was created in December 1979) were faltering, and it was only after 1985 that it began

55 OIT, Rapport au Gouvernement du Portugal sur les travaux de la mission multidisciplinaire du PIAC (7 octobre – 10 novembre 1984), BIT, Genève, avril 1985, pp. 1-2.

56 OIT, Rapport au Gouvernement du Portugal sur les travaux de la mission multidisciplinaire du PIAC (7 octobre – 10 novembre 1984), BIT, Genève, avril 1985, from page 163 onwards.

57 Cf. http://untreaty.un.org/unts/60001_120000/3/31/00005542.pdf.

58 By specialist Wim Schiefelbusch.

59 Management Training (POR/81/006), Cooperative Development (POR/81/005), and Employment and Vocational Training (POR/82/006), all in their second phase.

to play a decisive role in Portuguese society. The final report on the project recommended continued UNDP/ILO assistance on employment, especially in the areas of labour statistics and vocational training.

Vocational training for managers benefited from two projects⁶⁰. The first, Management Training Development, started in 1978 and ended in 1981, although initial discussions about it date back to 1974⁶¹. The project sought long-term and immediate objectives⁶². The former included productivity improvement, export growth, increased competitiveness, structural changes in various national production sectors, job retention, and creation of new productive employment opportunities, and adapting management methods and styles to the aspirations of the 1974 Revolution. The immediate objectives were: to organise training programmes in the IPE (*Instituto das Participações do Estado*) and create an institute for vocational training and further training for managers; to design and deliver vocational training and retraining programmes for public sector managers; to design and implement a national human resources development programme, and to provide guidance on the structure, organisation and monitoring of the economy's public sector. The evaluation of the project was positive, but it was thought that its duration should have been longer. Although the expected quantitative results were not achieved, the evaluation team considered that the quality and innovation policy adopted would be a valuable feature for the future strategy on staff training and retraining. "However, it is imperative that the strategic choices and institutional measures they involve are decided without delay [...]"⁶³.

The second UNDP manager training project, "Management Training", ran from 1982 to 1986. Although mostly related to the national sphere, the project's objectives also included support for the new Portuguese-speaking states.

Two UNDP cooperative development projects were carried out in succession: the first began in 1977 and the second in 1981. Both were designed to strengthen the capacity of cooperatives and their role in employment creation and development of socially-owned enterprises. The second project was specifically devised to support the cooperative sector during transition to

60 The specific aims of the project were: to design a vocational and upgrading training methodology, tailored to the immediate needs of enterprises; to study the establishment of a national apprenticeship system; to define a new, more functional and effective vocational training service structure, in a framework of budgetary and administrative autonomy.

61 Mémorandum " Programme de coopération technique entre le Portugal et le BIT. Cf. Letter to the Minister of Labour from ILO Director-General, Francis Blanchard, 14 January 1977. Source: DGERT/MTSS.

62 PNUD, OIT, Rapport établi pour le gouvernement du Portugal par l'Organisation Internationale du Travail en tant qu'Organisation chargée de l'exécution du projet pour le compte du Programme des Nations Unies pour le Développement, Résultats du projet et recommandations en découlant, Développement de la Formation des Cadres Dirigeants, POR/77/001, p. 2.

63 PNUD, OIT, Rapport établi pour le gouvernement du Portugal par l'Organisation Internationale du Travail en tant qu'Organisation chargée de l'exécution du projet pour le compte du Programme des Nations Unies pour le Développement, Résultats du projet et recommandations en découlant, Développement de la Formation des Cadres Dirigeants, POR/77/001, p. 3.

the EEC, and also aimed to create and develop support programmes for the PALOPs⁶⁴. After Portugal joined the EEC there was another project, “Strengthening Training in Cooperativism”, which involved the award of training grants to Portuguese technicians and missions to Portugal in 1987 and 1988.

Lastly, on the subject of the UNDP, a training project in hospitality and tourism should be mentioned. In August 1977, the Ministry for Trade and Tourism requested BIT assistance with restructuring the training system for the tourism and hospitality industry⁶⁵. As a result, a preparatory mission took place in 1978 to analyse, together with hotel organisations, market needs, and examine vocational training conditions. In February and March 1986, after Portugal had joined the EEC, a further mission took place at the request of the Ministry of Education and Culture. The aim was to set up an advanced level training system for hospitality and tourism activities⁶⁶.

Up until the country joined the EEC, there were various other missions to Portugal, on areas such as labour administration and inspection, labour law, collective bargaining, and support with the set-up of vocational training centres, which received EEC funding. Furthermore, in the early 1980s, at the request of the European Communities Commission, and with Portugal’s future membership in mind, the ILO carried out a study on the Portuguese social security system, focusing specifically on migrant labour⁶⁷.

4. From EEC membership to the end of the century

Apart from the missions to monitor UNDP projects, mentioned above, a large-scale technical cooperation project, the JADE⁶⁸, was conducted between 1986 and 1990. The project trained young people to be development agents in out-migration regions of Portugal. Financed by the BIT, and involving high level international and national specialists, the JADE project comprised various stages (assessment, course preparation, training, training-action, monitoring, publications), and made a considerable impact on the target areas.

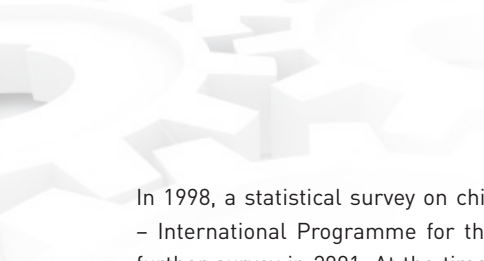
64 The final report on these programmes may be consulted in PNUD/OIT, *Développement Coopératif* POR/77/004 e POR/81/005, Portugal, *Conclusions et Recommandations des projets*, Genève, 1985.

65 Joint Mission Report, Mayer and Schiefelbusch, 19-28 October, 1977. Source: BIT.

66 DELPECH, Serge, *Rapport de mission au Portugal*, 24 février – 7 mars 1986, *Formation professionnelle pour l’hôtellerie, la restauration et le tourisme*, BIT.

67 For further information, see the document referred to in footnote 1, produced and filed in the ILO Lisbon Office.

68 This book contains an article on the JADE, written by Carlos Castro Almeida, which provides more detailed information on the project.



In 1998, a statistical survey on child labour⁶⁹ was conducted, with assistance from the IPEC – International Programme for the Elimination of Child Labour (ILO). It was followed by a further survey in 2001. At the time, Portugal was seen as a country with a high rate of child labour, which led the government to request technical support with the preparation of the statistical exercise. These surveys were unprecedented in the European context, and are still an international reference. The results obtained made it possible not only to dedramatise the numbers put forward by some national and international organisations, which really did not correspond to reality, but also to improve initiatives to combat the exploitation of child labour that still persisted. As a result of the action taken in the period between the two surveys, the situation was found to have improved: fewer minors in employment; a drop in the most serious forms of child labour; increased numbers of minors in education and lower school dropout rates⁷⁰. Another, far-reaching consequence of the surveys was that the IPEC adopted a fresh approach to child labour in the industrialised world.

5. The turn of the millennium. From the opening of the ILO Lisbon Office to the present

Two significant initiatives, which occurred prior to the opening of the ILO Lisbon Office, should be mentioned. In January 2000, a BIT mission⁷¹ came to Portugal to discuss, with the Minister of Labour and Social Solidarity (Paulo Pedroso), the possibilities of cooperation between the European Union and the ILO, on the occasion of the Portuguese Presidency and, in that context, to inform the Ministers of Labour and Foreign Affairs about the ILO's commitments regarding the EU expansion process and the Stability Pact for South Eastern Europe.

The second initiative was the International Conference on Policies to Fight Child Labour Exploitation in Europe, held in Lisbon in February 2001, attended by ILO and IPEC specialists⁷².

In July 2001, the Portuguese government suggested to the Director-General that an ILO office be opened in Lisbon⁷³. The excellent historical relations, the growing importance of Portuguese language in the ILO, multifaceted cooperation, and technical cooperation with the PALOPs, which then included Timor, justified the opening of a branch office. In January 2002, the ILO Regional

⁶⁹ Further information on this subject may be found in the article by Josefina Leitão and Joaquina Cadete in this book.

⁷⁰ Cf. SIETI, *Caracterização Social dos Agregados Familiares Portugueses com Menores em Idade Escolar – Comparação de Resultados 1998/2001*, SIETI.

⁷¹ Carried out by Heribert Scharrenbroich, ILO Regional Director for Europe and Central Asia.

⁷² Kari Tapiola, Executive Director for the ILO's Standards and Fundamental Principles and Rights, and e Frans Röselaers, Director of the International Programme on the Elimination of Child Labour (IPEC).

⁷³ Letter dated 13 July 2001 from the Minister of Labour and Solidarity, Paulo Pedroso, to ILO Director-General.

Director for Europe and Central Asia⁷⁴ visited Portugal for meetings with the government and social partners. In July, supported by the Portuguese tripartite constituents, the Agreement between the Republic of Portugal and the International Labour Organization concerning the establishment of a branch office of the Organization in Lisbon was signed⁷⁵.

Carlos Castro-Almeida was appointed the first Director of the ILO Lisbon Office in September 2002, and on 7 May 2003 the Office was officially opened, in the presence of Friedrich Buttler, representing the ILO, the Minister for Social Security and Labour (Bagão Félix), the social partners, the President of the Economic and Social Council, and the PALOP Ambassadors.

Since then, the Office has served as an anchor for ILO activities in Portugal, and a key interface with the Portuguese-speaking world. Directed between by Paulo Bárcia from 2004 to 2009, and by Mafalda Troncho from 2009 to the present, this small, agile, flexible structure has devoted its efforts to disseminating the Organization's values, principles and standards in Portuguese.

Leaving aside, in this text, the Office's cooperation work relating to the Lusophone world, let us look at recent projects in which the beneficiary, or one of the beneficiaries, was Portugal.

The AGIS Project, Combatting Forced Labour and Human Trafficking in Europe (2004/2006) was promoted by the ILO, European Commission and International Centre for Migration Policy Development. Source countries⁷⁶, and transit and destination countries⁷⁷ for people trafficking for forced labour took part in the programme. It aimed to enhance the understanding of the concept of Forced Labour, assess the situation in each country, and make recommendations for future action (involving the police, law enforcement and labour market authorities).

Revaluing Work to Promote Equality was an EQUAL Project carried out, simultaneously, in Portugal, France and Malta (2005-2008). In Portugal it involved a broad partnership between the CGTP-IN (the project promoter), the AHRESP, the ACT, the CESIS (Centre for Social Intervention Studies), the CITE (Commission for Equality at Work and in Employment), the FESAHT (trade union federation for the food, beverages, hospitality and tourism industries), and the ILO. The project was subject to an external evaluation by the CIES/ISCTE (Centre for Research and Studies in Sociology).

In a framework of intense social dialogue, the project aimed to build and test a new methodology for appraising the value of jobs with a view to re-evaluating predominantly female occupations.

⁷⁴ Friedrich Buttler.

⁷⁵ Approved by the Assembly of the Republic on 5 December 2002, and published in the Official Gazette on 4 March 2003 (Diário da República, Resolução 15/2003, I série, nº 53).

⁷⁶ Moldavia, Ukraine and Romania.

⁷⁷ Poland, Germany, UK and Portugal.

"The result of the tripartite logic was rich and intense discussion, in an atmosphere of mutual trust, of sharing different positions, mediated by the technical and complex nature of a methodology for appraising the value of a job, regardless of whether it is done by a man or a woman. Another dimension is the relationship between gender equality and social dialogue, insofar as both are core ILO values from the outset, and are interlinked. It was in a context of social dialogue that this project developed, and this made it possible to promote social dialogue, and develop consensuses that led to reaching achievable results for promoting equal pay. (...) Revaluing Work to Promote Equality contributed, in the words of Manuela Tomei, the ILO expert who served as project advisor, to enrich the knowledge and experience base of the ILO itself. Since 2007, the ILO has disseminated that experience, and has done so in different ways. The second ILO report on gender equality in the world of work, 2007, refers to the project as a practice to be followed by other countries. In 2007, 2009 and 2010 it was used as an example in three training courses at the ILO International Training Centre in Turin. It was presented in South America (Brazil and Chile), Europe (Denmark, France, Italy and Malta), and in the Middle East (Jordan). (...) In the sphere of the gender equality at the heart of decent work campaign (2008-2009), the promotional video on pay parity was based on the Revaluing Work to Promote Equality experience, and was widely disseminated through the ILO's website. At the time of the 2008 8th ILO European Regional Meeting, Director-General Juan Somavia met with AHRESP and CGTP-IN officials, the EQUAL Programme Manager, and male and female employees, at the Pastéis de Belém (which had taken part in the project). Photos of the event caught national and international media attention. Recently, the ILO prepared a practical Guide for member States, in which the Portuguese experience is included as an example of the practical application of the Equal Remuneration Convention (N.º 100). In an interview that Manuela Tomei gave to the EQUAL Programme in 2008, the fact that the project had been carried out during an economically unfavourable time had posed greater challenges. She underlined, however, that the Development Partnership's persistence demonstrated that it is possible to promote gender equality in the world of work even in an adverse economic context⁷⁸."

The crisis years brought new challenges. The ILO Inter-departmental Task Force on European Crisis Countries was launched in 2013 by the Director-General, Guy Ryder, in response to appeals for greater involvement of the Organization in producing research on the most affected countries. The appeals were reiterated by the tripartite constituents at the 9th European Regional Meeting (April 2013), when they adopted a Declaration intended to support those countries in overcoming the economic, political and social consequences and restoring confidence. The Oslo Declaration stated: "Fiscal consolidation, structural reform and competitiveness, on the one hand, and stimulus packages, investment in the real economy, quality jobs, increased credit for enterprises, on the other, should not be competing paradigms⁷⁹."

It was in this framework that the Task Force, led by Raymond Torres, Director of the ILO Research Department, in liaison with the Regional Office for Europe and Central Asia, began its work. Focusing on the countries that had been worst hit in terms of unemployment – Greece, Ireland, Portugal and Spain – it covered three components. The first – research and facilitation of discussion on policy – analysed the labour market situation and devised a series of policy options to boost employment and improve the social results, and reflected on the role that the ILO could play.

In the words of Raymond Torres, the report on Portugal (2013), *Tackling the Jobs Crisis in Portugal*, "provides a comprehensive policy package to improve the short-term macroeconomic outlook, while at the same time leading the way to job-rich economic growth over the longer

78 Testimony of Albertina Jordão, gender equality specialist at the ILO Lisbon Office, "43 anos a construir a igualdade entre mulheres e homens (1970-2013)", Coord. Fátima Messias, IBCJ, junho de 2014), pp 273 e 274.

79 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_210356.pdf, p.1.

term⁸⁰.”

The second component of the Task Force initiative dealt with technical cooperation. The tripartite partners discussed possible areas of cooperation between the countries involved and the ILO. The framework for cooperation could be decided by national conferences. In Portugal's case, potential areas were identified, including youth employment and sharing best practices in labour law. The ILO was willing to provide assistance with monitoring and evaluating impacts, facilitating information and experience exchanges between countries (component three).

