

CORRESPONDENCE

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TO THE EDITORS-IN-CHIEF:

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Professor Weissbrodt's discussion of *A New United Nations Mechanism for Encouraging the Ratification of Human Rights Treaties* (76 AJIL 418 (1982)) correctly draws attention to a critical weakness in postwar international efforts to protect human rights: the failure of a considerable number of states to ratify human rights treaties. Among the procedures he recommends for the rectification of this weakness is one drawn from the ILO. Technical difficulties impeding the ratification of ILO conventions by states are ironed out in informal discussions between government representatives and ILO staff, which apparently clears the way for a wider ratification of these conventions. This model, according to Professor Weissbrodt, has been "successful" because "the 152 member states of the ILO had reported over 4,856 ratifications of the then existing 153 ILO conventions" (p. 425 n.36). Without taking anything away from the work of the ILO and its contribution to the lives of working people everywhere, I think it is only fair to point out that the "success" that Professor Weissbrodt reports may only lie in the eye of the beholder.

The Chart of Ratifications of International Labour Conventions of January 1, 1980, updated by the ILO to June 1, 1980, shows 145 members (not all of them sovereign states) and a grand total of 4,808 ratifications for 153 conventions. Thus, on the average each state has ratified about 33 conventions, that is, one of every five. As may be expected, however, the "ratifying propensity" of states is not equal and the actual number of ratifications of the member states varies from a high of 104 (Spain) and 102 (France) to a low of 0 (Bahrain, Botswana, Namibia, and United Arab Emirates). The 15 states with the highest number of ratifications (11 European and 4 Latin American) contribute 1,177 ratifications, which is more than that (1,171) of the lower 71 states. Stated differently, 10 percent of the members at the high-ratifying end of the scale have more ratifications among them than 50 percent of the members at the low-ratifying end. Furthermore, no ILO convention adopted in the past 15 years has received more than 35 ratifications as of June 1, 1980.

It is submitted that far from suggesting "success," these statistics only reveal that the ILO membership comprises a small group of states that has ratified a large number of ILO conventions and a large group of states that has ratified few conventions. Indeed, the statistics *per se* would neither prove nor disprove "success." To make any claims of "success" for ILO procedures, one would have to demonstrate that these procedures changed the attitudes of states and resulted in larger numbers of ratifications than would otherwise have been the case. And, such a measure itself would hardly evaluate the extent to which ratified conventions were being implemented—the only true measure of success, it is suggested.

The above pattern of state ratifications may also be seen in ratifications of human rights treaties. A relatively small group of states has ratified most of these treaties, while a considerable number of states has more or less remained entirely outside the network formed by the major human rights treaties. The problem manifested by this common experience of human rights and ILO conventions is far more fundamental, it is submitted, than Professor Weissbrodt has recognized, and it is highly unlikely that it will be overcome through the mere resolution of technical difficulties. The basic problem is that despite the rhetoric and passage of numerous resolutions, most states have yet to accept the premise that the domestic treatment of individuals is a legitimate area for international action and one in which states may be under international legal obligations as distinct from political ones. The relatively low numbers of ratifications received thus far by the two Covenants and the generally hostile attitude of states towards even feeble implementation procedures cannot be explained otherwise. Professor Weissbrodt's recommendations are directed towards states that have already set themselves on the path to ratification of human rights treaties. They do not deal with the far larger group of states that thus far have refused to undertake and carry out international obligations on human rights.

FARROKH JHABVALA

Florida International University

David Weissbrodt replies:

Professor Jhabvala suggests that the success in obtaining ratification of ILO conventions is more apparent than real, and that, in fact, ILO membership includes a small group of states that have ratified a large number of ILO conventions and a large group of states that have ratified few conventions. It may be useful to analyze the ratification figures as set out in the most recently published ILO chart of January 1, 1982. (The following figures exclude the ratifications still registered for two states that withdrew from the ILO in the mid-sixties, Albania and South Africa. They include a number of states that joined the ILO in the last 5 years but have not yet ratified conventions or have ratified only very few—Bahrain (1977), Belize (1981), Botswana (1978), Cape Verde (1979), Equatorial Guinea (1980), Namibia (1978), and Zimbabwe (1980)—seven states with a total of 18 ratifications among them.)

At the beginning of 1982, the ILO had 146 member states. The total number of ratifications of ILO conventions by these states was 4,926, an average of 34 ratifications per state. Sixty-three states had ratified a number of conventions equal to or above the average: 27 were in Europe, 15 in the Americas, 13 in Africa, and 8 in Asia and the Pacific. These figures, both in absolute numbers and geographic spread, refute Professor Jhabvala's contention.

