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Summary

This report is intended as a primer on the International Labor Organization (ILO). The ILO was founded in 1919 under the Treaty of Versailles that ended World War I, and became the first independent agency of the United Nations in 1946. It is a tripartite organization composed of member governments, labor, and employer representatives. The United States helped found the ILO and contributes more to the ILO regular budget (22%) than any other country. The ILO and its activities are of ongoing interest to Congress, particularly its advancement of internationally recognized worker rights.

The ILO consists of three bodies. The International Labor Conference (Conference), which meets yearly, is made up of four "tripartite" representatives—two from government, one from business, and one from labor—in each of the 185 member countries. The Conference is the highest authority of the ILO. Its primary functions are to promote labor standards through conventions and principles, assessment of country standards, and technical assistance. In nearly 100 years, the Conference has adopted 189 conventions. The Conference is led by a Governing Body, and its decisions are carried out by an administrative body, the International Labor Office. The United States remains a member in good standing of the ILO because it has incorporated all ILO fundamental principles into its labor laws and generally enforces them.

Over time, the ILO's role in international affairs has strengthened from an organization operating primarily on consensus to one with supervisory action. This has occurred, in part, through enhanced reporting requirements in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, concluded in 1998. The *Declaration* obligates all countries, in order to remain ILO members in good standing, to respect, promote, and realize four "fundamental" labor principles, even if they have not ratified the related conventions. These principles are (1) freedom of association and the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of employment and occupational discrimination. The *Follow-Up* obligates member countries to report on their progress in implementing all fundamental principles. Along with the "stick" of reporting requirements, the ILO promotes implementation through the "carrot" of technical assistance resources and programs, administered through its extensive network of more than 40 field offices.

The United States has incorporated key ILO principles into numerous labor, foreign investment, and trade preference laws and programs, and as enforceable provisions in recent U.S. free trade agreements (FTAs). The United States has ratified only two of the eight conventions behind the fundamental labor principles, and has never incorporated any conventions into a free trade agreement. This is, in part, because a presidential subcommittee, the Tripartite Advisory Panel on International Labor Standards (TAPILS), has found conflicts between provisions in five of the eight conventions and certain federal and state laws. Since ratifications carry the force of law, some Members of Congress have been concerned that incorporating conventions into FTAs could potentially subject any conflicting U.S. or state labor laws to challenges in the courts. Labor groups have argued for the incorporation of ILO conventions. Congress may wish to examine these and other issues as part of its consideration of current free trade negotiations and, more generally, through oversight of the ILO.

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Introduction

The International Labor Organization (ILO) was created in 1919 by the Treaty of Versailles that ended World War I. It became the first independent agency of the United Nations (U.N.) in 1946. The United States was heavily involved in its founding and remains its most important financial supporter. However, Congress did not authorize U.S. membership until 1934, and dropped its membership for three years from 1977 to 1980.[1]

> "The failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries."
>
> —Preamble to the *ILO Constitution*

Congress has played a role in the evolution of the ILO through oversight and legislative activities. It appropriates annual funds for its operations; incorporates core internationally recognized ILO principles into U.S. trade preference laws and free trade agreements (FTAs);[2] considers ratifying conventions; and monitors the work of the ILO. Against this backdrop, Congress may consider two FTAs currently under negotiation: the proposed Trans-Pacific Partnership Agreement (TPP) and the proposed Transatlantic Trade and Investment Partnership Agreement (T-TIP).[3]

This report describes the ILO's mission, structure, and functions; presents case studies on how the ILO offers assistance to countries in promoting worker rights; and identifies issues for Congress.

Background

The ILO was founded on the key principle that lasting peace can exist only in an environment where "social justice" can prevail. The *ILO Constitution* further declared that workers should be guaranteed a minimum standard of working conditions; that a permanent body should be created to ensure international legislation to accomplish this;[4] and that "[t]he failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations that desire to improve the conditions in their own countries."[5]

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[1] In giving its required two-year notice of intent to withdraw in 1975, U.S. Secretary of State Henry Kissinger said that the ILO had been "falling back" in four fundamental areas: (1) workers' and employers' groups in the ILO falling under the domination of [specific] governments; (2) an "appallingly selective" concern for human rights; (3) "disregard of due process" in condemning member states "which happen to be the political target of the moment;" and (4) "increasing politicization of the organization." Source: *Encyclopedia of the Nations: United Nations Related Agencies: The International Labor Organization (ILO)*, "The International Labor Organization (ILO) Membership."

