 Implementation Procedures of the International Labor Organization, The Symposium International Human Rights

Ernest A. Landy
THE IMPLEMENTATION PROCEDURES OF
THE INTERNATIONAL LABOR
ORGANIZATION

Ernest A. Landy*

People must become aware that economic tensions within countries and in the relationship between States and even between entire continents contain within themselves substantial elements that restrict or violate human rights. Such elements are the exploitation of labor and many other abuses that affect the dignity of the human person.

Pope John Paul II in the United Nations General Assembly in 1979

I have been impressed by the extent to which the basic features of effective implementation are built into the constitutional structure of the ILO . . . . Though there may be limits to the use of ILO as a precedent, there is experience there that can be applied effectively to the entire range of human rights concerns.

Earl Warren in the American Bar Association Journal in 1973

INTRODUCTION

The International Labor Organization (ILO) has had the benefit of six decades of experimentation and experience in developing its complex set of human rights procedures. It has learned first hand that it is never easy to pioneer, especially when the rights in question have political as well as social and economic implications. Only recently did the United States return to the Organization after leaving in 1977, primarily because it considered the human rights and other business at the ILO's yearly conference sessions to have become unduly politicized.

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The first ILO standards (Conventions and Recommendations) were adopted—in Washington, D.C.—in 1919 by government, workers', and employers' representatives from the Founder Members of the newly formed League of Nations. Ever since the International Labor Organization was established as part of the League system, effective implementation of its standards has been a paramount concern. Initially this was to be secured through a series of requirements written into its constitution, then increasingly through an integrated scheme of quasi-judicial and practical measures aimed at establishing the facts and securing governmental compliance with ILO principles and obligations.

Under its mandate, the ILO covers a broad spectrum of human rights. With "social justice" as the ultimate objective, the Organization seeks to improve the economic and social lot of workers (conditions of work and life, employment promotion, social security, safety and health at work, child labor, etc.) and to safeguard their fundamental rights (freedom of association, abolition of forced labor and of job discrimination). Over the six decades of its existence a large body of standards has thus come into being. Successive sessions of the International Labor Conference have adopted 153 conventions—instruments which bind the states that ratify them—and 162 recommendations—conceived mainly as guidelines for national action. Management and labor delegates have participated with government representatives in discussing and voting these standards which together have come to be known as the "International Labor Code."

There is no need here to describe in detail the operation of the ILO's "standard-setting" process or the many instruments so adopted over the years, but a word must be said about two major features of this process which have had a di-

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1. For early accounts, written from a United States perspective, see J.T. Shotwell, THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION (1934); F.G. Wilson, LABOR IN THE LEAGUE SYSTEM (1934).


3. The authoritative treatise on ILO standards has recently appeared in English: N. Valticos, INTERNATIONAL LABOUR LAW (1979). This publication describes the subject in depth and contains full references to other relevant material. For a concise survey of ILO action in the human rights field, by the same author, see HUMAN RIGHTS THIRTY YEARS AFTER THE UNIVERSAL DECLARATION 211-31 (B.G. Ramcharan ed. 1979).
rect bearing on the ILO's implementation techniques. One such feature is the degree of preciseness with which the instruments are drawn up. As a rule their terms are sufficiently specific to produce obligations which are clear and verifiable. This is particularly important where some of the key conventions spell out the right to organize, the right to freely choose employment, and the prohibition against discrimination. The other special factor in ILO standard-setting is of course the full-scale participation of labor and management representatives, a departure from governments' usual monopoly on treaty negotiation. This introduction of non-governmental elements has given the Organization an added dimension and potential clearly evident throughout the various phases of its implementation machinery.

The machinery works mainly along two lines, through the examination of reports due from governments and through the consideration of complaints. These procedures, often sharing a common constitutional basis, do not function in isolation, but tend increasingly to interact in their operation. A description of the system must therefore begin with the main obligations concerning ILO standards, since they provide the legal framework for the whole machinery. The review of the reporting, examination and complaints procedures, which form the core of the system, will also cover some of the practical measures devised by the ILO to improve the functioning of its implementation procedures. A final section will focus on the relationship of ILO supervision with that of other international bodies, the United Nations (UN) in particular.

**THE CONSTITUTIONAL BASIS OF ILO PROCEDURES**

The Organization was established for the improvement of "conditions of labor" through internationally agreed instruments. Almost half of the forty articles in its constitution deal in some way or other with the formulation and implementation of international labor conventions and recommendations. There was much emphasis from the start on getting member countries to abide by these instruments and to "secure the effective observance" of ratified conventions. Some of these constitutional provisions turned out over time to be of

4. ILO Const. arts. 1, 19-35, & 37.
limited practical value; others have been crucial in permitting the development of durable supervisory arrangements. The framers of the constitution disagreed as to whether the instruments adopted by International Labor Conferences should be automatically binding on all member states or should merely resemble the draft treaties traditionally negotiated by diplomatic conferences. To bridge this gap between two seemingly incompatible concepts of national sovereignty, a compromise was struck which gave the ILO's quasi-legislative system some of its most distinctive features. This compromise instituted two types of instruments and provided in particular for their speedy submission to the legislative authorities in each country.

Submission of Newly Adopted Instruments to the Legislative Authorities

The Conference procedure for the adoption of conventions and recommendations, and the correlative obligations of member states, are spelled out in article 19, the longest by far in the ILO Constitution. Paragraphs 5, 6, and 7 deal with the measures to be taken by governments following adoption. Originally, the two types of instruments were designed to facilitate action by federal countries, (especially the United States) that might find it difficult to assume international obligations involving matters falling outside federal jurisdiction due to a division of powers between the central government and the constituent units of the federation (states, provinces, cantons, etc.). Until 1946, when the ILO Constitution was revised, federal states could treat a convention as a recommendation that is essentially a guide to internal action not subject to ratification.

Most significant, in terms of initiating implementation, is the requirement under article 19 to bring conventions and recommendations before the national “authorities within whose

5. The second in length is article 35 which deals with the application of ratified conventions in non-metropolitan territories (i.e., the colonial possessions called “non-self-governing territories” in the UN Charter). There is no room here to go into this aspect of the ILO's implementation system that, as decolonialization proceeded, has lost much of its practical importance. Some details may be found in INTERNATIONAL LABOR OFFICE, INTERNATIONAL LABOUR CODE 1951 at LXXXI-LXXXII (1952).

6. For an exposition of the respective roles of ILO conventions and recommendations, see id. at LXVIII-LXXV.
competence the matter lies, for the enactment of legislation or other action.” Such submission must take place twelve to eighteen months after the Conference adopts an instrument and the government must inform the ILO both of the nature of its competent authorities and of the measures taken. This set of rules has important implications. Although governments are of course free to propose what action to take, if any, to implement an instrument, and legislative authorities are equally free to accept or reject the governments’ proposals; this regular linkage between the International Labor Conference and the legislative authorities in the member countries helps the international instruments to be given prompt and proper consideration at the national level. In addition, the ILO can monitor the action taken by its membership to give effect to the standards formulated over the years.

