

New Scholars

**CONTINUATION OF THE ILO PRINCIPLES IN THE
21ST CENTURY THROUGH THE COMPLIANCE PULL
OF CORE LABOR RIGHTS***

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ABSTRACT

More than a decade has passed since the adoption by the International Labor Organization (ILO) of the 1998 “Declaration on Fundamental Principles and Rights at Work.” However, the debate over the meaning and implications of this change has not reached a conclusion yet. This article argues that regime theory can offer insights to move the debate to a more fruitful plane. The analysis suggests that the Declaration’s reinforcement of the ILO’s long-standing principles and norms in the context of four core labor rights can be interpreted as the emergence of a nested regime within the overarching ILO regime. From now on, the continuation of the ILO principles will be a function of how well the Declaration’s nested regime takes advantage of the “compliance pull” that the legitimacy of core labor rights generates against the competing principles of the neoliberal agenda.

* I dedicate my first publication to my mother and father, Nazan and Cezmi Eren, who taught me to value learning, and to my advisor, John Barkdull, who worked tirelessly with me from the beginning. The errors are of course mine.

Over the past decade in the global struggle for labor rights, the International Labor Organization's "Declaration on Fundamental Principles and Rights at Work" (ILO, 1998; hereafter, the Declaration), with its follow-up mechanisms, has stood out as an innovative and promising initiative as well as a controversial initiative with an uncertain future. The Declaration is a nonbinding statement of principles presented to the ILO member states with the purpose of inducing immediate action toward the realization of four core labor rights.

In the Declaration, for the first time in history, the ILO explicitly identified four basic labor rights as "core labor rights" and elevated them to the status of "fundamental human rights." These four core labor rights are as follows: (1) freedom of association (C.87, C.98); (2) prohibition of discrimination (C.100, C.111); (3) elimination of child labor (C.138, C.182); and (4) elimination of forced labor (C.29, C.105). The ILO's selection of these four core labor rights is not arbitrary: all four are procedural rights, which are the prerequisites for achieving substantive rights.

Since the Declaration now demarcates only four of the entire body of ILO standards for immediate attention, this initiative marks a contrast with the ILO's nearly century-old approach. It used to strive for the maximization of the legal enforcement of the entire body of its conventions. Having been the main international body in charge of the protection of labor rights since 1919, the ILO has a well-established international labor standards regime consisting of approximately 188 conventions and 198 recommendations as of June 2008. Critics said that the 1998 narrowing down of the scope of the ILO's focus was a regressive move (Alston, 2004).

An equally important break from the ILO's past practice embodied in the Declaration is that the ILO now requires all member states to respect, promote, and realize the principles and rights contained in the eight core conventions pertaining to these four core labor rights (listed above in parentheses) by virtue of their ILO membership, regardless of their status of ratification of those conventions. Yet the Declaration endorses the increasing use of soft law in the promotion of those core rights, which is thought to undermine the legal enforcement of labor standards. Thus, the Declaration has been a source of both optimism and concern.

More than 10 years have passed, and the meaning and implications of this change are still contested. Although critics and defenders of the Declaration agree that it was a turning point for the ILO's international labor rights regime (Haworth, 2002; Helfer, 2006; Hughes, 2002; Langille, 2001), they disagree as to the direction in which this change is headed. Yet the Declaration is not a rival or an alternative to the ILO's existing labor rights regime. It builds on the founding principles and norms of the ILO and utilizes innovative ways to realize the ILO principles in today's world.

The uncertainty about the ultimate impact of the Declaration on the worldwide implementation of labor rights is at the root of much of the controversy over the role of the ILO in today's world. Two opposing camps have emerged in the

controversy over the Declaration. The critics of the Declaration, exemplified by professor of law Philip Alston (Alston, 2004, 2005a, 2005b; Alston & Heenan, 2004), argue that the Declaration has caused a regressive transformation in the ILO's existing labor rights regime. The proponents of the Declaration, exemplified by another professor of law, Brian A. Langille (2001, 2005), whose views have been generally welcomed by commentators from the ILO, such as the ILO's former legal adviser, Francis Maupain (2005), see the innovations brought about by the Declaration as the last chance for the ILO to redeem itself in today's world.

Taken to the extreme, both positions are equally misleading. The ILO has never had the enforcement power that some fear is now being lost to globalization; so the regime around the ILO may be said to have been "born weak" (Haggard & Simmons, 1987: 514). Economic, political, social, and cultural challenges have always impeded the realization of labor rights, challenges bigger than the ILO's capability to overcome them. Thus, it may not be fair to attribute the slow progress in the realization of labor rights entirely to the Declaration.

Despite all the hype around the Declaration, so far the authors have mostly talked past each other. We need a theoretical lens to put the main arguments in perspective. Regime theory can offer illuminating insights that will move the debate to a more fruitful plane. Has the Declaration established a competing new labor rights system that subscribes to new norms, such as those of the neoliberal agenda? Or does the Declaration represent continuity with the norms and principles of the pre-Declaration international labor regime?

The article recasts the two opposing arguments with regard to the Declaration controversy in regime theory terms: The critics' side amounts to arguing that the Declaration has caused a regressive transformation of the entire ILO regime (Alston, 2004, 2005a; Alston & Heenan, 2004), and the proponents' side amounts to arguing that it has caused a change within the existing regime (Langille, 2005; Maupain, 2005). A regime theoretical analysis is presented to demonstrate that the Declaration is firmly rooted in the normative basis that underlies the ILO regime. This situation is interpreted as the emergence of a "core labor rights regime" around the Declaration within the overarching ILO regime. Thus, in regime theory terms, the new outcome resembles what has previously been identified as the emergence of a "nested regime" around a specific set of issues within a higher-level system (Aggarwal, 1983, 1998; Raustiala & Victor, 2004).

It is true that the Declaration leads the ILO regime to a new direction in an attempt to adapt the organization to the demands of the era; but the emergence of a "nested regime" within the ILO implies that the Declaration regime leads the ILO regime in that direction in such a way as to prevent the new rules and procedures, such as soft law, from diluting the legitimacy of the ILO's founding principles and norms. Therefore, rather than being a change within the ILO regime toward an unknown direction, as Langille (2005) suggests, hoping this would turn out to be good for labor, the Declaration launches a more disciplined process that is guided and restrained by the ILO's overarching principles and norms.

If the Declaration regime is in fact nested within the overall ILO regime, then, by virtue of the nesting, the overarching ILO principles that “labor is not a commodity” and that “poverty anywhere constitutes a danger to prosperity everywhere” should act as a constraint. Accordingly, the heightened interactions between transnational and domestic labor rights actors that the Declaration has set off should reinforce these principles as well as the underlying norm that prescribes international regulation in the context of four core labor rights. This in turn should enhance the overall legitimacy of the ILO instead of undermining it.

Evaluating whether the Declaration has established a nested regime within the ILO system requires us to investigate whether “countries will endeavor to bring subsystemic behavior into line with objectives in higher-level systems” (Aggarwal, 1983: 620). Answering this question requires us to assess whether the Declaration regime has contributed to the adoption of policies and laws within member states that are supportive of the ILO principles.

This assessment is carried out through an analysis of the ILO’s global reports, which the ILO issued as part of the follow-up to the Declaration, and the annual reports sent by the nonratifying members and then compiled by the ILO’s expert advisers. The reports are examined through a lens adapted from Viederman and Klett’s (2007) method of constructing labor standards indicators. Viederman and Klett’s method ranks countries according to four criteria: (1) ratification of the core ILO conventions; (2) national labor laws; (3) institutional capacity; and (4) implementation effectiveness.