[2] See CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Mary Jane Bolle and Ian F. Fergusson.

[3] Congress passed renewal of Trade Promotion Authority, P.L. 114-26, in anticipation of the eventual completion of these proposed agreements, on June 29, 2015. Trade promotion authority provides negotiating objectives for trade agreements and expedited legislative procedure for consideration of legislation to implement U.S. trade agreements. U.S. trade negotiating objectives in the reauthorization include "to promote respect for worker rights ... consistent with core labor standards of the ILO" (§102(a)(6)). See CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson. See also, CRS In Focus IF10000, *Trans-Pacific Partnership (TPP) Negotiations*, by Brock R. Williams and Ian F. Fergusson; and CRS In Focus IF10120, *Transatlantic Trade and Investment Partnership (T-TIP)*, by Shayerah Ilias Akhtar and Vivian C. Jones.

[4] Nobel Peace Prize Award Ceremony Speech delivered by Mrs. Aase Lionaes, Chairman of the Nobel Committee, Norwegian Storting. See Nobelprize.org. (1969).

[5] ILO, *ILO Constitution*, preamble.

Today, government, employer, and employee "tripartite" representatives of member countries meet annually at the ILO International Labor Conference (Conference) in Geneva, Switzerland. The Conference considers and adopts standards, composed of "conventions" that define labor principles, and "recommendations" that are non-binding guidelines. Member representatives then take these instruments back to their respective governments for possible legislative consideration, ratification, implementation, and enforcement. A Governing Body serves as a steering committee for the Conference, and an International Labor Office (ILO Office) serves as secretariat, providing research, publication, education, training, and technical assistance.[6] On its 50th anniversary in 1969, the ILO won the Nobel Peace Prize for promoting "fraternity among nations" as it translated into action the "moral idea" upon which it was based.[7]

Since its establishment, the ILO has continually adapted its mission, tools, and technical capabilities to changing world needs, across wars, economic depression, and globalization. Its mission has evolved from promoting "social justice" to promoting a more concrete notion of "decent work," based on four fundamental rights at work, plus social protections, "decent" employment opportunities, and tripartite dialogue. (See text box at right.) The four fundamental rights are (1) freedom of association and the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of employment and occupational discrimination.

> *Mission: "The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection, and strengthen dialogue on work-related issues."*
>
> —ILO Website. "About the ILO: Mission and Objectives."

The ILO monitors labor rights through assessment of country standards and provides technical assistance, but has no real enforcement authority. The ILO's "toolbox" includes a supervisory system that started with a single reporting requirement in the *ILO Constitution*. Current technical assistance capabilities include an elaborate delivery system offering programs, resources, and materials through its Geneva headquarters, its Turin, Italy, education facility, and more than 40 regional and country offices on all continents.

Table 1. ILO Budget Contributions, 2014

($ million)

	U.S.	Global
Regular Budget	95	431
Voluntary	34	246
TOTAL	129	677

Source: ILO Office, Geneva, March 4, 2014.

The ILO office in Washington serves as a liaison between its Geneva headquarters, the U.S. government, employer and worker groups, and multilateral institutions, including the World Bank, the International Monetary Fund (IMF), the Inter-American Development Bank (IDB), and the Organization for Economic Development and Cooperation (OECD).

The ILO budget has two main parts (see **Table 1**). Its "regular budget" is funded by ILO member assessments by the United Nations based on members' relative economic size. The United States, the largest ILO economy, contributed $95 million, or 22% of the regular ILO budget in 2014. The "voluntary contributions budget" funds specific technical assistance programs, as well as grants. The United States contributed $34 million to the voluntary budget from congressional

[6] *ILO Constitution*, http://www.ilo.org/public/english/bureau/leg/download/constitution.pdf.

