

## THE ILO SYSTEM OF INTERNATIONAL LABOUR STANDARDS AND MONITORING PROCEDURES: TOO COMPLICATED TO BE EFFECTIVE?\*

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UDK: 341.018:349.2

Stručni rad

Primljeno: siječanj 2014.

*The article deals with the complexity of the International Labour Organisation (ILO) Conventions and Recommendations and of the control procedures for their application as a factor that has a serious negative impact on their effectiveness. An analysis of the Conventions and Recommendations and other measures taken by the ILO is offered with a view to optimizing this system. The prospects for codification of the ILO standards are considered. A conclusion is reached concerning the possibility of gradual codification of the Conventions and Recommendations according to broad thematic classifications with further prospects for the creation of a unified international labour code. Some possible directions for such thematic classifications are proposed.*

*A separate analysis is made of ILO control procedures, and a judgment is made that these procedures are lacking sufficient coordination and systematization. Proposals are made for simplifying the procedures, for the abrogation of rarely used and secondary procedures, and for a higher level of coherence of the existing procedures in order to make the application of the international labour standards more effective.*

*Some other proposals associated with reducing the complexity of the ILO standards and control procedures are made.*

*Keywords: International labour standards, International Labour Organization, international labour law, social rights, international instruments' application effectiveness*

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\* This article was written as part of Project 1658 for scientific research commissioned by the government Ministry of Education and Science of Russia.

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## I. INTRODUCTION

The International Labour Organisation (ILO) is one of the oldest international organizations, and it has a unique system of control over the application of the Conventions, Recommendations and Declarations adopted under its auspices. At the same time there are numerous statements<sup>1</sup> at the academic level about the lack of control capacity by the ILO as a main obstacle to its effectiveness.

It is often said that the ILO is a “toothless tiger”, and that its “naming and shaming” system of control, which doesn’t provide any legal sanctions against the member states, prevents the ILO from making its system of international labour standards effective enough. This lack of power is rooted mainly in the consensual nature of international relations<sup>2</sup> between sovereign states. The ILO is an international organization which is merely a forum for discussion of the issues of international labour law and not a supranational institution like the European Union. Therefore this system of “naming and shaming” is necessarily the only means of control that the ILO possesses in its relations with member states.

Nevertheless, there are several contingent factors rooted in the ILO itself that impede the effective application of its international labour standards. The

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<sup>1</sup> See: Arne D. A. Vandaele, *International labour rights and the social clause: friends or foes* (London: Cameron May, 2005), at 319-350; James Atleson, Lance Compa, Kerry Rittich *et al.*, *International labor law: cases and materials on workers’ rights in the global economy* (St. Paul: Thomson/West, 2008), at 88-104; Christian Barry, Sanjay G. Reddy, *International Trade & Labor Standards: a Proposal for Linkage* (New York: Columbia University Press, 2008), at 43, 184; Kimberly Ann Elliot, Richard B. Freeman, *Can Labor Standards Improve Under Globalization?* (Washington DC: Institute for International Economics, 2003), at 102-107; George Alexander Johnston, *The International Labour Organization: Its Work for Social and Economic Progress* (London: Europa Publications, 1970), at 279; Kaushik Basu, Henrik Horn, Lisa Román, Judith Shapiro (eds.), *International Labor Standards: History, Theory and Policy Options* (Malden: Blackwell Publishing, 2006), at 271-302; George Tsogas, *Labor Regulation in a Global Economy* (London: M.E. Sharpe, 2001), at 52-54; Edward Weisband, *Discursive Multilateralism: Global Benchmarks, Shame and Learning in the ILO Labor Standards Monitoring Regime*, *International Studies Quarterly*, Vol. 44 (2000), at 643-666 *et sqq.*

<sup>2</sup> See: Alina Kaczorowska, *Public International Law*. 4th ed. (London and New York: Routledge, 2010), at 5; Rein Müllerson, *Ordering Anarchy: International Law in International Society* (The Hague: Martinus Nijhoff Publishers, 2000), at 40-46, and many others.

complexity of the ILO system of international labour standards and control procedures may be cited as one of the main contingent factors.<sup>3</sup> This issue is dealt with in this article in two aspects: with respect to the system of ILO standards and of the monitoring system for their application.

## II. THE SYSTEM OF ILO STANDARDS

From the very foundation of the ILO, its Conventions and Recommendations were adopted not according to some systematic plan, but as a result of discussions of different issues at the International Labour Conferences<sup>4</sup> (ILC), those being the main governing structure of the ILO. Over the course of time a large corpus of ILO Conventions and Recommendations was formed. Although they were sometimes called an “international labour code” in the early stages of the ILO’s existence<sup>5</sup>, in fact they were never codified. New Conventions and Recommendations were adopted on issues that were the subject of previously adopted standards without any long-term strategic plan for filling in gaps in the international labour standards.

Since the 1960s proposals concerning some systematization and re-evalua-

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<sup>3</sup> Other obstacles to the effectiveness of the ILO international labour standards, in my view, include excessive flexibility in the ILO’s application of its own policies; the overload of the ILO’s supervisory bodies; insufficient political neutrality; the globalization process and “privatization” of international labour law (i.e. the rise of corporate codes of conduct, social labeling systems, international collective bargaining and other private initiatives that in certain ways compete with “traditional” international labour law institutions and standards). See the arguments for these positions in: Nikita L. Lyutov, *Effektivnost’ norm mejdunarodnogo trudovogo prava*. Monographia [*Effectiveness of the international labour law: a monograph*] (Moscow: Prospect, 2014), at 109-171.

<sup>4</sup> International Labour Organisation (ILO), *The Impact of International Labour Conventions and Recommendations* (Geneva: ILO, 1976), at 13-14.

<sup>5</sup> There were earlier publications of the ILO standards which were entitled “International Labour Code” such as ILO, *International Labour Code, 1939* (Montreal: ILO, 1941); ILO, *International Labour Code, 1951* (Geneva: ILO, 1954). However, none of these publications was a legal codification or consolidation but a mere presentation of the Conventions and Recommendations in a single publication. In 2005 a more comprehensive publication was issued that included not just the plain text of the instruments but also information about the ILO procedures and practices in applying the standards. See: Neville Rubin (ed.), *Code of International Labour Law. Law, Practice and Jurisprudence* (Cambridge: Cambridge University Press, 2005). The term “code” is used again in later publications (see below).

tion of the previously adopted standards have been under discussion. The first ILO Director General who made such proposals was David Morse in 1963.<sup>6</sup> Serious discussion started in the 1970s, when the ILO Governing Body delegate<sup>7</sup> from Canada made a proposal<sup>8</sup> to review all ILO standards in order to determine which of them were outdated, to understand what labour law issues were not well reflected in the existing norms, and to create ways of modernizing the international labour code so that it would be updated regularly and systematically.