In this context, a technical support programme for monitoring and evaluating the Youth Guarantee (YG)⁸¹ project was requested in 2014 by the Minister for Solidarity, Employment and Social Security (Pedro Mota Soares). The result was the production of a framework that was tailored to suit the Portuguese reality while, at the same time, in line with the criteria established by the European Commission. This partnership with the ILO was extended, in 2015, under a project financed by the European Commission. Its main aim was to build national institutional capacity for managing youth employment policy measures covered by the YG. It ended with the adoption, in June 2017, of the National Strategy for Signalling Young Inactive NEETs (not in employment, education or training).

With regards the other area of cooperation identified during the November 2013 Conference, and following high-level bilateral meetings between the ILO Director-General and the tripartite constituents on the sharing of best practices in labour law, technical support was provided in relation to labour arbitration, termination of employment contracts by decision of the employer, and compensation in cases of unfair dismissal.

Lastly, in October 2017, the Ministry of Labour, Solidarity and Social Security (minister Vieira da Silva) invited the ILO to prepare a report on the country's economic and social progress, and development of labour market policies over the past decade.

The report, *Decent Work in Portugal 2008-18: From Crisis to Recovery*, was presented at a public event on 16 October 2018 in Lisbon, attended by Guy Ryder and Prime Minister António Costa.

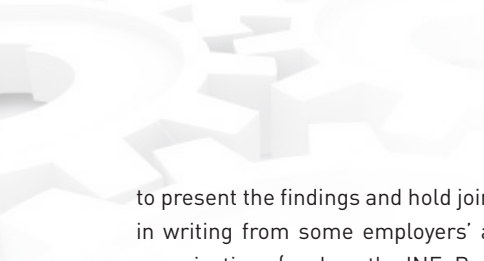
Preparatory work for the report⁸² included two ILO missions to Portugal, in January and May 2018. On both occasions, the ILO team met with representatives of the social partners. The purpose of the first visit was to gather relevant documentation and data, while the second was

80 This Task Force was chaired by Raymond Torres, then coordinator of the ILO's Research Department.

The study was presented at a High-Level Conference, "Tackling the Jobs Crisis in Portugal" on 4 November 2013, Gulbenkian, Lisbon.

81 This book includes an article on this support, by Vítor Mura Pinheiro and Paulo Feliciano, providing more detailed information.

82 The study of an interdepartmental nature, was coordinated by Maurizio Bussi, ILO Deputy Regional Director for Europe and Central Asia.



to present the findings and hold joint discussions. At the time, the ILO also received comments in writing from some employers' and workers' organisations, consulted with other relevant organisations (such as the INE, Bank of Portugal, and Economic and Social Council), and held meetings with various government ministries.

6. Some final comments

All syntheses pose the same difficulties for those attempting them. There are always some matters that are insufficiently detailed, or left out of a very vast and rich universe, such as the case of cooperation between the ILO and Portugal spanning their long relationship.

Although limited in their scope, the initiatives in Portugal prior to the 25th April reflect the broad lines of ILO cooperation and respective sources of financing in the global space. A word to stress the key role of the ILO in the configuration of public structures in the areas of labour, employment and vocational training in this phase.

The democratic period brought with it an intense rapprochement. Many projects in different areas of labour and workers' rights made possible the adoption of ILO principles and standards, in a framework of inclusive social dialogue. Even in cases of unfinished projects, such as the medium-term development plan that suddenly ended in 1978, the dialogue and preparatory work undertaken had positive repercussions for Portuguese society. The public framework and Portuguese industrial relations, which were fashioned in the early years of the democracy, are, to a great extent, indebted to the spirit of the ILO. In various situations, the close relationship with the ILO became a passport for membership of the EEC, a form of guarantee of the country's development and capacity to face up to the European challenge.

The relationship with the ILO became, generally, somewhat distant after Portugal joined the EEC. However, it revitalised in the late 1990s, largely due to an increased sharing of values, reflected by the country's support for the Decent Work Agenda and by closer multilateral development cooperation with the PALOPs and, later, with East Timor.

The economic and financial crisis, which triggered a search for new strategies for dealing with the difficulties, gave fresh impetus to ILO technical cooperation with Portugal. This would have influenced the commitment undertaken in the Troika Memorandum, which placed ILO standards as an insurmountable barrier in the framework of the changes that were to be introduced: "Reforms in labour and social security legislation will be implemented after consultation of social partners, taking into account possible constitutional implications, and in

respect of EU Directives and Core Labour Standards⁸³.”

In his address to the 108th Session of the International Labour Conference, held in June 2019, the Organization’s Centenary year, Portuguese Prime Minister, António Costa, underlined the importance of the Portugal-ILO relationship, which also goes back 100 years as the country is one of the Organization’s founder members. On that occasion, he stated: “We have a solid commitment to the ILO, which dates back more than 40 years. During the most difficult years of the economic and financial crisis that struck our country, the ILO’s help was pivotal. It brought into the debate data and studies which improved our understanding of the reality of the Portuguese labour market.”

Whether in the past or recently, directly or indirectly, the ILO has unquestionably influenced, and even determined, the country’s social evolution over the last one hundred years. With regard to technical cooperation specifically, given the history of the last decades, we would go as far as to predict that, in the future, it will continue to be based on the production of data, reports and sharing of good practices.

⁸³https://infoeuropa.euroid.pt/opac/?func=service&doc_library=CIE01&doc_number=000046743&line_number=0001&func_code=WEB-FULL&service_type=MEDIA p.20





16

Part III – Labour areas and the role of the ILO

Portugal-OIT Partnership. The JADE Programme: an example of decentralised technical cooperation ¹

CARLOS CASTRO ALMEIDA ²

The partnership between Portugal and the International Labour Office (ILO), which was reinforced with the establishment of democracy, has taken many forms and dimensions over the years.

Portugal and the ILO entered into a General Cooperation Agreement in 1982, reflected a shared political will to develop the different strands of cooperation, especially by reinforcing technical cooperation financed by Portugal in the form of voluntary contributions.

Cooperation between Portugal and the ILO culminated with the opening of an ILO Office in Lisbon, in May 2003, which had the concerted backing of the government and social partners. With the aim of consolidating the institutional and political links between the ILO and the wide range of actors in the world of work, the Office has advanced closer technical cooperation between Portugal and the ILO and the development of synergies with the CPLP (Community of Portuguese-speaking Countries). The Office has also been promoting the use of Portuguese language within the ILO, as well as the number of Portuguese officials working in the Organization, and deployment of Portuguese specialists in the area of international cooperation.

The main technical cooperation projects undertaken in the sphere of the Portugal-ILO partnership are described in other chapters of this publication.

¹ The present article was originally published in 2019, in the IEFJ Journal, *Dirigir & Formar*, n.º 24 (Jul-Set).

² Former ILO official. Among other duties, he was director of ILO-Lisbon, which he opened in 2003.

The JADE Programme: decentralised cooperation

This text seeks to describe a pilot Portugal-ILO technical cooperation project that had somewhat singular and innovative characteristics. It was a **decentralised cooperation** project involving not only national, but also regional and/or local bodies.

We are referring to the **JADE Programme – Training of young adults as development agents in regions of migration**. Launched by the ILO in 1987 with the support of the UNDP (UN Development Programme), JADE was a follow-up to the ILO European Regional Project for Second Generation Migrants.

Institutionally, the JADE Programme brought together various national authorities, the most prominent being the IEFP (Institute for Employment and Vocational Training) on account of its financing and technical support role. However, many other regional entities were involved, namely the CCRs - the Coordinating Committees for the Northern Region, Central Region and the Algarve Region, diverse local authorities, municipal associations, employers' associations, cooperatives, etc. The ILO, government and CCRs taking part entered into a protocol to ensure that the Programme's activities would be implemented in a concerted and interconnected manner.

While agreeing with its overall aims and methodology, the CCR for the Alentejo Region decided that, given the pilot nature of the project, it would wait and assess the Programme's results on the ground. The same is true of the CCR for the Lisbon and Vale do Tejo Region, which later organised a similar programme based on the outcomes of JADE. In fact, given that JADE was an experimental programme, the intention was never nationwide implementation, but rather triggering local dynamics that would facilitate its replication at a later stage.

The **medium-term objectives** of the JADE Programme were:

- to promote job creation opportunities in out-migration Regions;
- to this end, to develop technical and vocational skills of human resources in those Regions;
- to support decentralisation processes by institutional capacity building in the regions.

In the short-term, the JADE Programme aimed to achieve the following **operational objectives**:

- to train young adults to be development agents capable of promoting local and regional development through initiatives to revitalise/stimulate the economic, social and cultural fabric;
- to assist the integration of the trainees into working life, in institutions and entities,

facilitated by collaboration protocols between the CCRs and local actors involved in the Programme.

A group of 66 trainees joined the JADE Programme, after a recruitment process based on very strict selection criteria.

Training for development

Without going into the details of devising a training exercise, whose preparation and implementation involved multiple institutions (IEFP, CCRs, ILO/ILO International Training Centre in Turin, and, at the launch stage, the European Centre for the Development of Vocational Training/CEDEFOP in Berlin), it is worth outlining the five stages on which the training plan was based:

1st stage (May 1987): **training based on the trainees' experiences**, devoted to mobilising the personal experiences of each of the selected young adults, and creating team spirit around the aims of the JADE Programme.

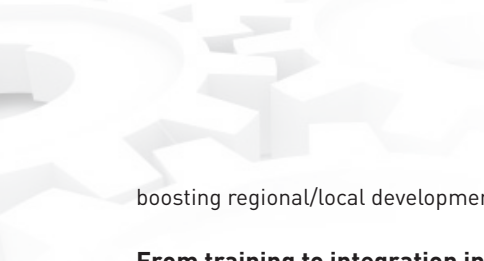
2nd stage (June-July 1987): **training/awareness raising for the first fieldwork exercise**, focused on the theoretical and methodological preparation of the trainees for visits and information gathering on the ground.

3rd stage (September 1987): **training/action on data gathering on the ground**, during which local development opportunities were identified, and the main parameters of future projects by the trainees were outlined.

4th stage (October 1987-April 1988): **skills training** – a key moment of the training course – structured courses were organised, based on the data gathered on the ground, in the following areas: public administration; regional/local development strategies; intervention methods; organisation and management of actions on the ground. Rather than adopting a disciplinary perspective, the courses were integrated horizontally around the following strategic areas:

- Regional and local development mechanisms and processes;
- Regional and local development policies, strategies and instruments;
- Design and formulation of intervention projects for development.

5th stage (May 1988): **preparation and realisation of a “situation test”**, based on simulating lifelike employment situations, and intended to assess trainees' skills in designing projects for



boosting regional/local development dynamics.

From training to integration into working life?

The final phase of the JADE Programme was devoted to organising and negotiating the trainees' integration in employment as development agents. The main guidelines followed in this stage may be summarised as follows: a dual strategy of training the agents and, at the same time, creating conditions for their professional integration; the gradual negotiated integration into employment; building career opportunities by means of a **participatory process**, involving the trainees, Programme teams, CCRs and other local actors.

A key aspect of this phase was establishing **employment integration protocols** between the trainees and the regional and/or local employer bodies and institutions. The protocols involved a wide range of public bodies (local authorities, job centres, National Parks and Nature Reserves Service, CCRs) and private and/or social economy bodies (enterprises, cooperatives, cultural associations, social solidarity associations).

At the end of the JADE Programme, the trainees were awarded a diploma at a **National Meeting** (March 1990) attesting to their successful participation in the training sessions, the completion of an appropriate intervention project, and achievement of an employment agreement. Of the 66 trainees, 50 obtained development agent diplomas.

Certification of development agents posed a few problems for the Programme, in connection with the recognition of the development agent occupation. Although there is an increasing call for professionals with development agent skills, the occupation is not listed in the national occupation classification. As a result, the development agent profile tends to melt into pre-existing profiles within the employers' workplace.

In spite of this limitation, most of the agents trained in the JADE Programme continued their work beyond the end of the Programme, gradually consolidating the image and added value of development agents as technical mediators and enablers of the projects/initiatives of regional and local actors.

Assessment of the JADE Programme: a regulatory function

The assessment was, from the outset of the pilot programme, considered strategic a continuous regulatory instrument at the action's disposal.

Assessment was ongoing throughout the activities, but focused especially on certain key moments, rather than – as is often the case in technical cooperation projects – just the final phase of the programme, or after it has finished. The assessment-regulation was, therefore, an especially useful function for **activity management**, facilitating the identification of problems to

be resolved and the most suitable corrective solutions.

This type of assessment-regulation calls for a **participatory** approach in the running of technical cooperation projects. Intervention of the stakeholders facilitates taking negotiated decisions, which are, therefore, the most consensual possible, thus helping to rationalise and tailor the action.

The participatory methodology followed from the start of the JADE was one of the most distinguishing facets of the pilot project. Being one of the objectives and, at the same time, an action tool, the participatory dimension was at the very core of the JADE Programme, and its activities were developed from the perspective of ongoing strategic dialogue between the actors. It may be said, therefore, that the programme gave rise to genuine co-construction and co-responsibility.

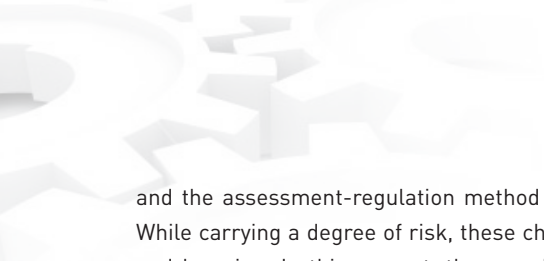
With regard to the assessment of the results of the JADE Programme, the following areas of impact were defined:

- assessment of the trainees' technical-professional skills;
- assessment of the trainees' professional behaviour when in a work situation on the ground;
- assessment of the effects of the development agents' interventions according to their impact (both short and medium-term) on the regional and/or local development dynamics;
- more generally, assessment of the Programme's ability to sustain its effects beyond the end of the activities, measured by the establishment of a development agents' network within in public and/or private institutions.

Conclusions

At the end of this brief presentation of the JADE Programme, the significance of a decentralised technical cooperation between Portugal and the ILO, markedly open to experimentation and innovation, should be emphasised.

The JADE Programme confronted its participants with challenges that were often way beyond their usual areas and practices, challenges such as: the complexity of the inter-institution and inter-region framework, which called for the design of a robust activity coordination system; the design of the courses, both in terms of them being alternance courses, and their programmatic content; achieving the aim of integrating the trainees in employment in the sphere of the Programme; the participatory methodology that was applied throughout the activities,



and the assessment-regulation method used as a structuring factor throughout the action. While carrying a degree of risk, these challenges became sources of inventiveness, creativity and learning. In this respect, the overall appraisal of the pilot **Portugal-ILO decentralised cooperation programme** is entirely positive.

It should be emphasised that the implementation of this type of programme shows to what extent Portugal-ILO technical cooperation is marked by the diversity of projects and the capacity to involve multiple institutions, at national, as well as regional and local levels. In the sphere of developing Portugal-ILO cooperation, this factor is a strong indicator of consistency and maturity.