[7] Nobel Peace Prize Award Ceremony Speech, op. cit.

appropriations to the Departments of State and Labor.[8] The ILO estimates that its budget will remain the same for 2015 as it was for 2014.

ILO Structure

The ILO's three main parts—the Conference, the Governing Body, and the ILO Office—carry out the functions of the ILO. The tripartite makeup, evident in all bodies, is most pronounced in the Conference and the Governing Body, where representatives from government account for 50% of all voting members, and representatives from employer and employee organizations account for 25% each. This share makeup encourages employee and employer groups to find common ground, in order to balance perspectives of government in developing standards and policies.

International Labor Conference

The Conference, the highest authority of the ILO, is an annual gathering of representatives from 185 countries. Four from each country—two from government, one from labor, and one from business—comprise the 740 voting members.[9] More than 2,000 non-voting technical advisors from the various countries offer assistance. The Conference sets the broad ILO policies and serves as an international forum for discussing world labor and social issues. It votes on labor conventions and recommendations, which are developed through the Governing Body, and oversees country implementation of them. The Conference adopts the ILO budget every other year, and elects the Governing Body every five years.

Governing Body

The Governing Body is the executive council of the ILO. It meets three times a year to develop policy, draft conventions and the budget, set the agenda, and make recommendations that the Conference votes on at its annual meetings. Much of its work overseeing the implementation of ILO policy in various countries is done through its appointed committees of experts in various fields. The Governing Body also supervises the functioning of the ILO Office and elects the Director General of the ILO every five years.

The Governing Body has 56 representatives: 28 from government, 14 from employer groups, and 14 from worker groups. As one of the 10 countries with the largest economies, the United States holds a seat on the Governing Body, along with Brazil, China, France, Germany, India, Italy, Japan, Russia, and the United Kingdom. The Conference elects the remaining Governing Body representatives every three years from representatives of other member countries.

International Labor Office

The ILO Office is the executive secretariat and operational headquarters of the ILO. Headed by a Director General and overseen by the Governing Body, it employs more than 2,700, including 900 technical specialists in 40 field offices around the world. (See map, **Figure 1**.) The ILO Office implements Governing Body and Conference decisions, provides technical assistance programs, conducts research, maintains databases, and publishes reports and studies. It interacts

[8] Most of the U.S. contribution is through the State Department budget under the Department of State Foreign Operations and Related Programs Act (H.R. 2772 in the 114th Congress), Title I, "Contributions to International Organizations."

[9] U.S. government, labor, and business delegates are from the Department of Labor, the AFL-CIO, and the U.S. Council on International Business, respectively.

with international organizations, including the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank. Special Interest Bureaus support key tripartite players: The ILO Bureau for Employers' Activities (ACTEMP) assists management groups and multinational corporations in drafting codes of conduct and other activities, and the ILO Bureau of Workers' Activities (ACTRAV) supports trade unions and management groups in labor relations and other activities.

Figure 1. Global Locations of ILO Offices

Source: ILO, "Offices, Departments and Programs."

ILO Functions

The continuing functional challenge facing the ILO is to develop policies, standards, and programs to carry out its mission, while maintaining technical oversight, so that, despite its limited budget, it can both assist and monitor countries around the world as they adopt and implement worker rights policies. Even without strict enforcement powers, it has many tools for carrying out these purposes. These include policies, standards, oversight, and technical assistance.

Policy Setting

The *ILO Constitution* sets forth its mission, organizational structure, and procedures. ILO "Declarations" provide global direction at critical times in history, and are a key tool for expanding, clarifying, or restating the long-term vision, mid-term goals, and/or immediate "next steps" for countries. Two of the six declarations adopted over the years are central.

> *"All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote, and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions."*
>
> —ILO Declaration, 1998

The 1998 *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up (ILO Declaration)*[10] was designed to strengthen the ILO's effectiveness after the 1996 WTO Ministerial Conference declared the ILO to be the "competent body to set and deal with" international labor standards.[11] The Declaration calls for "universal application" of four fundamental ILO principles:

- freedom of association and the effective recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor;[12] and
- elimination of discrimination in respect of employment and occupation.

