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Decision-making on ILO conventions and recommendations: Legal framework and application

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Decision-Making on ILO Conventions and Recommendations: Legal Framework and Application

Bernhard Boockmann

Dokumentation Nr. 00-03

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ZEW

Zentrum für Europäische
Wirtschaftsforschung GmbH

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Economic Research

Non-technical summary

The International Labour Organization (ILO) is the oldest specialised agency within the United Nations framework. Although the tasks of the organisation have undergone several changes over time, its main instrument has always been the setting of international labour standards. The most important of these are conventions, which can be ratified by member states and thus become legally binding on them, and recommendations, which often contain more detailed provisions but do not create legal obligations.

Up to the summer of 1999, a total of 182 conventions and 190 recommendations have been adopted. In 6,604 cases, member states have ratified a convention. This paper is an attempt to provide more detailed statistical information. It focuses on three important stages in decision-making: the adoption of standards, the ratification of ILO conventions and the use of the ILO's supervision procedures.

Labour standards are adopted by the International Labour Conference, a tripartite body which comprises government delegates as well as delegates representing employers and workers. Although formally, the decision rule is two-thirds qualified majority voting, many decisions are actually made by near-consensus. However, there is a sizeable opposition against the adoption of standards in the case of working conditions. Most of the votes against or abstentions come from the group of employer delegates. Within the Conference committees where the legal details are negotiated, majority voting can be quite frequent, with a weak and partially interrupted trend towards more consensus-based decisions over time.

The decision to ratify ILO conventions is made by the member states. Ratification numbers thus provide an, admittedly rough, measure of the acceptance of ILO conventions. This paper contains, for the first time in the literature, estimates of the probability of ratification a given number of years after the adoption. For instance, after 25 years the probability of having ratified a convention is about 25 per cent. Huge differences can be observed, however, across groups of states, such as industrialised and developing countries, and over convention subjects. It is also noteworthy that the process of ratification extends over a long period of time. It is not infrequent that states ratify conventions which have been adopted decades ago.

Among international organisations, the ILO has a unique supervisory system. Countries are obliged to report, in regular intervals, on the application of the conventions they have ratified. At the ILO, a committee of independent experts evaluates these reports. If a country does not fulfil its obligations, the committee may issue an observation. Our statistical exploration shows that in most cases observations are made repeatedly, reflecting the long-term nature of the supervision task. Again, there is a clear difference in the number of observations received between industrialised and developing countries as well as across convention subjects.

These results do not rest on any specific economic or political theory of international organisations. Instead, they aim at establishing a few stylised facts upon which subsequent theoretical research may build.

**INSTITUTIONALIZATION
OF INTERNATIONAL
NEGOTIATION SYSTEMS**



An Interdisciplinary Research Group at



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Centre for European
Economic Research

Decision-Making on ILO Conventions and Recommendations: Legal Framework and Application

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Abstract:

The subject of this paper is decision-making on the adoption, ratification and implementation of conventions and recommendations of the International Labour Organisation (ILO). The first part of the paper provides a brief introduction to the ILO as an international organisation, its treaty base and its most important bodies. In the second part of the paper, we focus on international labour standards. We first explain the decision-making procedure within the ILO which leads to the adoption of conventions and recommendations. We then deal with the ratification of conventions at the national stage and discuss the compliance with the obligations arising from ratification. The focus of the paper is not so much on the formal rules and procedures but on the question of how the rules are applied. Descriptive statistics give evidence on the degree of consensus at the decision-making stage, the voting behaviour of the delegates to the International Labour Conference, the ratification behaviour of member countries, and problems of implementation.

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1 *Introduction*

Since the foundation of the International Labour Organization in 1919, 182 conventions and 190 recommendations in many different fields of labour and social legislation have been adopted. With an average rate of two or three conventions and a similar number of recommendations per year, the ILO has been producing a fairly regular output. Up to July 1999, ILO conventions have received a total of 6604 ratifications which means that each of the ILO's 174 member states has ratified, on average, 38 conventions.

The apparent stability of the ILO's output during varied historical circumstances corresponds to the fact that its formal decision rules and procedures have changed very little over time. But before any conclusions as to the working of the ILO as an international negotiation system can be drawn, one should take a closer look at the actual application of the procedures. Some of the questions that arise in this context are: Have the subjects dealt with by ILO standards changed over time? Have there been changes in the application of the majority requirements? Have there been any changes in the propensity to ratify conventions? What does the geographic pattern of ratification look like? And finally, what can be said about implementation behaviour?

What is attempted in this paper is not a full description of the ILO's formal decision procedures. There is no scarcity of works, often written by ILO lawyers themselves, which discuss the legal details in much greater depth than is possible here. Nor do we try to explain how delegates vote or why certain countries ratify certain conventions while others do not – these are questions that must be tackled in further research. In this paper, we use statistical methods to describe the practice of decision-making within the formal rules given by the ILO's Constitution and its various legal subtexts. This seems particularly important because hardly any statistical analyses have been published since the extensive studies by Haas (1962) and Landelius (1965). As the earlier decades are already covered by these studies and the amount of data processed must be kept manageable, we concentrate on the period after 1960.

Historically, the main instrument of the ILO have always been international labour standards. Other functions of the ILO, such as providing technical assistance or collecting internationally comparable information on labour issues, will be discussed only briefly in this paper. The first part provides a short introduction to the ILO as an international organisation, its treaty base and its most important bodies. In the remainder of the paper, the decision-making procedure that leads to conventions or recommendations will be discussed in detail. We will follow this process roughly in chronological order. First, we deal with the adoption of conventions and recommendations at the International Labour Conference. Next, we gather evidence about the ratification of conventions at the national stage. Thirdly, the implementation of conventions is considered. A final section summarises the main findings.

All the statistical information presented in this paper is taken from official ILO sources. Information on voting behaviour was collected from the printed Records of Proceedings of the International Labour Conference. The data on the ratification and denunciation of conventions presented in sections 4 and 5 was obtained from the ILOLEX database, available both on CD-ROM and over the internet.

2 *An overview of the ILO*

2.1 History and task

The original reason why the ILO was set up was the concern of trade unionists, governments and philanthropic employers that working conditions could not be improved in one country if this led, through a subsequent rise in the costs of production, to a loss of market share for domestic producers. To block this mechanism, some degree of international coordination seemed to be required. Among governments, the Swiss in particular promoted the establishment of an international organisation. As a result, the first international conference on worker protection took place in Berlin in 1889. In 1900, the International Association for Labour Legislation was set up in Basle, with its secretariat already called the International Labour Office. The first proposals for international conventions originated inside the Association, and in 1905, a diplomatic conference was held to this purpose in Berne. In the following year, two conventions were adopted by a technical (i.e., non-diplomatic) conference. The first of these concerned night work of women, the second banned the use of white phosphorus in the production of matches. Up to the start of the first world war, a number of bilateral treaties on labour market conditions had also been signed by industrialised countries.

The ILO was founded in 1919, throughout the western world a significant year for labour and social legislation. Its constitution, drafted by a committee set up by the Peace Conference, became Part XIII of the Treaty of Versailles. It has been, in principle, the legal basis of the ILO until today.

According to the preamble of the Constitution, the first aim of the ILO is to further “universal and lasting peace”, which could be established “only if it is based upon social justice”. This objective was most topical in the wake of the Bolshevik revolution in Russia (Kruglak 1989: 180). To realise the aim of social justice, the regulation of labour markets seemed to be necessary. But this regulation would have to be international, since “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries” (ILO Constitution, Preamble). This economic argument is rarely found in later texts such as the Declaration of Philadelphia of 1944, but it reappeared in the 1970s with the spread of multinational companies and the extension of international trade (Ghebali 1989: 61ff.).

The first International Labour Conference saw the adoption of six conventions, dealing with working time, night work of women and children, unemployment, minimum age and maternity protection. In 1939, the number of conventions adopted stood at 67, and the number of members had increased from 46 in 1919 to 68.

In 1944, the Declaration of Philadelphia was annexed to the Constitution, describing the fundamental aims and principles of the organisation. There was some change in emphasis: whereas the Preamble of the ILO Constitution had focused exclusively on labour policies such as limits to working time, social insurance, the right to organise or the provision of training,

the Declaration referred to a much broader set of issues, including stabilisation policy and development aid.¹

With de-colonialisation and the subsequent accession to ILO membership of many African and Asian states, assistance in the development of labour law and social security has also become an important concern of the ILO. International labour standards serve as model legislation or a benchmark to which existing national legislation can be compared (Bartolomei de la Cruz et al. 1996: 25f.). Perhaps even more important for the relation between the ILO and the developing countries (and in the post-communist era, also the East European nations) was the expansion of technical assistance programmes supervised by the ILO. Administering technical assistance was never mentioned in the ILO Constitution as one of the organisation's tasks. However, this activity contributed much to the post-war growth of the International Labour Office, the ILO's bureaucracy.

2.2 Membership

With 174 countries (in 1999), membership of the ILO is almost universal. Only a small number of countries, such as Bhutan, Greenland, North Korea and Sikkim, are missing from the membership list, together with small islands (like Nauru, Samoa or Tonga) or territories (such as Andorra and Liechtenstein). Formally, the admission to membership requires either membership of the United Nations or admission by two-thirds of the delegates of the International Labour Conference (Constitution, Article 1, 3-4).

Initially, the ILO had only members from industrialised countries. The end of the colonial rule changed the composition of membership dramatically, with the industrialised countries being in a minority position from the early 1970s onwards. Cleavages among the ILO members, however, arose not only along different degrees of economic development, but also as a consequence of the east-west confrontation during the cold war. The Soviet Union, which had ceased its membership in 1940, re-entered the ILO in 1954; and all the other countries in the Eastern bloc (except for Romania, which left the ILO in 1942 and re-entered in 1956) were continually ILO members. "Inasmuch as the Soviet union remained very passive toward the ILO until 1954 and the influx of small, impoverished newly formed nations did not gain momentum until 1956, perhaps the mid-fifties is a more important demarcation than the Second World War" (Landelius 1965: 20).

Member states may withdraw from the ILO. A number of countries, most of them governed by right-wing authoritarian regimes, did so in the 1930s. More recently, South Africa left the ILO in 1966 (re-entered 1994), and the United States withdrew temporarily from 1977 to 1980. A withdrawal, however, takes effect only after two years. Moreover, the country remains subject to the obligations which follow from the ratification of convention. This means that the supervision of the application of these conventions also remains in force, except for those conventions which the former member has explicitly denounced.

¹ For an explanation of the growth of competences sought by the ILO and the change in its official goals, see Dufty (1972).

2.3 Organisation

The principal bodies of the ILO are the International Labour Conference, the Governing Body, and the International Labour Office (ILO Constitution, Article 2).

2.3.1 *The International Labour Conference*

2.3.1.1 *Tasks of the Conference*

The International Labour Conference is the supreme organ of the ILO. It convenes once a year, in recent history always in June.² It is ultimately responsible for the adoption, by qualified majority voting, of labour standards. The Conference is also responsible for the supervision of the application of ratified conventions. The Conference adopts the programme and budget of the ILO as proposed by the Governing Body. It decides over amendments to the ILO Constitution. Finally, it elects, every three years, the Governing Body (see below).

A separate Conference has been established for the maritime sector. The Maritime Conference also adopts conventions and recommendations but meets less frequently. There have also been Regional Conferences but these have never been allowed to adopt their own standards, for fear that this might dilute the power of the ILO's labour standards (Bartolomei de la Cruz et al. 1996: 27; Valticos and von Potobsky 1995: 55.). For budgetary reasons, the Regional Conferences have recently been scaled down in importance and are now called "Meetings" instead of "Conferences".³

2.3.1.2 *Composition*

The composition of the Conference follows, according to Article 3,1 of the Constitution, the principle of tripartism. Each member state sends two government delegates as well as one employer delegate and one worker delegate to the conference. All delegates have the right to vote individually (Constitution, Article 4,1). Worker and employer delegates are appointed by the governments, but the agreement of the most representative industrial organisations is required (Bartolomei de la Cruz et al., 1996: 11f.). If the worker or the employer delegate of a member country is absent from the Conference, the other may still participate but has no right to vote. Delegates are accompanied by technical advisors who represent them in committees; their number is limited to two for each item on the Conference agenda.

Government, employer and worker delegates form their respective groups, which have the task of nominating the Vice Presidents of the Conference as well as the members of the various Conference committees. Group meetings also serve to coordinate the voting behaviour inside each group. The degree to which such a coordination has taken place in the past has differed;⁴ Haas (1962) and Landelius (1965) devoted much attention to this question. In their

² During the Second World War, no meetings were held.

³ The specific rules of these meetings were adopted by the Governing Body in November 1997.

⁴ For instance, Haas (1962: 341) reports that, while the union and employer groups have tried to find common positions in substantive matters, the government group functioned only for procedural issues.

statistical analyses, they find that there was a much higher cohesion in the worker group than in the other two groups.

Most specific issues, such as the legal texts of international labour standards, are discussed within Conference committees. According to Article 17,1 of the ILO Constitution, the Conference regulates its own procedure, including the set-up and the composition of committees for issues on the Conference's agenda. The procedure for the nomination of committee members is left to the delegate groups (Article 70 Conference Standing Orders).⁵ In the Conference committees, technical experts often act for the Conference delegates because they possess more detailed knowledge of the issue to be decided.

There are also a number of standing committees, such as the credentials, selection, drafting and finance committees, the constitutional amendment committee, the Standing Orders committee, and the committee on freedom of association. Important committees for the supervision of labour standards are the Conference committee on the application of standards and the committee of experts on the application of conventions and recommendations (CEACR; see section 5). The latter is composed of 20 legal experts, appointed by the Governing Body, who assess member states' actions towards ILO conventions and recommendations.

2.3.1.3 Procedure of the Conference

A typical conference begins with technical or procedural issues. It then hears the reports of the Governing Body and the Director-General. A large proportion of assembly time is devoted to statements by delegates to these reports. Discussion in this context is often not related to any specific labour standard. There are usually hundreds of delegates who give statements, and there is a time limit for all speeches made by delegates.⁶

The remaining time is mainly spent discussing and deciding on committee reports. The principal decision mechanism at the Conference is majority voting. In plenary meetings, voting is by simple majority, except for cases where the Constitution explicitly requires other majorities (Constitution, Article 17,2). The most important exception is the final vote on conventions and recommendations, which is done by a two-thirds rule (Article 18,2).⁷

Within the committees, voting is always by simple majority. In contrast to the plenary sessions, governments, workers and employers have equal voting rights in committees, with the number of votes weighted such that all three groups are represented with equal strength (Conference Standing Orders, Article 65).

For the Governing Body, Osieke (1984: 406) reports that there has been an increase in efforts to clear up differences in the government group before plenary sessions.

⁵ Only the nomination of government delegates to committees is dealt with in the Conference Standing Orders (Article 75).

⁶ The limit has been recently shortened to five minutes, see Governing Body document GB 274/LILS/2.

⁷ The other cases are: admission of new members (ILO Constitution, Article 1); denial of admission to the Conference (Article 3); a change of the ILO's seat (Article 6); approval of the budget (Article 13); allowing a member to vote despite arrears in contributions (Article 13); the inclusion of subjects on the Conference's agenda (Article 16); and changes in the Constitution (Article 36).

Both in plenary sessions as well as in committees, every member may propose motions to procedure, resolutions or amendments to the texts under discussion.⁸ If there is more than one amendment to a text, the order of votes is at the discretion of the President. The amendment that comes out successfully must be voted individually against the status quo.