After discussing this issue in the ILO Governing Body, the International Labour Office started interviewing the member states on this issue in 1974. As a result, a special Working Party on International Labour Standards was established in 1976 (the “Ventejol Group” named after its chairman, an employers’ delegate from France).<sup>9</sup> The Ventejol Group worked on systematization of the ILO Conventions and Recommendations from 1977 to 1979 and presented the results to the Governing Body at the 202<sup>nd</sup> Session in February and March of 1979.<sup>10</sup> The Working Party had classified the Conventions and Recommendations into three groups: A) topical and high priority (78<sup>11</sup> Conventions and 76 Recommendations that should receive high priority support); B) standards that are in force but need revision (16 Conventions and 14 Recommendations); C) other existing Conventions and Recommendations that cannot be put into the first two groups (63 Conventions and 81 Recommendation). A list of 43 topics for possible new international labour standards or

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<sup>6</sup> ILO, *International Labour Conference. Record of Proceedings* (Geneva: ILO, 1963), at 440.

<sup>7</sup> The ILO Governing body is composed of the delegates from the governments and most of the representative organizations of employers and employees from the ILO member states. See more about the ILO structure: Jean-Michel Servais, *International Labour Law*. 3d ed. (Alphen Aan Den Rijn: Wolters Kluwer, 2011), at 21-45.

<sup>8</sup> ILO, Governing Body, *Minutes of the 184<sup>th</sup> Session, November, 1971* (Geneva: ILO, 1971), at 87-95, 206-209.

<sup>9</sup> See: Victor-Yves Ghébal, *The International Labour Organisation: a Case Study of the Evolution of U.N. Specialised Agencies* (Dordrecht: Martinus Nijhoff Publishers, 1989), at 217.

<sup>10</sup> ILO, *Final Report of the Working Party on International Labour Standards. Official Bulletin (special edition). Vol. LXII series A* (Geneva: ILO, 1979).

<sup>11</sup> *Ibid.*, paras. 3-11. Some instruments from the “A” group are mentioned in “B”, therefore the sum of the instruments in the three groups did not coincide with the overall number of Conventions and Recommendations (in 1979 these were 151 and 159 respectively).

matters for revision of the existing standards was also proposed. It was noted by the Working Party that this classification was not final or meant to be exhaustive or invariable.

After the approval by the ILO Governing Body of these results from the Working Party, there were a few years of debates within the ILO concerning the systematization of the norms and possible improvement of the controls over their application. Employers' delegates insisted that the process of setting norms should be slowed down or even stopped and that the ILO should concentrate on revision and consolidation of the existing standards.<sup>12</sup>

At the International Labour Conference of 1984 a decision was taken that Ventejol Group should renew its activity. The Group resumed its work in 1985 and presented its results as a revised classification<sup>13</sup> of the Conventions and Recommendations at the March Session of the Governing Body in 1987.<sup>14</sup> In addition to the revision of the earlier classifications, the Working Party examined the issues of abrogation of outdated standards, consolidation of the existing norms and adoption of new standards. The Minimum Age Convention, 1973 (No. 138)<sup>15</sup>, was taken as an example of such consolidation as it replaced ten earlier Conventions on minimum age for specific groups of workers. The Ventejol Group methodology of consolidation was relied upon later in the process of elaborating and adopting the next generation of ILO standards: the Maritime Labour Convention, 2006 (MLC), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Work in Fishing Convention, 2007 (No. 188).

The results of the Ventejol Group's work were examined by the Governing Body over the next few years. In March 1995 the Governing Body decided<sup>16</sup> to establish a new Working Party. The task of the new Working Party (called the "Cartier Group", also after the name of its chairman) was to determine which

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<sup>12</sup> ILO, *International Labour Conference. Record of Proceedings, PR44*. (Geneva: ILO, 1984), at 10 *et seq.* See also ILO Doc. No. GB.228/4/2.

<sup>13</sup> ILO, *Report of the Working Party on International Labour Standards, Official Bulletin, Special issue, Vol. LXX, 1987, Series A* (Geneva: ILO, 1987), at para. 1.

<sup>14</sup> *Ibid.*, at 7.

<sup>15</sup> For the ILO Conventions' texts see the ILO Normlex Database: (<http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO::>) [date of access to internet sources: 24<sup>th</sup> January 2014].

<sup>16</sup> ILO, *Governing Body Doc. No. GB.262/LILS/3*. (Geneva: ILO, 1995). Quote by: Hugo Barretto Ghione, *ILO recommendation 195: subjects, focuses and actors of vocational training* (Montevideo: CINTERFOR/ILO, 2006), at 21.

standards should be revised<sup>17</sup> and what methods for revision could be applied to make the system of standards more coherent. It was also supposed to analyse the dynamics of the ratification of Conventions by the member states and to counter reluctance to ratify the revised newer Conventions as readily as the original Conventions on the same matters had been accepted. The Cartier Group worked from 1995 until March 2002.<sup>18</sup> As the Cartier Group proposed<sup>19</sup>, an instrument on amendment of the ILO Constitution was adopted so that the outdated Conventions might be abrogated.

The Cartier Group held 13 meetings and studied the status of 181 Conventions and 191 Recommendations. As a result, a new and even more convoluted classification of the ILO standards was proposed to make their application more effective.<sup>20</sup> This new classification divided these instruments into *nine* different groups each with a different status:

1. “*Up-to-date instruments*”, including eight *fundamental* Conventions<sup>21</sup> on four core principles and rights at work<sup>22</sup> and another four *priority* or *governance*

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<sup>17</sup> Although earlier the Ventejol Group found that only a small number of instruments needs to be revised. See: ILO, *Report of the Working Party on International Labour Standards, Official Bulletin, Special issue, Vol. LXX, 1987, Series A, Appendix I* (Geneva: ILO, 1987).

<sup>18</sup> See Governing Body Decisions on the Cartier Group proposals in the ILO Docs. Nos.: GB.264/9/2; GB.265/8/2; GB.267/9/2; GB.268/8/2; GB.270/9/2; GB.271/11/2; GB.273/8/2; GB.274/10/2; GB.276/10/2; GB.277/11/2; GB.279/11/2; GB.280/12/2; GB.282/8; GB.283/10/2 (Geneva: ILO, 1995-2002).

<sup>19</sup> ILO, *Governing Body 267<sup>th</sup> Session Geneva, November 1996. Committee on Legal Issues and International Labour Standards. Possible amendments to the Constitution and Conference Standing Orders to enable the Conference to abrogate or otherwise terminate obsolete international labour Conventions. ILO Doc. No. GB.267/LILS/WP/PRS/1* (Geneva: ILO, 1996).