It also obligates all members to respect, promote, and realize the four fundamental principles, in good faith and in accordance with the [ILO] *Constitution*, even if they have not ratified the eight conventions that define them. It also recognizes the obligation of the ILO to provide technical support and encourages other international organizations to support the process.

The *Follow-Up* establishes a system for monitoring the implementation of the eight fundamental conventions (two defining each ILO fundamental labor principle) by requiring that all members must report to the ILO annually on changes in their law and practice relating to fundamental conventions they have not ratified.[13] These reports are reviewed by the Governing Body (discussed further in the "Oversight" section below), which produces a periodic global report contributing to a dynamic worldwide picture of evolving implementation of the four categories of fundamental principles.

The second core declaration is the 2008 *ILO Declaration on Social Justice for a Fair Globalization*, which restates the ILO mission in today's globalized setting. Adopted amid world financial turmoil and economic uncertainty, it identifies the primary goals of the ILO today as "decent and productive work" opportunities for women and men. Decent work, promoted through a technical assistance program (discussed later), is defined by four pillars:[14]

- job creation to eliminate long-term unemployment and underemployment;
- rights at work (both human and labor), covered by ILO labor standards;
- social protection: health care and income security for unemployment, sickness, work injury, old age, or maternity; and
- tripartite dialogue among representatives of government, businesses, and workers.

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[10] *ILO Declaration*. The *Follow-Up* was revised in 2010 to coordinate reporting requirements under the *ILO Declaration* and *ILO Constitution*.

[11] WTO *Singapore Ministerial Declaration*, December, 1996, paragraph 4.

[12] A related convention calling for abolition of the worst forms of child labor was adopted by the Conference one year later in 1999. It defines the "worst forms of child labor" as all forms of slavery including the recruitment of children for use in armed conflict, prostitution, pornography, drug trafficking, or work that by its nature is likely to harm the health, safety or morals of children.

[13] Once a country has ratified a convention, it is obligated to report on its application every two years if it is a fundamental convention, and every five years on all other conventions. Source: ILO, *International Labor Standards* booklet, prepared by ILO Turin School of Development, p. 8.

[14] *ILO, Decent Work: Concepts, Models, and Indicators*, Discussion Paper No. 1389, published by the International Institute for Labour Studies (Geneva, 2002). See also, International Labour Review, Vol. 142, (2003), No. 2, p. 113.

Standards Setting

A central function of the Conference is to translate its policies into labor standards and recommendations for member country consideration and possible ratification. ILO standards, once ratified by countries, are legal instruments that set out basic principles and rights at work. They are drafted by the Governing Body, with tripartite input. They are approved by the Conference by a two-thirds majority, under a process that typically takes about two years. Standards are of two types. The first type is *conventions*, which are legally binding treaties that may be ratified by member states. They address such issues as freedom of association, collective bargaining, forced labor, child labor, equality of opportunity and treatment, tripartite consultation, labor administration, labor inspection, employment policy, wages, working time, occupational safety and health, social security, and migrant workers. The second category is *recommendations*, which are non-enforceable guidelines that may further detail their application or be autonomous and unrelated to conventions. Since 1919, the Conference has adopted 194 conventions, including eight that define the four fundamental principles noted above,[15] and 203 recommendations.

Once the Conference adopts the conventions, member countries are required to submit them to their "competent authority" (typically a legislature or parliament) within 12 months for consideration and possible ratification. Altogether, the 185 member countries have ratified a total of nearly 8,000 conventions, or about 43 per country. The United States has adopted 14 conventions: 2 fundamental conventions, on the abolition of forced labor (C105), and on the worst forms of child labor (C182);[16] 1 governance convention on tripartite consultation (C144); and 11 technical conventions.[17]

Once a country ratifies a convention, it commits itself to applying that convention in national law and practice. This leads to oversight by the Conference. ILO technical assistance is available to countries throughout the process.