Since the statistical analysis of section 3 deals mainly with the outcomes of voting, some explanations as to the voting procedures are required. The most formalised kind of votes are record votes (or roll-call votes). The defining characteristic of a record vote is that individual delegates' voting acts are documented; in the case of record votes in plenary session, the individual delegate's voting decision can be looked up in the Conference's Record of Proceedings.⁹ Record votes must be held at the final voting stage of a convention or recommendation, and in all other cases in which a majority of two-thirds of the votes is required by the Constitution.¹⁰ Record votes also take place if requested by more than 90 delegates or by the Chairman of a group (Article 19,6 of the Conference Standing Orders), and in cases of doubt as to the result of a vote by show of hands (Article 19,4). In practice, those record votes which are not required by the Constitution mostly take place after a vote by show of hands has failed to produce a quorum. In some cases, delegates may also require a record vote in order to make public the voting behaviour of others, putting them under pressure if their voting intention is unpopular in their home countries.¹¹

A second method of voting is by show of hands. Here, the ILO documents the number of votes for and against and the number of declared abstentions, but individual votes are accessible only during the session at which the vote is taken, and are not published. Both types of votes are executed by electronic means. Motions to which there is no apparent opposition and which need not be decided by a record vote are often adopted without any formal vote taking place at all.

There has also been, since the late 1970s, the possibility of a secret ballot. It was introduced in order to give union and employer delegates more autonomy in their voting behaviour. Unlike in a vote by show of hands, delegates cannot be held accountable by their governments in a ballot vote, a problem which occurred frequently in the case of authoritarian states (Masters 1996: 22). However, a secret ballot is not admissible when the required majority is two-thirds (Conference Standing Orders, Article 19,5). A secret ballot can be held at the request of at least 90 delegates whenever a record vote is not required. For the election of the President of the Conference, a secret ballot is obligatory (Article 19,10).

⁸ Motions may be moved any time without prior notice. The text of amendments must be handed in to the Conference Secretariat before the amendment is moved. In the case of resolutions, the text must be received two days before a decision can be taken (Conference Standing Orders, Article 15).

⁹ Record votes at the Committee stage are not officially published by the ILO.

¹⁰ An exception occurs when the Conference votes on the inclusion in the agenda of the following of an item already discussed at the present session. This decision requires a majority of two-thirds, but no record vote is required.

¹¹ In practice, the largest number of record votes concern conventions and recommendations. Most of the others deal with the programme and budget or membership, voting, credentials or selection issues. Constitutional changes, which also require a record vote, have been relatively rare after 1960 compared to earlier periods (cf. Landelius, 1965: 70ff.).

An important issue is the size of the quorum. The ILO Constitution provides that, independently of the required majority or the voting procedure, voting in plenary session “is void unless the total number of votes cast is equal to half the number of the delegates attending the Conference” (Article 17,3). More precisely, Article 20 of the Standing Orders of the Conference stipulates that “a vote is not valid if the number of votes cast *for and against* is less than half the number of delegates attending the Conference and entitled to vote” (emphasis added).¹² Therefore, delegates who have declared their abstention do not count towards the quorum.

In order to prevent a convention from being adopted, it may thus be equally effective (or even more effective) to abstain rather than vote “no”. The lack of quorum is not an infrequent voting result, although this is true more for the Committee stage than for the final record votes.¹³ The 1986 revisions to the ILO Constitution, which have as yet not come into force,¹⁴ changed, on a proposal by the worker delegates, the quorum rule in such a way that votes recorded as abstentions will in future count towards the quorum (Kruglak 1989; Maupin 1987). They will not, however, count towards voting decisions: the number of “yes” votes must still only be higher than the number of “no” votes, not higher than the sum of votes against plus declared abstentions. The separation of these two issues might produce odd voting results.¹⁵ In order to prevent this, a minimum majority will be fixed numerically (Gheballi 1989: 184, 200). The object of the change was to make “strategic” abstentions more difficult. In future, delegates wanting to prevent a quorum will have to “vote with their feet”, i.e. not participate in voting at all (Maupin 1987: 487).

2.3.2 *The Governing Body*

2.3.2.1 *Tasks*

The most important function of the Governing Body is to set up the Conference agenda. The Governing Body also establishes the programme and the budget, it elects the Director-General, and it supervises the work of the International Labour Office. The Governing Body meets three times a year.

2.3.2.2 *Composition*

Similar to the Conference, the composition of the Governing Body is tripartite. It consists of 28 government members, 14 employer members and 14 worker members. Ten of the government seats are permanently held by states of “chief industrial importance” (including China

¹² In committees, the Quorum is two-fifths of the sum of the yes- and no-votes (Conference Standing Orders, Article 65).

¹³ “Abstentions become a real weapon, more effective than negative votes for blocking a decision considered politically inexpedient” (Gheballi 1989: 184).

¹⁴ Constitutional changes have to be ratified or accepted by two-thirds of the member countries before they take effect (Constitution, Article 36).

¹⁵ For example, a convention could be adopted with one single vote and all the others declaring their abstention.

and India). Representatives of other member countries are elected at the Conference every three years, taking into account their geographical provenance. According to the constitutional changes adopted in 1987, the permanent seats will be abolished and the overall number of seats will double.

Workers' and employers' representatives in the Governing Body are elected in a personal capacity by their groups from the Conference delegates (Governing Body Standing Orders, Article 7, 1-4). The Governing Body is headed by a chairman and two vice-chairmen, one from each of the three groups.

There are a number of committees to the Governing Body. Some of these are more technical in nature, dealing with administrative and organisational matters such as the programme, financial and administrative committee (PFA) and the committee on technical cooperation (TC). Others have certain functions in the supervision of existing standards or the revision of instruments, such as the committee on legal issues and international labour standards (LILS) or the working party on policy regarding the revision of standards (WP/PRS). A third group of committees deals with certain issues that have been found to be particularly important, such as the committee on freedom of association (CFA), the committee on employment and social policy (ESP), the working party on the social dimensions of the liberalisation of international trade (WP/SDL) or the subcommittee on multinational enterprises (MNE).

2.3.2.3 Procedure

With the assistance of the Director-General, the Governing Body chairman and vice-chairmen draw up the agenda of the Governing Body. Decision-making within this body follows an open rule procedure. Article 15 of the Governing Body Standing Orders stipulates that "any member of the Governing Body or any substitute or deputy member occupying the seat of a regular member may move resolutions, amendments or motions". The majority required is, in most cases, a simple majority, although certain decisions require an extraordinary majority or unanimity.¹⁶ In practice, almost all decisions are made by consensus. In cases of doubt as to the outcome of a vote, a roll-call vote may be taken.¹⁷

2.3.3 The International Labour Office

The International Labour Office is the permanent secretariat of the ILO. In the context of international labour standards, its main task is to provide documentation and studies on the issues before the Conference and the Governing Body. It also serves as the secretariat for meetings. The Office administers the ILO's technical cooperation programme. Furthermore, it publishes a wide range of statistical documents as well as specialised studies, reports and periodicals.

¹⁶ When a proposal to place an item on the agenda of the Conference is discussed for the first time by the Governing Body, a unanimous decision is required for a decision at the same session. Scheduling a single discussion instead of the usual double discussion procedure (see below) requires a majority of three fifths. (Governing Body Standing Orders, Article 10).

¹⁷ Voting behaviour in the Governing Body is not published by the ILO.

The International Labour Office is headed by the Director-General, who is elected for a five-year renewable term (since 1999, the Director-General is Juan Somavía from Chile). The Office employs some 1,900 officials at its Geneva headquarters. It is structured into a large number of departments. In the context of international labour standards, the most interesting one is the standards department. There are three subdivisions: NORMES, which is concerned with international labour standards and human rights, the relations and meetings division, and the sectoral activities division.

There are, in addition, 40 field offices around the world, and some 600 experts undertake missions in all regions of the world within the programme of technical cooperation. A number of institutes or research, teaching and technical cooperation work under the leadership of the Office, such as the International Training Centre in Turin, Italy and the International Institute of Labour Studies in Geneva.

2.4 International labour standards

2.4.1 *Different types of standards*

There are two different legal instruments for international labour standards: conventions and recommendations. The principle difference between them is that only the former can be ratified by member states and thus become legally binding. While the exact legal nature of the ILO conventions is disputed among lawyers,¹⁸ there is no disagreement that once a convention is ratified, the ratifying country is under an obligation to ensure the application of the standard given in the convention. The application of conventions is supervised by the ILO; each country is under an obligation to provide the required information.

Recommendations were introduced “to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention” (ILO Constitution, Article 19,1). They are most frequently used to supplement conventions, either giving more details on the content of the standard or sometimes setting a higher standard than the convention. Recommendations are often more “technical” in nature than conventions, and are adopted in areas where the diversity in national institutions is large.

Apart from conventions and recommendations, the Conference also adopts protocols. Protocols partially revise conventions. They are open to ratification only by states already bound by the convention.

2.4.2 *The contents of ILO standards*

Which matters are covered by international labour standards? Table 1 gives summary information on all conventions and recommendations adopted by the International Labour Conference since its beginnings. Conventions and recommendations are grouped according to the categories of the “classified guide”, the official subject classification scheme used by the ILO.

¹⁸ It is contested whether ILO conventions are contracts between states, or whether they are international laws; see Bartolomei de la Cruz et al., 1996: 21ff., Landelius, 1965: 10ff., Morhard, 1988, Valticos and von Potobsky, 1995: 50ff.

Table 1: Number of conventions and recommendations by subject category

Subject categories	Conventions		Recommendations	
	1919-97	1960-97	1919-97	1960-97
Basic human rights	11 (0.06)	4 (0.06)	8 (0.04)	4 (0.05)
Employment	9 (0.05)	5 (0.08)	25 (0.13)	8 (0.11)
Social policy	1 (0.01)	1 (0.02)	1 (0.01)	1 (0.01)
Labour administration	6 (0.03)	4 (0.06)	8 (0.04)	4 (0.05)
Industrial relations	1 (0.01)	1 (0.02)	8 (0.04)	5 (0.07)
Conditions of work	47 (0.25)	23 (0.35)	57 (0.31)	24 (0.32)
<i>among these, occupational safety and health standards</i>	20 (0.11)	15 (0.23)	33 (0.18)	16 (0.21)
Social security	21 (0.12)	5 (0.08)	16 (0.09)	5 (0.07)
Employment of women	6 (0.03)	0 (0.00)	4 (0.02)	1 (0.01)
Employment of children and young persons	13 (0.07)	3 (0.05)	9 (0.05)	3 (0.04)
Migrant workers	5 (0.02)	2 (0.03)	8 (0.04)	1 (0.01)
Indigenous and tribal peoples	6 (0.03)	0 (0.00)	4 (0.02)	0 (0.00)
Other special categories (seafarers, older workers, fishermen etc.)	53 (0.30)	18 (0.27)	40 (0.21)	20 (0.26)
Other subjects	2 (0.01)	1 (0.02)	0 (0.00)	0 (0.00)
All subjects	181 (1.00)	67 (1.00)	188 (1.00)	76 (1.00)

Note: Numbers in brackets are percentage shares. These may not sum to 1.00 due to rounding errors.

It is evident from the table that working conditions form the largest single subject area for international labour standards; one third of all conventions and recommendations belong to this group. Other areas where a large number of standards have been adopted are social security, employment policy, and the employment of children. Roughly one quarter of all standards are specific to certain groups of workers. Comparing the subjects of conventions and recommendations, we find that there are more recommendations than conventions in the area of employment policies or industrial relations. Industrial relations is an area where institutional arrangements differ widely across countries, hence it is unsurprising that most standards are recommendations. Employment policies may be seen as the prerogative of the individual state, hence there may have been resistance against the adoption of more binding international standards.

A notable change over time is the increase in the proportion of conventions on working conditions during the last 37 years as compared to the whole period of the ILO's existence. This increase is particularly strong among health and safety regulations. There is also an increase in the number of standards on labour administration and industrial relations which may reflect

the need of newly formed states for model legislation. Otherwise, there is no clear pattern of change over time.

Labour standards can also be categorised according to their importance. A succession of working parties of the Governing Body have been established to evaluate the usefulness of conventions and recommendations and make proposals for possible revisions. The first of these working parties, set up in 1974, proposed three categories for existing standards. About half of them were classified as topical. A need for revision was seen for 16 conventions and 14 recommendations. A total of 63 conventions and 81 recommendations were considered outdated (Gheballi, 1989: 214ff.). Two further working groups, one active between 1984 and 1987, the other set up in 1994, continued this task.¹⁹ In addition, the Governing Body designated seven conventions in the areas of freedom of association, forced labour, equality and the abolition of forced labour as “fundamental” conventions. They are complemented by four “priority conventions” covering labour inspection and employment policy. The importance given to these conventions is reflected by the stronger reporting requirements in the supervision procedure (see section 5).

2.4.3 The issue of flexibility

ILO conventions can only be ratified as a whole, and there is normally only one convention covering a particular subject open to ratification. A situation the ILO has always carefully tried to avoid is that members states could have a menu of standards of different tightness to choose from. Hence, they are required to make an all-or-nothing decision when they adjust their labour legislation to international standards. If, however, there is only one standard for all countries, it is difficult to account for different levels of productivity as well as differences in work organisation, industrial relations and government intervention. While the ILO’s all-or-nothing approach may sometimes result in greater changes to national labour legislation than could be expected otherwise, it is also likely to lead to a smaller number of ratifications.

The ILO has tried to preserve some degree of controlled flexibility in its standards (Handbook of Procedures, Paragraph 8). For instance, conventions may only formulate certain goals, with the more technical requirements laid down in recommendations. Some conventions offer alternatives to fulfilling the requirements given in the standard, such that they can be more easily implemented by member states with differing institutional frameworks. Other conventions are divided into several parts which can be ratified separately (although this is not the rule). Furthermore, conventions sometimes grant derogations to particular groups of countries, professions, etc.

In spite of the measures taken to make the contents of standards more flexible, critique as to its contents is often heard, in particular from the emerging economies. The complaints are that the standards take too much account of the conditions in the industrialised world, being too rigid for developing countries or covering subjects which are irrelevant to them (Bartolomei de la Cruz et al. 1996: 57, 117). The actual ratification behaviour across different groups of countries reflects this problem (see section 4). The results of the ILO supervision procedures

¹⁹ The most recent account is given in Governing Body document GB.276/LILS/WP/PRS/1.

(see section 5) also indicate higher costs of compliance with ILO conventions for non-industrialised countries.

2.5 The ILO's technical cooperation programmes

Apart from standard setting, the ILO engages, under the headline of technical cooperation, in development aid in the area of employment, working conditions, industrial relations and other labour-related subjects. A more extensive description than can be given here is contained in ILO (1993) and earlier ILO reports on the same subject.

Technical cooperation started in the early 1950s.²⁰ It is financed to some degree by the ILO's regular budget. Most resources, however, come from the United Nations Development Programme (UNDP) and from multi-bilateral programmes.²¹ The majority of projects concern vocational training (the single most important area of technical cooperation), the development of enterprises and cooperatives, child labour and working conditions. During the 1987 to 1991 period, more than half of the ILO's technical assistance was spent on projects in Africa.