The national bodies exercising legislative authority vary in nature from country to country, as does their degree of independence from the executive branch of government. In certain cases the power to give effect to an ILO instrument, instead of being vested as usual in the legislature (Congress, Parliament, National Assembly, etc.), may in fact lie with the executive, but even then the ILO considers it “desirable” to bring the convention or recommendation before the legislature for the purpose of “informing and mobilizing public opinion.”

As noted above, the implementation of ILO instruments in federal countries is liable to raise questions of divided or shared competence. Article 19 of the constitution takes account of such contingencies by establishing special rules depending on whether the subject matter is regarded by the federal government “as appropriate under its constitutional system for federal action” or “as appropriate . . . in whole or in part for action by the constituent states.” In the latter case “effective arrangements” are required for referring an instrument to the federal, state, or other authorities and for “periodical consultations” between them “with a view to promot-


ing” coordinated action. 9

Reporting Obligations

The key provisions of article 19 concerning submission require member governments to inform the ILO of the steps taken to bring conventions and recommendations before the competent national authorities, of the nature of these authorities, and “of the action taken by them.” They also empower the Governing Body, the ILO’s executive board (which like the Conference includes government, employer and worker members), to call for reports on an unratified convention or on a recommendation “showing the extent to which effect has been given, or is proposed to be given” to its provisions. In the case of a convention the reports must state “the difficulties which prevent or delay [its] ratification.” In pursuance of this power such reports are requested each year on a limited number of instruments chosen for their importance and timeliness and are then examined by the supervisory bodies. 10

Once a convention has been ratified, article 22 of the constitution requires an annual report to the ILO “on the measures . . . taken to give effect to [its] provisions.” As the ratification total now approaches 5,000 (involving some 140 states), the Governing Body decided recently to space out the cycle for reporting to two or four year intervals to keep the workload on governments and on the supervisory bodies within reasonable limits. In doing so an effort has been made, as will be seen below, to provide for accelerated reporting in case of need and to focus on major problems of implementation. 11

Closely connected with the requirement to send the ILO information and reports are two provisions in article 23 of the

9. For fuller information on the position of federal states see International Labor Code 1951, supra note 5, at LXXIX-LXXXI; E. A. Landy, The Effectiveness of International Supervision: Thirty Years of ILO Experience 108-114 (1966). Out of concern for possible implementation problems, the United States has ratified only seven conventions dealing with maritime employment and therefore within federal jurisdiction.

10. The subjects selected for article 19 reports in recent years were the employment of women with family responsibilities (1977), the abolition of forced labor (1978), the protection of migrant workers (1979), and the minimum age for employment (1980).

constitution. Under paragraph 1 the Office must supply the Conference at its yearly meetings with a summary of the data received from governments. Under paragraph 2 each government must communicate to the “representative organizations” of workers and employers in the country copies of the information and reports sent to the ILO. This enables organized labor and management interests to be directly associated in the implementation process just as they are in the adoption of conventions and recommendations. Taken together with the constitutional complaints provisions described below, article 23(2) gives the ILO’s system a distinctive “tripartite” dimension based on the rights enjoyed by the non-governmental participants in the procedures. It is only natural that the functioning and results of the system have come to depend significantly on the use which these participants make of their special rights and opportunities.

Underpinning the operation of the reporting system is the power granted the Governing Body, in articles 19 and 22 of the constitution, to specify the type of information governments must supply. The report forms drawn up for this purpose ask governments to indicate their law and practice in regard to a given ILO instrument. In the case of ratified conventions, a separate form is adopted as soon as they become effective, taking account of the special characteristics of a given instrument but asking also about its practical application (workers covered, inspection, litigation, etc.), about the labor and management organizations to which copies of the report are being sent and about any critical comments received from these organizations.

12. These are the organizations with which governments must seek agreement in nominating delegates and advisors to the International Labor Conference. ILO Const. art. 3, para. 5. The reference there is to the organizations “which are most representative of employers (and) workers.”

13. The formulation of these questionnaires follows a certain pattern but is by no means a matter of routine. To ascertain compliance with the obligation to submit new instruments to the legislative authorities, for instance, the Governing Body adopted in the 1950’s a “Memorandum” spelling out the various facets of this obligation (nature of the competent authority, extent and form of submission, time limits, obligations of federal states, communication to the representative organizations) and asking a series of questions. The Governing Body has recently revised the text of this Memorandum; for the discussions on the subject and the new text. See ILO Governing Body (GB) Doc. 211/15/16, 212/14/21 (1979).

14. This normally requires a minimum of two ratifications, but in some cases (mostly conventions dealing with seafarers) a larger number is needed.
Complaints and Representations

The constitution provides for two types of judicial proceedings to deal with cases where it is alleged that the “effective observance” of a ratified convention has not been secured. Article 26 entitles any other member state which has also ratified the convention to file a complaint; the procedure may also be initiated by the Governing Body, of its own motion, or when a delegate to the Conference so requests. The same article envisages the consideration of complaints by a commission of inquiry. Articles 27 to 29 and 31 to 34 lay down the procedure to be followed in such a case, including the possibility to refer a complaint to the International Court of Justice.

Articles 24 and 25 of the constitution enable employers’ or workers’ organizations to make a formal “representation,” another type of complaint. Under the rules laid down for this purpose, representations are considered first by a three-member committee of the Governing Body, then by the Governing Body itself.

Respect for Constitutional Principles

To be complete, this rapid survey of the legal basis of ILO procedures must include a reference to the general principles which the constitution affirms “should inspire the policy of its Members.” Although only ratification creates obligations under specific conventions, it has been held that membership in the Organization implies respect, in particular, for the principles of freedom of association and of non-discrimination proclaimed in the constitution. The ILO’s program for the elimination of apartheid in labor matters and the ILO’s special machinery in the field of freedom of associa-

15. The Governing Body has recently revised these rules; see ILO GB Doc. 212/14/21 (1979).
16. Declaration Concerning the Aims and Purposes of the ILO. ILO CONST. annex. This so-called “Declaration of Philadelphia” was adopted in 1944 as a major step in spelling out the ILO’s role and mandate in the post-war period.
17. See N. Valticos, supra note 3, at 43, 111-12, 248-49.
18. For a general description of this program see INTERNATIONAL LABOR OFFICE, THE ILO AND APARTEID (n.d.). This contains the text of the ILO Declaration concerning the Policy of Apartheid of the Republic of South Africa, adopted by the International Labor Conference in 1964. Since 1965 the Office has submitted to the yearly Conference sessions a series of “Special Reports” on the Application of this Declaration which analyzes various aspects of the labor situations in that country. South Africa’s withdrawal from the ILO became effective in 1966.
tion both are founded on these principles.

Constitutional Framework and Evolving Procedures

While the constitutional provisions and principles which underlie the ILO's implementation procedures have remained essentially unchanged for many years, the working and interplay of these procedures has continued to evolve. The machinery for the regular examination of reports from governments has been faced with a steady expansion in the ILO's membership, in the number of instruments adopted, and in the total of ratifications. There has been more interest recently in instituting complaints proceedings under the constitution, and the freedom of association machinery developed in the 1950's is now a major component of the system. At the same time nongovernmental participation has become more active and a series of practical measures has been introduced in order to improve and integrate the operation of the various procedures.