<sup>20</sup> ILO, *Governing Body. Working Party on Policy regarding the Revision of Standards. Follow-up to the recommendations of the Working Party. ILO Document GB.283/LILS/WP/PRS/1/2* (Geneva: ILO, 2002).

<sup>21</sup> Conventions Nos. 87 and 98 on freedom of association and collective bargaining, Conventions Nos. 29 and 105 on elimination of forced or compulsory labour, Conventions Nos. 138 and 182 on prohibition of child labour; Conventions Nos. 100 and 111 on elimination of discrimination in respect of employment and occupation.

<sup>22</sup> According to the ILO Declaration on Fundamental Principles and Rights at Work, 1998. See: Steve Charnovitz. *The International Labour Organisation in its Second Century*, in Jochen A. Frowein, Rüdiger Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Vol. 4 (The Hague: Kluwer Law International, 2000), at 262-278; Francis Maupain, *L'OIT, justice sociale et la mondialisation* (Leiden: Martinus

Conventions.<sup>23</sup> Up-to-date status means that a specific Convention, Protocol to a Convention or Recommendation is treated by the ILO as in effect, and its application is monitored to the full extent, including the member states' obligations to report on Conventions and Protocols.<sup>24</sup> Beside twelve governance and fundamental Conventions, there are 65 Conventions<sup>25</sup>, 5 Protocols<sup>26</sup> and 82 Recommendations<sup>27</sup> that are considered up-to-date.

The monitoring of the governance and fundamental Conventions is performed by the ILO on a higher priority basis than that of the other up-to-date instruments.<sup>28</sup> Since the 1990s the ILO has launched a campaign aimed at full ratification of all eight fundamental Conventions by all member states.<sup>29</sup> The goal of this campaign was to secure full ratification by 2015 although there seems to be no real chance of this.<sup>30</sup> The division of governance, fundamental and "merely" up-to-date Conventions is not very clear from a practical point of view. As the Committee of Experts on Application of Conventions and Recommendations (CEACR) has judged, some of the "merely up-to-date" Conventions are hardly less important than the fundamental ones.<sup>31</sup>

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Nijhoff Publishers, 1999), at 262-278 *et al.*

<sup>23</sup> ILO Conventions Nos. 81, 122, 129 and 144 on labour inspection, employment policy and tripartite consultations.

<sup>24</sup> As established by art. 22 of the ILO Constitution.

<sup>25</sup> Conventions Nos. 14, 77, 78, 94, 95, 97, 102, 106, 110, 115, 118, 120, 121, 124, 128, 130, 131, 135, 139, 140-143, 145-152, 154-157, 159-181, 182-185, MLC, 187-189.

<sup>26</sup> Protocols to the Conventions Nos. 81, 89, 110, 147 and 155.

<sup>27</sup> Recommendations Nos. 35, 67, 79, 81, 82, 84-86, 90, 91, 97, 99, 102-104, 110, 111, 113-116, 120-122, 125, 131-135, 143, 146, 147, 149, 151-160, 163-165, 167-195, 197-202.

<sup>28</sup> See more details further.

<sup>29</sup> This goal was announced by the ILO Director General J. Somavia. See: ILO, *International Labour Conference. 97<sup>th</sup> Session 2008. Report I (C). Decent Work. Some Strategic Challenges Ahead* (Geneva: ILO, 2008), at 23.

<sup>30</sup> This is the case, firstly, because such major countries as the US, China and India are not willing to ratify all the fundamental Conventions in the near future, and secondly because the increase in the absolute number of ratifications of the fundamental Conventions (see the data on ratification in the ILO Normlex database: <http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:0::NO::>) is offset as new member states that have not ratified any Conventions join the ILO from time to time. The proportion between ratified and non-ratified fundamental Conventions has remained steady for the last ten years.

<sup>31</sup> The Protection of Wages Convention, 1949 (No. 95) is cited as an example by the CEACR. See: ILO, *General Survey of the reports concerning the Protection of Wages*

2. “*Instruments to be revised*” is another status that is given to the Conventions and Recommendations that are supposed to be amended by some separate new provisions in the form of a Protocol or a new Convention. This status now is given to 22 Conventions<sup>32</sup> and 13 Recommendations.<sup>33</sup>

3. “*Instruments with interim status*” is the classification for the Conventions and Recommendations that are not approved by the member states at present. This status is given to 23 Conventions<sup>34</sup> and 22 Recommendations.<sup>35</sup>

4. “*Request for information*” status is given to the Conventions and Recommendations for which a request concerning their relevance and the prospects for their amendment has been submitted to the Governing Body working groups. There are 3 Conventions<sup>36</sup> and 12 Recommendations<sup>37</sup> with such status.

5. “*Shelved Conventions*” are the Conventions that are formally in force but closed to further ratification by the ILO. The ILO does not request any reporting by the member states concerning their application. This status is usually given to Conventions that were later replaced by revised Conventions on the matter. Currently 25 Conventions are regarded as shelved.<sup>38</sup>

6. “*Replaced Recommendations*” status is given to 22 Recommendations<sup>39</sup> that were later replaced by other ILO instruments.

7. “*Outdated instruments*” are the Conventions and Recommendations that are formally in force<sup>40</sup> but are not applied in practice because of the adoption

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*Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949* (Geneva: ILO, 2003), at 301 (<http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-iii-1b.pdf>).

<sup>32</sup> Conventions Nos. 6, 8, 13, 16, 22, 27, 55, 68, 69, 71, 73, 74, 79, 90, 113, 114, 119, 125, 127, 134, 136 and 153.

<sup>33</sup> Recommendations Nos. 3, 4, 6, 10, 14, 75, 76, 80, 118, 126, 128, 144 and 161.

<sup>34</sup> Conventions Nos. 1-3, 11, 12, 19, 26, 30, 45, 47, 53, 58, 84, 85, 88, 89, 92, 96, 99, 117, 132, 133 and 137.

<sup>35</sup> Recommendations Nos. 9, 17, 20, 25, 30, 31, 41, 52, 68, 69, 83, 89, 98, 100, 107, 108, 136, 140, 141, 145, 148 and 162.

<sup>36</sup> Conventions Nos. 82, 83 and 126.

<sup>37</sup> Recommendations Nos. 8, 13, 19, 71, 78, 92, 94, 129, 130, 137, 139 and 142.

<sup>38</sup> Conventions Nos. 4, 15, 20, 21, 28, 34-41, 43, 44, 48-50, 60, 64, 65, 67, 86, 91 and 104.

<sup>39</sup> Recommendations Nos. 7, 27, 28, 53, 55, 57, 60, 61, 62, 77, 87, 88, 95, 101, 109, 112, 117, 119, 123, 127, 150 and 196.