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Part III - Labour areas and the role of the ILO

The role of the ILO in combating child labour in Portugal ¹

MARIA JOSEFINA LEITÃO ²

JOAQUINA CADETE PHILLIMORE ³

1. Introduction

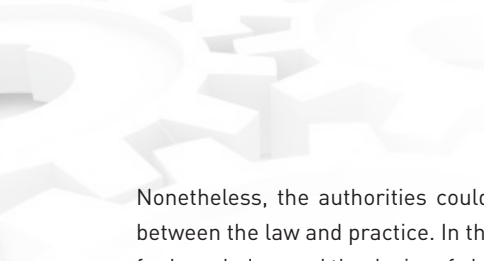
In October 1998, the International Commission of Jurists, a prominent international human rights NGO, lodged a complaint with the Council of Europe against the Portuguese State for violation of the European Social Charter's Article 7, which prohibits the employment of persons before they have reached the minimum age of admission to employment and completed compulsory education. This was widely publicised in both national and international social communications media, and portrayed our country in a very bad light.

The Portuguese authorities' first reaction was one of astonishment. The Constitution of the Republic guarantees social rights, and (since the 1977 revision) includes the prohibition of employment of school-age minors. The same prohibition is embodied in Portuguese labour legislation. Furthermore, the incidence rate of child labour (CL), determined by the Labour Inspectorate (LI), was not significant.

¹ The present text was prepared by the authors at the request of ILO-Lisbon and is a summary of their 2008 articles, published in the work "10 anos de combate à exploração do trabalho infantil em Portugal, Programa para Prevenção e Eliminação da Exploração do Trabalho Infantil (PETI), Ministério do Trabalho e da Solidariedade Social, pp 15-22; 25-41.

² Former government representative and expert to the ILO, the Council of Europe and the European Union.

³ Former Director of the Program for the Elimination of the Exploitation of Child Labour (PETI).



Nonetheless, the authorities could not deny that, as sometimes happens, there was a gap between the law and practice. In the case of CL, poverty, failure at school, lack of appreciation for knowledge, and the desire of children themselves to earn money for consumer goods, were all factors that fuelled its existence and spread. Additionally, given that CL is unlawful, it was practiced clandestinely and, more often than not, within the family context. Consequently, it was difficult for the LI to discover, using its traditional methods of detection.

The Government, not wishing to deny the phenomenon, soon saw the need to expose its existence and to take action to eradicate CL by adopting appropriate policies – a decision that earned it international respect. To achieve this purpose, the Government worked closely with the International Labour Organization (ILO), whose International Programme on the Elimination of Child Labour (IPEC), launched in 1992, soon became a its most important technical cooperation programme.

Defining effective policies to combat CL requires an understanding of its extent and characteristics, as well as of contexts in which it occurs. However, neither the Employment Survey, conducted by the Instituto Nacional de Estatística (Office for National Statistics), nor the data gathered by the LI, provided this information. For this reason, the “Survey on Social Characterisation of Portuguese Families with School-Age Children” was launched in 1998. This was followed, in 1999, by another survey conducted in schools that centred on the characterisation of children at school and the role of schools in awareness of and intervention in CL.

2. Legal regulations on employment of minors in force at the time of the 1/98 Complaint⁴

The legal framework for employment of minors in Portugal was revised with the passing of Decree Law 396/91, of 10 October, which, following the 1990 Economic and Social Agreement, changed the Legal Framework for Individual Employment Contracts provided for in Decree Law 49.408, of 24 November 1969. According to Decree Law 396/91, the minimum age for employment was set at sixteen years old, as of 1 January 1997, the date on which the first students, to whom nine years of compulsory education had applied, would finish their nine years of schooling. Before that date, the minimum age for admission to employment was fifteen years old. However, provisionally, young persons between fourteen and the minimum employment age, who had finished compulsory education, were allowed to undertake light work that was not harmful to their health or their physical and mental development, in such conditions that would be defined by ministerial order from the Ministry for Employment and

⁴ See “A regulamentação do trabalho de menores”, published in *Revista Sociedade e Trabalho*, No. 5, June 1999.

Social Security, after consultation with the National Council for Occupational Hygiene and Safety.

Decree Law 396/91 also permitted minors, who had reached the minimum employment age but had not finished compulsory education, to work, as long as three cumulative conditions were met: that they attended an educational establishment or were covered by a special modality of school education or apprenticeship or vocational training programme, which would confer them with a compulsory education level equivalent; that the working hours would not compromise their attendance at school or vocational training courses, and that they had written authorisation from their legal representatives, even though they had reached 16 years of age.

With regard to health protection, the Decree Law established that, whenever the likely duration of employment was more than three months, employers should submit minors to a medical examination, within fifteen days of commencement of employment, so as to certify their physical and psychological suitability for the activities involved. This stipulation did not comply with the provisions of ILO Conventions N.º 77 and N.º 78 on Medical Examination of Young Persons, which had been ratified by Portugal.

In the context of combating unlawful employment of children, employers were required to inform the LI about the recruitment of young persons under sixteen years of age, and schools were also obliged to alert the LI of cases in which young persons, who had not reached the minimum employment age, had dropped out of school.

Progress was also made in the Decree Law on the sanctions on employers for violations: penalties and fines were increased, and aligned with the minimum wage, so they could be regularly updated. In addition, further sanctions would be applicable, barring employers for one year from the award of contracts for supplies, public works, work contracts or provision of service by the State, Autonomous Regions, public institutions, local authorities and private social solidarity institutions co-funded by social security, as well the concession of public services and submission of applications for Community funding support. For this purpose, the LI and Directorate General for Judicial Services would be responsible for publishing the list of entities subject to the aforementioned sanctions in the *Diário da República* (Official Gazette).

In 1999, after the 1/98 Complaint, the General Framework of Labour Offences (*Regime Geral das Contraordenações Laborais*) was published. This provided for sanctions in case of breach of legal rules on the recruitment and employment of minors and criminalisation of these in certain cases.

Decree Law 396/91 was, on the whole, a significant improvement on the previous regulations. However, by remaining within the scope of application of the previous framework, it left contracts that were not covered by it without the necessary protection. Contracts not included

were in the areas of, for example, domestic service, rural work, port work, maritime work, and public shows and entertainment, to which legislation dating back to 1960 applied. Self-employed minors were also left unprotected, except in relation to general rules on occupational health and safety and the working students' category.

It was the 1997 constitutional amendment process that made the biggest impact on the regulation of employment of young persons by enshrining the prohibition of employment of school-age minors⁵. As a result of this, and also the international movement, generated in the 1990s, on the need to protect the rights of the child, both in law and in practice, and of which the 1/98 Complaint was one of its expressions, Decree Law 396/91 was revised by Law 58/99 of 30 July. This extended legal protection in employment to include self-employed or independent minors, working with special contracts. The same law regulated night work of minors, set limits on working hours flexibility, and established rules on rest breaks and daily and weekly rest periods. Nonetheless, minors' employment in shows, fashion and advertising were not covered by Law 58/99. These would only be covered later, when Law 35/2004 of 29 July was passed.

3. The Portuguese example

Combating child labour exploitation was largely based on the creation of the Plan for the Elimination of Exploitation of Child Labour (PEETI), established by Council of Ministers' Resolution N.º 78/98 of 4 June, and amended by Council of Ministers' Resolution N.º 37/2004 of 20 March.

The creation of PEETI, and especially the constitution of Multidisciplinary Mobile Teams in 2000, reflected government concerns, and enabled the development of outreach activity, both centrally and locally.

The work of these teams, which were a key resource of the PEETI/PETI with their motivated, flexible members, adaptable to the changes in the environments where they worked, showed that "variable geometry" structures were possible and necessary, and adjustable to suit a variety of situations and to change over time. The reasons behind the acceptance of the PETI are, without a doubt, to do with the teams' ability to assemble a wide range of local actors around a common struggle that sought to respond not only to all forms of CL, but also to combat social exclusion, which often starts or ends with children failing at school and dropping out.

⁵ Constitutional Law 1/97, of 20 September, Article 69, no. 3.

It was in the fight against early school leaving and social exclusion that so often lead to early entry into employment that the PETI was most exceptional, through its most emblematic instrument, the PIEF (Integrated Education and Training Programme).

Resolutions N.º 882/1999 and 948/2003 of the Council of Ministers, which created and amended the PIEF measure, were effective responses to the problem of CL in Portugal.

In terms of education, this measure gave concrete expression to an ambitious aim: to offer education to those who entered employment too early. The programme was innovative in that it comprised various strands, ranging from the interaction of educational agents to outreach and tailored support, which formed a basis suited to any educational programme, for any child.

Above all, through the PIEF it was possible to identify courses of action that were vital in successfully tackling problems facing school-age children and young persons: school drop-out, school failure, and early entry into work – a trio that needed to be dismantled through thoroughness and appropriateness of interventions, rather than through fatalistic, discouraging and conformist discourse.

The participation of children in shows, fashion and advertising, which draws vast public attention in Portugal and all over the world, is not only tolerated by society in general but even encouraged by the adults, relatives and others in the lives of children and young persons. This led the PEETI and CNCETI (National Council against Exploitation of Child Labour) in 2003 to advocate the introduction of specific legislation that would close the loopholes in the law in this activity sector. As a result, in 2004, a legal framework was approved, revised by the DGERT (Directorate-General of Employment and Labour Relations, a department of the Ministry of Labour and Social Solidarity), in collaboration with the PETI, ACT and CNPCJR (National Committee for the Protection of Children and Young Persons at Risk) and included in the revision of the Labour Code in 2008.

The fascination of these activities, not only for the children and young persons involved, but also for their parents or guardians, is understandable. However, we cannot forget that, under a sophisticated cover, lurks a modern form of child labour, with economic returns, i.e. productive activities that cannot be described as “leisure” (and, therefore, “not work”).

4. Partnership between the ILO and Portugal in the fight against child labour

The ILO played a prominent role in supporting the launch of the survey on characterisation of households with school-age children and preparing the 2001 International Conference on Policies to Fight Child Labour Exploitation in Europe, held in Lisbon. In addition to the



most important international organisations, representatives of governments, trade unions, employers and civil society organisations from 22 European countries attended the Conference.

The Portugal-ILO partnership also facilitated connections with the CPLP (Community of Portuguese-speaking Countries). Close liaison between the PETI, ILO and CPLP culminated in the 2006 conference on Combating Child Labour Exploitation in the Portuguese-speaking World. The Conference resulted in an important political declaration from the CPLP Ministers of Labour and Social Affairs, which originated a collaborative movement that produced an Action Plan uniting the eight Portuguese-speaking nations.

The influence of the ILO in our country was brought to bear mainly during the 20th Century, through its Conventions designed to protect children at work. Ratification of ILO Conventions had a direct impact on the country's legal framework for the employment of young persons, but the Organization's influence was also indirect, as it served as a source of inspiration.

In this respect, we refer to the Minimum Age (Industry) Convention, 1919 (N.º 5) and the Night Work of Young Persons (Industry) Convention, 1919 (N.º 6). Child protection would be taken up again, the following year, with the adoption of the Minimum Age (Sea) Convention, 1920 (N.º 7).

Of the above, Portugal only ratified Convention N.º 6, in 1931. Although, during the 1980s, it ratified the Medical Examination of Young Persons Convention, 1946 (N.º 77), and the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (N.º 78), it was only in 1998 that it ratified the Minimum Age Convention, 1973 (N.º 138). According to the latter Convention, which is a key instrument in child protection, the minimum age for admission to employment cannot not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years, except in certain exceptional situations. The provisions of the Convention are applicable to all activity sectors, and to both the self-employed and those in subordinated work. The delay in Portugal's ratification of this Convention is, therefore, not surprising.

The Worst Forms of Child Labour Convention, 1999 (N.º 182) had better luck and was ratified in 2000. Portugal joined the international movement behind ratification of this Convention, which, very quickly, became the most ratified of all ILO Conventions.

Among the worst forms of child labour, sexual exploitation of children continues to be a prevalent social problem worldwide. The profound social changes of recent decades combined with different forms of this phenomenon, which is particularly common in urban and suburban environments, make its real dimension unknown.

In combatting the worst forms of CL, the PETI "troubled" not only public opinion, but also technicians, politicians and researchers. This led the MTSS to designate it a focal point on the

issue at the 2002 Council of Europe⁶.

The ILO's 1998 Declaration on Fundamental Principles and Rights at Work must be mentioned here. It is a vital instrument for protecting human rights, including the rights of the child and the abolition of CL, especially in its worst forms, throughout the world and, consequently, in Portugal. The Declaration commits Member States, from the very fact of membership of the Organization, to respect the rights enshrined in its Conventions, including Convention N.º 138 and Convention N.º 182, referred to above.

5. Some reflections

In the ILO's centenary year, and 20 years since it supported our country in defining policies for the elimination of child labour, let us take a look at how effective they have been. CL, as it was described in the survey of households with school-age children, is no longer a reality in Portugal, and this is true of most industrialised countries. However, this does not mean that other forms of child exploitation, possibly more serious than previous forms, have been eliminated.

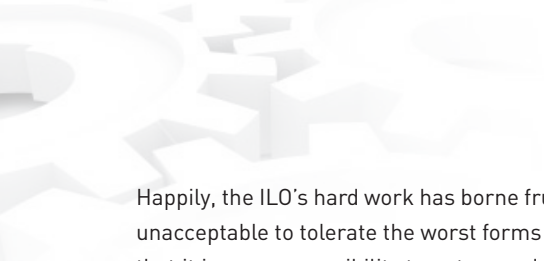
In recent years, wars and extreme climatic changes have intensified throughout the world. Floods and droughts have given rise to the displacement of peoples, refugee camps, migratory movements, and unaccompanied children. All these situations provide ideal settings for the violation of children's rights, such as forced labour, trafficking of children for sexual exploitation, etc.

The violation of human rights, especially those of society's most vulnerable, which includes children, is like a seven-headed hydra that, when one head is cut off, regrows other, even stronger, heads. For this reason, the ILO's efforts to end CL have been ceaseless, as evidenced by the various Reports from the Director General, produced in the framework of follow-up to the ILO Declaration on the Fundamental Principles and Rights at Work.

