

## **Achieving ILO Convention Aspirations through Independent Monitoring** **A Modest proposal by Arnold M. Zack**

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The following is a proposal to go beyond the selective and often inadequate policing of corporate Codes of Conduct to assure comprehensive and thorough monitoring of all eight Fundamental Conventions by an independent monitoring institution funded by corporations but under the authority and guidance of the ILO

The 21<sup>st</sup> century world of globalization is a far cry from the Euro-centric world of 1919 when the tripartite structure of the ILO was fashioned. In that era, there was acceptance of trade unions as the legitimate representative of the world's workers. We all know and respect the efforts of the ILO to facilitate the adoption and promulgation of its nearly 200 conventions, now accepted as the norms of workplace equity and fairness. Those conventions have not only been widely ratified; they have become the basis for adoption of national laws governing workplace justice throughout the world. That standard of justice is most apparent in the 1995 compilation of Fundamental Conventions on Freedom of Association (87 and 98), Abolition of Forced Labor (29 and 105), Equality (100 and 111), and Elimination of Child Labor (138 and 182).

### **The impact of Globalization on workplace protections**

But the hope and expectation that the Conventions would become the basis for assuring workplace protections has not been universally borne out. In the industrialized world through Convention ratification and national law, substantial progress toward that threshold has been achieved. However at the same time as that progress has been made, or perhaps as a consequence of that progress in the industrialized world employers have utilized the new world of tariff-free globalization to move their manufacturing to countries where they are unburdened by the constraints of conformity to Conventions and workplace protection law enforcement. Lamentably conformity to the laudable goals of convention adherence does not move with the jobs. Certainly many employers move their factories to other countries because of legitimate business concerns including greater access to raw materials and markets and with a commitment to treat the employees in their new enterprises with dignity and continuation of the good work practices they engaged in before such moves. But at the same time, many other employers use the freedom and ease of global commerce to escape from workplace commitments by moving their factories to countries where their profit can be enhanced by production or purchase of output from outsourced factories, operating beyond the norms of ILO conventions. In too many developing countries worker migration from the farms to the cities, the abundance of work seekers and the paucity of available jobs makes worker exploitation a real profit enhancing prospect. The yields from such exploitation is too often made even easier by the absence of trade unions, the desperate clamor of local governments for jobs for their people and perhaps even the corruption of government officials. Even in those countries where laws and governmental institutions provide paper support for workplace fairness, there is too often failure, insufficient personnel or funding to implement the laws, workplace inspection and worker protection that is hoped for. For many governments, a corporate threat to move to the country next door where wages are even lower, inspection more lax and government more compliant with the corporate demands,

impose an unsavory invitation to turn a blind eye to adherence to ILO conventions for workplace protection.

### **Undercutting the Role of the ILO in the World of Outsourcing**

In this all too familiar environment, there are numerous obstacles and adversaries impeding the ILO in fulfilling its global mission. Proceed it does with its tripartite rule of law efforts within those countries where it can, and in international training and forums where it continues to spread its message. But its efforts in governmental halls are a scant match for what should be a much more active presence in every factory and workplace to assure that the employees are given the protections the mandate of the ILO seeks to provide for them. ILO efforts can not overcome the efforts of corporations and employers, and perhaps even some governments to exploit the most vulnerable employees around the world. Certainly there are within the ILO structure, procedures and processes for expert investigation and exposure of wrong doing, but those arduous and time consuming procedures are negligible in light of the scope of global commerce and the efforts to maximize profits from exploitation of workers. The ILO involvement is most often confined to occasional references to its Conventions, and primarily to its Fundamental Conventions.

### **The Rising Voice of Students and Consumers**

But despite the vast gap between ILO ideals and exhortation and the reality of working conditions in the outsourced factory, those ideals and standards have had a very practical and hopefully growing impact in trying to keep us from travelling the road to the bottom. From union protest over jobs fleeing from industrialized to developing countries and over outsourcing of work, and from growing student and consumer protest over the unsavory working conditions in factories to which many of these jobs have fled has developed an enhanced demanding of accountability by these consumers. And of course their focus is on those products where they have some discretion as to whether to purchase from a responsible or irresponsible brand and its set of factories. This focus has, to date been on garments, toys, sports goods and visible consumer products such as universally recognized beverages.

### **Corporate Codes of Conduct**

There is no need to chronicle the evolution of that consumer movement and its impact on corporations setting up Codes of Conduct declaring their commitment to workplace fairness and their intent to assure that their off shore suppliers live up to the commitments contained therein. And it is here that the ILO standards and proclamations come into practical focus as the Corporate Codes proclaim adherence to the Fundamental 8 Conventions.

