

III. The Enforcement of Labor Rights in Developing Countries

International Labor Standards in U.S. Development and Foreign Policy

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Overview

Labor rights and standards have long played a part in U.S. development, diplomacy, and foreign policy objectives to varying degrees and in varying ways. The premise of this paper is that, under circumstances determined through proper analysis with appropriate tools and processes, the promotion of international labor standards (ILS) and well-functioning labor relations systems could play a substantially more important role. This paper focuses primarily on the role of ILS in international development, with its supporting relationship with diplomacy and foreign policy objectives. I suggest an approach for determining how the promotion of ILS can best achieve development objectives and identify some areas to be tested.

In brief, the U.S. government (USG) law and policy framework provides both normative and instrumental reasons for supporting ILS. While it expressly supports normative goals—promoting human/labor rights as a goal in itself—it appears that, in practice, normative arguments carry less weight than instrumental arguments for and against ILS in determining development funding priorities. USG policy is not uniform in application; different U.S. agencies emphasize different goals and approaches, with differing degrees of knowledge and interests in ILS.

Instrumental reasons for promoting ILS include their use in (1) achieving labor-related objectives (improve labor relations, increase labor peace, etc.); (2) serving as building blocks for achieving broader goals (promote sustainable economic growth, civil society, good governance, democracy, etc.); and (3) engaging labor-related organizations and institutions to achieve development objectives (improve health, fight HIV/AIDS, etc.).

A fundamental challenge is determining whether and where promoting ILS achieves certain defined objectives. Some who are dubious of their role argue that proponents support it either without reference to whether it achieves results or for normative reasons regardless of the results or in conflict with broader objectives, such as the promotion of economic growth. At the same time, some labor-related development projects are not successful simply because of their poor selection, design, and implementation. Indeed, the assertion that ILS supports the achievement of USG development and foreign policy objectives is, by itself, too broad to properly test. Rather, the promotion of ILS may help achieve objectives under certain circumstances through the design and effective implementation of appropriately focused development projects. With the use of the right analytical tools, a more precisely defined hypothesis may be stated and tested. This approach does not denigrate or ignore the normative value of labor rights; rather, it can enable a more precise understanding of how promoting ILS can serve as an additional pillar for promoting broad development and foreign policy objectives.

The use of labor relations/industrial relations analysis, in particular, may help improve the (1) identification of the most appropriate recipient/partnering countries and stakeholders, (2) focus and design

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for development projects, (3) implementation of project activities to achieve short- and long-term objectives, and (4) evaluation of the impact of development efforts. While this paper focuses on the USG legal and policy framework, many other industrialized countries have objectives similar to key USG objectives.

I discuss (1) the gap between the fields of labor and employment relations, traditionally referred to as industrial relations (IR) and the fields of development and foreign policy and analyze the system of labor rights and standards; (2) the broad USG law and policy framework for international development and foreign policy; (3) implementation of the framework; and (4) the role of labor rights and standards in development, with some approaches suggested to test how and to what extent the promotion of labor rights and standards can result in measurable gains that support development and foreign policy goals.

Minding the Gap in Fields

For the U.S. government, there has long been a complex interplay among foreign policy, development, and defense objectives. At best, USG agencies engage in coordinated efforts to define coherent, consistent, and mutually supportive objectives and implement activities in an appropriate sequence with the proper emphasis at the proper time on the appropriate set of objectives. At worst, objectives and actions are in direct conflict. It can be healthy, however, to have differing approaches within the USG, with the interplay and disagreement among agencies leading to better informed and better implemented programs and policies.

The USG has often recognized the importance of the labor realm and the role of labor rights and actors in addressing economic, social, and political issues, but there has long been a substantial disconnect between the academic fields of international development and foreign policy on one hand and IR on the other. International development experts tend to rely on one or a few particular schools of economics and political science to assess the whole of developing countries and devise comprehensive development plans. This disconnect in the academic field has been paralleled in the policy field, where ILS has been largely a marginal consideration in broader development policy. For example, labor issues have so far found little footing in the High Level Forum on Aid Effectiveness, a large international partnership of governments and other stakeholders aimed at broadly improving the development framework (see HLF-4 2011).