REGULAR REPORTING AND EXAMINATION PROCEDURE

The information and reports supplied under articles 19 and 22 of the constitution are considered by two supervisory bodies, a committee of technical experts and a tripartite committee of the International Labor Conference. This two-phased examination process originated in 1927 when it was already clear that the Conference could not by itself cope with the intricate and time-consuming task of evaluating the mass of data received from governments year after year.

Committee of Experts on the Application of Conventions and Recommendations

The main responsibility for this evaluation belongs to the Committee of Experts, currently composed of nineteen members drawn from all parts of the world and selected for their recognized qualifications and experience in the labor and social field. 19 To ensure a maximum of independence, the

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19. For a list of the members, indicating their background (mainly in the judicial and academic areas), see 1980 RCE, supra note 8, at 3-6. It is significant that even while the United States was absent from the ILO (1977-80) Professor Frank W. McCulloch, a former chairman of the National Labor Relations Board, continued to serve on the Committee of Experts; his predecessor had been Chief Justice Earl Warren.
Governing Body appoints the members in their personal capacity and on the proposal not of their government but of the ILO Director-General; this may help to account for the Committee's tradition of strict impartiality and objectivity, as proclaimed in its fundamental principles.\textsuperscript{20}

In addition to the information supplied by governments, the Committee of Experts makes use of any other reliable evidence bearing on national law and practice, including any comments workers' or employers' organizations have sent the ILO on the effect given to ILO instruments in their country. The Committee's findings take different forms, depending on the type of reports. In the case of an unratified convention or a recommendation selected by the Governing Body for a reporting under article 19 of the constitution, the Committee prepares a "general survey," a comprehensive study covering also the situation of ratifying states. The purpose of these surveys is to review the degree and difficulties of implementation, and through this sort of general balance-sheet to help the ILO membership to understand and implement the instruments under review.\textsuperscript{21}

Ever since its creation, however, the Committee of Experts' primary function has been to verify whether member countries live up to their basic obligation "to make effective the provisions of [a ratified] Convention" (article 19, paragraph 5(d) of the constitution). With over 100 conventions now in force and with many, especially the major human

\textsuperscript{20} For a statement reviewing the Committee's principles, mandate, and methods of work on the occasion of its 50th anniversary, see 1977 RCE, supra note 8, at 6-15. Elaborating on its basic principles, the Committee recalled that ILO conventions are "international standards, and the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any particular social or economic system." \textit{Id.} at 11. Although the whole Committee subscribed to this "approach," the U.S.S.R. and Polish members, Professors Tunkin and Gubinski dissented from the Committee's findings on the application of the forced labor and freedom of association conventions in "some socialist countries," \textit{id.} at 82; in their opinion "account should be taken of the economic and social system in these countries." In response the Committee recalled that it has "made no assumptions about capitalist, socialist or Third World countries. It applies to all, impartially, the same test of conformity to obligations undertaken by each country under ratified conventions." \textit{Id.} at 11, 82, 134-35.

\textsuperscript{21} See note 10 supra for the type of subjects covered; the Committee of Experts examines the article 19 reports the year after they are due and publishes the survey in volume B of its report; thus the most recent forced labor survey figures (there were others in 1962 and 1968) are in 1979 RCE, supra note 8; the survey on the employment of women with family responsibilities is in 1978 RCE, supra note 8.
rights instruments, now binding on a large proportion of the ILO’s membership,\(^2\) the yearly workload of supervision is heavy. To focus on essentials, only some of the Committee’s findings are published, as “observations,” in its report; the rest take the form of “direct requests” communicated to the government for reply in its next report. Apparent cases of non-compliance can thus be explored in a low key manner and many of the Committee’s comments are initially made in this way. The observations in the Committee’s report, though couched in careful, diplomatic language, clearly state how national law and practice fall short of ILO requirements and indicate what measures are needed to secure full conformity.\(^2\)

To deal with serious and persistent violations of a ratified convention, the Committee has developed as a further means of pressure the possibility to add to its observation a distinctive “footnote” asking the government to “report in detail” for the following year or to “supply full particulars” to the Conference at its next session or it may ask for both. Since routine reporting now follows a two or four year cycle, such a request implies that the matter is urgent.

Conference Committee on the Application of Conventions and Recommendations

The technical findings of the Committee of Experts enable the Conference to carry out a tripartite review through a standing committee of government, employer, and worker members set up at each yearly session in June and to pick out the most flagrant cases and invite the governments concerned to discuss them at one of the Committee’s sittings. In the light of the explanations and promises so received, the Application Committee can then report its own conclusions to the Conference. For this purpose it has followed a practice since the

\(^{22}\) At the beginning of 1980 the ratification totals were as follows: Freedom of Association Convention (No. 87) ratified by 92 states; Right to Organize and Collective Bargaining Convention (No. 98)—109 states; Forced Labor Convention (No. 29)—121 states; Abolition of Forced Labor Convention (No. 105)—105 states; Discrimination (Employment and Occupation) Convention (No. 111)—98 states; Equal Renumeration Convention (No. 100)—98 states. Chart of Ratifications ILO Conventions, Jan. 1980.

\(^{23}\) The Committee of Experts also uses observations and direct requests when governments fail to comply with the constitutional obligation to bring newly adopted ILO instruments before their legislative authorities and to report to the ILO on ratified and unratified instruments. See note 8 supra.
1950's of indicating in its report the countries which have repeatedly failed to comply with their obligations under the ILO Constitution. Serious violations, mainly of human rights conventions, are singled out for special mention in separate paragraphs summing up the often lengthy discussions on such major cases.24

The Conference Committee on Application thus represents the final phase of the ILO's regular reporting and examination process. Because the forum is tripartite, committee members—mostly from the workers' and employers' benches—have a chance to question, criticize and prod governments.25 Though limited by time to major cases, and not always conclusive in its outcome, this unusually open dialogue has become so much a part of the Conference Committee's routine that it is quite exceptional for a government to refuse to participate. Governments criticized in the Application Committee's report have instead used the discussion in the plenary conference to hit back, succeeding on two occasions to prevent formal adoption of the report.26 Such "retaliatory" action does not however affect the validity of the supervisory comments or the regular continuation of the examination

24. See, e.g., the Committee's report in Provisional Record, Int'l Labor Conf. No. 37 at 11-13, 19-22 (1980), for the report of a working party on the functioning of this special list and paragraph system.

25. For a description of the Committee's character, functioning, and "atmosphere," see Landy, supra note 9, at 36-49. For the detailed results of a full session, see Provisional Record, supra note 24, which runs to 62 double-column pages.

