

Foreign Labor Developments



Political issues dominate ILO conference; new worker standards adopted

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The International Labor Organization (ILO), which this year had grown to number 150 member states, held its 68th general conference in Geneva, Switzerland. Alfonso Grados Bertorini, labor minister from Peru, was elected conference president. Although the conference adopted a number of new international labor standards, its deliberations were dominated by political issues, according to members of the U.S. delegation.

Founded in 1919, the ILO is unique among the United Nations' specialized agencies because of its tripartite structure. Worker and employer delegates enjoy equal and independent representation with governments. The ILO's mission is to promote employment, better working conditions, and worker and employer rights. Its tools include an annual conference, smaller technical meetings, research, and technical cooperation.

From the outset, all the elements were present to make the June 2-23 conference a political arena—the Israeli invasion of Lebanon, the Argentine-British hostilities in the Falkland Islands, apartheid, Poland, and the Iran-Iraq war. In reaction to these developments, some delegates used the conference plenary sessions to make political denunciations, often insulting other member states and straying far from the competence of the ILO conference. Other delegates, including those of the United States, reminded the conference of the one political issue germane to and at the very heart of the ILO: freedom of association. These participants lamented the renewed and heightened challenges to the principles of freedom of association and the unfortunate absence of Poland's Lech Walesa, who had participated in the 1981 conference—to the cries of “political interference” from Communist delegates.

The same political undercurrents were present—although usually unstated—in the technical work of the

conference and during the special visits by French President Francois Mitterand and Pope John Paul II. But it was in three committees, which by their mandate and makeup were politically charged, that most of the drama of the conference developed: the Resolutions Committee, the Committee on the Application of Conventions and Recommendations, and the Committee on Apartheid.

Resolutions deadlock

Because it considers proposals unrelated to any item on the conference agenda, the Resolutions Committee is always a prime target for excessive and extraneous politicization. In theory, resolutions should deal with technical labor issues and propose new areas for ILO program emphasis. In practice, such resolutions are usually overshadowed by politically inspired resolutions having little to do with the ILO.

This year's Resolutions Committee was so beset by chaotic procedural wrangling (including one session adjourned because of a bomb threat and another adjourned following an almost total breakdown of order) that it ended in a deadlock. Not only were no resolutions forwarded to the conference plenary for adoption, but the committee was unable to adopt a report describing its work. Nevertheless, after 2½ weeks of chaos in committee, the anticipated blowup when the “non-report” reached the plenary never materialized.

Eighteen draft resolutions were submitted to the conference secretariat prior to the May 18 deadline (that is, 15 days before the opening of the conference, as required by ILO rules). The most potentially difficult and explosive of these was an Arab resolution concerning “The Observance of a Day of Solidarity with the Workers and People of Palestine, the Golan and the other occupied Arab Territories.”¹

The Arab bloc and its allies joined the committee in unprecedented numbers to ensure adoption of the resolution, but when results of the secret ballot for the five priority resolutions were announced, the Arab resolution—for the first time in almost 10 years—had not taken first place. The committee had decided to consider the draft resolutions in the following order:

- Freedom of association
- Arab resolution concerning Palestinian workers

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- Employers' group resolution on possible ILO funding of conference delegations
- Sudanese resolution on African refugees
- ILO participation in the International Youth Year

This meant that the discussion on the freedom of association resolution—which contained language unacceptable to the Soviet bloc—would have to be completed before the committee could consider amendments to the Arab resolution. What ensued, according to many knowledgeable participants and observers, was an apparently calculated disruption and blockage of the committee's proceedings, and the ultimate failure of the committee to agree on anything. Following a general discussion of the first three resolutions, the committee never progressed beyond the first 5 of 71 amendments to the freedom of association resolution. In its last sitting, the committee was even unable to adopt a report describing its lack of progress.

On the final day of the conference, the President noted the absence of a Resolution Committee report and concluded that there was, as a result, nothing to discuss. His statement, to the great surprise of many delegates who anticipated a major confrontation sparked by the Arabs' failure to win passage of their resolution, went unchallenged, and the conference quietly proceeded to the next item of business. However, the toll had already been taken the day before on the report of the Committee on the Application of Conventions and Recommendations.

Poland criticized

The Committee on the Application of Conventions and Recommendations faced a particularly difficult task this year, with 115 cases concerning approximately 70 countries. Among the politically sensitive cases on the agenda were Poland, the Soviet Union, Cuba, Czechoslovakia, Argentina, Nicaragua, Chile, and Bolivia. Coupled with the sheer number of cases to be examined, as well as the sensitive nature of some of them, were the emotional tensions surrounding the Israeli invasion of Lebanon and the clear disregard for the whole process of standards supervision on the part of the Eastern bloc.