This disconnect continues into implementation. While development experts often acknowledge that a cookie-cutter approach should be avoided, the analytical tools they use tend to find the same sets of problems and the same sets of prescriptions. The results have been mixed and, in many cases, unclear for a variety of reasons, including an incomplete understanding of the circumstances and behaviors in a country when designing and implementing programs, an inability to effectively measure the effects of aid, a lack of meaningful data collection systems and data, and at times, approaches taken at odds with local cultures.

Implementing organizations may agree on a broad goal but disagree on strategies due to a different understanding of local circumstances. For example, to relate a personal experience, a World Bank economist told me in 2004 that international financial institutions' pressure on the Zambian government to reduce total public expenditures would result in it spending more efficiently and effectively. A reasonable chain of logic in the abstract it would seem, but not mindful of the Zambian circumstances. Officials of the teachers' union, who had been pushing for careful review of the expenditures, explained that the pressure appeared to have the opposite effect, with high officials increasing the number of "ghost" teachers, reducing the number of real teachers and resources going to the schools for books, salaries, and infrastructure, and increasing the diversion of funds for other, apparently personal, uses. With few institutional checks in place, a lack of faith in the system, and no middle-class employment to fall back on if they lost their positions, it seemed that the officials were, from their perspectives, making a rational choice to take while the takings were good.

The IR field has much to offer to the fields of development and foreign policy for the power of its analytical tools; organizational and human behavior theories; insights into labor-related institutions and processes; integration of the fields of economics, business, and law for understanding the world of work; and use of qualitative and quantitative studies to explain behaviors, trends, and institutions in a manner that other fields do not. While economists tend to rely on heavily abstract theory, the IR tradition has focused on the particular institutions and structures in a country, an approach well-suited to development needs.

A reason for studying internationally comparative employment relations is to assist with the construction of theories as "a useful way of verifying hypotheses or of producing generalizations derived

from research findings from different national contexts” (Bamber and Landsbury 1998:4–5). Even in the developed world, there has been “a tendency to focus on the formal institutional and legal structures as a basis for comparison, rather than on the more complex informal practices and processes” (Bamber and Landsbury 1998:4–5). The complex web of domestic practices and processes is even more important in the developing world, particularly where Western-style legal structures have been superficially imposed over long-standing domestic systems for promoting cooperation and resolving disputes. While the labor relations academic literature has useful tools and approaches for such circumstances, it has focused primarily on developed countries. The developing world provides fertile ground for deeper and broader IR analysis.

The System of Labor Rights and Standards

I use the term *international labor standards* to broadly encompass a set of labor rights and standards identified in U.S. policy in international instruments, multilateral agreements, and U.S. law, as well as broader principles of a well-functioning labor relations system with its supporting laws, policies, institutions, processes, and practices. Based in large part on International Labour Organization (ILO) Core Conventions and U.S. trade law (Salinger and Wheeler 2010:9, 57–61), these rights and standards include the following:

- Freedom of association and the right to organize;
- Effective recognition of the right to collective bargaining;
- Elimination of all forms of forced and compulsory labor;
- Effective abolition of child labor and prohibition of the “worst forms” of child labor;
- Elimination of employment discrimination; and
- Promotion of “acceptable conditions of work” with respect to minimum wages, hours of work, and occupational safety and health.

A well-functioning labor relations system operates within a legal and social framework that promotes the rule of law with respect for substantive human rights and procedural justice with fair and transparent rules and procedures, invoking standards on labor administration (ILO C. 81) and tripartite consultations (ILO C. 144). In the IR field, there has long been a critique of the term *system* for its potential misunderstanding of relationships and organizations as being static. Many in the IR field, however, have recognized that such systems are inherently dynamic in terms of processes, practices, and institutions and the interaction among them. In fact, development experts often appear to assume that labor-related organizations, particularly unions, are fixed in their views and approaches, rather than actors responding to dynamic environments, with some channels open and others closed for their engagement.

The labor relationship system has the following components with these characteristics: labor laws and regulations that protect fundamental rights, set appropriate penalties and remedies, and establish government roles, responsibilities, and reporting requirements; labor administration that enforces the law and promotes constructive labor relations and best practices; and dispute resolution institutions and processes that adjudicate disputes to a final binding resolution supplemented with alternative dispute resolution. The labor relationship system includes a set of actors, including the following: government (labor administration and adjudication); mediators, arbitrators, and conciliators; worker and employer organizations; retail buyers; private monitoring organizations; NGOs/civil society organizations (CSOs) delivering labor-related services (e.g., legal services); and international organizations, particularly the ILO-IFC’s Better Work program, aimed at promoting labor compliance in the garment and footwear sectors.