26. The Soviet Union, which has ratified 43 conventions, tends to be vocal in defending itself against the critical comments of the Committee of Experts, especially in regard to freedom of association and forced labor, sometimes provoking long and heated discussions in the Conference Committee. When the United States government, in a letter signed by Secretary of State Kissinger, gave notice in November 1975 of its intention to withdraw from the ILO, it mentioned among "matters of fundamental concern" the International Labor Conference's "appallingly selective concern in the application of the ILO's basic conventions on Freedom of Association and Forced Labor. It pursues the violations of human rights in some member states. It grants immunity from such citations to others." This reflected inter alia events of the previous year when the Application Committee had placed the Soviet Union on the special list for violating the Forced Labor Convention, but the Committee's report had not been adopted in plenary, due to lack of a quorum. Provisional Record, Int'l Labor Conf. Nos. 36, 44 (1974). Three years later, when the Application Committee's report contained special paragraphs censuring Czechoslovakia and the Soviet Union on human rights issues, the report was again not adopted. Id. Nos. 25, 31 (1977). The United States' period of nonmembership lasted from November 1977 to February 1980.
process.\textsuperscript{27}

\textit{The Role of Workers and Employers}

Because they receive copies of their country's reports to the ILO every year, the representative organizations of employers and workers are in the privileged position of being able to play a sustained and active role in the regular examination procedure. Governments must indicate in all their reports to which organizations these copies are communicated, and the Committee of Experts has in fact found a high degree of compliance with this obligation. What really matters of course is the use the organizations make of their special status, that is, whether they do bring problems of implementation in their country to the ILO's attention.

For many years the Committee of Experts had expressed its disappointment that so few organizations took advantage of this possibility. When in 1972 it reviewed the whole question of the role of workers and employers in the implementation of ILO standards, it noted that the annual number of comments from non-governmental organizations over the previous few years had been twelve on the average.\textsuperscript{28} Since then the International Labor Office has taken a series of measures to make the organizations better aware of their opportunities. Among them have been to supply lists of reports requested from their governments to the central organizations in each country, together with copies of report forms and of the comments from the Committee of Experts; to hold occasional study courses of worker representatives attending the ILO's general or regional conferences; and, to publish a workers' education manual on standards.\textsuperscript{29} These practical steps seem to have had some impact because the yearly average of comments has now gone up to seventy.\textsuperscript{30}

\textsuperscript{27} In 1978 the Committee of Experts specifically referred to the discussions which had taken place in the Conference Application Committee the previous year and expressed the hope that the governments concerned would take them "into full account"; see 1978 RCE, supra note 8, at 29.


\textsuperscript{29} INTERNATIONAL LABOR OFFICE, INTERNATIONAL LABOUR STANDARDS—A WORKERS' EDUCATION MANUAL (1978).

\textsuperscript{30} See Samson, supra note 11, at 574-76, where it is also indicated that 30
To stimulate more active involvement of labor and management interests in the member states, the Conference adopted in 1976 a convention and a recommendation concerning tripartite consultation in regard to the preparation, application, and ratification of ILO standards. If the regular, systematic consultations envisaged in the 1976 instruments can become institutionalized in an increasing number of countries, this should further promote non-governmental participation in the ILO's compliance procedures at both the country and the international levels.

**Helping Governments Improve Compliance**

The objective of the two supervisory committees is not so much to publicize cases of non-compliance (especially with ratified ILO conventions), but to give governments a lead in overcoming the difficulties which prevent full implementation. These difficulties are as varied as the labor and social issues involved, as intractable sometimes as the economic conditions they reflect. They can range from administrative inefficiency to "serious legal, constitutional, even political problems." When the Committee of Experts came to realize more and more that in certain cases neither its own comments nor the dialogue in the Application Committee of the Conference were sufficient to produce results, it suggested that informal on-the-spot discussions between key government officials and a representative of the ILO Director-General might sometimes be of help. The rules under which this system of so-called "direct contacts" originated in 1968. They require a government's consent for such an ILO visit, permit regular supervision to be suspended for one year at the most, and provide for the association of the workers' and employers' organizations in the country. Since then thirty countries, many in Latin America, have asked for such contacts and the Committee of Experts has found that in about half the cases involved there has been progress towards compliance.

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percent of the comments are from employers' and 70 percent from workers' organizations; two-thirds come from industrialized and the balance from developing countries. For a list of the 77 comments examined by the Committee of Experts in 1979, see 1979 RCE, supra note 8, at 28-29.

31. For a discussion of some of the major legal and practical obstacles to compliance, see generally LANDY, supra note 9, at 79-150.

32. For a review of the working of the direct contacts procedure over its first
This procedural innovation has a number of advantages. Instead of public criticism by the supervisory bodies, "quiet diplomacy" can for a limited period be given a chance to work.³³ Contacts can also be used to help governments comply with their constitutional obligations, such as submission and reporting. Finally, these discussions represent an informal type of fact-finding and conciliation used by the ILO's freedom of association machinery, as described below, and as an opportunity to discuss technical issues at stake in a judicial complaint procedure.

There are other ways in which governments are given help to achieve better compliance. The ILO sends advisory missions, organizes regional seminars on national and international labor standards for labor ministry personnel, and has in the past decade used its regional conferences in Africa, Asia, and the Americas to review the ratification and implementation of conventions in a given part of the world.³⁴

The Effects of Supervision

The scope and complexity of the system, the work and strain it involves for the participants—especially governments—and the considerable experience now gained with its operation, all raise legitimate questions as to the actual impact ILO compliance procedures have on the law and practice³⁵ of member states. The Committee of Experts, in particular, has been increasingly concerned with the extent to which its own observations, often repeated again and again, lead eventually to fuller implementation of ratified conventions. Starting in 1963, the Committee has listed in its report the cases where it has been able to express satisfaction at measures taken by governments to make the necessary changes in their law or practice following earlier comments by

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³³ For a more general view of ILO efforts in this direction, see Valticos, Diplomacy in an International Framework: Some Aspects of ILO Practice and Experience (Vol. 3), 1974 LA COMUNITÀ INTERNAZIONALE.
³⁴ The most recent regional review of this kind focused on the Western Hemisphere; see INTERNATIONAL LABOR OFFICE, ILO ACTIVITIES IN LATIN AMERICA AND THE CARIBBEAN 47-80 (Report I Part 2 to the 11th Conference of American States Members of the International Labour Organization, at Medellin, Colombia 1979).
³⁵ For a survey of the means available to promote compliance with ratified conventions not only in law but also in everyday practice, see 1978 RCE, supra note 8, at 13-23.
the Committee. During the past seventeen years a total of 1,300 such cases of progress have been tabulated, at an average of seventy-five annually. 86

Taken by itself, this figure tells only part of the story: it does not indicate the proportion of cases where the Committee of Experts' many observations have led or have failed to lead to better compliance. 87 Moreover, there are a variety of other circumstances in which ILO standards—ratified or not—may have some bearing on national law and practice. 88

In legal terms, ILO supervision occasionally has another interesting, though negative effect. When there is pressure to eliminate a violation and a government concludes that it cannot comply, it can free itself from its obligations by denouncing the convention. 89 This has happened in only thirty cases, a very small proportion of the nearly 5,000 ratifications currently in force.

