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International Labour Organization (ILO)

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A. Historical Background and Development

1 The idea that improvement of working conditions at the national level required international cooperation goes back to the 19th century (→ *Labour Law, International*). The process of industrialization had brought about miserable living conditions for the working class, such as child labour, excessively long hours of work, and unhealthy working conditions. This need for regulation led to a movement towards the enactment of labour laws, an idea in particular advanced by Robert Owen in England and Daniel Legrand in France. In 1890, the German Emperor, following proposals by the Swiss Government, convened a conference in Berlin in order to have international agreements on working conditions discussed; it was feared that the improvement of working conditions could result in disadvantages in international competition compared to States retaining a low level of workers' protection. The Berlin Conference adopted resolutions on minimum social standards, eg on the work in mines, weekly rest, and the work of children, the young, and women. However, these resolutions were not followed up. In 1900, the International Association for the Legal Protection of Workers was founded as a private organization with an office in Basle by a group of scholars and administrators to compile and assess national labour legislations. The Association prepared international conferences convened by the Swiss government in Berne in 1905 and 1906, the outcomes of which were the first international conventions on workers' rights: the Convention respecting the Prohibition of Night Work for Women in Industrial Employment ([signed 26 September 1906, entered into force 14 January 1914] 203 CTS 4; → *Women, Rights of, International Protection*), and the Convention respecting the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches ([signed 26 September 1906, entered into force 1 January 1912] 203 CTS 12).

2 The outbreak of World War I cut short the Association's work and thereby foreclosed the adoption of other draft conventions. It was not until the peace negotiations that the establishment of social standards regained considerable importance. It was intended to reflect the contribution of the working masses to the war effort in the peace settlement; thus, following demands by a number of trade union conferences, the Allied Powers decided that the emerging peace treaties (→ *Peace Treaties after World War I*) should make arrangements for the protection of workers' rights and labour unions and for the establishment of an international body to promote future cooperation in this regard. The Paris Peace Conference appointed an Advisory Commission to draft proposals. Three concepts of an international body were discussed: *a)* an international parliament enacting labour laws, which the Member States would have to implement unconditionally, *b)* or would have to implement unless their national parliaments decided otherwise within a year, and *c)* an international body making recommendations, the enforcement of which would be left up to the Member States. The latter proposal prevailed, and the Report of the Commission on International Labour Legislation suggesting the establishment of a permanent international organization in the field of labour was adopted by the Peace Conference ('Draft Convention Creating a Permanent Organisation for the Promotion of the International Regulation of Labour Conditions' in Commission on International Labour Legislation *Report and Minutes of the Commission on International Labour Legislation* [Tipografia Italia Rome 1921] 12). Later, the respective provisions became Part XIII of the Treaty of Peace between the Allied and Associated Powers and Germany (→ *Versailles Peace Treaty [1919]*).

3 This was the birth of the International Labour Organization (ILO) as an independent organization within the framework of the → *League of Nations*. The preamble highlights the interrelation of peace between States and peace in the labour markets, and it solemnly declares that universal and lasting peace can be established only if based upon social justice, and that the failure of any nation to adopt humane conditions of labour was an

obstacle for other nations which desired to improve conditions in their own countries. In 1934, the founding document became independent from the Versailles Peace Treaty and was henceforth called 'ILO Constitution'. Notwithstanding a series of substantive principles enshrined in the ILO Constitution, its core achievement can certainly be seen in the establishment of a machinery through which labour standards might be adopted on the international level.