The interaction between technical cooperation and standard-setting has been under discussion for a number of years. A report to the Governing Body issued in 1992²² proposed to strengthen this link. According to this report, technical cooperation should mainly assist member states in applying the standards they have ratified, which implicitly means that only those countries can profit from technical cooperation which have ratified the conventions adopted in the particular field. To what extent these principles have subsequently been adopted seems to be, however, an open question. Employers have stressed the independent function of technical cooperation which should be maintained in areas where no specific international labour standards have been adopted, such as employment creation and productivity improvement (BDA, 1995: 160).

2.6 Conclusion

The ILO is the oldest specialised agency of the United Nations System and one of its largest. It had, in 1998-9, a biennial budget of US \$ 481 million, about 26 per cent smaller than the Budget of the FAO and about 43 per cent smaller than the WHO budget. As with many international organisations, there has recently been much pressure to reduce the costs of the ILO operation, in particular from the United States. Traditionally, standard setting has been the core activity of the ILO. During the last fifty years, development aid has become another important area.

In the remainder of this paper, we will concentrate on ILO conventions and recommendations. We will look at the way they are adopted, trying to characterise the negotiation system as

²⁰ In the 1930s, the ILO had given assistance to its member countries in drafting legislation (Jacob and Atherton 1972: 547).

²¹ For a recent breakdown of expenditures according to funding sources, see Governing Body document GB.276/TC/1.

²² International labour standards and technical cooperation, Governing Body document GB 252/15/1, 1992.

majoritarian or consensual and identifying the actors that vote in favour of them. We will also ask when and by which countries conventions are ratified and how the supervisory system is applied. By establishing basic stylised facts, we try to build the ground for further research on the question why and how standards are adopted and under which conditions countries ratify conventions.

3 Decision-making over international labour standards

The International Labour Conference adopts conventions and recommendations by qualified majority of its delegates. To become legally binding, conventions must be ratified by the member states. These principles have been in place since the establishment of the ILO in 1919. At the time of its foundation, various proposals for these rules had been made (Morhard 1988: 109-112). On the one hand, delegations such as the French and Italian wanted the ILO to be a supranational body, adopting standards by qualified majority voting which would then automatically be mandatory on member countries. On the other, there were delegations, such as the delegation of the United States, who favoured non-binding instruments, leaving the decision power entirely with the nation state (Valticos and von Potobsky 1995: 267). The actual rules arose as a compromise between these extremes.

In this section, we will outline the decision procedure that leads to the adoption of international labour standards by the International Labour Conference. In the following sections, the ratification and implementation of conventions at the national level will be discussed. An overview of the whole procedure is given in figure 1.

3.1 The choice of the matter regulated by international standards

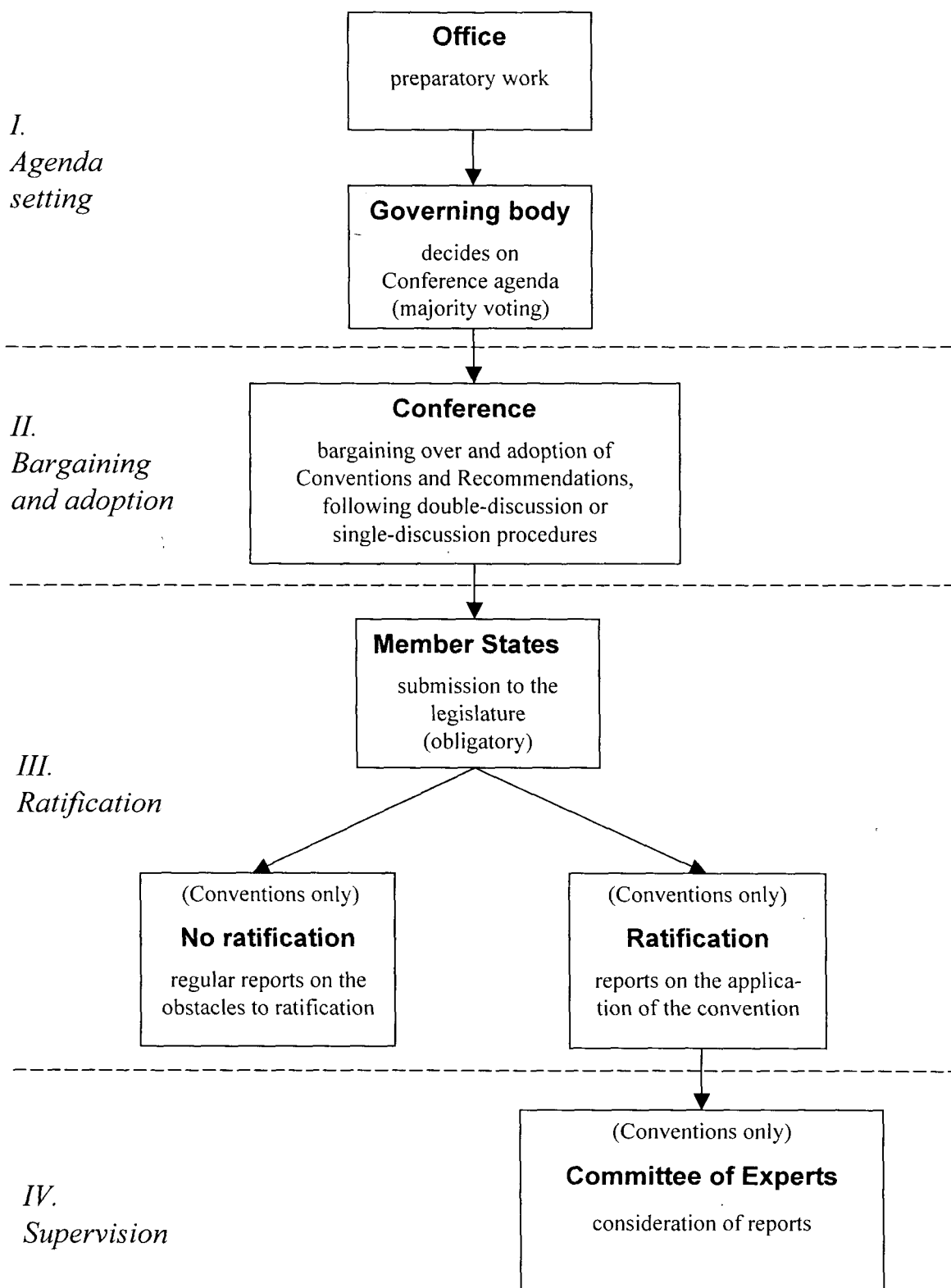
Subjects for new labour standards are placed on the agenda of the Conference by the Governing Body (Constitution, Article 14, 1). This is usually done two years ahead of the Conference. According to the Constitution, the initial proposals for regulation can be made by governments, representative organisations of employers and workers and other international organisations. In practice, almost all proposals come from the Office or the Governing Body.²³ A recent report by the Director-General criticises both this practice as well as the Office's work.²⁴ As a result of such criticism, there have been attempts to broaden consultations with other actors before a list of subjects for regulation is set up, in order to obtain a more varied portfolio of proposals.²⁵

²³ About 80 per cent of the proposals were made by the Office, while about 20 per cent came from members of the Governing Body. Only occasionally have other governments or unions or employers' organisations made proposals for regulation (Governing Body document GB 268/3).

²⁴ "[...] The choice of new standards is usually centralised and carried out in a rather random way" (Report of the Director-General, 1997).

²⁵ See Governing Body document GB 268/3.

Figure 1: The ILO's decision procedure: Overview



The Office assists the Government Body in the decision whether to include an item on the agenda by preparing documents which contain the current state of law and practice in the member states.²⁶ It also produces assessments which allow the Governing Body to determine the “value added” of a standard on the proposed subject.²⁷ There are also certain criteria for the relevance of a topic, fixed by a working party in 1984, which should be taken into account (Bartolomei de la Cruz et al. 1996: 37).

As mentioned earlier, the decision to place a subject on the Conference agenda is usually made by consensus. There are voting rules, however, for the case that a consensus cannot be reached. The Government Body first votes, by simple majority, on the question whether all the questions proposed should be put on the agenda. If a majority is not found, members allocate preference points to the proposals. These are then ranked according to the sum of points they have received. The Governing Body then votes on all proposal minus the least preferred, minus the two least preferred proposals, etc. until a majority is found (Governing Body Standing Orders, Article 18).

The Conference may itself place subjects on the agenda by a two thirds majority of its members (Constitution, Article 16,3). Any government of a member state may formally object to the inclusion of a subject on the agenda no matter which institution has set the agenda; the Conference may turn down such an objection by a majority of two-thirds (Constitution, Article 16,1-2). All these possibilities are merely hypothetical: in the period after 1960, there has not been a single Conference vote on the placement of a new item on the agenda. The only decisions on the agenda which the Conference has taken are resolutions on holding a second discussion on a subject already discussed in the first reading (see below).²⁸

3.2 The bargaining stage: drafting conventions and recommendations

3.2.1 Procedure

There are two procedures for adopting international labour standards: the single discussion and the double discussion procedures. Under the double discussion procedure, which is applied in the majority of cases, the standard receives two readings at the International Labour Conference, usually (but not always) in two consecutive years. Only in cases of urgency or in exceptional circumstances is the Governing Body entitled to choose the single discussion procedure, which provides for only one reading (Conference Standing Orders, 34, 7). Of all conventions and recommendations adopted between 1960 to 1997, merely five have been adopted

²⁶ Conference Standing Orders, Article 34,2; Governing Body Standing Orders, Article 10,2. The Governing Body may also convene a preparatory technical conference of experts to discuss whether a subject is apt for a standard (Conference Standing Orders, Article 34,5; Governing Body Standing Orders, Article 10,3).

²⁷ For such a report see, for example, Governing Body document GB 273/2 (“Portfolio of proposals for the agenda of the International Labour Conference as of its 89th Session, 2001”).

²⁸ Recall from footnote 10 that no record vote is required in this case, although the decision must be made by a majority of two-thirds.

in the single discussion procedure.²⁹ Therefore, we will only follow the double discussion procedure here. A flow chart is shown in figure 2.

3.2.1.1 Preparatory stages

Once a subject for a standard has been determined by the Governing Body, the Office prepares a “law and practice” report on the situation in the member countries (Conference Standing Orders, Article 39,1). No later than 18 months before the beginning of the Conference at which the issue is to be discussed, the report is published and sent to the governments of the member states. At the same time, governments receive a questionnaire asking them, in particular, about any obstacles they see to applying the proposed standards. The questionnaire is sent back by the governments no later than 11 months before the start of the Conference. Trade unions and employers are to be consulted by the governments during this process.

These responses form the basis of a second report by the Office which contains draft conclusions for the Conference. This report is again sent to the governments, normally no less than four months before the Conference commences (Conference Standing Orders, Article 39,3).

3.2.1.2 First reading at the Conference

At the Conference, a tripartite ad-hoc committee is established for each regulation project on the agenda.³⁰ The discussion about the contents of the standard takes place mainly in the committees, with the Conference in most cases only adopting the committees’ reports and their conclusions without a discussion on individual points. The committees are often large: in the period between 1974 and 1997, the number of committee members (counted at the start of the sessions) ranged from 67 to 219, with an average of 148. This is about thirty per cent of the average number of delegates to the Conference during that period (496).

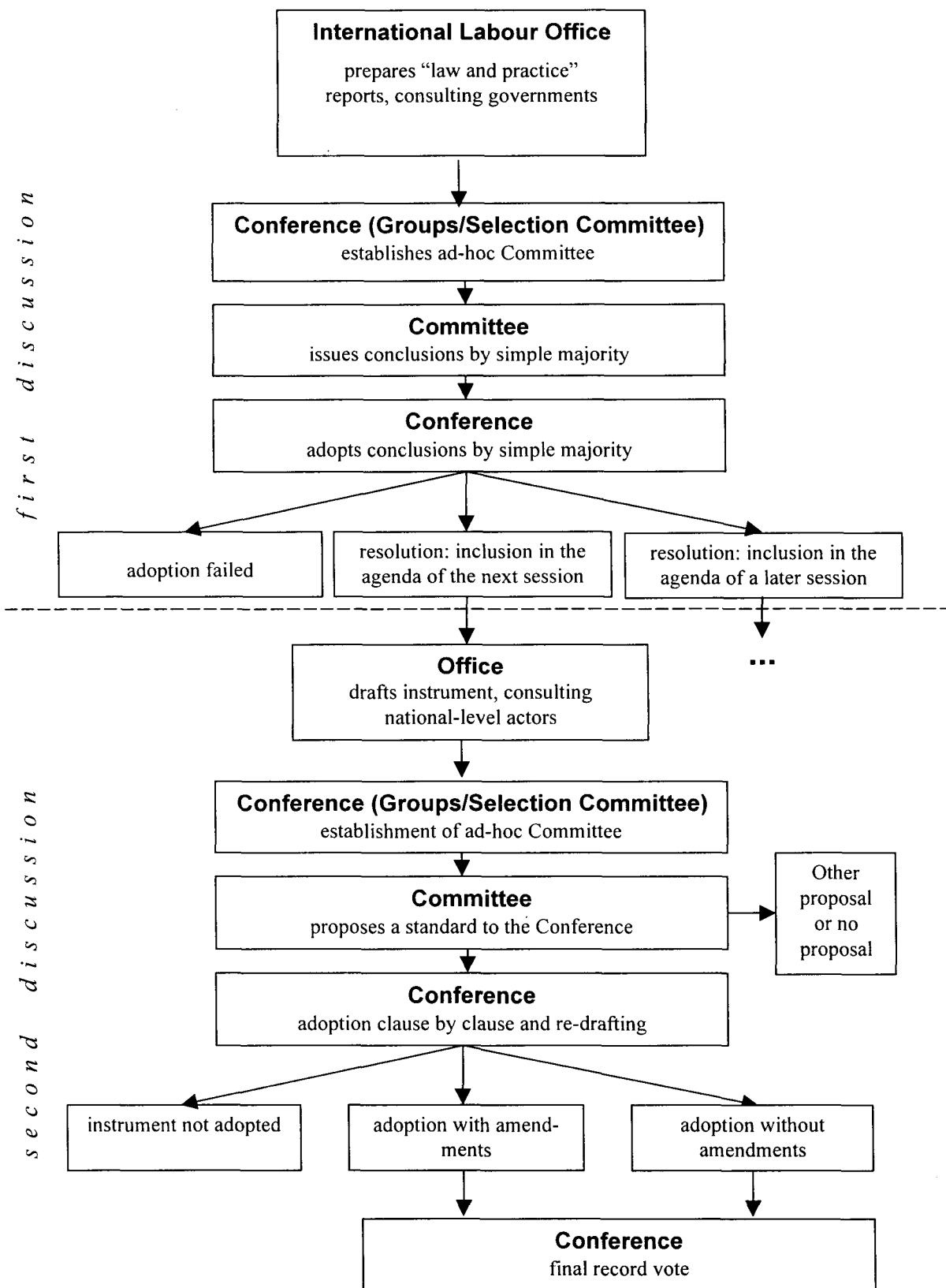
The protocols of the committee sessions are published in the ILO’s Record of Proceedings. The work of the committees is organised in the following way: the committee first elects its officers and the reporters. It moves to a general discussion, which consists of an exchange of views on the aims and purposes of the proposed standard. The committee then discusses the documents before it, i.e. the Office texts.