Oversight

In lieu of strict enforcement authority, the *ILO Constitution*[18] establishes a supervisory system to oversee countries' application of ILO standards. Components of the oversight system include reporting requirements for member countries; ILO committees to examine those reports and release findings; and a complaint system under which the Governing Body, other countries, or labor or management groups can initiate closer examination of country implementation practices. Technical assistance may be offered at any point along the way to assist government, businesses, and labor in their work of promoting compliance.

Reporting requirements for member countries are:[19]

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[15] In addition, 4 "governance" conventions detail how to implement the conventions; 6 "protocol" conventions add new provisions to older conventions; and 176 "technical" conventions cover labor and human rights issues.

[16] See footnote 12.

[17] These cover officers' competency certificates (C53); holidays with pay (at Sea) (C54, not in force); shipowners' liability for sick and injured seamen (C55); hours of work at sea (C57, not in force); minimum age at sea (C58); certification of able seamen (C74); final articles revision (C80); merchant shipping (C147); labor administration (C150); labor statistics (C160); and safety and health in mines (C176). See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871.

[18] In the *ILO Constitution*, reporting requirements are set forth in Articles 19 and 22.

[19] The length and the level of detail of a report may differ considerably from country to country, and the ILO may ask for more detailed reporting.

- every year on their application of fundamental conventions they have not ratified, and on difficulties delaying their ratification;
- every two years on fundamental conventions they have ratified; and
- every five years on all other conventions they have ratified.

Countries are also required to submit copies of their reports to relevant employer and employee groups, which may, in turn, forward their own comments on the relevant application of standards to the ILO.

Two supervisory systems overseen by the Governing Body examine country reports and address implementation. Under the regular system, the Governing Body Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) conducts technical evaluations of country reports and forwards observations to the tripartite Conference Committee on the Application of Standards (Conference Committee). This committee identifies issues for discussion at the annual Conference, and draws conclusions and recommendations.

Under the complaint system, complaints may be initiated by the Governing Body, worker or employer groups, or by one country against another country. They are considered by tripartite committees, which issue reports and recommendations. Countries may appeal cases initiated by another country to the U.N. International Court of Justice.[20]

If issues are not resolved under the complaint system, the Governing Body may recommend that the Conference take "wise and expedient" action to secure compliance. The ILO has taken such action[21] only once, in 1999-2000, in the case of Burma/Myanmar, for "widespread and systemic use" of forced labor—especially forced child labor for military purposes—by government authorities. The Conference voted to bar ILO technical cooperation benefits to Myanmar, prohibit it from attending ILO-organized meetings or seminars, and ask other international organizations to reconsider any assistance to Myanmar. In 2013, the ILO reinstated its membership status when Myanmar rolled back its rules authorizing forced labor, ratified C182 on the worst forms of child labor, and agreed to eliminate forced labor by the end of 2015.[22]

Technical Assistance

The ILO offers technical assistance to government officials, employee organizations, employer groups, industries, policymakers, and others in many forms on broad and narrow issues, relating to globalization, human trafficking, slavery, labor migration, working conditions, and labor relations. Forms of assistance include research, education and training centers, in-person technical assistance, targeted programs, printed books, electronic databases, and electronic (email) consultation.[23]

Technical assistance and information exchange are provided through global ILO operations, including 40 regional offices, grouped into five regions: Africa, the Americas, Arab States, Asia

[20] The U.N. International Court of justice is the main judicial organ of the U.N. Its judges are elected by the General Assembly and the Security Council. The Court decides disputes between countries. If a State agrees to participate in a proceeding, it is obligated to comply with the court's decision.

[21] Under Section 33 of the *ILO Constitution*.

[22] CRS Report R43132, *Human Rights, Civil Unrest, and Political Reform in Burma in 2013*, by Michael F. Martin; Human Rights Watch, "Burma: World's Highest Number of child Soldiers" October 17, 2002, and ILO, "ILO Lifts Remaining Restrictions on Myanmar," June 16, 2013.