**JUDICIAL PROCEDURES**

Although the framers of the ILO Constitution provided for formal representations and complaints as an essential part of the “enforcement” system, these judicial procedures have been invoked on a limited scale only. Clearly the steady development of the regular examination machinery offered an alternative, except in very special cases, and even then the two

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86. See 1980 RCE, supra note 8, at 22-23.
87. For a detailed tabulation of the results of the first thirty years of ILO supervision (1927-1939, 1947-1964), see E. LANDY, supra note 9. The findings indicated that up to then 32 percent of the Committee of Experts' observations had led to full compliance, 29 percent had led to partial implementation, 2 percent had caused the governments to denounce the convention, and in the remaining 37 percent there had been no apparent effect; id. at 66. For a tabulation of results by groups of conventions and by world regions, see id. at 68-69, 72-73.
89. Unless a revised version of the instrument is ratified simultaneously, the final articles of all conventions (adopted since 1932) specify that outright denunciation is possible at ten-yearly intervals. See INTERNATIONAL LABOR OFFICE, CONVENTIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE, 1919-1966 (1966).
types of procedures have tended to complement and reinforce each other in their operation.

**Complaints**

It took four decades for ILO member states to lodge formal complaints under article 26. When they finally did so in 1961, serious charges of human rights violations (forced or compulsory labor) were leveled at Portugal (in respect of its colonies of Angola, Guinea, and Mozambique) on the one hand, and at Liberia on the other. The Governing Body appointed personalities of proven caliber and independence to inquire into the charges and the three-man commissions so set up carried out their work along similar lines. Written and oral information was obtained not only from the countries directly concerned but also from international organizations of workers and employers, and from other non-governmental bodies; in addition, one commission carried out an on-the-spot visit (to Angola and Mozambique). The detailed recommendations made in the respective reports were accepted and initially implemented by the parties. Most significant in terms of continuity of compliance, was the request to both Liberia and Portugal to indicate, in their regular reports on the application of the forced labor conventions, the action taken during the period under review to give effect to the commission's recommendations. This coordinated approach enabled the Committee of Experts and the Conference to keep subsequent developments under review.

The next complaint was lodged in 1968 when workers' delegates at the Conference charged the Colonels' regime in Greece with non-observance of the ILO's freedom of association conventions. The commission of inquiry examining this case followed the precedent set in the two forced labor cases and suggested that the violations it had found be kept under review by the regular supervisory committees. The same

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40. When a complaint against Portugal was first filed by Ghana within the context of decolonization in Africa, the government in Lisbon chose as its target for retaliation Liberia, long under strong criticism from the ILO's supervisory committees for its infringements of the Forced Labor Convention.


linkage was again applied in the next case, involving Chile: a 1974 Conference resolution censuring the labor policies introduced by the Pinochet government after it seized power, led to the appointment of yet another commission of inquiry which visited the country and determined that there were breaches of the Discrimination (Employment and Occupation) Convention. The ILO's supervision machinery has since been pursuing the matter on a regular basis.43

During the 1975, 1976, and 1977 sessions of the Conference, workers' delegates lodged complaints under article 26 of the constitution against Uruguay, Bolivia, and Argentina. Because they all involved the freedom of association conventions, the Governing Body decided, prior to setting up commissions of inquiry, to refer the three cases initially to its own Freedom of Association Committee, as mentioned below.

During the past two decades the complaint procedure has thus been triggered in a variety of circumstances, but has always focused on the three fundamental human rights of major concern to the ILO. Interestingly, the procedure has now also begun to be used to deal with difficulties in giving effect to more technical standards, as in the employment of seafarers. The government of France first invoked article 26 in 1976 against Panama, alleging non-compliance with the Shipowners' Liability (Sick and Injured Seamen) Convention; when the unpaid claims were quickly settled, no commission of inquiry had to be set up.44 In 1978 France filed two further complaints charging Panama with breaches of the Officers' Competency Certificates Convention, the Repatriation of Seamen Convention and the Food and Catering (Ships' Crews) Convention; the Governing Body decided to refer these issues to a commission but then suspended the proceedings because the two parties agreed to use direct contacts to resolve their con-

43. The Commission had also been asked to examine the application of the Hours of Work (Industry) Convention and had found no breaches; see Report of the Commission Appointed Under Article 26 of the Constitution to Examine the Observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ILO GB Doc. 196/4/10 (1975). As indicated below, the Commission's main function was within the framework of the ILO's freedom of association procedure. See note 67 infra.

Thus the less formal device of contacts involving representatives of the Director-General, first introduced by the Committee of Experts, is now also being used in an attempt to avoid full-scale operation of a judicial procedure.

Representations

If effective utilization of the complaints procedure has been relatively recent, article 24 of the constitution was invoked several times during the ILO's early years, so that the Governing Body found it necessary in the 1930's to adopt a set of rules for the discussion of representations. More recently, several significant cases involving both technical and human rights issues have demonstrated the potential of this type of compliance procedure.

Under the above-mentioned rules, the case is examined first by a three-member committee, one from each group in the Governing Body, then by the Governing Body itself. In 1965 and 1970 a workers' organization in Brazil and an employers' organization in Italy filed representations alleging breaches of the ILO conventions on labor inspection and on the employment service, respectively. Interestingly enough, both governments in the end denounced the convention in question, admitting thereby their inability or unwillingness to comply with its requirements. In 1977 a representation from the Swedish Dockworkers' Union accusing France, the Netherlands, and Poland of not observing the ILO standards for marking the weight on heavy packages transported by vessels, was passed directly to the Committee of Experts so it could monitor application of the necessary safety measures in the three countries. About the same period, article 24 was again brought into play, this time to verify compliance with one of the ILO's major human rights instruments.

In 1977 and 1978 two trade union internationals filed charges that the Discrimination (Employment and Occupa-

45. See ILO GB Doc. 211/5/9 (1979).
46. As indicated above these rules have just been revised, see note 15 supra.
47. In each case the Governing Body had asked the Committee of Experts to pursue the matter during its periodic examinations; for the Committee's final observation on the Italian case, a sort of supervisory post mortem, see 1972 RCE, supra note 8, at 165-66.
tion) Convention was being violated in Czechoslovakia and in
the Federal Republic of Germany: the International Confederation of Free Trade Unions (ICFTU) which lodged the first representation and the World Federation of Trade Unions (WFTU) which initiated the second, both have consultative status with the ILO.49

The Czechoslovak case had its roots in the post-Dubcek era when the Committee of Experts and the Conference Committee on Application repeatedly insisted that under the recently revised legislation (labor and penal codes) workers could be dismissed from their jobs purely because of their political opinions, a serious breach of the Discrimination Convention. The material submitted by the ICFTU in support of its representation documented dismissals, transfers, and other punitive action taken against workers who had signed or supported the “Charter 77 Manifesto” (issued in Prague on January 1, 1977). This Manifesto accused the government of violating the International Covenants on human rights. The mass of material and the government’s response were examined by a tripartite committee of the Governing Body which concluded that the reply to the charges was “not satisfactory.” The Governing Body endorsed this finding in 1978 and decided, in pursuance of article 25 of the constitution, to publish the committee’s report.50 As a sanction for non-observance, the publicity thus given to the case was not merely a platonic gesture. The scope and weight of the evidence made available 51 accentuated the seriousness of the violation and underlined the need for regular follow-up. This helps to explain the fact that the case most thoroughly discussed by the Conference Committee on Application in June 1979 and 1980 was

49. In 1976 the WFTU had also filed a representation against Denmark, the Federal Republic of Germany, Italy, and the Netherlands, charging that a “political-policing” inquiry by the European Economic Community (EEC), the European Coal & Steel Community (ECSC) and EURATOM had discriminated against their officials on the grounds of political opinion, in contravention of the Discrimination Convention to which the four countries were parties. In 1978 the Governing Body endorsed the finding of its tripartite committee, that the representation was “irreceivable as regards form,” see ILO GB Doc. 205/8/17 (1978).