Despite its frequently electric atmosphere, the Committee on the Application of Conventions and Recommendations for the most part continued to successfully use its new methods of work (that is, a new special list system for highlighting both cases of progress and problems in implementing standards) adopted in 1980. This system includes a heading called "continued failure to implement," in which are listed governments which violated ratified ILO standards for a number of years and have failed to cooperate with ILO efforts to bring their law and practice into line. This is the ILO's most serious form of censure.

In the committee's report, Chile was cited for "continued failure to implement" Convention 111 concerning discrimination in employment—in this case dismissals of persons from the public service because of their political opinions. The governments of Bolivia and Burma were highlighted in special paragraphs for their problems in implementing Convention 87 on freedom of association.

But it was the case of Poland which took and maintained center stage throughout the proceedings of the Committee on the Application of Conventions and Recommendations, both in terms of the substance of discussion as well as the influence it exerted over the subsequent work of the committee. The Government of Poland came under the scrutiny of the committee for its violations of freedom of association stemming from its December 1981 declaration of martial law and imprisonment of hundreds of Solidarity leaders and members—this immediately following a separate examination on the same subject by the Governing Body's Committee on Freedom of Association. Although the Polish government initially expressed its willingness to cooperate with the ILO's supervisory machinery, it reversed its position when the committee recommended that the case be highlighted in a special paragraph—even going so far as to call for a vote on that part of the committee's report. (The committee in its conclusions commended the Polish government's recent efforts and progress, but nevertheless expressed its deep concern regarding the infringements of Convention 87 and associated itself with the very strong recommendations of the Committee on Freedom of Association.)

Following some discussion as to whether such a vote could be taken—that is, after the set of conclusions had already been accepted by the committee—a vote by show of hands resulted in the adoption of the special paragraph. One week later, the committee unanimously adopted its full report. However, those who believed that the subject of Poland had been laid to rest were quite surprised when the committee report reached the plenary.

In plenary, just as conference President Alfonso Grados was about to move that the report of the Committee on the Application of Conventions and Recommendations be adopted by consensus, a delegate from the Soviet bloc took the floor to protest the special paragraph on Poland and requested that the report as a whole be put to a vote by the conference. What ensued were two successive votes (first a show of hands, then a record vote the next morning) which prevented the report from being adopted by lack of a quorum—although by a very narrow 8-vote margin.

A breakdown of the record vote on the Committee on the Application of Conventions and Recommendations report revealed that many Arab delegates had

joined the Soviets to prevent a quorum from being obtained, at least partly because of their frustration over the events in the Resolutions Committee. Only twice before, in 1974 and 1977, has the conference similarly failed to adopt such a report. While the failure to adopt was disappointing, several delegates made powerful statements—starting with the U.S. Government—commending the work of the committee, supporting the other aspects of the ILO's machinery for the supervision of international labor standards, and pointing out that the conference's failure to adopt the report did not affect the ILO's continued scrutiny of events in Poland.

Conclusions on apartheid questioned

The stated task of the newly established permanent Committee on Apartheid was to review the Director-General's report on the application of the June 1981 "Declaration Concerning the Policy of Apartheid" in South Africa, which contained information on efforts to eliminate apartheid. The information had been submitted by governments and workers' and employers' organizations since adoption of the declaration. The committee's six sessions consisted primarily of a series of speeches denouncing apartheid and calling for measures—mostly economic—to combat it. Its conclusions outlined a number of recommended steps to be taken by governments and the private sector to reduce or eliminate economic relations with South Africa, including supplying information on foreign companies with investments in South Africa, and providing direct assistance to national liberation movements.

Both in the committee and in plenary, a significant minority of government and employer delegates, including those of the United States, stated that while they abhorred apartheid, they found unacceptable the conference's tendency to disregard the ILO's established procedures for due process and to take the organization "beyond its appropriate mandate and competence." The committee's conclusions took note of the reservations expressed by these members, and the anticipated, heated plenary discussion of the apartheid report never came to pass. The report was adopted without vote and without incident.

New labor standards adopted

The 1982 conference considered four technical agenda items. Two items resulted in the adoption of new Conventions and Recommendations, one in the minor revision of an existing Convention; the remaining item will undergo final discussion at the 1983 conference.

An ILO Convention is an international treaty that carries a legal obligation under international law for states which ratify it. A Recommendation, on the other hand, is simply what the name implies—a document which

suggests specific measures that can be taken to implement labor policies. Recommendations are not subject to ratification and therefore bear no legal obligation.

Termination of employment. The conference adopted both a Convention and a Recommendation concerning the termination of employment at the initiative of the employer, updating a 1963 Recommendation. At the end of last year's discussion of this item, workers and employers had been diametrically opposed on virtually every point of the proposed standards, with governments divided according to their law and practice. The major controversy surrounded the amount of government regulation that is necessary and appropriate to protect workers against arbitrary and unfair dismissal.