<sup>40</sup> From a legal point of view, to say that an ILO Recommendation is “in force” is quite dubious because a Recommendation is at best a “soft law”.



of a new instrument on the matter. There are 31 Conventions<sup>41</sup> and 14 Recommendations<sup>42</sup> with this status.

8. “*Withdrawn instruments*”. An ILO Convention may receive this status upon a determination by an International Labour Conference that the Convention in question has not received a sufficient number of ratifications over a long period of time. Five Conventions have this status now.<sup>43</sup> There are also 36 Recommendations regarded as withdrawn.<sup>44</sup>

9. “*Abrogated Conventions*” is a status that is supposed to be given to those Conventions that would undergo the procedure for abrogation, a step which will be possible only after the still pending Amendment of the ILO Constitution that will allow the abrogation of Conventions comes into force. Although this Amendment<sup>45</sup> was adopted by the International Labour Conference in 1997<sup>46</sup>, up to the time this is written<sup>47</sup> it has not received a sufficient number of ratifications to come into force.<sup>48</sup> The possibility of abrogation of the ILO Conventions was discussed within the ILO as early as 1929.<sup>49</sup> But at that time it was decided that such a procedure would contradict international law, inasmuch as the ILO cannot unilaterally cancel the obligations that sovereign states have placed upon themselves by the ratification of an international treaty, i.e. an ILO Convention. A later discussion of the feasibility of abrogating

<sup>41</sup> Conventions Nos. 5, 7, 9, 10, 17, 18, 23-25, 32, 33, 42, 52, 54, 56, 57, 59, 62, 63, 70, 72, 75, 76, 93, 101, 103, 107, 108, 109, 112 and 123.

<sup>42</sup> Recommendations Nos. 22-24, 29, 40, 44, 47-49, 93, 105, 106, 124 and 138.

<sup>43</sup> Conventions Nos. 31, 46, 51, 61 and 66.

<sup>44</sup> Recommendations Nos. 1, 2, 5, 11, 12, 15, 16, 18, 21, 26, 32-34, 36-39, 42, 43, 45, 46, 50, 51, 54, 56, 58, 59, 63-66, 70, 72-74 and 96.

<sup>45</sup> ILO, Office of the Legal Advisor (JUR), *Instrument for the Amendment of the Constitution of the International Labour Organization*, 1997 (<http://www.ilo.org/public/english/bureau/leg/amend/1997.htm>).

<sup>46</sup> See on this topic: ILO, *Director-general Report to the 85<sup>th</sup> meeting of the International Labour Conference: “The ILO, standards setting and globalization”* (Geneva: ILO, 1997), (<http://www.ilo.org/public/english/standards/reim/ilc/ilc85/dg-rep.htm>).

<sup>47</sup> Last revision, March 2014.

<sup>48</sup> Amendments of the ILO Constitution have to be ratified by at least two thirds of the member states including at least ten countries of “chief industrial importance” (specifically mentioned in the ILO Constitution). At the moment of writing only two ratifications of the 124 necessary are lacking for this amendment to come into force. See the ratification status at: <http://www.ilo.org/public/english/bureau/leg/download/1997-list.pdf>.

<sup>49</sup> ILO, *International Labour Conference Record of proceedings of the 13<sup>th</sup> Session (1929) of the Conference, Vol. I, Third Part (Appendices)* (Geneva: ILO, 1929), at 733-734.

the Conventions centred on the contractual status of the ILO Conventions and the possibility that they might turn into international “quasi-laws”.<sup>50</sup> Currently there are seven ILO Conventions that are candidates to be abrogated when the ILO Constitution Amendment permitting abrogation will come into force.<sup>51</sup>

The Cartier Group classification did not include technical Conventions concerning the final articles of the ILO Conventions.<sup>52</sup> And there was no decision agreed upon within the Working Party concerning the Termination of Employment Convention and Recommendation of 1982.<sup>53</sup>

It is plain to see that these classifications, which are aimed at clarifying the unwieldy bulk of ILO Conventions and Recommendations and making navigation among them easier, are themselves quite complicated. It seems that is quite difficult for both the representatives of the member states and the legal authorities at a national level that are supposed to apply the ILO instruments to understand the differences between these statuses. In certain cases the qualification of a particular instrument as having a certain status is quite questionable.

Because the Cartier Group’s work on the classification of instruments could not be considered as complete and final, discussion on the matter has continued within the ILO Governing Body from 2005 up to the present.<sup>54</sup>

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<sup>50</sup> See the discussion on the matter in: Nicolas Valticos, *Contrat – Convention – Traité – Loi? Les conventions internationales du travail*, Revue des sciences morales et politiques, Vol. 100, No. 1 (1996), at 403-413; Gerardo von Potobski, *Eficacia jurídica de los convenios de la OIT en el plano nacional*, in Jean-Claude Javillier, Bernard Gernigon (eds.), *Les normes internationales du travail: un patrimoine pour l’avenir. Mélanges en l’honneur de Nicolas Valticos* (Geneva: ILO, 2004), at 288; John Wood, *International Labour Organisation Conventions – Labour Code or Treaties?*, *International and Comparative Law Quarterly*, Vol. 40, No. 4 (1991), at 649-657; ILO, *Governing Body. Committee on Legal Issues and International Labour Standards. Abrogation or Extinguishment of International Labour Conventions. ILO Doc. No. GB.265/LILS/WP/PRS/2* (Geneva: ILO, 1996).

<sup>51</sup> The seven Conventions are: No. 4 of 1919; No. 15 of 1921; No. 28 of 1929; No. 41 of 1934; No. 60 of 1937; No. 67 of 1939; No. 91 of 1949.

<sup>52</sup> Conventions Nos. 80 and 116.

<sup>53</sup> Convention No. 158 and Recommendation No. 166.

<sup>54</sup> ILO, *Governing Body 294<sup>th</sup> Session, Geneva, November 2005. Committee on Legal Issues and International Labour Standards (LILS). Improvements in the standards-related activities of the ILO: Outlines of a future strategic orientation for standards and for implementing standards-related policies and procedures. ILO Doc. No. GB.294/LILS/4* (Geneva: ILO, 2005), at 7.