51. Appendix III of the report contains a 4,000 word statement sent to the Federal Assembly of Czechoslovakia on behalf of the “Charter 77” movement and 47 annexes reproducing letters of dismissal and related correspondence, records of trade union meetings, court decisions, etc. Id. at 11-53.
that of Czechoslovakia.\footnote{See Report of the Conference Committee, \textit{Provisional Record} No. 36, at 45-49 (1979); \textit{id. No. 37} at 45-49 (1980). In 1980, the case was singled out for special mention in the Committee's report to the Conference. \textit{See} note 24 \textit{supra}.}

As to the other representation involving the Discrimination (Employment and Occupation) Convention, the WFTU charged that the Federal Republic of Germany denied its citizens access to employment in public service on political grounds. In November 1979 the Governing Body approved the report of its tripartite committee which had found that new federal regulations in force since April 1979 should secure respect for the requirements of the convention; looking to the future, the report added that the practical application of these regulations and the situation "at the level of the Laender" would be examined "in accordance with established ILO procedures for . . . ratified conventions."\footnote{The report of the tripartite committee appears in ILO GB Doc. 210/16/27 (1978).}

**Freedom of Association Machinery**

Whereas the two kinds of judicial complaints under the ILO Constitution have only been used on a limited scale, and mostly over the past decade or two, a rather different type of procedure initiated after World War II has since developed into such a prime component of the ILO system that close to a thousand cases of alleged violation of trade union rights have by now come before it. This freedom of association machinery is based on a 1950 agreement between the ILO and the UN.\footnote{See E.S.C. Res. 277, 10 ESCOR Supp. (No. 1) 9-10 (1950).}

In 1948 and 1949 the ILO had adopted its two landmark conventions on freedom of association, the right to organize and collective bargaining, but it was far from certain then whether they would be as widely ratified as they in fact have been since.\footnote{For details on the genesis and operation of the machinery, \textit{see} C.W. Jenks, \textit{The International Protection of Trade Union Freedom}, (1957); C.W. Jenks, \textit{The International Protection of Trade Union Rights in The International Protection of Human Rights} 210-47 (Evan Luard ed. 1967); N. Valticos, \textit{Les Methodes de la Protection Internationale de la Liberte Syndicale} 1 Academie de Droit International, Recueuil des Cours 77-138 (1975).}

Under this procedure, complaints may be submitted by governments or by employers' or workers' organizations, regardless of whether or not the state accused of violation is a
party to the conventions on the subject. As indicated earlier, freedom of association is one of the key principles in the ILO Constitution that countries are pledged to observe by virtue of their membership of the Organization. But in the absence of ratification, the objective of the procedure is to promote, rather than to ensure, compliance and the two-phased machinery operates with this distinction in mind.

Committee on Freedom of Association

The Committee is appointed by the Governing Body and consists of nine members, chosen in equal numbers from its government, employers' and workers' groups. All freedom of association complaints, filed almost exclusively by national and international trade union organizations, are first submitted to this committee. Examination by the committee was conceived originally as a preliminary step in the procedure, but it soon became more substantive. The committee insists in particular that governments against which allegations are made should respond, so that a maximum of evidence is available. As will be seen, the second phase of the procedure has been used on only a few occasions, so that the bulk of the complaints has had to be handled within the Governing Body.

Violations of trade union rights are all too prevalent around the world. Organizations are interfered with or dissolved by governments, labor leaders are imprisoned, or restrictive new laws are enacted. Often it is left to the trade union internationals having consultative status with the ILO to bring such cases before the Freedom of Association Committee. When the issues at stake are especially urgent or complex, ILO representatives (independent personalities or members of the staff) have at times been able, with the government's consent, to discuss problems on the spot in order to ascertain the facts and report back to the committee. Direct contacts of this type have been on the increase in recent years. At the request of the International Labor Confere-
ence,\textsuperscript{59} the Freedom of Association Committee has also been reviewing other possibilities to improve and speed up the operation of its procedures, and to follow up periodically the cases examined.\textsuperscript{60}

That such procedural refinements are necessary is clear from the record. Although an impressive body of "case law" has been accumulated over the years,\textsuperscript{61} the results have been far from consistent. Some governments have taken account of the Governing Body's recommendations.\textsuperscript{62} In other cases, including two in Latin America which were referred to the Freedom of Association Committee several years ago after complaints under article 26 of the Constitution, progress has been painfully slow.\textsuperscript{63} In two more recent cases involving Eastern European countries, the committee submitted a series of "interim reports" to the Governing Body in 1979.\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{59} In a resolution concerning the promotion, protection and strengthening of freedom of association, trade union and other human rights, the Conference called for "speedy and effective action in cases in which freedom of association is impaired, particularly when human life is in jeopardy"; see \textit{Provisional Record} No. 30, \textit{supra} note 28, at 13-14.
\item \textsuperscript{60} In 1979 the Governing Body approved a series of proposals by the Committee regarding "questions of procedure"; this covered relations with complainants and governments, urgent reports, on-the-spot missions, hearing of the parties and even some type of "moral constraints" on governments which refuse to cooperate; see ILO GB Doc. 209/6/9 (1979).
\item \textsuperscript{61} For a systematic compilation, covering the first two decades of the procedure, see \textit{International Labor Office, Freedom of Association, Digest of Decisions of the Freedom of Association Committee of the Governing Body of the ILO} (1974).
\item \textsuperscript{62} See \textit{The Impact of International Labour Conventions and Recommendations, supra} note 38, at 72-73. In 1979 the Freedom of Association Committee reported to the Governing Body that since the beginning of 1976 its examination of a number of cases involving the arrest, detention or exile of trade unionists had led to the release of over 250 of them in some thirteen countries and in one case (Bolivia) to the granting of a general amnesty; see ILO GB Doc. 209/6/9 at 2 (1979).
\item \textsuperscript{63} See ILO GB Doc. 210/9/14 (1979) (Argentina); ILO GB Doc. 211/12/11 (1979) (Uruguay). Both these cases were also discussed at length in the Conference Committee on Application in 1979, see \textit{Provisional Record} No. 36, \textit{supra} note 24, at 32-34, 40. In the case of Bolivia the Governing Body had found sufficient progress, in 1978, to close both the freedom of association and the article 26 procedures; see ILO GB Doc. 206/6/15 (1978).
\item \textsuperscript{64} In 1978 the ICFTU and the World Confederation of Labor (WCL, an international association of Christian trade unions) filed complaints against the USSR and Poland, charging in both cases that it is impossible to set up labor unions independent of the state and of the Communist Party and that workers who wanted to do so had been jailed and otherwise victimized. The Freedom of Association Committee reported to the Governing Body in November 1979 that the Polish government was revising its trade union legislation to bring it "formally into line" with the terms of
Fact-Finding and Conciliation Commission

Originally, the Commission was to be the main body responsible for examining freedom of association complaints, but only with the consent of the government concerned. During the early years, governments were reluctant to give their agreement, so that the only action open to the Governing Body was to publicize this refusal and the findings of its Freedom of Association Committee. Eventually two important cases involving countries not bound by the ILO's standards on freedom of association did come before the Fact-Finding and Conciliation Commission.