The Declaration has brought about a norm-driven or cognitive change, as opposed to a power- or interest-based change (Hasenclever, Mayer, & Rittberger, 1997). Because the United States, the state with the most interest in establishing a neoliberal labor regime, also has the most power, separating the power- and interest-based arguments is difficult and not necessary for this study. Even though the Declaration proclaims that its principles bind all ILO members, it is technically a nonbinding instrument, and “its enforcement is based largely on shaming and suasion” (Stavis & Boswell, 2008: 85).

But the way in which this shaming and suasion connects the Declaration (independent variable) to real-world outcomes, such as ratifications of core conventions or changes in labor laws (dependent variable), has not been identified. Thomas Franck’s (1990) theory of “compliance pull,” that is, the idea that the legitimacy of rules exerts an independent “compliance pull” on state behavior (Franck, 1990), offers a useful explanation. The enhanced legitimacy of the idea of core labor rights, more so than the prior international labor regime, may persuade the ILO member states to comply with the Declaration’s principles. In turn, the persuasion effect of this “compliance pull” of labor rights may explain Langille’s (2005: 437) contention that the Declaration “connects ILO law with the ILO’s real world agenda.”

If the evidence indicates that the Declaration’s core labor rights regime works in line with the theoretical expectations regarding nested regimes, this should be

taken as a hopeful sign for the new direction in which the ILO has been going for over a decade now. A demonstration of the insight that normative factors, such as the “compliance pull” of international rules, may alter state preferences in the labor rights arena may be useful in clarifying the role of the ILO in today’s world.

THE CONTROVERSY OVER THE ILO’S 1998 DECLARATION IN REGIME THEORY TERMS

Main Points of Disagreement over the Declaration

The process that culminated in the adoption of the Declaration gradually developed as a response to the stagnant debate in the 1990s over whether trade agreements should enforce international labor standards. By the time of the adoption of the Declaration, the ILO’s existing supervisory system had already fallen short of expectations (Cooney, 1999). The Declaration tried to fill an important need by constituting a channel for a strategic change in the ILO’s approach. As a response to the challenges that it faced, the ILO identified four core labor rights as human rights and gave consent to the use of soft law instruments in their promotion.

The problem that the critics have had with this strategic change in the ILO’s approach is that the ILO’s selection of four core labor rights was arbitrary, and that the shift in the ILO’s focus from legal enforcement to soft law mechanisms could obscure the rest of the ILO conventions. This could ultimately marginalize the ILO in labor issues (Alston, 2005a, 2005b; Alston & Heenan, 2004).

In response, proponents of the Declaration pointed out the consistency of the new approach with the ILO’s past practice, both procedurally (Maupain, 2005) and in terms of upholding its founding principles and goals (Langille, 2005); but they drew attention to the new means the regime now preferred: “[t]he real difference between the Declaration and the ‘old regime’ may be in the nature, purpose, and organization of soft techniques” (Langille, 2005: 423).

Moreover, the Declaration’s emphasis on soft law instruments for the promotion of labor rights seemed appropriate and timely in the face of globalization’s undermining of the effectiveness of domestic and international legal instruments to protect labor rights (Blanpain & Colucci, 2004; Daugareilh, 2008; Duplessis, 2008; Gravel, 2008; Langille, 2005). Overall, the Declaration was greeted as part of a “competence-enhancing change” within the ILO with respect to its three goals regarding its lawmaking and monitoring functions: universal membership with widespread treaty ratifications, appropriately flexible substantive rules, and centralized mechanisms for monitoring state behavior (Helfer, 2006, adapted from Koremenos, Lipson, & Snidal, 2001).

In the end, Maupain (2005: 442) declared the controversy inconclusive: “the ILO’s first Director and enduring icon Albert Thomas reminded us that the ILO standards are not an end in themselves, and this is no less the case for the Declaration. The single question both for standards and the Declaration, ‘hard’

and closed or ‘soft’ and open as they may be, is whether, and to what extent, they make a verifiable contribution to the advancement of the Organization’s objectives in the real world.” Accordingly, Maupain suggested that both (pre- and post-Declaration) regimes be assessed according to the same set of criteria: whether they have been capable of or have actually exercised a verifiable impact on the achievement by members of the specific ILO constitutional objectives (Maupain, 2005).

Recasting the Debate in Regime Theory Terms

Short of a full-scale empirical investigation, it is not easy to respond to Professor Maupain’s question about whether the conditions of labor (wages, benefits, hours, safety, pensions, etc.) have improved, worsened, or stayed about the same since 1998. Also, it is sensible to refrain from guesses about the Declaration’s impact on “substantive outcomes” regarding labor conditions, because the overall situation regarding labor conditions around the world is beyond the ILO’s power to control (due to wars, civil wars, failed states, trade and investment issues, and domestic political factors).

We can only judge the ILO according to limited criteria; therefore we should keep the focus limited to what can be said definitively. The annual and global reports presented as follow-up to the Declaration indicate some improvement in labor conditions with regard to the worst forms of abuse in the ILO’s targeted areas. But, in order to interpret the meaning of these developments for the role of the ILO in today’s international system, we need guidance from theory.

In particular, regime theory may have unique leverage to move this debate ahead. The elements of a regime theoretical analysis are implicit in the Alston-Langille debate, but in order to deal with both arguments at the same level, these elements need to be brought forward. In fact, the sets of relationships developed over time around the ILO and its conventions have long been recognized and frequently referred to as the “international labor rights regime” (Haworth, 2002; Hughes, 2002; Langille, 2001). Analyzing the significance of the Declaration for the overall international labor rights regime using a regime theoretical framework seems to be the most appropriate next step.

In explaining continuity and change in international regimes, regime theory makes a distinction between *changes of regimes* and *changes within regimes*. Since the principles and norms, that is, the goals, of a regime “provide the basic defining characteristics of a regime,” changes in these are changes of the regime itself. Changes in the rules and decision-making procedures, that is, the means, of a regime are changes within the regime (Krasner, 1983: 3–4). This distinction gives us a clearer perspective from which to think of the Declaration’s role in contributing to continuity or change within the ILO regime.

According to the above premises of regime theory, the ongoing controversy over the Declaration can be recast both in terms of the descriptive considerations

of the *range of change* in international regimes (types, forms, patterns, and processes of change) and also in terms of the analytic examination of the *sources of change*, or the causal mechanisms behind those changes (Young, 1999). Regime theory's third type of consideration in explaining change, the consequences of change (Young, 1999), is what is needed to complete the discussion and will be dealt with in the next section.

Range of Change

To recast the two arguments in terms of the *range of change* that has occurred in the ILO regime as a result of the Declaration means to describe the resulting outcome in terms of whether it was a change *of* or a change *within* the regime. The argument of the critics of the Declaration, exemplified by Alston (2004, 2005a, 2005b) and Alston and Heenan (2004), amounts to suggesting that a *change of regime* has occurred in the ILO regime as a result of the adoption of the Declaration.

Alston's (2004) view can be characterized as suggesting a change *of regime*; not only because he explicitly uses the term "regressive transformation of the labor rights regime" but also because, in regime theory terms, his view equals the suggestion that the Declaration led to a change (or erosion) of the normative basis of the existing ILO regime. For Alston, the norm of international labor regulation based on the principle that "labor is not a commodity" had been abandoned in favor of decentralized, variable labor regulation in line with the neoliberal view that labor is indeed a commodity like any other.

In contrast, the argument of the opposite side of the debate (which started as a response to Alston) can be characterized as suggesting that the adoption of the Declaration has created a *change within the existing ILO regime*. In fact, Langille (2005: 409) has reacted to Alston's argument by asserting his conviction that "international regimes are notoriously hard to change or improve or reform—let alone transform." For Langille (2005: 415), the Declaration's demarcation of four core labor rights "explicitly makes no change to the existing legal regime, which is simply and explicitly taken as a baseline."