A failure at one stage may weaken or undermine the entire system, and improvements at one stage may not show measurable results without improvements at others stages. For example, in some countries, court decisions in favor of workers are rarely enforced, thus discouraging workers and labor inspectors from ever filing. Similarly, the system should be in balance, without an over-reliance on one approach alone. For example, monitoring programs should be supported in coordination with effective labor administration and capacitated unions.

The Framework for U.S. Development and Foreign Policy

Understanding the framework for U.S. development and foreign policy is essential for determining how the promotion of labor rights and standards can best achieve development objectives. The framework is set forth in U.S. development law, administration policy, trade law and policy, and labor sector-specific law and policy.

Law and Policy

In the past four years, the Obama administration has engaged in a comprehensive review of U.S. development and foreign policy, resulting in adoption of the U.S. National Security Strategy (NSS; President of the United States 2010) and the Quadrennial Diplomacy and Development Review (U.S. Department of State 2010). An important goal is to elevate the role of development and diplomacy to that of defense, which has been guided by the Quadrennial Defense Review.

President Obama declared in the NSS that the U.S. must apply a strategic approach to pursue four enduring priority national interests in promoting: Security for the United States, its citizens, and U.S. allies and partners; prosperity through a strong U.S. economy in an open international economic system promoting opportunity and prosperity; respect of universal values at home and around the world; and an international order advanced by U.S. leadership that promotes peace, security, and opportunity through stronger cooperation to meet global challenges (President of the United States 2010:7).

Because the role of ILS is most relevant to the goals of promoting prosperity and the respect of universal values, these two areas are discussed in more detail. The goal of promoting good governance remains very important, with key elements found in both of these areas.

Prosperity Through Sustainable, Broad-Based Economic Growth

The Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. §2151), sets forth the five principal goals of U.S. development cooperation policy, including “helping developing countries to achieve self-sustaining economic growth with equitable distribution of benefits.” While different administrations have varied in their application of this goal, it has remained a cornerstone of legally mandated policy. Consistent with the FAA, the NSS emphasizes that, in promoting prosperity, a key goal is to achieve a “balanced and sustainable growth, at home and throughout the global economy,” which “drives the momentum of the U.S. economy and underpins our prosperity” (President of the United States 2010:31). The strategy aims to

- **Prevent renewed instability** caused by “economic imbalances and financial excesses” resulting in the “very high cost of the boom and bust cycle that has plagued the global economy” (President of the United States 2010:31–2).
- **Shift to greater domestic demand**, especially in emerging markets and developing countries, as “the leading driver of growth and opening markets,” with the rebalancing of supply and demand providing “an opportunity for workers ... to enjoy the higher standards of living made possible” through productivity gains (President of the United States 2010:32).
- **Open foreign markets to U.S. products and services**, with trade agreements that have “high standards” containing “achievable enforcement mechanisms to ensure that the gains we negotiate are in fact realized and will be structured to reflect U.S. interests, especially on labor and environment” (President of the United States 2010:32–3; U.S. Department of State 2010:10).

A second key NSS goal is to accelerate sustainable development to help poor countries grow prosperous economies governed by “capable, democratic, and accountable state institutions” and work with governments showing “political will” to pursue sustainable strategies (U.S. Department of State 2010:33). In support of these goals, the State Department specifies that the promotion of economic growth covers eight areas, including private sector competitiveness with elements on the business-enabling environment, private sector productivity and workforce development, and indicators about the ratification of ILO Conventions and number of self-funded unions.

In 2010, the State Department launched Partners for a New Beginning to support public-private partnerships in developing countries, with a strong emphasis on the role of business. However, it appears that

worker organizations have not been meaningfully engaged in the effort. Similarly, the World Bank has promoted “competitiveness partnerships” through structured public–private dialogue, which includes unions, to improve the investment climate. While noting that the “exclusion or illegitimate representation of important constituencies, such as organized labor, can lead to poor policy design and lack of support for proposed policies,” the World Bank has faced challenges in determining how to engage unions (Herzberg and Wright, n.d.:16).