In 1964 the Japanese government agreed to the referral of a complaint regarding the trade union rights of public employees. The procedure followed for this case was patterned on the examination of formal constitutional complaints under article 26. Three independent personalities appointed by the Governing Body received written and oral testimony and visited Japan before issuing their report. Acceptance of the Commission's detailed conclusions and recommendations by the government and the General Council of Trade Unions of Japan paved the way for continued efforts at the national level to settle the issues at stake. The procedures also had another major result when Japan, in 1965, ratified the Freedom of Association Convention. Thus the Commission's essential task, not judicial, but investigatory and conciliatory in character as its name indicates, has also had long-range effects on collective bargaining in the Japanese public sector.

The second major case concerned Chile. Following the overthrow of President Allende in 1973, all the major trade union internationals lodged complaints with the ILO. The

the Freedom of Association Convention and suggested direct contacts for this purpose. In May 1980 a high ILO official visited Poland and made specific recommendations to guarantee respect for the Convention. The large-scale emergencies of a free trade union movement in Poland, following the wave of strikes in July and August throws light on the ILO's examination of this case. As for the USSR case, in response to the government's contention that it had in no way violated the convention, the Freedom of Association Committee recalled the Committee of Experts' criticism of Soviet legislation and questioned the government's repressive measures against the founders of two independent workers' associations. See ILO GB Doc. 211/12/10 at 97-103, 110-18 (1979).

65. The cases in question were wound up in 1953 (Czechoslovakia) and in 1958 (Hungary, USSR).

military regime accepted the Governing Body's request that the alleged violations be examined by the Fact-Finding and Conciliation Commission. The three member body appointed the following year was asked to also perform the functions of the Commission of Inquiry set up to consider the complaint under article 26 on two ratified conventions. In its report, issued in 1975, the Commission mentioned the wide array of contacts its members had had during their visit to Chile (including talks with jailed labor leaders). In light of the variety of repressive measures it had discovered, the Commission stressed the close connection between trade union rights and civil liberties. Among its conclusions was a suggestion for an interesting procedural innovation, that the government should be asked to report under article 19 of the ILO Constitution (unratified conventions) on the effect given to the Commission's recommendations. The government accepted the report, though with reservations, and the Governing Body has continued to follow developments, such as the new trade union legislation promulgated in June 1979.

Under the terms of the UN-ILO agreement, the Fact-Finding and Conciliation Commission can also examine, with the government's consent, cases involving UN member states which do not belong to the ILO. The Commission's first report of such a case, concerning Lesotho (a country in southern Africa), was transmitted by the Governing Body to the UN in 1975. Another case, initiated during the period after the United States withdrawal from the ILO in 1977, deals with trade union matters in Puerto Rico and is still under consideration.

**Ad Hoc Procedures**

The element of pragmatic innovation which has marked the development of ILO procedures is nowhere more apparent

67. See note 43 supra.
68. See *International Labor Office, The Trade Union Situation in Chile* (1975); for an analysis of the twin-procedures, see Valticos, *Un double type d'enquete de l'Organisation internationale du Travail au Chili*, *Annaire Francais de Droit International* 483-502 (1975). The government supplied the article 19 reports requested.
69. See the report of the Freedom of Association Committee in ILO GB Doc. 211/12/10, at 61-81 (1978).
70. See ILO GB Doc. 197/3/5 (1975).
71. See ILO GB Docs. 208/21/6 and 209/14/1 (1979).
than in the *ad hoc* inquiries carried out from time to time to deal with special situations. These have usually arisen against a background of political problems and have involved fundamental questions of human rights, so that they deserve at least brief mention here.

A prime example is the examination of the charges brought some twenty years ago by the major trade union internationals against the Franco regime in Spain. Following prolonged consideration of these complaints by the Governing Body Committee on Freedom of Association and the government's refusal to have them submitted to the Fact-Finding and Conciliation Commission, the impasse was broken when Madrid decided to ask the ILO to appoint a study group to examine the labor and trade union situation in Spain. This body followed in all respects a procedure patterned on that of the Fact-Finding and Conciliation Commission and of article 26 commissions of inquiry. Its three members received evidence from many quarters, visited Spain and in 1969 issued a detailed report which was given wide circulation, even inside the country. This *ad hoc* inquiry, with all its earmarks of a face-saving device, turned out to be a significant factor when the post-Franco government enacted new labor legislation in 1977.

A more recent example in a different setting involves questions of equality of opportunity and treatment of the Arab workers living in the territories occupied by Israel. In response to a politically inspired Conference resolution condemning Israel for alleged discrimination against these workers, the Director-General sent a team of senior ILO officials to carry out on-the-spot visits to Israel and the territories. The reports of these missions, whose findings and suggestions were based on the ILO's constitutional principles and on its convention concerning job discrimination, were submitted to the International Labor Conference where they helped to pro-

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73. Spain subsequently ratified the Freedom of Association and the Right to Organize Conventions. See in this connection the article by Albalate Lafita, *supra* note 38.

74. See action taken on the resolutions adopted by the International Labor
vide a more legally and technically oriented framework for the discussions.76

Under article 10 of the constitution, the International Labor Office has a general competence to "conduct . . . special investigations ordered by the Conference or the Governing Body." This mandate has been used, in particular, to prepare the special reports on apartheid in the Republic of South Africa, no longer a member of the ILO.76 However, no use has been made so far of a mechanism instituted by the Governing Body in 1973 to carry out special surveys aimed at implementing the Discrimination (Employment and Occupation) Convention in ILO member countries.77

COOPERATION BETWEEN ILO AND OTHER COMPLIANCE PROCEDURES

Over the past two decades other international organizations, global and regional, have framed a series of instruments with labor and social implications. Arrangements to coordinate the implementation procedures for such instruments with those of the ILO are essential, not only to ensure consistency of approach in the interpretation of corresponding provisions but also to share information and to help reinforce supervisory impact. In some cases these cooperative arrangements are envisaged in the instruments themselves.