4 The first annual conference of the ILO was convened in Washington in October 1919; Albert Thomas of France was appointed its first Director. The Conference adopted the first six international labour conventions, and in 1920, the ILO's headquarters were established in Geneva. In the successive years, many conventions and recommendations were adopted in the field of labour law (see also → *International Law, Development through International Organizations, Policies and Practice*). This stage was followed by a first period of tension with the Great Depression, the world economic crisis and the looming war. During World War II, a reduced staff having moved to Montreal shaped the ILO's future agenda. In 1944, the ILO Conference meeting in Philadelphia adopted the important Declaration concerning the Aims and Purposes of the International Labour Organisation ('Declaration of Philadelphia') reshaping the aims and the future role of the ILO in the post-war period. The Declaration of Philadelphia which was subsequently incorporated into the ILO Constitution affirmed 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' (at para. II (a)). In 1946, the ILO became the first Specialized Agency of the United Nations (→ *United Nations, Specialized Agencies*). The post-war period was shaped by a large increase of membership consequent upon the attainment of independence by former colonial territories. The ILO considerably extended its activity, including large-scale technical cooperation programmes supplementing the standard-setting, research, and information work. In 1969, the ILO was awarded the Nobel Peace Prize.

B. Basic Features and Special Legal Problems

1. Aims, Membership, and Finances

5 The ILO aims to promote workers' rights, dignified human working conditions and social security in general (see also → *Human Rights*; → *Social Security, Right to, International Protection*); at the same time, it aims to prevent States from gaining advantages in international competition by maintaining a low level of workers' rights. The ILO Constitution committed itself to the improvement of labour conditions including an overall spectrum of social policy such as the regulation of the working hours, the protection of children, young persons, and women, and the recognition of the freedom of association (→ *Association, Freedom of, International Protection*). The Declaration of Philadelphia broadened this enumeration considerably, referring to full employment (→ *Work, Right to, International Protection*), to policies with regard to wages and earnings, and to adequate protection for the life and health of workers. Altogether, the ILO endeavours to promote a harmonious balance between social progress and economic development.

6 While membership is limited to nation States, the ILO nevertheless cooperates with other international organizations (see paras 26–27 below) and → *non-governmental organizations*, including these organizations' potential participation without vote in ILO deliberations. UN Member States can accede by formally declaring that they accept the obligations under the ILO Constitution; other States can accede likewise, on condition that the General Conference approves the accession with a two-thirds majority. The expenses of the ILO are borne by the Member States, the budget being voted by the Conference by a two-thirds majority and approved by a committee of government representatives (Art. 13 ILO Constitution). Withdrawal from the ILO is possible two years after giving notice of that

intention; this does not, however, affect the continued validity of ILO conventions that were ratified before. In August 2014, 185 States were ILO members.

2. Institutional Structure

(a) Tripartism

7 A special and unique feature of the ILO is the principle of tripartism, which means that employers' and workers' organizations have an equal voice with governments in shaping the ILO's policies and programmes. Tripartism is a formal ILO principle in that every organ and subdivision (except for the Finance Committee) is composed of government delegates as well as employers' and workers' representatives. Tripartism is a substantial principle as well, in that the ILO attempts to encourage tripartism within the Member States by promoting a social dialogue which involves labour unions and employers in the formulation and implementation of national social policy. In the history of the ILO, tripartism has caused problems time and again, as it makes decision-making less rapid and effective. Current problems include more flexible and decentralized domestic social standards, and the decreasing importance of national workers' and employers' unions in the process of globalization. Nonetheless, the benefits of tripartism are virtually uncontested, as it vests ILO standards with an exceptional authority and higher democratic legitimacy (→ *International Organizations or Institutions, Democratic Legitimacy*).

(b) Organs

8 The ILO has three principal organs: the General Conference, the Governing Body, and the International Labour Office. In addition, there are Regional Advisory Committees, Regional Conferences, and Industrial Committees dealing with labour problems in particular sectors. Several institutions are associated with the ILO, eg the International Institute for Labour Studies in Geneva, the International Training Centre in Turin, and the International Social Security Association. The Administrative Tribunal of the ILO, the successor of the Administrative Tribunal of the League of Nations, hears complaints from serving and former officials of the International Labour Office and of other international organizations that have recognized its jurisdiction (→ *Judgments of the Administrative Tribunal of the International Labour Organization [Advisory Opinion]*).