In most cases, the committee chooses the type of instrument (i.e., a convention or a recommendation) before holding a detailed discussion on its contents, although this order may be reversed. Earlier decisions on the form of instruments are sometimes overturned. An example for this is Convention No. 159. Its subject, vocational rehabilitation, was originally set on the Conference agenda for the second reading in 1983 “with a view to the adoption of a recommendation” (ILO Record of Proceedings 1982: 25/13). During the committee stage of the second reading, however, the worker group moved to adopt the proposal as a convention. The amendment failed the required majority when voted upon by show of hands. The worker delegates then demanded a record vote, which the amendment passed narrowly.

²⁹ These are: Convention No. 127 and Recommendation No. 128 (Maximum Weight); Convention No. 136 and Recommendation No. 144 (Benzene Hazards); Recommendation No. 167 (Social Security).

³⁰ For the nomination of its members, see section 2.3.1.2.

Figure 2: The double discussion procedure



The procedure of voting on the kind of instrument has been revised in 1987 (Valticos and von Potobsky 1995: 62). Up to that year, committee decisions on this matter had required only a simple majority. Now, Article 40, 2 of the Conference Standing Orders stipulates that “when the Conference has referred to a committee the text of a Recommendation only, a decision by the committee to propose a Convention to the Conference for adoption (in place of or in addition to the Recommendation) shall require a two-thirds majority of the votes cast.” It has thus become more difficult to change the type of instrument during a committee session.

The committee then discusses the proposed texts point by point. The Conference Standing Orders rule that every member of the committee may propose amendments. These amendments, if seconded by another member and not withdrawn, must be voted upon (if they are not adopted by consensus). Often, there are sub-amendments proposed to amendments brought forward earlier during the discussion. In this case, the committee follows a backwards agenda, i.e. the sub-amendment is set against the original amendment, and the original amendment or the successfully sub-amended amendment is set against the status quo. In cases where alternative formulations are considered, two amendments may be set against each other.

In plenary session, the Conference usually adopts the Committee’s conclusions without much discussion. At the same time, the Conference decides whether the issue should be included on the agenda of the next Conference, or on the agenda of a later session (Conference Standing Orders, Article 39,4). The Conference may also decide not to issue a resolution to this effect at all.³¹

3.2.1.3 Second reading at the Conference

During the 11 months between the first and the second discussion (if they are held in two consecutive years), the Office works out the drafts of the instruments. Governments and, through them, unions and employers have three months to comment on them. Together with these comments, the Office prepares its fourth report, which is then communicated to the governments three months prior to the Conference. The Office has a certain degree of autonomy in drafting the texts of the standards. The Conference Standing Orders only require the Office to prepare them “on the basis of the replies received to the questionnaire referred to in paragraph 1 and on the basis of the first discussion by the Conference” (Standing Orders, Article 39,6). However, any possible leeway the Office has is restricted by the fact that the Office text can be amended during the second discussion. Since the Committee decides by simple majority and uses an open amendment rule, the degree of Office agenda power does not seem large from the outset.

After the opening of the Conference, the matter is discussed in a technical committee in the same way as in the first discussion.³² After the committee has reported to the Conference with a proposal for a standard, the Conference adopts the text clause by clause. Amendments made by delegates in plenary sessions are voted on by simple majority (Article 40,3 and 40,4 of the

³¹ This happened, for example, in the case of the Convention No. 181 (Private Employment Agencies) which was considered the first time in 1994, but received a second reading only in 1997.

³² The committee’s composition may differ from the composition of the committee dealing with the same subject the year before.

Conference Standing Orders). Hence, the committees do not possess the power to make “take it or leave it” proposals to the Conference. Nevertheless, votes on amendments at the plenary session have been relatively rare, at least since the early 1970s.³³ In the majority of cases, the text is not changed at the plenary session. One explanation could be that the committees reflect fairly well the distribution of interests in the conference as a whole. Hence if an amendment has failed at the committee stage, there is little reason to demand a vote on the same issue during the plenary meeting. Once adopted, the text is sent to its Drafting Committee in order to examine the details of its formulation.

3.2.2 *The occurrence of formal voting in committees*

Voting inside the committee is by simple majority. This opens up the possibility of coalitions: a majority of committee members could amend the Office text to meet their own interests, disregarding the preferences of those delegates who find themselves in a minority position. Any coalition of delegates would be restricted by the requirement that the final text must be adopted by a majority of two thirds at the plenary session. But there is often a certain range of possible convention texts that would all pass the final voting stage.³⁴

Is coalition-building characteristic for Conference committees? In order to determine the majoritarian or consensual character of the ILO negotiation system, we use the number of votes (either by show of hands or record votes) as a yardstick.³⁵ It is particularly interesting to look at how the number of votes evolved over time.

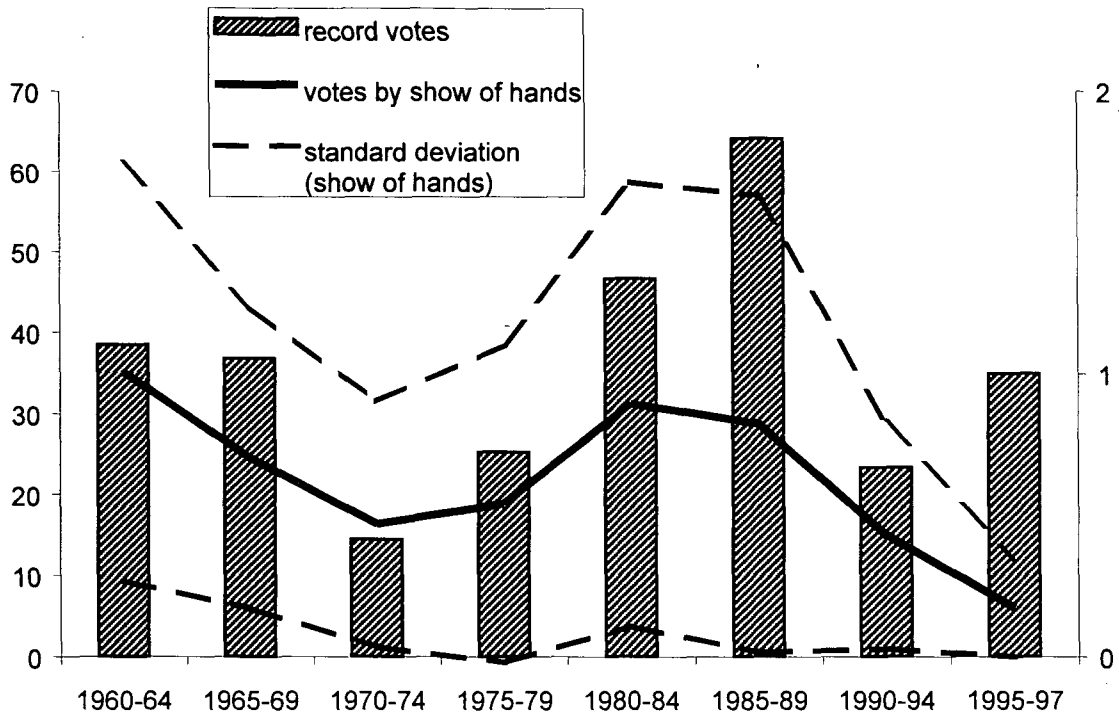
Figure 3 shows the number of record votes and votes by show of hands in Conference committees between 1960 and 1997, as published in the committee reports attached to the ILO Record of Proceedings. Only ad-hoc committees set up to discuss proposed conventions or recommendations were considered. For the discussion of the 54 conventions and 61 recommendations adopted between 1960 and 1997 (excluding maritime standards), a total of 125 Committees had been established. In the double-discussion procedure, there are two committees per issue, while in the single discussion procedure, only one committee is set up. In total, the committees held 3026 votes, of which 121 were record votes. In the graph, the data are averaged over five-year periods.

³³ In the 74 discussions of committee reports on conventions and recommendations between 1973 and 1997, only 18 votes by show of hands and four roll-call votes (other than final record votes) were held at the plenary session stage.

³⁴ Put in technical language, the qualified majority win set to the status quo (i.e., no convention) may be large at the plenary meeting.

³⁵ There may be, of course, a number of objections to the use of the number of votes as an indicator for the majoritarian character of the ILO. The most important one is that even in the absence of a consensus, if delegates can predict the outcome of a vote they may not request one. If they are in a minority position, they do not want to be seen on the losing side; by contrast, if an amendment is bound to find a majority of votes, no delegate would object to it. Hence there should be votes only in the case of uncertainty – and a large number of votes would indicate a high degree of uncertainty rather than a particular lack of consensus. But this would imply that the outcomes of most of the votes observed are narrow. This is not the case: in many instances, delegates request a vote even though they must be aware of being in a minority position.

Figure 3: The occurrence of formal voting in committees



Period averages. Left scale = average number of votes by show of hands per committee; right scale = average number of record votes per committee.

The first observation concerns the high variance in the number of votes over time. The maximum number of votes in a committee was 105 (Committee on Hygiene in Shops and Offices, 1963). In nine committees, no votes were held. This variance is reflected in the large standard deviations printed in the graph. Second, we observe that there is no monotonic tendency towards more or less consensus. The number of votes by show of hands declines from the early 60s onwards up to the mid-70s. It peaks again in the early 80s, to decline to quite low levels in the second half of the 90s. However, none of the averages (except for the last period) is statistically different from any of the other averages at the usual significance levels. Concerning the number of record votes, there is again no monotonic trend towards a reduction in their number. Measured by the number of votes, we do not find strong support for Osieke's (1984) assertion that there is a trend towards consensus in the ILO.

The number of votes is likely to be influenced by a number of other factors: e.g., how controversial the issue is; whether the committee held its first or its second discussion; and how large the committee was (since it is probably easier to reach consensus in a small group of delegates). To separate these influences from the time trend, we ran a multivariate regression. The dependent variable is the number of all votes held in committees (record votes plus votes by show of hands). To control for the length of the discussion, we divided the number of votes

by the number of sittings the committee held.³⁶ The time effect is estimated nonparametrically by locally weighted kernel smoothing, using a bandwidth of 0.8 (for the procedure, see Robinson, 1988). For the regression of the frequency of votes on the subject of conventions and other variables, the residuals from the smoothing procedure are used. This yields the estimated parameters found in table A1 of the appendix.

The independent variables are dummy variables defined as the ILO's subject categories (see the explanations to table 1 above), a dummy variable indicating whether the single or the double discussion procedure was used, and a dummy variable for the first versus the second discussion in the double discussion procedure. The coefficients of the subject variables give the difference in the number of votes per session of each of the categories to the base category, which is chosen to be conventions on special categories of workers. From the coefficients, we see that the number of votes differs slightly with the convention subject. There is significantly less voting (1.8 and 1.5 votes per session less, respectively) in discussions on social security and labour administration than there is for the base group. We also see that it is necessary to distinguish between occupational health and safety and other working conditions: there is, on average, one vote per session less on the former than on the latter.³⁷ We also see that there is less voting at the second discussion than at the first discussion in the double discussion procedure, although the difference is not huge and significant only at the ten per cent level. Overall, the fit of the regression is not large. Thus there are clearly factors the regression does not account for. The time trend estimated by kernel smoothing (figure A1) shows the same non-monotonic pattern as the descriptive statistics contained in figure 3.

Any differences found over time and over subjects in the frequency of voting can be interpreted in two different ways. They can either indicate the diversity of interests: the farther apart preferences are, the more difficult is unanimous agreement. On the other hand, delegates may also attach a positive value to consensus, and the desire to come to a unanimous solution may vary over time. Consensus may be esteemed particularly because it improves the chances of ratification of ILO standards.

In all committees, there is some degree of informal bargaining outside the formal proceedings: it takes communication both to reach unanimity or to organise a voting coalition. But bargaining is more extensive if consensus is sought *ex ante*, simply because the number of delegates to bargain with increases. The following account is given by the South African Employers' delegate who acted as Vice-Chairperson of the Committee on Child Labour in 1998:

The ILO is not new to deal-making in the corridors and coffee shops, but these deals are often precursors to a vote or are part of developing a majority view. ... [T]he expansion of deals to be inclusive of all the many interests requires holding back on positions until a genuine attempt has been made to reach consensus first. This can only take place off the record, as in the case of corridor and coffee-shop deals. It enables the parties to engage, unthreatened by public debate and exposure, and to test possible solutions away from public attack.

³⁶ Another way of controlling for this would be to divide the number of votes by the number of motions, resolutions and amendments brought forward by committee members, but it would have been too cumbersome to collect data on these.

³⁷ The difference is significant at the five per cent level (t-value: 2.08).

Consensus requires institutions that allow many, perhaps secret, cross-issue deals to be settled and many concessions to be made which might not be popular with the delegates' constituencies. But even if the ILO does indeed move towards decision-making by consensus, as it seems to have done since the mid-1980s, this does not necessarily mean that the majority rule provided for in the ILO Constitution and the formal "parliamentarian" procedures of the Conference will become obsolete. They may serve as an instrument of last resort, putting delegates under the threat of being outvoted if they push their interests or those of their constituents too hard.

3.3 The adoption of international labour standards

3.3.1 *The procedure for adoption*

The final record vote on the instrument takes place one day after the adoption of the convention. As mentioned before, a majority of two-thirds of all "yes" and "no" votes is required for a convention or recommendation to be approved.

3.3.2 *Voting outcomes*

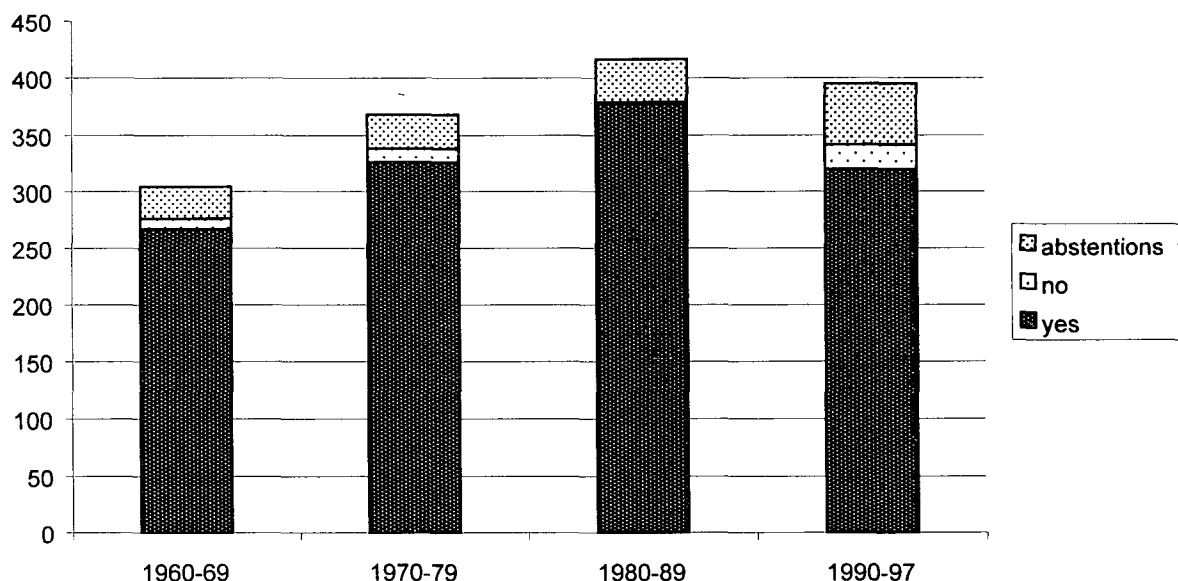
In this section, we will look at the voting behaviour of the Conference delegates. We restrict ourselves to final record votes on conventions, leaving aside voting on other issues. The period of observation ranges from 1960 to 1997, i.e. we deal with conventions 115 to 181. We compare voting behaviour over time, groups of delegates and convention subjects.