Source of Change

In terms of *source of change*, we can see this debate as a contestation between two opposing explanations of what caused the outcome that came about in the ILO regime after the adoption of the Declaration. Alston's (2004) view amounts to suggesting a *power- or interest-based change of* the ILO regime. In contrast, it is more apt to describe Langille's view as a *cognitive* explanation.

Alston's (2004: 466) account presents "the United States push for a promotional and non-convention-based approach to the CLS [core labor standards]" as the main force behind the outcome after the adoption of the Declaration. According to Alston (2004: 467), the United States supported the ILO's adoption of the

Declaration because “the proposed Declaration and its soft monitoring system provided an ideal route through which the United States could escape from the dilemma of not having ratified the key conventions itself while applying sanctions in its domestic legislation and seeking them at the WTO level for other countries’ violations of CLS.” This *power- or interest-based* explanation has been echoed in the literature since the adoption of the Declaration (see Bellace, 2001).

In this view, with “modified neo-liberalism” (Alston, 2004: 483) being on the ascendancy in the international system since the fall of the Soviet bloc, the choice of which particular labor rights were to be included in the CLS “reflects a pragmatic political selection of what would be acceptable at the time to the United States” rather than any consistent criteria associated with the postwar labor and human rights regimes (Alston, 2004: 485). Alston draws a connection between the demands of the neoliberal agenda and the resulting CLS regime, which is in line with the wishes of the hegemon that sustains and benefits from the neo-liberal agenda.

Power-based explanations, such as those exemplified by hegemonic stability theory, are generally considered to do “well at identifying apparently necessary conditions for . . . regimes, but poorly at establishing sufficient conditions” (Keohane, 1980: 137). Cognitive explanations introduce normative or informational variables into power-based ones to show the purposes for which power is exercised. While Langille (2005: 421) does not question Alston’s account of “the role of the U.S. in promoting the Declaration and the core labor rights agenda,” he does not believe “it controls or dictates what the Declaration is or can be.”

Langille (2005: 424) emphasizes the normative continuity in the ILO’s existing regime and the Declaration’s demarcation of four core labor rights by pointing out that “the ILO has long recognized that there is a hierarchy of conventions with those dealing with basic human rights at the top.” Thus, in Langille’s (2005: 419) view, the selection of core labor rights is not arbitrary but depends upon a morally coherent, “richer and better account of the relationship between social justice and economic progress.” Since Langille’s (2005) account takes into account normative considerations in its discussion of core labor rights, it can be characterized as a *cognitive* explanation of a change *within* the ILO regime, though toward an unspecified direction that develops along the way as the ILO adapts to the challenges of the global economy.

THE DECLARATION: CONTINUITY OR CHANGE IN THE ILO REGIME?

The controversy over the *type of change*, that is, whether a change *of* or *within* the ILO regime has occurred, seems to stem from the opposite conclusions scholars have reached about the Declaration’s impact on the underlying principles and norms of the ILO regime. The controversy over the *source* of this change signifies

an even deeper disagreement over the role of norms and principles in the international system.

To assess the *type of change* that the Declaration has brought about in the ILO regime, the continuity and change in the principles and norms underlying the ILO regime should be evaluated. If no significant challenge to the underlying normative basis of the ILO regime appears to have been posed by any competing principles, then we cannot talk of the replacement of the ILO regime by the new CLS regime, but only of a continuity of the existing regime with some procedural modifications. To assess the *source of the posited change*, we need to examine the mechanism through which this change might have happened.

The Principle That Underlies the ILO Regime: “Labor Is Not a Commodity”

Regime theory posits that there may be layers of international regimes that govern different aspects of the same international activity. Three overlapping regimes exist in the field of global economic relations: trade, investment, and labor regimes. The problem is that these three regimes are guided by two competing principles that have opposing prescriptions for action. While the trade and investment regimes have both embraced a liberal (and recently a neoliberal) worldview, the labor regime (centered around the ILO) has stood in contrast to these two since the beginning.

In fact, the underlying principle that gave rise to the ILO’s labor regime, “labor is not a commodity,” came as a response to the perceived failure of the trade and investment regimes’ underlying principle, “the free market will allocate resources, income and wealth efficiently and equitably” to protect human well-being. As a result, the ILO regime arose to provide a check to the exploitation of workers under the trade and investment regimes, based on experiences in the 19th- and 20th-century European workplace.

The ILO regime continues to exist in the 21st century, and it formally invokes the same principles against more or less the same alternative principles as in the early 20th century. But Alston (2004) rightly questions whether a significant change has taken place in the underlying principles of the ILO regime. Because of the increasingly globalized economy, the activities of the three regimes have repercussions in all three areas that are increasingly difficult to separate.

The principles do not neatly correspond to the issue areas for which they were originally intended; but free market principles tend to take over all aspects of economic activity including labor issues. The norm in today’s economy remains that trade and investment interests dominate over labor rights claims, because trade and investment interests are more directly connected to states’ survival and security interests. There is no a priori reason why this should be so; however, this situation enables the economically powerful actors to perpetuate a system in which they secure their interests at the expense of the weaker actors.

As a result, the idea of international labor standards causes controversy among both developing and developed countries for reasons related to comparative advantage (Elliott & Freeman, 2003). At the WTO's 1996 Singapore Ministerial Meeting, a proposal to link the WTO and ILO through the inclusion of the ILO standards as a social clause in trade agreements "raised the important question of the role of the ILO at the interface of world's trading and labor regimes" (Stavis & Boswell, 2008: 86).

The Unchanged Norm of International Regulation of Labor

The underlying norm in the ILO regime has been equality for workers. The main goal of the ILO conventions has been to establish the same labor standards everywhere regardless of countries' levels of development, GNPs, or cultural norms. The Declaration's consent to the use of soft law may appear to be an abandonment of this norm. However, the Declaration also insists that all member states are bound by the eight core conventions regardless of their status of ratification, and it elevates the four core rights to the status of universal human rights. This shows that the Declaration does not signify a radical change in the ILO's position in terms of this norm.

Even though the Declaration came about as a result of the rejection of the proposal for the ILO-WTO linkage, paradoxically, it may have "paved the way for the inclusion of labour standards on the trade policy reviews of the WTO" (Roozendaal, 2002: 199). For "[t]hrough the acceptance of these fundamental standards as universal, and through a follow-up mechanism that at least may increase the transparency of [their] application . . . workers may have strengthened the legitimacy of their quest for the observance of labour standards. In the future, the acceptance of universal standards could provide a basis within other organizations for the pursuit of trade-enforceable labour standards" (Roozendaal, 2002: 199).

The Declaration's Adoption of New Rules and Decision-Making Procedures

The Declaration has established new rules and decision-making procedures intended for the specialized task at hand, in addition to the regular supervisory mechanism of the existing regime. The ILO adopted three new follow-up mechanisms under the 1998 Declaration: (1) annual reports for the monitoring of the unratified core conventions; (2) global reports to track improvements in four core labor rights; and (3) technical cooperation/action plans to assist member states in their efforts to realize four core labor rights. In addition, the Declaration placed an increased emphasis on technical assistance.