United Nations and UNESCO

The International Covenants on Human Rights adopted in 1966 contain many provisions relating to labor, but because of their comprehensive nature rights provided for in the covenants are not as specifically spelled out as in ILO standards.78

Conference at its 59th to 64th Sessions in Supplement to the Report of the Director-General at 22-53 (65th Sess. 1979), and 24-32 (64th Sess. 1978). These missions were headed by Mr. Nicolas Valticos in his capacity as Assistant Director-General of the International Labor Office.
76. See note 18 supra.
77. See ILO GB Doc. 191/20/35; also Rossillion, ILO Examination of Human Rights Situations: New Procedures for Special Surveys on Discrimination, INT'L COMM'N JURISTS REV. 40-49 (June 1974).
78. For a detailed comparative analysis of the two Covenants and of the corresponding international labor conventions and recommendations, see 52 ILO OFF. BULL. No. 2 (1969).
Article 18 of the Covenant on Economic, Social and Cultural Rights empowers the Economic and Social Council to make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the Covenant’s provisions falling within the scope of their activities. In 1976 the Council called on the agencies to respond under this provision with any relevant “decisions and recommendations” by their “competent organs.” The Governing Body asked the Committee of Experts on the Application of Conventions and Recommendations to assume this new responsibility. During the past three years the Committee examined information concerning twenty-seven countries (covering the right to work, the right to just and favorable conditions of work, trade union rights, and the right to social security) and reported its findings to ECOSOC.\(^7\) Consideration of these findings by a “sessional working group” of the Council started in the spring of 1980.

In the case of the Covenant on Civil and Political Rights, the Human Rights Committee responsible for implementation has no formal cooperative arrangement with the specialized agencies, but it has recognized the need to receive from them all possible information relevant to its work.\(^8\)

In the field of discrimination, collaboration between the UN on the one hand and the ILO and UNESCO on the other dates back to 1972. The UN committee entrusted with the supervision of the Convention on the Elimination of all Forms of Racial Discrimination regularly exchanges information with the two agencies.\(^9\) The ILO and UNESCO have also coordinated the two procedures for monitoring compliance with their own instruments in this field, the Discrimination (Employment and Occupation) Convention and the Convention against Discrimination in Education.\(^10\)

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80. See ILO GB Doc. 211/16/26 at 9 (1979).

81. See 1973 RCE, supra note 8, at 11-12; and, most recently, 1980 RCE, supra note 8, at 9.

82. See, e.g., 1973 RCE, supra note 8, at 11; 1975 RCE, supra note 8, at 7.
The two major regional instruments on labor and social policy adopted by the Council both specifically provide for an ILO role in verifying compliance. The European Social Charter, which is comprehensive in scope, contains supervisory arrangements largely patterned on the ILO system. The Charter provides for an ILO representative to take part in a consultative capacity in the deliberations of the Committee of Independent Experts, the technical body responsible for supervision. This institutionalized participation has been functioning since the Charter became effective in 1965.

The other major instrument, the European Code of Social Security, goes even further in integrating the procedures of the two organizations. Since it is based on the ILO convention concerning minimum standards of social security (with provision in a Protocol for higher regional levels of coverage and benefit), it entrusts the technical examination of government reports to the competent ILO organ, i.e. again the Committee of Experts, which has been performing this “outside” task since 1969.

In terms of human rights protection, the Council of Europe has the most highly developed body of standards and compliance procedures. It remains to be seen whether the ILO’s cooperation will eventually be sought by other regional groupings, though not necessarily along the same lines followed in Strasbourg.

The Key Elements of ILO Action

The ILO’s compliance procedures differ from those of other organizations not only by the uniqueness of their context but also by the interaction of a variety of mechanisms. Yet despite its operational complexity, the ILO system, as sketched out here has been functioning on an increasingly extensive scale and with some measure of success. In conclusion, it may be useful to sum up the characteristics that made this


84. In 1978, for instance, the Committee of Experts “noted with great interest the measures taken by certain of the States concerned with a view to ensuring the full application” of the Code and its Protocol. 1978 RCE, supra note 8, at 9.
possible and the factors that helped shape the ILO's procedures, particularly over the past few years.

**Tripartite Structure.** The full-scale involvement of workers' and employers' representatives in the adoption and implementation of international labor standards has left its mark on the character and potential of the procedures.

**Combination of Expert and Mutual Supervision.** The regular examination of reports by a body of independent experts and the regular dialogue with governments in a standing tripartite committee of the International Labor Conference have recently been supplemented by direct on-the-spot contacts to explore difficulties and assist governments.

**Interplay of Regular and Complaints Procedures.** Complaints under the constitution and the freedom of association machinery are kept in reserve, should the regular supervision mechanism prove to be unavailable or unable to deal with serious violations.

**Access to ILO Procedures.** While complaints can only be filed by governments, by employers' and workers' organizations, or by Conference delegates, the complainants are free to submit evidence obtained from other reliable quarters, whether or not they are connected with the ILO.85

**Cooperation with Other Human Rights Procedures.** Arrangements between the ILO and other international organizations are designed to ensure a maximum of coordination and mutual support, so that the wider human rights effort can proceed along parallel lines and on all possible fronts.86

**Evolution of ILO Procedures.** In a continuing attempt to adapt the operation of the system to new needs and expanding tasks, a series of steps have had to be taken over the past decade or two:

(a) routine reporting by governments has been simplified and efforts have been made to accelerate the examination of

85. The documentation submitted in support of the representation against Czechoslovakia had been prepared by Professor Jiri Hajek who was Foreign Minister in the Dubcek government in 1968. See note 51 supra. One of the freedom of association complaints against the USSR drew on material supplied by Amnesty International. See note 64 supra; ILO GB Doc. 209/6/6 at 75 (1979).

86. The House of Representatives Subcommittee on International Organizations and Movements had gone a step further, in 1974, when it suggested that "the ILO methods of protecting human rights should be emulated by other international organizations," HUMAN RIGHTS IN THE WORLD COMMUNITY: A CALL FOR U.S. LEADERSHIP, 93rd Cong., 2d Sess. 45 (1974).
serious violations;
(b) methods have been diversified, ranging from judicial inquiries to quiet diplomacy and from formal complaints to ad hoc procedures;
(c) new means of persuasion have been introduced, through direct discussion with governments and through the Conference Committee's highlighting of major cases of non-compliance.

OUTLOOK FOR THE FUTURE

Although the late Senator Hubert Humphrey once called the ILO's system "the most effective human rights mechanism among international institutions," the operational and other problems the ILO faces are no less formidable than those confronting other procedures. Principal among these has been the need to maintain the momentum of supervision and to avoid undue delays. Another major problem is the question of politicization, reflecting world tensions, and the diversity of ideologies and regimes around the globe. Now that the United States is back in the ILO, its government, employers' and workers' spokesmen are again able not only to participate actively in the organization's compliance procedures but also to help counter any attempts to undermine their effectiveness.

88. In the words of a recent article, "The unfortunate truism that the wheels of justice grind slowly applies to the ILO process of accountability." Ziskind, Pursuit of Justice Through the ILO, 3 COMP. LAB. L. 66 (1979).
90. In his address to the June 1980 International Labor Conference, the first since the United States resumed ILO membership, Secretary of Labor Marshall underlined this point:

We must not allow the work of the Conference to be diverted by the extraneous political issues nor permit its machinery to be diverted from supervising international labor standards or to be dismantled . . . . The ILO can take justifiable pride in the fact that, along with its international labor standards, it has developed supervisory and complaint machinery that is both impartial and effective.

Provisional Record (No. 14), supra note 24, at 8.