Each delegate's voting behaviour is documented in the Conference Record of Proceedings. The decision is noted as "yes", "no" or "abstention". The true number of abstentions, however, is greater than the one given in the official publications. In addition to the recorded abstentions, there are also *undeclared abstentions* of those delegates who are counted as participating in the Conference but do not vote. At present (i.e., before the constitutional changes mentioned in section 2.1.3.1 will come into force), the effect of declared and undeclared abstentions is the same: in both cases, the delegate counts neither towards the outcome of voting nor towards the quorum. Thus if a delegate's tactic is to try to prevent the adoption of a convention for lack of a quorum, he or she can use either way of abstaining. Since they produce the same results, both kinds of abstentions should, in principal, be treated equally in the statistical analysis. However, we can only infer the number of undeclared abstentions if we have information on either the number of delegates participating in the conference session or the quorum, which is half that number. For conventions adopted up to 1974, we do not have this information, thus most statistics presented here only refer to declared abstentions.

First, consider voting behaviour over time. Figure 4 shows average numbers of votes in ten-year intervals. The absolute number of votes cast at the Conference rises up to the 1980s, reflecting the increase in ILO membership over time. The proportion of yes-votes is constant at around 90 per cent over this period. Behaviour changes in the 1990s, however. First, we see that attendance at the voting stage is declining in spite of the increase in ILO membership. Second, the proportion of yes-votes falls to 80 per cent, while the proportion of negative votes

risers to five per cent.³⁸ The increase in the number of negative votes in this decade can be attributed to two votes, the first one over Convention No. 173 (protection of workers' claims in the case of employer's insolvency) and the other over Convention No. 175 (part-time work).

Figure 4: Voting on ILO conventions C115-C181, averages by periods



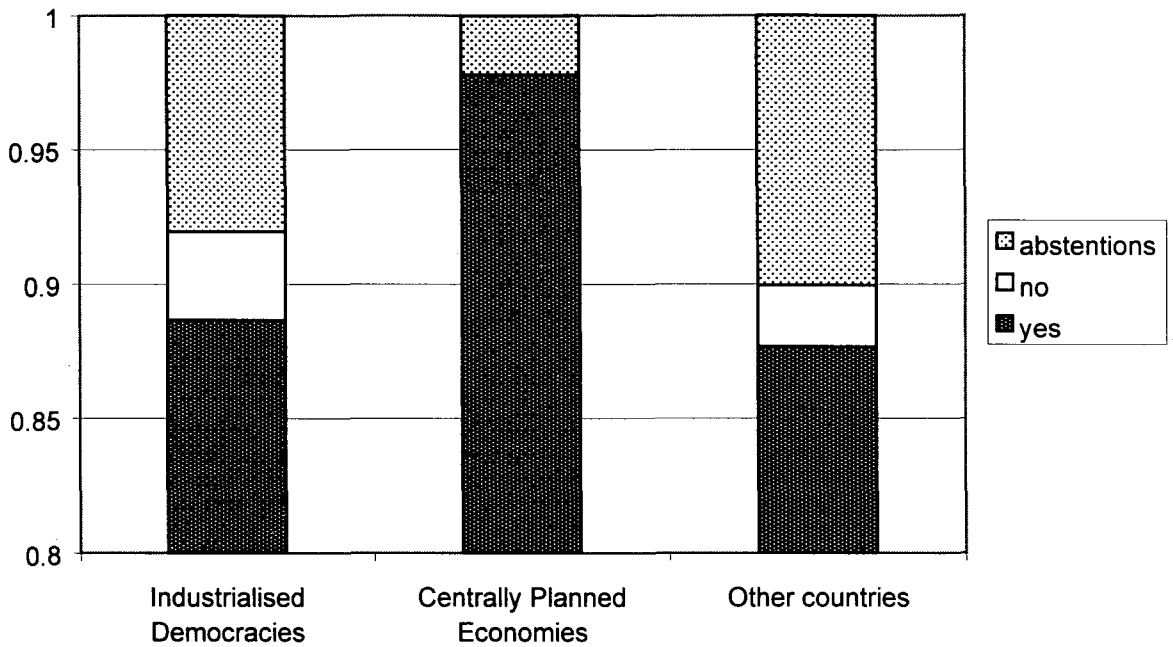
We now investigate how voting behaviour differs across delegates. There are two obvious ways to distinguish delegates: by their home country or by their affiliation to one of the tripartite groups. We build three country groupings: Industrialised democracies, the Eastern bloc and other (third-world) countries.³⁹ Since the Eastern bloc ceased to exist in 1989, we consider only votes up to that year. Figure 5 shows the proportions of delegates voting yes, no or abstaining. Eastern bloc delegates show a markedly different behaviour from the other two country groupings.⁴⁰ No delegate from an Eastern bloc country ever voted against a convention, and abstentions are much less frequent than among delegates from other countries. Between delegates from industrialised democracies and third-world countries there is little difference in behaviour, although the degree of abstentions is slightly higher and the proportion of no-votes slightly lower in the latter group.

³⁸ Pearson- χ^2 and likelihood ratio tests of independence both rejected the hypothesis of constant voting behaviour over time ($\chi^2=311.8$ for the Pearson test and $\chi^2=159.8$ for the likelihood ratio test).

³⁹ Industrialised countries are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the U.K., and the U.S.A. The Eastern bloc countries are Albania, Bulgaria, Czechoslovakia, Cuba, East Germany, Hungary, Poland, Romania, and the Soviet Union (including Byelorussia and the Ukraine which had separate delegations).

⁴⁰ The Pearson- χ^2 value for a test of independence across the three country groups was 188.0.

Figure 5: Voting on ILO conventions: Country Groups



The graph shows the proportion of delegates voting yes, no or abstaining on all ILO Conventions from 1960 to 1989.

Figure 6: Voting on ILO conventions: Averages by Delegate Groups



The graph shows the average number of delegates voting yes, no or abstaining at the final record votes on all ILO conventions from 1960 to 1997. To facilitate comparisons, the number of government votes have been divided by two.

Even more significant differences⁴¹ in behaviour occur across the tripartite groups (figure 6). There are almost no votes cast against a convention in the worker group, very little in the government group, but many more (roughly ten per cent of all votes cast) in the employer group. The same ranking can be observed for the number of abstentions, although there is a much higher proportion of government delegates declaring their abstention than voting against. Participation in voting is higher for the government delegates than for the other two groups. The number of undeclared abstentions in the employer group is higher than in the worker groups which can be inferred from the fact that the number of delegates eligible to vote must necessarily be the same in both groups (see above, section 2.3.1.2).

Figure 7 shows the average number of votes for and against as well as the number of declared abstentions, arranged by subject categories. We observe that the votes against are mainly confined to one or two subject groups: working conditions (excluding health and safety), and, to a lesser degree, employment policies.

For a smaller sample of record votes on conventions, figure 8 also displays the number of undeclared abstentions, calculated as two times the quorum minus the number of votes cast (including declared abstentions). From this graph, one may infer which types of conventions were most in danger of being rejected due to lack of quorum. It can be observed that undeclared abstentions occur most frequently on conventions concerning special categories of workers. However, if we take as a measure the number of votes against (figure 7) or the number of votes in committees (table A1), standards on this subject do not appear to be particularly controversial. Thus if delegates do not vote on these conventions in spite of being registered, it may have more to do with a genuine lack of interest than with the strategic motive to prevent the necessary quorum.

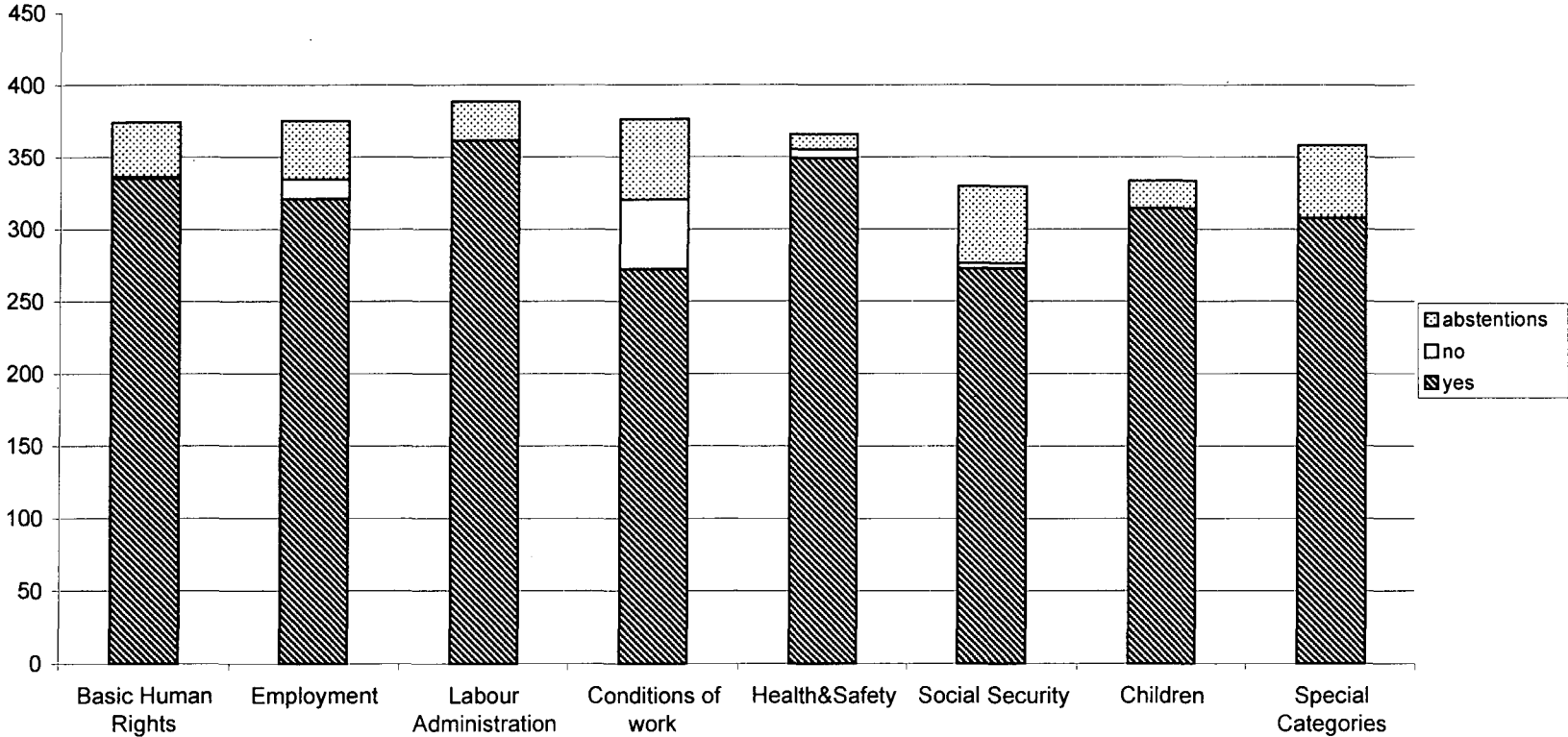
On the other subjects, the proportion of undeclared abstentions is fairly constant, while there is huge variation in the number of declared abstentions. We tentatively conclude that *Conference delegates do make a difference between declared and undeclared abstentions, although formally both decisions have the same consequences on voting outcomes.* The difference may be due to the more public character of declared as compared to undeclared abstentions.

In almost all cases, the results of the record votes show a much greater number of votes in favour than would be strictly necessary for the adoption of the standard. In the whole period from 1960 to 1997, there has been no instance where a convention was not adopted at the final voting stage.⁴² Should it ever happen that the necessary majority were not reached, a group of member states could still formally agree to apply the convention (Constitution, Article 21). In addition, if a convention failed the required majority, the Conference might also decide to issue it as a non-binding recommendation. All these provisions are, as has been said, merely hypothetical.

⁴¹ With a Pearson- χ^2 value of 2332.0.

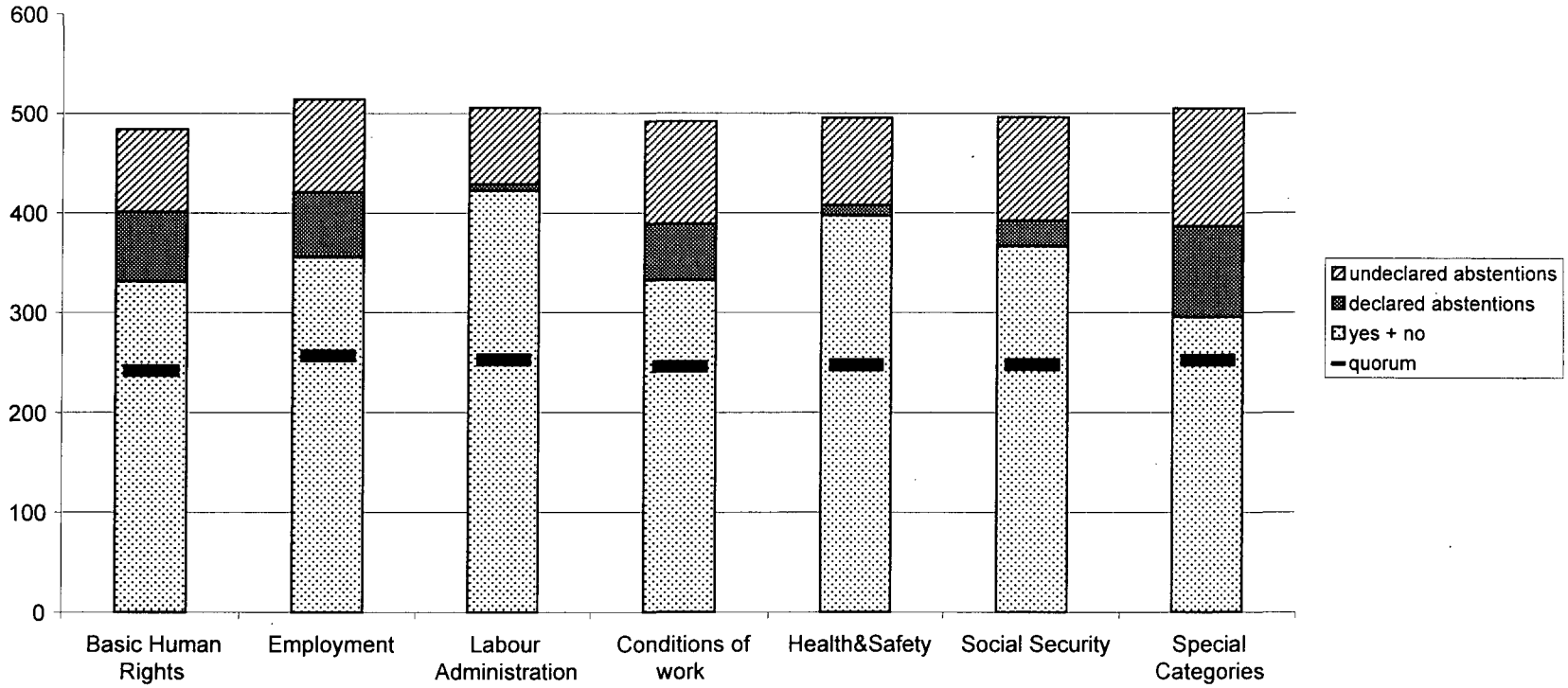
⁴² By contrast, two recommendations failed due to a lack of quorum in the early 1960s: a recommendation on the reduction of hours of work in 1961 (it was, however, adopted as recommendation 116 in the following year) and a recommendation on equality of nationals and non-nationals in social security in 1962.