(i) General Conference

9 The General Conference, or International Labour Conference, is the plenary organ which adopts the programme and budget of the organization every two years, elects the Governing Body, and is a forum for discussion of key social and labour questions. It adopts conventions as well as recommendations on substantive labour law and resolutions and declarations on the ILO's general policy. Two government delegates, an employer delegate, and a worker delegate represent each Member State. The delegates of the social partners are nominated in agreement with the most representative employers' and workers' organizations. Pursuant to Art. 4 (1) ILO Constitution, every delegate shall be entitled to vote individually on all matters. The General Conference decides by simple majority; further provisions regarding the voting procedure and other questions are embodied in the Rules for the Conference. The General Conference meets in Geneva every year in June.

(ii) Governing Body

10 The Governing Body is the executive council of the ILO. It takes general decisions on ILO policy and drafts its agenda, the Conference programme and the budget. The Governing Body also reports to the Conference on its activities, appoints the Director-General and supervises the work of the International Labour Office. It is composed of 28 government members, 14 employer members, and 14 worker members. Pursuant to Art. 7 (3) ILO Constitution, 10 of the government seats are permanently held by 'States of chief industrial importance'; the remaining government representatives are elected every three

years by the government delegates of the General Conference, and the persons representing the employers and the workers are elected by the employers' and the workers' delegates respectively. The Governing Body meets three times a year in Geneva. A constitutional amendment which would, inter alia, double the number of the Governing Body's seats and abolish the privilege of States of chief industrial importance has not yet entered into force.

(iii) International Labour Office

11 The International Labour Office is the ILO's permanent secretariat with its own public service headed and appointed by the Director-General and with some 1900 officials of over 110 nationalities at the Geneva headquarters and in 40 field offices around the world. The Office is the focal point for ILO's overall activities: it prepares studies and reports for the General Conference and the Governing Body, it executes the decisions of the other organs, assists governments at their request with the framing of laws and regulations on the basis of ILO standards, carries out comprehensive research and documentation, and administers the numerous programmes of technical cooperation. The Director-General, appointed for a five-year renewable term by the Governing Body, is responsible for the efficient conduct of the International Labour Office. Since 2012, this position has been occupied by Guy Ryder of the United Kingdom.

3. Activities

(a) International Labour Standards

(i) Overview and Procedure

12 The ILO Constitution provides for two instruments of standard-setting in the field of labour: conventions and recommendations. For both instruments, the 'legislative' procedure is initiated by the Governing Body, assigning the Office with a report on the legislation and practice in the Member States with regard to a specific labour issue. On the basis of Member States' comments, the Office updates the report for first consultation by the Conference which decides whether a convention or recommendation should be generated. The Office then prepares a draft for discussion in the Conference's committees during the following session, and the ultimate version of the document is then transferred to the plenum for final vote; both conventions and recommendations are adopted by a two-thirds majority vote. In framing any convention or recommendation, the Conference is requested to have due regard to those countries in which imperfect development or other special circumstances make the industrial conditions substantially different (Art. 19 (3) ILO Constitution); therefore, terms qualifying the required level as 'appropriate', 'fair', or 'practicable' are frequently used in ILO standards. Conventions and recommendations only establish → *minimum standards* and do not affect any domestic legal provision which ensures more favourable working conditions (Art. 19 (8) ILO Constitution).

(ii) Legal Nature of ILO Conventions and Recommendations

13 From a general international law perspective, ILO conventions are of particular interest as they partly reveal certain—and considerably early—characteristics of supranationalism. ILO conventions are of course no genuine supranational acts (→ *Supranational Law*), as Member States are bound by conventions only in case of ratification, and ratification is not compulsory (Art. 19 (5) (e) ILO Constitution). Consequently, the → *Permanent Court of International Justice (PCIJ)* has held that the ILO 'has no legislative power' (*Competence of the ILO to Regulate Incidentally the Personal Work of the Employer [Advisory Opinion]* 17; → *Advisory Opinions of the Permanent Court of International Justice on Issues of the International Labour Organization*; → *Competences of the International Labour Organization [Advisory Opinion]*). However, Member States are under an obligation to bring a convention before the authority within whose competence the matter lies, in order to have it decide on ratification; and the genesis of ILO conventions is so remarkably different from