Respect for Universal Values

The NSS states that the USG promotes respect for “universal values,” including democracy and human rights, because governments supporting these values are “more just, peaceful, and legitimate ... and are ultimately more stable, successful, and secure.” The NSS and QDDR support this goal by

- Promoting a “robust civil society” to ensure “democratic accountability,” principled engagement with nondemocratic regimes, the legitimacy of all peaceful democratic movements, and to support the rights of women and girls, and fight corruption (President of the United States 2010:37–9), with mobilized civil society and business addressing common problems (U.S. Department of State 2010:21–2);
- Fostering broad coalitions to support democracy, the rule of law, and human rights;
- Preventing violent conflict and reducing the growing costs of conflict;
- Promoting new technologies and the right to access relevant information (President of the United States 2010:36–9); and
- Facilitating innovative, flexible, and tailored responses (U.S. Department of State 2010:24).

In prior formulations, including the Foreign Assistance Framework, the overarching goal was defined as the promotion of democratic governance. The change to “universal values” appears to signal a shift of emphasis from promoting the U.S. model of democracy from the top down to promoting functional representation and problem solving from the grassroots level up. The UN also has a supporting strategy for civil society, with the UN Development Programme actively seeking local partners, such as unions, to implement programs and sustain change.

Labor Rights and Standards in Explicit Goals and Outcomes

The Department of Labor’s International Labor Affairs Bureau (DOL/ILAB) has an integrated approach to international labor rights and standards based on the use of technical assistance and cooperation, ILS compliance monitoring, labor diplomacy, and trade-related discussions. The U.S. Department of Labor’s Strategic Plan, Fiscal Years 2011–16 (U.S. Department of Labor 2010) provides that the strategic goals include

- Preparing workers for good jobs and ensuring fair compensation by fostering “acceptable working conditions and respect for workers’ rights in the global economy to provide workers with a fair share of productivity and protect vulnerable people” (U.S. Department of Labor 2010:18); and
- Supporting the principles of fair and high-quality work-life to help ensure that “workers in foreign countries must have the right to organize and bargain collectively with their employers,” with ILAB working “with other governments ... to enforce their labor laws and adopt policies that improve working conditions and protect worker rights” and using “dispute settlement mechanisms and penalties” and technical assistance projects that “aid Labor Ministries, firms and trade unions to ensure that workers in foreign countries have a voice in the workplace” (U.S. Department of Labor 2010:55). The State Department’s Bureau of Democracy, Human Rights and Labor also supports labor rights.

Prosperity Through Trade Agreements with Strong Labor Provisions

Labor issues in the United States have been linked with trade laws for more than a century, with labor rights now advanced through unilateral preferences, bilateral preferences, and free trade agreements (FTAs) and related side agreements, consistent with congressional requirements (Salinger and Wheeler 2010:32–5, 63–6). Labor rights have gradually become more important in U.S. trade-related agreements in terms of (1) the scope of rights covered and the duty of signatory parties in promoting them, (2) required special conditions for promoting labor standards, and (3) the mechanisms and procedures for promoting and enforcing the labor provisions.

Scope and Duty

The most recently ratified FTAs with Colombia, Panama, and Korea (negotiated 2007, signed October 21, 2011) cover a broader range of labor rights with commitments to enforce their labor laws, provide procedural guarantees, and promote public awareness, requiring each signatory to

- *Protect Fundamental Right:* Adopt and maintain in law the labor rights in the ILO Declaration on Fundamental Principles and Rights at Work (1998);
- *Enforce Fundamental Rights and Other Key Laws:* Enforce ILS and laws on minimum wage, work hours, and occupational safety and health; and
- *Guarantee Due Process:* Worker and employer must have access to tribunals where rights are enforced and proceedings are fair, equitable, and transparent with due process, reasonable procedures, public proceedings, and final decisions on the merits issued by impartial and independent tribunals without unreasonable fees or delays.

The standard for the duty to promote labor rights has progressively increased in the FTAs. While the North American Agreement on Labor Cooperation (1994) only required countries to enforce their own labor law with “high” standards, the FTAs with Peru, Colombia, Panama, and Korea require that each party “adopt and maintain” the ILO fundamental labor rights in domestic law and regulations and enforce them in an effective rule of law system. The USG has proposed similar provisions for the Trans-Pacific Partnership agreement, currently under negotiation.

Special Conditions and Requirements for Respect of Labor Rights

Congress and the administration are now requiring increasingly detailed commitments to address specific problems and show results. For example, a House committee letter sets forth the steps the government of Peru agreed to take to protect the rights of subcontracted workers to form and join unions, and the administration engaged in intensive negotiations with the government of Colombia to define the steps it would take to protect worker rights, including the formation of a new labor ministry, with assistance from the U.S. Department of Labor. Certain conditions were also included in the agreement with Panama.