Figure 7: Voting on ILO conventions: Voting outcomes



The graph is based on all conventions adopted between 1960 and 1997.

Figure 8: Voting on ILO conventions: declared and undeclared abstentions



The graph is based on all 25 final record votes on conventions between 1960 and 1997 for which the quorum could be obtained.

3.4 Abrogating or revising standards

With labour market conditions changing over time, a standard may be considered as outdated after a number of years. In the case of a recommendation, the Conference could simply adopt a new standard. By contrast, conventions are revised, and the earlier convention is often closed for new ratifications when the new convention enters into force.⁴³ The reason for this is not simply to save administrative costs. Even more important may be the principle that, as mentioned above, countries should not have a choice of standards of differing stringency to subscribe to.

The procedure by which conventions are revised follows the normal double-discussion procedure or a special procedure laid down in Articles 43-45 of the Conference Standing Orders; however, this procedure has been applied for the last time in 1952 (Bartolomei de la Cruz et al., 1996: 40). The fact that a convention revises another is mentioned in the text of the convention. Up to 1999, a total of 54 conventions have, at least in part, been revised.

Certain conventions have also been marked as “shelved” by the Governing Body which means that the ILO does not encourage further ratification; however, the “shelving” of a convention does not impact on its legal status.⁴⁴

Conventions which have not entered into force can be withdrawn by the Conference.⁴⁵ By contrast, it is presently impossible to abrogate a convention if it has received at least two ratifications. In 1997, however, the Conference amended the Constitution to the effect that conventions could now be abrogated by a two-thirds majority (see Article 11 of the Conference Standing Orders). This constitutional amendment has not yet come into force because it needs to be ratified by a minimum number of member countries (see Article 36 of the Constitution).

4 ***The ratification and denunciation of conventions***

4.1 Ratification of conventions

4.1.1 *The ratification procedure*

Conventions become legally binding on member states if they are ratified (Constitution, Article 19,5), provided that they have legally entered into force.⁴⁶ This distinguishes conventions

⁴³ ILO Handbook of Procedures, Paragraph 67 (b). Automatic denunciation of the older convention only takes place if a country ratifies the replacement convention.

⁴⁴ For a list of “shelved” conventions, see Governing Body document GB 271/LILS/WP/PRS/4/1.

⁴⁵ Thus the Governing Body decided to place on the agenda of the 2000 Session of the Conference the question of withdrawal of Conventions Nos. 31, 46, 51, 61 and 66 (Governing Body document GB 271/LILS/WP/ PRS/4/1).

⁴⁶ To enter into force, a minimum number of ratifications is required. For most conventions, this minimum is only two ratifications (ILO Handbook of Procedures, Paragraph 26), although some conventions contain different provisions.

from recommendations, which are not ratified. The ratification of a convention creates an obligation to apply the standard set out in the convention. More directly, it also creates an obligation to cooperate with the ILO in the supervision procedures.

Ratification itself is voluntary, although ILO officials sometimes stress a moral obligation to ensure the ratification of conventions, at least for those governments which have voted in favour of them.⁴⁷ There is, however, an obligation for every member state to submit ILO standards to the authorities competent for the ratification of international conventions within a time limit of, normally, 12 months; this applies to both conventions and recommendations. The competent authority is the national parliament or other legislative authority. The object of this last requirement is to give standards some weight in national-level decision-making, and to raise the public's awareness on the issue (Handbook of Procedures, Paragraph 12). Problems may arise in the case of federal states where the responsibility for labour regulation lies at the regional level. In this case, the standard has to be submitted to the regional legislatures within 18 months (Constitution, Article 19, 7).

The obligation to submit standards to the legislature may be one of the most important channels of influence for the ILO. Technically speaking, the ILO sets the agenda for the national stage, depriving governments of possible gatekeeping rights. This influence is not necessarily impaired by the fact that the government must only submit the standard to the legislature, and is under no obligation to propose that the standard be actually ratified (Bartolomei de la Cruz et al. 1996: 47). The decisive point is that the legislature must be given the opportunity to discuss the matter. If the government does not submit the standard to the competent authority, any member country may notify the Governing Body, who will report the failure to the Conference (Article 30 of the ILO Constitution). It is not clear, however, how systematically a breach of the submission obligation is pursued.⁴⁸

The ILO's agenda power vis-à-vis the national level mainly arises because conventions can only be ratified in full; amendments at the national level or reservations are not allowed.⁴⁹ The only exception is when the convention itself contains a clause to the effect that countries have a choice over which parts of the convention to ratify or which alternative models to adopt.

Conventions legally enter into force It is possible to ratify a convention *conditional* on the ratification by other member states, although this possibility has not been used for many years

⁴⁷ Comparing the statistics on voting and ratification from this and the previous section, one immediately concludes that government delegates often vote in favour of conventions which are not subsequently ratified. This has been a persistent concern with the ILO, in particular since the expansion of membership to developing countries after the Second World War (Jacob and Atherton, 1972: 536f.). Recently, the Director-General of the ILO has proposed to make governments which approved a convention at the Conference more accountable (Report of the Director-General, 1997).

⁴⁸ According to the ILO (1977: 36), less than half of the member states fully comply with the obligation to submit standards to the competent authority within 12 or 18 months.

⁴⁹ "ILO has considered this an important provision of the Constitution, and the majority of delegates have been unwilling to have it changed. Since the conventions result from efforts of labor and employer groups as well as governments, governments should not be permitted to change provisions by unilateral action" (Jacob and Atherton, 1972: 538).

(Valticos and von Potobsky 1995: 272). Thus France first ratified Convention No. 1 conditional on Germany's and Italy's ratification (which, in the former case, was never achieved).

Once a convention is ratified, the member state must make effective the provisions specified in it (Constitution, Article 19,5). In most cases, this means that national labour law must be changed.⁵⁰ In some countries, on ratification, the convention itself becomes binding to workers and employers; in others, separate legal measures have to be taken.⁵¹ The most direct obligation arising from ratification is to report regularly on the application of the convention and the practice in that country in order to make possible the supervision by the ILO (see below).

If the convention is not ratified after it has been submitted to the legislature, the only obligation that arises is to report in regular intervals (fixed by the Governing Body) on the current practice with regard to the standard and the obstacles for ratification (Constitution, Article 19,5). These reports are considered by the Committee on the Application of Conventions and Recommendations (CEACR), which can demand further reports from non-ratifying countries.

4.1.2 *The empirical pattern of ratification*

There have been 6604 ratifications of ILO conventions from 1919 to summer 1999. This means that each of the 174 ILO member states has, on average, ratified 38 conventions. For several reasons, however, this number is not very meaningful. First, the pattern of ratification may vary widely across different convention subjects, groups of countries or over time. Thus one should at least differentiate, as e.g. in Raynauld and Vidal (1998), between countries and between groups of standards. More importantly however, the number of ratifications up to any particular moment does not say anything about the probability of a convention being ratified a certain number of years after adoption, which is what one would ultimately like to know. For example, if new member countries join the ILO, this will result in a reduction of the average number of ratifications per member. If fewer new conventions are adopted, this will raise the average number of ratifications per convention. Both influences on ratification numbers, however, have nothing to do with the propensity of member countries to ratify existing standards. Therefore, statistical procedures must be used which eliminate these distortions.

Figure 9 presents the average number of ratifications per member and year from 1950 onwards. The purpose is to give an impression of the ratification behaviour over time; however, the procedure does not take into account the composition effects just mentioned. The first peak in ratification numbers, around the year 1960, is due to the de-colonisation which took full effect at that time. The vast majority of ratifications included in this peak are by African countries. A second peak occurs around 1978. Again, the reason is the coming into independence of the last European colonies in Africa.⁵² The third peak, after 1990, is explained by the breakdown of the Eastern bloc and the division of multi-ethnic countries in this region (the

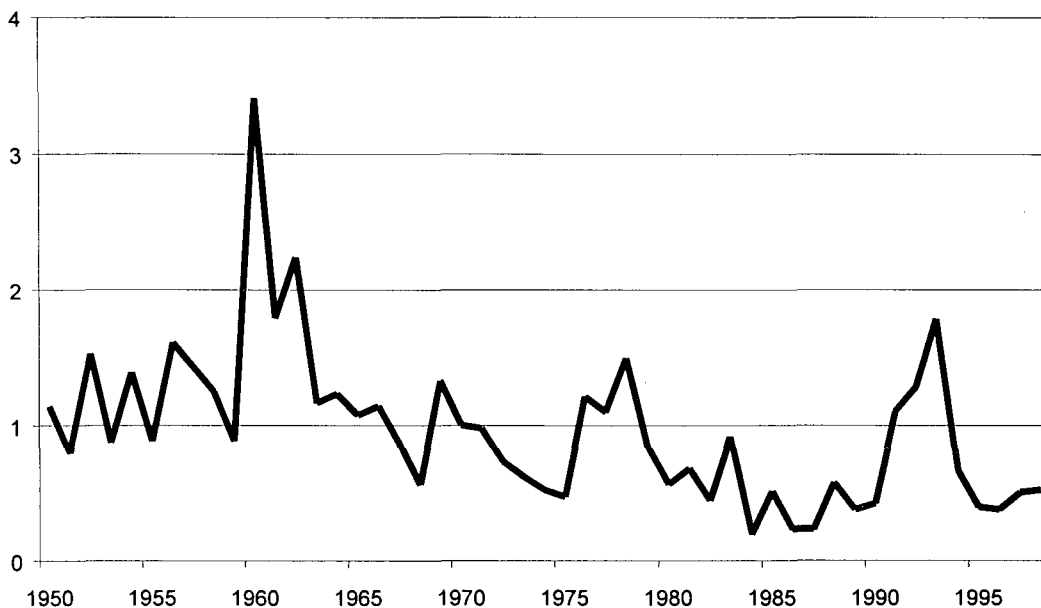
⁵⁰ The implementation of a standard need not necessarily be in the form of a law. Many conventions stipulate that they can also be applied by collective agreements or arbitration awards (as in Australia), although this creates problems if coverage by collective bargaining is not universal. Some conventions do not require legislation but rather administrative acts to be implemented.

⁵¹ For an extensive discussion of the direct or indirect application of ILO conventions, see Leary (1982).

⁵² For instance, of the 205 ratifications in the year 1978, as much as 62 concern the former French colony of Djibouti.

Soviet-Union, Yugoslavia, and Czechoslovakia). In between these peaks, the 1980s have been a decade with a very low level of ratifications, with the number of ratifications being as low as 35 in 1986 and 1987. A similar statement can be made for the years after 1995. The effect of new entries into the ILO left aside, there seems to be a tendency towards fewer ratifications over time.

Figure 9: Ratifications of ILO conventions per ILO member, by year



In the following, we estimate the ratification probabilities for a given member country a given number of years after the adoption of the convention. The methodology we use is Kaplan-Meier plots. The Kaplan-Meier procedure estimates the survivor function, in our case defined as the probability of not having ratified a certain convention t days after its adoption, where t is a running index of time.⁵³ In our figures, we will represent the failure function which is simply one minus the survivor function. It gives the probability of ratification up to date t .

In order to obtain meaningful results, we have to reduce our sample of ratifications somewhat. To eliminate the bias from the accession of new members to the ILO, we must restrict ourselves to countries which have been continually “at risk” of ratifying a convention. Hence, observations on countries which have not been members at the time the convention was adopted are discarded. For the same reason, if a country has not been a member over the whole period at which the convention was open to ratification, it is eliminated from the da-

⁵³ Formally, the Kaplan-Meier estimator of ratification is given as

$$\hat{R}(t) = 1 - \prod_{j|t_j \leq t} \frac{n_j - r_j}{n_j}$$

where n_j is the number of countries not having ratified up to time t_j and r_j is the number of ratifications which the convention receives at time t_j ; see Kalbfleisch and Prentice (1980: 12).

taset for those conventions which have been adopted prior to its most recent re-entry.⁵⁴ Likewise, data on countries which were split up or united were excluded for conventions adopted prior to the territorial change.⁵⁵ This leaves us with a data set of 3,356 ratifications.

Figure 10 shows the cumulated ratification probabilities for all conventions as well as for each type of convention separately. The subject groups are the same as in table 1 above. On the vertical axis, we measure the probability of ratification. On the horizontal axis, we measure time in days after adoption (10,000 days corresponding to 27 years and 5 months).

Each of the graphs gives the estimated ratification probabilities t days after the adoption of the convention. The graphs displaying two curves show the ratification probability for one subject group in one curve (labelled "1") and for all the other groups together (labelled "0") in the second curve. By this means, we can compare whether ratification behaviour in this group differs from all others taken together.

The first thing to notice is that the shape of the ratification function is concave. This means that the probability of ratification at any particular moment, given non-ratification up to that moment, is declining. This finding may be explained by the fact that the pressure for ratification is highest shortly after the adoption. It may also be due to conventions becoming less topical after some time. Overall, the probability of having ratified a convention after 10 years is 16.6 per cent, and after 25 years it is 25.3 per cent.

The type-specific graphs show that there is a notable difference between ratification of human rights standards and all other conventions. The probability is higher for all dates since adoption; thus 25 years after adoption, the probability of having ratified a human rights standard is 49.4 per cent, while it is only 23.6 per cent for all other conventions. A very significant finding is that the ratification function for human rights conventions is almost linear between 5,000 and 18,000 days after ratification (i.e., between 14 and 50 years). Hence the rate of ratification is constant over an extended period of time. Put differently, the median duration up to ratification for all countries having ratified a standard in the observation period is much higher for human rights standards than for other conventions.