the common origin of international treaties, perhaps even ‘revolutionary’ (Bartolomei de la Cruz von Potobsky and Swepston 22), that they are inadequately conceived of as mere international conventions. In case of ratification, ILO conventions have the same impact for Member States as treaties have under international law: they are under an obligation to implement these rules, whereas the mode of incorporation of ILO standards into domestic law is governed by the different domestic legal systems themselves. Depending on the domestic status of ILO conventions and, foremost, on the wording of the respective norm, ie whether a provision is self-executing, ILO conventions may be relied upon in national courts (cf especially Leary 77–95; see also → *Treaties, Direct Applicability*). In fact, ILO standards are frequently formulated as programmatic norms, putting an obligation upon governments to pursue a certain policy, without granting individual parties the right to invoke the provision in court.

14 However, this does not elucidate the legal nature of ILO conventions before ratification. Apart from all intricate implications of the notion of → *soft law*, ILO conventions tend to be more than this even before ratification, in that they entail hard legal obligations for non-ratifying Member States, at the very least a periodical duty to report to the Office the position of its law and practice in regard to the matters dealt with in the convention (Art. 19 (5) (e) ILO Constitution). In addition, Member States can decide freely if they ratify an ILO convention, but have little influence on the text: it is elaborated within the ILO tripartite system and not by a common State conference, it is not voted unanimously but by majority, there are no governmental signatures to the text, and States are not even entitled to add reservations as this would interfere with the uniform development of labour standards in a tripartite structure (Art. 19 (c) Vienna Convention on the Law of Treaties [(concluded 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331]; Bartolomei de la Cruz von Potobsky and Swepston 50; see also → *Treaties, Multilateral, Reservations to*). As long as all these quasi-legislative specifications of ILO conventions are taken into account, it is of minor importance if they are, as has been proposed in academic discussions, conceived of as facultative statutes, model laws, or treaty-making law, or if they are characterized as being of a *sui generis* nature (cf, for instance, ‘tripartite collective agreements concluded internationally’ [Servais 88]).

15 The General Conference can adopt a recommendation where a subject is not considered suitable or appropriate at the time for a convention (Art. 19 (1) (b) ILO Constitution). ILO recommendations are not subject to ratification by the Member States; they do not have binding force under international law, but they aim at providing guidance to legislation and policy, and entail certain general obligations for the Member States. Recommendations have to be brought before the competent authorities, and the States are under a reporting obligation. In practice, recommendations have often been adopted at the same time as conventions to supplement and shape the latter with more detailed provisions.

(iii) Major Fields of Standard-Setting Action

16 In the 95 years of its existence, the ILO has covered a broad range of subjects concerning work, employment, social security, social policy, and related human rights. Whereas in the early years, ILO conventions met certain clearly defined but limited demands of workers, they subsequently began to deal with entire fields of social policy. Thereby, the relatively precise original standard-setting activity was partly replaced by more promotional conventions requiring large-scale implementation programmes. Today, ILO standards range from basic issues to procedural and substantive labour standards and cover such varied issues as freedom of association, elimination of forced labour and child labour, equality of opportunity and treatment, tripartite consultation, labour administration, employment policy and promotion, working time and wages, social security, → *migrant workers*, and → *indigenous peoples*. So far, 189 conventions and 203 recommendations have been adopted by the General Conference. In certain areas, the ILO established separate

programmes, for example the International Programme on the Elimination of Child Labour (→ *Children, International Protection*) or the Special Action Programme to Combat Forced Labour (→ *Forced Labour/Slave Labour*).