[23] For a list of ILO publications, see http://www.ilo.org/global/publications/lang—en/index.htm. For a list of databases see http://www.ilo.org/global/statistics-and-databases/lang—en/index.htm.

and the Pacific, and Europe and Central Asia (see map, **Figure 1**); and two training centers: the International Institute for Labor Studies in Geneva, and the International Training Center in Turin, Italy; and an organizational structure, the Inter-American Centre for Knowledge Development in Vocational Training.

In-person, rapid-response technical assistance is offered to governments to help them apply ILO labor principles when crises emerge. In 2013, after the Bangladesh Rana Plaza Collapse that killed more than 1,100 apparel workers, the ILO arrived to help Bangladesh apply fundamental labor principles to ready it for the *ILO Better Work* program.[24]

The *Better Work* program to promote application of ILO principles in the apparel sector was created in 2008 in partnership with the ILO and the International Finance Corporation (IFC), the private arm of the World Bank. Eligible countries must have in place an acceptable legal structure for labor enforcement. Under the program, technical experts assigned to country factories help identify and remediate hazards and implement core labor principles. The Better Work program is functioning in eight countries: Cambodia, Haiti, Indonesia, Jordan, Lesotho, Nicaragua, Bangladesh, and Vietnam.[25] The United States is one of several countries actively financing the Better Work program, through voluntary contributions (see **Table 1**).

In-Focus programs are targeted to specific populations or to specific issues. For example, the ILO International Program on the Elimination of Child Labor (IPEC) operates in more than 50 developing countries and is funded by roughly 30 donor countries. Other In-Focus programs concentrate on promoting skills, knowledge, and employability; boosting employment through small enterprise development; crisis response and reconstruction; economic and social security; safety and health at work; gender promotion (women) and equality; multinational enterprises; and migrant workers.

Decent Work programs are multi-year programs for more than 80 participating countries, supporting the broad ILO mission, as set forth in the *ILO Declaration on Social Justice for a Fair Globalization*, discussed above. The Decent Work program is largely self-administered by countries, primarily through email and telephone, and is based on information-sharing and consultation.

World Application of ILO Principles

Documenting the extent to which the world has progressed in complying with ILO principles is an inexact science. At least 138 countries have ratified all eight fundamental conventions. The ILO estimates that between 2000 and 2012, child labor has been reduced by one-third and child labor in hazardous occupations has been reduced by one-half.[26] The ILO is still trying to develop a baseline on the extent of forced labor. It estimates that 20 million people are working under

[24] See CRS Report R43085, *Bangladesh Apparel Factory Collapse: Background in Brief*, by Mary Jane Bolle, and ILO, "The ILO's Response to the Rana Plaza Tragedy," April 3, 2014.

[25] Under the *Better Work* Vietnam, for example, tripartite Performance Improvement Consultative Committees (PICCs) negotiate improvements in workplace conditions, wages, and hygiene in about 200 garment factories (about one-quarter of Vietnam's exporter factories) employing roughly 230,000 workers. According to the ILO, the evaluations have found "consistent improvements in factories" in the program, and about 65% have seen rises in sales. Source: ILO, "Better Talk Leads to Better Work," January 2, 2014.

[26] ILO, "Global Estimates and Trends of Child Labor, 2000-2012."

forced labor conditions, one-half of them in Asia.[27] Estimating the number of people working under conditions in which they face discrimination is even harder to quantify.

Global quasi-governmental organizations such as the OECD, the World Bank, and the IMF have helped promote worker rights by adopting corporate codes of conduct that include ILO fundamental principles, as have a number of U.S. multinational corporations. In addition, the G-7 Leaders' Declaration of June 8, 2015, called on G-7 countries to engage with other countries [such as] the G-20, to strive for better application of "internationally recognized labor ... standards ... in global supply chains."[28]

U.S. Application of ILO Principles

Many observers agree that the United States leads the world in promoting ILO principles through its labor laws, trade programs, and free trade agreements. Congress has passed an extensive set of labor laws that cover virtually all labor principles addressed in the ILO conventions. Since the United States both upholds its laws and reports to the ILO regularly on the application of ILO principles, it remains an ILO member in good standing.