The prospects for creating a new Working Party were discussed in 2012.<sup>55</sup> Currently the Governing Body is trying to determine which instruments should be analysed: all ILO Conventions and Recommendations or only the ones that were not studied by the Cartier Group (i.e. the instruments that were adopted after 1985).<sup>56</sup>

The discussion of the systematization of the ILO instruments is described as the “creation of a robust and effective international labour code”.<sup>57</sup> Nevertheless, just as with the pre-War publications of the ILO instruments, there has been no discussion concerning the creation of any unified and codified international act. The subject of debate is limited to finding some convenient way to present the existing Conventions and Recommendations.<sup>58</sup>

### III. THE ILO MONITORING MECHANISM FOR APPLICATION OF THE CONVENTIONS AND RECOMMENDATIONS

In addition to the complexity of the standards adopted by the ILO, the rather complicated system for monitoring of their application is in itself a problem. An overall description of these procedures is certainly needed in order to understand the issue.

There are two main procedures of control over the application of ILO standards: a regular system of supervision and special procedures for examining representations and complaints relating to the ratified Conventions.<sup>59</sup>

The *regular system of supervision* includes reporting by the ILO member states

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<sup>55</sup> ILO, *Governing Body 313<sup>th</sup> Session, Geneva, 15–30 March 2012. Legal Issues and International Labour Standards Section (LILS). ILO Doc. No. GB.313/LILS/PV/Draft* (Geneva: ILO, 2012), at 13.

<sup>56</sup> ILO, *Governing Body 312<sup>th</sup> Session, Geneva, November 2011. Legal Issues and International Labour Standards Section. International Labour Standards and Human Rights Segment (LILS). ILO standards policy: The establishment and the implementation of a standards review mechanism. ILO Doc. No. GB.312/LILS/5* (Geneva: ILO, 2012), at 11.

<sup>57</sup> ILO, *Governing Body 310<sup>th</sup> Session, Geneva, March, 2011. Committee on Legal Issues and International Labour Standards (LILS). Improvements in the standards-related activities of the ILO - ILO standards policy: An approach for a robust and effective international labour code. ILO Doc. No. GB.310/LILS/3/1* (Geneva: ILO, 2011), at 1.

<sup>58</sup> ILO, *Governing Body 310<sup>th</sup> Session, Geneva, March 2011. LILS. Second report: International labour standards and human rights. ILO Doc. No. GB.310/11/2(Rev.)* (Geneva: ILO, 2011) at 9.

<sup>59</sup> See: ILO, *Handbook of procedures relating to international labour Conventions and Recommendations* (Geneva: ILO, 2006), at 20-40.

on their compliance with ratified and non-ratified Conventions according to art. 22 and 19 (paras. 5 and 6) of the ILO Constitution. These reports are submitted to the CEACR, a panel that includes independent academic experts in labour law from different countries. The CEACR responds to the member states' reports (or failures to provide such reports) by issuing *Observations* and *Direct Requests*. Observations are made in the more serious cases of failure by member states to comply with the ILO standards or to provide satisfactory information. They are published in the CEACR General Report annually. Each General Report is a large volume of about 1,000 pages.<sup>60</sup> Direct Requests are not published but are relayed to the member states when the CEACR considers that an issue may be solved by means of direct communication.

The next kind of regular procedure is the *Conference Committee on the Application of Conventions and Recommendations* (Conference Committee) formed on a tripartite basis in the course of each International Labour Conference. The Conference Committee examines the CEACR General Report, the member states' reports and *some* of the most serious cases brought to light in the CEACR Observations. This last task is considered to be the most important among the Conference Committee's functions. The representatives of the governments of the countries in question are invited to a discussion within the Conference Committee. The activity of the Conference Committee is considered very valuable by ILO experts.<sup>61</sup> Nevertheless, there is no practical way for this control body to make an objective determination which cases are the most serious, even though the Conference Committee is supposed to deal with the most serious violations of the international labour standards. It picks about 25 cases annually<sup>62</sup> out of the hundreds of cases examined by the CEACR.

The *special system of control* comprises several different procedures. First of all, art. 24 of the ILO Constitution provides for employers' or workers' indu-

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<sup>60</sup> See for example last CEACR Reports: ILO, *International Labour Conference, 101<sup>st</sup> Session, 2012. Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution). Report III (Part 1A). General Report and observations concerning particular countries* (Geneva: ILO, 2012); ILO, *International Labour Conference, 102<sup>nd</sup> Session, 2013. General Report and observations concerning particular countries* (Geneva: ILO, 2013).

<sup>61</sup> Francis Maupain, *Une Rolls Royce en mal de révision? L'efficacité du système de supervision de l'OIT à l'approche de son centenaire*, *Revue Générale de Droit International Public*, No. 3 (2010), at 495.

<sup>62</sup> See: ILO, *The Committee on the Application of Standards of the International Labour Conference: a dynamic and impact built on decades of dialogue and persuasion* (Geneva: ILO, 2011), at 2.

strial associations to make a *representation* against a government of a member state<sup>63</sup> concerning its failure to “...secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party”. There is a special procedure of examination for such representations regulated by the Standing Orders adopted by the ILO Governing Body.<sup>64</sup> The International Labour Office transfers a representation that it has received to the Governing Body, which invites the member state in question to respond to this representation. In case the member state fails to respond in a *reasonable* period of time, the Governing Body *may* establish a special tripartite *ad hoc* committee to examine the representation or refer the representation to the ILO Committee on Freedom of Association (CFA, see further). After the examination of the representation, the tripartite committee makes a report to the Governing Body.

The Governing Body also has an option to use another control procedure: filing a *complaint* according to art. 26 of the ILO Constitution. In such cases a special (also *ad hoc*) *Commission of Inquiry* is established. This procedure is considered to be one of the most radical measures that the ILO may employ to apply pressure to the member states and persuade them to comply with international labour standards. This procedure may be initiated by a motion of the Governing Body itself, or by any ILO member state, or by the delegates of the International Labour Conference. The results of the examination of a complaint are published in the report of the Commission of Inquiry. The government of the member state in question is obliged to react within the three months<sup>65</sup> after the publication of the report by stating its intentions concerning the fulfilment of the recommendations made.

There are no follow-up procedures associated with the results of representations and complaints according to art. 24 and 26 of the ILO Constitution. This issue was addressed by the Governing Body in 2000<sup>66</sup>, but the situation has not changed since that time. In the event of a refusal to follow the recommen-

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<sup>63</sup> Or former member state that is a party to the ILO Convention in question.

<sup>64</sup> ILO, *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization Adopted by the Governing Body at its 57th Session (8 April 1932), modified at its 82nd Session (5 February 1938), 212th Session (7 March 1980), and 291st Session (18 November 2004)*, ([http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/meetingdocument/wcm\\_041899.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/meetingdocument/wcm_041899.pdf)).

<sup>65</sup> Art. 29, para. 2, ILO Constitution.

<sup>66</sup> ILO, *Governing Body, 279th Session, November 2000. Possible improvements in ILO standards-related activities. ILO Doc. No.279/4* (Geneva: ILO, 2000), at 12.

dations of the International Labour Conference, the case may be referred to the UN International Court of Justice.<sup>67</sup> There has never been such a precedent in the history of the ILO to date.