Unfortunately posting a Code of Conduct on a store wall, or Company web site, or even on the product itself, does not mean that the workers in those far off factories are working under conditions expected by the Core Conventions. Nor does it mean that the Brand is aware of daily conditions in each supplying factory, much as it would try, much as it would insist in communications with factory directors and much as it would endeavor to monitor the diverse workplaces through period visits by the brand or any monitoring agency the brand employs. It might not even mean a serious commitment by the brand to confront workplace unfairness. The factory world is too wide, the factories too numerous, the monitoring too expensive and the resources dedicated thereto too small. Disney with 13,500 supplying factories in 52

countries certainly can not afford the adverse publicity resulting from any scandal involving child labor. It is certainly in its self interest to assure that such exploitation is prohibited. But the task is obviously difficult given the reach of the factories, the inability to provide perpetual observation and the cost of even periodic monitoring of so many workplaces around the world. Nonetheless, the evidence does show a good faith effort by those brands who are in the public eye, and whose economic survival is dependent on the consumers pocketbook. Organizations such as SAI 8000 and Fair Labor Association have brought to the table representatives of the main players to assist the brands in their effort to bring their factories up to the level of Core Convention compliance that the consumers and society increasingly come to expect. While there might be some shortfall in expecting the brands or factories, or even the independent monitors to be as assiduous in enforcing the Conventions on Freedom of Association and the Right to Collective Bargaining, there is little argument that they have had a positive impact on helping to bring compliance with the other Core Conventions. The reality of the marketplace is that the only factories that are under scrutiny as a consequence of consumer pressure are those in the realm of consumer products: garments, toys and sportswear, which are estimated to account for some 5% of world trade. Lamentably, there is little or no consumer constituency for the conditions under which shipping containers, wheel rims, tires, or even autos and computers are made and assembled around the world.

### **Can The Rule of Law Meet the Need?**

As much as the ILO has set the worlds standards for workplace law, and as much as most nation states have ratified conventions or passed laws using the Conventions as guide, the fact remains that mere legislation alone will not bring about improvement in workplace conditions. The Rule of Law offers us the text book expectation that the enactment of legislation in an operating society brings with it a reasonable confidence that the legislation will be enforced and the citizens benefit there from. We are all aware of the gaps between the rule of law and the implementation thereof for the benefit of those whom the law is designed to protect. The gap is broad enough in the industrialized world with experienced and sophisticated political players, but is even greater in the developing world. There, as noted earlier, the pressures of population growth and urbanization, the necessity of bringing work to that increasingly volatile political constituency, when coupled with the poverty and pressures upon governments, their civil servants and the deep pockets of too many greedy economic players opens the door to corruption and ready exploitation of the weakest by the most politically and economically powerful. Thus the former colonial powers and even long independent societies which have adopted the rule of law and given verbal and written endorsement to protective legislation and procedures, often fall short of fully implementing the expectations of the Rule of Law. Unfortunately, the rule of the marketplace too often takes its place. One would hope that the pressures of consumers and the marketplace would encourage the brands to pressure the local governments to implement their laws. To some extent that does occur, even if that consumer pressure has its impact in but a small percentage of global or national commerce. The UN's Global Compact, the undertaking between the ILO and the Asian Development Bank and the initiatives of the International Financial Corporation of the World Bank show a growing interest among international bodies to begin to bridge the gap between the goals of the globalized economy and the legitimate workplace

needs of factory workers. The impact of that pressure has brought some results, but as yet, too few.

### **Can Corporate Codes of Conduct Alone Meet the Need?**

As the public becomes more concerned about the movement of jobs to countries lacking adequate workplace protections, perhaps the role of the brands in bringing pressure on their suppliers and host countries may bring about greater conformity to the rule of law and to improvement of workplace conditions. But Corporate Codes must be viewed as a vehicle to protect or enhance their market advantage. They are not a substitute for the Rule of Law. There may be joint efforts to encourage government implementation of the Rule of Law but the higher priority of the Code sponsors is to avoid governmental and consumer interference with their economic interest, to enable them to meet the demands of their consumer market with minimal interference. One can hardly quarrel with their need to protect and enrich their self interest, and their stockholders can hardly be expected to assert that their priority should be to enhance their workers workplace benefits at the expense of maximized profit. That is particularly notable when dealing with laws or Conventions permitting or encouraging freedom of association and the allowance of collective bargaining which would so dramatically interfere with that maximization of those profits.

Given the best of intentions and the greatest of success in pursuing compliance with the Fundamental Conventions, the reality of the marketplace shows that the public pressures which have brought about improvements in supplying factories, do work in that small corner of world trade attributable to manufacture of garments, games and sportswear. Corporate Codes of Conduct may not be the most effective means of achieving conformity to international standards of workplace fairness or international labor standards throughout the range of factory output. And in too many instances the Corporate sponsors may have priorities that diverge from the goals of fair labor standards..

### **Better Factories Cambodia**

But there is hope that the pressure of consumer clamor for workplace fairness when coupled with international pressure and institutional effort can bring about a measure of compliance with international labor standards. The ILO has shown the world the effectiveness of independent international agency monitoring in its Better Factories Cambodia program . In the Cambodian Garment sector as a consequence of the Multifibre Agreement and increased quota allocations in the US market, the ILO has undertaken to do the monitoring of the several hundred garment factories, to the evident satisfaction of the factory owners who benefit from the single ILO inspection in lieu of the multiple inspections from multiple brands which were constantly interrupting their factory performance. In addition with ILO monitoring there is greater assurance of conformity to all 8 conventions without corporate monitors downplaying or overlooking potential violations of 87 and 98. The consequences of that ILO program are well documented. Instead of moving out of Cambodia at the Dec 31, 2004 end of the Multi-fibre Agreement factory expansion has brought more work to Cambodian garment enterprises, raising employment from 250,000 to 300,000, and leading to the expansion of unionization in the hotel, tourist and construction industries. That effort

has been inspiringly implemented with the ILO support of the Cambodian Arbitration Council as a widely accepted forum for resolving any resulting disputes between the factories and workers utilizing mediation and arbitration to assure workplace tranquility through effective implementation of workplace dispute resolution procedures.