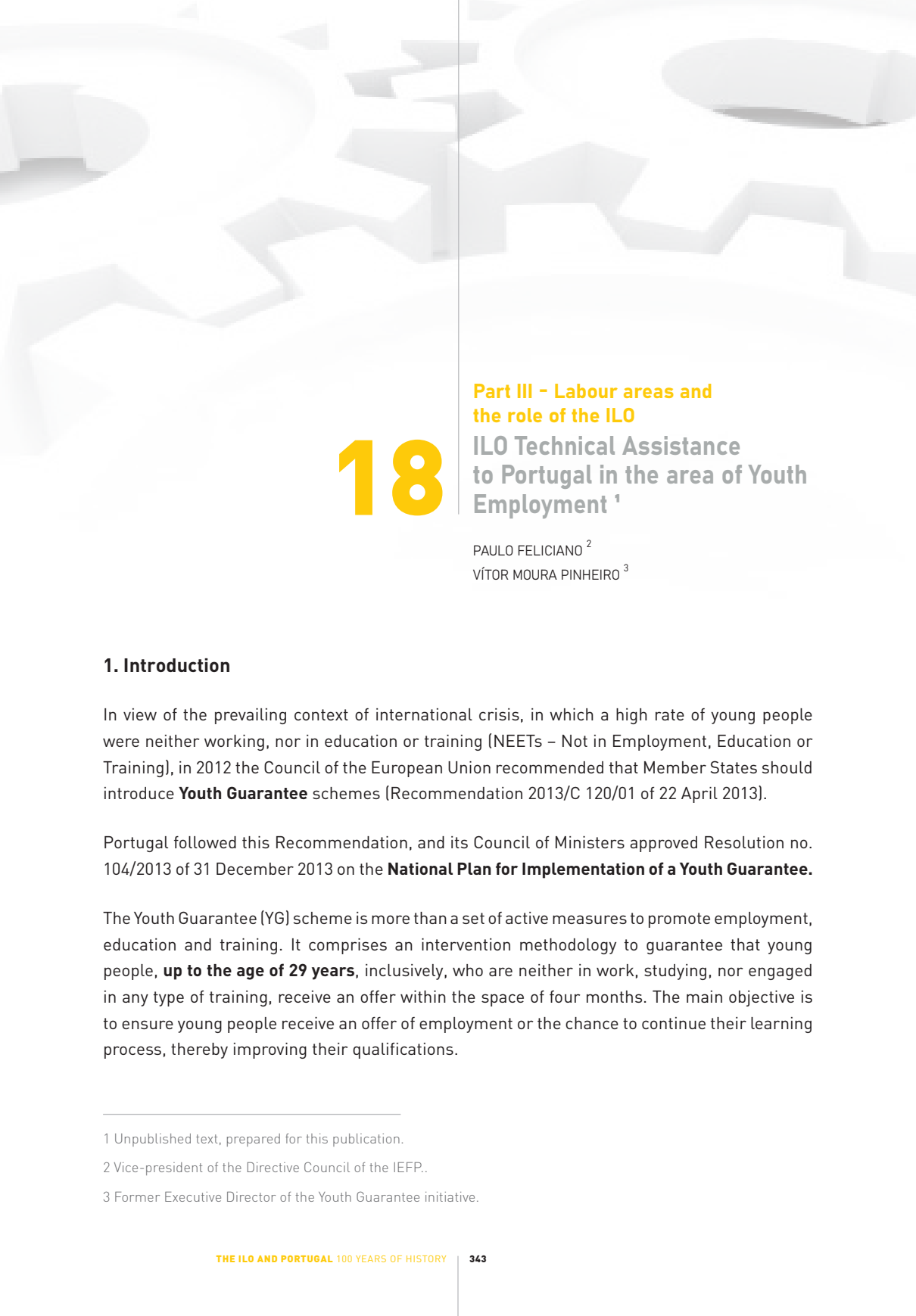
In Portugal, the challenge was not only to resolve the problem of CL, but to find the courage to start the ground work for tomorrow because, as UNICEF⁷ states: "The true measure of a nation's standing is how well it attends to its children – their health and safety, their material security, their education and socialisation, and their sense of being loved, valued, and included in the families and societies into which they are born."

⁶ 10 anos de combate à exploração do trabalho infantil em Portugal -Edição MTSS-PETI-2008.

⁷ UNICEF, An overview of Child Well-being in Rich Countries, Innocenti Report Card 7, 2007.



Happily, the ILO's hard work has borne fruit. Nowadays, there is worldwide awareness that it is unacceptable to tolerate the worst forms of child labour, as defined in Convention N.º 182, and that it is our responsibility to put an end to such violations. It is, therefore, not surprising that the United Nations' 2030 Agenda for Sustainable Development has set the goal of elimination of child labour in all its forms by 2025.



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Part III - Labour areas and the role of the ILO

ILO Technical Assistance to Portugal in the area of Youth Employment ¹

PAULO FELICIANO ²

VÍTOR MOURA PINHEIRO ³

1. Introduction

In view of the prevailing context of international crisis, in which a high rate of young people were neither working, nor in education or training (NEETs – Not in Employment, Education or Training), in 2012 the Council of the European Union recommended that Member States should introduce **Youth Guarantee** schemes [Recommendation 2013/C 120/01 of 22 April 2013].

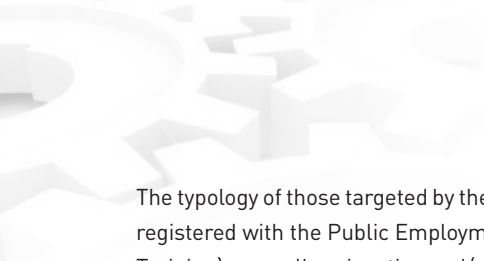
Portugal followed this Recommendation, and its Council of Ministers approved Resolution no. 104/2013 of 31 December 2013 on the **National Plan for Implementation of a Youth Guarantee**.

The Youth Guarantee (YG) scheme is more than a set of active measures to promote employment, education and training. It comprises an intervention methodology to guarantee that young people, **up to the age of 29 years**, inclusively, who are neither in work, studying, nor engaged in any type of training, receive an offer within the space of four months. The main objective is to ensure young people receive an offer of employment or the chance to continue their learning process, thereby improving their qualifications.

¹ Unpublished text, prepared for this publication.

² Vice-president of the Directive Council of the IEFP..

³ Former Executive Director of the Youth Guarantee initiative.



The typology of those targeted by the scheme consists of young unemployed people (also NEETs), registered with the Public Employment Service (IEFP – Institute for Employment and Vocational Training), as well as inactive and/or discouraged young people, who are disengaged from the “system” and often lack the initiative to register as unemployed.

With regard to the young unemployed registered with the Public Employment Service, the IEFP developed and put in place operating procedures that facilitate assessment of each individual situation, in order to achieve the objective of securing an offer in the stipulated time period. In view of the wide heterogeneity of young people (in terms of age, qualifications, their situation in relation to the education and training systems and labour market, and the likelihood their pathways have been marked by early school leaving, long-term unemployment, inactivity and social exclusion), the methodology considers both the identification of type groups of young people, and the definition of typified pathways. So, for young people registered with our services, the IEFP developed and disseminated, internally, procedures to be observed in the application of the National Plan for Implementation of a Youth Guarantee, in order to ensure that under-30s benefit from an **offer of employment, training, education or work placement** within four months.

Inactive and often **discouraged** young people tend not to actively seek work and, not uncommonly, neither do they give importance to the idea of continuing in education. Considering that the educational attainment of a large proportion of young NEETs in Portugal is equivalent to or below lower secondary education, education and vocational training measures play a vital role in enhancing their skills, especially through dual (school and vocational) pathways.

Given that, as stated above, these young people do not register with the IEFP on their own initiative, developing an action methodology that would facilitate signalling them was considered a priority.

2. ILO Technical Assistance to Portugal

Following the Oslo Declaration, adopted at the 9th ILO European Regional Meeting in April 2013, and the conclusions of the 4 November 2013 conference on “Facing the Employment Crisis in Portugal – What roads for the future?”, the Portuguese Government and social partners identified two pivotal areas in which the ILO could provide Portugal with support: Youth Employment, particularly the Youth Guarantee, and best practices in labour law.

3. Evaluation and Monitoring Implementation of the Youth Guarantee

Evaluation and monitoring of the YG was regarded to be a key vector. It was an intervention methodology applied early on, so it was important to design evaluation and monitoring mechanisms right at the start of the programme's implementation.

On 14 December 2013, the Office of the Secretary of State for Employment requested technical support in **the evaluation and monitoring of the implementation of Youth Guarantee** from the ILO.

Given that a robust monitoring and evaluation system is a vital requirement for rigorous implementation of the YG, the ILO provided support to the national team responsible for the programme's implementation, with the development of a monitoring and evaluation framework that would permit the appraisal of outcomes, and customisation of the interventions' design and application, as well as produce information and point to ways of designing and implementing future policies in this sphere.

Most of this work was done between October and December 2014. From 17 to 21 November 2014, the ILO team held a workshop in Lisbon for the representatives of the Youth Guarantee partners. The purpose of the workshop was:

- To familiarise the participants with the monitoring indicators established for the YG in Europe;
- To analyse and evaluate the performance and results indicators defined for monitoring the Portuguese YG;
- To examine the different approaches that would be used to evaluate the results achieved by the YG.

This project resulted in the ILO presenting a framework for monitoring the YG in Portugal.

Over time, the framework was adapted to better tailor it to the needs of the moment. Furthermore, technical conditions were put in place for building a database. This would be indispensable for data gathering on inflow and outflow indicators, and on the implementation of the YG response measures.

The indicators fell into the following broad groups:

- Macroeconomic Indicators: designed to measure the impact of the YG on the labour market situation, considering its ultimate goal, i.e. to reduce the rate of youth unemployment and numbers of NEETs;

- Inflow and Outflow Indicators:

Inflow refers to the entry of the young person into the YG system;

Outflow refers to the exit of the young person from the YG system:

Positive Outflow is when they receive an offer within 4 months;

Negative outflow is when they give up, refuse an offer, or return to unemployment or inactivity.

- Implementation Indicators (YG Measures):

Performance: young beneficiaries covered (by measure);

Result: their situation after taking part in the measure;

This assistance from the ILO ended in December 2014, with the production of a monitoring and evaluation framework of the YG that was tailored to suit the Portuguese reality and also in line with the criteria established by the European Commission, namely the Indicator Framework developed by the Employment Committee (EMCO).

4. Signalling of young inactive NEETs not registered with the Public Employment Service

On 4 March 2015, the Portuguese authorities responded positively to the challenge launched by the European Commission (European Commission, DG EMPLOYMENT, Unit C2 – Sectorial Employment Challenges, Youth Employment and Entrepreneurship – Invitation for expression of interest: ILO Cooperation on YG/apprenticeships) to participate in a project being coordinated by the ILO in the area of Youth Guarantee and Apprenticeship.

On 18 August 2015, the European Commission and ILO entered into an agreement to follow up this collaboration and, as a result, the European Commission financed the ILO project “Enhancing Capabilities of Practitioners to Design, Implement and Monitor Youth Employment Policies”. The 18-month long project comprised two components – Youth Guarantee and Apprenticeship – and involved three countries – Portugal, Spain and Latvia. The Portuguese authorities sent a request to the ILO asking to participate in both project components.

In this connection, two fact-finding missions were conducted. ILO specialists Gianni Rosas (mission in November 2015) and Michael Axmann (mission in December 2015) met with the

teams that, in Portugal, were responsible for the implementation of both the components – the IEFPP.

Where the YG was concerned, the aim was to continue with the work being done in order to further develop the instruments for monitoring and assessing the measure's impact, and to reinforce the national partnerships that generate employment policy measures included in the YG.

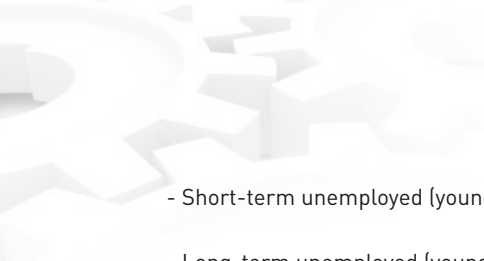
Between 24 and 26 February 2016, a "Refresher Workshop on Performance Monitoring" was held, involving the YG implementing bodies in Portugal. The aim was to consolidate understanding of the monitoring framework and to support the production of the reporting indicators. Another meeting was held with senior officials from the partnerships involved in the YG with a view to strengthening the political commitment and ensuring the working of the local partnerships' network.

During 2016, the ILO initiated its assistance with the design of the NEET profile in the country and, in November 2016, Gianni Rosas' team returned to Portugal, to help with the development of an **outreach strategy for inactive young people**.

Portugal, along with most of the countries implementing the YG, realised the complexity of signalling the young inactive people who were most disengaged from the formal education, training and employment systems, and whose numbers in the NEET universe were significant. The country benefitted from the ILO's support in profiling this group and producing an integrated strategy for signalling and supporting young NEETs who were not registered with the public employment service.

For this purpose, a working group was set up, comprising representatives of some of the core and strategic partnerships and representatives of the IEFPP. With technical guidance from the ILO, the group discussed and analysed the situation during several working sessions. Members of the group included: the IEFPP – national coordinator of YG; the National Agency for Qualification and Vocational Education (ANQEP); the Agency for Investment and Foreign Trade (AICEP Portugal Global); the António Sérgio Cooperative for Social Economy (CASES); the Directorate-General for Local Authorities (DGAL); the Directorate-General for Education and Science Statistics (DGEEC); the Directorate-General for Higher Education (DGES); the Directorate-General for the Qualification of Public Administration Employees (INA); the Portuguese Institute for Sport and Youth (IPDJ); the Institute for Social Security (ISS), and the Ministry for Foreign Affairs.

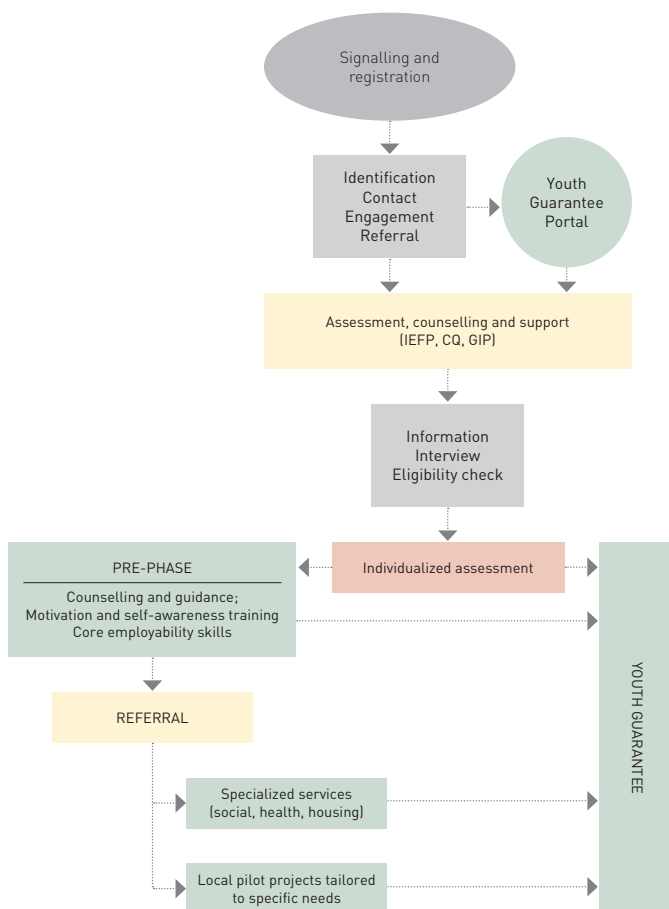
Access to the EU-SILC – Survey on Income and Living Conditions – facilitated better understanding of the scale of the problem, enabled detailed characterisation of the universe in question, and the identification of typologies within the heterogeneous NEET group:

- 
- Short-term unemployed (young people in search of work for up to one year);
 - Long-term unemployed (young people in search of work for more than one year);
 - Re-entrants to NEET (young people hoping to return to employment, education or training);
 - Inactive for reasons of health or disability;
 - Inactive for family responsibility reasons (e.g., carers of elderly or sick relatives, young mothers)
 - Discouraged workers (young people who have given up looking for employment because they believe that there are no jobs available, or that they do not have the right skills, as well as those who simply do not know how to seek employment);
 - Other inactive young people.

This work highlighted the importance of networking, and the value of partnership working at local level.

Another ILO proposal was based on the development of pilot projects tailored to the specific needs of each of the typologies identified, which, depending on the follow-through and respective results, could eventually be escalated throughout the country.

The following diagram shows the model for individualised support, customised to each young person's specific needs at each moment of the process, in the sphere of the YG services:



From 2017, therefore, the actions set out in the **National Outreach Strategy for non-registered unemployed and inactive young people**, a document compiled together with the ILO, were put into operation.