The Trade Act of 1974 was amended in 1984[29] to include a list of "internationally recognized worker rights" similar to the list of labor principles identified as "fundamental" under the *ILO Declaration*. The ILO list differs from the U.S. list in one essential respect. Both lists share principles relating to the right to organize and bargain collectively, prohibition on the use of forced labor, and protections for child labor, but differ on the fourth principle. While the U.S. lists "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health," the ILO focuses on "elimination of discrimination in respect of employment and occupation"[30] (see **Table 2**). The U.S. list of worker rights has been incorporated into country eligibility requirements in a number of trade preference laws, including the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), the Andean Trade Preference Act (ATPA), and the African Growth and Opportunity Act (AGOA). These trade preference laws all require that as a condition for eligibility, countries must be taking steps to afford their workers internationally recognized worker rights.

The U.S. list is also included, along with references to the ILO list, in the labor provisions in 13 U.S. FTAs.[31] For those FTAs entered into after 1998, the relevant provisions typically "reaffirm the Parties' obligations as members of the ILO, and their commitments under the 1998 *ILO Declaration and its Follow-Up*." They also state that "each party shall strive to ensure that such labor principles and the [U.S. list of] internationally recognized labor rights, are recognized and protected in domestic labor law."

[27] ILO, "Stopping Forced Labor and Slavery-Like Practices: The ILO Strategy."

[28] The White House, "G-7 Leaders' Declaration," Schloss Elmau, Germany, June 8, 2015.

[29] §503 of P.L. 98-573 (1984 amendments to the Generalized System of Preferences).

[30] The U.S. list was adopted by Congress in 1984. The ILO list was not incorporated into the *ILO Declaration* until 1998. While anti-discrimination conventions have been on the ILO list since 1951 for equal remuneration (C100), and 1958 for employment and occupation (C111), the ILO has not yet come up with single conventions covering minimum wages, hours, and safety and health, respectively. Its many conventions covering aspects and industries inconsistently.

[31] These are with Mexico and Canada under the North American Free Trade Agreement (NAFTA); Jordan; Chile; Singapore; Australia; Morocco; Bahrain; Oman; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR); Peru, Colombia, Panama, and South Korea. Prior FTAs with Canada and Israel contain no labor provisions.

Table 2. Comparison: ILO Fundamental Principles and U.S. Internationally Recognized Worker Rights

ILO Fundamental Principles	U.S. Internationally Recognized Worker Rights
• Freedom of association and the effective recognition of the right to collective bargaining; • Elimination of all forms of forced or compulsory labor; • Effective abolition of child labor and the minimum age of work; and prohibition of the worst forms of child labor; and • **Elimination of discrimination in respect of employment or occupation.**	• The right of association and the right to organize and bargain collectively; • Prohibition on the use of any form of forced or compulsory labor; • A minimum age for the employment of children; and prohibition of the worst forms of child labor; and • **Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.**

Source: For ILO: 1998 *ILO Declaration*; for U.S. Internationally Recognized Worker Rights: Trade Act of 1974, 1984 amendments (19 USC 2467).

In addition, both the U.S. and ILO lists are included in four FTAs adopted under the May 10, 2007, agreement between the George W. Bush Administration and House leadership,[32] with Peru, South Korea, Panama, and Columbia. The FTAs establish that the fundamental principles of the *ILO Declaration* are enforceable, in three separate provisions: (1) Each Party "shall adopt and maintain in its statutes, regulations and practices thereunder, the rights as stated in the *ILO Declaration*;" (2) Neither party shall waive or derogate from its statutes or regulations implementing the principles of the *ILO Declaration,* in a manner affecting trade; and (3) A Party shall not fail to effectively enforce its labor laws including those reflecting the *ILO Declaration* or U.S. internationally recognized worker rights, in a manner affecting trade. The most recent TPA renewal, in June of 2015, incorporates ILO core labor principles and the May 10 understanding in the U.S. principal negotiating objectives.[33]

By comparison, Canada, the European Union, and a number of Asian countries have mentioned ILO core labor principles in some of their FTAs or side letters, but their provisions tend to be consultative and non-binding.