### **Universal Monitoring**

The gold standard would have independent monitoring of all factories, and not just the 5% of world trade represented by garments, toys and sportswear, on a regular basis to assure compliance with all eight core conventions (including 89 and 98). Such thorough and effective monitoring would not only protect the workers in factories beyond those currently monitored, it would protect factory managers from excessive work interruptions by corporate monitoring done by all their brand customers. It would also assure consumers that Convention protections are in place, and would help to raise the level of the waters for workers throughout the world by minimizing the threat of exploitation to workers in enterprises where factory operators would otherwise be beyond reach. If that monitoring were under the aegis of the ILO, or UN or other international agencies, it would carry the greater weight of a world community backing for improved workplace fairness. It would also enable host countries to advertise all their products for the consuming world as having been made under fair working conditions, in compliance with ILO standards.

### **Is such an idealized system attainable?**

Certainly there is no widespread clamor at present for such an approach with international participation in monitoring ILO fair labor standards. But the success of the Cambodian effort and evidence of government efforts as in Guatemala under the aegis of Clinton's Global Fairness Initiative to achieve national fair labor standard endorsement for the nation's overseas market, suggest that a broader approach might work.

Admittedly the ILO lacks the resources, as well as structural facilities to establish and administer a global procedure as it has in the Cambodian garment industry, but it should and could be a main player in pursuing and encouraging such an undertaking. The traditional tripartite structure of the ILO does not provide a place for the increasingly active role of Non Government Organizations which are in the vanguard of asserting worker protection rights in the developing countries. Yet they are important players as are transnational companies and international governmental institutions which no longer fit snugly in the 1919 national tripartite structure of ILO.

The high cost of providing such monitoring service is also well beyond the budget competence of the ILO relying upon its intergovernmental funding sources. Furthermore ILO lacks the expertise personnel with global reach and language competency to staff such a large undertaking. But those limitations do not mean that some outside institution could not mount such an effort under the guidance of the ILO. An institution free from the tripartite politics of the ILO might be a better instrument for independent action. The Permanent Court of Arbitration in the Hague has demonstrated interest in offering ADR as a means of helping resolve fair labor standards issues, or a free standing institution could be established, funded in part by the brands, which currently expend considerable amounts for often redundant monitoring efforts, in part from the factories themselves and perhaps from independent

foundations or inter-government sources. Such contributions could be channeled into a fund where they would be beyond influence by the donors. The new monitoring institution could work cooperatively with companies having Codes of Conduct to develop a set of standards based upon the Fundamental Conventions and a protocol for undertaking monitoring as well as a procedure for helping to resolve disputes which might arise on the ground over issues of compliance. An earlier proposal for a Global Mediation Service might fit into this program calling upon mediators with local language proficiency to help resolve compliance disputes.

Given the enormity of the undertaking, a regional, national or industry based component might be undertaken on a pilot basis. This entity could bring together experts in labor standard monitoring, hopefully with fluency in the language of the locality, and availability on an ad hoc or permanent basis. These monitors could survey local factories on a random or scheduled basis rendering reports to the institution which would then issue and publicize certifications that the factory and companies selling their products were in compliance with the institution's code conformity requirements entitling them to the institution's Seal of Approval. In time such Seals could be posted as product labels helping to market the products of those companies participating in the program. The Seal could also be embraced by governments as an inducement for imports and expanded quotas in many areas of manufacture to the economic and marketing benefit of the participants.

### **The Next Steps**

Obviously this proposal requires a great deal of study in its early stages of formulation. But the ILO has already demonstrated that its approach in monitoring in the Cambodian garment sector has brought benefits for the factories which are relieved of excessive and repetitive purchaser inspections, for the brands which are relieved of the cost and administrative burden of recruiting and directing monitors from their own institutions or independent monitors, for the workers who are assured of an independent unbiased review of their working conditions and for the Government of Cambodia which becomes the beneficiary as more factories open in the country and more jobs are provided in part as a result of the ILO initiative. Certainly the consumer benefits from recognition that the garments bearing the Made in Cambodia label are made consistently with fair labor standards, a greater standard of scrutiny than attainable under Corporate Codes of Professional Conduct.

There are many players to be brought into such an undertaking if it is to get off the ground, including other international agencies and representatives of industries that are far afield from the garment industry. Funding and structure and range and personnel are also matters on which attentions should be focused. But it has been done locally in one industry, and it would be of enormous societal benefit if it could be expanded into other areas and industries. At the risk of tarnishing, and perhaps even demeaning, the words of Hillel, "If not the ILO, who? If not now, when?"