It is instructive to look at the distribution by region of ratifications of ILO conventions. The regional averages per member state are as follows: Europe, 57 (Western Europe, 61; Eastern Europe, 50); the Americas, 37; Africa, 26; Asia and the Pacific, 21.

These figures roughly reflect differences in levels of development. A conspicuous exception is the United States, with only seven ratifications—the last of which occurred almost 30 years ago. Only 11 member states—mostly poor developing countries—have fewer ratifications than the United States. If one

looks at the position of certain other federal states, one finds Australia with 43 ratifications, Canada with 26, and India with 34.

While there are considerable variations in the number of ratifications received by the different conventions, a number of key instruments have been very widely ratified, as may be seen from the following figures:

Forced Labour Convention, 1930 (No. 29)	124 ratifications
Abolition of Forced Labour Convention, 1957 (No. 105)	107 ratifications
Right of Association (Agriculture) Convention, 1921 (No. 11)	102 ratifications
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	93 ratifications
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	110 ratifications
Equal Remuneration Convention, 1951 (No. 100)	100 ratifications
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	101 ratifications
Employment Policy Convention, 1964 (No. 122)	68 ratifications
Labour Inspection Convention, 1947 (No. 81)	100 ratifications
Protection of Wages Convention, 1949 (No. 95)	82 ratifications

In considering the ratification figures, one must bear in mind that a considerable number of conventions (over 40) have been revised by later ones. Some of those conventions are closed to further ratifications; others—even if theoretically still open to ratification—are superseded by the revising conventions and are therefore no longer relevant targets for ratification. A number of other conventions addressed themselves only to a limited number of states, *e.g.*, conventions concerning conditions in nonmetropolitan territories (ratified by only a handful of colonial powers for extension to their territories), conventions on indigenous workers (mostly relating to practices that have now disappeared), conventions concerning merchant seamen and fishermen, and a convention on plantation work.

Professor Jhabvala points out that conventions adopted since 1965 had, by 1980, in no case received more than 35 ratifications. It may be of interest to examine the ratification record of conventions adopted over the 30 years from 1951 to 1980. The average ratification per convention is as follows:

Conventions adopted from 1951 to 1960	42 ratifications
Conventions adopted from 1961 to 1970	26 ratifications
Conventions adopted from 1971 to 1980	17 ratifications

In considering these figures, one must bear in mind the subjects dealt with in the conventions concerned. The instruments adopted in the sixties included a number in the fields of social security and occupational safety that would not immediately be capable of implementation by large numbers of states. The same is true of certain instruments on occupational safety and conditions of seafarers adopted in the seventies. These ILO conventions set standards

that are not just the common denominator of existing national practice, but for most countries require the raising or further development of national standards, a process that takes time. Thus, it is not true, as has occasionally been suggested in the United States, that many governments undertake ratification without a sufficient sense of the responsibilities resulting from their act.

There remains the question to what extent ILO measures aimed at promoting ratifications in fact influence government attitudes. This question would merit a separate article. It may be noted, however, that many statements are on record, by delegates to ILO meetings and by ILO deliberative bodies, emphasizing the usefulness of various means employed to promote the implementation and ratification of conventions (ranging from procedures involving reports on unratified conventions and their review by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations to informal advice or advisory missions) and calling for increased resources to be devoted to such activities. ILO staff, who have been involved in providing such facilities, are also of the opinion that they have a significant impact. One illustration that may be mentioned concerns the request made in 1975 by six countries belonging to the Andean Group for direct contacts missions by ILO officials (which were carried out in 1976) to assess and advise on the possibilities of applying and ratifying 25 major ILO conventions as a means of harmonizing their labor policies and legislation; a number of ratifications have followed.

Finally, the question of effective implementation of ratified conventions is one on which a considerable literature exists. Reference may be made, for example, to E. A. Landy's exhaustive study, including statistical data, *The Effectiveness of International Supervision—Thirty Years of ILO Experience* (1966); to the ILO study, *The Impact of International Labour Conventions and Recommendations* (1976); and to the fact that the Committee of Experts on the Application of Conventions and Recommendations has since 1964 recorded more than 1,400 cases in which governments have taken action in response to the committee's comments to ensure the better application of ratified conventions.

Those concerned with human rights obviously would like to see an ever greater measure of acceptance and implementation of international human rights instruments. That aim is more likely to be attained by keeping these questions in the forefront of public discussion and by pressing for continuing review of government policies and attitudes than by assuming, pessimistically, that those who govern are impervious to any outside influence.