(b) Technical Cooperation, Information, Studies, and Research

17 Since the 1950s, the ILO has been providing technical cooperation to countries at different stages of economic development (see also → *Technical Assistance*). Currently, the ILO conducts more than 1000 technical cooperation programmes in over 80 countries. The overall purpose of the technical cooperation is to promote the ILO agenda especially in less developed States. In addition, the ILO acts as a clearing-house for the collection and dissemination of information regarding labour law and social issues. Apart from the organs' reports, the ILO performs and publishes numerous studies and manuals as well as workers' education materials, undertakes comprehensive research, and collects statistics.

4. Supervisory Mechanisms

18 The ILO Constitution establishes various obligations for the Member States to submit reports to the International Labour Office and provides for representation and complaint procedures.

(a) Reporting System

19 The ILO's regular system of supervision consists in the examination of reports on the application of ILO standards in domestic law and practice sent by the Member States and commented on by the employers' and workers' organizations (→ *Reporting Systems*). Pursuant to Art. 22 ILO Constitution, Member States are under an obligation to report annually on the measures which they have taken to give effect to ratified ILO conventions; due to the increasing extent of these reports, ILO practice today arranges for longer terms. Additionally, Member States have to present the state of domestic law and practice and possible steps of implementation with regard to non-ratified conventions and recommendations. However, the ILO Constitution remains silent as to the supervisory procedure. In the 1920s, the General Conference hardly attended to the States' reports and exercised very little control over the Member States' → *compliance* with ILO standards. The General Conference thus adopted the Resolution concerning the Methods by which the Conference Can Make Use of the Reports Submitted under Article 408 of the Treaty of Versailles, Submitted by the Committee on Article 408, establishing two new supervisory committees: a Committee of Experts in charge of the examination of the States' reports, and another Committee in charge of the assessment of such examination on behalf of the General Conference.

20 The Committee of Experts on the Application of Conventions and Recommendations is to provide an impartial and technical evaluation of the application of ILO standards by the Member States. The Committee, on the basis of an accurate → *fact-finding*, examines compliance with ratified ILO conventions reviewing the legality and the efficacy of domestic acts of implementation, and assesses the Member States' activities as regards non-ratified conventions and recommendations. The Committee can resort to observations and direct requests. Observations serve to identify grave or continued breaches of ILO standards and outline possible remedies; they are published in the Committee's annual report. By means of direct requests, the Committee addresses itself directly to governments in the case of problems of minor importance or for further enquiry. The Committee of Experts is composed of 20 eminent jurists appointed by the Governing Body for three-year terms.

21 The annual report of the Committee of Experts is examined by the tripartite Committee on the Application of Standards on behalf of the Conference. This Committee acts as a 'political veil' selecting a number of observations of major importance for discussion and drawing up non-compliance findings and recommendations on how to remedy certain problems, all of which are published in the Committee's final report which is then submitted to the Conference for adoption. Since 2012, however, there has been considerable controversy in the Committee concerning ILO's mandate on the right to strike; the employers' group's resistance prevented the Conference Committee from discussing any substantive cases which has been characterized as a serious crisis in the ILO supervisory system (Swepston 199–218). In general, serious breaches of Member States' obligations under the ILO regime become known to the public, which is 'the most serious moral censure available within the ILO regular supervisory system' (Leary 20). Whether such conclusions are binding under international law is disputed among international scholars and practitioners, a question closely connected to the arguable characterization of the Committee of Experts as a quasi-judicial body (Wagner 226–29). The ILO Constitution itself neither provides for a review of Member States' reports nor for the Committee of Experts; as to interpretative questions, it refers to the → *International Court of Justice (ICJ)* or a separate ILO tribunal which has not been established. A competence of the Committee of Experts for authoritative interpretation of ILO conventions is hardly compatible with these assumptions.

22 ILO's early and remarkably elaborate international monitoring system has advanced compliance with ILO standards in a soft manner, relying on dialogue and cooperation. It is 'through a combination of diplomacy and what are basically moral urgings' (Servais 300) that the supervisory system endeavours to promote the implementation of ILO standards. Moreover, the system has strongly influenced international institutional law in general.