The most extreme measure that the ILO may apply to the non-compliance of a member state with the international labour standards is provided in art. 33 of the ILO Constitution. If the member state fails to carry out 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".

The grievance procedure most resorted to within the framework of ILO control involves the concept of freedom of association. A special Committee on Freedom of Association (CFA) is responsible for this procedure. Workers' and employers' associations may file complaints to the CFA claiming breach of the principles provided by ILO Conventions Nos. 87 and 98 and in the relevant case law. Member states are obliged to abide by the CFA decisions, although there is no special enforcement procedure, except for the provisions concerning the representations and complaints according to art. 24 and 26 of the ILO Constitution (see above). In 1979 the Governing Body agreed<sup>68</sup> to strengthen CFA control functions through more frequent use of the ILO field structure so that the CFA would have better information from a mission dispatched immediately to the field. This was to enable reaching conclusions on cases more quickly. But these decisions were never implemented in practice.

Another control institution related to freedom of association is the *Fact Finding and Conciliation Commission on Freedom of Association* (FFCC) that was established in 1950 as a result of an agreement between the ILO and the UN Economic and Social Council (ECOSOC).<sup>69</sup> It carries out its activity on an *ad hoc* basis and was first called upon 14 years after it was established.<sup>70</sup> During

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<sup>67</sup> Art. 29, para. 2, ILO Constitution.

<sup>68</sup> William R. Simpson, *Standard-setting and supervision: A system in difficulty*, in Jean-Claude Javillier et Bernard Gernigon (eds.), *Les normes internationales du travail: un patrimoine pour l'avenir Mélanges en l'honneur de Nicolas Valticos* (Geneva: ILO, 2004), at 68-69.

<sup>69</sup> See in detail: Nicolas Valticos, *La Commission d'investigation et de conciliation en matière de liberté syndicale et le mécanisme de protection internationale des droits syndicaux*, *Annuaire français de droit international* (Paris: Centre national de la recherche scientifique, 1967), at 445-468.

<sup>70</sup> In 1964 to examine freedom of association in the public sector in Japan. See: ILO,

the period that it has been active, it has examined only six cases<sup>71</sup>, the last of which was considered more than twenty years ago.<sup>72</sup> The infrequent use of this procedure may be explained by the fact that the consent of the state under examination is required in order to grant the FFCC the authority to examine the case whenever that state has not ratified the applicable Convention on freedom of association. Such consent is very rarely given in practice. From the moment of its creation the FFCC has been thwarted by lack of trust and of willingness to cooperate on the part of the ILO member states.<sup>73</sup>

The realization that regular and routine examination of cases infringing upon the freedom of association within the FFCC framework was impossible was a reason for the establishment of CFA. Nevertheless, the rare examples of FFCC engagement were considered to be more effective and successful than the Commission of Inquiry investigations performed under art. 26 of the ILO Constitution.<sup>74</sup> This is because member states that have voluntarily agreed to take part in the examination of a case are more open to cooperation with the ILO control bodies in preference to the “naming and shaming” procedure of art. 26.

There are other special ILO control procedures that are associated with its separate instruments (ILO Declarations, 1977, 1998 and 2008, Maritime Labour Convention, 2006).

Like the body of ILO instruments, the ILO monitoring and control system was created not according to some plan that was elaborated in advance, but rather as a reaction to the circumstances and needs of the time. This has inevitably led to difficulties in using the control mechanisms. For example, the CEACR was created in 1926 when it became clear that it was impossible to examine all the member states' reports within the International Labour Confe-

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*Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Persons Employed in the Public Sector in Japan* (Geneva: ILO, 1966).

<sup>71</sup> See the ILO site: *Reports of the Fact-Finding and Conciliation Commissions on Freedom of Association* ([http://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_160778/lang-en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/WCMS_160778/lang-en/index.htm)).

<sup>72</sup> ILO, *Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa*. ILO. Doc. No. GB.253/15/7 (Geneva: ILO, 1992).

<sup>73</sup> Max Rood, *New Developments within the ILO supervisory system*, in Roger Blanpain (ed.), *Labour Law, Human Rights and Social Justice. Liber Amicorum* in Honour of Ruth Ben-Israel (The Hague: Kluwer Law International, 2001), at 90.

<sup>74</sup> William R. Simpson, *op. cit.* (fn. 68), at 67-68.

rence plenary sessions. In 1932 a procedure of representations and complaints was established.<sup>75</sup> In 1946 the ILO Constitution was amended in order to reflect reporting obligations for a member state to that state's own authorities that were concerned with the adoption of the ILO Conventions<sup>76</sup> and also to the ILO about the measures taken in respect of the ratification of the Convention in question.<sup>77</sup> The CFA was established in 1951 after the adoption of the fundamental Conventions on freedom of association and collective bargaining and failure of the FFCC to provide routine examination of freedom of association cases.<sup>78</sup> After the adoption of the Tripartite Consultation (International Labour Standards) Convention of 1976 (No. 144) the control procedures were modified in order to involve the social partners to a larger extent. Over almost a hundred years of ILO operations, its procedures have been modified quite significantly. This is true of the corpus of the Conventions and Recommendations as well, and some of these procedures have become outdated in the course of time.

There were numerous discussions within the ILO concerning the lack of transparency of the monitoring system, the overlapping of the procedures and their interference with each other and with the powers of the control bodies. Even the Governing Body delegates and ILO officials with substantial experience in the involvement of the ILO have difficulty arriving at a clear picture of the monitoring system.<sup>79</sup> As the International Labour Office sees it, the weakest area of understanding the control procedures by the representatives of the member states is the reporting obligations of the authorities of the member states concerning the Conventions adopted according to art. 19, para. 5 of the Constitution.<sup>80</sup>

For example, the CEACR procedures and the procedure for representations with respect to the member states have different goals and origins but are often used in similar situations with the same results: publicizing information about breaches of the international labour standards by a member state. The

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<sup>75</sup> Art. 24 and 26 of the ILO Constitution.

<sup>76</sup> Art. 19, para. 5 of the ILO Constitution.

<sup>77</sup> Art. 22 of the ILO Constitution.

<sup>78</sup> ILO Conventions Nos. 87 and 98 of 1948 and 1949.

<sup>79</sup> ILO, *Governing Body, 279th Session, November 2000. Possible improvements in ILO standards-related activities. ILO Doc. No. GB.279/4* (Geneva: ILO, 2000), at 10.