Two aspects of this document deserve special attention. It presents a detailed analysis of the problem and, therefore, of the groups considered to be most vulnerable (such as, for example, young people with disabilities), and the design of a basic action strategy, based on the analysis and characterisation of the target group, applicable throughout the country. The strategy proposed was devised to be implemented in two phases:

First phase: 2017-2018: consolidation of the services provided to the young people, and

strengthening the structure of the respective partnerships required. In this area, strategies and pilot projects that could be replicated on a wider scale would be evaluated.

Furthermore, the need to continue follow-up of the monitoring of the Local Network of Partners was identified, as well as the need to:

- ensure the network was geographically balanced, and assess regions where new partnerships could be required, so that no region would be left without cover;
- continue to improve the YG's IT platform.

Second phase: 2019-2020: promotion of actions and projects that, according to the evaluation carried out in the first phase, could lead to the results being spread wider. Some performance methodologies could be fine-tuned, and any existing gaps in support for the NEETs could be dealt with.

It was also considered crucial to continue information and awareness-raising initiatives among institutions, partners and civil society, on the importance of finding solutions for inactive and/or discouraged NEETs, and the priority of outreach and identification of these young people.

In this respect, dissemination of the actions, using innovative methodologies, and adapting language and communication channels, is essential. As already said, these young people tend not to seek help, especially from public services, either because they are unaware of that possibility or because they are inclined to distrust them. Raising society's awareness of this issue is, therefore, decisive, particularly awareness among social intervention networks and those responsible for young people's education.

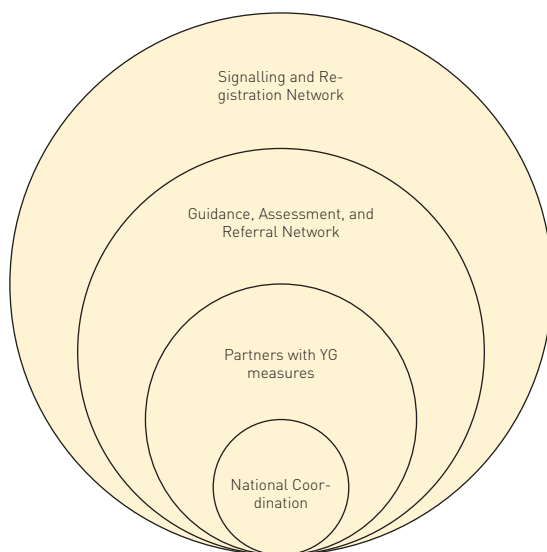
Another aspect referred to is that of **updating the YG online portal**, to modernise it and introduce new functions. Also, the **creation of a YG app for smartphones and tablets** is in the pipeline. It will have basically the same informational and registration functions as the portal. These two aspects are currently being dealt with.

The National Outreach Strategy for Young people not actively engaged in the workforce, education or training was publicly presented in 2017. The Secretary of State for Employment, the Secretary of State for Youth and Sport, the IEFPP Governing Board, local, core and strategic partners of the YG, as well as other stakeholders were all at the public presentation of the strategy on 27 June 2017.

The document constitutes a guiding reference for the action to be taken to better support young people who are disengaged from the education and training systems, and outside the labour market.

With regard to the Action Plan, the implementation of this strategy relies on a fundamental instrument, which was fine-tuned by the YG coordination team: **the local partners' network**. In our view, the proximity of these outreach partners (associations, NGOs, youth associations, municipalities, etc.) to the young people concerned is a fundamental factor in their regaining confidence and embarking on a process leading to participation in a YG measure.

The following is a simplified diagram showing the organisation of the local partners' network:

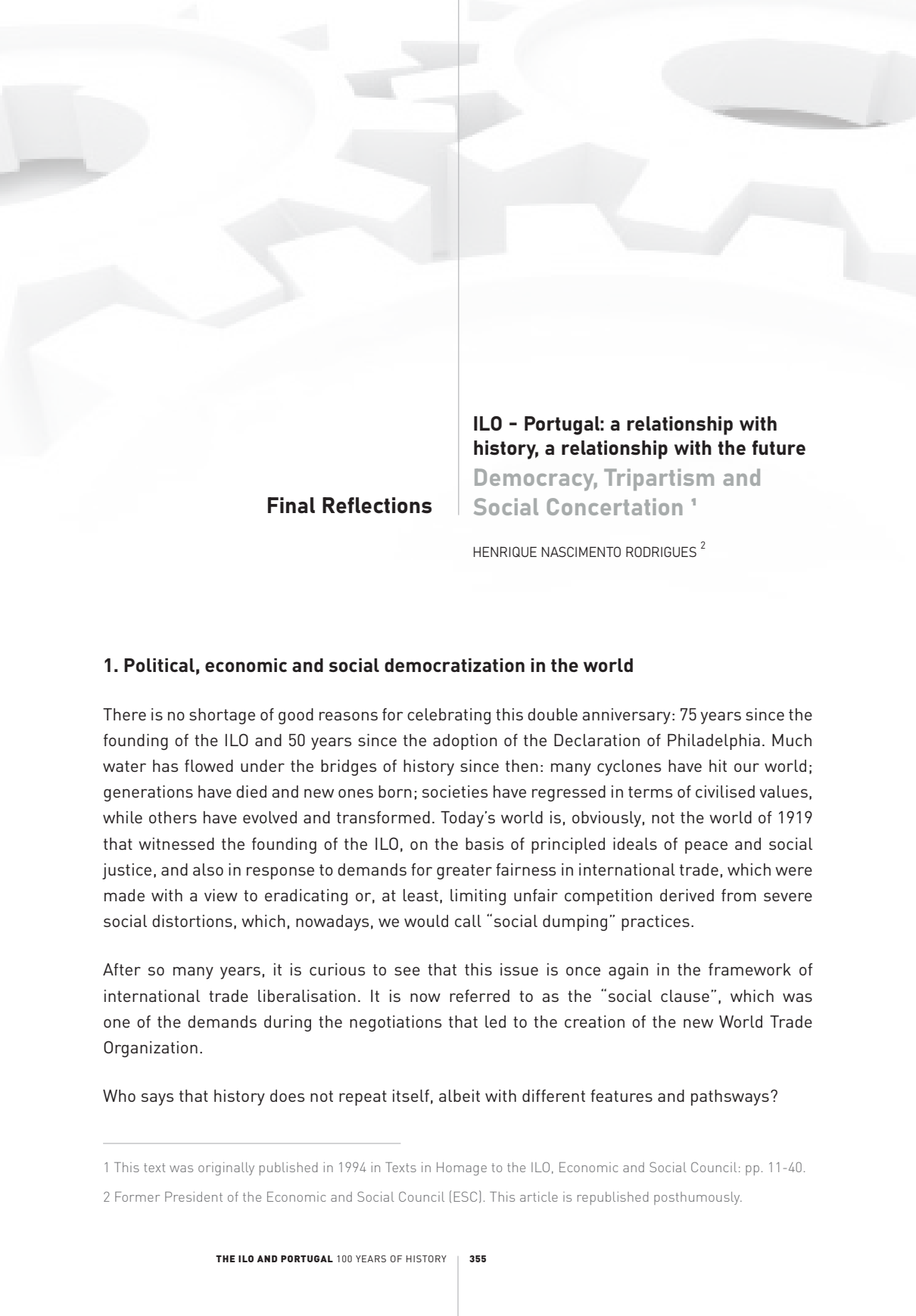


The design and introduction of the **YG Pre-phase** was another significant step, and was accompanied by alterations to the online platform. It enables cases of young people who, for different reasons, are not yet ready to receive a YG referral, to be further evaluated. In these cases, the countdown for the 4-month period for receiving an offer only starts once the YG pre-phase has been completed.

The document is, therefore, intended to assist national authorities with implementation of the National Strategy to support young, inactive NEETs who are not registered with the IEFP. The support received from the ILO was led by Gianni Rosas and Valli Corbanese (ILO Youth Employment Specialists) and, in Portugal, steered by the team from the IEFP, as the coordinating body of the YG, on the basis of the contributions from the inter-institutional working group that was tasked with identifying the main strategic focus areas.

The technical assistance provided by the ILO during the process of developing the strategy received financial support from the **EU Programme for Employment and Social Innovation – EASI 2014-2020**.





Final Reflections

ILO - Portugal: a relationship with history, a relationship with the future **Democracy, Tripartism and Social Concertation**¹

HENRIQUE NASCIMENTO RODRIGUES²

1. Political, economic and social democratization in the world

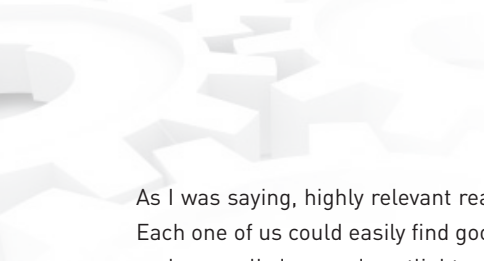
There is no shortage of good reasons for celebrating this double anniversary: 75 years since the founding of the ILO and 50 years since the adoption of the Declaration of Philadelphia. Much water has flowed under the bridges of history since then: many cyclones have hit our world; generations have died and new ones born; societies have regressed in terms of civilised values, while others have evolved and transformed. Today's world is, obviously, not the world of 1919 that witnessed the founding of the ILO, on the basis of principled ideals of peace and social justice, and also in response to demands for greater fairness in international trade, which were made with a view to eradicating or, at least, limiting unfair competition derived from severe social distortions, which, nowadays, we would call "social dumping" practices.

After so many years, it is curious to see that this issue is once again in the framework of international trade liberalisation. It is now referred to as the "social clause", which was one of the demands during the negotiations that led to the creation of the new World Trade Organization.

Who says that history does not repeat itself, albeit with different features and pathways?

¹ This text was originally published in 1994 in *Texts in Homage to the ILO*, Economic and Social Council: pp. 11-40.

² Former President of the Economic and Social Council (ESC). This article is republished posthumously.



As I was saying, highly relevant reasons abound for commemorating this double anniversary. Each one of us could easily find good motives for placing the ILO's work over the past 75 years under a well-deserved spotlight, especially its role in combating poverty and unemployment, setting up an unprecedented international labour code, its support for programmes on vocational training, workers' education, creation of cooperatives, etc.

All this could be spoken about, and rightly and deservedly so.

However, the troubling international context in which we are entangled, and which is ultimately contradictory to the idyllic visions put forward by many in the wake of the implosion of communism in Eastern Europe, is justification for the emphasis of tributes to the ILO to be, above all, on the rekindling and reassessment of the overarching values and principles that presided over its founding and which have been embedded in its ongoing work. I am referring to the values and principles inherent to **fundamental human rights** and those that entail the demand for **social justice**.

Democratic societies are characterised by their recognition of fundamental human rights, and are guided by the effective guarantee of observance of those rights. This means they adhere to the principles of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

Notwithstanding other highly important international conventions, of universal and regional scope, the foundations of the modern rule of law are basically immersed in the trilogy comprising the Universal Declaration and the two Covenants referred to above.

Now, it is indisputable that without political and civil rights – i.e., in the absence of pluralistic democracy – there are no fundamental freedoms. **And without these, there can be no fundamental rights in the world of work.**

It is unsurprising, therefore, that the ILO has always prioritised the defence and promotion of fundamental human rights.

The inseparable link between fundamental human rights and the improvement of working people's material well-being forms the backbone of the ILO constitutional basis and the specific international labour conventions on those rights.

Political and civil rights are the essential foundation for respect of the human being. It is on this principle that the Law itself is based, and Democracy – because it cannot be interpreted as merely a synonym for the absence of dictatorship – is established on the premise that all legitimate power is rooted in the Law and must be exercised according to it.

*"The supremacy of the law is a dynamic concept invoked not only to safeguard the individual's civil and political rights in a free society, but also to create the social and economic environment in which the individual's aspirations can be fulfilled", wrote Michel Hansenne in his report to the 1992 ILC, aptly entitled "Democratisation and the ILO"*³.

He added: *"Political freedom is the guarantee of the citizen's autonomy. Historically, it was preceded by a long struggle for emancipation, culminating in recognition of the human being's innate freedom. The industrial revolution showed that, though liberty might be a universal right, it was not given to all to enjoy it. This explains why there was a move to introduce the notion of equality of opportunities in the exercise of liberty, coupled with the concept of justice, in order that liberty should not be the privilege of a few. The idea of democracy, subsequently broadened to include economic and social relations, demands that everyone should share in political power and in economic responsibilities"*⁴.

I would be unable to find more meaningful words than these to explain why I am raising the following issue: **the challenges facing Democracy in the context of the major changes occurring in our days.**

The premise is simple: Democracy cannot only be political; it also has to be economic, social and cultural. The underlying idea is that it would be hard for a political democracy to last if it does not generate sound economic growth and establish conditions of social justice. In other words, economic and social democracy are two, inseparable sides of the same mirror. But that mirror has another dimension: **the political and cultural dimension of peoples.** And this is decisive.

This idea encompasses, on one hand, recognition of the intimate connection between Human Rights and Democracy and, on the other hand, involves the conviction of a link (although not always easily demonstrable) between **Democracy and Development**, the latter conceived as the vast array of conditions favourable to complete fulfillment of a human being's material and immaterial aspirations, and promoter of sound, cohesive societies, internally, as well as peaceable in their international relations.

This being said, it is comforting, therefore, to realise that the world has witnessed notable progress in terms of democratisation, even though, for the sake of caution and realism, we have to take that statement as merely tendential.

In Central and Eastern Europe, in Africa, Asia and Latin America, just as previously in Mediterranean Europe (remember the fall of the dictatorships in Greece, Spain and Portugal) democratic regimes gained ground, sometimes consolidating, and sometimes faltering –

³ "Democratização e a OIT", Presidência de Portugal à Conferência Internacional do Trabalho. CES, Lisboa, 1992, pág. 79.

⁴ Ob. cit. pág. 77.

especially where there was no collective memory or tradition of democratic practices. I am not just referring to countries that were formerly part of the communist bloc, such as Hungary, Poland, and Czech Republic, but also to others where transition to a democratic system was predictably an extremely delicate process, as was the case of the Republic of South Africa.

Political democratisation was often accompanied by transition to a market economy. This became the “*the universally accepted standard*”⁵. Again, quoting from Michel Hansenne’s report to the 81st Session of the International Labour Conference: “*The adoption of a market economy enjoyed widespread public support because it inspired hope for a better future, and because it did not require the intervention of a discredited state apparatus. [...] Everywhere, or nearly so, the commitment to private enterprise is being reaffirmed. Heads of enterprises vie with politicians, athletes and entertainers in attracting the attention of the media. The State is withdrawing from the economic sector, and privatization is taking place around the globe. At the same time, the State has begun to lose its grip on the market, in response to pressures for deregulation*”⁶.

On the whole, it is fair to say, therefore, that fundamental human rights and political democracy were gaining ground. This is a progress on a global scale, the likes of which has possibly never been seen before. At the same time, free initiative and the market won back supporters.

In fact, with regards economic democracy, it has to be said that positive outcomes were also achieved, as a result of more open trade and the substitution of centralised planning systems by economies clearly inspired by free enterprise, or even in transition to market economies. The formation of large regional spaces of integrated economies also opened the doors to undeniable economic developments, leading to the breakdown of protectionist barriers, boosting free movement of capital, goods and services, favouring the creation of a vast network of small and medium-sized enterprises, and, thereby, generating employment and facilitating consumer access to different products and goods that, in turn, were becoming increasingly cheaper.