But the Declaration was not merely a change of rules and procedures in the ILO regime, either (see Table 1). The four core labor rights have been placed on the normative level of fundamental human rights, essential to the realization of the entire body of labor standards. But the core labor rights subregime is nested

Table 1. ILO Regime: Continuity and Change

	Pre-Declaration	Post-Declaration
Principle	Labor is not a commodity	Labor is not a commodity + four core labor rights (CLRs) are human rights.
Norm	International regulation of labor (all states should comply with the minimum standards specified in the ILO conventions).	Continuance of the same norm with particular emphasis on four CLRs (four CLRs are binding regardless of their status of ratification); eight conventions are specified as "core" conventions (two for each CLR).
Rule	Voluntary ratification of conventions. Supervisory mechanisms apply only after ratification. The ILO encourages the incorporation of ratified standards into national labor laws.	Old rules are in force but considered ineffective; soft law mechanisms are allowed.
Procedure	Monitoring of compliance through the ILO's regular supervisory mechanism, technical assistance.	Old procedures are still in force but considered ineffective; new monitoring mechanisms for CLRs (two new follow-up mechanisms: annual report from members who have not ratified at least one core convention; yearly global report by the ILO on each CLR); renewed commitment to technical assistance.

within the larger labor rights regime, some of which is justified by human rights standards, some by treaty law.

Since the additional rules and procedures are geared toward the four core labor rights, and the already existing rules and procedures continue to serve the rest of the labor issues, the new situation qualifies as a special form of change *within* the existing regime, specifically, the formation of a *nested regime*. From a regime

theory perspective, the Declaration can be thought of as having initiated a “core labor rights” regime, “nested” (Aggarwal, 1983, 1998) within the ILO’s overarching labor rights regime, to which the next section of this article now turns.

THE DECLARATION AS A FOCAL POINT OF A NESTED REGIME WITHIN THE OVERARCHING ILO REGIME

The Core Labor Rights Regime as a Nested Regime

Based on the above analysis of the underlying principles, norms, rules, and decision-making procedures of the ILO regime, the outcome appears to be the formation of a nested regime around the Declaration within the existing ILO regime (based on Aggarwal, 1983, 1998). This has important implications for the future of the ILO regime that are different from those that Professors Alston and Langille have stated. The expected impact of this nested regime is to replicate the underlying principles and norms of the ILO in the context of four core labor rights that are the prerequisites for the achievement of other labor rights. This is, in turn, expected to enhance the achievement of the constitutional goals of the ILO, rather than to serve a watered-down ILO agenda or a completely new purpose.

A nested regime can be understood as a development of interactions among the members of a regime toward the achievement of a more specialized and tighter set of objectives within a larger system that is hierarchically above the emerging subsystem (Aggarwal, 1983). More specifically, the Declaration can be thought of as an “elemental regime,” a core regulatory framework, nested within the overarching labor rights “regime complex” (Raustiala & Victor, 2004).

To complete the regime-theoretical explanation for the meaning of the Declaration for the ILO regime, we also need Young’s third component (*consequences of regime change*). The Declaration has in fact established a distinguishable arrangement within the existing system. The Declaration’s Web site states that, “since its adoption in June 1998, the Declaration has been widely cited by world leaders, international and regional organizations, policy makers, ILO constituents and the press. The values in the Declaration represent a global consensus on social and labour issues, and serve as the major reference point in this sphere.”

Preliminary observation suggests that the emerging institutional arrangements around the Declaration bring about certain regularities in actors’ actual and expected behaviors. To establish this situation as a nested regime, it is essential, first, to show that the resulting outcome is not a change *of* regime, that the normative basis of the resulting post-Declaration situation still remains within the existing principles and norms of the overarching ILO regime. As explained above, the constitutional objectives of the ILO are reinforced in the context of the four core labor rights, with the addition of a new basis for their justification and new rules and procedures for their implementation that do not replace but strengthen the existing ones.

The reports under the follow-up to the Declaration inform us about new policy initiatives launched as a result of the Declaration for dealing with issues such as child labor (ILO, 2002, 2006a); forced labor (ILO, 2001, 2005), poverty, globalization, employment creation, HIV/AIDS, and sustainable development.

The reports also indicate evidence for the introduction of more inclusive definitions of discrimination as well as for the prompt identifications of its new forms around the world (ILO, 2003, 2007). Those constitute an initial confirmation that the overall impact of the ILO's change of strategy has not been so different from its institutional objectives, a finding that is in line with what would be expected from a nested regime.

Second, the emergence of a nested regime implies that the regularities in regard to expectations of actor behaviors are not based on random criteria but constitute a replication of the principles of the overarching regime at the level of the nested regime (Aggarwal, 1983). The four core labor standards are firmly rooted in international human rights law and the century-old ILO principle that "labor is not a commodity." The text of the Declaration makes clear that the competing principles of the neoliberal agenda should not be allowed to undermine the ILO's commitment to this principle in the 21st century.

Third, building on this baseline framework to evaluate the Declaration's "simple effectiveness," we can go one step further to include the "broader consequences" (Underdal & Young, 2004) of this arrangement on state behavior. One of the main channels through which the Declaration leads to broader consequences is the technical assistance that the ILO offers to member states.

According to the latest review of the ILO's progress in achieving Declaration goals, "ILO technical assistance comes in the form of advocacy, awareness raising, training, advisory services and technical cooperation for development of institutions and capacity building." And the results are obtained through "labour law reform; building the capacity of labour administrations; strengthening employers' and workers' organizations; developing tripartism and institution building; preventing and settling disputes; and advocacy and information" (ILO, 2008: xii).

The Replication of ILO Principles at the Nested Regime Level

To assess the argument that the Declaration has in fact established a nested regime within the ILO regime, first we need to determine whether the core labor rights regime has made a difference over the pre-Declaration situation in terms of improvement of labor rights practices in the ILO member states, and what kind of difference it has made. For that purpose, I now turn to an examination of whether there is an improvement in the Declaration's real-world impact from the first follow-up reports to the second reports.

Although this is not the place for a full-scale counterfactual analysis (Helm & Sprinz, 2000; Underdal, 1992), for now it can at least be suggested that the legal, normative, and policy-related changes that have occurred since the adoption of the

Declaration would be unlikely to have happened by themselves, without the actors having (1) a focal point around which to identify, define, and frame the issues; (2) an explicit commitment to do so; and (3) the tools necessary for the achievement of the changes. Having made this assumption, then, the ratification and implementation of the core conventions should give us a sufficient idea of the extent to which the ILO principles are replicated in the nested regime level. The overall purpose is to evaluate the extent to which the changes have been in line with the constitutional principles of the ILO, as reflected in the ILO conventions and contrary to those of the trade and investment regimes, which have no objection to the commodification of labor.

In *Qualitative Indicators of Labor Standards: Comparative Methods and Applications*, David Kucera (2007) has compiled several studies that propose indices to assess labor conditions around the world. From that volume, Viederman and Klett's (2007) four criteria (developed by Verité) are chosen here as a suitable lens through which to evaluate the information reported in the Declaration's annual and global reports as part of the follow-up to the Declaration. Viederman and Klett's method of constructing labor standards indicators utilizes a diverse range of information sources and has comprehensive coverage of actual labor conditions in addition to the implementation of the Declaration's four fundamental principles and rights at work. Second, the four criteria fulfill the promise of this section, which is to evaluate whether the Declaration has made a difference and what kind of difference it has made.

Viederman and Klett's (2007) method of constructing country scores consists of four components: (1) ILO conventions (10% of the total score); (2) laws and legal system (25% of the total score); (3) institutional capacity (15% of the total score); and (4) implementation effectiveness (50% of the total score).

Ratification of Core Conventions

The ratifications of core conventions have steadily increased since the elevation of the principles contained in them to human rights status with the Declaration and the ILO's subsequent campaign for the conventions' ratification (see Table. 2).

The ILO Declaration expert advisers' latest review of annual reports under the follow-up to the Declaration announces that the total number of ratifications of the eight core conventions is now 1293 out of a possible 1448 (89.3%), as of January 18, 2008, which is an increase by 192 ratifications (a 13.3% increase) since December 31, 2005. There is a parallel increase in the percentage of nonratifying states that have fulfilled their reporting obligations under the Declaration's follow-up (a rise from 56% in 2000 to 99% in 2008), and a continuation of the decrease in the number of states that still remain bound by those obligations.