U.S. Adoption of ILO Core Labor Principles

Whether to go beyond ILO principles and reference ILO conventions in FTAs has been a long-standing issue since Congress first considered the North American Free Trade Agreement (NAFTA). Some stakeholders, especially unions, including the AFL-CIO, have called for the inclusion of enforceable ILO conventions in U.S. FTAs to "level the playing field" for U.S. workers and to afford greater protections to workers in other countries, particularly developing countries.[34] Other stakeholders, including the U.S. Council for International Business (USCIB),[35] have expressed concern that, since ILO conventions carry the force of law, referencing the conventions in FTAs could conceivably expose the United States to legal challenge on any such conventions that conflict with U.S. law. However, the USCIB also counters its own argument,

[32] See CRS Report RS22823, *Overview of Labor Enforcement Issues in Free Trade Agreements*, by Mary Jane Bolle.

[33] See CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson; and CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Mary Jane Bolle and Ian F. Fergusson.

[34] See AFL-CIO, *NAFTA at 20.*

[35] The AFL-CIO represents labor interests and the USCIB represents management interests for the United States at the Conference.

pointing out that "U.S. courts could potentially find that the more specific requirements of existing laws take precedence over the more general but contradictory obligations contained in the ILO conventions."[36] In addition, the *ILO Constitution* states that "in no case shall the adoption ... or ratification of any Convention ... be deemed to affect any law, award, custom or agreement which ensures more favorable conditions to the workers concerned than those provided for in the convention.... "[37]

To determine where potential conflicts between U.S. law and ILO fundamental labor conventions exist, the President's Committee on the ILO, through its legal subcommittee, the Tripartite Advisory Panel on International Labor Standards (TAPILS),[38] has compared language of fundamental ILO conventions with U.S. laws. Three conventions appear not to be a problem. The Senate has already ratified two of them: C105 on the abolition of forced labor, approved by the Senate in 1991; and C182 on the worst forms of child labor, approved in 1999. A third convention, C111, on discrimination, was submitted to the Senate in 1998, but was never acted upon.[39]

The five remaining conventions have been found to conflict with U.S. or state laws. TAPILS found that C29 on forced labor, C138 on minimum age, and C100 on equal remuneration conflict with U.S. law.[40] In addition, some states may subcontract the operation of prison facilities to the U.S. private sector, for example, for the making of license plates or military uniforms. An independent researcher had previously found that two other conventions, C87, on freedom of association and protection of the right to organize, and C98, on the right to organize and bargain collectively, may also conflict with federal and/or state laws.[41] None of these conventions has been submitted to the Senate for ratification.

Potential Issues for Congress

Congress may wish to conduct oversight of the ILO to explore several issues, including the following:

- What should be future priorities of the ILO and the United States as a leading member of the institution?
- How have enforceable ILO principles in various FTAs affected worker rights in these countries?
- What effect have multilateral organizations such as the OECD, the World Bank, the IMF, and the G-7 had on promoting worker rights?
- How effective has the ILO been in promoting worker rights?

[36] USCIB, U.S. Ratification of ILO Core Labor Standards, April, 2007.

[37] *ILO Constitution*, Article 19, §8.

[38] The President's committee on the ILO was established in 1980 by Executive Order 12216 to monitor the work of the ILO and to address U.S. issues relating to the U.S. withdrawal from the organization between 1977 and 1980. Its seven members include representatives from the Departments of Labor (chair), State, presidential advisors, and representatives from organized labor and the business community.

[39] Treaty No. 105-45 was received in the Senate and referred to the Committee on Foreign Relations by unanimous consent on May 19, 1998.

[40] USCIB, op. cit.

[41] Edward E. Potter, "Freedom of Association, the Right to Organize and Collective Bargaining: The Impact on U.S. Law and Practice of Ratification of ILO Conventions No. 87 and No. 98," Labor Policy Association, Inc., 1984, as reported in USCIB, op. cit.

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- What has been the effect of the *ILO Declaration* on promoting fundamental labor principles around the world?
- What impact have business codes of conduct that include ILO fundamental principles had on promoting worker rights in various countries?
- What results has the ILO Better Work program achieved?

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