Stronger Mechanisms for Promoting and Enforcing Labor Provisions

The FTAs have long-established mechanisms for dialogue and review, though they have recently grown deeper, both in the cooperative processes they promote and the potential negative consequences. For example, trade-related agreements and preferences have served as a positive motivation for promoting labor rights, with countries requesting to improve labor compliance (e.g., The Maldives, Peru, and Vietnam). Also, trade agreements now include processes that may lead to punitive actions for failure to comply with labor provisions (Gantz 2011). For example, in August 2011, the USG requested the establishment of an arbitral panel under the CAFTA-DR FTA to address the government of Guatemala’s apparent failure to effectively enforce its labor laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work.

Implementation of the Law and Policy Framework

USG Agencies in Foreign Policy and Development Assistance

The USG provides development assistance and engages in cooperative capacity programs through a number of government agencies. USAID, which has the most funds for development, has not formulated an official policy on labor rights and standards in development, though they have issued a framework paper on the role of the labor sector and U.S. foreign assistance goals (Salinger and Wheeler 2010), country studies, and various other papers. USAID provides funding to the Solidarity Center, totaling more than \$330 million in the last several decades, for worker rights and trade unions and related labor matters, with the Washington, DC, head office overseeing the grant. USAID missions in U.S. embassies around the world, however, have discretion over substantial funding tranches, with some supporting labor rights and standards and engaging labor-related organizations and institutions to achieve a wide range of objectives, such as promoting economic growth and good governance.

The International Labor Affairs Bureau in DOL (DOL/ILAB) has the deepest engagement on labor issues through technical assistance and cooperation, labor diplomacy, and the negotiation and administration of labor provisions in trade-related agreements. In contrast to USAID, DOL/ILAB develops express policy approaches to ILS. Recently, it has begun providing more direct assistance to labor ministries on labor inspections and other technical areas. While USAID focuses exclusively on development, the State Department engages in foreign policy and funds development efforts through the Special Representative for Labor and the Bureau of Democracy, Human Rights and Labor (DRL). The Federal Mediation & Conciliation Service promotes capacity in dispute resolution and collective bargaining.

Different agencies emphasize somewhat different approaches and objectives. For example, the office of the U.S. Trade Representative commonly takes the position that a partner country should be in full compliance with the terms of a trade-related agreement on commerce, labor, environment, and intellectual property, while other agencies focus on assisting countries to achieve objectives in these areas in incremental ways.

USG and Developing Countries' Choices in Development

The USG has a variety of reasons and sets of criteria for choosing which countries and stakeholders will be recipients of technical assistance and partners in cooperation, with shifting emphasis depending on the U.S. agency involved. Developing countries also have some latitude in requesting and defining the focus of aid projects. In theory, per the Paris Declaration (HLF 2005), an international instrument to which the USG is a signatory, developing countries should have wide latitude in choosing the development objectives and how aid money is spent. In reality, the choices for U.S. agencies are generally far more constrained. Broadly speaking, the USG chooses aid recipients based on (1) congressional mandates with targeted funding for a particular country or region or for a particular subject matter area (e.g., child labor, trafficking, etc.), (2) administration policy choices in terms of particular countries and regions and per certain defined criteria (e.g., per the Millennium Challenge Corps' country rating on ruling "justly"), and (3) agency-level latitude to identify, generally through a technical analysis, where the needs are the greatest and likelihood of success relatively high.

An important starting question is why would developing governments and stakeholders agree to promote ILS? In general, it may be because they (1) believe in ILS for reasons related to its normative value and/or value of achieving ILS-related goals (promote labor peace, improve worker welfare, etc.); (2) believe that ILS will be instrumental in achieving other goals (reduce HIV, attract reputation conscious buyers, etc.); or (3) want to qualify for and obtain trade-related benefits, such as duty-free access to U.S. markets. Of course, there may be a large gap between agreeing to promote and showing measurable results. Some recipients may have a strong interest in merely *appearing* to promote ILS. Developing governments may also be suspicious that the United States is advancing protectionism in the guise of labor rights and standards, unless they see the functional utility in doing so to achieve their goals.