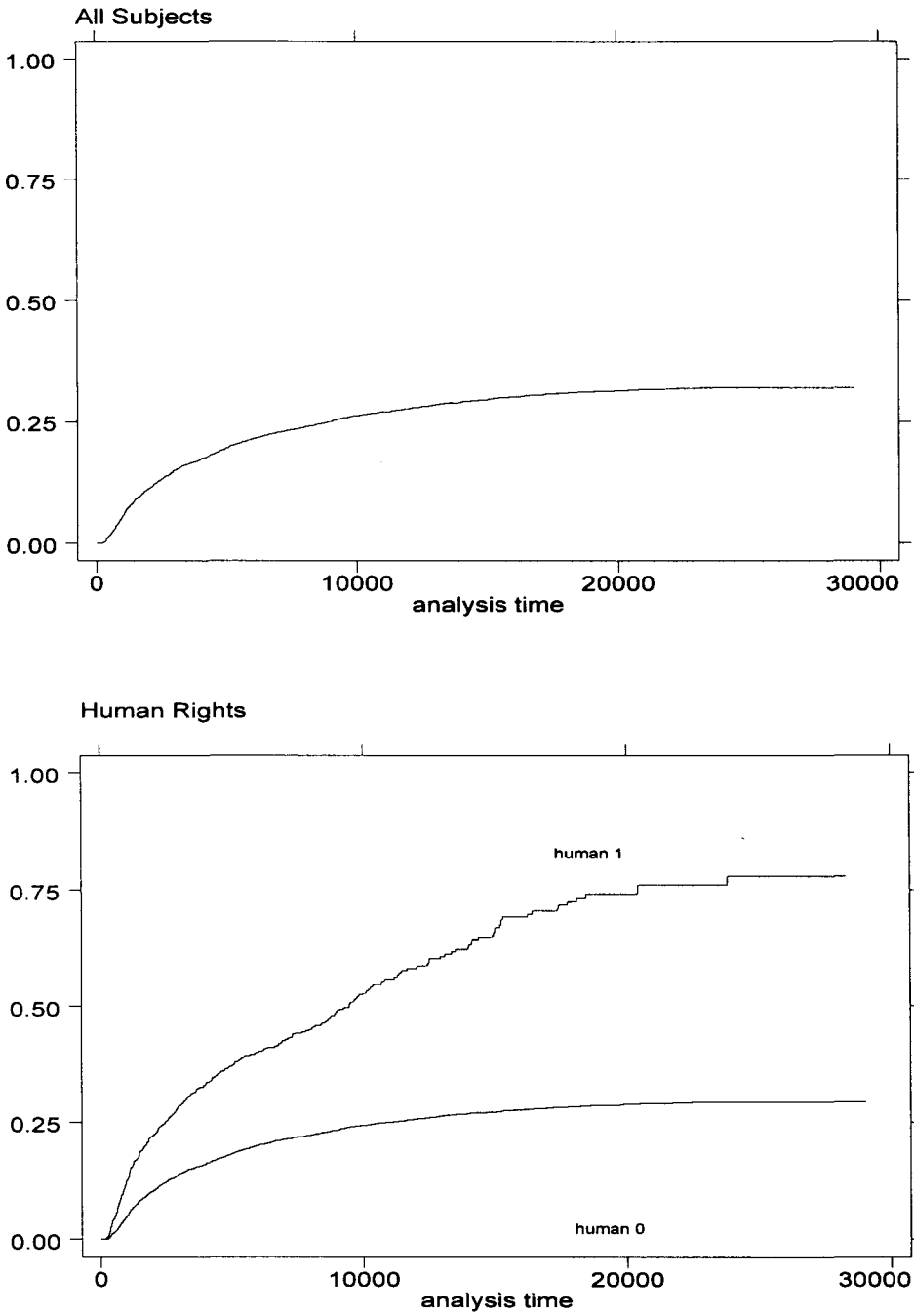
Other subjects which have a higher ratification probability are conventions on employment, labour administration, and employment of women and children. Among those subjects having a lower ratification probability are conventions on migrant workers, indigenous peoples and specific groups of workers. This is unsurprising because there is only a limited number of countries for which standards in these areas are relevant. More interesting is the fact that conventions on working conditions, health and safety and social security also receive fewer ratifications.⁵⁶

⁵⁴ We make an exception, however, for countries with short absences (up to five years) from the ILO, like the U.S. which left the ILO from 1977 to 1980.

⁵⁵ This concerns Czechoslovakia, Germany, the Soviet Union, Yemen, and Yugoslavia. Other territorial changes have not been accounted for.

⁵⁶ We performed logrank tests of equality of the cumulated ratification functions. For all subject groups, we compared the specific survivor function with the survivor function of all the other conventions taken together. We found the following χ^2 values: human rights conventions: 407.0; employment: 75.9; social policy: 0.02; labour administration: 64.4; industrial relations: 2.6; working conditions: 14.9; health and safety: 10.6; social security: 11.5; women: 30.3; children: 12.9; migrants: 30.7; indigenous peoples:

Figure 10: Kaplan-Meier-Estimates of cumulated ratification probabilities, by convention subjects



22.2; specific categories of workers: 147.1. This means that, at one degree of freedom, the differences were significant at the one per cent level for all subjects except social policy and industrial relations.

Figure 10 (continued)

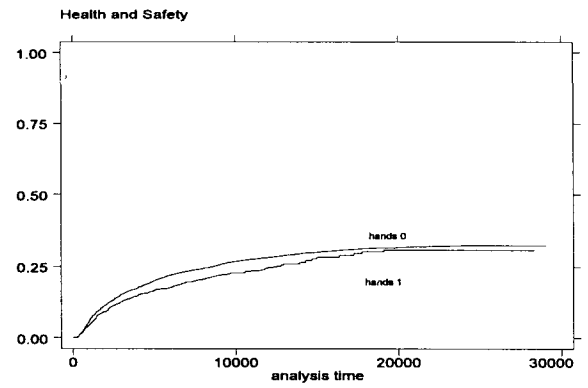
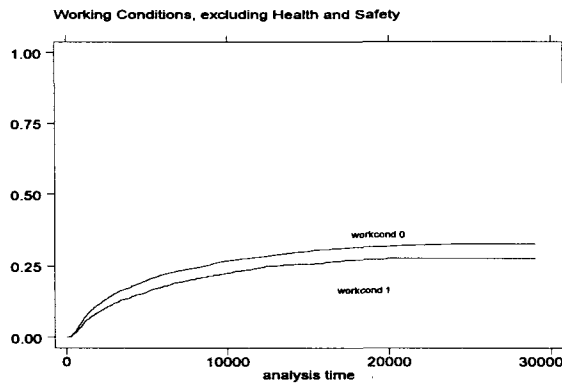
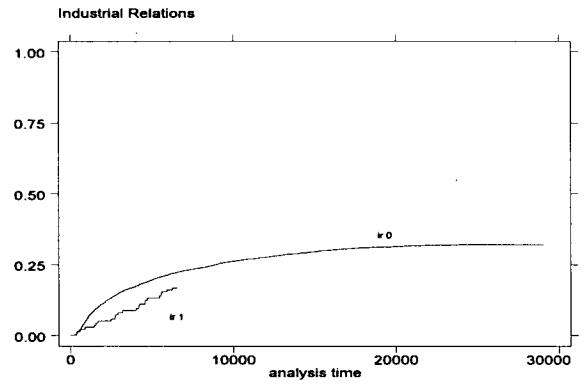
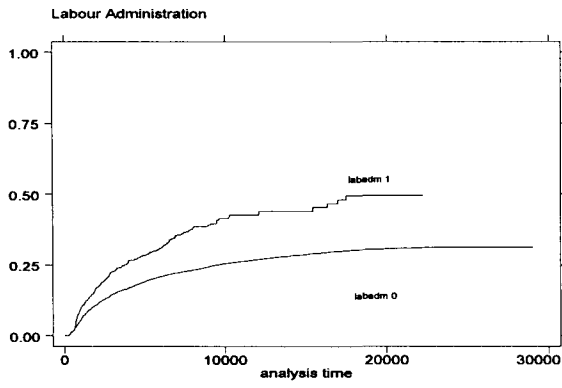
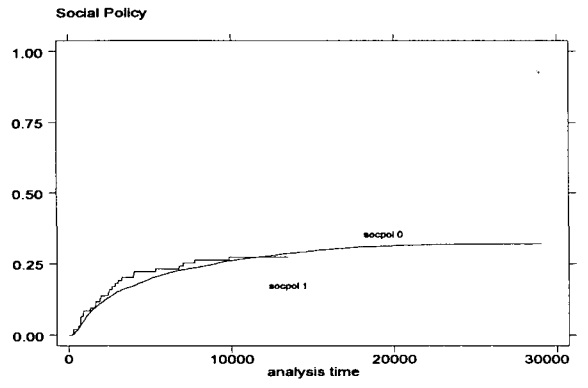
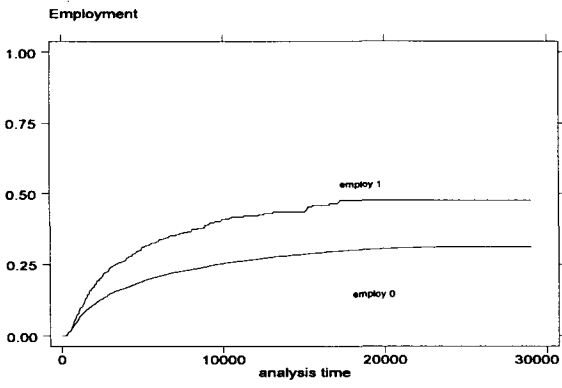


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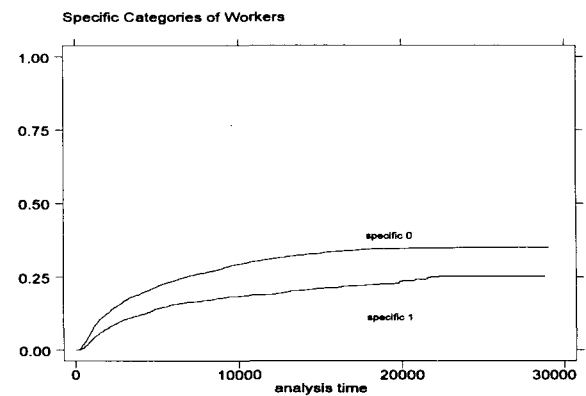
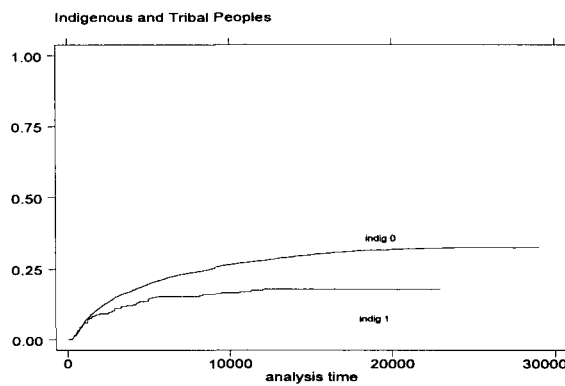
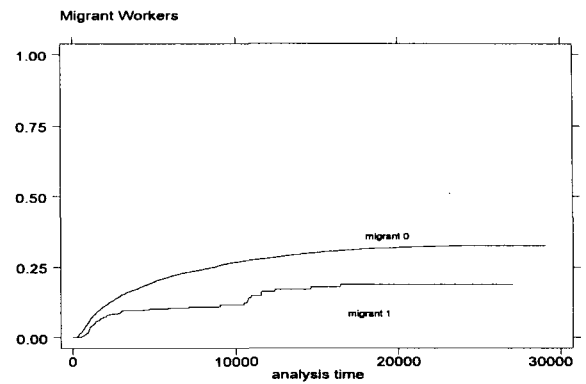
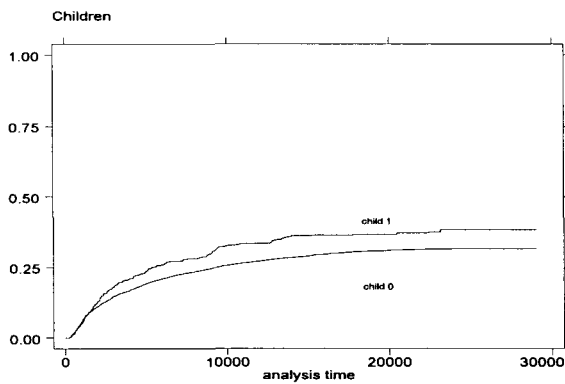
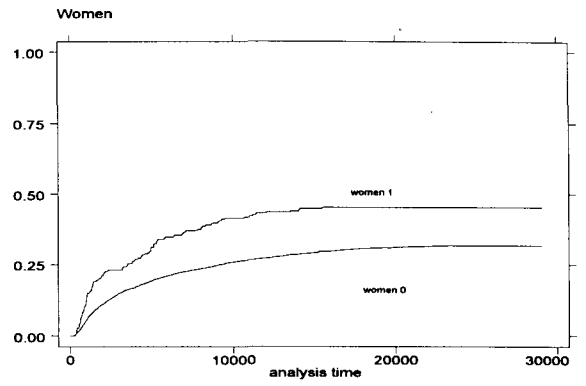
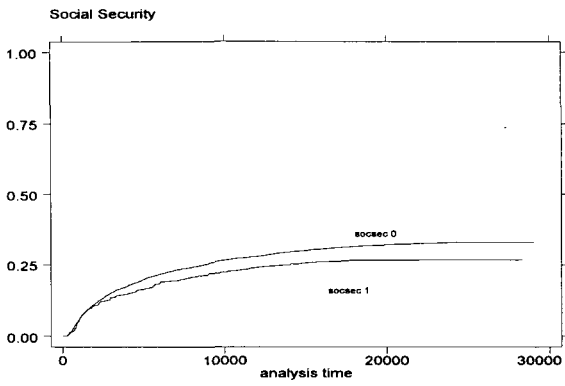
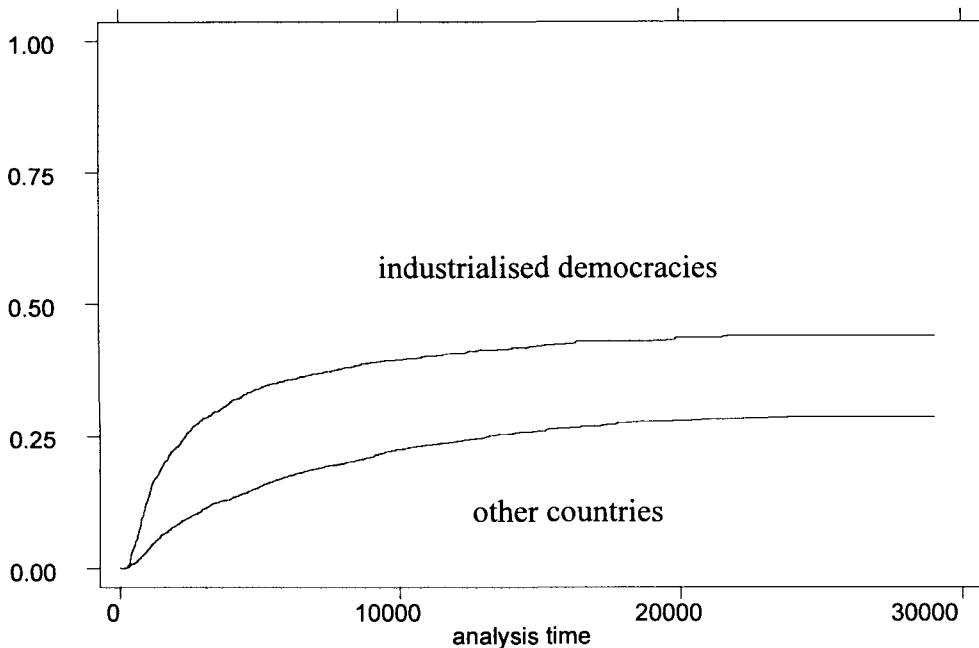


Figure 11: Kaplan-Meier-Estimates of cumulated ratification probabilities, by country groups



In figure 11, we plot the Kaplan-Meier failure functions for ratification by a group of industrialised democracies against ratification by all other countries.⁵⁷ The result is not surprising: industrialised democracies have a significantly higher probability of ratifying ILO conventions at any time after the adoption of the standard.⁵⁸ For example, the estimated ratification probability after 25 years is 39.1 per cent for developed countries, and only 21.4 per cent for the others. The distinction between these two groups of countries is, of course, very crude; for example, the group of industrialised democracies comprises both Spain (126 ratifications up to 1999) and the United States (12 ratifications). Much more work will have to be done to disentangle the factors that impact on the likelihood of ratification.