(b) Representation and Complaints Procedures

23 Associations of employers and of workers are granted the right to submit a representation against a Member State which 'has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party' (Art. 24 ILO Constitution). The Governing Body may then set up a three-member tripartite Committee to examine the representation and the government's comment, and to file a report. The Governing Body has the right to publish the representation and the response if it does not consider the government's reaction satisfactory. The result of the representation procedure thus is not an enforceable finding of non-compliance, but the exercise of political pressure.

24 A complaint may be filed against a Member State because of alleged non-compliance with a ratified ILO convention, either by another Member State having ratified the same convention, or by a Conference delegate, or by the Governing Body itself. The Governing Body may communicate the complaint to the Member State for comment, and it may form a Commission of Inquiry, consisting of three independent members which are not delegates to the Governing Body. This Commission carries out a full investigation of the complaint, reports on all questions of fact, and makes suggestions as to the steps to be taken. The Commission's report is published, and the governments concerned have to inform the Director-General whether they accept the Commission's recommendations or intend to refer the complaint to the ICJ. In case a Member State accepts recommendations without implementing them thereafter, Art. 33 ILO Constitution leaves it to the discretion of the Governing Body to recommend actions in order to secure compliance; so far, such action has been envisaged only once with regard to the continued violation of the ILO Convention

(No 29) concerning Forced or Compulsory Labour by Myanmar but has not been finalized. Due to the reluctance to file formal State complaints, the procedure has rarely been used.

25 The special procedure for complaints regarding freedom of association has gained considerably greater importance. After the adoption of Convention (No 87) concerning Freedom of Association and Protection of the Right to Organize and Convention (No 98) concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, the ILO was of the opinion that the freedom of association as a core principle required further supervision. In 1951, it set up the Committee on Freedom of Association ('CFA') as a Governing Body committee composed of an independent chairperson and three representatives each of governments, employers, and workers, to examine complaints about violations of the freedom of association, whether or not the Member State concerned has ratified the relevant conventions. Complaints may be submitted by employers' and workers' organizations. If the CFA finds a violation of the freedom of association, it files a report making recommendations on how the situation could be remedied. Subsequently, the Member States are requested to report on the implementation of the CFA's recommendations. The CFA procedure thus does not render non-ratified ILO conventions binding, but aims to promote progress and to encourage further ratification. To date, the CFA has examined over 2300 cases.

C. Relationship with Other International Organizations

26 International labour and social standards are not dealt with by the ILO alone, even though the ILO is the only international organization exclusively committed to this field of activity. The UN itself does not specifically deal with international labour standards; nevertheless, fundamental workers' rights form part of the → *Universal Declaration of Human Rights (1948)* and have been developed in the → *International Covenant on Civil and Political Rights (1966)*, and particularly in the → *International Covenant on Economic, Social and Cultural Rights (1966)* ('ICESCR'). To avoid conflicts arising from different international standards, these treaties partly comprise of compatibility clauses with respect to ILO conventions (see eg Art. 8 (3) ICESCR). In addition, the ILO has been cooperating in different ways with the → *Committee on Economic, Social and Cultural Rights (CESCR)*, the ICESCR supervisory organ. Within the framework of the → *Council of Europe (COE)*, three conventions with reference to the ILO have been adopted: the → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)* protects freedom of association, which is important because of the highly effective individual complaint system before the → *European Court of Human Rights (ECtHR)*. The → *European Social Charter* ([adopted 19 October 1961, entered into force 26 February 1965] 529 UNTS 89; 'ESC') formally provides for the presence of an ILO representative in a consultative capacity in the deliberations of the supervisory European Committee of Social Rights (Art. 26 ESC). Finally, the European Code of Social Security ('ECSS'), widely modelled on ILO Convention (No 102) concerning Minimum Standards of Social Security, established an interesting form of cooperation with the ILO (Betten 436–38), appointing the ILO Committee of Experts as one of the competent supervisory bodies (Art. 74 (4) ECSS). In the revised version of the ECSS ([done 6 November 1990, not yet entered into force] CETS No 139), an independent body is charged with the supervision, the ILO being likewise invited to send a representative (Art. 79 (10) revised ECSS).