Understandably then, a key criterion for the Obama administration is to provide assistance to countries that have demonstrated good will in achieving the defined objectives. Such a requirement reflects an interest in ensuring that development assistance is effective and not perceived as the USG forcing its agenda on governments. This approach, however, poses challenges when a country does not accurately reflect the

needs and interests of its populace, particularly with de facto nondemocratic governments. In such cases, the parameters of whether and how to mobilize and build a robust civil society to ensure good governance is unclear. As the International Trade Union Congress (has noted, unions “deplore” development policies that “are still often driven by donor countries’ political or trade priorities, rather than by democratic decision-making” in developing countries (ITUC 2011:17). A common practical result: a developing country very much wants trade benefits that require compliance with ILS and is willing to enforce prohibitions of forced and child labor in export processing zones but is unwilling or unable to prevent employer domination of trade unions.

Assessing Circumstances for Implementation in Developing Countries

Effective foreign policy and aid delivery in general and labor relations specifically require a holistic review and understanding of developing countries with their particular histories, circumstances, structures, and practices. Approaches to consider include the following.

Understanding Legal Systems, Decision Making, and Dispute Resolution. The culture, society, and history of developing countries vary greatly regarding the manner of reasoning, problem solving, and dispute resolution. In many cultures, particularly those rooted in tribal relationships, the emphasis is often more on promoting cooperative relationships than on reaching the legally correct result. For employers, this approach can be exasperating when their actions conform to the letter of law but the community views them as “unfair” in the social arena.

Developing and post-crisis countries often have deeply rooted power and dispute resolution systems that overlap or are distinct from formal legal systems. In many countries, the pivotal question is not who is formally authorized to make decisions but who in fact exercises the authority? For example, in Zambia, the Labor Ministry has limited reach, and the tribal chiefs often resolve disputes and negotiate on a range of issues with employers, including worker recruitment, as was the case with a major resort near Victoria Falls. In southern Somalia, a mediation project had disputants declare their agreements in the mosque or before tribal elders (depending on who held sway in the area) to ensure compliance, then submitted them to government offices, who had the formal responsibility but not actual power. In Cambodia, powerful elites make decisions through patronage networks with which organizations, including trade unions and employers, may be aligned.

Similarly, developing countries may have civil law, common law, or other legal systems, or more than one system overlapping or potentially in conflict with others. Even so, the body of law carries less significance in some countries. Law may more exhortatory than enforced through court action. Labor laws may be adopted simply because others have said they need them. In such a system, an observer may misperceive the “labor law” as effective.

In Mozambique, people have commonly viewed the body of law as an alien structure imposed by the Portuguese authorities, who abruptly pulled out in 1975. As late as 2005, the 1975 Portuguese criminal code remained the law for Mozambique, with its proscription of *estupro*—the Roman law notion of statutory rape used for the “deflowering” of a girl based on false promises of marriage—being one of the few that could be used to fight human trafficking.

Aid Delivery May Change the Local Environment. The manner in which aid is delivered may change or distort the local environment, making it harder to ensure transparency, develop constructive and balanced stakeholder relations, and achieve results. As found in the 2011 U.S. Senate Majority Staff Report on to Afghanistan foreign aid, when misspent, “can fuel corruption, distort labor and goods markets, undermine the host government’s ability to exert control over resources and contribute to insecurity.” The report also noted that large infusions of aid money can destabilize local communities. Moreover, the “overreliance on international technical advisors to build ... capacity” undermines the local institutions’ efforts to deliver basic services, emphasizing the value of building local stakeholders capacity (U.S. Senate 2011).

Understanding the Nature of Labor/Industrial Relations Systems. In the development arena, few appear to have a thorough understanding of the differences in IR systems. As a result, processes appear to be more opaque and unpredictable than necessary—and solutions more elusive. In some countries, various systems are in operation at the same time. For example, in Vietnam all four of the main schools of thought on the

employment relationship—mainstream economics, human resource management, industrial relations, and Marxist/critical IR—seem to be operating simultaneously and at times in conflict. The Vietnam General Confederation of Trade Unions has traditionally operated in the unified worker-party state as an instrument of government policy, while employers in the private sector have dominated and controlled unions, consistent with the view that good labor relations is simply a matter of good human resources policy. Meanwhile, tens of thousands of workers go on wildcat strikes while processes in the law from the “institutional” school, such as arbitration, remain largely unused.