<sup>80</sup> ILO, *The Committee on the Application of Standards of the International Labour Conference. A dynamic and impact build on decades of dialogue and persuasion, op. cit.* (fn. 62), at 137.



procedures are used very unevenly. The main burden of monitoring and control is placed on the CEACR and the CFA. The CEACR examines between two and three thousand reports from member states each year.<sup>81</sup> The Conference Committee accepts only about 25 cases for examination at the International Labour Conference session<sup>82</sup> based on the Observations made by the CEACR. The choice of cases is mainly determined not by the actual content of the CEACR comments, but rather by the practical possibilities of having the Conference Committee examine a case.<sup>83</sup> The choice of cases is performed by the Conference Committee itself based on the proposals of its members (in almost all cases these are delegates of workers and employers).<sup>84</sup> There are no clear criteria for this choice. Most of the cases examined are associated with fundamental or governance Conventions.<sup>85</sup> Other instruments, although they may cover very important labour rights (e.g. wages or occupational safety and health, etc.) usually fall outside of the attention of the ILO higher monitoring authority.

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<sup>81</sup> See the CEACR Report on the ILO site: <http://www.ilo.org/public/libdoc/ilo/P/09661/>.

<sup>82</sup> ILO, *The Committee on the Application of Standards of the International Labour Conference: a dynamic and impact built on decades of dialogue and persuasion*, *op. cit.* (fn. 62), at 2.

<sup>83</sup> For more information see: ILO, *Governing Body, 279th Session, November 2000. Possible improvements in ILO standards-related activities. ILO Doc. No. GB.279/4*, *op. cit.* (fn. 79), at 8-12; ILO, *Governing Body, 306th Session Geneva, November 2009. Reports of the Committee on Legal Issues and International Labour Standards. Second report: International labour standards and human rights. ILO Doc. No. GB.306/10/2(Rev.)* (Geneva: ILO, 2000), at 2-3, *et al.*

<sup>84</sup> ILO Doc. No. GB.279/4., *op. cit.* (fn. 79), at 9-11.

<sup>85</sup> In 2011, 20 cases out of a total of 26 pertained to the fundamental Conventions, and two more to the governance Conventions (see: ILO, *International Labour Conference, 100th Session, Geneva, 2011. Committee on the Application of Standards at the Conference. Extracts from the Record of Proceedings* (Geneva: ILO, 2011); in 2010, 22 cases out of a total of 26 pertained to the fundamental Conventions, and one more to the governance Conventions (ILO, *International Labour Conference, 99th Session, Geneva, 2010. Committee on the Application of Standards at the Conference. Extracts from the Record of Proceedings* (Geneva: ILO, 2010); in 2009, 23 out of 26 were fundamental, and one pertained to governance (ILO, *International Labour Conference, 98th Session, Geneva, 2009. Committee on the Application of Standards at the Conference. Extracts from the Record of Proceedings* (Geneva: ILO, 2009); in 2008, 21 out of 25 were fundamental and two more pertained to governance (ILO, *International Labour Conference, 97th Session, Geneva, 2008. Committee on the Application of Standards at the Conference. Extracts from the Record of Proceedings* (Geneva: ILO, 2008). The situation was similar in other years.

The CFA has examined 3,045 freedom of association cases from 1952 to date.<sup>86</sup> Representations to the Governing Body according to art. 24 of the ILO Constitution have been examined 164 times since 1924.<sup>87</sup> The recourse to this procedure has been very irregular. It was used from time to time in the early period of ILO activity, but then there were almost no representations until the 1970s (only three cases between 1938 and 1974). The “second life” of this procedure started in the 1980s and especially in the 1990s.<sup>88</sup> The use of representations became more casual at the beginning of the 21<sup>st</sup> century: there were 3.3 representations on average in the century’s first decade compared to 8.1 in 1990s. A Commission of Inquiry according to art. 26 of the ILO Constitution has been convened only 12 times<sup>89</sup> in the history of ILO. In most cases a special tripartite committee was established, while in some cases the matter was passed to the CFA.<sup>90</sup>

The most extreme control procedure, which is a call from International Labour Conference to the member states to take measures affecting a member state in violation according to art. 33 of the ILO Constitution, has been used only once in the history of the ILO regarding Myanmar in 2000.<sup>91</sup> As has already been mentioned, the FFCC has been convened only six times. As a result, some of the monitoring procedures are used in the routine regime while others are only “activated” in exceptional cases. The choice of procedure depends

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<sup>86</sup> January 2014. See: ILO, Normlex, Supervising the application of international labour standards. Search Freedom of Association cases: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20030:0::NO::>.

<sup>87</sup> ILO, Normlex, Representations (Art. 24): [http://www.ilo.org/dyn/normlex/en/f?p=1000:50010:3729097806904372:::P50010\\_DISPLAY\\_BY:1](http://www.ilo.org/dyn/normlex/en/f?p=1000:50010:3729097806904372:::P50010_DISPLAY_BY:1).

<sup>88</sup> The absolute record was set in 1996 when 27 representations were examined. In 1994 and 1995 there were 10 examinations each year and 9 examinations in 1998. Since that time the number of examinations has dropped.

<sup>89</sup> See the cases in the ILO Normlex Database: Complaints/Commissions of Inquiry (Art. 26): [http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:0::NO::P50011\\_ARTICLE\\_NO:26](http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:0::NO::P50011_ARTICLE_NO:26).

<sup>90</sup> ILO, *Governing Body 301<sup>st</sup> Session, Geneva, March 2008. Committee on Legal Issues and International Labour Standards (LILS) Sixth item on the agenda. Improvements in the standards-related activities of the ILO: Initial implementation of the interim plan of action to enhance the impact of the standards system. ILO Doc. No. GB.301/LILS/6(Rev.)* (Geneva: ILO, 2008), at 23.

<sup>91</sup> ILO, *International Labour Conference. Eighty-eighth Session, Geneva, 2000. Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar*. ILO site: [http://www.ilo.org/public/english/standards/reln/ilc/ilc88/resolutions.htm#\\_ftn1](http://www.ilo.org/public/english/standards/reln/ilc/ilc88/resolutions.htm#_ftn1).

not so much on the kind of violation as on the subjective decision of the institution submitting a complaint or on the control bodies of the ILO. Such a situation makes it quite difficult for the member states and social partners to understand the system of monitoring procedures.