27 The European Union with its supranational capacity to enact laws applicable within its Member States without any form of domestic incorporation plays a special role also with regard to the ILO as, beyond various forms of cooperation between the EU and the ILO, the Member States have transferred powers to the EU in the field of labour law. This raises the problem that the ILO Constitution neither provides for the accession of other international organizations nor for the ratification of ILO conventions, so that the EU may not ratify ILO

conventions instead of its Member States. However, under European Union law, the EU Member States, as a result of their transfer of powers, partly lack the competence for the ratification or, what is worse, for the implementation of ratified ILO conventions (→ *European Community and Union Law and International Law*). The European Court of Justice in its Opinion 2/91 *Convention No 170 of the International Labour Organization concerning Safety in the Use of Chemicals at Work* ([1993] ECR I-1061) held that the conclusion of this convention falls within the joint competence, and that the former Community, not being itself able to conclude an ILO convention, 'must do so through the medium of the Member States' (at paras 37–39). Secondly, the EU legislative activity as regards labour law entails the risk of conflicting legal obligations. As long as EU standards are more favourable, a conflict is prevented by Art. 19 (8) ILO Constitution (see para. 12 above). However, where ILO standards are more favourable, a conflict may arise if EU standards are not, for their part, minimum standards.

D. Evaluation

1. Achievements

28 The ILO has achieved sustained success in the 95 years of its history. The positive impact the Organization has had for the promotion of workers' rights and minimum social standards world-wide, not only by its standard-setting activity, but also by increasing the awareness of social issues by means of its 'soft' activities, such as technical cooperation and information policy, can hardly be overestimated. The four major concerns, as pointed out by the 1998 Declaration on Fundamental Principles and Rights at Work (see paras 30–31 below), are, at least on paper, widely achieved, as the eight relevant ILO conventions have been ratified by the overwhelming majority of Member States. However, the overall ratification status of ILO conventions is less impressive, and the ratification of a convention does not always mean that the standards are complied with in reality; it is needless to recall that some States do not even grant a minimum level of workers' rights and social protection, and that the major and constant social problems, to name only unemployment and poverty, remain unresolved.

29 From a general international law perspective, the ILO as the first normative international organization with its remarkably modern constitutional setting, has been the inspiration for many subsequent international organizations, particularly with regard to its institutional structure, its outstanding monitoring mechanisms, or its early, even if low, indications of supranationalism (see also → *International Organizations or Institutions, History of*).

2. Current Challenges: The ILO and Globalization

30 The ILO is faced with grave problems in an ever more globalized world. The collapse of the Communist bloc, the emergence of newly industrialized countries, the substantial change of production and communication technologies, and the reduction of trade barriers are only some of the main factors which have advanced global trade, increased capital flows, and the migration of workers since the 1980s and, generally, the integration of national economies into a world economy. This change has reshaped the world of work in profound ways. Stiffer economic competition, combined with increasingly serious financial and social problems of entire market economies, do not only make it more and more difficult to agree on common social standards, but also endanger standards already achieved in the last decades. At the same time, globalization undermines the regulatory authority of States in general, as national law is not suited to govern global economic activities, and global economic players are gaining influence. Economic change and

liberalized trade are thus in urgent need of being accompanied by an adjustment, as well as a consolidation, of labour regulation and a strong social dimension.