The Role of International Labor Rights and Standards in Development

Broadly speaking, the USG framework provides an excellent rationale and justification for promoting labor rights and standards. For example, ILS can both directly and indirectly promote sustainable, broad-based economic growth with equitable distribution of benefits in a manner that increases domestic demand and improves incomes. Similarly, ILS supports universal values with labor rights and a robust civil society in economic, social, and political spheres. Worker and employer organizations may be instrumental in improving good governance because it is in their interest to do so. ILS can be used to directly achieve the trade-related objectives of promoting the adoption and effective enforcement of fundamental labor rights with guaranteed due process and the specific labor-related goals advanced by the U.S. Departments of Labor and State’s DRL.

A substantial body of literature has analyzed how the promotion of ILS supports sustainable, broad-based economic growth in the formal and informal sectors (e.g., Galassi 2011; Kucera 2001). A similarly complex body of literature has explored how the promotion of ILS and the role of worker organizations support good governance, democracy, and human rights under certain circumstances (e.g., Lyle and Slackman 2008). Because this source material is relatively well-known to academics, I do not discuss it in detail. Rather, I suggest some approaches, or hypotheses, that may be tested in a variety of circumstances, relating them to specific examples that may be explored as case studies. The goal, in part, is to bridge the gap between the principal objectives defined by the NSS and QDDR and the specific goals advanced at the Departments of Labor and DRL. I suggest exploring the following approaches to test how and to what extent the promotion of ILS can make measurable gains in achieving key development and foreign policy goals.

- **A well-functioning labor relations system can serve as a foundation for good governance and stable economic and social growth, serving as a pilot for broader reform.** Cambodia, which has long had a largely nonfunctional judicial system, presents an example. Few cases are filed and even fewer are resolved by courts, with plaintiffs having so little faith in what are commonly known as “cellphone courts” because judges reportedly get calls during the proceedings to tell them how to rule. With the assistance of the USG and other donors, the Labor Arbitration Council was formed to address collective disputes raised by workers in the burgeoning trade union movement. It has become known as the only adjudicatory body in the country respected for its expertise and independence. Similarly, a new simplified labor procedure law in Peru presents a promising example. The question is can dispute resolution in the labor sector be a successful starting point for promoting good governance in other countries?
- **A simplified legal code with stronger labor rights and standards will result in substantial gains for both employers and workers.** Some countries have systems that appear to produce lose–lose outcomes: poor economic growth and poor labor rights protection. The ideal approach is to find ways to reform systems in a manner that will result in gains for employers and workers alike, promoting relative clarity in codes for employers and real protection for workers by simplifying labor codes and improving their coverage of labor rights. Not all labor regulations are equal; some protect important basic rights while others maintain outdated and nonfunctional requirements, which may applied in an arbitrary manner, potentially for rent-seeking (i.e., bribery) purposes. For example, a requirement that employers maintain a certain number of spittoons in the workplace (as in Pakistan) is not equivalent to protecting freedom of association or prohibiting forced labor. Some observers who are not cognizant of the distinctions may throw the baby out with the bathwater,

dismissing basic labor rights for their association with apparently unnecessary labor regulations and, conversely, labor rights advocates may inadvertently support provisions that needlessly undermine respect for basic rights.