Since the adoption of the Declaration, the ratifications of the antidiscrimination conventions (C.100, C.111) have rapidly increased to an almost universal level (ILO, 2007, 2008). From the first (ILO, 2003) to the second (ILO, 2007) follow-up

Table 2. Overall Ratification of the Core Conventions since the Adoption of the Declaration

	C.87	C.98	C.29	C.105	C.138	C.182	C.100	C.11
1998	121	137	145	130	64	0	136	129
2008	149	159	173	171	171	169	166	168

report on this subject, there have been new ratifications of C.100 and C.111, and the overall numbers of ratification of these two conventions have been on the increase as of March 2009. The new ratifications include those by states with long-standing discrimination problems, such as China, Uganda, and the Lao People's Democratic Republic. The apparently diminishing *rates* of ratification of C.100 and C.111 from the first to the second follow-up reports do not show a decline in the overall numbers of ratification, nor does it indicate that the impact of the Declaration is diminishing. On the contrary, it shows that, because most states are already covered, the additions have become more sporadic over time compared to the initial upsurge of ratifications.

The minimum age and the elimination of the worst forms of child labor conventions (C.138, C.182) received large numbers of new ratifications since the adoption of the Declaration, especially from 2002 to 2006, in comparison with the 1973–99 period (ILO, 2006a). The states that have not ratified either of the two conventions still remained bound by the lower standards (for example, C.5) they had already ratified. The most prominent examples of ratification include Pakistan, Thailand, and Vietnam, where child labor has been a major problem.

The ratifications of the elimination of forced labor conventions (C.29, C.105) have not significantly increased. However, the encouraging news is that countries with significant forced labor problems ratified one or both of these conventions after the Declaration's first follow-up report on the subject: Examples include Mozambique, Nepal, Rwanda, and Vietnam.

The weakest area in terms of increase in ratifications has been in terms of the core labor standard of the freedom of association and the right to collective bargaining (C.87, C.98). While the ratifications of core conventions C.87 and C.98 have increased since the adoption of the Declaration, significant world economies such as the United States, China, Brazil, and the Gulf states still have not ratified either one or both of these conventions.

The last two global reports on this area establish that even in the ratifying countries, the biggest problem is in the exercise of rights in this area (ILO, 2004, 2008). For the right to freedom of association and collective bargaining to be meaningfully exercised, a country must operate within a fairly democratic regime, and ratify both conventions at the same time. In the absence of any one of these

conditions, the ratification is, even on paper, close to being meaningless. It is a common practice among some member states to ratify either C.87 or C.98, but not the other. While such countries wish to seem in partial compliance with the requirements of this core right, in fact they may not be in compliance at all; because non-ratification of C.87 precludes the enjoyment of C.98, and vice versa.

The new ratifications, in particular those by the previously uncooperative states, are encouraging: For example, Angola, the Bahamas, Zimbabwe, Kuwait, and Mauritania, which have previously ratified only one of C.87 or C.98, have recently ratified the other, and thus, they are now in full compliance with this core labor right. Also, it is encouraging that, since the Declaration's first follow-up report, a number of countries who had not ratified any of the two conventions have decided to ratify both at the same time. Examples include, but are not limited to, El Salvador, Armenia, Equatorial Guinea, Montenegro, and Vanuatu.

The increase in the ratifications of the core conventions from the first to the second reports under the follow-up to the Declaration suggests that the impact of the Declaration in terms of continuing the ILO principles in the real world has been encouraging with regard to this criterion. Ratification of the ILO Conventions is a significant step toward implementation. The next step in the evaluation of the Declaration's impact is an examination of the levels of incorporation into national labor laws of the ILO principles captured in the conventions.

The Declaration's Impact on Laws and Legal Systems

According to the ILO's latest global report on discrimination (ILO, 2007), the trends in antidiscrimination laws since the adoption of the Declaration have been equally hopeful. The scope of antidiscrimination laws is expanding to encompass different grounds of discrimination in the industrialized world. Special legislation has been enacted in the developing world to address new forms of discrimination, such as discrimination based on HIV/AIDS status in many African countries. Also, according to the report, interesting developments, such as a greater emphasis on sanctions and the reversal of the burden of proof in antidiscrimination laws from the victim to the accused in European Union (EU) countries, have been taking place. This shows an improvement since the previous report (ILO, 2003), which had reported a growing shift in legal approaches away from the negative duty not to discriminate to the positive duty to prevent discrimination and promote equality but could not demonstrate sufficient concrete developments.

Child labor is an area in which the Declaration's impact in terms of translating the Declaration's principles and rights to concrete gains in national legislation is weak but still present. The first report on the subject (ILO, 2002) pointed out the need to gather better information on the scope and nature of the child labor problem, to improve legal frameworks, and to overcome the challenge of

enforcement. With the help of the ILO's International Programme on the Elimination of Child Labour (IPEC) and state and nonstate actors, some progress was achieved; but there was no radical change from the first to the second report in legal terms. The second report (ILO, 2006a) detailed the enactment of new legislation and the repeal of old laws since the adoption of the Declaration, especially in the Southeast Asian countries where the problem has been worst. Thailand's adoption of the Labour Protection Act, which raised the minimum legal age to work from 13 to 15, and the National Education Act could be examples of an influence exerted by the Declaration.

As for the *elimination of forced labor*, the ILO in 2001 reported that the legal measures taken by India, Nepal, Pakistan, Bangladesh, and Sri Lanka over the previous decade, and especially Nepal's 2000 legislation, were particularly encouraging. In the following four-year period, there were global and regional legal developments. The follow-up report (ILO, 2005) points out cases of amendment of national laws, including those in Niger and Mali, and positive developments in Pakistani courts. According to this new report, the obligation imposed on member states to set out detailed action plans as part of the Declaration's follow-up process has also led to the adoption of new national legislation by both industrialized countries (the United States' adoption of the Trafficking Victims Protection Act) and developing countries (Nigeria's adoption of the Trafficking in Persons [Prohibition] Law Enforcement and Administration Act) and induced significant improvements to existing legislation (for example, in Brazil and Nepal).

However, as for *the right to freedom of association and collective bargaining*, parallel to the only slight increase in the ratification of the pertinent two core conventions (C.87, C.98) in comparison with the ratification of the other core conventions, the Declaration's impact on national laws and legal systems has correspondingly been the weakest. The ILO (2000) has reported the presence of outright prohibitions or limitations of freedom of association and collective bargaining in national laws; but it has also highlighted positive developments, such as the fact that Namibia and Zimbabwe repealed their laws restricting unionization in the export processing zones (EPZs). The ILO (2004) reported encouraging progress in labor law reform, and significant substantive and procedural efforts to incorporate this right into national laws since the first report. Yet overall implementation remained weak for both C.87 and C.98.

The ILO (2008) reports some progress in removing the legal restrictions reported in the previous two reports on freedom of association in the Gulf states, and the ending of state-sponsored and state-controlled trade union monopolies in a number of African and Eastern European countries. Some notable developments include the adoption of new trade union and public services acts in Botswana, the Republic of Korea, Lesotho, and Uganda; the amendments to the Labor Code in Poland to allow prison guards to unionize; the amendments to the Thai labor law to break the monopoly of the state as the biggest employer in Thailand; and

amendments to the labor laws of Jamaica and Lithuania to broaden the right to strike to broader sectors. However, the ILO also pointed out that limitations on unionization and collective bargaining still persisted.