31 At the World Summit for Social Development held in Copenhagen in 1995, the Heads of State and Government agreed on a programme of action to defend and promote the fundamental rights of workers. One of the major focuses of the subsequent debate is the question whether social standards can be integrated in international trade regulations within the framework of the → *World Trade Organization (WTO)*; this would be of particular interest because of the WTO's effective sanctions system (→ *Economic Sanctions*). Social clauses which would allow for trade sanctions if minimum labour standards are not complied with have long been discussed but not yet been incorporated into WTO law, namely the → *General Agreement on Tariffs and Trade (1947 and 1994)*. The 1996 WTO Ministerial Conference in Singapore dealt with the issue of international social standards and expressed its commitment to core labour standards but, ultimately, referred to the ILO as the competent organization in this respect, stating: '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' (para. 4 Singapore Ministerial Declaration; → *Trade and Labour Standards*). Other organizations such as the EU grant tariff preferences if import countries have ratified and implemented certain ILO conventions, whereas several States, particularly the United States of America, reward compliance with minimum social standards in their bilateral trade relations. These efforts are complemented by non-governmental action intended to uphold minimum social standards (Hepple 69–88), eg by concluding → *codes of conduct*.

3. Recent Answers

32 To meet these challenges, the ILO has adopted two fundamental declarations in recent time: the ILO Declaration on Fundamental Principles and Rights at Work ('1998 Declaration') of 19 June 1998, and the ILO Declaration on Social Justice for a Fair Globalization ('2008 Declaration') of 10 July 2008. The 1998 Declaration first identifies four principles and rights of major concern ('core labour standards'). Secondly, and quite revolutionary from a general international law perspective, it refers to the Member States' free decision to join the ILO and the expression of basic principles and rights in the ILO Constitution, and declares that:

> all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions (1998 Declaration at para. 2),

ie the aforementioned core labour standards. Thirdly, it amends the established supervisory procedures in that the Member States, contrary to recent ILO practice (see paras 19–22 above), have to report annually on non-ratified ILO conventions concerning core labour standards. In its concentration on core labour principles, the 1998 Declaration has altered the ILO's focus considerably, and it is still fiercely discussed whether this has to be welcomed or criticized. One of the major critics has been Philip Alston, who identifies problems such as the excessive reliance on principles rather than rights, the vague definition of core labour standards, the choice of core standards intrinsically tied to degrade other standards, and the willingness to accept 'soft promotionalism' rather than implementation and enforcement (see, particularly, Alston [2004]). Whereas it has to be welcomed that the ILO tries to adapt to new challenges, the quintessence of this criticism is not without merit. Admittedly, more States have ratified the relevant ILO conventions since the 1998 Declaration, and the stronger focus on a limited number of labour standards has the advantage that it can more easily be referred to by other organizations, for example the

World Bank in its → *financial assistance*, in bilateral agreements, or by multinational enterprises.

33 Encouraged by the international community's recognition of 'decent work' as an effective response to the challenges of globalization, the 2008 Declaration predominantly outlines the ILO's Decent Work Agenda which evolved from the aforementioned 1998 Declaration. This Agenda consists of four major and equally important strategic objectives: promoting employment by creating a sustainable institutional and economic environment; developing and enhancing measures of social protection; promoting social dialogue and tripartism; and respecting, promoting, and realizing the fundamental principles and rights at work. In contrast to the concise 1998 Declaration, the broad 2008 Declaration is a typical declaration of intent, emphasizing that each Member State must determine how to achieve the strategic objectives. It remains to be seen whether this Declaration will have a considerable impact on the problems it is intended to tackle.

34 On 20 February 2009, the first-ever World Day of Social Justice was commemorated, UN Secretary-General Ban urging global pursuit of social justice and dignity for all. However, there was not much time to celebrate the ILO's 90th anniversary in the light of the emerging severe world financial and economic crisis involving critical levels of unemployment around the world. As a reaction, the ILO convened a Global Job Crisis Summit in June 2009 as part of ILO's General Conference. The Summit adopted a Global Jobs Pact calling on governments and organizations representing workers and employers to work together to collectively tackle the global jobs crisis through policies in line with ILO's Decent Work Agenda. In 2012, a special Youth Employment Programme was set up. Jean-Michel Servais has thus rightly pointed out that 'the Organization's labour goals are as pertinent as ever' (at 33).

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