And what about the unprecedented progress in science and technologies? For those who, like myself, watched, open-mouthed, the launch into space of astronaut Gagarine and, later, the landing of the first humans on the moon, new advances in technical innovation, medical sciences, biology, telecommunications, for example, are always spectacular, but no longer inconceivable. And, is it not true that, without prejudice to the dangers it poses when used without ethical values or effective controls, this progress has no parallel in the history of humanity and could be the source of unprecedented socio-economic development?

5 “Des valeurs à défendre, des changements à entreprendre” – report of ILO Director-General to the 81st Session of the International Labour Conference, page 11.

6 Ob. cit. pages 10-11.

In the social sphere, on the other hand, particularly in the world of work, the patrimony of ILO international instruments – 174 Conventions, 181 Recommendations, and in the region of 6,000 registered ratifications⁷ – is, unquestionably, a sign of just how much progress has been achieved on the basis of the international standards approved in the early days of the Organization.

The overall balance of the democratisation process on political, economic and social levels worldwide does reveal, therefore, positive aspects and auspicious tendencies. Obviously, this evaluation does not apply universally and, unfortunately there are many significant provisos. Furthermore, it would be wise to recognise that today's world is a kaleidoscope, in which the "great" sometimes become engulfed by Somali sands.

From what I have said, would it be reasonable to conclude that what we have before us is an international framework of factors and conditions that demonstrates an unequivocal line of democratic, peaceful, socially just, developmental evolution?

Not at all! On the contrary, it is very clear that situations are unfolding and shock waves accumulating, which make the end of the century and millennium a worrying but, at the same time, promising turning point.

I do not think it too outrageous to predict that the risks of major, painful setbacks along the democratisation and development road embarked upon by many countries in recent years, are high.

Nevertheless, the risks could potentially be overcome, especially if the values of political participative democracy and ideals of justice and solidarity take root in practice.

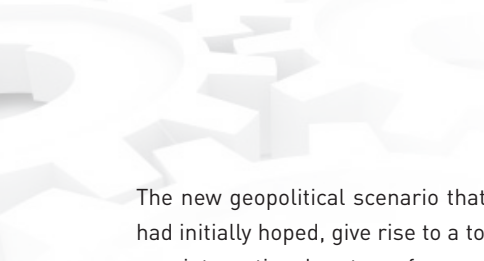
Let us take a brief look at the main obstacles in the way of democratisation and assess their consequences, particularly for the world of work.

2. Democracy, global changes and social consequences

Analysts seem to agree that an early major consequence of the fall of the Berlin wall and the end of the East-West conflict was at geostrategic level: the change from a bipolar to a multipolar world.

Some believed that it would mean the end of ideologies, conflicts and the parade of human misery. But these heralds of happiness no longer have a following, because they were mightily mistaken.

⁷ Cf. OIT, "Note d'information", December 1993.



The new geopolitical scenario that emerged out of the end of the cold war did not, as many had initially hoped, give rise to a torrent of vigorous democracies and the establishment of a new international system of cooperation and fair commercial exchanges, in spite of the hopes deposited in the work of the World Trade Organization.

Whilst it is true that some former Eastern communist bloc countries are reassuring evidence that with the apparent total exhaustion of communism, and the switch from a planned economy to a free market economy, they are able to flourish into democratisation with relative success, these examples also have to be seen in the light of their democratic political past and the economic and industrial model that existed in them before Soviet occupation. There are also cases, in the same area, where the opposite is true.

In many of the territories that made up the former Soviet Union, and the former Yugoslavia in particular, what is happening is beyond words. It is not just the horrors of bloody war, as if that were not enough, but also the re-emergence from the ashes of old ethnic and religious conflicts in regions of Eastern Europe and other parts, and the subsequent spread of racist and xenophobic phenomena, which, unfortunately, are also making an appearance in Western European countries, hitherto paradigms of civility, tolerance and openness towards other peoples. Examples of this are the recent incidences of violent racist intolerance in Germany, Austria, France and Italy. Portuguese workers in Germany have also been victims of violent attacks by skin heads.

Political democracy and peace have not, therefore, been established yet in vast areas of our old Continent or in others. By saying this, I do not wish to create scenarios of violent confrontation, which until now has been localised in some territories, spreading to other areas of Europe. I just want to highlight the social and employment consequences of this panorama of instability.

What consequences?

Firstly, there is the consequence of immense fragility of the process of democratic structuring in Eastern European countries, with inherent difficulties in building a system of trade union freedom and professional relationships that promotes an environment of social and economic stability. As a result, collective labour relations flounder, because setting up a network of trade union and employers' organisations cannot be achieved, and also because Labour Administrations have not managed to be drivers of social dialogue, mediators in industrial disputes, or active agents in employment and vocational training. However, the slowness of the structuring of new systems of professional relationships needs to be understood, because the latter always reflect the civic and cultural traditions of their respective societies and they are extremely sensitive to political, economic and social fluctuations.

Secondly, there are the economic and social consequences, which the news never tires of highlighting: sudden galloping inflation and unemployment, falling production and drastically

high poverty rates, even in countries where transition to the democratic model and to a market economy system seem to have been achieved, albeit at painfully high cost.

Thirdly, the irresistible migratory movements from European areas where there is conflict or large-scale instability, combined with identical waves of emigration from the Mediterranean Basin and African, Asian and Latin American countries situated on the lower levels of underdevelopment. The consequences of this, in terms of difficulty in achieving full socio-economic integration, are known, since most sought after destination countries are also now faced with economic recession and unemployment rates unseen since the Second World War.

Fourthly, the consequences that the new situation has for technical cooperation and public development aid to the most disadvantaged countries.

It would be hypocritical to pretend to ignore the fact that one of the main motivations behind the former communist and Western bloc countries' support for less developed countries was rooted in ideological considerations, geostrategic motives, and reasons of mere prestige and influence.

With the conflict between the two blocs over, cooperation and development aid to several of the traditional destination countries has now diminished. Of course, aid was frequently diverted from its intended purposes and often served, not to feed the hungry or impoverished, but rather syphoned off to keep the local cliques in power, or to be a source of benefit for the donors themselves, through undertakings that in no way helped the so-called beneficiaries. In this respect, the fact that public development aid programmes can now be re-focused to enable transparent and effective application, is a positive outcome. The downside, however, is that the necessary resources have been heavily cut back. The result will be a world with increasingly sharp developmental disparities, and I predict that this will be counter-productive for everyone. One only has to look at the floods of refugees and almost uncontrollable flow of illegal immigration.

A second major aspect of international change that is also having a profound effect on the social sphere, particularly on labour, are the transformations connected with what has been called the "worldization of the economy".

I believe that not only the economic and financial changes, but also technological innovations and transformations in organisational and enterprise management should also be included in this vast set of mutations. They are, after all, interlinked.

Clear evidence of internationalisation of the economies are: more extensive and faster development of trade exchanges, greater fluidity of financial markets and their increasing interconnection, the penetration and sometimes intense control of multinationals, the



intensification of foreign investment in areas of strategic interest for capital, the opening up of national markets and their integration in regional free trade zones or more advanced institutional integration (e.g. the EMU, EEE and MERCOSUL).

Meanwhile, the profound changes that new technologies have been causing for the traditional structure and weight of productive sectors are sufficiently well known. The so-called “tertiarisation of the economy” is, in this respect, a school motto.

The combination of these factors, together with demographic alterations and changes in generational values and behaviours, determined new organisational models and labour relations practices. The main and most visible impact of this multiple change process goes deep into the very heart of the organisation and provision of labour itself.

Some of the more well-known implications are: the emergence of new, so-called atypical forms of employment; sector or enterprise restructuring leading to the loss of thousands of jobs, the reconversion of many others, and the appearance of new ones; devaluation of professional qualifications inherited from the pre-industrialisation model and the subsequent demand for different skills for new vocational profiles; changes to pay structures, due to the alterations in occupational structures and reorganisation of employment; flexibilisation of working time and the systems for suspension and termination of employment contracts.

The repercussions for collective labour relations (e.g. collective bargaining), and for the actual structures and activities of trade unions (e.g. the fall in membership and changes in the areas where they traditionally had most representation), should also be remembered.

It would be pointless to outline here the wide range of factors that have intertwined in this complex process of worldization of the economy.

I will, therefore, just briefly summarise a few of the consequences: high unemployment levels, deepening inequalities within many countries, and between the countries and regions of the continents, the spread of new forms of poverty in areas where hitherto there was none, and worsening poverty in areas where poverty already existed.

At the same time, for reasons already known, cracks are appearing in the social protection systems of countries that had set up the welfare state as a model of advanced democracy and social justice.

Meanwhile, in many societies where a basic network of social protection would, in time, be an achievable objective, the period of time required is becoming increasingly long.

I say again, this panorama is a very global vision, in which it is possible, and even necessary, to make considerable distinctions. **While poverty is still poverty, there are varying degrees**

and non-coincidental causes of it. If employment for some is precarious, for others there is no prospect of employment at all, and while social injustice is always painful, there are situations in which the pain is followed by mortal agony.

Have I just painted a negative, pessimistic, horizonless picture of the social and labour situation in our world?

I do not think so, for the following three important reasons.

Firstly, because, countering the worsening situation in terms of social and labour rights, there are real signs that the opposite is happening. The movement involving relocation of investment and enterprises to areas or countries with increasingly competitive conditions is a clear signal that there are new, strong hubs of development throughout the world. This is no secret.

Whilst the level of social well-being in some of those new centres today is comparable to European social levels, as they generate, through their growth synergies, advances in social domains, in other centres, some social progress can always be found, precisely because they started off from, or are still at a stage, of very low levels of development.

This is where the issue of unfair competition and the need for social clauses in trade agreements come in. The question is relevant, insofar as the observance of human rights and fundamental labour rights (e.g. freedom of association and right to collective bargaining, prohibition of child labour and forced labour) is required of everyone. But it does not seem fair if it is only invoked as a pretext for protectionist retaliation, whose effects would, in the end, be counterproductive for the countries that adopted them. The latter would, eventually, end up dealing with markets with no purchasing and consumption capacity for exportable products and services, and would therefore, in time, encounter worsening trade balance deficits and levels of job creation which would have been possible due to the growth of their exports and improvement of their trade ratios.

The second reason is this: the increased commitment to human resources development and to research and development in new products in developed and developing countries must, in time, bear fruit. For this reason, I believe that balances lost in terms of comparative advantages, will eventually be restored.

Thirdly (**and above all**), because history tells us that democracy is, after all, the only way to organise societies, and liable to generate and manage the regulation of disputes in a rational, lasting way, and able to bring together people and organisations representing their respective interests, around a common interest that they freely adopt as a compass for their collective future.

In saying this, I am clearly referring to participative democracy, which leads me to the question of tripartism and social concertation.

3. Democracy, tripartism and social concertation

The word “tripartism” refers to the ILO’s type of structure and decision-making process. As we know, the Organization was founded on the basis of a tripartite composition, made up of governmental, workers’ and employers’ representatives.

That composition originated from the idea, which turned out to be a wise one, of the Organization’s founding fathers, according to which the promotion of social justice as the basis of world peace would never be viable without the participation of the social agents themselves, i.e. the representative organisations of employers and workers.

Their participation would, in turn, presuppose the method of dialogue, negotiation and consensus, as the never-ending tension between the stakeholders’s interests could only be surmounted that way, and never through permanent confrontation.

The founding fathers’ idea has proved not only to have been wise, but truly original in the international sphere.

In fact, as far as is known, the ILO is still the only international organisation in which the social partners join governmental representatives in decision-making within their mandate. The spirit and practice of tripartism has, however, been infiltrating into other supranational bodies, namely the EU (e.g. in the European Foundation for the Improvement of Living and Working Conditions).

I shall start by quoting from a BIT paper presented at the 1992 Tripartite Symposium on New Perspectives for Tripartism in Europe⁸, which reads:

“The term tripartism is taken in a broad sense and signifies the whole system of professional relations in which the State, employers and workers constitute distinct parts, that is, independent from each other and each exercising specific functions. Used in this sense, the term covers all the matters that, in the professional relations system, relating to the structure, functioning and attributes of the parties, the peaceful relations between them [collective bipartite negotiation, tripartite consultation and negotiation, i.e. between the Government, employers and workers, worker participation in the enterprise], as well as labour disputes and their regulation”.

The areas involved in this broad concept of tripartism are vast and complex, and any attempt to address them all would clearly go beyond the aim of this short article.

⁸ “Problèmes et enjeux du tripartisme en Europe”, BIT, Genève. 1992.

I shall limit myself, therefore, to the restricted, but nonetheless appealing, domain of social concertation.

I should first point out that the notion of social concertation I use here is in a narrower sense than that referred to in Article 95 of our Constitution, which states that the *Conselho Económico e Social* (CES) is “*the body for consultation and concertation in the sphere of economic and social policy, ...*”.

To illustrate this restricted understanding of social concertation, nothing better than to recall Professor Mário Pinto’s brilliant statement, issued precisely at the time of, and addressing the question raised by, the creation of the CES and the possible extinction of the *Conselho Permanente da Concertação Social* (CPCS), in which he identified the two functions of social concertation:

“There are two very distinct functions: that of social concertation in the restricted sense, involving the celebration of social pacts or collective conventions [or at least the possibility of undertaking commitments that the parties later fulfil, each in their own area of competence], and social concertation in the broader sense, addressing more general issues, beyond those that are the object of collective conventions, and which may refer to practically all economic and social matters, that is to say, to all economic and social policy measures [even to the extent of understanding “social” in a broad sense, so as to include aspects of cultural, family, environmental and consumption policies]”.

This excerpt is very informative, and from it I would underline two assumptions that, in my view, are inseparable:

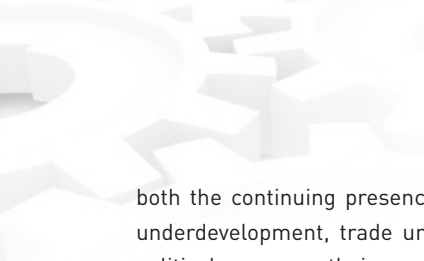
1. without a democratic regime, there can be no tripartism or social concertation;
2. tripartism and social concertation are expressions of democracy itself, developing and enriching it through their participative component. As the ILO Director-General said two years ago, tripartism and concertation are nothing other than the transfer to social relations, of the principles of **freedom, pluralism** and **participation** that underlie any political democracy.

In order for there to be a system of social concertation, albeit with sometimes very different national models, it is essential that freedom of association is recognised as a fundamental human right and is guaranteed in practice. By freedom of association I mean the freedom to set up, organise, join and participate in trade unions and employers’ associations.

It is fundamental, therefore, that these organisations exist and function with **freedom, independence** and **representativity**.

In this respect, globally, the scenario is not encouraging.

Summarising, I would say that in many zones of Latin America, Africa and Asia, because of



both the continuing presence of dictatorial or authoritarian political regimes, and endemic underdevelopment, trade unions and employers' organisations are either straitjacketed by political power, or their specific autonomous intervention capacity is very weak. As a result, there is no minimally structured professional relations system, so collective relations, never mind tripartite social concertation, are out of the question.

If we look at the Eastern European zone, we find that trade unions and employers' organisations are either nonexistent, especially in countries where there is open violent conflict and those that are politically unstable, or are in situations where they are up against understandable difficulties.