Like the global reports, the latest report of the expert advisers appointed by the ILO to review the annual reports under the Declaration has also pointed out limitations in member states' political will to implement the existing laws. The report notes that "the level of development, lack of financial resources, and the lack of technical capacity in particular, cannot be taken as an excuse for lack of political will to give effect to [principles and rights at work]" (ILO, 2006b: 1–2). Despite the Declaration's deliberate emphasis on targeting the nation-states for the implementation of labor rights, the lack of political will continues to be the biggest obstacle to the effective realization of the Declaration's objectives (ILO, 2008).

The Declaration's Impact on Institutional Capacity

The Declaration has led to several governmental and nongovernmental policy initiatives in the ILO member states in all four core issue areas. Networks of cooperation were established between the member states and nonstate entities. Having the Declaration as their focal point helped diverse actors to come together and act cooperatively to solve the problems framed by the Declaration, which made the resulting policy initiatives technically, financially, and operationally feasible.

One example of the Declaration's impact on institutional capacity is the rise in the number of specialized institutions around the world that deal with *discrimination and inequality in the workplace*, such as the Special Secretariat for Policies to Promote Racial Equality (SEPPIR) created by the Brazilian government (ILO, 2007). Between the first report on the subject (ILO, 2003) and the second one (ILO, 2007), new approaches such as active labor market policies that complement conventional policy measures were identified. Examples included the introduction of public procurement policies to complement legislation (such as the Preferential Procurement Policy Framework Act of 2000 in South Africa), the creation of specialized enforcement bodies to close the gender gap, and the creation of job placement services for disadvantaged groups.

The ILO (2002) has reported that tripartite agreements have been reached in partnership with IPEC to provide education, to combat poverty, and to eliminate the worst forms of *child labor*. A community-based education and social mobilization initiative named SCREAM (Stop Child Labor [Supporting Children's Rights through Education, the Arts, and the Media]) was initiated in 2002 to combat child labor around the world (ILO, 2006a). As part of this initiative, a World Seminar on Scouting and Child Labor was held in Cairo in February 2005. Several training programs have been initiated to eliminate child labor in mining and other

hazardous sectors, gender bias in child education, and occupational hazards for children working in family farms in the agriculture sector.

As a result of the ongoing engagement of the media and the research community, intergovernmental organizations (IGOs), nongovernmental organizations (NGOs), the donor community, and the integration of child labor within overall ILO priorities toward implementation, the number of all child laborers fell by 11%; in hazardous work by 26%; and in the 5–14 age group by 33% from the first report to the second.

As for *forced labor*, the ILO in 2001 identified ambitious short-term objectives set out by India, Pakistan, and Nepal to eradicate bonded labor, targeting women, children, the homeless, and the landless. It had suggested combining forces with the UN and the International Organization for Migration (IOM) in field projects and technical assistance, and enhanced policy coordination and partnerships between actors at different levels. The ILO in 2005 reports progress on the previously stated objectives of ensuring increased government priority for the rehabilitation of released bonded laborers in India, Nepal, and Pakistan.

The Pakistani government approved the National Policy and Plan of Action for the Abolition of Bonded Labour and the Rehabilitation of Freed Bonded Labourers (NAPA) in 2001, and its implementation is still continuing, despite financial limitations and administrative impediments. The state government of Andhra Pradesh in India held a state-level Convention on Bonded Labor in 2003 to raise awareness on the issue, and since then it has proposed a time-bound commitment for specific policy objectives. However, the ILO (2005) has stated that there has not been much improvement in terms of the forced labor exacted by the military in Guatemala and Myanmar, and on the problem of prison labor that was reported in 2001.

Likewise, the ILO (2000) identified innovative policy actions designed to improve the implementation of *freedom of association and collective bargaining* and to combat antiunion activities in EPZs in the Caribbean region. It stated that its direct contact missions, technical assistance, and seminars to raise awareness had led to policy developments in Indonesia, South Africa, and Poland. The second report on the subject (ILO, 2004), reports encouraging progress on the stated objectives. It notes that the climate of opinion is shifting in favor of freedom of association in many parts of the world, and that a rights-based approach to labor markets is growing; however, it concludes that no radical change has occurred in comparison with the previous period.

As was agreed under the first action plan under the Declaration's follow-up (ILO, 2000), the ILO has put special emphasis on technical assistance for the purpose of capacity building and the creation of the conditions necessary to realize the right to freedom of association and collective bargaining. The training programs and initiatives cover a wide range of areas from skills-building to trade-union education, to training of workplace inspectors, to nation-, province-, and enterprise-level dispute settlements, to name just a few.

Despite the limitations in translating the achievements of these initiatives into nationwide policies (ILO, 2004), the overall picture still seems to have improved since the adoption of the Declaration. Yet the 2004 report also highlights that “sustainable change . . . depends on the commitment of the government and social partners in each country, and on how they negotiate the change process together in this often passionately debated area and achieve a strong joint ownership of the agreed course of action” (ILO, 2004: 88).

The latest report (ILO, 2008) confirms positive expectations regarding institutional capacity building at national levels. It points out that, based on the complaints filed with the Committee on Freedom of Association (CFA), the allegations of denials of civil liberties have decreased since the 2004–7 period, and international cooperation for the implementation of this right at national levels through Global Union Federations (GUFs) and the International Trade Union Confederation (ITUC) is increasing. The report highlights the impacts of ILO action, corporate social responsibility (CSR) initiatives, international framework agreements (IFAs), and free trade agreements (FTAs) on building national capacity to protect the right to freedom of association, while pointing out that obstacles to the effectiveness of national policy initiatives still persist.

The Declaration's Impact on Effective Implementation of Labor Rights

According to Verité's method, the category of implementation effectiveness constitutes 50% of the total country score, 80% of which is made up of convention-related issues and 20% of which measures conditions of work. Since the ILO's global reports do not contain explicit data on the implementation effectiveness criterion, this particular impact of the Declaration can be discerned by using the political and normative impacts of the Declaration as a proxy, because, in the end, the effectiveness of implementation is highly dependent on the willingness of the political authority to implement labor rights in any given ILO member state. There is information on the overall effectiveness of the Declaration on each core right in the global reports (see Table 3). The reports show an increase in ratifications of core conventions and identify recent trends and the concrete steps taken toward the realization of the core rights.

In sum, the Declaration seems to have led to incremental but encouraging gains in terms of the ratification of core conventions, the incorporation of the ILO principles embodied in those conventions into national laws, and the establishment of relevant institutions at national and local levels to carry out the pertinent policy prescriptions. The effectiveness of the implementation of the four core rights is yet to be evaluated by a more detailed study, which is beyond the scope of this article; however, based on what has been achieved in terms of other criteria, there is reason to be hopeful for the implementation of the core rights as well.

Table 3. Impact of the 1998 Declaration on Viederman and Klett's (2007) Four Criteria

Discrimination	Ratification of core conventions		Laws and legal systems	Institutional capacity	Implementation
	Source				
Discrimination (C.100, C.111)	C.100 25 new ratifications	C.111 29 new ratifications	Growing shift in legal approaches away from negative duty not to discriminate to positive duty to prevent discrimination and promote quality	Public procurement policies to complement legislation (example: in South Africa, the Preferential Procurement Policy Framework Act of 2000). Introduction of specialized enforcement bodies.	The first action plan to eliminate discrimination at work was proposed under the follow-up, focusing on gender and ethnic/racial discrimination on the one hand, and HIV/AIDS and disability on the other hand.
	ILO (2007) C.100 4 new ratifications	C.111 8 new ratifications	Worldwide trend toward incorporating the pertinent conventions in labor laws. Improvements in antidiscrimination laws, such as recognition of new forms of discrimination (based on age, disability, HIV/AIDS status).	Introduction of specialized bodies to combat discrimination, policies to close the gender gap, and job placement services for disadvantaged groups. New approaches, such as active labor market policies, that complement conventional policy measures.	Governments have committed increased funds to the enforcement and advisory services provided by labor inspectors to tackle discrimination. Significant progress has been reported in achieving the goals stated in the first action plan.
Child Labor (C.138, C.182)	ILO (2002) C.138 55 new ratifications	C.182 51 new ratifications	Better information has been gathered on the scope and nature of the child labor problem, to	Tripartite agreements have been reached to provide education, combat poverty, and eliminate the	The first action plan to eliminate child labor was proposed for 2003-6, resting on three pillars:

Table 3. (Cont'd).