The Committee on Legal Issues and International Labour Standards of the ILO Governing Body (LILS) made a case study in 2008<sup>92</sup> concerning the effectiveness of interaction between the various control procedures based on seven selected practical examples.<sup>93</sup> As the case study shows, the coordination between various procedures mainly depends on the ILO Governing Body. The recourse to one or another procedure depends mainly on the participants in the case. The explanation is that the ILO Constitution does not provide for direct links between the different control procedures and does not establish any priorities for the examination of cases. In some cases it was shown that lack of constant attention to the cases from the complaining party has led to a delay in the examination for an indefinite period. In almost every case the same matter was taken up separately by different control institutions. In all cases the examination took many years. In the case of Myanmar it took *more than forty years*. This case was unique not only because of the International Labour Conference recourse to art. 33 of the Constitution, but also because this case was discussed at the Conference Committee and plenary session of the International Labour Conference annually<sup>94</sup> for many years until the summer of 2013.<sup>95</sup> Although the Myanmar case involved very serious violations with

<sup>92</sup> ILO, *Governing Body 303<sup>rd</sup> Session, Geneva, November 2008. Committee on Legal Issues and International Labour Standards (LILS) Fourth item on the agenda. Improvements in the standards-related activities of the ILO: Improving the coherence, integration and effectiveness of the supervisory system through a better understanding of its dynamics (further study from a substantive and practical standpoint)*. ILO Doc. No. GB.303/LILS/4/2 (Geneva: ILO, 2008).

<sup>93</sup> Cases Nos. 1 and 2 concerned freedom of association (Nepal and Nicaragua); Nos. 3 and 4 concerned forced labour (Dominican Republic together with Haiti and separately Myanmar); No. 5 concerned equal opportunity (Czech Republic and Slovakia); No. 6 wages (Congo); No. 7 social protection (Netherlands).

<sup>94</sup> See on the development of the situation in Myanmar: ILO, *International Labour Conference. 101<sup>st</sup> Session, Geneva, May–June 2012. Provisional Record. Additional agenda item. Review of measures previously adopted by the International Labour Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry* (Geneva: ILO, 2012).

<sup>95</sup> ILO, *International Labour Conference. 102<sup>nd</sup> Session, Geneva, June 2013. Additional agenda item: Further review of remaining measures previously adopted by the International Labour Conference under article 33 of the ILO Constitution to secure compliance by Myanmar*

respect to forced labour, it would be a great exaggeration to claim that such a case is absolutely unique in the world. There are many other very serious violations of labour rights<sup>96</sup> that did not receive the attention due them from the ILO control bodies.

According to the evaluation by the LILS, in three cases among the seven that were discovered the issues remained unsettled. Partial settlement was achieved in two cases, and complete settlement in only one case of seven. In some cases of partial settlement, that success was achieved not because of the ILO involvement but because of internal political factors.

#### IV. CONCLUSION

It is obvious that it would be totally unrealistic to expect the same level of effectiveness from an international organization as from a state that can apply its sovereign power to any subject of national law. But the empirical data provided above shows that ILO control mechanisms could operate much more effectively. There have been different suggestions in the literature and in internal ILO studies concerning possible improvement of the ILO control mechanisms, but up to now they have not been implemented in practice.

The measures that could make the control system more effective might include the following:

1. An amendment to the ILO Constitution to clearly rationalize the status of the ILO control machinery. This could alter the control bodies' status and would help to avoid the ambiguities related to them.
2. The abolition of secondary and seldom used procedures that serve only to make understanding the ILO control system more difficult.
3. Formation of a clear, transparent and easily understood procedure for control over the reporting system and examination of complaints,

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*with the recommendations of the Commission of Inquiry Arrangements for consideration of all relevant issues concerning Myanmar at the 102nd Session of the Conference (Geneva: ILO, 2013), at 2-1/2.*

<sup>96</sup> Such as, for example, some Middle East petro-dynasties. See for example: International Trade Union Confederation (ITUC), *Internationally Recognised Core Labour Standards in Saudi Arabia: Report For the WTO General Council Review of the Trade Policies of Saudi Arabia (Geneva, 25 And 27 January 2012)* ([http://www.ituc-csi.org/IMG/pdf/final\\_tpr\\_saudi\\_arabia.pdf](http://www.ituc-csi.org/IMG/pdf/final_tpr_saudi_arabia.pdf)).

including two stages of examination. The second stage should examine all unresolved issues, rather than being invoked on a casual basis as is now done. This system should also be clearly reflected in the ILO Constitution.

4. Even though only in exceptional cases, the ILO should have recourse to art. 33 of the ILO Constitution from time to time.

The modification of the system of the ILO instruments might include its gradual codification. Codification of all Conventions and Recommendations at once does not seem realistic. Nevertheless, when the ILO Constitutional amendment of 1997 that would allow abrogating the old Conventions finally comes into force, it would be possible to begin to undertake a broad codification of the ILO instruments. Such instruments could combine both binding and recommendation norms covering several broad topics and categories of workers. The Maritime Labour Convention could serve as a good example of such possible codification. There might be about 10 to 15 such mega-Conventions covering all the major issues in international labour law. These acts could include not just framework provisions in certain areas but specific norms (even if some of them were previously established in the earlier Conventions and Recommendations). After the Constitutional amendment of 1997 comes into force, it would be necessary to abrogate as many irrelevant and outdated Conventions as possible in exchange for the adoption of the new instrument on the matter.

If the ILO would persevere in this policy, it would be possible to combine these large instruments into a comprehensive international labour code in the future.

It seems that ILO reforms of this kind might significantly improve the effectiveness of the application of the international labour standards adopted under its auspices.

## Sažetak

Nikita Lyutov\*

### SUSTAV MEĐUNARODNIH RADNIH STANDARDA MOR-A I POSTUPCI NADZORA: PRESLOŽENI DA BI BILI UČINKOVITI?

*U radu se obrađuje složeni sustav konvencija i preporuka Međunarodne organizacije rada (MOR) i postupci nadzora nad njihovom primjenom kao čimbenik s izrazito negativnim utjecajem na njihovu učinkovitost. Razmatra se perspektiva kodificiranja standarda MOR-a. Izneseni su zaključci u vezi s mogućnosti postupne kodifikacije konvencija i preporuka prema širim tematskim cjelinama te daljnjeg stvaranja jedinstvenog međunarodnog radnog zakonika. Predlažu se smjernice za klasifikaciju tematskih cjelina.*

*Posebno su analizirani postupci nadzora koje provodi MOR te je zaključeno da im nedostaje koordinacije i sistematizacije. Iznesene su preporuke za pojednostavnjenje tih postupaka, za ukidanje rijetko rabljenih i sekundarnih postupaka te za postizanje višeg stupnja usklađenosti među postojećim postupcima kako bi primjena međunarodnih radnih standarda bila učinkovitija. Također su izloženi i dodatni prijedlozi u vezi sa smanjenjem složenosti standarda MOR-a i sustava nadzora nad njihovom primjenom.*

*Ključne riječi: međunarodni radni standardi, Međunarodna organizacija rada, međunarodno radno pravo, socijalna prava, učinkovitost primjene međunarodnih mehanizama*

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