- **A streamlined system of transparent labor regulation and enforcement in a relatively self-contained system will produce measurable benefits for employers and workers and expand exports.** For example, labor compliance systems may be integrated into export processing zone authorities with a unified labor inspection and dispute resolution system, with serious repeat violations resulting in the revocation of factories' export licenses, as is the case with serious commercial and customs violations. In this manner, problem zones can be turned into success stories and pilots for effective labor administration systems. In 2009, through a USAID project, I found tripartite agreement in Pakistan for such an approach. There, all parties agreed it was in their interest: employers would not be subjected to numerous inconsistent inspections by different authorities or pay into pension schemes that would not reach workers; unions would agree to dispute resolution processes to avoid strikes, with laws being enforced; and Labor Ministry officials viewed it as more feasible to develop a transparent and effective system in a zone rather than reforming the entire nation's system.
- **It is important to determine where and to what extent employers and other stakeholders prefer a predictable labor regulatory system over a system "free" of formal regulation.** Some economists have argued, in essence, that all labor regulations are inherently bad by interfering with the free hand of trade and business development. In practice, however, business leaders in developing countries have emphasized the importance of having a predictable, fair, and transparent regulatory environment in which they may reasonably assess costs and risks for the foreseeable future. To my surprise, in 2008, I found that employers in South Sudan agreed that the law should require employers to have objective reasons to terminate workers. At first, I wondered if they knew their own interests, but clearly they knew better. As they explained, they wanted to protect their right to terminate for cause so that they would not be subjected to the arbitrary whim of various government officials who would otherwise create their own rules. Also, they asked me why should they not be fair to people in their community? Similarly, in many countries it appears that companies make a calculation, whether roughly or precisely: as the regulatory environment becomes more predictable, they are willing to accept a lower rate of return and to make larger capital investments. This question could be formulated as a testable hypothesis.
- **Creating effective processes for worker voices to be heard combined, with the provision of "nuts and bolts" capacity building assistance for worker organizations will result in more effective worker representation leading to worker gains and, overall, a more effective system of negotiations and dispute resolution.** Consistent with resource mobilization theory, worker organizations use the avenues and resources available for effective voice. And as noted by American union leader A. Philip Randolph, "[a]t the banquet table of nature there are no reserved seats. You get what you can take, and you keep what you can hold. ... And you can't take anything without organization." In short, worker organizations should be given a seat at the table and a stake in the game. When this happens, worker organizations in developed and developing countries can become constructive partners promoting the common good as well as their members' interests.

In Sweden, after they gained a meaningful seat at the table, formerly leftist mine workers dropped their call for worker ownership and became more concerned with competitive pricing in the global markets. In Cambodia, unions affiliated with the ruling party tend to use legal processes to resolve disputes, while independent unions are more likely to strike and protest because they view the formal processes as being bent against them. In Bangladesh, unions are generally prevented from organizing for collective bargaining; consequently, many of them

become extensions of political parties fighting for political ends. In Vietnam, workers on mass wildcat strikes often achieve their goals with mediated solutions, even though the strikes are illegal and they do not have formal union representation. The hypothesis to test more broadly and in detail: if unions are given formal avenues and skills to peacefully represent worker interests, then unions will be more likely to use them. Worker organizations can promote democratic practices in small, pragmatic ways (e.g., resolve daily disputes, educate, mobilize around specific issues) that can establish consultative practices rooted in local cultures.

- **Indigenous systems of dispute resolution and labor rights education should be linked to formal systems of labor administration to improve coverage of labor rights and standards.** Western development experts commonly ignore indigenous systems of decision making and dispute resolution, denigrating their value without understanding them. However, many countries have long-established systems that work well and are consistent with local culture and customs. A starting point would be, for example, engaging tribal leaders in African countries to educate on worker rights and to mediate disputes, in coordination with labor ministries, which would collect data and conduct surveys to determine the results.
- **With the addition of high-technology tools, labor administration can become substantially more effective and efficient.** As technological tools dramatically improve, software and hardware become more user friendly, and more people in the developing world become tech savvy with cellphones, smartphones, and computers, the greater the opportunity for exponentially improving efficacy in labor administration. In the realm of labor rights assistance, substantial sums have been spent educating on fundamental rights in principle but relatively little on ensuring that they are protected in reality. In the realm of development, few appear well-versed in the trends in technology, with many misperceiving that the tools are too complicated and expensive to use.

These tools may be used to make labor administration more efficient and effective in enforcement, education and outreach, and reporting. For example, workers may use Web-based tools to calculate their benefits and overtime payments due; labor inspectors may directly input the results of inspections on cellphones, laptops, or tablets, allowing them to skip paper filings that are unwieldy, time consuming, unsearchable, and unusable for data collection. Inspectors may take cellphone photos of hazards and immediately send them to OSH experts. Employers may be required to report key aspects online, with links to educational tools and data points that trigger audits for high-risk employers. Workers may file complaints online after following prompts through an educational tool designed to weed out nonclaims and help workers receive their due. At a bare minimum, online user-friendly educational tools would reach a substantially larger audience than personal visits and pamphlets.

Conclusions and Next Steps

The promotion of ILS and well-functioning labor relations systems can play a substantially more important role in achieving USG development and foreign policy objectives with the use of industrial relations analysis, a careful understanding of the countries' circumstances, and the design of projects mindful of the broad principles but tailored to local circumstances and involving local stakeholders to ensure local ownership and success. Projects may be better designed to allow for the testing of hypotheses to determine how and where such efforts are effective and how they may be improved.

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