Source	Ratification of core conventions	Laws and legal systems	Institutional capacity	Implementation
ILO (2006)	C.138 31 new ratifications	Enactment of new laws regarding prevention and suppression of child prostitution and sexual exploitation in Southeast Asian countries since the adoption of the Declaration were reported. No new developments have been reported for the 2002–6 period.	Encouraging developments in policy coordination to achieve better education and elimination of poverty to combat child labor. National and community ownership of the problem.	(1) reinforce the work of IPEC; (2) mainstream child labor policies into the overall ILO activities; (3) forge closer partnerships.
	C.182 51 new ratifications			Engagement of the media and the research community, IGOs, NGOS, and the donor community and integration of child labor within overall ILO priorities toward implementation. Number of all child laborers fell by 11% in hazardous work by 26%; and in 5–14 age group by 33% from 2002 to 2006.
Forced Labor (C.29, C.105)	C.29 11 new ratifications	Legal measures by India, Nepal, Pakistan, Bangladesh, and Sri Lanka over the past decade were reported. Nepal's 2000	Ambitious short-term objectives set out by India, Pakistan, and Nepal to eradicate bonded labor, targeting women,	Combining forces with the UN and IOM in field projects and technical assistance has led to improvements. The first
	C.105 23 new ratifications			

<p>legislation was considered particularly encouraging.</p>	<p>children, the homeless, and the landless were reported</p>	<p>action plan suggested enhanced policy coordination and partnerships between actors at different levels.</p>
<p>ILO (2005)</p>	<p>C.29 11 new ratifications</p>	<p>C.105 23 new ratifications</p>
<p>Freedom of Association and Collective Bargaining (C.87, C.98)</p>	<p>C.87 5 new ratifications</p>	<p>C.98 8 new ratifications</p>
<p>ILO (2000)</p>	<p>In addition to global and regional legal developments, amendments of national laws in Niger (2003) and Mali (2001), positive developments in Pakistani courts (2002), new antitrafficking laws in Nigeria (2003), and the Trafficking Victims Protection Act (TVPA) in the United States (2000) were reported.</p>	<p>There is not much improvement in forced labor exacted by the military in Guatemala and Myanmar, and in prison labor, as reported in 2001. However, increased government priority given to the rehabilitation of released bonded laborers was reported in India, Nepal, and Pakistan.</p>
<p>Freedom of Association and Collective Bargaining (C.87, C.98)</p>	<p>Outright prohibitions or limitations of freedom of association and collective bargaining exist in national laws. But there have also been positive developments: Namibia and Zimbabwe have</p>	<p>Innovative policy actions to combat antiunion activities in EPZs were reported in the Caribbean region. The ILO's direct contact missions, technical assistance, and seminars to raise awareness have</p>
<p>ILO (2000)</p>	<p>The 2000 report acknowledges serious failures in implementation of pertinent conventions. However, 70% of members have ratified C.87 and C.98, and 67% of nonratifying members</p>	<p></p>

Table 3. (Cont'd).

Source	Conventions	Laws and legal systems	Institutional capacity	Implementation
	Ratification of core conventions	repealed laws restricting unionization in EPZs. There is a decline in state-controlled trade unions; however, legal restrictions persist.	paid off (policy developments in Indonesia, South Africa, and Poland have been reported in detail).	comply with their reporting obligations under the follow-up. The first action plan suggests awareness-raising and capacity-building, with a sectoral and gender focus.
ILO (2004)	C.87 16 new ratifications	Encouraging progress in labor law reform has been reported; also significant substantive and procedural efforts to incorporate the rights to freedom of association and collective bargaining into national laws.	There are reports of ILO assistance in reinforcing and improving labor administration in numerous countries. Dispute resolution training in African countries and national efforts to reach out to unorganized workers have been highlighted.	The 2004 report concludes that the climate of opinion is shifting in favor of freedom of association in many parts of the world; however, no radical change from the previous period. A rights-based approach to labor markets is growing. The report points out that, to ensure effective implementation of freedom of association

and collective bargaining, the ILO's attention should focus on nonratifying countries and vulnerable groups.

ILO (2008)	C.87 7 new ratifications (Total number of ratifications of C.87 as of June 2008 is 149; C.87 is still the least ratified among all eight core conventions).	C.98 5 new ratifications (Total number of ratifications of C.98 as of June 2008 is 159).	Encouraging developments include the adoption of new trade union and public services in Botswana, Republic of Korea, Lesotho, and Uganda; amendments to the Labor Code in Poland to allow prison guards to unionize; amendments to Thai labor law to break the monopoly of the state as the biggest employer in Thailand; and amendments to labor laws in Jamaica and Lithuania to grant the right to strike to broader sectors. However, limitations on unionization and collective bargaining persist across member states.	The impacts of ILO action, CSR initiatives, international framework agreements (IFAs), and free trade agreements (FTAs) on building national capacity to protect the right to freedom of association and collective bargaining were reported in 2008. However, challenges posed by the informal economy to the effectiveness of national policy initiatives persist.	Based on complaints filed in CFA, allegations of denials of civil liberties have decreased since the 2004–7 period. International cooperation through GUFs and the ITUC is increasing. The Governing Body of the ILO adopted a third action plan in November 2008.
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A COGNITIVE EXPLANATION OF THE OUTCOME

The above analysis of the annual and global reports under the follow-up to the Declaration shows that the Declaration has led to incremental improvements on three of the four selected criteria. There is reason to interpret these developments as being in line with the constitutional principles of the ILO. As would be expected from a nested regime, the consequence of the Declaration's core labor rights regime has been an increase in the ratification of core conventions, an improvement in the incorporation of those rights into national laws, the creation of new institutions and initiatives, and the adoption of new policies to ensure their actual implementation. Therefore, the *prima facie* evidence is suggestive of the continuation of the ILO principles and norms in the 21st century, in the context of core labor rights, as a result of the Declaration.

This outcome cannot be explained by *power-* or *interest-based* arguments; the ILO principles clearly contradict with those of the trade and investment regimes, which favor a neoliberal agenda promoted by powerful international economic actors. In the absence of compelling normative reasons, we might not have expected states to take actions that would disturb the economic status quo through which they have secured their immediate economic interests. Yet many states have taken steps to restrict child labor, forced labor, and discrimination, and have attempted to provide more freedom for trade unions.

Therefore, a *cognitive* explanation of the outcome is more appropriate. The Declaration's impact on real-world outcomes is more likely due to the power of labor rights norms to persuade and compel ILO member states to respect their international legal obligations in regard to labor rights, even in the face of their immediate interests, including their competing commitments to honor free trade and investment obligations. That is, the posited mechanism that links the Declaration regime to the ILO regime in the sense of a nested relationship is the "compliance pull" (Franck, 1990) of the Declaration principles.