This year the committee remained controversial and at times confrontational, but a small worker-employer working group did successfully propose shifting some of the more objectionable provisions from the Convention to the Recommendation and otherwise moderate the former. Nevertheless, the employers and a number of governments, including the United States, contended that the Convention adopted by the conference still relies too heavily on government intervention and too little on private initiative. As a result, they argued that the instrument is not sufficiently flexible and universal to be widely ratified and implemented.

Social security for migrant workers. The conference also adopted a new Convention (actually a revision of a 1948 Convention) concerning the social security rights of workers and family members who are employed outside their home countries. The new standard extends coverage to all forms of social security and opens the way for applying social security standards to self-employed persons as well as to salaried employees. Most of the provisions of the Convention would take effect as a result of bilateral or multilateral agreements between governments, though some provide for direct and immediate application as a consequence of a member state's ratification of the instrument.

Although U.S. legislation is not completely compatible with the provisions of the new Convention, and U.S. ratification is thus not likely in the foreseeable future, the entire U.S. delegation was able to support adoption of the instrument. The Convention was adopted in an overwhelming affirmative vote by the conference.

Next year, the conference will take up an unprecedented third discussion of the social security issue. This discussion, preceded by a tripartite meeting of social security experts, will formulate model provisions designed for bilateral and multilateral international social security agreements. These provisions will take the form of a Recommendation to supplement the new Convention.

Vocational rehabilitation. The 1982 conference held a general discussion which will lead to the possible adoption in 1983 of a Recommendation supplementing the Vocational Rehabilitation (Disabled) Recommendation of 1955. While the provisions of the original instrument are still relevant, new developments in the field have made it necessary to broaden its scope by updating and expanding its definitions of the terms "vocational rehabilitation" and "disabled." The conference did not accept the ILO secretariat's proposal to include among disabled persons the socially maladjusted, but proposed coverage in the revised instrument for all individuals whose prospects of securing and retaining suitable employment are substantially reduced as a result of "an impairment of a physical, mental, or psychological nature duly recognized by a competent authority."

During the committee's discussions, the workers' group unsuccessfully proposed that the supplementary standard on vocational rehabilitation should take the form of a Convention. While the committee's draft conclusions were easily adopted both in committee and in plenary, the workers are expected to rekindle their call for a Convention next year.

Revision of the Plantations Convention. In the shortest and quietest technical discussion in ILO history, the conference easily adopted a protocol revising Article One of the 1958 Convention concerning the Conditions of Employment of Plantation Workers. The objective of the revision was to limit the ILO's very broad definition of the term "plantation" and thereby pave the way for wider ratification and implementation of the instrument. There was no substantive discussion of conditions of work on plantations.

The revision of the Plantations Convention marks the first time that the protocol format has been used by the ILO conference. The new procedure eliminates the need for publishing an entire new text (only 1 article of 99 was changed) with a new number. In the future, governments will have the option of ratifying either version of the Plantations Convention.

Other work of the conference

In the Conference Finance Committee, which is composed only of government members, contributors to the ILO began—at the initiative of the United States—to take a closer and more critical look at the ILO's growing practice of using supplemental budget requests to finance so-called "unforeseen" expenditures, that is, in excess of the organization's biennial program and budget.

The Structure Committee, on the other hand, accomplished little more than to call for the reconstitution and resumption of the Working Party on Structure (now in its 9th year) and to request that an item on

structure be included in the 1983 conference agenda. The structure question involves, among other things, proposed changes in the size and composition of the ILO's Governing Body and its relationship to the conference. Although some of the issues have been ironed out, the structure question is being considered as a "package" and nothing can be resolved until complete agreement is reached. □

—FOOTNOTE—

¹ Sponsors were the government delegations of Algeria, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen.

Canadian legal approaches to sex equality in the workplace

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During the last several decades, labor market discrimination against women has become a matter of considerable social and political concern. The rising female labor force participation rate over the years and its projected further increase render this issue even more important.¹ This type of discrimination can take conceptually two forms: employment discrimination and pay discrimination. The former can be defined as unequal job levels for men and women with similar qualifications, and the latter as unequal pay for men and women who have equal qualifications and are performing similar jobs, jobs of equal value, or both (that is, comparable worth).²

In this report, equal employment and equal pay legislation are discussed; then, selected cases decided by courts and boards of inquiry are analyzed; and finally, conclusions and policy implications are presented.

Public policy

Equal pay. All Canadian jurisdictions have laws which require equal pay for equal work within the same establishment, without sex discrimination. These provisions have been incorporated either in human rights legislation (Federal jurisdiction, Alberta, British Columbia, New Brunswick, Newfoundland, Northwest Territories, Prince Edward Island, and Quebec) or in labor standards legislation (Manitoba, Nova Scotia, Ontario, Saskatchewan, and Yukon Territory).

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