4.2 Denouncing conventions

Member countries may denounce a convention they have ratified. A denunciation is possible only at certain points in time, stipulated in the texts of the conventions themselves. Most conventions can only be denounced ten years after coming into force, and only during an interval of one year. Denunciation becomes possible again after subsequent periods of ten years (Handbook of Procedures, paragraph 69). A government denouncing a convention is obliged to communicate the reasons for the denunciation to the Governing Body in writing. The vast majority of denunciations take place in the context of the revision of a convention; of all 460 denunciations up to 1997 contained in the ILOLEX database, only 57 concern conventions

⁵⁷ For the list of industrialised democracies, see footnote 39.

⁵⁸ The logrank test gave a χ^2 -value of 418.6, which is again highly significant.

other than the 54 which have been revised.⁵⁹ This means that less than one per cent of all ratification decisions have actually been reversed.

5 The supervision procedures

One of the obligations arising from ratification is the requirement to regularly provide reports to the International Labour Office which are then examined by legal experts. These communications form the regular supervision procedure. In the following, we will deal with this procedure first before turning to other means of supervision.

5.1 The regular system of supervision

The regular system is based on periodic reporting on measures to give effect to ratified conventions. In principle, reports have to be submitted annually (Constitution, Article 22). If strictly applied, this requirement would result in many more reports than could be evaluated at the Office. Therefore, the reporting system has been changed several times (Bartolomei de la Cruz et al., 1996: 68). Current regulations date from 1993.

The first report a government has to submit is due in the year after the convention entered into force in that country. The second report must be sent to the Office two years after the first. Further reports must be handed in every five years, except for fundamental or priority conventions (see section 2.4.2), where reports are due every two years. For conventions which have been “shelved” (see section 3.4), the obligation to report has been abolished. There are also non-periodic reports, either at the initiative of the Conference or under the special supervisory procedure discussed in the next section.

All reports must be communicated to the “most representative” trade unions and employer associations, in order to give them a chance to comment on them (Constitution, Article 23). If the Office receives a statement from one of these organisations, the government is requested to provide further information. This amounts to further reporting obligations in between the regular reporting cycle (Swepston 1997: 336). The ILO depends to a large extent on the transmission of interest groups’ knowledge about national conditions (Jacob and Atherton, 1972: 542). To be effective, this requires independent trade unions and employer organisations (Körner-Dammann 1991: 47).

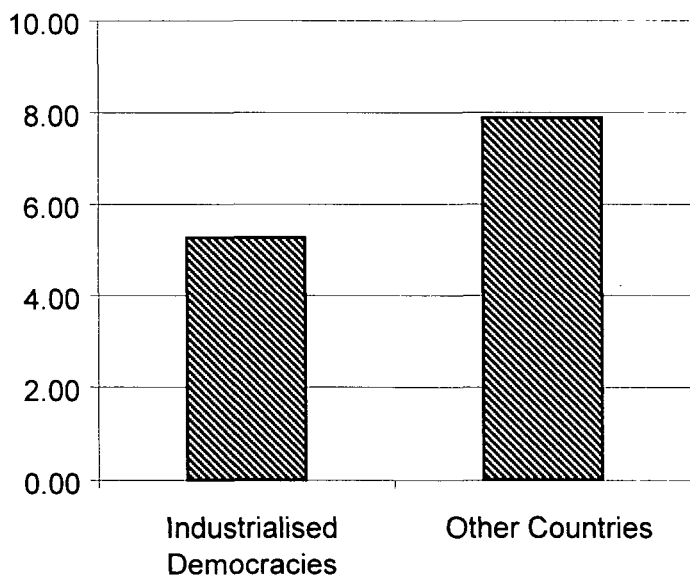
At the International Labour Office, the reports are examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR, see section 2.3.1.2). The CEACR meets annually and submits its reports to the Conference Committee on the Application of Standards. Its statements fall into three groups. “Observations” are made in cases of clear and persistent non-compliance with the provisions of the convention. “Direct requests” are made in connection with less important subjects; they are not published but sent directly to the governments. “Acknowledgements” are made when a government has reacted satisfactorily to a “direct request”. Observations can be general in nature, but more frequently concern the application of a specific convention by an individual country (“individual observations”).

⁵⁹ Cf. section 3.4.

To take a brief look at the empirical application of the supervision procedure, we exclusively draw on information for the years from 1990 to 1997.⁶⁰ On average, the CEACR made 425 individual observations per year during this period.⁶¹ Figures 12 to 14 show some of the patterns that can be observed.

Figures 12 and 13 display the conditional probability of receiving an observation on a convention in a given year during the 1990-97 period, given that the convention has been ratified.⁶² To estimate this probability, we divided the number of CEACR observations in each year by the number of ratifications up to the beginning of that year. We then averaged these numbers over the eight years of the period under investigation and over countries.

Figure 12: CEACR observations by countries



The graph shows the estimated probability (in per cent) of receiving a CEACR observation on a ratified convention within a single year between 1990 and 1997 .

⁶⁰ Data from earlier periods are not available electronically.

⁶¹ For an earlier statistical account of the CEACR's operation, see Landy (1966).

⁶² For country i , we estimate this probability by

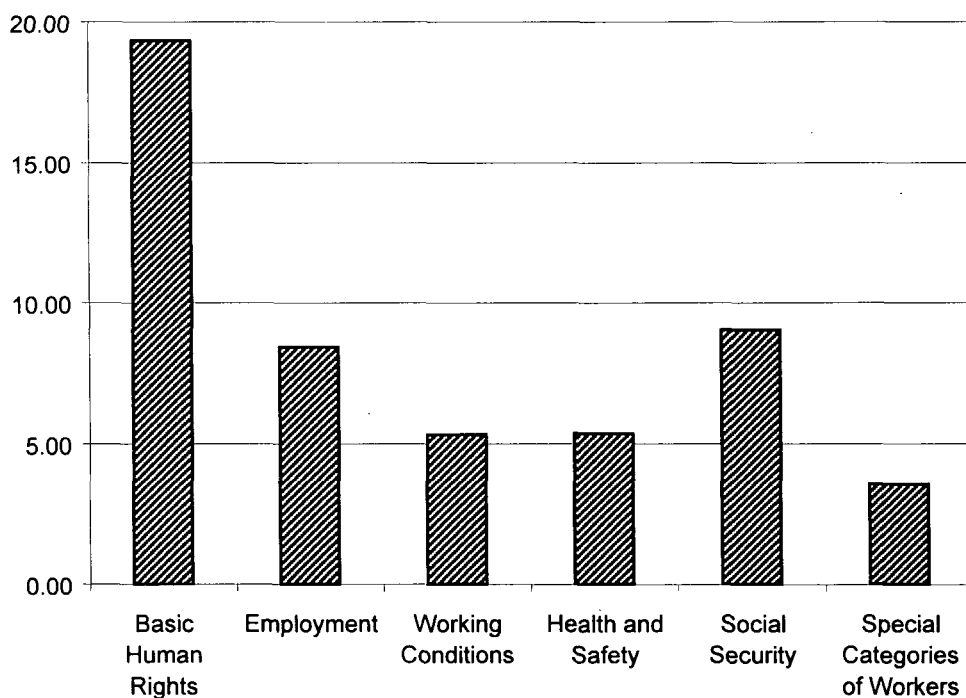
$$\Pr(\text{country } i \text{ receives observation}) = \frac{1}{8} \sum_{t=1990}^{1997} \frac{b_{it}}{\sum_{j \leq t} r_{ij}},$$

where b_t is the number of observations made by the CEACR in year t and r_j is the number of ratifications during year j .

Figure 12 shows the distribution of individual observations by groups of countries.⁶³ We find that industrialised democracies have a one third lower probability of receiving an observation by the CEACR.

From figure 13, we observe that many more observations are made concerning human rights standards, as compared to all other subject groups. Other subject groups where observations are made relatively frequently are employment and social security, while observations are less frequent for conventions on working conditions or health and safety. These numbers are, however, difficult to interpret. Observations on human rights conventions are more frequent than others probably not because compliance is worse. Rather, their number reflects the fact that six out of seven “priority conventions” with shorter reporting intervals are human rights standards. It may also be that the CEACR attaches a higher importance to these instruments and is therefore less tolerant in cases of non-compliance.

Figure 13: CEACR observations by convention subjects



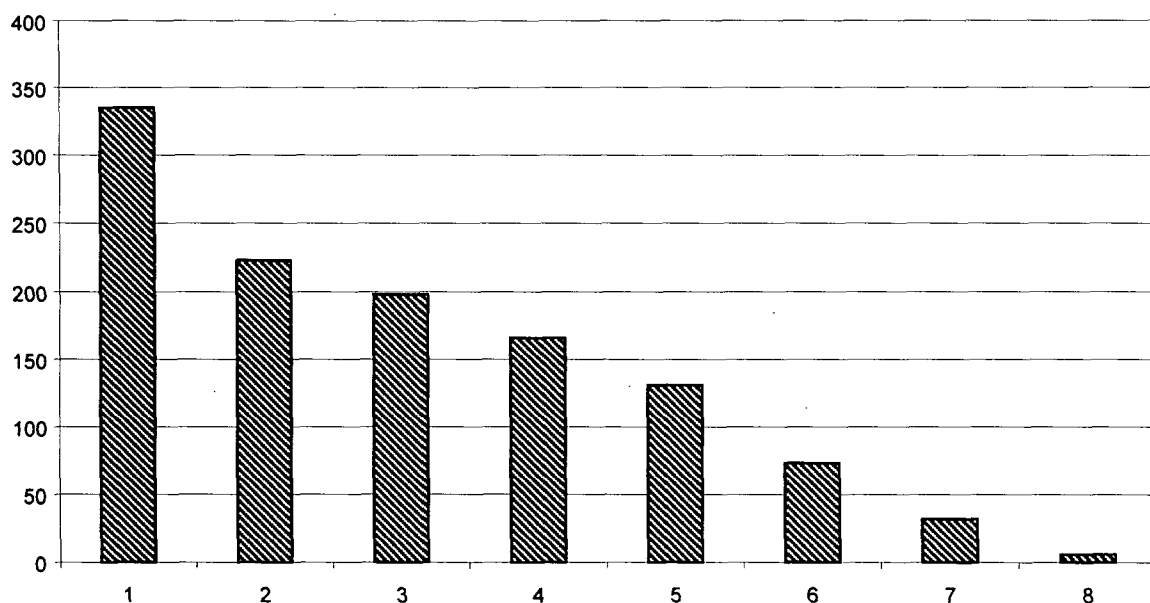
The graph shows the estimated probability (in per cent) of receiving a CEACR observation on a ratified convention within a single year between 1990 and 1997 .

It is also interesting to ask whether the CEACR often makes repeated observations on the non-compliance of a country with respect to the same convention. This could give an indica-

⁶³ For the country groups, see footnote 39.

tion on the persistence of non-compliance (and perhaps also on how fast a country introduces changes in response to the CEACR's comments.) According to figure 14, the most frequent case in absolute numbers (with 335 instances) is that only one observation was received by a country on a particular convention, compared to, for example, 131 cases where a country received five observations. However, if we look at the distribution of the number of observations, we see that roughly 90 per cent of the 3405 observations over the 1990-97 period occurred in cases where the CEACR repeatedly demanded better implementation of a convention.

Figure 14: The incidence of repeated CEACR observations



The graph shows the number of cases where 1, 2, etc., observations were received by a country on a given convention between 1990 and 1997.

The report of the CEACR is the basis for the discussion in the Conference Committee on the Application of Conventions and Recommendations. The Conference Committee selects cases of non-compliance mentioned in the CEACR's report, asking the governments concerned for written or oral statements. There is no automatic obligation to prepare further reports by governments which have received observations. Publicity may be given to individual cases when the Conference discusses the committee report in plenary session.

5.2 The special system of supervision

Outside the regular supervision procedure, there are two complaints procedures. According to Article 24 of the Constitution, unions and employer associations may make "representations" against governments if they believe that they do not comply with their obligations from ratification. In the past, this procedure was only infrequently used, but representations have been

more frequent recently (Swepston 1997: 338). In the second complaints procedure, laid down in Article 26, a government can file a complaint against another government if both ratified the convention in question. This procedure is also open to individual Conference delegates and the Governing Body. For the first time, it was used in 1961; up to the end of 1994, there have only been 22 cases of complaints (Bartolomei de la Cruz et al. 1996: 93f.). Of these, only five were made by governments. After a complaint has been made, the Governing Body may establish a Commission of Inquiry. If the country does not accept the ruling of this commission, which has happened only in very few cases so far, the case may be brought before the International Court of Justice. This, however, has never happened in the ILO's history. In the most recent application of the Article 26 procedure concerning Convention No. 29 (Forced Labour) and the government of Myanmar, the Conference passed a resolution which excluded Myanmar from receiving ILO technical cooperation and from participating in ILO meetings and seminars. This was one of the most drastic sanctions ever imposed on a country by the ILO.

6 Conclusions

In this paper, we have looked at decision-making over ILO labour standards at three stages: the adoption of standards by the International Labour conference, the ratification of conventions by member states and the implementation behaviour as measured by the Committee of Experts reports. Our statistical findings suggest the following broad picture:

- At the final voting stage, there is often near-unanimity concerning ILO conventions, although the average proportion of “yes” votes has recently declined. Votes against are mainly confined to the employer group. Sometimes, however, there is a non-negligible number of abstentions which may be “no”-votes in disguise.
- Majority voting is quite frequent during negotiations leading to labour standards. There has been a weak trend towards more consensus and fewer formal votes over the last two decades.
- The average number of ratifications per member is strongly influenced by the accession of new ILO members and the number of conventions adopted, hence one must be careful in interpreting the time pattern. However, the average number of ratifications per member and year has reached a comparatively low level in the 1990s. Calculations with a given group of members show that, over the whole period of the ILO's existence, the probability of ratification is about 25 per cent after 25 years, with significant differences across groups of members and convention subjects.
- Similar differences characterise implementation behaviour. Most cases of non-compliance with obligations from the ratification of conventions were repeatedly noticed by the Committee of Experts, suggesting persistent problems with the implementation of ILO standards.

The data on which our tables and figures are based will in future be more thoroughly exploited. Drawing on formal models of political decision-making, we will explore why delegates vote in a certain way at the committee stage and whether there are consistent voting

patterns. We will also further distinguish the factors that influence the propensity to ratify conventions. These factors may relate both to conventions as well as to countries. And finally, the same should be done with respect to the CEACR observations. The results from these investigations shall then be used to better explain how the contents of conventions and recommendations is chosen and to identify possible problems and inefficiencies in the ILO's negotiation system.

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Appendix A: Non-parametric regression of the occurrence of voting in committees

Table A1: Covariate estimates

Dependent Variable: Number of votes per committee session.

Data: All committees on standards, 1960-1997.

Independent Variable	Coefficient	t-value
<i>a) Subject dummy variables (base category: specific categories of workers)</i>		
Basic human rights	-0.030	-0.05
Employment	-0.240	-0.48
Social policy	-1.824	-1.75
Labour administration	-1.546	-2.55
Industrial relations	-0.623	-0.73
Conditions of work (excluding health and safety)	0.517	1.05
Health and safety	-0.486	-1.06
Social security	-0.117	-0.18
Employment of women	0.654	0.63
Child work	0.492	0.49
Migrant workers	-0.371	-0.42
<i>b) Procedure dummy variables (base category: first discussion)</i>		
Second discussion	-0.468	-1.80
Single discussion	-0.966	-1.32
Constant	0.050	0.39
Number of observations		110
R ²		0.20
adjusted R ²		0.09

Figure A1: Kernel smoothed time path