Recent scholarship has suggested that socially constructed normative expectations are capable of influencing state behavior toward compliance with internationally agreed normative standards even when their prescriptions are in conflict with states' other interests (Finnemore, 1993, 1996; Keck & Sikkink, 1998; Risse, Ropp, & Sikkink, 1999; Sikkink, 1998; Simmons, 1998). The fact that the prescriptions of the trade and investment regimes are not allowed to reign, but are continually challenged by the ILO's labor rights regime on human rights grounds, implies that normative considerations have a role in changing state behavior.

In Goldstein and Keohane's (1993: 3) words, "ideas influence policy when the principled or causal beliefs they embody provide road maps that increase actors' clarity about goals or ends-means relationships." The demarcation of four core labor rights and the Declaration's encouragement of the use of soft law in their promotion provide a case in which normative beliefs, ideas, and other cognitive variables influence policy outcomes. The Declaration increased clarity in that it

posited labor's bargaining rights and rights against unequal contract as human rights, not subject to negotiation on economic grounds.

But in order to alter state behavior in regard to labor rights, what is needed is more than just a road map; because if the principles underlying any arrangement in favor of labor rights are not at least as compelling as the free market principles, the practices preferred by the powerful actors will continue to dominate. However, the improvements in labor rights practices reported above imply that a factor exists that leads states to take at least incremental steps toward honoring their international obligations under the Declaration.

A likely explanation for the improvements is that the ILO principle that "labor is not a commodity" has gained additional legitimacy. This legitimacy may be due to the Declaration, which specifically invokes the relevant ILO conventions in demanding that the core labor rights must be respected by all member states. Therefore, it may be that, by virtue of being nested in the overall ILO regime, the Declaration regime has been able to exert a "compliance-pull" (Franck, 1990) sufficient to change state behavior.

In response to the question "Why do some rules exert a powerful compliance pull on states?" Franck (1990: 44) notes: "the degree to which a rule is obeyed affects the degree to which it is cognizable as a valid obligation." But to avoid a tautological position, Franck refrains from equating compliance with legitimacy. Instead, he suggests that four properties of legitimacy (determinacy, symbolic validation, coherence, and adherence) increase the compliance pull that a rule exerts on states. He argues: "to the extent that these properties are not present, the institution will be easier to avoid by a state tempted to pursue its short-term interest" (Franck, 1990: 49).

In Franck's (1990) terms, then, the ILO's 1998 Declaration came to fill the need to enhance the compliance pull of the labor rights regime, at a time when it was most needed. For Franck, *determinacy* is a rule's clarity and transparency. The Declaration's demarcation of four core labor rights as human rights assigns them a "readily ascertainable normative content" (Franck, 1990: 52). This also serves as a *symbolic validation* for these rights, which Franck defines as a signal or a cue to elicit compliance.

The fact that the Declaration obliges member states to respect these four core labor rights by virtue of their ILO membership, regardless of the status of their ratification of the corresponding conventions, clearly satisfies the criterion of *coherence* that Franck (1990) uses to explain why certain rules are compelling. This obligation that is unilaterally imposed by the Declaration on all member states assures the two components of coherence, that is, "rule conforming practice," since the Declaration imposes these obligations consistently, "and perceptions of [the] rule's legitimacy," since the imposition of these obligations comes from the ILO, of which every state is a member, not from one state or a nonstate organization (Franck, 1990: 142).

Finally, Franck's (1990: 184) criterion of *adherence* means that "a rule is more likely to obligate if it is made within the framework of an organized normative

hierarchy, than if it is merely an *ad hoc* agreement between parties in a state of nature.” The ILO’s existing monitoring and supervisory mechanisms, as well as its new supervisory arrangements specifically created under the Declaration as a follow-up mechanism to monitor the four core labor rights, and the ILO’s historical presence and involvement in the international labor rights arena meet Franck’s (1990) fourth criterion, *adherence*, to evaluate the degree of the compliance pull that rules assert on states. In other words, the Declaration accomplished compliance by virtue of being “nested” within the ILO regime. In sum, a cognitive explanation of the link between the Declaration and the real- world outcomes that specifically builds on the compliance pull of the core labor rights more accurately captures the implications of the Declaration as a nested regime within the ILO regime than an explanation of the Declaration as a mere expression of hegemonic power.

CONCLUSION

The ILO’s 1998 Declaration is among the ILO’s latest attempts to achieve the worldwide implementation of the minimum labor standards established under international human rights law. The Declaration’s strategy of framing four core labor rights as universal human rights and encouraging their promotion through the use of soft law was welcomed by enthusiasts as a means to rise above the economic controversies between the North and the South, which blocked effective problem solving. However, critics argued that, in reality, this strategy might also be dangerously empowering multiple standard-setting centers at the expense of the internationally accepted ILO conventions.

An analysis based on the annual follow-up reports presented above reveals mixed success in terms of the Declaration’s impact on core labor rights over the past decade. For example, while there have been concrete developments in eliminating child labor, the picture is more blurred for the other three rights. Also, the reports show some improvement in labor laws and policies, especially in the areas of discrimination and forced labor, and they highlight some encouraging policy initiatives from around the world; but the situation has not *radically* improved in any of the four areas.

Still, the ILO’s technical assistance and partnership-building efforts have created an unprecedented awareness and an ambition among transnational, regional, and local actors to reach out to the farthest parts of the world and enhance national capacities. None of these could have been possible in the absence of a renewed normative commitment on the part of the ILO to the continuation of its founding principles through an instrument such as the Declaration.

Nevertheless, it is disappointing that the protection of freedom of association still remains the weakest among all of the rights, despite the ILO’s resources and

its capability to mobilize the major players in the field. The Declaration seems to have remained ineffective in bringing together the international and national trade union confederations toward the common objective of protecting trade union rights for the majority of the members of their constituencies.

However, the reports also show that the Declaration provides a specialized arrangement toward the realization of a tighter set of labor rights. Moreover, in doing this, the Declaration replicates the principles and norms of the overarching ILO regime in which it is situated. Thus, the overall functioning of the Declaration confirms this article's suggestion that the Declaration could be characterized as a *nested regime*; since the reports seem to confirm the implications of the analysis presented earlier, indicating that the normative basis of the ILO regime has remained intact.

The identification of the outcome of the Declaration as the focus of a nested regime has different implications for the future of the ILO regime than have been argued by either side in the debate. Being a nested regime within the ILO, the Declaration regime is expected to promote the legitimacy of the ILO's founding principles, and the underlying norm of international regulation of labor, instead of undermining them. These are the principles that still offer the best normative challenge to the commodification of labor in today's era of globalization.

The nested regime concept allows recognition of the change the Declaration represents without positing a change *of* regime away from the pre-Declaration norms and principles. Just as importantly, the nested regime concept allows us to see that the Declaration does not leave the future direction of the labor rights regime up to the forces of globalization but deliberately guides it according to long-standing ILO principles and norms.

As against the interpretations of both sides in the debate, the Declaration represents a continuation of the long-standing ILO principles that "labor is not a commodity" and that "poverty anywhere constitutes a danger to prosperity everywhere," and of the accompanying ILO norm that prescribes the international regulation of labor. In fact, an analysis of the follow-up reports under the Declaration shows incremental improvement in terms of the worldwide upholding of the ILO principles from the first set of reports to the second set on each core right.

As the history of the labor movement shows us, the implementation of labor rights is a function of how well abstract universal principles are translated into concrete gains at local levels through the courageous, steady, and persistent efforts of ordinary people. The Declaration's main role is to bring together the labor rights actors around the ILO principles, but it is still up to the hard work of the individual workers, professionals, activists, and scholars to ensure that principles will be translated into concrete gains at the workplace level. From now on, the continuation of the ILO principles will be a function of how well the Declaration's nested regime takes advantage of the "compliance pull" that the

legitimacy of core labor rights generates against the competing principles of the neoliberal agenda.

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