There are, from the outset, institutional approach problems, due to the fact that many union and employers' leaders belonged to the old communist trade union apparatus (which were merely an extension of the Party and State), or to the state enterprises and economic ministerial departments. This often causes much confusion in institutional approaches to principles and practices, and lack of clarity on roles that the State, employers and trade unions should play. So, what could be called the vital "separation of the waters" is missing.

Difficulties may also be caused by plummeting living standards. This is detrimental to both trade union activity and the climate for collective bargaining, and creates an unsound basis for attempts at tripartite concertation. In spite of this, in some of those countries such attempts are being made, with support from the ILO itself.

With regards Western Europe, the technological, economic, social and cultural transformations that are changing the face of our societies, are also shaking up professional relations systems, particularly in terms of the structure, action and type of relationship between trade unions, employers' organisations and governments.

It is a well-known subject, which many have spoken and written about, calling it the "crisis in trade unionism", and sometimes predicting that, in time, trade unionism will run out of steam. Others, in the same line of analysis, have proclaimed the death of tripartite social concertation or, in a more benign vision, its transmutation into "meso" and "micro" level social concertation.

I never identified with this type of vision, but recognise that things are changing and will continue to change, at a relentless pace.

I am not saying that I fear for the legal guarantees of trade union freedom, because, after all, that would mean believing in the disappearance of European democracies. There may be (as there always have been and, possibly, always will be) one-off incidents, here and there, involving attacks on trade union rights. While they would be highly reprehensible, I do not believe that, now or in future, they would represent a pivotal axis of high risk potential.

My concerns with regard to the pluralist societies of Western Europe, fall mainly into three domains: the **independence, representativity, and concrete and effective capacity for organisational adjustment and response** to the problems connected with the collective autonomy of trade unions and employers' organisations.

I also see that the appearance and growing representative strength of new social actors (consumer associations, environmental groups, parents associations, family organisations, and others in the so-called social economy) are, in the future, going to create the need for **broadier social concertation**, because the interdependence of economic and social policies, and the demand for their consensualised merging will call for the transformation of tripartism into "multipartism" – without prejudice to the specific survival of tripartism in the respective decision-making areas.

I will not focus on this topic now, or on the issues referred to above, as that would be going too involved.

However, I do wish to refer to the issue of trade union independence, but just insofar as the relationship between trade unions and political parties is concerned.

No ILO Convention or Recommendation addresses this specific question, possibly because of the complexity it entails.

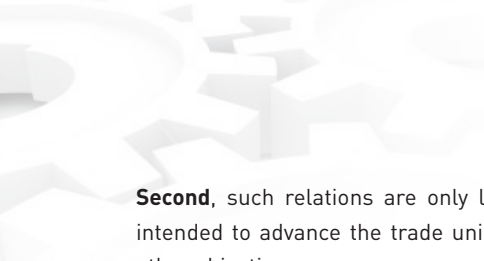
Nonetheless, there is one Resolution that does broach the matter. It was adopted in 1952 by the International Labour Conference, and drafted by a group of **workers' delegates** from different countries, which is highly significant⁹.

The Preamble to the Resolution states that "*the relations between the trade union movement and political parties will inevitably vary for each country*", and that "*political affiliation or political action by the trade unions depends on national conditions in each country.*" It goes on to state that certain principles should be laid down which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of workers.

The principles adopted are very clear and of immense practical application. I would like to outline just three aspects of them.

First, the question of relations between trade unions and political parties is dependent upon the specific circumstances in each country;

⁹ France, Cuba, India, United States, Switzerland, Austria, Italy, Canada and United Kingdom. The Resolution was adopted by 112 votes in favour, with 37 absentions.



Second, such relations are only legitimate when they, or trade union political action, are intended to advance the trade union movement's objectives and, therefore (I would add) no other objectives;

Third, even when such political relations or actions have been established or undertaken, they should not compromise the continuance of the trade union movement or the pursuance of its objectives, irrespective of political changes in the country. Now, this means that if the trade union movement is to be free and independent, it should never be at the service of a political party's strategy, even when that party's political principles and aims are the same or similar to those advocated by the trade union or that political-trade union position.

As we know, it is not just in Portugal that the leading trade union confederations are regarded by public opinion, particularly workers, as being closely aligned with political parties. This is obvious. In many countries, the history of the trade union movement refers to existence of ideological and political (and sometimes organic) ties between trade unions and political parties. The greater or lesser acceptance of that relationship depends on the "culture" of each society. There is nothing illegitimate about the relationship in itself when, **in practice**, it is one of mutual respect for the respective spheres of trade union and party political activity.

The degree of civic and democratic maturity of some countries gives rise to situations in which, once relations between the trade unions and political parties have stabilised, unacceptable interferences between them do not occur. The more the different political trade union currents, existing within the sphere of a central trade union organisation's representativity, manage to converge, the more this is achievable, because it is then less likely that one of them hegemonizes the others and ends up becoming dependent on the respective political party.

From the point of view of governance alternatives – a principle underlying any democratic matrix – I would say that, in our country, more effort should go into ensuring that trade union confederations (and, for the same reason, employers' confederations) are able to be guided by independent objectives and strategies, without being chained to political forces that are vying for power.

I understand that governments would be mistaken if they presumed that negotiating with trade union and employers' organisations of the same political colour would be easier. It might be easier, but even if this were true (and some situations abroad show that this is not always the case, an example of which is what happened for years between the UGT and the Felipe González government in Spain), what is important is that such circumstances are lasting and, above all, offer firm foundations for an institutional process of social dialogue and concertation. I admit that exactly the same would happen in the opposite case: social concertation based specifically on political and ideological identity would easily be accused, among us, of negotiating promiscuity, which would be neither advantageous for governments

nor for the social partners, and would be highly prejudicial for the country.

The fact that the UGT hosts diverse political-trade union currents in its unions (Socialists, Social Democrats, Christian Democrats, Communists and Independents) and in its national executive, in addition to the reformist nature of its strategic objectives, have combined factors that have advanced the practice of social concertation in Portugal. But it was still evident, at least in years when the political power struggle was more acute, that some party forces sought to constrain the UGT's independent decision-making in social concertation.

It is not the intention here to analyse the legitimacy of partisan forces' activities to influence the outcomes of bargaining processes, which is an issue that I shall not address. The point is rather to realise that such conduct is contrary to an institutional notion of social concertation itself, seeking to make it another piece on the gameboard of political-partisan moves. If this attitude were to proliferate and were adopted by all parties, it is easy to imagine the boomerang effects that it would set off in the democratic rotation process.

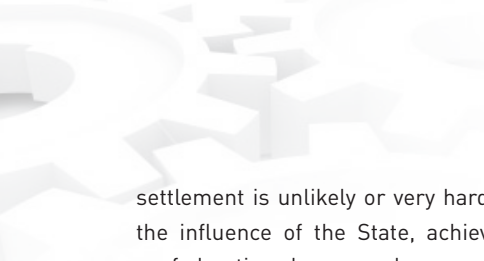
Clearly, the questions of representativity and trade union intervention capacity are not linked just to this issue.

They also have to do with the training needs of the leadership and officials of both unions and employers, as well as the type of functions and services that workers now expect from the unions or that enterprises expect from the organisations that represent them.

With regard to capacity to respond to new demands emerging in the area of working conditions, I am of the opinion that the classic collective bargaining function is still valid. However, these days, in Europe and in the more developed countries of other continents, it is not just (and I would go so far as to say that it is not even mainly) the discussion of wage increases that constitutes the core and horizon of the negotiating table. This is illustrated, among us, by the comprehensiveness of the Economic and Social Agreement, signed in October 1990, and by the even greater extensiveness of the negotiating areas on the table when the Economic and Social Agreement on Development and Employment was discussed, and negotiated for medium-term period (1995-99) which, unfortunately, failed.

Other, complex issues began to confront union and employer organisations, whether collective bargaining took place in the enterprise or at sector level, for example, matters in connection with industrial conversion, which is liable to have traumatic consequences for employment and the social fabric. Another example would be areas relating to enterprise competitiveness, which can be used to justify the introduction of innovation and vocational rehabilitation, and/or alterations within the organisation and to the work in the enterprise.

Such issues can also be raised with trade union and employer confederations in their own sphere of representation. However, this sometimes needs governmental involvement, when



settlement is unlikely or very hard to reach. In our country, I believe for reasons to do with the influence of the State, achieving a national agreement between union and employer confederations has never been possible.

Now to the final part of this reflection – the how, why and what for of tripartite social concertation.

4. Tripartite social dialogue: How, why, what for?

I reiterate that tripartite social concertation presupposes the existence of a well-functioning democratic rule of law. It requires that the State guarantees justice, allows the market to function freely (providing corrective intervention when necessary for the common good), respects the collective autonomy of the social partners, encourages individual civic participation of its citizens, and promotes conditions in which multiple collective interest organisations in civil society can properly operate.

In the field of professional relations, the Labour Administration should give the parties the widest possible margin for manoeuvre. Otherwise, the full flow of collective autonomy is curtailed, leading to an undesirable subalternity of the healthy principle of subsidiarity.

Whenever necessary, **but only then**, the Labour Administration should provide the social partners with effective conciliation, mediation or voluntary arbitration services with a view to collective labour dispute resolution. It should also establish active employment policies and reinforce all conditions to ensure that technical and vocational training is available to the largest possible number of enterprises and workers.

Governments must understand that it is in the national interest to include the social partners in the processes of defining and implementing economic and social policies. This may be done just through consultation, but it can also take place through concertation. The two methods are not incompatible, but although through social concertation may prove more difficult, it also achieves a more solid outcome.

However, social dialogue and celebration of tripartite agreements do not happen unless the three parties feel highly informed, motivated and interested in the process.

Far be it for me to presume that the political *scambio* of social concertation operates within

some “bacteriologically pure bubble”! It would be utopian, ingenuous and dangerous not to realise that, within it, political, economic and social factors, national traditions and psychological behaviours, merge, clash, connect and disconnect, come together and grow apart, divide and merge. With this I mean no disrespect, and I emphasise that, to the individual social dialogue actors themselves – clearly not.

However, apart from all this, there always has to be a **committed, lucid will on the part of each one, and the three parties, towards social concertation**. There must exist that which, for want of a better expression, I shall call the **social concertation spirit**.

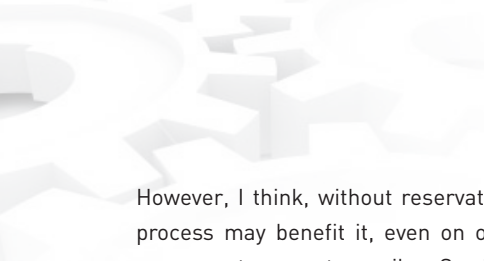
How can I describe what that social concertation spirit is? Just as the ideals of freedom and social justice are inherent to the human being and people’s lives, I also believe that spirit can only be translated through tripartite interiorisation of the intrinsic values of social concertation.

This “interiorisation” is not imposed from outside. It is not prescribed by law or any administrative measure. It is not established through coercion. It does not emerge, flourish and cement unless each and all of the three parties are aware of their freedoms, their differences and their responsibilities in the pursuit of the common good.

This entails **realising that the other side’s reasoning must be comprehended**, even when it is not acceptable; it means understanding that **there are mutual concessions to be made**, under penalty of going around in circles; it calls for the same **shared vision of society, in terms of its fundamental features**, and the belief that the policies necessary for development are always more fruitful when arrived at on the basis of consensus. For these reasons, I would say that good agreements reached through social concertation are no more than the agreements possible. That is exactly why they are good: concertation success is never a victory of one party over the other, but rather always a victory for the three sides.

Social concertation presupposes, therefore, this frame of mind, this “hothouse” of intangible requirements.

It is not indispensable for institutionalised bodies to be involved, such as the *Comissão Permanente de Concertação Social* of the CES, which took over from the former *Conselho Permanente de Concertação Social* [CPCS].



However, I think, without reservation, that institutionalised organisation of the concertation process may benefit it, even on occasions when dispute settlement and reaching a social agreement are not possible. So, in a way, it is as if the body creates the function and, subsequently, the function invigorates the body, in a synergistic relationship.

In this regard, it should be pointed out that both the former *Concelho* and the current *Comissão Especializada* of the CES, were classified as “permanent” by law. However, does this not mean that the lawmakers regarded the concertation process as both a negotiating chain that can be stabilised and a process that is fluid in its course? I think that is the conclusion I can draw from the applicable legal precepts. In fact, the CPCS’s internal procedures point in that direction when they state, for example, that its “Coordinating Nucleus”, comprised of its President and five Vice-Presidents, who are responsible for guiding its operations and implementing the plenary’s decisions, “**will normally meet at least once a month**¹⁰.”

This provision ties in with the logic of the continuity of a social dialogue. Although I am convinced that the overall balance of our social concertation since 1984 has so far been very positive, I should point out that the Commission has failed to comply with the frequency of meetings called for by the respective regulation.

The right of tripartite participation requires, downstream, mutual responsibility for the **concrete results of the concertation process.**

Clearly, I do not mean to say that reaching social concertation settlements every year is obligatory! After all, agreement is as natural and legitimate as disagreement, on the assumption that, in either case, the negotiation process has been guided by principles and rules for negotiation ethics and by interest requirements that are not just selfish and sectoral.

I just wish to say this, and only this: “*Tripartism also has a “burning commitment to succeed” [...] no institutional machinery for negotiation and dialogue could survive indefinitely in the face of a persistent stalemate or a permanent conflict.*” These are the words of the ILO Director-General in his report to the 81st Session of the International Labour Conference in 1994. With this I would like to draw attention to certain risks.

The normative and organic institutionalisation of the social concertation process and practice

¹⁰ Art. 20, CPCS internal procedures.

in our country could be called into question in the future, if a prolonged, and I underline, prolonged, cycle of disagreements and disputes between the parties were to occur. At the same time, if social concertation were not taken up by other political agents and other economic and social actors in the country, as an institutional matter that deserves broad consensus (therefore, shielded from appetites of a different nature, even legitimate ones), there are evident risks of turmoil, which it would be unwise to forget.

I am far from being pessimistic in this respect, but I am duty bound to be realistic. There are some signs that ought to be taken into account.

Based on statistics compiled by the MESS (Ministry for Employment and Social Security), I find that the number of collective labour agreements dropped from **430** in 1992 to **298** in 1993. The number of workers covered was **1 600 000** in 1992, falling sharply to little more than **900 000** in 1994.

In contrast, a look at the figures for the 1984 to 1992 period shows a distinct tendency towards gradual increases in the numbers of collective agreements and workers covered by them.

I do not wish to establish a simplistic direct correlation between social concertation and the number of collective labour agreements. In fact, even in the years in which social concertation failed (1989 and 1990), there was no palpable negative variation in collective bargaining.

In any case, the monumental fall that occurred in 1993, and some snags in collective bargaining in that year, especially in the public business sector, are indications that the failure of social concertation in 1993 and 1994 could now be repeating itself, acutely, in collective bargaining.

The UGT itself has continued to attempt to show the positive effects derived from social concertation agreements in terms of wage increases and lower unemployment rates, as may be seen in the following table, compiled by the UGT.

YEAR	INFLATION		NOMINAL WAGE		REAL WAGE	UNEMPLOYMENT
	TARGET	RECORDED	REFERENCE	RECORDED		
1987	9%	9,4	Inf+Prod (Massa salarial)	14,0	+4,2%	7,3
1988*	6%	9,7	Inf+Prod (Massa salarial)	10,5	+0,7%	5,8
1991	11%	11,4	13,5% (Tabela)	17,7	+5,7%	4,1
1992	8,5%	8,9	10,75% (Tabela)	14,4	+5,4%	4,1=

* 6-monthly figures supplied by the UGT

The reasons behind the situation prevailing for the past two years would certainly not be dissociable from the worsening economic and social climate that has enveloped us during this time.

When the economy cools, unemployment rises and budget revenues shrink, it is natural to feel that social concertation is more difficult. This leads me to ask whether, in fact, social concertation only works in times of growth and subsequent, fairer sharing of the national income among the workers – in other words, in easier times.

My answer to this is no, because, in my view, social concertation's biggest, hardest battle is not so much when the country's is going through a period of general growth and development, but rather the contrary, when difficulties are considerable, problems are acute, and the challenges for the future are tremendous.

In fact, in the case of several European countries, concertation agreements have been celebrated precisely in (and because of) times of economic, financial and social crisis. Governments and social partners realised, then, that joint efforts were key to enable the adoption of measures that could lift their countries out of the crises in which they were immersed. For this reason, concertation agreements often polarised on the tight wage control policies, required of the trade union organisations in return for overcoming the difficulties.

Curiously, in Portugal, except for the text agreed in the former CPCS on the "Financial and Economic Recovery Programme", signed in September 1984, (which, to an extent, may be considered a concertation agreement), all other social concertation agreements were negotiated and subscribed to during, and for, years of clear economic expansion. For this reason, and as the above table reveals, those were years when nominal and real wages rose and unemployment dropped.

Furthermore, the agreements negotiated from 1987 onwards were not limited to setting estimated inflation levels and the corresponding wage references for collective bargaining. Their content, especially in the case of the 1990 *Acordo Económico e Social*, AES (Economic and

Social Agreement) always went beyond just the domain of wage policy. Social agreements as a means of overcoming crisis situations that did not happen, cannot, therefore, be considered – in fact the opposite is true.

It is in the endogenous factors, and in the potential of national human resources that our collective future has to be won. Here, social concertation has a truly vital role to play. With social concertation, development paths will be easier, or at least less difficult. Without it, the journey will definitely be a lot more arduous.

If I am right about this, then qualitative evolution in the methods and content of our social concertation is justified and imperative. To fulfil the role of catalytic agent for collective efforts and desires, and to achieve genuine **strategic concertation** maturity, it must cover the whole range of development policies, not just wage and work policy, *stricto sensu*.

In the extremely difficult, sensitive complex situation in which the growth of our economy, the competitiveness of our enterprises and other institutions, the redefinition of the role of the State, the rethinking of social protection systems and rebalancing of the employment market, are all at stake, from now on, strategic social concertation possibly faces its biggest challenge ever.

I believe no time should be wasted, and that it will meet the challenge. If it does so, perhaps it would be appropriate to say that, through social concertation, the fundamental right to work was achieved, through the right to negotiate work.

The antagonism that some refer to nowadays between labour law and the right to work, cannot be resolved unless there is harmony between both. A vacuum of legislation and conventions in the regulation of labour relations and conditions would be just as disastrous (because it would reopen the door to the law of the jungle) as a legal framework set up as an obstacle to the right to work, considered a fundamental right of each and every person.

Here could possibly be the hardest task and noblest objective of social concertation: **to help guarantee the immemorial aspiration of human dignity, through the right and duty to work.**





Final Reflections

ILO - Portugal: a relationship with history, a relationship with the future

The future of work: contextualizing the relationship between Portugal and the ILO ¹

HELENA ANDRÉ ²

I would like to start by congratulating the ILO Lisbon Office for the excellent initiative of publishing a set of texts on Portugal and its relationship with the ILO, to mark the Organization's centenary year. It will be an important testament to this joint 100-year-old adventure, in which there have been ups and downs, according to the country's different political, economic and social phases.

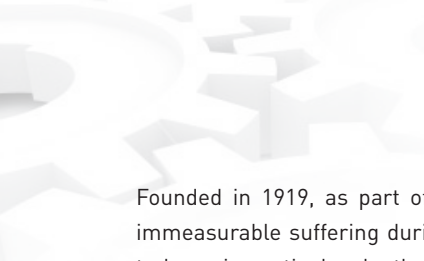
However, this is not what I want to write about here. I want to take the opportunity afforded to me through the invitation with which I have been honoured, to devote a few lines to the ILO's journey over the past century in its tireless pursuit of social justice, and to the challenges facing us in our time.

The ILO centenary celebration this year, 2019, will be devoted to reviewing its legacy over its 100-year-old history, and, above all, to preparing for the future. 2019 is a year for looking to the future, and defining how the ILO can continue to promote its mandate in support of social justice and decent work, based on the international labour standards, tripartism and social dialogue.

Understanding the origins of such an ambitious mandate entails recalling the circumstances that led to the ILO's creation.

¹ Unpublished text, prepared for this publication.

² Director of Bureau for Workers' Activities-International Labour Organization.



Founded in 1919, as part of the Treaty of Versailles that put an end to the four years of immeasurable suffering during World War I, the ILO is the result of heavy pressure brought to bear, in particular, by the trade union and social movements of the time. They called for international labour standards that would help to improve the inhuman working conditions that had arisen out of the industrial revolution in the 19th Century.

Portugal, a signatory to the Treaty of Versailles, is one of the ILO founder members.

As an agency belonging to the then recently created League of Nations, the ILO's mandate was designed to support the struggle for social justice as a way of ensuring lasting peace, at a time when much of the world was in conflict. The ILO is the only international tripartite organisation that has given a voice to working people during two world wars, great depressions and financial crises.

The preamble to the ILO Constitution, adopted in 1919, states:

"Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also 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 (...)"

In these words, it is easy to recognise similarities with the challenges facing us today. We live in a globalised world and, in spite of considerable progress in many areas of human, economic and social development, there is still much to be done, especially in terms of tripartite action involving government, trade unions and employments, in many parts of the world. Here is the importance of justice as a fundamental element of harmonious societal development.

After its founding, the ILO rapidly showed its capacity to adopt international labour standards. In its first two years of existence, it adopted nine Conventions and ten Recommendations. For the first time, there was international regulation of such key areas as working time, maternity protection and child labour. These instruments were as crucial when they were adopted as they are today.

In 1926, a Committee of Experts on the Application of ILO Conventions and Recommendations was set up. This was an important decision, three years before the Great Depression of 1929,

which would have disastrous consequences for Europe and the world generally.

With the outbreak of World War II and threat of war reaching Geneva, in 1940 the ILO moved its headquarters to Montreal.

On 10 May 1944, 41 countries adopted the *Declaration of Philadelphia*, extending the scope of the ILO's work for social justice, already embedded in its Constitution and the cornerstone of the Organization's activities until today.

The fundamental principles enshrined in the Declaration state that:

"work is not a commodity" and that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity".

Nowadays, we see that principles such as "work is not a commodity" and "the right to pursue both their material well-being and spiritual development in conditions of freedom and dignity ... and equal opportunity" are still as vital as ever.

Since 1946, the ILO has been one of the United Nations' specialised agencies, and now has a membership of 187 States. It is with great pride that we can say that, over the course of its 100 years of existence, the ILO has taken its ambitious mandate of promoting social justice to the four corners of the world.

Many of the challenges faced by the world of work over the past century still exist, but they have been joined by many additional new challenges.

Globalisation and technological advances are causing profound changes, on an unprecedented scale, to the organisation of work and production.

More interlinked and interdependent economies, rising levels of growth, emerging economies, the gradual liberalisation of trade, have all had negative repercussions for the quality of employment and, in many countries, for the protection of workers' rights, especially freedom of association.

Demographic changes, with ageing populations in some parts of the world and expanding youth populations in others, have led to increasing mobility of people, in both their own countries and between countries and regions, causing disorderly migration phenomena that are giving rise to new tensions between peoples and regions of the world.

Climate change and the need to promote fair transitions: the Paris Climate Agreement is of enormous relevance here, although we all know that only a few are making a genuine effort to reduce global warming and its consequences for people, economies and the sustainable and



inclusive development to which we should aspire.

The impact of the digital revolution and all its consequences for societies, for lifestyles and consumption patterns, in the world of work. We are witnessing the fragmentation of production and work itself, and changes in employment relationships, and grey lines between autonomous work, subordinate employment and dependent employment.

Taylorism, a term that we used to characterise the manufacturing sector, has become digital Taylorism that, more and more, dominates service industries throughout the world.

We talk about the challenges posed by platform work, and the “uberisation” of the economy as a direct result of new technologies. We discuss the fallout from these markets on wages, labour rights, working conditions, health and safety, and on workers’ social protection. These platforms make it increasingly difficult for trade unions to organise workers and identify which employer to negotiate with. Such changes to the traditional industrial relations models pose an enormous challenge to traditional trade union and employers’ organisations.

We are concerned about the possible effects of automation and robotics, and the risks of workers being substituted, leading to mass unemployment, widening further the inequalities between those who benefit from new technologies and those who cannot access them. But these are not new fears.

What is needed urgently is discussion about how new technologies can be used to complement rather than substitute workers.

Some argue that what is happening in the world of work could lead to improved enterprise efficiency, greater flexibility for workers, and could help emerging economies. It does, however, undeniably contribute to widening inequalities, and generates new and diverse forms of precarious work, with dire consequences for the policies and institutions created to promote social justice and decent work for all.

Inevitably, the erosion of the formal employment relationship challenges governments and social partners, and their ability to define, in dialogue, new forms of labour governance.

These are complex issues. How can we guarantee respect for labour legislation on, for example, the question of the minimum wage, or basic levels of social security, including access to unemployment benefit, or decent pensions for all workers, regardless of their employment relationship?

How can access to lifelong learning as a right for everyone be guaranteed?

How can trade union organisations extend collective coverage to include all those who do not

have a formal employment relationship – the “invisible” workers?

In short, how can the protection of workers, which the ILO has been promoting throughout its 100 years of existence, be guaranteed to make the same impact, without losing anyone along the way?

Many of these questions were raised in the ILO report *Work for a Brighter Future*, published on 22 January 2019, marking the start of the centenary celebrations. The report was written by an independent 25-member Global Commission on the Future of Work, comprising experts with different experiences and perspectives from all over the world, all connected with the world of work. The Commission was co-chaired by the Prime Minister of Sweden, Stefan Löfven, and South African President, Cyril Ramaphosa.

The Commission members propose a human-centred agenda, and reinforcement of the principles and values of the ILO Constitution and *Declaration of Philadelphia*, reaffirming that labour is not a commodity to be traded for the lowest price, and that workers’ rights are essential to ensuring that all in society have access to decent work.

The three proposed pillars of action seek to respond to current and future challenges in the world of work.

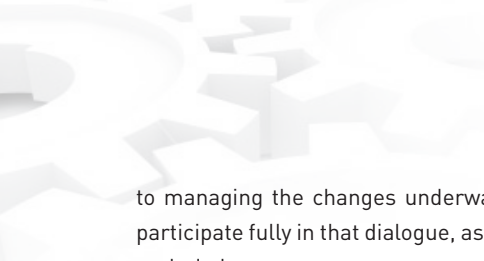
The first focuses on the need to increase investment in people’s capabilities, with the creation of a universal entitlement to lifelong learning that enables people to acquire skills, to reskill and upskill so they can face up to transitions throughout their life course, strengthening social protection to guarantee universal coverage, and transforming gender equality into a reality.

The second pillar proposes increasing investment in the institutions of work, establishing a universal labour guarantee for all workers, regardless of their contractual arrangement or employment status.

The third pillar tells us that it is essential to increase investment in decent and sustainable work, recommending transformative investments in line with the United Nations 2030 Agenda for Sustainable Development.

The report goes further, and puts the urgent need to reinvigorate the social contract back on the agenda of governments, employers and workers. In practice, this requires committed action on the part of governments as well as employers’ and workers’ organisations. It means they need to revitalise the social contract that gives working people a just share of economic progress, respect for their rights and protection against risk, in return for their continuing contribution to the economy.

It underlines the key role of social dialogue in guaranteeing the relevance of this contract



to managing the changes underway, stating that all the actors in the world of work should participate fully in that dialogue, as the voice of the many millions of workers who are currently excluded.

The report served as the basis for the ILC tripartite discussion, at which the *ILO Centenary Declaration for the Future of Work*, a roadmap for a human-centred future, was adopted on 21 June 2019.

The Declaration recalls and reaffirms the aims, purposes, principles and mandate set out in the ILO Constitution and the *Declaration of Philadelphia*, while confirming that the continuous and concerted action of governments and representatives of employers and workers, and the promotion of multilateralism are essential to the achievement of social justice, democracy and the promotion of universal and lasting peace.

By and large, the conclusions of the Conference, enshrined in the Declaration, reflected many of the proposals and views put forward in the report of the Global Commission. We should bear in mind that this was the result of a tripartite negotiation, in which the language used, the terms addressed and agreements reached did not enjoy the same freedom as the Commission had in its work.

The Declaration sets out broad guidelines for the future work of the ILO. One consequence will be its effects on the programme proposals for the next two years to be discussed by the Organization's constituents. We are all aware, however, that putting all the Declaration's recommendations on the future of work into practice will require many years. But we are also aware of urgency in the commitment and action in support of peace and social justice.

The UN 2030 Agenda needs to embrace the *ILO Centenary Declaration*. The Agenda can only be successfully implemented if priority is given to a people-centred approach, with investment in people, labour market institutions and sustainable development. Full employment, productive employment, inclusive economic growth and decent work for all are not viable without international labour standards, social dialogue and tripartism.

Just as all the other ILO and UN member States, Portugal will be called upon to take action for the success of the Agenda. The country's long experience and tradition of dialogue and social concertation, even in times of crisis, could and should be an example to other countries.

Social dialogue is embedded in one of the four fundamental principles and rights at work, enshrined in the ILO 1998 Declaration, specifically in the principle concerning the fundamental right to freedom of association and the effective recognition of the right to collective bargaining. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (N.º 87) and the Right to Organise and Collective Bargaining Convention, 1949 (N.º 98), establish this

principle and right.

As we know, social dialogue in Portugal is not an option – it is an obligation.

It has been crucial to building trust between the social and political actors, between employers' and workers' organisations and governments. It has been fundamental in helping the country to get back on the road to economic recovery, and has shown that the recipe for success cannot be based on labour market flexibility and absence of protection for working people.

Understanding that social dialogue and concertation do not have to be synonymous with consensus at any price or on all areas is vital. The importance of collective bargaining cannot be underestimated.

Much progress has been achieved, but there is a realisation that the road ahead is going to be extremely challenging if we are to achieve decent work for all, and continue to defend social rights, and rights to freedom of association and collective bargaining.

As I say in this article, dealing with demographic and climate challenges, the consequences of globalisation in a small and open economy such as Portugal's, migratory flows and digitalisation of the economy, the challenge of education and skills, social inclusion, poverty, in a context of increasing precarious employment, and growing inequalities in a highly segmented labour market, is no easy task.

It requires a social and industrial relations model that needs to be cultivated and cherished on an ongoing basis, with active, participative, independent and responsible partners.

The debate we want about the Future of Work does not end with the ILO Centenary year. The future of the planet, of our societies and peoples, depends on the collective ability of the ILO constituents to continue to act in the collective interest, with full respect for the individual.

I hope we are all up to meeting the challenges ahead.

